

(2019) 08 DEL CK 0113
In the Delhi High Court
Case No : Criminal Appeal No. 1462 Of 2012

Pramod @ Langra

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 07-08-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 313, 357, 374
Indian Penal Code, 1860 — Section 34, 302, 379, 411, 458, 460, 511

Citation : (2019) 08 DEL CK 0113

Hon'ble Judges : Siddharth Mridul, J;Brijesh Sethi, J

Bench : Division Bench

Advocate : Vishal Raj Sehijpal, Anwara Khan, Ghufraan Ahmad, Ravi Nayak

Final Decision : Dismissed

Judgement

Brijesh Sethi, J

1. The appellant has instituted the present appeal under section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C') assailing the impugned judgment dated 20.07.2012 and order on sentence dated 21.08.2012 passed by Addl. Sessions Judge-II, (North-West), Rohini, Delhi in Session Case No. 1255/10, arising out of FIR No.80/2010 (hereinafter referred to as the 'subject FIR'), registered at Police Station -Sarswati Vihar.

2. By way of the impugned judgment and order on sentence dated 20.07.2012 and 21.08.2012 respectively, Pramod Langra (hereinafter referred to as 'Appellant') was convicted to undergo rigorous imprisonment for life and fine of Rs. 50,000/-, in default of payment of fine, to further undergo simple imprisonment for period of 06 months for the offence under Section 302 IPC, the entire fine amount, if recovered, shall be given to the family of the deceased (Dheeraj) as compensation u/s. 357 of CrPC and was further sentenced to rigorous imprisonment for life for the offences under Section 458 r/w. Section 460 IPC and fine of Rs. 10,000/-, in default of payment of fine, to further

undergo simple imprisonment for period of one month and was further sentenced to rigorous imprisonment for period of two years and fine of Rs. 2000/-, in default of payment of fine, to further undergo simple imprisonment of Fifteen days for the offence under Section 411 I.P.C. and was further sentenced to rigorous imprisonment for period of one year for the offence under Section 379 read with Section 511 I.P.C.

3. In order to establish the guilt of the accused, the prosecution has examined 49 witnesses. Statement of the accused was recorded under section 313 CrPC wherein he denied the case of the prosecution and pleaded not guilty.

4. The Ld. Trial Court framed the charge against the appellant Pramod and other convicts namely Mini @ A. Mini, Manoj @ Monu and also Narbahadur @ Ladies Monu @ Dhan Bahadur under Section 460/302/34 IPC. Further, charges under Section 411/34 IPC were framed against the appellant Pramod and other two convicts namely i) Mini @ A. Mini and ii) Manoj @ Monu. An alternative charge under Section 458 IPC was framed against all the accused. All the accused persons pleaded not guilty and claimed trial. Ld. Trial Court has convicted the appellant Pramod @ Langra, ii) Mini @ A. mini & iii) Manoj @ Monu and acquitted the accused Nar Bahadur for the above offences.

5. Before proceeding further, it will be better to recapture the sequence of the events as given by the Ld. Trial court in its judgment, which runs as follows:-

i. On 2.3.2010 at about 11:30 PM one Parmeet Singh (son of Surender Singh), PW-21 had parked his Maruti Esteem Car bearing No. DL?8CK?2765 in front of his house i.e. BM?55, East Shalimar Bagh which was stolen.

ii. The prosecution version is that in the said stolen Maruti Car bearing No. DL?8CK?2765, the four accused persons namely i) Pramod @ Langra ii) Mini @ A. Mini, iii) Manoj @ Monu & Narbahadur, came to the place of occurrence i.e. Sandesh Vihar Market. Accused Nar Bahadur parked the Car at the corner of the Market and the other accused persons namely Pramod @ Langra, Mini @ A. Mini and Manoj @ Monu entered Shop No.17, DDA Market, Sandesh Vihar, Pitampura where the accused Manoj @ Monu was previously employed for almost two years and was aware about the facts that the owner Vikas, PW-13 used to keep the money in the locker of the shop.

iii. Accused Pramod @ Langra, Mini @ A. Mini and Manoj @ Monu entered into the shop No.17 duly armed with iron rods and after breaking open the counter, removed the drawer/ locker from the table/ cupboard.

iv. Accused Manoj @ Monu carried the drawer containing cash amount of Rs.1,100/?, other documents and items such as automobile spare parts. The accused Pramod @ Langra i.e. appellant and Mini @ A. Mini joined him.

v. While accused persons were coming out of Shop No.17 after committing robbery, one Dheeraj who was working in the adjoining shop No. 18 and was sleeping on the Sofa lying on the Chabutra in front of Shop No.18 & 19 woke up,

on which the accused Manoj @ Monu fearing identification exhorted Pramod @ Langra and Mini @ A. Mini to kill him by saying 'Isko jaan se maar do'.

vi. Pursuant to the same, Pramod @ Langra and Mini @ A. Mini inflicted repeated injuries on the head of Dheeraj with the iron rods which they were carrying in their hands and clubbed him to death.

vii. Shri Ram (PW29) another employee working in Shop No.19 was sleeping inside the said Shop on the wooden counter, who got up on hearing the cries of Dheeraj and witnessed the entire incident through the glass door but did not come out of the shop till the break of dawn feeling extremely scared and terrified.

viii. Thereafter at about 2:15 AM all the four accused went to B?3 Block, Keshav Puram in the same stolen car bearing No. DL?8CK?2765 and parked the same besides another EsteemCarbearingNo. DL?9CP?8957 and tried to break open its lock when they were noticed by the guard Anil Kumar Tiwari (PW28) who was on duty at the Main Gate of B?3 Block, Keshav Puram.

ix. Anil Kumar (PW28) questioned them about there presence in the area as they were not residing there and also asked them to come with him but the accused refused.

x. Anil Kumar Tiwari (PW28) noticing the strange and suspicious behaviour of the accused person and the fact that they were armed with iron rods, returned back to the Main Gate where he met Jagbir Shah Singh (PW25) a resident of the same area who was waiting at the gate for him as the gate was closed and informed him about the presence of four boys who were trying to break open the locks of the Esteem Car.

xi. Jagbir Shah Singh (PW25) immediately made a call to the PCR at 2:26AM and while Jagbir Shah Singh was still talking on the phone, accused Pramod @ Langra, Mini @ A. Mini, Manoj @ Monu and Nar Bahadur ran away on foot from there towards Tri Nagar side leaving the Esteem Car bearing no. DL?8CK?2765 behind.

xii. Pursuant to the PCR call, HC Ram Dayal (PW48) reached the spot and inspected the car bearing No. DL?8CK?2765 when he found a drawer/ cash counter (Ex.PW13/A) containing documents and other articles.

xiii. On the basis of the documents of car, HC Ram Dayal (PW-48) contacted Surender Singh, the registered owner of the car who along with his son Parmeet Singh (PW21) reached the spot and identified their car but did not claim the drawer and other articles including rods and handed over the said drawer and its contents to HC Ram Dayal.

xiv. After this, the accused persons fled to Tri Nagar on foot at about 3:40 AM where they committed theft of another Esteem Car bearing No. DL?9CK?3999 from 1910/143, Ganesh Pura, Tri Nagar, belonging to Rajesh (PW24) which was witnessed by the Chowkidar of the area who immediately informed Rajesh of it.

Pursuant to this Rajesh immediately made a call to police and an FIR bearing No. 82/2010 (Ex.PW9/A), Police Station Keshav Puram was registered regarding theft of this car.

xv. As per evidence appearing on record Shri Ram (PW-29) who had witnessed the murder kept hiding inside Shop No.19 being terrified and it was only in the morning when people started moving in the area that Shri Ram rushed to the house of his owner Sanjay Sharma (PW18) and informed him about the incident and, thereafter, Sanjay Sharma immediately went to the Police Station personally and informed the police about the incident and the present FIR was registered on the statement of Shri Ram (PW-29).

xvi. Meanwhile HC Ram Dayal (PW-48) of Police Station Keshav Puram after going through the documents lying in the drawer found the address of Shop No.17, DDA Market, Sandesh Vihar, Pitam Pura and he also reached DDA Market, Sandesh Vihar and there he met Inspector Praveen Kumar, PW-47 and came to know of the robbery and murder and handed over the drawer and its contents to Inspector Praveen Kumar. The owner of the Shop No.17 namely Vikas, PW-13 also identified the said drawer, papers and articles as belonging to him.

xvii. PW-47 IO Insp.Praveen Kumar investigated the case. According to prosecution on 06.03.2010 on receiving information PW-47 along with other police officials reached at PS. Rani Bagh, where police officials of PS Rani Bagh had apprehended the convict Manoj @ Monu, who in his interrogation had disclosed his involvement in the present case as well as involvement of his other associates i.e. appellant Pramod @ Langra, convict Mini @ A. Mini and Nar Bahadur.

xviii. Thereafter IO PW47 and other officials had started searching for other co-accuseds. On receipt of a secret information, accused Pramod @ Langra along with co-accuseds Mini @ A. Mini and Nar Bahadur were apprehended in one Esteem Car bearing No. DL 9CK 3999. Pramod @ Langra was sitting on the driver seat, co-accused Mini @ A. Mini was sitting on the front seat next to driver seat and accused Nar Bahadur was sitting at the rear seat. From the personal search of them, a knife was recovered from the Pramod. Blood stains were found in the Car. One iron rod was recovered from the seat next to the driver seat. Said rod was also having blood stains. Another rod was recovered from the dicky of the car that too had blood stains. All the three accused persons were interrogated and arrested in the present case.

6. The Trial Court in its judgment has primarily relied upon the testimony of PW-29 Shri Ram who is an eye-witness to the incident. Most of the arguments of Ld. Counsel for the appellant also revolve around the statement of PW29. In fact his examination-in-chief sums up the prosecution version and it runs as under;

'In the month of March, 2010, I was working at Shivani Tent for decoration which is situated at Shop No.19, DDA Market, Sandesh Vihar. I used to sleep at the aforesaid tent house. Dheeraj Sharma was also working at the aforesaid tent

with me and used to sleep at the said tent house. On the night of 02.03.2010 I took dinner and slept and Dheeraj had been already gone to somewhere and was not present at the tent house at that time in the night when he slept. At about 11:30 PM Dheeraj came and got me woke up. He took quilt and hanged his pant on the hanger and slept on the sofa which was lying in front of the tent house. I also slept inside the shop after closing the door. In the morning when I got up at about 5 AM and came out of the tent house I found Dheeraj in the pool of blood lying in front of shop No.17. There was blood near the sofa. Againsaid the injured Dheeraj was found in front of shop no.18 and also found the lock of shop No.17 broken. I found the injuries on the head of Dheeraj and he was found dead. I informed the tent owner Sanjay Sharma who came to the spot.

My statement was recorded by the police which is Ex.PW29/A bearing my signature at point A.

At that time I was so scared therefore I could tell the entire incident to Dahiya Sahib. I was again interrogated by Parveen Sir to whom I had given my further statement. I heard the voice of khat pat. I woke up and saw from inside from inside from the mirror door that Dheeraj was crying and two persons were found standing near him with rods. I heard the noise of khat pat from shop no.17. Injured Dheeraj had tried to stand and came up to shop No.18. I heard the voice from inside the shop No. 17 that "isko jan se mar do". I had seen both persons hitting rod on the head of Dheeraj. I so scared, therefore, I could not come out from our shop. I had seen that third person had brought wooden drawer from shop No. 17. At the same time the two persons who hit the rod on the head of Dheeraj and the person who brought drawer, left the spot. Dheeraj fell down in front of shop No.18. I had given this version to the police in which I had also stated that I can identify those persons if shown to me.

On 18.03.2010 I attended Rohini Jail and I participated in the TIP Proceedings of accused persons in which I had identified two persons by pointing towards them as those who had given beatings to Dheeraj whose names I later on came to know through the IO were Pramod and Mini. Both the said persons are present in the court. The witness has been asked to identify the said persons who were sitting in court from amongst the others and he has correctly identified both the accused Pramod and Mini @ A. Mini @ Mental both of whom are sitting in the court as the persons who had inflicted beatings to Dheeraj. I could not identify the third person during the Judicial TIP due to fear but I had seen the third boy and I can recognize him. Earlier on 19.03.2010 the IO Insp. Praveen had brought the boy to my shop during the interrogation when I identified him as the boy who had removed the drawer from the table of the shop and taken away the same. The said boy is present in court today.

At this stage, the witness has pointed out towards the accused Manoj (in JC) sitting in the second last row as the boy who had been seen brought to his shop by Inspector Parveen during investigations and whom had identified. The witness submits that the accused Manoj was the person who had removed the drawer

and had an iron rod in his hand at the time of committing the offence. The accused Manoj pointed out the spot and IO prepared the memo to this effect vide already Ex.PW13/E bearing my signature at Point B. Police also lifted the blood with the help of cotton from various points from the spot.

On 25.03.2010 the official (nakshawala/draftsman) had come to the spot and taken various measurements and prepared the scaled site plan. I can identify the case property if shown to me.

At this stage MHC(M) had produced one unsealed plastic bag having particulars of the case and from it another plastic bag having court seal is taken out and from it MHC (M) has taken out three rods. Same are shown to the witness who correctly identified the same. Same has already been exhibited as P3 to P5. One wooden drawer is also taken out from the said bag and shown to the witness who correctly identified the same also. Same is already EX P10.'

7. Learned counsel appearing on behalf of the appellant has vehemently argued that Ld. Trial court erred in convicting and sentencing the appellant as Ld. ASJ failed to consider the fact that the entire prosecution version is based upon the testimony of PW-29 Shri Ram who is totally unreliable and his testimony has not been corroborated by any other independent witness. There are number of material contradictions in the statement of PW-29. Ld. Addl. Sessions Judge has failed to consider the fact that PW-29 Shri Ram had not narrated the incident to SI Sanjay Kumar (PW-14) at 6.45 AM in the morning who had reached the spot on receipt of DD No. 5A. This witness in fact has given the details of the incident and projected himself as an eye-witness only in the afternoon at about 1.30 PM when IO Insp. Praveen had recorded his supplementary statement.

8. Ld. Counsel for the appellant has next argued that prosecution case is totally based upon surmises and conjunctures as it has failed to prove the presence of the appellant at the spot and his involvement in the alleged offence. The appellant has been shown to have been arrested from a public place but strangely no independent witness was joined at the time of his arrest. No weapon of offence has been recovered at the instance of the appellant and Ld. ASJ has also failed to consider the fact that the appellant has been acquitted in case FIR no.82/2010 P.S. Keshav Puram wherein it was alleged that he had made a disclosure statement admitting his involvement in the present case.

9. It is further argued that the Ld Trial Court did not appreciate the contradictions and the improvements appearing in the statements of the witnesses, particularly, PW-29, as these contradictions go to the roots of the case. According to Ld. Counsel, the prosecution has failed to prove its case beyond reasonable doubt and the judgment of the Trial Court convicting the appellant be set aside in the interest of justice.

10. Per Contra, Mr. Ravi Nayak, Ld. APP appearing on behalf of the State has argued that Ld. Trial Court has rightly convicted the appellant on clear, creditworthy and unshattered testimony of PW-29 Shri Ram. It is a well settled

law that the accused can be convicted on the basis of the sole testimony of an eye-witness. The Ld. APP, has further argued that there is no reason to disbelieve the testimonies of prosecution witnesses and the prosecution has been able to prove the guilt of the accused, beyond reasonable doubt.

11. We have carefully considered the rival contentions and perused the entire evidence appearing on record. Let us first examine the statement of PW-29 Shri Ram to find out whether the same deserves acceptance and whether the Ld. Trial Court has rightly relied upon the testimony of PW-29 for coming to the conclusion that appellant is guilty of the offence charged.

12. Ld. counsel for the appellant has argued that PW-29 is not worthy of reliance as he is not an eye-witness to the incident. In fact, he has given two entirely different versions. The first version of incident was given to SI Sanjay Kumar (PW-14) at 6.45 AM on 03.03.2010 where he has not shown himself to be an eye-witness. Later on at about 1.30/2.00 PM when he was examined by the IO Insp. Praveen, he has narrated the entire incident in detail and projected himself as an eye-witness. Ld. counsel has argued that to base conviction on the statement of such a witness would be against all the cardinal principles of criminal law. He has argued that this witness is totally unreliable and planted later on by the prosecution to falsely implicate the appellant and, therefore, the judgment passed by Ld. Trial Court is not in accordance with law.

13. We have considered the contention of Ld. Counsel for the appellant. Ld. Trial Court has dealt with this point in detail in its judgment and held that PW-29 is a reliable witness. We do not find any infirmity, illegality or perversity in the appreciation of evidence by Ld. Trial Court. It is a matter of record that PW-29 Shri Ram has not given the details of the incident as an eye witness till 1.30 p.m in the afternoon. It is an admitted case of the prosecution that PW-29 has not narrated the incident to SI Sanjay Kumar in the morning when rukka Ex.PW14/C was sent. However, PW-29 has clarified in his supplementary statement dated 03.03.2010, given to the Investigating Officer that he was scared and that is why he had not told SI Sanjay Kumar about the incident. In his testimony before the Court, PW-29 has again narrated the said fact and categorically deposed that he was scared and, therefore, he did not tell the entire incident to PW-14 SI Sanjay Kumar that he had actually seen the incident. The witness has also identified the appellant Pramod in the TIP conducted in the jail by the Ld. MM.

14. Perusal of the statement of PW-29 reveals that he has given very cogent reasons for not disclosing the details of incident in his first statement. He has categorically deposed that since he was scared, he could not disclose the entire incident to PW-14 SI Sanjay Kumar. There is no cross-examination of PW-29 on this point by the Ld. Counsel for the appellant. Even there is no cross-examination of I.O. Insp. Praveen, PW-47 who had recorded the supplementary statement, on this point. There is no cross-examination by Ld. counsel on the point that PW-29 has given a different version to SI Sanjay Kumar, PW-14 and altogether different version to the IO Insp. Praveen Kumar, PW-47. Only a

suggestion has been given that he was not a witness to the incident and has been planted at the instance of the IO. The witness has, thus, not been cross-examined on the point as to why he has kept quiet in the morning and given an eye-witness account of the incident in detail in the afternoon. In our opinion, there is no reason to disbelieve the statement of PW-29 on the ground that he has not informed the police immediately after seeing the incident. We cannot ignore the fact that the witness has seen someone being brutally killed by the appellant and another convict Mini @ A. Mini. His state of mind at that time and thereafter as well would not have been such that he could come out from the shop and inform about the incident to the neighbours or to the police. It is not unusual for the witness to have acted in such a way. This is a fact that people respond in their own way when they witness a crime. The Hon'ble Supreme Court in case *Kathi Bharat Vajsur & Ors. Vs. State of Gujrat*, AIR 2012 SC 2163, has held that different persons react differently when they witness incident of crime. The observation of Hon'ble Supreme Court runs as under;

'The court, however, must bear in mind that witnesses to a serious crime may not react in a normal manner. Nor do they react uniformly. The horror stricken witnesses at a dastardly crime or an act of egregious nature may react differently. Their course of conduct may not be of ordinary type in the normal circumstances. The court, therefore, cannot reject their evidence merely because they have behaved or reacted in an unusual manner. In *Rana Pratap v. State of Haryana Chinnappa Reddy, J.*, speaking for this Court succinctly set out what might be the behaviour of different persons witnessing the same incident. The learned Judge observed: [SCC p. 330, SCC (Cri) p. 604, para 6]

6.....Every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Every one reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way.'

15. As discussed earlier, the eye-witness PW-29 was so scared that he had not disclosed the full facts at the first instance, however, later on when he had regained his composure in the security of police officials, his employer and other neighbours, he had come out with the truth & narrated the incident. Thus, we find no infirmity in the findings of Ld. Trial Court on this point.

16. Ld. Counsel for the appellant has next argued that there are number of contradictions in the statement of PW-29 and these contradictions go to the root of the case and, therefore, no reliance should have been placed upon his testimony by the Ld. Trial Court for convicting the accused. Ld. Counsel has argued that Ld. Trial Court has not appreciated the fact that PW-29 could not

have seen the alleged incident happening for the reason that he was present inside the shop and in his cross-examination, he has himself stated that he had hidden himself behind the counter which was about three feet high and when the witness was hiding behind the counter, it was not possible for him to see as to what was happening outside. Ld. Counsel has further argued that this witness in his cross-examination has again changed his stand and stated that he was sleeping on the top of the counter and not on the floor and that is why he could see as to what was happening outside and it is difficult to reconcile these two contradictory statements. He has, therefore, argued that witness is a planted one and since his statement is full of contradictions, he is not worthy of reliance and Ld. Trial Court has committed a grave error by relying upon his statement.

17. We have given our thoughts to the matter and carefully perused the statement of PW-29. The cross-examination of PW-29 is reproduced below to appreciate the contention of Ld. Counsel for the appellant that there are major contradiction in his testimony.

XXXX By counsel Sh. B.S. Solanki for accused Pramod and Manoj and Ms. Sadhana Bhatia, counsel for accused Mini @ Mental.

Dheeraj was in normal condition when he met me at 11:30 PM. He did not tell me about any quarrel with any person. I had stated the IO that the deceased has put his pant on the hanger before sleeping. Vol. Earlier I could not disclose all the details but in my later statement to the IO I told about all the details. The shop where we used to sleep was approximately 10 x 12 feet. We also keep our goods on the chabutra in front of the shop and the gallery ahead of it. There is an iron shutter on the front side of the shop and also a glass door. Vol. On the day of the incident we had only shut down the glass door but the shutter was open. I used to sleep was hardly about one feet away from the main door. The light of the shop was closed but the light was coming inside from the glass door as the light of House No. 1, which was open, was coming inside. House No.1 is at a distance of hardly twenty feet from the shop. Vol. it is right adjoining the chabutra. The said house bearing no.1 is right opposite our shop. There was a small gallery between the house No.1 and our shop. Vol. The door of the house leading to the clinic of the doctor opens in the gallery in front of our shop. The said gallery is open and there was a chajja in front of our shop. The said gallery is hardly 6-7 feet wide. There are shops on either side of our shop. Vol. It's a market. After the houses/ residential area starts after house No.1. At the time of incident there was no chowkidar/guard in the area.

In the morning when I saw the dead body of Dheeraj soaked in blood I got perplexed and had telephoned to my owner. Vol. I was so confused and scared that after making the call I personally went to the house of my owner to inform him about what had happened. I had called up my owner through my personal mobile. Vol. I am still continuing with the same connection which is operational when I am in Delhi. My telephone no. 9310367105. I have given this number to the police when I made my statement. At this stage witness is confronted with

his statement u/s. 161 CrPC which are are Ex.PW29/A, Ex.PW29/DX1, Ex.PW29/DX2 and Ex.PWDX3 where this number has not been mentioned but the said number has been mentioned along with my name and address at point B on Ex.PW29/A.

I had informed my owner about the incident at about 5:30 AM. He came to the spot within 5 - 7 minutes along with me. My owner/ employer had informed the police. He did not telephoned the police but had personally gone to the police station. I did not accompany him. When I noticed the incident in the morning, some people were passing through the road and slowly the crowd gathered around the place of the incident. Police reached the spot at about 6:15 AM. There was crowd of around 50-60 persons gathered. Police did not ask any person from the crowd to join the investigations in my presence. Insp. Parveen had met me at around 2:30-3PM when police had gone to the spot. My second statement was recorded in the afternoon of the same day i.e. 03.03.2010. when I had heard the noises at night I was sleeping behind the counter. I did not move because I was scared that these people would see me and therefore I kept hiding behind the counter. I did not tie a watch. I had seen the time from my mobile and it was around 1:00 midnight. Vol. I had seen the time when I felt that the things had become normal. The counter in our shop is of same height as that of the computer table of this court.

Court observation: The computer on which the stenographer is working is about three feet high.

The counter is made of ply and there is no glass on the front side. Some bed sheets are kept in the box of the counter. On the date of the incident I was sleeping on the floor. I did not raise any hue and cry when I saw the incident. Vol. I was myself very scared. I did not make any telephone call to anybody between 1AM and 5AM to inform about some persons having entered the shop. I also did make any 100 number call. I was not sleeping at that time. Vol. feeling scared I was not coming out and it was only when I felt that people were moving in the road outside that I came out. When I slept the door of the shop was closed but I came out in the morning it was already opened. Vol. there is a system of internal lock in the door like a daraj which lock was already open. It is correct that whenever we sleep the door of the shop is locked from inside. The door of our shop is about three and a half feet wide and the length of the counter adjoining the door is approximately 6 x 3 feet. Vol. It is L shape. The portion of 6 feet runs along the length of the shop and the portion of three feet of the counter is on the front side. I could see from under the counter when I heard the noises by hiding under the counter. It is wrong to suggest that in case if I could see the accused from outside it was possible for them to have seen me. Vol. I was inside my shop whereas accused were outside in front of the adjoining shop. When I was sleeping my head was towards the door. Vol. I was sleeping on top of the counter and not on the floor and that is how I could noticed what was happening outside by turning my head. The distance between the place where I

was sleeping and the place where the deceased was lying was about 15 feet. The distance between the shop No. 17 and shop No. 19 was about 12 to 15 feet. Vol. The shop in between i.e shop No.18 was hardly about twelve feet wide. Initially I did not tell the police the description of the accused. Vol. in the second statement I had told them that I can identify them but I did not tell the description. I did not tell their description in my statement U/S 161 Cr. P.C. It is correct that no sketches of the accused were got prepared by the IO.

It is wrong to suggest that I am not a witness to the incident and I have been planted at the instance of the IO and the owner. It is wrong to suggest that I did not see anybody and it was not possible for me even otherwise to have seen any person from behind the counter as I was hiding. It is wrong to suggest that I was shown the photographs of accused Minni @ Mental and it is for this reason I had identified him at the instance of the IO during the judicial TIP proceedings. It is wrong to suggest that I was shown the photographs of accused Parmod @ Langra by the IO only after which I identified him at the instance of I.O. It is wrong to suggest that I had never seen the incident and it is for this reason that I could not identify accused Manoj during the Judicial TIP since I was not a witness to the incident and later I identified him only at the instance of IO. It is wrong to suggest that the drawer/ counter and the iron rods which I had identified were commonly and easily available in the market. Vol. the sunmica of the counter/ drawer is similar to the sunmica of the main table/ counter which is not available in the market. It is wrong to suggest that the counter/ drawer was not stolen and was planted upon the accused. It is wrong to suggest that I was not present at the spot. It is wrong to suggest that that I am deposing falsely.

18. Perusal of the cross-examination of PW-29 reveals that there are no such contradictions or discrepancies in his testimony which may render his statement untrustworthy. The testimony of PW-29 also describes in detail the role of appellant and other convicts. PW-29 is a natural witness for the reason that he was an employee of PW-18 Sh. Sanjay Sharma and was sleeping in his shop no. 19 along with deceased Dheeraj who used to work with him. Since there was no history of animosity between the appellant and PW-29, he had no interest in falsely implicating him. It is also a settled law that in the deposition of witness there are always normal discrepancies, however, honest or truthful he or she may be. These discrepancies are due to normal error of memory due to lapse of time. Thus, even, if there are some discrepancies which have come in the cross-examination of the witness, his total testimony cannot be disregarded. PW-29 has categorically deposed that he had seen the incident. His presence in the shop was natural. It does not matter much whether he had seen the incident while hiding behind the counter or sleeping on the counter. Such kind of small discrepancies in deposition of witnesses are always there. Human memory fails with time and that much of concession has to be given to a witness. No witness can narrate the incident in a parrot like manner and flawlessly. The Court has only to see whether testimony of the witness is trustworthy and the contradictions are not such that they demolish the prosecution version. The

testimony of a witness cannot be disregarded by taking one sentence from the cross-examination showing discrepancy and rejecting whole of his testimony. In this regard, we are supported by the judgment of Hon'ble Supreme Court in case 'Mritunjoy Biswas Vs. Pranab @ Kuti Biswas and Anr., (2013) 12 SCC 796' wherein it was held:-

'28. As is evincible the High Court has also taken note of certain omission and discrepancies treating them to be material omissions and irreconcilable discrepancies. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission.

19. We do not find any major contradiction which may warrant rejection of the testimony of the witness. The discrepancies appearing in the statement of PW-29 are minor in nature and do not demolish the prosecution version.

20. The Ld. Counsel for the appellant has, however, argued that even if the discrepancies are ignored, it was not possible for the witness to have seen the incident for the reason that he was hiding behind the counter which was 3 feet high and there was no glass on the front. Ld. Counsel for the appellant has argued that Ld. Trial Court has overlooked such an important aspect which has emerged in the cross-examination of PW-29 and which clearly demonstrates that the witness has not seen the incident and his version of the incident is a concocted one.

21. We have given our thoughts to the matter. Cross-examination of PW-29 reveals that a suggestion has been given to the witness that it was not possible for him to see any person from behind the counter and the witness has denied the same. On the other hand, he has stated in his cross-examination that he could see outside from under the counter. There is no cross-examination by the Ld. counsel on the point that he could not see outside from under the counter as well. Thus, the fact as it has emerged from the testimony of PW-29 is that this witness could see the incident, while hiding behind the counter.

22. Ld. Counsel for the appellant has next argued that conviction of the appellant is primarily based upon the sole testimony of PW-29. He has argued that since there is no corroboration of his testimony by any independent witness, his sole testimony should not have been made a ground for conviction of the appellant.

23. We have carefully considered the above submission of the Ld. Counsel for the appellant. It is a settled law that the conviction can be based upon the sole

testimony of an eye-witness. The prosecution does not require number of eye witnesses to prove its case beyond reasonable doubt. Even if there is one eye witness and his testimony is up to the mark, the conviction can be based upon the same. In case titled 'Namdeo Vs. State of Maharashtra,(2007) 14 SCC 150', the Hon'ble Apex Court has held as under;

'In the leading case of Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793, this Court held that even where a case hangs on the evidence of a single eye witness it may be enough to sustain the conviction given sterling testimony of a competent, honest man although as a rule of prudence courts call for corroboration. "It is a platitude to say that witnesses have to be weighed and not counted since quality matters more than quantity in human affairs." In Anil Phukan v. State of Assam, (1993) 3 SCC 282 : JT 1993 (2) SC 290, the Court observed; "Indeed, conviction can be based on the testimony of a single eye witness and there is no rule of law or evidence which says to the contrary provided the sole witness passes the test of reliability. So long as the single eye-witness is a wholly reliable witness the courts have no difficulty in basing conviction on his testimony alone. However, where the single eye witness is not found to be a wholly reliable witness, in the sense that there are some circumstances which may show that he could have an interest in the prosecution, then the courts generally insist upon some independent corroboration of his testimony, in material particulars, before recording conviction. It is only when the courts find that the single eye witness is a wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure that defect.'

24. We are of the opinion that PW-29 is totally reliable and, therefore, the Ld. Trial Court has not committed any illegality by relying upon his sole testimony. Perusal of the evidence reveals that the witness has clearly deposed that when he had heard the voice of 'Khat-pat', he had woken-up and saw from inside that Dheeraj (deceased) was crying and two persons were found standing near him with rods. Injured Dheeraj had tried to stand up to go to shop no. 18. At that time PW-29 had heard a voice that 'Isko Jaan Se Mar do'. He had seen two accused persons hitting the deceased on his head with iron rods. He has also identified both the accused persons in TIP and one of them was appellant Pramod. The witness has also correctly identified the appellant while deposing in the Court. Thus, the statement of this witness is clear, cogent and consistent. His evidence is, therefore, reliable and trustworthy and conviction can be based upon his sole testimony.

25. The Ld. Counsel for the appellant has next argued that appellant has not been identified properly and TIP conducted by the prosecution was a farce for the reason that his photograph was shown to PW-29. He has further argued that another witness Mr. Anil Kumar Tiwari (PW-28) has failed to identify the appellant as well as other convicts in TIP before Ld. Magistrate in jail. He has, therefore, argued that there is a grave doubt regarding the identification of the appellant

and benefit of doubt should be given to him and, therefore, the findings of the Ld. Trial Court on this aspect are erroneous and perverse.

26. We have considered the submission of Ld. Counsel for the appellant. So far as the identification of the appellant Pramod is concerned, perusal of the record reveals that appellant has been properly identified by PW-29 in the jail as well as in his testimony before the Court. The appellant has voluntarily participated in the TIP. He could have refused to join the TIP if he had any doubt that his photograph has been shown to the witness. Moreover, there is nothing on record to suggest that photograph of appellant was shown to the witness before TIP.

27. So far as identification by PW-28, Anil Kumari Tiwari is concerned, no doubt he has failed to identify the accused persons in TIP in jail before the Ld. Magistrate. However, as per his statement, he was working as a Chowkidar in B-3 Block, Keshavpuram and had seen the appellant and other convicts sitting in Esteem car no. DL 8CK 2765 in the colony on the intervening night of 2/3.03.2010 and one of them was trying to break open the lock of another car bearing no. DL 9CP 8957. He had also interacted with them and realised that they were all criminals. Statement of PW-28 Sh. Anil Kumar Tiwari reveals that on the intervening night of 2/3.03.2010, he was on duty from 8pm to 8am as a chowkidar at B-3 block, Keshavpuram. He had noticed that one Esteem car bearing no. DL-8CK-2765 had come and was parked in between the other cars. There were four boys in said car bearing no. DL-8CK-2765. When he had gone near the car, he had found that one of them was breaking the lock of car bearing no. DL-9CP-8957. On seeing him, that boy got back in the car bearing DL-8CK-2765. He had also found three persons already sitting in the said car. He had asked them as to what they were doing in the car and they had replied that they were waiting for someone. He had further asked that one of them should accompany him to his supervisor. On this, two of the boys who were sitting in the back seat had come out and one of them was holding a rod in his hand by hiding it on his side. He had then realized that these boys may be criminals and came back to the gate where he met a Sikh gentleman Sh. Jasbir Shah Singh, PW-25 and apprised him about the above fact. PW-25 gave a ring at 100 number. In the meanwhile, all the boys ran away on foot towards Tri Nagar. He has also deposed that the accused persons were in the age group of 20-25 years. He has also described their complexion as well. He had gone to Jail for identification of accused persons but since he was scared he did not identify them. On 29.05.2010 when he had gone to the Court with his Manager all the accused were present there. He had told this fact to his Manager who had called the police. Insp. Praveen Kumar, PW-47 had come and recorded his statement. This witness had thereafter correctly identified all the accused persons in his testimony before the Court.

28. The perusal of the above statement of PW-28, reveals that he had seen all the convicts including the appellant and had interacted with them on the intervening night of 2/3.03.2010 and, thus, he had sufficient time to see them

and had not identified them earlier in TIP as he was scared. The Trial Court has also given the reason as to why it has believed the version of PW-28 Mr. Anil Kumar Tiwari regarding identification of appellant and other convicts and the same runs as follows:-

'I have considered the rival contentions and also the explanation offered by Anil Kumar Tiwari in not identifying the accused at the first instance. In his testimony before the Court the witness Anil Tiwari (PW28) has duly explained that he is an outsider in Delhi and had gone to the jail for the first time when the Test Identification Parade was conducted. He has stated that when he saw a large number of criminals standing in a row with threatening body language, staring at him, he got extremely scared and did not identify them which fact he also disclosed to his Manager Ramayan Mishra. He has further explained that thereafter when he came to the Court on 19.03.2010 with Ramayan Mishra to attend a court hearing in some other case, when he saw all the accused in the Court on which he informed Ramayan Mishra who in turn informed the police officials present in the Court and also the Investigating Officer with regard to the identification. I may note that Anil Kumar Tiwari belongs to a poor section of the society. He has migrated to Delhi for his livelihood and has no exposure to the Courts and the Criminal Proceedings. Having gone to the Jail for the first time it is only natural for this poor man (Anil Tiwari) to be overpowered by the atmosphere of the jail and having felt scared because of his personal insecurities due to which reason he did not identify any of the accused feeling terrified when he saw many persons staring at him. The explanation given by him is probable, natural and reasonable and hence under the given circumstances, I hereby hold that there is no ground to disbelieve the version given by Anil Kumar Tiwari in the Court qua the identification of the accused Pramod @ Langra, Mini @ A. Mini, Manoj @ Monu and Nar Bahadur as the boys present in Esteem Car bearing No. DL?8CK?2765 which they had left at the spot from which the stolen drawer and other articles were recovered.'

29. Ld. Trial court has given a very cogent finding supported by reasons as to why identification of appellant as well as other convicts by PW-28 Anil Kumar Tiwari should be believed and relied upon. Thus, the contention of the Ld. Counsel for the appellant that there is no proper identification of appellant by PW-28 Anil Kumar and PW-29 Shri Ram, cannot be accepted.

30. Ld. counsel for the appellant has next argued that no TIP of the drawer and other articles alleged to have been stolen by the appellant as well as other convicts from shop no. 17 on the intervening night of 02/03.10.2010 has been conducted by the prosecution. He has argued that since no TIP of the articles was conducted, it, therefore, cannot be held that these articles were stolen from shop no. 17 by the appellant and other convicts and subsequently recovered from them.

31. We have given our thoughts to the contention. So far as the identification of the drawer and other articles is concerned, the same has been done by PW-13

Sh. Vikas, who is the owner of shop no.17. He has categorically deposed that drawer belongs to his shop. He had also put the drawer in the table/counter and it had correctly fitted there. The sunmica of both drawer and table/counter was also same. Similarly, he had also identified other articles belonging to his shop. Ld. Trial Court has given a detailed and reasoned finding as to how the articles have been properly identified PW-13, which runs as under:-

(150) This drawer/ locker which had been taken away by the accused from the shop of Vikas (PW13) was containing cash, stationery articles and documents belonging to Vikas and his family, cheque books and other articles such as hammer with wooden handle, steel katori, Locas TVS Auto Electrical spare parts, electrical bulbs, hawk?show iron blades, spare parts of vehicles etc. Vikas (PW13) has in the Judicial Test Identification Parade conducted on 29.10.2010 and also in the Court (at the time of his deposition) correctly identified the drawer stolen from his shop and the various other articles contained in the same which are original trade license and coloured copy of the same which is Ex.P?1; two original MTNL bills, application for obtaining the PAN Card in his name and in the name of his wife Geeta Batra, cheque book in the name of Sh. H.N. Batra , receipt dated 15.11.2009 to 29.11.2009, full and final settlement of salary of Umar Alam which are collectively Ex.P?2; three iron rods which are collectively Ex.P?3; one hammer with wooden handle which is Ex.P4; one steel katori which is Ex.P?5; four Locas TVS Auto Electrical St. Vs. Pramod @ Langra Etc., FIR No. 80/2010, PS Saraswati Vihar Page No. 192 spare parts which are collectively Ex.P?6; Six electrical bulbs of blue colour which are Ex.P?7; ten hawk?show iron blades which are collectively Ex.P?8; seven tools which are collectively Ex.P?9; one wooden drawer which is Ex.P?10; 19 papers which are Ex.P?11; 4 spare parts of vehicles which are Ex.P?12; two pens, two refills, one eraser and one clip which are collectively Ex.P?13.

(151) Further, the eye witness Shri Ram (PW29) has also identified the drawer of the counter Ex.P?10 as the same which he had seen in the hands of accused Manoj @ Monu while they were leaving the shop of Vikas after committing the robbery. A specific suggestion had been given to Shri Ram (PW29) that similar drawers are easily available in the market which he has denied and has explained that he could identify the stolen drawer recovered later because of its sunmica which was the same as that of the table/ counter from where it was stolen and it fitted into the same.

32. We, therefore, do not find any infirmity in the above finding of the Ld. Trial Court on the point of identification of the stolen articles.

33. Ld. counsel for the appellant has next argued that no public person has been joined at the time of apprehension of the appellant and other convicts and in fact they have been lifted from their respective houses and falsely implicated in the present case. He has further argued that only witnesses to the arrest of the convicts are police officials and their testimony should not be relied upon for non joining of public persons though they were available at the spot.

34. We have given our thoughts to the matter. The witnesses i.e. PW-47 IO Insp. Praveen Kumar, PW-32 HC Ashok Kumar, PW-47 Ct. Kulbhushan and PW-44 SI Ramesh Kumar have given a consistent version regarding apprehension and arrest of the convicts including appellant. So far as non joining of public persons is concerned, one cannot ignore the fact that generally the witnesses to the incident of crime are not willing to come forward for deposing before the police or court. There is a general tendency on the part of public persons not to become a witness so that one has not to attend the court by leaving his work and suffer monetary loss. The Hon'ble Supreme in case 'Jai Yodhad v State, 2014 SCC OnLine Del 458', while highlighting the reluctance of common men to join as public witnesses, has observed as under:

'11. As regards public witnesses not being joined, it has come in the deposition of prosecution witnesses that a number of persons present on the bus stops on the way to the place where the appellant was apprehended as well as several members of the public present on the spot were requested to join the police team but no one agreed to be associated with them. It cannot be disputed that the public does not want to get dragged in police and criminal case and wants to avoid them, because of long drawn trials and unnecessarily harassment. Similar view was taken in Manish v. State (NCT of Delhi) and in Appabhai v State of Gujarat. We can't be oblivious to the reluctance of common men to join such raiding parties organised by the police, lest they are compelled to attend Police Station and Courts umpteen times at the cost of considerable inconvenience to them, without any commensurate benefit. Hence, no adverse inference on account of failure to join public witnesses in such raids despite genuine efforts should be drawn'.

35. The Ld. Trial Court has also dealt with the above contention in its judgment and we do not find anything wrong in the reasons given by it which are duly supported by the decisions of the Hon'ble Supreme Court. The relevant portion of the same runs as follows;

'I have considered the rival contentions. I may observe that it is common experience that public persons are generally reluctant to join police proceedings. There is general apathy and indifference on the part of public to join such proceedings. This position of law was reiterated in Aslam and Ors. (Mohd.) Vs. State reported in 2010 III AD (Delhi) 133. It was also observed by Hon'ble High Court that reluctance of the citizens to join police proceedings is well known and needs to be recognized. It cannot be disputed that public does not want to get dragged in police and criminal cases and wants to avoid them, because of long drawn trials and unnecessary harassment. Similar view was taken in Manish Vs. State, reported in 2000 VIII AD (Scheduled Caste/ Scheduled Tribes (Prevention of Atrocities) Act, 1989) 29 and in A. Bhai Vs. State, reported in AIR 1989 SC 696, where it was held that we cannot be oblivious to the reluctance of the common man to join such raiding parties organized by the police, lest they are compelled to attend police station and Courts umpteen times at the cost of

considerable inconvenience to them, without any commensurate benefit.'

36. Ld. Counsel for the appellant has next argued that it is the prosecution case that appellant as well as other convicts namely Mini @ A. Mini and Manoj @ Monu were apprehended while travelling in a stolen car bearing no. DL 9CK 3999 and regarding which FIR No. 82/2010 was registered. However, the said case has resulted in acquittal vide judgment dt. 14.05.2010 by the court of Sh. Vidya Prakash, Ld. ACMM-1,/NW/RC/Delhi. He has contended that in view of the above fact, the arrest of the accused persons from the said car becomes doubtful. In fact, the appellant and other convicts were arrested from their respective houses and not from the alleged stolen car and, therefore, the prosecution version regarding whole of the alleged incident cannot be believed.

37. We have given our thoughts to the above contention of the Ld. Counsel. The judgment in FIR No. 82/2010 has been passed by the Ld. ACMM on 14.05.2010. The present case was committed to the Ld. Trial Court on 12.07.2010. The IO PW-47 Insp. Praveen Kumar was examined on 11.01.2012 in the present case. He was not confronted with the fact that the accused persons have been acquitted in case bearing FIR no. 82/2010 and he has falsely implicated them and shown their arrest from the said car. However, even if this fact is ignored, we find that the said judgment of acquittal is based upon minor discrepancies and the reason for acquittal was that one of the witness was not cross-examined and there were contradictions in the testimonies of PW-11 HC Ashok Kumar and PW-06 Insp. Praveen Kumar who had apprehended accused persons along with stolen vehicle. Ld. ACMM in the judgment has observed that PW-6 has deposed that stolen car was stopped after being chased whereas PW-11 has deposed that stolen car was stopped by putting barricades in front of the car. PW-6 has deposed that 2-3 public persons were asked to join the investigation whereas PW-11 has not deposed that PW-6 had requested the public persons to join the investigation and they refused to do so. PW-6 has deposed that the entire writing work was done by him at the spot in standing position whereas PW-11 has deposed that entire writing work was done while sitting on a wooden bench which was arranged from a nearby park. Accused persons in FIR no. 82/2010 were, thus, acquitted on the basis of above contradictions. We are of the opinion that acquittal of the accused persons in the said FIR on the basis of the above contradictions does not affect the conviction of the appellant in the present case in which there is an eye witness to the incident (PW29), who has given a very cogent and reliable evidence and his testimony could not be shaken in the cross-examination and he had no reason to falsely implicate the appellant and other convicts. Evidence on record in the case clearly suggests that the appellant and other convicts have committed theft in shop no. 17 and also murdered deceased Dheeraj as he had woken-up at that time. Findings regarding blood stains in Car no. DL 9CK 3999 and recovery of iron rods having blood stains also stand proved by the testimony of PW-16 Sh. Naresh Kumar, Senior Scientific Assistant, Biology, FSL, Rohini, Delhi and PW-49 Sh. V. Sankaranarayanan, SSO (biology), FSL, Rohini. Thus, it is difficult to accept the contention of Ld. Counsel for the

appellant that acquittal of appellant and other convicts on minor contradictions in FIR no. 82/2010, PS Keshav Puram has weakened the prosecution case.

38. Ld. counsel for the appellant has further argued that so far as weapon of offence is concerned, the prosecution has failed to prove the fact that the alleged weapons i.e. iron rods were the same which were used in the incident. According to him such kind of rods are easily available in the market and there is no evidence to connect the alleged weapon with the offence.

39. We have given our thoughts to the contention of Ld. Counsel for the appellant. Though, it is a settled law laid down by Hon'ble Supreme Court in number of its decisions that in case there is ocular evidence, non recovery of weapon does not demolish the prosecution case. In 'Mritunjoy Biswas Vs. Kuti Biswas and Anr. (Supra)' the Hon'ble Supreme Court has held that when there is unimpeachable ocular evidence, non recovery of weapon is not fatal to the prosecution case. However, in our opinion, in the present case, the prosecution has been able to prove that there is recovery of weapons of offence and these were used in commission of the offence. Let us now analyse the evidence to find out whether there is recovery of weapons of offence and these were used in commission of offence. We have perused the statement of PW-47 IO Insp. Praveen Kumar, which reveals that two iron rods were seized by him along with other police officials from the car bearing no. DL 9CK 3999 in which appellant Pramod @ Langra and other convicts Mini @ A. Mini and Narbahadur were apprehended while travelling. These rods were taken into possession vide seizure memo Ex.PW32/J. Both these iron rods were having blood stains on them. The said iron rods were also sent to the FSL for examination. FSL report Ex.PW 49/B also reveals that there was human blood on both the rods. PW-15 Dr. K. Goyal, CMO, BJRM Hospital, who has conducted the post-mortem on the dead body of Dheeraj on 03.03.2010 has deposed that on 21.04.2010 Insp. Parveen Kumar of PS Sarswati Vihar had moved an application for opinion on weapon of offence and had produced one iron rod about 55 cms long weighing about 1360 gms in a sealed packet. After examination, he had opined that the injuries No. 1, 2 and 3 mentioned in post-mortem report Ex.PW15/A were possible by this weapon (iron rod) or such kind of other weapon. There is no cross-examination by the Ld. counsel for the appellant on the said point. There is no cross-examination by Ld. Counsel for the appellant of PW-49 Shri Sh. V. Sankaranarayanan, who had submitted the biological and serological reports.

40. Ld. Trial Court has also discussed the FSL report Ex.PW16/A as well as the biological and serological report Ex.PW49/A and 49/B and presented these in a tabulated form which runs as follows;

Sr.No.

Exhibit no. in the FSL

Details of the exhibit

Exhibit no. in the Court

Opinion/Result

1.

'1'

Cotton wool swab taken from the Chabutra

P-15

Human blood of 'A' Group (same as belonging to the deceased)

2.

'2'

Cotton wool swab taken from outside the Shop No. 19, Sandesh Vihar Market

P-16

Human blood of 'A' Group (same as belonging to the deceased)

3.

'3'

Cotton wool swab taken from outside the Shop No. 18, Sandesh Vihar Market

P-17

Human blood of 'A' Group (same as belonging to the deceased)

4.

'4'

Blood stained earth material taken from the Chabutra

P-18

Human blood

5.

'5'

Earth material (Control) taken from the Chabutra

P-19

Blood was detected

6.

'6'

Piece of stone taken from outside the Shop No. 19, Sandesh Vihar Market

P-20

Human blood

7.

'8'

Piece of stone taken from outside the Shop No. 18, Sandesh Vihar Market

P-21

Human blood

8.

'10'

Piece of Plastic/Control sample of Sofa found at Chabutra opposite Shop No. 19, Sandesh Vihar Market

P-25

Human blood

9.

'12'

Piece of cloth/ pieces of quilt found at the Chabutra opposite Shop No. 19, Sandesh Vihar

P-26

Human blood of 'A' Group (same as belonging to the deceased)

10.

'14'

Piece of cloth taken from outside the shop no. 19, Sandesh Vihar

P-28

Human blood of 'A' Group (same as belonging to the deceased)

11.

'16'

A pair of chappals

P-29

Blood was detected

12.

'17'

Blood stained gauze cloth i.e. Blood sample of the deceased Dheeraj

--

Human blood of 'A' Group (same as belonging to the deceased)

13.

'18a'

Banian of deceased Dheeraj

--

Human blood of 'A' Group (same as belonging to the deceased)

14.

'18b'

Underwear of deceased Dheeraj

--

Human blood of 'A' Group (same as belonging to the deceased)

15.

'18c'

Underwear of deceased Dheeraj

--

Human blood

16.

'19'

Piece of cloth recovered from beneath the driver seat of car No. DL-9CK3999

P-33

Human blood

17.

'20'

Iron rods

Human blood

18.

'21'

Piece of cloth taken from the left side rear seat of car no. DL8CK 2675

--

Blood was detected

19.

'22'

Piece of cloth taken from the left side rear seat of car no. DL8CK 2675

--

Human blood

20.

'23'

Piece of cloth (seat cover) taken from the driver seat from car no. DL-8CK-3999

--

Blood was detected

21.

'24'

Gauze cloth piece taken from internal right side window of car No. DL-9CK-3999

--

Blood was detected

22.

'25'

Gauze cloth piece taken from space near hand brake of car no. DL-9CK-3999

--

Blood was detected

23.

'26'

Gauze cloth piece taken from space driver side door / window of car no. DL9CK-3999

--

Blood was detected

41. Perusal of the reports reveals that samples lifted from both the cars i.e.

bearing nos. DL 8CK 2765 and DL 9CK 3999 show the presence of blood. Traces of human blood were also found on the iron rods recovered from Esteem Car bearing No. DL 9 CK 3999 in which appellant Pramod, convicts Mini @ A. Mini and Narbahadur were travelling when they were apprehended by PW 47 IO Insp. Praveen Kumar with the help of other police officials. Perusal of the evidence of PW-29 Shri Ram reveals that iron rods were used by the appellant Praveen @ Langra as well as convict Mini @ A. Mini for murdering the deceased Dheeraj. In the opinion of PW-15 Dr. K Goel, the injuries received by the deceased Dheeraj were sufficient to cause death in ordinary course of nature. The details of the injuries found on the body of deceased Dheeraj and opinion of the doctor are as follows;

EXTERNAL INJURIES:

1. Laceration 5 x 1 cms over top of vault midline with crust margins.
2. Laceration 6.5 x 1.5 cms over junction of right forehead and right frontal with crushed margins and contused abraded marks around with depressed deformity around.
3. Two lacerations each 1cm and 1.5cms long over left side forehead just above the medial end of left eye brow, two small lacerations each about 0.75 cms over nose with contused abraded area around with fracture nasal bone, laceration 1cm long just in front of right ear with abrasions around, laceration 1 x 0.5 cms over upper lip.

OPINION: All injuries were ante mortem in nature caused by blunt forced impacts. Cause of death was extensive cranio-cerebral injuries as a result of hard, relatively heavy blunt object diverted upon head. Mode of death was homicidal. Caranio-cerebral injuries were sufficient to cause death in ordinary course of nature. The time since death was about 14-15 hours.

42. As per the above report, the cause of death was extensive cranio-cerebral injuries as a result of hard, relatively heavy blunt object diverted upon head and these injuries were sufficient to cause death in ordinary course of nature. The ocular evidence, thus, stands corroborated by medical evidence i.e. Post-mortem and FSL reports.

43. In view of the above, we do not find any infirmity or illegality in the judgment passed by the Ld. Trial Court wherein it is held that appellant Pramod @ Langra along with other convicts had committed lurking house trespass and theft in shop no.17, DDA Market, Sandesh Vihar and murder of deceased Dheeraj. The whole incident was seen by PW-29 who has narrated the same in detail in his deposition before the Ld. Trial Court. The iron rods i.e. weapons of offence have also been recovered from the appellant as well as other convicts. The testimonies of witnesses are trustworthy and unimpeachable. The Ld. Trial court has discussed the evidence in detail and has given a reasoned judgment.

44. In view of the above discussion, we do not find any reason to interfere in the

judgment passed by Ld. Trial Court. We find ourselves unable to conclude that the judgment of conviction passed by the trial court suffers from any perversity, so as to warrant reversal by this Court, in the present appeal. Thus, the judgment dated 20th July, 2012 and the order on sentence dated 21st August, 2012, are both hereby upheld. Accordingly, the present appeal fails and the same is dismissed.

45. Copy of the judgment be communicated to the appellant through the Superintendent, Tihar Jail and also be sent for updation of the records.