
(2012) 02 CAL CK 0026
In the Calcutta High Court
Case No : CRA No. 659 of 2007

Shri Pushpen Biswas @ Puspen Biswas APPELLANT
Vs
State of West Bengal RESPONDENT

Date of Decision : 13-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 313
Penal Code, 1860 (IPC) — Section 302, 379, 411

Citation : (2012) 2 CALLT 47 : (2012) 5 CHN 506

Hon'ble Judges : Tarun Kumar Gupta, J; Girish Chandra Gupta, J

Bench : Division Bench

Advocate : Manjit Singh Mr. Anand Keshari and Mr. Pawan Kr. Gupta, for the Appellant; Siladitya Sanyal and Mr. Soumik Ganguly, for the Respondent

Final Decision : Dismissed

Judgement

Girish Chandra Gupta, J.—This appeal is directed against a judgment dated 19th September 2007 passed by the Additional Sessions Judge, Fast Track-2nd Court, Jangipur, district-Murshidabad in Sessions Serial No.5 of 2005 corresponding to Sessions Trial No.2(3) of 2005 arising out of the Raghunathganj PS Case No.161 of 2004 dated 6th September 2004 by which the learned Trial Court convicted the sole accused/appellant of an offence punishable under Sections 302/379/411 of the Indian Penal Code. By an order dated 20th September 2007 the trial Court sentenced the convict to suffer rigorous imprisonment for life as also to pay a fine of Rs.10,000/-, in default to suffer further rigorous imprisonment for a period of two years for the offence punishable u/s 302 IPC. He was also sentenced to suffer imprisonment for a year as also to pay a fine of Rs.2000/-, in default to suffer further simple imprisonment for two months for the offence punishable u/s 379 IPC. He was yet further sentenced to simple imprisonment for a year as also to pay fine of Rs.2000/-, in default to suffer further simple imprisonment for two months for the offence punishable u/s 411 IPC. All the sentences were however directed to run concurrently.

2. The facts and circumstances of the case briefly stated are as follows:-

Kamalesh, a classmate of the appellant, was an officer of Railways. He was in the night of 5th/6th September 2004 sleeping in the rest room of the Jangipur Road Station. The adjoining room was occupied by Shri Kiron Deo Pathak. At about 2.15 hrs. of 6th September, 2004 the said Pathak woke up hearing an abnormal sound and saw an unknown person in the room of Kamalesh. The rooms occupied by Kamalesh and Pathak were accessible by a common door. Pathak being frightened cried for help. The chowkidar on duty rushed to him. In the meantime the unknown person had started chasing the said Pathak. Seeing the chowkidar the unknown person fled away jumping the fence. Thereafter both the chowkidar and the said Pathak came back to the room of Kamalesh and found him lying in a pool of blood. GRP Office was informed then and there. Police was also informed. They arrived at the place of occurrence at about 3.55 hrs. GRP had already reached the place of occurrence.

3. The unknown person who had escaped from the place of occurrence approached a rickshawpuller to ferry him to Umarpur. In doing so he picked up a quarrel with him and ultimately fought with him. Another rickshaw puller intervened. There was naturally a hue and cry. Others also assembled and the said unknown person was, it appears, beaten up black and blue. From his possession a bloodstained bhojoli and a chaku were also recovered. He was ultimately hospitalised. From his pocket a mobile phone belonging to the deceased was recovered. Through that mobile phone the parents of the victim were informed. The father and the maternal uncle of the victim came and identified the unknown person as the classmate of the deceased Kamalesh. Police thereafter arrested him. During interrogation by the father of the deceased he disclosed that he had killed Kamalesh because the latter had misbehaved with his cousin sister. Based on his statement discoveries were made, including (a) the offending weapon, (b) personal papers of the accused and (c) four pens, from a jungle (bush) near the Jangipur Road Station. The offending weapon, wearing apparel of the accused amongst others were sent to the FSL and the same were found to contain human blood.

4. 19 witnesses were examined. PW 1 is the said Pathak and the PW 2 is the said Chowkidar. PWs.3,6 and 13 are the railway officials. PWs.4 and 5 are the rickshawpullers who had encountered the accused on the fateful day. PW 7 is the father of the deceased. PW 8 is the maternal grand father of the deceased. PWs.9 and 10 are the witnesses to the recovery of the offending weapon and the personal belongings of the accused based on the basis of disclosure made by him. PW 11 is the Autopsy Surgeon. PW 12 is a nurse of Jangipur SD Hospital and PW 14 is the doctor who had admitted the accused in the Jangipur SD Hospital. PW 17 is the Judicial Officer who had recorded the statements of the witnesses u/s 164 of the Code of Criminal Procedure. PWs.15 and 16 are the homeguards attached to the Raghunathganj Police Station. PW 18 is the Officer-in-Charge of the Raghunathganj Police Station and PW 19 is the I.O.

5. Mr. Singh, learned Advocate appearing for the appellant advanced the following submissions.

a) The de facto complainant and the Chowkidar being PW 1 and PW 2 respectively failed to identify the accused at the T.I. Parade although the de facto complainant in the written complaint had indicated that he would be able to identify the unknown person whom he had seen. The rickshawpullers (PWs.4 and 5) who had allegedly encountered the accused and had hospitalised him were not asked to identify the accused person during the T.I. Parade and the identification in court was according to him valueless. In support of his submission Mr. Singh relied upon the judgment in the case of V.C. Shukla and Others Vs. State (Delhi Administration), He relied on paragraph 23 wherein the following view was expressed:-

The possibility that the witness committed some mistake in identifying cannot be ruled out. Moreover, the identification of Tripathi by the witness for the first time in the court without being tested by a prior test identification parade was valueless.

b) It would appear from the evidence of the PWs.4 and 5 that a bloodstained bhojoli and a chaku, recovered from the possession of the accused, were deposited with the police. The police also appears to have shown the bloodstained bhojoli and the chaku to the PWs.7 and 8 on 6th September 2004 itself but the said bhojoli and the said chaku conveniently disappeared and was substituted by a 17" long chopper allegedly discovered by the police on the basis of an alleged statement allegedly made by the accused. He contended that the alleged recovery and seizure of the offending weapon on 8th September 2004 is a concocted story. The police already had in its possession on 6th September 2004 the bloodstained chopper but the same does not appear to have been seized formally and ultimately the same was substituted by another weapon.

c) It would appear from the evidence of the PWs.7 and 8 the father and the maternal grand father of the deceased respectively that a mobile phone was shown to them by the Officer-in-Charge, Raghunathganj PS which according to them belonged to the deceased. PWs.7 and 8 disclosed that they were told that the said mobile phone was recovered from the pocket of the accused. But that mobile phone has vanished and another mobile phone allegedly recovered on 8th September 2004 along with other belongings including the allegedly recovered offending weapon have been substituted. He drew our attention to the charge framed against the accused wherein the SIM Card number has also been indicated. The SIM Card number indicated in the chargesheet tallies with the SIM Card of the mobile phone allegedly recovered on 8th September 2004. Mr. Singh questioned the genuineness of the recovery of the mobile phone on 8th September 2004 or in any event the police should also have had in its possession the mobile phone which they had allegedly recovered on 6th September 2004 and shown to the PWs.7 and 8. The whereabouts of that mobile phone is not known.

d) The injury report of the accused was not produced which could have thrown light as to the time when the accused was actually hospitalised.

e) The weapon allegedly recovered on 8th September 2004 on the basis of information furnished by the accused was not shown to the Autopsy Surgeon.

He added that the size of injury appearing from the postmortem report as also from the evidence of the Autopsy Surgeon is disproportionate to the size of the weapon allegedly recovered on 8th September 2004. In support of his submission Mr. Singh relied upon the judgment in the case of Kartarey vs. State of UP reported in 1975 SCC (Criminal) 803. He relied on paragraph 26 wherein the following view was taken:-

We take this opportunity of emphasising the importance of eliciting the opinion of the medical witness, who had examined the injuries of the victim, more specifically on this point, for the proper administration of justice, particularly in a case where injuries found are forensically of the same species, e.g. stab wounds, and the problem before the Court is whether all or any of those injuries could be caused with one or more than one weapon. It is the duty of the prosecution, and no less of the Court, to see that the alleged weapon of the offence, if available, is shown to the medical witness and his opinion invited as to whether all or any of the injuries on the victim could be caused with that weapon. Failure to do so may, sometimes, cause aberration in the course of justice.

f) Criticizing the FSL report Mr. Singh submitted that neither the blood group appearing from the offending weapon has been indicated nor did the I.O. send the alleged offending weapon for finger print test. Based on the aforesaid submissions Mr. Singh drew the conclusion that there is no certainty that it is the accused who had committed the murder. In order to show the type of assurance required he relied upon the judgment in the case of State of U.P. Vs. Satish, . He relied on paragraph 10 which reads as follows:-

It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all incriminating facts and circumstances found to be incompatible with the innocence of the accused or the guilt of any other person. (See Hukam Singh Vs. State of Rajasthan, Eradu and Others Vs. State of Hyderabad, State of U.P. Vs. Sukhbasi and Others, Balwinder Singh alias Dalbir Singh Vs. State of Punjab, and Ashok Kumar Chatterjee Vs. State of M.P.,). The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond any reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In Bhagat Ram Vs. State of Punjab, it was laid down that where the case depends upon the conclusion drawn from circumstances must be such as to negative the innocence of the accused and bring home the offences beyond any reasonable doubt.

6. The second judgment relied upon by him in that regard is in the case of Vittal Eknath Adlinge vs. State of Maharashtra reported in 2009 AIR SCW 1831. He

relied on paragraph 13 which reads as follows:-

A reference may be made to a later decision in *Sharad Birdhichand Sarda Vs. State of Maharashtra*, wherein, while dealing with circumstantial evidence, it has been held that onus was on the prosecution to prove that the chain is complete and the infirmity or lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, being conviction could be based on circumstantial evidence, must be fully established. They are:

- 1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must" or "should" and not "may be" established;
- 2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
- 3) the circumstances should be of a conclusive nature and tendency;
- 4) they should exclude every possible hypothesis except the one to be proved; and
- 5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

7. The Third judgment relied upon him is in the case of *Dinesh & Anr. Vs. State of Haryana* reported in 2002 CriLJ 2970 (SC). He drew our attention to paragraphs 17 and 18 wherein the following view was taken:-

For the foregoing reasons, we do not deem it safe to place reliance on the testimony of Rajbir, PW 8 and Jagadish, PW6. In any case, we are satisfied that there is a reasonable doubt about these two accused-appellants having participated in the incident and in the manner as alleged by the prosecution, the benefit whereof must go to them.

The appeal is allowed. The conviction of the accused-appellants under SS. 302/34, IPC as recorded by the trial Court and maintained by the High Court is set aside. The accused-appellants shall be released forthwith if not required in connection with any other offence.

(b) Criticizing the judgment of the learned Trial Court Mr. Singh contended that the learned trial Judge was influenced by the alleged confession allegedly made by the accused before the police which is also reflected in the judgment.

8. Mr. Sanyal, learned Additional Public Prosecutor appearing for the State submitted that there is unmistakable evidence to show that the accused committed the murder. He relied on the following circumstances.

- a) The wearing apparels of the accused were found bloodstained and the same was found to be human blood.

b) The discovery made by the police on the basis of statement made by the accused on 8th September 2004 is genuine and bona fide which is also established by the fact that not only the offending weapon but the personal belongings of the accused were recovered from the place shown by him.

c) As regards the mobile phone Mr. Sanyal contended that the police may have made a mistake. It is true that one mobile phone was recovered on 6th September 2004 from the pocket of the accused. It is also true that on 8th September 2004 another mobile phone was recovered on the basis of disclosure made by the accused. The police may have made a mistake in describing the mobile phone which they already had taken possession of from the pocket of the accused.

d) He concluded by saying that the judgment and the order are perfectly justified in the facts and circumstances of the case and this Court should refrain from interfering.

9. From the submission made by the learned Advocates appearing for the parties the only question which requires determination is whether the prosecution has been able to prove beyond any reasonable doubt that it is the appellant and no one else who murdered the victim. The conviction u/s 379, 411 of I.P.C. is ancillary to the main question. In order to answer this question as also to answer the points raised by Mr. Singh, we shall first tabulate the circumstances firmly established.

(a) From the evidence of Shri Kanak Biswas (PW 7), father of the deceased, it appears that the accused was a classmate of the deceased. This fact has not been disputed during his cross-examination. On the contrary during his cross-examination the PW 7 was suggested that the accused was his co-villager which he admitted.

(b) PW 7 was also suggested that the accused was an employee of the Standard & Chartered Bank to which he replied that he had no knowledge about the same. The documents recovered by the police on 8th September 2004 on the basis of statement made by the accused-appellant included an identity card issued by the Standard & Chartered Bank (material exbt.23) to the accused, an identity card issued by the Chief Commercial Manager, Eastern Railway, to the accused (material exbt.22) and the credit history sheet of various customers of the Standard & Chartered Bank (material exbt. 25 series) which go to show that the accused was a recovery agent of the Standard & Chartered Bank. The fact that the aforesaid documents, recovered along with the offending weapon, belonged to the accused is therefore firmly established.

(c) The fact that the wearing apparel of the accused were bloodstained has been proved by the FSL report (exbt.-26) which derives further support from the following suggestions given to the PW 4.

Not a fact that the wearing apparels of the accd. stained with water coloured

with moram but it was not bloodstained.

10. An identical suggestion was also given to the PW 5 which reads as follows:-

Not a fact that I inferred that the wearing apparels of the accd. were bloodstained. If red nail polish is sprayed on any wearing apparel it may be inferred as bloodstained. The wearing apparels of any persons if coloured with moram might be seen as red.

11. The wearing apparel of the accused was seized by the police in the Jangipur SD Hospital in the presence of the attending doctor (PW 14). The seizure list has been marked exbt.10. The wearing apparel of the accused amongst other were sent to the FSL and were received back with a report. The full pant of the accused was marked material exbt.2 which was identified by the I.O. as an ash colour pant which has been described by the FSL as brownish-grey colour pant and has been opined to contain human blood. The report of the FSL & Serologist are exbts.25 and 26 respectively.

12. Neither was any attempt made by the accused nor by the learned counsel to explain the source of human blood in the wearing apparel of the accused whereas the evidence of the PW.4 in that regard is as follows:-

When I asked about fare, a lorry from the side of Omarpur was coming and I saw loodstained in the bhojali and the wearing apparel of the accused.

13. The aforesaid evidence of the PW 4 was corroborated by the PW 5 who deposed as follows:-

At that time a lorry was coming from Omarpur side. We saw by the head light of the said lorry that the wearing apparels and hands of the said person were bloodstained.

14. Around 2"O clock in the night the murder took place and the assailant escaped from the place of occurrence as would appear from the evidence of the de facto complainant and the Chowkidar. Around the same time the accused encountered the Rickshaw pullers the PWs.4 and 5 and their evidence in that regard is as follows. PW 4 deposed during his examination-in-chief, inter alia, as follows:-

The incident was happened about 9 months ago at Jangipur Rail Station at about 1.40/1.45 A.M. I am a rikshaw van puller. I along with another van puller Samu were going towards Omarpur with our empty rikshaw vans. Both of us waited near rail gate Jangipur Station at Jupurapattij to take passengers as a train arrived at that time at Jangipur Rd. station. I saw a man was coming from Jangipur station. He asked me to take him to Omarpur. When I asked him about fare I saw that he was armed with a bloodstained bhojali. Then I refused to take him to Omarpur. Then the person threatened me that he would murder me if I refused to carry out his order. He disclosed that he had already murdered someone. At that time a lorry was coming from Omarpur side. The said person

tried to assault me with his bhojali but it hit my shirt but it did not hit me only, it tore my shirt. Then I hit him with my fist. The bhojali of the said person fell down from his hand. Then the said person brought a chaku from his shocks. He hit me with his chaku in my right hand. Then I caught hold the said person and tied him with a rope. I called my friend Samu. Both of us raised hue and cry and a number of persons were assembled there. We took the said person to Raghunathganj PS and handed over him to police. Police asked us to admit him to hospital and we took him to Jangipur SD Hospital and admitted him there. Then we returned out home. I can identify the person whom we caught and admitted in the hospital. (The witness identifies the accd.) In the next morning we heard that a person was murdered at Jangipur Railway Station. I have stated the incident before a Judicial Magistrate in Jangipur.

15. PW 5 deposed during his examination-in-chief, inter alia, as follows:-

My nick name is Samu. About 8/9 months ago the incident was happened at Jangipur Rail Station quarter at about 2 a.m. At that night I along with Mojibur were waiting to take passengers for our van. A train reached at jangipur Railstation at the time. We saw that a person was moving from the side of Jangipur Rail quarter to Omarpur side. I along with Mojibur came near to the said person with our vans and asked him his destination. At that time a lorry was coming from Omarpur side. We saw by the head light of the said lorry that the wearing apparels and hands of the said person were bloodstained. The said person asked me to take him to Omarpur. He threatened us with dire consequences that in case of our refusal he would murder us. He also told us that he had already murdered someone, I asked Mojibur to catch hold of the person. Mojibur caught hold of the said person. The said person brought a chaku from his leg and tried to kill Mojibur. The shirt of Mojibur was also torn by the attack of the said person's chaku and Mojibur was also injured by the said chaku. Mojibur tied the said person with a rope. Both of us assaulted the said person with fist and blows and raised hue and cry. Then a good number of persons assembled there and said persons was manhandled there. Then we took the said person to Raghunathganj PS and from there we took him to Jangipur Hospital. Then we returned to Mianpur and saw a good number of persons were assembled there. We cam to know from them that a person was murdered at Jangipur Railway quarter. I know the person. (The witness identifies the accd.). I have deposed before a Magistrate about the incident.

16. The answer to questions nos.10, given by the accused during examination u/s 313 CrPC, that " on getting down at Omarpur N.H. two van rickshaw pullers snatched away my papers and money" establish the fact that the accused had encountered the PWs.4 and 5 the rickshaw pullers. This Answer of the accused explain as to how did the police get hold of the mobile phone from the pocket of the accused. It is significant that the information as regards this mobile phone was elicited by the defence during cross-examination of the P.W.7. What is further significant is the fact the P.W.7 was not suggested that no mobile phone

was recovered from the pocket of the accused.

17. From the aforesaid analysis the following facts are established.

a) At around 2 a.m. in the morning of 6th September 2004 the murder of the victim Kamalesh took place.

b) The murderer escaped from the place of occurrence.

c) The accused with a bloodstained dagger was seen near the place of occurrence by the PWs.4 and 5.

d) The wearing apparels of the accused were also bloodstained.

e) The accused got himself involved in a brawl with the rickshawpullers which resulted in a scuffle between them. One of the rickshawpuller was attacked by the accused. The accused ultimately was overpowered, assaulted and thereafter hospitalised.

18. These facts by themselves suggest that the accused may be involved in the murder of the victim Kamalesh. The degree of proof that the accused "may be" involved hardens into "must be" involved from the following circumstances.

19. While in police custody the accused made a statement, which was recorded and has been marked exhibit.15. On the basis of Ext.15 the accused was taken to a jungle (bush) near the place of occurrence from where the offending weapon, a mobile phone and the personal belongings of the accused were recovered and seized vide ext.6. The weapon thus recovered has been found to contain human blood by the FSL (exbts.25/26). Discovery of the offending weapon and the belongings of the accused firmly establish that he had concealed these articles at the aforesaid secluded place which also establish his guilty knowledge. It is therefore established that the weapon was used to kill or injure someone by the accused and this is also the reason why his own wearing apparel were found to contain human blood. Now the only question is whether the weapon was used by the accused against Kamalesh or some one else? This question can only be answered in favor of the prosecution by reason of the fact that mobile phone of the victim was also recovered. If the accused had not murdered the victim his mobile could not have come into the possession of the accused.

20. Extra-judicial confession made by the accused to the PWs.4 and 5 the rickshawpullers that he had already killed a person lends further assurance to the Court as regards his involvement. On the top of that the following reassuring extra-judicial confession made by the accused to the father and the maternal grandfather of the deceased is another important piece of evidence. The father of the deceased deposed in that regard deposed as follows:?

I saw Pushpen in the hospital. I informed Darogababu that the name of the accd. is Pushpen Biswas and his father's name is Prangopal Biswas. I along with my

two brothers-in-law asked accd. Pushpen why he murdered Kamalesh. On our query he replied that he committed the murder as Kamalesh used filthy languages to his cousin sister Arpita. D/O Asim Biswas.

21. PW 8 in that regard deposed as follows:-

I went to the ward where accd. Pushpen was kept under police custody. I asked accd. Pushpen why he murdered Kamalesh and accd. Pushpen replied that he murdered Kamalesh as Kamalesh used filthy languages to her sister and misbehaved with her. The witness identifies the accd.

22. We shall now deal with the points raised by Mr. Singh.

23. As regards the first point of Mr. Singh it can be pointed out that the PW 2 Chowkidar deposed that "the way through which the unknown person was fleeing was dark as no electric light was there". Therefore the fact the PWs.1 and 2 could not identify the accused does not appear to us to have in anyway weakened the case of the prosecution. PWs.4 and 5 the rickshaw pullers had dealt with the accused for a very long time and they had also hospitalised him. Therefore they were not required to be called upon to identify the accused in the T.I. Parade. The fact that the PWs.4 and 5 had encountered the accused was admitted by him in answer to question No.10 during examination u/s 313 Cr.P.C..

24. The second point of Mr. Singh that a bhojali and a chaku were deposited by the rickshaw pullers being PWs.4 and 5 with the police and the same were also shown to the PWs.7 and 8 by the police is a correct reading of the evidence. As a matter of fact, the accused had tried to assault the PW 4 with that bhojali and after the same slipped from his hand he took out a chaku from his shocks. These two weapons, in fact, appear to have been submitted by the rickshwapullers to the police but the police do not appear to have attached any importance to that after the offending weapon was quickly recovered on 8th September 2004 on the basis of a statement (Ext.15) made by the accused in custody. We are fortified in our opinion by the fact that the I.O. during his cross-examination was not asked even one question with regard to the said bhojali. The fact that the accused took out a chaku from his shocks after the bhojali slipped from his hand goes to show that he was prepared with a number of weapons. The offending weapon recovered on 8th September 2004 could very well have been kept concealed in the bag when the accused went to see the victim which was also recovered on 8th September 2004. Merely because the police did not attach any importance to the bhojali and the chaku we are unable to disbelieve the recovery made by the police on 8th September 2004. It is significant that the recovery on 8th September 2004 was not restricted to the offending weapon alone. Other items including official papers, identity card of the accused were also recovered simultaneously from the same place. Had the papers etc. belonging to the accused not been recovered and the recovery were restricted merely to the offending weapon we might have been persuaded to at least entertain a doubt as to whether the chopper had been implanted to involve the accused. Any scope

for entertaining such a doubt does not survive because articles definitely belonging to the accused were also recovered. We are inclined to think that after the offending weapon was recovered on 8th September 2004 the police ignored the importance of the bhojali and the chaku deposited with them by the rickshwa pullers.

25. The third submission of Mr. Singh as regards the mobile phone has also not impressed us. The accused had concealed his belongings and the offending weapon after he escaped from the place of occurrence. He also concealed the mobile phone of the victim. That was his impression as would appear from Ext.15. But therein he made a mistake. He sought to conceal mobile phone of the victim but ended up by concealing his own mobile. After the charge sheet was filed the accused must have become aware that the mobile discovered on 8th September, was his own mobile but he omitted to disclose this fact during cross examination of the witnesses apprehending that in that case his presence at the P.O may be established. The police remained confident based on Ext.15 that the mobile recovered on 8th September was the mobile of the victim. The accused never disputed this fact. Now in order to create a smokescreen it was argued that mobile of the victim could not have been recovered on 8th September. This ingenuity cannot help the accused.

26. The fourth point of Mr. Singh with regard to absence of the injury report of the accused does not in the least weaken the case of the prosecution. At what time was the accused hospitalised is not important. What is important is whether he was connected with this crime. An answer in the affirmative to this question has already been given above.

27. The fifth point of Mr. Singh that the offending weapon was not shown to the Autopsy Surgeon is factually correct. The Autopsy Surgeon found the following injuries.

1) Incised perforating wound lower part left lateral side of neck passed through right side of the neck lower part, 1 1/2" wide cutting all the structures, skin, muscle, vessel trachea.

2) Stab injury left side anterior chest wall fourth inter costal spaces 1 1/2" wide passing down to thoracic cavity cutting skin, muscle, vessel pericardium and left ventricle, thoracic cavity full of blood.

3) Incised wound 1" X 1/4" muscle deep at the root of right thumb over palm.

4) Incised wound 1/2" X 1/4" skin deep at the roof of right of index over palm.

5) Incised penetrating wound at lower part left side of back tens inter costal space 1 1/2" wide deep to abdominal cavity. Injury in small intestine and liver. Abdominal cavity is full of blood.

28. In my opinion the cause of death is due to shock and haemorrhage from above mentioned injuries which is ante-mortem and homicidal in nature. This is

the carbon copy of PM report duly prepared by carbon process. It bears carbon impression of my signature and official seal. (The carbon copy of PM report be marked as ext.9)."

29. The offending weapon is a 17 inch long chopper. The injuries found by the Autopsy Surgeon could very well have been inflicted by the chopper. We are unable to see how could it be said that the chopper was disproportionately big for the injuries found in the body of the deceased. It is true that the offending weapon should have been shown to the Autopsy Surgeon. But merely on the basis of this lapse it is not possible to throw overboard an otherwise well established case of the prosecution.

30. The last point of Mr. Singh that the blood group was not opined by the FSL nor was the chopper sent for fingerprint expert's opinion are factually true but even without the aforesaid report the case of the prosecution is well proved.

31. It is difficult to hold that the learned Trial Court took an unreasonable view of the matter. It is also true that the learned trial Court referred to the alleged confession allegedly made before the police but he may have fallen into an error in describing the true nature of the confession. The extra-judicial confessions are there on the record made before the PWs.4, 5, 7, 8 which we already have indicated. The judgment cited by Mr. Singh do not assist him because the guilt of the appellant in this case was proved beyond any reasonable doubt.

32. For the aforesaid reasons it is not possible to interfere with the judgment and order under challenge.

33. The appeal stand dismissed.

34. The appellant is directed to surrender forthwith to serve out the sentence. In case he does not do so within 4 weeks from date the learned Trial Court shall take coercive measure to secure his presence.

35. Lower Court Records with a copy of this judgment be sent down forthwith to the learned trial Court for information and necessary action.

36. Urgent xerox certified copy of this judgment, be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

Girish Chandra Gupta J.

37. I agree.

Tarun Kumar Gupta J.