

**(2014) 01 DEL CK 0269**  
**In the Delhi High Court**  
**Case No : Criminal A. 458 of 1998**

Sunita Sharma and Another

APPELLANT

Vs

State of Delhi

RESPONDENT

**Date of Decision :** 28-01-2014

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 100(5) 161 207 313

Evidence Act, 1872 — Section 154 27

Penal Code, 1860 (IPC) — Section 302 307 323 324 34

**Citation :** (2014) 01 DEL CK 0269

**Hon'ble Judges :** Reva Khetrapal, J;Pratibha Rani, J

**Bench :** Division Bench

**Advocate :** K.B. Andley and Mr. M.L. Yadav, for the Appellant; Narender Kr. Choudhary, APP, for the Respondent

**Final Decision :** Dismissed

## Judgement

Pratibha Rani, J.—The Appellants Sunita Sharma and Sudhir Sharma have preferred this appeal impugning the judgment dated 07.10.1998 and order on sentence dated 08.10.1998 whereby they have been convicted under Sections 302/324/323/34 IPC and sentenced to undergo life imprisonment with fine of Rs. 2,000/- each for committing the offence punishable u/s 302/34 IPC, further to undergo RI for six months for committing the offence punishable u/s 324/34 IPC and also to undergo RI for one month for committing the offence punishable u/s 323/34 IPC. Briefly stating, the prosecution case is that the Appellants before this Court are husband and wife who were residing as tenant in a single room unit just adjacent to the house of the complainant and were having a common compound. Both the parties were having grown-up children. While the Complainant PW-2 Sh. Kuldeep Raj had two sons, the Appellants Sunita Sharma and Sudhir Sharma had a daughter and a son. A day prior to this incident, Kaka—the younger son of the Complainant said something to the daughter of the Appellants which was to the disliking of the Appellants. The matter was brought to the knowledge of PW-5 Smt. Chanchal, mother of the deceased Raman @ Kai

by Appellant Sunita Sharma.

2. The complaint Ex. PW2/A which formed basis of registration of case FIR No. 27/1993 at PS Preet Vihar reveals the sequence of events as under:

(i) The complainant PW-2 Sh. Kuldeep Raj was residing at 88-B, Gali No. 5, East Laxmi Nagar Market and the Appellant Sudhir Sharma was residing at 88-C, Gali No. 5, East Laxmi Nagar Market.

(ii) A day prior to the incident Appellant Sunita Sharma informed PW-5 Smt. Chanchal Rani that their younger son Kaka had said something to Appellants' daughter Meenakshi which caused annoyance to Appellant Sudhir Sharma.

(iii) On 14.02.1993 at about 7.45 pm Appellant Sudhir Sharma called his (complainant's) eldest son Raman @ Kai. When Raman went out in front of the house of Appellant Sudhir Sharma, he was hit by something and on hearing the cries of Raman, he rushed out to see as to what had happened.

(iv) He saw Appellant Sunita Sharma holding the hair of his son Raman from behind. Raman was lying down and Appellant Sunita was hitting him with an iron "musli". On hearing the noise, his wife Chanchal Rani (PW-5) and nephew Pawan (PW-16) also came out and joined him to save Raman from Sudhir Sharma who was holding a long chhuri in his hand. Appellant Sudhir Sharma also assaulted Pawan with that chhuri and in the process to save Raman, PW-2 Sh. Kuldeep Raj and his wife also received injuries.

(v) The complainant PW-2 Sh. Kuldeep Raj took his son Raman, his wife Chanchal and nephew Pawan to JPN Hospital where Raman was declared "Brought Dead" and he and other two injured were given the necessary treatment.

3. On the basis of complaint Ex. PW2/A made by PW-2 Sh. Kuldeep Raj, case FIR No. 27/1993 was registered at PS Preet Vihar. After completion of investigation, chargesheet was filed against both the Appellants. On compliance of requirements of Section 207 Cr.P.C., the case was committed to the Court of Session and registered as Sessions Case No. 197/1994. Both the Appellants were charged for committing the offence punishable under Sections 302/307/324/323/34 IPC. As the Appellants pleaded not guilty and claimed trial, prosecution has examined 21 witnesses in support of its case. Appellants were also examined u/s 313 Cr.P.C. to enable them to explain the evidence appearing against them. Appellants have produced DW-1 Sh. Surender Kumar, DW-2 Sh. Raghunath and DW-3 Ms. Meenakshi Sharma in their defence.

4. After considering the testimony of PW-2 Sh. Kuldeep Raj-the complainant and PW-5 Smt. Chanchal Rani, who were also injured in the occurrence and are parents of the deceased Raman @ Kai, the learned Addl. Session Judge had convicted both the Appellants Sunita Sharma and Sudhir Sharma for committing the offence punishable under Sections 302/324/323/34 IPC and sentenced them in the manner stated above.

5. We have heard Mr. K.B. Andley, learned Senior Advocate for the Appellants and Mr. Narender Kr. Choudhary, learned APP for the State.

#### Contentions

6. Mr. K.B. Andley, learned Senior Advocate representing the Appellants submitted that testimony of the eye witnesses i.e. PW-2 Sh. Kuldeep Raj and PW-5 Smt. Chanchal Rani has not been corroborated by PW-16 Sh. Pawan Kumar who was also injured in the occurrence. Further as per statement of PW-1 Sh. Jagdish Lal, when he was on the terrace, he heard the cries. Thus, by the time he happened to reach the spot, incident must have been over. Hence he cannot be termed as an eye witness. PW-16 Pawan, who is also one of the injured in this case, has turned hostile on all material aspects about the incident and did not even identify the Appellants to be the assailants, which fact has not been considered by learned Trial Court while convicting the Appellants. Learned senior counsel for the Appellants has drawn the attention of this Court to the opinion of the Doctor about the weapon of offence i.e. "gupti" Ex. P2 wherein he has specifically opined that the fatal injury was not possible with the "gupti" which was claimed to be got recovered by the Appellant Sudhir Sharma. It has also been submitted that even no public witness has been joined at the time of recovery of "gupti" by Appellant Sudhir Sharma and "musli" by Appellant Sunita Sharma.

7. Mr. K.B. Andley, learned senior counsel for the Appellants emphasized that the learned ASJ has convicted the Appellants on the basis of unreliable testimonies of the parents of the deceased who are not only interested witnesses but also could not have been trusted in view of the material discrepancies appearing in their testimonies and the improvements made by them while deposing before the Court, hence conviction based on such evidence is liable to be set aside.

8. Learned senior counsel for the Appellants submitted that not only there is a delay in recording the FIR but the FIR is also ante timed in view of the version of PW-2 Sh. Kuldeep Raj that his first statement was recorded at the police station at about 2.00/2.30 am on the same night. In that case, how the rukka could have been sent on 14.02.1993 at 11.55 pm and FIR could be registered at 12.05 am on the night intervening 14/15.2.1993. He further submitted that when the police visited the hospital, none of the eye witness was found present there which further proves that PW-2 Sh. Kuldeep Raj and PW-5 Smt. Chanchal Rani have not witnessed the occurrence. Sh. K.B. Andley, learned Senior Advocate has drawn our attention to the fact that on the MLCs of injured Sh. Pawan (PW-16), Sh. Kuldeep Raj (PW-2) and Smt. Chanchal Rani (PW-5), the names of the assailants have not been mentioned before the Doctor despite the fact that PW-2 Sh. Kuldeep Raj, the complainant was conscious and oriented.

9. Mr. K.B. Andley, learned senior counsel for the Appellants submitted that Sh. Mohan Lal, landlord of the Appellants and complainant was having some dispute with the complainant over "committee" (chit fund). Mohan Lal was a suspect in

this case, who was absconding and despite that he was neither interrogated nor arrested. There was no motive for the Appellants to commit murder of Raman @ Kai and they have been falsely implicated in this case. It has been submitted that learned Trial Court failed to consider the testimony of defence witnesses as well as the wedding card and photographs which established that Appellant Sunita was away to Punjab to attend the marriage of daughter of her first cousin Surinder Kumar (DW-1) and returned to Delhi only on getting telephonic message from her daughter about the Appellant Sudhir Sharma being injured and arrested in this case. Thus, plea of "alibi" which was established by Appellant Sunita Sharma has been rejected without any justification. Learned senior counsel for the Appellants has relied upon Jugraj Singh Vs. State of Punjab Kishan Pal Vs. State Dahyabhai Chhaganbhai Thakker Vs. State of Gujarat, Kashiram & Ors. Vs. State of M.P. 2012(4) Cri. 281 and Raj Kumar Singh @ Raju @ Batya Vs. State of Rajasthan, in support of his contentions.

10. On the other hand, learned APP for the State has submitted that the prosecution fully established not only the motive but also that the Appellant, in furtherance of the common intention, had caused death of Raman who was declared "Brought Dead" when examined by the doctor at LNJP hospital. Learned APP for the State further submitted that learned Trial Court has rightly relied on the evidence of PW-1 Sh. Jagdish Lal, PW-2 Sh. Kuldeep Raj and PW-5 Smt. Chanchal Rani, who are uncle and parents of the deceased and had also witnessed the incident. While refuting the contentions of Appellants that PW-1 Sh. Jagdish Lal happened to reach the spot only after the occurrence, learned APP for the State submitted that the manner in which the role of the Appellants has been described by PW-1 Jagdish Lal, proves otherwise for the reason that he on seeing the occurrence and hearing the cries, reached the spot and his presence is also proved from the fact that he even identified the dead body of Raman. While not disputing that PW-16 Pawan Kumar did not fully support the case of prosecution, learned APP for the State urged that PW-16 Pawan suffered injuries in the same incident and just because he failed to identify the assailants during trial in itself is no ground to give any benefit to the Appellants as identity of the Appellants stands established by PW-1 Sh. Jagdish Lal, PW-2 Sh. Kuldeep Raj and PW-5 Smt. Chanchal Rani. Thus, the State has prayed for dismissal of the present appeal. Learned APP for the State has relied upon State of Madhya Pradesh Vs. Dharkole @ Govind Singh and Others, Ram Swaroop Vs. State of Rajasthan, State of U.P. vs. Mukunde Singh & Ors. JT 1994 (1) SC 109 and Radha Mohan Singh @ Lal Saheb and Others Vs. State of U.P., in support of his contentions.

11. We have carefully considered the rival contentions and perused the relevant record.

12. Before dealing with the rival contentions, we feel the necessity to bring on record as to when the police was first informed about the occurrence, the action taken by the police officers in the matter, the further investigation carried out in

this regard and the testimonies of the material prosecution eye witnesses as well as those associated with the investigation. We are of the considered view that unless we discuss all these facts, mere dealing with the contentions of the Appellants and State would not serve the purpose without dealing with the necessary supporting evidence to arrive at the conclusion.

13. The police came into action with DD No. 14-A dated 14/15.02.1993 Ex. PW7/A and the informant was none else but Appellant Sudhir Kumar, S/o Sh. Hukam Chand, R/o 88-C, East Guru Angad Nagar, Delhi. Since this DD No. 14-A is going to play a decisive role in disposal of this appeal, we have to refer to its contents in extenso. As per DD No. 14-A (Ex. PW7/A), informant Sudhir Kumar i.e. the Appellant came to the police station and reported that he was residing at the above mentioned address with his family and doing some private job. On that day, at about 8.15 pm, one boy Kaka residing in his neighbourhood said some bad words to his daughter Meenakshi which she conveyed to him. He came out of his house and told Kaka that she was just like sister to him and he should not have behaved like that. On this Kaka's eldest brother namely Kai and their cousin Pawan all of a sudden came out of their house armed with lathis and barchis and attacked him. On being beaten with dandas, kicks and fist blows, he received injuries all over his body and also started bleeding from his head. He requested for his medical examination. This DD entry was also signed by the informant Sudhir Kumar and thereafter it was handed over to ASI Maman Khan who along with HC Yash Pal and Ct. Braham Pal left for the spot whereas injured Sudhir Kumar was sent through Ct. Anand Kumar No. 575/E to SDN Hospital for his medical examination.

14. Next DD is No. 15A dated 14/15.02.1993 Ex. PW-7/B about the wireless message being received at 8:40 p.m. The Wireless Operator informed the Police Station that H.C. Gabaruddin No. 1053/PCR has informed through wireless about the quarrel between landlord and tenant at C-88, East Guru Angad Nagar with request to send the police. This DD was also sent to ASI Maman Khan through Ct. Ashok Kumar, No. 472/E.

15. DD No. 16A dated 14/15.02.1993 Ex. PW-7/C PS Preet Vihar was recorded at 9.10 p.m. on the basis of information given by Duty Constable Shiv Raj No. 2019/C from JPN Hospital. Vide this DD, Duty Constable informed that Kuldeep Raj has brought to the hospital his son Raman Kumar resident of C-88, East Laxmi Market, Guru Angad Nagar, Delhi, who had been declared "Brought Dead" and Pawan Kumar and Chanchal Rani in injured condition with stab wounds. This DD was also sent to ASI Maman Khan through Ct. Digamber Singh No. 1370/E. SHO who was patrolling in the area vide DD No. 31B, was also informed through wireless about this incident.

## EVIDENCE

16. Out of the 21 witnesses examined by the prosecution, PW-1 Jagdish Lal, PW-2 Kuldeep Raj, PW-5 Chanchal Rani and PW-16 Pawan Kumar are material

public witnesses who are not only eye witnesses but PW-2 Kuldeep Raj, PW-5 Chanchal Rani and PW-16 Pawan Kumar were also injured in this occurrence.

17. PW-3 ASI Virender Singh is the Duty Officer, PW-4 Ct. Suraj Mal is the Photographer, PW-6 SI Ram Shanker, PW-7 Ct. Digamber Singh, PW-9 Ct. Bhopal Singh, PW-10, W/SI Usha, PW-11 ASI Jai Pal, PW-12 ASI Om Prakash, PW-13 Ct. Braham Pal, PW-14 Ct. Suresh and PW-18 Ct. Vijay Kumar are formal witnesses associated with the investigation of the case. PW-19 ASI Maman Khan was the Police Officer to whom all the DDs Ex. PW-7/A to C were assigned and PW-20 ACP Daulat Ram was then SHO PS Preet Vihar, who took over the investigation on registration of the case u/s 302/34 IPC.

18. PW-5A Dr. Leisha prepared the MLC Ex. PW-5/A of deceased Raman Kumar and declared him "Brought Dead". PW-8 Dr. P.C. Dixit conducted the postmortem on the body of Raman and as per the postmortem report Ex. PW-8/B, death was caused due to hemorrhage and shock as a result of stab injury to heart and lung via injury no. 1. PW-15 Dr. Amarjeet Kaur prepared the MLC of PW-16 Pawan Kumar who was declared unfit for statement at the time of his medical examination. PW-21 Dr. M.S. Chopra identified the handwriting and signatures of Dr. Madhur Sarin and Dr. Asita who prepared the MLCs of PW-2 Kuldeep Raj and PW-5 Chanchal Rani since the two doctors had already left the said hospital and their whereabouts were not known.

19. First we would like to refer to the testimony of PW-19 ASI Maman Khan and PW-20 ACP Daulat Ram, the then SHO and then consider the testimonies of public witnesses to deal with the contentions raised at the bar.

20. PW-19 ASI Maman Khan stated that on the night intervening 14/15.02.1993, he was on emergency duty from 8 p.m. to 8 a.m. (next day). On receiving the copy of DD No. 14A Ex. PW-7/A, he along with HC Yash Pal and Ct. Braham Pal reached the spot and came to know that injured had already been taken to the hospital. At the spot, he also received DDs No. 15A and 16A Ex. PW-7/B and C respectively and leaving Ct. Braham Pal and Ct. Ashok Kumar to guard the spot, he along with Ct. Yash Pal reached the hospital where SHO Inspector Daulat Ram also reached along with staff.

21. PW-19 ASI Maman Khan deposed that since injured Raman had already been declared "Brought Dead", he obtained the MLCs of Pawan Kumar, Kuldeep Raj and Chanchal Rani. Injured Pawan Kumar was declared unfit for statement. He came to know that injured Kuldeep Raj (PW-2) and Chanchal Rani (PW-5) had left the hospital after being discharged. On finding no eye witness in the hospital, he along with SHO reached the spot and met the complainant Kuldeep Raj who made the statement Ex. PW-2/A which was recorded by the Inspector and after making endorsement thereon it was sent for registration of the case. Copy of the FIR was also received by the SHO at the spot through Ct. Digamber.

22. PW-20 ACP Daulat Ram the Investigating Officer stated that on receiving the wireless message about Raman Kumar @ Kai being "Brought Dead" to JPN

hospital, he along with staff reached the hospital where he also met ASI Maman Khan. On finding no eye witness present in the hospital, they reached the spot, where he recorded the statement of complainant Kuldeep Raj, made endorsement Ex. PW-20/A thereon and sent the same through Ct. Digamber for registration of the case. Crime Team was summoned and spot was got photographed. He prepared the site plan Ex. PW-20/B at the instance of PW-2 Kuldeep Raj and PW-5 Chanchal Rani. While the police team was busy in conducting necessary investigation at the spot, he received the copy of FIR through Ct. Digamber. Thereafter he went to JPN hospital and conducted inquest proceedings. Dead body was sent for postmortem and thereafter handed over to legal heirs.

23. Regarding arrest of the Appellants, PW-20 ACP Daulat Ram stated that he again returned to the spot and Appellant Sunita was found present at her house. She was interrogated and arrested in this case in the presence of W/SI Usha Sagar who conducted her personal search. Appellant Sunita also led to the recovery of "musli" from under a trunk lying near a wall outside her house which was seized in this case. At her behest, Appellant Sudhir was also arrested from bus stand Vikas Marg, Shakarpur and Appellant Sudhir got recovered a "gupti" from backside of the almirah inside his house which was seized in this case.

24. PW-1 Jagdish Lal who is brother of complainant Kuldeep Raj has stated that on 14.02.1993 when he was present upstairs at his house, on hearing the noise he got down and reached the house of his brother. He saw that Appellant Sunita was holding hair of Raman and Sudhir Sharma was hitting him with some object like "chhuri". Sunita was also having an iron "musli". Kuldeep Raj and his wife Chanchal Rani and Pawan were also lying in injured condition and crying "bachao-bachao". He accompanied them to Irwin hospital where Raman was declared "Brought Dead". He identified the body of Raman vide Ex. PW-1/A.

25. PW-2 Shri Kuldeep Raj, the complainant and father of deceased Raman has stated about a quarrel that took place between the children of complainant and Appellants and the matter being complained by Appellant Sunita to his wife Chanchal Rani (PW-5). About the occurrence, he deposed almost on identical lines as stated by him in his complaint Ex. PW-2/A and that in the process to save Raman, he, his wife Chanchal Rani (PW-5) and his nephew Pawan (PW-16) suffered injuries at the hands of the Appellants.

26. PW-5 Smt. Chanchal Rani has also deposed almost on identical lines about the occurrence and how her son Raman was stabbed and beaten with "musli" by the Appellants and while trying to save Raman from the hands of the Appellants, she, her husband as well as her nephew Pawan suffered injuries. She also stated that her son Raman was declared "Brought Dead" at JPN hospital.

27. PW-16 Pawan Kumar admitted having suffered injuries in the occurrence that took place on 14.02.1993 when he was staying as guest at the house of his Mausi (aunt) i.e. PW-5 Chanchal Rani. He, however, failed to identify the

Appellants to be the persons responsible for causing injuries to him. On this score, he was cross-examined by learned APP for the State but without success.

28. Now it is time to deal with the contentions raised by learned counsel for the Appellants in the light of evidence adduced by the prosecution.

#### Plea of Alibi

29. First of all, we would like to deal with the plea of "alibi" raised by Appellant Sunita for the first time during her examination u/s 313 Cr.P.C. before learned Trial Court. In reply to Question No. 36 as to "what she has to say?" put to her during her examination u/s 313 Cr.P.C., Appellant Sunita Sharma has given the following answer:

I am innocent. I had gone to Punjab on 12.02.1993 to attend the marriage of my maternal cousin which was to be solemnized on 15.02.1993 but I received a telephonic call from my daughter about the implication of my husband in this case on the night of 14.02.1993 at 11 pm and I came to Delhi on 15.02.1993 and went to the P.S. alongwith my father Sh. Raghunath-who had accompanied me from Punjab. I asked the police to let me see my husband but I was made to sit in the P.S. and my signatures were obtained on some blank papers and then I was not permitted to leave the P.S. and was falsely implicated in this case.

We note that as per the wedding card placed on record by Appellant Sunita Sharma to prove her plea of "alibi", the date of marriage is 14.02.1993, however she has given the date of marriage as 15.02.1993 in her statement recorded u/s 313 Cr.P.C.

30. DW-1 Sh. Surinder Kumar has made the following statement:-

On 14.02.93 the marriage of my daughter Renu was solemnized with Praveen at Village Nahl, Jalandhar. Sunita, accused present in court, is my cousin being my Bua's daughter. Accused Sunita had come to my house on 13.02.93. She attend the marriage on 14.2.93. On 14.2.93 at about 11 pm we recd. a telephonic message through her daughter that her (Sunita's) husband had sustained some injuries at Delhi and she should reach immediately. Shri Raghunath Sharma-father of Sunita had also attended the marriage of my daughter. On the early morning on 15.02.93 Raghunath Sharma alongwith Sunita left for Delhi. The marriage card of my daughter is Ex. DW1/A and the photographs of the marriage of my daughter are Ex. DW1/1-5. (Objected to). Accused Sunita is shown in these photos.

31. In his cross examination, although he denied the suggestion that photographs Ex. DW1/1 to 5 did not pertain to the marriage dated 14.02.1993, on being questioned, he could not tell who had taken these photographs. He admitted that he never complained to any higher authority informing that Sunita, who was his first cousin, was falsely implicated in this case as at the time of incident, she was present at Jalandhar to attend the marriage of his daughter.

32. DW-2 Sh. Raghunath made statement to the following effect:-

Sunita is my daughter. She is present in Court today. DW-1 Surender Kumar is the son of my brother-in-law. The marriage of his son was fixed for 14.2.93 at Village Nahl, Jalandhar. I alongwith Sunita reached his house at Nahl and attended the marriage on 14.2.93. On 14.2.93 at about 10.30 pm a telephonic message was recd. by us from the daughter of Sunita stating that Sudhir Sharma had sustained some injuries and she should reach immediately. On 15.2.93 I left village at 5 am and reached Delhi at 2.30 pm. When we reached Delhi Sudhir was already in custody and Sunita was also detained at PS Preet Vihar.

Here we note that as per the wedding invitation card Ex. DW1/A, marriage was of Renu, D/o Smt. & Sh. Dr. Surinder Kumar Sharma (DW-1) with Parveen, S/o Sh. Ram Kishan Sharma of Nadala.

33. During cross examination by State, he also admitted that he did not make any complaint to any higher authority regarding false implication of his daughter Sunita in this case.

34. DW-3 Ms. Meenakshi Sharma is daughter of the Appellants. Her version about the occurrence in her own words reads as under:

On 14.2.93 at 7.30 pm I, my father Sudhir Sharma and my brother Kapil Sharma were present in our room in house No. C-88, Gali No. 5, East Laxmi Nagar, Delhi. We had only one room in our possession and we also used it as a kitchen. I and my father were cooking meals. We heard a noise from the street and I came out and saw that our landlord Mohan Lal and one Raman Kumar, who was a relation of Mohan Lal were quarrelling with each other. Several persons from the nearby houses had also come there and standing. My papa also went there. My father tried to intervene but my father suddenly got an injury on his head. Blood had come out from the head of my father and he was told by some persons to go and get the wound bandaged. After about half-an-hour we learnt that Raman Kumar had died and my father Sudhir Sharma had been arrested by the police.

My mummy was not present in the house as she had gone to Jalandhar to attend a marriage. I gave a telephone call to my mummy at Jalandhar. My mummy/accused Sunita Sharma came at about 4 p.m. on 15.2.93. My mummy went to the P.S. to make enquiries about my father but she was also detained there and arrested in this case. Our landlord Mohan Lal was not seen by me there for 2-3 days and then I was taken to Jalandhar by my maternal grandfather Sh. Raghunath Sharma.

Accused Sunita now present in court is my mother and accused Sudhir Sharma also present in court is my father.

35. In her cross examination by State, she has stated that:

When I gave a telephonic call at Jalandhar and I had told on the phone that my father Sudhir Sharma had been arrested by the police, and that my mummy

should be sent back as my father had also suffered some injury.

36. In support of her plea of "alibi", Appellant Sunita Sharma has placed on record the wedding card of the marriage of Renu, daughter of Smt. and Dr. Surinder Kumar Sharma (DW-1) with Parveen son of Shri Ram Krishan Sharma. The wedding was to take place at Village and Post Office Nahl near Lohian Khas (Jal). The wedding programme given in the marriage card is given as under:-

37. Along with the wedding card, photographs Ex. DW-1/A to F are annexed to establish that the wedding was attended to by Appellant Sunita Sharma and she was not in Delhi at the time of occurrence.

38. We do not find the testimony of DW-1 Shri Surinder Kumar, DW-2 Shri Raghunath and DW-3 Ms. Meenakshi Sharma to be sufficient to prove the plea of alibi raised by Appellant Sunita Sharma for the following reasons:-

(i) Right from the stage of her production before the Magistrate for remand within 24 hours of her arrest, she did not inform the Court or move any higher authority to complain that she was arrested by the police when she returned from Punjab and visited police station to see her husband. This is despite the fact that within two weeks of her arrest in this case, she was ordered to be released on bail by the learned Addl. Session Judge on 05.03.1993.

(ii) Appellant Sunita claims to have received the information on the night of 14.2.93 at 11.00 pm from her daughter Meenakshi regarding implication of her husband in this case. DW-3 Ms. Meenakshi, daughter of Appellant Sunita deposed in her cross examination by State that she made a telephonic call to Jalandhar and she had told on the phone that her father Sudhir Sharma had been arrested by the police and that her mother should be sent back as her father had also suffered some injury. However, DW-1 Sh. Surinder Kumar and DW-2 Sh. Raghunath deposed that telephonic message by daughter of Sunita Sharma was about some injuries sustained by husband of Appellant Sunita Sharma at Delhi and that Sunita should reach immediately and not about arrest of Sudhir Sharma.

(iii) The photographs of the marriage placed on record by DW-1 Sh. Surinder Kumar contain the photograph of a bridegroom sitting in front of a room and surrounded by some relations. These photographs do not contain any photograph of the bride or joint photograph of the bride and bridegroom at the venue of the marriage. Even wedding like decoration at the venue cannot be seen in the photographs. In the photographs, the bridegroom can be seen wearing currency notes "haar". The surprising aspect of these photographs is that the Appellant Sunita claims to have attended the marriage of daughter of her cousin Surinder Kumar (DW-1) but not only the bride is missing in the photographs, even negatives were not produced and the father of the bride Sh. Surinder Kumar (DW-1) even did not know who was the photographer covering the marriage function.

39. After considering the testimonies of DW-1 Sh. Surinder Kumar-first cousin of the Appellant Sunita Sharma, of DW-2 Sh. Raghunath-father of Appellant Sunita Sharma who accompanied her from Jalandhar to Delhi and of DW-3 Ms. Meenakshi-daughter of the Appellants about the incident and the information given by her about the incident, it is clear that while DW-1 Sh. Surinder Kumar and DW-2 Sh. Raghunath claim that information was only in respect of the injuries suffered by Appellant Sudhir Sharma at Delhi, DW-3 Ms. Meenakshi, the maker of the call claims that she made telephonic call only after arrest of her father and factum of her father sustaining the injuries and his arrest was intimated by her. The version of defence witnesses is also not in consonance with the first version of the occurrence given by the Appellant Sudhir Sharma recorded vide DD No. 14-A. Even the contents of DD No. 14-A are at total variance from the version of DW-3 Meenakshi Sharma about the occurrence who claims to be present at the time of incident.

40. PW-10 W/ASI Usha is a witness to the arrest and interrogation of Appellant Sunita. Appellant Sunita being a female, her personal search was conducted by W/ASI Usha. Surprisingly, neither to PW-10 W/ASI Usha nor PW-20 ACP Daulat Ram any suggestion has been given on behalf of Appellant Sunita that she was not arrested in the manner stated by them or that she was arrested and falsely implicated in this case when she came to inquire about her husband. Thus, we find that plea of alibi taken at the fag end of the trial for the first time during her examination under Sec. 313 Cr.P.C., though tried to be proved through a futile attempt by examining DW-1 Surinder Singh, DW-2 Raghunath and DW-3 Meenakshi, could not be established by Appellant Sunita Sharma.

#### Injury to the Appellant Sudhir

41. Learned Senior Advocate for the Appellants, in support of his contention that in this case, the Appellant Sudhir Sharma was injured and his injuries have not been explained by the prosecution, has relied upon *Kashiram & Ors. Vs. State of M.P. (Supra)* wherein it was held that since prosecution failed to prove or explain injury sustained by the accused/Appellant, the prosecution version was disbelieved. It is suffice to record here that version of the Appellant Sudhir Sharma as to how he sustained injuries has already been proved on record in the form of DD No. 14-A and MLC Ex. PW17/A. Hence, the case relied upon by learned Senior Advocate for the Appellants in support of above contention is of no help to them.

#### Delay in FIR

42. The next contention of the Appellants is that the FIR No. 27/1993 being ante timed or registered after inordinate delay thereby giving rise to the same being concocted and manipulated against the Appellants.

43. Although there is no inordinate delay in registration of FIR, even otherwise delay itself is not fatal as held in *Gangabhavani Vs. Rayapati Venkat Reddy and Others*, that:

15. The case of the prosecution cannot be rejected solely on the ground of delay in lodging the FIR. The court has to examine the explanation furnished by the prosecution for explaining the delay. There may be various circumstances particularly the number of victims, atmosphere prevailing at the scene of incidence, the complainant may be scared and fearing the action against him in pursuance of the incident that has taken place. If the prosecution explains the delay, the court should not reject the case of the prosecution solely on this ground. Therefore, the entire incident as narrated by the witnesses has to be construed and examined to decide whether there was an unreasonable and unexplained delay which goes to the root of the case of the prosecution and even if there is some unexplained delay, the court has to take into consideration whether it can be termed as abnormal.

(Vide P. Venkateswarlu Vs. State of A.P. and Others, and State of U.P. Vs. Munesh,

44. PW-3 ASI Virender Singh, the Duty Officer has stated that the rukka in this case was received by him on 15.02.1993 at 12.05 a.m. After recording the kayami DD No. 19A, he sent the copy of the FIR to the IO through constable. He also stated that special report was also sent to the concerned Magistrate and senior police officers. A departure entry regarding sending of special report was also made in the roznamcha. PW-14 Ct. Suresh has taken the special FIR and delivered to the concerned police officer and the Magistrate. He left the PS at 1 a.m. and returned at 6 a.m. Cross examination of both these witnesses has been recorded as "Nil" despite opportunity being given.

45. Now, it does not lie in the mouth of the Appellants to raise such type of pleas when there is documentary evidence in the form of roznamcha, FIR and testimony of concerned police officials to prove otherwise.

46. No doubt PW-2 Sh. Kuldeep Raj had stated that his statement was recorded at the police station at about 2.00/2.30 am on the same night but the question is whether this in itself is sufficient to discard the documentary evidence to prove that the FIR was recorded without any delay and it was not ante timed. PW-2 Shri Kuldeep Raj has given the time by approximation. Not only his wife was injured, he was also injured. His nephew was admitted in serious condition in JPN hospital and was not even fit to make statement and above all, he had witnessed his young son aged about 24 years being killed by the Appellants before his own eyes.

47. In the given facts mention of time by approximation is not sufficient to return a finding about the FIR being ante timed or recorded after inordinate delay. In the given facts and circumstances of the case, placing reliance on Jugraj Singh vs. State of Punjab (Supra) is of no help to the Appellants.

Non-mention of names of assailants on the MLCs & no witness was found present at the hospital

48. It is true that in the earliest information to the doctor, who prepared the

MLCs, about the alleged history, there was no name, description, reference of the assailants. In other words, we may say that assailants were not named by injured i.e. PW-2 Kuldeep Raj, PW-5 Chanchal Rani and PW-16 Pawan at the time of preparation of their MLCs, but the answer is not difficult to find for the reason that PW-5A Dr. Leisha who examined Raman and declared him "Brought Dead", during her cross-examination by learned counsel for the Appellants, stated that she did not ask Kuldeep Raj the name of the assailants and how and when this incident took place. Kuldeep Raj also did not disclose to her the names of the assailants. This explains the reason for non-mention of names of assailants by PW-2 Sh. Kuldeep Raj as the information seeker i.e. the doctor did not question him in this regard. There is no need to mention all the details chronologically in the complaint/before the doctor as it depends upon so many facts, such as, mental/physical condition of the injured and informant etc. We cannot ignore the mental condition of PW-2 Kuldeep Raj who himself being injured and an eye witness to the occurrence had only one concern at that time i.e. to rush to hospital to save Raman. In the given circumstances, when Raman aged about 24 years was declared "Brought Dead" at about 8.45 p.m. to his parents and at the same time i.e. at 8.45 p.m. Pawan who also received stab injuries on his head was declared unfit for statement, the state of mind of PW-2 Shri Kuldeep Raj and PW-5 Smt. Chanchal Rani could be well imagined. In the given circumstances, they had hardly any option but to get treatment for the injuries suffered by them and leave for home to mourn the death of their son, wait for the postmortem, handing over of body to perform last rites and pray for life of another injured Pawan who was their guest.

49. Submission of learned counsel for the Appellants that none of the injured was found present at the hospital stands explained in the above narrated facts and circumstances.

50. From the MLCs Ex. PW-15/A of Pawan Kumar, Ex. PW-21/A of Kuldeep Raj and Ex. PW-21/B of Chanchal Rani as well as Ex. PW-5/A of the deceased Raman, it is established that the complainant went himself to the hospital and other three injured were brought by him. In view of the situation in which the complainant and his wife were placed, it was not necessary for him to voluntarily disclose the names of the assailants to the doctor especially when he was not asked by PW-5A Dr. Leisha to give these details.

51. In *Yudhvir Singh and Others Vs. State (Delhi Administration)*, this Court has dealt with this aspect observing as under:

The absence of the name of assailant in the MLC is of no consequence. There is neither any such requirement nor this circumstance creates any doubt about the correctness of the prosecution case.

Non-joining of public witness at the time of recovery

52. We are not impressed with the contention of learned senior counsel for the Appellants that no independent witness was associated at the time of arrest of

the Appellants or recovery of "musli" Ex. P1 and "gupti" Ex. P2 at the instance of Appellants Sunita and Sudhir respectively. The legal position is well settled that there is no requirement of Section 27 of Indian Evidence Act to join independent public witnesses at the time of recovery pursuant to the disclosure statement of the accused. If judgment is needed on this point, reliance can be placed on State, Govt. of NCT of Delhi Vs. Sunil and Another, wherein it was held that:

20. In this context we may point out that there is no requirement either u/s 27 of the Evidence Act or u/s 161 of the Cr.P.C., to obtain signature of independent witnesses on the record in which statement of an accused is written. The legal obligation to call independent and respectable inhabitants of the locality to attend and witness the exercise made by the police is cast on the police officer when searches are made under Chapter VII of the Code. Section 100(5) of the Code requires that such search shall be made in their presence and a list of all things seized in the course of such search and of the places in which they are respectively found, shall be prepared by such officer or other person "and signed by such witnesses". It must be remembered that search is made to find out a thing or document which the searching officer has no prior idea where the thing or document is kept. He prowls for it either on reasonable suspicion or on some guess work that it could possibly be ferreted out in such prowling. It is a stark reality that during searches the team which conducts search would have to meddle with lots of other articles and documents also and in such process many such articles or documents are likely to be displaced or even strewn helter-skelter. The legislative idea in insisting on such searches to be made in the presence of two independent inhabitants of the locality is to ensure the safety of all such articles meddled with and to protect the rights of the persons entitled thereto. But recovery of an object pursuant to the information supplied by an accused in custody is different from the searching endeavour envisaged in Chapter VII of the Code...

#### Motive

53. So far as the contention of learned Senior Counsel for the Appellants that there was no motive for the Appellants to commit the crime is concerned, we find that the Appellants had a grudge against the complainant's son on account of some misbehavior by younger son of the complainant with daughter of the Appellants which finds mention not only in the DD No. 14-A Ex. PW7/A by Appellant Sudhir Sharma at 8.30 pm but also in the complaint Ex. PW2/A made by PW-2 Kuldeep Raj on the basis of which rukka was prepared and sent for registration of the case at 11.55 pm on the same night.

54. It is settled legal proposition that even if the absence of motive as alleged is accepted, that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of witnesses as to commission of an offence, the motive part loses its significance. Therefore, if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence could not be

discarded only by the reason of the absence of motive, if otherwise the evidence is worthy of reliance. (Vide Bipin Kumar Mondal Vs. State of West Bengal,

Opinion of doctor regarding weapon of offence

55. No doubt the medical opinion is there that the injuries sufficient by Raman could not be caused by "gupti" but it is hardly of any significance for the reason that Appellant Sudhir Sharma was moving in a planned manner first by getting the DD No. 14-A recorded and thereafter it appears that he must have substituted the weapon of offence to claim benefit during trial. Thus, the Appellants cannot derive any benefit by placing reliance on Kishan Pal vs. State (Supra) which has no applicability to the facts of the present case.

No investigation regarding absconding of Mohan Lal

56. Learned senior counsel for the Appellants has tried to draw the attention of the Court to the statement of PW-1 Sh. Jagdish Lal in his cross examination that Mohan Lal, landlord of the Appellants and complainant was absconding for 20-25 days and contended that there was a dispute between Mohan Lal and complainant Kuldeep Raj over some "committee" (chit fund) and quarrel took place between them in which Appellant Sudhir Sharma also received injuries.

57. This arguments is also liable to be rejected in view of DD No. 14-A which was got recorded by Appellant Sudhir Sharma giving the narration of the incident and seeking his medical examination. The contents of this DD are not disputed by Appellant Sudhir Sharma. This DD nowhere refers to any dispute between the complainant and Mohan Lal. Even otherwise, when the Appellant Sudhir Sharma also claims to have been injured in the occurrence in which Raman had suffered fatal injuries, PW-16 Pawan had suffered murderous assault, PW-5 Chanchal Rani suffered injuries by sharp object and PW-2 Kuldeep Raj-the complainant also suffered simple injuries, we feel that DD No. 14-A was got recorded by Appellant Sudhir Sharma just to create a defence for himself. Here it is also necessary to mention that while Sudhir Sharma personally reached the police station at 8.30 pm and was also got examined at SDN Hospital vide MLC Ex. PW17/A at 9.20 pm, the first information about this quarrel was received by PCR and conveyed to PS Preet Vihar at 8.40 pm vide DD No. 15-A and the said DD was assigned to ASI Maman Khan who was already given DD No. 14-A lodged at the behest of the Appellant Sudhir Sharma. Thus, ASI Maman Khan was required to take action and report in respect of both these DDs. When he reached the spot, he found the injured already removed to hospital which fact is further proved by the MLCs Ex. PW6/A, PW14/A, PW21/A and PW21/B wherein in column "Brought By", on the MLC of Kuldeep Raj, it is mentioned as "Self" and on the MLCs of remaining injured, name of Kuldeep Raj is mentioned. This proves that while the complainant was rushing to hospital to save the lives of his son and nephew, the Appellant Sudhir Sharma was busy in creating defence.

58. Non-mention of Mohan Lal's name or any dispute between the complainant and Mohan Lal in DD No. 14-A makes the factum of availability or absconding of

Mohan Lal immaterial for us.

Hostile witness (PW-16)/Interested witnesses (PW-2 and PW-5)/Discrepancies

59. No doubt, PW-16 Pawan has not supported the case of prosecution but merely because the witness has been declared hostile is not sufficient to wash away his entire testimony. It is a settled principle of law that the statement of a witness who has been declared hostile by the prosecution is neither inadmissible nor is it of no value in its entirety. The statement, particularly the examination-in-chief, in so far as it supports the case of the prosecution is admissible and can be relied upon by the Court. (Vide Haradhan Das Vs. State of West Bengal,

60. In the case of Bhajju @ Karan Singh Vs. State of M.P., it was held as under:

35. Now, we shall discuss the effect of hostile witnesses as well as the worth of the defence put forward on behalf of the Appellant-accused. Normally, when a witness deposes contrary to the stand of the prosecution and his own statement recorded u/s 161 Code of Criminal Procedure, the prosecutor, with the permission of the court, can pray to the court for declaring that witness hostile and for granting leave to cross-examine the said witness. If such a permission is granted by the court then the witness is subjected to cross-examination by the prosecutor as well as an opportunity is provided to the defence to cross-examine such witnesses, if he so desires. In other words, there is a limited examination-in-chief, cross-examination by the prosecutor and cross-examination by the counsel for the accused. It is admissible to use the examination-in-chief as well as the cross-examination of the said witness insofar as it supports the case of the prosecution.

36. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence. Section 154 of the Evidence Act enables the court, in its discretion, to permit the person, who calls a witness, to put any question to him which might be put in cross-examination by the adverse party.

37. The view that the evidence of the witness who has been called and cross-examined by the party with the leave of the court, cannot be believed or disbelieved in part and has to be excluded altogether, is not the correct exposition of law. The courts may rely upon so much of the testimony which supports the case of the prosecution and is corroborated by other evidence. It is also now a settled canon of criminal jurisprudence that the part which has been allowed to be cross-examined can also be relied upon by the prosecution. These principles have been encompassed in the judgments of this Court in the following cases:

a. Koli Lakhmanbhai Chanabhai Vs. State of Gujarat,

- b. Prithi Vs. State of Haryana,
- c. Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi),
- d. Ramkrushna Vs. State of Maharashtra,

61. Since PW-16 Pawan was admitted in the hospital being injured in the occurrence in which Raman has died and his MLC also proved that he was taken to JPN Hospital by PW-2 Kuldeep Raj and his MLC was also prepared at 8.45 pm when MLC of Raman was prepared, the mere fact that he did not identify the Appellants to be the assailants is not sufficient to extend any benefit to the Appellants. The testimony of PW-2 Sh. Kuldeep Raj and PW-5 Smt. Chanchal Rani which is duly supported and corroborated not only by their respective MLCs as well the narration of the incident recorded in the complaint Ex. PW2/A on the same night is sufficient to base the conviction of both the Appellants. PW-2 Sh. Kuldeep Raj being author of the complaint and the person who removed all the injured to the hospital despite he being injured in the occurrence, has rightly been relied upon by learned Addl. Session Judge to be an eye witness to the incident and truthful in his deposition.

62. The submissions of learned counsel for the Appellants that PW-2 Sh. Kuldeep Raj and PW-5 Smt. Chanchal Rani should be disbelieved for the reason that being parents of the deceased, they are highly interested in seeking conviction of the Appellants deserves to be rejected for the reason that merely because they are parents of the deceased is not sufficient to term them as interested witnesses. Their presence at the spot is proved from the fact that not only they were injured but also examined in the same hospital and Raman and Pawan were also removed by PW-2 Kuldeep Raj to the hospital. In the case of Sachchey Lal Tiwari Vs. State of Uttar Pradesh, V, it was held as under:

7. Murders are not committed with previous notice to witnesses; soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a street, only passers-by will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere "chance witnesses". The expression "chance witness" is borrowed from countries where every man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite unsuitable an expression in a country where people are less formal and more casual, at any rate in the matter explaining their presence.

63. The evidence of prosecution witnesses are acceptable to prove the common intention of the appellants in causing fatal injuries to deceased Raman and murderous attack on PW-16 Pawan as well simple injuries to PW-2 Kuldeep Raj and PW-5 Chanchal Rani. We may note here that misbehavior by younger brother of the deceased with daughter of the Appellants was a day prior. Not only the protest was lodged by Appellant Sunita Sharma with mother of deceased Smt. Chanchal Rani (PW-5), even Kaka who allegedly misbehaved was also counseled

to treat their daughter Meenakshi (DW-3) as his sister. The deceased Raman was elder brother of Kaka who has been killed after calling him from inside the house. The occurrence is pre-meditated and he was specially called from inside the house and attacked with a chhuri like object by Appellant Sudhir Shama and with a "musli" by Appellant Sunita Sharma. It has come in the statement of DW-3 Meenakshi that the rented accommodation is just one room unit with no provision even for separate kitchen. The occurrence has taken place in the common compound in front of the rooms of the complainant and Appellants and whatever happened in the compound could be immediately heard and seen by PW-2 Kuldeep Raj and PW-5 Chanchal Rani after running out of their room. It is relevant to mention here that the nature of injuries suffered by PW-2 Kuldeep Raj and PW-5 Chanchal Rani explains not only their presence at the spot but also that they suffered injuries while trying to save Raman.

64. On behalf of Appellants, a feeble attempt has been made to discard the testimony of material prosecution witnesses by referring to the material discrepancies/contradictions appearing therein. We may record that the discrepancies pointed out by learned Senior Advocate for the Appellants are not on material aspects and do not go to the root of the case. Such discrepancies are bound to occur due to lapse of time, capacity to recapitulate the events. (Vide Krishna Mochi and Others Vs. State of Bihar,

65. No doubt, there are some variations in the statements of prosecution witnesses and the investigating officer as to when the complainant made the statement or where it was recorded but the variations are negligible. Taking note of the state of mind of PWs i.e. PW-2 Kuldeep Raj and PW-5 Chanchal Rani-parents of the deceased and the condition of injured Pawan who was admitted in the hospital and was opined as "unfit to make statement", we concur with the observations of Trial Court in accepting the prosecution evidence on all aspects to convict the Appellants.

66. We agree with the conclusion arrived at by learned Addl. Session Judge. Consequently the appeal is liable to be dismissed.

67. Having regard to above conclusion, we dismiss the appeal.

68. Registry is directed to send the TCR alongwith copy of this order immediately.

69. Appellants are directed to surrender before the learned Trial Court within fifteen days from the date of this order to undergo the sentence awarded to them. Copy of this order be also sent to the concerned Jail Superintendents with direction to report the compliance within one month from the date of this order.