Before S.S. Saron & Darshan Singh, JJ.

RAJ KUMAR @ MOGHLI AND ANOTHER—*Appellants*

versus

STATE OF HARYANA—*Respondent*

CRD-D No.111-DB of 2010

March 09, 2017

Indian Penal Code, 1860—Ss. 302, 34 and 506—Appellants/accused attacked and injured deceased with knives due to old quarrel—Doctor declared deceased brought dead to hospital—Inordinate delay of 6 months in examination of knives by expert—No benefit to accused in view of doctor's opinion—Injuries possible with knives recovered. Intention gathered from (1) weapon of offence used, (2) part of body aimed to cause injuries, (3) force applied to gave blows, (4) other circumstances.

Held that, as per the report of the FSL Ex.PAA, the blood was not detected on the knives recovered from the accused-appellants. The knife was recovered from the possession of accused-Raj Kumar @ Moghli on 22.02.2007 and from the possession of accused-appellant Sheru on 26.02.2007. The said weapons were sent to the FSL Madhuban on 01.03.2007, but were examined by the expert on 10.09.2007 i.e. after about seven months from the date of recovery. With this inordinate delay in the examination of the weapons might be one of the factors for the non-detection of blood on these knives. From the statement of PW-14-Dr. Sushma Jain, Medical Officer, General Hospital, Rohtak, it comes out that on 27.02.2007, the police moved application Ex.PY before her to seek her opinion whether injuries no. 4, 5, 6 and 7 could be caused by the 'knives' produced before her, recovered from the accused. Those knives were in sealed parcels. She opened the parcels and then gave her opinion Ex.PY/1 that possibility of injuries no. 4, 5, 6 and 7 with those weapons could not be ruled out. So, PW-14 has given a categoric opinion that injuries on the person of deceased-Naveen were possible with the knives recovered from the accused-appellants.

(Para 26)

Further held that, it is settled principle of law that the intention of the accused can be gathered from the weapon of offence used by them, the part of the body aimed to cause the injuries, the force applied

to gave the blows and many other circumstances. In the instant case, the accused-appellants were armed with knives of sufficient size. Two injuries have been given on the on the right side of the chest of the deceased. The deceased has died instantaneously as he was brought dead in the hospital. The injuries suffered by deceased were declared sufficient to cause death in the ordinary course of nature by PW-14-Dr. Sushma Jain, who carried out the postmortem examination. Thus, the offence committed by the accused- appellants clearly attracts Section 302 IPC.

(Para 31)

Deepak Malhotra, Advocate
for R.P.Dhir, Advocate
for the appellant no.1-Raj Kumar @ Moghli.

Rajesh Gupta, Advocate
for appellant no.2-Sheru

S.S.Pannu, DAG, Haryana.

DARSHAN SINGH, J.

(1) The present appeal has been preferred against the judgment of conviction dated 16.11.2009, vide which both the accused-appellants have been held guilty and convicted for the offences punishable under Section 302 read with Section 34 and Section 506 of the Indian Penal Code, 1860 ('IPC'-for short) and the order on the quantum of sentence dated 20.11.2009, vide which they have been sentenced as under:-

Name of the Convicts	U/S	R.I	Fine	In default
Raj Kumar @ Moghli	302/34 IPC	Imprisonment for life	Rs1500/-	Rigorous imprisonment of two months
	506 IPC	One year	Rs.500/-	Rigorous imprisonment of fifteen days.
Sheru	302/34 IPC	Imprisonment for life	Rs1500/-	Rigorous imprisonment of two months
	506 IPC	One year	Rs.500/-	Rigorous imprisonment

				of fifteen days.

(2) The brief facts giving rise to this prosecution are that PW-1- Bijender made the statement Ex.PA to PW-16-SI Subhash Chander stating therein that he was studying for obtaining the degree of law from Jhunjhun, Rajasthan. About six months back his nephew-Sushil had a quarrel with accused-appellants Raj Kumar @ Moghli and Sheru, residents of village Nigana. But, that dispute was settled by the brotherhood and thereafter, there remained no dispute. However, the accused-appellants were nursing the grudge since then. On 20.02.2007, complainant along with his nephew-Naveen and grandson (daughter's son) Hemant-PW-2 was coming to shop of Jagdish for purchasing some articles. When, they reached near the house of Birju Balmiki, accused- appellants Raj Kumar @ Moghli and Sheru got them stopped. It was about 11.00 a.m. Both the accused-appellants were carrying 'Chhuries' (Knives). They attacked Naveen, the nephew of the complainant with the said 'knives'. Raj Kumar @ Moghli gave the knife blows on the chest and the right flank of Naveen. Sheru gave knife blow on the right thigh of Naveen. He gave the second blow on his right knee at two places. Thereafter, Naveen fell down. They intervened. They were brandishing their 'knives' and threatened them with dire consequences. In the meanwhile, Sushil another nephew of the complainant came at the spot. Other persons also gathered at the spot. Then, the accused-appellants fled away from the scene of occurrence along with their weapons. Naveen was shifted to CHC, Kalanaur by arranging vehicle, but he was declared brought dead by the doctor. On the basis of the statement of complainant-Bijender Ex.PA, the formal FIR Ex.PAC was registered and investigation initiated.

(3) Thereafter, PW-16-Inspector Subhash Chander inspected the dead body and prepared the inquest proceedings Ex.PJ. He also recorded the statements of the witnesses. The dead body of Naveen was handed over to constable Ram Sarup for postmortem along with application Ex.PS. Thereafter, the Investigating Officer along with complainant- Bijender went to the spot at village Nigana. He inspected the spot and prepared the rough site plan of the place of occurrence Ex.PAE with correct marginal notes. After the postmortem examination on the dead body of deceased-Naveen, Constable Ram Sarup handed over the belongings of the deceased to the Investigating Officer in the sealed parcels, which were taken into possession vide memo Ex.PC. On return to the Police Station, the articles of the case

property were deposited with the Moharir Head Constable of the Police Station.

(4) On 21.02.2007, accused-appellant Raj Kumar @ Moghli who was sitting on a tea stall at Railway Station was arrested in this case, who was identified by PW-3-Sushil. Accused-appellant-Raj Kumar @ Moghli was got medico legally examined from Civil Hospital, Kalanaur by moving the application Ex.PAF. On 22.02.2007, on interrogation he suffered the disclosure statement Ex.PB and in pursuance thereof he got recovered the knife from the bushes near the fields of Mahabir resident of Nigana. The sketch of the said knife Ex.PE was prepared. The same was kept in a sealed parcel and was taken into possession vide memo Ex.PG.

(5) On 26.02.2007, accused-appellant Sheru was apprehended on the basis of the secret information from near the Chabba Brick kiln. He was also interrogated and suffered the disclosure statement Ex.PL. In pursuance thereof he got recovered the knife from the bushes in front of B.L. Brick Kiln on Nigana road. The sketch of the said knife Ex.PN was prepared. The same was kept in a sealed parcel and was taken into possession vide memo Ex.PM. Thereafter, on completion of the formalities of the investigation, the report under Section 173 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'-for short) was presented in the Court.

(6) The case was committed to the Court of Sessions by the learned Judicial Magistrate Ist Class, Rohtak, vide order dated 03.05.2007.

(7) Both the accused-appellants were charge sheeted for the offence punishable under Section 302 read with Section 34 and Section 506 IPC by the learned Additional Sessions Judge (Fast Tract Court), Rohtak, vide order dated 12.06.2007 to which both the accused-appellants pleaded not guilty and claimed trial.

(8) In order to substantiate its case, the prosecution examined as many as sixteen witnesses besides bringing on record the documents.

(9) When examined under Section 313 Cr.P.C., both the accused- appellants pleaded that they are innocent and have been falsely implicated.

(10) In the defence evidence, they examined DW-1 Saroj Kumar, Hindi Teacher, Govt. Sr. Secondary School, Nigana. He has

brought on record the attendance register of 10th class up to March 2006 and deposed that Hemant Kumar son of Dalip Singh was student of their school of 10th standard in the year 2005-06 and after the year 2006-07 he did not remained the student of their school. He has proved the certificate issued by the principal of Govt. Sr. Secondary School Nigana Ex.D-1. Dinesh Gautam, Lecturer in Law, Seth Moti Lal Law College, Jhunjhun appeared as DW-2. He has brought the admission form, attendant register, notice of unfair means, list of students for the session 2005-06 and TR of the University in respect of complainant-Bijender. He deposed that he took admission on 30.07.2005 and remained the student of LL.B Ist year up to examination in the month of May, 2006. He was apprehended as a case of unfair means and debarred by the University from appearing in the examination. After May, 2006, he did not remain the student of the University. He proved the list of students Ex.D-2, copy of result Ex.D-3 and D-4, copy of notice Ex.D-5 and copy of Register Ex.D-6. DW-3 Ashok deposed that Chabba Brick Kiln is at a distance of seven acres from Nigana road towards west side. He further stated that he does not know where B.L Brick Kiln is situated. DW-4-Phool Singh has also deposed in contradiction to the version of the prosecution regarding the places of recovery of the weapons recovered from the appellants. Thereafter, the defence evidence was closed.

(11) On appreciation of evidence on record and the contentions raised by learned counsel for the parties, the learned Additional Sessions Judge (Fast Tract Court), Rohtak, held guilty and convicted the appellants for the offence punishable under Section 302 read with Section 34 and Section 506 IPC vide impugned judgment of conviction dated 16.11.2009 and were sentenced as mentioned in the upper part of the judgment vide impugned order of sentence dated 20.11.2009.

(12) Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred by both the appellants.

(13) We have heard learned counsel for the parties and have meticulously examined the record of the case.

(14) Initiating the arguments, learned counsel for the appellants contended that as per the prosecution version, the occurrence has taken place at 11.00 a.m. on 20.02.2007. But, the FIR Ex.PAC has been registered at 02.30 p.m. They contended that the delay in lodging the FIR has not been explained, which shows that the case has been got

registered as a result of deliberations and consultations.

(15) They further contended that the occurrence is alleged to have been taken place in the busy locality of the village. But, no independent witness on the point of occurrence has been examined by the prosecution. The entire case of the prosecution is based on the statements of the relatives. Their statements in the absence of any independent corroboration should not be relied upon.

(16) They further contended that as per the prosecution case, the knives recovered from the accused-appellants were stained with blood. The said knives were sent to the Forensic Science Laboratory ('F.S.L'-for short). But in report of the FSL Ex.PAA no blood was found on the said knives. So, the knives allegedly recovered from the appellants were not the weapons of offence.

(17) They further contended that there is no evidence to show that the accused-appellants had any intention to cause the death of Naveen. So, the offence punishable under Section 302 IPC is not made out.

(18) On the other hand, learned State counsel contended that there is no inordinate delay in lodging the FIR. A close relative of the complainant has died. It is not expected that he will immediately rush to the Police Station to lodge the report. He further contended that the evidence adduced by the prosecution is cogent and unimpeachable. So, the small delay of 3-4 hours in lodging the FIR is of no legal consequence.

(19) He further contended that there is no rule of law that the statements of the relative witnesses cannot be believed. Learned counsel for the appellants have not been able to point out any material discrepancy in the statements of the prosecution witnesses. Their statements are consistent on the point of occurrence and carries great evidentiary value. He further contended that the doctor has given the specific opinion that the injuries on the person of deceased could be caused with the knives recovered from the accused. Mere this fact that the blood was not detected on the said knives is of no consequence particularly when the said weapons were examined after about seven months of the recovery. He further contended that the accused-appellants have caused seven incised wounds on the vital parts of the body of the deceased. These injuries shows the intention of the appellants to cause the death of Naveen. The injuries have been declared sufficient to cause death in the ordinary course of nature. So,

they have been rightly convicted for the offence punishable under Section 302 read with Section 34 IPC.

(20) We have duly considered the aforesaid contentions.

(21) The occurrence has taken place at 11.00 a.m. on 20.02.2007. The statement of complainant-Bijender was recorded by PW-16 SI Subhash Chander at 02.15 p.m. on 20.02.2007 and the FIR Ex.PAC was registered on the same day at 02.30 p.m. So, there was delay of only less then three and half hours in reporting the matter to the police. Such small delay is wholly immaterial to cause any dent in the prosecution case. Moreover, it is the settled principle of law that mere delay in lodging the FIR cannot by itself be considered as fatal to the prosecution case. Reference can be made to case ***Om Parkash*** versus ***State of Haryana***[1]. A division Bench of this Court in case Dalip Singh Vs. State of Punjab2014 (4) R.C.R. (Criminal) 151 **has** also laid down that when there is unimpeachable and positive evidence of the complicity of the accused in the commission of the crime, the delay in lodging the FIR is rendered inconsequential. The Hon'ble Supreme Court in case ***Shanmugam and another*** versus ***State represented by Inspector of Police, Tamil Nadu***[2] has laid down that the delay in lodging of FIR is not by itself fatal to the case of prosecution nor can delay itself can create any suspicion about truthfulness of the version given by the informant just as a prompt lodging of FIR may not be guarantee about its being wholly truthful. The Hon'ble Apex Court in ***Zahoor and others*** versus ***State of U.P***[3] has laid down that the delay is of no consequence where the offence was proved beyond doubt. It was further laid down that the delay in lodging the FIR by itself is not sufficient to reject the prosecution case unless there are clear indications of fabrications. The Hon'ble Apex Court in the case, ***Ravi Kumar*** versus ***State of Punjab***[4] has held that when the occular evidence is cogent, credible and reliable, the delay in lodging the FIR as well as special report to the Magistrate, is no ground to hold that the investigation is tainted and the prosecution had given a coloured version. The same principle of law has been reiterated by the Hon'ble Apex Court in the case, ***State of Rajasthan*** versus ***Maharaj Singh &***

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[1] 2014 (3) R.C.R. (Criminal) 25 (SC)
[2] 2014 (7) R.C.R. (Criminal) 1518
[3] 1991 (1) R.C.R. (Criminal) 484
[4] 2005 (2) R.C.R. (Criminal) 72

Anr.[5]. Thus, in view of the aforesaid legal position, the delay itself in lodging the FIR is no ground to discard the prosecution version if the incident that had occurred is otherwise proved. In fact even a prompt lodging of an FIR is not an unmistakable guarantee of the truthfulness of the prosecution version.

(22) On the mode of occurrence, the prosecution has examined complainant-Bijender as PW-1. He has categorically deposed that accused-Raj Kumar @ Moghli gave two blows on the person of Naveen. One of them landed on the chest and other blow landed on right flank of Naveen. Accused-Sheru also gave one blow on the right thigh and other two three blows were given near the right knee. As a result of which Naveen fell down. He and Hemant tried to rescue Naveen, but aforesaid Raj Kumar @ Moghli and Sheru threatened them with dire consequences, in case they proceed to rescue Naveen. After inflicting injuries on the person of Naveen, they fled away towards their house. In the meantime, his nephew Sushil also arrived at the spot. Naveen was shifted to CHC, Kalanaur by Hemant, Gugan and Surender. The doctor on duty checked Naveen and declared him dead. The testimony of Bijender is fully corroborated by PW-2-Hemant, the eye witness of the occurrence. He has categorically deposed that on 20.02.2007 at 11.00 a.m., he along with his maternal uncle Naveen and maternal grandfather-Bijender was going to shop of Jagdish for purchasing some household articles. When they reached near the house of Birju Balmiki, they were made to stop by accused Raj Kumar @ Moghli and Sheru, present in the Court. Raj Kumar @ Moghli and Sheru openly attacked Naveen with their knives. Raj Kumar @ Moghli gave two knife blows on the person of Naveen i.e. one on the right side of chest and other in the right flank. Sheru also gave the blows with his knife on the right thigh and three blows were given near the right knee of deceased-Naveen. On receiving the injuries at the hands of the accused, Naveen fell down on the ground. He and Bijender tried to intervened and save Naveen from accused, but the accused brandishing the knives threatened them to kill if they proceed further and thereafter, they fled away from the spot towards their houses with their respective weapons. His maternal uncle-Sushil also came present at the place of occurrence. Other villagers also reached there. He has also deposed about the motive of this occurrence i.e. the previous dispute between Sushil and the appellants. PW-3-Sushil Kumar, the brother of the deceased has further corroborated the testimonies of PW-1-

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[5] AIR 2004 SC 4205

Bijender and PW-2-Hemant. All these witnesses have been cross-examined at length by the learned defence counsel. But, nothing material could be brought on record to shatter their testimonies. All these witnesses have given the cogent, consistent and natural version of the occurrence.

(23) It is well settled principle of law by this time that mere relationship of the witnesses with the victim is *per se* no ground to discard their testimonies. The relationship is not a factor to adversely affect the credibility of a witness. The Hon'ble Apex Court in case ***Bur Singh & Anr.*** versus ***State of Punjab***[6] has laid down as under:-

> "6. Merely because the eye-witnesses are family members their evidence cannot per se be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. We shall also deal with the contention regarding interestedness of the witnesses for furthering prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.
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> **a.** In **Dalip Singh and Ors. v. The State of Punjab (AIR 1953 SC 364)** it has been laid down as under:-
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> "A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a

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[6] 2008 (4) R.C.R. (Criminal) 834

foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

b. The above decision has since been followed in **Guli Chand and Ors. v. State of Rajasthan (1974 (3) SCC 698)** in which **Vadivelu Thevar v. State of Madras (AIR 1957 SC 614)** was also relied upon.

c. We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh's case (supra) in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed:

"We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in - **`Rameshwar v. State of Rajasthan' (AIR 1952 SC 54** at p.59). We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel."

d. Again in **Masalti and Ors. v. State of U.P. (AIR 1965 SC 202)** this Court observed: (p. 209-210 para 14):

"But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses.......The mechanical rejection of such evidence on

the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

e. To the same effect is the decisions in **State of Punjab v. Jagir Singh (AIR 1973 SC 2407), Lehna v. State of Haryana (2002 (3) SCC 76)** and **Gangadhar Behera**

f. and Ors. v. State of Orissa (2002 (8) SCC 381).

g. The above position was also highlighted in **Babulal Bhagwan Khandare and Anr. v. State of Maharashtra [2005(10) SCC 404]** and in **Salim Saheb v. State of M.P. (2007(1) SCC 699)**."

(24) The same legal position has been reiterated in cases ***Maranadu and another*** versus ***State by Inspector of Police, Tamil Nadu***[7], ***Joginder Singh*** versus ***State of Punjab***[8] and ***State of Chhattisgarh Through Police Station*** versus ***Hariram Ray and others***[9].

(25) **In view of the aforesaid consistent ratio of law, mere this fact that PW-1-Bijender, PW-2-Sushil and PW-3 Hemant are the relatives of deceased-Naveen, is no ground to discard or disbelieve their otherwise cogent, unimpeachable, consistent and natural testimonies.**

(26) As per the report of the FSL Ex.PAA, the blood was not detected on the knives recovered from the accused-appellants. The knife was recovered from the possession of accused-Raj Kumar @ Moghli on 22.02.2007 and from the possession of accused-appellant Sheru on 26.02.2007 and from the possession of accused-appellant Sheru on 26.02.2007. The said weapons were sent to the FSL Madhuban on 01.03.2007, but were examined by the expert on 10.09.2007 i.e. after about seven months from the date of recovery. With this inordinate delay in the examination of the weapons might be one of the factor for the non- detection of blood on these knives. From the statement of PW-14-Dr. Sushma Jain, Medical Officer, General

[7] 2009 (2) R.C.R (Crl.) 256
[8] 2009 (2) R.C.R. (Crl.) 589
[9] 2014 (7) R.C.R. (Crl.) 2416

Hospital, Rohtak, it comes out that on 27.02.2007, the police moved application Ex.PY before her to seek her opinion whether injuries no. 4, 5, 6 and 7 could be caused by the 'knives' produced before her, recovered from the accused. Those knives were in sealed parcels. She opened the parcels and then gave her opinion Ex.PY/1 that possibility of injuries no. 4, 5, 6 and 7 with those weapons could not be ruled out. So, PW-14 has given a categoric opinion that injuries on the person of deceased-Naveen were possible with the knives recovered from the accused-appellants.

(27) A Division Bench of this Court in case ***Raj Daler @ Kala*** versus ***The State of Punjab***[10] has laid down that the absence of the blood on the weapon of offence can have no adverse effect on the prosecution case. Another Division Bench of this Court in case ***Rajpal alias Raju and others*** versus ***State of Haryana***[11] has laid down as under:-

> "The other contention is that no blood stains was found on the knife (Ex.P-5). The recovery of knife is proved from the deposition of Lakhmi Chand (PW-10) who has proved the disclosure statement (Ex.P-26) of Rajpal @ Raju (appellant No.1). In his statement, it is stated that he was associated by the police on 26.02.2000 on which date Rajpal @ Raju (appellant No.1) was arrested. In terms of the disclosure statement (Ex.P-26), it has been stated by Rajpal @ Raju (appellant No.1) that he had concealed the knife (Ex.P-5) used by him in the commission of crime in the room of his residential house. In pursuance of the disclosure statement (Ex.P-26), the knife (Ex.P-5) was recovered. The sketch of the knife (Ex.P-27) was prepared. Rajpal @ Raju (appellant No.1) got the knife recovered, which was taken in possession by the police vide recovery memo (Ex.P-28). In terms of the FSL report (Ex.P-33), indeed no blood was found on the knife (Ex.P-5) that was used by Rajpal @ Raju (appellant No.1) in the crime. The learned trial Court observed that the incident had occurred in the night of 21.02.2000 at about 9.00 pm, whereas the knife was got recovered by accused Rajpal @ Raju on 26.02.2000, therefore, there were five days with the accused to remove

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[10] 2003 (3) R.C.R. (Crl.) 294

[11] 2013 (6) R.C.R. (Crl.) 545

the blood stains from the knife and perhaps, he cleaned the knife to the full extent in an effort to remove the connection between the crime and the knife. The said reasoning of the learned trial Court is quite sound. Even otherwise merely because there are no blood stains on the knife, is not a ground to discard the prosecution case particularly when the FSL reports are used primarily for corroboration of a fact and these do not in any manner dislodge the prosecution case."

(28) Thus, the non-detection of the blood on the weapons recovered from the appellants is no ground to conclude that those were not the weapons of offence.

(29) From the statement/affidavit Ex.PR of PW-14, Dr. Sushma Jain, Medical Officer, General Hospital, Rohtak and the postmortem report Ex.PQ prepared by her, it comes out that deceased-Naveen has suffered the following injuries:-

1. An incised wound of size 2.5 x 1 cm was present just right to mid line on chest wall just above xiphisternum.

   <u>On exploration:-</u> trck was going upward & towards right side piercing soft tissues, intercostal muscles, sternum, pericardium & right ventricle of heart piercing whole thickness of cardiac muscle. Right ventricle has wound of size 1.4 x 0.2 cm piercing whole thickness of cardiac muscles of right ventricle. Whole chest cavity was full of blood.

2. 1 x 0.5 cm incised wound was present on right side of chest on lateral side in mid axillary line 13 cm from anterior superior iliac spine (Rt.).

   <u>On exploration:-</u>wound piercing intercostal muscles, soft tissues & reaching upto rt. Plural cavity, Intercostal muscles & soft tissues were ecchymosed.

3. 23 x 2 cm size contusion was present on the back on rt. Side of chest starting 8 cm above the angle of rt. Scapula going down ward, medially & obliquely & ending 1 cm lateral to mid line on rt. Side 26 cm proximal to natal cleft.

4. An incised wound 3 cm x 1.5 cm size on posteriomedial aspect of rt. Thigh 10 cm proximal to rt. Knee joint.

Sub cutaneous tissue deed.

5. 6 x 3 cm size incised wound was present on posterio lateral aspect of rt. Thigh 6 cm proximal to rt. Knee joint sub cutaneous tissue deep.
6. An incised wound 4 x 1.5 cm was present on lateral side of rt. Knee 3 cm lateral to lateral border of patella obliquely placed track was going upward piercing sub cutaneous tissue & muscles of thigh. Muscles were ecchymosed.
7. An incised wound 1 x 0.5 cm size was present on anterior aspect of rt. Knee at medial border of patella. Track was going up piercing sub cutaneous tissue & muscles of thigh. Muscles were ecchymosed.

(30) She has also given a definite opinion that the cause of death was shock and haemorrhage, which was due to injuries described above, which were ante-mortem in nature and were sufficient to cause death in the normal course of nature. Deceased-Naveen has suffered six incised wounds. Out of them two incised wounds were on the chest, a vital part of the body.

(31) It is settled principle of law that the intention of the accused can be gathered from the weapon of offence used by them, the part of the body aimed to cause the injuries, the force applied to gave the blows and many other circumstances. In the instant case, the accused-appellants were armed with knives of sufficient size. Two injuries have been given on the on the right side of the chest of the deceased. The deceased has died instantaneously as he was brought dead in the hospital. The injuries suffered by deceased were declared sufficient to cause death in the ordinary course of nature by PW-14-Dr. Sushma Jain, who carried out the postmortem examination. Thus, the offence committed by the accused- appellants clearly attracts Section 302 IPC.

(32) Thus, in view of our aforesaid discussion, we do not find any legal infirmity in the conviction of the appellants as recorded by the learned trial Court and the sentence awarded to them.

(33) Resultantly, the present appeal has no merits and the same is hereby dismissed.

Shubreet Kaur