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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 14.05.2026**Pronounced on: 13.08.2026**

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CNR No.: DLHC010095122004

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CRL.A. 294/2004**ASHWANI KUMAR & ANR.****.....Appellants**

Through: Mr. Ajay Verma, Ms. Smriti S
Nair, Ms. Sneha Sejwal, Mr.
Akshay Yadav and Mr. Viren
Pratap Singh, Advocates.

versus

STATE OF DELHI**.....Respondent**

Through: Mr. Aman Usman, APP for the
State with Mr. Manvendra
Yadav and Mr. Atiq Ur
Rehman, Advocates with Insp.
Arjun Singh, PS-Krishna
Nagar.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****HON'BLE MR. JUSTICE RAVINDER DUDEJA**

J U D G M E N T

RAVINDER DUDEJA, J.

1. The present appeal has been preferred by the appellant/convict, Ashwini Kumar and Sanjay Kumar, against the Judgment dated 05th April, 2004, *vide* which, they were convicted under Sections 302/307/34 of the Indian Penal Code [**“IPC”**] and against the Order



on Sentence dated 12th April, 2004, passed by the learned Additional Sessions Judge, New Delhi [**“trial court”**], in Sessions Case No. 43/2001, arising out of FIR No. 225/1985 registered under sections 307/34 of the Indian Penal Code [**“IPC”**] at Police Station Krishna Nagar, Delhi.

2. The sentence awarded by the learned Trial Court on the appellants was suspended by this Court *vide* order dated 25th September, 2006 and 17th February, 2009 respectively. Appellant no. 1, Ashwani Kumar, expired during the pendency of the appeal and therefore the proceedings *qua* him stand abated *vide* order dated 18th November, 2025.

Factual Background

3. The prosecution case in brief, is that on 2nd June, 1985, at 6:30 PM a quarrel allegedly took place between the appellants, the victim, the complainant and their companions when the complainant/Rajesh Kumar along with Bharat Bhushan (deceased), Vipin Kumar and Satish Kumar were passing near the house of Appellant No. 1/Ashwani Kumar. The said quarrel initially started with verbal abuses and later escalated to stone pelting between both sides, when one accused, Leeley Singh, fired from his ‘katta’ but the same did not work. At that time Appellant no. 1 asked Appellant no. 2 to fetch firearm/gun from his house and exhorted him to kill them. Appellant no. 2 immediately brought a double barrel gun and fired a shot which hit the neck of a person namely Vipin [**PW3**] who then fell down. Bharat Bhushan/deceased tried to overpower the appellant no. 2, when



Appellant no. 1 (now deceased) snatched the gun from Appellant no. 2 and fired at the deceased on his abdomen and again loaded the gun from the cartridges belt hanging in the neck of Appellant no. 2 to fire, but could not do so since a crowd had gathered there. The appellants then went to their houses. Subsequently, both the injured persons were taken to JPN Hospital where Bharat Bhushan (deceased) succumbed to his injuries.

4. The information of the death of the deceased was recorded *vide* DD No. 16A dated 2nd June, 1985 at around 7:40 PM and further, on basis of the statement of the complainant Rajesh Kumar **[PW-2]**, FIR No. 225/1985 was lodged under Sections 307/34 IPC at PS Krishna Nagar.

5. Inquest proceedings of the deceased were conducted and body was sent for Post-Mortem, which was conducted by Dr. George Pal.

6. During investigation, the police seized various articles lying on the spot, seized the blood stained clothes of the deceased, IO prepared a rough site plan of the spot and the accused persons were arrested and their disclosure statements were recorded. Further, the double barrel gun and cartridges belt were recovered by the police and were taken into possession at the instance of co-accused Jagdish Prasad and at the instance of co-accused Leeley Singh one country made pistol and two cartridges were recovered and a separate case *vide* FIR No. 229/1985 under Sections 25/54/59 of the Arms Act was also registered against him.



7. During investigation, the exhibits were sent to CFSL, scaled site plan was prepared and statements of witnesses were recorded.
8. Upon completion of investigation, charge sheet was filed against all the accused, that is, Ashwani Kumar, Sanjay Kumar, Leely Singh @ Leelu, Rakesh Tuli @ Chhotu and Jagdish Prasad, before the court for commission of offences punishable under Sections 302/307/147/148/149/34 of IPC and Sections 27 of Arms Act.
9. A cross case *vide* FIR No. 224/1985 was also registered by PS Krishna Nagar against Rajesh Kumar **[PW-2]**, Satish Kumar **[PW-4]**, Rajinder Kumar **[PW-1]**, Vipin Kumar **[PW-3]** and Ravinder Kumar **[PW-7]** under Sections 147/148/149 of IPC based on the statement of Appellant No. 1/Ashwani Kumar and same was also committed to the Sessions Court for disposal.
10. Separate charge sheet was filed against co-accused Leeley Singh under Sections 25/54/59 of the Arms Act in case FIR No. 229/1985, which was also committed to the Court of Sessions.
11. The learned Trial Court framed charges under Sections 147/148/302 read with Section 149 and under Section 307 read with Section 149 IPC against all accused persons, to which they pleaded not guilty and claimed trial.
12. During the pendency of the trial, Accused Rakesh Tuli @ Chhotu and Accused Jagdish Prasad expired and therefore the proceedings against them stood abated.



13. In order to substantiate its case, the prosecution examined 21 witnesses, including the injured witness Vipin Kumar [PW-3] as per the following details:

S No.	Name of the Prosecution Witness	Deposition Made by the Witness
1.	Rajinder Singh (PW-1) & Ravinder Kumar (PW-7)	They are the eyewitness of the incident and also the brothers of the deceased and the PW3. They corroborated the statements made by PW-2, PW-3 & PW-4. They joined when stones were being pelted.
2.	Rajesh Kumar (PW-2)	He is the complainant and eyewitness of the incident. He corroborated the statements made by PW1, PW3, PW4, PW7 and, along with them, took the deceased and PW3 to hospital.
3.	Vipin Kumar (PW-3)	He is the injured witness. He deposed about the incident in question. His statement was corroborated by PW1, PW2, PW4 and PW7.
4.	Satish Kumar (PW-4)	He is the friend of the deceased. He is also an eyewitness of the incident and corroborated the statements made by PW1, PW2, PW3, PW7.



5.	Prem Singh Rawat (PW-5)	He was the neighbour of PW-2 who signed the memo [Ex. PW5/A], <i>vide</i> which clothes of the deceased were seized/collected.
6.	ASI Ram Lakhan Singh (PW-6)	He was posted as MHCM at PS Krishna Nagar, with whom the seized articles were deposited in the PS.
7.	Balwinder Singh (PW-8)	He is the brother in law of the deceased. He identified the body of the deceased <i>vide</i> statement [Ex. PW-8/A].
8.	Inspector Devender Singh(PW-9)	He was the Draftsman, Crime Branch, who prepared the scaled site plan. [Ex.PW9/A]
9.	Kale Singh (PW-10)	He was the police official who seized articles of the deceased from JPN Hospital.
10.	HC Dayal Chand (PW-11/18)	He was posted as Duty Constable at JPN Hospital. He informed PS Krishna Nagar about the admission of the deceased and PW3.
11.	Sanjay Chaddi (PW-12)	He is the photographer who clicked photographs of the crime scene.
12.	ASI Ravi Chand (PW-13)	He was the duty officer at PS Krishna Nagar who recorded the FIR [Ex. PW-13/A].
13.	Sh. Raj Gopal, Joint Director,	He was posted as the Deputy Commissioner of Police, East District, Delhi and had



	Intelligence Bureau (PW-14)	accorded sanction under Section 39 of Arms Act in case FIR No. 229/1985.
14.	Dr. M.S. Chopra (PW-15)	She was the Casualty Incharge at Lok Nayak Hospital who testified on behalf of the doctor who prepared the MLC and declared that the deceased was unfit for statement.
15.	Dr. Sanjay Chugh (PW-16)	He had examined the deceased and prepared his MLC. During his cross, he was unable to tell whether the injury was due to bullet/pellet or whether the same was dangerous or not.
16.	Dr. Rajiv Mahajan (PW-17)	He prepared the MLC of Vipin Kumar (PW-3).
17.	ACP Lal Singh (PW-19)	He was posted as SI at PS Krishna Nagar. He collected the MLC and also recorded the statements of witnesses, prepared site plan, lifted blood samples, collected the dead body and after post-mortem handed over the dead body to his family. He also interrogated all the accused person and seized the DBBL gun along with belt containing 16 cartridges (out of which 2 were used), given by accused Jagdish. He



		also recovered the country-made pistol used by accused Leeley Singh.
18.	Dhara Singh, Record Clerk (PW-20)	He appeared on behalf of Dr. George Pal, who had conducted the Post-mortem report of the deceased and verified the post-mortem report through the handwriting and signature since Dr. George Pal had gone to Malaysia.
19.	Rup Singh (PW-21)	He was the Principal Scientific Official, CFSL, CBI who examined the cartridges/wad received from PS Krishna Nagar. He gave the opinion that the plastic bore sealing wad piece came from firing of a 12 bore cartridge but no definite opinion was given regarding firing of the same from the DBBL gun recovered.

14. Statements of accused were recorded under Section 313 of the Code of Criminal Procedure [“Cr.P.C.”], wherein, they denied all the incriminating evidence put to them and claimed innocence. They stated that Bharat Bhushan was involved in a murder case and remained in jail for about 6-7 months before being released on bail. They suspected that appellant Ashwani Kumar and his family members had got them arrested in the murder case, and hence, on the day of incident, he and his brothers along with 4-5 accomplices, came



to their house to attack them. They started throwing stones on them. *Mohalla* people also gathered at the spot, and in retaliation, they and *Mohalla* people threw stones on Bharat Bhushan and his associates, whereupon, Bharat Bhushan and his associates fled away from there. They further stated that the incident was reported to the police. A case was registered vide FIR No. 224/1985 at PS Krishna Nagar against the complainant and others.

15. In their defence, the appellants produced DW-1 HC Beg Raj Singh, MHC (R), PS Krishna Nagar. He produced the record regarding case FIR No. 62/1981 under Section 27 of the Arms Act, FIR No. 116/1985 under Section 324 IPC, FIR No. 293/1984, FIR No. 271/1985, FIR No. 315/1985 under Section 324/34 IPC and FIR No. 6/1985, with a view to show that deceased Bharat Bhushan had criminal antecedents.

Submissions on behalf of Appellant Sanjay Kumar

16. The learned counsel, who appeared for the appellant Sanjay Kumar, assailed the impugned judgement stating that the same is unsustainable and prosecution has failed to prove its case beyond reasonable doubt. He submitted that appellant Sanjay Kumar did not share any common intention with appellant Ashwani Kumar and the other co-accused to cause death of the deceased. It was contended that prosecution itself makes a clear distinction between the role of appellant Sanjay Kumar and the fatal act attributed to Ashwani Kumar. As per prosecution version, appellant Sanjay Kumar brought a double barrel gun and fired at PW-3 Vipin Kumar. The fatal shot, causing



death of Bharat Bhushan, is only attributed to Ashwani Kumar, who snatched the gun from appellant Sanjay Kumar and fired at Bharat Bhushan. This distinction goes to the root of the case. The mere presence of the appellant Sanjay Kumar at the spot and his participation in the quarrel and the alleged firing at another person and his relationship with Ashwani Kumar cannot automatically attract Section 34 IPC.

17. It was argued that there is no evidence that appellant Sanjay Kumar exhorted Ashwani to fire at Bharat Bhushan or held him or prevented him from escaping. There is also no evidence that he had prevented any other person from saving him, facilitated the fatal shot or had any prior plan of committing murder of Bharat Bhushan, and therefore in the absence of such evidence, conviction of appellant Sanjay Kumar under Section 302/34 IPC cannot be sustained.

18. It was argued that the prosecution evidence, at best, proves that appellant Sanjay Kumar fired at Vipin Kumar, but does not establish that he knew, intended, assisted, encouraged or facilitated Ashwani Kumar's act of firing at Bharat Bhushan. Therefore, the act of Ashwani Kumar was independent and thus conviction under Section 302 IPC with the aid of Section 34 IPC is unsustainable against the appellant Sanjay Kumar.

19. The learned counsel also submitted that the prosecution case is further weakened by serious evidentiary gaps as the post-mortem report was not proved by the doctor, who conducted the post-mortem and was sought to be proved through a hospital Record Clerk, who



merely identified the handwriting and signatures of the doctor. The said witness could not prove the contents of the post-mortem report.

20. It was further contended that the Record Clerk could not give the expert opinion on the cause of death, nature of firearm injury, whether the injury was caused by pellet, wad or bullet, direction and trajectory of firing, range of firing, whether the injury was possible with a 12 bore DBBL gun, whether the alleged ocular version was medically consistent or whether any alternative medical inference was possible. The aforesaid defects are not just technical in nature, and thus, have caused serious prejudice to appellant Sanjay Kumar, as he lost the opportunity to cross examine the doctor on the medical issues, which were central to the prosecution case.

21. It is further argued that there is a clear difference between proving that a document bears the handwriting/signatures of the doctor and proving the contents of the same and expert conclusions contained in the said document, and therefore, a Record Clerk can substantiate the former but not the latter, and thus, no sufficient foundation was laid to treat post-mortem report as substantial proof of medical conclusions against appellant Sanjay Kumar.

22. It was also contended that the CFSL/ballistic evidence does not conclusively link the recovered double barrel gun with the fatal injury and even the Trial Court itself noticed that the CFSL report did not give any definite opinion regarding firing of the plastic wad, recovered from the DBBL gun.



23. As per the prosecution stand, the recovered DBBL gun was the weapon used in the occurrence, however, the scientific evidence does not conclusively prove the same. Merely proving that gun was recovered or that it was capable of firing, is not enough and the prosecution has to prove that the recovered gun was the same weapon used from which the fatal shot was fired. The CFSL Result (Ex. PW21/C) opined that one 12 bore DBBL gun was the firearm and was in working order and that the recovered 12 bore cartridges were the ammunition. However, the report also notes that no definite opinion regarding firing of plastic wad from the recovered DBBL gun could be given, which is a serious gap as the prosecution's own scientific evidence does not conclusively connect the recovered weapon with the wad/projectile material, and thus, the recovered gun cannot safely be treated as the proved weapon of offence.

24. It was further submitted that the expert evidence is merely an opinion evidence and is relevant but not conclusive, and therefore, the Court must examine whether the opinion is supported by reasons, data, scientific material and proper linkage. It was submitted that in the present case, the forensic chain is incomplete, as prosecution has failed to prove beyond doubt that the recovered DBBL gun was the actual weapon used to cause the fatal injury to the deceased.

25. It was also contended that when a firearm is discharged, the projectile comes in contact with the barrel and other parts of the firearm and the individual characteristics/marks of the firearm may get imprinted on the projectile. However, the accuracy of such comparison



depends upon the barrel fit, clear striation marks and proper scientific comparison. In this regard, the learned counsel placed reliance on the book **“Firearms in Criminal Investigation and Trials”** by **B.R. Sharma**.

26. It was argued that prosecution has not produced a clear and definite scientific linkage between the recovered DBBL gun and the wad projectile material, and therefore the scientific foundation necessary to treat the recovered gun as the weapon of offence, is missing.

27. It was further submitted that prosecution has heavily relied upon the testimony of PW3 Vipin Kumar, who is an injured witness. However, being injured, does not make him a reliable witness, as he is not an independent witness and is from the side of the deceased. The evidence also reveals the existence of a cross case under Section 147/148/149 IPC, and in such circumstances, his testimony must be scrutinized, especially, if it is to be used to fasten constructive liability under Section 302/34 IPC.

Submissions by the Ld. APP on behalf of the State:

28. The learned APP argued that the learned Trial Court has given a detailed and well reasoned findings and the conviction is based on cogent, reliable and fully corroborative ocular, medical, forensic and documentary evidence.

29. It was submitted that the prosecution successfully proved the entire sequence of chain through consistent testimonies of injured, independent witnesses, medical experts and scientific evidence and the



evidence on record forms a complete and unbroken chain pointing unmistakably towards the guilt of the appellant Sanjay Kumar.

30. It was submitted that PW-3 Vipin Kumar is the most material witness in the present case. He is not merely an eye witness but an injured witness who himself suffered firearm injury during the incident. His presence at the spot of occurrence is, therefore, undeniable. PW-3 categorically deposed that the appellant Sanjay Kumar fired at him causing fire arm injury on his neck, whereafter the accused Ashwani snatched the gun from him and fired a fatal shot at Bharat Bhushan (since deceased). His testimony clearly establishes the individual roles played by the appellant Sanjay and the accused Ashwani.

31. It was submitted that the testimony of PW-3 is natural, consistent and inspires complete confidence. Despite detailed and lengthy cross-examination, no material contradiction, omission or improvement could be elucidated so as to shake his credibility. His testimony remained firm on all material particulars.

32. It was argued that the testimony of an injured eye witness carries great evidentiary value because such witness comes with an in-built guarantee of his presence at the spot and ordinarily would not falsely implicate innocent persons while shielding the actual assailant. No motive, whatsoever, has been attributed by the defence as to why PW-3 would falsely implicate the appellant and the co-accused.

33. It was further argued that testimony of PW-3 stands fully corroborated by the medical evidence. The MLC of PW-3 records



‘fresh firearm injury on the neck’ exactly corresponding the manner of assault described by him. This completely supports the prosecution version and confirms that PW-3 sustained firearm injury during the occurrence.

34. It was further argued that testimony of PW-3 finds corroboration from the testimonies of PW-1, PW-2, PW-4 and PW-7, who are also the witnesses of occurrence. It is submitted that the testimonies of all the eye witnesses including the injured witness are consistent with each other and there is no reason to disbelieve them.

35. With regard to the argument that the post-mortem report has not been duly proved, the learned APP submitted that the said argument is of no avail for two reasons, first that the said post-mortem report was duly proved by the Record Clerk of the hospital (PW-20). He identified the signatures of Dr. George Pal who was not available on being out of the country. He further submitted that the post-mortem report would reveal the injury no. 7 is the cause of death, caused by gunshot. The said injury is also reflected in the MLC as well as in the death summary and further corroborated by the account of the eye witnesses. Thus, there is no room for doubt that the deceased died because of gunshot injury.

36. It was also argued that post-mortem report records a ‘close range firearm injury on the abdomen’ fully matching the ocular version of PW-2, PW-3 and PW-4 regarding the manner in which the accused Ashwani had fired at the deceased. It was also argued that the post-mortem report is an admissible document within the meaning of



the Section 32 of the Indian Evidence Act, 1872, if the signatures of the maker are proved.

37. It was also submitted that the CFSL report provides scientific corroboration to the prosecution case. The report conclusively establishes that the recovered 12 bore gun was functional and capable of firing. The cartridges were found to be live cartridges and the wad recovered during the investigation was consistent with the discharge from a 12 bore firearm. The forensic evidence therefore, perfectly matches with the eye witness account and the medical findings complete the chain of evidence.

38. With regard to the argument that ballistic report is not conclusive as to the wad found inside the body of the deceased, being fired from the gun is of no avail. It was argued that in view of the fact that the recovered gun is a double barrel gun and the shell, after the gun is fired, does not automatically come out and in fact it is a matter of record that the groove mark, etc. come on the shell and not on the carbon part which leaves the gun and therefore, it is impossible for the forensic expert to establish that the wad of the cartridge was fired from the recovered gun. What is conclusive is that the cartridge found inside the deceased was of 12 gauge/bore and the gun recovered from the appellant is also 12 gauge/bore which corroborates the claim of the eye witnesses and thus the argument of the appellant that the ballistic report is not conclusive as to the wad found inside the body of the deceased having been fired from the gun is denied on merits.



39. It was further submitted that the defence has relied on the composition of KF 12 gauge cartridge which is available in market presently. Whereas, the cartridge used in the present case is of 1986 and it was not normal KF 12 gauge cartridge, rather as per the seizure, it was KF Special. Number 4, long range 12 bore cartridge which is also known as 'Shaktiman', which as per name is used for long range shooting for which no literature has been cited.

40. It was also contended that the accused persons admitted the occurrence and the use of firearm in cross case FIR no. 224/85, so much so the accused Ashwani admitted the presence of all the prosecution witnesses and deceased Bharat Bhushan at the spot. This admission, as per the learned APP directly supports the prosecution version regarding the occurrence and use of fire arm by the side of the appellant.

41. It was thus argued that the appellant Sanjay Kumar has failed to demonstrate any perversity, illegality, misreading of evidence, miscarriage of justice in the impugned judgment recorded by the learned Trial Court and therefore, the appeal is liable to be dismissed.

Reasoning and Analysis

42. We have considered the rival submissions and have perused the material on record. It is well settled that while exercising the appellate jurisdiction in a criminal appeal against conviction, the Court may re-appreciate the evidence to ascertain whether findings recorded by the Trial Court suffered from perversity or material illegality resulting in miscarriage of justice.



43. The prosecution case mainly rests on the testimony of PW-3 (injured), PW-1, PW-2, PW-4 and PW-7. They are the eye witnesses of the occurrence. In order to decide whether the prosecution has been able to prove its case, we would briefly refer to the testimonies of the aforesaid witnesses.

44. PW-3 Vipin Kumar deposed that on 02.06.1985 at about 6:30 PM, he along with his brother Bharat Bhushan and friends Rajesh Kumar and Satish Kumar were going to the Pant Hospital as his mother was admitted in Pant Hospital and father of Rajesh was admitted in Irwin Hospital. When they reached Peepal Wali Gali, Azad Nagar, they saw the accused Ashwani, his brother Sanjay, Rakesh Tuli and Neelu @ Lenda. As soon as accused Ashwani saw Bharat Bhushan, he remarked *“you were to be in jail. How have you come here”*. Thereafter, they hurled abuses on each other. All the four accused persons then starting pelting stones on them. Accused Rakesh Tuli asked accused Neelu @ Lenda to shoot them and they should not be allowed to escape. Upon this, Neelu took out a country-made pistol from his ‘dub’ and fired but it did not work. In the meanwhile, Ashwani asked his brother Sanjay to bring a gun from the house and that they should not be permitted to escape. Sanjay brought a gun from the house and fired at him, on account of which he received gunshot injuries on left side of his neck. In the meanwhile, Jagdish brought a ‘bandolier’ from his house and put the same around the neck of Sanjay. Bharat Bhushan tried to overpower Sanjay, whereupon Ashwani snatched the gun from Sanjay and fired at Bharat Bhushan,



as a result of which, Bharat Bhushan suffered gunshot injury on the left side of his stomach. Thereafter, Ashwani took out two cartridges from the bandolier hanging around the neck of Sanjay and loaded the same into the gun. In the meanwhile, a crowd gathered there. The accused Ashwani, Sanjay and Jagdish went away to their houses and remaining accused ran away from the spot. He further deposed that his brothers, Ravinder and Rajender, with the help of two other persons took him and Bharat Bhushan to JPN hospital and got them admitted.

45. In his cross-examination, PW-3 stated that they did not pelt stones on the accused persons. He was confronted with statement Ex. PW3/DA where this fact was so recorded. He stated that he did not state to the police that on sustaining gunshot injuries, he had fallen down. Again, he was confronted with statement Ex. PW3/DA where the aforesaid fact finds mention. He further stated that when Sanjay fired, at that time, they were standing at a distance of about 15/16 paces from Sanjay, and Bharat Bhushan was also standing by his side. He further stated that Bharat Bhushan had sustained a gunshot injury at a distance of 10/12 paces from the house of Jagdish and he had fallen there itself. According to him, from the spot they went to Jheel in a three-wheeler scooter and from Jheel they hired a taxi to reach JPN Hospital. He further stated that on reaching the hospital, he had turned unconscious. He admitted that he had not told the doctor in the hospital that he had sustained gunshot injury and also did not tell the names of the persons who inflicted him the gunshot injury as he was unconscious. He denied that he did not see the person who inflicted



him the gunshot injury. He stated that on 03.06.1985, he regained consciousness at about 12 noon and the police met him at about 1 PM. He could not tell as to whether blood had fallen down in the scooter or taxi. He stated that he does not know whether Bharat Bhushan was involved in a case under Section 324 IPC vide FIR no. 116/85, case FIR no. 6/85 under Section 325/34 IPC, and FIR no. 271/85 under Section 324/34 IPC. He admitted that a case under Arms Act was initiated against all his brothers except Rajender. He admitted that an FIR no. 315/85 is registered against Rajender. He further admitted that a case under Section 147/148/149 IPC was registered against him and his other family members on the day of occurrence. He further admitted that persons from both the sides received injuries in the brick-batting. He denied that the residents of locality were frightened of them as they used to carry knives and were involved in stabbing and had caused injuries to many person. He denied that the people of the locality were on inimical terms because of the above reasons. He admitted that there is a Shiv Mandir in the locality but denied that Bharat Bhushan was murdered near Shiv Mandir by the persons inimical to them and not by the accused persons.

46. On analysis of the testimony of PW-3, we find that he has fully supported the prosecution case. He identified all the accused persons including the appellant Sanjay and meticulously described the role of each of the accused persons. The appellant has not disputed his presence at the spot at the time of occurrence. Importantly, a cross FIR was also registered at the instance of appellant/co-accused arising out



of the same occurrence. Thus, the presence of PW-3 and the other eye witnesses is also not disputed. The fact that PW-3 suffered injuries in the occurrence has also remained unchallenged. It has also remained undisputed that Bharat Bhushan suffered a gunshot injury on his person.

47. The testimony of PW-3 is straightforward and cogent. Being himself injured, his testimony is more reliable. The testimony of an injured witness has its own relevancy and efficacy. The fact that PW-3 himself suffered injuries in the same occurrence, lends support to the testimony that he was present during the occurrence and he saw the happening with his own eyes. In ***Akhtar and Ors v State of Uttaranchal* (2009) 13 SCC 722**, the Hon'ble Supreme Court held that credence to the testimony of injured eyewitness is to be given since his presence at the scene of crime is seldom doubtful. The relevant para of the judgment reads as under:

“18. In Krishan v. State of Haryana (2006) 12 SCC 459 this court has taken the view that if the prosecution case is supported by two injured eyewitnesses and if their (injured eyewitnesses) testimony is consistent before the police and the court and corroborated by the medical evidence, their testimony cannot be discarded. Similarly, in Surender Singh vs. State of Haryana (2006) 9 SCC 247 this Court has opined that:

“9. The testimony of an injured witness has its own relevancy and efficacy. The fact that the witness is injured at the time and in the same occurrence, lends support to the testimony that the witness was present during occurrence and he saw the happening with his own eyes.”



48. In ***State of MP Vs. Mann Singh (2003) 10 SCC 414***, it was held that the evidence of injured witnesses have greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

49. The learned Trial Court rightly appreciated the testimony of PW-3. The pertinent observations of the learned Trial Court are reproduced hereunder:

20. *The overall testimony of this witness supports the prosecution case. This witness has categorically named the accused persons for the murder of his brother Bharat Bhushan and for the Injuries caused on his person. Specific role has been attributed by this witness to each of the accused persons for the commission of the offence. This witness has given graphic details about the incident. The presence of this witness at the spot has not been controverted in the cross examination. The receiving of injuries by this witness in the occurrence has remained unchallenged. The receiving of gunshot injuries by deceased Bharat Bhushan has also not been controverted. Only plea of the accused persons is that injuries on the person of the deceased and that of PW3 were not caused by them. The accused persons have also disputed the place of occurrence.*

21. *The testimony of this witness inspires confidence as his presence at the spot was quite probable and natural. This witness had himself suffered injuries at the occurrence and was removed from the spot. So, there is no doubt about the presence of this witness at the time of occurrence. The defence of the accused persons is not clear. Suggestion has been put to this witness in the cross examination that they had started from their house after 6.30 PM. This witness volunteered to add that they used to leave their house between 6.15 PM to*



6.30 PM. This witness denied the suggestion of the Ld. defence counsel that the occurrence took place just in front of the house of A-5. This witness volunteered to add that it was at a distance of 5/6 paces from the house of the accused, just in front of the house of Kundal Lal Verma. This witness admitted the suggestion of the Ld. defence counsel that there was brick-bating at the time of incident and both the persons had received injuries in the said brick-bating. This witness admitted the suggestion of the Ld. Defence counsel that stones and brick pieces were lying near the house of the accused persons.

22. The material facts regarding the incident proved on record by this witness in his testimony have remained unchallenged and unrebutted. The presence of the other PWs alongwith this witness at the time of incident has not been controverted. No motive has been alleged against this witness to falsely rope-in the accused persons and to let the real culprit go scot-free. No suggestion was put to this witness in the cross examination that no role, as deposed by him in the examination-in-chief; was played by the accused persons in the occurrence. Accused persons did not deny their presence at the spot and they did not assert themselves to be present at some other place at the time of incident.

50. The prosecution further examined the eye witnesses PW-1 Rajinder Kumar, PW-4 Satish Kumar, PW-7 Ravinder Kumar. These three witnesses also supported the prosecution case on material facts. They named and identified the accused persons while specifically attributing their roles.

51. PW-1 Rajinder Kumar and PW-7 Ravinder Kumar are the brothers of PW-3 Vipin Kumar and the deceased Bharat Bhushan, who



reached at the spot on receipt of information regarding the fight taking place between Bharat Bhushan, Vipin Kumar, Rajesh Kumar and Satish Kumar on one side and accused Ashwani Kumar, Sanjay, Lenda and Rakesh on the other side.

52. PW-4 Satish Kumar is the friend of the deceased Bharat Bhushan and was accompanying Bharat Bhushan, Vipin and another friend Rajesh to Pant Hospital to see his ailing father. Despite lengthy cross-examination, nothing material has been pointed out which may persuade us to discard their testimonies. The learned Trial Court elaborately discussed the examination and cross-examination of the aforesaid witnesses while placing reliance on them. The relevant paras are reproduced below:

27. The prosecution has examined another eye witness PW4 Satish Kumar. This witness has supported the prosecution in toto on all material facts and has categorically named the accused persons to have caused injuries to Vipin and Bharat Bhushan in the occurrence. This witness has asserted himself to be present at the spot at the time of incident. Lengthy cross examination of this witness has not brought any discrepancy to discard his testimony. The presence of this witness at the spot has not been challenged. Rather suggestion has been put to this witness in the cross examination that this witness alongwith injured had gone at the house of A-1. The presence of this witness at the spot is also probable as this witness was friend of deceased Bharat Bhushan and had accompanied him to inquire about his mother admitted in Pant hospital. No suggestion to the contrary has been put in the cross examination to this witness. The specific role attributed by



this witness to A-1, A-2, A-3 has remained unchallenged. Only suggestion by the Ld. defence counsel for the accused persons to this witness is that someone had fired from the crowd when Bharat Bhushan and others were being chased after they pelted stones at the accused in front of house of A-1.

28. Again the testimony of this witness inspires confidence. This witness is an independent witness. No enmity or motive has been imputed to this witness to falsely implicate the accused persons. The name of this witness finds mention in the statement Ex.PW2/A got recorded at the earliest by complainant PW2 Rajesh Kumar. All the other witnesses appearing on behalf of the prosecution have corroborated the testimony of this witness on material points. There is no deviation in the version given by this witness contrary to the prosecution case, in the cross examination also, this witness has given detailed description about the incident and lengthy cross examination by the Ld. defence counsel has not shattered the testimony of this witness. In the cross examination, this witness has stated that he did not try to save Vipin as he was stunned after receipt of injury by Vipin. When Bharat Bhushan received injury, he (Bharat Bhushan) was at the same place where he (PW4) was standing. When Bharat Bhushan received injury, his (Bharat Bhushan) one leg was struck up in the drain. Bharat Bhushan was kneeling down when he was fired at. He had lifted Bharat Bhushan immediately. Sufficient blood had come out from the injuries sustained by Bharat Bhushan. He had removed the injured to the hospital in a three wheeler scooter. This witness has further stated that he had sustained minor injury on his head when stones were pelted by the accused. The statement of the witness that he had given blood for deceased Bharat Bhushan at about



7.45 PM at the hospital has not been controverted.

29. This witness has no motive to falsely name the accused persons. Again the testimony of this witness becomes reliable as he did not attribute any overt act in the occurrence to A-4 and A-5. No evidence to the contrary in defence has been adduced by the accused to show that this witness was not present at the spot or that he had not witnessed the occurrence.

30. Similar is the testimony of PWI Rajender, the brother of the deceased. This witness has fully supported the prosecution on all aspects and has corroborated the testimony of the other witnesses in toto. This witness in the examination-in-chief has also accused A-1 and A-2 to have caused injuries on the person of Vipin and Bharat Bhushan with gun. This witness has further deposed that on getting information that the accused persons were throwing stones at his brothers, Vipin Kumar, Bharat Bhushan, PWs Satish and Rajesh, he alongwith his brother PW Ravinder reached there and witnessed the occurrence. Again, this witness was cross examined at length by the Ld. defence counsel for the accused but, nothing in the cross examination has been elicited to disbelieve this witness. The material facts regarding the incident deposed by this witness in the examination-in-chief have remained uncontroverted. The presence of this witness at the spot at the time of incident has not been disputed. The witness denied the suggestion of the Ld. defence counsel that they were suspecting A-6 to be the person on whose information deceased Bharat Bhushan was arrested in a murder case. The witness denied the suggestion that he, Vipin, Rajesh, Satish, Ravinder and deceased Bharat Bhushan had approached the house of A-5 for picking-up quarrel with him or that they had thrown stones on them. The witness denied that



someone from the crowd fired at Vipin and Bharat Bhushan as a result of which they received injuries near Shiv Mandir in Shanker Nagar. This witness further stated that the place of occurrence was after crossing two streets from his house. It took about three minutes to reach there on foot, When A-2 fired a gun shot, no one was grappling with Vipin. When A-2 had gone to bring a gun from his house, no one was holding deceased Bharat Bhushan. When A-2 was asked to bring a gun from the house, they did not run away at the spot. A-1 had fired a gun shot on Bharat Bhushan from a distance of about 4/5 ft. A-2 was at a distance of about 10/12 ft., when he had fired gun shot at Vipin. This witness further stated that he alongwith other prosecution witnesses had gone with Bharat Bhushan to the hospital. They had reached there at about 7 PM by three wheeler scooter upto Jheel and by Taxi from the Jheel. The police met them in the hospital at about 8 PM. He had no enimity or strained relations with any of the accused persons. This witness has further stated that when he reached at the spot, stones were being pelted. He also joined in the pelting of the stones.

31. Again there is nothing in the cross examination of this witness to disbelieve him. This witness had removed the injured from the spot at the earliest. This fact finds mention in the MLC Ex.PW17/A of injured Vipin Kumar. This witness being close relative of the deceased has no axe to grind to falsely rope-in the accused persons and not to bring to book the real culprits. The name of this witness finds mention in the statement Ex.PW2/A made by PW2 Rajesh Kumar. No manipulation is possible in such a short interval.

32. Similarly PW7 Ravinder Kumar, other brother of the deceased who had accompanied PW1 Rajender at the spot has supported the prosecution in its entirety. The prosecution



case has been proved without any deviation by this witness in the examination-in-chief. He has also deposed that he and his brother Rajender had removed injured Bharat Bhushan and Vipin to Irwin hospital in a three wheeler scooter. In the hospital, his brother Bharat Bhushan was to be operated and they gave blood but Bharat Bhushan expired on the same day at midnight. This witness identified the gun Ex.P-1 to be the same which was used in firing at Bharat Bhushan and Vipin Kumar. This witness further identified shirt Ex.P2, pant Ex.P3, underwear Ex.P4, clothes which his brother Bharat Bhushan (deceased) was wearing. This witness further identified stones Ex.P5 to Ex.P11 used at the time of occurrence. This witness further identified belt of cartridges containing 14 live cartridges and two spent cartridges Ex.P12. This witness was tested in the cross examination. In the cross examination, he stated that Shiv Mandir was at a distance of about one minute walking from the house of A-1. It was Sunday on the day of incident. He had gone at the spot on foot alongwith his brother Rajender. In the cross examination, this witness clarified that they had gone in T.S.R. from the spot upto to Jheel and from there they hired a taxi. They had gone together with the injured Vipin and Bharat Bhushan. He himself did not lift his brother to put him in the T.S.R. This witness further stated that they remained in the hospital till 2.30 or 3 AM (night). He had disclosed the names of the assailants to the police officials who met them in the hospital. The witness denied the suggestion of the Ld. Defence counsel that he was not present at the spot and had not taken his brother to the hospital.

33. In the cross examination on behalf of A-1, A-2 and A-5, the witness stated that they had no enmity with the accused persons prior to the incident. Satish, Vipin, Rajender and



Bharat Bhushan had left the house before half an hour before their departure. The place of occurrence was only one and a half minutes walking distance from their house. This witness fairly admitted that at the time, they reached at the spot, he was not aware as to why and how the firing had started. This witness denied the suggestion of the Ld. Defence counsel that incident had taken place just in front of the house of A-1. This witness volunteered to add that the incident had taken place slightly away from the door of his house. The incident had taken place about 15/20 ft. away from the said door. At the time of the incident, one Prem alongwith his parents used to reside in the neighbourhood of accused. One Sardarji namely Tinki also used to reside in their neighbourhood. However, both were not present at the time of incident. About 100 public persons had assembled at the spot. This witness further stated that Bharat Bhushan, Rajender and Satish Kumar had left the house on the day of occurrence to see his ailing mother and ailing father of Rajesh who were admitted in J.P.N, hospital and Irwin hospital respectively. They had no business dealings with any of the accused persons nor they were related to each other, however, they used to wish each other being resident of the same mohalla.

34. Again, no discrepancy has come in the testimony of this witness to disbelieve his presence at the spot. When the incident regarding pelting of stones was heard between his brothers and the accused, it was natural for this witness to reach at the spot. Accused persons have not denied their presence at the spot at the time of occurrence. Material facts regarding the incident again have remained unchallenged.

35. The ocular version given by all the prosecution witnesses discussed above clearly establishes the involvement of A-1 and A-2 in



the commission of the offence. All the prosecution witnesses have supported each other on all material facts and have corroborated the statements given by them. They have proved the contents of the complaint on the basis of which the present case was registered in toto. There are no variance between the version given to the police and stated before the court by the prosecution witnesses. Their presence at the spot has not been disapproved. Rather, the presence of these witnesses at the spot is probable due to the specific defence taken by the accused persons.

53. It is evident from the testimonies of the aforesaid witnesses that there is consistency regarding the role and involvement of appellant Sanjay with the co-accused persons in the occurrence. They have not only corroborated each other's testimony but have also supported the prosecution narrative. We find no material variance in their versions given to the police and as deposed before the Court. The incident took place in June, 1985 and these witnesses were examined much thereafter. The minor contradictions/ improvements as pointed out are always there, howsoever, truthful the witness may be because of lapse of memory on account of passage of long time.

54. PW-2 Rajesh Kumar is another important witness of the occurrence who, according to him, was a friend of Bharat Bhushan. His father was admitted in JPN Hospital and he accompanied Bharat Bhushan, Vipin and Satish to JPN Hospital. The FIR was recorded on the basis of statement Ex. PW2/A given by him in JPN Hospital. He supported the prosecution version in his examination-in-chief.



Although, in his examination-in-chief he deposed that Ashwani had snatched the gun from Sanjay and shot at Bharat Bhushan which hit him at his left abdomen, but in his cross-examination he stated that it was the appellant Sanjay who had fired at the deceased and his earlier statement in the examination-in-chief to the effect that it was Ashwani who fired at Bharat Bhushan was incorrect. Such statement is also in contradiction not only to the prosecution case but also to the testimonies of the injured and all the other eye witnesses. As if this was not enough, he identified his signatures on affidavit Ex. PW2/DA which records that he was not present at the spot at the time of the incident of firing and was taken to the police station by the police and his signatures were obtained on certain documents which were not read over to him. He admitted that the stamp paper Ex. PW2/DA was purchased by him from stamp vendor and had also signed on the register in that respect. However, according to him, he was forcibly taken from his house to Shahdara Court by certain persons, one of them being the brother-in-law of Ashwani and he was compelled to sign Ex.PW2/DA. He identified his signatures on the carbon copy of the application given to the police commissioner which is Ex.PW2/DB wherein it is recorded that neither any stone pelting incident took place in his presence nor Sanjay and Ashwani fired in his presence. According to him, he had gone at the spot but by that time Vipin and Bharat Bhushan were lying injured and he rushed them to the hospital.

55. The examination-in-chief of PW-2 Rajesh Kumar was recorded on 10.03.1989, that is, almost four years after the incident. His cross-



examination was not recorded on the same day and was recorded as late as on 13.12.1993, that is, after more than four years. The affidavit Ex. PW2/DA and the letter Ex. PW2/DB are dated 08.09.1987, that is, more than two years of the incident. There is a possibility that PW-2 was won over by the accused persons, inasmuch as such affidavit and letter was prepared and signed two years after the incident. Similarly, again in between March, 1989, when the examination-in-chief was recorded and in December, 1993, when the cross-examination of PW-2 was recorded, something may have transpired between the PW-2 and the accused persons which led to giving such statement in cross-examination by PW-2. Be that as it may, we find that the testimony of PW-2 is not consistent as he has contradicted himself in cross-examination by stating that it was the appellant Sanjay Kumar who had fired at the deceased and therefore, his testimony is not trustworthy and therefore, it shall not be safe to place reliance on his testimony, and is therefore, discarded from consideration.

56. Even though, PW-2 Rajesh Kumar has turned out to be unreliable witness, we find the testimonies of PW-1 Rajinder Kumar, PW-3 Vipin Kumar, PW-4 Satish Kumar, PW-7 Ravinder Kumar to be trustworthy and of sterling quality and there is no reason to disbelieve them. The defence contention has been that neither the injured nor the other eye witnesses named the accused before the doctor and therefore, their evidence cannot be believed. The perusal of the MLCs of the injured and the deceased reveals that the names of the assailants are not mentioned therein. The absence of the names of the assailants



in the MLCs cannot be held to be fatal as it is not mandatory for the doctors to record the names of the assailants in the MLC and therefore, the testimony of the witnesses cannot be disbelieved merely because the MLCs does not bear the name of the assailants. Moreover, it is not the concern of the treating doctor as to who the assailant was inasmuch as his duty is to provide immediate treatment to the injured person and therefore that being so, we find no merits in the defence contention and reject the same.

57. It was also contended before us that no one from the public persons who gathered at the spot was examined to prove the incident. It was thus argued that there is no independent corroboration of the interested witnesses. Similar argument was addressed before the learned Trial Court. The learned Trial Court, while dealing with the same, placed strong reliance on the decision of the Hon'ble Supreme Court in the case of **Hardev Singh Vs. Harbaz Singh and Others**, 1997 Crl. L.J. 727, wherein it was observed as under:

"Coming to the findings as regards the non examination of independent eye witnesses who saw the incident in question we must hasten to add that it is completely erroneous and unmerited. The prosecution has examined Hardev Singh (PW2) and an injured witness Suba Singh (PW3), although some other villagers did come at the place of incident but in our opinion merely because other independent witnesses were not examined could not be a ground to discredit the evidence of these two eye witnesses. This court time and again has emphasised that the evidence of close relations who testified the facts relating to the occurrence be not rejected merely on the



ground that they happened to be the relatives. All that this Court has ruled is that the evidence of such witnesses be scrutinised very carefully. We have very carefully gone through the evidence of Hardev Singh (PW2) and Suba Singh (PW3) who were consistent in their evidence as regards the details of assault caused by the respondents (accused). Both the witnesses have given minute details in regard to this weapon used by each of accused and the manner in which they have assaulted Harbhajan Singh in front of the house of Chanan Singh."

58. As already discussed, the testimonies of the injured witness (PW-3) and the other eye witnesses, that is, PW-1, PW-4 and PW-7 have been found to be truthful and trustworthy, there is no reason as to why they would falsely implicate the appellant and let off the real culprits. In the absence of any material contradictions/infirmities, the testimonies of the close relatives and friends cannot be disbelieved merely on the ground that the other witnesses from the public present were not cited or examined.

59. The next contention of the learned counsel of the appellant was that the post-mortem report was not proved in accordance with law and its content cannot be considered as substantive evidence because Dr. George Pal, the doctor who conducted the post-mortem of the deceased, was never examined and instead the record clerk of the said hospital Dhara Singh (PW-20) was examined.

60. As per the prosecution case, the post-mortem of the deceased was conducted on 03.06.1985 and the post-mortem report is Ex. PW20/A. PW-20 Dhara Singh, Record Clerk of Maulana Azad



Medical College, appeared on behalf of Dr. George Pal and deposed that Dr. George Pal was in Malaysia. He stated that he has seen Dr. George Pal writing and signing in his official capacity and was therefore conversant with his handwriting and signatures. He identified the signatures of Dr. George Pal on post-mortem report Ex.PW20/A. The post-mortem report reveals that the cause of death of Bharat Bhushan was shock and haemorrhage consequent upon extensive tearing of right internal iliac vein as well as extensive tearing in left and right pelvic muscle as well as left iliac bone. The injuries were found to be ante-mortem in nature. As per report, injury no. 7 shotgun entry wound was sufficient to cause death in ordinary course of nature.

61. The normal rule is that a post-mortem report, being a document containing previous statement of a doctor who examined the dead body, can be used only to corroborate the statement made under Section 147 or to contradict a statement under Section 145 or to refresh his memory under Section 159 of The Evidence Act. But the provision of Section 32 of the Evidence Act is an exception to this rule. If the doctor who held autopsy is dead or not available for examination, the certificate issued by him is relevant and admissible under Section 32(2) of the Evidence Act which reads as under:

32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant. - Statements, written or verbal, or relevant facts, made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured, without an



amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:-

(1) xxxxxxxxxxxxxxxxxxxx

(2) or is made in course of business -

When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgement written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him, or of the date of a letter or other document usually dated, written or signed by him.

(3) to (8) not relevant, therefore, not referred to”.

62. The learned counsel for the appellant placed reliance on the judgment of the Division Bench of this Court in the case **Shyambir Vs. State 2009:DHC:2189-DB**, wherein this Court held that in the event the doctor who conducted the post-mortem report is not produced as a witness, his opinion cannot be relied upon by the prosecution to the detriment of the appellant.

63. Similar question came up for consideration before another Division Bench of this Court in the case of **Laddan Vs. State, 2013 SCC OnLine Del 4951**, wherein the doctor who prepared the MLC was not examined. Para 24 of the judgment is reproduced as under:

24. It was urged before us that the doctor who prepared the MLC was not examined and hence the statement of evidence of the deceased, in his absence cannot be relied upon. We are not satisfied with this contention.



Although Dr. Yogesh was not examined, Dr. Ravinder Singh (PW-11) was examined who has stated that he had seen MLC C-4051/07 of the patient Mohd. Shahid dated 17.07.2007 (Ex.PW11/A) prepared by Dr. Yogesh. The signature on the MLC was also identified by PW-11 to be that of Dr. Yogesh. He further stated that Dr. Yogesh had left the hospital and his whereabouts were not known to him. He identified his signature and he had seen his handwriting and signature. In his cross-examination, he reiterated that the deceased was examined at about 10.45 a.m. by Dr. Yogesh. He was conscious, oriented and was fit for making statement and his condition was declared fit for statement at specified column at encircled portion 'X' on the MLC Ex.PW11/A. MLC is an authentic record of injuries which is prepared in regular course of business by the doctor and can be relied upon by the Courts, even when the doctor who prepared the MLC is not examined in the Court and record is proved by any of the doctor. Any person who alleges why the record of injuries maintained by the hospital was not authentic and was tampered with has to prove, how tampering was done. It cannot be expected from the hospital to keep track of the doctor after he leaves the hospital. Neither is the doctor expected to keep the hospital informed about his whereabouts. Merely because the doctor who prepared the MLC is not personally examined, the MLC cannot be disbelieved. Proving of MLC by a colleague doctor, who identifies the writing and signature of the doctor who examined the patient or by an administrative staff of the hospital who identifies the signature of the doctor is sufficient and good proof and MLC cannot be doubted unless the tampering in the MLC be proved by the person alleging the tampering.



64. Similarly, in the case of ***Kamlesh Vs. State*** 2023 SCC OnLine Del 14, this Court held as under:

14. *The contention of the Ld. counsel for the appellant that in the absence of examination of Dr. Rajender, who has examined the victim and prepared the MLC, the MLC cannot be admitted in evidence is fallacious and has no force in it. Although Dr. Rajender was not examined but PW 7 Dr. Monika Chopra was examined who stated that she has seen the MLC Ex. PW 7/A which was prepared by Dr. Rajender. She has also identified the signatures on the MLC Ex. PW 7/A to be that of Dr. Rajender. PW 7 has stated that Dr. Rajender has left the hospital and his whereabouts were not known.*

15. *The MLC is an authenticated record of injuries which is prepared in regular course of business by the doctor and can be relied upon by the Courts, even when the doctor who prepared the MLC is not examined in the Court and record is proved by any of the other doctor. It cannot be expected from the hospital to keep track of the doctor after he leaves the hospital. Neither the doctor is expected to keep the hospital informed about his/her whereabouts. Merely because the doctor who prepared the MLC is not personally examined, the MLC cannot be disbelieved. Proving of MLC by a colleague doctor who identifies the handwriting and signatures of the doctor who examined the patient or by an administrative staff of the hospital who identifies the signatures of the doctor is sufficient and good proof and MLC cannot be doubted.*

65. In the case of ***Rajesh Kumar @ Raju Vs. The State (Delhi Admn.)*** 2007 (94) DRJ 676, the doctor who prepared the MLC was not examined. The MLC was proved by the Record Clerk. Dealing



with the condition that the MLC is not duly proved, the learned Single Judge held that when a medical man is examined to prove an MLC of a colleague, all questions regarding the medical jurisprudence can be asked to him and when a clerk is examined and the accused wants to ask some question about the medical aspects, he can ask the Court to summon some doctor from the hospital who can answer the question on the medical aspect of the injuries, their nature, their impact on the body. It is not a legal requirement that the doctor who examined the plaintiff alone can answer such questions. The relevant para of the judgment is reproduced as under:

10. The plea that the MLC has not been proved must fail. A document can be proved by the author of document or anyone else who can identify his signature. MLCs are recorded in the hospitals in the normal course of duties by the doctors who are there at the 'causalities'. The record of the injuries is prepared and documented only for the reason that it is not possible for any doctor to remember as to what were the injuries on the person of an injured after few days. A doctor has to examine, in causality several patients per day and in all medico legal cases, a record of injuries is prepared for use in the Courts. The doctor who prepares the record of injuries is normally called to prove the MLC in the Court during evidence which may be after a year or more of his examining the injured. A doctor cannot be expected to depose orally as to what were the injuries on the person of a patient. A doctor therefore speaks from the MLC. MLC is an authentic record of injuries which is prepared in regular course of business by the doctor present and can be safely relied upon by the Courts, even when the doctor is not examined in the Court and the record is proved by any



other doctor or record keeper. Any person who alleges that the MLC i.e. the record of injuries produced in the Court was not authentic and there has been tampering with the record, has to show to the Court how tampering has been done. It cannot be expected from the hospitals to keep track of the doctors after the doctors leave the hospital. Neither it is necessary for a doctor to keep the hospital informed about his latest whereabouts. A doctor today working in AIIMS or SJ Hospital may tomorrow be working in Bangalore and next month may be away to any other country. Merely because doctor is not personally examined, the MLC cannot be disbelieved. Proving of MLCs by a colleague doctor who identifies the signatures of the doctor on MLC or by any administrative staff of the hospital or by any record keeper who identifies the signatures of the doctor on MLC, is a valid and good proof. MLC cannot be doubted unless tampering with MLC is proved by the person alleging tampering. When a medical man is examined to prove the MLC of a colleague, all questions regarding medical jurisprudence can be asked to him and when a clerk is examined and the accused wants to ask some questions about medical aspects, he can ask the court to summon some doctor from hospital who can answer the questions on the medical aspects of injuries, their nature, their impact on the body. It is not a legal requirement that the doctor who examined the plaintiff alone can answer such questions.

66. The trial in the case continued for about 15 years and by the time doctor was called for examination, he was not available, as is evident from the testimony of PW-20, who stated that Dr. George Pal had gone to Malaysia. No question was asked from the Record Clerk in cross-examination. There is no allegation that the post-mortem



report is not authentic or has been tampered with. If the appellant wanted to ask some question on the medical aspect, he could have requested the Court to summon some other doctor from the hospital for answering the question on medical aspect of injuries, cause of death but that was not done. The appellant never objected to the admissibility of the post-mortem report and therefore, cannot be allowed to question the same at this stage.

67. The next important submission of the learned counsel for the appellant Sanjay Kumar was that he cannot be held vicariously liable for the murder of Bharat Bhushan with the aid of Section 34 IPC. Section 34 IPC embodies the principle of joint liability for acts done in furtherance of common intention. It is not an independent substantive evidence, rather, it is a role of constructive liability which makes each participant liable for the criminal act done by any of them pursuant to their common intention. For Section 34 IPC to apply, the prosecution generally has to establish that a criminal act was done in furtherance of common intention of all, there was participation of the accused in the commission of the act and accused shared the requisite common intention. Prior consent is strong evidence of common intention, but is not indispensable. Common intention can be formed even at the spur of the moment. There must be some evidence showing participation coupled with common intention. Participation, however, does not necessarily mean that the accused must himself perform the particular physical act constituting the offence. An important feature of Section 34 IPC is that every accused need not performed the same act. Where



several persons act pursuant to a common intention, the individual act of one may make all jointly liable, even though the others did not themselves performed that particular act.

68. Direct evidence of meeting of minds is rarely available and therefore, the court may infer common intention from the conduct of the accused, the nature of weapon carried, the manner and duration of attack, words spoken before or during the occurrence, conduct before and after the occurrence, relationships between the accused and victims and other surrounding circumstances.

69. Section 34 IPC requires participation by two or more persons, it does not require that all persons originally arrayed as accused must be ultimately convicted.

70. It has come in evidence that appellant Sanjay, not only on the exhortation of accused Ashwani brought the firearm, but had also fired a shot at PW-3. There was likelihood of him firing further shots at other persons if he had not been deprived of the same by the deceased who tried to overpower him. Further, the fact that appellant number 2 also wore a belt having 12 live cartridges, proves the intent of causing injuries to other people present, and because Ashwani snatched his gun, he did not resist or prevent him from doing the same, thereby establishing his common intention to kill the deceased Bharat Bhushan who was caused gunshot injuries by accused Ashwani resulting in into his death.

71. The last argument of the learned counsel for the appellant Sanjay was that the testimonies of the witnesses are not supported by



the ballistic evidence inasmuch as the recovered weapon was not proved to be the weapon of offence. He submitted that if the firing was made from a 12 bore cartridge, there would be pellet injuries but the post-mortem report does not reveal any pellet injuries. Thus, the prosecution has not been able to prove that the recovered DBBL gun was the actual weapon used to cause the fatal injury to Bharat Bhushan.

72. As per the seizure memo, Ex.PW19/N, a DBBL gun and a belt containing sixteen cartridges of “number 4 KF special long range cartridges” were recovered from co-accused Jagdish Prasad. After post-mortem, the doctor handed over a *pulanda* containing the bullet extracted from the abdomen of Bharat Bhushan, which was seized vide memo Ex.PW10/A. As per the CFSL report, Ex.PW21/C, the 12 bore DBBL gun was opined as “firearm”. The said gun was found in working order. The sixteen 12 bore cartridges were opined to be “ammunition”. These cartridges were found to be live cartridges. Plastic bore-sealling wad piece was opined to have come from the firing of a 12 bore gun. However, as per the report, no definite opinion regarding the firing of that plastic wad from the DBBL gun in question could be given. Even though, there was no conclusive opinion that the plastic wad was fired from the DBBL gun stated to be recovered from co-accused Jagdish, the fact remains that post-mortem report Ex.PW20/A confirms that injury no. 7 on the person of the deceased was a gunshot entry wound. PW-7 Ravinder identified the gun [Ex.P1] recovered from co-accused Jagdish. According to him the gun [Ex.P1]



was the same which was used in firing at Bharat Bhushan and Vipin Kumar. He also identified the belt [Ex.P12] containing sixteen live cartridges. There is no cross-examination of the witness with regard to the same, so much so that there is not even a suggestion that the gun [Ex.P1] was not used in the commission of the offence.

73. The defence has tried to setup a new case by submitting that since no pellets were found inside the body of the deceased, the Court should presume that the same was not shot from the gun in question and in support of such submission, the learned counsel for the appellant placed reliance on **“Produce Equipment Catalogue, 2026 by Ordinance Factory Board, Government of India, Ministry of Defence”**, wherein as per the product description of cartridge “SA12 bore 70 mm plastic Astram”, the said cartridge can be fired from all types of 12 bore guns having 70 mm or more chamber length, having projectile of lead and antimony alloy shots (chilled) wherein the number of shot varies from the size. The learned APP for the State submitted that the cartridge seized is a different type of cartridge inasmuch as the cartridge used in the present case is of 1986 and was not normal KF 12 gauge cartridge and was “KF special, number 4, long range 12 bore cartridge” also known as “Shaktiman” which as per name is being used for long range shooting. However, he did not cite any literature in support of said submission.

74. As per **“Modi’s textbook of Medical Jurisprudence and Toxicology, 26th Edition”**, the effect produced by a small shot fired from a shotgun vary according to the distance of the weapon from the



body and the chocking device and if the shot card wad is found in the wound, it indicates that the shot was fired from less than two yards while its absence suggests more than two yards. In the cross-examination PW-1 stated that Ashwani had fired the gun shot at Bharat Bhushan from a distance of 4/5 feet, that is, from a distance of less than two yards. The recovery of wad from the body of the victim is thus in consonance with the testimony of PW-1 Rajinder. Be that as it may, the appellant had sufficient opportunity to cross-examine the expert by asking such questions which have been argued in the appeal since it is the expert who could have clarified the technical aspects. However, no such question was asked by the accused to the expert. That being so, we find no merit in the submission made by the learned counsel for the appellant.

75. For the sake of argument, even if we are to accept the argument of the learned counsel for the appellant that the recovered weapon was not proved to be the weapon of offence, the same would hardly have any impact on the outcome of the decision, as non-recovery of the weapon of offence is also not fatal to the prosecution case and it cannot lead to acquittal in the presence of other clinching evidence implicating the appellant with the crime.

Conclusion

76. The findings recorded by the learned Trial Court are based on proper appreciation of evidence on record and do not suffer from any perversity and illegality warranting interference by us. The sentence imposed is proportionate and commensurate with the offence



committed. We, therefore, find no ground to interfere with the Trial Court's judgement.

77. The appeal is accordingly dismissed.

78. The conviction and sentence awarded by the learned Trial Court are hereby affirmed. The appellant Sanjay Kumar is directed to surrender before the Jail Superintendent within two weeks' from today to serve the remaining sentence. In the event of failure to surrender, appropriate steps shall be taken by the State and the learned Trial Court to ensure that the appellant is taken into custody to serve the remaining sentence.

79. Copy of this judgment be sent to the learned Trial Court and the concerned Jail Superintendent for information and necessary action.

RAVINDER DUDEJA, J.

NAVIN CHAWLA, J.

AUGUST 13, 2026/SK