

IN THE COURT OF MS. CHARU AGGARWAL
ADDITIONAL SESSIONS JUDGE-02: CENTRAL DISTRICT
TIS HAZARI COURT: DELHI.

State Vs. Rajan @ Mundan

FIR No. 206/2011
SC No. 28243/2016
PS : Subzi Mandi
U/s: 302 IPC

1. SC No. of the case : 28243/2016
2. Date of commission of offence : 22.10.2011
3. Name and address of accused : Rajan @ Mundan S/o
Kailash Chauhan R/o
T-81, Gali No. 1,
Meat Wali Gali, Kabir
Basti, Delhi.
4. Offence complained of : u/s 302 IPC
5. Plea of accused : Pleaded not guilty
and claimed trial.
6. Final order : Acquitted
7. Date of institution : 17.02.2012
8. Date of such order : 11.08.2020

JUDGMENT

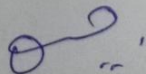
1. Accused Rajan @ Mundan has faced trial for committing offence u/s 302 Indian Penal Code (*hereinafter*

referred as 'IPC'), on the allegations that he committed murder of an unknown person.

2. The case of the prosecution is that DD No. 9 A dated 22.10.2011 at 6 a.m. was lodged at PS Subzi Mandi, Delhi-110007, on receipt of information that one unknown person is lying in unconscious condition on the road running from Baraf Khana red light towards Hindu Rao Hospital. The information was given to SI Veer Sain who alongwith Const. A. Ansari reached at the spot i.e. Dr. Karnawal Marg, Near Pole No. L-13(L-38), Kamla Nehru Park, where they found dead body of an unknown person aged about 30 to 40 years. The legs of the body were towards Baraf Khana Chowk and his head was towards Hindu Rao Hospital. The blood was oozing from the external injuries of the body. One plastic sack of garbage, one jute sack, one small piece of sack, one newspaper and one heavy cement stone, all having blood stains were lying near the dead body. On the basis of above scene found at the spot the FIR u/s 302 IPC was registered and investigation was handed over to Inspector D.P. Kalra. Crime team was called at the spot. Photographs of the spot were clicked. Dead body was sent to Mortuary Subzi Mandi through const. Ansari where it was preserved for 72 hours. Mobile crime team furnished its report. Site plan was prepared. IO lifted the blood samples from the spot and dead

body and sealed the same. The case property i.e. all the sack, newspaper and cemented stone lying at the spot were also sealed and seized. IO also took the earth control with blood sample and without blood sample. During investigation at the spot, one eye witness Sh. Kanwar Lal reached there whose statement was recorded by the IO (**Statement of eye witness shall be mentioned in the subsequent para of this order**). Notice by flashing W2 message was issued for identification of the dead body, however, despite several efforts, the body could not be identified. On 27.10.2011 post mortem of the deceased was conducted. The viscera of the deceased was sent to CFSL. On 02.11.2011, the post mortem report of the deceased was collected, as per which, the cause of death was '**Cranio unbral damage consequent upon blunt force impact**'. On 22.12.2012 the FSL report was collected.

3. In the statement given by eye witness Sh. Kanwar Pal to the IO, he has stated that he is resident of T-9, Malka Ganj, Subzi Mandi, Delhi. He is running a factory of Ball bearing. He goes for morning walk every morning at 4 a.m. from Dr. Karnawal Marg towards Hindu Rao Hospital. On 20.10.2011 while he was returning after taking walk and had reached on the road running between Baraf Khana and Hindu Rao Hospital, he saw that one boy, who is a rag picker in the



said area, was hit on his head by another boy aged about 18-19 years with cement stone. He tried to save the rag picker but the latter ran away from the spot. He chased the said person but he succeeded to fled away. In the later part of the statement, the eye witness gave the name of assailant of the crime as Mundan resident of Kabir Basti and said that he can identify him. He also said that the deceased was hit by Mundan on account of demand of money.

4. On 11.11.2011, on pointing out of eye witness Kanwar Pal, accused was arrested from near the NDPL office, Kabir Basti. IO completed the formalities of the arrest of the accused and recorded his disclosure statement. In pursuant to disclosure statement, one black colour purse allegedly belonging to the deceased, is stated to be got recovered by the accused.

5. After completion of investigation, the chargesheet was filed by the IO in the Court of concerned MM who took the cognizance and complied the provisions of Section 207 CrPC. Thereafter, the case was committed to Sessions Court and assigned to this Court. Vide order dated 20.03.2012 charge u/s 302 IPC was settled against the accused to which he pleaded not guilty and claimed trial. The date and time of the incident was wrongly mentioned in the charge framed on 20.03.2012, therefore, vide order dated 23.01.2016 the

charge was amended correcting the date and time of the incident.

6. In order to prove its case against the accused, the prosecution has examined as many as total 17 witnesses.

Public witnesses

7. The prosecution has examined total three public witnesses, out of one Kanwar @ Chotu is stated to be eye witness and remaining two witnesses, PW4 Shanker and PW16 Laxmi Kant were examined by the prosecution to support last seen theory that accused and deceased were seen together on the previous night, when the dead body was found at the spot.

8. PW1 in his deposition has stated that he is resident of Malka Ganj, Delhi and is running a business of manufacturing of ball bearing. He is Diabetic patient and daily go for morning walk from his house to Bonta *via* Dr. Karnawal Marg and Hindu Rao Hospital and came back *via* same way. He has stated that about 2-3 days prior to festival of Diwali i.e. on 22.10.2011, he left his house for morning walk at 5 a.m. and came back at about 10 a.m. On that day he took way of Lal Sain Mandir to Hindu Rao Hospital to go to Bonta for morning walk. While he was going for walk and reached at back side of Indira Park, he saw that the rag picker of the area was lying on the foot path. Head of that boy was towards

Hindu Rao Hospital and his legs were towards Baraf Khana chowk. He has further stated that at that time he saw that one another boy was scuffling with that rag picker for snatching his purse from his hand. He further deposed that while he was returning after walk he saw that the boy who was scuffling with the rag picker hit a stone on his head and after hitting him went inside the park. This PW tried to chase him but he went inside Kabir basti. He has further stated that on 11.11.2011 the police officials called him to accompany them to the house of accused. The accused did not meet at his house. However, he was apprehended near the NDPL office of Kabir Basti on the pointing out of this PW. IO arrested the accused and completed the formalities of his arrest. Accused got recovered one black colour purse of the deceased. The said purse was seized by the IO. IO prepared the site plan of recovery of purse.

This PW has identified the accused in the Court as assailant of the crime.

9. PW4 and PW16 have turned hostile in the Court. PW4 has stated that he does not know anything about this case and he was cited as a witness in this case since he is a BC of the area. Similarly PW16 has also not supported the prosecution case as he stated that 4-5 years back he alongwith PW4 Shanker was taking liquor in Kamla Nehru

Ridge park. Shanker went to bring water. When Shanker came back he informed this PW that 2/3 persons are beating one person outside the park. Thereafter, both these PWs went out of the park and found one person in injured condition but could not see the assailants. Thereafter, they both went to police station Subzi Mandi and reported the matter to the police. Both these witnesses were cross-examined by Ld. APP who gave him specific suggestions regarding identity of the accused but all the suggestions were denied by them.

Police witnesses

10. **PW 2 HC Rajesh Kumar** was duty officer on 22.10.2011 at PS Subzi Mandi who on the basis of ruqqa registered the FIR (Ex. PW2/A).
11. **PW3 Const. Ravinder** who on 22.10.2011 was posted as photographer with Mobile Crime Team, North District, New Delhi. He alongwith other members of Mobile Crime Team reached at the spot where one dead body was found by him. He clicked five photographs of the scene of crime (Ex. PW1/G-1 to Ex.PW1/G-9). The negatives of the photographs are Ex. PW3/A.
12. **PW5 is SI Mahesh Kumar** who was posted as Draftsman in Crime Branch. On the request of IO of the case he made rough notes and measurements of the spot on the

basis of which he prepared site plan Ex. PW5/A.

13. **PW6 is HC Narain Singh** who was posted as duty officer at PS Subzi Mandi, who received a 100 number call that a dead body of an unknown person is found lying on the road going from Baraf Khana to Hindu Rao Hospital. On receipt of said information, he lodged DD No. 9 A(Ex. PW6/A). The information was passed by him to SI Veer Sain and Inspector D.P. Kalra.

14. **PW7 is SI Satish Kumar** who on 22.10.2011 was posted as Incharge Mobile Crime Team, North District. On receipt of call from Control Room, he alongwith his staff reached at the spot and found dead body lying there. On his instructions, photographs of the scene of crime were taken by const. Ravinder. This PW inspected the spot from forensic point of view and gave his report Ex. PW7/A.

15. **PW9 is const. A. Ansari**, who on receipt of DD No. 9 A reached at the spot alongwith SI Veer Sain where they found one person aged about 35-40 years lying on the pavement. Blood was oozing from his wounds. Crime team was called at the spot who took the photographs and inspected the spot. Ambulance was called at the spot by the IO and deceased was sent to Subzi Mandi Mortuary through this PW. He deposited the dead body at the Subzi Mandi Mortuary and remained there till post mortem of the body was

conducted by the doctor. He has stated that on 27.10.2011 post mortem of the dead body was conducted. After post mortem several pullandas were handed over to the IO by the doctor which were seized by the IO vide memo Ex. PW9/A, PW9/B and PW9/C.

16. PW10 is Mahi Pal Singh who has stated that on 22.10.2011 he was on patrolling at Dr.Karnawal Marg, Baraf Khana chowk going towards Hindu Rao Hospital, where he met SI Veer Sain and Const. Ansari. A dead body of a person aged about 33-34 years was lying there and blood was oozing from his head. One blood stained stone and some different kinds of sacks were also lying there. SI Veer Sain called the Crime Team which inspected the spot and took the photographs. SI Veer Sain handed over the ruqqa to him for the registration of the FIR and the same was got registered by him. He has stated that inspector D.P. Kalra, IO of the case, prepared site plan of the incident, lifted all the exhibits and prepared all the seizure memos Ex. PW10/A, PW10/B and Ex. PW10/C.

17. PW11 is const. Anil Kumar who has stated that on 11.11.2011 on the instructions of IO, he took viscera of the deceased from MHC(M) and deposited the same at FSL Rohini against which he got the acknowledgement to be handed over to MHC(M).

18. **PW12 is const. Rakesh Kumar** who has stated that on 11.11.2011 they reached at near the office of Delar Samachar where they met one person namely Chotu. IO told Chotu about the investigation of the present case, who joined the police officials in the investigation and went to the house of accused Mundan. Accused did not meet them at his house. In search of accused, the police team alongwith said Chotu went at NDPL office, Kabir Basti from where the accused was arrested on the pointing out of Chotu. IO completed the formalities of arrest of accused. At the instance of accused pointing out memo (Ex. PW1/E) of place of incident was prepared. In the personal search of accused Rs.20/- was recovered. He also got recovered one black colour purse from Jhule Lal Mandir near Kamla Nehru Marg. The purse was seized by the IO vide memo Ex.PW1/D.

19. **PW13 is SI Veer Sain**, who on receipt of DD No. 9 A reached at the spot and found one dead person. The injury marks on the head of the deceased were also there and blood was oozing out of the injuries. At the spot one gunny bag containing some scrap articles, plastic gunny bag, newspaper and one cement stone, all having blood stains were also found near the dead body. No eye witness met at the spot. This PW prepared ruqqa Ex. PW13/A and sent the same for registration of FIR through HC Mahi Pal. On the basis

of ruqqa, FIR of this case was registered. Crime team was called at the spot by him who clicked photographs of the spot. Dead body was sent to Subzi Mandi Mortuary through const. Ansari where it was preserved for 72 hours. Thereafter, inspector Dharam Pal Kalra alongwith other police officials reached at the spot for further investigation of the case. IO prepared the site plan, lifted blood from two places with the help of gauze piece and all the sacks being in jute or plastic and the stone, all having blood stains were seized and sealed by the IO. IO also lifted blood sample from the place where the dead body of deceased was found. Earth control with blood and without blood were also lifted and sealed by the IO. In the meantime, one person Kanwar Pal @ Chotu reached at the spot and stated that he is an eye witness to the incident. IO recorded his statement at the spot. Despite efforts by the IO, the dead body of deceased could not be identified. On 27.10.2011 IO prepared the inquest proceedings and on his request post mortem of the dead body was conducted. After the post mortem, dead body was cremated in Electric Cremation Unit near Lal Qilla as per procedure. The post mortem doctor handed over the sample containing viscera of the deceased to the IO which was seized by the IO vide seizure memo Ex. PW9/A. Doctor also handed over one sample containing blood of the deceased and his clothes

having blood stains to the IO. The same was also seized by him. On 11.11.2011 the accused was arrested on the pointing out of PW1 Kanwar Pal. IO completed formalities of his arrest and recorded his disclosure statement. Accused got recovered one black colour purse from Jhule Lal Mandir, Subzi Mandi and said that same belongs to deceased. The purse was also seized by the IO.

20. **PW14 is HC Hari Om** who has stated that on 22.10.2011 he was posted as MHC(M) at PS Subzi Mandi. On **22.10.2011** IO inspector D.P. Kalra deposited 11 parcels with the seal of DPK in the Mal Khana. On 27.10.2011, IO again deposited three parcels in Mal Khana. On 11.11.2011 again one parcel was deposited. The relevant entries regarding deposit of parcels have been proved by this witness as Ex.PW14/A to Ex. PW14/C. On 11.11.2011, he handed over 11 parcels to const. Anil vide memo Ex. PW14/D. On 27.12.2011, again 11 parcels pertaining to this case were deposited in the Mal Khana having seal of FSL. On 29.12.2011 this PW handed over one parcel containing weapon of offence to SI Veer Sain vide entry Ex. PW14/F.

21. **PW15 is IO Inspector Dharam Pal Kalra** who has stated that on 22.10.2011 on receipt of DD No. 9 A from the duty officer, he reached at the spot and found SI Veer Sain and Crime team. Dead body was already sent to Mortuary

through const. Ansari. He recorded the statement of witnesses and prepared the site plan. The FIR was got registered through HC Mahi Pal. This PW lifted the exhibits i.e. blood samples etc. and seized the same. He also seized one big cemented stone. During investigation, eye witness Kanwar Pal reached there, whose statement was recorded by him. He also recorded statement of two other public witnesses Laxmi Kant and Shanker. He tried to trace out the identity of deceased by flashing W2 message, hue and cry notice etc. After the post mortem conducted on 27.10.2011, viscera of the deceased was collected by him. All the exhibits including viscera were sent to FSL. On 02.11.2011 post mortem report was collected. On 11.11.2011 accused was arrested, who got recovered one black colour purse. This PW collected the FSL result. After completion of entire investigation he filed the chargesheet in the Court of concerned MM.

Forensic evidence

22. **PW17 is Indresh Kumar Mishra**, Assistant Director, Biology, FSL, Rohini, Delhi. He has proved FSL reports Ex. PW17/A and Ex. PW17/B.

Medical evidence

23. **PW8 is Dr. Asitesh Bajwa** is Senior Resident at Subzi Mandi Mortuary, Aruna Asaf Ali Govt. Hospital. He has stated that on 27.10.2011 he conducted post mortem on the

dead body of an unknown person aged about 30-40 years, male brought by IO D.P. Kalra. He has proved post mortem report Ex. PW8/A. He has stated that there were following external injuries on the body of the deceased:-

“External injuries:

1. *Lacerated wound 3.2 x 0.5 cm was obliquely placed at right temporal region of scalp 0.8 cm above right ear pinna, clotted blood was present ;*
2. *Lacerated wound 7.1 x 0.7 cm was present at right temporal region of scalp 1.6 cm above injury number 1, clotted blood was present.*
3. *Lacerated wound two in numbers 1.8 x 0.6 and 1 x 0.4 cm was present at right mastoid region, clotted blood was present.*
4. *Lacerated wound 0.9 x 0.4 cm was present at tragus of right ear.*
5. *Lacerated wound 0.7 x 0.2 cm was present at right side of eyebrow.*
6. *Black eye at right side*
7. *Reddish brown abrasion 4.1 x 1.2 cm was present at back of left elbow.*

On dissection : Fracture of right side of mandible at rami. Sub-galial haematoma was present at right temporal region with depressed fracture of right temporal bone. Sub-dural haemorrhage and sub-arachnoid haemorrhage with about 80 cc of fluid and clotted blood was present at bilateral cerebral hemisphere with fracture of right basi sphenoid bone.

Stomach contained about 100 cc of blackish fluid.”

**All the injuries were known as ante mortem
and the cause of death was opined as Cranio Cerebral**

damage consequent upon blunt force. The time of death was 5 to 6 days prior to post mortem.

He has stated that subsequently he received a request letter from police seeking opinion on the weapon of offence i.e. cemented stone having blood stains. After examination of alleged weapon of offence and post mortem findings, this PW gave his report Ex. PW8/B and opined that the injuries mentioned in post mortem report could be possible by the said weapon of offence.

All the prosecution witnesses were cross-examined by defence counsel.

24. After completion of prosecution evidence, statement u/s 313 CrPC of the accused was recorded in which he pleaded his innocence and stated that he was falsely implicated in this case. No evidence was led by the accused.

25. I have gone through the written arguments filed by Ms. Sadhna Bhatia, Ld. Amicus Curiae appearing for the accused and heard arguments of Ld. APP. Record is also perused by the Court.

26. Ld. Amicus Curiae has argued that accused has been falsely implicated in this case by the police in connivance with PW1 since he(accused) is BC of the area and in order to solve a blind case of murder, the accused has been falsely implicated in this case. She also submits that PW1

later on was introduced by the police as eye witness to the incident since he (PW1) had prior acquaintance with the police officials as he contest election in the area where the incident has happened. She also mentioned number of contradictions in the testimony of eye witness (PW1) in her written arguments.

27. Ld. APP submitted that the prosecution has proved its case beyond reasonable doubt. He submits that PW1, eye witness of the prosecution, has fully supported its case on the occurrence of the incident as well as on the identification of the accused. He submitted that contradictions in the testimony of PW1 are minor in nature which cannot fatal the case of the prosecution. He also submitted that apart from the testimony of PW1, the medical evidence as well as forensic evidence, all are in support of the prosecution case. He also argued that the purse of the deceased was recovered from the possession of accused in pursuance of his disclosure statement is a strong evidence against him. He also stressed that there was no previous enmity between the eye witness and the accused that eye witness would implicate him in an offence of such serious nature.

28. I have considered the rival contentions raised by Ld. APP for the State and Ld. Amicus Curiae and perused the

entire record.

29. The chargesheet of this case was filed on the basis of sole testimony of an eye witness(PW1) Kanwar Pal and certain incriminatory evidence.

30. The FIR of this case was registered on the allegations of murder of an unknown person, identity of whom or any of his relative could not be established by the police agency despite its various efforts. Though, material on record indicates that the deceased was a wanderer or a rag picker around the area where the incident took place.

31. It is not disputed and also proved on record from the photographs and post mortem report that death of deceased was not natural but an unnatural death. The photographs of the dead body clearly show that deceased had sustained severe injuries on the back side of his head and his body is in pool of blood. The condition of the dead body depicted in the photographs find corroboration with the post mortem report (Ex.PW8/A) as per which also the deceased sustained serious injuries on the back side of his right head and cause of death opined in the post mortem report is '**Cranio unbral damage consequent upon blunt force impact.**' The report Ex. PW8/B given by PW8 Dr. Ashitesh Bajawa regarding weapon of offence is also supporting photographs and post mortem report (Ex. PW8/A) that death

of deceased is possible with the cemented stone i.e. weapon of offence. As per FSL report(Ex.PW17/B) also the human blood was found on the cemented stone sent to FSL for analysis, though, DNA profile could not be generated from the stone but the other material on record i.e. photographs, post mortem report and FSL report are itself sufficient to hold that the death of deceased was unnatural, most probably the homicidal death.

32. Now, the most crucial aspect of the case requires consideration of the Court is regarding the identity of the assailant of the crime who murdered the deceased. In order to prove any case by the prosecution, their best witness is always the eye witness to the incident. In this case PW1 Sh. Kanwar Pal has been examined by the prosecution as an eye witness to the incident around whom the entire case of the prosecution is revolving. After perusal of testimony of PW1, this Court has no hesitation in observing that this witness is not at all reliable and truthful witness. There are innumerable contradiction in his deposition creating doubt on his presence at the spot at the time of incident. As per the chargesheet, the information that one person is lying in unconscious condition was recorded at PS Subzi Mandi vide DD No. 9 A dated 22.10.2011 at 6 a.m. As per DD No. 9 A, the date of incident was 22.10.2011 and time was 6 a.m. or prior to that.

As per the statement (Ex. PW1/DA) of PW1 recorded by the IO, he witnessed the incident while he was returning from the morning walk. In his said statement, he said that on 20.11.2011, when he was coming back from morning walk, he saw that one boy who was a rag picker in the area was being beaten by one another boy aged about 18-19 years and the latter hit the cement stone on the head of rag picker. In the latter portion of the statement Ex. PW1/DA this witness said that the person who hit the cement stone also roams around the area of Kamla Nehra Ridge whose name was disclosed by him as Mundan R/o Kabir Basti. PW1, when appeared in the box to depose, he gave contradictory statement to witness the incident. In his deposition, he said that on 22.10.2011 he left his house for morning walk at 5 a.m. and was returning from walk around 10 a.m. He, during his initial deposition in the Court said that while he was going for a walk he saw one rag picker of the area lying on the footpath, whose head was towards Hindu Rao Hospital and legs were towards Baraf Khana chowk. He also stated that at that time one another boy was scuffling with him for snatching purse from his hand. This witness in the latter portion of his deposition recorded on the same day suddenly changed his stand and started saying that when he was returning from the walk, he saw that the same boy was still scuffling with the rag picker for snatching

purse from his hand and suddenly hit a stone on the head of rag picker and went inside the park to whom he(PW1) tried to chase but he went inside Kabir Basti. This Court is surprised after going through the testimony of PW1 that in his initial deposition he said that while he was going for morning walk he saw that one boy was scuffling with the rag picker(deceased) for his purse but in the latter portion of his deposition he said that he saw the scuffling between deceased and another boy while coming back from the walk, which by no stretch of imagination is possible since as per DD No. 9A death of rag picker has already taken place prior to 6 a.m. on 22.10.2011. Therefore, the deposition of PW1 that he saw rag picker(deceased) and another boy while scuffling with each other while coming back from the walk at 10 a.m. is not at all possible. Furthermore, during cross-examination PW1 admitted that the police station is situated in between his house and the place of incident. Again this creates doubt in the mind of the Court that when PW1 was present at the spot and witnessed the incident then for what reason he straight way went to his house and did not bother to visit PS which admittedly was situated in between his house and spot particularly when he has taken efforts to the extent that he tried to chase the assailant of the crime but for the reason best known to him he did not report the matter to the police

at the first opportunity available with him.

33. As regards the identity of the accused being assailant of the crime, again the testimony of PW1 is most important to be evaluated since PW1 in his statement Ex. PW1/DA stated that the boy who was scuffling with the deceased roams around in the area of Kamla Nehru Ridge and his name is Mundan who resides in Kabir Basti. PW1 could not withstand cross-examination on this aspect since in his cross-examination, he admitted that he informed the police that he did not know the name and address of the assailant of the crime but can identify him by his face. This admission of PW1 in his cross-examination indicates false implication of the accused in this case as he is BC of the area since when PW1 was not aware of name and house of the assailant of the crime then how the name of the accused and his address was given by him in his statement EX. PW1/DA recorded during investigation is a big question remained unanswered during trial. During cross-examination, PW1 admitted that he contest elections from Subzi Mandi area therefore, had acquaintance with police officials of PS Subzi Mandi hence, the possibility that later on introduced as an eye witness to the incident, cannot be ruled out.

34. The prosecution could not prove its case from the testimony of eye witness PW1. But, there also remains a

circumstantial evidence relied upon by the prosecution to be looked into by the Court.

35. The circumstantial evidence relied upon by the prosecution is evidence of PW4 and PW16 in order to support the last seen theory of the prosecution that deceased and accused were seen together on the previous night of the incident and recovery of one black colour purse at the instance of the accused in pursuant to his disclosure statement.

36. As per Section 25 and 26 of Evidence Act, the disclosure statement is not admissible unless any incriminating evidence is found pursuant to said disclosure. In this case the alleged incriminating evidence against the accused is recovery of one purse at the instance of the accused to which the prosecution is alleging that it was the purse of the deceased due to which the accused murdered the rag picker. Again, no evidence has come on the record that the purse recovered at the instance of the accused was belonging to the deceased. PW1 and IO of the case have admitted that the purse recovered from the possession of accused is commonly available in the market and nothing was found from the said purse showing that it was belonging to the deceased. IO has not taken the finger prints of the accused during investigation to match the same with the

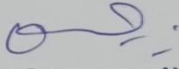
purse allegedly recovered from the accused and with the weapon of offence i.e. big cement stone to connect the accused with the offence.

37. So far as testimony of PW4 and PW16 are concerned, they both have not supported the case of the prosecution and turned hostile during trial. As per chargesheet, both these PWs gave their statements to the IO during investigation that accused on the previous night of the incident was fighting and scuffling with the deceased on account of demand of money. However, PW4 took complete U-turn in the Court and said that he does not know anything about this case and was cited as a witness since he is a BC of the area. Though, PW16 Laxmi Kant has deposed certain facts as stated by him during investigation that prior to day of incident he was taking liquor in the Kamla Nehru Ridge and at that time PW4 informed him that 2-3 boys are beating one boy outside the park. But he also turned hostile on the identification of the accused being assailant of the crime and stated that he could not see the wrong doer who were beating the said boy. Both these witnesses were cross-examined by Ld. APP, who gave them specific suggestions that the accused and the assailant of the Crime but all suggestions were denied by them. Thus, Ld. APP could not elicit anything from their mouth in favour of prosecution.

38. In view of aforesaid discussions, the accused deserves benefit of doubt and is accordingly acquitted. He is directed to furnish the bail bond to the tune of Rs.10,000/- in compliance of Section 437 A CrPC at the earliest. Accused is in JC, he be released, if not required in any other case, on furnishing of bail bond as mentioned above. Copy of this order be sent to jail superintendent immediately to be supplied to accused. Copy of order be also uploaded on the official website of District Courts.

File be consigned to record room.

**Announced through
VC(Cisco-webex)
on 11.08.2020**


**(CharuAggarwal)
ASJ-02/Central/THC/Delhi**