

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

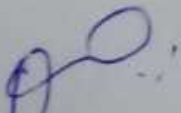
State Vs. Prakash @ Akash @ Chinu & Ors.
FIR No. 398/18
PS:Nabi Karim
U/s: 307/201/34 IPC

- | | | | |
|----|--|---|---|
| 1. | SC No. | : | 305/19 |
| 2. | Names & parentage of the accused persons | : | (i) Prakash @ Akash @ Chinu
S/o Sh. Daulat Ram
R/o C-74, Chinot Basti, Nabi Karim, Delhi.
(ii) Arjun @ Prem, S/o Sh. Kishan Lal @ Kishan Kumar Tanwar, R/o 7943/1, Nai Basti, Gurdwara Wali Gali, Nabi Karim, Delhi.
(iii) Sheetal, W/o Sh. Shidhanth, R/o C-74, Chinot Basti, Nabi Karim, Delhi.
(iv) Kajal, W/o Aman
R/o 56, Pakka Talab, Ghaziabad, Uttar Pradesh. |
| 3. | Offence complaint of | : | 307/120-B/201/34 IPC |
| 4. | Plea of guilt | : | Pleaded not guilty |
| 5. | Final order | : | Acquittal |
| 6. | Date of such order | : | 30.05.2020 |

JUDGMENT

1. Accused Prakash, Arjun & Sheetal have faced trial for offence punishable u/s 307/34 IPC and accused Kajal has faced trial only for offence u/s 201 IPC.

2. In brief the allegations against accused Prakash, Arjun and Sheetal are that they attempted to kill PW-5 Prem and PW-9 Manoj by inflicting stab and gunshot injuries to them by using knife and pistol. The allegations against



accused Kajal are that she is sister in law (Bhabhi) of accused Prakash and destroyed the data of his mobile containing the material of offence committed by accused Prakash.

3. The present case originated on receipt of DD No. 69-A dated 26.11.2018, at about 10:57 PM, regarding gunshot at Multani Dhanda, Nabi Karim, which resulted into registration of FIR dated 27.11.2018 on the statement of the complainant/injured Prem. The complainant has stated in his statement (Ex. PW-5/A) that on 26.11.2018 at about 10:00 PM, he alongwith his relative Varun and Manoj were going from the back side of the White House Hotel, Nabi Karim. At that time, accused Akash @ Prakash @ Chinu, Arjun and CCL "R" met them. Complainant just two days prior had altercation with accused Arjun when he (Arjun) threatened him that complainant does 'mukbari' against him with the police. Complainant and his relative threaten them. Accused Prakash @ Chinu sent the CCL "R" from the spot who after 15 minutes came with a knife at the spot. In the meantime accused Sheetal (Sister of accused Prakash) also came at the spot with a pistol and handed over the same to accused Arjun. Seeing all this, the complainant's cousin Varun ran from the spot. Accused Sheetal caught complainant and exhorted "Maaro". On hearing this, accused Prakash took out the knife and gave stabbed injuries to the complainant on his head and thigh. The CCL "R" attacked on the thigh of the complainant. Complainant tried to run away from the spot in order to save him but in the meantime accused Arjun fired on his left leg. Complainant's relative Manoj also sustained gunshot injury on his chest. On the basis of this statement of the complainant, the FIR of this case was registered. Investigation was carried out.

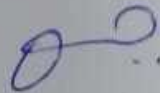
4. On receipt of DD No. 69/A, SI Ram Avtar alongwith Ct. Mahender reached at the spot where they found blood stains and two empty cartridges. 10

SI Ram Avtar prepared the site plan and called the Crime Team. Crime Team took the photographs of the spot, earth control, earth control with blood. IO seized the empty cartridges and all the aforementioned exhibits and sealed the same. At the spot, IO came to know that injured have been shifted to Lady Harding Medical College (LHMC) Hospital. IO reached at the hospital where he met complainant/injured Prem. He collected the MLC of complainant Prem and injured Manoj on which the alleged history was stated to be gun shot. Both the injured were declared unfit for statement by the concerned Doctor. The IO seized the blood stained cloths and blood samples of both the injured. On 27.11.2018, the injured persons were declared fit for statement. Accordingly, IO recorded their respective statements. On the basis of statement of complainant and injured Manoj, initially the FIR u/s 326/334/34 IPC and 27/54/59 Arms Act was registered. The statement u/s 161 Cr.PC of eye witness Varun was also recorded. On the same, co-accused Sheetal was arrested. On 07.12.2018, accused Prakash, CCL "R" and Arjun were arrested. Their disclosure statements were recorded. During interrogation, accused Prakash disclosed that he took the weapons of offence and cartridges from one boy namely Monu. He also disclosed that prior to the day of crime; he sent messages to Monu through WhatsApp and thereafter handed over the said phone to co-accused Kajal. Thereafter, the IO conducted the search at the house of accused Prakash and seized mobile phone, box of sim card on which three mobile numbers i.e. 8851720730, 9650331043 and 7982056756 were written. During interrogation, accused Kajal disclosed that she has deleted all the chatting and whatsapp record of those mobile numbers belonging to accused Prakash. Accused Kajal was booked for the offence u/s 201 IPC. Weapon of offence was not recovered, however, the blood sustained cloths of the injured and other seizures were sent to the FSL.

5. After completion of investigation, charge sheet was filed in the court of concerned Ld. MM. After completing all the formalities, Ld. MM committed the case to the Session Court. Vide order dated 07.05.2019, charge u/s 307/34 IPC was framed against accused Prakash, Akash and Sheetal and upon accused Kajal only the charge u/s 201 IPC was framed. Till framing of charge, the FSL report was not received, therefore, no charge u/s 27/54/59 Arms Act was framed. The said report was not even placed on record by the prosecution at later stage.

6. In order to prove its case, the prosecution has examined 18 witnesses. PW-1 is ASI Kailash Chand, Duty Officer, who has stated that on 27.11.2018 at about 11:30 PM, he received a rukka from SI Ram Avtar on the basis of which FIR Ex. PW-1/A was registered. PW-2 is Ct. Deepak Nagar- he has stated that on 26.11.2018 he was posted as Crime Team Photographer at Central District; at about 11:15 PM, on receipt of information, he along with Crime Team In-charge Inspector Narender Singh, Finger Print Expert ASI Pawan and other members reached at the spot where on the instruction of the IO, 15 photographs of the scene of the crime were taken; CD was prepared (**no such photographs and CD are on record**). PW-3 is Ct. Jogender, who has stated that on 31.01.2019, MHC(M) of PS Nabi Karim handed over him 12 pullandas in sealed condition which this PW has deposited at FSL, Rohini, vide RC No. 148/21/19 (Ex. PW-3/A) against acknowledgment Ex. PW-3/B. PW-4 is ASI Sanjay Singh, who has stated that on 26.11.2018, he was posted as Duty Officer at PS Nabi Karim and on that day at about 10:57 PM, he received an information from PCR regarding the person having been shoot at H. No. 7981, Multani Dhanda. This PW recorded the said information vide DD No. 69-A (Ex. PW-4/A).

7. PW-5 is the complainant Prem, PW-9 is Manoj and PW-12 is Varun who all are eye witnesses to the incident and out of them, PW-5 Prem and PW-9 Manoj are injured persons also. They all have stated that on 26.11.2018 at about 10:00 PM, they were going on foot for purchasing medicines. When they reached on the back side of the White House Hotel, Nabi Karim, 5-6 boys were already standing there, amongst those boys, 3 were accused Prakash, Arjun and CCL "R". Those boys started abusing these witnesses. These witnesses requested them not to abuse them upon which the quarrel ensued. Accused Prakash, Arjun and CCL "R" took out their respective pistols and started firing due to which PW-5 received bullet injury over his left leg and injured Manoj received bullet injury over his abdomen. The associates of above accused persons caused stab injury over right leg, back and head of PW-5. After assaulting PW-5 Prem and PW-9 Manoj, accused persons ran away from the spot. PW-5 managed to reach at his house. His neighbor Anil shifted him to the hospital on his motorcycle. PW-9 injured Manoj was shifted in the hospital by his mother. PW-5 and PW-9 have stated that they remained in the hospital for about 15 days. Police recorded the statement Ex.PW-5/A of PW-5 Prem and statements u/s 161 Cr.PC of PW-9 Manoj and PW-12 Varun. These PWs did not disclose certain facts during their chief examination which were mentioned in their statements recorded during investigation; therefore, they were cross examined by Ld. APP. The suggestions given by Ld. APP to these PWs that in their respective statements u/s 161 Cr.PC, they have stated that the accused Arjun threatened PW-5 saying that he does "Mukhbari" against him but the suggestion was denied by all these PWs. These PWs also denied the suggestion that accused Prakash stabbed PW-5 with the knife. They also denied the suggestions given by Ld. APP to them that accused Sheetal brought the pistol at the spot and handed over to Arjun.



8. PW-6 is Dr. Ankush, who firstly examined PW-5 Prem and PW-9 Manoj in LHMC Hospital and proved their MLCs as Ex. PW-6/A and Ex. PW-6/B respectively. PW-7 is Sh. Ramesh Dalal, Assistant Ahlmad of JJB-03, Kingsway Camp, Delhi, who has brought the summoned record of judicial file of FIR NO. 350/18, u/s 25/54/59 Arms Act, titled State Vs. Farman @ Rupesh. PW-8 is Inspector Narender, In-Charge Crime Team, who on the instructions of the IO reached at the spot. He has stated that he alongwith Crime Team, Photographer Ct. Deepak and Finger Print Expert ASI Pawan Kumar reached at the spot. He inspected the crime scene and found blood on the road as well as two empty cartridges. The exhibits were lifted by this PW. The photographer clicked the photograph. The Finger Print Expert tried to lift the chance print but same were not found. He has stated that he has prepared the report which was not collected by the IO. PW-10 is ASI Mange Ram, who has stated that on 01.12.2012, he was posted as MHC(M) at PS Model Town. On that day, IO ASI Rajesh Kumar deposited two sealed pullandas sealed with the seal RK vide entry no. 2391/18 in Register No. 19 (Ex. PW-10/A). On 21.12.2018, those pullandas were deposited in FSL vide RC NO. 168/21/18 in Register No. 19 (Ex. PW-10/C). PW-11 is Dr. Rohit Kashyap, who also examined PW-5 Prem and PW-9 Manoj in LHMC Hospital and proved his report as Ex. PW-11/A and Ex. PW-11/B. PW-13 is Sh. Anil, who has stated that he is residing in the vicinity of PW-5 Prem. On 26.11.2018, at about 09:30 PM, he returned back to his home from his work. On that day, at about 10:00 PM, he heard noise of bullet fire. He came outside his house and saw his cousin PW-5 Prem in injured condition who was bleeding from his left leg. He immediately shifted him to Lady Harding Hospital. PW-14 is Smt. Saroj, who also resides in the vicinity of PW-5 Prem. She stated that on 26.11.2018, at about 10:00 PM, she heard the noise of gunshot and came outside her house and saw her son Manoj in injured condition bleeding

from his chest. She also shifted PW-9 Manoj in the hospital. PW-15 is Lady Constable Mamta Kumari. She has stated that on 27.11.2018, accused Sheetal was arrested vide arrest memo Ex. PW-15/A, her personal search was conducted vide personal search memo Ex. PW-15/B and her disclosure statement was recorded which is Ex. PW-15/C. On the same day, co-accused Kajal was arrested and her disclosure statement was recorded. PW-16 is Dr. Munish from Lady Harding Hospital, who also examined PW-5 Prem and PW-9 Manoj and proved his report as Ex. PW-16/A and Ex. PW-16/B, respectively. PW-17 is ASI Rajesh Kumar, who has stated that on 01.12.2018, he was posted at PS Model Town. On that day, accused Arjun was apprehended by HC Dharamvir and HC Ram Kumar from Buddho Mata Mandir, G.C.K. Road. The aforesaid police officials got recovered one countrymade pistol and two live round cartridges from the possession of accused Arjun and one stolen motorcycle. Pistol and live round cartridges were seized. FIR No. 470/18, PS Model Town, u/s 25/54/59 Arms Act, was registered against accused Arjun. PW-18 is IO SI Ram Avtar, who has stated that on 26.11.2018, on receipt of DD NO. 69-A (Ex. PW-18/A), he along with Ct. Mahender reached at the spot where blood and two empty cartridges were lying. He called the Crime Team at the spot. The Crime Team In-charge inspected the place of occurrence and prepared his report. Crime Team Photographer clicked the photographs. This PW lifted earth control & blood stains and kept them in the plastic container, thereafter, sealed and seized the same vide seizure memo Ex. PW-18/B. He came to know that injured persons have been shifted to Lady Harding Medical College Hospital. Accordingly, this PW along with Ct. Mahender reached at the said hospital and collected the MLC of PW-5 and PW-9. Though, the patients were opined unfit for statement. This PW came back in the Police Station. Thereafter, he again went there where the Doctor opined PW-5 fit for statement. He recorded his statement Ex. PW-5/A. The con-

cerned Doctor also handed over exhibits in sealed condition vide seizure memo Ex. PW-18/C. On the basis of statement Ex. PW-5/A, FIR of this case was registered. This PW prepared the site plan Ex. PW-18/E. On 27.11.2018, this PW met PW-12 Varun and recorded his statement. On the same day, co-accused Sheetal was also arrested. On 28.11.2018, statement of PW-9 Manoj was recorded. During investigation, co-accused Arjun and Kajal were also arrested.

9. All the above prosecution witnesses were cross examined by Ld. Defence Counsel. After completion of prosecution evidence, statement of accused persons was recorded u/s 313 Cr.PC in which they pleaded their innocence and have stated that they have been falsely implicated in the present case.

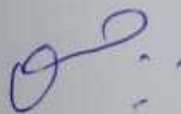
10. I have heard the arguments advanced by the Ld. APP for the State & also the arguments advanced by the Ld. Defence Counsel. I have carefully perused the entire case file and have bestowed my thoughtful consideration to the rival arguments advanced by the learned counsel for the parties keeping in mind the evidence adduced by the prosecution to prove its charges against the accused persons. .

11. Ld. APP Sh. Virender Singh, has argued that the prosecution has proved its case beyond reasonable doubt against all the accused persons. He has submitted that PW-5, PW-9 and PW-12, eye witnesses of the prosecution, have remained consistent throughout their testimony; that PW-5 Prem and PW-9 Manoj sustained stab injury and bullet injury caused by accused Prakash and Arjun in conspiracy and connivance with accused Sheetal. Ld. APP has submitted that the intention of the accused persons can be gathered from the fact deposed by the eye witnesses that the gun and knife were used by the accused persons in causing injuries to PW-5 and PW-9 in the incident.

12. On the other hand the Ld. Counsels for the accused persons have argued that the prosecution has failed to prove its case against either of the accused since no FSL Report, weapon of offence, photographs of the scene etc., have been placed on record by the prosecution. They have also argued that the eye witnesses i.e. PW-5, PW-9 & PW-12 have not supported the case of the prosecution on the material aspect on the basis of which this FIR was registered. Counsel for accused Kajal has argued that no evidence whatsoever either oral, documentary or electronic has come on record against this accused. He has also argued that none of the prosecution witnesses has deposed anything against accused Kajal nor any electronic evidence of any mobile containing any kind of data or any service provider is examined by the prosecution to prove that which mobile phone or mobile number accused Prakash was using or any kind of data from the service provider allegedly destroyed by accused Kajal.

13. In order to prove the offence punishable u/s 307/34 IPC, it is essential for the prosecution to prove the following ingredients:-

- i) That the accused persons in furtherance of their common intention, attempted to cause death of any person;
- ii) That the death was attempted to be caused by, or
- iii) That such act was done by the accused persons in furtherance of their common intention to cause death; or that it was done with intention of causing such bodily injury as: (a) the accused persons knew to be like to cause death; or (b) was sufficient in the ordinary course of nature to cause death; or that the accused persons attempted to cause such death by doing an act known to them to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused persons having no excuse for in-

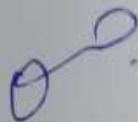


curing the risk of causing such death or injury.

13. In "*Hari Kishen & State of Haryana Vs. Sukhbir Singh*", AIR 1988 SC 2127, the Hon'ble Apex Court has held that the act done by the accused persons must be shown to have been done with their intention and knowledge to kill victim irrespective of result of the said act. The relevant para of the judgment is reproduced as under:-

"7. In the first question as to acquittal of the accused under Sections 307/149 IPC, some significant aspects may be borne in mind. Under Section 307 IPC what the court has to see is, whether the act irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in that Section. The intention or knowledge of the accused must be such as is necessary to constitute murder. Without this ingredient being established, there can be no offence of - attempt to murder. Under Section 307 the intention precedes the act attributed to accused. Therefore, the intention is to be gathered from all circumstances, and not merely from the consequences that ensue. The nature of the weapon used, manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention. In this case, two parties in the course of a fight inflicted on each other injuries both serious and minor. The accused though armed with ballam never used the sharp edge of it. They used only the blunt side of it despite they being attacked by the other side. They suffered injuries but were not provoked or tempted to use the cutting edge of the weapon. It is very very significant".

14. As per Section 134 of the Evidence Act, it is the quality of evidence that is important to decide a case but not the quantity of the witnesses. It is settled law that in a criminal case, the accused can be held guilty even on the solitary evidence of the witness if found cogent and consistent. The accused can be convicted if the sole witness of the prosecution is credible and truthful since a credible witness outweighs all other evidence.

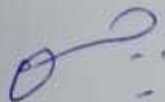


15. In the present case, the evidence led by the prosecution is not sufficient to record the conviction of the accused persons primarily for the following two reasons:

- (i) *The material witnesses/eye witnesses of the prosecution i.e. PW-5 Prem, PW-9 Manoj and PW-12 Varun do not seem to be reliable as there are several material contradictions in their testimony when compared with their statements recorded u/s 161 Cr.PC during investigation;*
- (ii) *Even if, the evidence of these witnesses is taken as gospel truth then also the prosecution has failed to prove that the accused persons had any intention or knowledge to kill the injured party.*

16. The FIR of this case was registered by disclosing the names of assailants of the crime. The victim party was even aware of the relationship of the accused persons with each other since as per the statement (Ex. PW-5/A) of PW-5 Prem, he has specifically stated that accused Sheetal is sister of accused Prakash, who allegedly brought the gun at the spot. In a situation, when the FIR is registered specifically naming the wrong doers of the crime and parties were known to each other prior to the incident, it becomes the duty of the court to minutely scrutinize the evidence of the eye witnesses with circumspection.

17. The case of the prosecution primarily rests upon the testimony of PW-5 Prem, PW-9 Manoj and PW-12 Varun who are the eye witnesses of the incident and out of them PW-5 Prem and PW-9 Manoj are injured also. There is no dispute about the fact that both the parties were known to each other prior to



the incident. Nothing has come on record that there was any previous enmity between the injured party and accused party. As per the record, both the parties are involved in other criminal cases also and they admittedly are persons with criminal antecedents. PW-5, PW-9 and PW-12 during their respective cross examination have admitted that they are involved in other criminal cases. Similarly, as per the previous involvement report of the accused persons on record, they are also involved in other criminal cases. In the statement (Ex. PW-5/A) on the basis of which FIR was registered and in the statement of PW-9 & PW-12 recorded u/s 161 Cr.PC, they all have stated that just prior to two days of the incident accused Arjun threatened PW-5 Prem that he (PW-5) does 'mukbari' against him, though this fact has not been so deposed by either of the PWs in their chief examination in the court. Even, in their cross examination conducted by Ld. APP, they were given specific suggestions regarding the 'mukbari' but the same is denied by all of them. However, the charge sheet clearly reveals ill will in the minds of both the parties against each other due to their previous involvement in the criminal cases and this ill will might have led committal of offence of this case by the accused party or their false implication by the victim party.

18. In order to find out whether the incident actually took place and accused persons attacked on the victim party or the victim party falsely implicated the accused persons, the testimony of eye witnesses i.e. PW-5, PW-9 and PW-12 is very relevant to be looked into. For the sake of repetition, it is again emphasized here that the FIR was registered by naming the accused persons and specifying their individual roles in the incident. However, all the above named three eye witnesses of the prosecution changed their version in the roles of the accused person in their testimony recorded in the court from what they stated in their initial statements recorded during investigation. In the charge sheet, the

role attributed to accused Prakash was that he stabbed PW-5 Prem with a knife on his skull and thigh but none of the eye witness has deposed in their respective chief examination that accused Prakash stabbed PW-5 with a knife. As per their testimony, the stab injuries were caused to PW-5 by the associate of accused Prakash and Arjun but not by accused Prakash. Similarly, in the charge sheet, the role attributed to accused Arjun in the incident was that he fired PW-9 Manoj on his chest and on the left leg of PW-5 Prem but all the eye witnesses changed their version when they entered the witness box in the court even regarding the gun shot injuries caused to PW-5 and PW-9 as they stated that the gunshot injuries were caused to PW-5 and PW-9 by accused Prakash, Arjun and CCL "R". As per the charge sheet, the gun was brought by accused Sheetal at the spot who handed over the same to accused Arjun but the eye witnesses in their deposition in the court have stated that all the accused persons namely Prakash, Arjun and CCL "R" were having their respective pistol with them and individually fired upon PW-5 and PW-9 with the same. By deposing so regarding the firing by accused Prakash, Arjun and CCL "R" by their respective pistols, all the three eye witnesses gave complete escape route to accused Sheetal by stating in their cross examination conducted by Ld. APP that accused Sheetal was not even present at the spot. Furthermore, as per the case of the prosecution the entire incident has taken place in the gali where PW-5 and PW-9 reside. PW-13 Anil (cousin brother of PW-5) and PW-14 Saroj (mother of PW-9), have stated that on hearing the noise of fire, they came out of their house and saw PW-5 and PW-9 respectively in injured condition. Surprisingly, the noise of firing was heard only by the relatives of PW-5 and PW-9 but not by any independent person/neighbour of the vicinity. I would also like to take note of one more fact though not of much relevance to decide this case but show the conduct of PW-5 that he nowhere in his deposition disclosed that PW-13 Anil, who allegedly



shifted him to the hospital is his cousin, but the same was so disclosed by PW-13 himself in his testimony. Rather, PW-5 in his evidence has stated regarding shifting him in the hospital by PW-13 Anil in such a manner that he (PW-13) was only his neighbour but not relative. All the public witnesses including the eye witnesses of the prosecution are interested witnesses being relatives of each other and none of them seem to be trustworthy and credible. The ocular evidence on record creates serious doubt on the credibility of the eye witnesses which even does not find support from the medical evidence on record or any other independent evidence like FSL Report, photographs of the place of occurrence, Crime Team Report etc.

19. As per the medical evidence i.e. MLCs of PW-5 Prem and PW-9 Manoj, there were no gun shot injuries found on their body and are shown to have sustained only simple injuries. PW-6 Dr. Ankush was the first Doctor who medically examined PW-5 Prem and PW-9 Manoj who specifically opined in the MLC that there was only fracture in the left foot of PW-5 Prem. During his cross examination also, he specifically said that there was no bullet embedded in the body of PW-5 and PW-9 as per their X-Ray plate. PW-11 is Dr. Rohit Kashyap, who had also examined PW-5 Prem and PW-9 Manoj from surgical point of view has categorically stated in his evidence that the injuries sustained by both these PWs were simple. During his cross examination also, he has stated that there was no bullet wounds on the body of either PW-5 Prem or PW-9 Manoj and their injuries were only super facial. PW-16 is Dr. Munish, who has also examined both these PWs. During his cross examination, he has specifically stated that the alleged history of the patient were gunshot injuries but the same were put question marked by him, therefore, he was not sure whether the injuries sustained by them was gunshot or not. Thus, the medical evidence is also

not corroborating the ocular evidence which otherwise also is only supporting evidence of the prosecution but not the substantial piece of evidence.

20. Furthermore, the prosecution has not bothered to bring on record any other evidence like FSL report, photographs of the scene, Crime Team report etc., to connect the accused persons with the incident. As per the charge sheet, two empty cartridges were recovered from the place of incident on 01.12.2018, one pistol was recovered from the possession of accused Arjun for which FIR No. 470/18, PS Model Town, was registered against him. The IO of this case did not bother to get the ballistic report that the two empty cartridges recovered in this case were fired from the same pistol recovered from the possession of accused Arjun in FIR No. 470/18, PS Model Town, to connect him with the alleged crime of this case. Even, the empty cartridges recovered in this case, photograph of place of occurrence, Crime Team Report are also not on record to prove occurrence of incident on the alleged date and time. The material on record creates serious doubt on the case of the prosecution on the occurrence of incident.

21. As already mentioned, the most important ingredient to prove offence u/s 307 IPC is intention and knowledge of accused persons. Here, it is the own case of the prosecution that the accused party was not armed with any weapon of offence at the time when they reached at the place of occurrence. The prosecution has not proved use of any weapon in the offence or any previous enmity between the parties or the injuries sustained by PW-5 and PW-9 were such that the same would have caused their death. The material on record does not indicate any intention or knowledge of the accused persons to kill the victim party. Accordingly, the material on record is highly insufficient to record



the conviction of accused Prakash, Arjun and Sheetal for the offence u/s 307 IPC.

22. Accused Kajal is booked only for the offence u/s 201 IPC on the allegations that she destroyed the mobile data of accused Prakash being his sister-in-law (Bhabhi). No such mobile phone, their details and data from any service provider is brought on record by the prosecution. No service provider from any mobile company is even cited as witness by the prosecution to prove charges against accused Kajal. Accordingly, accused Kajal is acquitted for the offence charged against her.

23. In view of the aforesaid discussion and material available on record, accused Prakash, Arjun, Sheetal and Kajal are acquitted for the offence u/s 307/34 IPC and are ordered to be released forthwith if not required in any other case on their furnishing bail bonds u/s 437 (A) IPC to the tune of Rs. 20,000/- each with one surety in the like amount.

24. Copy of this order be sent to the concerned Jail Superintendent immediately and also to the Prosecution Branch.

File be consigned to record room.

Announced in the open court
on 30th May, 2020


(Charu Aggarwal)
ASJ-02/Central/THC/Delhi

Received
C. Aggarwal
30/5/2020