



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

Date of reserving Judgment: 25th September, 2025

Date of decision: 6th February, 2026

IN THE MATTER OF:

+ CRL.A. 51/2002

MOHAN @ AKKAR

....Appellant

Through: Mr. Bharat Dubey, Ms. Shubhlaxmi Dubey, Ms. Sonia Dubey, Ms. Taniya Kapoor and Ms. Ayesha Sharif, Advs. alongwith Appellant.

versus

STATE

....Respondent

Through: Mr. Aashneet Singh, APP for the State.
Inspector Yogesh Singh, PS Mandir Marg.

+ CRL.A. 74/2002

VIJAY @ CHAMPION @ PAHARI

....Appellant

Through: Mr Ajay Burman Sr. Adv. with Ms. Ruchi Kapoor, Mr. Varun Seth and Ms. Ishita Kadyan, Advs.

Versus

STATE

.... Respondent

Through: Mr. Aashneet Singh, APP for the State.
Inspector Yogesh Singh, PS Mandir Marg.



CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

VIMAL KUMAR YADAV, J.

1. Factoid of dichotomous statement, made by HC Surender Singh (PW 30), is the core challenge made by the Appellants in Crl. Appeal No. 51 of 2002 and Crl. Appeal No. 74 of 2002, to assail conviction of one of them for offences punishable under section 302 read with section 120-B of the Indian Penal Code (hereinafter referred to as the Code) and offence punishable under section 120-B of the Code and of the other for offence punishable under section 120-B of the Code, vide judgment dated 03.12.2001 and sentences of imprisonment for life and fine of Rs. 100/- for offence punishable under section 302 of the Code and imprisonment for life for offence punishable under section 120-B of the Code awarded to Vijay @ Champion @ Pahari, which sentences are to run concurrently, and sentence of imprisonment of life and fine of Rs. 100/- awarded to Mohan @ Akkar for offence punishable under section 120-B of the Code, vide order on sentence dated 02.01.2002. In default of payment of fine they are to undergo rigorous imprisonment for one day each. Conviction and sentences, so referred, were awarded to them in Sessions Case No. 107/1998 in respect of case FIR No. 128/1998, registered at police station Mandir Marg for offences punishable under section 302 read with 120-B and 34 of the Code. Since the above appeals arise out of the judgment dated 03.12.2001 and order on sentence dated 02.01.2002, hence the same are disposed of vide this common judgment.

2. Besides the above contention, the Appellants claim that dying



declaration, made by Amar before Ms. Beena (PW-1) and officials of PCR van, is nothing but fabrication of facts by the investigating officer, which stands demolished by the message Ex. PW 34/D-1, flashed by HC Surender Singh (PW-30). Testimony of Ms. Beena (PW-1) does not stand on litmus test of ordinary human behaviour, since she asserts that name of the assailants was inquired from the victim twice. Her testimony also gets a dent from the fact that till 1:30 a.m. she has not disclosed the name of the assailants to anyone. Another prong of attack, made by the Appellants, is delay in lodging the FIR. It has also been argued that on the MLC of the victim only name of HC Surender Singh (PW-30) is mentioned, while Beena (PW-1), Uma (PW-4) and Om Wati (PW-2) claim that they were also present in emergency ward at the time of admission of Amar there. The doctor opined Amar to be unfit for statement after which Amar succumbed to his injuries at 12:30 a.m., which fact goes to establish that he was not in a position to make any dying declaration. It has also been asserted that names of Appellants are not mentioned in the MLC of the victim. A claim has also been made on behalf of Mohan @ Akkar that there is complete vacuum of evidence on conspiracy to commit murder of Amar and as such conviction and sentence, recorded by the Trial Court, is not maintainable. Contentions, so advanced on behalf of the Appellants, were repelled by the Id. APP.

3. Denuded of unnecessary details, facts of the controversy are that on 12.03.1998 at about 11:45 p.m. Satpal (PW-10) got up on hearing of barking of dogs, came out of his house and saw Amar lying in injured condition in stairs. He rushed to the house of Devi Prasad (PW-3), cousin of Amar, and informed him about the condition of the victim. Devi Prasad



(PW-3) and Beena (PW-1) rushed to the spot, while Satpal (PW-10) went to inform the police. On being inquired, Amar informed that he was stabbed by Vijay @ Champion @ Pahari and Mohan @ Akkar. When he was being taken to hospital in a rickshaw, PCR van approached them. Amar was made to board the said van and was taken to Ram Manohar Lohia Hospital. While being transported to the hospital, on enquiry he again named the above assailants. Soon after his admission in the hospital, Amar succumbed to the injuries. Ms. Beena (PW-1) made a statement to the police, which became the bedrock of the case. Investigation was taken up. During the course of investigation, the Appellants, besides Sanjay @ Jat, Chander Prakash @ Raheel and Vinod Kumar were arrested. Investigation culminated into a chargesheet against them.

4. On case being committed, the Trial Court framed charges for offences punishable under section 302 read with section 120-B of the Code against the Appellant, namely, Vijay @ Champion @ Pahari, Sanjay @ Jat, Chander Prakash @ Raheel and Vinod Kumar, while charge for offence punishable under section 120-B of the Code was framed against Appellant Mohan @ Akkar, to which charges they pleaded not guilty.

5. To substantiate the charges, prosecution examined (PW-1) Ms. Beena, (PW-2) Om Wati, (PW-3) Devi Prasad, (PW-4) Uma, (PW-5) Anil Kumar, (PW-6) Anil Kale, (PW-7) Ram Kishan @ Kanchi, (PW-8) Devender @ Bobby, (PW-9) Surender @ Balli, (PW-10) Satpal @ Chattar Singh, (PW-11) Dr. G. Prakash, (PW-12) Puran, (PW-13) Dr. G.K. Sharma, (PW-14) Madu Ram, (PW-15) Baldev, (PW-16) Const. Netra Singh, (PW-17) Risalo Devi, (PW-18) Rakesh @ Pappu, (PW-19) Const. Kafil Ahmed, (PW-20) Const. Ramesh, (PW-21) Const. Jangli Ram, (PW-



22) Const. Roop Chand, (PW-23) Ramesh, (PW-24) Const. Jai Prakash, (PW-25) Const. Naresh Kumar, (PW- 26) Const. Roop Chand, (PW-27) Insp. Devender Singh, (PW-28) SI Joginder Singh, (PW-29) SI Lal Saheb, (PW-30) HC Surender Singh, (PW-31) HC Jagdish Chander, (PW-32) Shri Praveen Kumar, (PW-33) HC Surender Singh and (PW-34) Insp. Nirnanjan Singh in the case.

6. Out of the witnesses, referred above, Ms. Beena (PW-1), Om Wati (PW-2), Devi Prasad (PW-3), Uma (PW-4), Anil Kumar (PW-5), Satpal (PW-10), Puran (PW-12) and HC Surender Singh (PW-30) were brought in the witness box to prove the dying declaration made by the deceased. Anil Kale (PW-6), Ram Kishan @ Kanchi (PW-7), Devender (PW-8), Surender, Risalo Devi (PW-17) and Rakesh @ Pappu (PW-18) were examined to prove the facts as to who stabbed Amar. Ramesh (PW-23) and Baldev (PW-15) identified the dead body of the deceased. Madu Ram (PW-14) was brought in the witness box to prove his ownership of vehicle bearing registration No. DL 8C A 7651 and as to who was driving it on the date of incident. Const. Netra Singh (PW-16), Const. Kafil Ahmed (PW-19), Const. Ramesh (PW-20), Const. Jangli Ram (PW-21), Const. Roop Chand (PW-22), Const. Jai Prakash (PW-24), Const. Naresh Kumar (PW-25), Insp. Devender Singh (PW-27), HC Jagdish Chand, HC Surender Singh (PW-33) and SI Joginder Singh (PW-28) were examined to prove certain investigative steps, formal facts and link evidence. Dr. G. Prakash (PW-11) prepared the MLC of Amar while Dr. G.K. Sharma conducted autopsy on his dead body. Shri Praveen Kumar (PW-32), Civil Judge, has been brought in the witness box to prove refusal statements of accused Sanjay and Chander Prakash to join the test identification parade. SI Lal Saheb



(PW-29) conducted investigation in initial stages while Insp. Niranjana Singh (PW-34) took investigation after registration of the case and concluded it.

7. When examined to give an opportunity to explain circumstances appearing in evidence against them, the Appellants as well as other accused persons adopted posture of denial simpliciter. No evidence in defence was examined in the matter.

8. After hearing arguments, other accused persons were acquitted of the charges, while the Appellants were convicted and sentenced for the offences, referred above.

9. We have heard learned counsel for the Appellants, and Mr. Aashneet Singh, learned APP for the State at length.

10. Much has been spoken by Id. counsel for the Appellants on the contents of Ex. PW 34/D-1 and the statement of HC Surrender Singh (PW-30). He argued that contents of the above document discard the facts testified by HC Surrender Singh (PW-30), wherein he unfolds that Amar, while being transported to the hospital in PCR van, uttered that he was stabbed by Mohan @ Akkar and Vijay @ Champion @ Pahari. According to Id. counsel for the Appellants contents of Ex. PW34/D-1 completely negate the factum of any dying declaration made by Amar till he was handed over to the duty constable at the emergency ward of RML Hospital. He relies heavily on the contents of that document to claim that Amar had not made any dying declaration till he was brought in the emergency ward, otherwise that fact would have been incorporated by HC Surrender Singh in message Ex. PW 34/D-1, flashed by him to police control room.



11. To appreciate the submission made by Id. counsel for the Appellants, as referred above, facts testified by the witness are to be scanned. HC Surrender Singh (PW30) was on duty on PCR van No. V-7 along with HC Balbir Singh and Const./Driver Mehak Singh on the night intervening 12 - 13 March 1998, as unfolded by him. He details that at about 11:50 pm a wireless message from police control room was received to the effect that one person was lying injured in a pool of blood near 112 Quarters, Lady Harding Hospital, Panchkuian Road, which information was recorded in the call book and they reached the spot. Injured was having stab wounds, whose name was later on revealed as Amar son of Jaganath. He was made to sit in PCR van along with his cousin sister Babita and neighbours Satpal (PW-10) and Anil Kumar (PW-5). On the way to the hospital Ms. Beena (PW-1) asked Amar as to who had stabbed him. Crying with pain, Amar uttered that he was stabbed by Mohan @ Akkar and Vijay @ Champion @ Pahari. They (three police officials) have heard the conversation, which took place between Ms. Beena (PW-1) and Amar. They got him admitted in the emergency ward of RML Hospital. During the course of cross-examination, he declares that he had told SHO Mandir Marg, who came in the hospital in his presence, that Amar told Ms. Beena (PW-1), Anil (PW-5) and Satpal (PW-10) in PCR van in their (police officials) presence that he was stabbed by Vijay @ Champion @ Pahari and Mohan @ Akkar. He admitted that wireless message, shown to him in the form of a photocopy, was flashed by him to police control room. The said photostat copy was marked as Mark A. When Insp. Niranjan Singh (PW-34) was facing the cross- examination, contents of Mark A were admitted on behalf of the prosecution and as such it was exhibited as Ex. PW34/D-1.



12. Ex. PW34/D-1 brings it to the light of the day that wireless message was transmitted to PCR van at 12:02 a.m. and the van reached at the spot 12:04 a.m. It has been detailed therein that Amar Singh son of Jaganath resident of 112 type-1, Lady Harding Hospital quarters, was having four stab wounds. He was handed over to duty constable in RML Hospital in an unconscious state. His two sisters were with him and it was not known as to who had stabbed him.

13. When dissected, contents of Ex. PW34/D-1 clarifies that HC Surender Singh (PW-30) had a dialogue with Ms. Beena (PW-1) from whom he came to know that Amar Singh was son of Shri Jaganath and residing in a 112 Quarters type-1 of Lady Harding Hospital, Delhi. On enquiry or cursory examination of the body of Amar it is revealed that there were four stab wounds on his person. He claims that Amar was unconscious when handed over to duty constable at emergency ward of RML Hospital. As far as presence of relations of Amar is concerned, it is mentioned in the document that his two sisters were with him. The contents of the document lay emphasis that the names of the assailants were not known by the time it was flashed to police control room authorities.

14. To ascertain as to whether contents of Ex. PW 34/D-1 are acceptable on its face value, it has to be examined in the light of the surrounding circumstances brought over the record through the witnesses examined by the prosecution. Dr. G. Prakash (PW-11), who examined Amar in the emergency ward, unfolds that the patient came to causality with multiple stab wounds and massive blood loss. His clothes were blood stained. He was drowsy but arousable and restless. Smell of alcohol was positive, as mentioned in Ex.PW11/1. As per this document, HC Surender Singh (PW-



30) had brought the victim to the hospital. This document explains that the patient was handed over by HC Surender Singh (PW-30) to Dr. G. Prakash (PW-11) and not to the duty constable, present in the emergency ward. Doctor found the patient to be drowsy but arousable and restless.

15. In medicine, an “arousable” state is described as the ability to be woken or brought to a state of alertness and responsiveness from sleep, unconsciousness or anesthesia, involving the brain’s systems that control wakefulness, alertness and readiness to act. It also refers to the capacity for sexual or psychological excitement indicating a patient’s level of consciousness or reactivity to stimulation. Since Amar was arousable, it means the doctor could wake him up or get him to respond, indicating that his brain was functioning enough to achieve wakefulness and react to the environment. This term is often used to assess a patient’s level of consciousness or responsiveness by some form of stimulation, such as a loud noise, touch or pain, from a stuporous state.

16. Therefore, contents of Ex. PW11/1 discards the claim that the patient was unconscious, when he was examined by Dr. G. Prakash (PW-11) in the emergency ward. It is emerging that the facts detailed in Ex. PW34/D-1 are in contradiction to the facts recorded by the doctor, on the above two counts, viz, he was handed over in the custody of doctor and not to the duty constable and was arousable, not unconscious.

17. HC Surender Singh (PW-34) records in Ex. 34/D-1 that two sisters of Amar were present in the hospital. As per the testimony of Ms. Beena (PW-1) she reached the scene, where Amar was lying in a pool of blood, in an injured condition. He was removed to the hospital by her along with Anil (PW-5) and Satpal (PW-10) with the help of PCR officials. In his



testimony HC Surender Singh (PW-30) admits that Ms. Beena (PW-1), Satpal (PW-10) and Anil made the victim sit in the PCR van and accompanied him to the hospital. Thus, as per the facts testified by Ms. Beena (PW-1) and reaffirmed by HC Surender Singh (PW-30), Ms. Beena (PW-1) went to the hospital in the PCR van when Amar was transported there. Om Wati (PW-2) deposed that she along with Uma (PW-4) went to RML Hospital and found Amar admitted there. Uma (PW-4) also testified facts in the same vein. These facts bring it over the record that besides two real sisters of Amar, namely, Om Wati (PW-2) and Uma (PW-4), cousin sister, namely, Ms. Beena (PW-1), were present in the emergency ward of the hospital. Instead of detailing that there were three sisters of the victim in the hospital, HC Surender Singh (PW-30) records in Ex. PW 34/D-1 that two sisters of the victim were present in the hospital.

18. Though in Ex. PW34/D-1 HC Surender Singh (PW-30) spells that it was not known as to who stabbed the victim, yet in his testimony before the court he deposes that Amar told on enquiry to Beena (PW-1) that he was stabbed by Vijay @ Champion @ Pahari and Mohan @ Akkar. He declares that the said conversation was heard by him besides the other two police officials, present with him at that time. During the course of cross-examination, he declares that he had told SHO Mandir Marg, who came in the hospital in his presence, that Amar told Ms. Beena (PW-1), Anil (PW-5) and Satpal (PW-10) in PCR van in their (police officials) presence that he was stabbed by Vijay @ Champion @ Pahari and Mohan @ Akkar. Thus, it is evident that contents of Ex. PW34/D-1 are in contradiction with various facts testified by this witness himself, not to talk of the facts unfolded by Ms. Beena (PW-1) and Dr. G. Prakash (PW-11).



19. Out of discrepant facts testified by HC Surender Singh (PW-30), can it be said that facts detailed in Ex. PW 34/D-1 project the truth and those unfolded by him in his testimony are sheer lies. For reaching a conclusion either way, first we have to notice as to what weight has been given to his testimony by the Trial Court. When it was argued before the Trial Court that testimony of HC Surender Singh (PW-30) is not reliable, since his statement was recorded by the investigating officer after 50 days of the incident, the Trial Court discarded that contention. It would be apposite to note down the observation of the Trial Court, recorded as follows:

“I do not agree with the ld. counsel of the accused. The mere delay in recording the statement of a witness by itself does not make the witness unreliable. Reliance can be placed on Ranbir vs State 1973 S.C. 1409. It was vehemently argued that this witness has been introduced by the Investigation Officer. Had this witness heard that Amar had told names of Vijay @ Champion @ Pahari and Mohan @ Akkar as assailants, this witness would not have hesitated in furnishing this message to the Police Control Room. Learned counsel for the accused has vehemently argued that since nothing was known up to 00:44 hours on 13.3.98 and Amar had died at 12:30 AM as is evident from the death summary Ex. PW 13/DA, therefore, it can be said that the story of the dying declaration has been falsely introduced..... The witness cannot be condemned without affording him an opportunity. If the document Ex. PW34/D-1 was intended to be utilized by the accused as a previous statement of the witness (PW-30), it was incumbent upon him (accused) to



have drawn the attention of the witness to clarify the position in this regard in view of section 145 of the Evidence Act..... It was not inquired from the witness as to why this particular fact was flashed by him when he claims to have heard that Amar had told him that he was stabbed by Vijay @ Champion @ Pahari and Mohan @ Akkar. Had the attention of the witness been drawn to contradict him with the message Ex. PW34/D-1, the witness may or may not have given any explanation. Had he been given an opportunity and had he given a reasonable explanation the matter would have been different. In the absence of compliance of section 145 of the Evidence Act, I am not going to extend any benefit of this particular fact to the accused. Reliance can be placed on “State of Gujrat vs Hira” AIR 1964 Gujrat 261 (at page 264).”

20. It is a settled proposition of law that where there is a conflict of oral evidence on any matter in issue and its resolution turns upon the credibility of the witnesses, the general rule is that the Appellate Court should permit the findings of fact rendered by the trial court to prevail unless it clearly appears that some special feature about the evidence of a particular witness has escaped the notice of the trial court or there is a sufficient balance of improbability to displace its opinion as to where the credibility lies. See **W.C. Macdonald v. Fred Latimer (AIR 1929 P.C. 15)**.

21. It is a cogent circumstance that a judge of first instance, when estimating the value of verbal testimony has the advantage (which is denied to courts of appeal) of having the witnesses before him and observing the manner in which their evidence is given. **Watt v. Thomas, 1947 AC 484**,



relied with approval in *Sara Veeraswami @ Sara Veerraju v. Talluri Narayya*, AIR 1949 P.C. 32. Also see *Sarju Parshad v. Raja Jwaleshwari Pratap Narain Singh* (1950 SCR 781).

22. An Appellate Court can discard testimony of a witness, relied upon the Trial Court, if it is found unreliable, inconsistent or contradictory to material evidence brought over the record, despite having been accepted previously. While Appellate Court generally respects the findings recorded by the Trial Court, but it can discard the same if the Trial Court ignored critical discrepancies or acted in a perverse manner. An Appellate Court may discard the testimony of a witness, relied by the Trial Court, if there are material discrepancies that corrode credibility of the witness. In case of a witness found to be an interested witness, his testimony is to be scrutinized with a great caution. This approach should be kept in the forefront while considering whether the testimony of a witness can be found to be reliable by the Trial Court, ruled the Apex Court in *Madhusudan Das vs Smt. Narayani Bai*, AIR 1983 SC 114.

23. While testifying facts before a court, the testimony of a witness is not a mere mechanical repetition or transcription of past events. A witness in testifying to things seen or heard or felt is inevitably making judgments on or inferences from what he has seen, heard or felt. During articulating the facts into words, which were perceived by him at a given point of time, the witness makes recall of those events from his memory. His tone, in which he is making a statement, hesitation or readiness with which answers are given, the look of the witness, his courage and gestures etc. make the trial judge to form an opinion about the value of facts testified by the witness. The demeanor of the witness, noted down by the Trial Court, leads



them to form an opinion about the veracity of the facts testified by him. These are the reasons that the Appellate Court generally respects the opinion formed by the Trial Court about the veracity of facts testified by a witness.

24. Except the fact that it is mentioned in Ex. PW-34/D-1 “It was not known as to who had stabbed him”, no special features came to our notice when we scrutinized the entire facts detailed in the testimony of HC Surender Singh (PW-30), which may persuade us to form a different opinion about the veracity of this witness than one formed by the Trial Court. Except the last line, which has been reproduced above, contents of Ex. PW-34/D-1 are in sync with the facts testified by this witness as well as Ms. Beena (PW-1), relating to the dying declaration made by Amar. Other circumstances detailed in this document get reaffirmation from the facts unfolded by Devi Prasad (PW-3), Satpal (PW-10) and Puran (PW-12) also. However, the recital made in Ex. PW-34/D-1 boggles our mind and constrains us to look at the psychological process in which facts are perceived, recalled and articulated into words by a witness, to form an opinion as to whether the said recital has nugget of truth or the witness went in oblivion while recording the contents of the said documents.

25. How process of perception of events, its recollection and articulation of those circumstances into words takes place when a witness is called upon to testify facts? For an answer we have to pass through the pages of psychological research made from time to time. Perception may be regarded as process by which sensations are classified, interpreted and given meaning by the perceiver. Perception is the active process of selecting, organizing and interpreting sensory information from sight,



sound, touch, taste, smell and body awareness to understand and make meaning of the environment/circumstance, turning raw data into a coherent experience influenced by our past experiences, beliefs and context. It is more than just sensation as to how our brain actively constructs our reality, allowing us to recognize objects, navigate our environment and form responses. Perception involves signals that go through the nervous system, which in turn result from physical or chemical stimulation of the sensory system.

26. The process of perception begins with an object in the real world, known as the distal stimulus or distal object. Sensory organs transform the input energy into neural activity- a process called transduction. There are many factors which may influence the perception of the perceiver, while three major ones include: (i) motivational state, (ii) emotional state and (iii) experience.

27. Experience of HC Surender Singh (PW-30) happened to be the factor which influenced his sensory stimulus at that time. Though HC Surender Singh (PW-30) is a trained police officer, but at the relevant time he was performing para-police functions, being posted in police control room. Officials posted in police control room are not supposed to perform the duties of crime prevention, investigation of crimes and maintenance of law and order. It is a matter of common knowledge that the police control room is the central hub for police operations responsible for: (i) emergency response-acting as the public's first point of contact for emergencies, handling calls and dispatching resources, (ii) maintaining records of operational acts such as dispatches, which are crucial for legal proceedings, (iii) connecting all police stations and ensuring proper execution of law and



order, (iv) taking decisions during critical situations and directing officers on the spot, and (v) keeping track of police forces and ensuring timely communication of important events.

28. After getting Amar admitted in the emergency ward, next action of HC Surender Singh (PW-30) was to inform his authorities about the circumstances noted and acts performed by him, in discharge of his duties. As noted above, he was performing duties, ancillary to police functions. His experience dragged him to tunnel vision mode, when he was recording the contents of Ex. PW-34/D-1. Klinger in his paper: “*Into the Kill Zone: A Cop's Eye View of Deadly Force, 2004*”, found that in any given situation, we may focus on the central characteristics of that situation in the belief that we have identified the core, the most important element and are led to a dangerously narrow perspective. Tunnel vision metaphorically denotes a collection of common heuristics and logical fallacies that lead individuals to focus on cues that are consistent with their opinion and filter out cues that are inconsistent with their view point.

29. A cognitive bias from past experience with a specific solution makes people stick to it, which process is known as Einstellung effect. Human brain favours a familiar solution for efficiency, creating a tunnel vision mode. It often affects experts most, as their deep knowledge makes them less likely to question their established methods. Once a solution comes to mind, attention narrows, preventing consideration of alternatives, even if they are superior. (See *Merim Bilalic: Why good thoughts block better ones: the mechanism of pernicious Einstellung (set) effect, 2008*).

30. Since HC Surender Singh (PW-30) was concerned with handling the situation, as ancillary to police function, his past experience might have



led him to confirmation bias, as he had been recording the wireless message relating to transportation of the victim to the hospitals or police stations. With this tunnel vision, his brain functioned only to the aspect of recollection of certain events, necessary for performance of his duties. Duty of ascertaining identity of a criminal was not performed by him, hence this was what led him into the narrow perspective of recording facts in that regard.

31. Memory is usually divided into three storage systems: (i) sensory, (ii) short-term, and (iii) long term. Sensory memory is affiliated with the transduction of energy (change from one form of energy to another). The body has special sensory receptor cells that transduce external energy to something the brain can understand. In the process of transduction, a memory is created. This memory is very short and termed as sensory memory. After entering sensory memory, a limited amount of information is transferred into short term memory. Selective attention determines what information moves from sensory memory to short-term memory. Short-term memory has a very limited duration from 3 to 20 seconds. This is called working memory and relates to 7 numbers plus or minus 2 at a given time. George A. Miller in his paper: *The Magical Number Seven, Plus or Minus Two: Some Limits on Our Capacity for Processing Information*, (1956, Harvard University) found that the amount of information which can be remembered on one exposure is between 5 and 9 items, depending on the information, which can be held in short-term memory, in respect of one aspect. The information encoded, organized and transferred for storing and retrieval is called long-term memory. Long-term memory is stored in schemas and this whole process of perception, encoding and retrieval is



known as cognitive information processing. A sensory memory which remained in short-term memory and transferred to long-term memory may become permanent on being rehearsed. In cognitive information process the brain gathers information through the senses known as “bottom up processing” and “top-down processing”.

32. Memory recall is the mental process of retrieving past information or experiences from long term storage. The ability to retrieve and recognize information and experiences from past can be termed as: (i) free recall, (ii) cued recall, and (iii) serial recall. Free recall often displays evidence of primacy and recency effect. Cued recall is when a person is given a cue to recall the facts. Serial recall is the ability to recall items or events in the order in which they occurred. To store a sequence in long term memory, it is repeated over time until it is represented in a memory as a whole, rather than as series of items.

33. Attention, motivation, interference, context, state dependency, gender, physical activity etc. are the factors which affect a person’s memory recall capacity. Metacognition serves a self-regulatory purpose whereby the brain can observe errors in processing and actively devote resources to resolve the problem of recall of the memory.

34. The cognitive process, referred above, works automatically at a given time.

35. Coming to the facts of the controversy, the dying declaration was made by Amar when it was inquired, at the time of making him board the PCR van, as to how he sustained stab injuries. At that juncture, it seems that the focus of HC Surender Singh (PW-30) was on transporting the victim to the hospital at the earliest. The declaration, relating to the factum



of being stabbed by Vijay @ Champion @ Pahari and Mohan @ Akkar, was paid less attention by HC Surender Singh (PW-30) and as such he could not recollect it from his short-term memory, when he was recording message Ex. PW-34/D-1. It seems that when the said message was flashed, either HC Balbir Singh or Const./Driver Mehak Singh might have given him the cue about the dying declaration, so made by Amar. On getting this cue, the information was rehearsed by this witness and it became permanent in his long-term memory. He could tell SHO Niranjan Singh (PW-34) about that declaration, when the latter met him in the hospital. This aspect of his testimony remained un-assailed, during the course of his cross- examination. He was not confronted with contents of Ex.PW-34/D-1, apprehending that he would disclose as to how the factum of dying declaration, made by Amar, could not be recorded in that document.

36. Cognitive process, in which aspect of the dying declaration made by Amar in the presence of HC Surender Singh (PW-30), not being recorded in Ex. PW-34/D-1, makes us to believe that no dichotomous statement has been made by HC Surender Singh (PW-30). Slip of not recording “it was not known as to who had stabbed him”, occurred since HC Surender Singh (PW-30) was in a tunnel vision mode, much more persuaded by his past experiences, while serving in police control room. Therefore, we find that the above discrepancy occurred in the statement of HC Surender Singh (PW-30) since he was dragged by his cognitive process in tunnel vision mode, due to his past experiences while working on PCR van. Sensory stimuli, which reached his long-term memory, on hearing the contents of dying declaration, could not be recalled when message Ex. PW-34/D-1 was flashed by him. On getting a cue from the other police officers,



present in PCR van, he rehearsed the contents of dying declaration, which became permanent in his memory. He detailed those facts to the SHO, when he met him in the hospital. When entered into the witness box, he could recall that very information and testify facts before the Trial Court. Therefore, it is concluded that in Ex. 34/D-1 facts were presented by him being in tunnel vision mode and when given a cue on rehearsal the contents of dying declaration, he could recall the same before the SHO as well as before the Trial Court. The Einstellung effect suffered by this witness could show this gap in the document Ex. PW34/D-1 and his testimony, when he entered the witness box. There is no dichotomy in his testimony. Arguments, advanced on this count, are nothing but a factoid, hence brushed aside.

37. The claim, that Ms. Beena (PW-1) is not a reliable witness, is farther from the truth. She happens to be the cousin sister of the deceased, to whom the information was passed on by Satpal (PW-10) at the first possible opportunity. She along with Devi Prasad (PW-3) rushed to the spot, where Amar was lying in a pool of blood, after receiving multiple stab injuries. She inquired as to how Amar sustained those injuries. This was her first response to the circumstances to which she was confronted. Ms. Beena (PW-1) acted in consonance with ordinary human behaviour. At that juncture Amar informed her about his assailants, while groaning in pain. Steps were taken by Ms. Beena (PW-1) to remove the injured to hospital. On their way to hospital, PCR van met them. When Amar was made to board PCR van, a spontaneous inquiry seems to have been made by the police officials as to who stabbed Amar. At that juncture, to have an answer from the mouth of the injured himself, she might have inquired Amar



again, who repeated the name of the assailants before the police officials also. No circumstance is brought to our notice which may show that there was any abnormality in the behaviour of Ms. Beena (PW-1) in making inquiry again from the victim about his assailants.

38. Her testimony is questioned that she had not told the police till 01:30 a.m. on that night about the contents of dying declaration, claiming till that time no one had divulged the name of the assailants. Claim in that regard is nothing but quibbles of advocacy. Dying declaration was also made by Amar in presence of officials of PCR van, who happen to be the members of the police force. When Amar got admitted in the hospital, attention of Ms. Beena (PW-1) or their other relations was to get the best treatment to save his life. Om Wati (PW-2) unfolds that Uma (PW-4) helped the doctor in the emergency ward, since she is a nurse. On this count Om Wati (PW-2) deposed that when Amar was in the emergency ward, during that period she remained with him. Thus, from the facts testified by these witnesses, it crept over the record that everyone was busy to take steps to save the life of the victim. It is not expected of Ms. Beena (PW-1) that at that juncture she would make a hue and cry in order to tell the name of the assailants to the police officials amidst the chaos.

39. As has emerged out of the MLC (Ex. PW11/1), Amar was admitted in the emergency ward at 12:25 a.m. At 12:30 a.m. Lal Saheb (PW-29) approached the doctor for seeking permission to record statement of Amar and at that juncture Amar was reported to be unfit for statement and succumbed to his injuries at 12:30 a.m. Thus, till 12:30 a.m. Amar was there in the emergency ward and everyone was busy in taking steps for his care. When Amar was declared dead, Ms. Beena (PW-1) unfolds that they



started lamenting his death. Uma (PW-4) deposed that she along with Om Wati (PW-2) were also weeping, when they reached the emergency ward. This fact brings it to light that at the moment when Amar breathed his last, his sisters started crying in grief. In such a situation it cannot be expected that Ms. Beena (PW-1) would rush towards the police officer for getting her statement recorded. We find no abnormality in the fact that she could spell the name of the assailants before SI Lal Saheb (PW-29) for the first time at 1:30 a.m.

40. As detailed Ex. PW29/1, rukka was sent for recording the FIR at 02:10 a.m. The incident of Amar lying in a pool of blood was brought to the notice of Ms. Beena (PW-1) at about 11:45 p.m. She rushed to the spot and Amar got admitted in the hospital at 12:25 a.m. He was declared unfit for statement. Thereafter he was declared dead at 12:30 a.m. Rukka was sent, at the time mentioned above and after recording the FIR, DD No. 40 A was recorded at 02:25 a.m. Thus, it emerged that the FIR was promptly recorded and there is no force in the contention that there was delay in recording the FIR.

41. HC Surender Singh (PW-30) got Amar admitted in the emergency ward. He was the officer who approached the doctor along with the victim. MLC Ex. PW11/1 was recorded by Dr. G. Prakash (PW-11) and he recorded that the patient was brought by HC Surender Singh (PW-30). There was no occasion for the doctor to record the names of the other persons in the MLC who took the victim to the emergency ward, in the PCR van. Arguments to this effect that names of relatives of the victim were not recorded in the MLC are completely unfounded and discarded.

42. As noted, Amar was drowsy and arousable when he was got



admitted in the emergency ward. Due to huge loss of blood, he became unfit for statement and ultimately succumbed to his injuries at 12:30 pm. Dying declaration, as unfolded Ms. Beena (PW-1) and HC Surender Singh (PW-30), was made by him when he was questioned by Ms. Beena (PW-1) on finding him lying in the pool of blood and subsequently during the process of transporting him to the hospital. Since he was in arousable state, he was capable of making a dying declaration before Ms. Beena (PW-1) as well as officials of police control room. Contention of Id. counsel for the Appellants, on the count that on being declared unfit for statement Amar was not in a position to make a dying declaration, is not found acceptable.

43. Ex. PW-11/1 nowhere details that any fact was told by the victim to the doctor. HC Surender Singh (PW-30) got the victim admitted and was not expected to tell the doctor that a dying declaration was made before him. Furthermore, Ms. Beena (PW-1) was not required to detail the fact of dying declaration made in her presence, to the doctor who was attending the victim. Under these circumstances, names of the assailants were not divulged before Dr. G. Prakash (PW-11). There was no occasion for him to record the name of the assailants in Ex. PW11/1. Submissions of learned counsel for the Appellants are unfounded on this count too.

44. On turning to the facts of controversy, it is noted that Ms. Beena (PW-1) deposed that on being informed by Satpal (PW-10), she along with her brother Devi Prasad (PW-3) rushed towards the staircase of the house of the former, where Amar was found lying in a pool of blood. He was crying with pain. On inquiry he said that he was stabbed by Vijay @ Champion @ Pahari and Mohan @ Akkar. In the meantime, Anil also reached there. When they were proceeding towards hospital in a rickshaw,



PCR van reached. Satpal Pradhan was sitting in PCR van. Amar was made to sit in PCR van and she along with Anil also boarded it. On the way to hospital, when (again) inquired Amar said that he was stabbed by Vijay @ Champion @ Pahari and Mohan @ Akkar.

45. Above statement of Ms. Beena (PW-1) brings it to light that Amar made a dying declaration. Dying declaration is a statement made by a person as to the cause of his death or as to the circumstances of the transaction resulting in his death. The grounds of admission of a dying declaration are: firstly, necessity for the victim being generally the only principal eye witness to the crime, the exclusion of his statement might defeat the ends of justice; and, secondly, the sense of impending death, which creates a sanction equal to the obligation of an oath. The general principle on which this species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth: a situation so solemn and so lawful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a court of justice.

46. A statement becomes admissible under section 32 (1) of the Evidence Act, only when cause of declarant's death comes into question. As noted above, Amar declared before Ms. Beena (PW-1) and officials of PCR van that he was stabbed by Vijay @ Champion @ Pahari and Mohan @ Akkar. Ex. PW11/1, the MLC of Amar, highlights that he got admitted in the hospital with four stab injuries. Soon after his admission, he succumbed to those injuries. Autopsy report Ex. PW13/1 gives



confirmation to the fact that there were four stab wound on the body of the deceased. Those injuries were ante-mortem and fresh, caused by a sharp object. Injuries resulted into the death of the victim. Death of Amar is in question in the present controversy, when Appellants and others were tried for his murder.

47. In ***Sharad Birdi Chand Sharada vs State of Maharashtra, AIR 1984 SC 1622***, the Hon'ble Supreme Court formulated, on review of the cases following provisions:

“(1) Section 32 is an exception to the rule of hearsay and makes admissible the statement of a person who dies, whether the death is a homicide or a suicide, provided the statement relates to the cause of death, or exhibits circumstances leading to death. In this respect, as indicated above, the Indian Evidence Act, in view of the peculiar conditions of our society and the diverse nature and character of our people, has thought it necessary to widen the sphere of s.32 to avoid injustice.

(2) The test of proximity cannot be too literally construed and practically reduced to a cut-and-dried formula of universal application so as to be confined in a straitjacket. Distance of time would depend or vary with the circumstances of each case. For instance, where death is a logical culmination of a continuous drama long in process and is, as it were, a finale of the story, the statement regarding each step directly connected with the end of the drama would be admissible because the entire statement would have to be read as an organic whole and not torn from the context.”



48. A dying declaration may be oral, or it may be reduced to writing by a Magistrate or any other person, but in either case it must be duly proved. The method of proving the record of such a declaration is to examine the person who was present at the time and heard the statement being made. A statement purporting to be a dying declaration should be admitted or rejected as a whole. In ***Khushal Rao vs State of Bombay, AIR 1958 SC 22***, the Hon'ble Apex Court laid down reliability test of dying declaration, as follows:

“(1) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated;

(2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made;

(3) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence;

(4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence;

(5) that a dying declaration which has been recorded by a competent magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends



upon oral testimony which may suffer from all the infirmities of human, memory and human character, and

(6) that in order to test the reliability of a dying declaration, the Court has to keep in view the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.”

49. Principles governing dying declaration, laid down by the Hon’ble Apex Court in several judgments, are summed up as under:

(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (*Munnu Raja vs State of M.P. (1976) 3 SCC 104*).

(ii) If the court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (*State of U.P. vs Ram Sagar Yadav (1985) 1 SCC 552*), (*Ram Wati Devi vs State of Bihar (1983) 1 SCC 211*), and (*Jose vs State of Kerala, (1994) Supp. (3) SCC 1*).

(iii) This court has to scrutinize the dying declaration



carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. (*K. Ramachandra Reddy vs. Public Prosecutor*, (1976) 3 SCC 618).

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (*Rasheed Beg vs State of M.P.*, (1974) 4 SCC 264).

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it to be rejected. (*Kake Singh vs State of M.P.*, AIR 1982 SC 1021).

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (*Ram Manorath vs State of U.P.*, (1981) 2 SCC 654) and (*Jagga Singh vs State of Punjab*, AIR 1995 SC 135).

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (*State of Maharashtra vs Krishnamurti Laxmipati Naidu*, AIR 1981 SC 617).

(viii) Merely because a dying declaration is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantee truth. (*Surajdeo Oza vs State of Bihar*, AIR 1979 SC 1505).



(ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration should look up to the medical opinion. But where the eye witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (*Nanahau Ram vs State of M.P.*, AIR 1988 SC 912).

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (*State of U.P. vs Madan Mohan*, (1989) 3 SCC 390).

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. (*Mohanlal Gangaram Gehani vs State of Maharashtra*, AIR 1982 SC 839).

(xii) Of course, if there are plurality of dying declarations, to be held to be trustworthy and acceptable, they have to be accepted. (*Paniben vs State of Gujrat*, (1992) 2 SCC 474).

(xiii) If after careful scrutiny, the court is satisfied that declaration is true and free from any effort to induce the deceased to make a false statement, and coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration. (*Atbir vs Govt. of NCT Delhi*, (2010) 9 SCC 1).

(xiv) A truthful and voluntary dying declaration, made when



the declarant was in a fit state of mind, can form the basis of conviction even in the absence of medical certification or independent corroboration. (*Laxman vs State of Maharashtra*, (2002) 6 SCC 710).

50. It is not a case where there were feelings of animosity between the Appellants on one hand and the victim on the other. Contra to it Mohan @ Akkar takes a step ahead to project that he was friendly with the deceased and assisted his family members, when the victim was admitted in the emergency ward. Why the victim names the Appellants as his assailants, in case they have not perpetuated the crime? Not even an iota of fact has come over the record to decipher that the victim was made to spell the names of the Appellants as his assailants. The Appellants could not project any cue that there were reasons with Ms. Beena (PW-1) to induce Amar to make such a declaration. All these aspects indicate that the dying declaration, made by Amar, was voluntary and true.

51. Nothing is there over the record to give an inference that the dying declaration, made by Amar, was a result of tutoring, prompting or instigating him to speak so by Ms. Beena (PW-1), his cousin sister. When Ms. Benna faced ordeal of cross-examination, nothing was suggested to her, to project that the dying declaration, made by Amar suffers from an infirmity. The only contention advanced was that Amar was not in a fit state to make a dying declaration, which assertion is negated by the fact that even at the time of admission in the hospital Amar was in arousable state. While being in an arousable state, Amar was made alert by Ms. Beena (PW-1), asking him in a loud voice as to who had assaulted him. To the stimuli, which was followed by touch of his body by Ms. Beena (PW-



1), Amar declared that he was stabbed by Vijay @ Champion @ Pahari and Mohan @ Akkar. These factors make us reach the conclusion that Amar was in a fit mental condition and declared before Ms. Beena (PW-1) that he was stabbed by Vijay @ Champion @ Pahari and Mohan @ Akkar, which dying declaration satisfies the standards of evidentiary value, as detailed above.

52. A hue and cry was raised that when Amar made a dying declaration before Ms. Beena (PW-1), when she reached the place where he was lying in a pool of blood, what occasion was there for her to ask him again about the name of the assailant, when he was being transported in PCR van to the hospital? It is argued that the story of asking Amar again to name the assailants was coined with a view to introduce HC Surender Singh (PW-30) as a witness to the declaration, so made. When officials of PCR van approach a scene of crime, they try to ascertain as to who has been wronged and by whom, with a view to facilitate assistance to the victim and transporting the assailant to local police, if available at the spot. Here in this case too, when Amar was made to board the PCR van, such a question was put and to get an answer from the victim himself, Ms. Beena (PW-1) would have asked Amar and then he declared the name of the assailants before the PCR officials too. Conduct of Ms. Beena (PW-1), in asking again Amar about the name of the assailants, is in consonance with ordinary human behaviour. Nothing abnormal is found to make the subsequent dying declaration suspicious. Submissions, so made, are hereby discarded.

53. The dying declaration, made by Amar, is brief and specific. He declared that he was stabbed by Vijay @ Champion @ Pahari and Mohan



@ Akkar. His declaration is so concise and straight that there cannot be any chance of forgetting it by Ms. Beena (PW-1), who was anxious to know the names of his assailants. The said dying declaration, proved by Ms. Beena (PW-1) is found worthy of reliance. The subsequent dying declaration, made before HC Surender Singh (PW-30), substantiates the facts unfolded by Ms. Beena (PW-1). Therefore, the dying declaration made by Amar is acceptable and sufficient to adjudicate the accountability of the Appellants, to the crime committed.

54. Witnesses, namely, Om Wati (PW-2) and Uma (PW-4), were disbelieved by the trial court on the count that they claim that Amar made a dying declaration before them also, when they approached him in the hospital. Anil Kumar (PW-5), Satpal (PW-10) and Puran (PW-12) turned hostile and pushed the prosecution to a corner on that count. Devi Prasad (PW-3) unfolded facts of dying declaration made by Amar in his presence, when his examination in chief was recorded. He entered the witness box after some time, to face the ordeal of cross examination. At that juncture he turned the table and claimed that no dying declaration was made by Amar in his presence. He went on ahead and asserted that in his examination in chief he testified factum of dying declaration being made by Amar in his presence, at the instance of Ms. Beena (PW-1). Therefore, deposition of these witnesses was found deficit, to support the cause of the prosecution.

55. SI Joginder Singh (PW-28) had deposed that he joined the investigation of the case on the night of 14.03.1998 and accompanied Insp. Niranjan Singh (PW-34) to R.K. Puram, Delhi, at the house of Vijay @ Champion @ Pahari. There they came to know that he had gone to the house of his maternal uncle at Karol Bagh, Delhi. Vijay @ Champion @



Pahari was arrested from the house of his maternal uncle after which he suffered disclosure statement Ex. PW28/2, wherein he disclosed that blood stained clothes and knife were kept at the house of his maternal uncle and that he can get the same recovered. Pursuant to the said disclosure statement Vijay @ Champion @ Pahari recovered his T-shirt and jeans pant, which were blood stained. These clothes were sealed and taken into possession vide memo Ex.PW-28/3. Vijay @ Champion @ Pahari made another disclosure statement, declaring therein that he has kept the knife at his house No. 1587, Sector-5, R.K. Puram, New Delhi, from where he can get it recovered. His disclosure statement Ex.PW-28/12 was recorded. Pursuant to the said disclosure statement a knife was recovered, a sketch of which was prepared as Ex. PW-28/13. It was sealed in a parcel and taken into possession vide memo Ex. PW-28/14. T-shirt Ex.P-9, jeans pant Ex.P-10 and knife Ex.P-15 are the same, which were recovered at the instance of Vijay @ Champion @ Pahari. Insp. Niranjana Singh (PW-34) gives confirmation to the facts testified by SI Joginder Singh (PW-28), regarding arrest of Vijay Champion, disclosure statements made by him and recovery of T-shirt Ex. P-9, jeans pant Ex. P-10 and knife Ex. P-15.

56. HC Surender Singh (PW-30) testified about deposition of sealed parcels in intact condition in Malkhana by Insp. Niranjana Singh (PW-34) on 13.03.1998, out of which two parcels were taken by the Insp. Niranjana Singh (PW-34) on 17.03.1998 for obtaining the opinion of autopsy surgeon. Insp. Niranjana Singh (PW-34) speaks that those two parcels, one containing the knife and the other containing clothes of the deceased, were produced before Dr. G.K. Sharma for obtaining his opinion. Dr. G.K. Sharma examined the knife Ex. P-15 and opined that the injuries on the



body of the deceased could be caused by it. He also examined the clothes of the deceased and opined that the cuts on them corresponds to the injuries present on the body of the deceased.

57. Insp. Niranjana Singh (PW-34) declares that the knife and clothes, having the seal of the doctor, besides the exhibits and parcels already deposited in the Malkhana, were sent to CFSL Chandigarh through Const. Roop Chand (PW-26) in intact condition on 26.03.1998, which were deposited there in intact condition on 27.03.1998. These facts get corroboration from events unfolded by HC Surender Singh (PW-30) and Const. Roop Chand (PW-26), who claims to have taken those parcels to CFSL Chandigarh in intact condition vide road certificate No. 166/21.

58. CFSL Report Ex. P-X was obtained, which announces that the blood group of the deceased was B and blood on T-shirt Ex. P-9, jeans pant Ex. P- 10 and knife Ex. P-15 was found to be of human origin of B group. The opinion of Dr. G.K. Sharma to the effect that injuries found on the body of the deceased could be caused by knife Ex. P-15, substantiate the case of the prosecution. These events lend support to the facts of dying declaration, since soon after the crime Vijay @ Champion @ Pahari was arrested and at his instance his clothes stained with the blood of group B and knife Ex.P-15 were recovered. No explanation was put forward as to how his T-shirt Ex. P-9 and jeans pant Ex. P-10 were stained with blood of B group, which happens to be the blood group of the deceased. Therefore, we are of the opinion that the dying declaration, made by the deceased in presence of Beena (PW-1) as well as before HC Surender Singh(PW-30), get support from the events, referred above.

59. Witnesses, namely, Anil Kale (PW-6), Devinder (PW-8), Surrender



(PW-9), Ram Kishan @ Kanchi (PW-7), Rakesh @ Pappu (PW-18) and Madu Ram (PW-14) opted not to support the prosecution. All of them turned hostile and attempted to push the prosecution to the corner.

60. To establish charge for offence of criminal conspiracy, the prosecution is under an obligation to prove following ingredients:

1. Agreement between two or more persons:
 - i. The foundation of criminal conspiracy is the existence of an agreement between two or more individuals. The agreement does not need to be formal or explicit: it can be inferred from the actions or conduct of the parties involved.
 - ii. It is essential to prove that the individual involved had a meeting of minds, intending to cooperate and pursue a common goal.
 - iii. The agreement may involve a single or multiple transactions, but the underlying intention to commit the act must be clear and consistent.
 - iv. It is not necessary for all conspirators to know every details of the plan or every participant in the controversy. However, they must be aware of the overall objective and willingly participate in the agreement.
2. Intention to commit an illegal act or legal act by illegal means:
 - i. The second element of criminal conspiracy is the intention to commit an illegal act or a legal act by illegal means.
 - ii. The conspirator's intention can be inferred from their actions, statements or other circumstantial evidence. The prosecution must establish that the accused



persons shared a common purpose to commit the intended act.

3. Existence of a plan or scheme to execute the intended act:

- i. The third element of criminal conspiracy is the existence of a plan or scheme devised by the conspirators to execute the intended act. This involves making preparation, devising strategies and taking concrete steps towards achieving the common objective.
- ii. The plan or scheme may be simple or complex, depending on the nature of the intended act and the conspirators' involvement. It may evolve overtime and evolve multiple stages, but the ultimate goal should remain consistent.
- iii. Evidence of planning and coordination among conspirators can strengthen the case of criminal conspiracy. This can include communication between the conspirators, division of responsibility or sharing of resource to execute the intended act.

61. Uma (PW-4) is the only witness who espouses the cause of the prosecution for proof of charge of criminal conspiracy against the Appellants. She testified that on 11.03.1998 she was on duty in the hospital in morning hours. At lunch time she was coming to her house. At the backside of house of Mohan @ Akkar, a Maruti van of white colour was standing. Vijay @ Champion @ Pahari and Mohan @ Akkar were talking to each other while three other boys were standing there. She heard Mohan @ Akkar saying to Vijay @ Champion @ Pahari that she was the sister of Amar. Mohan @ Akkar also pointed out towards their house to Vijay @ Champion @ Pahari. The events, so unfolded, bring it to the light that there was a meeting of mind between Vijay @ Champion @ Pahari and Mohan



@ Akkar and the latter identified the witness as to be the sister of the victim, besides pointing out towards their house. A day thereafter, Amar was found lying in a pool of blood, having four stab wounds on his person. as testified by Autopsy Surgeon, those injuries proved to be fatal.

62. Out of facts testified by Uma (PW-4), we have no hesitation to conclude that the prosecution adduced evidence to afford a reasonable ground to believe that Vijay @ Champion @ Pahari and Mohan @ Akkar conspired to murder Amar. Since prima-facie evidence of their having so conspired has been brought over the record, provisions of section 10 of the Evidence Act came into application, which make acts, statements or writing of a conspirator admissible against the other conspirators. Proof of existence of conspiracy and furtherance of its object would fall within the domain of section 10 of the Evidence Act, under the following circumstances:

- i) There should be prima-facie evidence affording a reasonable ground for a court to believe that two or more persons are members of conspiracy;
- ii) If the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other;
- iii) Anything said, done or written by him should have been, done or written by him after the intention was formed by any one of them;
- iv) It would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he



left it;

- v) It can only be used against a co-conspirator and not in his favour.

63. As testified by Uma (PW-4), Vijay @ Champion @ Pahari and Mohan @ Akkar entered into a criminal conspiracy to murder Amar, on 11.03.1998. Amar was stabbed in late hours of night of 12.03.1998, which injuries proved fatal. He succumbed to those injuries after 12:30 a.m. on 13.03.1998. The events unfolded by SI Joginder Singh (PW-28) and Insp. Niranjan Singh (PW-34), relating to the statement made and acts done by Vijay @ Champion @ Pahari, leading to discovery of new facts and recovery of clothes Ex. P-9 and Ex. P-10 and knife Ex. P-15, at his instance, shall be relevant against Mohan @ Akkar also. All events of criminal conspiracy to murder Amar, detailed above, stands established against the Appellants. These circumstances are sufficient to announce that criminal conspiracy to murder Amar was committed by Vijay @ Champion @ Pahari and Mohan @ Akkar and in furtherance of the said conspiracy Amar was murdered.

64. In statement Ex. PW1/1, made to police by Beena (PW-1), the factum of dying declaration made by Amar has been narrated. Out of those facts charge for offence of murder ought to have been framed against Mohan @ Akkar also. The judge who framed the charge failed to apply his mind to the facts of the case, when he framed charge of criminal conspiracy only against Mohan @ Akkar. The trial Judge, who handed down the judgment, ought to have framed the charge of murder against Mohan @ Akkar, but it was not so done. At this juncture we cannot make out a new case for the prosecution, saying that charge of murder also stands proved



against Mohan @ Akkar.

65. Charges for murder and criminal conspiracy to murder Amar were rightly found to have been established against Appellant Vijay @ Champion @ Pahari by the trial court. Charge of criminal conspiracy to murder Amar also stood established to the hilt against Appellant Mohan @ Akkar also. Hence their conviction for offences punishable under section 302 read with section 120-B and section 120-B of the Code in respect of Appellant Vijay @ Champion @ Pahari and section 120 B of the Code against Appellant Mohan @ Akkar are, hereby, confirmed.

66. Sentences awarded to them by the trial court are in consonance with law.

67. Appeals filed by them have no merit. The same are hereby dismissed.

68. Let the copy of this judgment be transmitted to the concerned Trial Court for necessary action. Appellants shall surrender before the Trial Court forthwith to undergo sentences awarded to them.

SUBRAMONIUM PRASAD, J

VIMAL KUMAR YADAV, J

FEBRUARY 06, 2026

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