

**IN THE COURT OF MS. ASHA MENON
DISTRICT & SESSIONS JUDGE (SOUTH DISTRICT)
SAKET: NEW DELHI**

**CIS-SC-7890-2016
CNR-DLST 01-005982-2016**

State

Versus

- 1 Arman Ansari
S/o Sh. Munna Ali Ansari
R/o H. No.I-9/705, Sangam Vihar,
New Delhi.**

- 2 Munna Ali Ansari
S/o Sh. Nankau Ansari
R/o H. No.I-9/705, Sangam Vihar,
New Delhi.**

**FIR No.435/2016
U/s 302/307/34 IPC
PS Sangam Vihar**

**Date of Institution: 26.10.2016
Judgment reserved on: 25.03.2019
Judgment pronounced on: 04.05.2019**

JUDGMENT

The accused Arman Ansari son of the co-accused Munna Ali Ansari was alleged to have stabbed one Ravi on 12.07.2016 causing his death. He was charged for the offence U/s 302 IPC. The charge-sheet was also filed against him and the accused Munna Ali Ansari for having committed the offence U/s 307 read with Section 34

IPC on the allegations that at around 7 pm, near house No.I-705, gali no.9, Sangam Vihar, they had in furtherance of their common intention attacked and injured Imtiyaz Siddiqui with a knife and with a thick stick and had kicked him in the chest. The accused Arman Ansari was charged for the offence U/s 302 IPC and both the accused were charged for the offence U/s 307 read with Section 34 IPC to which they pleaded not guilty.

As both the accused pleaded not guilty to the charge framed against them, the prosecution examined 27 witnesses in all. After the statements of the accused were recorded U/s 313 Cr.PC, they also examined six witnesses in defence.

PROSECUTION EVIDENCE

PW.1 is Kali Charan who stated that the deceased Ravi was his son and he identified the dead body vide memo Ex.PW.1/A.

PW.2 is Rajiv Kumar who was posted as Channel Operator,PHQ, CPCRC on 16.07.2016 and was on duty on channel no.118 from 8 PM to 8 am. He corrected the date to 12.07.2016 on being questioned by the Ld. Additional Public Prosecutor for the State. He further deposed that at about 8.09 pm he had received a call informing him that there was a quarrel in Block-I, gali No.9, Sangam Vihar. On receipt of this information, he immediately transmitted this call to the South East District Control Room for necessary action. He brought on record the PCR form as Ex.PW.2/A. In his cross-examination, he stated that he had recorded all information that he had received in Ex.PW.2/A.

PW.3 is Imtiyaz who is the injured. He deposed that he knew Shameem Gunga as he stays in the next gali from his. He

further deposed that he also knew Ravi and Dabbu as they also live in the gali next to his. He further deposed that he had heard that they had a quarrel with the accused Arman Ansari. He further stated that on 12.07.2016, he was going to his maternal uncle's house at about 6 pm. He further stated that on the way Shameem, Dabbu and Ravi met him and they requested him that they had to go to some place. He further stated that he was on a bike and so he gave them lift and on their directions, he reached the place where the accused Arman Ansari resided. He further stated that the three of them got off and he parked his bike on one side and then the accused Arman Ansari started quarreling with them. He further stated that the father of Arman also came there. He correctly identified the accused Arman Ansari and his father Munna. He further stated that the accused Arman Ansari had hit him on his head and run from the spot. He further stated that he could not say who struck his arm with the knife as he lost consciousness. He further stated that he learnt later that Ravi had been murdered. He further stated that Ex.PW3/A was his statement recorded by the police at the hospital.

He was cross-examined by Sh. Salim Khan, the Ld. Additional Public Prosecutor for the State on certain aspects, during which cross-examination, he admitted as correct that he had told to the police that at first, the accused Arman Ansari had aimed at him with a knife and he had stopped the blow with his arm which got injured. He further stated that he had not told the police, since he did not know about it, that the accused Arman Ansari then aimed at Ravi with the knife and caused him stab injuries to his neck. He admitted as correct that he had told the police that he had left his motorcycle at the spot

and had started running when the accused Arman Ansari stabbed him. He further stated that it was correct that he had told the police that the accused Munna Ali Ansari, the father of the accused Arman Ansari had caught hold of his right hand and had pushed him on the ground and had kicked him a few times. He further stated that it was correct that he had told the police that the accused Arman Ansari had hit him on his head with a danda and had told his father “*isko chodna nahi aaj ise jaan se maar denge*”. He further stated that it was correct that he had told the police that in the meantime, the police had come to the spot and while they were trying to remove him to the hospital in an autorickshaw, the father of the accused Arman Ansari namely the accused Munna Ali Ansari prevented the police from doing so and started taking a video and also stated that first his lawyer would come and then the media would come and he could go only thereafter. He also stated that the police had seized all his articles / blood stained clothes which he later identified as Ex.P1 to P7. He could not state whether the baseball bat mark Ex.P1 was the object with which he was beaten. He further stated that it was correct that at the time of the incident as he was being beaten and it was slightly dark, therefore, he did not clearly notice the object with which he was being beaten.

In his cross-examination by Sh. Vishal Singh, the Ld. Defence counsel, he stated that it was correct that due to darkness, he was not able to see the type and colour of the danda and that he had mentioned to the police that a danda had been used but he had not described the danda to the police. He further stated that it was correct that due to the darkness, he did not know who had hit him on his head and caused him injuries on his arm. He further stated that it was

correct that one of his friends resided near the house of both the accused and he had seen the accused persons whenever he visited his friend's house but had no social terms with the accused persons. He stated that it was correct that they were neighbours. He further stated that it was correct that the quarrel was taking place near the house of the accused. He further stated that it was correct that it was on suspicion that he had given the names of the two accused persons as the incident had occurred near their house. He deposed that the police did not record his statement after the incident and that he had signed blank papers and did not know what those papers contained. He further stated that though the policemen had asked him how he had sustained injuries but he was not in a position to explain. He further stated that he did not know who had stabbed him. He further stated that he had wrongly stated on the previous date of hearing about who had given him the kick and fist blows. He admitted as correct that the accused had neither threatened him nor abused him. He claimed that he did not know how the Ex.P1 had his blood on it. He further stated that he had gone alone to the place of incident and no one was with him at that time. He further stated that he also did not know who else had received injuries or whether there was any other quarrel.

On this statement coming in the cross-examination of the witness, the Ld. Additional Public Prosecutor for the State was permitted to re-examine the witness. During such cross-examination by the Ld. Additional Public Prosecutor for the State, he admitted as correct that on the previous date, he had deposed that the accused had aimed at him with a knife and he had stopped it and as a result of which his arm was injured. He stated that he had made that statement

in confusion as it was his first visit to the Court. In further cross-examination by the Ld. Additional Public Prosecutor for the state, he denied the suggestion that he had made a truthful statement on 25.01.2017 during his first examination and that on 13.04.2017, he was making a false statement under pressure. He denied that he was deposing falsely to save the accused persons as he had made a compromise with the family of the accused. He further denied the suggestion that on 25.01.2017, he was fully conscious and oriented and had given his statement in full senses. He also produced his motorcycle as Ex.P8 which he had taken on superdari on 23.07.2016. He stated that he was the registered owner of this motorcycle bearing No. DL-3SCV-6006.

PW.4 is Ct. Deepanshu who stated that on 12.07.2016, he was posted in PCR, Police Headquarters and was performing duty on channel no.113 from 2 pm to 8 pm. He deposed that at about 7.06 pm, he had received a call informing him about a quarrel at H. No.705 gali no.9, Sangam Vihar, Ratia Marg, near Peepal chowk. He further stated that he immediately transmitted this message to the relevant Section i.e. Console for necessary action. He placed copy of this PCR form as Ex.PW.4/A.

In the cross-examination by Sh. Vishal Singh, Ld. counsel for both the accused persons, he denied the suggestion that he had received two separate calls in respect of the same incident which was recorded in Ex.PW.4/A.

PW.5 is ASI Govind Singh who was posted as Malkhana Mohrar at PS Sangam Vihar between 13.07.2016 to

24.11.2016. He deposed to the receipt of various pulandas and the transmission of these pulandas to the FSL. He also deposed to having made all the entries in the Malkhana register, brought on record as Ex.PW.5/A (collectively.)

He was cross-examined at length by Sh. Vishal Singh, Ld. counsel for both the accused persons with regard to the entries which he stated were in his own hand. He denied the suggestion that the entries were manipulated by him at the instance of the Investigating Officer.

PW.6 is SI Anup Kumar who had received the copies of the four PCR forms, Ex.PW.4/A and Ex.PW2/A and certificate U/s 65B, Ex.PW6/A.

PW.7 is W/Ct. Sarita who while being posted as DD writer from 4 pm till 12 mid-night on 12.07.2016 received an information from AIIMS Trauma Centre at about 9.45 pm about the admission of an injured Ravi by his sister Sona who was declared brought dead by the doctor. She recorded DD No.87B, Ex.PW7/A

During her cross-examination by Sh. Vishal Singh, Ld. counsel for both the accused, she admitted that there was some overwriting on the time recorded of receiving the information. The time of 9.55 pm seems to have been corrected to 9.45 pm.

PW.8 is Ct. Satish who on 16.09.2016 while being posted at the PS Sangam Vihar had received fifteen pullandas from the MHCM, PS Sangam Vihar which he deposited at the Biometric Department, FSL, Rohini. He deposed that he brought back the receipt and handed it over to the MHCM, PS Sangam Vihar. He further stated that so long as the exhibits remained in his custody, there was no

tampering with them. He was cross-examined by Sh. Vishal Singh, ld. counsel for both the accused.

PW.9 is Insp. Mukesh Kumar Jain. He deposed that on 06.10.2016, he inspected the place of occurrence at the instance of SI Prem and took measurements and prepared rough notes. He further deposed that on the basis of the rough notes and measurement, he prepared scaled site plans, Ex.PW9/A and Ex.PW9/B. This witness was extensively cross-examined by Sh. Vishal Singh, Ld. counsel for both the accused.

PW.10 is Ct. Mukesh. He deposed that on 12.07.2016, he was posted at the PS Sangam Vihar and on that day, he had accompanied SI Prem Kumar on receipt of the DD no.52A regarding a quarrel at I-Block, Gali no.9. He further deposed that they went to the spot. He further deposed that there was a crowd at the spot and in the crowd one Imtiyaz was found bleeding and he was held by two persons i.e. the accused Munna Ali Ansari and Arman Ansari. He further deposed that he and SI Prem Kumar freed the injured from the custody of both accused persons and on the directions of SI Prem Kumar, he took the injured Imtiyaz to Hamdard hospital in a TSR where the injured was given medical attention. He further deposed that on 09.09.2016, he joined the investigations again when he was handed over two sealed pullandas alongwith sample seal containing viscera and mobile phone. He further deposed that he took the said exhibits to FSL office and deposited the same there and handed over the acknowledgement receipt to ASI Govind, MHCM In-charge. These acknowledgement receipts have been brought on record as Ex.PW10/A and Ex.PW10/B and the Road Certificates as Ex.PW10/C

and Ex.PW10/D.

During his cross-examination by Sh. Vishal Singh, Ld. counsel for both the accused, he deposed that the injured Imtiyaz as well as the other person who were present at the spot had identified the accused Munna and Arman by name to SI Prem Kumar. He further deposed that SI Prem Kumar HC Ishwar and Ct. Shambu Dyal had already reached the spot. He further deposed that SI Prem Kumar had got Imtiyaz released from the clutches of the accused. He denied the suggestion that he had not joined the investigation.

PW.11 is Ms. Sona, the daughter of Sh. Malkhan. She deposed that on 12.07.2016, when she was at home, a boy came and informed her that a quarrel had taken place between her brother and friends of her brother. She further deposed that she was informed that he had gone to Trauma Centre and she also reached there where the doctor and the police asked her name. She further deposed that from the talks between the police and the doctors, she learnt that Ravi had died, upon which she left.

The witness was cross-examined by Sh. Salim Khan, Ld. Additional Public Prosecutor for the State. During such cross-examination, she denied that she had told the police that she had been informed at 8 pm that the friend of her brother Shamim, by the name Ravi was lying bleeding at number 10 gali, I-Block. She denied the suggestion that she had told the police that she had reached the spot and had taken Ravi who was still breathing to the Trauma Centre, AIIMS or that on reaching the Trauma Centre the doctors pronounced that Ravi was dead. She deposed that she had not gone to the spot where the quarrel had taken place and she had not removed Ravi to the

Trauma Center, AIIMS in a bleeding condition in an auto-rickshaw. She denied the suggestion that on the way Ravi had told her that Arman and his father Munna Ali Ansari had beaten Imtiyaz, Shamim @ Goonga, Dabu and that the accused Arman had stabbed him and Imtiyaz with the intention to kill them. She claimed that she had never seen the accused Arman Ansari and Munna and therefore, she could not identify them in the court as she did not know whether they were present at the time of incident. She denied the suggestion that she had come to know that the accused Arman and Munna had beaten Ravi and her brother Shamim @ Goonga and on hearing this she had gone to gali no.10, I Block.

The witness was cross-examined by Sh. Vishal Singh and Sh. Inamuddin, Ld. counsel for both the accused.

PW.12 is Shamim son of Sh. Malkhan. He deposed that in the year 2016, he had been released from the jail and he had gone to the house of the accused Arman present whom he identified as he had slapped his brother. He further deposed that the accused Arman Ansari was present with his mother. He further deposed that he had made a request to both of them to withdraw the complaint against him for having slapped the accused Arman Ansari. He further deposed that they assured him that they would consider it and he returned home. He further deposed that he did not know anything about the present case. He further deposed that he was told by the Investigating Officer after he was arrested that he would have to depose in the present case as a witness.

The witness was declared hostile and cross-examined by Sh. Salim Khan, Ld. Additional Public Prosecutor for the State.

During the cross-examination by the Ld. Additional Public Prosecutor for the State, he stated that it was correct that in the month of July 2016, a quarrel had taken place between him and the accused Arman Ansari and the FIR no.414/16 was registered against him and his friends. He denied the suggestion that on 12.07.2016, he alongwith Imtiyaz, Dabbu and Ravi had gone to the house of the accused Arman Ansari and stated that he had gone alone to the house of the accused Arman at 2 pm. He denied the suggestion that on 12.07.2016 at around 7 pm, he had gone with his friends to the house of accused persons on the motorcycle of Imtiyaz. He denied the suggestion that while they were talking with the accused Arman Ansari, the accused Arman Ansari took out a knife from his pocket and attacked Imtiyaz who defended himself by raising his left hand and the knife stuck on his left arm.

He further denied the suggestion that the accused Arman Ansari attacked Ravi with a knife and caused him injuries. He further denied the suggestion that after being stabbed by the accused Arman Ansari, all of them left from the spot to save themselves. He further denied the suggestion that the accused Arman Ansari had caught hold of Imtiyaz and forced him to lie on the ground in front of his house and was given beatings. He deposed that he was informed on the phone that Ravi had died. He did not identify the accused Arman Ansari though the accused was shown to him and he claimed that he could not identify the accused Arman Ansari as no quarrel had taken place in his presence. He denied that his statement was recorded by the police on 02.08.2016. He admitted that the FIR No.414/16 was registered against him in which the complainant was the accused

Arman Ansari and his mother. He denied the suggestion that having made a compromise with the accused persons in respect of that case, he was deposing falsely in the present one.

During his cross-examination by Sh. Vishal Singh, Ld. counsel for both the accused, he stated that it was Insp. Badruddin who had made him a false witness in this case.

PW.13 is Dr. Lingraj Sahu, Senior Scientific Officer, Chemistry from the FSL, Rohini. He brought on record his report Ex.PW13/A and deposed that no poisons or metallic substances were found in exhibits 1A, 1B, 1C and 1D.

PW.14 is W/Ct. Shobha who deposed that on 12.07.2016, she was working in CPR, PHQ and performing duty on channel no.125 with the duty hours 8.00 pm to 8.00 am. She further deposed that at about 8.30 pm, she received a call and the caller told her “*mere ladke ko chaku maar diya hai sangam vihar gali no.9 near Madina Masjid*”. She further deposed that on receipt of this information, she immediately transmitted this call to the higher authorities for necessary action.

PW.15 is Dr. Mohd. Aftab, Medical Officer from HAH hospital, Jamia Hamdard Hospital, New Delhi. He deposed that on 12.07.2016, one patient namely Imtiyaz son of Mohd. Iqbal was brought to casualty with the alleged history of physical assault as given by the patient himself. He deposed that on examination, he found five injuries, namely, lacerated wound over parital region around 1.5 inch in length and 0.2 inches in width with the history of bleeding which was not active; incised wound over left fore-arm extensor surface measuring 2 cm X 0.2 cm; incised wound over left

fore-arm flexor surface measuring around .2 cms; abrasion over right side of face measuring around 3 inch X 1.5 inch; and abrasion over right side and lateral aspect measuring 3 cm X 2 cm.

He further deposed that as the patient had no sensation on the left hand, he was referred to another government hospital for plastic surgery. He further deposed that the nature of injuries were opined by him as grievous as there was a fracture evident in the X-ray.

In his cross-examination by Sh. Vishal Singh, Ld. counsel for both the accused, he stated that the patient was examined immediately on arrival i.e. 9 pm but he had not mentioned this fact in the MLC as the examination was upon arrival and it was not separately mentioned. He further stated that the incised injury was caused with a sharp object. He further stated that overwriting occurs in ordinary course. He denied the suggestion as incorrect that he had not noticed these injuries. He further deposed that it was correct that on Ex.PW15/A, the words 'fit for statement' were not mentioned but he explained that it was given in the original MLC. He denied the suggestion that no MLC was drawn up on 12.07.2016.

PW.16 is Ms. Shashi Bala Pahuja, Sr. Scientific from Officer, Biology, FSL, Rohini who conducted the DNA Finger Printing examination and submitted her report, Ex.PW.16/A. She found that blood stains on the baseball bat (exhibit 14) were from blood in gauze cloth piece of complainant (exhibit 2) and blood stained gauze of deceased (exhibit 5). She also stated that the blood stains on the clothes of the accused Munna Ali Ansari (Exhibit 12a and 12b) were also of the complainant. She also stated that blood stains picked from the gali no.9 on cotton wool swab from (Exhibit 6) and

blood stained cemented material (Exhibit 7) also belonged to the complainant.

During the cross-examination by Sh. Vishal Singh, Ld. Defence counsel for both the accused, she admitted that no DNA could be isolated from the source of exhibit 15 (wooden pieces). She denied the suggestion that she had not personally examined the exhibits or that that is the reason she had left out facts from her report.

PW.17 is SI Vishnu Kumar who was posted as Head Constable at the PS Sangam Vihar and was working as Duty Officer from 4 pm to 12 mid-night. He deposed that on that day, at about 7.18 pm, he had received a call from intercom that a quarrel had taken place near Peepal chowk and pistol was being used in the quarrel. He further deposed that he reduced this information into writing vide DD no.45A and had handed it over to HC Ishwar for necessary action. He further deposed that on the same day, he received another call from intercom at about 7.22 pm and the caller informed that there was a quarrel at H. No.75, I-block, Sangam Vihar, gali no.9 which information was reduced into writing vide DD No.47A and marked to HC Ishwar Singh for necessary action.

He deposed that on the same day, when he was on duty, he received another call at about 8.20 pm through intercom and the caller informed that there was a quarrel in gali no.9, I-Block, Sangam Vihar which he reduced into writing vide DD No.51A which was marked to HC Ishwar Singh for necessary action and was sent through Ct. Shambhu Dayal to HC Ishwar Singh. He further deposed that while on duty on the same day, he again received a call at about 8.29 pm through intercom and the caller informed him that “*Ke Sangam*

Vihar near Madina Masjid caller lady ke ladke ko chaku mar diya”. This information was reduced into writing vide DD No.52A and he handed over the said DD to Ct. Mukesh who was on duty with SI Prem Kumar. All the DDs were brought on record as Ex.PW17/A, Ex.PW17/B, Ex.PW17/C and Ex.PW17/D respectively. He was not cross-examined by Sh. Vishal Singh, Ld. Defence Counsel for both the accused.

PW.18 is SI Prem Kumar. He deposed that on 12.07.2016, he was posted at the PS Sangam Vihar and on that day, he had received the DD No.52A, on receipt of which he along with Ct. Mukesh and other police staff reached at spot i.e. gali no.9, H. No.705, Sangam Vihar where he found HC Ishwar along with Ct. Shambhu Dayal present having received a prior call. He further deposed that the SHO also came to the spot along with the ATO and they found the injured at the spot who was bleeding profusely from his arm and head and upon enquiry he informed that he was Imtiyaz son of Iqbal. He further deposed that he sent the injured Imtiyaz along with Ct. Mukesh in an auto rickshaw to the Majidia Hospital. He further stated that the suspects Arman Ansari and his father Munna Ali Ansari were present at the spot and with the help of the staff, they were apprehended.

He further deposed that after leaving HC Ishwar in charge of the spot, he left for the Majidia Hospital where Imtiyaz was getting treatment on his MLC No630. He further deposed that in the meantime, he received another message through DD No.87B that another injured in the same incident had been brought dead to the AIIMS Trauma centre. He further stated that he reached the AIIMS Trauma Centre where the SHO and other senior officers had also

reached. He further deposed that he collected the MLC of Ravi and the father of Ravi who was present at the AIIMS Trauma Centre identified the body of Ravi. He further deposed that the doctor handed over an exhibit to him which he seized. He further deposed that he along with the senior officers had examined the body and had found a deep cut wound on the right shoulder towards the neck on the body.

He further stated that he returned to the Majidia Hospital but did not find the eye witness there but found Imtiyaz at the Majidia Hospital. He further deposed that he recorded the statement of Imtiyaz, made his endorsement, Ex.PW.18/A at the spot and handed it over to HC Ishwar for the registration of a case. He further deposed that HC Ishwar returned to the spot after registration of the case and the investigations were marked to the ATO, Insp. Badruddin Khan. He deposed to the various procedures undertaken by Insp. Badruddin Khan and seizure of various exhibits. He also deposed to the conduct of the post-mortem.

He further deposed that the accused Arman Ansari had got the weapon of offence recovered from a vacant plot in front of the house of the accused persons and further disclosed that he had broken the knife used in the commission of the offence and after committing murder, he had thrown the knife near the chowk in gali no.9, Sangam Vihar but despite efforts, the knife could not be recovered but five pieces of the handle of the knife were recovered near the chowk which the accused disclosed, he had destroyed. He deposed to the seizure of these exhibits. He identified all the exhibits in the Court. He also identified the mobile phone make Samsung, Ex.PW18/6. According to him, the accused Munna Ali Ansari was taking a video with the aid of

the said mobile.

During his cross-examination by Sh. Vishal Singh, Id. Defence Counsel for both accused, he deposed that DD No.52A was handed over to him at the Police Station at about 8.29 pm and the information had been given by a girl by the name Sona. He admitted that these particulars were not mentioned in the DD No.52A, Ex.PW17/D. He further deposed that the information received was regarding stabbing at I-block. He further deposed that he had remained with the SHO for about half an hour and there was some crowd of almost 50 people. He further deposed that Ct. Mukesh and Ct. Ishwar with the help of other policemen had over powered the quarrelling persons. He further explained that he had not got the FIR registered first because he was removing the injured. He denied the suggestion that on 12.07.2016, he had not joined the investigations and had not gone to the spot as claimed by him. He further deposed that he had made enquiries from the father of the deceased and at the AIIMS Trauma Centre but had not recorded his statement. He was also cross-examined on the various alleged recoveries of the alleged weapon of offence. He denied that the Investigating Officer and the other police officials had falsely implicated the accused persons on account of previous enmity with the police officials.

PW.19 is Inspector Vikram Singh who deposed as ATO on 20.09.2016 while he was posted at the PS Sangam Vihar, he had been marked the investigation of this case and during which he had got the scaled site plan prepared by Insp. Mukesh Kumar Jain. He deposed that he also collected the MLC result of injured Imtiyaz and also collected the PCR form and certificate U/s 65B of IEA from the

PHQ. He further stated that the accused persons had already been arrested by Insp. Badruddin before he joined the investigation. He was also cross-examined by Sh. Vishal Singh, Ld. Defence Counsel for both accused.

PW.20 is Dr. C.P. Singh, Asstt. Director (Physics) from the FSL, Rohini. He deposed that on the examination of the DVD marked DVD-1, it was observed that each video file contained one identified video shot. He deposed that there was no indication of alteration in the identified video shots on the basis of frame-by-frame examination. He brought on record his report as Ex.20/A.

PW.21 is Sh. Vivek Kumar, Junior Forensic / Asstt. Forensic Examiner (DOC) from the FSL, Rohini. He deposed that he had examined the mobile phone containing one half cut SIM of Vodafone marked as SC1 and one micro SD memory card marked MC1 and after using the appropriate devices, no video files dated 12.07.2016 could be retrieved from the exhibits marked MP1 and SC1. He had brought on record his report as Ex.PW21/A.

PW.22 is HC Ishwar Singh. He deposed that on 12.07.2016, he was posted in the PS Sangam Vihar and had received the DD no.45A. He deposed that he alongwith Ct. Shambu Dayal had gone to Gali no.9 I-Block, H.No.705 where he saw both the accused persons Arman Ansari and Munna Ali Ansari holding one person and that person was having injury on his head and on his left hand. He deposed that the accused Munna was taking a videography with his mobile phone. He stated that he tried his best to remove the injured to hospital but both the accused were very aggressive and insisted on taking the photos and seeking the presence of the media as well as

their lawyer. He further deposed that after some time staff from the Police Station arrived at the spot alongwith SHO, Insp. ATO, SI Prem and support staff. He further deposed that the ATO Insp. Badruddin sent the injured Imtiyaz to Majidia hospital with Ct. Mukesh.

He further deposed that after sometime, SI Prem also left the spot for the hospital leaving him behind at the spot. He further deposed that he had apprehended both the accused persons with the help of the police staff. He further deposed that he had also taken the rukka handed over to him by Insp. Badruddin after recording the statement of Imtiyaz and he had got the FIR registered. He deposed to having returned to the spot with the injured Imtiyaz and Insp. Badruddin, seizing various memos including motorcycle from the spot vide various memos. He deposed to the clothes of the accused persons having blood stains which were seized by the Investigating Officer. He deposed to the arrest of both the accused. He stated that he had signed all of these memos. He also testified to the accused persons leading the police party of himself Insp. Badruddin and SI Prem Singh for the recovery of one baseball bat from his house and five wooden pieces of handle of the knife from near a drain towards gali no.10. He also deposed to the seizure of the mobile phone of the accused Munna Ali Ansari. He identified the accused persons and the case property.

During his cross-examination by Sh. Vishal Singh, Ld. counsel for both the accused, he stated that he had been on Emergency Duty along with Ct. Shabhu when he had received DD No.45A regarding a quarrel “ *gali no.9 I-Block, Sangam Vihar me jhagda*”. He deposed that he had reached the spot within ten minutes of the call i.e. by 7.30 pm. He deposed that when he reached the spot there was large

crowd and both the accused persons were also present there and the injured Imtiyaz was found fallen on the ground. He further deposed that the accused were beating Imtiyaz and were trying to record the same. To a question by the Ld. Counsel for the accused as to whether both the accused were beating Imtiyaz or was one holding him and the other beating him, he stated that the injured was lying with injuries and the police wanted to remove the injured to the hospital but the two accused were preventing them and so clearly, the accused had caused the injuries to Imtiyaz and further stated that the accused Munna Ali Ansari was trying to record the scene and was preventing them from removing the injured saying that he was going to call the Media. He was cross-examined at length to the various procedures that were conducted by the Investigating Officer at the spot.

PW.23 is Dr. Jasbir, Assistant Professor from PGIMER, Chandigarh who had examined the dead body of Ravi son of Sh. Kali Charan who was brought to the AIIMS hospital where he was posted as Senior Resident on 13.07.2016. He had conducted the post-mortem and found one incised stab wound of elliptical shape measuring 3 cm x 1.5 cm x 9-10 cm deep horizontally over root of neck on right side at supra clavicular area. It was shaped with right angle acute and left angle wide. On dissection, he found tract was directed down wards medially and back ward reaching inside apex of right lung. The underlying intervening soft tissues including subclavian artery (cut through and through) brachial nerve plex and muscles were cut. There was cut over pleura and apex of upper lobe of right lung reddish (2.6 x 2 x 2 cm.). There was another stab wound measuring 2.7 cm x 1 cm x 8 cm deep found horizontally on back of lower chest in midline. On

dissection, he found left lateral process of D11 vertebra were cut and the paraspinal muscles were also cut. The cause of death as per the witness was shock due to haemorrhage resulting from cut blood vessel due to injury no.1 which was sufficient to cause death in the ordinary course of nature. Both the injuries were antemortem caused by sharp object.

He was cross-examined by Sh. Vishal Singh, Ld. Counsel for both the accused. He denied that he had not conducted the post-mortem and had not prepared the report, Ex.PW23/A.

PW.24 is ASI Rattan Singh who was the Duty Officer in the intervening night of 12/13-7-2016 at the PS Sangam Vihar between 12 mid-night to 8 am. He had registered the FIR, Ex.PW24/A on receipt of rukka brought by HC Ishwar Singh sent by Insp. Badruddin.

PW.25 is Dr. Rupesh Kumar Kejriwal, who had while working as Senior Resident on 12.07.2016 in the Department of Emergency Medicine at AIIMS Trauma Centre examined the patient namely Ravi aged about 17 years old with alleged history of assault by knife at Sangam Vihar and on examination, he had declared the patient brought dead vide MLC, Ex.PW25/A.

PW.26 is Insp. Badruddin. He was posted as ATO at the PS Sangam Vihar on 13.07.2016 and was handed over the further investigation of this case. He deposed that on that day he had come to the spot with the copy of the FIR i.e. at Gali no.9 Block-I Sangam Vihar where he met SI Prem Kumar, HC Ishwar, Ct. Mukesh and both the accused Arman Ansari and Munna Ali Ansari. He stated that the injured Imtiyaz Siddiqui was also present. He deposed to the various

investigative proceedings conducted at the site. He deposed to the seizure of various exhibits and the recovery of baseball bat and five pieces of broken handle of knife. He also deposed to the seizure of various exhibits and the arrest of the accused. He identified the accused persons and the exhibits produced in the Court.

He was cross-examined at length by Sh. Vishal Singh, Ld. Defence counsel for both the accused during which he reiterated the presence of the accused Munna Ali Ansari at the spot when he had reached there. He was cross-examined on the recovery of the broken pieces of the handle of knife and the baseball bat. He denied that he had tampered with the mobile phone and had deleted the footage in order to fudge the true facts. He denied the suggestion that he had manipulated the evidence against the accused. He denied the suggestion that he had coerced Sona and Shamim Goonga to testify against the accused persons. He denied the suggestion that he had falsely implicated the accused persons in the present case. He had also taken the photographs Ex.PW26/1 to 5.

PW.27 is ASI Shiv Dutt. He deposed that on 13.07.16, he was posted as MHCM at the PS Sangam Vihar. He was also posted as MHCM on other dates namely 11.08.2016, 09.09.2016, 16.09.2016, 07.02.2017 and 24.11.2016 when various exhibits were either deposited in the Malkhana or were sent from there for analysis to the FSL. He had brought on record the various exhibits being Ex.PW27/A to Ex.PW27/E. He was cross-examined by Sh. Vishal Singh, Ld. Defence counsel for both the accused.

STATEMENTS OF THE ACCUSED U/S 313 CR.PC

After the evidence of the prosecution was completed, the

statements of the accused Arman Ansari and Munna Ali Ansari were recorded U/s 313 Cr.PC. Both the accused pleaded false implication on account of the various complaints that the accused Munna Ali Ansari had made against the police since 2015. The accused Munna Ali Ansari claimed that since then he had been named in the various cases though he had no role to play in the commission of those crimes. The accused Munna Ali Ansari further claimed that at the alleged time of incident he was at his work place at Saidulajab and he had received a call from his son, the co-accused Arman Ansari that a quarrel was taking place outside their house between the persons whose identity the accused Arman Ansari did not know. The accused Arman Ansari assured himself that his son i.e. the accused Arman Ansari was not involved in that quarrel. Thereafter, the accused Munna Ali Ansari reached his home and found that police were also present there. He asked Imtiyaz who he was and how he had been injured. He stated that he also made a video though the police had stopped him from making a video but he insisted on making a video. According to him, he was not present at the time the quarrel took place and did not know anything about it. The accused Arman Ansari claimed that he was not involved in the offence. He further claimed that he had not held Imtiyaz who was sitting there after he had quarrelled with somebody and was injured on his head and arm. He claimed that he had been forcibly removed to the Police Station. He too claimed that his father had prepared a video. He denied the recovery of baseball bat and stated that he had been falsely implicated on account of his father's complaints against the police.

DEFENCE EVIDENCE

The accused examined **DW.1 HC Anil Dhaka** to bring on record the copy of the complaint received from the accused Munna Ali Ansari. He was not aware of what inquiry was conducted on this complaint.

DW.2 is ASI Yogesh Kumar from the PCR Record Office, Katwaria Sarai, New Delhi. He has brought three police call details of 24.03.15. He deposed that the first call was made at around 21.12 hours relating to a quarrel at I-Block, Gali no.9, H. No.705, Sangam Vihar, the second call was received at 22.13 hours relating to a quarrel at Gali no.9, H. No.705, Sangam Vihar and the third call was received at 22.48 hours relating to a quarrel at Gali no.9, H. No.705, Sangam Vihar. He deposed that all the calls were made by Munna Ansari (the accused). The call records have been brought on record as Ex.DW2/A to Ex.DW2/C.

DW.3 is SI George Abraham who also brought on record the details of three PCR calls. He deposed that on 24.03.15 the first call was received at 21.12.20 hours, the second call was received at around 22.12.30 hours and the third call was received at around 22.46.11 hours. He brought the certificate as Ex.DW3/A.

DW.4 is Ct. Vipin who was posted in Complaint Branch, DCP Office, Sarita Vihar. He deposed that one complaint was received on 30.03.15, the second complaint was received on 07.04.15 and the third complaint was received on 16.04.15. The complaints have been brought on record as Ex.DW4/A to Ex.DW4/C.

In the cross-examination by Sh. Salim Khan, Ld. Additional Public Prosecutor for the State, he admitted that he had no knowledge of these complaints and he had not investigated them.

DW.5 is Sh. Rauf Alam who deposed that on 12.07.16, at around 6.00 / 6.30 pm, he was at his house at I-Block, Gali no.9, H.No.779, Sangam Vihar, New Delhi. He deposed that he found a large crowd had gathered on the road so he too went down to gali no.9 and saw that a quarrel was taking place between some boys and the accused Arman Ansari and they were shouting out amongst themselves. He further deposed that after about 20 minutes, the father of accused Arman Ansari namely accused Munna Ali Ansari came there and started video recording. He further deposed that thereafter the police had come. He further deposed that the accused Munna Ali Ansari was wanting to make the video as he had complained against the police to higher officials and he apprehended that his son would be involved in some case by the police falsely. According to the witness, the police remained at the spot for about half an hour and thereafter took away both the accused and the wife of accused Munna Ali Ansari to the Police Station. He further deposed that in his presence, no knife was used to cause injuries to anyone nor any baseball bat was used in his presence.

In his cross-examination by Sh. Salim Khan, Ld. Additional Public Prosecutor for the State, he deposed that he did not know whether any Ravi was stabbed by the accused persons. He explained that he had been on the roof of his house and on noticing the crowd had gone down. He admitted as correct that he did not see the quarrel taking place and had come out from his house after the quarrel. He admitted as correct that no incident had taken place in his presence, and therefore, he could not say who had caused injuries to whom. He denied the suggestion that the accused persons had caused injuries to

Imtiyaz and also caused stab injuries to Ravi due to which Ravi had died.

DW.6 is Sh. Dulha Khan. He deposed that he was coming after prayer and saw that there was some commotion and some boys were running. He deposed that he reached near the house of the accused Munna Ali Ansari and saw that some boys had caught hold of one boy. He stated that in the meantime, someone informed the police on 100 number and police reached in his presence. He stated that the police asked the accused Arman Ansari why he was quarreling and asked the accused Arman Ansari to accompany them. He deposed that the police also asked Munna Ali Ansari, the father of the accused Arman Ansari to go with them to Police Station.

He deposed that the accused Munna Ali Ansari had reached the spot 7-8 minutes after he had reached. He deposed that in his presence, accused Munna Ali Ansari had not struck anyone with a baseball bat or kicks rather he was telling the police who were compelling him to accompany them to the Police Station that he wanted to call his lawyer and the media. He deposed that the police had threatened to implicate him falsely in a case on account of the fact that the accused Munna Ali Ansari had filed complaints previously against the police. He deposed that the quarrel was taking place near the house of the accused persons. According to the witness, at that time the accused Arman Ansari was alone and the two boys quarreling with him.

In his cross-examination by Sh. Salim Khan, Ld. Additional Public Prosecutor for the State, he admitted that the quarrel did not take place in his presence and therefore, he was not aware who

had caused injuries to whom. He further deposed that he did not know the names of the persons who were quarrelling with a boy. He denied the suggestion that the accused persons were quarrelling with Imtiyaz and his friend Ravi and had caused injuries to them with a knife and a baseball bat. He admitted as correct that he had learnt later on that one man had died. He denied the suggestion that the accused Munna Ali Ansari and Arman Ansari were already present at the spot before his arrival. He denied the suggestion that the police did not threaten the accused persons to involve them in a false case. He denied the suggestion that the accused persons had given beatings to Imtiyaz and his friend Ravi due to which Ravi had expired. He denied the suggestion that both the accused persons were present at the spot.

ARGUMENTS

Sh. Salim Khan, Ld. Additional Public Prosecutor for the State argued that the prosecution had proved the charges against the accused persons and they deserved to be convicted. According to the Ld. Additional Public Prosecutor for the State, PW.3 Imtiyaz along with Shamim and another friend had gone to discuss an earlier quarrel with the accused Arman Ansari when a quarrel ensued in which Ravi died though PW.3 Imtiyaz survived. The Ld. Additional Public Prosecutor for the State submitted that PW.3 Imtiyaz was a very material witness as he had identified the accused and had given their specific roles and weapons namely the baseball bat and handle of a knife had been recovered. He submitted that though PW.3 after a gap of two months during his cross-examination, gave a new theory that change in testimony had to be discarded and the statement made during the examination-in-chief had to be given credibility in which he

has described the place of incident, the presence of both the accused as well as their roles. The Ld. Additional Public Prosecutor for the State that PW.10 Ct. Mukesh had reached the spot first on receipt of information regarding a quarrel along with SI Prem Kumar PW.18 and had found the injured Imtiyaz PW.3 in the clutches of both the accused. At that time, Imtiyaz was bleeding. PW.18 SI Prem Kumar corroborated this witness. Through his testimony also, the presence of the two accused along with injured Imtiyaz was proved. There was scientific evidence which showed that the clothes of the accused had the blood of the injured on them for which there was no explanation except that they were involved in causing those injuries. PW.22 HC Ishwar Singh who had also reached the spot along with Ct. Shambhu Dayal found that both the accused were holding the bleeding injured Imtiyaz and the accused persons were very aggressive and prevented removal of the injured till the other police personnel came. Therefore, it was the contention of the Ld. Additional Public Prosecutor for the State that the presence of the accused and their involvement had been duly proved by the prosecution and they were liable to be convicted.

Sh. Vishal Singh, Ld. Counsel for both the accused however submitted that both the accused were entitled to be acquitted. Ld. Defence counsel has pointed out that the injured Imtiyaz had to be treated as a hostile witness as he did not support the prosecution story and had clearly explained that his examination in chief was prompted due to the threat perception from the police. The other witnesses examined as the alleged eye witnesses namely PW.11 Ms. Sona and PW.12 Shamim @ Goonga were also completely hostile to the case of the prosecution. There is no evidence whatsoever that has come on the

circumstances in which Ravi died. There was nothing to connect the death of Ravi with either of the accused. It was further submitted that if the prosecution witnesses were to be believed that both the accused were present at the spot together yet the time of their arrest had been shown at different times, namely 4 am and 5 am with no explanation. Further, the depositions of PW.10 Ct. Mukesh, PW.18 SI Prem Kumar, PW.22 HC Ishwar Singh and Ct. Shambhu Dayal are that the accused persons were beating and quarrelling with injured Imtiyaz when the police arrived. Therefore, there was no scope for the accused Arman Ansari to have broken the knife into pieces with which he had allegedly killed Ravi and throw it at a chowk or naali. Similarly, the Ld. Defence counsel argued that there was no scope for the accused to have disposed off the baseball bat. There were also conflicting testimonies regarding the alleged weapon of offence as PW.3 referred to a danda whereas no danda had been recovered.

According to the Ld. Counsel for the accused, the case had been falsely made against the two accused persons because, as established through the evidence of the defence witnesses, the accused Munna Ali Ansari had made several complaints against the police. It is further argued that PW.12 Shamim @ Goonga had 42 cases of kidnapping against him. The Investigating Officer had not submitted the correct details before the Court during a bail hearing which was opposed by the accused persons and which was why both, the Investigating Officer and PW.12 Shamim @ Goonga had falsely implicated the accused in this case. Ld. Counsel for the accused has pointed out to several other discrepancies in the testimonies of the witnesses examined by the prosecution to submit that no proper

investigation had been carried out in this case. According to the Ld. Defence counsel, there were two incidents, one in which there was a scuffle between the accused Arman Ansari and Shamim @ Goonga that was at 4 pm. The second incident happened at 7 pm when PW.12 Shamim @ Goonga was pressurizing the accused to withdraw the case. There was no incident of stabbing in which the accused Arman Ansari was involved. There was no role of the accused Munna Ali Ansari.

The place of the alleged incident in which Ravi was killed was different that had occurred in gali no.10 whereas the alleged incident with Imtiyaz occurred in gali no.9 near the house of the accused persons. The injured Imtiyaz was fit for statement but no effort was made by the Investigating Officer to record his statement or statements of other persons who were present at the Majidia Hospital. The delay in registration of the FIR and the sham investigations indicated false implication of the two accused. It was further submitted that the clothes of the injured were not given in sealed condition and the MLC of the injured had also been retained with the doctor till 09.10.2016 and belated MLC had been prepared. Doubt was, therefore, created in respect of the nature of injuries sustained by Imtiyaz and the benefit of that doubt had to go to the accused.

No efforts were made by the Investigating Officer to extract the finger prints from the pieces of the knife handle and the baseball bat. The video was not found during analysis which indicated that the Investigating Officer had tampered with the same. The witnesses examined on behalf of the accused clearly proved that the accused had been falsely implicated. The complaints made by the accused have been brought on record as Ex.DW.4/A to Ex.DW.4/C.

DW.5 and DW.6 were with the eye witnesses who testified to no involvement of the accused persons. Thus, it was submitted that in these circumstances, the two accused persons were entitled to be acquitted of all the charges.

Sh. Salim Khan, Ld. Additional Public Prosecutor for the State countered these arguments and submitted that the PW.16 had found the blood of the deceased on the clothes of the accused Munna Ali Ansari as well as on the baseball bat. DW.5 and DW.6 had admitted that they had not seen the incident. However, they still admit that the accused Arman Ansari was quarrelling with some boys. The defence witnesses also supported the prosecution witnesses that the accused persons were wanting to call the media and their lawyers to the spot. It was submitted that opinion of the doctor is always obtained later and no inference could be drawn that till 09.10.2016 the MLC remained unprepared or that these were prepared belatedly to fit in with the theory of the Investigating Officer. Thus, the Ld. Additional Public Prosecutor reiterated that the accused persons were liable to be convicted.

I have gone through the entire evidence that has been brought on record and I have heard the arguments of Sh. Salim Khan, Ld. Additional Public Prosecutor for the State and Sh. Vishal Singh, Ld. Defence Counsel for both the accused persons.

ANALYSIS

The accused Arman Ansari was charged with the murder of the deceased Ravi son of Sh. Kali Charan on 12.07.2016 at 7 pm at gali no.9, near I-705, Sangam Vihar. However, as rightly pointed out by the Ld. Defence Counsel, there is no evidence whatsoever that has

been brought on record to connect the death of Ravi with the accused Arman Ansari. No witness has testified to having seen the accused Arman Ansari actually striking the deceased Ravi with the knife and causing his death. While the evidence of PW.16 that the blood of the deceased was found on the clothes of the accused Arman Ansari was too nebulous to find the accused Arman Ansari guilty of having murdered Ravi, none of the witnesses have explained how and why Ravi had come to the spot. There is no evidence that would suggest that some altercation had taken place between Ravi and the accused Arman Ansari as a consequence of which Ravi was murdered by the accused Arman Ansari. There is no weapon of offence that actually connects the accused Arman Ansari with the murder of Ravi. Broken pieces of handle of knife form insufficient material even assuming that the accused Arman Ansari had got them recovered and that too far removed from the alleged place of occurrence from a public place. Moreover, there is weight in the argument of the Ld. Defence Counsel that if the police had come to the spot while the quarrel was going on with Imtiyaz PW.3, there would have been no opportunity with the accused Arman Ansari to break the knife into pieces in such a manner that the blade was not retrievable and only some pieces of the handle could be traced from a place of public access.

A perusal of the evidence would indicate that the investigations into two distinct offences seem to have been clubbed by the Investigating Officer. The prosecution has examined several witnesses in respect of the different PCR calls and DD entries. On 12.07.2016 at about 8.30 pm a PCR call was made “*mere ladke ko chaku maar diya hai sangam vihar gali no.9 near Madina Masjid*”. At

8.09 pm on the same day another PCR was received about a quarrel at gali No.9, I-705. According to the MLC, Ravi was brought dead by Sona at 9.45 pm. Two other PCR calls, one at 7.06 pm refer to a quarrel near house No.705, gali no.9 and another at 7.18 pm of the use of pistol at Peeple Chowk. PW.22 HC Ishwar Singh along with Ct. Shambhu Dayal had reached the spot vide DD No.45A received at the Police Station at 7.22 pm within 10 minutes of the call i.e. by 7.30 pm. PW.10 SI Prem Kumar claims to have left the Police Station on receipt of DD No.52A at the Police Station at about 8.29 pm. If HC Ishwar Singh and Ct. Shambhu Dayala were already at the spot when the information was received at the Police Station about stabbing of a boy from a female caller, it is clear that the stabbing did not take place at the hands of the accused Arman Ansari who much before that time was under the vigil of HC Ishwar Singh and Ct. Shambhu Dayal.

The site plans, Ex.PW.9/A and Ex.PW.9/B also would strengthen this conclusion that there may be two different incidents that had occurred. In Ex.PW.9/A, the presence of the accused Arman Ansari and the accused Munna Ali Ansari with Imtiyaz is shown at point 'C' outside the house No.I-9/705 of Naseer, blood was found lying at point 'D' outside the House No.I-9/702. Point 'A' is described as the point where Imtiyaz, Shamim @ Goonga, Dabbu and Ravi had come on the motorcycle and parked the motorcycle. However, in Ex.PW.9/B, point 'E' has been described as the place where Ravi fell and where blood was found lying. The point 'E' is in gali no.10 outside the house No.I-10/917 of H.R. Sharma. On reading Ex.PW.9/A and Ex.PW.9/B together it can be easily seen that from the house of the accused Arman Ansari and the accused Munna Ali Ansari, No.I-

9/706, the house No.I-9/705 of Naseer and the house no.I-9/702 to reach the point 'E' on Ex.PW.9/B i.e. in gali no.10 quite some distance had to be covered including one T-point with gali 125 meters wide, a chowk leading to Peepalwala Chowk / mandir which is on the main road, another gali on the road leading to Masjid Gareeb Nawaz and a right turn towards Panchawati mandir in gali no.10 had to be taken.

According to PW.23 Dr. Jasbir who conducted the postmortem, the first injury over the root of neck on right side had clotted blood vessel which had caused haemorrhage. The subcalvian artery was cut through and through along with blachial nerve plexus and muscles. This was sufficient to cause death in ordinary course. The second stab injury was in the chest and had cut D11 vertebra and paraspinal muscles. It is inconceivable that Ravi having been stabbed in front of house of Naseer and the house No.I-9/702 would have run all the way to point 'E' as depicted in Ex.PW.9/B in gali no.10. The possibility that Ravi had been murdered in gali no.10 cannot be ruled out and if that be so, the accused Arman Ansari could not have been present in gali no.9 and 10 simultaneously. This would eliminate his involvement in the murder of Ravi.

Thus, neither is there any direct evidence nor is there any circumstantial evidence that is available to the prosecution to prove that the accused Arman Ansari had murdered Ravi. Thus, it has failed to prove the charge for the offence U/s 302 IPC against the accused Arman Ansari.

The second charge against the accused Arman Ansari and the only charge against the accused Munna Ali Ansari is that on 12.07.16 at 7 pm at gali no.9, near their house, in furtherance of their

with common intention, they had attacked the injured Imtiyaz and the accused Arman Ansari gave knife blow on the left hand of the injured Imtiyaz with a knife and hit him on the head with a thick stick and the accused Munna Ali Ansari held the right hand of the injured Imtiyaz and kicked him in the chest with such intention and knowledge and under such circumstances that had the injured Imtiyaz died, both would have been guilty of murder and thus, they were tried for the offence U/s 307 read with Section 34 IPC.

The prosecution has emphasized on the presence of the accused persons in front of their house when the police had arrived at the spot in conjunction with the presence of the injured Imtiyaz at the spot to submit that the accused had caused injuries to Imtiyaz. The second fact on which the prosecution has placed reliance is the presence of blood on the baseball bat and also on the clothes of the accused Munna Ali Ansari connecting with the injured and the recovery of the baseball bat at the instance of the accused Arman Ansari to connect both the accused to the injuries found on Imtiyaz. The prosecution has relied on PW.3 who is the injured himself to claim that the case against the accused persons was proved beyond doubt. There are two injuries on the person of PW.3 Imtiyaz, one was a blunt injury on the head and the other was an incised stab wound on the fore-arm which also resulted in the fracture of the bone. This would suggest that PW.3 Imtiyaz was injured by two persons atleast with different weapons.

PW.3 in his deposition when examined for the first time on 25.01.17 has completely denied any knowledge of who had struck him with the knife. It was only when the Ld. Additional Public

Prosecutor for the State cross-examined him that he claimed that he had told the police that the accused Arman Ansari had aimed at him with a knife. He further stated that he had left his motorcycle at the spot and had started running when the accused Arman Ansari stabbed him and thereafter, the accused Munna Ali Ansari had caught hold of him and he was kicked and pushed. In this cross-examination, he does not say how the accused Arman Ansari had stopped him and whether he had been stabbed again.

In his examination in chief on that day, he stated that the accused Arman Ansari had hit him on his head when he had run from the spot and had lost consciousness. This direct testimony leaves many things vague. Did the accused Arman Ansari stab PW.3 first and then hit him on the head or did the accused Arman Ansari hit PW.3 on the head first upon which he ran from the spot and subsequently the accused Arman Ansari stabbed him, which blow he stopped with his left arm? Even without going into the completely contrary testimony of this witness, during his cross-examination, it is clear that the testimony of PW.3 in respect of the incident would require serious corroboration for it to be acceptable.

In this regard, it is to be noted that PW.12 Shamim is completely hostile to the prosecution and denies having witnessed any incident in which Imtiyaz had been injured and that too at around 7 pm. That leaves the police witnesses. Though it is true that PW.10 Ct. Mukesh, PW.18 SI Prem Kumar, PW.22 HC Ishwar Singh and the IO, Insp. Badruddin PW.26 have deposed to the presence of the accused Arman Ansari and the accused Munna Ali Ansari at the spot where the injured Imtiyaz was also present, their testimonies do not help the

prosecution in establishing that injuries found on the person of PW.3 Imtiyaz had been caused by the two accused persons.

PW.10 Ct. Mukesh who had accompanied SI Prem Kumar has testified that on receipt of DD No.52A on 12.07.2016 regarding a quarrel at I-block, gali no.9, he and SI Prem Kumar had reached the spot where they found a crowd. They found one Imtiyaz, whose name was revealed later on, bleeding and he was caught hold of by two persons Munna Ali Ansari and Arman Ansari, the accused. According to him, the injured was in the “clutches of” both the accused persons, so he was “freed from the custody of both accused persons” and he (PW.10) was directed by SI Prem Kumar to take the injured to the hospital which he did. Therefore, according to him, neither he nor SI Prem Kumar had witnessed either of the accused beating and causing injuries to PW.3 Imtiyaz.

PW.18 SI Prem Kumar deposed that on receipt of DD no.52A on 12.07.2016, he along with Ct. Mukesh and other police staff had reached gali no.9, outside house no.705, Sangam Vihar. He found HC Ishwar Singh and Ct. Shambhu Dayal already present there as they had received the prior call. They found the injured at the spot namely Imtiyaz who was bleeding profusely from his arm and head. He sent Imtiyaz with Ct. Mukesh in an auto-rickshaw to the Majidia hospital. The SHO had also come to the spot along with the ATO. He left HC Ishwar Singh incharge of the spot and left for the Majidia hospital. In the meantime, he had received a message vide DD no.87B from the AIIMS Trauma Centre which related to Ravi. It is clear from this testimony that SI Prem Kumar did not see who had caused

injuries to Imtiyaz. He no doubt, states that he had been informed on enquiry by Imtiyaz about his name and parentage. He sent Imtiyaz for medical examination. He does not mention that they had made any preliminary enquiry from Imtiyaz yet describes the accused Arman Ansari and Munna Ali Ansari who were present at the spot as “suspects”. He does not explain the basis for such suspicion.

It is clear from the testimonies of PW.18 SI Prem Kumar that HC Ishwar Singh and Ct. Shabmbhu Dayal had reached the spot before they had. As noticed hereinabove, PW.22 HC Ishwar Singh had reached gali no.9, house no.705, I-block on receipt of DD no.45A which it may be noticed was received at around 7.22 pm. When PW.22 HC Ishwar Singh and Ct. Shambhu Dayal reached the spot by 7.30 pm, they found both the accused persons were present there. The accused were found catching hold of one person who had injuries on his head and left hand. He further stated that the accused Munna Ali Ansari was taking videography on his mobile phone. He further deposed that both the accused were very aggressive and insisted on taking the photos and seeking the presence of the media as well as their lawyer when he i.e. PW.22 tried his best to remove the injured to the hospital. It is then that the other staff from the Police Station namely PW.18 SI Prem Kumar and PW.10 Ct. Mukesh along with SHO, ATO Insp. Badruddin and support staff reached there. Ct. Mukesh PW.10 took the injured to the hospital. He deposed that he had apprehended both the accused with the help of the police staff. In this examination in chief, he does not mention having witnessed either the accused Munna Ali Ansari or the accused Arman Ansari assaulting or causing injuries to PW.3 Imtiyaz.

In his cross-examination, this witness has given two other versions. He claims that while he was trying to control the crowd, his attention was drawn away from the crowd as the accused “were beating Imtiyaz” and “were trying to record the same”. Further, the witness states that he told the police the accused were “trying” to beat Imtiyaz. When questioned about the varying statements as to whether the accused were beating Imtiyaz or was one holding him and the other beating him, the witness answered that the injured was lying with injuries and the accused were preventing the police from removing the injured to the hospital. The only conclusion that can be drawn from this varying testimony is that PW.22 HC Ishwar Singh who had first arrived at the spot did not see direct involvement of the accused in causing the injuries found on the person of PW.3 Imtiyaz.

Interestingly, this witness claims that since the two accused were preventing the police from removing Imtiyaz to the hospital, therefore, according to the witness clearly they had caused injuries to Imtiyaz. This seems to be a strange inference in as much as there is no logic to it. Why would an assailant videograph the assault and insist on calling for the media and a lawyer and to record their involvement in the commission of the crime?

The accused Munna Ali Ansari in his statement recorded U/s 313 Cr.PC has claimed that he was at his work place at Saidulajab on 12.07.2016 when around 7.06 pm, he had received a call from his son, the accused Arman Ansari informing about a quarrel that had taken place outside the house and he had confirmed from the accused Arman Ansari whether he was involved in the quarrel which he said

he was not. He further stated that he had reached home and found that police were also present there and he asked Imtiyaz who he was and how he had been injured and he had also made a video as he feared false implication and further explained that he had not objected to the removal of the injured to the hospital but to the acts of the police in involving him in this case. The accused Arman Ansari has stated that he was not holding Imtiyaz when the police had come and that Imtiyaz was sitting there and he had injuries on his head and arm having quarrelled with someone else. He also claimed that he was forcibly taken to the Police Station. Thus, the accused have given reasonable explanation for their conduct regarding the incident fearing false implication and to record the true facts and the actual event when the police had arrived. Thus, there is no reason to conclude merely because the accused Munna Ali Ansari was trying to record what was happening, after the arrival of the police, he and his son were involved in causing injuries upon Imtiyaz.

It would be then apparent that there is infact no direct evidence to involve the accused Arman Ansari and the accused Munna Ali Ansari in causing of the injuries to Imtiyaz. The complaint of Imtiyaz was recorded by Insp. Badruddin after Imtiyaz was brought to the spot by Insp. Badruddin and much later in the night after his medical examination was completed. This delay is important. It is clear that the Investigating Officer in an attempt to prove the death of one person and the injuries on the other person has arranged the facts in the complaint to suit his requirment. There is no reason, therefore, to disbelieve PW.3 Imtiyaz when he has stated in his cross-examination by the Ld. Defence Counsel that the accused had not

caused him any injuries and that he had signed blank papers. He also stated that though the policemen had asked as to how he had sustained injuries, he was not in a position to explain.

With regard to the circumstantial evidence relied upon by the prosecution, this is chiefly on the recovery of the baseball bat and the presence of the blood not only on the baseball bat but also on the clothes of the accused Munna Ali Ansari. Reliance has been placed on the report of PW.16 Ms. Shashi Bala Pahuja to the effect that the clothes of the accused Munna Ali Ansari were found to be stained with the blood of the complainant. This does not appear prima facie a suspicious circumstance as according to Ct. Mukesh and HC Ishwar Singh, the accused persons had held the injured. Blood from his wounds could have naturally come on the clothes of the accused. This fact cannot, therefore, be such crucial evidence leading to the conclusion that the accused Munna Ali Ansari and the accused Arman Ansari had caused the injuries found on the person of Imtiyaz PW.3.

The second incriminating evidence claimed by the prosecution is the recovery of the baseball bat at the instance of the accused Arman Ansari with the presence of the blood on this baseball bat. As noticed herein above, with regard to the recovery of the handle of the knife, in the sequence of events as claimed by the prosecution there would have been no scope for the accused to have disposed off the baseball bat, if at all it had been used in causing injuries to PW.3 Imtiyaz. PW.3 Imtiyaz has not identified the baseball bat as the weapon of offence, first describing the weapon of offence as being a small danda and thereafter clarifying that in the dark he could not

notice the weapon of offence.

Be that as it may, the recovery is alleged to have been from a vacant plot in the open, no specific knowledge can be then attributed to the accused Arman Ansari of the existence of the baseball bat. No finger prints were obtained from the baseball bat. Moreover, it is also interesting to note that according to PW.16, the baseball bat had blood stains not only of the complainant but also of the deceased. This one fact in the light of the fore-going discussions casts complete doubt on whether this baseball bat was at all the weapon of offence used to cause injuries on Imtiyaz. As discussed above, the evidence suggests that the place of apprehension of the accused where the accused and the injured Imtiyaz were found was far removed from the place where the body of Ravi was lying. There was no way for the blood of Ravi to have come on the baseball bat and therefore, the possibility of evidence having been manipulated cannot be ruled out.

Thus, in the absence of the any direct or clinching circumstantial evidence, the role of the accused Arman Ansari and the accused Munna Ali Ansari in causing injuries found on the person of Imtiyaz is shrouded by doubt. The law requires that benefit of doubt should go to the accused. Therefore, it is held that the prosecution has failed to prove the charge U/s 307 read with Section 34 IPC against the accused Arman Ansari and the accused Munna Ali Ansari.

The accused Arman Ansari is accordingly acquitted of the charge U/s 302 IPC and the charge U/s 307 read with Section 34 IPC. The accused Munna Ali Ansari is acquitted of the charge U/s 307 read with Section 34 IPC. The accused Arman Ansari be released

from JC if not required in any other case or proceedings. Both, the accused Munna Ali Ansari and the accused Arman Ansari shall furnish bail bonds under the provisions of Section 437A Cr.PC in the sum of Rs.10,000/- for a period of six months with one surety each in the same amount.

The file be consigned to the Record Room.

**Announced in open Court
today i.e. 04.05.2019**

**(ASHA MENON)
District & Sessions Judge (South)
Saket/New Delhi.**