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IN THE HIGH COURT OF DELHI

Judgment reserved on : January 7, 2009

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Judgment delivered on : January 15, 2009

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CRL.A. 724/2002

ARVIND S.LAL Appellant
Through: Ms. Charu Verma, Advocate

versus

STATE OF DELHI Respondent
Through: Mr. Pawan Sharma, Advocate

CRL.A. 605/2002

BHARAT Appellant
Through: Mr. Bhupesh Narula, Advocate

versus

STATE OF DELHI Respondent
Through: Mr. Pawan Sharma, Advocate

CRL.A. 703/2002

ROHIT Appellant
Through: Ms. Charu Verma, Advocate

versus

STATE OF DELHI Respondent
Through: Mr. Pawan Sharma, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE ARUNA SURESH

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not? Yes

3. Whether judgment should be reported in Digest? Yes

: **PRADEEP NANDRAJOG, J.**

1. Out of the five accused; namely (i) Arvind S.Lal (ii) Bharat (iii) Sanjay (iv) Rohit and (v) Amar Singh; only Arvind S.Lal, Bharat and Rohit have filed an appeal each, challenging their conviction vide judgment and order dated 7.6.2002 and the order of sentence dated 9.7.2002. Thus, we would be noting the relevant evidence, in relation to the submissions urged by learned counsel for the three appellants, while disposing of the instant three appeals pertaining to the three appellants.

2. Appellant Rohit has been convicted for committing an offence under Section 468 IPC. He has been sentenced to under-go rigorous imprisonment for 1½ years and to pay a fine of Rs.5,000/-; in default, to under-go rigorous imprisonment for one month. Appellants Arvind S.Lal and Bharat have been convicted for committing offences under Section 302/34 IPC, 201/34 IPC and 380/34 IPC. Bharat has additionally been convicted for committing an offence under Section 364 IPC.

3. Arvind S.Lal and Bharat have been sentenced to undergo imprisonment for life and a fine of Rs.100/-, in default, to under-go rigorous imprisonment for seven days for having

committed the offence under Section 302/34 IPC. For the offence committed under Section 201/34 IPC they have been sentenced to under-go rigorous imprisonment for three years and to pay a fine of Rs.100/-; in default, to under-go rigorous imprisonment for seven days. For the offence punishable under Section 380/34 IPC, they have been sentenced to under-go rigorous imprisonment for three years and to pay a fine of Rs.500/-; in default, to under-go rigorous imprisonment for seven days.

4. For the offence punishable under Section 364 IPC, Bharat has been sentenced to under-go imprisonment for life and to pay a fine of Rs.300/-; in default, to under-go rigorous imprisonment for seven days.

5. It may be noted that Amar Singh and Sanjay have been convicted for the offence punishable under Section 411 IPC for which they have been sentenced to under-go rigorous imprisonment for 1½ years and to pay a fine of Rs.5,000/-; in default, to under-go rigorous imprisonment for one month. Since the two were in custody for more than 1½ years and paid the fine imposed, the two were set free. This appears to be the reason why both of them have not preferred any appeal against their conviction.

6. The origin of the trial is the receipt of an information on 21.7.1998, recorded by PW-27, Const. Sher Singh, vide DD entry No.20, Ex.PW-14/1, that the dead body of a male was found near a road in Village Pochanpur. It was received at the police post Kapashera falling under the jurisdiction of police station Najafgarh. SI Dharampal, PW-14, was handed over a copy of the DD entry. Accompanied by Const. Laxman he proceeded to the place where the dead body was found. The SHO of the police station, SI Rajesh Kumar Kaushik, PW-19 also arrived at the spot. PW-19 lifted blood stained earth and the sample earth as recorded in the seizure memo, Ex.PW-14/3.

7. PW-14, SI Dharampal, made an endorsement, Ex.PW-14/2, on the copy of DD Entry No.20 and sent it to the police station through Const. Laxmi Narain. At the police station, Const. Krishna, PW-17, recorded the FIR, Ex.PW-17/1, being FIR No.380/98. Const. Dharamveer, PW-20, to whom a copy of the FIR was handed over delivered the same to the area magistrate on 21.7.1998 itself. In the meanwhile, at the spot, SI Rajesh Kumar Kaushik prepared the rough site plan, Ex.PW-19/1.

8. PW-8, Hari Shankar, then posted as Head Constable (Photographer) in the Crime Branch with Delhi Police was deputed who reached the spot where the dead body was found.

He took photographs, Ex.PW-8/A to Ex.PW-8/D, negatives whereof were collectively filed at the trial as Ex.PW-8/E.

9. The dead body could not be identified till 30.7.1998. On said date post mortem was conducted by Dr.K.Goel, PW-3, and as per the post mortem report Ex.PW-3/A, ligature marks running horizontally around the neck having width of about 1.25 cms were noted. Due to the advanced stage of decomposition of the body no other external injury was noted. Internal examination reflected that there was subcutaneous and platysmal bruising underneath the ligature mark. Effusion of blood in the neck layers was noted. The left greater corlerahyoid bone had fractured. As per the opinion of Dr.K.Goel, death was due to asphyxia being the result of ligature strangulation. It was opined that the approximate date of death was 10 days prior to the date when the post mortem was conducted.

10. The investigation of the case remained with SHO of the police station Najafgarh, Inspector Rajesh Kumar Kaushik, PW-19, who could not break through. The dead body remained unidentified. The investigation was transferred to the Crime Cell, South West District, Delhi Police and was entrusted to Inspector Raj Kumar, PW-21. As per him, he was entrusted with

the investigation on 9.10.1998 and that he broke through with a lead on the same day. According to him, the break through came when Rajeev Goswami, PW-18, residing at C-9/9856, Vasant Kunj, New Delhi, from the photographs of the deceased identified to Inspector Raj Kumar that the same were the photographs of one Laxman Singh Yadav, residing at C-9/9307, Vasant Kunj, New Delhi. Inspector Raj Kumar claimed that not only Rajiv Goswami, PW-18, but another person Inder Singh Malik (not examined as a witness) identified the dead body and also informed him that the deceased had employed Bharat, residing in INA Colony, as a driver. He further claimed to have over-heard a conversation between Bharat and Arvind S.Lal at 1.00 am on 10.10.1998 at the house of Arvind S.Lal in Sarojini Nagar which roused his suspicion and that he apprehended both from the house and took them to his office for interrogation. He claimed that during interrogation both admitted to their guilt and made disclosure statements.

11. Further investigation, as per the case of the prosecution, led Inspector Raj Kumar to Phoolwati, PW-11 whose husband used to press clothes in Block-C, Vasant Kunj. She informed the police that Bharat was engaged as a driver by deceased Laxman Singh Yadav and that the clothes of Laxman

Singh Yadav used to be ironed by her husband and that she was engaged by the deceased to wash his clothes. She informed that she was employed during summer season and had worked for around a week when she saw Bharat and Laxman Singh Yadav leaving the house in a car and that the next day when she went to the house to wash the clothes, Bharat told her that the deceased had left for Bombay and she need not report for duty. The wife of the deceased, PW-9, Sitara Devi, was contacted who informed Inspector Raj Kumar that the deceased was her husband and was a retired official from United Nations Organization and that due to his worldly ways of life and she being a person with a religious bent of mind was forced to take up separate residence at Satya Niketan. She informed that their children were settled abroad. She informed that somewhere in the month of August, as she required some money she had rung up her husband at his flat and that the call was responded to by Bharat. She told the purpose of her ringing up being her requirement of Rs.30,000/-. Bharat told her that the deceased was away to Bombay, but accompanied by Arvind S. Lal came and delivered Rs.30,000/- to her stating that her husband and they had inter se money dealings. She also informed that around *Karva Chauth* Arvind and Bharat had taken her to the flat

of her husband and had given her a blanket and some chinaware articles.

12. Involvement of Rohit surfaced when he was apprehended by the police personnel of PS Sarai Rohilla with respect to an offence of abduction and murder for which FIR No.442/1998 was lodged at PS Sarai Rohilla. He was arrested by Inspector Jagjit Singh, Anti Auto Theft Squad, North District Police, PW-24, as per whom during interrogation Rohit admitted his involvement in the instant case and disclosed having impersonated the deceased and in his name opened an account at the Sarojini Nagar Post Office on being introduced by Arvind S.Lal. This information being conveyed to Inspector Raj Kumar, since Rohit was in custody, an application was filed on 16.11.1998 in the Court of Metropolitan Magistrate to interrogate Rohit in the instant FIR. Custody of Rohit was handed over to the Crime Branch, as per Head Const. Mahender Singh, PW-13, and on interrogation his disclosure statement, Ex.PW-13/1, was recorded as per which Rohit had opened a post office saving account in the name of the deceased at post office Sarojini Nagar.

13. On 18.11.1998, the police seized an account opening form dated 18.8.1998, Ex.PW-5/A, and a deposit slip of even

date, Ex.PW-5/B, depositing Rs.500/- with the post master, post office Sarojini Nagar. The same were to the effect that the account was opened by Laxman Singh Yadav on being introduced by Arvind S.Lal. Specimen hand-writing of Rohit, Ex.PW-13/4 to Ex.PW-13/7, were obtained by Head Const. Mahender Singh, PW-13 and along with Ex.PW-5/A and Ex.PW-5/B were sent for opinion of a hand writing expert, namely Ms.Deepa Verma, PW-25. As per her opinion reported, vide Ex.PW-25/1, she opined that the person who had filled up Ex.PW-5/A and Ex.PW-5/B was the same who had written Ex.PW-13/4 to Ex.PW-13/7.

14. Further investigation led the police, as claimed by Inspector Raj Kumar, of course on the basis of the stated disclosure statement made by Arvind S.Lal, to the State Bank of India, Sansad Marg, New Delhi where from two cheques, Ex.PW-23/1 and Ex.PW-23/2 were seized. The cheques dated 12.7.1998 and 11.8.1998 were drawn on the saving bank account No.43261 in the name of the deceased and pertained to the cheque book issued by the bank to the deceased. The two cheques were presented for encashment on 12.8.1998 and 19.8.1998. They were presented at the State Bank of Bikaner and Jaipur, Kamal Cinema Complex Branch, Safdarjung Enclave

for being credited in account No.3319 in the name of Arvind S.Lal maintained with the said branch. Both cheques were duly encashed and the amount was credited in account No.3319, Kamal Cinema Complex Branch, Safdarjung Enclave in the name of Arvind S.Lal. The two cheques were seized on being handed over by R.K.Malik, Branch Manager of the State Bank of India, PW-23 who also handed over the account opening form filled up by the deceased when the account was opened, Ex.PW-23/3. The seizure pertaining to the two cheques and the account opening form was as per seizure memo, Ex.PW-23/4.

15. Proceeding to the State Bank of Bikaner and Jaipur, Kamal Cinema Complex Branch, Safdarjung Enclave, the police seized 20 cheques, Ex.PW-22/1 to Ex.PW-22/20, all drawn under the signatures of Arvind S.Lal, pertaining to account No.3319, in his name. The same revealed that on various dates, commencing from 20.8.1998 the cheques except Ex.PW-22/8 were utilized for withdrawing money from the said account i.e. account No.3319 by cheques drawn on self. Cheque, Ex.PW-22/8, was drawn in the name of Nirmal, mother of Bharat. It was in the sum of Rs.50,000/-. The cheque was issued under the signatures of Arvind S.Lal. It was presented for encashment with the State Bank of India, Mehrauli Road, and was credited

into the account of the mother of Bharat maintained with the said branch.

16. Ashok Kumar Gupta, PW-2, was another person contacted by the police pursuant to the stated disclosure statement of Arvind S.Lal who told the police, that in the first week of September 1998, Arvind S.Lal had contacted him and had handed over a file, Ex.P-6, pertaining to a plot of land bearing No.1301-B, Bobiliya, Part-II, Gurgaon, in the name of the deceased, and had wanted to sell the same informing Ashok Kumar that the deceased had died and that the wife of the deceased was having a general power of attorney. He also handed over a mobile phone having IMEI No.44522951569116, Ex.P-13, to the police stating that Arvind S.Lal had given the same to him. The two, i.e. the mobile phone and the file were seized vide seizure memo Ex.PW-2/A.

17. As per disclosure statement of Arvind S.Lal, Ex.PW-18/12, recorded by the investigating officer, Inspector Raj Kumar, PW-21, in presence of Head Const. Ranveer, PW-26 and Rajeev Goswami, PW-18, as also another disclosure statement Ex.PW-26/1, recorded by PW-21, in presence of PW-26, recoveries were effected from the house of Arvind S.Lal at G-1/106 Sarojini Nagar being as under:-

- I. A VCR with remote (made in Japan) and cassette cover (Ex.P19).
- II. A music system with four speakers (made in Japan), disk recorded + remote (Ex.P21).
- III. A video camera (Ex.P7) make Panasonic (made in Japan) + six cassettes and one power adapter.
- IV. Two cordless phones make Panasonic (Ex.P12 and P14).
- V. A telephone answering system (ExP26).
- VI. Five cassettes (Ex.P27/1 to P-27/5).
- VII. One woolen blanket (Ex.P24/1).
- VIII. Two big suit cases of blue colour (Ex.P25/1-2).
- IX. Shaving items like spray [(shaving) Ex.P28/1-3].
- X. Multitone (Ex.P29).
- XI. Three electronic leads (Ex.P-30/1-3)."

18. Jewellery items Ex.P-10/1 to Ex.P-10/7 were also recovered at the instance of accused Arvind S.Lal in respect where to TIP was conducted before Raj Rani Mittra, M.M., Delhi, PW-16.

19. Meena Yadav, PW-10, the daughter of the deceased did the TIP and correctly identified the jewellery as that of her father.

20. Since as per the disclosure statement of Bharat, the car of the deceased, bearing registration No.HR-26E-7901,

Pugeot make, was left at the workshop of Sushil Kumar, PW-6, the same was recovered on being pointed out by Bharat vide seizure memo, Ex.PW-6/B, from the workshop of PW-6 at INA Market. According to the police, during investigation, mother of Bharat, Nirmla came to the police station on 17.10.1998 and handed over Rs.50,000/- in cash to the police, stating that this money was given to her by Bharat, seizure memo whereto, Ex.PW-1/A, was signed by Nirmal.

21. A car stereo in the car HR-26E-7901, as per the disclosure statement of Bharat had been given for repair to Dheeraj Kochhar, PW-7. The same was seized vide seizure memo Ex.PW-7/1 on being pointed out by Bharat.

22. Armed with the aforesaid evidence, the case of the prosecution as laid for trial was that the accused persons had found in Laxman Singh Yadav an easy prey, for the reason he was staying alone and was a wealthy man. The motive was to harvest the wealth of the deceased by murdering him. Involvement of Bharat and Arvind S.Lal in the murder of the deceased was sought to be proved with reference to the last seen evidence as disclosed to the police by Phoolwati, PW-11, the washerwoman employed by Laxman Singh Yadav; the testimony of the wife of the deceased, Sitara Devi, PW-9; the

recovery of the movable property of the deceased as per disclosure statement made by Arvind S.Lal and at his instance; the recovery of the car as per disclosure statement made by Bharat; the recovery of the stereo of the car; the identification of the property of the deceased as made by the wife of the deceased and his daughter, Meena Yadav, and above all the transmission of money from the account of the deceased to the account of Arvind S.Lal vide two cheques Ex.PW-23/1 and Ex.PW-23/2; the withdrawal of the money by Arvind S.Lal from his account and transfer of Rs.50,000/- from the account of Arvind S.Lal to the account of mother of Bharat, as also Rs.50,000/- handed over to the police by the mother of Bharat, Nirmla vide Ex.PW-1/A. Rohit was sought to be nailed with reference to his having impersonated the deceased and opening an account in the name of the deceased at post office Sarojini Nagar.

23. At the trial, various police officers, names noted by us herein above, appeared as witnesses of the prosecution and deposed with respect to the disclosure statements made by Bharat, Arvind S.Lal and Rohit and the recoveries effected pursuant thereto. PW-22, Harish Chand Grover, an officer of State Bank of Bikaner and Jaipur was examined, who gave

evidence pertaining to account No.3319 in the name of Arvind S.Lal and the cheques issued by Arvind S.Lal from said account, being Ex.PW-22/1 to Ex.PW-22/20 and Ex.PW-22/8 being issued in the name of Nirmal and money there under credited in her account with the State Bank of India, Mehrauli Road. PW-5, Onkar Chand, Post Master, Sarojini Nagar post office, proved the account opening form and deposit slip, Ex.PW-5/A and Ex.PW-5/B respectively which showed that an account was opened in the name of Laxman Singh Yadav on being introduced by Arvind S.Lal being handed over to the police. PW-25, Deepa Verma, proved her report Ex.PW-25/1, to the effect that the handwriting on Ex.PW-5/A and Ex.PW-5/B matched the handwriting of Rohit. Mother of Bharat, Nirmal who was examined as PW-1 turned hostile, but admitted her signatures on the seizure memo, Ex.PW-1/A. We note that she has not stated in her testimony that the police obtained her signatures on any blank papers which were used to create Ex.PW-1/A. PW-23, Shri R.K.Malik, proved the seizure memo, Ex.PW-23/4 where under seizure of the cheques Ex.PW-23/1 and Ex.PW-23/2 was recorded as also the seizure of the account opening form, Ex.PW-23/3.

24. PW-6, Sushil Kumar, deposed that the vehicle HR-26E-7901, Pugeot make, was seized in his presence but did not

support the prosecution that Bharat had brought the same to him. Similarly, PW-7, Dheeraj Kochhar admitted seizure of the car stereo from his shop but did not support the prosecution that Bharat had given the same to him. It may be noted that he did not state that Bharat did not hand over the stereo to him. At the trial he could not identify Bharat as the one who had handed over the stereo to him.

25. Finding that the witnesses of the prosecution did not lack in credibility and that in his statement recorded under Section 313 Cr.P.C., Bharat admitted that PW-1, Nirmal was his mother, as also admitted that the cheque Ex.PW-22/8 was drawn in favour of his mother; additionally he admitted that his mother was having an account with the State Bank of India, Mehrauli Road, Gurgaon and that in his statement recorded under Section 313 Cr.P.C., Arvind S.Lal admitted having opened account No.3319 with the State Bank of Bikaner and Jaipur, Kamal Cinema Complex Branch, Safdarjung Enclave, New Delhi and that he also admitted having issued the cheques Ex.PW-22/1 to Ex.PW-22/7 and Ex.PW-22/9 to Ex.PW-22/20, learned Trial Judge has returned the finding of guilt as afore-noted against Arvind S.Lal and Bharat. The recoveries at the instance of Arvind S.Lal have been proved as established. The identification thereof by

PW-9 and PW-10, the wife and daughter of the deceased has been accepted. Rohit has been held guilty on the basis of the testimony of PW-25.

26. At the hearing of the appeals on 7.1.2009, learned counsel for the appellants urged that the manner in which PW-21 claimed to have broken through the case is doubtful. Counsel urged that since the very initiation of the break through is doubtful, the entire case of the prosecution must be thrown out.

27. The factual matrix of the aforesaid submissions was the fact that PW-21, Inspector Raj Kumar, claimed to have been entrusted with the case on 9.10.1998 and on that very day he claimed to have called Rajeev Goswami, PW-18 and one Inder Singh Malik, who, from the photographs of the dead body identified Laxman Singh Yadav as the deceased. Counsel urged that where from PW-21 got hold of the said two persons has not been explained.

28. With reference to the testimony of the wife of the deceased, Sitara Devi, examined as PW-9, counsel pointed out that she could not tell the exact date on which Bharat and Arvind S.Lal gave money to her, and that at one place she stated that Rs.24,000/- was handed over and at another place

stated that Rs.30,000/- was handed over, counsel urged that this made her testimony suspect.

29. With reference to the testimony of the daughter of the deceased, Meena Yadav, examined as PW-10, counsel urged that no reliance could be placed upon the fact of her identifying the jewellery of her father recovered at the instance of Arvind S.Lal, for the reason, admittedly, Meena Yadav was staying abroad and presumably would not be in a position to identify the same.

30. To discredit Phoolwati, PW-11, counsel urged that her testimony was vague, in that, she claimed to be employed during summer months without disclosing the exact date, coupled with the fact that she could not state the exact date when she last saw the deceased in the presence of Bharat. Counsel urged that the last seen theory was shattered.

31. We are not impressed with either argument urged by learned counsel for the appellants.

32. The testimony of the wife of the deceased and Phoolwati show the two being rustic women. The wife of the deceased has deposed that she had a spiritual bent of mind and did not approve the worldly ways of life adopted by her husband. She categorically stated that she was illiterate. Minor

inconsistencies in her statement are of no consequence. It is settled law that major and inherent inconsistencies on material points alone, can discredit a witness. In her statement recorded to the police under Section 161 Cr.P.C. she stated that in the month of August 1998, Bharat and Arvind gave her Rs.30,000/- but in Court while deposing after nearly three years thereafter stated that they handed over Rs.24,000/- to her is not a material contradiction. Similarly, minor inconsistencies pertaining to the chinaware items handed over to her by Bharat and Arvind are immaterial. It would be relevant to note that counsel for Bharat did not even challenge the testimony of PW-9 to the effect she had stated that in August when she rang up her husband, Bharat had responded to the telephone call and told her that her husband had gone to Bombay. It has to be noted that PW-10 correctly identified the articles of recovery made at the instance of accused Arvind. Pertaining to Phoolwati it may be noted that she claimed being employed in the summer season of 1998 and within a week of her employment being told by Bharat not to report for work as the deceased was away to Bombay, was reiterated by her in Court. In spite of cross-examination this part of her testimony could not be shattered as also her testimony that a day prior to her being told by Bharat not to

report for work she had seen the deceased being driven away by Bharat. That she could not give the exact date is irrelevant. Phoolwati was examined on 7.3.2001 i.e. nearly after 2½ years of the date of the incident.

33. The crucial and the clinching evidence, in the instant case, which has surfaced through Ex.PW-23/1 and Ex.PW-23/2 which show that through the medium of two cheques, Rs.2,24,000/- (Rupees Two Lakhs Twenty Four Thousand only) and Rs.2,25,000/- (Rupees Two Lakhs Twenty Five Thousand only) respectively has flown from the coffers of the deceased to the coffers of Arvind S.Lal after the deceased had died and non-explanation by Arvind S. Lal, as to under what circumstances he came in possession of the said cheques, is sufficient evidence to nail Arvind S.Lal. It may be noted that learned counsel for Arvind S.Lal did not dispute that the two cheques were drawn on the account of the deceased maintained with the State Bank of India and were duly credited in account No.3319 in the name of Arvind S.Lal with the State Bank of Bikaner and Jaipur, Kamal Cinema Complex Branch, Safdarjung Enclave, New Delhi. Further, withdrawal of money from the said account on cheques being issued by Arvind S.Lal (drawn on self) being Ex.PW-22/1 to Ex.PW-22/7 and Ex.PW-22/9 to Ex.PW-22/20, all withdrawals

being after the date of death of the deceased was also admitted.

34. Obviously, the inference is that Arvind S.Lal shared the booty with somebody. That somebody had to be the person who was hand in glove with Arvind S.Lal to perpetrate the crime.

35. Pertaining to Ex.PW-22/8, the cheque dated 30.8.1998 in sum of Rs.50,000/- in the name of Nirmal, it needs to be noted that the amount under the cheque has been credited in the account of Nirmal with the State Bank of India, Mehrauli Road; Bharat has admitted in his statement recorded under Section 313 Cr.P.C. that his mother was maintaining an account with the State Bank of India at Mehrauli Road Branch; there being no explanation by him as to under what circumstances his mother received the amount points the finger towards the guilt of Bharat. Though, mother of Bharat, Nirmal, PW-1, turned hostile with respect to the case of the prosecution that she voluntarily handed over Rs.50,000/- to the police stating that this money was give to her by Bharat, but she admitted her signatures on the seizure memo Ex.PW-1/A; she not having deposed to having been forced to sign the same or sign on blank papers, lends assurance to the testimony of PW-21 and other police witnesses who had witnessed the seizure, that indeed, mother of Bharat had, probably on her conscience

pricking her, told the truth to the police with simultaneous conduct of coming clean by handing over Rs.50,000/- to the police.

36. Recoveries of the jewellery of the deceased and also the electronic goods noted in para 17 above as per disclosure statements of Arvind S.Lal and at his instance as also same being identified by the wife and the daughter of the deceased establish Arvind S.Lal being in possession of the property of the deceased, possession whereof he has not explained, much less satisfactorily explained.

37. Testimony of PW-11 categorically establishes that she was employed by the deceased to wash his clothes during summer months; July is summer period in Delhi; after a week of her employment she saw the deceased last time, being driven in the car by Bharat who was the driver of the deceased and that the next day, Bharat told her that Laxman Singh Yadav had gone to Bombay and hence she need not visit the house to wash his clothes; the same points the finger of guilt towards Bharat being involved. The testimony of PW-10 established Bharat being the driver of Laxman Singh Yadav and both Bharat and Arvind S.Lal being in contact with the deceased. Ex.PW-23/1 and Ex.PW-23/2 evidence that Arvind S.Lal was in possession of

the two cheques issued by the deceased which further reinforces that Arvind S.Lal was having access to the deceased, in the absence of any explanation by Arvind S.Lal that somebody else handed over the cheques to him. Testimony of PW-2 establishes the attempts made by Arvind S.Lal to sell the plot of the deceased. This also explains the need to open an account in the name of the deceased where the sale proceeds realized could be credited and siphoned off and hence the need for Rohit to impersonate the deceased and open an account at post office Sarojini Nagar.

38. Where the fruits of a crime are in possession of the accused and the possession is not accounted for in some way consistent with the innocence of the accused, the same affords a strong and a reasonable ground for the presumption that the accused, in whose possession, the fruits of the crime were found is the real offender, more so when the nature of the fruit is such which cannot pass readily from hand to hand.

39. Law requires that the broad spectrum of the prosecution case has to be considered; the process of evaluation of circumstances and evidence has to be based on broad probabilities with a sound forensic approach and the nugget of truth is to be searched accordingly.

40. We concur with the view taken by the learned Trial Judge that motive has been established. We may only add that in a case of circumstantial evidence, motive plays a very important role. We concur with the view taken by the learned Trial Judge that just prior to Laxman Singh Yadav disappearing he was last seen in the company of Bharat and that Bharat has failed to explain as to when the two parted company; requiring inference to be drawn against Bharat. We concur with the view taken by the learned Trial Judge that the evidence on record establishes Arvind S.Lal as the main brain and he and Bharat shared the fruits of their illegal venture. We concur with the view taken by the learned Trial Judge that Rohit, by falsely signing as Laxman Singh Yadav, when he opened an account in the name of the deceased at the post office Sarojini Nagar has committed an offence under Section 468 IPC. It would be of importance to note that Arvind S.Lal has acted as the introducer of the account when Rohit impersonated as Laxman Singh Yadav which further lends credence to the fact that after doing away with Laxman Singh Yadav, Arvind S.Lal went about utilizing Rohit to open an account in the name of the deceased. As noted above, PW-2 has spoken about Arvind S.Lal coming to him around 8th or 10th of September 1998 with a desire to sell

plot No.1301B, Bobilia, Part-II, Gurgaon. Obviously, an account was required to be opened in the name of the deceased by somebody in which account sale proceeds, after the plot was sold could be credited and thereafter booty was shared amongst the accused persons.

41. Pertaining to the submission made by learned counsel for the appellants that the manner in which PW-21 claims to have broken through the case is highly suspicious; suffice would it be to state that the manner in which the police claims to have picked up initial leads is of no significance in a case where tell tale and unimpeachable evidence surfaces pointing out towards the guilt of the accused. In a given case, where the very origin of the break through is in doubt, and the substantive evidence brought on record by the police is shaky, the doubtful origin of the break through by the police may assume significance. But, in the instant case, ignoring all other evidence, the evidence pertaining to the account of the deceased maintained with the State Bank of India, the account of Arvind S.Lal maintained with the State Bank of Bikaner and Jaipur; money flowing from the account of the deceased to the account of the Arvind S.Lal and further disbursement by Arvind S.Lal vide 20 cheques, Ex.PW-22/1 to Ex.PW-22/20, itself is

sufficient to hold that the police did reach the right place which was presented in the form of evidence at the trial.

42. We find no merits in the appeals.

43. The same are dismissed.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

JANUARY 15, 2009
Dharmender