

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

% *Judgment Reserved on: July 2, 2009*
Judgment Pronounced on: August 21, 2009

+ **CRL. APPEAL NO.890/2008**

RAM BABU @RAJA ...Appellant.
Through : Mr.Mukesh Jain, Advocate.

VERSUS

STATE ...Respondent
Through : Mr.Pawan Sharma, APP.

CRL. APPEAL NO.923/2008

ULHAS ...Appellant.
Through : Mr.Mukesh Jain, Advocate.

VERSUS

STATE ...RESPONDENT
Through : Mr.Pawan Sharma, APP.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J.

1. Case set up by the prosecution against four accused, Ram Babu, Ulhas, Shakuntala and Sanjay is that

Shakuntala was the widowed sister-in-law of the deceased (the person murdered) and was residing in a separate portion of the same house in which the deceased was residing; namely, House No.RZA-95, Gali No.3, Sita Pur- II, Delhi. Accused Ram Babu was a tenant under Shakuntala and had developed illicit relations with her. This was not to the liking of Radhey Gupta who used to object to the same. Besides, Shakuntala and Radhey Gupta had a dispute pertaining to the property in which they were residing. This motivated Shakuntala to murder Radhey Gupta and to give effect to her intention she and Ram Babu sought the help of accused Sanjay and Ulhas to murder Radhey Gupta. In furtherance of their conspiracy, Ram Babu enticed the deceased to a room taken on rent by Ram Babu in Dabri Extension, where with the help of Sanjay and Ulhas, the deceased was strangled to death with a nylon rope. The body was put inside a gunny bag which was tied with a nylon rope and was thrown at an abandoned spot in a DDA park Todar Pur Road.

2. The process of law was set into motion when at around 7:00 AM on 15.6.2004, Const.Vinod PW-10, was informed by somebody that a gunny bag containing something was lying at a kachcha raasta leading to village Dasghada. Const.Vinod informed said fact to the duty officer PS Inderpuri who noted the same vide DD No.7A, Ex.PW-12/A. ASI

Raghuvar Dyal PW-12 was entrusted with the job of investigating and copy of DD No.7A was handed over to him. Accompanied by Const.Ram Phool PW-9, he reached the place, which happened to be a DDA park on Todar Pur Road and saw a gunny bag with mouth tied with a red colour nylon rope. He untied the bag and found a dead body of a man wearing black pants and a white vest. ASI Raghuvar Dyal made an endorsement Ex.PW-12/B under copy of the DD entry and sent Const.Ram Phool PW-9 to the police station for registration of an FIR. At the police station SI Asha PW-19 registered the FIR Ex.PW-19/A for the offence of murder.

3. Since ASI Raghuvar Dyal had called a photographer to be deputed at the site, Karan Singh PW-15, a photographer by profession reached and took 13 photographs Ex.PW-12/1 to Ex.PW-12/13 of the place where the gunny bag containing the body was found. It may be noted that the photographs Ex.PW-12/7 and Ex.PW-12/12 show a nylon rope next to the gunny bag and the body.

4. Since it was a prima facie case of murder, Inspector M.C.Katoch PW-22, the SHO of PS Inderpuri was informed about the dead body being found. Even he reached the spot. He prepared the rough site plan Ex.PW-22/A of the place where the dead body was found. The red coloured nylon rope Ex.P-7 with which the mouth of the gunny bag was tied, a red shirt

Ex.P-8 recovered from the gunny bag along with the gunny bag Ex.P-9 were seized as recorded in the memo Ex.PW-7/A.

5. The body was seized and was sent to the mortuary of Safdarjung Hospital for post-mortem. Information about the dead body being found was sent to the 'Missing Person PCR'. The body was preserved in the mortuary of Safdarjung Hospital since it was not identified.

6. Radhey Gupta had left his house at around 2:30 PM on 14.6.2004 and did not return home. His son Satish Gupta PW-3, lodged a 'missing person report' on 16.6.2004 at around 9:30 PM at PS Dabri, the police station within jurisdiction whereof the house in which Radhey Gupta resided was situated. The report was registered vide DD No.60-B, Ex.PW-3/B. Relevant would it be to note that in the report Satish Gupta stated that when his father left the house he was wearing a black pant and a white vest.

7. Pertaining to the dead body of a man which was found as afore-noted in the morning of 15.6.2004, no progress could be made pertaining to the identity of the body or the manner in which as also as to who committed the crime, till 19.6.2004. During this period, Inspector M.C.Katoch PW-22 scrutinized the missing persons' information and with reference to the description of Radhey Gupta as disclosed in the missing persons' report found that the description therein

matched that of the dead body which was found in the morning of 15.6.2004. Satish Gupta PW-3, the person who had lodged the report Ex.PW-3/B, pertaining to his father being missing, was contacted. He identified the dead body of his father. His statement Ex.PW-3/DA under Section 161 Cr.P.C. was recorded wherein he stated that his father Radhey Gupta left the house on 14.6.2004 around 2:30 PM in the company of Ram Babu who was a tenant of his aunt Shakuntala, and had not returned since then. He further stated that Shakuntala used to quarrel with his father in respect of the house in which the two families resided.

8. Obviously, in view the afore-noted statement, the needle of suspicion pointed towards Ram Babu and efforts were made to trace him.

9. Since the body was identified by Satish Gupta PW-3 as that of Radhey Gupta, the same was sent for post-mortem. On 20.6.2004, at 11:15 AM, Dr.Chander Kant PW-11 conducted the post-mortem and prepared the post-mortem report Ex.PW-11/A in which he noted that on external examination of the body he found ligature marks and abrasion injuries on the body. Ligature marks were caused by material like rope. He opined that the cause of death was strangulation by ligatures associated with manual strangulation. He further opined that the time since death was about 5½ days prior to the date on

which the post-mortem was conducted i.e. the intervening night of 14/15.6.2004 or morning of 15.6.2004. After the post-mortem, Dr.Chander Kant handed over the clothes of the deceased, the sample of blood of the deceased and the sample of scalp hair of the deceased to Inspector M.C.Katoch, who seized the same as recorded in memo Ex.PW-9/A.

10. On 27.6.2004 at 1:40 PM, Inspector M.C.Katoch arrested accused Ram Babu from red light, Shastri Park, Seelam Pur in the presence of SI Anil Kumar PW-21. Ram Babu had a bag with him which was searched and yielded a photograph Ex.PW-21/D of his and co-accused Shakuntala and her daughter. The bag and the photograph were seized as recorded in the memo Ex.PW-21/E. Inspector M.C.Katoch interrogated Ram Babu and recorded his statement Ex.PW-21/A.

11. Eschewing reference to the confessional part of the statement Ex.PW-21/A and relevant for purposes of the case, it may be noted that after admitting to the commission of the crime with Sanjay as co-accused, Ram Babu stated that he could point the shop from which he purchased the gunny bag in which the body of Radhey Gupta was thrown and that the rope and a wood piece with which the deceased was strangled were hidden by him and he could get the same recovered. Thereafter, Ram Babu led the police party to

House No.RZ-82 Dabri Extension and got recovered a red nylon rope Ex.P-4, an empty bottle of whiskey Ex.P-6 and a wooden plank Ex.P-5 from inside the house. Inspector M.C.Katoch seized the said articles as recorded in memo Ex.PW-5/A, which was witnessed by Mahender PW-5 and SI Amar Pal PW-7.

12. Ulhas was arrested the same day from house No.D-131 Vrindapuri because Ram Babu disclosed his whereabouts. Inspector M.C.Katoch interrogated Ulhas and recorded his statement Ex.PW-21/B. Eschewing reference to the confessional content of the statement of Ulhas, it may be noted that he disclosed that a purse Ex.P-2 belonging to the deceased was with him and that the same had a photograph of the deceased and a telephone bill in the name of the deceased. He told that he had hidden the purse inside the taand (loft) in his house. He climbed up to the taand and produced the purse Ex.P-2 which contained a photograph of the deceased and a telephone bill in the name of the deceased, which were seized as recorded in the memo Ex.PW-22/G. Thereafter, Ulhas led Inspector M.C.Katoch to the place where the dead body of Radhey Gupta was recovered and as recorded in the pointing out memo Ex.PW-21/G pointed out the same. He thereafter led Inspector M.C.Katoch to House No.RZ-82, Khasra No.27/15 Dabri Main Extension i.e. the house from

where Ram Babu had already got recovered a piece of nylon rope, a piece of stick and a bottle of whisky and pointed out the same to be the place where the deceased was strangled.

13. Both Ram Babu and Ulhas, then led the police team to H.No.RZA-95, Sita Puri, where accused Shakuntala was arrested. Inspector M.C.Katoch interrogated her and recorded her disclosure statement Ex.PW-21/C. However, nothing incriminating was recovered at her behest.

14. On 29.6.2004, accused Ram Babu pointed out a shop at RZA-119, Sitapuri Part II, wherefrom he claimed to have purchased the gunny bag in which the body of Radhey Gupta was thrown. The pointing out memo Ex.PW-2/A was prepared by Inspector M.C.Katoch and bears the signatures of SI Anil Kumar and Arjun PW-2, the owner of the shop. On the same day, Ulhas pointed out a shop at RZ-34 Mohan Block, West Sagarpur, wherefrom he claimed to have purchased the red nylon rope used in the crime. Inspector M.C.Katoch prepared the pointing out memo Ex.PW-6/A which was witnessed by SI Anil Kumar and Shri R.K.Tiwari PW-6, the owner of the shop.

15. A Test Identification of the purse Ex.P-2 was conducted before a Magistrate and as recorded in the

proceedings Ex.PW-22/H, Satish PW-3, the son of the deceased identified the same correctly.

16. Accused Sanjay remained untraceable till 26.9.2004 when SI Girdhari Lal arrested him from his native village Raj Mandir, District Maharaj Ganj. A wrist watch Ex.P-1 from his person was seized as recorded in the memo Ex.PW-23/B. Test Identification Proceedings pertaining to the watch conducted before a Metropolitan Magistrate were conducted and as recorded in the TIP proceedings Ex.PW-22/I, Satish PW-3, correctly identified the watch as that of his father.

17. The nylon rope with which the mouth of the gunny bag in which the body of the deceased was recovered as also the nylon rope recovered at the instance of accused Ram Babu were sent for expert opinion and as per report Ex.PW-22/J the analyst opined that the two pieces of rope were made of nylon and were similar in respect of colour, texture, design, thickness, number of strands, twist, number of fibres in each strands and in their microscopic appearance.

18. The appellants as also Sanjay and Shakuntala were sent to trial for offences punishable under Section 302/120-B/201 IPC.

19. At the trial, the prosecution examined twenty four witnesses. For the sake of brevity, we eschew reference to the formal and procedural witnesses. Reference is being made

only to the testimonies of those witnesses who are relevant for the purposes of proving or disproving the guilt of the accused.

20. Jagdish PW-13 deposed that on a particular date which he fails to remember, at about 2:30 PM deceased Radhey Gupta, Ram Babu and brother-in-law of Ram Babu visited him at his grocery shop at 99, Gali No.2, Dabri. From the shop, Radhey Gupta went to his house and returned with a water bottle and thereafter left with Ram Babu and his brother-in-law. He identified Ram Babu and Sanjay as those accompanying Radhey Gupta on that day. Being declared hostile and on cross-examination by the learned APP he confirmed that the date was 14.6.2004.

21. It is apparent that through the testimony of Jagdish PW-13, the prosecution attempted to prove that the deceased was last seen alive in the company of the appellants on 14.6.2004, the day the deceased went missing.

22. Satish Gupta PW-3, deposed that the deceased was his father and that he used to reside with his father and his sister in the first floor of H.No.RZA-95, Sita Puri Part II, Gali No. 3. The ground floor of the said premises was in possession of his aunt Shakuntala (Chachi). Accused Ram Babu was a tenant under Shakuntala. On 14.6.2004, at about 2:30 PM, when his father was leaving for somewhere, Ram Babu took a lift from him, i.e. Radhey Gupta, to be dropped to the railway

station. His father did not return home for two days thereafter, and subsequently he lodged a missing persons' report. Accused Shakuntala used to quarrel with his father and threaten him to leave the house or else she would get him killed. In cross-examination, he stated that the house was jointly owned by his late Uncle Amar Singh (husband of Shakuntala) and his father and that after the death of this uncle, Shakuntala used to fight over the property.

23. Indra Wati PW-4, deposed that deceased Radhey Gupta was her husband and she used to reside with her family at Sita Puri on the first floor of the premises in which accused Shakuntala used to reside on the ground floor. Shakuntala is her sister-in-law and after the death of the husband of Shakuntala, she was keen to sell the property in which they resided. Ram Babu was a tenant under Shakuntala. He was having illicit relations with Shakuntala and had married her. Deceased Radhey Gupta used to admonish Shakuntala for this reason and this often led to quarrels between Shakuntala and Radhey Gupta. Shakuntala used to threaten that she would get Radhey Gupta killed.

24. Arjun PW-2, deposed that Ulhas and Ram Babu had purchased oil, soap and a gunny bag from him and told him that they were purchasing the gunny bag to take utensils to their village. 14 – 15 days later, police brought Ulhas and Ram

Babu to his shop and that the pointing out memo Ex.PW-2/A was witnessed by him. On being cross-examined, Arjun stated that he could not tell the exact date when Ulhas and Ram Babu purchased the gunny bag from him.

25. We may note at this stage that the gunny bag Ex.P-9 was not shown to Arjun and hence he did not speak a word about the same.

26. Inspector M.C.Katoch PW-22 deposed that on 15.6.2004 he took over the investigation of the case pertaining to DD No.7A regarding a gunny bag lying on a street. He reached the spot and saw a dead body in a gunny bag. He summoned a photographer who took photographs Ex.PW-12/1 to Ex.PW-12/13. He removed the dead body from the gunny bag and recovered a maroon coloured shirt from the bag. He prepared the site plan Ex.PW-22/A of the spot. He seized the nylon rope (which was used to tie the mouth of the gunny bag); the gunny bag and the maroon shirt recovered from the said gunny bag as noted in the memo Ex.PW-7/A. He enquired from the people present at the spot regarding the identity of the body but no one could identify it. On 19.6.2004, while scrutinizing the missing persons' information he learnt that one Radhey Gupta was missing since 14.6.2004 and therefore contacted his son Satish Gupta. Satish Gupta identified the body as that of his father. The body was then sent for post-

mortem. He recorded the statement of Satish Gupta. On 27.6.2004 accused Ram Babu was arrested from the red light, Shastri Park, Seelampur at 1:40 PM. He interrogated the accused and recorded his disclosure statement. The accused led the police team to RZ-82, Dabri Extension which was locked. After the arrival of crime team the lock of the room was broken and a piece of nylon rope Ex.P-4, a bottle of whisky Ex.P-6 and a wooden plank Ex.P-5 were recovered and seized. Thereafter, at the instance of accused Ram Babu, accused Ulhas was arrested and his room was searched. A purse Ex.P-2 belonging to the deceased was recovered from his possession. The two accused Ram Babu and Ulhas then led to the arrest of Shakuntala from her house.

27. On being cross examined by the counsel for the accused, Inspector M.C.Katoch PW-22, stated that when Ram Babu led the police team to RZ-82, Dabri Extension, a public witness Mahender accompanied them. The owner of said plot i.e. RZ-82 Dabri Extension could not be traced. An old lady present there informed him that the land was a disputed property. He stated that he does not remember as to what efforts he made to trace the owner of said plot. The crime team had reached at 5:30 PM and consisted of three persons whose names he does not know. The photographs taken by the crime team could not be developed as the reel got

washed. The lock was broken with the help of a stone. The place was a lonely place, it was a plot situated in a residential area. There was no cot in the room. He does not remember whether the room had any windows or not. The finger print expert of the crime team informed him that no chance prints were found on the articles which were seized.

28. SI Amar Pal Singh PW-7 deposed that on 15.6.2004, he joined the investigation of the case with Inspector M.C.Katoch. On reaching the spot, they saw a gunny bag from which a dead body was recovered. The spot was got photographed. The gunny bag along with a nylon rope with which the gunny bag was tied and a brown shirt recovered from the gunny bag were seized vide Memo Ex.PW-7/A. SHO prepared a site plan.

29. SI Anil Kumar PW-21 deposed that he joined the investigation of this case on 20.6.2004 when the dead body was sent for post-mortem. On 27.6.2004, SHO M.C.Katoch, SI Amar Pal Singh, Const. Manju and he i.e. SI Anil Kumar met a secret informer who informed about the whereabouts of accused Ram Babu. Accused Ram Babu was arrested and on interrogation disclosed about the conspiracy between Shakuntala, Ulhas, Sanjay and him to kill Radhey Gupta. From his personal search a bag containing a photograph of accused Ram Babu with co-accused Shakuntala and her daughter was

recovered. Then the accused led them to a dairy at Mangal Bazaar, near Dabri where a public witness Mahender joined them. From there they went to RZ-82, Khasra No. 27, Dabri main. There was a room which was locked. They summoned the crime team and in presence of crime team the lock was broken and from the room Ram Babu got a nylon rope and a wooden plank recovered. The spot and the articles were photographed. Thereafter at the instance of Ram Babu accused Ulhas was also arrested from D-131 Bindapur, and his disclosure statement was also recorded. In pursuance of his disclosure statement Ulhas got recovered a wallet belonging to the deceased. Subsequently, accused Shakuntala was also arrested. He i.e. SI Anil Kumar witnessed the pointing out of the place of occurrence by the accused and the pointing out of the shops from where the gunny bag and nylon rope respectively were purchased by them. In his cross-examination he stated that he did not remember the number of persons in the crime team. He did not remember as to who broke open the lock of the room in Dabri Extension. He could not tell as to how many houses were there in front of the house of Ram Babu. He stated that no public persons were present when the lock was broken. He could not tell as to how many windows and gates were there in the room. He could not tell the

dimensions of the room but stated that there was no cot in the room. He denied that the recoveries were planted.

30. R.K.Tiwari PW-6 deposed that he sells paint and sanitary ware but denied having sold any nylon rope to the appellants. It is obvious that R.K.Tiwari is a hostile witness.

31. Mahender PW-5 the witness to the recoveries as recorded in the memo Ex.PW-5/A i.e. the recovery of the rope Ex.P-4, the piece of wood Ex.P-5 and the whisky bottle Ex.P-6 from House No.RZ-82, Khasra No.27/15, Dabri Main Extension also turned hostile and denied any recovery in his presence but admitted his thumb impression on the memo Ex.PW-5/A. He claimed that he was apprehended and taken to the police station where his thumb impression was obtained.

32. Vide impugned judgment and order dated 23.8.2008, the learned Trial Judge has held that qua accused Shakuntala only incriminating evidence was of a motive and that save and except the inadmissible evidence pertaining to confessions made before the police, there was no evidence of her being involved in the crime. Thus, Shakuntala has been acquitted. Acquitting accused Sanjay against whom the incriminating evidence led pertained to the recovery of the wrist watch Ex.P-1 and it being identified by Satish PW-3, as minuted in the TIP proceedings Ex.PW-22/I, as the watch of the deceased and the evidence of being last seen in the company

of the deceased along with co-accused Ram Babu as also the inadmissible confessional evidence. Giving benefit of doubt, the learned Trial Judge has held that the watch Ex.P-1 was of an ordinary make and there was no distinctness in the same, meaning thereby anyone could possess the same. Pertaining to the testimony of Jagdish PW-13 who was the witness of last seen, the learned Trial Judge noted that in his statement recorded under Section 161 Cr.P.C. Jagdish had not given the name of Sanjay. Thus, the learned Trial Judge has held that it would not be prudent to accept that part of the testimony of Jagdish wherein he inculpated Sanjay.

33. The appellants have been convicted. Ram Babu has been convicted on the ground that he was last seen in the company of the deceased by Jagdish PW-13 on 14.6.2004 at about 2:30 PM and that this was the time of the day when the deceased was last seen alive. It has further been held that the rope Ex.P-4 recovered from House No.RZ-82, Dabri Extension being similar to the rope Ex.P-7 as per the expert opinion Ex.PW-22/J showed that the two pieces of rope pertain to the same long piece of rope and hence proved the involvement of Ram Babu in the crime. The learned Trial Judge has further held that the testimony of Arjun PW-2 evidence that a gunny bag was sold by him to Ram Babu. With reference to the deceased being last seen in the company of Ram Babu, the

learned Trial Judge has also referred and relied upon the post-mortem report Ex.PW-11/A as per which the probable time of death of deceased was the intervening night of 14th and 15th June 2004 or the morning of 15.6.2004. The proximity of the time of the deceased being last seen alive in the company of Babu Ram and the probable time of death of the deceased has been noted by the learned Trial Judge. Holding Ulhas guilty, the learned Trial Judge has held that the purse Ex.P-2 containing the photograph of the deceased and the telephone bill in the name of the deceased was proof that Ulhas had the purse of the deceased and since said possession was unexplained, the learned Trial Judge has held that from said fact an inference of Ulhas being associated in the crime could be inferred. The learned Trial Judge has also held that the evidence pertaining to the conduct of Ulhas of pointing out the place where the dead body of the deceased was recovered also was incriminating evidence against Ulhas.

34. Pertaining to Ulhas, the second piece of incriminating evidence i.e. of Ulhas pointing out the spot where the dead body of the deceased was recovered and the place where the crime ostensibly took place (as disclosed by Ram Babu), which have been held to be incriminating evidence i.e. conduct of Ulhas, suffice would it be to state that the place where the dead body was recovered was already in the

knowledge of the police and the police could well take Ulhas to the said spot and get it re-identified. Thus, the said alleged act of Ulhas does not inspire any confidence. Qua the place where the deceased was allegedly killed, there is no incriminating evidence to show that the deceased was killed in House No.RZ-82, Khasra No.27/15, Dabri Extension. This was the house from where Ram Babu had got recovered a nylon rope, a bottle of whisky and a wooden plank and this was the place disclosed in his confessional statement as the place of the crime. His confessional statement as to the same being the place of crime is inadmissible evidence. Thus, there is no evidence that the crime was committed in said house. Even otherwise, the existence of the house, its location and a nylon rope, a bottle of whisky and a wooden plank were already recovered from the said house prior to Ulhas being arrested. Thus, nothing fresh came in the knowledge of the police thereafter. We hold that the second piece of incriminating evidence used against Ulhas is a wrong finding returned by the learned Trial Judge.

35. We are thus left with only one incriminating evidence against Ulhas being the recovery of the purse Ex.P-2 containing a photograph of the deceased and a telephone bill in the name of the deceased.

36. Recoveries of ordinary and useless articles have been always held to be very weak evidence. Decades ago, in the decision reported as Rex Vs. Jora Hasji 11 Bom HCR 242, West, J. observed that Courts must not, under cover of this provision (Section 27 of the Evidence Act) allow the discovery of ordinary articles to be introduced so as to admit what are practically confessions to the police. In the decision reported as AIR 2003 SC 1088 Bhagwan Singh Vs. State of M.P. it was observed that a bottle, which is an article too ordinary to be stolen and a religious book, again too ordinary an article to be stolen belonging to the deceased would be too weak a piece of evidence to sustain a conviction.

37. Against accused Ram Babu two incriminating evidences definitely stand proved. The first is Ram Babu seen in the company of the deceased at around 2:30 PM on 14.6.2004 and the deceased going missing on said day coupled with the evidence of the post-mortem as per the report Ex.PW-11/A which shows that the deceased died in the night of 14/15.6.2004 or the morning of 15.6.2004. Though not very proximate, but the two times are not very distant apart either. The second incriminating evidence is the authorship of possession of the rope Ex.P-4 which was recovered by him pursuant to his disclosure statement and the fact that the said rope matched the rope Ex.P-7 with which the

mouth of the gunny bag was tied in which the dead body of the deceased was dumped. The report Ex.PW-22/J of the expert opines that the same i.e. Ex.P-4 and Ex.P-7 are pieces of rope made of nylon and are similar in respect of colour, texture, design, thickness, number of strands, twist and number of fibres in each strands. It is obvious that a long rope has been cut and two pieces recovered from two different places. One directly linking to the dead body recovered and the other not. The connectivity of the second with reference to its features with the first and the authorship of possession of the second linked to Ram Babu connects Ram Babu with the former. Thus, we have evidence of Ram Babu's involvement in the crime, speaking through the interconnection of the pieces of rope Ex.P-4 and Ex.P-7. The dead body of the deceased was noted for the first time on 15.6.2004. The red coloured nylon rope Ex.P-7 with which the mouth of the gunny was tied was seized on 15.6.2004 and deposited in the Malkhana. Ram Babu was apprehended on 27.6.2004 i.e. after 12 days. The red nylon rope Ex.P-4 was got recovered by him on 27.6.2004. The same was deposited in the Malkhana on the same day. It is difficult to believe that the investigating officer so remembered the features of Ex.P-7 that he planted a rope of identical features and showed the recovery thereof at the instance of Ram Babu. It is important to note that the report

Ex.PW-22/J of the expert analyst shows that two pieces of rope made of nylon were similar in colour, texture, design, thickness, number of strands, twists and number of fibers in each strands. Thus, nine similar features going into the minutest details of even the number of fibers in each strands matched. The law of probability guides us that remembering nine features of a rope and procuring a rope of same nine features is virtually next to impossible.

38. Though not of a very conclusive nature, through the testimony of the wife and the son of the deceased some evidence of motive against Ram Babu has emerged. The motive is the objection raised by the deceased against Ram Babu having illicit relationship with Shakuntala who is the sister-in-law of the deceased.

39. We hold that there is sufficient evidence against Ram Babu where from the guilt of Ram Babu can safely be inferred.

40. CrI.Appeal No.923/2008 filed by Ulhas is allowed. He is acquitted of the charge framed against him. His conviction vide impugned judgment and order dated 23.8.2008 is set aside.

41. Ulhas is directed to be set free forthwith unless required in custody in some other case.

42. Crl.Appeal No.890/2008 filed by accused Ram Babu is dismissed.

43. Copy of this judgment and order be sent to the Superintendent, Central Jail, Tihar for compliance.

(PRADEEP NANDRAJOG)
JUDGE

(INDERMEET KAUR)
JUDGE

August 21, 2009
Dharmender