

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

Judgment reserved on: February 18, 2010
Judgment delivered on: April 13, 2010

+ **CRIMINAL APPEAL NO.78/2009**

PRADEEP PILLAI **....APPELLANT**

Through: Mr. L.K. Upadaya, Advocate

Versus

STATE **.....RESPONDENT**

Through: Mr. Manoj Ohri, APP

WITH

CRIMINAL APPEAL NO.225/2009

ROHIT BHATTI **....APPELLANT**

Through: Mr. K.K. Manan, Advocate with Mr. Tarun Goomber, Mr. Gaurav Goswami, Mr. Pankaj Mendirata, Mr. Sangram S.S. Rao, Mr. Nipun Bhardwaj & Mr. Mustafa Arif, Advocates

Versus

STATE **.....RESPONDENT**

Through: Mr. Manoj Ohri, APP

CORAM:

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE AJIT BHARIHOKE

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

3. Whether the judgment should be reported in Digest ?

Yes

AJIT BHARIHOKE, J.

1. The appellants Rohit Bhatti and Pradeep Pillai, having been convicted in Sessions Case No.5/2008 FIR No.442/98 P.S. Sarai Rohilla on the charges under Section 302, 365 and 201 IPC all read with Section 34 IPC, have preferred the above two appeals against the impugned judgment dated 12.12.2008 and the consequent order on sentence dated 16.01.2009.

2. Briefly stated, case of the prosecution is that appellant Rohit Bhatti was a friend of Manish (deceased). The appellants Pradeep Pillai and Rohit Bhatti entered into a criminal conspiracy with their co-accused persons Arvind S. Lal, Sanjay Dass, Bharat Khilania and Khushi Ram to abduct the deceased Manish with a view to extort handsome ransom from his family. Pursuant to the said conspiracy, appellant Rohit Bhatti called the deceased Manish on telephone at his Printing Press in the afternoon of 08.10.98. Said call was received by Dinesh Kumar Sharma (PW13). On the request of the Rohit Bhatti, Dinesh Kumar Sharma connected him to the deceased Manish and after attending to the call the deceased left the Printing Press in his car No. DL-4CF-3946. It is also the case of the prosecution that a message was also received on the Pager No. 962800437 of the deceased at 01:57 p.m. that Rohit was waiting for him at Liberty Cinema. The deceased

reached at Liberty Cinema where appellants Rohit Bhatti and Pradeep Pillai were already waiting for him. They had juice together at the Juice Shop of Satish Kumar (PW8). The appellants Rohit Bhatti and Pradeep Pillai lured the deceased by telling him that their boss had arranged for a nice girl and if he was interested, he could accompany them. On this pretext, they took him to house No. B-150, Sector 8, Pappan Kalan, Delhi. The appellant Pradeep Pillai accompanied the deceased from Liberty Cinema in his car whereas Rohit Bhatti went to Pappan Kalan on his motorcycle. They reached the said house at around 03:15 p.m. where they met the co-accused persons Arvind, Sanjay and Bharat at the gate. They escorted the deceased to a room upstairs where the other co-accused Khushi Ram, Chowkidar was also present. After some time, accused Sanjay and Khushi Ram proceeded to tie the hands of the deceased at his back. The deceased Manish protested and resisted and he even bit both the hands of Bharat. On this, Khushi Ram stabbed Manish on his back with a knife and accused Sanjay strangled him with a piece of cloth, as a result, Manish died. Thereafter, they brought his dead body downstairs and dumped it into a *gutter*. Thereafter the appellants Pradeep Pillai and Rohit Bhatti alongwith the others left the spot of occurrence. Subsequently, in the evening of 08.10.98, the appellant Pradeep Pillai again went to Pappan Kalan house alongwith Ajay. They carried a *phavra* with them. At Pappan Kalan, they dug a pit outside the gate of the house with the

phavra and buried the dead body of Manish in the said pit after removing it from the *gutter*.

3. When the deceased did not return home on 08.10.98, complainant Anil Kumar Jain (PW14) visited the police station Sarai Rohilla at 11:35 p.m. and lodged a missing report. In the morning of 09.10.98, when the complainant could not find any trace of his son despite enquiries, he again visited the police station to lodge a formal complaint and his statement (Ex.PW5/A) was recorded by SI Ram Avtar wherein he expressed the suspicion that somebody might have kidnapped and killed his son. On the basis of said information, formal FIR was registered at the police station and investigation was entrusted to SI Ram Avtar (PW25).

4. During investigation, it was revealed by PW8 Satish Kumar that in the afternoon of 08.10.98, the appellants along with Manish visited a Juice Shop and after taking juice, they left together in the car of Manish and motor cycle of Rohit Bhatti. Appellant Rohit Bhatti was arrested on 05.11.98 and on interrogation, he made a disclosure statement (Ex.PW22/B) detailing the above referred facts. Appellant Pradeep Pillai was also arrested on 05.11.98. On interrogation, he made a disclosure statement regarding the carrying of *phavra* to the spot and also burying the dead body of Manish in a pit after removing it from the *gutter*.

5. Other accused were also arrested. They also made disclosure statements. Since they have been acquitted by the learned Trial Judge and their acquittal has not been challenged, it is not necessary to reproduce the facts relating to them.

6. Pursuant to the disclosure statement Ex.PW22/D, Pradeep Pillai got recovered the *Phavra* from the aforesaid house in Pappan Kalan. Disclosure statement of Pradeep Pillai also led the recovery of the dead body of Manish buried in the said pit when it was exhumed on 06.11.98 after seeking permission of the concerned SDM in presence of SDM Sh. Chandrakar Bharti (PW26) and Dr. K.Goel, Autopsy Surgeon (PW17).

7. It is also the case of prosecution that blood samples were lifted during investigation with the help of CFSL officials from the wall of the house in question, the *gutter* as also the place of burial of the dead body and seized vide respective memos. Aforesaid seized samples were sent to CFSL alongwith the clothes of the deceased for analysis and on analysis, the samples were found to contain the human blood of blood group 'A'.

8. On completion of the investigation, charge sheet against the seven accused including the appellants was filed, whereas the eighth accused Khushi Ram could not be arrested and he was declared proclaimed offender.

9. The appellants as well as their co-accused persons, namely, Arvind S. Lal, Bharat Khilania, Sanjay Dass, Ajay S. Lal and Tarun

Kumar were charged for the offence of criminal conspiracy punishable under Section 120B IPC as also for abduction, murder and screening of evidence of their crime in furtherance of said criminal conspiracy punishable under Sections 364A IPC, 302 IPC and 201 IPC all read with Section 120B IPC. Appellants as well as other co-accused persons pleaded not guilty to the charges and claimed to be tried.

10. Accused Arvind S. Lal filed a revision petition against the framing of charges against him and he was discharged by the High Court vide order dated 13.01.2000. Accused Khushi Ram was shown as proclaimed offender in column No.2 of the charge sheet.

11. In order to bring home the guilt of the appellants and the accused persons, prosecution examined 27 witnesses in all. However, the material witnesses examined with regard to the role played by the appellants Rohit Bhatti and Pradeep Pillai are PW8 Satish Kumar, PW13 Dinesh Kumar Sharma, PW14 Anil Kumar (complainant), PW17 Dr. K. Goel, PW26 Shri Chandrakar Bharti, SDM besides initial Investigating Officer, PW25 SI Ram Avtar, PW22 SI Iqbal Singh and the subsequent Investigating Officer PW27, Inspector Jagjeet Singh.

12. The appellants as well as their co-accused persons were examined under Section 313 Cr.P.C. to afford them an opportunity to explain the incriminating evidence appearing against them. They all denied the correctness of prosecution evidence and claimed to have

been falsely implicated. Neither of the accused persons has examined any witness in defence.

13. On appreciation of evidence, the learned trial Judge found the charges under Section 302 IPC, 365 IPC and 201 IPC all read with Section 34 IPC established against the appellants Rohit Bhatti and Pradeep Pillai. As regards other accused persons, the learned trial Judge came to the conclusion that the prosecution had failed to establish their guilt beyond reasonable doubt. They were accordingly acquitted of all the charges. We may note, though the appellants have preferred appeal against their conviction and consequent order on sentence, the State has not preferred to challenge the acquittal of other accused persons.

14. Instant case is based upon the circumstantial evidence as there is no eye witness to the occurrence. On perusal of the impugned judgment, it transpires that the learned trial Judge has found the appellants guilty of the charges on the basis of following circumstances taken to be established on record:

- (i) That on 08.10.98 at around 01:45 p.m., appellant Rohit Bhatti called the deceased Manish Jain at his factory on telephone which call was initially received by PW13 Dinesh Kumar Sharma, to whom Rohit Bhatti disclosed his identity and the call was then passed to Manish Jain, who after attending the call immediately left the factory

in his Maruti Car No. DL-4CF-3946. Ten minutes later at 01:57 p.m., a message was received on the pager of Manish Jain that "ROHIT IS WAITING AT LIBERTY". Thereafter, the deceased was last seen alive with the appellants Rohit Bhatti and Pradeep Pillai in the afternoon of 08.10.98 by PW8 Satish Kumar when they all took juice at his Juice Shop near the Liberty Cinema.

(ii) That on 05.11.98, appellant Rohit Bhatti made a disclosure statement (Ex.PW22/B) about giving details of the occurrence. Pursuant to said disclosure statement, the place of occurrence i.e. room of first floor at B-150, Sector 8, Dwarka, Pappan Kalan, Delhi was inspected and its western wall was found stained with blood, which blood was lifted on a piece of thread, besides that, blood samples were also lifted with the help of pieces of thread from the *gutter* and also the blood stained earth was scraped from the main sewer hole (*gutter*), which samples when analysed at CFSL, gave positive tests of human blood group 'A', as that of the deceased.

(iii) That the appellant Pradeep Pillai also made a disclosure statement on 05.11.98 stating that in the evening of 09.10.98 at around 06:00 p.m., he alongwith the other accused persons Khushi Ram, Arvind, Tarun

and Ajay removed the dead body from the said *gutter* and buried it outside the gate of the house at Pappan Kalan in a pit dug by them and pursuant to said disclosure statement, he got recovered the *phavra* with which the pit was dug as also the dead body.

(iv) That the blood-stained earth lifted from the aforesaid pit also tested positive for human blood group 'A' as that of the deceased.

15. Since case of the prosecution is based upon the circumstantial evidence only, it would be appropriate to have a look upon the law relating to circumstantial evidence.

16. In the matter of ***Padala Veera Reddy v. State of A.P.***, 1989 *Supp (2) SCC 706*, it was laid down by the Supreme Court that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

“10.(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of

explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.”

17. The above enunciated principle of law was reiterated in the matter of **State of U.P. v. Ashok Kumar Srivastava**, (1992) 2 SCC 86, where the Supreme Court, inter alia, observed thus:

“9. This Court has, time out of number, observed that while appreciating circumstantial evidence the Court must adopt a very cautious approach and should record a conviction only if all the links in the chain are complete pointing to the guilt of the accused and every hypothesis of innocence is capable of being negated on evidence. Great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. The circumstance relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.”

18. In the light of above enunciated principle of law, we now proceed to analyse the evidence.

19. Learned counsels for the appellants has assailed the impugned judgment on the ground that it is not based upon the correct appreciation of law and the facts. They submitted that the prosecution case is mainly based upon the last seen evidence and the recovery of dead body from a pit near the gate of House No.B-150, Sector 8, Pappan Kalan, pursuant to the disclosure statements Exhibits PW22/B

and PW22/D respectively made by the appellants Rohit Bhatti and Pradeep Pillai. It is also submitted that careful appreciation of the evidence would show that prosecution has failed to establish either of the circumstances. Therefore, the learned Trial Court was wrong in coming to the conclusion of the guilt of the appellants.

20. Learned counsel for the State, on the other hand, argued in support of the impugned judgment. He submitted that the prosecution has firmly established from the testimony of PW8 Satish Kumar and PW13 Dinesh Kumar Sharma as also the record of pager messages Ex.PW6/A received on the pager No.962800437 of the deceased that the deceased was called in the afternoon of 08.10.98 to Liberty Cinema by the appellant Rohit Bhatti by making a telephone call and even sending a pager message and he was last seen alive in the company of the appellants at the juice shop of PW8 Satish Kumar. Learned counsel for the State further submitted that even the disclosure statements made by the respective appellants and recovery of the dead body pursuant to the said disclosure statements is firmly established on record from the testimony of PW14 Anil Kumar Jain (complainant), PW22 SI Iqbal Singh, PW25 SI Ram Avtar and PW27 Inspector Jagjeet Singh. He has submitted that from their testimony, it is also established that on inspection of the spot of occurrence, some blood stains were found on the western wall of the room in question from where the scrapings were seized and also some blood samples were lifted from the *gutter*/sewer and which samples on analysis , as per the

CFSL report, gave positive tests for human blood of blood group "A", which was the blood group of the deceased also, which is significant proof of the fact that dead body was initially concealed in the gutter and buried later in the pit. Thus, he has urged for the dismissal of the appeal.

21. We have considered the rival contentions made on behalf of the parties and perused the material on record.

22. In order to establish circumstance No.(i), i.e., the deceased was last seen alive in the company of the appellants, the prosecution has mainly relied upon the testimony of PW8 Satish Kumar, who is a juice shop owner. Satish Kumar deposed that three days after the day of '*Karva Chauth*', the police visited his shop along with one person and inquired if the deceased Manish and appellant Rohit had visited his shop for taking juice, to which he replied in the affirmative. He also stated that on that day photograph Ex.PW8/A of the deceased was shown to him and since his memory was fresh, he confirmed the visit of Manish at his shop on the day of '*Karva Chauth*'. He, however, failed to identify either of the appellants as the persons who had accompanied the deceased to his juice shop but he stated that the two persons who had taken juice with the deceased had come on a motorcycle. Thus, it is not certain that the appellants visited the juice shop of PW8 on 08.10.98 with the deceased. Even if aforesaid evidence of PW8 Satish Kumar is taken to be true, then also this

evidence establishes only the fact that the deceased along with two persons had taken juice at the shop of PW8 Satish Kumar on the day of '*Karva Chauth*'. If, for the sake of argument, it is assumed that said two persons were the appellants, then also it is not of much help to the prosecution because PW8 Satish Kumar has not testified that after taking the juice all three of them left together for the same destination. In absence of any categorical evidence in this regard, we find it difficult to conclude that the deceased had accompanied the appellants from the juice shop of PW8 to the place where he was ultimately killed. Thus, in our considered view, above said evidence does not firmly establish that the deceased was last seen alive with the appellants.

23. Learned counsel for the State has submitted that no doubt PW8 Satish Kumar had failed to identify the appellants in his testimony, yet he has admitted that the deceased visited his shop and had juice with two persons. If this evidence is analysed in the context of the testimony of PW13 Dinesh Kumar Sharma and the message received at the pager of Manish Jain (deceased) on 08.10.98 at 1:57 pm stating "ROHIT IS WAITING AT LIBERTY", it is clear that it was the appellant Rohit Bhatti and his associate appellant Pradeep Pillai who had met the deceased near the Liberty Cinema and took juice along with him at the shop of PW8 Satish Kumar. To appreciate this contention of learned counsel for the State, it is necessary to have a look on the testimony of PW13 Dinesh Kumar Sharma. He has testified that on 08.10.98, he was present in the factory of the father of the deceased. On that day, at

about 1:45 pm he received a telephone call at the factory from Rohit Bhatti, who was a friend of the deceased. Rohit Bhatti disclosed his identity and requested him to pass on the call to the deceased. Thereafter, he passed on the call to the deceased, who after talking on phone for some time, made a telephone call to his grand-mother and left the factory in his Maruti Car DL4CF 3946. From this evidence, learned counsel for the State has urged us to conclude that it must be Rohit Bhatti with whom the deceased had juice at the shop of PW8 Satish Kumar. We are not convinced with this submission because it is not clear what conversation took place between the deceased and the caller who identified himself as Rohit Bhatti on telephone and it is also not clear as to where the deceased went after attending said telephone call. Coming to the pager message, the record of calls received at the aforesaid pager No. 962800437 of the deceased is proved on record as Ex.PW6/A. On perusal of the said record, it transpires that on 08.10.98 at about 1.57 pm, one message was received on the pager of Manish Jain "ROHIT IS WAITING AT LIBERTY". This circumstance, of course, raises a possibility that Rohit might have arranged for a meeting with the deceased at Liberty Cinema but this fact in itself is not sufficient to conclude that the deceased actually went to Liberty Cinema and met Rohit. Even if it is assumed that the deceased had gone to Liberty Cinema and met Rohit, then also the testimony of PW8 Satish Kumar falls short of saying that after their meeting and having juice they left together. Thus, it is not certain whether the deceased had gone along

with the appellants or not. Therefore, in our view, the last seen circumstance has not been firmly established in this case. We may note at this juncture that perusal of the call record of pager also indicates that on 09.10.98 also at 11:34 am, a message was sent to the pager of the deceased Manish Jain stating "CONT ROHIT AT HOME IMDTLY", which raises a possibility that appellant Rohit Bhatti was not aware of the death of the deceased. Otherwise, there was no occasion for him to send the said message to Manish Jain (deceased) on 09.10.98 at 11.34 am.

24. Another circumstance which weighed with the learned trial Judge against the appellant Rohit Bhatti is the disclosure statement Ex.PW22/B, which purportedly led to discovery of certain facts. Perusal of the disclosure statement reveals that as per the prosecution, Rohit Bhatti disclosed to the police that after killing the deceased in a room at the first floor of House No.B-150, Sector 8, Pappan Kalan, Delhi he and his co-accused persons brought his dead body downstairs and dumped it into the *gutter*. Learned counsel for the appellant submit that above said disclosure statement is inadmissible in evidence being a confession made to the police and it does not fall within the exception provided under Section 27 of the Evidence Act because the disclosure statement has not led to the discovery of the dead body or any fact. As against this, learned counsel for the State submitted that no doubt the dead body was not recovered from the *gutter* as it had been shifted subsequently by the other co-accused persons but the

fact remains that from the aforesaid gutter, blood samples were lifted, which on analysis, gave positive tests for the human blood of group "A" and this amounts to the discovery of the fact that at some stage, the dead body was concealed in the *gutter*.

25. We do not find merit in the contention of learned counsel for the State. Ex.PW22/Z is the seizure memo vide which the samples were lifted from the gutter and also the western wall of the room where the murder took place. Perusal of the said seizure memo indicates that it starts with the narration that the samples were collected with the help of CFSL team headed by Dr. G.D. Gupta, Principal Scientific Officer, CBI, CGO Complex, CFSL. Neither Dr. G.D. Gupta nor any member of the CFSL team which purportedly lifted the samples detailed in the seizure memo have been examined by the prosecution. In absence of their testimony, we do not find it safe to rely upon the evidence of the police officials and the complainant Anil Kumar Jain regarding the lifting of blood samples from the gutter/sewer, particularly when the CFSL report has been given under the signatures of Dr. G.D. Gupta but there is no mention in this report that the samples were lifted under his supervision by a team of CFSL.

26. Coming to the recovery of the dead body of the deceased, PW27 Inspector Jagjeet Singh, Investigating Officer has testified that on 05.11.98 he recorded the disclosure statement of the appellant Pradeep Pillai Ex.PW22/D. The disclosure statement Ex.PW22/D has

been witnessed by SI Ram Avtar (PW25), SI Iqbal Singh (PW22) and Anil Kumar Jain, complainant (PW14). On perusal of disclosure statement, it transpires that in the said statement appellant Pradeep Pillai disclosed about his complicity in the crime and stated that after the murder, the dead body was initially concealed in the gutter/sewer within the premises of House No.B-150, Sector 8, Pappan Kalan. He also disclosed that subsequently on 09.10.98 at around 6:00 pm in the evening, he again visited said house along with other co-accused Khushi Ram, Arvind and Ajay. They dug a pit near the gate of the said house and thereafter, they removed the dead body from the gutter and buried it in the said pit. PW14 complainant Anil Kumar has corroborated the aforesaid version by stating that on 05.11.98, appellant Pradeep Pillai was arrested at about 3:30 pm and on interrogation, he made a disclosure statement Ex.PW22/D disclosing that he along with others had buried the dead body of the deceased near property No.B-150, Sector 8, Pappan Kalan. His aforesaid version also finds corroboration in the testimony of PW22 SI Iqbal Singh and PW25 SI Ram Avtar who are also the witnesses to the disclosure statement Ex.PW22/D of the appellant Pradeep Pillai. From the aforesaid evidence, we find that the prosecution has been able to establish the disclosure statement Ex.PW22/D made by the appellant Pradeep Pillai about burning the dead body of the deceased in the pit.

27. As regards the recovery of the dead body of the deceased, PW27 Inspector Jagjeet Singh has categorically stated that pursuant to the

disclosure statement made by Pradeep Pillai and Ajay, he had visited the place of occurrence on 05.11.98 and recovered a phawra which was used for digging the pit. He, however, did not try to recover the dead body in view of the fact that it was already night time and he was supposed to obtain prior permission of area SDM for exhuming the dead body. He also stated that on 06.11.98, he moved an application Ex.PW26/A before the SDM seeking permission for exhuming the dead body in furtherance of the investigation and after getting the permission, he visited the spot for recovery along with the complainant Anil Kumar Jain, SDM Shri Chandrakar Bharti (PW26) and Dr. K. Goel, the Autopsy Surgeon (PW17) and police official. His aforesaid version regarding seeking of permission for exhuming the dead body, grant of permission and visit of the police party for recovery to the spot of burial stands corroborated by the testimony of the SDM Shri Chandrakar Bharti (PW26) and Dr. K. Goel (PW17), who have testified that the Investigating Officer actually sought permission to exhume the body and they actually accompanied the police party for exhuming the dead body.

28. PW27, Inspector Jagjeet Singh has further stated that the police party along with the SDM and the Doctor reached at the spot on 06.11.08 where the appellant Pradeep Pillai pointed out the place where the dead body was buried. Thereafter on digging, the dead body of the deceased was recovered, which was identified by PW14 Anil Kumar Jain, father of the deceased. His aforesaid version stands

corroborated by the testimony of PW14 Anil Kumar Jain, PW22 SI Iqbal Singh, PW25 SI Ram Avtar, PW17 Dr. K. Goel, as also PW 26 Shri Chandrakar Bharti, the SDM, who have also deposed to the similar effect.

29. Learned counsel for the appellant Pradeep Pillai has submitted that aforesaid recovery at the instance of the appellant is highly doubtful for the reason that admittedly as per the case of the prosecution, purported disclosure statement was made by the appellant Pradeep Pillai on 05.11.98. Despite of that, the recovery of the dead body pursuant to the disclosure statement has been delayed for a day without any justifiable reason. In view of the above, he contended that a possibility of manipulation on the part of the investigating agency to falsely implicate the appellants cannot be ruled out. Learned counsel for the State, on the other hand, has refuted this argument by submitting that discovery of the dead body on 06.11.98 at the instance of Pradeep Pillai is established not only by the testimony of complainant and the police officials but also by the SDM Shri Chandrakar Bharti (PW26) and Dr. K. Goel (PW17), who are public servants who had no axe to grind with either the complainant or the appellants. Considering their stature, it is highly unlikely that they would have deposed falsely at the instance of the Investigating Officer. Thus, he submitted that discovery of the dead body of the deceased at the instance of the appellant is established. As regards the delay in effecting recovery of the dead body of the deceased, learned

prosecutor submitted that since as per the disclosure statement the body was buried, it was necessary as per Rule 25.34 of Punjab Police Rules to obtain the permission of the SDM for exhuming the dead body and for that reason the delay was caused.

30. As regards the fact of recovery of the dead body at the instance of appellant Pradeep Pillai, we find that PW27, the Investigating Officer in his testimony discussed above has categorically stated that the dead body was recovered/found buried in a pit near gate of House No.B-150, Sector 8, Pappan Kalan on the pointing out of the appellant Pradeep Pillai and also pursuant to his disclosure statement Ex.PW22/D. His aforesaid version finds corroboration from the testimony of the other members of the police party, namely, PW22 SI Iqbal Singh and PW25 SI Ram Avtar. All these witnesses were cross-examined at length but nothing material so as to discredit their version could be elicited. We may note that two witness of recovery, namely, PW17 Dr. K. Goel, Autopsy Surgeon and PW26 Chandrakar Bharti, though public servants can easily be termed as independent witnesses because they are public servants having no interest either in the complainant or in the appellant or in the success or failure of the investigation. Both of them are officers of considerable status as such it is unlikely that they would have deposed falsely at the instance of the Investigating Officer. Thus, we find no reason to suspect the version of the prosecution witnesses regarding the recovery of the dead body at the instance of the appellant Pradeep Pillai.

31. Regarding one day delay in effecting the recovery of the dead body, the Investigating Officer has given the explanation that he did not make any endeavour to dig the spot and recover the dead body on 05.11.98 because he was supposed to obtain necessary permission for exhuming the dead body, which was stated to have been buried, because of requirement of Rule 25.34 of the Punjab Police Rules. Rule 25.34 of the Punjab Police Rules reads thus:

“25.34 The following rules relate to the disinterment of bodies:-

- (1) An officer in charge of a police station and any superior police officer lawfully making an investigation into the unnatural or sudden death of any person shall, on learning that the body of the deceased person has been formally buried, record in writing the information which has reached him and the grounds on which he considers it necessary that the body should be disinterred.
- (2) He shall forward the information so recorded to the nearest magistrate empowered to hold inquests and ask for an order under section 176(2), Code of Criminal Procedure, and in the meantime guard the grave.
- (3) On receipt of such order, if the magistrate himself does not attend the disinterment, such police officer shall, in the presence of two or more respectable inhabitants of the neighbourhood, cause the body to be disinterred. Such police officer shall then comply with the provisions of section 174, Code of Criminal Procedure.
- (4) Police officers shall invariably examine witnesses to prove the identity of disinterred bodies before commencing their investigation.
- (5) When a body has lain in the grave for a period exceeding three weeks no disinterment shall be made by any police officer until the opinion of the Civil Surgeon has been obtained, and then only with the concurrence of the District Magistrate.”

32. Perusal of the above referred Rule makes it clear that the legal requirement of seeking permission of the SDM for exhuming the dead body is applicable only in the cases in which the dead body has been buried formally pursuant to a religious or customary ritual. The object of this provision is to avoid causing hurt to the feelings and sentiments of the relatives of the deceased or his community by exhuming the dead body formally buried. This, however, is a simple case of murder of a young man belonging to Jain community. In that community, as per the religious rites, the dead bodies are cremated and not buried. Therefore, by no stretch of imagination, it can be said that the dead body of the deceased Manish Jain was formally buried in the aforesaid pit. As such, Rule 25.34 of Punjab Police Rules was not attracted in this case. Be that as it may, the fact remains that the Investigating Officer was under the impression that under the above referred Rule he was supposed to seek permission for exhuming the dead body from the SDM and if under that mistaken interpretation of the Rule, he had delayed the recovery of the dead body he cannot be faulted and this cannot be the reason to reject otherwise reliable evidence of recovery. Under these circumstances, it is apparent that the delay in recovery of the dead body is reasonably explained by the Investigating Officer. Otherwise also, there is nothing on record to suggest that during the intervening night of 05.11.98 and 06.11.98 and till the recovery of the dead body, it had been buried by someone at the spot. Thus, we find

that the dead body of deceased Manish Jain was recovered at the instance of the appellant.

33. Learned counsel for the appellant also submitted that as per the Investigating Officer and Dr. K. Goel (PW17), it is apparent that before leaving for the recovery of the dead body, the Investigating Officer had requested Dr. K. Goel to take his associates along and also carry implements to conduct the post mortem at the spot, which according to learned counsel for the appellant imply that the Investigating Officer was sure that dead body would be found at the spot and this circumstance raise a strong possibility of manipulation and cast doubt upon the correctness of the theory of recovery of the dead body at the instance of appellant Pradeep Pillai.

34. We are not convinced with this argument. The above request made by the Investigating Officer to the Autopsy Surgeon, Dr. K. Goel to accompany the police party for recovery of the dead body after making preparation to conduct the autopsy at the spot does not imply that he knew for certain that there was a dead body buried at the said site and his aforesaid request can be attributed to his anxiety to expedite the investigation. Otherwise also, the deceased went missing on 08.10.98 and as per the disclosure statement, he was killed on the same day. Therefore, it must have weighed heavily on the mind of the Investigating Officer that the dead body within the span of almost one month must have decomposed and it would be a great bother to carry

the decomposed body to the mortuary from Pappan Kalan for the purpose of post mortem. Thus, we do not find anything suspicious in the Investigating Officer asking Dr. K. Goel to accompany them for making preparation for conducting the autopsy.

35. From the above, we find that prosecution has been able to establish that the dead body of the deceased Manish Jain was recovered, found buried, from in front of the house at Pappan Kalan at the instance of appellant Pradeep Pillai. This imply that appellant Pradeep Pillay had knowledge of the presence of the dead body buried at the said spot. He has not come forward with any explanation as to how he derived said knowledge if he was not party to the commission of crime of murder of the deceased. This circumstance by itself is sufficient to lead to an irrefutable conclusion that appellant Pradeep Pillai was the party to the murder of the deceased and he also participated in the concealing of the dead body by burying it in the said pit.

36. Thus, so far as the appellant Pradeep Pillai is concerned, we find no infirmity in the impugned judgment to hold him guilty of the murder of the deceased punishable under Section 302 IPC read with Section 34 IPC and also for the offence of causing the evidence of the offence to disappear punishable under Section 201 IPC read with Section 34 IPC. His appeal is accordingly dismissed.

37. As regards the appellant Rohit Bhatti, the prosecution has failed to firmly establish the two relied upon incriminating circumstances, i.e., the deceased was last seen alive in the company of the appellant and that the dead body of Manish Jain (deceased) was recovered at his instance, as such we are unable to sustain his conviction, as also the consequent order on sentence. We accordingly accept his appeal and set aside his conviction as well the order on sentence and acquit him, giving him benefit of doubt.

38. Appellant Rohit Bhatti is in Jail. He be released forthwith, if not required in any other case.

39. Both the appeals are disposed of accordingly.

AJIT BHARIHOKE, J.

APRIL 13, 2010
pst

A.K. SIKRI, J.