

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

% Judgment Reserved on : 29th April, 2010
Judgment Pronounced on : 11th May, 2010

+ **Crl. A. No. 924/2008**

ALIZAN Appellant
Through: Mr.S.B.Dandapani, Advocate

versus

STATE Respondent
Through: Mr.M.N.Dudeja, APP

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

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

SURESH KAIT, J.

1. Instant appeal has been preferred against the judgment and order dated 06.03.2007 convicting the appellant for the offence punishable under Section 302 IPC for which offence he has been sentenced to undergo imprisonment for life and pay a fine in sum of Rs.2000/-.

2. On 11.10.2003 Police Control Room received information at about 22:54 Hrs. that at House No.3381, Chowk Singhara, Qutab Road, Delhi, one person has been murdered. This information was received by ASI Moti Lal PW-11. ASI Moti

Lal further flashed the message Ex.PW-11/A to the concerned police station i.e. Sadar Bazar. PW-6 ASI Khem Singh Duty Officer at PS Sadar Bazar recorded the DD No.36A, Ex.PW-14/B, and the same was handed over to SI Naresh Kumar PW-14 for investigation.

3. Taking along with him DD No.36-A, PW-14 reached House No.3731, Singhara Chowk along with HC Yashpal (not cited as witness), HC Ravinder PW-5, Ct.Suresh Chand PW-9 and Ct.Ram Naresh PW-10 from where he came to know that the incident of murder has occurred at House No.3379. Accordingly, he reached the premises where a dead body of a male aged about 45-46 years having injury marks on the neck while blood oozing from his mouth and tongue between upper and lower jaw was found. Blood was lying on the stair cases also. The name of the deceased was revealed as Darshan Singh who was residing at House No.3379, IInd Floor Chowk Singhara, and the deceased was wearing baniyan and blue coloured under-wear and the dead body was smelling and it appeared that the murder was committed one or two days prior. He inspected the spot, room of the deceased and prepared rukka Ex.PW-14/A upon which FIR Ex.PW-6/A was recorded under Section 302/201 IPC.

4. Thereafter, investigation of the case was taken over by Insp.Randhir Singh PW-15 who also reached at the spot and lifted earth control blood sample from the spot and blood sample from the room of the deceased and converted the same into pulandas. Insp. Randhir Singh also completed the inquest proceedings of dead body of deceased Darshan Singh and sent the dead body to Subzi Mandi for post-mortem through Ct.Suresh Chand PW-9 and Ct.Ram Naresh PW-10.

5. On 13.10.2003, the accused was arrested by Insp. Randhir Singh from Basti Julahan from the jhuggi of Achhan, brother of the appellant (Achhan not cited as witness) at the instance of Ashok Kumar vide arrest memo Ex.PW-4/B and his personal search was conducted vide memo Ex.PW-4/A and his disclosure statement Ex.PW-4/C was recorded. Pursuant to his disclosure, blood stained trouser and vest, both were of white colour which the appellant was wearing were taken into possession vide memo Ex.PW-14/E. A hammer used in the crime was also recovered vide memo Ex.PW-14/D from the room of the deceased.

6. Most material witness who broke-out the blind murder is Amrish PW-3 who deposed that he was living in House No.3379 in Nabi Karim on the top Floor i.e. Illrd Floor and on the IInd Floor deceased Darshan Singh was living along

with the appellant. On 10th day of the month at about 9:00 AM, he got washed the hands of deceased Darshan Singh near the toilets of the house of the Darshan Singh. He went to place of work in a cream company named Durga Cream. He returned at about 8:00 PM. At that time he saw the room of Darshan Singh was locked from outside. During night time appellant came at his jhuggi and slept with him in his Jhuggi. He asked about Darshan Singh from the appellant but he replied in negative. On next day morning on 11.10.2003 he went to his work. He returned at about 8:00 PM. He took his meal and went inside his jhuggi for sleeping. He noticed that the appellant was wandering hither and thither. He asked about Darshan Singh but he replied that he does not know. Thereafter, he went for sleeping but he did not sleep and was walking. After about 10 minutes he heard a voice of opening of the gate of the room of Darshan Singh. He came down and saw that the gate of the room of Darshan Singh was opened. He came down on the pretext to bring cigarette. One person named Nathni (not cited as witness) was also living with him in the same jhuggi. He saw the accused carrying the dead body on his back in the stair-cases. The dead body was not covered with any cloth. The dead body of Darshan Singh was wearing Kacha and baniyan. He raised alarm and the appellant started

running. He chased him but he could not apprehended him as he ran away. The appellant threw away the dead body on the stair-cases. He immediately went to Pan Mandi near Kutub Chowk and Singhara Chowk. He informed Shobha PW-2 about this. He and Shobha came to the place of occurrence where he saw the police persons were already present. The appellant was not present at that time.

7. In his cross-examination he deposed that the distance between his house and the house of Shobha PW-2 is half a kilometer. He did not inform the police. He did not call any neighbour. He informed Shobha because she had intimate relationship with deceased Darshan Singh. On the night of incident appellant came at his jhuggi at about 9:00 PM. On 11.10.2003, he returned from his place of work at about 9:00 to 9:30 PM. He saw that the appellant was carrying the dead body on his back and his face was facing the stairs when he was getting down by the stair-cases. He admitted that when he raised the alarm many people gathered but he only chased the appellant. He first of all went to the house of Shobha at about 11:30 PM. He did not go to the house of Ashok. When he reached at the spot along with Shobha by that time the police had also came there.

8. Another material witness is Shobha Kukreja PW-2 who deposed in court that she knows the appellant who was working as a mason. The deceased Darshan Singh was living in House No.3379, Singhara Chowk, Qutab Road, Sadar Bazar, Delhi. From the last 10-12 years the appellant was living in the same house with the deceased. The deceased was unmarried and was alone. She knew Darshan Singh for the last 15-17 years and that he had constructed her house. The deceased was the resident of Punjab by origin. He never went to Punjab nor did his parents and relatives come to see him. The deceased used to come at her residence to see her family members.

9. Shobha Kukreja PW-2 further deposed that on 10.10.2003 at about 9:00 or 9:15 PM the appellant came at her house and demanded Chadar. She asked him about the deceased. He replied that the deceased has gone somewhere since early in the morning and had not returned. One separate key of house of the deceased Darshan Singh always remained with her. She asked the appellant to accompany her at the house of the deceased and she will provide Chadar from the room of the deceased. Thereafter they both went to the room, she opened the room of the deceased and found artificial teeth and tooth brush of the deceased Darshan Singh lying on the

table while his wearing chappals and boots were lying in the room. She asked the appellant as to why the necessary belongings of deceased Darshan Singh were lying in the room and where the deceased had gone to which the appellant replied in negative. On the second day she again searched the deceased Darshan Singh at the shop of doctor but the shop of the doctor was closed. Thereafter, she searched in Jullahan Basti. She asked many persons but could not know the whereabouts of the deceased. She further deposed that on the next day when the appellant came to her at about 7:00 or 7:30 AM she again asked him of the whereabouts of the deceased Darshan Singh to which the appellant replied that he did not know. Thereafter, he left her house. At about 11:45 AM or 12:00 Noon the appellant again came to her house. She again asked about the whereabouts of the deceased. Thereafter, she asked the appellant to hire a rickshaw so that that they both would search the deceased in the hospital and other places. They both went to lady Hardinge Hospital. Hospital authorities checked their register and replied that no Darshan Singh had come to their hospital for treatment. Thereafter, they came to the house of the deceased and opened the lock of the house. Shobha felt a foul smell and asked the appellant if cooking gas was leaking to which

appellant replied that no smell is coming out and that she is wrongly feeling the foul smell. She again locked the room of deceased Darshan Singh and came at her residence. The appellant also left that place saying her that he will leave for Moradabad in the evening. Shobha PW-2 further deposed that on the same day on 11.10.2003, at about 12:00 night or 12:15 AM the door/shutter of her house was knocked at high volume. She saw outside from the gallery. One Amrish, who was living on the upper portion i.e. IIIrd Floor of the room of Darshan Singh, was shouting to come down and told her that person with whom (the appellant Alizan) she was roaming is the killer of Darshan Singh and had been caught. Immediately, she came down and reached house of the deceased where the appellant was apprehended by the public persons. She again said that first of all public persons had apprehended the appellant but when she went there the appellant was in the custody of the police officers. Amrish told her that the accused was going to throw out dead body of Darshan Singh while wrapping in a cloth but since Amrish had seen the appellant in stair-cases, he threw the dead body and was trying to run away. He apprehended the appellant. Shobha saw the dead body of Darshan Singh near the stair cases. A Chadar was also lying there. The same was of Shawl type.

Police told her that they had recovered the key of the house of Darshan Singh from the possession of the appellant. She identified the dead body of the Darshan Singh.

10. In her cross-examination, she admits that she knew the deceased since 1990. The deceased used to visit her house. She is unmarried. No other lady used to visit at the house of the deceased. She never visited the house of the deceased without any work. She admits that she used to help deceased Darshan Singh financially in the days of his ailment. She was having a public carrier Vikram three-wheeler. She stated that the stair-cases leading to the room of Darshan Singh on the IInd Floor first lead to Ist Floor then while crossing the roof of the Ist floor the stairs lead to IInd Floor. The room of the deceased was measuring 14 ft. x 11 ft. In the said room one divan, almirah, cooler, table, cooking utensils, gas, water container and bucket were used to be kept. The said room was having two windows and one ventilator. She visited the room of the deceased during the period of his missing and opened the room with her key. She handed over the key of the room of Darshan Singh to the police on 11.10.2003. She did not feel anything while visiting the room twice or thrice prior to 11.10.2003. She admits that on 10.10.2003 while visiting the room of Darshan Singh she did not found any foul

smell and did not notice any blood in the said room. She stated that Amrish had come to her to call on 11.10.2003 at about 11:00 PM and she reached at the spot after about an hour. The police was present there. The appellant was not present there. Again said she had seen the appellant running away and the public persons were chasing him. She stated that when she reached at the spot on 11.10.2003, she found the appellant in the custody of the police and he fled away from their hands. Again said that the appellant was in the custody of the public and he ran away from the custody of the public. To this statement she was confronted with the statement so recorded by the police. She entered in the room of the deceased along with the police. She noticed blood lying on the floor near the Diwan. Her statement was also recorded. The entire work of inspection and writing started at about 12:00 midnight and continued for about 1½ to 2 hours. Thereafter, she was sent back. She further deposed that her younger sister Pushpa (not cited as witness) had also accompanied on that day. Pushpa kept on standing on the ground floor while the police was conducting their work. She admitted that she knows one Ashok Kumar who was the landlord of the building in which the deceased was residing. He lives at Singhara Chowk but she do not know his complete

address. She denied her having visiting terms with Ashok Kumar. She also denied whether Ashok Kumar wanted to evict Darshan Singh from the said room. She further deposed that the deceased was in a bad state of health for almost one and half year prior to his death because he was suffering from T.B. She denied that the appellant left for Moradabad on 09.10.2003 after leaving his baggage. She further denied the suggestion that the accused was not present in Delhi on 10.10.2003 to 12.10.2003. She further denied the suggestion that the appellant was neither apprehended by the police nor by public on 11.10.2003 and that the accused was apprehended by the police on 12.10.2003 from Moradabad. She had not seen the accused on 12.10.2003 and 13.10.2003 with the police and the police did not met her after it met her at the spot on the night intervening 11-12.10.2003. She denied the fact whether any key of the room of Darshan Singh was recovered from the possession of the appellant.

11. After her cross-examination, Shobha PW-2 was re-examined by the APP at request, which was allowed by the court. The questions put forth to her and their answers are reproduced as under:-

“Q: You had stated in your examination-in-chief that the police had told you that a key of the house of Darshan Singh was recovered from the

possession of the accused. But today in your cross-examination you had deposed that they police had not told you this fact. Which out of these two statements is correct?

A: My previous statement is correct which I deposed in my examination-in-chief.

Q: Then why you had stated in you cross-examination today that the police had not told you that they key of the house of deceased Darshan Singh was recovered from accused Alizan?

A: I could not properly understand the question of the Id.defence counsel.

XXXXXXX by Ms.Kirandeep Kaur, amicus curiae for the accused.

It is correct that all the questions were being asked to me in Hindi language. I am well conversant with Hindi Language. I had not pointed out to the Court that I am unable to understand the question put to me by the Id. DC."

She admits that she was shown no other document except Ex.PW-2/A i.e. her statement recorded by Addl.SHO Randhir Singh PW-15 on 12.10.2003.

12. Ashok Kumar PW-4 is the landlord of the rooms of the deceased, appellant and Amrish PW-3. As per his version he deposed that on 11.10.2003 at about 10:30 PM a boy named Amrish who was living in the top floor of the house where deceased Darshan Singh was staying at the IInd floor of the same house, came and told him that he saw appellant was carrying the dead body of Darshan Singh through stair-cases. He raised alarm on which the appellant Alizan left the dead

body and ran away from the spot. He along with Amrish reached at the place where the dead body was lying. In the meanwhile, police also came there as someone had informed the police at number 100. In his presence police inspected the room of Darshan Singh. A foul smell was coming from his room. He further deposed that in the morning of 13.10.2003 the appellant met him on the road besides his house. He asked about Darshan Singh on which he replied that during the night time on 10.10.2003 a quarrel had taken place between him and Darshan Singh and he killed Darshan Singh after strangulating him. The appellant further disclosed that he had also hit the hammer on the person of Darshan Singh and he had concealed the dead body of Darshan Singh in Diwan (bed). He advised the accused to produce himself before the police. The police had arrested the appellant from Basti Jullahan at his instance as he had informed the police about his whereabouts. The police had taken the personal search of the appellant vide memo Ex.PW-4/A which bears his signatures at point 'A'. The appellant was arrested vide memo Ex.PW-4/B which bears his signatures at point 'A'. The appellant had confessed his guilt before the police. His disclosure statement was recorded as Ex.PW-4/C which bears his signatures at point 'A'. The appellant was wearing blood stained banyan and pajama. The

appellant had removed the same and handed over the same to the police. The police had taken the same into possession vide memo Ex.PW-4/E.

13. In his cross-examination he deposed that he had given a room in the building on the IInd floor free of cost without rent to the deceased. The deceased was not his relative but used to do the repair work in his house as and when it was required. The deceased was very poor person and that is the reason why he and his partner had given a room to the deceased free of cost. Previously, he stated that the deceased Darshan Singh was living on rent at House No.3379, Chowk Singhara, Kutub Road since 1989. He stated that he cannot assign any reason as to why he had stated earlier that Darshan Singh was living on rent in the aforesaid house. He did not use to take rent from the appellant Alizan as he was living with the deceased Darshan Singh. On 11.10.2003 at about 10:30 PM Amrish PW-3 came at his house on foot. He was sleeping at that time. Amrish rang the door-bell of his house. He woke up and opened the door. His family members were sleeping at that time and they did not hear conversation between him and Amrish. The distance between the room of Amrish and his house is about 25 yards. No rent receipt was issued to Amrish by him. The distance between his house and

the house of Shobha PW-2 is about 60-70 yards. Amrish first of all went at the house of Shobha and thereafter he informed him about the occurrence. He admitted that the locality in which he was living is a crowded place. Amrish did not enter his house. He was informed about the occurrence while standing on the ground of stair-cases of his house. He went alone at the place of occurrence. It took him about 5 minutes in reaching there. He found 5-7 public persons and police personnel were standing there on the floor and in front of the house in which deceased Darshan Singh was living. PW-2 Shobha was also standing there. No other woman was standing there. 8-10 police officers were present there. He went to police station two or three times. He went on 13.10.2003 at about 1:30 PM. He also went on 13.10.2003 at about 2:00 PM. His statement was recorded only once and thereafter the police had called him for making enquiry. When he reached in front of the building in which the deceased Darshan Singh was living, the appellant was not present there. Voluntarily he stated that the appellant had run away earlier. He further deposed that he had not stated in his earlier statement that in the morning of 13.10.2003 the appellant met him on the road besides my house and he was frightened and that he asked the appellant about Darshan Singh and on which

the appellant replied that during the night time of 10.10.2003 a quarrel had taken place between the appellant and Darshan Singh and the appellant killed Darshan Singh after strangulating him and also hit hammer on his person. Voluntarily he stated the above-said facts on the date of 11.10.2003 at about 7:30 PM and not on 13.10.2003. When the appellant had confessed his guilt before him on 11.10.2003 he did not inform the police. He further voluntarily stated that he has asked the appellant to surrender himself before the police. He denied the suggestion that he had not informed the police about the confession of the accused as no such confessional statement was made by the appellant before him. He did not pay any heed towards the wearing clothes of the appellant when he was arrested. He further denied the suggestion that the appellant was picked up by the police from Moradabad at his instance and that he along with Amrish and Shobha have concocted a false story to falsely implicate the appellant.

14. Ct.Sonu PW-12 being the draftsman proved the scaled site plan of the spot i.e. House No.3379, Singhara Chowk as Ex.PW-12/A and depose that he had prepared the site plan on 27.11.2003 at the request of Insp.Randhir Singh.

15. Dr.Kulbhushan Goel PW-7 conducted the post-mortem on the dead body of the deceased Darshan Singh at Mortuary, Subzi Mandi, Delhi which was sent by Insp. Randhir Singh PW-15 and it was identified by Ct.Suresh Chand. He observed the injuries on the body of the deceased vide his post-mortem report Ex.PW-7/A as under:-

" External injuries:-

- 1. Lacerated wound about one inch long just below the chin.*
- 2. Anterior part of tongue was extensively lacerated with two holes or upper teeth in the tongue.*
- 3. There was diffuse pinkish area scattered over front of neck and front of sides of neck in upper and middle part of the neck, coalesced. Rest of the neck area was dark greenish to blackish.*

Any other external injury was inconspicuous due to decomposition.

- 1. Head: There was subscalpe bruising right frontal temporal regions. Skull bones were intact. Meninges were intact. Brain matter was intact and softened.*
- 2. Neck:On relection of skin of nect, diffused subcutaneous and platysmal bruising seen over front and sides of neck. Deeper neck muscles also showed bruising with early changes of decomposition. Liquid blood was seen in nech layers. Both greater horns of hyoid bone were showing inward fracture with massive bruising around the fracture sides. Right superior horn of thyroid cardilage fractured with brushing around. Tracheal mucosa show signs of decomposition. Epiglottis and laryns were showing bruising. Litting segosanguionous discharge present in trachea.*
- 3. Chest: Subcutaneous brushing with hematoma seen at places over right chest and sterna regions. Fracture right ribs second to 7th at mid clavicular line and anterior axillary line, fracture left ribs second to 7th*

at mid clavicular line. Brushing and clots present at fractured sides. Contusions seen over both lungs. Early decomposition changes seen in lungs and heart. Heart was intact. Stomach contained about 3-4 ounces food material in semi churned condition. All abdominal viscera were intact and slightly congested."

16. He opined the cause of death to be asphyxia consequent upon pressure over neck structures. Postmortem findings were consistent with manual strangulation by other party. Mode of death was homicidal. All injuries were ante mortem in nature. Injury No.1 is caused by blunt force impact. Injury No.2 was consistent with injury in the tongue by teeth. Chest injuries were caused by repeated blows over chest. Manual pressure over neck was sufficient to cause death in ordinary course of nature. Time since death was about three days.

17. It may be pertinent to mention here that consequent upon the arrest of appellant Alizan and pursuant to his personal search, one black purse containing Rs.450/-; one key of pital, Jainson on one side and 359 on the other side is written and Five bus tickets (denominations of 20x3, 10x1 and 4x1) were got recovered vide memo Ex.PW-4/A.

18. When examined under Section 313 Cr.P.C., the appellant denied each and every incriminating circumstance put forth to him. In the last, he only stated that he was picked

up by the police from his house in Moradabad on 13.10.2003 and that he was innocent and he had been falsely implicated in this case at the instance of PW Shobha and Ashok Kumar. He further told that deceased Darshan Singh was infact got murdered by Shobha PW-2 in conspiracy with Ashok PW-4 and that he was got falsely implicated in this case by them.

19. Perusal of FSL report Ex.PW-15/H proves that human blood of the same group as that of the deceased was detected on the baniyan and pyazama of the appellant. Further, the learned trial Judge has held that it stands confirmed by the CFSL report that the blood stains found on the hammer Ex.P-10 were matched with the blood group as that of the deceased which was got recovered at the instance of the appellant.

20. We note that the instant case is based on circumstantial evidence. There are three material witnesses i.e. PW-2, PW-3 and PW-4. A careful perusal of the testimony of the three witnesses show irreconcilable inconsistencies thereby totally destroying proof that the appellant threw the dead body on the street or was present as claimed differently by the three witnesses.

21. PW-3 Amrish in his examination-in-chief stated that he washed the hands of the deceased on 10.10.2003 at 9:00 AM and thereafter he had not seen the deceased. He further stated that on the night of 11.10.2003, he saw the appellant with the dead body. Whereas, in his cross-examination he stated that on 11.10.2003 at 8:00 AM he washed the hands of the deceased Darshan Singh. He specifically stated that he had not gone to house of Ashok though Ashok PW-4 claimed that Amrish PW-3 came to his residence and informed about the incident. In his examination-in-chief he disclosed that one Nathani (his room-mate) was also sleeping with him but neither the investigation team has made him the witness nor any other witness confirms the presence of Nathani. He has deposed in his statement that he went to Shobha PW-2 at 11:30 PM and returned with her at 12:30 AM (approximately after about an hour). Whereas, he stated that the house of Shobha is just half a kilometer from the house of the incident. Though Ashok PW-4 stated in his examination-in-chief that the house of Shobha is at a distance of 60-70 yards and the place of incident is 5 minutes walking distance from the house of Ashok. Therefore, it is unbelievable for us that it took one hour to bring Shobha to the place of incident whose house is

just 10-15 minutes walking distance away from the place of occurrence.

22. While Shobha PW-2 deposed in her examination-in-chief that she visited the house of the deceased three times, opened the door of the deceased's room but she did not notice the blood under the Diwan and on the floor. As per the post-mortem report Ex.PW-7/A which was conducted on 13.10.2003 it was opined that the dead body was three days' old. Post-mortem report further shows that the murder has been committed on 10.10.2003. Further, she stated in her examination-in-chief that when she reached at the spot with Amrish PW-3, she saw the appellant was apprehended by public persons but in her cross-examination she stated that on 11.10.2003 at the place of occurrence police was there but appellant was not present there. She further deposed that she had seen the appellant running and public persons were chasing him. Further she said contrary to the above statement that on reaching the spot on 11.10.2003, she found the appellant in the custody of the police but he fled away from their hands. Further, she stated that the appellant was in the hands of the public and fled away. She even stated which is contrary to all her versions that on 12.10.2003 when she visited the room of the deceased, she felt foul smell. Whereas,

the body of the deceased was removed on the night of 11.10.2003. She further deposed that she came at the spot along with her sister Pushpa but neither Pushpa is cited as witness nor her presence has been confirmed by any of the witness throughout.

23. If we just go through the statement of Shobha PW-2, we find that it is full of contradictions. Nothing of any sort can be established from the above-said discussion with respect to deposition of Shobha PW-2. Further, Nathni (room-mate of Amrish PW-3) and Pushpa (sister of Shobha PW-2), who were not cited as a public witness, could have proved the presence of the appellant if both of them were present at the place of occurrence. Moreso, as deposed to by Shobha PW-2 that the appellant accompanied her in searching the deceased at various places, if it is believed, indicates the appellant being unaware of the murder of Darshan Singh. The presence of blood on the floor near the base of diwan and besides the Diwan shown vide photograph Ex.PW-5/9 further shows that Shobha failed to notice the blood on the floor of the room of the deceased despite her 2-3 visits along with appellant.

24. One more witness i.e. Ashok Kumar PW-4 deposed that in the night of 11.10.2003 at about 10:30 PM Amrish came to him and told Ashok about the occurrence. Whereas, Amrish

PW-3 did not admit going at the residence of Ashok. He in his examination-in-chief deposed that in the morning of 13.10.2003, the appellant met him on the road besides his house and confessed the guilt. But in the cross-examination he denied the same. In his examination-in-chief he stated that the appellant was wearing Bainyan and Pyzama with blood spots but in his cross-examination he said that he did not paid any heed towards the clothes which the appellant was wearing at the time when he was arrested. As per his deposition, the appellant was wearing blood stained clothes which fact was proved by the post-mortem report also. But, we cannot believe that a person will continue to wear blood stained clothes for three days continuously and as per Shobha PW-2 the appellant was moving throughout with her to trace the deceased.

25. As per the above discussion, it is revealed that each of the witnesses has given different versions on the apprehension of the appellant and there is no consistency between the three who informed whom first.

26. We may mention here that on 27.04.2010, during the course of hearing of this appeal learned counsel for the appellant has brought our attention to the recovery of tickets which are stated to have been recovered at the instance of appellant pursuant to his personal search. The said tickets

were directed to be produced in court from Malkhana. On the next date of hearing i.e. 29.04.2010 learned counsel for the state submitted that the five tickets stated to have been recovered on the personal search of the appellant being not exhibited as an exhibit by the learned trial Judge and only recovery memo thereof being proved, said five tickets have been destroyed by the District Nazir after the impugned decision was pronounced.

27. As the defence taken by the appellant in the statement recorded under Section 313 Cr.P.C., the learned counsel pointed out that the appellant was in Delhi on 10th, 11th and 12th October, 2003, whereas he was arrested from the Moradabad on 13.10.2003. Since the said tickets have been destroyed, we are unable to give any opinion on this issue raised by the learned counsel for the appellant. Let it remain as mystery, we cannot help.

28. Suffice would it be to state that, if we inter-relate these three material witnesses (PW-2, PW-3 and PW-4) with each other, we find taint in their testimony with respect to the presence of the accused at the spot; Amrish PW-3 informing Ashok PW-4 of the incident. Statements of these three witnesses carry no consistency with regard to the appellant committing the guilt of murder.

29. We are left with the recovery of blood stained clothes and the alleged weapon of offence. Such kinds of recoveries have always been treated as weak recoveries as held in the decisions reported as AIR 1963 SC 1113 Prabhu vs.State of UP; AIR 1977 SC 1753 Narsinhbhai Haribhai Prajapati etc. vs. Chhatrasinh & Ors.; AIR 1994 SC 110 Surjit Singh and Anr. vs. State of Punjab; 1999 Cri.LJ 265 Deva Singh vs. State of Rajasthan and JT 2008(1) SC 191 Mani vs. State of Tamil Nadu.

30. Under the circumstances, we hold that Alizan would certainly be entitled to, if not more, a benefit of doubt.

31. The appeal is allowed. Alizan is acquitted of the charge framed against him.

32. Since Alizan is in Jail, we direct that a copy of this decision be sent to the Superintendent, Central Jail Tihar with a direction that unless required in custody in some other case, Alizan be set free forthwith.

(SURESH KAIT)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

MAY 11, 2010
'nks'