

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 02.06.2011

+ **CRL.A. No. 979/2010**

Harvinder Singh

..... Appellant

versus

The State (Govt. of N.C.T)

.... Respondent

Advocates who appeared in this case:-

For the Appellant : Mr Mukesh Kalia with Mr Ankur Sharma, Advocates.

For the Respondent : Ms Richa Sharma, APP

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MS JUSTICE VEENA BIRBAL

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 the Digest? Yes

VEENA BIRBAL, J

1. The present appeal is directed against the judgment dated 27th July, 2010 passed in Sessions Case No. 37/2009, by the learned Additional Sessions Judge, Delhi, arising out of FIR No.426/2003, registered at Police Station I.P. Estate, under Sections 363/302/201/34 IPC wherein the appellant, namely, Harvinder Singh has been

convicted under Section 302/201 IPC. The appeal is also directed against the order of sentence dated 30.07.2010 whereby the appellant was sentenced for the offence punishable under Section 302 IPC to undergo imprisonment for life and to pay a fine of Rs. 3000/- and in default to undergo S.I. for three months and under Section 201 IPC to undergo R.I. for five years and to pay a fine of Rs. 2,000/- in default to undergo S.I. for two months. It is further ordered that both the sentences shall run concurrently.

2. On 30th November, 2003 at about 11.40 pm, complainant Avtarjeet Singh (PW2) went to Police Post J.P.N. Hospital, P.S. I.P. Estate, and informed that his daughter Manpreet Kaur aged seventeen & half years, a student of B.A (Pass) 1st Year had gone to Mata Sundari College on the aforesaid date at 9 am. Her friend, namely, Sarabjeet Kaur had seen her last at 12 noon and thereafter she was not seen by anyone and found missing from her college. On the basis of his information, DD No.38 (Ex.PX-1) got recorded. The same was assigned to SI Rajesh Shukla PW-13 for enquiry. During enquiry, he conveyed the message through wireless net and missing person's squad and also made efforts to trace Manpreet Kaur from relatives but could not succeed.

On 17th December, 2003, the complainant Avtarjeet Singh (PW-2) again went to Police Post JPN Hospital, Police Station I.P Estate and gave statement (Ex.PW2/A) to SI Aftar Ali (PW-12) about the fact that his daughter was missing since 30th November, 2003 and also informed about recording of DD No.38 Ex PX-1 in this regard. SI Aftar Ali (PW12) made endorsement Ex.PW12/A on it and prepared ruqqa and got the case registered vide FIR Ex.PW1/A through Constable Dhani Ram (PW-7). The investigation was assigned to SI Rajesh Shukla (PW-13) who made efforts to trace Manpreet Kaur but no clue could be found. During investigation, complainant Avtarjeet Singh (PW-2), disclosed that accused Harvinder Singh was the brother-in-law of the deceased. He also gave his mobile no. as 9811656501 and also informed that he used to talk to Manpreet Kaur frequently. SI Rajesh Shukla PW 13 collected mobile phone details of the said phone from Hutch Essar Company vide mark 'A' and noticed frequent calls from the said mobile phone to the land line number i.e. 2519918 installed at the house of the deceased. On 3rd February, 2004, he called appellant Harvinder Singh in police post and after some interrogation, appellant was discharged by him. On the

same day, investigation was transferred to Anti Homicidal Cell, Crime Branch and was assigned to Inspector H.S.P.Singh (PW-24).

3. On 4th February, 2004, the Investigating Officer, Inspector H.S.P.Singh (PW-24) along with ASI Gopi Ram PW-8 and SI Ravinder Singh PW-6 went to the house of complainant Avtarjeet Singh (PW2) and apprised him about the transfer of the case to the Crime Branch. The complainant Avtarjeet Singh had told them about his suspicion upon his relative Harvinder Singh. Inspector H.S.P. Singh (PW-24) studied call details (Ex. PW-20/B) of mobile phone of appellant Harvinder Singh and it was revealed that he was regularly in touch with the land line phone at the residence of the deceased. Even on 29.11.2003, three calls were made from the mobile of appellant to the land line phone of deceased. Thereafter, police team went to the house of appellant and brought him to the office of Anti Homicidal Cell for interrogation. During interrogation, the appellant made a disclosure statement Ex.PW-6/C disclosing therein that he could get the dead body of Manpreet Kaur recovered from a “*ganda nala*” at Chander Vihar. He further disclosed that he could also get recovered sulphas tablets from his house and could also get the wrist watch of deceased recovered from a park at Jwala Heri. On the basis of his

disclosure statement Ex.PW-6/C, co-accused Palvinder was also arrested after completing necessary formalities. On interrogation, he had also made a disclosure statement Ex.PW-6/D. Pursuant to aforesaid disclosure statements, the appellant and the co-accused on 04.02.2004 had got recovered the dead body of Manpreet Kaur from *pakka ganda nala* near Nilothi village, P.S. Nangloi, Delhi which was found in a gunny bag and was in a decomposed state. Immediately, complainant Avtarjeet Singh (PW-2) was called at the spot who came along with his brother Narender Jeet Singh (PW-3). Both of them had identified the dead body as that of Manpreet Kaur vide memo Ex.PW2/B and 3/A respectively. Photographs of the spot as well as dead body were taken. Inquest proceedings were conducted and the body was shifted to mortuary. On the next day, both the appellant as well as co-accused were produced in the court of ACMM and two days police remand was taken. On the said date, both the accused persons led the police party to the house of appellant and got recovered a Maruti car which was parked outside his house which is alleged to have been used in the commission of crime. From the dashboard of the car, appellant had taken out one sim card. From the small room of the appellant in his house on the ground floor, he produced

one *dibbi* on which 'Aluminum Phosphate' was written, after taking it out from the waste material. The same were seized vide memo Ex.PW-6/I. After completing the necessary formalities, the postmortem of the deceased was got done. On 6th February, 2004, appellant and co-accused also led the police party to the District Park, Jawala Heri Road. Inside the park, appellant took out one ladies wrist watch make Time Star from the bushes. The same was seized by the IO vide Ex.PW 6/J after completing necessary formalities. During the course of investigation, statements of witnesses were recorded and the documents pertaining to mobile phone no. 9811656501 were also obtained. The TIP of the wrist watch was got done from complainant Avtarjeet Singh (PW-2). During the course of investigation, the seized exhibits were sent to CFSL, site plan was got prepared and statement of PWs were recorded. After completion of investigation a report under section 173 Cr.P.C was filed. On completion of investigation, charge sheet was filed against the appellant and the co-accused before the Metropolitan Magistrate, Delhi. Thereafter, the learned M.M. committed the case to Sessions Court for trial. The charges were framed against both the accused persons for having committed offences punishable under section 363/302/201/34 IPC.

Accused pleaded not guilty to the same and thus had been tried by the learned Addl. Sessions Judge, Delhi.

4. The prosecution in all had examined 25 witnesses. Out of which PW-2 Avtarjeet Singh is the father of deceased and Narender Jeet Singh (PW-3) is the brother of the complainant. Both of them had identified the dead body of the deceased Manpreet Kaur on 4th February, 2004. Shri P.K.Jain, learned ASJ conducted the TIP of the wrist watch. Sh. Jyotish (PW-20) is the executive of Essar Cellular Ltd who produced the call details of mobile no.9811656501 from 1.11.2003 till 29.1.2004 Ex.PW 20/B. PW-16, Smt.Kavita Goel is the senior Scientific Assistant from CFSL who had examined the blood sample, viscera etc which were sent for examination and had proved on record necessary report in this regard. Remaining evidence relates to police and medical witnesses.

5. In their statements under section 313 Cr.P.C, the present appellant as well as co-accused had denied the incriminating evidence against them and had stated that they were falsely implicated. In defence, appellant, Harvinder Singh had examined his father Jaswant Singh (DW-1) and DW-2 Smt.Parminder Kaur, his wife. Co-accused had also examined one Manoj Kumar (DW-3) Ministerial Staff,

Government Hospital Jaitaran, Pali District, Rajasthan and DW-4 Dr.Praveen Punmiya in defence.

6. After hearing counsel for the parties, the learned ASJ has convicted the appellant for the offence punishable u/s 302/201 IPC whereas co-accused was acquitted of the charges levelled against him after giving him the benefit of doubt.

7. Aggrieved with the order of conviction and sentence, the present appeal has been filed by the appellant Harvinder Singh.

8. Learned counsel for the appellant has argued that as per prosecution case deceased was last seen in the college by her friend Sarabjeet Kaur. The said Sarabjeet Kaur has not been interrogated by the police nor has she been made a witness in this case. It is contended that in view of above lapse on the part of the prosecution, it cannot be said that Manpreet Kaur had attended the college on that day. It is contended that the present case is based on circumstantial evidence. It is contended that circumstantial evidence relied upon by prosecution is not fully established nor the same proves in any manner the alleged guilt of the accused. It is contended that as per DD No. 10, P.P. Nihal Vihar, P.S. Nangloi, Mark-24/A, one dead body had already been recovered on 4th February, 2004 at 6.30 am whereafter

PCR reached the spot followed by local police and then crime branch was informed as such it cannot be said that the appellant got recovered the dead body pursuant to disclosure statement Ex. PW-6/C. It is contended that aforesaid DD report totally demolishes the alleged recovery of dead body to police at the instance of the appellant. It is further contended that alleged incident is of 30th November, 2003 and the initial IO SI Rajesh Shukla PW 13 did not have any suspicion over the appellant and all of a sudden on 4th February, 2004, the case was transferred to Crime Branch and was solved in a day. It is contended that though it was a kidnapping case but investigation has been conducted by Anti Homicide Cell of crime branch. No justified reasons are forthcoming as to why case was transferred to Anti Homicide Cell. It is contended that there is no recovery of dead body at the instance of appellant. It is further contended that dead body had already been recovered by the police and the same has been planted upon appellant by Anti Homicide Cell to solve the murder case. It is further contended that the dead body was totally decomposed and was beyond recognition, as such evidence of PWs about identity of Manpreet Kaur is doubtful. There is also no mention in the missing report Ex.PX1 and FIR Ex. PW-1/A that the girl was wearing ear

rings, chain, clip whereas as per prosecution case aforesaid articles were there on the person of alleged body recovered. Learned counsel further contended that no DNA test was got done, as such it cannot be said that body was that of the deceased. It is further contended that there is no evidence that girl was having illicit relations with appellant and there is no motive for making the alleged crime. It is contended that record pertaining to mobile phone of the appellant seized during the investigation is not admissible in law under section 65(B) of the Evidence Act. It is further contended that even the recovery of wrist watch and *dibbi* Ex. P6 containing poisonous substance “Aluminium Phosphate” alleged to have been seized vide Ex. PW-6/I is also doubtful.

9. On the other hand, learned APP for the State has argued that the circumstantial evidence led by prosecution clearly proves the guilt of appellant. It is contended that identification of dead body by Avtarjeet Singh PW-2 and Narender Jeet Singh PW-3 read with the evidence of PW-18 Dr. V.K. Jha clearly established the identity of the dead body. It is contended that CFSL report Ex. PW-16/A shows that death was due to poisoning. Learned APP has argued that present case is based on circumstantial evidence. The prosecution witnesses have proved

all the circumstances forming a complete chain. It is contended that recovery of dead body from the '*nala*' (drain) at the instance of the appellant, pursuant to his disclosure statement Ex. PW-6/C, identification of dead body by her father (PW-2) and uncle (PW-3), clearly establishes that the same was of Manpreet Kaur. The postmortem report Ex.PW18/B and the evidence of PW-18 Dr. V.K. Jha clearly establishes that death was homicidal. It is further contended that evidence on record clearly establishes the recovery of '*dibbi*' of poisonous substance and wrist watch Ex. P1 at the instance of appellant. It is further contended that it has also come in evidence that appellant Harvinder Singh was closely related to deceased. It is contended that call details Ex. PW-20/B shows that appellant was near the place on 30.11.2003 where the dead body was got recovered by him on 04.02.2004. The tower shows his presence at Meera Bagh at 1533 hours. It is contended that it is admitted position that accused was closely related to Avtarjeet Singh (PW-2) being son-in-law of his sister-in-law. It has also come in the evidence that Avtarjeet Singh (PW2) had told the appellant not to come to his house in his absence.

10. We have heard counsel for the parties.

11. The fact that Manpreet Kaur was missing w.e.f. 30.11.2003 stands established from the testimony of Avtarjeet Singh, PW-2, father of deceased who has deposed that Manpreet Kaur was his daughter and was a student of Mata Sundri College. On 30th November, 2003, she left the house at 9 am. She generally used to return from college at 2.30 pm but on that day, she did not return home as such he informed the police station where DD No.38, i.e., Ex. PX-1 was recorded. Again he went to the police station on 17th December, 2003 wherein his statement Ex.PW1/A was recorded, on the basis of which FIR Ex.PW-1/A was registered. There is no suggestion to Avtarjeet Singh PW2 that deceased did not go to attend college on that day or that false report was lodged by him.

12. The case of the prosecution is that when Manpreet Kaur could not be traced, her father Avtarjeet Singh (PW2) had raised suspicion over appellant Harvinder Singh, as is evident from the testimony of ASI Gopi Ram PW-8 and Inspector H.S.P. Singh PW-24 and his call details were studied and it was revealed that he was regularly in touch with the deceased on the land line phone of Complainant PW-2. It has also come in evidence that appellant is son-in-law of sister-in-law (Sali) of the complainant (PW2). It has also come in the evidence of

PW-6, PW-8 and PW-24 that appellant had made a disclosure statement Ex. PW-6/C and pointed out the place near '*ganda nala*' vide memo Ex. PW-6/F and got recovered the body of Manpreet Kaur which was in a gunny bag from the said nala. The witness to the recovery of the dead body contained in a gunny bag, are SI Ravinder Singh (PW-6) and ASI Gopi Ram (PW-8) and Inspector H.S.P. Singh (PW-24).

13. The stand of the appellant is that DD No.10, P.P. Nihal Vihar, P.S. Nangloi, mark 24/A, recorded at 6.30 a.m., shows that police of Police Post Nihal Vihar had come to know about a dead body lying in a *bori* (gunny bag) whereas the appellant was arrested at about 4.00 pm, as per the arrest memo Ex.PW-24/A and it has also come in the evidence that disclosure statement was recorded thereafter as such it can't be said that pursuant to disclosure statement Ex. PW-6/C, the appellant got the dead body recovered. Learned APP has shown us the original relevant DD register, as per which DD No.10 was actually recorded on 4th February, 2004 at 6.30 pm as the said register records the entries from 8 am to 8 pm. It appears there is a bona fide mistake in recording the time of 6.30 a.m. on DD Mark 24/A. The entry prior to it in the original register shown to us is also of 'p.m.' Learned APP

has also referred to DD No.15 Mark 24/B dated 4th February, 2004 recorded at PP Nihal Vihar P.S.Nangloi at 9 pm wherein it is recorded that pursuant to DD No.10 Mark 24/A, ASI Ram Pal (PW-9) along with one Constable had gone to *ganda nala* and found that crime team was already present there and was investigating the case FIR No.426/2003 u/s 363 IPC and was also informed that a dead body had been recovered from the *ganda nala* and accordingly DD No.10 was filed. In view of the above position, it cannot be said that the dead body had already been recovered and the same was planted on the appellant to solve a dead case, as is alleged.

14. The evidence of S.I. Ravinder Singh PW-6, ASI Gopi Ram PW-8 and Inspector H.S.P. Singh PW-24, shows that the dead body of Manpreet Kaur was recovered pursuant to the disclosure statement of accused Ex.PW6/C. S.I. Ravinder Singh PW-6 has also categorically deposed that both the appellant and co-accused led the police party to the *ganda nala* near SDM School Chander Vihar by disclosing that they had thrown the gunny bag containing the dead body of deceased Manpreet Kaur in the '*ganda nala*' at that place. He pointed out the said place vide pointing out memo Ex.PW6/F. The efforts were made to trace the dead body through the track of flow of water in the *ganda*

nala. After covering a distance of 1.5 km, there was a place where water was found accumulated due to some obstruction. At that place one gunny bag was observed submerged in water. It was taken out. It was opened and the dead body was recovered from the same.

15. ASI Gopi Ram PW-8 has also deposed that pursuant to disclosure statement Ex.PW6/C, search was made for dead body in the *nala*. It had running water. They were able to trace the bag in which the dead body was concealed, after travelling a distance of about 1-1/2 km following the flow of the water towards Nangloi. The bag was found entangled with a siphon. The bag was taken out from the *nala*. It was found to contain a dead body of a female. The dead body was seized vide memo Ex.PW6/F-2 after its identification. IO prepared site plan Ex.PW6/G of the place of recovery of dead body.

16. IO PW 24 has also deposed in detail the manner in which dead body was got recovered by appellant pursuant to his disclosure statement Ex.PW6/C. There is no discrepancy of material nature about the place and manner of recovery of dead body of deceased.

The testimony of material witnesses in this regard is not shaken in cross-examination. There are photographs of dead body on record which are Ex. PW4/A collectively.

17. Learned counsel for the appellant has contended that there were siphons in the nala and as per the prosecution case the dead body was recovered after travelling a distance of about 1.5 km. It is contended that there were two siphons in between the places where the dead body was alleged to have been thrown and the place from where it is allegedly recovered. Learned counsel referred to photographs Ex.D-1 to D-8 to substantiate the same. The evidence of ASI Gopi Ram PW-8 and that of I.O. Inspector H.S.P. Singh PW-24 clearly shows that iron grills were affixed with siphon and the same were broken. It has clearly come in the evidence of recovery witnesses that on the way up to 1.5 km in the nala, the iron grill of siphons were broken. Reading the entire evidence of witnesses in this regard it is clarified that there were iron siphons at some places which were broken and the dead body travelled with the flow of water and it got entangled in the garbage near siphons from where it was ultimately recovered. It is also on record in the evidence of the witnesses that the appellant had led police party following the flow of water in the *nala* and after travelling about 1.5 km, the gunny bag was found.

18. The call location and call detail/call locations of mobile phone of appellant Ex.PW-20/A and Ex.PW-20/B show his presence on 30th

November, 2003, at 15.33 at Meera Bagh. The same also corroborates the recovery of dead body at the instance of the appellant.

19. Constable Nagender Singh PW-10 has categorically deposed that on 04.02.2004 he had joined the investigation of the case with Inspector H.S.P. Singh and came to *ganda nala*, Nilothi. The appellant and the co-accused were present there and at the instance of the appellant, a dead body of a girl was recovered from a bag inside the *ganda nala*. In his cross-examination, he has stated that he along with S.I. Ravinder Singh, PW-6 and ASI Gopi Ram PW-8 got down in the *nala* and the body was recovered from a place at a distance of 1½ km from the place pointed out by the appellant. He has also deposed that the distance of 1½ km was covered by him by moving in the *nala* along the flow of water.

20. There is nothing on record by which it can be said that the evidence as to the recovery of dead body is not believable or that the dead body is planted on the appellant as is alleged.

21. The recovery of dead body of Manpreet Kaur at the instance of appellant shows that he had the knowledge regarding the body of the deceased lying in a '*ganda nala*' at Chander Vihar in a gunny bag tied with a rope. This knowledge as to the place of dead body and the

manner in which it was kept was exclusive to the accused. The appellant has not explained when examined u/s 313 Cr.P.C as to how the dead body was lying at the place from where it was recovered. The appellant has failed to explain as to how it came into his possession. Under these circumstances, the same is a highly incriminating evidence against him.

22. **In Deepak Chandrakant Patil Vs. State of Maharashtra:**
(2006) 10 SCC 151, the conviction under Section 302 IPC was challenged. The Supreme Court upheld the conviction as the dead body of deceased and the motor cycle of the deceased was recovered at the instance of the accused. The relevant portion of the judgment is as under:-

“XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
xxApart from being last seen with the deceased, there is evidence to the effect that he pointed out the place where the body of the deceased was lying which was in the garden behind the house of A-1. The motorcycle of the deceased was also recovered from the same spot. The evidence is thus conclusive that the appellant and the deceased travelled from the house of the deceased to the point where he was assaulted and killed. The objective findings also prove that the appellant had brought the deceased towards the house of A-1 and that in fact he had told the deceased that he was required by A-1. Learned counsel submitted that the statement made by the appellant that he had a fight with the deceased and that he could show the place where his body was

lying, is not admissible as it was made in the presence of a police constable. Assuming that the inculpatory part of the statement may not be admissible in evidence, the statement, so far as it relates to other parts disclosed leading to recovery, is admissible. It is also not as if with the aid of Section 106 of the Code the appellant has been convicted because he was unable to give an explanation regarding facts within his exclusive knowledge. In this case, the appellant had brought the deceased from his house and later on pointed out the place where his dead body was found. The evidence on record suggested that he may be acting at the behest of A-1 but even if that is not proved, the evidence as against the appellant is abundant and conclusive enough to prove that he was responsible for the death of the deceased.”

In *Ningappa Yallappa Hosamani and Ors. Vs. State of Karnataka and Ors.* (2009) 14 SCC 582 wherein there was recovery of dead body pursuant to disclosure of appellant from the canal, the Supreme Court has held as under:-

“9. xxxxx xxxxx xxxxx xxxxx xxxxx
xxxxx

As regards accused Nos. 1 and 2, since the dead body of Namadev was recovered in furtherance of the voluntary information furnished by them, the natural presumption, in the absence of explanation by them is that it was those two persons, who had murdered Namadev and had buried the dead body.

In the aforesaid judgment, reference is also made to judgment of *State of Maharashtra v. Suresh* : (2000) 1 SCC 471 wherein it is observed as under:-

“Three possibilities are there when an accused points out the place where dead body or an incriminating material was concealed without stating that it was concealed by him. One is that he himself would have concealed it. Second is that he would have seen somebody else concealing it. And the third is that he would have been told by another person that it was concealed there. But if the accused declines to tell the criminal court that his knowledge about the concealment was on account of one of the last two possibilities the criminal court can presume that it was concealed by the accused himself. This is because the accused is the only person who can offer the explanation as to how else he came to know of such concealment and if he chooses to refrain from telling the court as to how else he came to know of it, the presumption is a well-justified course to be adopted by the criminal court that the concealment was made by him. Such an interpretation is not inconsistent with the principle embodied in Section 27 of the Evidence Act.”

23. **In State of Maharashtra Vs. Suresh: JT 1999(9)SC 513**, the Supreme Court has held as under:-

“24. One of the formidably incriminating circumstances against the accused was that the dead body was recovered as pointed out by the respondent. The statement of the respondent which led to the recovery of the dead body has been incorporated in Ext. 79 and the admissible portion of it reads thus:

Her dead body is kept concealed in the field; I will take it out and produce the same; come with me.

25. But unfortunately the Division Bench of the High Court did not rely on the above circumstance on a very

fragile reasoning. The first limb of that reasoning was based on a mistake committed by PW-3 Sayyed Niyamat in his evidence when he said that he saw the dead body of the child on 23.12.1995. Much strain is not required in holding that what PW-3 said should have been understood as 24.12.1995. The second limb of the reasoning is that two other possibilities could not have been ruled out. Of which one is that respondent would have seen someone else placing the dead body at that spot, and the second is that respondent would have been told by somebody else that the dead body was placed there.

26. We too countenance three possibilities when an accused points out the place where a dead body or an incriminating material was concealed without stating that it was conceded by himself. One is that he himself would have concealed it. Second is that he would have seen somebody else concealing it. And the third is that he would have been told by another person that it was concealed there. But if the accused declines to tell the criminal court that his knowledge about the concealment was on account of one of the last two possibilities the criminal court can presume that it was concealed by the accused himself. This is because accused is the only person who can offer the explanation as to how else he came to know of such concealment and if he chooses to refrain from telling the court as to how else he came to know of it, the presumption is a well justified course to be adopted by the criminal court that the concealment was made by himself. Such an interpretation is not inconsistent with the principle embodied in Section 27 of the Evidence Act.”

24. A Division Bench of this court in **Prithipal Singh Vs. State** (Crl.A.No.75/2004), decided on 12th March, 2010, has held as under:-

“37. Recoveries of objects and dead bodies lying hidden in the soil at the instance of a person have always been treated as highly incriminating evidence for the reason save and except a person telling the police its whereabouts, the police can never reach out to the same. The same has been reiterated in the decision of a Division Bench of this Court decided on 01.02.2010 in Crl.A. No. 385/2008 Dost. Mohd. and Anr. v. State. Thus, we hold that Section [27](#) of the Evidence Act stands attracted and makes admissible the disclosure statement of the appellant pertaining to the spot wherefrom the dead body of Hemant Kumar was recovered. Further, the part of his statement which gives the description of the dead body i.e. that the same has stab wounds as also its condition i.e. being stripped of the clothes is also admissible as the dead body is a thing and the state of the thing is a matter of fact.”

25. Recovery of dead bodies at the instance of the accused have been held to be highly incriminating evidence as is held in the decisions reported in AIR 1947 PC 67 Pulukuri Kottaya & Ors Vs. Emperor; 1989 Crl.L.J(NOC) 200 (Gauhati) Chakidhar Paharia vs. State of Assam; 1986 Crl.L.J 220 Parimal Banerjee vs State; AIR 1963 SC 1074 Ram Lochan Ahir vs. State of West Bengal as also in a decision by a Division Bench of this court titled Dost Mohd. & Anr vs. State Crl.A.No.385/2008, decided on 01st February, 2010.

26. Learned counsel for the appellant has contended that evidence on record shows that the dead body was decomposed and was beyond

recognition as such it can't be said that Avtarjeet Singh PW2 and Narender Jeet Singh PW3 were in a position to identify her. It is contended that Ld. Addl. Sessions Judge has wrongly taken into consideration the said evidence.

27. The dead body is identified by Avtarjeet Singh PW-2 and Sh. Narender Jeet Singh PW-3 in the presence of SI Ravinder Singh PW-6 and ASI Gopi Ram PW-8. Sh. Avtarjeet Singh, PW-2, the father of the deceased has deposed that after receiving information from the Crime Branch, he along with his brother (PW3) and another relative went to Nillothi Village near the *ganda nala*. Both the accused persons, i.e., the present appellant and the co-accused, were there in the custody of Crime Branch and the dead body was recovered from the *ganda nala* in a gunny bag. He has also deposed that the dead body had the same clothes which Manpreet Kaur was wearing when she had left the house for the last time. On the basis of clothes, he had identified the body and has proved his signatures on identification memo Ex. PW2/B. PW-3, Narenderjit Singh has deposed that on 4th February, 2004 when they came to know about the recovery of dead body, he along with his brother went at the place of recovery of dead body, i.e., *ganda nala*. He identified the dead body vide memo Ex.

PW 3/A. SI Ravinder Singh (PW-6), a witness to the identification of the dead body, has also deposed that father of deceased PW-2 and his brother PW-3 reached the spot and had identified the dead body vide Ex.PW2/B and Ex.PW3/A respectively. Similarly, ASI Gopi Ram PW8, who is also a witness to the identification of dead body has also supported the deposition of identification by PW2 and PW3.

SI Ravinder Singh PW-6 and Inspector H.S.P. Singh PW-24 in cross-examination have deposed that body was in a decomposed state.

But reading the evidence of PW-2 & PW-3 about identification of dead body of deceased it can't be said that there is a doubt about identification as is alleged. Further, Dr.V.K.Jha, PW-18 has deposed that face of dead body was not decomposed and was identifiable. Under these circumstances, it cannot be said that identification of dead body is doubtful. Learned counsel for appellant has also pointed out variation about the description of clothes as stated in missing report Ex. PX-1, FIR Ex. PW-1/A, as compared to deposition of Avtarjeet Singh PW2 in court. It is contended that in missing report Ex.PX-1 and FIR Ex. PW-1/A, complainant has stated that when deceased left home she was wearing blue and yellow colour shirt and blue salwar, whereas in deposition before the court he had stated that she

was wearing a blue suit with yellow stripes on the shirt. Learned counsel for the appellant has contended that in FIR Ex. PW-1/A as well as in missing report Ex. PX1, the locket, ear rings and hair clip were not mentioned, whereas the evidence on record shows dead body had these articles. It is not necessary to give every minute details by a person whose daughter is missing. The father of deceased PW2 had given sufficient description of the missing girl in the missing report i.e. Ex.PX1 and FIR Ex.PW-1/A. Considering the entire evidence on record the above variations pointed out don't make the identification doubtful.

Further the autopsy report Ex.PW18/B mentions the age of the deceased as seventeen & half years and time since death is recorded as two and half months which coincides closely with the date and time as recorded in the missing report Ex.PX-1 and as such corroborates the identification.

28. Dr. V.K. Jha, who has conducted the post mortem vide report Ex.PW18/3 has deposed that in view of the fact that the dead body was placed in gunny bag tied with rope, element of homicide was present. The CFSL report Ex.PW16/A shows presence of "aluminium phosphide" in the viscera and blood sample of deceased. Further,

there is no suggestion on behalf of the defence to the PWs that Manpreet Kaur committed suicide.

29. The other contention of learned counsel for appellant is that the alleged recovery of *dibbi* Ex.P6 containing poisonous substance “aluminium phosphate” is doubtful.

30. As per evidence on record, the accused got recovered one *dibbi* Ex. P6 on which “aluminium phosphate” was written after taking it out from the waste material which was seized by IO PW-24 vide memo Ex.PW-6/1 in the presence of SI Ravinder Singh PW-6 and ASI Gopi Ram PW-8 on 5.2.2004. It has come in the evidence that during the course of investigation, the *dibbi* Ex. P6 was sent to CFSL. As per seizure memo Ex. PW6/I, it is stated that on the *dibbi*, “Aluminium phosphate” was printed in English and some more words in Hindi and English were printed which were not legible.

As per CFSL report Ex. PW16/A, the description of the said parcel is as under:-

“Grey coloured powdery substance kept in a metallic tube labelled as “FUMIGANT-INSECTICIDE ALUMINIUM PHOSPHIDE 56% Quick phos.”

There is a clear discrepancy in the *dibbi* Ex. P6 which is alleged to have seized vide memo Ex. PW6/I and the parcel-2 containing the alleged *dibbi* which was sent to CFSL.

In these circumstances, the alleged recovery of *dibbi* Ex. P6 is not believable. Further, SI Ravinder Singh PW6 has deposed that inside the *dibbi* Ex. P6 there were some grey coloured tablets and some powder like substance and ASI Gopi Ram PW8 who is another witness to the alleged recovery has stated that only some intact and some broken tablets were there in *dibbi* Ex. P6. He is not talking of any powder. In cross-examination, he also could not state whether the number of tablets were 10, 20, 50, 100 or more. Similar is the answer of the IO, PW24. In view of the above discussion, the recovery of *dibbi* Ex. P6 containing the poisonous substance “Aluminium phosphate” is doubtful. The finding of the learned ASJ in this regard is rejected and this piece of evidence cannot be taken into consideration.

31. Even the alleged recovery of wrist watch Ex. P-1 is also doubtful. The disclosure statement Ex. PW6/C is dated 04.02.2004. The alleged recovery of wrist watch Ex. P-1 is dated 06.02.2004. PW-

8 ASI Gopi Ram has stated that appellant had got recovered from the bushes inside the Central Park, Paschim Vihar one ladies wrist watch “Time Star”. It has also come in the evidence that the Central Park, Paschim Vihar is for the use of general public. The alleged incident is of 30.11.2003. The alleged recovery is of 6.2.2004, that too from a park which is generally used by the public. The recovery, in these circumstances, becomes doubtful. Even this piece of evidence cannot be taken into consideration.

32. Learned counsel for the appellant has contended that call details Ex.PW 20/B relied upon by the learned Addl. Sessions Judge should not have been taken into consideration as circumstantial evidence against appellant. It is contended that same have not been proved in accordance with law. Further the same have not been put to the appellant in his statement u/s 313 Cr.P.C and at no point of time, he was given an opportunity to explain the said details.

33. On the other hand, learned APP has contended that there is complete compliance of section 65(B) of the Evidence Act and the same have been proved in accordance with law and were put to appellant in his statement u/s 313 Cr.P.C.

34. We have examined the contentions raised in this regard. Shri Jyotish, Executive of Essar PW-20, who was produced by the prosecution, has deposed that he had brought cell ID chart of Essar showing the side ID and site name and computerized generated record certified to be true which is Ex.PW 20/A. He has proved on record the call detail record Ex.PW 20/B of mobile no.9811656501 which was of appellant from 1.11.2003 to 29.1.2004. He has also proved on record Ex.PW 20/C to show that the aforesaid mobile was in the name of Harvinder Singh. He has also deposed that the record is computer generated and certified the same as correct. There is no suggestion to the said witness that the same was a manipulated record. Under these circumstances, the correctness of the aforesaid document cannot be doubted.

35. Perusal of record shows that even the call details of the said mobile number Ex.PW 20/B and other relevant material had been put to the appellant in his statement u/s 313 Cr.P.C wherein he had admitted the aforesaid mobile number belongs to him and had also admitted that landline no.2519918 having been installed at the residence of deceased Manpreet Kaur. He has further stated that the said mobile phone was used in his factory at the ground floor as well

as on the first floor where he was living. His further stand was that his wife was having intimacy with the mother of the deceased and she used to talk from his mobile phone to the aforesaid landline. However, the call details Ex.PW 20/B shows that the mobile phone was not only being used from the area of Tri Nagar but was being used from different places of Delhi in order to make calls at the landline number of PW-2. The Call details Ex.PW 20/B shows that one day prior to incident, three calls were made from the mobile phone of accused to the landline of deceased. Even on the day of incident shows his presence near the college of deceased and the place where dead body was recovered.

36. Insofar as the transfer of the case to Anti Homicide Cell is concerned, the explanation of prosecution that when no clue about missing girl was coming forward, the father of deceased PW-2 made a representation to the higher officers of police for transfer of investigation to Crime Branch. It is also submitted that the DCP of the area concerned on 20th January, 2004 had also requested the Incharge Anti Kidnapping Cell, Crime Branch to assist the local police of I.P.Estate in tracing the missing girl. Despite that, the girl was not traced. Thereafter, Department in its wisdom marked the case to Anti

Homicide Cell of the Crime Branch which has requisite expertise. Under these circumstances, it cannot be said that the Crime Branch has falsely implicated the accused.

37. It is an admitted position that the deceased's mother and mother of wife of appellant were sisters as such complainant's daughter Manpreet Kaur was related to accused Harvinder Singh as his sister in law. Further, it has also come on record in the evidence of PW-2 that accused Harvinder Singh had been visiting his house in his absence and he had warned him not to visit his house in his absence. Further the conduct of the accused that on 29th November, 2003, he called thrice at the residence of deceased, is also an indication of his involvement.

It is an admitted position that deceased was related to accused being his sister-in-law (Sali). The call details Ex.PW-20/B shows that he was in constant touch with the landline phone of the deceased. There are various calls made from the period from 01.11.2003 to 29.01.2004. One day prior to her going missing he had called thrice on the landline of deceased. The call location of mobile phone of appellant on 30.11.2003 at 12.37 shows the presence of appellant at

Ranjit Nagar flyover which is near Mata Sundri College from where the girl went missing and the call at 1533 hours on the said date demonstrates the location at Meera Bagh where appellant pointed out the place where the dead body was put in a gunny bag.

The appellant was apprehended on 04.02.2004 and had made a disclosure statement Ex. PW-6/C and got recovered a dead body of deceased Manpreet Kaur from the *ganda nala* which was kept in a gunny bag and tied with a rope. All these facts were within the special knowledge of the appellant. No explanation has been given by him. Identity of the dead body is also fully established. As stated above in the judgments referred above, recovery of a dead body lying concealed is a piece of highly incriminating evidence against the accused and the recovery has been fully established beyond doubt and the same incriminates the appellant at whose instance the recovery has been effected. Learned ASJ has also noted that it has come in the evidence of PW2 that appellant used to visit the house of deceased in the absence of complainant and he had warned the accused not to visit the house in his absence. The cumulative effect of the above circumstantial evidence led by the prosecution proves the guilt of the

appellant. These circumstances are not capable of explaining any other hypothesis except the guilt of the accused.

Even if the evidence led by the prosecution does not establish the recovery of *dibbi* Ex. P6 and wrist watch Ex.P1 at the instance of the appellant, the same does not demolish the case of the prosecution in view of the other circumstances which are proved by the prosecution against the accused and which form a complete chain as discussed above.

38. In view of the above discussion, we find no merit in the appeal and the same is dismissed.

VEENA BIRBAL, J

BADAR DURREZ AHMED, J

June 2, 2011

ssb/kks