

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

% **Date of Decision: 06.04.2011**

+ **Crl. Appeal No.762/2008**

Mohd. Javed Appellant

Through: Mr.Ashish Kumar Das, Advocate.

Versus

The State (Govt. of NCT of Delhi) Respondent

Through: Mr.Jaideep Malik, APP for the State.

AND

+ **Crl. Appeal No.932/2008**

Mohd.Akhtar Appellant

Through: Ms.Anu Narula, Advocate.

Versus

The State (Govt. of NCT of Delhi) Respondent

Through: Mr.Jaideep Malik, APP for the State.

AND

+ **Crl. Appeal No.1000/2008**

Manoj Kumar Singh Appellant

Through: Mr.Sunil Tiwari and Mr. Amar Nath
Saini Advocate for the appellant.

Versus

The State (Govt. of NCT of Delhi) Respondent

Through: Mr.Jaideep Malik, APP for the State.

AND

+

Crl. Appeal No.685/2009

Ikramul Haq @ Vishal

.... Appellant

Through: Mr. A.J.Bhambani Advocate for
Appellant.

Versus

The State (Govt. of NCT of Delhi)

.... Respondent

Through: Mr.Jaideep Malik, APP for the State.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE S.L.BHAYANA

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| 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 |

ANIL KUMAR, J.

1. These above noted appeals arise from the judgment dated 25th August, 2008 in session case no. 93 of 2003 arising from FIR No. 23 of 2000 PS Nand Nagri u/s 364 A/302 /34 of IPC titled State Vs Manoj Kumar Singh, Mohd Akhtar; Mohd Javed, Ikramul Haq and Manoj Kumar @ Manju s/o Sh.Dhanpal convicting accused Manoj s/o Bindeshwari, Ikramul Haq, Akhtar and Javed u/s 120 B,/364A r/w 120 of IPC and section 302 of IPC r/w 120 B of IPC and sentencing them by order dated 5th September, 2008 to undergo life sentence with fine of Rs.5000/- each u/s 120 B of IPC and in default of payment of fine to undergo further simple imprisonment of three months; Life

imprisonment with fine of Rs.5000/- each and in default to undergo simple imprisonment for three months u/s 302 r/w section 120 B of IPC and life imprisonment with fine of Rs.5000/- each and in default to undergo simple imprisonment for three months u/s 364A r/w section 120 B of IPC.

2. The case of the prosecution in brief is that on 3rd January, 2000 the deceased, Shokeen Pal, s/o Jagbir Singh resident of H No. 5, Ganga Enclave, Johari Pur Road, opposite Satyam Cinema Loni, UP, along with his uncle Sh.Varinder Singh had left the house at about 11 a.m for his transport office which was run by the deceased at Apsara Border in a white Maruti Car No. DL 5C B 2353. However Varinder Singh returned home alone and slept with Jagbir Singh, father of the deceased. On 4th January, 2000 the father of the deceased enquired about the whereabouts of his son. Then his uncle Shr. Varinder Singh disclosed that on the previous day, around evening time he along with Shokeen Pal and Akhtar had been going to the Transport Office in the car of Shokeen Pal. The car was stopped at Loni Morh Flyover at about 7 p.m by Akhtar. At that time Shokeen Pal told his uncle Sh.Varinder that he would return home after getting some work done for Akhtar and that he, Sh.Varinder, should go home and have his meal. Thereafter the deceased and Akhtar went away in the car. The deceased, however did

not return home and despite all efforts by the family members Shokeen Pal could not be traced out.

3. On 6th January, 2000 at about 12:15 p.m. the deceased's family received an anonymous call on their telephone No. 2812127 and the caller asked Jagbir Singh, father of Shokeen Pal who had been missing, to give the phone to Babli, wife of the deceased. When Jagbir Singh asked if he could take a message, the caller on the other side again stated that he wanted to speak to Babli, upon which Jagbir Singh told him that he is the father, and the caller kept the phone down. On the same day, at about 12:30 p.m. Ranjit Kumar Singh, Manager of the transport company run by deceased, telephoned Sh. Jagbir Singh at his house and told him that he wanted to speak with Babli. He disclosed that he had received an anonymous call at Apsara Border Transport Office stating that Shokeen Pal had been kidnapped and his vehicle No. DL 5C B 2353 was parked at Pahar Ganj Parking. Caller also demanded that if they wanted Shokeen Pal alive then they should give two 'petties' of Rupees 10 lacs each to some Hundi wala at Lahori Gate Naya Bazar. He also gave the direction/guidance for reaching that Hundi wala i.e from Lahori Gate crossing, one should take the way to Khari Bawoli and then to Hundi Wali gali opposite Naulakha Soap and thereafter should get further information there at an apartment at the 3rd Office. On the same day, a complaint regarding the missing of the deceased and the

demand for ransom was lodged at PS Sahibabad. At 8:15 pm another call was received by the sister of the deceased, Smt. Santresh and the caller had informed her to give the amount demanded at the above address by 1 p.m. on 7th January, 2000, otherwise he threatened that Shokeen Pal, would be killed. Many such calls for the money were received by the family of the deceased right up to 9th January, 2000.

4. On 11th January, 2000 Sh.Jagbir Singh, father of Shokeen Pal who had been kidnapped, came to the office of the Anti Extortion cell Crime Branch, R K Puram along with his son-in-law Basant and nephew Sudhir Kumar and gave an application, making a formal complaint regarding the abduction of his son Shokeen Pal for ransom. On 12th January, 2000 Sudhir Kumar along with the police officers went to the railway station, New Delhi at the parking lot where the white colour Maruti car No. DL 5C B2353 belonging to the deceased was parked which was seized. Thereafter several teams were deployed at different places for tracing out Shokeen Pal and the telephone of the complainant was also kept under observation. During investigation one Munna Khan @ Matloob Ahmad Khan, business partner of deceased, disclosed that he had learnt that Shokeen Pal and Akhtar of Motihari went missing since 3rd January, 2000. Akhtar was also the neighbor of Munna Khan. On enquiring from STD booths it was revealed that Amjad brother of Akhtar was talking to him on the Mobile

no.9810184352. On 13th January, 2000, SI Pyare Lal obtained the call list of the above number from the Airtel Office and found that few calls from the above number were made to Motihari and few calls were made to a mobile no. 9810174266. The call list of the later number was also obtained and it was found that many calls from this number as well, were made to Motihari.

5. On getting this revelation SI Suresh Kumar along with the staff and relevant documents went to Motihari Bihar to enquire about Akhtar and the others. SI Suresh Kumar on the basis of phone details stipulating the calls made by Mukesh Kumar to Mohd. Akhtar, Manoj Kumar and the phone no. 2812127 installed at the deceased's house, joined Mukesh Kumar in the enquiry. Mukesh Kumar s/o Ram Chander disclosed that he along with his own co-villagers Manoj, Akhtar and Javed conspired to abduct transporter Shokeen Pal and in pursuance of this conspiracy on 3rd January, 2000 Manoj, Akhtar, Javed and Vishal abducted Shokeen Pal and kept him as a captive in a tenanted accommodation. He further disclosed that while tying up Shokeen Pal, Javed sustained a bullet injury and he had come for his treatment at Motihari. Pursuant to disclosure statements made on 23rd January, 2000 SI Suresh Kumar arrested Mukesh Kumar and Javed from the District Motihari, Bihar and produced them before the learned CJM Motihari. Their transit remand was obtained. On receiving all the

information from SI Suresh Kumar, SI Pyare Lal conducted a raid with his staff on 27th January, 2000 at Tukmeer Pur Extension Karawal Nagar, where accused Manoj, Mohd. Akhtar and Ikramul Haq @ Vishal were over powered and interrogated.

6. During investigation it was disclosed that accused Manoj Kumar son of Bindashwari Prashad suffered losses of 17/18 lacs in September/October, 1999 as his Ball Barings were seized at Bihar which were smuggled. Mohd. Akhtar too was under economic constraints as he had gotten two trucks financed from KGA Finance Company on the personal guarantee of Shokeen Pal, but due to non-payment of the installment, the trucks were seized by the Finance Company and thereby Mohd. Akhtar suffered huge losses. On October, 1999 Javed introduced Mohd. Akhtar to Manoj and in November, 1999 about three/four days prior to Diwali, Javed, Manoj, Akhtar and Mukesh met at the rented accommodation of Mukesh at Motihari, where the conspiracy was hatched. Manoj instructed Mukesh that when Shokeen Pal would be abducted in Delhi they would contact Mukesh on the phone and Mukesh was to raise the ransom demand of Rs. 20,00,000/- from the deceased's family on the phone which was to be collected through Hawala in Nepal as Manoj had many good acquaintances in Nepal due to his smuggling business there.

7. Accused persons further disclosed that in pursuance of the conspiracy Akhtar, Manoj and Javed came to Delhi and took a two room set on rent to keep the abducted person there. Accused Ikramul @ Vishal had later on joined the conspiracy and started living with the co-accused persons in the rented accommodation. The accused persons, Akhtar, Javed and Ikramul purchased two gunny bags, one polythene bag and two big knives, whereas Manoj purchased the fortvin injections and a country made pistol .315 Bore and one mobile telephone number 9810184352, in order to maintain contact with Mukesh.

8. On 3rd January, 2000 Mohd. Akhtar went to the transport office of Shokeen Pal and asked him to join the new year celebrations and informed him that he should leave at around 7/7:30 p.m. Thereafter Shokeen Pal was brought to the tenanted accommodation at Tukmeer Pur, where they all had their meals. After which the volume of the tape recorder was increased, and Akhtar, Javed and Ikramul caught hold of Shokeen Pal, while Manoj injected the fortvin injection to him. When the deceased protested, Manoj with the intention to terrorize him took out his country made revolver and threatened Shokeen Pal, whereupon Shokeen Pal pounced upon them as a result of which, the pistol was accidentally fired which caused an injury on the right foot of accused Javed and the bullet pierced his shoes and foot. Thereafter Shokeen Pal was tied up on the cot by a rope in the inner room and his mouth was also taped. He was also given injection to make him unconscious.

Subsequently, Javed was taken to the hospital by Manoj and Akhtar and dressing of his injury was got done. The deceased's car was then taken by the trio to the New Delhi Railway Station and abandoned there and they returned to Tukmeer Pur in a TSR.

9. Shokeen Pal would intermittently come to his senses but then the accused persons repeatedly injected him medicine to keep him unconscious and kept him in a drugged state till 5th January, 2000. On 5th January, 2001 when Shokeen Pal came to his senses, he threatened that once he would be released he will implicate all the accused persons. So a decision was taken by the accused persons to kill him.

10. The Prosecution alleged that Akhtar caught hold of the head of Shokeen Pal whereas Ikramul caught hold of both his legs and Javed caught hold of his hands, while Manoj closed his mouth and throttled him. With the intention to dispose of the body the accused persons removed his clothes and severed his head. The ring of Shokeen Pal was taken by Manoj whereas his watch was removed by Akhtar. The severed body was then kept in a gunny bag which was further put in another gunny bag and his head was kept in another bag on the night intervening 5/6th January, 2000. The bags were thereafter, kept in a maruti car which belonged to the accused Manoj's friend Manju @

Manoj s/o Dhan Lal r/o H No. 143, village Tukmeer Pur, Delhi, to be disposed of. The bag containing the headless body was thrown into the Ganda Nala under the Pulia opposite to Suraj Pal Workshop, Plot No. 4 Tukmeer Pur whereas the bag containing the head was thrown in Ganda Nala, Chand Bagh Pulia. The clothes of the deceased, the rope of charpai used, the mattresses, his shoes and diary were all burnt, while the fortvin injections, two knives, burnt ashes, empty cartridges and a part of the fired bullet were all thrown into the nala. The country made revolver as well as the mobile was given to Manoj's friend Lalit Rana by him.

11. Pursuant to the arrest, investigations by the crime team was done. Blood samples from the spot of murder at Tukmeer Pur were lifted. The cot and other articles were also seized from that room and at the pointing out of the accused. The headless body of the deceased was also recovered from Bihari Pur Pulia, Ganda Nala, near Sher Pur Chowk. The Body was found wrapped in a rope and it was identified as the body of Shokeen Pal by his family members. The syringe used to inject the medicine to the deceased and to make him unconscious, as well as the knife were also recovered. The Country made pistol was also recovered from Manoj's friend Lalit Rana, for which separate proceedings were conducted under the Arms Act. However the severed head of the deceased could not be recovered.

12. Post mortem on the body was conducted. Exhibits were sent to CDFD, Hyderabad along with the blood samples of the father of the deceased. The Viscera, syringe and two audio cassettes were sent to CFSL Delhi. While the finger prints of the accused and flanges of deceased were sent to FSL Malviya Nagar. The ring and watch of the deceased were recovered from the accused persons, Manoj and Akhtar pursuant to their disclosure statements which were duly identified in TIP by the wife of the deceased.

13. After completion of the investigation, the challans were filed against all the five accused persons, namely Manoj, Javed, Akhtar, Ikramul and Mukesh on 22nd April, 2000. Manju @ Manoj and Lalit Rana were arrested subsequently and the supplementary challan was filed on 26th July, 2001. Charges were framed under section 120 B/364A r/w 120B, 302 r/w 120 B of IPC against all the accused persons on 12th December, 2002 and u/s 201 of IPC against accused Manju@ Manoj by the then Ld. Judge to which all except Mukesh pleaded not guilty. Accused Mukesh was convicted under Section 384 IPC on 12th December, 2002. However accused Lalit Rana was discharged vide order dated 12th December, 2002 by the Learned ASJ Ms. Aruna Suresh, due to lack of evidence.

14. In support of its case the prosecution examined 55 witnesses. After closure of the prosecution evidence all the incriminating evidence were put to the accused persons and their statements were recorded under section 313 of the Cr.P.C. All the accused persons claimed that they were falsely implicated since they did not meet the demands for bribe made by SI Pyare Lal. However, none of the accused opted to lead defence evidence.

15. After careful consideration of the evidence on record, the trial court held that the prosecution was successful in bringing home the guilt beyond all reasonable doubt against the accused Manoj Kumar, Ikramul Haq, Mohd Aktar and Javed and hence convicted them under Sections 120 B, 364 A, 120, 302 and 120 B of the IPC. However the Trial Court acquitted Manoj @ Manju holding that the prosecution had failed to attribute any knowledge to the accused to the effect that he was aware of his vehicle being used for disposal of the dead body of the deceased and that there was no evidence to support the allegation that the car was washed by the accused in order to destroy the evidence.

16. Against the order of conviction and sentence that each of the four appellants have filed separate appeals. However, since the appeals are against the common judgment convicting them and common order sentencing them, and the appeals involve common evidence and

substantially common facts, their appeals are decided by common order, however, the pleas and contentions raised on behalf of appellants are noted separately and dealt with accordingly.

Pleas raised by Mohd Javed.

17. Learned Counsel for the appellant Mohd Javed has contended that the Trial Court failed to appreciate the delay in filing the FIR. He asserted that in the absence of any reasons justifying the same and on account of unexplained delay in filing the FIR, the very base of the prosecution story becomes doubtful. It is contended that appellant, therefore, is entitled for benefit and the entire proceedings against him are liable to be quashed. He further contended that the only reason for inculcating the appellant, Javed is the sole disclosure statement made by co-accused Mukesh who pleaded guilty and was convicted u/s 384 of IPC. He also submitted that there are absolutely no recoveries were effected at the instance of the appellant Mohd Javed and that the last seen witness, PW-1 Varinder Singh, also did not name him and mentioned about him. It is contended that therefore there is no evidence to substantiate the allegations made against the appellant, Javed.

18. Learned counsel further contended that there are many inconsistencies in the deposition of the various witnesses and

contradictory deposition cannot be relied on to convict the appellant as the inconsistencies go to the root of the matter. While PW-50 SI Bankteshwar Ram deposed that he was present at the time Javed, the appellant had made his disclosure statement on 23rd January, 2000, however, this is diametrically opposite to the deposition of PW-51 SI Suresh who categorically stated that the disclosure statement was not recorded before PW-50. It has also been pleaded that the disclosure statement of the accused Mukesh which is the sole basis to arrest Javed is undated, which undoubtedly leads to the inference that it is a fabricated document and therefore no reliance can be placed on the same and the appellant is entitled for benefit of doubt. Learned Counsel for appellant, Javed urged that no reliance should be placed on the deposition of PW-49, Inspector Pyare Lal as specific allegations of demanding money from the co-accused Manoj @ Manju were made against him. Pursuant to which PW-49 was even transferred to Line.

19. It is further contended that the chance prints which were tallied with the specimen finger prints collected from the appellant, by PW-37 Ravinder Kumar, of the Finger Expert Bureau, do not match. Thus on the basis of chance prints which were lifted the guilt of the appellant cannot be established. It has also been asserted that there are discrepancies between the two disclosure statements allegedly made by the appellant, i.e. the one made on 23.1.2000 and the other on

28.1.2000 at New Delhi. The first disclosure statement does not divulge the place of occurrence i.e. 2/38, Tukmeer Pur Extension, Delhi as what is mentioned is Bhajanpura area in Delhi.

20. It is further pleaded on behalf of appellant Javed that Nathni who allegedly treated him of his gun wound, had not been examined. PW33 had taken Javed, the appellant to hospital, but there is no medical evidence on record to prove that the appellant sustained a foot injury.

Pleas raised by Mohd. Akhtar

21. Learned counsel for Mohd Akhtar has also contended that the delay in filing the missing report is reflective of the abnormal conduct of the family in the facts and circumstances, as on 6th January, 2000 at 12.15 PM first ransom call was made and by 9th January, 2000, 12 ransom calls were received. However, the complaint, Ex. PW 49/A, was made only on 11th January, 2000. As per the deposition of PW-25 Babli, wife of the deceased, she was confident that Akhtar due to enmity with her husband had abducted him, however, in spite of this she did not make any attempts to lodge a complaint. Thus it has been urged that the conduct of the wife does not seem to be very probable and creates a doubt about the entire prosecution version and benefit of doubt should be given to Mohd. Akhtar. Reliance was placed on her deposition that her husband, deceased, used to inform her whenever he left for 2-3

days. He had not done so in January, 2000 which was abnormal conduct on his part yet the wife did not attempt to file the missing person report or of abduction of her husband after receiving ransom call on 6th January, 2000. It is also contended that even though the family members knew the address of the appellant Mohd. Akhtar, and they were suspicious about him, still the police did not go to his house in Motihari. This could only imply that the said appellant was falsely implicated. Learned counsel also urged that as per PW-23 Smt Santresh, sister of the deceased, she had recorded the ransom calls on a tape recorder on 13th January, 2000, however she had handed it over to the police only on 16th January, 2000. This gap of three days has remained unexplained and is enough time to have tampered with the evidence.

22. It has been urged that Akhtar was only identified by PW-1 Sh. Varinder Singh for the first time in Court and that no TIP was conducted. According to learned counsel for the said appellant this is sufficient along with other grounds to exculpate the appellant. Emphasis has also been laid on the ground that Najibulla Khan, driver of the deceased had not been examined, even though his license was recovered from the car. It is also contended that nothing had been established to ascertain whether the driver was on leave or had left the services of the deceased. This according to learned counsel is major flaw

in the version of the prosecution and last seen theory has not been established and consequently the said appellant cannot be inculpated.

23. Learned counsel for the appellant no.2, Mohd Akhtar submitted that the motive of the appellant as alleged by the prosecution is that two trucks bearing no. DL 1 G A 0860, UHN 2437 of the accused Akhtar were financed by KGA Company, for which Shokeen Pal, the deceased stood as guarantor. However as the recovery of amount was not possible on behalf of Akhtar, based on the information given by the deceased, the trucks were seized by the company, hence huge losses were suffered by Akhtar and therefore a plan was made to abduct the deceased and claim ransom. It is contended that as per the deposition of PW-3 Rajesh Yadav, Manager of KGA, he wasn't even aware of the outstanding dues against the finance of the said two trucks, nor was he aware of the address of the appellant and this coupled with the fact that no suit was filed for recovery of the said amount, the allege motive as contended by the prosecution has not been established. Even though it is alleged that Shokeen Pal stood as guarantor, as per the deposition of PW-28 Krishan Kumar himself, the documents in question did not bear the signatures of Shokeen Pal.

24. Learned Counsel also referred to the depositions of Matloob @ Munna Khan, PW-17 as well as PW-2, Sudhir who had deposed that on

enquiry from the STD booth, they had found out that Amjad had been talking to his brother Akhtar on the number 9810184352. However, learned counsel contended that neither Amjad himself had been examined, nor did PW-27, father of the deceased knew who Matloob was, who according to the prosecution was the business partner. Thus in the facts and circumstances the father not knowing the partner of the business of his own son seems highly unlikely and casts a doubt on the credibility of Matloob as a witness and such deposition could not be basis of conviction of the appellant Mohd. Akhtar.

25. It has also been contended on behalf of appellant, Akhtar that the recoveries of the call details by the police cannot be relied on as PW-8 and PW-9, STD booth owners had turned hostile and had also deposed that the record could have been tampered with by someone.

26. Learned counsel has further urged that the dead body was not recovered from the place as divulged in the disclosure statement of the appellants. While referring to the deposition of PW-31 Ranbir Singh the learned counsel emphasized that when the search for the dead body was initiated, pursuant to the disclosure statements made by the appellant, Manoj, Akhtar and Javed, some persons had told the police officials about a bad smell emanating from another pulia, from where the dead body was subsequently recovered. Thus since the body was

not recovered at the instance of the accused persons pursuant to their disclosure statement, therefore the same cannot inculcate them.

27. Learned counsel has also urged that the alleged place of occurrence has absolutely no connection with the appellant Akhtar, as the place of occurrence was the tenanted premises belonging to PW-30, which was taken up by co-accused Manoj. Further the chance prints recovered from the place of occurrence did not match with that of the specimen fingerprints obtained from the appellant. The learned counsel for appellant no.2 further contended that the learned Trial Court also failed to appreciate the fact that the TIP of the wrist watch allegedly recovered from Akhtar on 27th January, 2000 was conducted by the wife of deceased, PW-25 only on 13th March, 2000, after a lapse of 45 days without furnishing any explanation for such delay, which had defeated the very purpose of TIP and thus the probability of watch being planned could not be ruled out and such identification by the widow of the deceased could not be relied on in convicting the appellant Mohd. Akhtar.

28. Lastly it has been contended by the learned counsel for said appellant that the trial court had failed to appreciate that PW-52 Dr. Sumit Telewar who identified the handwriting of Dr. A.K. Tyagi, who had conducted the post mortem, had categorically stated that “the

cause of death will be given only after the report of chemical analysis of viscera.” However the viscera report is not found on the record, thus whether the death is homicidal or not, has not been established by the prosecution.

Pleas raised by MANOJ KUMAR

29. The learned counsel for appellant Manoj submitted that the allegations as per the prosecution specifically made against the appellant is that he had injected the deceased to make him unconscious and to keep him drugged. Allegation have also been imputed that the said appellant had made the demand for ransom and he had strangled the deceased and finally he had severed the head from the body of the deceased.

30. The learned counsel for the appellant, Manoj contended that as per the deposition of PW2, the cassettes allegedly containing the recordings of the ransom demanded by the accused persons were in an unsealed condition and therefore could have been easily tampered with and thus they could not be relied on. It was further contended that no TIP was conducted to identify the ring allegedly recovered from the appellant, Manoj pursuant to his disclosure statement. According to him this coupled with the fact that no documentary proof had been provided to connect the watch and the ring to the deceased, the alleged

recoveries pursuant to his disclosure statement cannot be used to inculcate him with the alleged crime.

31. It was further urged that the recoveries of headless dead body and knife were made in a residential area and admittedly there were many people present, however none were included as independent witnesses. In addition to this, in all the pictures of the recoveries taken, the appellant is not present in a single one of them. The learned counsel further submitted that since PW8 and PW9 both did not support the prosecution's version and had categorically denied any calls having been made by the appellants, hence the alleged call records recovered from the STD Booths could not be relied on for convicting the appellant.

32. As per the learned counsel for Manoj, motive too had not been proved as against the appellant. As per the prosecution story the balls bearing business of the appellant was allegedly suffered losses and thus he agreed to participate in the conspiracy to abduct the deceased. However, the learned counsel contended that not a single witness had deposed the same nor had any evidence been produced to this effect, thus no motive has been established against the said appellant.

33. It is further urged that the prosecution had mislead the trial court into believing that the appellant had taken the tenanted premises solely

for the purpose of holding the deceased hostage, as PW-30 , Dr. Rajinder Singh in his deposition had deposed that the appellant was in possession of the premises for the past 8/9 years.

34. Learned counsel had also contended that the dead body was not recovered from the place as divulged in the disclosure statement. Learned counsel also referred to the depositions of PW34, Mahabir Parshad who allegedly sold the two gunny bags to the accused persons and PW-35, Deepak Pundhir, who allegedly sold 5 fortvin injections to the appellant Manoj, but they were declared hostile, as they deposed that they hadn't sold the same to the appellants. Thus their depositions could not be relied on to inculcate the said appellant. Learned contended that the credibility of PW-49, Inspector Pyare Lal is doubtful as specific allegations of demanding money from the co-accused Manoj @ Manju were made against him and pursuant to complaint against him he was even transferred to police line.

35. As per the learned counsel the Trial Court also failed to consider the fact that the appellant was arrested on 27th January, 2000 while the offence was committed on 3rd January, 2000. Thus the plea of picking of the chance prints on 27th January, 2000 cannot be believed and accepted since even as per the reasoning of the Trial Court the prints of the co-accused may have got destroyed. In the circumstances the

chance prints of Manoj could not have survived and were not relied on by the Trial Court. Even, PW30 in his cross-examination had also categorically deposed that no officer from the CFSL had come to the spot and no chance prints were taken in his presence. He also stated that no syringe was recovered in his presence. Thus the recoveries pursuant to alleged disclosure statement of the appellants are fraught with discrepancies and suspicion and could not be relied upon to inculcate the appellant.

Pleas raised by Ikramul Haq

36. Learned Counsel for appellant Ikramul Haq too has contended that the Trial Court has failed to appreciate the consequence of delay in filing the FIR. He contended that as per PW-1, the deceased was seen with Akhtar on 3rd January, 2000, however the missing report was lodged only by 6th January, 2000. The time gap necessarily implied that in the intervening period the deceased could have come back home and the death of the deceased was not proximate to the last seen evidence produced by the prosecution.

37. Learned Counsel for Ikramul Haq further contended that as per the record on the day the charges were framed against the accused Mukesh Kumar i.e. on 12th December, 2002 he had accepted his guilt. The death of Shokeen Pal, the deceased has been established as on

3rd/5th January, 2000. However, in all the allegations the role of Ikramul Haq had not been described. It was further contended that most of the witnesses have not imputed anything against Ikramul Haq in their depositions. The last seen evidence does not substantiate the allegations made against the appellant, Ikramul Haq. As per the deposition of the uncle, Sh. Varinder, of the deceased PW-1 the deceased had been last seen in the company of co-accused, Akhtar on 3rd January, 2000 at about 7.00 to 7.30 PM and not in the company of Ikramul Haq.

38. The learned Counsel submitted that nothing had been recovered pursuant to his disclosure statement from the said appellant, Ikramul Haq except for an amount of Rs. 180-185/-. The said amount also belonged to the deceased has not been established. The other incriminating evidence, wrist watch, and the gold ring allegedly belonging to the deceased were also recovered from the co-accused Akhtar and Manoj respectively and not Ikramul Haq.

39. The Learned counsel also emphasized that the place from where the dead body was recovered is not the one mentioned in the disclosure statements of the appellants and that appellant Ikramul Haq had absolutely no motive to take part in the conspiracy to abduct and murder the deceased. Reliance has also been placed on the depositions

of the hostile witnesses PW-8 and PW-9. PW-8 Kalyan Singh, is the owner of the STD booth from where the appellants had allegedly made the calls for ransom. Learned counsel emphasized that as per deposition of PW-8 and PW-9, none of the accused persons had made any calls from his STD booth and that the police had forcibly taken his signatures on the bills that were allegedly recovered from him.

40. Learned Counsel relied on the fact that as per the deposition of PW-30, Dr. Rajinder Singh Jaspal, the owner of the premises in which the deceased was murdered, the tenanted premises was taken up on rent by co-accused Manoj, for installing sewing machines. However there is no reference of the appellant in his deposition that said appellant Ikramul Haq was involved in the said transaction, or that he was ever seen on the premises. Merely because on the day of the arrest the appellant was allegedly found on the premises is not sufficient to connect the appellant to either to the motive of the crime or that the place of offence was taken by the said appellant with the common intention. It is also urged that the said witness is not creditworthy since during his deposition on 1st September, 2006 he did not support the prosecution's version, however on 24th September, 2007, he deposed in conformity with the prosecution story. The inconsistency in the facts and circumstances in the deposition of the said witness is substantial,

his deposition could not be relied on to implicate the appellant as during the intervening period he was pressurized by the IO.

41. It has been also urged by the learned counsel for appellant, Ikramul Haq that the death of the deceased was alleged to be by strangulation. As per the prosecution version, the deceased was not strangled by the appellant Ikramul Haq. Learned Counsel further urged that the knife recovered at the instance of Ikramul Haq, as per the deposition of PW-49, Inspector Pyare Lal recovered on 27th January, 2000, Ex. PW 2 /M is different from the knife that was recovered by PW-37, HC Lajya Ram on 1st February, 2000, as Ex. PW 19/B. Thus in light of recovery of these two knives, there is ambiguity as to which knife was the weapon of offence and therefore, the appellant cannot be implicated on the basis of said recovery of knife and cannot be implicated. It is also contended that the knife was rusted and did not have any blood. It is further asserted that at the best the case which can be made out against the appellant Ikramul Haq could be of destruction of evidence for being liable u/s 201 of IPC and nothing more. As per the CFSL Report, Ex. PW 39/A no blood was recovered from either of the two knives recovered which had been marked in the report as Ex 3 and 4. Thus the nexus between the weapon of offence and the knives recovered has not been established.

42. The testimony of PW-42 is also contended to be untrustworthy as being the first and original registered owner of the car, she did not support the prosecution version in the examination in chief. In her cross-examination she even denied having sold the car to one Anish Mehta. She also deposed that she did not inform the insurance company and transport department about the sale of car to Rajesh Gupta. While the prosecution's case is that car was initially owned by Kripal Premanand which was sold to Anuj Mehta and then to Srinivas and finally to the co-accused. It is asserted that neither Rajesh Gupta nor Chander Prakash nor Anish Mehta were examined. In the circumstances an important link of prosecution theory of missing and the benefit should be given to the appellant Ikramul Haq.

Pleas and contentions of the State

43. Per Contra, learned Counsel for the State has contended that the case of the prosecution has been proved beyond all reasonable doubt and that there is enough evidence on the record to inculcate all the accused/appellants, as has been rightly concluded by the Trial Court. Reliance had been placed on the last seen witnesses PW-1 and PW4 who had last seen the deceased in the company of Appellant Akhtar.

44. Learned counsel also contended that even the motive stood established as deposed by many witnesses that the appellant Akhtar

had grudge towards the deceased, since it was because of him that his two trucks were recovered by the Financing Company, due to which he had suffered losses. This fact also stood substantiated by the depositions of PW-3, 11, 28 and 17.

45. Learned counsel further emphasized that the sister of the deceased had even recorded the ransom calls on 13th January, 2000 which was duly given to the police, and which is also a strong link towards establishing the guilt of the appellants as the recorded voice matched with the sample voice provided by accused Mukesh. Learned counsel also contended that since Mukesh was responsible for making the ransom calls and he had subsequently pleaded guilty to the charge framed against him, the evidence against him would be substantially considered against the co-accused as well. According to him thus the link has been established against Mukesh, who had informed about the involvement of Javed and on the arrest of Javed, he revealed about the involvement of Akhtar, Manoj and Ikramul Haq, pursuant to which on the basis of their disclosure statements from the place of occurrence incriminating evidence, knives, ring and watch of the deceased and headless body of the deceased etc were recovered.

46. It is contended by the learned Public Prosecutor that recoveries have been established and the same cannot be doubted on the pleas

and contentions raised by the appellant. He also pointed out that Javed had suffered injuries while holding deceased as hostage, and the socks and shoes of Javed were also recovered at the instance of Manoj. On 27th January, 2000 the head-less body of the deceased was also recovered on the pointing out of Akhtar, Manoj and Ikramul Haq. It is contended that recoveries of incriminating material had not been planted becomes apparent from the videograph of the recoveries made which clearly reveals that the recovery of the gunny bag containing the headless body from the nala was at the instance of these three accused. Once the body was recovered, its identity was established by the family members and also by sampling the blood of the deceased with the blood samples of parent and DNA fingerprinting. Further the chance prints found from the spot matched with the specimen finger prints of appellant Manoj. TIP of the articles recovered from the appellants, i.e. the ring and watch was also duly conducted in which the recovered article were correctly identified by the wife of the deceased. It was further urged that no TIP of Aktar was required as PW-1 had known him and had even spent considerable time sitting and talking with deceased.

47. This Court has heard the learned counsel for the parties in detail and have also perused the evidence on record and have also seen the

video-graph recorded by the prosecution of the recovery of the headless body of the deceased.

48. This is settled law that in reversing the finding of conviction the High Court has to keep in view the fact that the presumption of innocence is still available in favor of the accused. If on fresh scrutiny and reappraisal of the evidence and perusal of the material on record, if the High Court is of the opinion that another view is possible or which can be reasonably taken, then the view which favors the accused should be adopted. However the view taken by the Trial Court which had an advantage of looking at the demeanour of witnesses and observing their conduct in the Court is not to be substituted ordinarily by another view unless another view is substantially and reasonably possible in the opinion of the High Court. Reliance for this can be placed on AIR 2009 SC 1242, Prem Kanwar v. State of Rajasthan; 2008 (3) JCC 1806, Syed Peda Aowlia v. the Public Prosecutor, High Court of A.P, Hyderabad; Bhagwan Singh and Ors v. State of Madhya Pradesh, 2002 (2) Supreme 567; AIR 1973 SC 2622 Shivaji Sababrao Babade & Anr v. State of Maharashtra; Ramesh Babu Lal Doshi v. State of Gujarat, (1996) 4 Supreme 167; Jaswant Singh v. State of Haryana, 2000 (1) JCC (SC) 140. The Courts had held that the golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the

case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted because the paramount consideration of the Court is to ensure that miscarriage of justice is not done. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent person.

49. The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the findings are against the evidence or record or unsustainable or perverse. However, before reversing the finding of acquittal the High Court must consider each ground on which the order of conviction is based and should also record its own reasons for accepting those grounds.

50. The counsels for the appellants have strongly emphasized on the plea of delay in lodging the FIR by the father of the deceased. However the trial court has aptly dealt with this plea holding that initially there had been no doubt in the mind of the family members of the deceased, regarding any motive or hostility from any quarters particularly attributable to the accused. In the circumstances the delay in filing the FIR is understandable. The trial court had also noticed that it has not been put to any of the family members who had appeared as witnesses

that the deceased was in the habit of staying away from home in connection with his business for long durations without intimating them. The widow of the deceased is categorical about it. In the absence of any such question on the part of the accused in their defense, the Trial court held that the circumstances have to be inferred in light of the fact that the deceased used to be absent very often from the house for 2 to 3 days. This is also fortified by the deposition that the deceased was in the habit of enjoying the company of girls (LADKIBAAJ) and this habit of the deceased used to keep him away without any intimation to the family members. In the circumstances if the family members did not take any serious action about the deceased not coming back after going with Akhtar on 3rd January, 2000 till 6th January, 2000, delay is normal. The family members had reason to react and get worried on account of the ransom calls made to the residence of the deceased. Pursuant to which complaints were immediately lodged on 6th January, 2000 at PS Sahibabad. In the circumstances on perusal of the testimonies of the witnesses, the delay in filing the FIR cannot be termed to fatal to the case of the prosecution.

51. It is a well settled principle of law that delay simplicitor in lodging the FIR alone is not enough to disbelieve the prosecution's story. In the case of State of Maharashtra v. Joseph Mingal Koli, (1997) 2 Crime 228 (Bom) it was held that the answer to the question whether the F.I.R. in

a given case has been lodged belatedly or not is always a question of fact and has to be answered bearing in mind the facts of the case in question and also considering the explanation furnished by the prosecution in case there is some delay in its being lodged. There can be no mathematical computation of the time taken in the lodging of the F.I.R. What the court has to examine is whether the delay is inordinate and whether any cogent explanation is forthcoming in case or not. Some delay in the lodging of the F.I.R. in some of the cases is only natural and would not detract from the value to be attached to it.

52. A perusal of the testimonies on record gives a clear indication that all efforts were made to trace the deceased and that complaint was lodged on the first day the ransom call was received i.e. on 6th January, 2000 at PS Sahibabad. PW-1, Varinder Singh has categorically deposed that he hadn't lodged any complaint on the 3rd and 4th of January, 2000 since there was no reason to worry as the deceased was a mature man and he was sure that he would come back as was the case in past also. PW-27 Jasbir Singh, father of the deceased and PW-2 Sudhir, both had deposed that all efforts were made to trace the deceased and that FIR was also lodged at PS Nand Nagri, however the police officials had informed them that they couldn't register the same since the incident had taken place at U.P. Thereafter, they went to Ghaziabad, U.P to lodge the complaint, but the police authorities there had refused

registering the FIR, stating that the FIR ought to be lodged at Delhi because the deceased was last seen there. Thus for two days they were running back and forth to lodge the complaint at the appropriate Police Station. Since the delay had been duly explained by the prosecution nothing adverse is to infer against the prosecution version in the facts and circumstances. Explanation given by the witnesses is usual and natural and there is nothing to disbelieve them in the facts and circumstances of this case.

53. The learned counsels for the appellants have also urged that the testimony of the last seen witness is unreliable since he had identified the appellant Mohd. Akhtar for the first time in Court and no TIP was conducted for the same. From the facts of the case and from the perusal of the evidence it is apparent that there is no illegality in the identification of the accused for the first time in court by PW-1, as it is not the case of the prosecution that Varinder, PW-1 had interacted with the accused for only a brief moment or that they were not known to each other. Rather Varinder had remained seated with him in the car for a considerable period covering the distance from the transport office of the deceased to the Loni flyover bridge during which time accused Akhtar had even talked to witness Varinder.

54. It is fairly well-settled that identification of the accused in the Court by the witness constitutes substantive evidence in a case although any such identification for the first time at the trial may more often than not appear to be evidence of a weak character. That being so a test identification parade is conducted with a view to strengthening the trustworthiness of the evidence. Such a TIP then provides corroboration to the testimony of the witness in the Court who claims to identify the accused persons otherwise unknown to him. Test Identification parades, therefore, remain in the realm of investigation. The Code of Criminal Procedure does not oblige the investigating agency to necessarily hold a test identification parade nor is there any provision under which the accused may claim a right to the holding of a test identification parade. The failure of the investigating agency to hold a test identification parade does not, in that view, have the effect of weakening the evidence of identification in the Court. As to what should be the weight attached to such an identification is a matter which the Courts determine in the light of peculiar facts and circumstances of each case. In appropriate cases the Court may accept the evidence of identification in the Court even without insisting on corroboration. This view had been upheld in the following cases *Kanta Prashad v. Delhi Admn.* AIR 1958 SC 350, *Vaikuntam Chandrappa v. State of A.P.* AIR 1960 SC 1340, *Budhsen v. State of U.P.* (1970) 2 SCC 128 and *Rameshwar Singh v. State of J and K.* : (1971) 2 SCC 715). Also PW-1's

testimony is corroborated by PWs 4, 24, 25, 27. In the facts and circumstances identification of accused Akhtar in the Court by the witnesses cannot be ignored on account not conducting the Test Identification Parade of the said accused. The reasoning of the Trial Court also is sustainable and there is no illegality of un-sustainability in the same. No corroboration by Test Identification Parade was required for the identification of appellant Akhtar by PW-1 in the Court.

55. Though it is not imperative for the prosecution to prove motive against the accused persons in all the case but in the present case, it has succeeded in doing the same. The aspect of motive has been elaborately dealt with by the Trial Court, by highlighting all the important testimonies and evidence which clearly proves that the motive of the appellants was to extort money from the family of the deceased. The learned counsel for the appellant has not been able to show any such grounds on the basis of which it can be held that the reasoning of the Trial Court is perverse of un-sustainable. From the testimonies of the witnesses it has been established that Akhtar had got financed two trucks from KGA Finance on personal guarantee of Shokeen for which PW-3 Manager of finance company at that time, PW-4 Ranjeet manager of transport company of Shookeen pal and PW-11 Sudhir Kumar Aggarwal owner of finance company supported the prosecution and identified accused Akhtar unerringly in the Court.

Relevant documents with respect to finance of trucks were also produced in the court and duly proved. Photograph of Akhtar in the file of relevant truck was also produced and proved as Ex.PW3/A. Case of the prosecution in this context is also strengthened from the record of relevant trucks produced by PW-18 Rajender Kumar Chillad from Rajpur Road, Transport Authority, Delhi who stated that as per the record, Truck No. DL 1G A 0860 was registered in the name of Mohd. Akhtar and that Mohd. Akhtar had even given a letter on 30th July, 1999 to keep the file of the truck in safe custody which was proved as Ex PW 18/B. Testimony of these witnesses indisputably leads to the inference that Akhtar had a grudge towards the deceased as he did not help him by extending his personal guarantee and did not help him keeping the trucks during the extended period of time which he wanted so that he could repay the amount to the finance company towards the loan for the trucks which had been taken by him. Rather the deceased facilitated seizure of trucks of the accused leading to great financial loss to him. From the testimonies of witnesses it is further revealed that even accused Manoj had suffered losses in his illegal business of ball bearing smuggling during those days and that he was in need of money. Circumstances also suggest that such a conspiracy could not have been executed by two persons which was a cogent reason for including the other two appellants. Therefore in light of the evidence on record this court too is of the view that the motive has been established against the

appellants, especially against appellants, Manoj and Akhtar without any reasonable doubt even in the opinion of this Court.

56. All the counsels for the appellants have urged to discard and not to place reliance on the deposition of PW-49, Inspector Pyare Lal, as specific allegations of demanding money from the co-accused/appellants were made against him. It is also contended that pursuant to the allegations against the said witness, PW-49 was even transferred to police line. The testimony of Pw 49 rather reveals that that he had been transferred for a week to police line. Mere transfer to police line cannot be for the reasons as alleged by the accused nor it has been established that he had demanded money from one of the accused. In the circumstances, the testimony of said witness cannot be ignored nor can be discredited on the basis of allegations made on behalf of the accused.

57. Learned Counsel for appellant Javed has contended that the only basis for inculcating the said appellant is the disclosure statement made by the co-accused Mukesh who pleaded guilty and was convicted u/s 384 of IPC. According to him no recoveries were made on the basis of his disclosure statement and the last seen witness, PW-1 Varinder Singh, also did not depose about him. His contention is that there is no evidence to substantiate the allegations made against Mohd Javed. It

was also contended that the disclosure statement of Mukesh that allegedly lead to the arrest of appellant, Javed is not dated and had been tampered with as it could be tempered with easily in the facts and circumstances.

58. On perusing the record it is clear that accused Mukesh had been arrested on 23rd January, 2000 and upon interrogation he had revealed the entire plot/conspiracy. The Trial Court had also observed that even though the disclosure statement of Mukesh was undated, but since appellant Javed was arrested on 23rd January, 2000 pursuant to the information given by Mukesh, so by obvious inference the disclosure statement was made on 23rd January, 2000 or prior to that. Disclosure statement of Mukesh, Ex PW7/B leading to various recoveries reflected that the conspiracy to abduct Shokeen Pal was hatched between him, Manoj, Javed and Akhtar and it was made to understand that Manoj would contact Mukesh from Mobile number 9810184352 and Mukesh would contact him on the same number. Various recoveries made pursuant to disclosure statement and arrest of other accused also substantiate that Manoj had informed the other accused on the phone about the arrival of co accused Javed for treatment at Motihari as Javed had sustained foot injury. Javed accordingly came to Motihari and disclosed to Mukesh that he had sustained accidental bullet injury on his foot while handling Shokeen Pal with Manoj, Akhtar, Vishal and 2/3

others. Since Mukesh confessed his guilt u/s 384 IPC when charge was framed against him on 12th December, 2002 his confession is a corroborated piece of evidence against the other co accused persons.

59. The trial Court had also placed reliance on the disclosure statement of Mukesh as corroborative evidence as against all the appellants, since he had accepted his guilt and that it amounted to a confession. The learned counsel for the appellants had not refuted this and it is also apparent that considering the entire testimonies of other witnesses confession of the said accused is not the sole basis for the conviction of the appellants. Under section 30 of the Evidence Act when more than one person are tried jointly for the same offense, then a confession made by one of the accused affecting himself and other accused can be considered as against other accused.

60. Accused Javed was apprehended in pursuance of disclosure statement of Mukesh on 23rd January, 2000. His disclosure statement revealed that while being at Motihari, on 23rd January, 2000 he had talked to Manoj from the STD booth at Khairva Village and STD Booth Kalyan Motihari on the phone number 9810174266. The prosecutions were successful in obtaining corroborative evidence of the same which was the call records of the STD booth at Khairva, Kalyan Motihari and of the STD shop of Sunny Photostat. This fact has been further

substantiated in the testimonies of PW-5, PW-7, PW-8 and PW-9. Even though PW-7, 8 and 9 were declared hostile, but these hostile witnesses did not deny the seizure of the relevant call details from the respective STD booths. This cannot be disputed that if a prosecution witness turns hostile that does not mean that his testimony has to be treated as effaced or washed off the record all together. The Supreme Court had held that it can be accepted to the extent his version is found to be dependable on a careful scrutiny of the entire evidence. Reliance for this can be placed on Bhagwan Singh v. State of Haryana, (1976) 1 SCC 389: 1976 SCC (Cri) 7: AIR 1976 SC 202; Rabindra Kumar Dey v. State of Orissa, (1976) 4 SCC 233:1976 SCC (Cri) 566: AIR 1977 SC 170; Syad Akbar v. State of Karnataka, (1980) 1 SCC 30: 1980 SCC (Cri) 59: AIR 1979 SC 1848; Khujji v. State of M.P, (1991) 3 SCC 627: 1991 SCC (Cri) 916: AIR 1991 SC 1853.

61. Learned counsel had also contended that there are many inconsistencies in the deposition of the various witnesses and hence the same cannot be relied on. While PW-50 SI Bankteshwar Ram deposed that he was present at the time Javed, the appellant had made his disclosure statement on 23rd January, 2000 however, this is diametrically contrary to the deposition of PW-51 SI Suresh who categorically stated that the disclosure statement was not recorded before PW-50. However this court does not find the discrepancy to be so

major as to negate the entire disclosure statement made by the appellant.

62. In *C. Muniappan and Ors. v. State of Tamil Nadu* JT 2010 (9) SC 95, the Supreme Court, had held that it is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court can come to conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance could not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses. Reliance can be placed on *Sohrab and Anr. v. The State of M.P.*, AIR 1972 SC 2020; *State of U.P. v. M.K. Anthony*, AIR 1985 SC 48; *Bharwada Bhogini Bhai Hirji Bhai v. State of Gujarat*, AIR 1983 SC 753; *State of Rajasthan v. Om Prakash*, AIR 2007 SC 2257; *Prithu @ Prithi Chand and Anr. v. State of Himachal Pradesh*, (2009) 11 SCC 588; *State of U.P. v. Santosh Kumar and Ors.* (2009) 9 SCC 626 and *State v. Saravanan and Anr*, AIR 2009 SC 151.

63. Learned Counsel has also relied on the judgment of Mahadev Prasad Pant v. State of Delhi 2007[2] JCC 1617 to contend that the discrepancies in the disclosure statement would have an impact on the recoveries effected pursuant to it. However the facts of the case cited is distinguishable from the facts of the instant matter. In the case Mahadev (supra) it was rather held that the disclosure statement alone cannot be the sole basis for convicting the accused especially where the recoveries were effected 5/6 days after the arrest of the accused, causing reasonable doubt about the same. The case of appellants in the present facts and circumstances are quite distinguishable as the recoveries were effected on without any undue delay i.e on the arrest of the co-accused on 27th January 2000. In any case the delay of two days for arresting the co-accused has been cogently explained that the information was conveyed from Mobile regarding the spot of occurrence being Bhajan Pura at Delhi to SI Pyare Lal on 24.1.00 and that Delhi being capital where the Republic day is celebrated in an extensive manner and there was high alert prior to Republic Day (26th January) and particularly from the day of Rehearsal (23rd January onwards) and the entire police machinery was geared up accordingly for overseeing the law and order situation in high alert state, so delay in tracing out the exact spot by police from 24th to 26th January has to be accepted as quite plausible and the testimony of SI Pyare Lal cannot be doubted in this regard.

64. Learned counsel for the appellants have also relied on Raj Rani and Ors v. State: 2007 VII AD (DELHI) 509; Vinod Kumar and Anr. v. State: DRJ 1992 (23) and Chet Ram v. State: 63(1996)DLT 695 in support of their contentions on this aspect. However, even these cases are distinguishable as no recoveries were made pursuant to the disclosure statements and in these circumstances it was held that conviction could not be possible on the basis of the disclosure statement alone. In the case of appellants pursuant to disclosure statements the recoveries were made of car no. DL 5C 2353 of the deceased (Ex P24); syringe (Ex P-19); seven cassettes (Ex P-14); Mobile Phone Motorola (Ex P-15); Driving license of Najibullah Khan recovered from abandoned car of deceased (Ex P-20); Unsealed rexine bag (Ex P-21), a cream color of cloth having writings in Urdu and Pharsi (Ex P-23) from car of the deceased; HMY Quartz watch of the deceased recovered from accused Akhtar (Ex P-26); Ring of deceased recovered from Manoj (Ex P-27); knife recovered at the instance of Ikramul Haq (Ex P-29); pant of light brown color and checked full sleeved shirt at the instance of Ikramul Haq (Ex P-30); another yellow color pant and yellow color full sleeved shirt at the instance of appellant Manoj (Ex P-31); one grey colored pant and grey colored shirt at the instance of Mohd Akhtar (Ex P-32); two dirty jute bags from which the headless body of the deceased was recovered (Ex P-33); pair of shoes of Ikramul Haq (Ex P-34) and other article which have been considered by the Trial Court. Thus the

judgment relied on by the learned counsel for the appellant are distinguishable and on the basis of ratio of them it cannot be held that there is not sufficient evidence against the appellants in the present case.

65. PW-7, Parvez Alam owner of PCO booth, categorically deposed that a man named Saddam Hussain had made a call from his booth at Delhi on 23rd January, 2000. Soon after his departure the police officials had come and apprehended him. PW-7 even identified the man as Javed in Court who had been apprehended by the Police on that day. Even though the witness was declared hostile, it is not necessary that his entire testimony should be effaced and thus the testimony which supports the version of the prosecution can be relied. The Trial Court has also relied on the part of the testimony of said witness and judgment of trial Court cannot be faulted on this aspect also in the facts and circumstances.

66. It was further contended by the learned counsel for the appellant Mohd Javed that there were discrepancies between the two disclosure statements made by the appellant, i.e. the one made on 23.1.2000 and the other on 28.1.2000 at New Delhi. In the first disclosure statement he had not divulged the place of occurrence i.e. 2/38, Turkmir Pur Extension, Delhi but what was mentioned was Bhajanpura Delhi. This

is apparent that Javed had revealed to SI Suresh the name of the place where Shokeen Pal was kept as a captive as Bhajanpura Delhi. This information was shared with SI Pyare Lal at Delhi. Bhajanpura is a thickly populated area in North East Delhi. Since, it was within the knowledge of accused Javed as to where exactly Shokeen Pal was kept, if he did not wish to reveal, the exact address, and did not accordingly say so, in his 1st disclosure statement, the prosecution could not be blamed for such incomplete revelation nor it would reflect that the disclosure statements are inconsistent so as to give any benefit of it to the appellants.

67. The plea of counsel for Mohd. Javed that pursuant his disclosure statement no recoveries were effected cannot be accepted. At the instance of the appellant. From the clue given by accused Javed, prosecution had zeroed to the spot of occurrence from where incriminating articles/recoveries were made which have been dealt with extensively by the Trial Court and no cogent infirmities have been pointed out by the counsel for the appellants. The place of occurrence could be reached by the prosecution due to information divulged by the appellants and some of the accused were apprehended due to such disclosure and other recoveries were made inculcate the appellants. No plausible explanations were furnished by the accused persons as to

how come there were blood stain marks present on the different articles and also regarding the presence of wooden burnt sticks.

68. The Trial Court had noticed that the foot injury sustained by Javed about which reference is made by co accused Mukesh in his disclosure statement, was established on record. Javed was medically examined on 28.1.2000 at Safdarjung Hospital which fact was also admitted by Javed to be a correct fact which would implicate both of them. His examination report also refers to L/E old reveals lacerated wound (LT) foot on dorsal side which corroborates the said facts. The socks and shoes with corresponding holes were also recovered at the instance of co accused Manoj. This fact is also in consonance with the statement made by Mukesh that he was informed about the injury on Javed's foot by Manoj. Thus from these facts also inculpability of the appellants can be inferred. The learned counsel has failed to give any cogent grounds to fault the prosecution version in this regard and non inferences with the order of the trial Court, cannot be held to be unreasonable or that the judgment of Trial Court is unsustainable in the facts and circumstances.

69. The learned counsel for the appellant Akhtar has contended that the only recovery that could implicate the said appellant, is that of the wrist watch and the headless body which as alleged by the prosecution

were recovered at the instance of the appellant. However the TIP of the wrist watch by Babli, PW-25, the wife of the deceased was delayed and the headless body was not recovered from the place as divulged in the disclosure statement and that it was in fact effected on account of complaints of foul smell made by certain other persons. In the circumstances it has been contended that both the recoveries cannot be relied on. With respect to the delay in holding the TIP the Trial Court held that the IO had given the explanation and attributed the same to the procedural aspect in getting dates from the Court. Trial Court, however, was of the view, that such delay in holding TIP does not demolish the prosecution case, as recovery of such articles was effected on date of arrest itself and same were kept in a sealed pullanda. Also there was nothing on record to suggest that family members of deceased handed over the gold ring and watch to the IO for planting the same on the accused persons.

70. As regards the contention of recovery of the headless body on the pointing out of the appellants Manoj, Akhtar and Ikramul not being effected from the place specified in their disclosure statement, has been raised by the counsel for all the accused. The Trial court held that the recovery as well as the presence of blood stains on the spot of murder points to the implication of the appellants. The video tape of recovery of the headless dead body on the pointing out of accused Manoj S/o

Bindeshwari, Akhtar and Ikramul has also been considered by this Court. It is clearly shown that the gunny bag containing the headless body from the ganda nala was retrieved at the instance of all the appellants. The contention of defense that it was on the disclosure of public persons on account of some foul smell coming from another pulia and not on account of disclosure by the appellants that the headless body was recovered from another pulia cannot be accepted. This plea is also to be repelled on the ground that the recovery is to be viewed in context and not in isolation, as it was not the case of the prosecution that the point of ganda nala where accused persons had initially taken the police party is where the headless body was thrown, and that it did not flow up to the point of recovery at another pulia has not been ruled out. The Trial Court had also held that it was obvious that with the flow of water current in ganda nala, the gunny bag was carried to the next pulia along with the water current. At the next pulia is proximate to the place where gunny bag containing the body was thrown. The appellants has pointed out towards the gunny bag which was fished out and found to contain the headless body. In any case, the public persons did not tell about gunny bag floating in the ganda nala, and therefore the recovery of the body can be construed recovered only on pointing out by the appellants and not by public persons. The recovery of the headless body is further corroborated by the testimony

of Dr. Rajender PW-30 who even though had turned hostile on other points, can be relied on with regard to the recovery of the body.

71. The contention of the learned counsel for appellant Mohd Akhtar with respect to motive is that the documentary evidence produced to prove that the deceased Shokeen Pal was the guarantor is not established as the documents of guarantee did not bear his signatures. This fact has been deposed by PW-28 Krishan Kumar and therefore, the motive has not been established conclusively. However on perusing the deposition of PW-28 clearly reveals as to why the signatures of Shokeen Pal were not taken on the documents, was because he was a close and trusted fellow of his and it was on his faith alone that the financed company had financed the two trucks for Akhtar. It is further in evidence that the trucks of the said appellant had been seized on his failure to pay the installment at the instance and active help of deceased which had given a grudge to the appellant as he wanted more time to repay the installment, which could not be done on account of seizure of trucks by the finance company. In the circumstances the plea of the appellant that the papers for guarantee were not signed by the deceased will not obliterate the motive as has been sought to be contended by the counsel for the appellants. The inevitable inference in the facts and circumstances is that the prosecution has established the

motive of the appellants against the deceased and the finding of the Trial Court cannot be faulted on the grounds raised by the appellants.

72. Learned counsel for appellant, Shri Mohd. Akhtar also argued that Matloob @ Munna Khan, PW-17, the business partner of the deceased as well as PW-2, Sudhir had deposed that on enquiring from the STD booth they had found out that, Amjad had been talking to his brother Akhtar on the number 9810184352. However, Amjad himself had not been examined, and PW-27 Jasbir Singh, father of the deceased himself had deposed that he did not know who Matloob was, who as contended by the prosecution was the partner in the business of the deceased. According to the appellant this constitute a major missing link in the chain of events propounded by the prosecution and these contradictions the testimony of PW-17 makes his testimony uncorroborated and not reliable. This plea of the appellants cannot be accepted as it is not sustainable as the call records in themselves are proof of the phone number used by the appellant to carry out the conspiracy. The recovery of the call records had been corroborated by the testimony of PW 7, 8 and 9. Thus non-examination of Amjad does not exculpate the appellants from the accusation made against him. On the grounds as alleged by the counsel for the appellants it also cannot be held that the findings of the trial Court are illegal or perverse or that

another view is feasible which will support the pleas and contentions of the appellants.

73. Learned counsel had also urged that the ransom calls that were recorded by PW-23 Smt. Santresh, were recorded on 13th January, 2000, however she had handed it over to the police only on 16th January, 2000. Thus the gap of three days had remained unexplained and this three days time was enough for the sister of the deceased and other persons to temper with the said evidence. However, this argument is not sustainable as there is nothing on the record which would show that the cassettes were tampered with and could not be relied on. The cassettes were given in a sealed condition and opened only in court in the presence of PW-23. There is no other fact which would reflect that the cassettes were tempered with. On the assumption by the counsel for the appellants that during three days the cassettes could be tempered, it cannot be held that the cassettes were tempered and the testimony about it would not be credible. There is no evidence to prove that the family members of the deceased had any enmity towards the appellants so as to falsely implicate them. Further the voice on the cassettes was duly matched with the sample voice of Mukesh. In the circumstances the credible evidence led by the prosecution cannot be ignored on the basis of assumptions made by the appellant that the contents of the cassettes could have been tempered. The Trial Court has also held so

and the findings and inferences of the Court cannot be faulted on the grounds as alleged on behalf of the appellants.

74. The learned counsel for appellant Mohd Akhtar has also endeavored to point out that the Trial court had grossly erred as it did not take into consideration the testimony of PW-52 Dr. Sumit Telewar who identified the handwriting of Dr. A.K. Tyagi, who had conducted the post mortem as he had categorically stated that the report stipulated that “the cause of death will be given only after the report of chemical analysis of viscera.” However the viscera report is not found on the record, hence it was contended that whether the death is homicidal or not, has not been proved by the prosecution. However this seems to be an attempt to mislead the court as the deposition of PW- 53 Dr Raghavendra from GTB Hospital is categorical in proving the subsequent opinion about the cause of death given by Dr. A.K.Tyagi. As per him Dr. A.K. Tyagi after taking into consideration the CFSL Report dated 30th June, 2000 and post mortem report No. 76/2000 dated 1st January, 2000 conducted on the body of the deceased had given the cause of death as shock as a result of cut throat injury to neck vide injury no.1 mentioned in post mortem report. The testimony of PW-53 is reproduced as under:

“FIR No.23/00
PS.N.Nagri

PW-53 Dr.Raghvendra Junior demonstrator, GTB Hospital, New Delhi.

On SA

I have been deputed by Head of Department, forensic medicine for Dr.A.K.Tyagi who is on vacation. I can identify his writing and signatures as I have seen him writing and signing during the course of my duty hours. I have seen the subsequent opinion about the cause of death in this case given by Dr.A.K.Tyagi. **Dr.A.K.Tyagi after considering the CFSL report dt. 30/06/00 and postmortem report no.76/00 dt. 01/02/00 on the body of Shokeen Pal given the cause of death in this case was shock as a result of cut throat injury to neck vide injury no.1 mentioned in postmortem report.** The subsequent opinion of Dr.A.K.Tyagi is Ex. 53/A, it bears the signatures of Dr.A.K.Tyagi at point A and the same is in his handwriting.

Xxxxxx by Sh.Sarfaraz Asif, Counsel for accused Manoj Singh and Ikram.

NIL (Opportunity given).

Xxxxxx by accused Md.Akhtar,

NIL (Opportunity given)

Xxxxxx by accused Md.Javed.

NIL (Opportunity given)

Xxxxxx by accused Manoj @ Manju.

NIL (Opportunity given)

RO&AC

ASJ/KKD/26/05/08

In the circumstances on the basis of specific testimony of the said doctor and the fact that he was not even cross examined, the pleas on behalf of the appellant are not sustainable.

75. Reliance can also be placed on the letter dated 14th May 2008 addressed to the Head of Department, Forensic Medicine Dept., UCMS, requesting a final cause of death which categorically stipulated that the viscera report of the deceased was sent to CFSL, Lodhi Road and which was received vide No. 2000/C-140 dated 30th June, 2000. The trial

court has inferred the guilt of appellants taking into consideration these reports. No cogent grounds have been raised by the appellants which would show any illegality or un-sustainability in the findings of the Trial Court. This Court on perusing the relevant testimonies also concurs with the findings of the Trial Court. The appellants have failed to disclose any such grounds which will reflect any illegality or unsustainability in the findings of the Trial Court.

76. Learned counsel for appellant Manoj has also reiterated the arguments of the counsel for other appellants without adding anything new to their pleas and contention. The plea and arguments of the learned counsel for the appellant Manoj are also to be rejected on the same grounds on which the pleas and contentions of other appellants have been rejected by this Court. The learned counsel for the appellant, Manoj has contended that as per the deposition of PW20, the seven cassettes allegedly containing the recordings of the ransom demanded by the accused persons were in an unsealed condition and therefore could have been easily tampered with and hence the same cannot be relied on. He has also emphasized that no documentary proof had been provided to connect the watch and the ring with the deceased, which therefore does not validate the recoveries made. However on perusing the record of this Court it is clear that PW-23, Santresh, sister of the deceased categorically stated identified the cassettes when asked to

identify the cassettes which were shown to her by the police in the Court in a sealed parcel. No other cogent ground has been raised or facts disclosed which would create any doubt about the authenticity of the tapes. On the assumption made by the counsel for the appellant that the cassettes could be tempered, it cannot be inferred that the cassettes were tempered as has been alleged by the learned counsel. There are no facts and grounds to infer that the cassettes had been inferred or could be inferred by the prosecution. Thus on the basis of pleas raised by the appellants, it cannot be held there had been tempering of the cassettes. The ring of the accused was identified by his wife in the TIP proceedings which identification was done in accordance with rules. In the circumstances no further documentary proof of the ring recovered from the appellant was required to establish that the ring was of the deceased. Testimony of PW 47 is produced below which is reflective of the proper identification done about the ring:

“FIR No.23/00
PS.N.Nagri

PW-47 Sh.O.P.Saini, Joint Registrar (Addl.District and Sessions Judge), Delhi High Court, New Delhi.
On SA

On 29/02/02 I was posted as MM KKD Courts. An application for TIP of a ring and a wrist watch was moved by OI SI Pyare Lal before my Ld.Link MM and the same was assigned to me. The TIP was fixed for 07/03/02. However, on that day I had gone for evidence at Patiala House court and accordingly the TIP was fixed for 13/03/02.

On that day SI Pyare Lal had brought a sealed pullanda sealed with the seal of PLP. The pullanda was stated to contain a gold ring. The pullanda was opened. He

had also brought three other similar rings for mixing up. He had also brought an HMT watch for identification in unscaled condition. He had also brought three other wrist watches of HMT make of similar type. The case property was duly mixed up. The ring to be identified was given marked D and the other similar rings were given mark A, B & C. The HMT to be identified was given mark X1 and three other similar wrist watches were given mark X2 to X4. The mixing was done of the both items of case property in my chamber in such a manner that the witness could not see it. Thereafter IO SI Pyare Lal left my chamber. Witness Smt.Babli w/o Shokeen Pal was waiting outside in the court room. She was identified by the IO. She was asked to identify the ring as well as the HMT watch. She correctly identified both items after looking at them. Her statement was recorded and thereafter, a certificate was signed by me giving the true and full account of TIP proceedings. The case property was returned to the IO after the identification. The application for TIP is Ex. PW47/A which bears my endorsements at point A & B. TIP proceedings are Ex. PW47/B and bears my signature at point A. The statement of the witness Smt.Babli is already Ex. PW25/A. My certificate is Ex. PW47/C which bears my signature at point B.

Xxxxxxxx for accused.

NIL (Opportunity given)

RO&AC

ASJ/Delhi/11/10/07

77. Thus the plea of the learned counsel for the appellant that identification was not done in accordance with rules or as per the prescribed procedure cannot be accepted. In any case if there was any deficiency in identification carried out, it should have been put to the concerned witness. In the circumstances on the basis of alleged grounds raised on behalf of the appellants, no illegality can be found in the inferences of the trial Court and this Court is also of the same view as has been inferred by the Trial Court in this aspect.

78. Learned counsel had vehemently argued that since PW-8 and PW-9 have both turned hostile and did not support the prosecution story, and also categorically stated that none of the accused persons had made any calls from the booth and even deposed that it was quite possible to tamper with the call record, hence despite these facts, trial court grossly erred in still placing its reliance on the call list procured by the prosecution from the respective booths. PW34, Mahabir Parshad who allegedly sold the two gunny bags to the accused persons and PW-35, Deepak Pundhir, who allegedly sold the 5 fortvin injections to the accused Manoj, denied the same in their testimony and were also declared hostile by the prosecution. It is contended that the recoveries effected against appellant Manoj Kumar Singh cannot be relied on. However as has been already discussed above just because the witnesses have turned hostile, it does not mean that the entire testimony needs to be effaced. It can still be relied on to the extent that it supports the prosecution case. In any case PW8 and 9 have not denied the recovery of the call records and neither had PW34 and 35 denied the sale of the gunny bags and the fortvin injections. Considering the entirety of the record, therefore, it cannot be held that the recoveries made pursuant to the disclosure statements have to be completely rejected on account on some of the aspect, some witnesses going hostile. The other testimonies and the portion of the testimonies

of the witnesses who have turned hostile are sufficient to implicate the appellants and the arguments on behalf of their counsel cannot be accepted.

79. The learned counsel for appellant Manoj Kumar Singh has further urged that the trial court was wrong in taking the view that the rented premises were taken up by Manoj for the sole purpose of abducting Shokeen Pal and keeping him hostage and the testimony of PW-30 the owner of the rented premises is reflective of the fact that the said premises were in possession of the appellant for the past 8/9 years much before the date of the alleged offence. This plea however, does not negate the fact that the premises was taken on rent by Manoj Kumar Singh. The appellant has not denied that the premises were under his possession. If the possession was of the said appellant, it will become rather immaterial as to when the premises was taken on rent. This has been established that the blood stains were found in the premises which was under the possession of the said appellant. It was, therefore, for the said appellant to explain as to how his room got the blood stains which matched with the blood of the deceased. No cogent explanation has been given by the said appellant. The onus was on the said appellant under Section 106 of the Indian Evidence Act, 1872, a fact which was especially within his knowledge. The learned counsel for the said appellant is unable to explain any cogent reason for the blood

stains in the room which was under the tenancy of the said appellant. Thus on the ground that the premises was taken much before the time of the alleged offence becomes immaterial and the findings of the Trial Court cannot be held to be immaterial or illegal in the facts and circumstances.

80. The disclosure statement of Mukesh is also relied on by the Trial Court. Manoj had on 5th January, 2000 at 7 pm told Mukesh on the phone that Shokeen pal was kidnapped on 4/5-1-00 and was kept in the tenanted room. His disclosure statement further revealed that on instructions of accused Manoj, he had made ransom calls at phone number 2812127 at house of deceased. He also disclosed to the family members of deceased on phone that the car of deceased was parked at Pahar Ganj Railway Station parking. The trial Court was of the view that the circumstances of the case suggested that accused at Motihari was being conveyed about developments at Delhi by co accused Manoj contemporaneously, that is how in pursuance of such disclosure, car of deceased was recovered from the Parking lot of Pahar Ganj Railway station. Otherwise Delhi being a Metropolis with a population of over 1.50 Crore, the car could not have been recovered in such a short period without any clue, more so when it was stationed at the Parking. Disclosure statement of Mukesh also reveals that Manoj had told him on the phone about the arrival of co accused Javed for the treatment at

Motihari hospital as Javed had sustained foot injury. This disclosure was corroborated by recovery of the socks and shoes of Javed with the holes in them reflective of the injury at the instance of co-accused/appellant, Manoj, thus was clearly aware of all that was stated in the disclosure statement of Mukesh and relevant recoveries were made pursuant to their disclosure statement. The disclosure statement of Mukesh also revealed that Manoj had suffered losses in his illegal business of ball bearing smuggling during those days and that he was in need of money which facts have also been established with the cogent evidence on record. The trial court has observed that easy money is such a thing which would easily corrupts the mind of a person having criminal orientation/ propensity and that the circumstances clearly suggested that such a conspiracy could not have been executed by two persons. Thus the motive of abduction of deceased to extort money from his family members, clearly stands proved as against the appellant Manoj also. Other circumstantial evidence in the circumstances establishes the culpability of the said appellant without any reasonable doubt.

81. The trial Court had also noticed and relied on the chance prints of accused Manoj found at the spot of occurrence, lifted from the glass and mirror found at the spot which tallied with the specimen finger prints of the appellant vide Ex PW33/A. While before the trial court the

appellant, Manoj denied being the tenant of PW-30, before this court he hasn't pressed this plea instead a doubt has been expressed on the chance prints taken, on the ground that since the trial court had observed that chance prints of other accused could not be recovered from the spot of occurrence because the murder had taken place in first week of January whereas chance prints were lifted as late as on 27.1.2000 when spot could be traced out by the police. It was contended that if due to lapse of time evidence of chance prints were damaged/lost of one accused, then how could the chance prints of the appellant, Manoj could survive? This Court however, does not find any force in the argument as the appellant has not denied that he was in possession of the tenanted premises. In fact it was urged that he stayed on the premises for the past 8-9 years much prior to the date of incident. Thus the said appellant should have shown that despite having possession of the said premises he was not present. There is no explanation on behalf of the said appellant. Regarding chance prints also it cannot be held that if the change prints of one of the accused did not survive or could not be lifted on account of poor quality of chance prints the prints of other accused also could not be lifted. The plea of the appellant is based on his own assumption and cannot be sustained in the facts and circumstances nor can be construed in favor of the appellant. On the basis of evidence on record the complicity of Appellant Manoj is clearly and without any reasonable doubt is

established. On the pleas raised by the appellant it cannot be also held that the findings of the trial Court are illegal or unsustainable in any manner.

82. The learned counsel for the appellant Ikramul Haq has contended that the prosecution has failed to ascribe a role to the appellant in the offence and has merely implicated the appellant on the sole basis of the disclosure statements of the co-accused. It was further contended that even most of the witnesses have not taken Ikramul Haq's name in their depositions. It was also contended that the motive of the said appellant has not been established.

83. Learned Counsel further urged that the knife recovered at the instance of appellant Ikramul Haq, as per the deposition of PW-49, Inspector Pyare Lal recovered on 27th January, Ex. PW 2 /M is different from the knife that was recovered by PW-37, HC Lajya Ram on 1st February, 2000, Ex. PW 19/B. It is contended that in light of these two knives recovered, there is ambiguity as to which knife is the weapon of offence, therefore the appellant cannot be made liable for the same and benefit of doubt should be given said appellant. It is also contended that the knife which was recovered was rusted and did not have any blood, hence at best this could be a case of destruction of evidence u/s 201 of IPC and nothing more. However, perusal of the testimony of PW-52 Dr.

Sumit, who had analyzed these two knives and had given a report which has been proved it is apparent that injury on the neck of the body could have been caused by either of these weapons. Since the one of these knives was recovered at the instance of the appellant, hence the same is liable to be held against him and it can be construed to be the weapon of offence. It cannot be held that there is no evidence against the said appellant or there is reasonable doubt about his complicity in the offence of murder of deceased Shokeen Pal.

84. Learned counsel has also urged that since the charge framed against appellant clearly states that death was on account of strangulation and then the head was severed off and it is not the case of the prosecution that the appellant had strangled the deceased, nor has the same been established, hence the, maximum that can be attributed to the appellant would be that of destruction of evidence u/s 201 of the IPC. In support of this contention learned counsel relied on *Ramashish Yadav & Ors v. State of Bihar*, 1992 (2) JCC [SC] 471. In this case one of the accused had shot the victim while the others were mostly guilty of unlawful assembly. The question which was considered and answered by the Court was, whether the assembly was with the intention to commit murder. The Supreme Court had held that the others could not be held liable for murder since there was no prior meeting of minds which is a pre-requisite under Section 34. However

the facts of present case are clearly distinguishable In the case of present appellant there had been prior meeting of minds and common intention of abducting and thereafter killing the deceased which has been established by cogent evidence produced on behalf of the prosecution.

85. The trial Court has dealt with the role of the appellant, Ikramul in para 100 of its judgment. The same is reproduced as follows:

“100. Accused Ikramul got recovered knife used in commission of offence. PW-30 has referred to such recovery. Disclosure statement of Mukesh refers to Ikramul being privy to the commission of offence. Since Mukesh has admitted his guilt so all the investigation conducted qua Mukesh, can be invoked against co-accused persons as corroborative piece of evidence in addition to his confession. Accused Ikramul was also apprehended from the spot along with prime accused Manoj S/o Bindeshwari and Akhtar. Ikramul appears in the video tape of recovery with Manoj and Akhtar. He has not pleaded any alibi rather in response to Question 44 he comes forth with following reply.

Q44. It is in evidence against you that thereafter, on 27-1-2000 you along with your co accused Akhtar and Manoj Kumar Singh in pursuance of your disclosure statement took the police party and public witness namely Dr. Rajinder Singh & Sudhir to Bihari Pur Pulia, Ganda Nala and pointed out ganda nala where you had thrown the headless dead body of Shokeen Pal. The dead body was found at a distance of 100 meter from the place of pointing near Sher Pur Pulia. You and your co accused persons pointed out towards a gunny bag floating in the ganda nala and fished out the gunny bag. Ct. A K Rai took the six photographs of dead body EX PW 24/19-27. He also recorded video film of recovery of headless body in a cassette EX PW 24/B. Pointing out memo and seizure memo of headless dead body of Shokeen Pal is EX PW 2/ T.

Dead body was identified by Ranbeer Singh and Sudhir vide their statement EX PW 31/B and EX PW 2/W. What have you to say?

Ans. It is correct. On 23-1-2000 police came to my work place at Tilak Nagar along with accused Akhtar and I was brought to the place and given a knife and pushed in the water and took my photograph with knife to frame me in this case.

101. The answer given by Ikramul is culpably wrong in view of the visual display of VCR showing the recovery at the instance of accused persons when the same is appreciated in the entire context.

86. The relevance of Section 313 has been dealt with by the Supreme Court in the judgment of Sanatan Naskar & Anr. Vs. State of West Bengal: AIR2010SC3570:-

“10. The answers by an accused under Section 313 of the Cr.PC are of relevance for finding out the truth and examining the veracity of the case of the prosecution. The scope of Section 313 of the Cr.PC is wide and is not a mere formality. Let us examine the essential features of this section and the principles of law as enunciated by judgments, which are the guiding factors for proper application and consequences which shall flow from the provisions of Section 313 of the Cr.PC. As already noticed, the object of recording the statement of the accused under Section 313 of the Cr.PC is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The Court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the Court and, besides ensuring the compliance thereof, the Court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with

simplicitor denial or, in the alternative, to explain his version and reasons, for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross-examine him. **However, if the statements made are false, the Court is entitled to draw adverse inferences and pass consequential orders, as may be called for, in accordance with law.** The primary purpose is to establish a direct dialogue between the Court and the accused and to put every important incriminating piece of evidence to the accused and grant him an opportunity to answer and explain. Once such a statement is recorded, the next question that has to be considered by the Court is to what extent and consequences such statement can be used during the enquiry and the trial. Over the period of time, the Courts have explained this concept and now it has attained, more or less, certainty in the field of criminal jurisprudence. The statement of the accused can be used to test the veracity of the exculpatory nature of the admission, if any, made by the accused. It can be taken into consideration in any enquiry or trial but still it is not strictly evidence in the case. The provisions of Section 313(4) of Cr.P.C. explicitly provides that the answers given by the accused may be taken into consideration in such enquiry or trial and put in evidence for or against the accused in any other enquiry into or trial for, any other offence for which such answers may tend to show he has committed. In other words, the use is permissible as per the provisions of the Code but has its own limitations. The Courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this Section should not be considered in isolation but in conjunction with evidence adduced by the prosecution.

87. This coupled with the fact that it is on the basis of the disclosure statement of the appellant, Ikramul that the police had visited the Kiryana shop of PW-34 from where the two gunny bags were purchased, in which the body was found, therefore this court too concurs with the view of the Trial Court in concluding with the guilt of the appellant

Ikramul. In any case strangulation of the deceased could not have been possible without the assistance of the appellants/ co-accused. The trial Court has also commented on the fact that the deceased was a good built and therefore it could not have been possible for a single person to over-power him.

88. In the instant case the evidence produced by the prosecution is purely circumstantial. The principles on which the circumstantial evidence is to be evaluated have been stated and reiterated by the Supreme Court in numerous judgments. We may notice here the observations made by the Apex Court, in the case of Hanumant Govind Nargundkar v. State of M.P. MANU/SC/0037/1952: 1952 SCR 1091 on the manner in which circumstantial evidence needs to be evaluated. In the aforesaid judgment, Mahajan, J. speaking for the Court stated the principle which reads thus:

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

The aforesaid proposition of law was restated in the case of *Naseem Ahmed v. Delhi Admn* : (1974) 3 SCC 668, by Chandrachud J. as follows:

This is a case of circumstantial evidence and it is therefore necessary to find whether the circumstances on which prosecution relies are capable of supporting the sole inference that the Appellant is guilty of the crime of which he is charged. The circumstances, in the first place, have to be established by the prosecution by clear and cogent evidence and those circumstances must not be consistent with the innocence of the accused. For determining whether the circumstances established on the evidence raise but one inference consistent with the guilt of the accused, regard must be had to the totality of the circumstances. Individual circumstances considered in isolation and divorced from the context of the over-all picture emerging from a consideration of the diverse circumstances and their conjoint effect may by themselves appear innocuous. It is only when the various circumstances are considered conjointly that it becomes possible to understand and appreciate their true effect.

89. On careful consideration of the evidence this court is of the view that the circumstantial evidence forms a link and every link is to be established regarding the guilt of the appellants. From the perusal of entire evidence, recoveries made pursuant to disclosure statement made by the appellants and that the appellant did not disclose relevant information which was within their knowledge as contemplated under Sec. 106 of the Evidence Act, inevitable conclusion is that the prosecution has been able to make out all the links in the chain of circumstantial evidence to prove the guilt of all the appellants. No such cogent grounds have been disclosed which will snap any of the essential link in the chain of events. No cogent grounds have been made out by

the counsel which would show that another theory is reasonably possible which would indicate the innocence of the appellants so as to give benefit of doubt to the appellants. The counsel for the appellants have also failed to show any cogent ground on the basis of which it could be held that the inferences and findings of the Trial Court suffers from any illegality or that the judgment of the Trial Court convicting the appellants would not be sustainable.

90. Thus this Court upholds the findings of the Trial Court that the prosecution witnesses has indeed supported the core of the prosecution case and at the instance of accused persons, recovery of headless dead body and weapon of offence was effected. Further the recovery of the personal articles of deceased was also effected from the accused persons; there is no reason to doubt the recoveries made by the various police witnesses as they have corroborated each other on every aspect. PW 5, PW 7, PW8 and PW 9 have all deposed that the police officials had effected the recoveries of the call records from the respective STD booths. This could have been possible only pursuant to the disclosure statements made by the accused persons; motive was also effectively proved and co-accused Mukesh had already pleaded guilty at the charge stage and was convicted, which is a corroborative evidence for the accused facing trial.

91. Therefore considering the entire facts and circumstances and testimonies of the witnesses and documents on record, there are no grounds to accept the appeals of the appellants. Therefore all the appeals of above noted appellants are dismissed and judgment of trial Court convicting the appellant for various offences and sentencing them for the said offenses are upheld. The appellants are undergoing sentences and their sentences were not suspended during the pendency of their appeal. The appellants shall undergo their sentences. Copy of this order be sent to the concerned authorities under which the appellants are undergoing their sentence for compliance of this order.

ANIL KUMAR J.

April 06, 2011

S.L.BHAYANA J.