

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 04/05/2012

+1. CRL.A. No.554/2010

MUKESH KUMAR

..... Appellant

versus

STATE

..... Respondent

+2. CRL.A. No.657/2010

DEEPAK KUMAR

..... Appellant

versus

STATE

..... Respondent

+3. CRL.A. No.894/2010

HARI SINGH

..... Appellant

versus

STATE

..... Respondent

Advocates who appeared in this case:-

For the Appellant : Mr Tanveer Ahmed Mir in CrI.A.554/2010
Mr.S.B.Dandapani in CrI.A.657/2010
Ms.Charu Verma in CrI.A.894/2010

For the Respondent : Ms Richa Kapoor

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MS JUSTICE VEENA BIRBAL

VEENA BIRBAL, J

1. These three appeals are filed against the impugned judgment dated 3rd February, 2010 passed in Sessions Case No.49/2008 by the Additional Sessions Judge, New Delhi arising out of FIR No.193/2004 Police Station Dwarka u/s 302 IPC wherein all the three appellants have been convicted u/s 302 IPC. The appellants Deepak and Hari Singh are further held guilty and convicted for committing the offence u/s 404 IPC. The appeals are also directed against the order of sentence dated 18th February, 2010 wherein all the three appellants have been sentenced to imprisonment for life and to pay a fine of Rs.2000/- each under section 302 IPC and in default of payment of fine to further undergo RI for three months. For committing offence u/s 404 IPC, appellants Deepak and Hari Singh have been further sentenced to undergo RI for a period of one year with fine of Rs.1000/- and in default of fine to undergo RI for a period of one month. It is further directed that both the sentences shall run concurrently.

2. The case of the prosecution is that on 3rd May, 2004 DD No.16A was got recorded at Police Station Dwarka. A copy of the same i.e., Ex.9/D9 was given to ASI Bhupender Singh, PW-21 who had reached the spot i.e shop nos T5 & 6, 3rd Floor, Manish Abhinav Plaza II, Sector 5, Plot no.5, Dwarka. He found blood lying at the spot. The owner of office was not found there. In the meantime, SHO, Inspector Umesh Singh, PW-24 along with other police officials had also reached the spot. Furniture and other articles were found ransacked in the office. The furniture in the office and computer were lying in a scattered condition. There they came to know that deceased Rajeev Soni had already been taken to Sarthak Medical Centre, Palam Village. Inspector Umesh Singh, PW-24 had left ASI Bhupinder Singh at the spot and he himself had gone to Sarthak Medical Centre where he found the dead body of Rajeev Soni on the rear seat of the car. He found injury marks on the neck of deceased caused by some weapon. Inspector Umesh Singh, PW-24 recorded the statement Ex.PW 9/D-5 of Avinash Kumar, PW-1, brother-in-law of deceased on which he had made his endorsement Ex.PW 24/A and sent the rukka through Constable Raj Pal Singh, PW-18 for registration of case. Inspector Umesh Singh, PW-24 had conducted the inquest proceedings and filled up inquest form Ex.PW 9/D-3. He also moved an application Ex.PW 9/D-1 for conducting the postmortem examination of the deceased. Thereafter he came to the spot with complainant Avinash Kumar, PW-1 and on his pointing out, a site plan Ex.PW 24/B was prepared. From the spot he lifted

blood stains with the help of cotton which was kept in a plastic bottle and was sealed with the seal of US. The blood from the walls of the room was seized by completing necessary formalities. One red cloth piece having blood stains and other necessary articles were also seized from the spot after completing formalities. IO Inspector Umesh Singh, PW-24 also lifted hair with blood lying at the spot and had kept the same in a plastic bottle which was sealed with the seal of US. One ear phone with plastic code having blood stains, one electric wire, one broken blade having blood stains which were lying on the floor were also seized after completing necessary formalities. All the aforementioned articles were seized vide memo Ex.PW 21/A. The Crime team had also reached the spot and inspected the site. The scene of crime was also photographed.

3. After the postmortem examination, dead body was handed over to the family members of the deceased. During investigation, statements of prosecution witnesses were also recorded. Search was conducted for the culprits. After about 7-8 days of the incident, one public witness, namely, Deepak Kumar, PW-2 met Inspector Umesh Singh, PW-24 and had stated that on the day of the incident, he had seen appellant Mukesh along with two persons coming down from the stairs of Manish Abhinav Plaza Sector 5, Dwarka, i.e., the office of the deceased at about 8.10 am.

4. On 1st June, 2004 at about 3.15 pm, on the basis of information given by a secret informer that appellants would be coming from

Sector 13 towards Ayudh Vihar Chowk, IO, Inspector Umesh Singh PW-24 formed a raiding party consisting of ASI Suresh Kumar, PW-23, Head Constable Nanak Chand, PW-20, Constable Mahesh, driver and the secret informer. At about 3.45 pm all the three appellants were apprehended from the aforesaid chowk on the pointing out of the secret informer. On interrogation, appellant Mukesh Kumar made a disclosure statement Ex.PW 20/H. The other two appellants also made separate disclosure statements i.e., PW 20/G and Ex.PW 20/J separately. They were arrested by preparing necessary memos i.e., Ex.PW 20/O, Ex.PW 20/P and ex.PW 20/Q respectively. Before arrest, their personal search was also conducted and necessary memos in this regard were prepared. Thereafter, appellant Deepak Kumar produced one ring of gold Ex.P2 on which one flower was engraved. The same was seized vide memo Ex.PW20/B. Appellant Hari Singh produced one wrist watch of make HMT with CSIR emblem Ex.P1. The same was also seized vide memo Ex.PW 20/C. Before seizing, necessary formalities were completed. Thereafter, the appellant had led the police party to the alleged place of occurrence and took them to a '*nala*' near Priyadarshini Apartment Sector 5 Dwarka and got recovered one iron pipe, hidden in the bushes. The said pipe was taken into possession vide memo Ex.PW 20/L. Before seizing, it was kept in a pulanda which was sealed with the seal of US. Thereafter, appellant Mukesh Kumar led the police party to DDA Flats, Binda Pur, at flat no.876 and got recovered one *ustara* having a broken blade Ex.PW 20/R. During investigations, all the three appellants refused to participate in TIP. The wrist watch Ex.P1 and gold ring Ex.P2

were identified in TIP proceedings. After completion of investigation and conducting other necessary formalities, charge sheet was filed before the concerned Metropolitan Magistrate wherein copies of documents were supplied to the appellants and case was committed to the Sessions court.

5. The Charge was framed against all the appellants for having committed offence u/s 302/34 IPC and a separate charge was framed against appellants Deepak and Hari Singh for having committed offence punishable u/s 404 IPC. All the appellants pleaded not guilty in respect of charges framed against them and claimed trial.

6. Prosecution, in all, had examined 24 witnesses. Out of which, Avinash Kumar, PW-1 is the complainant and is the brother-in-law of the deceased. Deepak Kumar, PW-2 is an independent witness who is alleged to have seen the appellants getting down from the stairs of the office of the deceased shortly after the incident. Sudhir Kumar, PW-3 is the employee of the deceased. Sanjeev Soni, PW-4 is the brother of deceased who is alleged to have identified case property in TIP proceedings. Jagat Singh, PW-16 is another employee of deceased who is alleged to have opened the shutter of the shop after the incident. Shri Ashutosh Kumar, MM, PW-13 has conducted the TIP proceedings in respect of wrist watch Ex.P1 and gold ring Ex.P2. The remaining evidence relates to the police and medical and scientific evidence.

7. The incriminating evidence was put to the appellants in their respective statements u/s 313 Cr.P.C. They denied the same and stated that they are innocent persons and have been falsely implicated in the present case. Appellants Mukesh and Deepak did not adduce any evidence in their defence. However, appellant Hari Singh examined DW1 and DW2 in his defence.

8. Learned counsel for appellant Deepak Kumar has argued that star witness of the prosecution is Deepak Kumar, PW-2. As per prosecution case, he was a former employee of deceased and had worked with him from December, 2003 to 31st March, 2004. On the date of incident i.e., 3rd May, 2004, at about 8.10 am, he had come to inform the deceased at his office that he had got a new job. It is contended that nothing has been shown by the prosecution that Deepak Kumar, PW-2 was ever the employee of deceased. It is further contended that even assuming that he was a former employee of deceased, as per evidence, he had barely worked for four months. In these circumstances, it cannot be said that he had very good relations with deceased and would come all the way to inform the deceased about the new job. It is contended that as per evidence Deepak Kumar PW-2 had come to inform the deceased after 32 days of leaving the job. It has also come in the evidence that his new office where he had to report for duty on the day of occurrence was at IGI Palam which is quite far from the office of deceased. It is contended that in these circumstances the conduct of the said witness is very unnatural. It creates a doubt that he had come to the office of

deceased, as is deposed by him. It is contended that Deepak Kumar, PW-2 is a planted witness.

9. It is further contended that Deepak Kumar, PW-2 has deposed that on 3rd May, 2004 at 8.10 am, he had seen appellant Mukesh along with two persons getting down from the stairs of office of deceased and Mukesh was wearing a half sleeve sweater. It is contended that nobody will wear a sweater in the month of May. It is further contended that as per evidence of Deepak Kumar, PW-2, the appellants were empty handed when he had seen them. On the other hand, as per prosecution, five mobile phones, cash bag of deceased were missing after the incident. There are two weapons of offence, one is *iron rod* Ex.P1/A and other is *Ustra* Ex.PW 20/R which as per prosecution were got recovered later at the instance of appellant Mukesh. In these circumstances, the evidence of Deepak Kumar, PW-2 having last seen appellants together getting down from the stairs of office of deceased is not believable.

10. Learned counsel for appellant-Hari Singh has contended that Deepak Kumar, PW-2 is not a reliable witness. It is contended that Deepak Kumar, PW-2 could not tell as to what clothes were worn by appellants Hari Singh and Mukesh when he is alleged to have seen them together getting down from the stairs of office of deceased on 3rd May, 2004 at 8.10 am. It is contended that Deepak Kumar, PW-2 was earlier a suspect in this case and even the police had gone to his house on 13th May, 2004. It is contended that even his finger prints were

taken during investigation. It is contended that he has falsely implicated the appellants. Even the alleged recovery of wrist watch Ex.P1 at the instance of appellant Hari Singh after one and half months of the incident is not believable. It is contended that evidence of alleged recovery of wrist watch Ex.P1 is not believable. Shri Ashutosh Kumar, PW-13, learned MM who has conducted the TIP proceedings of wrist watch Ex.P1 in his cross examination has stated that make of wrist watches produced for identification in the TIP proceedings was not same as of the wrist watch to be identified. It is contended that in these circumstances, it cannot be said that proper identification of wrist watch Ex.P1 was got done.

11. It is further contended that appellant Hari Singh has produced two defence witnesses i.e., D.W 1 Sh.Mahant Kumar and D.W.2 Sh.Raja Prakash who have deposed that appellant Hari Singh was arrested from his village at Etawa in U.P on 30th May, 2004 at 10.15 am. It is contended that evidence of these witnesses is not demolished on being cross-examined by the State.

12. Learned counsel for appellant Mukesh Kumar has contended that when ASI Bhupinder Singh, PW-21 and IO, PW-24 visited the spot, as per prosecution case, lot of blood was found there. It is contended that nothing has been stated by Deepak Kumar, PW-2 having seen any blood stains on the clothes of appellants. It is contended that *Ustra* Ex.PW 20/R having broken blade was got recovered by appellant Mukesh Kumar pursuant to his disclosure

statement Ex.PW-20/H from flat no.878, DDA Flats, Bindapur on 1st June, 2004. It is contended that manner of recovery and place of recovery make it unbelievable as the place of recovery is accessible to all. It is contended that even the evidence about alleged recovery of *iron pipe* Ex.P1/A from the bushes near nala, New Priyadarshni Apartments Sector 5 Dwarka at the instance of appellant is also not believable.

13. On the other hand, learned APP has contended that the case is based on chance witness i.e Deepak Kumar, PW-2 whose deposition inspires full confidence. It is contended that the evidence of PW-2 clearly establishes that he had seen the appellants on the date of the incident at about 8.10 am getting down the stairs of M/s Sai Biotech, Manish Abhinav Plaza, Sector 5 Dwarka i.e., the office of the deceased. It is contended that as per postmortem report Ex.PW 9/A, time since death was about 8 hours i.e., about 8 am on 3rd May, 2004. It is contended that chance prints Q 1 to Q5 were lifted from the spot and the chance print Q1 matches with specimen palm print S1 of appellant Deepak Kumar and the same shows his presence at the spot. It is contended that recovery of *Ustra* with broken blade Ex.PW 20/R at the instance of appellant Mukesh is highly incriminating evidence. It is contended that broken piece of blade Ex.P10 was seized from the spot along with other articles on the day of incident by the IO vide memo Ex.PW 21/A. The CFSL report shows that portion of broken blade Ex.P10 is the broken part of *Ustra* Ex.PW 20/R. It is contended that even Dr.L.K.Barua in his opinion

Ex.PW 9/C has opined that injuries 1 to 6 could be caused by *Iron pipe* Ex.P1/A and injuries nos.10, 12, 13 & 14 could be caused by *Ustra* Ex.PW 20/R. It is contended that recovery of gold ring having flower engraved on it Ex.P2 is also clearly established from appellant Deepak. The recovery of wrist watch Ex.P1 is also clearly established. It is contended that circumstantial evidence as discussed above clearly established that appellants are responsible for the alleged occurrence.

14. As per prosecution case, Deepak, PW-2 had worked with deceased from December, 2003 to 31st March, 2004 i.e., about a period of four months. As per evidence of Deepak, PW-2, he had seen all the appellants on 3.5.2004 as they were getting down from the stairs of M/s Sai Biotech i.e., the office of deceased at 8.10 am. He has deposed that on that day, he had gone to the office of deceased Rajeev Soni i.e., M/s Sai Biotech to inform him that he had got a new job. He has also deposed that he had asked appellant Mukesh as to whether the owner of the shop had come who informed that owner had not come. As he was getting late for his new job, he went away to join the new duty. Deepak, PW-2 is a resident of Prem Nagar, Najafgarh. As per his evidence, he had to report for his new job at Blue Dart company, Domestic Airport, Palam., which as per him was at a distance of 13-14 km from the office of deceased. It is not believable that an ex employee who had hardly worked for four months would come all the way from Najafgarh to Dwarka to inform his ex employer specially on the day of joining his new job at 9 am in

a new office. His conduct appears quite unnatural. His purpose of visit makes it difficult to believe that he had come to the office of deceased on 3rd May, 2004 at 8.10 am.

15. It has also come in the evidence that after the receipt of information in Police Station Dwarka, vide DD no 16A, Ex.PW-9/D9 ASI Bhupinder Singh, PW-21 had reached the spot and thereafter SHO, PW-24 and other police officials also reached there. As per them, lot of blood was seen at the spot.

16. In evidence, Deepak Kumar, PW-2 who is alleged to have seen them at about 8.10 am has deposed that he did not see any blood stains on the clothes of appellants. As per prosecution case, five mobile phones and cash bag of deceased were found missing. The weapons of offence are *iron rod* Ex.P1/A and *ustra* Ex.PW 20/R which were alleged to have been recovered at the instance of appellant Mukesh on 1.6.2004. As per evidence of Deepak, PW-2, when he saw the appellants on the staircase of the office of deceased, he did not see any bag or weapon in their hands. According to him, he saw them empty handed. Deepak, PW-2 has also deposed that appellant Mukesh Kumar was wearing a half sleeve sweater. The occurrence is of May. It is not believable that one would wear woollens in the month of May in a place like Delhi. Deepak, PW-2 has also deposed that he was not given any appointment letter nor he has any proof that he had worked with deceased. He also deposed that he cannot say which offices or shops were at first, second or third floor of that building nor he saw any chowkidar to look after the building. Reading his

evidence, it cannot be said that he had come to the office of deceased at Manish Plaza, Sector 5, Dwarka and had seen the appellants getting down from the stairs there. Accordingly, this piece of circumstantial evidence relied upon by prosecution against appellants is not believable.

17. The other circumstantial evidence relied upon by the prosecution is the chance print Q1 lifted from the spot on 3rd May, 2004 had tallied with specimen palm impression S1 of appellant Deepak Kumar.

18. SI Ganga Ram PW-6, who was a Finger Print Expert from Finger Print Bureau, Malviya Nagar has deposed that he had reached the place of incident on 3rd May, 2004. After examining the site, he had lifted five chance prints i.e., Q1 to Q5. Q1 to Q 4 were the blood prints which were lifted from the body of the computer which was lying on the table there. Q 5 was lifted from the side wall window of the shop. He has proved his report Ex.PW 6/A. Nothing relevant has come out in his cross-examination. In his cross-examination, he has deposed having reached the spot at about 1.30 pm on the day of occurrence and remained there for about two hours.

19. ASI Raj Singh, PW-7 is the photographer from Finger Print Bureau, Malviya Nagar, Delhi who has deposed having gone to the place of occurrence i.e., Shop no.T-5 and T-6, Third Floor, Manish Plaza, Sector 5, Dwarka with SI Ganga Ram PW-6 and taken photographs of chance prints available there. He has proved negative

print of those photographs as Ex. PW 7/1-15, i.e., three sets of one each and the positive prints thereof are Ex.PW 7/16-20.

20. ASI Chet Ram, PW-17, Finger Print Expert, Finger Print Bureau, Malviya Nagar has deposed that on 6.5.2004 he had received file containing scene of crime investigation report dated 3.5.2004 along with chance print mark Q 1 to Q5 from Finger Print Expert. He had also received photographs of chance prints along with negatives thereof. He has also received specimen finger prints/palm prints of suspects as per details given in Ex.PW 17/A. He had compared the chance prints and the specimen prints and found that chance print Q1 was identical with left palm impression slip –S1 of appellant Deepak Kumar. Rest of the chance prints were found unfit for comparison with specimen sent. He has proved on record the enlarged photograph of chance print mark Q1 and the specimen S1 as Ex.PW 17/B and Ex.17/C respectively. He has proved on record result of examination vide Ex.PW 17/A. The relevant portion of which is as under:-

“1. Chance print marked Q1 is IDENTICAL with left palm portion marked S1 on the palm impression slip of Deepak Kumar s/o late Sh.Govind Ram.

2.Chance print marked Q2 to Q5 are either blurred, partial or smudged and do not disclose sufficient number of ridge details in their relative positions of comparison, hence they are UNFIT and no opinion can be given regarding these prints.”

21. The report Ex.PW 17/D shows identical ridge characteristics have been found in their nature and relative position in chance print

Q1 and specimen palm print S1. The same has been discussed in Ex.PW 17/D.

22. Learned counsel for the appellant Deepak Kumar has contended that in the report Ex.PW 17/A, in front of names mentioned at Sr.nos.14, 17 & 18, the words 'Palm Prints Only' is written whereas the same is not stated in front of name of appellant Deepak Kumar which is at sr.no.19 in Ex.PW 17/A. It is contended that the same means his palm prints were not sent.

23. It may be mentioned that in order to examine the specimen finger prints/palm prints of 21 persons mentioned in Ex.PW 17/A, we have found that said records are not available in the lower court record received by this court. Accordingly, the requisite record from the Finger Print Bureau, Crime Branch, Delhi Police Complex, Malviya Nagar was called. The Official from the said Bureau had appeared before us and had produced the relevant file and it was clarified that about the names mentioned at Sr.Nos. 1 to 13, 15, 16 of Ex.PW 17/A, specimen palm prints and finger prints were sent. From Sr.No.14, 17 to 21 only palm prints were sent and it was clarified that from sr.no.19 to 21, the word 'do' was missing. In view of above explanation which is supported with material on record, the argument of learned counsel for appellant Deepak Kumar has no force and is rejected.

24. As per aforesaid report Ex.PW 17/A chance print Ex.Q1 lifted from the place of occurrence was identical with left palm print portion mark S1 of appellant Deepak Kumar. There are eight points of similarities which have been given in report Ex.PW.17/D.

Accordingly, chance print Q1 lifted from the spot tallied with the specimen palm print S 1 of appellant Deepak Kumar s/o late Govind Ram as per report Ex.17/A which is proved on record by PW-17. During cross examination, ASI Chet Ram, PW-17 had denied the suggestion that the print of half palm could not be compared with the print of the full palm. In cross-examination he has admitted that photograph Ex.17/B of Q1 is not the photograph of the full palm. He has also admitted that specimen photograph Ex.PW 17/C was of the full palm. Nothing material has been placed by learned defence counsel to substantiate his arguments.

25. In **Mohan Lal Vs. Ajit Singh: 1978 CriLJ 1107**, the Supreme Court accepted the finger prints expert's opinion as an important piece of evidence. The relevant portion of the judgment is reproduced as under:-

“45. Nothing substantial has been urged to challenge the opinion of the Director of the Finger Print Bureau, and all that has been argued is that as there were only 8 points of similarity, there was not enough basis for the expert's opinion about the identity of the fingerprints. Reference in this connection has been made to B. L. Saxena's "Identification of Handwriting, Disputed Documents, Finger Prints, Foot Prints and Detection of Forgeries", 1968 edition, page 247, Walter R. Scott's "Fingerprint Mechanics" page 62, and M. K Mehta's "The Identification of Thumb Impressions and the Cross-Examination of Finger Print Experts" 2nd edition, page 28. We have gone through these books but they do not really support the argument of the learned Counsel for the respondent. While referring to the old practice of looking for a minimum of 12 identical

characteristic details, Saxena has admitted that the modern view is that six points of similarity of pattern are sufficient to establish the identity of the fingerprints. Walter Scott has stated that "as a matter of practice, most experts who work with fingerprints constantly satisfy themselves as to identity with eight or even six points of identity. Mehta has also stated that in the case of blurred impressions the view of some of the Indian experts is that if there were three identical points, they would be sufficient to prove the identity."

26. In the present case, eight ridge characteristics are identical with the specimen palm print S1 of the appellant. The report Ex.PW 17/D shows the presence of appellant Deepak Kumar at the spot. In statement u/s 313 Cr.P.C, appellant Deepak Kumar has denied the said piece of incriminating evidence against him. However, no explanation has been given by him as to how his palm print was there. The burden was on him to explain the same. The non explanation by him makes it a highly clinching and vital circumstantial evidence against him.

27. As per evidence, the appellants were arrested on 1st June, 2004 from Ayudh Vihar Chowk, Sector 13 Dwarka by IO Inspector Umesh Singh, PW-24, as is deposed by Head Constable Nanak Chand, PW-20 and ASI Suresh Kumar, PW-23. Head Constable Nanak Chand, PW-20 has proved on record arrest memo Ex.PW 20/O of appellant Deepak Kumar, Ex.PW20/P of appellant Mukesh Kumar and Ex.20/Q of appellant Hari Singh. As per evidence on record, they were arrested on the basis of information given by a secret informer.

The evidence of witnesses i.e., IO, PW-24, ASI Suresh Kumar, PW-23 and HC Nanak Chand, PW-20 about manner and time of arrest is not demolished in cross-examination.

28. On interrogation, appellants made respective disclosure statements i.e., Ex.PW 20/H of appellant Mukesh Kumar, Ex.PW 20/G of appellant Deepak Kumar and Ex.20/J of appellant Hari Singh. IO, PW-24, has deposed that after recording of respective disclosure statements of appellants, appellant Mukesh Kumar took the police party to a place near Priyadarshni Apartment near nala Sector 5 Dwarka and got recovered one *iron pipe* Ex.P 1/A which was hidden in the bushes. Iron pipe was kept in a pulanda and was sealed with a seal US and was taken into possession vide seizure memo Ex.PW 20/L. IO has proved his signature on the seizure memo. Head Constable Nanak Chand, PW-20 and ASI Suresh Kumar, PW-23 have also deposed in the same manner and have proved their respective signatures on the said memo. Nothing relevant has come out in their evidence by which it cannot be said that *iron pipe* Ex.P1/A was not recovered at the instance of appellant Mukesh Kumar. It has further come in the evidence that appellant Mukesh Kumar had also led the police party to flat no.878, DDA flats Binda Pur. The front gate of the said flat was found locked. The police party entered through the rear gate which was found opened. The said flat was not allotted to any one. One *Ustra* having broken blade with the mark “Gaffar” Ex.PW 20/R was recovered in the front room.. The sketch of the said *Ustra* Ex.20/M was prepared and was taken

into possession vide Ex.20/N by completing necessary formalities. IO has also proved his signatures on the aforesaid memos. The other witnesses i.e., ASI Suresh Chand, PW-23 and HC Nanak Chand, PW-20 who had joined the investigation with the IO, PW-24 on the day of occurrence had deposed in the same manner as deposed by the IO, PW-24. They have proved their respective signatures on the aforesaid memos. There is no material discrepancy in the evidence of aforesaid witnesses which makes the recovery of *Ustra* with broken blade at the instance of appellant Mukesh Kumar unbelievable. The place of recovery of *Ustra* with broken blade was not accessible to all. Appellant Mukesh Kumar had led the police party there and got the *Ustra* recovered with broken blade from a room of the aforesaid flat. The evidence on record clearly establishes the recovery of *iron pipe* Ex.1/A and *Ustra* with broken blade Ex.PW 20/R at the instance of appellant Mukesh Kumar.

29. ASI Bhupender Singh, PW-21 has deposed that he had reached the place of occurrence i.e., shop no.T5 & T6, Manish Abhinav Plaza II on receiving DD No.16A Ex.PW 9/D9. In the meantime, SHO, PW-24 had also reached the spot. They had found the chairs, computers in scattered condition. The blood stains were also there on the wall and injured had already been taken to the hospital. The IO directed him to guard the scene of crime and left for Sarthak medical centre along with staff. IO returned back from the hospital at 1.30 pm and inspected the place of occurrence. ASI Bhupender Singh, PW-21 has deposed about the detailed proceedings done by IO, PW-24. He

has deposed about the articles being seized by the IO from the spot vide memo Ex.PW 21/A. Before seizure, same were put in separate pulandas which were sealed with the seal of US. As per his deposition, one of the articles seized by the IO was one broken blade EX 1/A having blood stains on which Carbon- HI was written. The same was kept in a small bottle of plastic and was sealed with the seal US and was seized with other articles vide memo Ex.PW 21/A on 3rd May, 2004 at about 1.30 pm from the spot. IO Inspector Umesh Singh PW-24 has also deposed in detail about the articles being seized by him vide memo ex.PW 21/A from the spot after returning from the hospital on 3rd May, 2004. There is no material contradiction in the evidence of IO Inspector Umesh Singh PW-24 and ASI Bhupinder Singh, PW-21. Both have identified the said blood stained blade as Ex.P-10.

30. The recovery of *Ustra* with blood stains having part of blade missing Ex.PW 20/R is highly incriminating evidence against appellant Mukesh who has got recovered the same from the aforesaid DDA Flats. In his statement u/s 313 Cr.P.C, appellant has simply denied the same.

31. As per evidence of Doctor L.K.Barua, PW-9, he has conducted the postmortem examination on the body of deceased and noticed the following injuries:-

1. A big lacerated wound on left parieto occipital area with three angular lacerations involving an area of 14x7 cms.
2. Lacerated wound on right parieto occipital area of 7x2 cms.

3. Another lacerated wound on the right side of occipital area of 4x2 cm size.
4. A lacerated wound on the right occipital area 6 cms above the posterior hair line measuring 4x2 cms.
5. A small lacerated wound on the right side forehead of 1.5 cms, placed obliquely above medial end of right eye brow.
6. Lacerated wound on the left side of forehead, 1.5 cm above left eye brow measuring 1x1.3 cms.
7. Contusion on bridge of the nose measuring 1x0.8 cms.
8. Small CLW below left eye brow measuring 8x2 cms
9. Contusion with abrasion of left ear and front side measuring 5x4 cms
10. One big incised wound in front side of the middle of the neck placed horizontally measuring 15x3 cms. Both sides blood vessel and tracea is cut. Very little blood clot in cut area.

Dr.L.K.Barua has deposed that besides above injuries, injury nos. 11 to 14 were also found on the body of deceased.

32. Dr.L.K.Barua, PW-9 has given the opinion that injury on head was caused by blunt and heavy object and was sufficient to cause the death. He has further deposed that injury on the neck was also sufficient to cause the death individually. All the injuries were simultaneously inflicted. Dr.Barua further deposed that death was

due to brain injury and shock and time since death was about eight hours. Dr.Barua has proved postmortem report Ex.PW 9/A.

33. The opinion was sought by the IO PW-24 from Dr.L.K.Barua, PW-9 vide application Ex.PW-9/B as to whether with the recovered weapons, injuries found on the person of the deceased were possible. Dr.Barua vide Ex.PW 9/C has opined that after examining the weapon i.e *iron rod* Ex.P1/A and *ustra* Ex.PW 20/R and injuries in the postmortem report, injuries nos.1 to 6 could be caused by the *iron pipe* Ex. P1/A and nos.10 to 14 could be caused by the *ustra* Ex. PW 20/R. As noted above, Dr.Barua has also opined that the blade of *ustra* Ex.P10 is the missing part of main *ustra* ExPW 20/R.

34. The above evidence clearly establishes that death is homicidal and has been caused with *iron pipe* Ex.P1 and *ustra* Ex.PW 20/R. As discussed above, both these weapons were got recovered at the instance of appellant Mukesh Kumar .

35. It has also come in the evidence that portion of broken blade Ex.P10 seized by the IO, PW-24 from the spot and *ustra* Ex.PW 20/R were sent to CFSL. The relevant portion of CFSL report Ex. is as under:-

“The exhibit marked as `7` (a portion of broken blade) was compared with the exhibit marked as `19` (Ustra). A physical matching of the broken piece of exhibits marked as `7` and `19` could be established. Please refer photograph marked `C` show the physical matching which is enclosed.

Hence, it can be opined that the exhibit marked as `7` is the broken part of the exhibit marked as `19`.”

36. The CFSL report also establishes that portion of broken blade seized by the IO PW-24 from the spot vide memo Ex.PW 24/A is that of *Ustra* recovered at the instance of appellant Mukesh.

37. The other circumstantial evidence relied upon by the prosecution against the appellant Deepak Kumar is the alleged recovery of gold ring Ex.P2 having flower engraved on it. As per evidence of IO, PW-24, ASI Suresh Kumar, PW-23 and HC Nanak Chand, PW-20, appellant Deepak Kumar was apprehended on 1st June, 2004 from Ayudh Vihar Chowk. IO, PW-24 having recorded his disclosure statement Ex. PW20/G. IO, PW-24 has proved his signature on it. The other P.Ws i.e., ASI Suresh Kumar, PW-23 and HC Nanak Chand, PW-20 have also proved their signatures on Ex.PW 20/G as witnesses. IO, PW-24 has deposed that appellant Deepak Kumar presented one gold ring from his finger. On the said ring, one flower was engraved on it and its weight was about 8 gm which was kept by him in a pulanda and the same was sealed vide seal US and same was taken into possession vide seizure memo Ex.PW 20/E. He has proved his signature on it. The other P.Ws i.e., ASI

Suresh Kumar, PW-23 and HC Nanak Chand, PW- 20 have also deposed in the same manner and have proved their respective signatures on the aforesaid seizure memo. They have been cross-examined on behalf of the appellant Deepak Kumar at length. Nothing relevant has come out to demolish the aforesaid depositions.

38. It has also come in the evidence of IO, PW-24 that in TIP proceedings, gold ring Ex.P2 has been identified by Sanjeev Soni, PW-4, brother of deceased. In the statement u/s 313 Cr.P.C, appellant Deepak Kumar has stated that *gold ring* Ex.P2 belongs to him and was not of the deceased. However, no evidence is led in defence to substantiate the same whereas Sanjeev Soni, PW-4 has categorically stated that gold ring was of the deceased and when he saw the deceased on 3rd May, 2004, he was not alive and there was cut marks on his wrist and wrist watch and gold ring were found missing. His evidence about identification of gold ring was not demolished in cross-examination.

39. As regards recovery of wrist watch Ex. P-1 from the appellant Hari Singh, it has come in the evidence of IO, PW-24 that appellant Hari Singh had produced wrist watch Ex.P-1 which was taken into possession vide seizure memo Ex.PW 20/C . The TIP proceedings was conducted by Sh. Ashutosh Kumar, Metropolitan Magistrate, PW-13 on 30th July, 2004. Learned MM, PW-13 in cross-examination has stated that make of the watches provided for identification proceedings were not the same as that of the wrist watch to be identified. Thus the TIP proceedings for wrist watch has not

been properly conducted. Under these circumstances recovery of wrist watch Ex.P1 at the instance of appellant Hari Singh cannot be taken as a reliable piece of evidence.

40. In view of the above discussion, the prosecution has categorically proved that chance print Q1 collected from the spot has matched with specimen print S-1 of the appellant Deepak Kumar as is evident from report Ex.PW 17/A and Ex.PW 17/D. Appellant has not given any explanation in his statement u/s 313 Cr.P.C as to how his finger prints were there at the spot. Non explanation makes it highly incriminating evidence against him. The same establishes his presence at the spot and is also a strong circumstance showing his involvement in the crime. Reference in this regard is made to the judgment of this court in Shashi Shekhar @ Neeraj @ Raju Vs. State reported in 2007 CrLJ 4193.

41. In the present case, the recovery of gold ring Ex.P2 has been clearly established from appellant Deepak Kumar as is evident from the evidence discussed above. Sh.Sanjeev Soni, PW-4 has clearly identified the same in TIP proceedings.

42. The other evidence established by the prosecution is recovery of *iron pipe* Ex.1/A from the bushes and the remaining part of the *ustra* Ex.PW 20/R recovered at the instance of appellant Mukesh Kumar from flat no.878 pursuant to disclosure statement Ex.PW 20/I. As regards recovery of *Ustra* Ex. PW 20/R, special knowledge is attributable to Mukesh Kumar. There were about 3200 flats in that area. It is the appellant Mukesh Kumar who had the knowledge where

the remaining part of the *ustra* was concealed. The evidence on record also establishes the seizing of broken piece of blade Ex.P1 from the spot. The CFSL report clearly establishes that the broken piece of blade Ex.P1 found at the place of occurrence is the remaining part of the *ustra* Ex. PW 20/R. Even Dr.Barua, PW-9 has also given the same opinion vide Ex.PW 9/C. The aforesaid circumstantial evidence establishes that both the appellant Deepak Kumar and Mukesh Kumar are responsible for the occurrence. The evidence on record also shows that the motive was to rob the deceased. These circumstances are of a sufficient conclusive nature and establishes the guilt of appellants Deepak Kumar and Mukesh Kumar. The conclusion can be drawn that appellants Deepak Kumar and Mukesh Kumar are responsible for the occurrence.

The Supreme Court in **Md. Mannan @ Abdul Mannan v. State of Bihar**; (2011) 5 SCC 317 held as under:-

“In our opinion to bring home the guilt on the basis of the circumstantial evidence the prosecution has to establish that the circumstances proved lead to one and the only conclusion towards the guilt of the accused. In a case based on circumstantial evidence the circumstances from which an inference of guilt is sought to be drawn are to be cogently and firmly established. The circumstances so proved must unerringly point towards the guilt of the accused. It should form a chain so complete that there is no escape from the conclusion that the crime was committed by the accused and none else. It has to be considered within all human probability and not in fanciful manner. In order to sustain conviction circumstantial evidence must be complete and must point

towards the guilt of the accused. Such evidence should not only be consistent with the guilt of the accused but inconsistent with his innocence. No hard and fast rule can be laid to say that particular circumstances are conclusive to establish guilt. It is basically a question of appreciation of evidence which exercise is to be done in the facts and circumstances of each case.”

In view of the above discussion, the conviction and sentence of appellants Deepak Kumar and Mukesh Kumar under section 302 IPC is upheld. The conviction of appellant Deepak Kumar under section 404 IPC is also upheld. Considering the overall circumstances, appellant Hari Singh is given benefit of doubt and is acquitted of the offence punishable u/s 302 IPC and section 404 IPC.

The appeals stand disposed of accordingly.

VEENA BIRBAL, J

BADAR DURREZ AHMED, J

May 04, 2012

ssb