

\$~R-10, 11 & 12.

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

+ **CRIMINAL APPEAL NO.376/2011**

Date of decision: 28th August, 2012

MEMBER SINGH Appellant
Through Mr. Ajay Verma, Advocate.
versus
STATE Respondent
Through Ms. Richa Kapoor, APP for the
State.

CRIMINAL APPEAL NO.330/2009

PAPPU @ MAHESH Appellant
Through Mr. Ajay Verma, Advocate.
versus
STATE Respondent
Through Ms. Richa Kapoor, APP for the
State.

CRIMINAL APPEAL NO.250 /2009

AMAR PAL @ KANWAR PAL Appellant
Through Mr. Ajay Verma, Advocate.
versus
STATE Respondent
Through Ms. Richa Kapoor, APP for the
State.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE S.P.GARG

SANJIV KHANNA, J. (ORAL):

Member Singh, Amar Pal and Pappu have filed these

appeals challenging their conviction under Sections 302 and 406 read with Section 34 of the Indian Penal Code, 1860 (IPC, for short) in Session Case No. 162/2007 arising out of FIR No. 189/2004, Police Station, Rohini for murder of Arjun Singh, driver of tempo bearing registration No. DL 1LD 2857. They have been sentenced to life imprisonment and fine of Rs.3,000/- each for the offence under Section 302/34 IPC and rigorous imprisonment of two years for the offence under Section 406 IPC. In default of payment of fine, the appellants have to undergo simple imprisonment of three months each.

2. In the charge sheet brief case of the prosecution was that FIR No. 189/2004 dated 1st March, 2004 was registered under Section 365 IPC on a complaint (Exhibit PW-7/A) made by Pardeep Kumar (PW-7) that his tempo driven by Arjun Singh was hired by an unknown to transport buffaloes to Aligarh and return back with potatoes. At the time of departure, PW-7 had noticed that two more persons were sitting in the tempo apart from the man who had hired it. The tempo and the driver were to return on 25th February, 2004 but did not return. He tried to search Arjun Singh but he could not be located. On 1st/2nd March, 2004, PW-24, SI Naresh Bhatia went to SSP's office, Aligarh with his staff

and photographs of unidentified bodies were shown to the relatives of Arjun Singh. One photograph of a body was identified as that of Arjun Singh. The said body was found in an area under the jurisdiction of Police Station, Ghonda, U.P. At Police Station, Ghonda, U.P. SI Yatender Kumar, PW-15 and SI Baldev Prasad, PW-18 showed photographs and clothes of the deceased and were identified by the relatives. The tempo could not be located. The perpetrators of the crime remained unknown. The police team came back to Delhi on 4th March, 2004. Investigation was handed over to Inspector Jaibir Singh, PW-26. On the basis of the secret information, Member Singh was arrested near a cinema theatre on 6th March, 2004. From his pant a loaded country made pistol with a live cartridge was recovered. He was apprehended and charged under the Arms Act in FIR No. 206/2004, Police Station, Rohini. During interrogation, he revealed his involvement in the present murder case. He was arrested on 6th March, 2004.

3. As far as the homicide death of the deceased Arjun Singh is concerned, an unidentified body was found on 25th February, 2004 at about 9 – 10 A.M. in a field located at village Arania, District Aligagh, Police Station, Gonda, U.P. The recovery of the

unidentified body is proved by the statement of PW-8, Sham Lal, owner of the said field. PW-5 Prem Singh, PW-6 Jitender Singh, PW-9 Chander Pal Sharma and PW-10 Ashok Kumar are other villagers who have testified and have mentioned about discovery of an unidentified dead body. Thereafter, information regarding the dead body was conveyed by PW-9, Chander Pal Sharma to local Police Station, Ghonda and panchnama Exhibit PW-9/A was prepared. On the basis of the same, FIR No. 11/2004 under Section 302/201 IPC was registered as per the statement of PW-12, Constable Gaya Saran Singh, Police Station, Ghonda. PW2 Ct. Gaya Saran, PW14 Ct. Satbir, PW15 SI Yatender Kumar and PW18 SI Baldev Prasad have also deposed on recovery of the body. At that time, the dead body could not be identified to be that of Arjun Singh. Recovery, was treated and regarded as that of an unidentified/unknown person.

4. The prosecution witness PW-24, Pappu Singh is the brother of the deceased Arjun Singh. In his statement in the court he had deposed that on 2nd March, 2004 he, along with his nephew Dheeraj, went to Police Station, Rohini and from there with the Police Officers of Police Station, Rohini, they went to Police Station, Ghonda, Aligarh, U.P. where clothes and photographs of

the deceased were shown to him and he identified the said clothes and photographs. PW4 Dheeraj Singh, a relative of Arjun Singh had also gone with PW24 and had identified the photographs and clothes of Arjun Singh. We may note that by the said date, the dead body of Arjun Singh had already been cremated. Post mortem was conducted on 26th February, 2004 at 5.00 PM as per the post mortem report Exhibit PW-2/A, which has been proved by Dr. Pramod Kumar, PW-2, Physician in DDU Hospital, Aligarh, U.P.

5. The reason why PW-24, Pappu Singh and PW4 Dheeraj Singh had gone to Police Station, Ghonda along with police officers of Police Station, Rohini is stated by PW-28, SI Naresh Bhatia, the first investigating officer. PW-28 in his statement had stated that he was posted at Police Station, Rohini and after registration of FIR No. 189/2004 on 1st March, 2004 under Section 365 IPC, he along with his staff reached the place of occurrence, i.e., Tempo Stand, Avantika, Delhi along with the complainant PW-7, Pardeep Kumar and had inspected the place and prepared the site plan. Thereafter, he along with the staff went to the District, Aligarh SSP's office for investigation. PW26 Inspector Rajbir Singh, Additional SHO,

Police Station, Rohini was with him. Police officers at SSP's office/G.D. office had shown them photographs of unidentified bodies and from the said photographs, one photograph of a dead body stated to have been recovered by Police Station, Ghonda, U.P., was identified by relatives of the deceased to be that of Arjun Singh. Thereafter, they reached Police Station, Ghonda and met SI Yatender and SI Baldev Prasad, PW-15 and PW-18 respectively. They showed the photographs of the deceased and his clothes after breaking seals of the pullandas, which were kept in the malkhana. The photographs and the clothes were identified by the relatives of the deceased. Photographs and negatives thereof and the clothes were sealed and were deposited in the malkhana, Police Station, Ghonda, U.P. by them.

6. The real issue and controversy raised in the present appeals relate to the involvement of the three appellants in the said offence and whether they are responsible and the prosecution has been able to show and establish that they had committed the offence i.e murder of Arjun Singh and the offence under Section 406 IPC.

7. There are no eye witnesses in the present case and the prosecution has relied upon circumstantial evidence of last seen

and the recoveries. TIP proceedings are relied upon in the case of Member Singh and Pappu. Member Singh did not join TIP and Pappu was identified by PW7 Pardeep Kumar in the TIP.

8. To establish the case, the prosecution has relied upon the statement of PW-7 Pardeep Kumar. PW-7 had stated that he was the owner of tempo DL 1LD 2857 and the deceased was working with him as a driver. He recognized the appellant Member Singh and had stated that he had come to the tempo stand at Avantika, Main Kanjhawala Road, Delhi on 24th February, 2004 and asked him to give a tempo on hire to take buffalos to Aligarh and on return they would bring potatoes in the tempo. He had given Rs.1,000/- as advance fare for the tempo. The tempo and the driver were to come back by 11 or 11.30 A.M. on the next day. The tempo and the driver did not come back by the said time. He waited till the evening of 25th February, 2004. He then made a written complaint to the police at Police Station, Rohini, Sector-3, Delhi, Exhibit PW-7/A. Thereafter, the police started investigation and the appellant Member Singh was brought to the Police Station and was shown to him on 28th/29th February, 2004. He identified Member Singh and stated that he had taken the tempo along with the driver. Thereafter, he joined the

investigation and the appellant Member Singh took them to the house of the other accused appellant Pappu but he was not present at that time in his house and his residence in U.P. He accompanied the police to the house of the third accused, who was a friend of Pappu but he was also not present at his house at that time. The accused-appellant Member Singh took the police party to the place of occurrence where he had committed the murder of the driver Arjun Singh at night time. He pointed out the place of incident in their presence. After 2-3 days again, PW-7 went to U.P. to the house of the two accused but they were not present in their houses even at that time.

9. In his cross-examination, PW-7 has stated that Member Singh had come at 4.00/4.30 P.M. and that the diesel was filled up at about 9.30 p.m. after loading of the buffalo in the tempo. He had not maintained any records of the tempo hire and the fare collected by him. He had waited for the whole day on 25th February, 2004 and next day i.e. 26th February, 2004 and had made a complaint to the police on 27th February, 2004. He did not go to the house of Arjun Singh to make any enquiry. Member Singh was apprehended at Peera Garhi as told to him by the police and he had gone to the Police Station either on 28th

February, 2004 or 29th February, 2004. Member Singh had accompanied him and the police officers to the house of accused Pappu at his native village on 1st March, 2004, but Pappu at that time could not be found. He denied the suggestion that Member Singh did not hire the tempo. The said cross examination was held on 21.2.2005 and completed.

10. PW-7 was recalled for further examination on an application made by the prosecution. He was re-examined on 1st October, 2008. In his statement in chief recorded on the said date he had pointed out to the appellant accused Member Singh and stated that he had come to take the tempo on hire to load buffaloes from Delhi and take the same to Kher Tapple in U.P. The said statement was objected to by the defence counsel on the ground that this fact was already stated. He also stated that the tempo came back to the stand at Avantika after loading of the buffaloes. Member Singh was accompanied by two other persons, who were present in the Court and he identified the said two persons as the appellants Pappu and Amar Pal. Thereafter, the driver along with the three appellants accused went to the petrol pump where the fuel was filled and they left for U.P. He came back to the tempo stand. On 16th April, 2004, he had gone to Tihar Jail

with the IO where he identified Pappu in the judicial TIP Ex. PW27/A. PW-7, when cross-examined on 1st October, 2008, had stated that he did not know Pappu prior to the incident. He denied the suggestion that Pappu was shown to him by the IO prior to TIP in the jail. He had further stated that the Magistrate, who had conducted the TIP had not asked or queried whether he had been tutored or the accused was shown to him prior to that or not.

11. We may also notice that Member Singh had refused to join TIP on the ground that he had already been shown to PW-7. He had stated that he had been kept in police custody for 6-7 days and was shown to public persons, who may be witnesses of the said case (refer Exhibit PW-27/A). PW7 has admitted and accepted that Member Singh was shown to him by the police on 28/29th February, 2004 and he along with Member Singh on 1st March, 2004, had gone to UP with the police officers. PW7 was not declared hostile and his statement in examination in chief and again in cross examination was not challenged and questioned.

12. Amar Pal and Pappu could not be arrested. They had surrendered in the court on 8.4.2004 and 10.9.2004, respectively. As far as disclosure and recovery statements are concerned, it is

noticed that the dead body of the deceased was found in the fields on 25th February, 2004 in village Arania, Police Station, Ghonda. On 1st March, 2004, the said dead body was identified by PW-24, Pappu Singh, brother of the deceased Arjun Singh and PW4 Deeraj Singh. The appellant Member Singh was arrested in FIR No. 206/2004 under Sections 25, 54 and 59 of the Arms Act and Section 411 IPC in Police Station, Rohini on 6th March, 2004. He had made three disclosure statements on or after 6th March, 2004. Two disclosure statements marked Exhibit PW26/X and PW26/B are dated 6th March, 2004 and the third disclosure statement marked Exhibit PW26/D is dated 11th March, 2004. The recovery of the body of the deceased Arjun Singh cannot be collated and connected with any of the disclosure statements. As noticed above, the body of the deceased was found on 25th February, 2004 and was identified by as that to be of deceased Arjun Singh on 1st March, 2004. This was before Member Singh was arrested on 6th March, 2004 and the three disclosure statements. Thus on the date when disclosure statements of Member Singh were recorded on 6th March, 2004, the police officers PW26 and PW28 had knowledge and already knew about recovery of the dead body of Arjun Singh and the

place where it was found. The recovery of the dead body of the deceased, therefore, cannot be attributed to the disclosure or treated as recovery made pursuant to the statements made by Member Singh and recorded by the police.

13. Learned Additional Public Prosecutor for the State has submitted that pursuant to the disclosure statement Exhibit PW-26/B made on 6th March, 2004, an iron rod and blood stained shirt and pant of the accused Member Singh were recovered from village Samashpur, Police Station, Sadabad, District Mathura, U.P., vide Exhibit PW-26/E dated 12th March, 2004. The recovery of the iron rod, which is alleged to be the weapon of offence in the present case does not inspire confidence as iron rods are easily available and as per the CFSL report Exhibit PW-26/X no blood could be detected on the iron rod and the shirt. Human blood was detected on the pant of the appellant accused Member Singh but blood group could not be ascertained.

14. Once the recoveries are discounted, the evidence available, which is relied upon by the prosecution, is that of last seen. Prosecution has relied upon the statement of PW-7. As per prosecution version PW-7 had made the first complaint to the police Exhibit PW-7/A on 1st March, 2004 at 12.10 A.M. In the

said complaint, he had stated as under:-

“To,

The SHO,
P. S. Rohini, Sec-3,
Delhi-85

Sir,

It is submitted that in the morning of 24.02.04 at about 6.00 O’Clock, a person had come to me to hire my Tempo Tata 407 saying that he had to carry a buffalo from Sultanpuri to Khair Tappar, Aligarh road and he had to bring fifty – sixty sacks of potatoes to Sultanpuri itself from there in returning. I sent my Tempo Tata 407 bearing No. DL 1L D2857 with my driver Arjun Singh S/o Samar Bahadur Singh, r/o Village- Jatwara Baisan Taisil, Post Office – Jatwara, Distt. Pratap Garh, U.P. along with that person. When my driver came back to Awantika stand at about 9.00 O’ Clock in the night carrying the buffalo I saw that the same person alongwith two other people was sitting in the vehicle. Hardly had I got filled the fuel of a sum of Rs.1140/- that he drove away the Tempo carrying the buffalo which was bound to return till the evening of 25.02.04. But neither my driver nor my tempo has returned till now. I had been searching for them till now at my level but they are untraceable. I apprehend that some unknown people have abducted my aforesaid driver along with my Tempo. I request that they may be traced. I can identify the said three people on confrontation. Legal action may be initiated against the accused persons.

Sd/-

Pradeep Kumar

(In Hindi)

Pradeep Kumar
S/o Jaspal Singh
R/o R-Z-332, Mangolpur Khurd
Delhi- 55"

15. As elaborated above, PW-7 in his statement in the court had stated that Member Singh was shown to him on 28th or 29th February, 2004 in the police station. The said statement was made in categorical terms in the examination-in-chief, wherein it is recorded :-

".... My driver's name is Arjun Singh S/o Samar Singh r/o Pratap Garh, U.P. On the next day my tempo and driver did not come back as my tempo and driver were to come upto 11 or 11.30 A.M. So, I waited upto evening on 25.2.2004 but neither my driver nor my tempo returned. Then I made written complaint in this respect to the police at P.S. Rohini, Sector 3, Delhi. My complaint is Ex. PW7/A signed by me at point A. Thereafter police started the investigation of this case and police brought accused Member Singh to PS and I was called there on 28/29/2/04 and I identified him there that he had taken my tempo along with my driver....."

16. In the cross-examination again PW7 had stated as under:

"Accused Member Singh came to me to take my tempo on hire basis at about 4/4.30 P.M. The fare of the tempo was fixed for going and coming was Rs.3800/-. Diesel was not filled up in the tempo at that time it was filled up at about 9.30 PM after loaded the buffalow. Only one buffalow was loaded in the tempo. I am not maintaining any record of my tempo

sending it to any where on fare basis. I waited to coming back my tempo whole day on 25/2/04 and on the next day on 26/2/04 because the tempo had to come back in the mean time on 26/2/04 then I made a complaint to the police on 27/2/04.

I did not go to the house of Arjun Singh to make enquiry for non coming back my tempo. Member Singh was apprehended from Peerah Gari it was told to me by the police. I went to PS either on 28/2/04 and 29/2/04. I accompanied with the police and accused Member Singh to the house of Pappu at his native village but Pappu was not present at his house at that time and I went to the village of Pappu on 1/3/04.....”

17. PW-4, Dheeraj Singh in his examination in chief had stated that Arjun Singh was his uncle. He had taken the tempo to somewhere from Avantika, Rohini but did not return next day. Owner of the vehicle had taken him to Ghonda, U.P. and he identified the clothes and the photograph of Arjun Singh. In the cross-examination, he had stated that he had lived in Delhi with Arjun Singh from December, 2003 to 4th March, 2004. Till he remained with Arjun Singh, he did not go out. He did not have any knowledge where Arjun Singh had gone on 24th February, 2004, when he left the house. He did not make any complaint to the police.

18. PW-24, Pappu Singh had stated that his brother Arjun Singh was missing since 24th February, 2004. He used to drive a

tempo. He along with Dheeraj had gone to Police Station, Ghonda wherein they recognized and identified the clothes and photographs of Arjun Singh. In cross-examination, he had stated that he was not aware about going and coming of Arjun Singh and where he used to go. His brother was missing since 24th February, 2004 but he did not make any complaint. He did not remember whether on 24th February, 2004, his deceased brother was in Delhi or out of Delhi. He did not visit the working place of his deceased brother. On 24th February, 2005 (sic 2004) after taking dinner, he did not know where his brother had gone.

19. From the statements of PW-7, PW-4 and PW-24 and the statements of IOs PW-26 and PW-28, several material contradictions in the case of the prosecution are apparent. These and relevant aspects are analyzed below:-

- (a) PW-26 and PW-28 had stated that Member Singh was arrested on 6th March, 2004 and confessed his involvement and thereafter on the basis of disclosure statements Exhibits PW-26/X and 26/B, an iron rod vide memo Exhibit PW-26/E was recovered. However, PW-7, in his examination in chief had stated that Member Singh was shown to him on 28th or 29th February, 2004 and thereafter Member Singh went with him and the police officers to U.P. to the

residence of Pappu and another accused. After two-three days again, they went to U.P. to the houses of other accused. PW-7's statement was not questioned or challenged by the Public Prosecutor. This averment was again reiterated by PW-7 in his cross-examination. PW-7 was not declared hostile.

(b) On the iron rod no blood was found as per CFSL report Exhibit PW-26/X. As noted above, the rod in question (kamani patta side) is easily available in the market. The said rod was allegedly recovered from the residence/house of Member Singh in his village. Presence of an iron rod in a house is not abnormal, even if we accept the recovery.

(c) As per PW-7, Member Singh and the police parties had gone to U.P. on 1st March, 2004 to the residence of Pappu and another unknown person whose name he did not reveal and they came back to Delhi on the next day. PW-26 and PW-28 have stated that they had gone to U.P. along with PW-24 and PW-4 on 1st/2nd March, 2004 and after verification and inquiry came to know that dead body of Arjun Singh was found in a village in the area of Police Station, Ghonda, U.P.

(d) PW-7 had in the examination in chief stated that he had been to the police on several occasions and had made a complaint Exhibit PW-7/A on 25th February, 2004. As per the cross-examination, PW-7 had made the complaint to the police on 27th February, 2004. As per the police Exhibit PW-7/A was recorded on 1st March, 2004 at 12.10 A.M. The earlier complaints made by PW-7 have not been brought on record. No reason or ground for not producing the said complaints are indicated or stated. PW-7 in the examination in chief had clearly stated that he had made a written complaint on 25th February, 2004. The said statement of PW-7 was not questioned or challenged by the prosecution. PW-7 was not declared hostile. This creates a doubt as to what was stated by PW-7 earlier.

(e) The failure of the police to record the FIR or even DD entry between 25th February, 2004 till 1st March, 2004 creates a doubt about the first and the initial statement made by PW-7. The doubt is fortified in view of the statement of PW-7 that Member Singh was shown to him on 28th or 29th February, 2004 and was with them on 1st March, 2004, when they went to U.P. A dead body in an agricultural field

under the jurisdiction of Police Station, Ghonda was found on 25th February, 2004.

(f) PW-7 had admitted that he did not go to the residence of Arjun Singh and made enquiries at his residence. This is abnormal and contrary to normal human behaviour.

(g) PW-24, real brother of the deceased had stated that deceased Arjun Singh was missing since 24th February, 2004. He was not aware about going and coming of his brother and where he used to go. He did not make any complaint with the police on 24th February, 2004. He did not remember whether his brother was in Delhi or outside Delhi on 24th February, 2004. He did not even bother to visit the place where his brother used to work. He had seen his brother taking dinner in his house on 24th February, 2004.

(h) PW-7 was not expected to remain silent for about 6 days from 25th February, 2004 to 1st March, 2004. His statement that he had made written complaint before 1st March, 2004 is reasonable and natural. It inspires confidence. The statement Ex. PW7/A which became the basis of FIR was

recorded after a substantial delay on 1st March, 2004 at 12.10 AM at midnight. On the same day itself, PW7 along with relatives and the police officers went to U.P. The dead body of Arjun Singh was already recovered on 25th February, 2004.

- (i) No inquiries were made by the police whether, where and when the buffalo was dropped. No inquiries or investigation was done whether the tempo had crossed Delhi border and had paid toll tax while entering U.P. from Delhi. No inquiry was made whether the tempo had carriage permit to transport goods and operate in U.P. Tempo as per the registration number was registered in Delhi.
- (j) It is difficult to accept that PW-7 the owner of the truck would have permitted and allowed hiring of the said tempo without knowing the name of the person hiring the tempo or his address. As per the statement of PW-7 in the Court, the tempo was taken to some place from where buffalo was loaded and put on the tempo. No details of the said place are stated or indicated. Police also did not conduct any investigation on the said aspect.

- (k) The tempo has not been recovered. The route of the tempo taken was not ascertained and brought on record.
- (l) The personal belongings of the deceased Arjun Singh were not recovered.
- (m) The evidence of last seen, therefore, only on the basis of Exhibit PW-7/A becomes debatable and doubtful. Regarding law of last seen, the observations of the Supreme Court in **Muhibur Rahman vs. State of Assam** (2002) 6 SCC 715 are relevant:-

“The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. There may be cases where, on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide. In the present case there is no such proximity of time and place.”

In **Bodhraj vs. State of J&K** (2002) 8 SCC 45, it was observed:

“The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author

of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.”

32. In *Ramreddy Rajesh Khanna Reddy* (2006) 10 SCC 172 this Court further opined that even in the cases where time gap between the point of time when the accused and the deceased were last seen alive and when the deceased was found dead is too small that possibility of any person other than the accused being the author of the crime becomes impossible, the courts should look for some corroboration.”

(see also observations of Supreme Court in ***State of Goa vs. Sanjay Thakran*** (2007) 3 SCC 755).

(n) Member Singh had refused to participate in the TIP on the ground that he had been shown to PW-7. PW-7 had admitted and accepted that Member Singh was shown to him in the Police Station on 28th or 29th February, 2004 and they were together on 1st March, 2004 and thereafter again they went to U.P. Refusal of Member Singh to participate in the TIP was justified.

(o) In Exhibit PW-7/A, there is no description of the accused Pappu and Amar Pal. Physical attributes of the appellant Member Singh have also not been stated in Exhibit PW-7/A.

(p)With regard to Pappu and Amar Pal the case of the prosecution is even weaker. Pappu was identified in the TIP proceedings by PW-7. However, Pappu's case is that he had been shown to PW-7. On this aspect, we may note that PW-7 did not identify Pappu in the court in his examination in chief on 4th January, 2005 or in the cross-examination on 21st February, 2005. PW-7 was thereafter recalled on an application filed by the prosecution and on 1st October, 2008 he identified Pappu and Amar Pal in the court. These two accused were obviously present in the court when statement of PW-7 was recorded on 4th January, 2005 and 21st February, 2005. No recoveries were made on the basis of alleged disclosure by Pappu. Amar Pal was not subjected to TIP. No recovery is attributed to the disclosure statement of Amar Pal.

20. Keeping in view the said facts, we do not think that the prosecution has been able to establish the case beyond reasonable doubt. It is well settled that when a case is based on circumstantial evidence, such evidence has to satisfy three tests. Firstly, the circumstances from which an inference of guilt is sought to be proved must be cogently and firmly established;

secondly the circumstances should of definite and unerringly point towards guilt of the accused; and thirdly the circumstances taken cumulatively must form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and no one else.

21. In the present case, evidence does not complete the chain and does not rule out the possibility of any third person committing the said offence. In these circumstances, we are inclined to grant benefit of doubt to the accused Member Singh, Pappu and Amar Pal and accordingly their conviction is set aside and they are acquitted. They will be released unless they are required in any other case.

DASTI.

SANJIV KHANNA, J.

S.P. GARG, J.

**AUGUST 28, 2012
VKR**