

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

+ **Crl. A. 997/2012**

% **Reserved on: 22nd November, 2012**
Date of Decision: 5th December, 2012

GHANSHYAM PRASAD YADAV Appellant
Through Ms. Anu Narula, Advocate.

Versus

STATE ...Respondent
Through Mr. Sanjay Lao, APP.

+ **Crl. A. 297/2012**

SUDHIR PRASAD YADAV @ BOXER Appellant
Through Mr. D. K. Sharma, Mr. O.S. Punia &
Mr. Depak Panwar, Advocates.

Versus

STATE Respondent
Through Mr. Sanjay Lao, APP.

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

SANJIV KHANNA, J.

By the impugned judgment, dated 24th September, 2011, the two appellants Ghanshyam Prasad Yadav and Sudhir Prasad Yadav (hereinafter referred to as A1 and A2, respectively) have been convicted under Section 302 read with Section 34 of the Indian Penal Code, 1860 (IPC, for short), for murder of Mahesh Kukreja, on 29th November, 2008, in his office, at 1st Floor of Property No. 2263/68 Gali Raghunandan, Naya Bazar, Delhi. The appellants have been sentenced

to life imprisonment and to pay fine of Rs.5000/- each, in a default of which, they are to undergo simple imprisonment, for two months.

HOMICIDAL DEATH AND INJURIES CAUSED TO THE DECEASED

2. Homicidal death of Mahesh Kukreja, due to neck injuries, remains undisputed by the appellants and stands established, beyond doubt, from the testimony of Dr. Akash Jhanjee (PW-5), who had conducted post mortem of Mahesh Kukreja, on 3rd December, 2008 at 1.00 P.M. The Post Mortem Report has been proved as Ex. PW5/A. As per the post mortem report and testimony of PW-5, the deceased Mahesh Kukreja had the following external injuries:-

1. Incised wound 7.2 cm x 5 cm x 1 deep, spindle shape placed almost horizontally over front surface of neck with gaping in the middle portion. The upper margin was placed 2.6 cm below thyroid prominence in the mid-line and lower margin was placed 5.2 cm above suprasternal notch. The margins were smooth, clean cut, well defined and everted with no bruising. No hesitational cuts present in the surrounding area. Wound was deeper at the commencement over left side neck side and showed tailing towards the right end in the form of three linear abrasions measuring 1.5 cm x 0.1 cm, 1 cm x .1 cm and 1.1 cm x 0.1 cm. The associated vessels comprising of carotid arteries and jugular veins on both sides cleanly cut. Skin, subcutaneous tissues, fascia and muscles in the involved area also found clearly cut. Trachea anterior wall showed cut 2 cm in length with lumen exposed showing clotted blood deposits in the walls. Haematoma formation was seen in the wound with dried blood deposits at places (cut throat injury).

2. Multiple small abrasions numbering 4 present over upper half front of right side neck measuring 3 cm x 0.2 cm, 2 cm x 0.2 cm, 1.5 cm x 0.3 cm and 1.1 cm x 0.2 cm, crescentic type distributed haphazardly lying 1.5 cm above and right of injury No. 1.

3. Multiple small abrasions numbering 3 present over upper half front of left side neck measuring 2 cm x 0.1 cm,

1.6 cm x .1 cm, and 1 cm x .1 cm, crescentric type lying 3 cm above and left of injury No. 1.

4. Contusion swelling reddish 5 cm x 4.5 cm over back surface of left hand region.

5. Contusion swelling reddish 3 cm x 3 cm over left cheek region of the face, 1 cm outer to the left nostril opening fold.

6. Contusion swelling reddish 4 cm x 2 cm over outer surface of the right lower eyelid surface.

7. Abrasion contusion reddish 2 cm x 2 cm over left side face out of the left eye outer angle.

8. Contusion swelling reddish 3.5 cm x 1.8 cm over outer surface of the left upper eyelid region.

9. Abrasion contusion reddish 3 cm x 3 cm over left parietal region of the head lying 5.2 cm above the top of left ear pinna.

10. Abrasion Contusion reddish 4 cm x 2 cm over back of right side head, occipital region lying 1.5 cm below and right of external occiput.

11. Contusion reddish 3 cm x 2 cm over outer front of middle half of left forearm.

3. On internal examination, it was found that -on the neck- soft and subcutaneous tissue, fascia, nerves and muscles were cut via injury No. 1. Trachea, along with carotid and jugular vessels on both sides, was cut and lumen exposed via injury No. 1. Cause of death was a combined effect of hemorrhagic shock and asphyxia, consequent upon cut throat injury i.e. injury No. 1. All injuries were ante-mortem and fresh in duration. As per Ex. PW5/A and the statement of PW-5, in the court, time of death was 4-5 days. This is an important aspect and has been examined later on. At this stage, it is suffice to notice that, as per the post mortem and statement of PW-5, the deceased had died between 1.00 A.M. on 28th November, 2008 to 1.00 P.M. on 29th November,

2008. PW-5, in the cross-examination, had denied that the body was highly decomposed and that the death might have happened about eight days before the post mortem was conducted. PW-5 has stated that it could not be determined whether the deceased had consumed liquor though viscera was kept because there was “liquor like odour”. The Viscera Report, given by the CFSL (Ex. PW21/D), states that, on examination of the blood sample, it was found that blood contained ethyl alcohol (59.5 mg per 100 ml of blood).

4. The time of death, as indicated by PW-5 and as mentioned in Post Mortem Report (Ex. PW5/A), is an estimation and is not precise or exact. Variation in time is possible and the time of death indicated is not treated as mathematically precise. The time of death indicated, however, does give a fair view regarding when the injuries were caused and enables the court to decide on the veracity of the prosecution case and involvement of the accused.

CASE BASED UPON CIRCUMSTANTIAL EVIDENCE

5. This brings us to the crucial issue regarding whether or not the appellants were the perpetrators of the said injuries and whether they have been, rightly punished for the crime.

6. The present case is premised purely upon circumstantial evidence as there is no eye-witness. In cases of circumstantial evidence, each fact relied by the prosecution has to be examined and proved and Court has to be satisfied that the facts established cumulatively prove the accusation against the accused and rule out possibility of any third person involvement i.e. prosecution must establish its case beyond reasonable doubt.

7. The prosecution relies upon statement of Trilok Chand (PW-6) to prove the last seen allegation to incriminate the appellants. Reliance has

been place on the statement of Satbir Sharma (PW-4) and chance finger prints on the liquor bottle and two glasses, claimed to have been recovered on the basis of the disclosure statement made by A-1, on 9th December, 2008. Additional circumstance, relied against A1, is recovery of the pant with blood stains.

LAST SEEN EVIDENCE

8. Trilok Chand (PW-6), in his examination in chief, has stated that he used to sit, every morning and evening, in his “Jeeja” brother-in-law’s shop at 2263/68, Gali Raghunandan, Naya Bazar, Delhi. The two appellants used to come, at the shop, to purchase water bottle, soda and cigarette. The deceased, who had his office above the shop on the 1st floor of the same building, also used to come for the same purpose. On 29th November, 2008, at about 8.00 – 8.30 P.M., the deceased Mahesh Kukreja purchased water, soda and cigarette, from the shop and went upstairs, to his office. At that time, he alleges that both the appellants were standing near the staircase and PW-6 saw them accompanying Mahesh Kukreja to his office. He did not know what happened thereafter. On 2nd December, 2008, police came at about 9.00 – 10.00 A.M., to Mahesh Kukreja’s office, and it was then that PW-6 came to know about murder of Mahesh Kukreja. His statement, recorded by Magistrate under Section 164 Cr.P.C., was marked as Ex. PW6/A. In his cross-examination, he has stated that Mahesh Kukreja used to come to his office, at 8.00 A.M., and often remained there till late night. He further stated that stair-case was directly visible from his shop since the shop counter had been extended. There were two counters and people used to purchase the goods from both the counters. The deceased had purchased articles, from the shop, at 7.30 – 8.00 P.M. and, at that time,

4-5 other customers were also standing, at the counter, and other 4-5 persons were standing, near the stair-case. He had seen deceased going upstairs, after purchasing articles, and 4-5 persons following him, up the stairs. He has further stated as under:

“It is correct that I did not see those 4-5 persons who had entered along with deceased to the staircase, coming back from the office of the deceased”.

PW-6 himself had never visited the office of the deceased, on the 1st floor.

9. As already noted above, as per the Post Mortem Report and statement of PW-5, the deceased had died between 1.00 P.M. on 28th November, 2008 and 1.00 P.M. on 29th November, 2008 which is an approximation. There is evidence, in form of statement of PW-9 (deceased's mother) and PW-8 (deceased's brother), that PW-9 had interacted with the deceased in the evening of 29th November, 2008. She has also stated that, at times, deceased used to sleep in the shop, where he was working, and would not come back home. Therefore, she had not become anxious and she did not make enquiries when the deceased did not return, after 29th November, 2008 till 2nd December, 2008.

10. In view of the aforesaid position, the pertinent question is whether principle of last seen can be applied in the present case? We are not inclined to accept and apply the principle of last seen in the present case for following reasons:-

(A) The deceased was a trader and, as per PW-9, there were occasions when he used to stay in the office for days. Obviously he entertained and interacted with different people, in his office, at various hours. The office was located in a market place frequented by visitors.

(B) PW-6, no doubt, in his examination in chief and his statement under Section 164 Cr.P.C., made reference to the appellants' presence

and the fact that the appellants' went upstairs, with the deceased, but he also admitted and accepted that he had seen 4-5 other individuals going upstairs. He has stated that he did not see these 4/5 persons returning and coming down. Statement of PW-6 is not clear regarding whether these 4-5 persons had gone with the deceased and the two appellants or they have gone to some other office, in the same building but the appellants are entitled to benefit if there is an ambiguity.

(C). There is always a possibility and it cannot be ruled out that some other persons may have visited the deceased, in his office, after 8 P.M. on 29th November, 2008. Being a market area and the deceased being a trader, it is probable that the persons known to him and others, working in the area, could frequent and talk to him.

(D). The site-plan, placed on record and marked Ex. PW1/A and PW20/A, shows that there were number of shops or offices on the first floor. This is also clear from the photograph Ex. PW 21 E to 23. Therefore, presumably there was a lot of movement and footfalls, in the said building and again, we reiterate that involvement of other persons cannot be ruled out.

(E). It is not the case of the prosecution that the two appellants used to reside or live with the deceased, in the said office. On the other hand, the prosecution is categorical that the appellants used to reside at separate locations. As per the prosecution version and statement of Satbir Sharma (PW-4), appellant A-1 resided in C-1/68, Sector 16, Rohini, along with his another employee – Udaipal. Thus, as per the prosecution case, A-1 returned to the flat and had stayed there. Examination of Udaipal would have proved and established when and at what time A-1 had come back to the premises. Udaipal was not examined and was not a prosecution witness. (The effect of non-

examination of Udaipal on the recovery of pant has been examined separately). Further, whereabouts and presence of A-2, in this interim period, has not been investigated, verified and put on record.

(F). From the crime spot i.e. the room/office, a half filled water bottle was recovered but no soda bottle was recovered. The seized water bottle was not put to or identified by PW-6 as the same bottle which was purchased from him, by the deceased, before the incident.

(G). The mobile phone, lying next to the deceased, was seized but no record of the call details were produced, to determine when and at what time the last call was made or received by the deceased from his mobile phone. This is crucial in the present case, if we have to apply the principle of last seen. It is difficult to accept and believe that PW-8 and PW-9, deceased's brother and mother would not have tried to contact Mahesh Kukreja, post 8.30 PM of 29th November, 2008 till the recovery of dead body on 2nd December, 2008. On this aspect, as well, there is no explanation for non-examination of the call records by the Investigating authority.

(H) The aforesaid aspects on the question of last seen have to be read with the alleged recoveries relating to the crime, which also negate applicability of the said principle in the factual matrix of the present case.

RECOVERIES FROM THE CRIME SPOT

11. One half filled alcohol bottle was recovered, from the room, but the said bottle was not on the table, along with the glasses. The bottle was on the top of the cupboard. The contents of the glasses, which were examined by the CFSL, were negative for alcohol. As per the prosecution case, the deceased and the two appellants had alcohol but not from the bottle, in question, which was found in the room. They had alcohol from another bottle which was found and recovered, pursuant to

the disclosure statement of A-1, on 9th December, 2008, along with two glasses. Prosecution pleads that finger prints of both accused were found on the alcohol bottle and the two glasses, as established in the FSL report (Ex. PW 18/E , 18/F & 21/D). However, we are not inclined to accept the said recovery and the consequent finger prints. We find considerable merit in the contention of the appellants that the bottle and the two glasses recovered on 9th December, 2008 have been planted. The following facts are apposite and relevant:-

(A) The place of crime was thoroughly inspected, by the police and the crime team, on 2nd December, 2008, and even dog squad was called. It is difficult to accept that the police officers, in spite of thorough search and examination, did not notice or locate the alcohol bottle and glasses which were allegedly found later, after 7 days, on 9th December, 2008.

(B) The Investigating Officer, Inspector Karan Singh (PW-21), has stated that the alcohol bottle and two glasses were seized from an aluminum rack, outside or near the gate of Shop No. 12, on 9th December, 2008. The crime team was summoned, photographs were taken and finger prints were lifted. Similar statement was made by HC Dilip Singh (PW-13) who further stated that he had lifted two chance prints from two glasses and one chance print from half bottle of liquor. However, in the cross-examination, he has accepted that the rack was lying open. He could not tell about the ownership of the rack. We have seen the photographs. From the photographs, it is clear that the rack did not have any cover/door and was open. Contents and things kept in the rack were visible to all. The rack was kept outside, in the corridor, as is apparent from the two site plans (Ex. PW1/A and PW20/A). In the photographs, belongings including bags etc. can be seen. It is difficult to accept that an half filled liquor bottle and two glasses would have

remained unclaimed and untouched, in an open rack, for ten days, from 29th November, 2008 till 9th December, 2008. Thus it is clear to us that the bottle and the two glasses, which were allegedly recovered on 9th December, 2008, were planted. In that light, the alleged disclosure statement does not have any value and has to be rejected.

12. Crime team lifted two samples finger prints, from the glass door, only on 2nd December, 2008 i.e. the date on which the dead body of Mahesh Kukreja was found. However, the chance prints could not be tallied with the finger prints of the two appellants.

RECOVERY OF BLOOD STAINED PANTS

13. As noticed above, the prosecution relies upon recovery of blood stained pant from the A-1's premises No. C-1/68, Sector-16, Rohini. The prosecution case is that this pant was recovered, on the basis of disclosure statement made by the accused A-1, from the said premises. This is the premises where the accused A-1 used to reside with Udaipal, as stated by Satbir Sharma (PW-4), the employer of A-1. However, as we have noticed before, statement of Udaipal has not been recorded. Udaipal would have been the best witness to determine and decide at what time A1 came back to the premises on 29th November, 2008, and whether or not he had seen A-1, with the blood stained pant. His non-examination makes the prosecution case a grave suspect and creates doubt regarding their submission that clothes worn by A-1, including the pant which was blood stained, was recovered from the said flat, on 9th December, 2008, nearly ten days after the occurrence. Rohini is a fairly developed well-known locality with all modern civic amenities like water supply, drainage, sewage etc. and it is difficult to perceive that A-1 would not have tried to clean or wash the blood stained pant or,

alternatively, burn it. In the present case, as per the prosecution, the murder had taken place in the intervening night of 29th & 30th November, 2008 and knowledge/ information about the murder had come to notice of the police/public only on 2nd December, 2008. Till then no one suspected A-1 for the said murder. Presence of blood stains, mentioned in FSL report (Ex. PW18/E and 18/F) and reference to blood stained pant, pursuant to the disclosure statement on 9th December, 2008, has to be discounted. We may note that, as per the FSL report (Ex. PW18/E and 18/F), blood group on the pant could not be ascertained.

EXTRA JUDICIAL CONFESSION

14. This brings us to the statement of Satbir Sharma (PW-4), employer of A-1, to whom the alleged extra judicial confession was made by A-1. Plea of extra judicial confession, as expounded by the Supreme Court, requires careful scrutiny before it is accepted. Extra judicial confession is normally made to a close confident and/or a person on whom the accused relies or seeks favours. It may be made because of consequent repentance or that the guilty is under a belief that the person, to whom the confession is made, would help and protect him or other reasons which could be weighing on a guilty mind. The Supreme Court in *Sahadevan and Anr. v. State of Tamil Nadu* 2012 (5) SCALE 415 laid down the following principles which would make an extra judicial confession a reliable and trustworthy piece of evidence, capable of forming the basis of conviction of an accused:

22....The Principles:

- (i) The extra judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.
- (ii) It should be made voluntarily and should be truthful.
- (iii) It should inspire confidence.

(iv) An extra judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

(v) For an extra judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

(vi) Such statement essentially has to be proved like any other fact and in accordance with law.”

15. The Supreme Court in the said decision also dealt with evidentiary value of extra judicial confession in cases based on circumstantial evidence and held that:

“12. ...In case of circumstantial evidence, the onus lies upon the prosecution to prove the complete chain of events which shall undoubtedly point towards the guilt of the accused. Furthermore, in case of circumstantial evidence, where the prosecution relies upon an extra judicial confession, the court has to examine the same with a greater degree of care and caution. It is a settled principle of criminal jurisprudence that extra judicial confession is a weak piece of evidence. Wherever the Court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra judicial confession, it must ensure that the same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.”

16. In light of these observations, we shall examine statement of Satbir Sharma (PW- 4), employer of A-1. PW-4, in his statement, has mentioned that on 29th November, 2008, he was busy in the nephew's marriage, in Sonipat and on 30th November, 2008, being a Sunday the markets were closed, he did not come back to Delhi. Then, on 1st December, 2008, there was another marriage in Sonipat of his niece.

Therefore, he came back to Delhi on 1st December, 2008, in the evening at about 4.00 P.M., and went back to Sonipat at 6.30 P.M. Before proceeding to Sonipat, he had met the appellant – A-1, at Naya Bazar. A-1 had demanded money as he wanted to go back to his village. PW-4 refused to give him money because he did not have sufficient cash with him. However, A-1 insisted and stated to him that his parents were ill and that he and Sudhir had killed Mahesh Kukreja, therefore, he urgently needed to return to his village. PW-4 has stated that he was under the impression that A-1 was referring to “maarpeet” and did not take it seriously, though he knew the deceased who was in the same business. On 2nd December, 2008, he came to Delhi from Sonipat and, at about 10.15 – 10.30 A.M., he came to know that Mahesh had been killed. He, thereafter, made a statement to the police and informed them about the extra judicial confession. He has claimed to have joined the investigation, on 7th December, 2008, when the appellant A-1 was arrested from the counter of Old Delhi Railway Station. He had signed the arrest memo (Ex. PW4/A) and the personal search memo of the accused A-1 (Ex. PW4/B).

17. There is difficulty in accepting the version or statement of PW-4 pertaining to the extra judicial confession. Firstly, as noticed above, PW-4 has stated that A-1 had insisted on taking money because he wanted to return to his village and had stated the reasons to be that his parents were ill and because he had killed Mahesh Kukreja. A-1, as per PW-4, had a plausible excuse that his parents were ill. It is not understandable why and for what reason A-1 would then confess and admit to PW-4 that he, and Sudhir, had killed the deceased. Further, in his cross-examination, it was suggested and put to him that A-1 had gone to his native place to see his ailing parents on 19th November, 2008. However, there PW-4 was

ambiguous in stating that A-1 had gone to his native village to attend his ailing parents. Secondly, it is difficult to accept that PW-4 did not take A-1 seriously, in spite of confession, and treated the confession as 'maarpeet' or a scuffle. Murder or a fight involving a known person can jolt or would cause an alarm. PW-4 himself states that he knew the deceased and, therefore, it is difficult to believe that he would not have taken note and taken immediate action like making phone call etc. to ascertain well-being of the deceased or inform the police, in case A-1 had made the said confession. On the contrary, when further cross-examined, PW-4 averred that it was wrong to suggest that A-1 had not stated before him that he had killed Mahesh. He volunteered that A-1 had stated before him that "maine Mahesh ko maar diya kyonki woh galat bol raha tha" i.e. "I killed Mahesh because he was making a wrong statement". The words "wrong statement" have not been elaborated upon. PW-4 volunteered that the words "maar diya" were understood by him as statement by A-1 that he had beaten up Mahesh Kukreja. This cannot be accepted. Normal conduct in such circumstances would be to make enquiry and at least get in touch with the known person to ascertain what had happened. Thirdly, PW-4's statement, that he did not take the confession seriously, is contrary to his statement under Section 161 Cr.P.C. wherein it is recorded that he was shocked and taken aback when A-1 confessed that he along with Sudhir i.e. A-2, had murdered Mahesh Kukreja. PW-4, it appears, changed his statement, in the court, because he knew that he would be confronted and cross-examined as to why he did not report the matter to police, once extra judicial confession was made by A-1. Fourthly, PW-4, in his cross-examination, had admitted that his shop in the grain market was near Mahesh Kukreja's office and they had business transactions of oil and grains. There were

also money transactions between them. He further stated that A-1 was not visiting his shop regularly and used to come at 10 – 10.15 A.M. A-1 was his employee and not well off and of the same social and economic stature as Mahesh Kukreja. It is apparent that Mahesh Kukreja was in the same business, with the appellant, and there were money and business transactions between them. A-1, as per the PW-4, was dependent upon him for his monetary needs and was his employee. It is difficult to accept and believe that PW-4 would have remained quiet, not cautioned or reprimanded A-1 even if he had understood or heard that A-1 had beaten up Mahesh Kukreja. At least, PW-4 should have spoken to Mahesh Kukreja and verified what had happened, after the said conversation with A-1. This did not happen. PW-4 is a man of considerable means and economic wealth. He has stated that he owned several shops in Delhi, had employees and two cars, was owner of a banquet hall and a shop in Sonipat. It is surprising that no action was taken by him, in spite of confession of his own employee that he was involved in even a scuffle with his business alliance. Fifthly, PW-4, initially in his examination in chief, had stated that A-1 had confessed that he along with Sudhir (A-2) had killed Mahesh Kukreja. However, in his cross-examination he changed his stand viz. A-2 to that effect that A-1 did not name A-2 in his confession about beating/killing of Mahesh.

18. This apart, there is discrepancy even as to the time when the alleged confession was made to PW-4. As per examination in chief, PW-4 has claimed that the said confession was made on 1st December, 2008, between 4.00 to 6.30 P.M., before he left for Sonipat. In the cross-examination, he has stated that he had talked to A-1 at Peeli Kothi, when he was going to Sonipat for the second time, and he did not tell the police that he met him at Naya Bazar. This was contrary to his statement

under Section 164 Cr.P.C. (Ex. PW4/DA). When confronted, PW-4 again changed his statement and stated that A-1 had met him at Naya Bazar. However, he had volunteered and stated that A1 had asked for money at 12:00 midnight in the intervening night of 29th and 30th November, 2008. It is difficult to reconcile and collate the exact time and occasion when the alleged extra judicial confession was made.

19. In view of the aforesaid contradictions, in the statement of PW-4, which are material and substantial and go to the core of the alleged extra judicial confession, set up by the prosecution, we are inclined to completely disbelieve and not rely upon the extra judicial confession.

INCRIMINATING EVIDENCE AGAINST A-2

20. It is pertinent to note, regarding A-2 that, as per the prosecution, statement of PW-6 was recorded on 2nd December, 2008 and accordingly, he had named the two appellants. The police diary makes a reference that, on 3rd December, 2008, a police team had gone to the village of A-1. However, the police diary does not show that any attempt was made to locate and make enquiries from A-2 i.e. Sudhir Prasad Yadav, in the interim period. There is no incriminating material against him apart from the supposed recovery of clothes. However, the FSL Report (Ex. PW 18/E & 18/F) delineates that no human blood was found on A-2's clothes. In light of that, recovery of clothes becomes immaterial in A-2's case. This leaves us with virtually no incriminating evidence against A-2. His conviction cannot be based upon the sole statement of PW-6 that he had seen the appellant go upstairs in the building where the crime occurred that night. Therefore, his conviction cannot be sustained.

21. In conclusion, after scrupulous examination, we find that prosecution has been unable to establish that the appellants had committed the offence of murder of Mahesh Kukreja, under Section 302 IPC. The prosecution falters at so many grounds – the last seen theory was not established, the alleged recoveries have not been proved and indicate that they were planted and the extra-judicial confession is unreliable. The charges against the appellants, therefore, cannot be sustained. They are acquitted and will be released forthwith, unless required to be detained in any other case. The appeals are disposed of.

(SANJIV KHANNA)
JUDGE

(S. P. GARG)
JUDGE

December 05, 2012
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