

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

% *Judgment Reserved on :25.11.2013*
Judgment Delivered on: 02.12.2013

+ CRL.A. 285/2000

RAMESH Appellant

Through: Mr.Tarunesh Kumar,
Mr.Neelkanth Kumar and
Mr.Pradeep Kumar Sharma,
Advocates.

versus

STATE Respondent

Through: Mr.Sunil Sharma, APP.

AND

+ CRL.A. 388/2000

RAM GULAM Appellant

Through: Mr.Tarunesh Kumar,
Mr.Neelkanth Kumar and
Mr.Pradeep Kumar Sharma,
Advocates.

versus

STATE Respondent

Through: Mr.Sunil Sharma, APP.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The appellants are aggrieved by the impugned judgment and order of sentence dated 24.12.1999 whereby they had been convicted under Sections 302/201/34 IPC and had been sentenced to undergo imprisonment for life and to pay a fine of Rs.50,000/- in default of payment of fine to undergo simple imprisonment for five years for the offence under Section 302 IPC; they had been sentenced to undergo rigorous imprisonment for seven years each for the offence under Section 201 IPC and to pay a fine of Rs.10,000/- in default of payment of fine to undergo simple imprisonment for one year. Appellant Ram Gulam was also convicted separately under Section 27 of the Arms Act and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.5000/- in default of payment of fine to undergo simple imprisonment for six months.

2 The version of the prosecution is as follows:

- i. On 29.12.1995 at 10.00-10.30 a.m. Chob Singh (PW-5) an employee of the Horticulture Department in a park outside his office saw a headless dead body of a male lying there. Police

was informed. DD No.17B (Ex.PW-19/B) was recorded in the local police station at P.S.Rajouri Garden. ASI Ram Niwas along with H.C. Ravi Dutt (PW-9) reached the spot i.e. Woodland Park, Subhash Nagar Mod; Inspector R.K.Rathi (PW-19) also joined them. A headless body of a male was found lying in the bushes. Deceased was wearing a blue colour baniyan and red colour underwear (kachha); there was a muffler and a blood stained shirt lying near the body. Local inquiry could not reveal the identity of the dead body.

ii. Rukka Ex.PW-19/B was dispatched and an FIR against unknown was registered under Section 302/34 IPC.

iii. Site plan Ex.PW-19/C of the spot prepared. Photographs of the scene of crime were taken. Exhibits were lifted from the spot which included bloodstained clothes and earth control vide memo Ex. PW-19/G. Inquest proceedings were ordered.

iv. On 30./12.1995 on an application (Ex.PW-19/F) post mortem of the deceased was conducted by Dr.L.T. Ramani (PW-16). The post mortem report was proved as Ex.PW-16/A. The post mortem doctor had noted that *it was a*

headless body of a male; height without head was 142 c.m.; complexion was dark and was uncircumcised. The post mortem examination further revealed that there was decapitation across the middle part of the neck. The skin all around showed fairly regularly cut edges. There was an abrasion ½ inch below the cut level present horizontally running behind up to postero-lateral surface. Size of the abrasion was 4 ½ inch x ½ inch. The skin flaps were seen hanging on the back of neck suggesting multiple leveled cuts. The decapitation was through the 4th cervical vertebra body. The cut surface of the bone was even.

On internal examination, neck tissues showed no appreciable extra vassation of blood in the neck tissues. The cut skin edges were devoid of any blood clot. (suggesting post mortem nature of decapitation). Ribs were intact. Lungs were adherent to the chest wall, heart was normal. Stomach was full and containing semi disgusted food. Rigour mortis had passed off.

The opinion regarding cause of death was deferred till the

receipt of the analysis of the viscera and skin piece for tissue matching on the recovery of the head.

v. PW-16 handed over a wooden box containing the viscera, one sealed bottle containing the skin of the deceased and one sealed envelope containing a blood cloth piece as also the underwear and baniyan of the deceased; clothes were handed over to the police unsealed to facilitate the identification of the dead body.

vi. Further investigation included a hue and cry notice and a door to door inquiry to identify the deceased and the perpetrators of the crime. House nos.147 and 323, Transit Camp Raghbir Nagar, in the nearby vicinity were lying locked for a long time. Kanta (PW-4) the landlady of House No.157 revealed that Ram Gulam and Ramesh were her tenants for the last eight years i.e. from the year 1987; they were living in House No.157 along with four other persons; in December 1995, they had locked the premises and started living at some other place.

vii. Further inquiry revealed that these persons were natives of

village Chakmeera Pur, Unnav, U.P.

viii. On 18.4.1996 Inspector R.S.Dahiya (PW-20) went to their native village where he located Ramesh (PW-18) the brother of Jageshwar who was also reported missing from the village. It was learnt that accused Ram Gulam and Ramesh were working as labourers in Azadpur, Subzi Mandi.

ix. On 19.4.1996, PW-19 along with Inspector Dahiya and ASI Ghasi Ram along with other police personnel went to Azadpur Subzi Mandi in their search.

x. Both Ram Gulam and Ramesh were arrested vide memos Ex.PW-19/H and Ex.PW-19/J; their disclosure statements Ex.PW-9/A and Ex.PW-9/B were recorded. Pursuant to their disclosure statements both the accused persons led the police party to a gutter in Woodland Park where they took out one potali and inside that potali was wrapped a human skull. One white coloured shirt, one red coloured shirt, a pink coloured shirt, one white coloured pant and one loongi and a pair of hawai Chappals were also found there. These articles were sealed and taken into possession and so also the skull vide

memo Ex.PW-7/A. On the same day i.e. 19.4.1996 accused Ram Ghulam led the police party to house No.157 from where he took out a dagger from the parchhati of the house. Its sketch Ex.PW-4/A was prepared and was taken into possession vide memo Ex.PW-4/B.

xi. Photographs of the scene of crime Ex. PW-19/N were clicked. Site plan of the place where the dead body was found was prepared and proved as Ex. PW-19/R.

xii. Separate inquest proceedings were conducted regarding the recovery of the skull.

xiii. Death report Ex.PW-19/A was prepared.

xiv. On an application dated 19.4.1996 (ExPW-19/S) a request was made to the post mortem doctor to determine as to whether the skull belonged to the dead body on which the post mortem had been conducted vide Ex.PW-16/A.

xv. The second post mortem conducted by PW-16 of the human skull on 22.4.1996 revealed that *the soft tissues were attached to the lower part of occipital area and vertebrae. The lower jaw was present showing 16 teeth, both central*

incisors were missing (fallen). Upper jaw showed 16 sockets, both central incisors and 3rd molar tooth on the right side were missing. Few soft tissues were present in the eye ball sockets. The mental foremen was the middle. Teeth showed some attrition. There was no fracture or injury to the skull. Four cervical vertebrae were attached to the skull. The last one i.e. the 4th vertebra was cut on the posterior surface. The skull showed six male characteristics. Brain was missing. The doctor opined that it was a human skull and that of an adult male.

No other opinion was possible regarding cause of death or the manner of separation of the skull from the body. However the level of separation of skull was found corresponding with that of the headless body recovered earlier on 29.12.1995 which had been subjected to a post mortem vide report Ex.PW-16/A.

This report was proved as Ex.PW-16/B.

xvi. On the same day i.e. on 22.4.1996 Constable Shoram collected one plastic bottle containing a bone piece and

another plastic bag containing a shawl and a sweater from PW-16 which was taken into possession vide memo Ex. PW-11/A.

xvii. The exhibits were sent to CFSL. The CFSL vide its report (Ex.PW-19/B) dated 15.4.1998 opined human blood of A origin on the muffler, baniyan and underwear which were the clothes found on the headless dead body which as per the prosecution matched with the blood group detected in the bone which was recovered from the skull.

xviii. Human blood was also detected on the dagger Ex.P-10 but there was no reaction.

xix. This was the gist of the version of the prosecution.

3 In the statement of the accused recorded under Section 313 of the Cr. P.C. they stated that they have been falsely implicated in the present case; they had been picked up from their village Chakmeera Pur on 17.4.1996; no disclosure statement was made by them; they were never tenants of PW-4; they were innocent.

4 No evidence was led in defence.

5 On behalf of the appellant arguments have been addressed at length. It is pointed out that this is a case of circumstantial evidence

and unless and until all the links in the chain of circumstances are proved a conviction cannot be founded. There is no other evidence with the prosecution except the recovery of a skull which was purported to have been recovered at the instance of the accused persons four months after the dead body was recovered. This was from an open place i.e. in the gutter. This recovery has been planted upon the accused persons. It is pointed out that this is the only piece of evidence on which prosecution is relying. Attention has been drawn to the testimony of PW-18 where on oath in court he has stated that on 19.4.1996 Delhi Police came to his village and told him that his brother had been traced and thereafter they had shown him the skull of his brother at the police station which was identified by him. Submission being that it was on 18.4.1996 that the whole exercise had been completed whereas as per the version of the prosecution the recovery of the skull was effected pursuant to the disclosure statement of the accused persons on 19.4.1996. This demolishes the version of the prosecution completely. The prosecution has also failed to establish whether it is a case of homicide as cause of death had not been given in spite of the post mortem having been conducted both on the headless body as also on the

skull. To support this proposition reliance has been placed upon State of Punjab Vs. Bhajan Singh AIR 1975 SC 258. Further submission being that motive in a case of a circumstantial evidence assumes great importance but no motive has been spelt out. On all counts the appellant is entitled to benefit of doubt and a consequent acquittal.

6 Arguments have been rebutted by the learned public prosecutor. Submission being that the case of the prosecution stands proved to the hilt and the most clinching piece of the evidence is the recovery of the skull which has been made at the behest of the accused persons. The 4th vertebra where the headless body had been cut and which had been noted in the first post mortem report also corresponded with the finding returned in the second post mortem report which had also noted that there was a severance of the neck at the level of the 4th vertebra; the doctor who was the expert had opined that this skull belonged to that headless body. The other circumstance of the recovery of the blood stained clothes of the accused which matched the blood group of the victim was yet another piece of clinching evidence. The impugned judgment does not call for any interference.

7 We have perused the record. We have also heard the submissions

made by the respective parties.

8 This is admittedly a case of circumstantial evidence. The law on circumstantial evidence is clear. In Padala Veera Reddy v. State of A.P.; 1989 Supp (2) SCC 706 the Apex Court had relied upon the following tests which have to be satisfied in a case of circumstantial evidence:

“10.(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should 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 none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

16. The above enunciated principle of law was reiterated in the matter of State of U.P. v. Ashok Kumar Srivastava (1992) 2 SCC 86, where the Supreme Court, inter alia, observed thus:

9. This Court has, time out of number, observed that while appreciating circumstantial evidence the Court must adopt a very cautious approach and should record a conviction only if all the links in the chain are complete pointing to the guilt of the accused and every hypothesis of innocence is capable of being negated on evidence. Great care must be taken in evaluating circumstantial evidence and if the evidence relied on is

reasonably capable of two inferences, the one in favour of the accused must be accepted. The circumstance relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.”

9 In the light of the aforementioned principles as set down by the Apex Court we shall now proceed to analyze the case as set up by the prosecution.

10 On 29.12.1995 a headless dead body of a male was found in the park of the Horticulture Division at Janakpuri. This was noted by PW-5 who reported the matter to the local police station. The local police of P.S.Rajouri Garden arrived at the spot. Photographs of the scene of crime Ex.PW-5/A1 to A7 had been taken. The dead body was of a male person who was wearing a blue coloured baniyan and a red coloured underwear; muffler and a shirt were lying near the dead body. In spite of best efforts the identity of the dead body could not be established. An FIR under Section 302/34 IPC was registered against unknown persons as the accused persons were not known. The inquest report (Ex.PW-19/D) and the death report (Ex.PW-19/F) show that age of the headless dead body was opined to be about 30 years; he was a male; the dead body was thin and slender; in the column of distinguishing marks the moles noted were thick and burly.

11 The post mortem report (Ex.PW-16/A) revealed the height of the dead body to be 142 cm. The decapitation of the dead body was through the fourth cervical vertebra. Opinion on the cause of death had been deferred. The body was accordingly cremated in unidentified form. The viscera and the clothes of the deceased had been preserved.

12 The investigation continued. In the course of the investigation and door to door survey in the area of vicinity it was learnt from PW-4 that the occupants of room No.157, Transit Camp, Raghubir Nagar was lying locked since December, 1995 and Ram Gulam and Ramesh who were the tenants since 1987 had since left; they had been living in this room along with four other persons. This had raised a suspicion in the mind of the investigating team. Further inquiry revealed that Ramesh and Ram Gulam were the residents of Village Chakmeera Pur, Unnav, U.P.

13 On 18.4.1996, PW-20 along with his other staff gone to Village Chakmeera Pur, Unnav where he met Ramesh (PW-19) brother of Jageshwar who told them that his brother left the village in 1995 and thereafter he had not returned.

14 Testimony of PW-18 reveals that Jageshwar (his deceased brother) had on 16.12.1996 appeared in a case at Unnav; at that time he was dressed in a white pant and a white shirt; his brother had told him that after his court work he would leave for Delhi and would be residing with Ram Gulam to earn his livelihood in Delhi; Ram Gulam was the nephew of his brother-in-law. Since Jageshwar did not appear in the Unnav Court for the next two dates PW-18 made inquiry from Ram Gulam who was in the village and questioned him about Jageshwar wherein Ram Gulam told him that Jageshwar had not met him in Delhi. Missing report was lodged by PW-18 in the local police station in February 1996.

15 Further deposition of PW-18 is to the effect that on 18.4.1996 Delhi Police had come to their village and informed him that his brother had been traced and he was taken Delhi. He was shown the clothes of his brother and a skull at the police station where he identified the clothes as those belonging to his brother; Ex.P-7 was the sweater which his brother used to wear; Ex. P-8 was a part of a shawl which belonged to his sister. He had cremated the skull of his brother. The other articles

of clothes shown to him i.e. red shirt, white shirt, loongi and a pair of hawai chappal were also identified by him as belonging to his bother.

16 In his cross-examination PW-18 admitted that 2-3 cases of dacoity and robbery were pending against his brother at Unnav. He denied the suggestion that his brother was having enmity with many persons. He admitted that the Delhi Police had taken him to Delhi from his home on 18.4.1996; he also reiterated that clothes shown to him (Ex.P-7 and P-8) as also the skull were identified by him in the police station.

17 This version of PW-18 highlights and substantiates the argument of the learned defence counsel. It shows that it was on 18.4.1996 that Delhi Police had gone to Unnav, U.P. and informed PW-18 that his missing brother Jageshwar had been found. This is clear from the deposition of PW-18. PW-20 has also reiterated this version.

18 How the police party on 18.4.1996 was aware that the deceased brother of PW-18 had been located in Delhi, is unanswered. The recovery of the skull pursuant to the disclosure statement of the accused was admittedly on 19.4.1996. Version of PW-18 that he had identified

the skull and clothes of his deceased brother in the police station on 18.4.1996 which has gone unrebutted is by itself is enough to throw out the case of the prosecution. The submission of the learned public prosecutor that this could probably be a typographical error is dislodged by the fact that PW-18 stuck to his stand not only in his examination-in-chief but also in his cross-examination. If this was a typographical error nothing prevented the public prosecutor to seek a clarification on this count by cross-examining but he chose not to do so. In the absence of any such cross-examination, the statement made by PW-18 is binding.

19 It is thus established that on 18.4.1996 the clothes of Jageshwar had been shown to PW-18 in the police station along with his skull which had been identified by him. Recovery of the skull allegedly made on 19.4.1996 is thus demolished; it is nothing but sham and planted.

20 Version of PW-20 is also relevant on this count. He has also categorically stated that it was on 18.4.1996 that he had gone to District Unnav in connection with the investigation of this case where he met PW-18 brother of Jageshwar. In his cross-examination, he admitted that at the time when he had gone to Unnav (i.e. 18.4.1996) he knew that the brother of the deceased was living in Unnav District. How on 18.4.1996

PW-20 knew that PW-18 was a resident of Village Chakmira, Unnav, U.P. is again not answered. Even on a specific query, learned public prosecutor has no answer. PW-20 in fact in his entire deposition on this count has not spoken of any other date other than 18.4.1996.

21 PW-7 and PW-8 were witnesses to the recovery of this skull. On 19.4.1996 after the arrest of the accused they had led the police party to a open sewer from where a skull wrapped in a jersey had been recovered; along with the skull a white coloured shirt, a white coloured pant, a red coloured shirt, pink coloured shirt and one loongi as also a pair of hawai chappal were also been taken into possession. The skull was seized vide memo Ex. PW-7/A.

22 PW-8 (Chander Prakash) had turned hostile. He did not support the version of the prosecution.

23 PW-7 (Bal Kishan) as on oath stated that he had joined the investigation on 19.4.1996. Accused persons had taken the police party to the Gudier Park, near Transit Camp, Raghubir Nagar from where a skull of a human being along with few clothes and a pair of hawai chappal were recovered in their presence and the same had been taken

into possession vide memo Ex. PW-7/A. He denied the suggestion that he was not a witness to the recovery.

24 PW-19 and PW-20 were both parties to this recovery; neither of them have spoken of the presence of PW-7; however, memo Ex. PW-7/A has been admittedly prepared at the instance of PW-7. PW-19 admitted that the gutter from where the skull was recovered is an open place; it was frequented by people; the water was not following in the gutter; public witnesses had been asked to join the recovery but only Chander Prakash (PW-8) had agreed to join. His testimony is conspicuously silent on PW-7 having joined the recovery.

25 PW-20 in his cross-examination admitted that the depth of the sewer from where the potali containing the skull was recovered was about 2- 2½ feet deep; it was a dry sewer which was a common fare and people were passing by.

26 Recovery from an open and accessible place and that too 4 months after the alleged death of the victim again throws doubt on this recovery.

27 In Sattatiya @ Satish Rajanna Kartalla Vs. State of Maharashtra AIR 2008 SC 1184 a recovery of the clothes and the weapon (a blade)

from an open place, accessible to the public was disbelieved. The Apex Court in this Context had held:

“It has not been explained as to why the appellant gave information in piecemeal on three dates i.e. 3.10.1994, 5.10.1994 and 6.10.1994. Room No.45 of ‘Ganesh Bhuvan’ from which the clothes are said to have been recovered was found to be unlocked premises which could be accessed by any one. The prosecution could not explain as to how the room allegedly belonging to the appellant could be without any lock. The absence of any habitation in the room also cast serious doubt on the genuineness and bonafides of recovery of clothes. The recovery of half blade from the road side beneath the wooden board in front of ‘Ganesh Bhuvan’ is also not convincing. Undisputedly, the place from which half blade is said to have been recovered is an open place and everybody had access to the site from where the blade is said to have been recovered. It is, therefore, difficult to believe the prosecution theory regarding recovery of the half blade. The credibility of the evidence relating to recovery is substantially dented by the fact that even though as per the Chemical Examiner’s Report the blood stains found on the shirt, pant and half blade were those of human blood, the same could not be linked with the blood of the deceased. Unfortunately, the learned Additional Sessions Judge and High Court overlooked this serious lacuna in the prosecution story and concluded that the present of human blood stains on the cloths of the accused and half blade were sufficient to link him with the murder.”

28 The recovery of the skull in the present case is thus wholly unreliable.

29 Accused persons have been specifically charged for having committed the murder of Jageshwar. As noted supra, this is a case of

circumstantial evidence. Besides a charge under Section 302/24 IPC charges under Section 201 of the IPC and Section 27 of the Arm Act had also been framed against the accused. The order on charge dated 03.4.1997 specifically recites so.

30 It was incumbent upon the prosecution to establish that the murdered victim was none other than Jageshwar. This has, however, not been proved. On 29.12.1995 a headless body of a human male had been recovered; it was cremated unidentified. The clothes worn by the victim i.e. his baniyan, underwear and the muffler lying near the dead body had been preserved. Four months later i.e. on 19.4.1996 a head of a male person had been recovered. This court has already disbelieved the recovery of the head. Recovery stood demolished in view of the version of PW-18 which was in total contrast and in conflict with the versions of PW-19 and PW-120.

31 There are other reasons also for holding the recovery to be planted. Ex.PW-16/A was the first post mortem which was conducted on the headless body. This report had opined the victim to be slender built, 5 feet tall and 30 years old having a dark complexion. His neck was severed from his body. This was cut at the point of 4th vertebra.

On 22.4.1996, the human skull recovered from the gutter purported to be of the deceased had been subjected to a post mortem. Photographs of the skull had also been taken. Before adverting to the post mortem report, the photographs Ex.PW-19/N, Ex.PW-1/O, Ex.PW-19/P and Ex.PW-1/Q have been perused. These were the positives. The negatives could not be retained. A perusal of these photographs show that it is a human skull which had been recovered. There was no flesh or skin on it. This has also been opined by PW-16, the post mortem doctor. These photographs show that this skull having no skin on it, the features on its face were absolutely undecipherable.

32 In this scenario how PW-18 the brother of the victim could have identified the skull as the head of his deceased brother Jageswar has not been answered. Scrutiny of these photographs in fact show that it was impossible to have detected or noted the features in the face which could connect this skull as the face of Jageshwar.

33 The post mortem report of the skull recites that it was a male skull having six male characteristics. The age of the person to whom the skull belonged could not be opined so also no other information regarding the height and the weight of the victim. In fact no opinion on the cause of

death could be given. The only finding in favour of the prosecution was that the neck was cut on the 4th vertebra on the posterior surface and the level of the separation of the skull was found corresponding with the level of the headless body recovered earlier on 29.12.1995. This has been stated by the post mortem doctor (PW-16).

34 Admittedly, the headless dead body had been cremated. The body was not before the doctor at the time when he gave the opinion that the level of the separation of the skull corresponded with the headless body recovered earlier. Even in his report Ex. PW-16/B no further information to this effect is forthcoming. The doctor even could not opine about the age of the victim. There was no skin or tissues visible on the head. Only the skull bones were intact.

35 What could have established the connectivity between this headless body and the skull was either a DNA test i.e. the DNA of the tissues of the headless body and the skull which could have been performed either from the extraction of the bone of the headless body and the skull or through the skin of the body and the head. In his cross-examination PW-16 admitted that no bone of the body had been preserved. Bone of the skull alone was preserved. There was no bone of

the headless body which could be used to match the two bones. The skin had been preserved but since there was no skin available on the skull (at the time of its recovery) no such matching could be done. DNA profiling was also not done.

36 Learned public prosecutor on this count submits that DNA was not a very popular method used by the investigating agencies in the year 1995 when this crime was committed. The super imposition of the photograph of the victim was a method being deployed by the investigating agencies to draw a conclusion whether the headless body and the head matched or not; but in this case in the absence of the photograph of the victim this method could not be used.

37 This is not a correct statement; in several cases including the murder case against Shibu Shoren (which was of the year 1994) the investigating agency had used the DNA profiling method. The second submission of the learned public prosecutor is also completely off the record. Not a single witness had stated that any effort was made to obtain the photograph of the victim; there is no investigation qua this aspect.

38 That apart in the absence of any other evidence to connect the

head with the body; the body having been cremated four months ago and the doctor opining only on the examination of the skull and there being no further details; not even the details about the age or the possible height of the person to whom this skull belonged as also the skull being completely devoid of skin or flesh and except for the sockets which represented the eyes and other gaping holes which would probably be the nostrils and the jaw, it would have been impossible for PW-18 to have identified or recognized this skull as the head of his deceased brother.

39 These are the additional factors which compound the belief of this Court that the recovery is false and planted.

40 This recovery was in fact the most crucial piece of evidence that the prosecution had projected against the accused persons. We, however, feel it wholly unsafe to rely upon this piece of evidence. Identity of the skull being unreliable; the prosecution has failed to bring home the charge that it was Jageshwar who had been killed.

41 Admittedly the cause of death has also not been opined. Both the post mortem reports i.e. of the body as also of the skull are silent on the cause of death of the victim. The question whether the death was

homicidal has also not been fully answered.

42 In the case of Bhajan Singh (supra) where the cause of death of the dead body could not be opined because of the decomposition of the body, the Apex Court has noted as under:

“13. The learned Sessions Judge in the course of his judgment has observed that the doctor who performed post mortem examination was careless inasmuch as he failed to send the two dead bodies to the Professor of Anatomy who might have been in a position to express opinion after examining the hyoid bone and cervical vertebra as to whether the death of the two deceased persons was due to strangulation. Although it may be that it would have been more appropriate on the part of the doctor to have sent the dead bodies to an anatomy expert, the fact that the doctor did not do so cannot be a ground for drawing an inference adverse to the accused. The accused cannot be made to suffer because of that omission of the doctor. It would indeed be contrary to all accepted principles to give the benefit of that omission to the prosecution. The onus in a criminal trial is upon the prosecution to prove the guilt of the accused. If there be any gap or lacuna in the prosecution evidence, the accused and not the prosecution would be entitled to get the benefit of that.”

43 Benefit of doubt on this count also accrues to the accused.

44 The CFSL vide its report dated 15.4.1998 Ex.PW-19/V had opined blood group A on the blood stained earth, muffler and baniyan which had been recovered on 29.12.1995 from the headless dead body. The sweater and the shawl identified by PW-18 as belonging to his

victim brother and his sister respectively also contained a human blood of A group. As noted supra both the sweater and the shawl had been shown to PW-18 in the police station on 18.4.1996. The recovery of the sweater and the shawl on 19.4.1996 was thus belied. This piece of evidence also does advance the version of the prosecution.

45 The recovery of the dagger at the behest of the accused Ram Gulam from the parchhatti of the House No.157, four months later also does not inspire confidence; it is even otherwise by itself of no consequence.

46 Motive was also neither projected and nor proved. There is no other evidence which has been collected by the prosecution. This is a clear case where the appellants have been falsely framed to solve a blind case.

47 The trial judge holding the accused persons guilty has committed an illegality. Conviction of the appellants on the charges framed under Sections 302/201/34 IPC and Section 27 of the Arms Act cannot be sustained.

48 We accordingly set aside the impugned judgment giving benefit of doubt to the appellants. They are on bail. Bail bonds are cancelled;

sureties discharged.

49. Appeals are allowed and disposed of in the above terms.

INDERMEET KAUR, J

KAILASH GAMBHIR, J

DECEMBER 02, 2013

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