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

\+ **CRL.A. Nos. 349/2009 & 352/2009**

Reserved on: 4th April, 2013

% **Date of Decision: 2nd August, 2013**

GOPI CHAND ALIAS PAPPU ..... Appellant

Through Mr. Ajay Burman, Mr. Rajesh Samanotra, Mr. Ajay Burman & Mr. Sunil Malhotra, Advocates.

versus

STATE ..... Respondent

Through Mr. Sanjay Lao, APP for the State.

CRL.A. Nos. 351/2009 & 353/2009

TEJ PAL ..... Appellant

Through Mr. Ajay Burman, Mr. Rajesh Samanotra, Mr. Ajay Burman & Mr. Sunil Malhotra, Advocates.

versus

STATE ..... Respondent

Through Mr. Sanjay Lao, APP for the State.

CRL.A. Nos. 350/2009 & 354/2009

KISHAN LAL ..... Appellant

Through Mr. Ajay Burman, Mr. Rajesh Samanotra, Mr. Ajay Burman & Mr. Sunil Malhotra, Advocates.

versus

STATE ..... Respondent

Through Mr. Sanjay Lao, APP for the State.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

SANJIV KHANNA, J.

Tejpal, Gopi Chand and Krishan Lal have preferred these six appeals (two each) against their conviction vide two judgments dated 3rd March, 2009 by which the appellants have been convicted under Sections 302, 396, 201 and 120B of the Indian Penal Code 1860 (IPC, for short) for murder of Arun Kumar subject matter of FIR No. 300/1984, P.S. Civil Lines and for murder of Jasbir, subject matter of FIR No. 190/1984, P.S. Alipur. By separate orders of sentence dated 7th March, 2009, under FIR No.300/84 three appellants have been sentenced as under:-

- RI for life apart from fine of Rs 2 Lacs each for commission of offence punishable u/s 302 IPC, in default of payment of fine, convicts will have to undergo additional SI for the period of two years.
- RI for ten years apart from fine of Rs 50,000/- each for commission of offence punishable under Section 396 IPC, in default of payment of fine, convicts will have to undergo additional simple imprisonment for the period of one year.
- RI for 6 years apart from fine of Rs.25,000/- each for commission of offence punishable under Section 201 IPC, in default of payment of fine, convicts will have to undergo additional SI of 6 months.
- RI for six years apart from fine of Rs 25,000/- each for commission of offence punishable u/S 120-B IPC, in default of payment of fine, convicts will have to undergo additional simple imprisonment for the period of six months.

The cumulative fine of Rs three lacs imposed upon each accused is to be given to legal heirs of deceased driver Arun as compensation. All sentences to run concurrently.

By order of sentence dated 7th March, 2009, in FIR No. 190/1984 the appellants have been sentenced as under:-

- RI for life apart from fine of Rs.2 lacs each for commission of punishable under Section 302 IP, in default of payment of fine, convicts will have to undergo imprisonment for the period of 2 years.
- RI for 6 years apart from fine of Rs.25,000/- each for commission of offence punishable under Section 201IPC, in default of payment of fine, convicts will have to undergo additional SI for the period of 6 months.

- RI for 6 years apart from fine of Rs.25,000/- each for commission of offence punishable under Section 120B IPC, in default of payment, convicts will have to undergo additional Simple Imprisonment for the period of 6 months.

- Out of the cumulative, Rs.2.5 lacs imposed upon each accused shall be given to legal heirs of deceased cleaner Jasbir as a token of compensation.

2. The impugned judgments record that the trial and the charge sheets were consolidated pursuant to an application moved by the State but separate charges were ordered to be framed in the two cases. In a nutshell, consolidated and one set of evidence was recorded but the trials were not amalgamated as a single trial. Thus, there are two judgments

and orders of sentence. As the facts are intertwined and overlapping, we have disposed of these appeals by this common judgment.

3. The prosecution version is that Arun Kumar and Jasbir were driver and cleaner, respectively, of Truck No. URM 660 which was owned by Dayal Chand (PW23). The appellants along with one Ram Chail, who died during the course of trial, and Ashok Kumar, who later became an approver, had committed or had conspired and committed murder of Arun Kumar and Jasbir on 12th July, 1984 with the motive and purpose of stealing the Truck No. URM 660.

4. FIR No. 300/1984 (Ex. PW-35/B) was registered at Police Station, Civil Lines, on 13th July, 1984 at 7.05 PM, after a headless body was found in the agricultural fields as intimated by Ramphal, Pradhan of Village Burari (PW 27). Earlier, DD entry No. 20 (Ex. PW25/A and 35/A) was recorded on 13th July, 1984 at 6.45 PM. Identity of the deceased could not be ascertained but some torn papers were found near the dead body which gave leads for investigation. On 15th July, 1984, a skull without jaw and a green coloured pajama was recovered by the police from agricultural fields across the road from the crime spot.

5. On 16th July, 1984, dead body of another unknown person was found in the agricultural fields within the jurisdiction of P.S. Alipur. On the right hand of the corpse "Jasbir" was tattooed. No further information and details regarding the deceased came forth till the arrest of the appellants Krishan Lal, Tejpal and Ram Chail (who has expired) on 24th July, 1984.

6. On 24th July, 1984, Ram Chail (since expired), Krishan Lal and Tejpal were apprehended while sitting in Truck No. OSC 4115. Gopi

Chand, brother of Ram Chail, was arrested on 29th July, 1984 and approver Ashok (PW1) was apprehended on 6th August, 1984.

7. The first question and contention raised relates to identification of the dead bodies. The appellants have submitted that the prosecution has not been able to prove that the two dead bodies were that of Arun Kumar and Jasbir.

Identity of the dead bodies.

8. There is ample evidence and material which proves and establishes that the headless dead body, recovered in the fields and subject matter of FIR No. 300/1984 P.S. Civil Lines, was that of Arun Kumar. The said body was seen and identified by Arvind Kumar (PW14), cousin of the deceased Arun Kumar, and Dayal Chand (PW23), owner of the truck. Arvind Kumar (PW14) has averred that he came to Delhi on 14th July, 1984 along with his maternal uncle and father of the deceased, Jaipal as the police had apprised them that a dead body was found with some torn papers of "bilty" etc. lying nearby. Jaipal and PW-14 identified the beheaded dead body. PW-14 identified tagri (Ex. P4), underwear and banian (Ex. P2 & P3) which were found on the dead body. He identified the silver ring with red stone which was found on the body of the deceased (Ex. P8). In the cross-examination, PW14 has clarified that the deceased Arun Kumar resided on the other side of the road, where PW-14 used to reside. Dayal Chand (PW23) has deposed that he had come to Delhi on 15th July, 1984 after police officers from Delhi had met him in Dehradoon and made enquiries about headless dead body and papers. PW-23 identified that dead body to be of Arun Kumar. Father of Arun Kumar, Jaipal, was with him at the time. He identified clothes of Arun Kumar and tagri which he generally used to

wear. The dead body of Arun Kumar was handed over to his father Jaipal after post mortem. PW-23 also deposed that a skull/head was found subsequently but the lower jaw was missing. Pyjama of Arun Kumar was found with the head/skull. Both were separately sealed. Dead body of Arun Kumar was received by his father Jaipal vide Ex. PW23/A. In the cross-examination, PW23 has accepted that it was not possible to identify the person by seeing the skull but has averred that, in the present case, skull was found wrapped in the green pyjama which deceased Arun Kumar was wearing when he was last seen by PW23. Secondly, the skull was found across the road from where the headless dead body of Arun Kumar was recovered. No other questions were put to PW23 regarding identification of the headless dead body which he said was of Arun Kumar. Father of the deceased, Jaipal unfortunately could not be examined as he had expired during the course of trial.

9. It is not possible to accept the contention of the appellants' counsel that the headless dead body could not have been recognized by PW14 and PW23. The statements of PW14 and PW23 are credible and merit acceptance and there is no prudence in disbelieving that the headless body could not have been recognized by close relatives or known person, who would in fact be the best persons to identify the dead body from physical features like height, weight, build etc. There was no reason or cause for Jaipal, the father, Arvind Kumar (PW-14), the nephew or Dayal Chand (PW-23), the owner of the truck to falsely identify the headless dead body as that of Arun Kumar and claim the body. Father had claimed the dead body and it was handed over to him for the purpose of cremation. Normally a father or a relative would not like to believe and accept that his son or brother has been killed or murdered, unless they are sure of the identity. Further, testimony of PW-

1 Ashok Kumar, the approver in the present case, is also relevant as far as identification of headless dead body of Arun Kumar is concerned. He has pointed out the place/location where Arun Kumar was murdered and beheaded. The dead body was recovered from the same spot.

10. PW14 has referred to the ring which was found on the dead body of the deceased. Presence of the ring in the finger of the deceased also finds mention in seizure memo of the ring (Ex. PW5/A dated 14th July, 1984 when unidentified dead body was recovered lying in the fields). Learned counsel for the appellants have referred to the statement of Constable Naseebuddin (PW5) and highlighted that the said witness was oscillating in his testimony regarding how and who had given him possession of the silver ring. In the examination-in-chief, PW-5 had stated that on 14th July, 1984 one silver ring was given to him by some worker in the mortuary and he had handed over the same to SHO, B.M. Chopra. He had identified the ring as Ex. P-8. However, in the cross-examination on 5th March, 1990, he had averred that the silver ring was given to him in the mortuary, by some worker, and he had handed it over to SI Rameshwar Pradesh. Cross-examination of PW-5 was recorded in March and May, 1990, nearly six years after the occurrence. Therefore, we have to discount and take into account likelihood that recollection of minute details after six years cannot be exact as human memory fades. Perfect photographic reproduction is impossible and unrealistic. Similarly, the contention based upon Nasibuddin's (PW-5) statement that in his presence or knowledge silver ring was not shown to the father is not fatal or determinative. Ring could have been shown to the father by another person. PW-5 was not the investigating officer. Arvind Kumar (PW-14) had identified the silver ring Ex.P-8 but was not cross-examined and questioned on the said assertion made in the examination-

in-chief. To this extent, his statement on identification remained unchallenged.

11. The second dead body, purportedly of Jasbir, was cremated as an unidentified body. The corpse was not seen by any of Jasbir's relatives. Neither did his relatives appear and depose before the Court. Ashok Kumar (PW-1), the approver in the present case, has deposed how Ram Chail, Kishan and he had murdered Jasbir, cleaner of the truck in the agricultural field, near village Hiranki. It was the same place from where body of Jasbir was recovered. The statement of PW-1 is, therefore, relevant for the purpose of identification of the dead body of Jasbir. The time of recovery of the dead body and assertion that the word "Jasbir" was tattooed on the right arm of the deceased corroborate with PW-1's testimony. We have evidence in the form of testimony of police witness, namely, Ct. Narayan Singh PW- 36 (sic 40) , who had deposed that word "Jasbir" was tattooed on the right arm of the dead body found in the agricultural field of village Hiranki on 16th July, 1984. This fact also finds mention in the post mortem report of the deceased Jasbir (Ex. Pw 17/A) dated 17th August, 1984 prepared by Dr. Ramani, Civil Hospital, Delhi. Paragraphs 30 to 33 are also relevant and do support the prosecution version.

12. In view of the aforesaid discussion, we reject the contention of the appellants that the dead bodies were not identified to be of Arun Kumar and Jasbir. The case relates to the year 1984, when DNA sampling procedure was unknown but the evidence produced before us is suffice to establish the identity of the deceased persons.

INVOLVEMENT OF APPELLANTS AND WHETHER THEY HAVE BEEN RIGHTLY CONVICTED FOR MURDER OF ARUN KUMAR & JASBIR

13. There are no eye-witnesses to the occurrence, other than PW-1 Ashok Kumar, the approver. In addition to the approver's statement, we have circumstantial evidence relied upon by the prosecution. PW-1 Ashok Kumar, the approver, was arrested on 6th August, 1984. On 9th August, 1984, he moved an application before the concerned Metropolitan Magistrate that he wanted to make a statement. The application was marked to another Magistrate who gave two weeks' time for him to think over. PW-1 was apprised that he was not bound to make a confession. On 23rd August, 1984, his confessional statement under Section 164 of the Criminal Procedure Code (Cr.P.C, for short) was recorded. On 18th October, 1984, PW-1 Ashok moved another application before the concerned Metropolitan Magistrate to become an approver and seeking pardon. The application was allowed on 19th October, 1984. In the charge-sheet filed on 20th October, 1984, name of Ashok was mentioned in column 6 i.e in the list of witnesses and not in column No. 3 i.e. the accused persons. Initially, the charge-sheet was committed to Sessions vide order dated 5th Feb, 1985, but the Additional Sessions Judge by subsequent order dated 27th July, 1985 remitted the matter to the committal Magistrate for recording statement of Ashok Kumar, the approver, as a witness. Thereafter, statement of Ashok Kumar was recorded on 5th September, 1985, 6th September, 1985 and 17th September, 1985. Defence counsel was allowed to cross-examine Ashok Kumar. Thereupon, the case was committed to Sessions by the concerned Magistrate on 20th September, 1985. Subsequently on 30th October, 1985, separate charges were framed against all the four accused. The charges were subsequently reframed on 21st Jan, 1986.

We shall deal with the charges framed and then reframed subsequently, while examining the contention that only Ram Chail and Krishan Lal were charged with the offence under Section 302 IPC for murder of Arun Kumar and the said two and Tejpal were charged with the offence under Section 302 IPC for murder of Jasbir. It was further submitted that the charge against Gopi Chand was for conspiracy to commit dacoity read with Section 120B IPC, 396/120B IPC and 201/120B IPC.

14. Ashok Kumar (PW1) has clearly implicated the three appellants for the murder of Arun Kumar and Jasbir. He has testified that he was present with Ram Chail and Kishan when they murdered Jasbir at Village Hiranki. All of them were present and were involved/participated in murder of Arun Kumar, with Gopi standing guard. His testimony is quite expatiated. He has deposed that he knew Ram Chail to be a well off person and therefore had joined his business in order to get rich, by paying Rs 12,000. On 11th July, 1984, all of them were in Ram Chail's house at Hiranki, Delhi. Later on they came to Gokul Puri in Truck No. HRA 6825 and slept at night inside the truck. In the morning, the three appellants and Ram Chail, left PW-1 in the truck and went away. Ram Chail and Kishan Lal came back at about 12 noon in a three-wheeler. Leaving Kishan Lal behind, Ram Chail and PW-1 left for Shahdra Taxi Stand in the same three wheeler. They hired a taxi from Shahdra Taxi stand and went to Village Katha Mau, U.P. as Ram Chail wanted to pay visit to his ill uncle. In the same car, PW-1 and Ram Chail returned to Gokal Puri Chowk and met Gopi and Tejpal who were present with the truck bearing No. URM 660. Ram Chail and Ashok (PW-1) again went to Shahdara subzi mandi in the said car, while Truck No. URM 660, with Gopi and Tejpal, followed them. They loaded Kashi Phal (Petha phal) in the said truck. Ram Chail

requested the truck driver to lend services of Jasbir, the cleaner so that they could load another truck with Kashi Phal. Thereafter, Ram Chail, PW-1 and Jasbir returned to Gokalpuri chowk, where Kishan was waiting in Truck No. HRA 6825. Car expenses were paid and Ram Chail, Kishan, PW-1 and Jasbir then boarded the truck No. HRA 6825 and drove towards village Hiranki. At about 7.00 P.M., when dusk was setting in and truck had covered a distance of 3 to 4 kms on a kachcha rasta, the truck was stopped near an artificial pond of water (Thokkar). Ram Chail took off his pant and caught hold of the said cleaner, who got frightened. Jasbir appeared to be a boy, 16-17 years of age. He was told that he would not be killed but would be tied in the fields. It was a rainy season and fields had high grass. Jasbir was made to take off his clothes and his hands and feet were tied. He was made to lie down in the ground. Thereafter, Ram Chail sat on the chest of Jasbir and started pressing his neck. Kishan and PW-1 caught hold of his legs. After some time Jasbir became unconscious but he was still breathing. Ram Chail felt that he might survive and, therefore, gave him a ghandasa blow on the neck. The victim started bleeding. Ram Chail then freed victim's hands and feet and the three left the spot. Ghandasa was thrown in the pond water. They drove truck HRA 6825 to village Tajpur from where they hired a car. The truck and the car came to village Burari, where the truck was parked as Ram Chail who was driving claimed that it had developed problems. All three of them, returned to Gokal Puri Chowk, at about 10 P.M., in the said car. Rs.250/- were paid to the car driver. Truck No. URM 660 was standing at the petrol pump and the appellants Gopi, Tejpal and the truck driver (Arun Kumar) were present. Arun Kumar was informed that truck No. HRA 6825 had developed trouble and Kashi Phal was to be loaded from the said truck into truck No. URM

660. All of them then drove to the spot where Truck No. HRA 6825 was parked. At that time, Arun Kumar became suspicious as he noticed kashi phal was not loaded in HRA 6825. Ram Chail quickly swung into action and swooped on Arun Kumar. Appellant Tejpal helped him catch hold of Arun Kumar. Gopi was left to guard the truck, while Arun Kumar was taken to the fields by Ashok (PW-1) the approver, Kishan, Tejpal and Ram Chail (since deceased). Kishan was armed with a ghandasa. Money amounting to Rs.1000-1200/- from one pocket and Rs.100-200, from the other pocket, of Arun Kumar, was taken. Papers were torn by PW1 and, thereafter, thrown on the ground. Arun Kumar was taken to a dried canal's bank nearby. Arun Kumar's clothes were removed, his hands and feet were tied and he was made to lie on the ground. Ram Chail sat on his chest and pressed his neck while Kishan caught hold of his legs. Tej Pal pressed his mouth and nose. Arun Kumar became unconscious and was left there. Ram Chail, thereafter, picked up the gandhasa and hit Arun Kumar thrice on his neck. Arun Kumar's head severed as a result of these blows. Hands and feet of Arun Kumar were untied. Appellant Tej Pal wrapped the severed head in the clothes of the deceased. Appellant Kishan took out an iron rod from the tool box of the truck and went in the fields situated on the other side of the road, with Tej Pal. Kishan dug a pit where they buried the head and then Kishan repeatedly struck it with iron rod. PW-1 was watching all this while standing on the road. Thereafter they boarded Truck No. URM- 660 which was being driven by Ram Chail, with Ashok (PW-1) and Kishan in it. On the way they threw the clothes. Appellant Tej Pal and Gopi sat in the other truck HRA 6825, which was being driven by Tej Pal. Number plate of truck No. URM 660 was changed and sunmica, on the windows of the truck, was removed. The

words "State Bank of Rishikesh", painted on the truck, were erased. Documents of the truck were taken out and burnt. Kashi Phal was transferred from Truck No. URM 660 to Truck No. HRA 6825 and they drove both the trucks towards Alipur. They threw the clothes towards Village Jinpur, where Gopi was dropped. All of them, thereafter, went to Subzi Mandi Shahdara, unloaded Kashi Phal at a broker's shop. PW1 has identified clothes worn by the deceased Arun Kumar. PW-1 has identified two gandhasas which he claimed had been used for committing the murder. He accepted/admitted his statement before the Metropolitan Magistrate (Ex. PW1/A).

15. Statement of PW-1, approver in the present case, is of vital importance as there is no eye-witness. Two contentions have been raised by the appellant's counsel on why PW1's statement should not be made the basis for conviction. Firstly, it is submitted that there has been non-compliance of Section 306 Cr.P.C. and secondly, combined effect of Sections 133 and 114 illustration (b) of the Evidence Act is that it is unsafe to place reliance on uncorroborated testimony of the approver. On the first contention, we have already noticed the facts; that the matter was remanded by the learned Additional Sessions Judge and consequent thereto statement of the approver was recorded by the Metropolitan Magistrate and a fresh committal order was passed. The first contention, therefore, has to fail in view of the corrective steps taken by the learned Additional Sessions Judge and the fresh committal order, which was passed. Reference can be made to the decision of the Supreme Court in ***Suresh Chandra Bahri vs. State of Bihar*** **1995 Supp(1) SCC 80.**

16. The second contention has also been dealt with in the ***Suresh Chandra Bahri*** (supra) case and it has been observed:

> "43. The evidence of an approver does not differ from the evidence of any other witness except that his evidence is looked upon with great suspicion. Consequently in the event the suspicion which is attached to the evidence of an accomplice is not removed his evidence could not be acted upon unless corroborated in material particulars. But where the suspicion is removed and the evidence of an approver is found to be trustworthy and acceptable then that evidence may be acted upon even without corroboration and the conviction may be founded on such a witness. Here in this connection it would be appropriate to make reference to the provisions of Section 133 of the Evidence Act which deal with the testimony of an accomplice. It contemplates that an accomplice shall be a competent witness against an accused person: and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. The first part envisages that an accomplice, in other words, a guilty companion in crime, shall be a competent witness while the second part states that conviction is not illegal merely because it is based on the uncorroborated testimony of an accomplice. But if we read Section 133 of the Evidence Act with illustration (b) of Section 114 of the Evidence Act it may lead to certain amount of confusion and misunderstanding as to the real and true intention of the Legislature because quite contrary to what is contained in Section 133 illustration (b) to Section 114 of the Evidence Act lays down " that an accomplice is unworthy of credit, unless he is corroborated in material particulars". A combined reading of the two provisions that is Section 133 and illustration (b) of Section 114 of Evidence Act go to show that it was considered necessary to place the law of accomplice evidence on a better footing by stating in unambiguous terms that according to Section 133 a conviction is "not illegal or in other words not unlawful" merely because it is founded on the uncorroborated testimony of an accomplice while accepting that an accomplice is a competent witness. But at the same tune the Legislature intended to invite attention to the illustration (b) of Section 114 of the Evidence Act with a view to emphasis that the rule contained therein as well as in Section 133 are parts of

> one and the same object and neither can be ignored in the exercise of judicial discretion except in cases of very exceptional nature. However, the difficulty in understanding the combined effect of the aforementioned two provisions arises largely due to their placement at two different places of the same Act. It may be noticed that illustration (b) attached to Section 114 is placed in chapter VII of Evidence Act while Section 133 is inserted in chapter IX of the Act. The better course was to insert the illustration (b) to Section 114 as an explanation or in any case as a proviso to Section 133 of the Act instead of their insertion at two different places and that too in different chapters of Evidence Act. In any case since an approver is guilty companion in crime and. therefore, illustration (b) to Section 114 provides a rule of caution to which the Courts should have regard. It is now well settled by a long series of decisions that except in circumstances of special nature it is the duty of the Court to raise the presumption in Section 114 illustration (b) and the Legislature requires that the Courts should make the natural presumption in that Section as would be clear from the decisions which we shall discuss hereinafter."

17. The aforesaid position of law was recorded after taking into consideration decisions of the Supreme Court in ***Bhiva Doulu Patil vs. State of Maharashtra*** AIR 1963 SC 599 and ***Ravinder Singh vs. State of Haryana*** (1975) 3 SCC 742. Thus, the legal position is that though conviction of an accused can be based on uncorroborated statement of an accomplice but rule of prudence is that it is unsafe to place reliance on uncorroborated testimony of an approver. Before we go on to examine these circumstances, we would like to record that PW1 Ashok's cross-examination is on fringes and reflects tepidity and reluctance to question him on the main and substantive assertions made by him. PW1 is not cross-examined on his testimony or averments on substantive aspects. There is hardly anything in the cross-examination on primary facts to dent or create doubt about his testimony or the fact that he and the appellants committed the two murders. Secrecy of crime, paucity or

lack of substantive evidence and sometimes help in recovery of incriminating article or evidence justifies exercise of power under Section 306 and 307 Cr.P.C. Object behind these Sections is to obtain material and evidence by granting pardon to the accomplice so as to prevent the other perpetrators/offenders from escaping punishment for lack of evidence, inability to collect or locate evidence. While applying the principle of corroboration this aspect has to be kept in mind. Corroboration, therefore, does not mean that there should be independent evidence, sufficient by itself in securing conviction of the accused, otherwise testimony of the accomplice would be unnecessary or would be merely confirmatory of other independent testimony and material evidence. What is required and mandated by rule of prudence is that there should be some additional evidence rendering it probable that the story of the accomplice as true and reasonably safe to act upon (see Cross on Evidence, Seventh edition by Colin Tapper at page 235). The important thing is to restore trust in the testimony of the approver.

18. The fact that accomplice is a man of questionable character, though a relevant and important consideration, is not a ground to reject his testimony. The decree of credibility or suspicion which has to be attached to the evidence of an accomplice depends upon several factors including the nature and extent of his complicity. In ***Rameshwar Kalyan Singh vs. State of Rajasthan***, AIR 1952 SC 54 it has been observed:-

> "It would be impossible, indeed it would be dangerous, to formulate the kind of evidence which should or would be regarded as corroboration. Its nature and extent must necessarily vary with the circumstances of each case and also according to the particular circumstances of the offence charged, but to this extent the rules are clear, i.e. it is not necessary that there should be independent confirmation of

> every material circumstance in the sense that independent evidence in the case, apart from the testimony of the complainant or the accomplice should in itself be sufficient to sustain conviction. All that is required is that there must be some additional evidence rendering it probable that the story of the accomplice is true and that it is reasonably safe to act upon it."

19. The view taken in India appears to be synonymous with the view preferred and endorsed by ***Cross on Evidence***, 7th edition by Colin Tapper that the corroborative or independent evidence should not only show that an accomplice's testimony is true but it should implicate the accused. The other view that independent evidence intended is only to verify the testimony of the accomplice, has not been accepted. Thus, independent evidence must not only make it safe to believe that the crime was committed but there must be in some way reasonably connect or to connect the accused with crime by confirmation of material particulars deposed to in the testimony of accomplice. [See ***Rameshwar Kalyan Singh*** (supra) relying upon ***R. vs. Baskerville***, 1916 (2) KB 658].

20. In the light of the aforesaid legal position, let us examine the corroborative and independent evidence relied upon and proved by the prosecution.

21. Appellants Tejpal and Kishan Lal were arrested along with Ram Chail on 24th July, 1984 when they were sitting in truck number OSC-4115. Their personal search was also conducted vide memos Ex.PW23/F and Ex.PW 23/G, respectively. Dayal Chand (PW-23), owner of the truck, was present at that time and he was also a signatory to the seizure memo (Ex.PW23/D) of the truck. At that time, the truck was having number plate OSC-4115 as the original number plate URM-660 had been removed. Another number plate HRU-9512 was also

found in the truck. PW-23 identified the truck from the modifications made in the diesel tank, safe which had been originally constructed under the driver seat and its body. The truck was taken into custody and subsequently released on superdari to PW-23 as he was the registered owner of the same. The said seizure and the arrest of the appellants Tejpal and Kishan Lal from the truck is deposed to and asserted by police officers PW-37 (sic 41) Inspector Rajeshwar Prasad and PW-38 (sic 42) B M Chopra.

22. It was urged before us that ownership of truck number URM-660 has not been proved as original registration book was not filed. PW-23, in his examination-in-chief, has stated that he was the registered owner of the truck. The truck was given to him on superdari and he had produced the same before the Court. The truck was marked Ex.P-8. He had also given description of the truck and its body which was affirmed in the cross-examination. Registration book of a public carrier has to be kept in the vehicle itself. In the present case, the truck in question was stolen and the original number plate was removed. The CFSL Reports (Ex. PW-35/J8) delineates that the result of deciphering the registration plate OSC-4115 (Ex. No. 2) was that URM-660 was found to be the actual registration number of the truck. The name Asha was also deciphered to be written in devnagari, on the rear part of the truck. Dayal Chand (PW-23) was not cross-examined on his assertion that he was the registered owner of the truck and the basis on which he had identified the truck i.e. extra fuel tank and the safe below the driver seat. The engine number and chasis number of the truck seized matched with the actual engine number and chasis number of truck number URM-660. On 7th October, 1984, Dayal Chand (PW-23) had produced papers relating to the ownership of the truck which were taken into possession

vide memo Ex.PW23/L and the said papers were marked Ex.PW23/M. Papers Ex.PW23/M are stamp papers relating to registered ownership of PW-23, issued by the registering authority where the truck was registered. There cannot be any doubt or debate that PW-23 was the owner of the truck.

23. Appellants Krishan Lal and Tejpal in their Section 313 Cr.P.C. statements have not stated that they were arrested on a different date, but in response to the question whether they had anything to say, the two have identically stated that they were called from the house.

24. Head Constable Ishwar Singh (PW-26) has deposed that at 11.15 a.m. on 16th July, 1984, Ram Chail, co-accused, had lodged a report in police station Alipur with him about missing documents of OSC-4115. He proved the original DD in this regard as Ex.PW26/A. On 27th July, 1984, PW-26 identified Ram Chail as the person who had filed the complaint regarding missing documents.

25. Dalip Singh (PW-20) is a public witness, who has turned hostile. As per the prosecution version, he had modified and painted the truck number URM-660 after it was stolen. He had a workshop in Hudda Colony, Sonipat, Haryana. In the cross-examination by the Additional Public Prosecutor he could not deny that he had put signature in the register (cash book) at point A at his workshop. He has claimed that he was threatened and, therefore, had signed. At page 6 of the said register there is an entry dated 13th July, 1984 regarding truck number OSC-4115 which mentions the amount of Rs.515/- out of which Rs.300/- was received in advance and the balance amount was Rs.215/-. The said entries were encircled.

26. Subsequent to the arrest of Krishan Lal and Tejpal they had made disclosure statements on 25th July, 1984. On the basis of the disclosure statement (Ex. PW-27-E) made by Tejpal, a jaw, which is claimed to be the missing jaw of Arun Kumar, was recovered from the fields near Burari. On the basis of the disclosure statement (Ex.PW-27/D) made by Krishan Lal, shirt of Arun Kumar was recovered.

27. It has been submitted before us that the area had been combed and scanned by the police, when the headless dead body was found on 13th July, 1984 and thereafter skull was recovered on 15th July, 1984. It is stated that Ram Chail had made a disclosure statement one day earlier, on 24th July, 1984, on the basis of which gandasa, broken sunmica etc., were recovered. Ram Chail's disclosure statement (Ex.PW23/H) does not refer to the place where the head of the deceased Arun Kumar was thrown or buried. It does not refer to the shirt of the deceased Arun Kumar, which could not be located earlier i.e. on 13th or 14th July, 1984. The recoveries made therefore cannot be disregarded for this reason. The appellants' contention that the skull found on 14th July, 1984 was with jaw has to be rejected. The post mortem report Ex.PW. 32/A specifically states that the skull was without the jaw.

28. Recovery of a jaw and the shirt, which was deposed to as belonging to the deceased Arun Kumar by Arvind Kumar (PW-14) are admissible under Section 27 of the Evidence Act. The jaw and the shirt had not been recovered by the police on 13th and 14th July, 1984 or subsequently till the disclosure statements were recorded. These recoveries were made only after the arrest of appellants Tejpal and Krishan and their disclosure statements Exhibits PW 27/E and Ex. PW 27/D).No doubt the villagers, who are public witnesses, have not

supported the recoveries pursuant to the disclosure but the police officers, namely, PW-37 (Sic PW-41) Inspector Rajeshwar Prasad and PW-38 (Sic PW-42) B M Chopra have affirmed and testified proving the prosecution version. Insp. Rajeshwer Parsad (PW37) has averred that on 25th July, 1984, the lower jaw, with sixteen teeth, was recovered after digging the place pointed out by the appellant Tejpal in his disclosure statement (Ex. PW27/E). Thereafter, green shirt was recovered on the basis of disclosure statement of Kishan Lal (Ex. PW27/D) from the field of Nihal Singhand taken into possession vide seizure memo (Ex. PW27/H). We do not think the statement of the police officers should be disregarded and disbelieved as, in fact, there was recovery of the shirt and the jaw. It is correct that the forensic examination and studies could not collate or connect the jaw or the skull to the body for the reasons set out and stated in Exhibit PW 38/J2 and Ex. PW 38/J4, that superimposition of the skull with the body could not be carried out because of the broken condition of the heads of the mandible but the location from where the skull as well as the jaw were located are pointers that these were possibly remnants of the deceased Arun Kumar. On their own or individually this may not be sufficient or substantially incriminating by themselves, but they do corroborate to a limited extent the testimony of the approver PW-1 Ashok.

29. Chamela Ram (PW-16) is a public witness and resident of Dehradun, who knew Arun Kumar. He was also a driver and claims that he used to drive truck No. URM 660 and Jasbir was a cleaner of the said truck. As he was not feeling well, he had come to Delhi for some work by truck No. URM 7825 and on 12th July, 1984 while going back to Dehradun at 5.15 P.M. he was at petrol pump of Kanpur-Delhi Goods Carrier, near Loni Chowk, where he saw Truck No. URM 660 parked

and two deceased Arun Kumar and Jasbir Singh with the truck. Ram Chail, whom he identified in the court along with the three accused, i.e., Kishan, Tejpal and Gopi, was also present near the truck. On query, deceased Arun Kumar had replied that they were to carry sitaphal vegetable for Ram Chail. He has deposed that he identified the four accused in Tis Hazari Courts. In the cross-examination, he has stated that he had come to Delhi on 11th July, 1984 and, after recovering from malaria he had started driving the truck. He had seen the accused after they were arrested and the SHO had inquired from him whether they were the same persons whom he had seen at the petrol pump. He did not know Ashok (PW-1) and he had not met him. He denied the suggestion that he was a false witness or he had not seen the accused at the petrol pump. He has averred that he had not met Dayal Chand between 12th July, 1984 and 15th July, 1984. He has stated that he came to know on 18th July, 1984, when the police came that Arun Kumar and Jasbir Singh had been murdered. Learned counsel for the appellants has submitted that Chamela Ram (PW-16) is a chance witness and highly unreliable as he has himself accepted that his statement was recorded at the police station after he had recognized the accused and the truck. Statement of PW-16 under Section 161 Cr.P.C. has not been exhibited and no questions were asked to the investigating officer as to the date on which his statement was recorded. As noticed above, PW-16 has stated that he came to know about murder of the Arun Kumar and Jasbir Singh when the police came on 18th July, 1984. Therefore, it is not correct to state that the police had not interacted with PW-16 before the appellants Krishan and Tejpal were arrested on 24th July, 1984 and Gopi was arrested on 29th July, 1984. The assertion that Chamela Ram (PW-16)'s statement should be disbelieved because it appears that he does not

recollect the presence of the approver Ashok Kumar, during his testimony, or does not speak about Ashok Kumar being present there does not shake or create doubts. It is not necessary that Ashok Kumar must have been present when Chamela Ram (PW-16) chanced upon the appellants, at the petrol pump for a brief period. There could have been many plausible explanations for the same. PW-19 has categorically deposed about presence of the appellants and even given a vivid description. We are inclined to believe that he is a credible witness. In fact clue given by PW-16 regarding presence and involvement of the deceased accused Ram Chail possibly became the lead for further investigation.

30. There is no doubt that Ashok Kumar was present with the appellants at the time of the commission of crime, and this came to the knowledge of the police, even before his arrest (See ex. PW 38/K marked to Police Station Alipur by Insp B.M. Chopra (PW-38) on 24th July, 1984) . After recovery of the decomposed dead body with the name Jasbir tattooed on the hand on 16th July, 1984, formal FIR was not registered at P.S. Alipur. Proceedings under Section 174 Cr.P.C. were initiated on 16th July, 1984; the dead body was photographed and sent for post mortem. Wireless message was sent for the identification of the dead body. Investigating Officer of FIR No. 300/84 namely Inspector B.N. Chopra, SHO, P.S. Civil Lines (PW38) has deposed that he kept on searching for the stolen truck and the persons involved in the offence. He was informed that identical occurrences had taken place in the jurisdiction of P.S. Bagpath and Shamla, U.P. by Dayal Chand (PW23) who was assisting him. SI R.P. Gautam was sent to Dehradun who intimated him that Ram Chail and two others may be involved. The said Ram Chail was resident of village Hiranki and, as per information, he

had recently purchased a new Truck No. OSC 4115. On the basis of secret information, they were successful in arresting Ram Chail, Kishan Lal and Tejpal, while they were travelling in Truck No. OSC 4115. After Ram Chail was arrested, he disclosed during his interrogation that Jasbir cleaner was murdered and his dead body was thrown at a place near village Hiranki. His pointing out memo was exhibited as Ex. PW23/J. After interrogation of Ram Chail, FIR No. 190/1984 was registered in Alipur, on the basis of rukka sent by Insp. B.M. Chopra, P.S. Civil Lines. On the question as to what extent Sections 27 and 8 of the Evidence Act can be invoked, there is no requirement to elaborately deal with the contention as Ram Chail has expired. Section 27 of the Evidence Act is not applicable viz the appellants. However, the investigation made by the police officer Dayal Chand (PW23) and how they came to know that the unidentified body was of Jasbir, the cleaner, is an admissible and relevant circumstance under Section 8 of the Evidence Act. There is a corroborating circumstance both on the question of identity of the dead body i.e. it was the body of Jasbir, the cleaner of the truck, as well as involvement of the appellants. We would like to reproduce the following observations of the Supreme Court in ***Prakash Chand v. State (Delhi Admn.)*** **(1979) 3 SCC 90:**

> **"8.** It was contended by the learned Counsel for the appellant that the evidence relating to the conduct of the accused when challenged by the Inspector was inadmissible as it was hit by Section 162, Criminal Procedure Code. He relied on a decision of the Andhra Pradesh High Court in *D.V. Narasimham* v. *State* [AIR 1969 AP 271 : 1969 Cri LJ 1016 : 1969 MLJ (Cri) 687] . We do not agree with the submission of Shri Anthony. There is a clear distinction between the conduct of a person against whom an offence is alleged, which is admissible under Section 8 of the Evidence Act, if such conduct is influenced by any fact in issue or relevant fact and the statement made to a

> Police Officer in the course of an investigation which is hit by Section 162 of the Criminal Procedure Code. What is excluded by Section 162, Criminal Procedure Code is the statement made to a Police Officer in the course of investigation and not the evidence, relating to the conduct of an accused person (not amounting to a statement) when confronted or questioned by a Police Officer during the course of an investigation. For example, the evidence of the circumstance, simpliciter, that an accused person led a Police Officer and pointed out the place where stolen articles or weapons which might have been used in the commission of the offence were found hidden, would be admissible as conduct, under Section 8 of the Evidence Act, irrespective of whether any statement by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 of the Evidence Act (vide *Himachal Pradesh Administration* v. *Om Prakash* [(1972) 1 SCC 249 : 1972 SCC (Cri) 88 : AIR 1972 SC 975])."

31. It was further elucidated in ***State (NCT of Delhi) v. Navjot Sandhu*, (2005) 11 SCC 600***:

> **"190.** The *first* circumstance is that Afzal knew who the deceased terrorists were. He identified the dead bodies of the deceased terrorists. PW 76 (Inspector H.S. Gill) deposed that Afzal was taken to the mortuary of Lady Hardinge Medical College Hospital and he identified the five terrorists and gave their names. Accordingly, PW 76 prepared an identification memo Ext. PW-76/1 which was signed by Afzal. In the post-mortem reports pertaining to each of the deceased terrorists, Afzal signed against the column "identified by". On this aspect, the evidence of PW 76 remained unshattered. In the course of his examination under Section 313, Afzal merely stated that he was forced to identify by the police. There was not even a suggestion put to PW 76 touching on the genuineness of the documents relating to the identification memo. It may be recalled that all the accused, through their counsel, agreed for admission of the post-mortem reports without formal proof. Identification by a person in custody of another does not amount to making a statement falling within the embargo of Section 162

> CrPC. It would be admissible under Section 8 of the Evidence Act as a piece of evidence relating to the conduct of the accused person in identifying the dead bodies of the terrorists."

32. Ram Singh (PW39) has deposed that he was posted as Sub-Inspector, P.S. Alipur and had joined investigation in the case bearing FIR 190/84, P.S. Alipur on 28th July, 1984. On 11th September, 1984, he went to Dehradun for investigation and showed the photographs of Jasbir to his family members who identified him. He recorded their statements to this effect. To this extent, statement of PW39 may be a hearsay but Raj Mahender Singh (PW40) who was posted at P.S. Alipur, had deposed that on 24th July, 1984, Insp. B.M. Chopra then S.H.O., P.S. Civil Lines had sent a rukka to register the case under Section 302/34 IPC, and thereafter he had taken over the investigation. PW-40 has deposed that SI Ram Singh was sent to Dehradun with a photograph of the deceased Jasbir and there Jabir's photograph was identified by his father. Raj Mahender Singh (PW40)'s statement on the identification of the photograph by the family members of the deceased Jasbir again may be hearsay and non-admissible but this cannot be a ground to hold that the dead body found in village Hiranki was not that of Jasbir.

33. Const. Narayan Singh (PW36) has deposed that on 17th July, 1984, he was posted at P.S. Alipur. That day, he went to the field of Lillu by the side of nala, in village Hiranki where a dead body, clothed only with vest and underwear, partly eaten by wild animals, was found and had a tattoo "Jasbir" engraved on the wrist. After the post mortem, the

unidentified dead body of the deceased Jasbir was handed over to Sewa Sanstha since no relative was found.

34. Corroboration of material particulars does not mean corroboration of every material fact against each accused deposed to by the approver. Corroboration in material particulars refers to corroboration of facts against each accused.

35. In ***Sarwan Singh Vs. State of Punjab***, AIR 1957 SC 637 it has been held that corroboration of material particulars by independent evidence does mean that the Court should expect that such independent corroboration should cover the whole of the prosecution story or even on material particulars that would render the evidence of accomplice/approver superfluous. Corroboration means necessary assurance that the main story disclosed by the approver is reasonable and safe to be treated as true. Such corroborative evidence, however, need not be sufficient for sustaining the conviction of the accused as in that case, evidence of the approver would be wholly unnecessary and mere surplusage. (see also ***Ramnarain Vs. State of Rajasthan***, AIR 1973 SC 1188).

36. In ***Dagdu & Others Etc. Vs. State of Maharashtra***, *AIR 1977 SC 1579* (Chandrachud, J. as his Lordship then was) has observed "evidence is corroborated and material particulars" means that there is some independent evidence to incriminate a particular accused in the commission of the crime and nothing more.

37. No doubt, the approver has incentive to speak out his mind after tender of pardon and Section 133 of the Evidence Act lays down that

accomplice is a competent witness against an accused and conviction would not be illegal because it proceeds upon uncorroborated testimony of the accomplice, but as a rule of prudence and as elucidated by Illustration (b) to Section 114 of the Evidence Act it is normally "hazardous" to proceed upon the evidence of self-confessed criminal, who testifies on the terms of the pardon tendered to him.

38. In ***Piara Singh Vs. State of Punjab***, 1970 SCC (Cri) 104 referring to the earlier case law it has been held that evidence of approver should pass the following twin test: (i) he should be a reliable witness and his version should be intrinsically credible and (ii) there should be corroboration against each accused in material particulars by other evidence, direct or circumstantial. Both the tests are cumulative and have to be satisfied.

39. On the first test we have referred to the statement of PW-1, Ashok and also recorded that there is hardly any cross-examination of PW-1 on material deposition and the facts asserted by him. His cross-examination was on fringes and no specific questions were put to him on material factual assertions against each appellants made by him. The statement made by PW-1 is detailed, descriptive and recounts in graphic manner what had transpired on 11th and 12th July, 1984. This witness is credible and has been clear, categorical and has elaborated the crime, occurrence in great detail. The second test has been dealt with separately.

40. The contentions of the appellants that no one had seen committing of crime; or weapon of offence was not recovered at the instance of the two appellants, but at the instance of accused-Ram Chail, who has died;

or no blood stained clothes or articles of the deceased were found, do not in any way dent or discount the prosecution case. These are neutral facts and do not tilt the scale of justice in favour of the appellants Tejpal and Kishan. The said appellants were arrested after a time gap and, therefore, the factum that no blood stained clothes or articles were found is natural. The fact that Ram Chail had made a disclosure statement and Gandasas i.e. the weapon of offence were recovered again does not mean and show that the appellants Tejpal and Kishan were not involved. No doubt, the place of occurrence was known and in the knowledge of police, but this is not a ground to disbelieve the recoveries made at the instance of Tejpal, Kishan and Gopi. It was rainy season and grass and weeds had grown in agricultural field. The headless body of Arun Kumar was found after a day. It took another day before the skull without the jaw was recovered. It will be, therefore, wrong to disregard the recovery of the shirt and jaw only on the ground that the police had earlier combed the area. The contention that recoveries were from an open place which was easily accessible to all and, therefore, should be disbelieved and discarded should be rejected for the reasons recorded above. Similarly, the contention that disclosure statement of Ram Chail was recorded on 24th July, 1984, whereas the disclosure statements of Tejpal and Kishan were recorded on 25th July, 1984 and not on 24th July, 1984 is a weak and feeble defence. The dates of recording of disclosure statement depend upon the dates on which the appellants made the disclosures. The fact that public witness Ram Phal has not supported the prosecution case, like several other witnesses, is not a good ground to disbelieve the recoveries.

41. The contention that there is a time gap between the evidence of last seen as deposed to by PW-16 , Chamela Ram and the occurrence in

the present case again has to be rejected. PW-16 , Chamela Ram has stated that he had seen the deceased in the company of the three appellants at Gokulpuri at 5.15 p.m. on 12th July, 1984. They were with the truck URM-660, and were to travel in the truck. The distance itself, i.e. 25-30 kms. from Gokulpuri to the place where the dead bodies were recovered, is not by itself an aspect or factum which creates doubt. The approver has accepted that they had gone to Gokulpuri Chowk. Dead bodies were found after some delay and gap as they were not visible, and we cannot ignore the factum that the truck URM-660 was stolen and was also found in possession of the two appellants Tejpal and Kishan with Ram Chail, the third accused, who has expired. We are not required to put the last seen principle and "recovery" in a water tight compartments, but have to apply and understand the two principles together and hand in hand in the facts of the present case.

42. The contention that presence of Dayal Chand at the time of the arrest of the appellants on 24th July, 1984 is doubtful has to be rejected, as Dayal Chand had lost his truck and his driver had been killed and cleaner was missing. In these circumstances, Dayal Chand had vital interest in catching the culprits so that he could recover the stolen truck and save himself from economic hardship and problems. His presence is duly mentioned and recorded in the documents relating to seizure and search. It is irrelevant whether these documents were signed at the spot or at the police station. Similarly, the contention that PW-37, Rajesh Pal, PW-38 B.M. Chopra have contradicted themselves on the question whether Ram Chail had pointed the place where the deceased were killed or whether Tejpal and Kishan were also with them, at the time of the disclosure, is a minor discrepancy and is not relevant. Tejpal and Kishan had subsequently made their disclosure statements. Only recoveries

made pursuant to their disclosures are relevant under Section 27 of the Evidence Act.

43. After having discussed the evidence, we would like to crystallize the incriminating or corroborative evidence available against Tejpal and Kishan Lal.

(i) Disclosure statement of Tejpal and Kishan Lal, Ex. PW27/E and PW 27/D, respectively, which led to the recovery of lower jaw and green shirt, (taken into possession vide memo Ex. PW27/J and PW27/H, respectively);

(ii) The identification of Tejpal and Kishan Lal, at the petrol pump Kanpur Delhi Goods Carriers, near Loni Chowk, by Chamela Ram (PW-16) on 12th July, 1984, at about 5.15 P.M., when he was driving back in the truck No. URC 7825;

(iii) Failure and refusal of Tejpal and Kishan to participate in the Test Identification Proceedings;

(iv) Arrest of Tejpal and Kishan Lal on 24th July, 1984 along with Ram Chail (deceased accused), while they were travelling in truck NO. URM 660. The truck had actually been partly repainted and was being driven with fake number plate OCS 4115, while another fake number plate was found in the truck. Dayal Chand (PW23) has deposed that this truck was owned by him and the deceased Arun Kumar and Jasbir were the driver and cleaner of the truck, who had gone missing.

(v) The truck in question was ultimately found in custody of the appellants Tejpal and Kishan Lal. No doubt there is some gap between occurrence which had taken place on or before 13th July, 1984 and the date on which the truck with the appellants

was seized i.e. 24th July, 1984 but in the present case, we do not think the time gap is such that the recovery of the stolen truck is to be treated and regarded as a weak or unreliable evidence which should be ignored for the purpose of weighing or accepting the testimony of the approver (PW1). The truck in question was certainly stolen and thereafter modified. The truck was having Orissa number plate OSC 4115. The appellants and Kishan had the opportunity to explain why and how they were travelling in the said truck along with Ram Chail but no explanation has been given and stated in their examination under Section 313 Cr.P.C. They were completely silent on the said aspect, except stating that they were at home when they were arrested. Presumption under illustration (a) of Section 114 of the Evidence Act is a matter which depends upon evidence and circumstances of each case. The nature of the stolen article, nature of evidence about its identification, the place and circumstance of recovery, intervening period and in the manner in which it was dealt with, with ability or otherwise of a person to explain his possession and relevant factors which are to be taken into consideration. Where murder and recovery are integral part of the same transaction, presumption under illustrations to Sections 114 to 116 of the Evidence Act may be applied for holding that the person was accused of not only of a robbery but also of murder (see ***Ganesh Lal vs. State of Rajasthan,*** (2002) 1 SCC 731 and other judgments referred therein).

44. We again state that presence and arrest of the appellants Tejpal and Kishan Lal in the stolen truck by itself is not the ground or the

reason to implicate and convict the appellants Tejpal and Kishan Lal. The said fact including the failure to explain coupled with their disclosures, recoveries and statement of Chamela Ram (PW16) can be used as corroborative evidence to accept and believe the approver's statement i.e. statement made by Ashok (PW1).

45. This brings us to the case against the appellant Gopi and whether there is any corroborative evidence to show his involvement. Gopi was not arrested with the truck but was arrested subsequently on 29th July, 1984. He did make a disclosure statement but there is no recovery attributed to him. The corroborative evidence against him consists of statement of Chamela Ram (PW16) that he had seen Gopi with the two deceased and the other appellants on 12th July, 1984 at 5.15 PM at the petrol pump. Gopi had also refused to participate in the TIP. Gopi, we may state is the brother of Ram Chail who had died during the trial. We feel that these two circumstances are sufficient corroborative evidence to hold that approver's (PW1) statement on involvement of Gopi should be relied upon to uphold conviction of Gopi. The occurrence leading to the death of the cleaner, Jasbir and the driver Arun Kumar, the motive to steal etc. are corroborative. This independent evidence/material is not to be read in isolation but with the intent and purpose to verify the testimony of the approver.

46. Section 120B IPC has been rightly invoked against Gopi as far as murder of Jasbir is concerned. The said murder was committed in cool calculated preplanned manner. Arun Kumar and Jasbir were separated on false pretext and Jasbir was taken to an isolated spot in village Hiranki where he was killed. Gopi was not present at the spot of the occurrence at village Hiranki but as testified by the approver he was

present with all accused till in terms of the plan, till Jasbir was separated from Arun Kumar. Gopi was present at the spot of occurrence when Arun Kumar was killed though was guarding the truck. Principle of common intention u/s 34 IPC would be applicable.

47. Before we close, we should deal with the contention of the appellants Tejpal and Kishan on the question of the charges framed against them. In the present case charges were framed on two dates i.e. on 30th October, 1985 and again on 21st January, 1986. One of the charges framed on 21st January, 1986 reads as under:-

> "I, Mohd. Shamim, Addl. Sessions Judge, Delhi do hereby charge you (1) Ram Chail, (2) Krishan Lal, (3) Gopi Chand and (4) Tejpal, as under:-
>
> That on 12.7.84 at Delhi you all along with Ashok (approver) agreed to do the illegal act by illegal means i.e. to commit the decoity of Truck No. URM-660 and murder of Arun Kumar and Jasbir Singh and thereby committed an offence punishable under Sec. 120B IPC and within the cognizance of this court.
>
> And, I hereby direct that you all be tried by this court on the aforesaid charge."

Another charge framed on the same date is as under:

> "I, Mohd. Shamim, Addl. Sessions Judge, Delhi do hereby charge you (1) Ram Chail, (2) Krishan Lal, (3) Tejpal, as under:-
>
> That during the intervening night of 12/13.7.84 in a jungle near Hiranki village, within the jurisdiction of P.S. Alipur, Delhi in pursuance of the conspiracy you intentionally caused the death of Jasbir alias Kala after committing the decoity of truck No. URM-660 and thereby committed an offence punishable under Sec. 302 IPC read with Sec. 120B IPC and within the cognizance of this court.

And, I hereby direct that you all be tried by this court on the aforesaid charge."

48. No doubt, on the same date other charges were framed against Ram Chail, Krishan Kumar and Tejpal to the effect that on 12th July, 1984 to 13th July, 1984, they in conspiracy had caused death of Arun and committed offence under Section 302 read with 120B IPC, but the reading of the two charges mentioned above clearly show that appellants were aware of the case against them and they have been charged with the murder of both Arun Kumar and Jasbir and the offence punishable under Section 120B. They were also charged for dacoity for having stolen truck number URM 660. Even if there is any ambiguity or anomaly in the framing of the charge neither of them objected to or questioned it at the time of trial. Looking at the questions asked to the witnesses and the manner in which the trial was conducted, it is clear that no prejudice has been caused and suffered by the appellants. The contention, therefore, has to be rejected.

49. The appeals are dismissed. The conviction and sentence under Sections 302, 396, 201 and 120B IPC are upheld. Appellant Gopi Chand who is on bail shall surrender before the trial court within seven days to undergo the remaining sentence. In case Gopi Chand does not surrender appropriate steps will be taken to arrest him.

SANJIV KHANNA
(Judge)

SIDDHARTH MRIDUL
(Judge)

August 2nd, 2013
Kkb/vkr/NA