

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

Date of decision: 8th July, 2013

+ **CRL.A. 742/2012**

MOHD. IMRAN @ CHUNNU Appellant
Through : Mr.Vivek Sood Advocate with
Mr.Vishwanath Pratap Singh, Advocate

versus

STATE (NCT OF DELHI) Respondent
Through : Ms. Richa Kapoor, Additional Public
Prosecutor for the State.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE G.P. MITTAL

J U D G M E N T

G. S. SISTANI J.(ORAL)

1. The present Appeal is directed against the judgment and order on sentence dated 30th October, 2009 by which the Appellant has been sentenced to imprisonment for life along with fine of Rs.5,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of six months for the offence punishable under Sections 302/34 IPC and also to undergo three years RI along with fine of Rs.2,000/- and in default thereof three months RI for the offence punishable under Section 201 Indian Penal Code. Both the sentences were to run concurrently.
2. The facts of the case as noticed by the learned Trial Court are that one Mohd. Salim is the owner of a DDA flat bearing No.A-5/33-B, Inderlok. One Abdul Salam was inducted as a tenant in respect of one room

forming part of the said flat. The son of Abdul Salam one Mohd. Nirale started living along with his father in the tenanted room since the year 2004. Mohd. Nirale was selling handkerchives, caps, belts etc. by sitting on a patri near Badi Masjid, Inderlok. The original tenant Abdul Salam had shifted to his native village however his son continued to reside in the tenanted premises. Mohd. Nirale was joined by one Mohd. Imran, the accused (Appellant herein) in the tenanted room and both were doing business and used to carry jute bags for the purpose of their business. On 13th July, 2004 Mohd. Imran and Mohd. Nirale came back to the tenanted room, had dinner and played the deck. Thereafter on the following day Mohd. Salim went to his work and returned in the evening. On 14th July, 2004 at about 7:00 P.M. Mohd. Salim saw Mohd. Imran going from the tenanted room carrying a jute bag. Mohd. Salim presumed that Mohd. Imran might be carrying the goods in the jute bag for selling his goods.

3. A telephonic message was received at Police Post Shanti Nagar on 14th July, 2004 at about 9:05 P.M. regarding a dead body lying near red light crossing, Ashok Vihar. This information was reduced into writing vide DD No.21 and assigned to ASI Mohan Lal who along with Constable Kishan Pal went near the red light crossing, Ashok Vihar. A jute bag was found near Jhuggi Cluster, Sulabh Shauchalya, Red light, Ashok Vihar, the opening of which was tied with green colour plastic rope. ASI Mohan Lal opened the bag and found a dead body of a man, aged about 20-22 years. The information was sent to Inspector Gajraj Singh who reached the spot along with other staff. The dead body had a deep wound with blood on the left side of the abdomen and injuries on the neck and right side back. The dead body was wrapped in a thin mattress with a woolen sheet, two loongies and was placed on two caps and plastic polythene

bags. There was no eye witness to the offence. A rukka was prepared for registration of an FIR which was registered under Section 302/201 IPC at Police Station Keshav Puran. The crime team was summoned, photographs were taken, site plan was prepared and exhibits seized from the spot.

4. The dead body was identified on 16th July, 2004 by Mohd. Aslam and Surfe Alam. Thereafter, the investigating officer along with Mohd. Aslam and Surfe Alam, who identified the dead body as that of Mohd. Nirale, the IO along with Mohd. Aslam and Surfe Alam reached Flat No.A-5/33-B, Inderlok situated at second floor. Mohd. Salim informed the IO that the deceased was residing with Mohd. Imran and he had seen Mohd. Imran taking a jute bag on 14th July, 2004. On 17th July, 2004 on the basis of secret information received, Mohd. Imran was apprehended at about 6:00 P.M. from near Idgah Gate, Sadar Bazar. His disclosure statement was recorded. He led the police party to the spot and pointed out to the room where the murder of the deceased was committed on 14th July, 2004. The accused is also stated to have produced one scissor, stating to be the weapon of offence from the *Machan* in the room. Photographs were taken of the wall having blood stains by the crime team. The wall plaster having blood stains was also taken along with sample plaster. It is also the case of the prosecution that the Appellant led the police party to Sulabh Shauchalya near Red light, Ashok Vihar in the presence of Mukesh Kumar and pointed out the place where he threw the dead body after putting it in a jute bag. The exhibits were sent to the FSL. After completion of investigation, charge-sheet was filed. The prosecution examined 22 witnesses. No evidence was led by the defence. Since there was no eye witness to the offence, the entire case was based

on circumstantial evidence. The learned Trial Court has held the Appellant guilty. Penultimate para of the judgment of the Trial Court reads as under:-

“37. The prosecution from the quality and quantity of evidence proved the following circumstances leading to the inference incompatible with the innocence of the accused or the guilt of other person :--

i. The accused was seen lastly in the company of the deceased by PW-1 Mohd. Salim.

ii. The time gap between the death of the deceased and when the accused was lastly seen with the deceased exclude the possibility of another being author of the crime.

iii. Recovery of weapon of offence i.e scissor Exp2 at the instance of accused.

iv. Expert Opinion.

v. Pointing Out of place of incident and place where dead body was thrown.”

5. Mr. Vivek Sood learned counsel for the Appellant contends that there are glaring contradictions, falsities and infirmities in the case of the prosecution against the Appellant. It is apparent from the records that the prosecution witnesses have deposed falsely against the Appellant. It is further contended that the disclosure statements as well as the recoveries attributed to the Appellant are fabricated, concocted and hence ought to have been rejected by the Trial Court. Instead, the Trial Court has accepted and relied upon such fabricated and concocted disclosure statements, recovery memos, arrest memos, etc. The prosecution has failed to lead unimpeachable evidence against the Appellant and the chain

of events is not complete so as to reach a conclusive finding pointing out to the guilt of the Appellant.

6. While pointing out to paragraph 37 of the judgment of the trial court, Mr.Sood next contends that the first circumstance which has been relied upon very heavily by the prosecution and accepted by the learned Trial Court is that the Appellant was last seen in the company of the deceased by PW-1 Mohd. Salim. Mr. Sood contends that the time gap between the Appellant having been seen with the deceased and the time of his death was very long and thus the finding arrived at by the Trial Court on the basis of last seen theory is erroneous. Mr. Sood further contends that PW-1 had seen the deceased and the Appellant lastly on 13th July, 2004 in the evening and having regard to the time gap, it cannot be said that it was so small that possibility of any person other than the Appellant committing the crime becomes impossible. Thus it would not be a circumstance which could be considered vital to nail the Appellant. Mr. Sood contends that as per the evidence of PW-1 on 13th July, 2004 during evening hours he had seen the deceased and the Appellant come back at the tenanted premises after taking dinner and they both played the deck. It is further contended that as per the post mortem report, the post mortem which was conducted on the deceased, the deceased had died 72 hours prior to the conducting of the post mortem which was carried out at 12:45 P.M. on 17th July, 2004. Mr. Sood thus contends that the approximate time and date of death would be 14th July, 2004 at 12:45 P.M. whereas according to PW-1 he had seen the deceased alive in company of the appellant on the evening of 13th July and further seen appellant carrying the jute bag on 14th July, 2004 at 7:00 P.M.

7. Mr. Sood further contends that the third circumstance which has been considered by the Trial Court is the recovery of the weapon of offence, that is the, scissor from the Appellant is also unreliable. Mr. Sood contends that there are major contradictions in the evidence of PW-7, PW-9, PW-18 and PW-19 who are the material witnesses who have deposed with respect to the recovery of the scissor at the instance of the Appellant. It is contended that as per the evidence of Head Constable Brij Pal PW-7, the Appellant had led the police party to the DDA flat bearing No.A-5/33-B, Inderlok and lock of the said flat was opened with the help of key which was produced by the Appellant. PW-7 has also deposed on the same lines that in the said room blood stains were found on the wall of the room and the Appellant had pointed out to one scissor from the slab (*tand*), PW-9 Head Constable Umed Singh has also deposed that the accused had handed over key of the said flat and with the help of the said key, door of the flat was opened, blood stains were noticed on the wall and the scissor was recovered from the *tand* of the said room on pointing out by the accused. It is contended that PW-18 Sub-Inspector Rajpal Singh has deposed that the accused had voluntarily led them to the house, pointed out to the room, pointed out to the blood on the western wall and informed them that the blood is of Mohd. Nirale and further disclosed that the scissor with which he had committed the murder of Mohd. Nirale was kept on the *machan* and after committing the murder he had washed the scissor. Mohd. Imran himself lifted the scissor from the *machan* and produced the same to the IO. PW-19 deposed on the lines of PW-18 that the accused had pointed out to the scissor with which he had committed the murder.

The counsel submits that the contradictions in the evidence of these

witnesses with respect to the production of the key goes to the root of the matter. As per PW-7 and PW-9 the Appellant produced the key of the room, however, the testimonies of PW-18 and PW-19 are silent with respect to the same. It is next contended that the contradictions are very material in view of the fact that the search which was conducted (*jamatalashi*) of the accused (Ex.PW-7/B) would show that nothing was recovered from the person of the accused. It is thus the submission of the learned counsel for the appellant that the evidence of PW-7, PW-9, PW-18 and PW-19 is unreliable and more particularly the evidence of PW-7 and PW-9 that the key was produced by the accused and the scissor was recovered. Counsel further contends that PW-1, PW-18 and PW-19 in their testimony have nowhere mentioned the production of the key by the accused.

8. Counsel also contends that the version of the prosecution with respect to the recovery of the scissor at the pointing out of the appellant is further unbelievable for the reason that admittedly PW-1 had identified the body of the deceased on 16th July, 2004 after he noticed the photograph of the deceased from the poster which he had seen on his way after performing *namaz*. Mr. Sood contends that PW-1 was the owner of the flat and was aware that the deceased was residing along with his cousin in the tenanted room and further PW-19 has deposed that they had visited the flat on 16th July, 2004 itself and thus PW-1 and PW-19 would have entered the room when the alleged murder took place. It is thus contended that the recovery of scissor even if presumed to be correct cannot link the scissor to the Appellant as in all probability, the same was planted and in the alternative the scissor could have been recovered earlier than on the date when it is alleged that the appellant led the police to his room and got the

recovery made.

9. Elaborating his arguments further, Mr. Sood contends that even if it is assumed that the scissor was recovered, there is no evidence to show that the particular scissor was used for the commission of the crime. Relying on the report of the CFSL he submits that no blood was found on the scissors and further there is no evidence on record to show that the scissor was actually washed neither any opinion was sought from the CFSL to opine whether the scissor had been washed or not. Reliance is placed on the CFSL report wherein it has been opined that Ex.P-4 which was the scissor did not contain any blood. In support of his submission, Mr. Sood has relied upon material which has been downloaded from the internet to show that even if blood stains were washed, in case a chemical luminal is not applied on the object stained with blood it can be detected even if it is washed many times.
10. Counsel further contends that the another circumstance strongly relied upon by the Trial Court is the pointing out of place of incident by the Appellant. It is submitted that the place where the dead body was found had already been detected and DD No.21 was made. Mr.Sood, submits that it would amount to rediscovery and the prosecution cannot derive any benefit of Section 27 of the Evidence Act and the same would not be applicable to the facts of the present case.
11. Another submission of the learned counsel for the Appellant is that although jute bag has been described by PW-11 and PW-13 but the same has not been identified by PW-1 to be the same jute bag which PW-1 had noticed with the Appellant. It is contended that much cannot be read into the testimony of PW-1 that he saw the Appellant with the jute bag on 14th

July, 2004 as it was the normal practice of the Appellant to carry goods in a jute bag for sale.

12. Mr. Sood has also laboured hard to show that firstly the Appellant did not abscond as he was found at Idgah in Sadar Bazar and even if it is assumed that he has absconded, the same cannot be treated as a circumstance against him. To canvas this argument, Mr. Sood has placed reliance on **Jitender Kumar Vs. State NCT of Delhi** reported at 2009 [1] JCC 491, wherein it was held:

“22. The act of absconding by itself is not a very weighty circumstance to hold against the accused for the reason many a times innocent persons run away fearing false arrest. At best the circumstance of absconding would reinforce, if otherwise established, the guilt of the accused.”

13. Reliance is also placed on **Rahman Vs. State of U.P.** AIR 1972 SC 110, wherein it was held:

“21. It is true that the appellant was concealing himself for nearly a month though he must have known that he was wanted by the Police and that he left his wife to face the situation alone. But absconding by itself is not conclusive either of guilt or of a guilty conscience. For, a person may abscond on account of fear of being involved in the offence or for any other allied reason.”

14. Similar view has been expressed in the case of **Bipin Kumar Mondal Vs. State of West Bengal** reported at 2010 (7) SCALE, wherein it was held:

“22. In *Matru @ Girish Chandra Vs. The State of U.P.*, AIR 1971 SC 1050, this Court repelled the submissions made by the State that as after commission of the offence the accused had been absconding, therefore, the inference can be drawn that he was a guilty person observing as under:

“The appellant's conduct in absconding was also relied upon. Now, mere absconding by itself does not necessarily lead to a firm conclusion of guilty mind. Even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a grave crime such is the instinct of self-preservation. The act of absconding is no doubt relevant piece of evidence to be considered along with other evidence but its value would always depend on the circumstances of each case. Normally the courts are disinclined to attach much importance to the act of absconding, treating it as a very small item in the evidence for sustaining conviction. It can scarcely be held as a determining link in completing the chain of circumstantial evidence which must admit of no other reasonable hypothesis than that of the guilt of the accused. In the present case the appellant was with Ram Chandra till the FIR was lodged. If thereafter he felt that he was being wrongly suspected and he tried to keep out of the way we do not think this circumstance can be considered to be necessarily evidence of a guilty mind attempting to evade justice. It is not inconsistent with his innocence.”

15. Another submission made by the learned counsel for the Appellant is that there is nothing to connect the blood stains on the wall with the murder of the deceased as no conclusive findings has been given by the CFSL and further there is no evidence to show that the bloodstains were old or fresh. It has also been argued before this Court that the story of the prosecution and the reliance of the learned Trial court that the murder took place in the tenanted room of PW-1 is doubtful and improbable as there is no evidence of any scuffle or fight nor there is any evidence to show that there was screaming or shouting or any quarrel between the deceased and the Appellant. Neither blood was detected on any furniture or floor nor there is any evidence that any attempt was made to remove the evidence and more particularly, the same could not have remained undetected as there was a common toilet which was being used between

the tenant and the landlord. Counsel contends that as per the evidence of PW-1, he was residing in a flat along with his wife and six children and it is impossible that eight persons did not hear any shouting or screaming when the murder was committed. It is also the contention of the Appellant that the prosecution has failed to prove any motive for the offence committed by the Appellant.

16. Ms. Richa Kapoor, learned Additional Public Prosecutor for the State submits that the prosecution has been able to prove its case beyond any shadow of doubt. The deceased and the Appellant were admittedly residing in the tenanted room, they were last seen together on 13th July, 2004. There is nothing to show that any other person either entered the room or left the room after the appellant was last seen with the deceased and the evidence of PW-1 would clinch the entire issue as he had seen the Appellant carrying a jute bag on 14th July, 2004 and the dead body was found in a jute bag at 9:00 P.M. on the same date. It is further submitted that it is not the case of the Appellant that he has been falsely implicated as his statement under Section 313 Cr.P.C. does not throw any light on the same, moreover no foundation has been laid in the statement made under Section 313 Cr.P.C. for being falsely implicated. Counsel also contends that the recovery of scissor has been duly proved by PW-7, PW-9, PW-18 and PW-19 and minor contradictions cannot dislodge the case of the prosecution and the Appellant cannot derive any benefit of the same. She further contends that merely because there was no blood stains on the scissors, the Appellant cannot derive any benefit of the same as only he was aware that this was the weapon of offence and the same was recovered at his instance. It is also contended by the learned counsel for the State that the case is fully covered under Section 27 of the Evidence

Act. She has vehemently denied the theory of planting of the scissors and it is contended that if anything was to be planted, it would have been smeared with blood. She also submits that the wall of the room had human blood.

17. In support of her submission that the appellant can claim no benefit for failure to detect the origin of the blood on the scissor, learned APP for the State has placed strong reliance on paragraphs 29 and 30 of **Dr. Sunil Clifford Daniel v. State of Punjab (Supra)**, which are reproduced below:

“29. A similar issue arose for consideration by this Court in Gura Singh Vs. State of Rajasthan, AIR 2001 SC 330, wherein the Court, relying upon earlier judgments of this Court, particularly in Prabhu Babaji Navie v. State of Bombay AIR 1956 SC 51; Raghav Prapanna Tripathi v. State of U.P., AIR 1963 SC 74; and Teja Ram (supra) observed that a failure by the serologist to detect the origin of the blood due to dis-integration of the serum, does not mean that the blood stuck on the axe would not have been human blood at all. Sometimes it is possible, either because the stain is too insufficient, or due to haematological changes and plasmatic coagulation, that a serologist may fail to detect the origin of the blood. However, in such a case, unless the doubt is of a reasonable dimension, which a judicially conscientious mind may entertain, with some objectivity, no benefit can be claimed by the accused, in this regard.

30. Learned counsel for the appellant has placed very heavy reliance on the judgment of this Court in Sattatiya @ Satish Rajanna Kartalla Vs. State of Maharashtra, AIR 2008 SC 1184, wherein it was held that in case the Forensic Science Laboratory Report/Serologist Report is unable to make out a case, that the blood found on the weapons/clothes recovered, is of the same blood group as that of the deceased, the same should be treated as a serious lacuna in the case of the prosecution. The appellant cannot be allowed to take the benefit of such an observation in the said judgment, for the reason that in the aforementioned case, the recovery itself was doubted and, in addition thereto, the non-matching of blood groups was treated to be a lacunae and not an independent factor, deciding the case.”

18. While relying on *Bipin Kumar Mondal v. State of West Bengal (Supra)*, learned APP for the State submits that a motive is of no consequence and would become insignificant when the direct evidence establishes the crime.
19. We have heard counsel for the parties, considered their rival submissions and examined the evidence on record.
20. Since there is no eye witness to this offence, the present case is one of the circumstantial evidence. The learned Trial Court has relied upon the evidence of PW-1 and held that the deceased was last seen in the company of the Appellant on 13th July, 2004. The Trial court was convinced that the prosecution has established that the deceased was last seen in the company of the Appellant and also there was no reason to disbelieve the testimony of PW-1.
21. Although the trial court has rightly noticed that the last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible, however, in our view the law has not been correctly applied to the facts of the present case. In the case of *State of U.P. Vs. Satish* 2005(2)SCR 1132, it was held:

“The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively

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

22. In the case of **Arjun Marik and Ors. Vs. State of Bihar** 1994 Supp. (2) SCC 372, the Apex Court has held that even if the appellant had stayed in the night in the house of the deceased, and even if it is accepted, the only circumstance of last seen will not complete the chain of circumstances to record a finding against the accused. Paragraph 31 of the judgment reads as under:

“31. Thus the evidence that the appellant had gone to Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded.”

23. Similar view has been expressed by the Supreme Court of India in the case of **Jaswant Gir Vs. State of Punjab** (2006) 1 SCC (Cri.)579, holding that:

“5. Apart from the extra-judicial confession which we shall advert to a little later, the main incriminating fact relied upon is that the deceased was last seen by PW 14 in the company of the appellant and the other accused and that he was given a lift in the vehicle belonging to the appellant. In order to establish that the vehicle belonged to or was in de

facto possession of the appellant, some evidence has been let in. The “last-seen” evidence is sought to be established by the testimony of PW 14. At the outset, we must observe that there is a serious doubt cast on the version of PW 14 about the deceased going in the vehicle of the appellant. The destination of the deceased was Pehowa whereas the vehicle had come from Pehowa and was proceeding towards Devigarh which is in a different direction. Prima facie there is no apparent reason why the deceased would have chosen to go in the vehicle which was proceeding to some other destination. The High Court resorted to a guess that the deceased would have been lured to consume liquor or his relatives might be there at Devigarh. Without probing further into the correctness of the “last-seen” version emanating from PW 14's evidence, even assuming that the deceased did accompany the accused in their vehicle, this circumstance by itself does not lead to the irresistible conclusion that the appellant and his companion had killed him and thrown the dead body in the culvert. It cannot be presumed that the appellant and his companions were responsible for the murder, though grave suspicion arises against the accused. There is considerable time-gap between the deceased boarding the vehicle of the appellant and the time when PW 11 found the dead body. In the absence of any other links in the chain of circumstantial evidence it is not possible to convict the appellant solely on the basis of the “last-seen” evidence, even if the version of PW 14 in this regard is believed. In view of this, the evidence of PW 9 as regards the alleged confession made to him by the appellant assumes importance.”

24. Applying the settled law to the facts of this case, the last seen theory in our view is not applicable to the facts of this case, firstly for the reason that the time gap between the evening of 13.7.2004 when PW-1 saw the appellant and Mohd. Nirale to the estimated time of death of Mohd. Nirale, which would be either 12:45 p.m. of 14.7.2004 or 7:00 p.m. when PW-1 saw the appellant with the jute bag, is not small. The learned trial court has noticed while relying on the testimony of PW-1 that Mohd.

Salim and the deceased remained together on 13.7.2004 and on 14.7.2004 with a bag as seen by PW-1. In our view the time gap between 7:00 p.m. on 13.7.2004 to 12:45 p.m. of 14.7.2004, which is the approximate time of death, cannot by any stretch of imagination be treated a small. In our view this is not a circumstance which will complete the chain of circumstances which alone can be a ground for recording a finding against the accused nor the fact that PW-1 had seen the appellant carrying a jute bag and the dead body of Mohd. Nirale was also found in a jute bag can be the basis of holding the appellant guilty; nor there is any evidence to show that the dead body of the deceased, who has been described as a stout and young boy of 20 to 22 years of age, 5ft. 6 inches in height, was wrapped in this jute bag which the PW-1 had seen with the Appellant.

25. We also find the recovery of the weapon of offence at the instance of the Appellant to be unreliable. Firstly, for the reason that the *jamatalashi* of the Appellant shows that there was nothing on the person of the appellant and on the other hand, according to PW-7 and PW-9, the key was handed over by the Appellant and whereas PW-18 and PW-19 who were also present are silent on this issue. We also find this aspect to be unreliable also for the reason that PW-1 had informed the police on 16th July, 2004 in the afternoon and on the same day the police had visited the flat in question, as per the evidence of PW-19 and it is absolutely improbable that the room was neither visited nor searched. Thus it cannot be safely said that the weapon of murder was recovered at the instance of the appellant.
26. The final circumstance which has been relied upon by the prosecution and which has impressed the Trial Court is the pointing out of place of

incidence and place where the dead body was thrown. Section 27 of the Evidence Act, which reads as under, would have no application as the place where the dead body was found would amount to a re-discovery:

“27. How much of information received from accused may be proved. –

Provided that, when any fact is discovered to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”

27. Section 27 of the Evidence Act would apply in a case where a fact should have been discovered on the basis of information which is received from a person, who is accused of an offence and the accused should be in custody of the police when such information is supplied. It is also necessary that such statement should lead to discovery of a fact which the police had not previously learnt from another source. The disclosure made by the appellant which led to the pointing out to the place where the dead body was thrown in this case would amount only to a re-discovery, as the place where the dead body was found was discovered by PW-13, ASI Mohan Lal and PW-11 Constable Kushal Pal Singh, who were informed on telephone from police post Shanti Nagar on 14.7.2004 at about 9:05 p.m. regarding lying of a dead body near red light crossing, Ashok Vihar.
28. In the case of **Thimma and Thimma Raju Vs. State of Mysore** 1970 (2) SCC 105, the Apex Court has held that once a fact is discovered from another source that can be no fresh discovery even if relevant information is extracted from the accused. Paragraph 10 of the judgment reads as

under:

“10. Reliance on behalf of the prosecution was also placed on the information given by the appellant which led to the discovery of the dead body and other articles found at the spot. It was contended that the information received from him related distinctly to the facts discovered and, therefore, the statement conveying the information was admissible in evidence under Section 27 of the Indian Evidence Act. This information, it was argued, also lends support to the appellant’s guilt. It appears to us that when PW4 was suspected of complicity in this offence he would in all probability have disclosed to the police the existence of the dead body and the other articles at the place where they were actually found. Once a fact is discovered from other sources there can be no fresh discovery even if relevant information is extracted from the accused and courts have to be watchful against the ingenuity of the investigating officer in this respect so that the protection afforded by the wholesome provisions of Section 25 and 26 of the Indian Evidence Act is not whittled down by mere manipulation of the record of case diary. It would, in the circumstances, be somewhat unsafe to rely on this information for proving the appellant’s guilt. We are accordingly disinclined to take into consideration this statement.”

29. Similar view was also taken by the Apex Court in the case of **Makhan Singh Vs. State of Punjab** AIR 1988 SC 1705.
30. The opinion of the expert which is another circumstance which has been relied upon by the Trial Court does not lead to any conclusive finding that the scissor was the weapon of the murder nor the scissors contained any blood. The wall which contained human blood does not show that the blood either belonged to the deceased or the Appellant, whether it was fresh or old, coupled with the fact that neither the crime branch nor the IO found blood on any other furniture, clothes, floor of the room nor it

was the case of the prosecution that the evidence was tampered with more particularly that there was only one bathroom which was commonly used by the landlord and the tenant.

31. In our view, the prosecution has failed to prove its case beyond any shadow of doubt and therefore, the impugned judgment of the trial court and the order of conviction dated 30th October, 2009 is set aside. The Appeal is allowed. The Appellant shall be released forthwith unless he is wanted in any other case.
32. Copy of the order be sent to the concerned Superintendent Jail for information and compliance.

(G.S. SISTANI)
JUDGE

(G.P. MITTAL)
JUDGE

JULY 08, 2013
vk/ssn/