

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

+ **CRL.A. 1052/2010**

ASHOK VISHWAKARMA @ SURJI

..... Appellants

Through: Mr. Shri L.S.Saini, Advocate

versus

STATE

..... Respondent

Through: Ms. Ritu Gauba, APP.

CRL.A. 845/2010

ANGAD SINGH

..... Appellants

Through: Mr. Vivek Sood, Advocate.

versus

STATE

..... Respondent

Through: Ms. Ritu Gauba, APP.

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Date of Decision: 9th July, 2013

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Tried on charges under Sections 302, 364-A, 365, 201 IPC read with Section 34 IPC in Sessions Case No.64/08 arising out of FIR

No.594/04 under Section 365 IPC, PS Najafgarh, the appellants stand convicted by a judgment dated 28.07.2009 of Additional Sessions Judge, Delhi and sentenced on 31.07.2009 to:-

(i) Imprisonment for life and fine of Rs.15,000/- each in default of payment of fine, one year rigorous imprisonment under Sections 302/34 IPC, fine if realised, be given to the mother of the deceased.

(ii) Sentenced for life and fine of Rs.15,000/- each, in default of payment of fine one year imprisonment, fine if realised, be given to sister of the deceased under Section 364-A IPC.

(iii) Seven years rigorous imprisonment and fine of Rs.5,000/- each, in default of payment of fine, six months rigorous imprisonment under Sections 201/34 IPC, fine if realised, be given to the mother of the deceased.

2. All the sentences of imprisonment are to run concurrently.

3. The appellants are in appeal against the aforesaid judgment of conviction and order of sentence passed by learned Additional Sessions Judge, Delhi.

4. The appellants faced trial on the allegation that they abducted

Pawan Kumar aged about 19 years and tried to extort Rs.1 lakh from his father by making a phone call for his safe release and committed his murder. Facts of the case reveal that on 13.10.2004, Pawan went along with accused Ashok at about 10.30 a.m. for going to the office of BDO, however, he did not return. His parents made an unsuccessful search for him. On 14.10.2004, Shri Jaglal Prashad, father of the deceased, made a call regarding missing of his son, which was received by Constable Ram Swroop (PW17) at about 13:43 p.m. He entered the message in the PCR form Ex.PW17/A and sent the same to South-West District Control Room. On receipt of message, ASI Rani Devi (PW13) recorded DD No.21, Ex.PW13/A and sent to ASI Vijay Pal. ASI Vijay Pal Singh (PW28) sent wireless message on receipt of this DD No.21, Ex.PW13/A. On 15.10.2004, Anu Kumari (PW3), sister of the deceased received a telephone call from an unknown person that Pawan Kumar is with them and this information should not be leaked to anyone and that the caller will make call again. Anu Kumari informed her father Jaglal Prasad about the telephone call. Thereupon, Jaglal Prasad went to Police Station Najafgarh. ASI Vijay Pal Singh (PW28) recorded his statement

Ex.PW28/A and made his endorsement Ex.PW28/B, prepared rukka and handed over to duty officer for registration of FIR. Head Constable Munni (PW10) recorded FIR Ex.PW10/A and handed over copy of the same and original rukka to ASI Vijay Pal Singh for further investigation. On 07.11.2004, the investigation of this case was assigned to SI Amar Pal Singh (PW25).

5. On 20.11.2004, Jaglal Prasad, father of the deceased, received a telephone call from accused Ashok demanding a sum of Rs.1 lac for release of his son Pawan. Thereupon Jaglal Prasad went to Police Station Najafgarh and informed SI Amar Pal Singh regarding receipt of telephone call from accused Ashok on his phone No.25323586 stating that his son has been abducted by him and his associate. He was directed by Ashok to reach at PCO booth near Sai Baba Mandir between 12:00 noon to 1:00 p.m. and that in case he informs the police they would kill his son. Complainant was produced before Inspector H.S.Meena, who directed SI Amar Pal Singh to organise a raiding party and to prepare dummy bundles of currency notes. SI Amar Pal Singh prepared 10 wads of papers and wrapped the same in a newspaper. The same were put in a bag of Maroon colour and

handed over to the complainant directing him to reach at the given spot. Raiding party comprising of SI Amar Pal Singh, ASI Vijay Pal Singh, ASI Chandu Lal, SI S.S.Yadav, Head Constable Iswar Singh, Constable Mahabir Singh and other staff was organised. They all reached near Sai Baba Mandir. At about 12.10 p.m., both the accused came at the PCO booth. Accused Ashok had conversation with complainant Jaglal Prasad and took the bag from him and then handed over the same to co-accused Angad. On getting signal from complainant, police officials apprehended both the accused and took the bag from them. On search of accused Ashok, one slip bearing telephone No.25323586 was recovered. Both the accused were interrogated, arrested and their personal search was taken in which besides other things, one key each was also recovered. They made disclosure statements and led the police party to AB -38, Nangli Vihar, Najafgarh, Near Annu Public School and pointed out the place where they committed murder of deceased. Accused Ashok also got recovered one Titan watch belonging to Pawan which was identified by his father, Shri Jaglal. Thereafter, they led the police team to Ranaji Enclave, house of Tara Chand by stating that they had buried

the deceased after committing his murder over there. Dead body was recovered from the house of Tara Chand at Ranaji Enclave. One iron chain, one white sheet and pair of chappal were found inside the bag. The accused also got recovered one kudal from the front room and iron tawa from the rear room. Photographs were taken by Head Constable Ajeet Singh (PW6), whereas videography was done by Constable Bhom Pal (PW12). Post mortem on the dead body was conducted by Dr. L.N.Barua (PW16), who gave his report Ex.PW16/A. After post mortem, dead body was handed over to complainant. Subsequent opinion regarding iron chain was obtained from Dr. L.K.Barua. After completing investigation, charge-sheet was submitted.

6. In order to substantiate its case, prosecution examined 28 witnesses, however, record reveals that Constable Bhom Pal was examined as PW12 and again as PW27. Similarly, Head Constable Ishwar Singh was examined as PW22 and again as PW24. All the incriminating evidence was put to both the accused by recording their statements under Section 313 Cr.P.C., wherein they denied the case of prosecution. They did not prefer to lead any evidence.

7. In the absence of direct evidence for commission of offence, the prosecution based its case on circumstantial evidence. The circumstances that were held by the learned trial court as firmly established, find mention in the impugned judgment. On examining the evidence on record, the learned trial court found that the circumstances taken together formed a chain so complete that there was no escape from the conclusion within all human probability that crime was committed by the appellants and none else. It found that the circumstances proved were incapable of explanation on any reasonable hypothesis save that of the guilt against the appellants.

8. Impugned judgment was challenged by filing the present appeal.

9. We have heard Shri L.S.Saini, learned counsel for Appellant Ashok, Shri Vivek Sood, learned counsel for appellant Angad and Ms. Ritu Gauba, learned Additional Public Prosecutor for the State and have perused the record.

10. Conviction of the appellants rests on circumstantial evidence. The circumstances which accounted for their conviction may be broadly categorised as under:-

- (i) The deceased being last seen with the appellants.
- (ii) Recovery of bag containing dummy notes from the possession of accused in pursuance of the ransom call made by them to complainant Jaglal Prasad.
- (iii) Recovery of slip from Ashok bearing telephone number of complainant.
- (iv) Recovery of Titan watch at the instance of accused Ashok belonging to the deceased.
- (v) Recovery of dead body of Pawan Kumar in a plastic bag from their residential room.

11. Each of the circumstance, in seriatum, will be taken by us.

Last seen evidence:-

12. Durga Wati Devi (PW5) is the mother of the deceased and she has testified that on 13th October, 2004, her son Pawan Kumar aged about 19 years got ready at about 8:00 am. Her husband enquired from him as to where he was going in such early hours of morning on which he informed him that Sirji, i.e., Ashok Kumar had asked him to go to BDO Office, Najafgarh in order to get some papers, pertaining to school, signed/attested. Thereafter, her husband, left for duty. At

about 10:00 am., accused Ashok Vishwakarma came and enquired from Pawan as to whether he is going to BDO Office or not, on which Pawan replied in affirmative. Ashok left the house and he was followed by Pawan. She also came out of the house. Her husband had started a school, namely, Anu Public School in the name of her daughter. On the roof of the school, accused Ashok and Angad were standing. Her son also went over there. Thereafter, she came inside her house and started working. At about 2:00 pm, accused Ashok came to her house. She enquired about Pawan from him, then Ashok told him as to why she was getting worried, he may be roaming with his friends and will come soon. Angad and Ashok used to reside in the school premises itself where he used to take tuitions. At about 4:00 pm, she saw accused Ashok taking a gunny bag in a rickshaw. She enquired from him as to what he was taking in the gunny bag. Then Ashok informed him that Angad had taken a room on rent in Ranaji Enclave, Najafgarh. He was taking some utensils and rice in the katta. At that time also, she enquired from him about Pawan, thereupon Ashok told her that after leaving Angad, he would search Pawan. At about 7:45 pm, she informed her husband on telephone

that Pawan has not returned back. Her husband came at about 8:00 pm and then search was made for Pawan in relatives and friends. At that time, accused Ashok and Angad also came and Ashok told her that he was also searching for Pawan. On 14th October, 2004, Ashok advised her husband that missing report be lodged regarding Pawan. Thereupon, her husband lodged missing report by making a telephone call from the house itself. Thereafter, on 15th October, 2004 at about 10:00 am, a telephone call came which was heard by her daughter. The caller informed her daughter that Pawan is with them and this fact should not be revealed to anyone and they will call after two days. Police was intimated. Thereafter, on 20th November, 2004 at about 9:00 am, Ashok made a call to her husband demanding a sum of Rs.1 lac for release of Pawan. The witness was extensively cross-examined, however, nothing material could be elicited to discredit her testimony.

13. It has come on record that both the accused were well known to the complainant. Ashok was residing as a tenant in their house for last about seven years. He was also running the school started by the husband of the complainant and also used to give tuitions. Keeping in

view the fact that accused Ashok had taken Pawan with him for the purpose of getting some documents, pertaining to the school, signed/attested and thereafter, Pawan was lastly seen in the company of accused Ashok and Angad on the roof of the school and thereafter, his whereabouts were not known, the onus shifted upon the accused persons to explain as to where Pawan had gone after he was seen in their company. However, no explanation is coming forth on the part of any of the accused. Therefore, there can be no trace of doubt that the deceased was last seen in the company of accused persons.

Recovery of Bag containing dummy notes

14. Durgawati, mother of the deceased has deposed that on 20th November, 2004 at about 9:00 am, a telephone call was received by her husband. She enquired from her husband as to who had made the call. Thereupon, her husband informed her that Ashok had made the call and demanded a sum of Rs.1 lac for release of Pawan. Thereupon, her husband went to Police Station and met HC Asmita (PW14) who was working as duty officer on that day and told her regarding the receipt of ransom call from Ashok Vishvakarma @ Sirji. She recorded his statement vide D.D.No.10A Ex.PW14/A and

produced complainant Jaglal before SI Amarpal Singh. Jaglal reiterated before SI Amarpal that he had received a telephone call from accused Ashok on his phone No.25323586 that he and his associate has abducted his son and he asked him to reach at PCO Booth near Sai Baba Mandir between 12:00 noon to 1:00 pm. A sum of Rs.1 lac was demanded for release of his son and he was further directed not to inform the police failing which his son will be killed. SI Amarpal Singh produced Jaglal before Additional SHO H.S. Meena and informed him about the facts disclosed to him by the complainant. Additional SHO made enquiries from the complainant and directed SI Amarpal Singh to organize a raiding party and to prepare dummy bundles of currency notes. He prepared ten wads of papers and wrapped the same in newspaper. The wads were put in bag of Maroon colour and handed over to complainant vide memo Ex. PW19/A. He was directed to reach at given spot. Raiding party comprising of SI Amarpal Singh, ASI V.P. Singh, H.C. Ishwar Singh, SI S.S. Yadav and other staff reached near Sai Baba Mandir at about 12:10 pm. Both the accused came at PCO Booth. Accused Ashok talked to the complainant and took over the bag which was in his

possession. Then he handed over the said bag to his associate Angad. On getting signal from complainant, SI Amarpal Singh with the help of Head Constable Mahavir over powered Angad while ASI V.P. Singh and Head Constable Ishwar Singh over powered accused Ashok. They were brought at the PCO Booth. On checking the bag fake wads were recovered. The same were seized vide seizure memo Ex.PW21/A.

15. This recovery has been challenged on the ground that there is no independent witness of recovery despite the fact that Sai Baba Mandir is a crowded place. Moreover, according to prosecution version, this recovery was effected during noon time but PW 1 and PW2 have deposed that news had spread in the locality in the morning itself regarding apprehension of accused. If that is so, the apprehension of accused and recovery of bag containing dummy bundles of notes is doubtful.

16. This submission has no substance, in as much as, recovery was effected in the presence of complainant Jaglal, however, due to non availability of Jaglal as he has since expired, he could not be examined but the fact remains that the recovery was witnessed by ASI

V.P. Singh, HC Mahavir Singh, HC Ishwar Singh and SI Amar Pal Singh. All these witnesses have been cross-examined at length by learned defence counsel. However, nothing material could be elicited to discredit their testimony. The testimony of police personnel have to be treated in the same manner as testimony of any other witnesses and there is no principle of law that without corroboration by independent witnesses their testimony cannot be relied upon. The presumption that a person acts honestly applies, as much in favour of police personnel as of other person and it is not a proper judicial approach to distrust and suspect them without good ground. It will all depend upon the facts and circumstances of each case and no principle of general application can be laid down as held in *Karanjit Singh Vs. State (Delhi Admn.)* 2003 5 SCC 291, *C. Ronald & Anr. Vs. Union Territory of Andaman & Nicobar Islands*, (2001) 1 SCC (CrL.) 596. In *Sunil Clifford Daniel vs. State of Punjab*, 2012 11 SCC 205, Apex Court referred to **State Govt. of NCT of Delhi v. Sunil and Anr.**, (2001) 1 SCC 652, wherein Court held as under:-

“20. ... But if no witness was present or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so

prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The court has to consider the evidence of the investigating officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth.

21. We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust.....At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way round. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions.”

Record reveals that no ill-will or animus has been alleged against any of the police officials for which reason they will falsely implicate the accused. Under the circumstances, receipt of ransom call by Shri Jaglal from accused Ashok and thereafter recovery of dummy bundle of notes from the possession of accused stands established.

Recovery of Slip

17. It has come in the testimony of the police officials that after the accused were apprehended, on search of accused Ashok one PCO slip bearing telephone no. 25323586 Ex. PW 21/P1 was recovered from his pocket which was pasted on white paper and seized vide memo Ex. PW21/B. Recovery of this slip has been challenged by learned counsel for the accused on the ground that it is highly improbable that accused will keep on carrying such a slip for such a long time. Moreover, if he was tenant of the complainant then he must be remembering the telephone number and there was no need to note the telephone number on a slip. It was also submitted that as per personal search memo of accused Ashok there are 4 witnesses besides the Investigating Officer. However, the slip bears the signatures of only the complainant and the Investigating Officer. This submission is devoid of merit inasmuch as record reveals that after the recovery of the slip it was seized vide seizure memo Ex. PW21/B. The witnesses to this seizure memo are the same who are witnesses to the personal search memo of the accused. The recovery was effected at the same time and on the same day i.e. 20.11.2004. Under the circumstances

the mere fact that the slip bears only the signatures of complainant Jaglal Prasad and the Investigating Officer and no other witnesses does not cast any doubt regarding the recovery of slip from the possession of accused Ashok.

18. The submission of defence counsel regarding possibility of non-retention of slip for such a long time or recollecting the number being a tenant are based on conjectures. On the other hand, there is no reason to disbelieve the testimony of the police officials regarding recovery of slip from the person of accused.

19. The fact that a telephone call was received by the complainant on this telephone number on 20.11.2004 stands proved from Durgawati Devi who has deposed that Ashok made ransom call on this telephone number which was heard by her husband, Shri Jaglal and it was only thereafter that whole police machinery was set in motion. Krishan Lal (PW-9), owner of STD booth at RZ-109, Ranaji Enclave, Najafgarh, Delhi, although has deposed that on 20.11.2004, some person had come to make telephone call at his STD booth, however, could not identify the person who made the call, rightly so, as number of persons come at STD booths to make calls and it is

difficult to identify the callers. In fact, the Investigating Officer should have collected the call details in order to ascertain that call was made from the STD booth of Kishan Lal which was not done but that, at best, is a lapse on the part of the Investigating Officer, which, however, does not cast any dent on prosecution version. In ***Ram Behari Yadav Vs. State of Bihar***, AIR 1998 SC 1850, it was held by Supreme Court that if primacy is given to the omissions or lapses by perfunctory investigation by the investigating agency, the faith and confidence of people would be shaken, not only in law enforcing agency, but also in the administration of justice. It is true, if on account of any lapse, doubts are created in prosecution case, the accused would be entitled to the benefit of that doubt. But, if the prosecution is able to establish its case beyond reasonable doubt against the accused, in spite of lapses, the accused cannot be acquitted because of the lapse on the part of the IO. Substantially, similar view was taken in ***C. Munniappan and others Vs. State of Tamilnadu***, 2010 IX AD (SC) 317 where it was held that where there has been negligence on the part of Investigating Agency or omissions etc which resulted in defective investigation, there is a legal obligation on

the part of the Court to examine the prosecution evidence, *de hors* such lapses carefully to find out whether said evidence is reliable or not or to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation.

Recovery of Watch

20. After the arrest of accused, they were interrogated and they made disclosure statements, Ex. PW21/E and Ex. PW21/F. Both of them led the police party to house No. AB-38, Nangli Vihar, Najafgarh and at their instance pointing out memo Ex. PW21/C was prepared. Thereafter accused Ashok opened the room with the key which was recovered from his personal search and got recovered one Titan Watch Ex. PW 21/P2 which was identified by complainant Jaglal to be belonging to his son Pawan. The watch was seized after sealing in a pullanda vide memo Ex. PW21/H. Here again, it may be mentioned that all the police officials have corroborated each other regarding recovery of watch at the instance of accused Ashok and

there is no reason to disbelieve their testimony.

Recovery of Dead body

21. Both the accused, namely Ashok and Angad were arrested from Sai Baba Mandir and their personal search was conducted vide memos Ex. PW-21/C and PW-21/D. From their personal search, one key each besides other articles were recovered. Both the accused were interrogated. They made disclosure statements Ex.PW21/E and Ex.PW 21/F stating therein that they had abducted Pawan Kumar with a view to extort money from his father and thereafter, committed his murder and buried the dead body inside the earth after digging floor of the gallery and cemented the same in Ranaji Enclave in the house of Tara Chand, which was taken on rent by Angad and that they can get the dead body recovered.

22. Both the accused took the police team to M.S. Block, Ranaji Enclave at the house of Tara Chand and pointed out vide memos Ex. PW21/K and Ex. PW21/L. Thereupon, Insp. H.S. Meena moved an application Ex. PW7/A before Shri S.S. Kanawat, Addl. District Magistrate (South-West) District, Kapashera on the same day who referred him to seek opinion from the Surgeon. Insp. H.S. Meena

contacted Dr. L.K. Barua who opined to dig out the dead body to ascertain the cause of death of deceased. Crime team and videographer were summoned to the spot. Thereafter, written orders were taken from ADM who also reached the spot. In the presence of ADM Shri S.S. Kanawat, Dr. L.K. Barua, father of the deceased late Sh. Jaglal, two public witnesses, PW1 Yogesh Dua and PW2 Ramesh Chand Ojha and other members of the raiding team, the lock of the room was opened with key recovered from the personal search of accused Angad. Both the accused led the police party inside the room where they pointed out the place where they had buried the dead body of the deceased in front of room in the gallery. Thereafter, after breaking open the floor and digging the earth upto $\frac{3}{4}$ ft., one yellow plastic katta was taken out. One dead body was recovered lying wrapped in sheet inside the plastic katta. One iron chain and one sandal like chappal pair was found in the katta. On opening the sheet, dead body was taken out which was identified by father of the deceased Jaglal, Yogesh Dua and Ramesh Chand Ojha vide Identification Memos Ex. PW1/A and Ex. PW2/A. Dead body was wearing blue colour jeans-pant and T-shirt. Inquest proceedings were

conducted by Insp. H.S. Meena. He lifted sample earth, soil on the katta, soil inside the katta, broken pieces of floor, earth control, etc. from the spot and seized vide Memo Ex. PW22/A. Thereafter, at the instance of accused Angad, one kudal and one tawa used for digging the floor and carrying the soil were recovered from the room which were seized vide Memo Ex. PW22/B. Dead body was sent through Ct. Umed Singh for post mortem. Iron chain, sheet and chappal were also sent. Lock was seized vide memo Ex. PW26/B. Photographs were taken by HC Ajit Singh (PW6). SI Rajender Singh (PW8), In-Charge Crime Team gave his report Ex. PW8/A. Ct. Bhom Pal (PW12 and again examined as PW27) videographed the entire proceedings. Thus, recovery of dead body at the instance of both the accused persons stands proved not only from the testimony of police officials- Ct. Umed Singh, HC Mahavir , HC Ishwar Singh, SI Amar Pal Singh, Insp. H.S. Meena, ASI Vijay Pal, but also from totally independent witnesses, namely Shri S.S. Kanawat, ADM, Dr. L.K. Barua, Yogesh Dua and Ramesh Chand Ojha. Besides them, parents of the deceased were also present at the spot. Complainant Jaglal, father of the deceased could not be examined as it has come in the

statement of Smt. Durgawati Devi, mother of the deceased that due to shock of the murder of Pawan her husband has since expired. Death certificate was also filed. Smt. Durgawati Devi was also present at the time of disinterment proceedings, however, on seeing the dead body of her son, she became unconscious. Son of her brother-in-law took her to her house. As such mere fact that the proceedings do not bear her signatures, does not cast any doubt regarding her presence at the time of proceedings. Even otherwise, clinching evidence has come on record to prove the recovery of dead body at the instance of accused persons.

23. It is the submission of learned counsel for the appellant Ashok that identity of the dead body as that of Pawan is not established since as per the post mortem report Ex. PW16/A, dead body was in highly decomposed condition and recovery was effected after a lapse of about one month and seven days, as such it was not identifiable. This submission is devoid of merit. Smt. Durgawati Devi, mother of the deceased has deposed that she as well as her husband Jaglal identified the dead body to be of their son Pawan. Beside her, Yogesh Dua and Ramesh Chand Ojha had also identified the dead body vide

identification statements Ex. PW1/A and Ex. PW2/A respectively. It was suggested to PW2 Ramesh Chand Ojha that since the dead body was disintegrated, it was not in identifiable condition, however, he denied the suggestion. No such suggestion was given to PW1 Yogesh Dua. Moreover, the best person to depose about this fact was Dr. L.K. Barua. Although there is a mention in the post mortem report that the body was in high state of decomposition, however, it was not taken from him that the decomposition was such as to render the identification difficult or impossible. As stated above, the entire proceedings were conducted in the presence of various police officials, ADM, Doctor and all these witnesses have deposed that the dead body was identified by Jaglal, Yogesh Dua, Ramesh Chand Ojha to be that of Pawan. On perusal of evidence, there is no difficulty in finding that the dead body that was recovered was of Pawan and that was sufficient proof of *corpus delecti*. ***Kaju and Anr. Etc. Vs. State***, 1985 CrL LJ, 367 relied upon by learned APP for the State was also a case where it was held that in criminal prosecution one of the essential factors to be proved to a moral certainty is the *corpus delecti*. In that case, photographs of the dead body were not taken in

order to get him identified in court. It was held that despite the fact that the dead body was in a high state of decomposition there was nothing to show that the decomposition rendered identification difficult or impossible. Son and son-in-law of the deceased had identified the dead body, therefore, it was held that there was sufficient proof of *corpus delecti*. In such a case, it was not necessary for the prosecution to have taken photographs of the dead body and then get them identified in the court. The present case stands on much better footing in as much as, as many as 23 photographs Ex. PX24 to PX46 were taken by HC Ajeet Singh and the entire proceeding was also videographed. The cassette Ex. PX was even displayed before learned Addl. Sessions Judge when the evidence was being recorded before him. Under the circumstances, the identification of the dead body is proved by clinching evidence.

24. It was not disputed by learned counsel for appellants that the statement of accused that they had buried the dead body in Ranaji Enclave, which they can get recovered was admissible under Section 27 of the Evidence Act, but what has been strenuously contended before us is that the prosecution evidence that both the accused Ashok

and Angad stated that they had buried the dead body in Ranaji Enclave after committing murder and they can get the same recovered should be rejected as being vague and indefinite, it being not clear as to on whose statement, whether of Ashok or of Angad, the discovery was made. The evidence, therefore, ought to have been rejected against both. Reliance was placed on *Mohd. Abdul Hafeez v. State of Andhra Pradesh*, AIR 1983 SC 367; *Ram Singh vs. Emperor*, 1916 Cri LJ 273; *Adam Khan vs. Emperor*, 1927 Cri LJ 456; *Putta Vs. Emperor*, AIR (32) 1945 Oudh 235; *State (N.C.T. of Delhi) vs. Navjot Sandhu*, 2005 CrI. LJ 3950.

25. In *Mohd. Abdul Hafeez* (supra), it was held that if evidence otherwise confessional in character is admissible under Section 27 of the Indian Evidence Act, it is obligatory upon the Investigating Officer to state and record who gave the information; what words were used by him so that recovery pursuant to the information received may be connected to the person giving the information so as to provide incriminating evidence against that person. In that case, three of the accused gave information to the IO that the ring was sold to the jeweller, pursuant thereof, they took the police party to the shop

of jeweller and got recovered the ring. It was observed that it is impossible to believe that all spoke simultaneously. This way of recording evidence is most unsatisfactory and such mode of recording evidence was deprecated. In ***Ram Singh*** (supra) also, it was held that where two persons are alleged to have given certain information to the police which led to the arrest of another accused, it is only the information given first which can be admitted under Section 27 of the Evidence Act. It is also necessary that the information given by each should be precisely and separately stated. Similar view was taken in ***Adam Khan*** (supra). In ***Puttu*** (supra), it was observed that Section 27 of Evidence Act has to be construed strictly. The use of word “a person” in singular in Section 27, is somewhat significant. The word was used in singular designedly because the joint statement of a number of persons cannot be said to be an information received from any particular one of them. When a fact is discovered in consequence of information received from one of several persons charged with an offence, and when others give like information, it is impossible to treat the discovery as having been made from the information received from each one of them. Where all the accused persons

jointly pointed out the place where the dead body of the deceased was discovered buried and jointly pointed out other places from where articles belonging to the deceased were recovered, the facts discovered on such information cannot be used as evidence against any of the accused persons. Relying on these authorities, it was submitted that both the accused jointly pointed out the place where the dead body of deceased was discovered buried, the facts discovered on such information cannot be used as evidence against any of the accused persons.

26. Repelling the submission of learned counsels for the appellant, it was urged by learned APP for the State that the disclosure statements made by the accused are not joint statements but are distinct and separate. Even if, pointing out memo is one since recovery has been effected in pursuance thereof, it is admissible in evidence. Reliance was placed on *Motilal Vs. State*, AIR 1959 Patna 54, *State Government, M.P. Vs. Chhotelal Mohanlal*, AIR 1955 Nagpur 71, *Nathu Vs. State*, AIR 1958 All. 467.

27. In *Moti Lal (supra)*, it was held:

“It is well established now that provisions of Section 27 of the Evidence Act are by way of exceptions to the rule of

inadmissibility of confessional statements of an accused in custody of a police officer as provided in Sections 25 and 26 of the Act. It is also well established that section should be strictly construed and the prosecution is to bring the statements of the accused leading to the discovery strictly within the four corners of the section. Further, only so much of the evidence of the accused is admissible as leads to the discovery and not the past account or the past history.

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Where a relevant fact is discovered in consequence of statements made by one or more accused in custody, so much of those statements as relates distinctly to the discovery of that fact is admissible under S. 27. Information received from more than one person accused of an offence, whether it amounts to a confession or not, may relate distinctly to the fact thereby discovered and may be proved under S. 27 of the Act. What is not desirable to admit is a vague and indefinite statement like saying ‘two or more persons said this and said that’. What should be insisted upon by the Courts is that the statements should be recorded as precisely as possible attributing the respective words to each accused, whether they made the statements simultaneously or immediately one after the other before the discovery of the fact was made. As a rule of prudence, vagueness in such statements of information leading to the discovery of a fact should be avoided.

There is no sufficient reason to hold that a fact cannot be said to be discovered in consequence of the information of more than one person accused of any offence. The information may be by one or by several persons but, if the information precedes the fact of discovery, the discovery must be attributed to the joint and several information by all and so much of the information as leads distinctly to the fact thereby discovered must be admitted in evidence under S. 27 against all such persons who gave that information.

No principle in support can be found for the view, that the statements of two or more accused leading to the discovery of a relevant fact will be admissible only if they are simultaneously made. The statement nevertheless remains the statement of two or more persons, whether made simultaneously or one after the other, and, if it is admissible against all those who made the statement, if made simultaneously, it is equally admissible if made one after the other, provided always that the statements made by those accused which are to be admitted relate distinctly to the discovery and not rediscovery of the relevant fact. ”

28. It was further held that in view of Section 13 of the General Clauses Act, the words ‘a person’ used in Section 27 of the Evidence Act in singular number must be held to include the plural.

29. In *Nathu* (supra) it was held:-

“There is nothing in section 27 to show, beyond what the words “a person” may themselves mean, that the Legislature intended to depart from the general rule laid down in section 13 of the General Clauses Act. The presence of the words “a person” in singular therefore cannot mean that the information should be by a single individual only.

Thus S.27 on its plain language does not exclude the interpretation as to plurality of information received from persons accused of any offence. Being an exception to the general rule contained in the preceding section, it nevertheless insists that only such information shall be admitted as relates distinctly to the facts thereby discovered. The information should directly and distinctly relate to the facts discovered. Where, therefore a fact has already been discovered, any information given in that behalf afterwards cannot be said to lead to the discovery of the fact. There cannot be a

rediscovery. It is easily conceivable that two or more persons simultaneously or jointly furnish an information and as a result of that information a common discovery is made; such a case will, if other conditions are satisfied, be covered by the section. Each case will, however, have to be judged on its own facts but the underlying principle seems to be that the information is such information as cannot be said to be already in the possession of the police and that the discovery is made in consequence of that information and further that the discovery is made in consequence of that information and further that the discovery is not rediscovery of something already discovered.”

Similarly, in *Chhote Lal Mohan Lal (supra)*, it was held that under Section 27 Evidence Act, simultaneous statements made by accused persons are not *per se* inadmissible in evidence and are liable to be considered if the discovery made in consequence thereof affords a guarantee about the truth of the statements.

The word ‘a person’ in Section 27, Evidence Act, do not in any way exclude admission of information from more than one person simultaneously received provided it fulfils the requirements of Section 27. Section 13(2), General Clauses Act, provides that words in the singular shall include the plural and ‘vice versa’ provided there is nothing repugnant in the subject or context. There is nothing repugnant in the provisions of Section 27 for acceptance of statements jointly made by more than one person provided that facts discovered in consequence thereof afford some guarantee about truthfulness of their statements.”

30. It was further submitted that recovery in pursuance to disclosure statement is also relevant under Section 8 of the Evidence Act. Reliance was placed on *A.N. Venkatesh & Another Vs. State of*

Karnataka, 2005 SCC (Cri) 1938 which was also a case pertaining to kidnapping and murder for ransom. Accused pointed out to police the place where the dead body was buried and on that basis the body exhumed from that place. It was held that:-

“By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simplicitor, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in *Prakash Chand v. State (Delhi Administration)*. Even if we hold that the disclosure statement made by the accused appellants (Ex. P14 and P15) is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8. The evidence of the investigating officer and PWs 1, 2, 7 and PW4 the spot mahazar witness that the accused had taken them to the spot and pointed out the place where the dead body was buried, is an admissible piece of evidence under Section 8 as the conduct of the accused. Presence of A-1 and A-2 at a place where ransom demand was to be fulfilled and their action of fleeing on spotting the police party is a relevant circumstance and are admissible under Section 8 of the Evidence Act.”

31. In view of these authoritative pronouncements, there is no legal bar to the admissibility of two simultaneous disclosure statements made by accused persons which leads to discovery of certain facts. In fact, learned counsel for the appellant himself relied upon *Navjot*

Sandhu (supra), more popularly known as “Parliament attack case”, where dwelling on Section 27 of the Evidence Act with particular reference to joint disclosures, it was held as under:-

“Joint disclosures- to be more accurate, simultaneous disclosures, per se, are not inadmissible under Section 27 of the Evidence Act, 1872. A person accused need not necessarily be a single person, but it could be plurality of accused. It seems that the real reason for not acting upon the joint disclosures by taking resort to Section 27 is the inherent difficulty in placing reliance on such information supposed to have emerged from the mouths of two or more accused at a time. In fact, joint or simultaneous disclosure is a myth, because two or more accused persons would not have uttered informatory words in a chorus. At best, one person would have made the statement orally and the other person would have given unequivocal nod to what has been said by the first person. Or, two persons in custody may be interrogated separately and simultaneously and both of them may furnish similar information leading to the discovery of fact. Or, in rare cases, both the accused may reduce the information into writing and hand over the written notes to the police officer at the same time. But such disclosures by two or more persons in police custody do not go out of the purview of Section 27 altogether. If information is given one after the other without any break almost simultaneously, and if such information is followed up by pointing out the material thing by both of them, we find no good reason to eschew such evidence from the regime of Section 27. However, there may be practical difficulties in placing reliance on such evidence. It may be difficult for the witness (generally the police officer), to depose which accused spoke what words and what sequence. In other words, the deposition in regard to the information given by the two accused may be exposed to criticism from the standpoint of credibility and its nexus with discovery. Admissibility and credibility are two distinct aspects, whether and to what extent such a simultaneous disclosure could be relied upon by the Court is really a matter of

evaluation of evidence.”

32. This very authority was relied upon by this Court in *Vijay Kumar Vs. State (GNCT) of Delhi*, 2008 (101) DRJ 725; *State Vs. Kiran*, 2010 (117) DRJ 647; *Raj Kumar Vs. State* in CrI.A.56/2009.

In this very authority, **Mohd. Abdul Hafeez** (supra) was referred to and it was observed that there is nothing in this judgment which suggests that simultaneous disclosures by more than one accused do not at all enter into the arena of Section 27, as a proposition of law.

33. The legal position on joint disclosures as it emerges is that the same *per se* are admissible under Section 27 of the Evidence Act. The plea against inadmissibility of disclosure statements Ex.PW21/E and Ex.PW21/F made by the appellants Ashok Viswakarama and Angad Singh respectively must therefore get answered in the negative. We have very carefully gone through the voluminous evidence led by prosecution in this regard and find no material to disbelieve the version given by them that the place was shown by both the accused and that when the place was dug up, a plastic bag containing dead body of Pawan was recovered. This evidence conclusively shows that accused Ashok and Angad had buried the said plastic bag containing

the dead body of Pawan and that it was detected in furtherance of the voluntary information furnished by them.

34. Facts were substantially similar in *Ningappa Yallappa Hosamani & Ors. Vs. State of Karnataka & Ors.*, (2010) 1 SCC (Cri) 1460 relied upon by learned APP for the State where it was held that where on the basis of statement made under Section 27 of the Evidence Act, dead body of deceased was recovered in furtherance of voluntary information furnished by two accused, the natural presumption in absence of explanation was that it was these two accused persons who had murdered the deceased and buried his body. Reliance was placed on *State of Maharashtra vs. Suresh* (2000) 1 SCC 471, where it was observed as follows:-

“Three possibilities may be countenanced when an accused points out the place where a dead body or an incriminating material was concealed without stating that it was concealed by himself. One is that he himself would have concealed it. Second is that he would have seen somebody else concealing it. And the third is that he would have been told by another person that it was concealed there. But if the accused declines to tell the criminal court that his knowledge about the concealment was on account of one of the last two possibilities, the criminal court can presume that it was concealed by the accused himself. This is because accused is the only person who can offer the explanation as to how else he came to know of such concealment and if he chooses to refrain from telling the Court as to how else he came to know of it, the presumption is a well justified course to be

adopted by the criminal court that the concealment was made by himself. Such an interpretation is not inconsistent with the principle embodied in Section 27 of the Evidence Act.”

35. Relying upon this authority, it was held in the case of *Ningappa* (supra) that the evidence conclusively proved that the accused had buried the gunny bag containing the dead body of deceased and it was detected in furtherance of voluntary information furnished by them.

36. In *State vs. Damodar* 2000 Cri LJ 175, it was observed by Supreme Court that;-

“Where in a charge of kidnapping, murder and then concealing the body of the victim, the prosecution evidence was that the deceased was seen in the company of the accused on the fateful day, the accused took the investigating team to his house and dug out portion of the room from where the body of the deceased was exhumed and the failure of the accused to give explanation as to how the body came to be exhumed in his house, the chain of the circumstances was complete to uphold the accused guilty under Section 300, 364 and 201 IPC. ”

37. In *State of Andhra Pradesh vs. Gangula Satya Murthy*, 1997 Cri.LJ 774, the Apex Court observed that:-

“Where the fact that the dead body was found on the cot inside the house of the accused, it was held to be a telling circumstance against him. It was further held that the accused owed a duty to explain as to how a dead body, which was resultant of a homicide, happened to be in his house. In the absence of any such explanation from him, the implication of

the said circumstances is definitely adverse to the accused.”

38. In *Gyano @ Gyanwati Vs. State of U.P.*, 1995 Cri LJ 1016, it was held:-

“Where the accused killed the deceased and concealed the dead body inside the house in a room where nobody had access except the accused persons, the conviction was held proper.”

39. In the present case also the accused persons have failed to offer any explanation as to how they came to know of such concealment. The evidence on record amply proves that the accused persons had buried the plastic bag containing the dead body of deceased and it was detected in furtherance of information furnished by them.

40. It was urged that no cogent evidence has come on record to prove that premises at Ranaji Enclave belongs to PW4 Tara Chand or that it was taken on rent by the accused persons as there is no documentary evidence in this regard nor the person who introduced the accused to Tara Chand nor any neighbour has been examined. The submission is devoid of merit in as much as it stands proved from the photocopy of the document produced by Tara Chand, which was seized vide memo Ex.PW4/A that he is the owner of Plot No.1A out of Khasra No.33/24/2 situated in the area of village Nangli Sakurbasti

Colony known as MS Block, Ranaji Enclave Road, Najafgarh, New Delhi. It has come in his deposition that on 05.10.2004, both the accused came to him for taking on rent the premises in Ranaji Enclave and he let out the same to them at the rate of Rs.1500/- per month. One month advance was paid by accused persons and they took the key of the room. The mere fact that there is no documentary evidence in the form of rent agreement or rent receipt, no presumption can be drawn that the premises was not let out by him to the accused persons in as much as there is no statutory requirement for executing the documents before letting out the premises. Moreover, there is no reason as to why the witness would falsely depose in regard to letting out the premises to the accused persons with whom no animosity is alleged or proved. Moreover, in his statement recorded under Section 313 Cr.P.C., accused Angad has not even denied the factum of taking the premises belonging to Tara Chand on rent, he merely replied 'don't know'. This is only an evasive answer. Under the circumstances, it stands proved that the premises at Ranaji Enclave was taken on rent by the accused persons belonging to Tara Chand. Moreover, the key of the room was

recovered in the personal search of accused Angad and it was with this key that the house at Ranaji Enclave was opened from where a plastic katta was recovered containing the dead body of deceased Pawan. Durga Devi identified the katta to be the same which accused was carrying in the rickshaw on 13.10.2004. One iron chain was also found near the dead body. Dr. L.N.Barua who conducted the post mortem on the dead body of the deceased, had opined in his post mortem report Ex. PW16/A that the cause of death was 'strangulation'. According to him, time since death was approximately one and a half month, which co-relates to the period since when Pawan went missing. In pursuance to the subsequent opinion sought by the Investigating Officer, Dr.L.N.Barua gave his opinion Ex.PW16/B that the iron chain which was recovered at the instance of the accused persons along with the body of the deceased could have been used for causing injury and strangulation.

41. The aforesaid evidence led by prosecution establishes the following facts: -

- Complainant Jaglal opened a school in the name of his daughter "Annu Public School".

- The school was being run by accused Ashok where he also used to give tuition.
- Accused Ashok had taken two rooms on rent in the school premises where he was residing.
- On 05.10.2004, both the accused had taken a room on rent in Ranaji Enclave belonging to Tara Chand and the room was in their exclusive possession.
- On 13.10.2004 accused Ashok took deceased Pawan at about 10.30 AM for getting some papers pertaining to school signed/attested.
- Smt. Durgawati Devi, mother of deceased saw Pawan in the company of both the accused on the terrace of the school.
- Pawan did not return back. On repeated inquiries by Smt. Durgawati, accused persons kept on assuring her that he will return back.
- On the suggestion of accused Ashok, Jaglal lodged a missing report on 14.10.2004.
- On 15.01.2004 at 10.00 AM one telephone call came at the house of Jaglal which was heard by his daughter Annu

informing that Pawan is with them. Nobody should be informed and that they will again make a call after two days.

- On the same day, Jaglal informed the police and FIR was registered.
- On 20.11.2004 accused Ashok made a call to Jaglal demanding a sum of Rs. One lac for release of Pawan.
- A raiding party was organized. Jaglal was sent with 10 bundles of dummy papers Ex. P 19/P2, wrapped in newspaper Ex. P 19/P12 in a bag Ex. P19/P1 near Sai Baba Mandir, PCO Booth, Najafgarh, New Delhi.
- Both the accused came, talked to Jaglal and took bag from him.
- On receiving signal from complainant, police team apprehended both the accused alongwith bag containing dummy papers.
- On search of accused Ashok, one slip Ex.PW 21/P1 bearing telephone number of complainant was recovered.
- Accused pointed out House No. AB-38, Najafgarh where they committed murder of deceased Pawan.

- The room was opened with key recovered from shirt of accused Ashok.
- Accused Ashok got recovered one Titan Watch Ex. P21/P2 belonging to Pawan from underneath the mattress inside the room.
- Accused led the police team to Ranaji Enclave and the room was opened with the key recovered from pocket of accused Angad.
- On the pointing out of both the accused, floor in the gallery was dug out and a plastic bag containing dead body was recovered.
- Dead body was identified by Jaglal, Yogesh Dua and Ramesh Chand Ojha to be of Pawan.
- One plastic chain and other articles were recovered in the plastic bag in which the dead body was recovered.
- Doctor opined that the cause of death was strangulation and that the iron chain which was recovered at the instance of accused person along with body of the deceased, could have been used for causing injury and strangulation to the deceased.

- One Tawa Ex.PW 22/P3 and Kudal Ex. PW 22/P2 were also recovered at the instance of accused Angad which were used by them to dig the floor before concealing the body.

42. Above circumstances cumulatively taken together lead to the irresistible conclusion that the accused-appellants alone are the perpetrators of the crime. Each and every incriminating circumstance has been established by reliable and clinching evidence. The circumstances in the chain of events established rule out the reasonable likelihood of innocence of the accused. The overwhelming evidence led by prosecution on record is inconsistent with the plea of innocence of accused persons. No other hypothesis can be developed in the wake of such strong circumstances appearing against the accused persons.

43. Another aspect is to be taken note of. All the incriminating circumstances which point to the guilt of the accused persons have been put to them, yet they could not give any explanation under Section 313 of the Cr.P.C. except choosing the mode of denial. In *State of Maharashtra Vs. Suresh* (2001) SCC 471 reiterated in *Jagroop Singh Vs. State of Punjab*, (2013) 1 SCC (Crl.) 1136, it has been

held that when the attention of the accused is drawn to such circumstances that inculcate him in the crime and he fails to offer appropriate explanation or gives a false answer, the same can be counted as providing a missing link for completing the chain of circumstances. We may hasten to add that we have referred to the aforesaid decisions only to highlight that the accused have not given any explanation whatsoever as regards the circumstances put to them under Section 313 Cr.P.C.

44. From the aforesaid analysis, we are of the considered opinion that all the circumstances which have been established by the prosecution complete the chain. There can be no trace of doubt that all the circumstances consistent with the guilt of the accused have been proved beyond reasonable doubt. It is worthwhile to remember that in *Sucha Singh Vs. State of Punjab*, (2003) 7 SCC 643, it has been stated that : (SCC State 653 Para 20):

“20...The prosecution is not required to meet any and every hypothesis put forward by the accused.... A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some inevitable flaws because human beings are prone to err, it is argued that it is too imperfect.”

45. The present case is one where there is no trace of doubt that all circumstances complete the chain and singularly lead to the guilt of the accused persons.

46. In view of the aforesaid reasons, we do not find any infirmity in the judgment of conviction and order on sentence recorded by learned Addl. Sessions Judge and accordingly, the appeal, being devoid of any substance, stands dismissed. Trial Court record be returned forthwith.

SUNITA GUPTA, J

REVA KHETRAPAL, J

July 09, 2013
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