

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

% *Judgment reserved on : 06.11.2013*
Judgment delivered on:20.11.2013

+ CRL.A.1077/2010
ASHAD Appellant
Through: Ms. Rakhi Dubey, Adv.
Versus

THE STATE OF (GNCT) OF DELHI Respondent
Through: Mr.Sunil Sharma, APP

+ CRL.A.1288/2011
SHIKSHA Appellant
Through: Ms. Anu Narula, Adv.
Versus

THE STATE OF (GNCT) OF DELHI Respondent
Through: Mr.Sunil Sharma, APP

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 On 07.07.2005, Raj Kumar (deceased) was murdered. His dead body was recovered from an iron box of his house bearing No. 236, Gali No. 8, Amar Colony, New Delhi.

2 This murder was reported in the local police station on 09.07.2005 by Jai Pal (PW-6) on the information given to him by his grandson, Master Govind (PW-1) who had allegedly witnessed this incident of murder.

3 The statement of PW-1 (Ex.PW-1/A) had formed the basis of the rukka pursuant to which the present FIR No. 543/2005 was registered under Sections 302/506/201/34 of the IPC. This FIR was registered against five persons of whom two of them are the appellants before this Court i.e. Shiksha and Ashad. The other two accused Amjad and Mukesh have been acquitted by the trial Court; the fifth accused namely Lale has been declared a proclaimed offender.

4 As per the eye-witness account, on the fateful day i.e. on 07.07.2005 at about 07:30 PM Ashad and two other persons had come to their house to visit his mother Siksha. He heard his mother telling her associates that her husband used to harass her upon which they stated that they would teach him a lesson. On the asking of his mother PW-1 went to sleep. 2-3 hours later, he heard a noise; he thought that his father had returned home; on peeping down from his room which was on the

first floor, he saw that his mother and Ashad had caught hold of his father; both of them were throttling his neck; his father was screaming. PW-1 shouted. He was threatened by the accused not to disclose this incident to anyone. He went back to his room. On coming out again, he saw his mother and Ashad putting the body of his father in a gunny bag; the gunny bag was kept in front of the gutter of their house; when he again for the third time came out of his room, he saw that the gunny bag was missing from there. At that time, co-accused Mukesh was with his mother.

5 PW-1 had narrated this incident to his grandfather Jaipal. This was in the morning of 09.07.2005. PW-6 had come to Delhi on the information given by his nephew Suresh (PW-2) informing him that his son was missing since the last two days. PW-2 was in fact living with the deceased and the family of the deceased. Both of them were working at a petrol pump.

6 Jaipal (PW-6) was the father of the victim. He was living in the native village Muzaffarnagar, UP at the time of the incident. He has been informed by his nephew PW-2 about the missing of his son; he

reached Delhi in the morning of 09.07.2005 when his grandson (PW-1) had narrated the incident to him on the basis of which he had lodged the complaint with the Police.

7 The son of PW-6 and the brother of the victim Babu Ram has been examined as PW-7. He was also a resident of their native village. His version is to the effect that accused Shiksha was living in the village along with them wherein she had developed intimacy with co-accused Ashad who had his fields nearby. On learning of this, Shiksha was sent to Delhi by their family to live with her husband. His testimony being to the effect that Shiksha and Ashad had an illicit relationship which as per the version of the prosecution was the motive to eliminate the deceased.

8 SI Kashmira Singh and HC Upender Singh (PW-15) were first police personnel who reached the spot to initially investigate the case. The investigation was thereafter handed over to Inspector Gajender Singh examined as PW-9. Crime team had been summoned to the spot. Photographs were taken by constable Sanjeev Beniwal (PW-13); positives were proved as Ex.P-1 to Ex. P-18 and negatives were proved as Ex.P-19 to Ex.P-36. From the spot, exhibits were lifted which

included one cream coloured bed-sheet (Ex.P-1) vide seizure memo Ex.PW-2/A. No finger prints were found.

9 Accused Shiksha was arrested vide seizure memo Ex.PW-9/C. Her disclosure statement (Ex.PW-12/A) was recorded. Pursuant to her disclosure statement, a foul smell was found to be emanating from the room; an iron box was kept in the room; on opening it, it was found to contain a jute bag which when opened revealed the dead body of the deceased Raj Kumar. The dead body was identified by PW-1 and PW-6. Accused Ashad was arrested on 14.07.2005 at the pointing out of a secret informer from under the Loni flyover vide arrest memo Ex.PW-9/H. His disclosure statement (Ex.PW-9/K) was recorded.

10 As noted supra, the trial Court has given benefit of doubt to the other co-accused namely Amjad and Mukesh noting that qua Amjad, the identification of the accused has not been fully established and as far as the co-accused Mukesh was concerned, evidence qua him was also not sufficient to nail him.

11 The statement of appellant Shiksha was recorded under Section 313 of the Cr.PC. She pleaded innocence; in answer to question No. 7, Crl. Appeal Nos. 1077/2010 & 1288/2011

she stated that PW-1 her elder son was living with his grandfather in the native village at the time of the incident; the dead body was also not recovered from her house.

12 In the statement of co-accused Ashad, he also pleaded innocence; submission being that he has been falsely implicated in the present case.

13 No evidence in defence was led by either of the appellants.

14 This was the sum total of the evidence collected by the prosecution against the appellants on the basis of which the trial Judge had convicted both of them for the offences under Sections 302/201/506/34 of the IPC.

15 On behalf of accused Shiksha submissions have been made by Ms. Anu Narula, Advocate. Her submission being that the testimony of PW-1 who is a child witness has to be received by the Court with great caution and circumspection; children are prone to tutoring and this is one such case where the child witness appears to have been tutored; submission being that it has come in the statement of the accused under Section 313 of the Cr.PC that PW-1 was in fact living with his

grandfather and was not an eye-witness. It is also inconceivable that when the other two children of the appellant were admittedly in the same house, such a heinous offence could have been dared to have committed by the appellant; these circumstances are inconsistent with a guilty mind. Further submission being that there was a property angle attached to this murder and to substantiate this argument attention has been drawn to the testimony of PW-6 who has in his deposition admitted that the property i.e. the house at Amar Colony where the deceased and his family were residing has been sold after two months from the date of the incident i.e. in September, 2005. On this score it is submitted that it was an unnatural conduct on the part of a father to have sold the house which was co-owned by both the victim and himself within such a short span i.e. within two months of the date of death of his son and this was for no other reason but to grab the property of this son. In this context, attention has also been drawn to the testimony of PW-2 who in a part of his cross-examination has admitted that the deceased was not on speaking terms with his brother Babu Ram; further submission on this score being that PW-6 in his deposition had stated that he has only two sons i.e. the deceased and Lokender; it was only on

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a sustained and repeated cross-examination that he admitted the fact that he also had a third son namely Babu Ram; submission being that it was a conspiracy hatched by PW-6 along with his sons to grab the property of the deceased which had in fact led to this incident. Attention has also been drawn to a status report which has been filed before this Court by the prosecution (dated 23.05.2012) wherein it has come on record that this property has been sold by PW-6 in September, 2005 and after that it had changed hands several times. On this count, submission being that it is enough for the defence to create a dent in the version of the prosecution and for which a benefit on this score must be given to the accused; the case of the prosecution must thus fail. The dead-body has also not been recovered at the behest of the appellant; there was also no evidence to connect the bed-sheet with the crime as there is no expert opinion evidencing the fact that the death of the victim had in fact been caused by the bed-sheet which had allegedly been recovered at the instance of the appellant. On all counts, the appellant is entitled to a benefit of doubt and a consequent acquittal.

16 On behalf of the second appellant Ashad, arguments have been addressed by the learned amicus-curiae Ms. Rakhi Dubey. She had adopted the submissions made by the accused Shiksha. The foremost submission made by the learned counsel is that the testimony of PW-1 is suspect; it has to be viewed with a greater caution as apart from the fact that he is a child witness and such a witness is susceptible to pressures; even otherwise, the prosecution has not answered as to why his statement under Section 164 of the Cr.PC had not been recorded. His statement under Section 161 of the Cr.PC alone was recorded and his deposition in the Court was eight months later when admittedly in this intervening period he was living with his grandfather and was tutored to advance the version of the prosecution. Reliance has also been placed upon AIR 1998 SC 2726 Panchhi and Others Vs. State of Uttar Pradesh; submission being that such a child witness is a susceptible witness and can easily be swayed by what others tell him and can also be easily tutored. His testimony is liable to be discarded. The learned trial Judge having disbelieved the version of PW-1 and doubting his credibility qua the role of Mukesh and Amjad; same benefit should also be accorded to the present appellant and on the ground of parity alone he

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is also entitled to an acquittal as his role is no different from the role of Amjad and Mukesh. Further submission being that there was a family angle attached to this crime; family angle being that PW-6 and his sons wanted to grab the property of the deceased for which purpose this entire story has been set up. Testimony of PW-7 in the context of motive is also suspicious as it has come in his version that there were two villages in between the fields of the family of the in-laws of Shiksha and of Ashad; the question of their developing an intimacy while working in the fields could not have arisen. No recovery has also admittedly been made pursuant to the disclosure statement of the present appellant. On all counts, he is also entitled to a benefit of doubt and a consequent acquittal.

17 Arguments have been refuted by the learned public prosecutor. Submission being that the learned counsels for the appellants have failed to dislodge the version of PW-1; although admittedly he is a child witness yet there is no reason as to why he would depose against one parent i.e. his mother Shiksha but for the reason that he was speaking the truth; further submission being that the motive for the crime which

was the illicit relations between Shiksha and Ashad has come not only in the version of PW-7 but also in the versions of PW-2 and PW-6. Attention has also been drawn to the testimony of Ratan Lal (PW-3) who was the earlier employer of Ashad and Amjad who had stated that Shiksha used to make telephone calls on his mobile in order to speak to Ashad establishing the close connection between the two co-appellants. Further submission being that on no count does the judgment of the trial Judge calls for any interference.

18 Record has been perused. We have also heard and appreciated the submissions advanced by the learned counsel for the parties.

19 This is an eye-witness account. It is not a case of circumstantial evidence. There is only one eye-witness to the incident. The said eye-witness is closely related to the parties i.e. to the appellant Shiksha and to the deceased Raj Kumar. He is the son of the parties. He is a boy aged 13 years and as per the case of the prosecution, he had witnessed this incident on 07.07.2005 as the incident had occurred in their house. The whole case of the prosecution in fact revolves upon the version of PW-1. If this Court accepts the version of PW-1 as a reliable and cogent testimony, there would be little defence left with the appellants. Vice-Crl. Appeal Nos. 1077/2010 & 1288/2011

versa if this Court dis-believes the version of PW-1, the further evidence collected by the prosecution will have to be gone into a greater depth to conclude as to whether the links in the chain of the circumstances set up by the prosecution stand complete or not.

20 We shall now examine the version of PW-1.

21 PW-1 is master Govind. He has on oath testified in Court on 09.03.2006 i.e. after about seven months of the incident. He was between 12-13 years at the time of the incident i.e. at the stage of puberty; in his growing years. A preliminary round of questions had been put to the witness before he was asked to depose on oath. The trial Judge being satisfied that the witness was able to understand and comprehend the questions put to him, his statement on oath was recorded.

22 Before advertng to his version on oath in Court, it would be relevant to state that it was the statement of PW-1 which had become the basis of the FIR. It was on his statement that the FIR had been registered. His statement had been recorded in the morning of 09.07.2005 i.e. almost after 1- ½ days after the incident. We shall also have to examine whether this delay of 1- ½ days in lodging the

complaint before the police has been satisfactorily explained or not.

23 PW-1 on oath in Court has stated that he was residing in house No. 236, Gali No. 8, Amar Colony, Delhi along with his mother, father and his younger brother and sister. Accused Ashad often used to come to their house. On 07.07.2005 at about 07:30 PM in the evening Ashad along with two other persons had come to his house; his mother told Ashad and his associates that her husband (deceased Raj Kumar) used to harass and trouble her. Ashad told her that he would solve the problem and teach him a lesson. PW-1 was asked by his mother to go to sleep. PW-1 used to sleep on the roof and he went off to sleep. 2-3 hours later, he heard some noise; he woke up thinking that his father had returned home; on peeping down he saw the said persons fighting with his father; he came down; he saw his mother Shiksha and Ashad had caught hold of his father pressing him down on the cot; another person (Amjad) was sitting on his legs; the fourth person caught had hold of the hands of his father; his mother Shiksha and Ashad were throttling the throat of his father with a bed-sheet. PW-1 screamed; he was threatened by the accused to leave otherwise he would meet the same fate; his mother again threatened him to go up-stairs. PW-1 saw his mother and Ashad

putting the body of his father in a gunny bag held by Amjad and other persons. The top of the gunny bag was tied. PW-1 went up-stairs. He was afraid and was crying. 2-3 hours later he came down and found that all other persons had left except his mother; he saw his maternal uncle (co-accused Mukesh) standing with his mother and the gunny bag lying near the gutter of their house. On inquiry from his mother, he was again threatened to go back and not to interfere. He went up-stairs and started thinking about the incident. It was morning by that time. When he again came down, he found the gunny bag missing; he presumed that the body of the father must have been disposed off.

24 Further version of PW-1 being that on 08.07.2005, his uncle Suresh had come to his house and inquired about his father from his mother; PW-1 did not tell him anything. On 09.07.2005 in the morning when his grandfather had come to their house along with some other persons, PW-1 narrated the incident to him; he told him that his mother along with her associates had killed his father. Police complaint was lodged; his statement Ex.PW-1/A was recorded.

25 A lengthy cross-examination had been conducted of this witness by the different counsel for the four accused persons. PW-1 denied the

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suggestion that he has been tutored either by the Investigating Officer or by any other person. He admitted that he had not gone to school on that date. His brother and sister had also not gone to school. He explained that he had not narrated this fact to his younger sibling as they were very young. It has come in his cross-examination that the roofs of the houses adjoining their house were touching each other; persons were sleeping on the roofs. He had not narrated the incident to any neighbor. He had not raised alarm as he was afraid. He had detailed the map of his house revealing thereby that there were two rooms on the ground floor of which one was used for dwelling purposes and the other room for cattle; there was one room on the first floor. He admitted that his uncle Suresh did not have a mobile phone and so also his father who was working as a pollution checker at a petrol pump; PW-2 was residing in their house since the last 1- ½ years.

26 The vehement submission of the learned counsel for the appellants is that the testimony of this witness is liable to be discarded as he is a tutored witness; he has vacillated on various scores; he is not truthful and in fact he had not witnessed the incident as he was living with his grandfather in the village at the relevant time. This last part of

the defence had come in the statement of accused Shiksha recorded under Section 313 of the Cr.PC.

27 Relevant would it be to state that not a single suggestion has been given to this witness that he had not witnessed the incident or he was not in Delhi in the house at the relevant time. In fact repeated questions have been put to him as to where he was studying in Delhi and what was the name of his school to which he has categorically answered that he was studying at Partibha Model School. This version is also consistent with the status report (dated 23.05.2012) filed in this Court where State has reported that PW-1 was studying in Partibha Model School. This was in the year 2012 and Partibha Model School was the school where PW-1 was studying at the time when the incident had occurred and as such the vehement argument of the learned counsel for the appellant Shiksha on this score that the witness is inconsistent is an incorrect argument; it is accordingly rejected.

28 The version of PW-1 inspires confidence. He is not only clear, cogent and coherent but also appears to be a truthful witness. There appears to be no conceivable reason as to why a child would depose against his mother but for the fact that what he was deposing is the truth.

PW-1 had first heard his mother complaining about his father to her associates at about 07:30 PM. At around 10:30-11:00 PM when he came down on hearing a noise, he had witnessed the incident. Ashad was known to him as he was earlier also visiting their house. He has ascribed a specific role to both his mother and Ashad. His mother and Ashad had caught hold of his father and were throttling him with a bed-sheet whereas the other co-accused were holding him. The conduct of this witness also appears to be normal and natural. He is a growing child; the eldest in the family; he had two younger siblings but he did not have the courage to disclose the incident to them as they were not only younger in years because of the threats extended to him from his mother as also from the other co-accused. In spite of a sustained and lengthy cross-examination of the witness on this score, he had stuck to his stand; his focus did not shift.

29 Learned counsel for the appellant has vehemently argued that even presuming PW-1 could not disclose this incident to his younger brother and sister yet nothing prevented him from disclosing this incident to PW-2 who was his cousin uncle and whom he had allegedly met in the evening of 08.07.2013. The answer to this was probably that

PW-2 was only a cousin uncle; he was the first cousin of his father and PW-1 may not have found him a trust-worthy confidant to disclose such a big event to him; the trauma was burning in the mind of the child but it was only when he met his grandfather on the following morning i.e. of 09.07.2005 that he found his trust-worthy confidant in him and narrated the goring incident to him. The complaint was lodged immediately thereafter.

30 Viewed in this scenario, the conduct of PW-1 is natural and becoming; it is not abnormal as has been vehemently argued. This is also so keeping in view the fact that PW-1 was probably the closest blood relation of the parties; being the child of the parties. The mental trauma of PW-1 and the tug of war between one parent and the other was tormenting.

31 In Dattu Ramrao Vs. State of Maharashtra 1997 (3) Mah LJ 452, 454 the Supreme Court laid down the rule of prudence and desirability of corroboration as under:-

“A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and

able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the Court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored. There is no rule or practice that in every case the evidence of such a witness be corroborated before a conviction can be allowed to stand but, however as a rule of prudence the court always finds it desirable to have the corroboration to such evidence from other dependable evidence on record.”

32 On all counts, PW-1 is reliable.

33 Jaipal (PW-6) was the grandfather of PW-1. He was the father of the victim. He was admittedly a resident of his native village Kandhla, Distt. Muzaffarnagar, UP. He had been informed by his nephew Suresh (PW-2) that his son was missing. This information was given to him on telephone on 08.07.2005. PW-6 reached Delhi forthwith. The incident was narrated to him by PW-1. Police complaint was lodged by PW-6. Version of PW-6 establishes that when he had questioned Govind (PW-1) about his father he initially looked perplexed and confused; on repeated inquiry, PW-1 blurted out the incident. In the presence of PW-6, the dead-body of his son Raj Kumar was recovered from an iron trunk lying in the room from where a foul smell was emanating. The iron trunk (Ex.P-3) was taken into possession vide memo Ex.PW-2/B.

34 In his cross-examination, PW-6 has initially stated that he had two sons Raj Kumar (deceased) and Lokender; vehement submission of the learned counsel for appellant Shiksha being that he had deliberately concealed the identity of his third son for the reason that Babu Ram was not on speaking terms with the deceased; this could be for the property angle attached to this crime and because of that a deliberate attempt had been made to conceal the identity of his third son.

35 This submission has to be noted only to be rejected. The third son Babu Ram in the course of investigation had given his statement to the police under Section 161 of the Cr.PC. This was in July, 2005; PW-6 had come into the witness box to depose in May, 2008. Identity of Babu Ram was known to the investigating agency much before and as such the question of concealment of his identity did not arise; it could only be an error or a slip of the mind of the 58 years old witness. In a later part of the testimony he has clearly stated that Babu Ram was his son.

36 In another part of his cross-examination, PW-6 has admitted that the house where the deceased Raj Kumar was residing was in his name although he has no document to substantiate this; the deceased had executed documents of this house in his name 6-7 months prior to his

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death; he admitted that he had sold this house within 2-3 months of the date of the incident. Learned counsel for the appellants on this score have propelled an argument that the whole idea was to grab the property of the deceased and this is clear from the fact that PW-6 had admittedly sold this house within 2-3 months from the date of the incident which appears to be a highly suspicious conduct on his part as no person would negotiate the sale of an immoveable property within such a short span of such an unfortunate event having occurred.

37 This submission of the learned counsel for the appellants holds no water. Testimony of PW-6 in fact establishes that the house where Raj Kumar was residing was in his own name. PW-6 was the owner of his house. The question of PW-6 and his other sons trying to usurp this house could not and did not arise as this house was not owned by any other person but PW-6 himself. The reason why he had sold this house within such a short span of the death of his son was obviously for the fact that the children of the deceased i.e. his two sons and a daughter were residing with him after the incident; they had stopped residing in Delhi from the date of the incident. This has come in the version of PW-1 as also in the status report filed by the State (dated 23.05.2012).

This house had become a useless liability for PW-6 as admittedly PW-6 and his remaining family were all living in the village at Muzaffarnagar, UP. This house was in occupation of his deceased son and he having died, this house was now of no use to PW-6.

38 PW-2 Suresh was the cousin brother of the deceased who was also residing in the house at Amar Colony since the last 1- ½ years where the deceased and his family were living. PW-2 was in fact working at the same petrol pump along with the deceased. He has on oath deposed that on 07.07.2005 he had taken leave for two days i.e. up to 09.07.2005 to go to his village Kandala; in the evening of 08.07.2005 he received a call from his employer that his cousin Raj Kumar had not attended his work. On receipt of this information, he along with his other cousin Lokender came to Delhi where on reaching the house of the deceased they inquired from Shiksha about the whereabouts of Raj Kumar; they were informed that he had had a quarrel with her and had gone somewhere; PW-2 and Lokender started searching for Raj Kumar but they could not find him. A telephone call was made to his uncle i.e. Jaipal, the father of the deceased informing him about the missing of Raj Kumar. PW-6 reached Delhi in the morning of 09.07.2005 where on

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inquiry from Shiksha and thereafter from PW-1, the truth about the incident was narrated by PW-1 to PW-6 pursuant to which the police report had been lodged. The rest of the testimony of PW-6 is hearsay as it only narrates what PW-1 had narrated to him.

39 This witness was also subjected to a lengthy cross-examination. He has corroborated the version of PW-1 that he did not have a mobile phone nor did his deceased cousin have a mobile. He has however clearly and cogently deposed that PW-6 had a mobile phone which number was known to him and this number had been given by him to his employer. PW-2 has stated that he had given the mobile number of PW-6 to his employer who had contacted him on this phone number. That is how the employer of PW-2 was able to contact him on 08.07.2005 informing him of the absence of Raj Kumar on 07.07.2005. The submission of the learned counsel for the appellants on this score that there was no explanation as to how this information about missing of Raj Kumar had been transmitted from Delhi to Muzzafarnagar has been answered in this version.

40 PW-2 in another part of his cross-examination has stated that there was a dispute between Raj Kumar and Shiksha about the affair of

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Ashad and Shiksha. This has also been corroborated in the statement of PW-6, the father-in-law of Shiksha who had stated that his son had told him that his wife had a bad-character. PW-7 is also a relevant witness on this count. He is Babu Ram, the brother of the deceased. He has deposed that his bhabhi Shiksha was living in the village with them; their fields and fields of Ashad were at a distance of 4 kilometers. Ashad and Shiksha had developed intimacy when they used to work in the fields; they had an illicit relationship and when the family learnt about it, Shiksha was sent to Delhi to live with her husband. This witness has not shifted in his cross-examination. Vehement submission of the learned counsel for the appellants on this score is that PW-7 is a false witness and his version is liable to be disbelieved for the reason that it has come in the version of PW-2 that PW-7 was not on speaking terms with the deceased and this was the reason why he has deposed in favour of the prosecution; further that PW-6 has stated that there was a distance of 6-7 kilometers between the fields of Shiksha and Ashad and they could not have developed any intimacy. Relevant would it be to state that this witness has not been cross-examined on the score that Shiksha and Ashad were not working in adjacent fields at the relevant time or that

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Shiksha had not been sent to Delhi by the family on learning about their illicit relationship; whether there was a distance of 4 kilometers or 6-7 kilometers between the two villages, in this background, would be of little consequence. That apart merely because it has come in the version of PW-2 that PW-7 was not on visiting terms with the deceased would be no reason for PW-7 to depose against Shiksha; his enmity towards, if any, were with the deceased and would not make out a case to falsely implicate Shiksha.

41 PW-3 is another witness who has deposed on this count. He was Ratan Lal, the erstwhile employer of Ashad and Amjad. He has categorically deposed that telephone calls had been received by him from one Shiksha to speak to Ashad; this was 5-6 years ago which would be around the year 2002. It has thus come on record that Shiksha and Ashad were known to each other as way back as 2002. In his cross-examination he has given the details of his mobile number; he has admitted that he did not furnish any document to show that Shiksha used to call Ashad on his phone but this witness has not been cross-examined on this score that he did not own this mobile number. PW-3 was an independent witness. There was no reason for him to have made such a

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statement but for the reason that it was a truthful statement.

42 Motive for the crime thus stood established in the aforementioned versions of PW-7 and PW-3 and corroborated by PW-2 & PW-6. Motive even otherwise may not be relevant as there is an eye-witness account of PW-1 who had actually witnessed the crime. In these circumstances, what was in the mind of the accused which had led them to commit the crime may not be relevant.

43 The dead body of the victim was recovered from an iron trunk lying in the ground floor of the house. This was pursuant to the disclosure statement made by accused Shiksha. It was on 09.07.2005. A foul smell was found emanating when the police party had reached the spot which had led them to open this box. Submission of the learned counsel for the appellants on this count is that if there was a foul smell and death having occurred (as per the prosecution) somewhere around the midnight of 07.07.2005 and being a summer month, the smell would have started emanating 12 hours after the death and why PW-2 and Lokender who had reached the house of the deceased in the evening of 08.07.2005 had not noted this foul smell has not been explained; thus this is a clear case where the dead body had been planted upon the

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appellant and this is also corroborated by her version recorded under Section 313 of the Cr.PC wherein she has stated that no dead body was recovered from her house in her presence; this defence of the appellant cannot be ignored.

44 This submission of the learned counsel for the appellant is explained and answered in the version of the witnesses. It has come in the evidence of PW-1 that he used to sleep on the roof. PW-2 has deposed that he was living in this house since the last 1- ½ years and he used to reside on the roof. Also being the summer season, it is clear that on 08.07.2005 when PW-2 and Lokender had come to Delhi they had slept on the roof; it was for this reason that they did not note the smell emanating from the iron trunk which was lying on the ground floor of the house.

45 The fact that the dead-body was recovered is substantiated by the testimony of the police personnel i.e. constable Upender Singh (PW-15) as well. Further the statement of PW-1 is also corroborative of this fact wherein he has stated that he had seen his mother Shiksha and Ashad putting the body of his father in a gunny bag; this gunny bag was then put near the gutter of the house; when he came back again, he found that

the gunny bag was missing; he had presumed that the body of his father had been disposed of. This version of PW-1 had formed the basis of the FIR and was recorded prior in time to the recovery of the dead body which was contained in the gunny bag. Recovery in these circumstances could not have been planted.

46 The fact that the dead body remained in the house up to 09.07.2005 and could not be disposed of was obviously for the reason that the locality in which the parties were residing was a congested area; the roofs of the houses were touching one another. As per PW-1 all other persons after committing the crime had left the scene of crime in the early morning hours of 08.07.2005; when he last saw his mother with the body of his father, his maternal uncle Mukesh was alone present . Obviously they needed some vehicle to transport the body; it was for the reason that they probably decided to keep the dead-body in the trunk to dispose it of at an opportune time. Little did they know this whole mystery would be unraveled on that day itself.

47 Relevancy of not lifting the finger prints which even as per the version of SI Suman Kumar (PW-10) (crime team in-charge) were not found would even otherwise would not be material as there is an eye-
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witness account.

48 The common intention of the two appellants to eliminate Raj Kumar has been spelt out clearly and unequivocally by the prosecution. The eye-witness account of the incident as witnessed by PW-1 cannot be faulted with. The dead body was recovered at the instance of Shiksha at their house. Motive for the crime i.e. the illicit relationship between the co-appellants has also been spelt out in the version of the witnesses as discussed supra. After committing the heinous offence, the co-appellants made all efforts to destroy the evidence.

49 On no count, do the appellants deserve any sympathy. Prosecution has been able to establish its case to the hilt. Both the appeals are without any merit. Dismissed.

INDERMEET KAUR, J

KAILASH GAMBHIR, J

NOVEMBER 20, 2013

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