

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

+ **CRIMINAL APPEAL No. 1143/2012**

% **Reserved on: 29th January, 2013**
Date of Decision: 16th May, 2013

RAJEEV KUMAR Appellant
Through Mr. Sanjay Kumar, Ms. Parul Sharma &
Mr. Krishan Kumar, Advocates.

Versus

THE STATE (NCT OF DELHI) ...Respondent
Through Ms. Richa Kapoor, APP for the State.

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

SANJIV KHANNA, J.:

The appellant Rajeev Kumar impugns judgment dated 21st July, 2012, arising out of FIR No. 235/2010, wherein he has been convicted under Section 302 IPC for murder of Arun Kumar. By order of sentence dated 25th July, 2012, he has been sentenced to life imprisonment and fine of Rs 2,000/-, in default of which, he shall undergo simple imprisonment for two months.

2. Prosecution case is based upon circumstantial evidence. On 9th September, 2010, at about 9.55 P.M. DD entry No. 28 was lodged in

Police Station Krishna Nagar that an unidentified man was lying at Kanti Nagar Park. ASI Yash Pal (PW-27) was sent to the crime spot with Constable Pramod (PW-22). Before they could reach, the injured was taken by a PCR van to Guru Tej Bahadur Hospital where, on examination he was declared as brought dead. PW-27 thereafter recorded the rukka (Exhibit PW-27/A), which mentions that many stab injuries were found on the deceased's body. One mobile phone, Rs.1,400/-, a bike key and some documents were taken into possession. The unknown deceased was identified, on the basis of contact stored in the mobile phone, as Arun Kumar. One Ravinder reached the spot and identified the deceased as his relative. Ravinder later on appeared as PW-1 before the Trial Court. The Rukka (Exhibit PW-27/A) records that Ravinder had claimed that on 9th September, 2010 at about 8.30 to 9 P.M. he had seen deceased in the company of the appellant Rajeev, driving towards Gali No. 2 Shanti Mohalla on his motorcycle. The rukka was dispatched on 10th September, 2010 at 1.10 A.M. and thereafter FIR (Exhibit PW-2/A) was registered at about 1.20 A.M.

3. Homicidal death of Arun Kumar and his identity is not disputed or denied. MLC (Exhibit PW-15/A) was proved by Dr. Banarasi (PW-15), who had examined the deceased on 9th September, 2010 at 10.40 P.M., when he was brought by Constable Rahul of the PCR van. Upon

examination, he was declared brought dead. PW-15 has deposed about the articles found on the body of the deceased, i.e., mobile phone, Rs.1,400/-, key of the bike and documents. The said articles are clearly mentioned in the MLC itself. MLC also records that the deceased was purported to have been found in a park with history of stabbing. Post-mortem report (Exhibit PW-16/A) has been proved by Dr. Ashok (PW-16). The post-mortem was conducted by Dr. Juthika Debbaram, who had left the hospital but her signatures and hand writing were identified.

4. The post-mortem report (Exhibit PW-16/A) records as many as 24 incised wounds, many of which are incised stab wounds. Cause of death was opined as haemorrhagic shock, produced as a result of ante mortem stab wounds to the lungs, heart, liver and neck vessels caused by sharp edged weapon. Injury Nos. 1, 3, 5, 9, 10, 11, 12, 14 and 15 were independently and collectively sufficient to cause death in the ordinary course of nature. The said injuries are as under:

“1. Incised cut throat wound measuring 18 cm × 0.3 cm present on the anterior aspect of the neck, extending from 2 cm below right angle of mandible to 6cm below the tip of left mastoid process, obliquely present. In the midline, the depth is 3.8 cm. The underlying muscles of the neck, subcutaneous tissues are cut, the trachea, esophagus and cricoid cartilage and left carotid artery, jugular vein and vagus are cut completely

with extravasation of blood into the surrounding tissue.

3. Incised stab wound measuring 4.1cm ×0.1 cm present horizontally on the front of right side of chest, 10.5cm from midline and 12 cm below the right clavicle. The inner angle of the wound is more ante than the outer angle. The wound goes inwards medially and upwards cuts the subcutaneous tissue and fourth intercostal space and enters the right chest cavity and ends in the parenchyma of the anterior aspect of upper lobe of right lung making a total depth of 10 cm.

5. Incised stab wound measuring 4.1 cm×0.1cm present obliquely on the right side of chest, midpoint of the wound is 3.5 cm from midline and 16.5 cm below right clavicle. The upper inner angle of the wound is more dente than the lower outer angle. The wound goes downwards, backwards and to the left, cuts the subcutaneous tissue, nicks the seventh costal cartilage and ends in the parenchyma of the left lobe of liver making a total depth of 13 cm.

9. Incised stab wound measuring 3.5 cm×0.1cm present horizontally on the front chest on left side .5 cm from midline and 14cm below clavicle. The inner angle is more acute than the outer angle. The wound goes upwards, backwards and medially, cutting the subcutaneous tissue, third intercostals space enters the chest cavity (left) and ends in the cavity of left ventricle on the upper part, making a total depth of 10.5 cm. The left chest cavity is full of blood.

10. Incised stab wound measuring 7.5 cm×0.1cm present on the front of upper part of abdomen on left side, horizontally present 5 cm from midline and 2 cm below the left subcostal margin. The inner angle is more acute than the outer angle. The wound goes backwards and medially cutting the subcutaneous tissue, enters

the abdominal cavity cuts the cover border of left lobe of the liver, through and through and ends on the anterior wall of the stomach making a total depth of 10 cm, with extravasation of blood into the surrounding tissue.

11. Incised stab wound measuring 10.5 cm×0.1cm present horizontally on the front of left side of abdomen, 3.4 cm below injury number 10 and 1 cm from midline. The inner angle is more acute than the outer angle. The wound goes backwards and medially, cutting the soft tissue and muscles of abdomen, enters the abdominal cavity and ends in the parenchyma of pancreas making a total depth of 10.5cm.

12. Incised stab wound measuring 8 cm×0.1cm present obliquely on the front of left side of abdomen, inner end is just on midline and 4.2 cm below injury number 11. The inner angle is more acute than the outer angle. The wound goes inwards, cutting the soft tissue and muscles of abdomen, enters the abdominal cavity and ends in the loops of small intestines are cutting it, making a total depth of 10 cm. The loops of intestines are coming out through the wound. The inner angle is lower than the outer angle.

14. Incised stab wound measuring 5.4 cm×0.1cm present obliquely on the right side of abdomen, midpoint of the wound is 14.5 cm from midline and 12.5 cm above the iliac crest. The inner upper angle is more acute than the lower outer angle. The wound goes upwards, backwards and medially, cutting the soft tissue and muscles of the abdomen, enters the abdominal cavity and ends in the parenchyma of the anterior aspect of liver (right lobe) in making a total depth of 12.5 cm.”

5. Tentative time since death was stated to be half a day. The post-mortem was conducted on 10th September, 2010 between 11.05 A.M. to 12.45 P.M. There were multiple cut marks on the shirt, vest and pant worn by the deceased, which correspond to the injuries on the body.

6. On behalf of the appellant, it was contended that he is not the perpetrator of the said crime and the prosecution case had not been proved beyond reasonable doubt.

7. We have noted above that in the rukka (Exhibit PW-27/A) recorded at about 1.10 A.M. by PW-27 ASI Yash Pal it is recorded that one Ravinder had disclosed and stated that at about 8.30 to 9 P.M. he had seen the deceased on his motor cycle in the company of appellant going towards Gali No. 2 Shanti Mohalla. It is also on record that Ravinder went to the hospital after coming to know that Arun had sustained injuries. The said Ravinder appeared as PW-1 and has deposed that at about 8.15 to 8.30 P.M. he had seen the appellant and the deceased together on the motorcycle. He has elaborated upon the said fact by giving the make of the motorcycle which, to our mind, is irrelevant and inconsequential. The said elaboration does not defeat or contradict the main statement. PW-1 has further deposed that at 9.30 P.M. he had received a phone call from his friend Balram that he had

seen the deceased with the appellant on foot going towards Maharana Pratap Park. Arun appeared to be inebriated. At about 10.30 P.M. he received a call that the deceased had met with an accident. PW-1 made a call on the mobile number of Arun and it was picked up by a head constable, who apprised him that Arun was admitted in the emergency unit of GTB Hospital. PW-1 was asked to reach immediately. Thereafter, he went to police post Old Seelampur where Mahesh brother of the appellant was present. Purportedly Mahesh had then apprised that the appellant had called him on the mobile phone and informed him that he had a fight with someone and would return at about 12 midnight or 1.00 A.M. In the cross-examination, PW-1 has affirmed that it was not recorded in Exhibit PW-1/DA, (his purported statement u/s 161 Cr.P.C.) that he had received a call from Balram at about 9.30 P.M. Counsel for the appellant confronted PW-1 with some other assertions made by PW-1, which do not find mention or recorded in Exhibit PW-1/DA. Suffice it is to notice that ASI Yash Pal Tomar PW27 has deposed that cousin of the deceased namely Ravinder (PW1) met them in the hospital and he had made an endorsement on DD No. 28 marked Ex. PW27/A. In PW27/A it is recorded that the deceased was identified by one Ravinder, son of deceased's uncle, who had disclosed that at about

8.30-9 P.M. he had seen the deceased on his motorcycle in the company of the appellant. We would observe two facts cannot be controverted and stand established. Firstly, PW1 had seen the deceased with the appellant on a motorcycle at about 8.15/8.30 P.M. on 9th Sept., 2010. Secondly, PW1 was informed and he had reached GTB hospital at about mid-night on 9/10th Sept.,2010. ExPW27/A was dispatched from the hospital on 10th Sept.,2010 at 1.10a.m. for recording of the FIR. We discard and do not rely upon the other averments/allegations made by PW1. For reasons elaborated upon below we are also substantially disbelieving the deposition of PW5 Balram.

8. Learned counsel for the appellant has drawn our attention to the cross-examination of PW-1 wherein he had stated that he had not informed the police, when he was at the hospital, that he had seen deceased on motorcycle with the accused at 8.30 to 9 P.M. We feel that said statement is being read out of context. In the examination-in-chief, PW-1 has averred that on 9th September, 2010 at 8.15 to 8.30 P.M. he had seen the deceased with the appellant on a motorcycle. Therefore, in response to the question in the cross-examination, when reference was made to 8.30 and 9 P.M., PW-1 rebutted and denied the suggestion regarding a different time. In the rukka (Exhibit PW-1/DA) it is recorded that PW-1 had disclosed that it was at 8.30 to 9 P.M. that

he had seen the deceased on his motorcycle in the company of Rajeev but this minor difference of fifteen minutes does not, to our mind, cast doubt on whether PW-1 had or had not seen the deceased in company of the appellant on a motorcycle between 8.15 to 8.30 P.M..

9. Balram appeared as PW-5 and has deposed that on 9th September, 2010 at about 8 P.M. he had met the deceased along with Rajeev. They were apparently drunk and he had offered to drop the deceased to his house but Rajeev intervened and said that he would drop him. At 9.30 P.M. he tried to contact the deceased on his mobile phone but it was not reachable. Thereafter at 10.30/10.45 P.M. he received a call on his mobile phone from the deceased's mobile phone and he was informed that deceased was admitted in GTB Hospital as he had met with an accident. He informed the caller that he could not reach the hospital and asked the caller to inform Ravinder (PW-1) whose mobile number he provided.

10. PW5 deposition in chief is debatable. He has contradicted substantive portions of his statements, in chief, in the cross examination. In the cross examination, PW-5 has stated that he came to know about the murder of Arun on the next day in the evening. He has stated that he had seen the deceased and the appellant on foot and not on a motorcycle. Further, PW-5 had not offered to speak to the police

and inform others till 30th November, 2010 that he had seen the deceased and the appellant together. His deep concern for the deceased Arun on 9th September, 2010 had for no apparent reason dissipated and evaporated the next day. Silence for over two months is unexplained and casts grave doubts about PW5's testimony in chief. In these circumstances, we are inclined to discard the testimony of PW-5 Balram that he had seen the deceased and the appellant together on 9th September, 2010 at 9 P.M. We are further inclined to discard testimony of PW-1 to the effect that on 9th September, 2010 at 9.30 P.M., PW-5 had informed him on telephone that he had seen deceased Rajeev on foot. The delay in recording the statement of PW-5 under Section 161 Cr.P.C. has not been explained and does lead us to believe that he is unreliable. In case Balram, (PW-5) had come to know about the murder of Arun on the next day, the statement of PW-5 that he received phone call from the mobile phone of the deceased by a police officer calling from GTB Hospital is incorrect. The police in their investigation have not collected call records of telephones PW-1, PW-5 or the deceased on whom a mobile phone was found. Call data records and subscriber application form of Ravinder (PW1) mobile number 9210366193 ExPw19/A and ExPW19/B have been placed on record and proved by M.N.Vijayan but as per PW5, Ravinder (PW1) at that

time was using mobile number 9210051455. Indeed before us it was stated by the Addl. Public Prosecutor that the deceased was using mobile number 9210366193 registered in the name of Ravinder (PW1) and PW5 was possibly using mobile number 9213988513. This may be true but there is no such evidence. No one has deposed on the telephone number of the deceased. PW5 has not deposed about his own telephone number. Subscriber forms of telephone number 9210051455 and 9213988513 and call details have not been placed on record. In a case of this nature, a cautious and meticulous approach was required and necessary.

11. Therefore, all that is proved by PW-1 is the fact that between 8.15 to 8.30 P.M. he had seen the deceased and the appellant on a motorcycle going through gali No. 2. PW-1 had gone to the hospital at about mid night, after he came to know that Arun had suffered an accident. At that time he had told the police that at about 8.30 P.M. he had seen the deceased on his motorcycle in the company of Rajeev, i.e., the appellant.

12. Ravinder Kumar Sharma, who appeared as PW-9, has deposed that on 9th September, 2010 at about 9.30 p.m. when he was returning home on foot, he noticed that one person was lying on the pavement in the park in an injured condition. Blood was oozing out. He had asked

public persons to help, but no one came forward. Then he made a call to 100 number from his mobile. Thereafter, PCR Van came and removed the injured to the hospital. Injured was alive at that time. At about 9.55 p.m. a wireless message was conveyed by HC Satpal of PCR and DD entry No.28 (Ex.PW11/A) was recorded at police post Old Seelampur by Constable Kalicharan (PW-11). This DD entry was marked to ASI Yash Pal (PW-27), who along with Constable Pramod, left the police station for investigation. Constable Pramod (PW-22) has deposed that on 9th September, 2010 he was on emergency duty with ASI Yash Pal and had reached Maharan Pratap Marg near PS Krishna Nagar where he found blood at two places on the walking strip/path. ASI Yash Pal left him there to guard the spot and went to GTB Hospital. Material/evidence was lifted from the spot.

13. There is some time gap between 8.15/8.30 P.M., when PW-1 saw the deceased, and when the injured Arun was found on the street at about 9.30 P.M. At about 8.15 to 8.30 P.M., as per PW-1, the deceased was in the company of the appellant. It would be difficult to substantially rely upon this and treat it as the last seen evidence and convict the appellant. Principle of last seen applies when there is a close proximity between the time when the accused and the deceased were seen together and the time when the crime took place. We have

to be cautious and careful to ensure that any third party involvement is ruled out. Indeed the statement made by PW-1 became the starting point of investigation and enquires against the appellant. His conviction can be sustained only if there is substantive evidence which when read together with the fact that appellant and deceased Arun were together at 8.15 p.m. on 9th Sept.,2010, would complete the chain of circumstances.

14. The appellant was arrested on 10th September, 2010 at about 5.30 P.M., as per arrest memo Exhibit PW-24/A. At the time of arrest, as per personal search memo (Exhibit PW-24/B), mobile phone with SIM No. 9540013160 was recovered and seized. The appellant in his statement under Section 313 Cr.P.C. has stated that he was lifted from his house and he had not made any disclosure statement. However, the appellant has not given the date and time when he was arrested. Before we go into the question of disclosure statement, we would like to first refer to statement of two public witnesses Mohan Singh Rawat and Jitender Rathi PW-13 and PW-14, respectively.

15. PW-13 is the owner of the three storeyed house at Mandoli, which was given on rent to PW-14 and one Sudan. This fact deposed by PW-13 is accepted by PW-14. PW-13 has stated that on 10th September, 2010 at about 6.30 P.M. three police men came with a boy

whom he recognized and identified as the appellant Rajeev. The boy was taken to the first floor and from there one pair of shoes, one pair of khakhee colour socks, one T shirt having blood marks, one blue colour jeans and one handkerchief having blood marks were recovered and were seized vide seizure memo Exhibit PW-13/A. The said seizure memo was signed by PW-13 at point 'A'. In the court, these articles were identified by the appellant as Exhibit P-1 to P-5. PW-14's statement is significant and important. He has stated that he was working as a helper in a blue line line bus and had become friendly with the appellant who used to travel in the said bus. On 9th September, 2010 at about 11.00 to 11.30 P.M. the appellant came to the said room where they were residing in Mandoli Extension. At that time, the appellant was wearing blood stained T shirt and jeans. On being questioned, the appellant had stated that he had a quarrel with pick pocketeers and during the scuffle he had sustained injuries on his hands and his clothes got stained with blood. The appellant slept with him at night and left in the morning while PW-14 was still sleeping. On the next date, i.e., 10th September, 2010 at 6/6.30 P.M. Inspector Subhash Kumar, PW-28 along with two other police officers had come to the room with the appellant. They took into their possession jeans, T shirt, handkerchief, socks and shoes, which were left behind in the

room. He identified the seizure memo (Exhibit PW-13/A) and accepted that his statement was recorded by the investigating officer. He identified the appellant and the clothes/belongings as Exhibit P-1 to P-5.

16. PW-13 and 14's deposition are important. As per PW-14, the appellant came to his residence/room at about 11 to 11.30 P.M. on 9th September, 2010 and his clothes had blood stains. He had injury on his hands. He removed his blood stained clothes, which he later left behind. He slept there and left in the morning. The very next day on 10th September, 2010 the said clothes were seized in the presence of PW-13 and 14. The seizure memo Exhibit PW-13/A by signed by PW-13 and not by PW-14, but this does not cast doubt about the presence of PW-14. Once PW-13 had signed the seizure memo, it was not necessary that PW-14 should have signed the same.

17. This brings us to the disclosure statement which was recorded by Inspector Subhash Kumar and marked as Exhibit PW-24/C. Head Constable Satyapal, PW-24 had deposed that after the arrest the appellant had made a disclosure statement and thereafter led the police team to Mandoli Extension at the house of PW-14 from where recoveries were made in the presence of PW-13 and PW-14. The appellant was then taken to SDN Hospital for medical examination.

PW-24 identified the clothes Exhibit P-1 to P-4. The fact that PW-24 could not state who had ascribed the disclosure statement (Exhibit PW-24/C) is immaterial. Similar, statement has been made by Constable Jitender (PW-25) and Inspector Subhash Kumar (PW-28). PW-28 has deposed that after the accused was arrested, the appellant made a disclosure statement Exhibit PW-24/C that he went to reside at B-193, Mandoli Extension, house of the friend of the appellant, namely, Jitender Rathi (PW-14). From there they recovered blood stained pant, T-shirt and handkerchief etc. He identified the properties so recovered as Exhibit P-1 to P-4, i.e., shoes, socks, handkerchief, T shirt and jeans, which were collectively marked Exhibit P-4. In the cross-examination of PW-28, he accepted that PW-14 was not a signatory to the memo but denied the suggestion that PW-14 was not present. PW-28 accepted that he could not tell who had ascribed the disclosure statement Exhibit PW-24/C.

18. Similar statement has been made by Constable Jitender, PW-25, viz. the disclosure statement and recoveries. He identified the articles so recovered. Inspector Subhash (PW-28) took over the investigation after Arun Kumar was brought to the hospital and was declared brought dead. He arrested the appellant Rajeev vide arrest memo Exhibit PW-24/A which was signed by him at point 'B'. The personal

search was conducted on the accused vide memo Exhibit PW-24/B which was signed by him at point 'B'. He recorded the disclosure statement Exhibit PW-24/C and prepared the pointing out memo Exhibit PW-24/D. He had gone to House No. B-193, Mandoli Extension, New Delhi and met PW-13 and PW-14 there. From the house they recovered blood stained shoes, handkerchief, socks, T shirt and blue jeans which were seized vide seizure memo (Exhibit PW-13/A).

19. The FSL Report (Exhibit PW-28/D) opines that blood was detected on handkerchief, T shirt, pants, socks and shoes of the deceased which were seized at the instance of the appellant. As per the biological report (Exhibit PW-28/E), the blood was human and in the case of handkerchief and T shirt it was opined that it belonged to group 'B'. On other articles, there was no reaction. Blood was found on earth material, cotton wool swab and the clothes of the deceased but the blood group could not be ascertained. The blood sample of the deceased had putrefied and, therefore, no opinion could be given. As per the FSL report (Exhibit PW-28/C) ethyl alcohol 631.3 mg was found in 100 ml of blood. The deceased was, therefore, heavily drunk when the crime was committed.

20. In *Sunil Clifford Daniel Vs. State of Punjab*, 2012 (8) SCALE 670, the Supreme Court dealt with a situation where the FSL and Serological reports opined that the articles recovered had human blood, but the blood group could not be ascertained. The Supreme Court observed that in such cases, benefit need not necessarily go to the accused because the blood had disintegrated; the stain was too insufficient; there were hematological changes or plasmatic coagulation. It was elucidated:-

“28. Most of the articles recovered and sent for preparation of FSL and serological reports contained human blood. However, on the rubber mat recovered from the car of Dr. Pauli (CW.2) and one other item, there can be no positive report in relation to the same as the blood on such articles has dis-integrated. All other material objects, including the shirt of the accused, two T-shirts, two towels, a track suit, one pant, the brassier of the deceased, bangles of the deceased, the under-garments of the deceased, two tops, dumb bell, gunny bag, tie etc. were found to have dis-integrated.

29. A similar issue arose for consideration by this Court in **Gura Singh v. State of Rajasthan** AIR 2001 SC 330, wherein the Court, relying upon earlier judgments of this Court, particularly in **Prabhu Babaji Navie v. State of Bombay**., AIR 1956 SC 51; **Raghav Prapanna Tripathi v. State of U.P.**, AIR 1963 SC 74; and **Teja Ram** (supra) observed that a failure by the serologist **to detect the origin of the blood due to dis-integration of the serum, does not mean that the blood stuck on the axe would not have been human blood at all.** Sometimes it is possible, either because the stain is too insufficient, or due to haematological changes and plasmatic

coagulation, that a serologist may fail to detect the origin of the blood. However, in such a case, unless the doubt is of a reasonable dimension, which a judicially conscientious mind may entertain, with some objectivity, no benefit can be claimed by the accused, in this regard.”

21. Prosecution further relies upon statement of Firoz (PW-12) who has stated that on 2nd September, 2010 the appellant had come to his shop and stated that he was running a meat shop. He wanted to purchase churri (knife) and had given him Rs.100/-, in advance, for PW-12 to procure it as he did not keep knives for sale. PW-12 used to sharpen knives and scissors. PW-12 gave his mobile No. 9971516567 to the appellant and on the next day, i.e., 3rd September, 2010 the appellant called him. He asked the appellant to come on the next day as he had not been able to arrange for the knife, the day being Friday. On 4th September, 2010 the appellant came and PW-12 gave him the knife after sharpening the same. On 12th September, 2010 police came to his shop along with the appellant and PW-12 identified him. He informed the police that the appellant had purchased a knife from him. Prosecution claims that the churri or the knife, in the present case, could not be recovered though an attempt was made to recover the same, as per the testimony of Ram Pal (PW-8) Safai karamchari in MCD. As per the disclosure statement (Exhibit PW-24/C), the accused

had thrown the knife in a drain near swarn Cinema, East Delhi. They tried to search for the dagger with the help of two magnets tied to a rope, but it could not be located.

22. Telephone conversation between PW-12 Firoz and the appellant, as per the prosecution, stands proved from the testimony of Pawan Singh (PW-26), who had produced call records of mobile No. 9540013160 for the period 1st September, 2010 to 29th September, 2010. He had produced certificate under Section 65B of the Evidence Act marked Exhibit PW-26/D. The said telephone connection was issued in the name of one Keshav son of Durga Prasad, resident of house No. 3374, Gali No. 1, Raghubar Pura No. 2, Gandhi Nagar, Delhi on the basis of photocopy of election I card (Exhibit PW-26/A). The said mobile with the aforesaid SIM number was seized from the appellant vide personal search memo Exhibit PW24/D. The call records (Exhibit PW-26/C) placed on record show that there was a telephonic conversation between the said number and PW-12 on 3rd September, 2010 at 12.29 hours. More importantly the call details on 9th September, 2010 show that the appellant was in constant conversation or sending or receiving SMSs on 9th September, 2010 from 19.04 hours till 19.55 hours. Thereafter, there was a gap till 21.23 hours and from then onwards the appellant was constantly on

phone till 1241 on 10th September, 2010 either by receiving or making calls or SMSs.

23. Rajiv (PW-6), uncle of the deceased had stated that he was the owner of the motorcycle number DL 13SF 1132. He has stated that the deceased had taken the motorcycle from his house on 9th September, 2010. This corroborates the statement of PW-1 that he had seen deceased Arun on the motorcycle with the appellant. PW-6 has deposed that at about 10.00/11.00 p.m. somebody informed him that Arun had been murdered. The motorcycle was released on *Superdari* to him on 11th October, 2010. In the cross-examination he has deposed that motorcycle was taken by Arun at about 5 p.m. and thereafter he had seen the motorcycle for the first time in the police station. What is highlighted by the counsel for the appellant is the assertion by PW-6 in the cross-examination that in the night hours of 9th September, 2010 “I came to know that my motorcycle was lying parked in the premises of police post Old Seelampur”. We record that this statement by PW-6 is rather vague as he has not specifically deposed that he himself had seen the motorcycle parked at police post Old Seelampur.

24. Public witness Harpal Singh (PW-17) has deposed that on 11th September, 2010 at about 5.30/6.00 p.m., he had participated as a public witness in recovery of the motorcycle. He has further deposed

that he had earlier seen the deceased riding the same motorcycle in the area.

25. The Investigating Officer, Inspector Subhash Kumar (PW-28) has stated that on 11th September, 2010, the appellant was produced before the Court and one day police custody remand was obtained. Thereafter, the appellant led the police team to Parwana Road, Khajuri Khas, and identified the place from where he had purchased the knife i.e. the weapon of offence, but the shop was found to be closed on the said date. Thereafter, the appellant took them to the place where the motorcycle was parked by him. The motorcycle was seized vide memo Ex.PW17/A and PW-28 had signed the seizure memo at point 'C'. PW-28 has denied that the motorcycle was parked in the premises of police post Old Seelampur in the intervening night of 9th September, 2010. Ct. Jitender (PW-25) had deposed that the motorcycle was parked outside the entry gate of the park.

26. Nevertheless, we would assume that recovery of the motorcycle pursuant to the disclosure statement by the appellant PW24/C is debateable and should not be accepted. It is possible that the police may have recovered the motorcycle independently and by their own efforts. However, the prosecution is entitled to rely on Section 8 of the Evidence Act and statement of PW12 which is corroborated by the call

details records Ex. PW-26/C that the appellant had purchased a knife. The conduct of the appellant is relevant, though the knife could not be recovered and therefore Section 27 of the Evidence Act cannot be invoked.

27. We will now refer to the decisions relied upon by the appellant. In *Prem Thakur Vs. State of Punjab*, (1982) 3 SCC 462, the Supreme Court has laid down general principles when the prosecution version relies upon circumstantial evidence. Unquestionably every effort must be made to find out, who had committed the murder, but care and caution should be taken that *a priori* suspicion should not transform itself into a facile belief that the person accused has committed the offence. Human mind can implicate a person as the author of the crime, as it may not resist the frustrating feeling that no other person has been identified as the perpetrator. Such hazards should be avoided and the Court must ensure that the circumstances established should of such a nature as to be capable of supporting the exclusive hypothesis that the accused is guilty of the crime charged.

28. *Dandu Jaggaraju Vs. State of A.P.*, JT 2011 (13) SC 618 was a case wherein ‘disco jewellery’ which is commonly available to all and sundry, was purportedly recovered and treated as incriminating material under Section 27 of the Evidence Act. Supreme Court

rejected the said recovery observing that it did not support the prosecution story as motive propounded was family honour and the jewellery allegedly recovered was little more than trinkets.

29. *In Prasann Kumar Vs. State of U.P.*, 2009 (2) ACR 2341

Allahabad High Court elucidated upon the nature and character of circumstances to secure conviction in cases of circumstantial evidence. The recoveries under Section 27 of the Evidence Act were disbelieved and on the question of extra judicial confession there was doubt.

30. *In Sohan Singh Vs. State of Uttranchal*, AIR 2006 SC 520, the

Supreme Court examined the question of delay in examination of prosecution witnesses and it was observed:-

“7. It is well settled that delay in examination of prosecution witnesses by the police during the course of investigation, ipso facto, may not be a ground to create doubt regarding veracity of the prosecution case. But in the facts and circumstances of the present case, veracity of the prosecution case becomes highly doubtful as in view of the evidence of prosecution witnesses, namely, PWs 1, 2 and 6, the possibility of dacoity in the house of Ram Singh and receiving injuries by the members of the prosecution party during the course of dacoity cannot be ruled out more so when there is no evidence whatsoever to show that any of the accused persons much less the appellant assaulted the three deceased persons in view of the fact that none of the injured witnesses, namely, PWs 4, 5 and 6 stated that the accused persons assaulted any of the three deceased persons. For the foregoing reasons, we are of the view that the prosecution has failed to prove its case beyond reasonable doubt and the High Court was not justified in reversing the order of acquittal recorded by the trial court as the same was not perverse in any manner. As we have doubted veracity of the prosecution case in relation to all

the accused persons, it would be just and expedient to extend same benefit to accused Paramjeet Singh as well in spite of the fact that his conviction recorded by the High Court has attained finality as he did not move this Court."

31. We have already disbelieved and not relied upon the statement of PW-5 on the ground of delay and other reasons quoted above.

32. This Court in Criminal Appeal No.819/2012, **Vijay Singh Vs. State and Another** decided on 3rd September, 2012 by one of us (Sanjiv Khanna, J.) has reproduced the five principles expounded in **Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116** for basing conviction on circumstantial evidence. In the facts of the said case it has been held that the chain of evidence was not complete.

33. Supreme Court in **Niranjan Panja Vs. State of West Bengal**, JT 2010 (5) SC 204 dealt with the question of motive and its importance in cases of circumstantial evidence. In the said case it has been held that the motive as propounded was not strong so as to hold that the accused was driven to commit the offence in question. In the present case, prosecution to prove motive has suggested that the appellant had taken loan from the deceased and was under financial stress and obligation to pay. Prosecution has relied upon one of the papers, which was found with the deceased at the time of death as per Ex.PW-18/A, the seizure memo. The said paper is a photocopy and records

entries which relate to money, i.e. the name and the amount. The said paper should be treated as the original document in the present case but the said document by itself would not prove that the deceased was lending money and had lent money to the appellant or others. There is evidence to suggest as deposed by PW-5 that the deceased used to lend money. Similar statement is made by PW-1. However, the said transactions, it is apparent were not through banking channels but in cash. To adduce satisfactory documentary evidence in such cases is difficult. We, therefore, agree that the prosecution has not been able to fully substantiate the motive, though the factum that the deceased was engaged in money lending business has been deposed to and stated. It is, however, not necessary in all cases of circumstantial evidence to prove motive to sustain conviction. Chain of circumstances can be complete even if motive is not fully established. What impels and pushes a person to do a crime remains confined and known to the accused. Because of overt acts in some cases, it may be possible to decipher and know the reason or the cause which impelled the accused, but in other cases it may not be possible to pin-point the so called motive or reason. Crime/offence can be proved or established without establishing/proving motive.

34. In view of the aforesaid discussion, we have reached the following conclusions:-

(i) The appellant and the deceased were seen together on a motorcycle at about 8.15 p.m. on 9th September, 2010.

(ii) Deceased was found in an injured condition in a nearby area at 9.30 p.m. and was taken to GTB hospital where he was declared brought dead.

(iii) Ravinder (PW-1) had reached the hospital at about midnight and informed the police officers that he had seen the deceased and appellant together at 8.15 p.m. This became the starting point of investigation.

(iv) The appellant made a disclosure statement Ex.PW24/C. Pursuant to which, blood stained clothes worn by the appellant at the time of occurrence were seized on 10th September, 2010 from the rented room in occupation of PW-14 in the presence of the house owner PW-13.

(v) The appellant had spent the night intervening between 8 and 9th September, 2010 at the said rented room with PW-14, who has deposed that the appellant came with blood stained clothes and injured hand at

about 11-11.30 p.m. and on being questioned had stated that he had quarreled with pick pocketeers and had suffered injuries.

(vi) The appellant in his Section 313 Cr.P.C. statement has denied having suffered injuries and has not given any explanation.

(vii) Ex.PW28/D, the FSL report in respect of handkerchief, T shirt, pants, socks and shoes indicates that human blood was found on them. FSL report also states that the deceased had substantial amount of alcohol. Corroborating the similar assertion made by PW-1. FSL report also corroborates testimonies of PWs13 and 14.

(viii) PW-12 has deposed that the appellant had purchased a meat knife from him on 4th September, 2010.

(ix) Call records (Ex.PW26/C) of the mobile phone with number 95400131360 seized from the appellant, show that the appellant had conversation with PW-12 on 3rd September, 2010 at 12.29 hours as deposed by PW-12. Further, the appellant was in constant conversation or sending or receiving SMSs on 9th September, 2010 from 19.04 hours till 19.55 hours. Thereafter, there was a gap till 21.23 hours and from then onwards the appellant was constantly on phone till 12.41 on 10th September, 2010 either by receiving or making calls or SMSs.

35. In view of the aforesaid proved and established facts, we feel that the chain of circumstances is complete. The prosecution has proved that the appellant is the perpetrator of the crime in question. There is no ambiguity, doubt or possibility of a third person committing the said crime. We do not find any merit in the present appeal and the same is dismissed. Conviction and sentence are maintained.

(SANJIV KHANNA)
JUDGE

(SIDDHARTH MRIDUL)
JUDGE

MAY 16th, 2013
VKR/NA