

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

+ **CRIMINAL APPEAL No. 1495/2011**

% **Reserved on: 31st January, 2013**
Date of Decision: 12th February, 2013

HAMID & ANOTHER Appellants
Through Mr. Avdhesh Kumar Singh & Mr.
Jitendra Mani, Advocates.

Versus

STATE NCT OF DELHI ...Respondent
Through Ms. Richa Kapoor & Mr. Sanjay Lao, APP
for the State.

CRIMINAL APPEAL No. 1167/2011

SABIR Appellant
Through Mr. Sanjay Kumar, Mr. Krishan Kumar
and Ms. Parul Sharma, Advocates.

Versus

STATE NCT OF DELHI ...Respondent
Through Ms. Richa Kapoor & Mr. Sanjay Lao, APP
for the State.

CRIMINAL APPEAL No. 1346/2011

FIRDOS & ANR. Appellants
Through Mr. Avdhesh Kumar Singh & Mr.
Jitendra Mani, Advocates.

Versus

STATE NCT OF DELHI ...Respondent

Through Ms. Richa Kapoor & Mr. Sanjay Lao, APP
for the State.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

SANJIV KHANNA, J.:

The appellants Hamid, his brother Rashid and nephew Sabir by the impugned judgment dated 3rd September, 2011 have been convicted under Sections 302/363/201/34 of the Indian Penal Code, 1860 (IPC, for short) and the appellants Firdos, mother of Hamid and Rashid and Vakila, wife of Rashid have been convicted under Sections 201/34 IPC. The said judgment acquits the five appellants from the charge under Section 364A IPC.

2. By the order of sentence dated 6th September, 2011 Hamid, Rashid and Sabir have all been sentenced to imprisonment for life and fine of Rs.5,000/- each and in default of payment of fine, they have to undergo Simple Imprisonment for six months under Section 302/34 IPC. These three appellants have been sentenced to Rigorous Imprisonment for three years and fine of Rs.3,000/-each and in default of payment of fine, Simple Imprisonment of three months under Sections 363/34 IPC. The five appellants have been sentenced to Rigorous Imprisonment for three years and fine of Rs.3,000/- each for

offence under Section 201/34 IPC, in default of payment of fine, they have to undergo Simple Imprisonment of three months.

3. The prosecution case in brief is that on 2nd March, 2007 at about 3.30 P.M. Kasim Alam @ Rahil, son of Kadir Alam, aged about ten years went missing. At that time, he was wearing jeans pant, a blue coloured T-shirt, red colour jacket and black leather shoes. Missing report in form of DD No. 21A (Ex. PW-9/B) was recorded which does not name any suspect. After investigation, on 9th March, 2007, Hamid was apprehended and on interrogation he made a disclosure statement. Thereafter, on 10th March, 2007 appellants-Rashid and Firdos were arrested from Pooja Colony, Loni, Uttar Pradesh and at their instance dead body of Kasim Alam @ Rahil was recovered, from the nala between Bhagirathi Vihar and Ganga Vihar, where it was stuffed in a gunny bag with bhussa and other waste papers and thrown off in the nala. On 26th March, 2007 Sabir was arrested near Kabutar Market, Welcome Colony, Delhi and on 26th April, 2007 Vakila was arrested from Chand Bagh Pulkia near Gokul Puri, Delhi.

4. There are no eye witnesses to the incident and the prosecution case is premised upon circumstantial evidence.

5. The factum that the boy Kasim Alam @ Rahil had died an unnatural death after he had suffered stabbed wounds is an undisputed

position. The Post-Mortem Report stands proved by Dr. Arvind Kumar (PW-21). Erroneously, the exhibit number (Exhibit PW-21/A) has not been marked on the post-mortem report. The Court Master has been directed to record exhibit number on the post mortem report. The said post-mortem was conducted by Dr. Barkha Gupta, Senior Resident, who has since left the hospital, i.e., UCMS and GTB Hospital, Shahdara, Delhi. PW-21 has identified her handwriting and signatures. As per the post-mortem report, the deceased had external injuries in the form of four lacerated wounds and the cause of death was identified as shock due to ante-mortem head injury caused by penetrating blunt edged weapon. Each of the four injuries was caused by penetrating blunt edged weapon and were independently sufficient to cause death in ordinary course of nature. The injuries were of recent origin. The post-mortem was conducted on 11th March, 2007 between 12.20 - 1.20 P.M. and records that all clothes were intact, wet and dirty. Straw was present on clothes. The body was bloated up and had undergone a change due to decomposition. The face was distended, eyes were bulging out, mouth was open and scrotum was distended. There was sero sanguinous discharge oozing from the mouth and nostrils. There was greenish discolouration of body at certain places, skin had peeled at few places, scalp hair was lying loose, teeth were

also loose and Rigor Mortis had passed away. Maggots were crawling all over the body and clothes. The report further records that intestine was full of gases and the walls were soft. In the stomach 50 ml of liquid was present and the walls were soft. The time of death, as opined in the said report was about one week, which would date back to 5th March, 2007.

6. As noticed above, appellant-Hamid was the first one to be arrested on 9th March, 2007 and the arrest memo (Ex. PW-9/C) records the time of arrest as 9.00 P.M. On the same day itself, the following disclosure statement (Exhibit PW-9/E) as per the prosecution version was recorded:-

“He had been working in the factory of Kadir Alam since last four years at Gali No. 20 Braham Puri, Delhi. Kadir Alam was a rich person due to that he made a plan to kidnap Kasim Alam @ Rahil s/o Kadir Alam and to demand Rs.5 lacs from him as ransom.

On 02.03.07 in pursuant to said plan he took Rahil on the pretext of playing with him at about 3.30 P.M. to his house. When he reached at his house, mother Firdos was present and she confined Rahil in a room and after some time Rahil (Apne Ghar jane Ki Zid Kerne Lega to maine usko thapper mark ker chup rehne ko khea lekin veh rone lega) then he thought in case Rahil would be left then he (Rahil) would disclosed all the facts to his father therefore, due to this apprehension he pressed the mouth and neck of Rahil and killed him. He further disclosed that when he was keeping his dead body under the

bed lying in the room in the meantime his mother reached there and insisted him to go back to the factory and thereafter he returned to his factory and started searching Rahil with Kadir Alam. He further disclosed that at about 7.30 P.M. he again reached at his house to remove the dead body of Rahil, on reaching there his mother Firdos, Rashid and Vakila (Dekhate hi keha ki tune bache ko mar ker theek nahi kiya jo meri galti manne per teeno ne kaha kit u wapis karkhane chala ja aur hum teeno Rahil ki lash ko thikane laga denge.) Thereafter again he started searching Rahil and at about 2 a.m. when he again returned to his house, his mother, his brother and his Bhabhi told him that they all had thrown the dead body of Rahil while keeping in a gunny bag at Gokal Puri Nala near Tripal Factory Indra Vihar. He also disclosed that on 8/3/07 he also disclosed all these facts to one Nadeem that he had killed Rahil. He can get the place identified and also can get arrested his mother, his brother and his Bhabhi and also can get recovered the dead body of Rahil.”

7. The disclosure statement is inadmissible, except to the extent stated and stipulated in Section 27 of the Evidence Act. As per the police version, the dead body of Kasim Alam @ Rahil was not recovered pursuant to the aforesaid disclosure by appellant-Hamid. Father of Kasim Alam, who had appeared as PW-9 in his examination-in-chief in the court had stated that the disclosure statement (Exhibit PW-9/E) was recorded and he was taken by the police officers near the nala but due to night time dead body of his son could not be recovered. The location of the dead body, as identified in (Exhibit PW-9/E) was Gokul Puri nala near Tripal Factory, Indra Vihar. This was not the

place, as per the police witnesses, from where the dead body of Kasim Alam was recovered.

8. Prosecution relies upon the disclosure statements made by appellants-Rashid and Firdos marked (Ex.PW-16/C) and (Ex. PW-16/F) for recovery of the body of Kasim from the place in question i.e. ganda nala Bhagirathi Vihar near Brahm Puri Pullia, Gokul Puri, Delhi. The place of recovery of the dead body is not the same place as mentioned in the disclosure statement of appellant-Hamid dated 9th March, 2007 (Ex.PW 9/E).

9. The disclosure statement quoted above records that appellant-Hamid did not have personal knowledge but the information given by him to the police was on the basis of what had been told to him by his mother, brother and bhabhi, i.e., Rashid, Firdos and Vakila. Thus, the place was known and in knowledge of the appellant Hamid because third persons had so informed him.

10. Other circumstantial evidence relied by the prosecution against the appellant Hamid is the allegation of last seen and extra judicial confession. Rizwan Ulhaq (PW-3) has deposed that Kadir Alam was his friend and on 2nd March, 2007 at about 4.00 to 4.30 P.M. he had seen appellant-Hamid taking away Kasim @ Rahil son of Kadir Alam

with him at gali No. 20, Braham Puri towards pullia. Next day he

came to know that Kasim Alam was missing and he informed Kadir Alam on telephone that he had seen Kasim Alam with the appellant-Hamid. On 4th March, 2007, he had gone to the Police Station and his statement was recorded. He deposed that on 2nd March, 2007 no one was present with Hamid and Kasim Alam. He was declared hostile and cross-examined by the Public Prosecutor and questions were put to him about presence of appellant-Sabir with Hamid when he had purportedly seen Hamid taking away Kasim Alam with him. He denied the said suggestion given by the Public Prosecutor. In the cross-examination PW-3 admitted that he had known Kadir Alam for last 12-13 years and they were in the same business. Prior to 2nd March, 2007, he had never seen Hamid with Kasim and on 3rd March, 2007 he had informed Kadir Alam on telephone at 9 to 10 A.M. that he had seen both of them together. On 2nd March, 2007, he had not enquired from Hamid or Kasim where they were going. He further testified that on 4th March, 2007 he along with Kadir Alam and one or two other persons had gone out to search for Kasim and they had also gone to the police station. He has stated that he had filed the written complaint with the police on 4th March, 2007 which bears his signatures and the signatures of Kadir Alam but the said “complaint” has not been brought on record. The first investigating officer SI

Pramod (PW-18) has stated that on 3rd March, 2007 Kadir Alam had come to the police station and on his statement Exhibit PW-9/A (rukka) was prepared and FIR was registered. He had recorded statement of witnesses on 4th March, 2007 and 8th March, 2007 and thereafter on 9th March, 2007 appellant-Hamid was apprehended and his disclosure statement Exhibit PW-9/E was recorded. In his deposition in the Court PW-18 does not talk of attempt to locate, interrogate and detain the appellant-Hamid between 4th March, 2007 till 9th March, 2007. He has not deposed that the appellant-Hamid was absconding or efforts were made but he could not be located as he was hiding or had given replies which required verification. PW-18 is completely silent on this. This creates doubts or suspicion whether PW-3 had made any statement or informed Kadir Alam that he had seen Kasim with appellant-Hamid on 2nd March, 2007 and had made statements either on 3rd March, 2007 or on 4th March, 2007. In case PW-3 had made any such statement and informed Kadir Alam, they too would have certainly tried to get in touch with Hamid on the same day, i.e., 3rd March, 2007 or thereafter, if the police was not talking steps to interrogate or talk to him. Nothing of the sort is deposed by both PW-3 and PW-9. Kadir Alam (PW-9) in his testimony states that PW-3 on 3rd March, 2007 at about 9-10 P.M. had spoken to him on

telephone and had stated that he had seen his son with appellant-Hamid and another person whom he can identify. However, the said averment remains extremely doubtful and debatable in view of the conduct of PW-3 and 9 and the silence of the investigating officer SI Pramod (PW-18). It is also not believable that appellant-Hamid, who was known to both PW-3 and PW-9 not would have been interrogated or questioned in case PW-3 had informed PW-9 that he had seen his missing son with him. This makes the testimony of PW-3 and 9 on the evidence of the last seen debatable and unreliable. We are, therefore, not inclined to accept the statement of PW-3 that he had seen Kasim with appellant-Hamid. At this stage, we also record that PW-3 did not recognize the appellant-Sabir as a person, who was allegedly with appellant-Hamid and Kasim. His testimony completely exonerates and exculpates Sabir and his presence. Interestingly, in PW-3's Section 161 Cr.P.C. statement refers to the FIR No. 76/2007 and in the heading mentions Sections 363/364/302/201/120B IPC. This statement has been purportedly made on 4th March, 2007, that is 5 days before the arrest of any of the appellants and 6 days before recovery of the dead body of Kasim on 10th March, 2004. It is the prosecution case that it was after recovery of the dead body that Section 302/364A/201/120B were added prior to which only Sections 363/364 IPC were there. SI

Pramod (PW-18), in his court statement has stated that on 9th March 2004 Section 302/364A/201/120B IPC were added in the FIR and the investigation was transferred to Inspector K.L. Sharma (PW-19). PW-19 has averred that on 10th March 2007 (sic 2004) he took investigation on this case after addition of sections 302/364A/201/120B IPC. This casts a grave doubt regarding the exact date on which PW-3's statement was actually recorded. It could be after the body was found and, in turn, in these circumstances we are inclined to disbelieve and disregard the statement of PW-3.

11. The prosecution relies upon statement of Nadeem (PW-2) to prove extra judicial confession. Nadeem (PW-2) has stated that he was working with Kadir Alam and on 8th day of 2007 (month he did not remember) Hamid had met him in Gali No. 20 at 10 A.M. Hamid was perplexed and on being questioned told him that he had kidnapped son of Kadir Alam and murdered him. He has averred that he had kidnapped Kasim Alam for money. Thereafter, he went to the factory of Kadir Alam, informed him about the conversation between him and Hamid. The testimony of PW-2 shows that the appellant-Hamid had not absconded and was available in Delhi. Hamid as per PW-2 had met him on 8th March, 2007. There is no evidence to show that PW-2 was close and good friend of the appellant-Hamid. It is difficult

to accept that appellant-Hamid would have confided and made a confession to PW-2 regarding kidnapping and thereafter committing murder of Kasim by strangulation. Further, as noticed, the post-mortem report does not show that Kasim had died because of strangulation. As per the post-mortem report, there were four lacerated wounds which had led to his death. PW-2 in his cross-examination admitted that he had assisted Kadir Alam in trying to trace out Kasim on 4th, 5th and 6th March, 2007 in the locality. They had made announcement (Elan) along with other workmen and had gone around searching for Kasim. Thus, PW-2 it is apparent was very close and a good friend of PW-9.

12. The prosecution also relies upon CFSL report (Ex. PX) as per which blood stains were detected on stone and mattress and human blood was detected on one wooden piece. The blood stains on the stone and the mattress had degraded and blood stains on the wooden piece could be detected to be human but blood group could not be ascertained. The prosecution case is that a mattress, stone which was part of the flooring, and the wooden piece of a part of the bed, were seized by the police after the disclosure statements made by the appellants; Hamid, Rashid and Firdaus. The seizure was from their residence i.e. Jhuggi No. E-16/B 147, Jhuggi Seelam, Pur. The alleged

seizure was made by seizure memo (Ex. PW18/G) purportedly dated 12th March, 2007. The memo records that appellant Rashid and Firdaus were present with the police team when the crime team was called to the spot i.e. Jhuggi No. E-16/B, 147 Jhuggi Seelam Pur. The appellants have submitted that the so-called seizure and recovery is in fact planted and it is unbelievable that almost ten days after the crime, blood stains or blood would have remained on the stone, mattress or the part of the wooden piece. It is also high-lighted that the blood group could not be ascertained. The said seizure memo was prepared by Insp. K.L. Sharma (PW-19) who took over the investigation of the case on 10th March, 2007, after addition of Sections 302/364A/201/120B IPC. Before 10th March, 2007, the investigation was entrusted to S.I. Pramod (PW18). S.I. Pramod (PW18) in his deposition in chief has stated that he had interrogated Hamid thoroughly and recorded his disclosure statement (Ex. PW9/E). Thereafter, Hamid took the police to his jhuggi and pointed out the spot where he and the co-accused had murdered the deceased. Thereafter, site plan (Ex. PW18/B) was prepared. Thus, the police team had visited the jhuggi and inspected the crime spot on 9th March, 2007. At that time, blood/blood stain was not noticed on the stone and no blood was noticed on the wooden bed and the mattress. It is

difficult to accept and believe that three days thereafter, the blood/blood stains were noticed by (PW-19) Insp. K.L. Sharma as well as (PW-18) S.I. Pramod who was also a part of the team. The recovery memo and the CFSL Report, therefore, become extremely doubtful and cannot be used as an incriminating material against the appellants.

13. Against Sabir, we do not have any material or evidence. The prosecution had relied upon the alleged identification as recorded by them in the statement by Rizwan Ulhaq (PW-3) under Section 161 Cr.P.C, but noticed in the court testimony that the said witness refused to accept this version and has stated that he had not seen Sabir. His testimony on last seen even otherwise is disbelieved. The prosecution has also relied upon the statement of Riyaz, who appeared as PW-4 and had a STD booth in Kabutar Market, Welcome, near Khajoor Wali Masjid, Delhi. He has stated that last year, the date and month he did not remember, at about 10.30 PM, a boy under influence of liquor had come to his STD booth to make a call. At that time another boy of fair complexion had made a call and talked for 60-90 seconds. The next day, in the morning, he received a call from police officials, P.S. New Usman Pur, and was informed that somebody had used his STD booth for making a ransom call. A boy in the police vehicle was shown to

him and police obtained his signatures when the said boy confessed having made a call from his booth. He could not identify the person who had made the call from his booth and had been shown to him by the police officials. PW-4 was cross-examined by the public prosecutor, but stated that he did not know Sabir Ali and he could not say if Sabir Ali, who was present in court, had made the call from his STD booth or was brought to his booth by the police on 26.3.2007. On the other hand, he pointed out towards appellant Rashid and stated that the police officials brought him to his booth in hand cuffs. He denied the suggestion that Sabir had made a call from his booth on 9th March, 2007 or on 26th March, 2007 and that he had identified the said person. Rashid was already in judicial custody on 26.3.2007, and therefore he could not have been shown to the said witness.

14. We now examine the case made out and proved by the prosecution against the appellant Rashid, Firdaus and Vakila. Rashid was arrested vide arrest memo (Ex. PW16/A) on 10th March, 2007 at 4.15 PM. After his arrest, it is alleged that he had made a disclosure statement Ex. PW16/C. The appellant Firdaus was also arrested on 10th March, 2007, after 45 minutes of the previous arrest, at 5.00 PM vide arrest memo Ex. PW16/D and thereafter had made/ a disclosure statement Ex. PW16/F. It is stated that thereafter the appellant Rashid

and Firdaus took the police team to Ganda Nala, Bhagirath Vihar near Brij Puri Pullia, and from where the gunny bag with the dead body of Kasim, was recovered. The crime team report Ex. PW-17/A records that the crime team was present at the said spot on 10th March, 2007 between 6.15 to 7.30 PM. (PW-18) S.I. Pramod has stated that after interrogation and disclosure statement by Rashid and Firdaus, the accused persons took the police team to the drain between E Block Bhagirath Vihar and G Block Ganga Vihar and pointed out the place where a gunny bag was lying and told them that the dead body of the child was inside the gunny bag. When the gunny bag was opened, it was discovered that it had the dead body of a child who was subsequently identified by Kadir Alam as his son Kasim Alam @ Rahil. The crime team reached the spot and took photographs. PW19, Insp. K.L. Sharma has also deposed on similar lines. He has stated that it was on pointing out of Rashid and Firdaus that the gunny bag was found in the drain between E Block Bhagirath Vihar and G Block Ganga Vihar, with dead body of Kasim inside. Thereupon the crime team was called and photographs were taken by them. Another disclosure statements were made by Hamid, Rashid and Firdaus (Ex.PW18/D to PW18/F) respectively. Subsequently, Rashid and Firdaus took police team to their jhuggi and got recovered one

polythene bag in which pant, shoes of the deceased and weapon of offence i.e. screw driver. Kadir Alam identified shoes and pant belongs to his deceased son. These articles were seized vide seizure memo PW9/H, it is dated 12th March, 2007. Interestingly, the post mortem report Ex. PW21/A records that clothes worn by the child namely denim jeans and jacket with read belt, T-shirt, white baniyan and pair of blue socks were intact, wet and dirty. As per the post mortem report, therefore, the child was wearing blue jeans at the time of recovery of the dead body. The subsequent recovery of the pant again on 12th March, 2007 cannot be explained. This naturally creates grave suspicion about the so called recovery made vide seizure memo Ex. PW9/H. Two photographs taken by the crime team Ex. PW2/A and PW2/2 do not indicate that till the crime team had reached the spot, the gunny bag was opened. The photographs indicate that the gunny bag was opened after the crime team had reached the spot.

15. The death report form against the column at No. 10 “Injuries or marks of violence of the body may have received. Wounds and bruises—Show position, length and breadth”, is blank and the column has not been filled up. Against column No. 12 – “In what manner or by what weapon or instrument such marks of injuries of violence appear to have been committed”, it is recorded “seems due to

strangulation”. It is surprising that the police officers did not notice the injuries on the body of the deceased Kasim@ Rahil when they opened the bag.

16. Thereafter, the post mortem was conducted on 11th March, 2007, between 12.20 to 1.20 PM and the opinion of the doctor with regard to injuries for lacerated wounds was known. Thereupon, it is apparent that PW-19 Insp. K.L. Sharma again recorded the disclosure statement on 11th March, 2007 of the appellants, Hamid, Rashi and Firdaus, Ex. PW18E to 18/F and alleged on 12th March, 2007, the aforesaid recoveries were made and articles seized vide seizure memo Ex. PW9/H.

17. The prosecution also relies upon statement of Rahisuddin, PW-1, who had deposed that last year, i.e. in 2007, one or two days before Holi at 8/8.30 PM, Firdaus along wither son Hamid had come to his house and demanded his rehri (cycle rickshaw). They had taken his cycle-rickshaw to throw some malba and the same was returned at 1.30/2 AM by Hamid or his brother Rashid. At that time he was sleeping and did not come out. After 4-5 days, Hamid brought some police officials and his rehri/cycle rickshaw was seized. Allegation of the prosecution is that the said cycle rickshaw was used to ferry the dead body in the gunny bag from jhuggi of the appellant at E-16/B/141

to the drain/ganda nala. No one had seen any of the appellants cycling or the gunny bag in the rickshaw. PW-1 has stated that the cycle rickshaw was to be used to ferry malba. As stated above, there is no evidence or material to show that Kasim was killed in the house i.e. jhuggi No. E-16/B/141. The recoveries from the house i.e. stone, wooden piece of the bed and the mattress have been already adversely commented upon.

18. In view of the aforesaid reasoning, we do not think that there is evidence or material to establish and prove the prosecution case that Hamid, Rashid or Sabir had committed murder or Hamid, Vakila or Sabir had thrown body in the gunny bag in the drain/nala. Prosecution has not been able to prove the case against them beyond reasonable doubt.

19. We observe here that against Vakila, who was subsequently arrested on 26th April, 2004, there is no material or evidence whatsoever to suggest her involvement. She cannot be convicted on the basis that she is Rashid's wife and is, therefore, entitled to acquittal.

20. The prosecution case against appellant Rashid and Firdaus is based on their two disclosure statements and the alleged recovery of the dead body thereafter on 10th March, 2007. As noticed above, appellant Rashid was arrested on the said date at 4.15 PM vide arrest

memo Ex. PW16/A and Firdaus was arrested at 5.00 PM vide arrest
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memo Ex. PW16/D, soon after the arrest, as per the prosecution version, Rashid had made disclosure statement Ex. PW16/C and Firdaus had made disclosure statement Ex. PW16/F. Thus, there were two disclosure statements. Law of joint disclosure statement was examined by the Supreme Court in *State (NCT of Delhi) v. Navjot Sandhu* (2005) 11 SCC 600 and it was observed as under:-

“ 145. Before parting with the discussion on the subject of confessions under Section 27, we may briefly refer to the legal position as regards joint disclosures. This point assumes relevance in the context of such disclosures made by the first two accused viz. Afzal and Shaukat. The admissibility of information said to have been furnished by both of them leading to the discovery of the hideouts of the deceased terrorists and the recovery of a laptop computer, a mobile phone and cash of Rs 10 lakhs from the truck in which they were found at Srinagar is in issue. Learned Senior Counsel Mr Shanti Bhushan and Mr Sushil Kumar appearing for the accused contend, as was contended before the High Court, that the disclosure and pointing out attributed to both cannot fall within the ken of Section 27, whereas it is the contention of Mr Gopal Subramaniam that there is no taboo against the admission of such information as incriminating evidence against both the accused informants. Some of the High Courts have taken the view that the wording “a person” excludes the applicability of the section to more than one person. But, that is too narrow a view to be taken. Joint disclosures, to be more accurate, simultaneous disclosures, *per se*, are not inadmissible under Section 27. “A person accused” need not necessarily be a single person, but it could be plurality of the accused. It seems to us 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 stated so substantially in similar terms a few seconds or minutes later, or the second 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. We do not think that such disclosures by two or more persons in police custody 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 in 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, as pointed out by Mr Gopal Subramaniam. Whether and to what extent such a simultaneous disclosure could be relied upon by the Court is really a matter of evaluation of evidence. With these prefatory remarks, we have to refer to two decisions of this Court which are relied upon by the learned defence counsel.

146. In *Mohd. Abdul Hafeez v. State of A.P.* [(1983) 1 SCC 143 : 1983 SCC (Cri) 139 : AIR 1983 SC 367] the prosecution sought to rely on the evidence that the appellant along with the other two accused gave information to the IO that the ring (MO-1) was sold to the jeweller, PW 3 in whose possession the ring was. PW 3 deposed that four accused persons whom he identified in court came to his shop and they sold the ring for Rs 325 and some days later, the Police Inspector accompanied by Accused 1, 2 and 3 came to his shop and the said accused asked PW 3 to produce the ring which they had sold. Then, he took out the ring from the showcase and it was seized by the Police Inspector. The difficulty in accepting such evidence was projected in the following words by D.A. Desai, J. speaking for the Court: (SCC p. 146, para 5)

“Does this evidence make any sense? He says that Accused 1 to 4 sold him the ring. He does not say who had the ring and to whom he paid the money. Similarly, he stated that Accused 1 to 3 asked him to produce the ring. It is impossible to believe that all spoke simultaneously. This way of recording evidence is most unsatisfactory and we record our disapproval of the same. 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; when he is dealing with more than one accused, what words were used by him so that a recovery pursuant to the information received may be connected to the person giving the information so as to provide incriminating evidence against that person.”

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.

147. Another case which needs to be noticed is the case of *Ramkishan Mithanlal Sharma v. State of*

Bombay [(1955) 1 SCR 903 : AIR 1955 SC 104 : 1955 Cri LJ 196] . The admissibility or otherwise of joint disclosures did not directly come up for consideration in that case. However, while distinguishing the case of *Gokulchand Dwarkadas* [AIR 1948 PC 82 : 49 Cri LJ 261] decided by the Bombay High Court, a passing observation was made that in the said case the High Court had “rightly held that a joint statement by more than one accused was not contemplated by Section 27” (SCR p. 925). We cannot understand this observation as laying down the law that the information almost simultaneously furnished by the two accused in regard to a fact discovered cannot be received in evidence under Section 27. It may be relevant to mention that in the case of *Lachman Singh v. State* [1952 SCR 839 : 1952 Cri LJ 863] this Court expressed certain reservations on the correctness of the view taken by some of the High Courts discountenancing joint disclosures.”

(emphasis supplied)

21. In light of the aforesaid ratio, we feel that the disclosure statement by appellant Rashid was made earlier in point of time and the disclosure by appellant Firdaus would have been later in point of time as they were arrested after a gap of 45 minutes. The place of arrest of both of them was the same i.e. Pooja Colony, Loni, as recorded in Ex. PW16/A and PW16/B. Firdaus is the mother and it is difficult to believe that she would have paddled the cycle rickshaw or would have gone on the cycle rickshaw at night to drop the dead body in the drain/nala, which is located at a distance of approximately 5 kms from their residence. The exact distance between the two places is not

indicated in any of the statements but can be gauged from the Delhi road map. In these circumstances, we do not accept the prosecution version and disregard the disclosure statement made by the appellant Firdaus. Recovery of the dead body on the basis of disclosure statement made by Rashid is certainly a grave incriminating fact. Till the disclosure statement, the police as well as family of Kasim was not aware that Kasim had died and his body had been packed in a gunny bag and thrown in the drain between E Block Bhagirath Vihar and G Block Ganga Vihar. However, in the present case, we are not inclined to, on this basis alone, convict the appellant Rashid for having committed murder of Kasim. The reason is that in the present case, the prosecution itself suspects involvement of third persons including Sabir. There is no other incriminating fact or material against the appellant Rashid to show and establish that he had committed murder of Kasim. The possibility that a third person may have committed the same and then Rashid had gone and dispose of the dead body cannot be ruled out in view of the prosecution case itself. In cases of circumstantial evidence, the evidence and material on record, should rule out the possibility of a third person committing the offence with which the accused is charged. The said possibility is not ruled out in the present case as far as offence under Section 302 IPC is concerned,

with the prosecution itself suspecting involvement of a third person. However, as far as offence under Section 201 IPC is concerned, involvement of appellant Rashid is established. He was aware that the dead body of Kasim had been packed in the gunny bag and thrown to hide it from third persons so that the said body cannot be recovered or remains concealed.

22. In these circumstances, Hamid, Sabir, Firdos and Vakila are acquitted. Rashid is convicted under Section 201 IPC but is acquitted of the charge under offence 302/34 and 363/34 IPC. Sentence of Rashid under 201 IPC is maintained. We note that Rashid, Firdos, Vakila and Sabir were released on bail, vide order dated 12th December, 2011, pursuant to suspension of their sentence. Rashid has undergone sentence imposed under Section 201 IPC and therefore need not be re-arrested. Hamid will be released forthwith, unless required to be detained, in accordance with law, in any other case. The appeals are disposed of.

(SANJIV KHANNA)
JUDGE

(SIDDHARTH MRIDUL)
JUDGE

FEBRUARY 12, 2013
VKR/NA