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

Date of decision: 12th February, 2013

+ **CRL.A. 1237/2012**

RAJESH @ DAI Appellant
Through Mr. A.J. Bhambhani, Ms. Nisha
Bhambhani, Mr. Apurv Chandola & Ms.
Bhavita Modi, Advocates.

versus

STATE 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. (ORAL)

Rajesh @ Dai stands convicted vide judgment dated 04.11.2011 under Section 302 of the Indian Penal Code, 1860 (IPC) for murder of Bhuvan Kumar @ Kalia in the intervening night of 22-23.09.2010 on the Second floor/terrace of the Royal Banquet Hall at Jheel Kurenja, Geeta Colony in East Delhi. By the order of sentence dated 11.11.2011, the appellant has been sentenced to life imprisonment and fine of Rs.1,000/- in default of which he has to undergo simple imprisonment for one month.

2. The homicidal death under unnatural circumstances has been proved and established beyond doubt in view of the post mortem report

(Ex.PW-9/A). The said report was proved by Dr. S. Lal (PW-9), who had conducted the post mortem. As per the post mortem report the deceased Bhuvan Kumar had the following ante-mortem injuries.

1. Lacerated wound with Reddish Contused Margin of Size 13 x 5 cms x cranial cavity deep over forehead with underlying commuted fracture of frontal bone through which brain matter is coming out.
2. Lacerated wound with Reddish Contused Margin of size 5 x 1 cm x cranial cavity deep on left side forehead over the left eyebrow.
3. Lacerated wound with Reddish Contused Margin of size 2 x 0.4 cms x muscle deep over left side face 1 cm lateral to angle of eye.
4. Lacerated wound with Reddish Contused Margin of size 2 x 0.4 cms x muscle deep on left side face over cheek with fracture of underlying cheek bone.
5. Lacerated wound size 1.5 x 1 cm x muscle deep over right outer angle of eye.
6. Reddish abrasion 3 x 1 cm x muscle deep over just below the lower lip over chin.
7. Reddish abrasion 3 x 1 cm over right cheek with underlying fracture of cheek bone.
8. Lacerated wound with contused margins 2 x 0.5

cms x muscle deep over tip of chin with fracture of mandible.

9. Lacerated wound 7 x 2 cms x muscle deep over occipital area over eminence with extravasations of blood.

10. Lacerated wound size 3 x 1 cm x muscle deep over right parietal area over eminence.

11. Lacerated wound 6 x 1.5 cms x muscle deep over right parietal area over eminence.

3. The cause of death as opined by PW-9 was shock due to ante mortem cranio cerebral damage consequent upon heavy blunt force/object which was hit on the head of the deceased. The injuries were sufficient to cause death in ordinary course of nature. The viscera of the deceased were preserved to rule out any intoxication, but the viscera report has not been placed on record. The viscera was seized vide Ex. PW-17/C. PW-9 has further opined that the injuries were possible by an iron rod which was produced before him for examination. At this stage we only record that the said iron rod was found at the site of the offence, i.e., on the roof of the banquet hall as per the prosecution version. The said position is not disputed by the learned counsel appearing for the appellant.

4. The core and primary issue raised is regarding involvement of the appellant and whether he is perpetrator of the said crime. In order

to establish their case, the prosecution has relied upon testimonies of Kunal Pandey (PW-1), Shakeel Ahmed (PW-2) and Harish Chand Bindra (PW-8). Statements of some police witnesses have also been relied upon, which can be referred to subsequently.

5. Kunal Pandey (PW-1) in his deposition had stated that he used to work as a waiter in the Royal banquet hall which operated from a three storyed building. He along with other workers used to sleep in the banquet hall at night. On 22.09.2010 at about 4P.M. he came to the banquet hall from Patiala, Punjab after a gap of four months. The appellant Rajesh and the deceased Bhuvan Kumar also used to work there and they had all worked together when he was working in the banquet hall. They decided to have liquor and the appellant Rajesh told him that he was on leave. He gave Rs.100/- to the appellant Rajesh to procure a bottle of liquor and thereafter he, Rajesh and deceased Bhuvan Kumar started drinking at about 9 P.M. and finished the bottle by 10 P.M. While consuming liquor, a verbal altercation took place between the appellant and Bhuvan Kumar during which the deceased Bhuvan Kumar had abused the appellant. Both of them grappled with each other and on seeing this other boys also came there. The owner of the banquet hall Harish Chand came to know about the incident and thereafter, he called the appellant and Bhuvan Kumar to the ground floor and admonished them. Thereafter, PW1, the appellant and the

deceased Bhuvan Kumar went upstairs to second floor. He and Bhuvan Kumar went to sleep on the second floor but the appellant went to sleep on the ground floor.

6. PW1, Kunal Pandey, has thereafter stated that he was an eye witness to the killing/murder of Bhuvan Kumar by the appellant. We deem it appropriate to reproduce the exact statement/deposition made by PW1 before the court in his examination in chief:-

“In the night, Kalia came at the second floor. I was under heavy influence of liquor, at that time, I had woken up as I felt thirsty but I was unable to get up and drink water. Rajesh came there and was carrying steel rod used in the gym. Rajesh dragged Kalia outside the room by holding his foot. Rajesh had taken lesser quantity of whiskey than us. While we were drinking, Rajesh was also working and during that we consumed the entire whiskey and due to this reason Rajesh could drink lesser whiskey than us.

Rajesh assaulted Kalia with the iron rod. First he hit Kalia on his feet and then on his head. I was lying on the floor and was watching the incident but was unable to get up. After that, accused Rajesh came inside the room and took out pouch of Kuber (a kind of tobacco) and put it in his mouth, stayed there for about 4-5 minutes and went down stairs. I was unable to get up to see what has happened with Kalia. After 20-25 minutes, I got up and saw Kalia. Kalia was lying dead on the floor near the iron folding channel gate. The left hand side of his head was badly crushed. I came to ground floor but Rajesh was not there. I got scare and run away from there (sic) since I was not carrying any money with me. My clothes and money was lying in the banquet, at 11-12 A.M. I mustered courage and came to banquet. A huge crowd had gathered outside the banquet. Staff members asked where was I. I was told that Kalia has been murdered. I told the staff members that everything has happened before me

but since I was scared, I ran away from there. Police was also present there. Police recorded my statement.

After consuming liquor we had thrown the plastic bottle of whiskey outside the room and glasses were put in the rack in the room.

At this stage, Ld. APP seeks permission to cross examine this witness as this witness is resiling from his earlier statement given to the police. Heard. Allowed.

Xxxx by Sh Mohd Iqrar Ld. Addl PP for the State.

It is correct that Dai was threatening to teach a lesson to Kalia and threatened to kill him.”

7. In the cross-examination PW1 has stated that he had worked in the banquet hall for about two years but had left the job about four months prior to the incident as the work in the banquet hall had reduced. Workers were not permanent employees in the banquet hall and were paid on daily basis. The workers were hired from Red Fort in season if there was any shortage. He further deposed that Bhuvan Kumar was not working in the banquet hall and used to run thela rehri at Lal Qila. On 22.09.2010 Bhuvan Kumar came to the banquet hall to put his belongings like utensils, stove etc. as Irfan who was working in the banquet hall was known to him. He has further stated that he had not seen Bhuvan Kumar prior to 22.09.2010. He was not friendly with the appellant but knew him as they were working together in the banquet hall. He further deposed that on the night of the incident as he was drunk he was not in senses. At about 12 midnight, he had gone for

sleep at the same place where they were drinking liquor and he did not know what happened thereafter. He stated that while they were eating and drinking liquor there was friendly atmosphere. There was a room on the terrace in the open portion where Halwai was cooking and they were sitting in the said room. The door of the room was open. He further deposed that in the said room articles used by Halwai were kept. The workers were coming and going. He has stated that he regained consciousness at about 3-4A.M. but contradicted himself by stating that he did not know exact time. He further deposed that when he got up for drinking water there was no one outside or inside the room. Further when he had gone to sleep, the appellant and the deceased were still eating and drinking liquor and he did not visit the room thereafter where both the deceased and the appellant went to sleep. PW-1 has stated that he ran away from the banquet hall at about 5-5.30 A.M. when it was still dark and no one was awake in the banquet hall but the main door was open. At that time he had seen Irfan, Raja, an aged man known as Chacha and other workers sleeping on the ground floor. He went to Tanga Stand, Jheel Chowk and remained sitting there for 2-2½ hours only to return to the banquet hall to pick up his clothes and purse. At the same time he deposed that he came back to the Banquet Hall at 12 noon. The Police was present there but Harish Bindra the owner of the banquet hall was not present.

He did not see the appellant at that time, though other workers were present. The Police took him, Shakeel and other workers to Police Station for interrogation. Harish Chand, owner of the banquet hall thereafter, reached Police Station and intervened. They came back to the banquet hall with him. The police had kept them in the police station for about two hours. He deposed that the police was suspecting them for the murder of Bhuvan Kumar. The police was neither believing his version nor the version of the other workers. He did not know from where the appellant was arrested by the police. With regard to the actual incident, in the cross-examination PW1 deposed as under:-

“I did not see that which portion of body of deceased Kalia was hit by accused with an iron rod. I kept on lying there closing my eyes pretending as if I am sleeping and thereafter I did not see anything. Vol. I had been (sic) accused hitting Kalia with iron rod and “Man Hi Man Me Sara Kuch Dekh Raha Tha”. I had told the police that I was lying on the floor and watching the incident but I was unable to get up. Confronted with Ex.PW1/A where it is not so recorded.

I had told the police that after that accused came inside the room, I (sic) took out a pouch of kuber and put it in his mouth and stayed there for 4-5 minutes and went down stairs and I was unable to get up to see what was happened with Kalia. Confronted with Ex.PW1/DA where it is not so recorded that accused took pouch of kuber and put it in his mouth.

I told the police that after 20-25 minutes, I got up and saw Kalia lying dead on the floor near the iron folding channel gate and left hand side of his head was

badly crushed and I came to the ground floor but accused Rajesh was not there. Confronted Ex.PW1/DA where the time of 20-25 minutes is not mentioned and it is also not mentioned that I did not find Rajesh there.”

8. There are various reasons why we feel that the deposition of PW-1 is a suspect and not credible and trustworthy.

9. As noticed above, there is a contradiction in the statement made by PW-1 in his examination-in-chief and what was stated by him in his cross-examination wherein he admitted that he had gone to sleep at 12 midnight after consuming liquor. He was not in his full senses. He had stated that he did not know what happened after he went to sleep. At the time when he went out to sleep, the appellant and Bhuvan Kumar @ Kalia were still eating and taking liquor in a friendly atmosphere and others were also roaming around and halwai was cooking at the terrace. In the cross-examination PW-1 had stated that he did not know who visited the room and where both the appellant and the deceased had gone to sleep. He testified that he regained consciousness at about 3-4 A.M. but he was not certain about the said time. PW-1 accepted that he did not know the portion of the body of Bhuvan Kumar, which was allegedly hit by the appellant with an iron rod whereas in the examination in chief PW-1 has stated that appellant assaulted Bhuvan Kumar with the iron rod first on his leg, and then on

his head . In the volunteered portion of the cross examination, PW1 had stated that he had seen the appellant hitting Bhuvan Kumar @ Kalia with the iron rod and then stated “man hi man me sara kuch dekh raha tha”, i.e., he was visualising everything in his mind. At the same time, PW-1 accepted that he was not in a position to even get up as he was completely drunk. The photographs placed on record Exhibit PW-A2, A3, A9, A10 and A12 show that the deceased was found on a blanket on which he was lying. The said blanket is visible and clearly seen underneath the body. The deceased was still wearing one of his slippers and the other slipper was lying nearby. The site plans placed on record and marked Exhibits PW-17/A and PW-7/A indicate the place where the deceased’s body was found in the morning at 9.30 to 10 A.M. on 23rd September, 2010. The body was found underneath a tin shed and not in any room. The two site plans indicate that there were three rooms on the terrace, which were being used as crockery store, rasan store (store room for rations) and electric goods store. The crockery store and the ration goods store had a gate or a door. The place where PW-1 had allegedly slept on the terrace is not identified in the site plans. It is not possible to accept the testimony of PW-1 that the appellant had assaulted Bhuvan Kumar first by hitting him on his feet and then on his head. No injuries on the feet are noticeable in the photographs or indicated in the post-mortem report Exhibit PW-9/A.

Similarly, the statement of PW-1 that the appellant dragged Bhuvan Kumar outside the room by holding his feet is apparently wrong and not in consonance with the photographs, as the body of the deceased Bhuvan Kumar was found on the blanket. It is evident that Bhuvan Kumar had slept on the blanket underneath the tin shed. Thus, PW-1's statement that the deceased Bhuvan Kumar had slept in the room is incorrect and wrong. PW-1 had slept in one of the rooms. He was dead drunk. Looking at the location of the rooms, it is difficult to accept that PW-1 had seen the occurrence with the appellant coming upstairs, picking up the iron rod and lifting or hitting the deceased. PW-1 was also a suspect as he had slept on the second floor from where the body of the deceased was found and was missing in the morning. PW-1's statement that he was dead drunk and was not even in a position to even move or get up is his own version to justify why he did not raise any alarms or shout.

10. PW-1 has stated that he had left the banquet hall in the morning at about 5 to 5.30 A.M. and returned back after 2 to 2 ½ hours. At the same time, he stated that he came to the banquet hall at about 12 noon. However, PW-1 admits that he along with other workers was taken to the police station and interrogated. After about 2 hours, they were released. PW-1 has stated that he was one of the suspects. It is noticeable that in the present case the FIR (Ex. PW-4/A) was recorded

after the rukka was sent from the spot at 4.00 P.M. on 23rd September,

2010. The said rukka is Ex. PW-13/A and reads as under:

“It is submitted that on receipt of aforesaid DD No. 12A today for the purpose of enquiry I, Harpal Singh Sub-Inspector reached at Royal Banquet Hall, Jheel, Geeta Colony, Delhi i.e. the place of occurrence alongwith Constable Sonu Kumar No. 3034/E where a dead body of a male unknown person aged about 24-25 years was lying under the tin shade outside the room situated on the upper roof of Royal Banquet Hall whose mouth was covered with a white colour bed sheet. After lifting the bed sheet, I saw that the forehead of the deceased was lacerated and other wounds were also visible on his face. Blood, flesh and pieces of the brain were lying here and there in large quantity near the aforesaid (place). On enquiring from the labourers present there, it was learnt that the name of the (deceased) was Kalia s/o Unknown r/o unknown who had come to work as a labour in Royal Banquet Hall around 4/5 days ago. No eyewitness was found present at the place of occurrence. Thereafter, I, the Sub-Inspector revealed the circumstances to the Senior Officers. The Station House Officer has reached the spot alongwith the other staff members. After calling the crime team at the place of occurrence, Inspection of the same has been got conducted. The photographs of the place of occurrence have got taken from the different angles with the help of a private camera. On inspection of the body of the deceased, the face was in round shape, swarthy complexion, height about 5’6” and medium body who was wearing a blue colour jeans pants, yellow and grey colour striped T-shirt, blue colour under wear and white colour banyan and was wearing a pink colour plastic slipper on his one foot. Marks of tattoo were

visible on both hands of the deceased who was wearing a silver like tops in his right ear. Two blood smeared bed sheets were lying on the table at the spot. Some blood and flesh were found present on the screw thread of one side of the iron rod meant for weight lifting which was lying on the second end of North-West direction of the roof. The exhibits i.e. blood, blood mixed earth, earth control, weight lifting rod, flesh and the pieces of the brain, blood stained bed sheets and blanket, a pair of chappal have been taken into police possession as a piece of evidence by means of seizure-memo from the place of occurrence. I, the Sub-Inspector, after filling up the form No. 25-35, sent the dead body of the deceased under the surveillance of Constable Sonu Kumar No. 3034/E to mortuary, Sabzi Mandi with the written request to preserve the dead body for 72 hours. The place of occurrence and the inspection of the dead body of the deceased prima-facie reveal the commission of an offence punishable under section 302 of Indian Penal Code. Hence, after preparing a writing, the same is being sent to the Police Station through Constable Rameshwar No. 1834/E for the purpose of registration of a case. After registration of a case, the case (FIR) number may kindly be intimated and the further investigation of the case may be entrusted to Inspector Ranbir Singh Khatri, SHO, P.S. Geeta Colony who is present at the place of occurrence alongwith the staff. The copies of the case (FIR) may be sent through special messenger to all the concerned officers.

Date and time of occurrence: 23-09-2010

Time: not known

Place of occurrence: The roof of Royal Banquet Hall, Jheel, Geeta Colony, Delhi.

Date and time of departure of the writing:

Date 23-09-2010 at 4:00 p.m.”

11. In the rukka, the appellant is not named as a suspect. As per the police version, the appellant was arrested from Jheel Chowk, Geeta Colony vide arrest memo Exhibit PW-8/J on 23rd September, 2010 at 7 P.M. Thus, as per the police version between 4.00 and 7 P.M. on 23rd September, 2010 they came to know that the appellant was the culprit and the perpetrator of the said offence. It is apparent from the testimony of PW-1 is that he along with other workers had gone to the police station where he was interrogated and their statement was recorded. As per the statement under Section 161 Cr.P.C. Ex PW-1/DA, Kunal Pandey (PW-1) has stated as under:

“...Thereafter, Kalia and myself had slept on the floor of the room situated upstairs after spreading a cloth whereas Rajesh had slept on the ground floor itself. Rajesh alias Dayi who was holding an iron ...(sic)....suddenly entered in our room late night who after waking up Kalia dragged him outside the room. I was watching all this. Rajesh started giving blows of rod on the body of Kalia and made him fall (on the floor). After that he hit the iron rod on his head and forehead several times. I had got frightened on seeing such furious act of Rajesh and kept on laying there myself. After a short while, Rajesh came back in the room but I remained laying while closing my eyes. Rajesh remained in our room for a short while and then left from there. After a short while I got up, came out and I saw that Kalia was lying in dead condition near the gate at the front of the room itself who had died....”

12. If PW-1 had clearly implicated the appellant and had stated what

is recorded in his statement under Section 161 Cr.P.C., the factum that the police suspected involvement of the appellant, the same should have been mentioned in the rukka and then the FIR. The prosecution version is that immediately after the arrest of the appellant at 7 P.M. on 23rd September, 2010 he made a disclosure statement Exhibit PW-8/L. Pursuant thereto, from underneath the diwan on the second floor of the banquet hall, a blood stained vest and pant was recovered. As per the FSL report Exhibit PW-17/D, human blood was found on the vest and the pant. Blood group could not be ascertained on the pant. Blood group 'B' was found on the vest, which matches with the blood group of the deceased. PW-1 in his statement has mentioned that the labour/workers used to sleep in the banquet hall. Similar statement has been made by Shakeel Ahmad (PW-2), manager of the Banquet Hall and Harish Chand Bindra (PW-8), owner of the banquet hall. We also note that the pant and the vest were deposited in the malkhana on 23rd September, 2010 itself as per Exhibit PW-11/A. There is no evidence or material on record to show that the vest and the pant belong to the appellant and not to any third person. In the banquet hall itself a number of workers were residing. PW-1's deposition contradicts the prosecution case on recovery. As per PW-1, the appellant after hitting the deceased on the head, came back to the room where PW-1 was

sleeping, had tobacco, stayed there for 4/5 minutes and then went downstairs. PW-1 has not averred or stated that the appellant had removed/changed his clothes. PW-1 has not deposed that thereafter the appellant came back to the second floor to hide the clothes. Recovery of vest and pant as alleged would indicate that either the appellant changed his clothes or was only wearing an underwear when he went down. This is not stated and averred by PW-1. Therefore, the recovery is contrary to the deposition of PW-1 that the appellant after killing the deceased came to his room, had tobacco and then went downstairs.

13. None of the other workers have been examined though PW-2 in his cross-examination has stated that the function in the banquet hall had continued till 12 mid night and 7 to 8 workers had slept that night in the banquet hall. He has stated that these workers were all daily wagers. PW-8 in his cross-examination has stated that the police at the instance of the appellant had taken out from a room on the second floor where a diwan/bed was lying, the vest and jeans pant which were blood stained. No such bed is indicated in the site plan. The room in question is also not indicated in the two site plans. PW-8 has stated that the appellant and the deceased were not working with him at that time. Further, he used to get his workers on hire from Chandni Chowk and Lal Quila and the workers did not have any permanent abode in Delhi and were like vagabonds.

14. PW-8 contrary to what has been stated by PW-1, has denied the suggestion in the cross-examination that PW-1 Kunal Pandey was not present in the banquet hall when he reached there and was absconding. PW-2 in the cross-examination has stated that he did not remember but perhaps PW1 Kunal Pandey was present in the banquet hall when he reached there in the morning at about 9 A.M. On the other hand, the stand taken by Kunal Pandey (PW-1) is that he came back to the banquet hall at about 12 noon or at least after 2 to 2 ½ hours after when he left the banquet hall in the morning at 5 to 5.30 A.M. In case Kunal Pandey (PW-1) was present in the banquet hall at 9 to 9.30 A.M. and had seen the occurrence, he should have spoken out and stated the facts. In case Kunal Pandey (PW-1) was not present and was absconding, then he was in the same position as the appellant. Probably he was the prime suspect as PW-1 was sleeping on the same floor as the deceased whereas the appellant was sleeping on the ground floor. In any case, as per the prosecution version and as per PW-1, the police had interrogated Kunal Pandey (PW-1) much before the rukka was sent at 4.00 P.M. in the evening. However as noticed, by the time the rukka was recorded, the appellant herein was not a suspect and had not been named.

15. It may be appropriate here to reproduce the statement of the appellant under Section 313 of the Code of Criminal Procedure, 1973.

In his statement the appellant has stated:

“Q30. Do you want to say anything else?

A. Police took me and other workers to PS. Owner Bindra got released other workers and since I was Nepali, he did not get me released. On that day since I was tried, I went to the basement at about 7-8 PM and went to sleep. In the morning at about 9-9.30 AM I was awakened by the police and thereafter I was falsely implicated in this case.”

16. PW-2 Shakeel Ahmed was working as a Supervisor of the workers. He has stated that there was quarrel in the evening after PW-1, the deceased and the appellant had liquor but the matter was settled. PW-8 Harish Bindra has made a similar statement. PW-1 in his cross-examination had accepted the said position and further stated that when he went out to sleep at that time the appellant and the deceased were still eating and consuming liquor and the atmosphere was friendly. Thus, even if we accept the statement of PW-2 and PW-8 that there was some quarrel in the evening between the appellant and the deceased there is evidence to show that thereafter, both the deceased and appellant had consumed food and liquor together in a friendly atmosphere. Thus, the matter was apparently pacified and settled. All three, i.e., PW-1, the appellant and the deceased had consumed substantial quantity of liquor and were drunk.

17. It is relevant that the crime team report has not been placed on

record. It is also not available in the police file. PW-5 ASI Jai Kishan of the crime team has stated that chance print could not be lifted from the scene as the floor was washed before they reached there.

18. PW-1 has stated that the appellant had gone to sleep on the ground floor. PW-2 has stated that the appellant was made to sleep in the bride's room on the ground floor whereas PW-1 and the deceased went to sleep on the roof at the second floor. PW-8 has stated that he did not see where PW-1, deceased or accused were sleeping. From the statement of PW-1 and PW-2 it is apparent that PW-1 and the deceased were sleeping on the second floor, i.e., on the terrace top whereas the appellant was sleeping either in the brides room or on the ground floor. Therefore, there is suspicion and doubt about the implication of the appellant by PW 1. The appellant was certainly sleeping on a different floor has been implicated by a person who was also a suspect and was sleeping on the same floor as the deceased. The suspicion and doubt is also arises as PW-1, did not raise any alarm or cries while witnessing the incident. Even if PW-1 was drunk and had seen the occurrence but because of intoxication was unable to raise alarm when he saw the occurrence, his conduct thereafter in not naming the appellant at least till 4.00 P.M. raises enough questions marks. Unless PW-1 had named and implicated a third person as the perpetrator of the crime, he himself would have been the likely culprit. As noticed above, there are

material discrepancies between PW1's testimony and what the photographs on record show. PW 1 in his statement said that the appellant had caught hold of feet of the deceased, took him out of the room when PW 1 was sleeping and then hit him on his body, feet and head. The said ocular version is contra indicated and not supported by the photographs. The photographs do not demonstrate that the deceased was hit on the feet, dragged out of the room or he was sleeping in the room. The post mortem report (Ex. PW-9/A) also does not indicate presence of any injury on the feet of the deceased. Recovery of clothes and consequent FSL report Exhibit PW-11/A are also doubtful for reasons set out in paragraphs 12 to 13 above.

19. In view of the aforesaid position, we do not think the prosecution has been able to prove the case beyond reasonable doubt against the appellant and it cannot be said with certainty the appellant is the author of the crime. He is, therefore, entitled to acquittal. He will be released forthwith unless he is required to be detained in any other case.

The appeal is disposed of.

SANJIV KHANNA, J.

SIDDHARTH MRIDUL, J.

FEBRUARY 12, 2013/VKR