

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

Reserved on: 20th March, 2014

Pronounced on: 30th April, 2014

+ CRL.A.580/2010

YOGESH KUMAR @ BUNTY Appellant

Through Mr. B.S. Rana, Advocate

versus

STATE(GOVT OF NCT OF DELHI) Respondent

Through Mr. Rajat Katyal, APP

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE G.P. MITTAL

J U D G M E N T

G.P. MITTAL, J.

1. Having been convicted for the offence punishable under Section 302 of the Indian Penal Code, 1860 (IPC) for murder of one Jitender @ Vicky in Sessions Case No.98/2009 (arising out of FIR No.161/2007, P.S. Rajinder Nagar) and sentenced to undergo imprisonment for life and to pay a fine of Rs.2,000/-, or in default of payment of which he was to further undergo RI for two months, the appellant has preferred this appeal challenging the judgment and order on sentence dated 09.04.2010.
2. Homicidal death of the deceased has not been disputed by the appellant. In fact, the dead body of the deceased was recovered from

the toilet attached to the bedroom of the appellant's house on 17.06.2007 at about 10:30 a.m. Dr. J.V. Kiran (PW14), who conducted post mortem examination on the dead body of the deceased found 11 incised wounds on the dead body. He, in his post mortem report (Ex.PW-14/A) dated 18.06.2007, opined cause of death as haemorrhagic shock consequent upon penetrating injury to the chest via injury No.1, *i.e.*, an oblique incised stab wound 4.5 cm x 1.7 cm x 16.5 cm on lower middle front of neck with the acute angle to the left 11 cm below the chin and obtuse angle to the right 15 cm below the chin. He further found that injuries No.1 and 2 inflicted on the deceased were sufficient to cause death in the ordinary course of nature.

3. There is no eye witness to the homicidal death of the deceased. The prosecution case rests solely on circumstantial evidence. It is well settled that in case of circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete, as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused. (*See Ashish Batham v. State of Madhya Pradesh, 2002 (7) SCC 317; Ramreddy Rajeshkhanna Reddy and Anr. V. State of Andhra*

Pradesh (2006) 10 SCC 172; State of Goa v. Pandurang Mohite AIR 2009 SC 1066).

4. Mr. B.S. Rana, learned counsel for the appellant has urged that the only incriminating evidence relied upon by the prosecution is the recovery of the dead body from the appellant's house. However, the appellant in his defence has clearly given an explanation that the deceased parted his company and went away with a person supporting a French cut beard. Presence of the deceased with a French cut bearded person has also been supported by PW19. Thus, merely on recovery of the dead body of the deceased from his house, the appellant could not have been held guilty for the murder of Jitender Kumar @ Vicky. Referring to *M. Abbas v. State of Kerala, (2001) 10 SCC 103* and *Aloke Nath Dutta & Ors. v. State of West Bengal, (2007) 12 SCC 230*, the learned counsel for the appellant urges that suspicion howsoever strong it may be, cannot form the basis for conviction of an accused and "between may be true and must be true, there is a long distance to travel" and this distance has to be travelled by the prosecution through unimpeachable evidence which in the present case, the prosecution has failed to do.
5. Elaborating his argument, the learned counsel for the appellant urges that the prosecution has failed to find out the whereabouts of the French cut bearded person. Further, it has failed to collect the call details of the appellant's and the deceased's mobile phones (which were recovered during investigation) to show as to how the two of them met and parted company. The I.O. has failed to obtain the appellant's signature on the various memos prepared at his residence

although it is alleged that he was very much present in the house; there was an inordinate delay of about four hours in recording of the FIR (Ex.PW-1/B) and a delay of almost sixteen hours in arrest of the appellant which creates serious doubts in the case of the prosecution coupled with non-joining of any independent witness at the time of alleged recovery of the dagger (weapon of offence) which is otherwise of no consequence. Referring to the brief facts sent to the doctor for conducting the post mortem examination on 17.06.2007 at 12:30 p.m., the learned counsel stated that the name of the appellant was not mentioned in the same either as a suspect or as a person found present at the spot which falsifies the case of the prosecution.

6. The learned counsel for the appellant further urges that the prosecution sought to rely on the alleged extrajudicial confession purported to have been made by the appellant to his maid servant Meena (PW19) about which she stated in her police statement. PW19 was given beatings and illegally confined to obtain the said statement. She, however, did not support the prosecution version in the Court and deposed that the appellant left his house on 16.06.2007 at about 10:00 a.m. The appellant's wife had gone to her parental house. At about 8:00 a.m.(sic 8:00 pm.), the deceased who was previously known to her along with a bearded person came to the appellant's house. On deceased's instruction, she went inside her room. The appellant did not return to the house whole night. She was unaware as to what happened in the night. In the morning, the police came to the appellant's house. Lock of one of the bedrooms was broken open by the police and dead body of the deceased was recovered from inside

the room.

7. The learned counsel urges that in view of PW19's testimony, it is evident that the appellant had no role to play in the deceased's death. The Trial Court erred in convicting the appellant merely on suspicion because the dead body was recovered from the appellant's house.
8. On the other hand, Mr. Rajat Katyal, learned Additional Public Prosecutor for the State has urged that there is not only the evidence of recovery of the dead body from the appellant's house, but there are other circumstantial evidence also which are pointing unerringly to the appellant's guilt. On 16.06.2007, the appellant and the deceased were together at 08:30 p.m. and since 9:00 p.m., the appellant was misleading the deceased's wife Suman Mehta(PW-2) and his other relatives Sandeep Kumar, Bharat Bhushan and Naveen Sethi (PWs 3, 5 and 12) about the whereabouts of the deceased.
9. At the outset, it will be appropriate to refer to the testimony of Suman Mehta (PW-2), the deceased's wife which is sufficient to establish that the deceased was in company of the appellant on 16.06.2007 till about 8:30 p.m., a fact which has not been disputed by the appellant either in cross-examination of PW-2 or in his statement under Section 313 of the Code of Criminal Procedure (Cr.P.C.) The false explanation as to how the deceased parted company with him and constant and deliberate misleading of PW-2 and other family members that the deceased had gone to Kays Chicken Corner close to his (deceased's) house, to get chicken for dinner, he has gone with a French cut bearded man to buy chicken, he has gone with the French cut bearded

man for placement of a big order *etc.*, in our opinion, is sufficient to say that it was the appellant only and none else who was responsible for committing the deceased's murder.

10. PW2 deposed that on 16.06.2007 at about 7:30 p.m., she received a phone call from her husband from his shop at G.B. Road that he was going with his friend, *i.e.*, the appellant Bunty who would take him (the deceased) to his (appellant's) house and after receiving money from someone, he would give the same to him and would then drop him (the deceased) at their residence. She testified that about nine months prior to 16.06.2007, the appellant had taken a lone of Rs.1 lakh from the deceased. She added that her brother-in-law Bharat Bhushan (PW-5) went to deceased's shop on the fateful evening, but her husband told PW-5 that he would come afterwards. PW-2 further deposed that at about 8:30 p.m., she again rang up her husband who told her that he will still take some time. At about 9:00 p.m., she again called her husband and this time, the mobile phone was picked up by the appellant. The appellant told her that her husband (the deceased) was in the toilet. On query, the appellant further told her that they were near Zakhira (Punjabi Bagh) and they would reach home soon. After about 15-20 minutes, the door bell rang. When she opened the door, the appellant was standing at the door alone. On PW2's asking, the appellant replied that the deceased had gone to Kays Chicken Corner at Ashok Vihar (in appellant's car) to get chicken for dinner as the appellant's wife was out of station. She deposed that the appellant came inside the house. Thereafter, PW2 again tried to contact her husband on her mobile, however, he did not pick up the call. She

deposed that thereafter, the appellant behaved abnormally and suspiciously and again and again kept on making new stories about the deceased's not returning. The appellant also informed her that on the way, the appellant had met a tall person supporting French cut beard wearing white *kurta pyjama* and that the said person was to place a big order with her husband and thus, her husband might have gone with that person. PW-2 testified that the appellant further told her that since the deceased had to discuss some business transaction with the said person, so he had dropped him (the appellant) at his (the deceased's) residence and he (the deceased) had gone with that person to buy chicken. PW-2 added that feeling scared, she called her mother and asked her to send her brother (PW-12). At about 12 midnight, PW-2's mother and PW-12 came to her. Her brother and the appellant searched for her husband and on being unable to find his whereabouts, the police was informed. She testified that she got the information that the appellant's car was found parked near her house and the deceased's phone was also found in the car. She deposed that later, the appellant insisted on going to his house making an excuse to collect the duplicate keys of the car and thus, Naveen Sethi (PW-12) and one Deepak Kumar accompanied him to his house. There, he (PW-12) saw one room of the appellant's house blocked.

11. At this juncture, it would be appropriate to refer to the testimony of Naveen Sethi (PW12), PW-2's brother who corroborated PW2's testimony to the effect that on 16.06.2007, PW2 called him up and told him that the deceased had not still returned home. He deposed that he went to the house of his sister (PW2) and met the appellant

there. The appellant informed him that the deceased had gone to buy chicken. PW12 went on to add that the appellant then changed his stand and stated that the deceased had gone with a French cut beard supporting person to obtain an order for supply of some machines in his (appellant's) santro car. PW12 testified that he along with the appellant went in search of the deceased and the appellant's car. At a little distance from the deceased's house, he found the Santro car bearing No.6407 standing opposite a park. He peeped through the windshield of the car and found that the mobile of the deceased was lying in the car. He stated that between 4:00 and 5:00 a.m., he along with the appellant and one Deepak Kumar went to the appellant's house at New Rajender Nagar to collect the duplicate keys of the car. He saw there were two rooms in the house and one of the two rooms was closed. The appellant informed him that he did not have the keys of that room with him. He deposed that the appellant's conduct was suspicious and finally at about 6:00/6:30 a.m., after they returned to Ashok Vihar, the appellant slipped away without informing them.

12. Further, deceased's brother Bharat Bhushan (PW-5) deposed that on 16.06.2007, around 06:30 p.m., when he made a call on the deceased's mobile phone and asked him to return home, the deceased told him that he had to take payment from the appellant and thus, he was going to the appellant's house. Moreover, deceased's brother Sandeep Kumar (PW-3) also deposed that he saw the deceased with the appellant in the appellant's car (Santro Car) around 07:00 p.m. the appellant was driving and the deceased was sitting beside him.

13. As stated earlier, PW2's testimony about making of calls to

deceased's phone at 08:30 p.m. and 09:00 p.m. has not been challenged in cross-examination. PW2's testimony that the call at 9:00 p.m. was attended to by the appellant and he informed that they were near Zakhira (Punjabi Bagh) has also not been disputed. Thus, even if we do not attach any value to the PW3's and PW5's testimony that the deceased had left for appellant's house on 16.06.2007 in the evening in the appellant's car, from PW2's unchallenged statement, it is established that the appellant and the deceased were together on 16.06.2007 at 8:30 p.m. It is also established that at about 9:00 p.m., the appellant had attended to the phone call (on the deceased's phone) and had informed PW2 that they were on way to Ashok Vihar and would be reaching in a short while. It is proved that after about 20 minutes, the appellant alone had reached the house of the deceased and PW2. It is also established that on reaching the deceased's home, the appellant had informed PW2 (the deceased's wife) that the deceased had gone to Kays Chicken Corner, Deep Market, Ashok Vihar to bring chicken for dinner. In fact, this fact has been also admitted by the appellant in his statement under Section 313 Cr.P.C. For the sake of convenience, the relevant question and the answer (on page 84 of the paper book) are extracted hereunder:

"Q. It is further in evidence against you that at about 9.30 p.m. you went to the house of deceased Jitender and when his wife asked you about deceased, you told that he had gone at Kayas Chicken Corner at Deep Market, Ashok Vihar to bring chicken for dinner. What you have to say?"

Ans. It is correct."

14. It is a matter of record that the appellant was consistently shifting his

stand and had subsequently informed PW2 as also PW12 that the deceased had met one customer supporting a French cut beard on their way back to his (deceased's) house. This part of the prosecution evidence was also admitted by the appellant in the question put to him, which is extracted hereunder:

“Q. It is further in evidence against you that you were again asked by PW-2 about her husband and you told that on the way to house of deceased, Jitender met one customer who was a tall person supporting french cut bear and wearing Kurta Pyjama and told that Jitender might have gone with him. What you have to say?”

Ans. It is correct.”

15. Of course, in his statement under Section 313 Cr.P.C., the appellant has denied having taken PW12 with him in his house in New Rajender Nagar to collect the keys of his car, but he did not deny that he had gone to his house to collect the keys. We see no reason to disbelieve PW12's testimony that he accompanied the appellant to his house in New Rajender Nagar to collect the car keys one of the rooms in that house been locked. The dead body of the deceased was definitely lying in the attached toilet to his room at 4:00-5:00 a.m. when the appellant had gone to his house. Moreover, it is evident that the room was locked by the appellant himself otherwise he would have asked his maid servant (PW19) as to why the room was locked. It is undisputed position that on the next day in the morning, dead body of Jatinder was found in the attached toilet to this closed room in the house/flat of the appellant.
16. Of course, the appellant has come forward with an explanation as to

how he parted company with the deceased. The appellant is not expected to prove his explanation on the touchstone of beyond reasonable doubt. He can discharge this burden by giving an explanation on the standard of preponderance of probabilities. The question for consideration is whether the explanation given by the appellant has met with the test or is just a lame excuse. We have already noticed the testimonies of PW2 and PW12. The first explanation given by him on reaching PW2's house was that the deceased had gone to the nearby shop Kays Chicken Corner to get chicken for the dinner. At that time, he had not stated that the deceased was also accompanied by any other person, *i.e.*, so-called person supporting French cut beard. It does not stand to reason that the deceased would ask the appellant, who was not closely associated with the deceased's family, to reach his home, sit there and the deceased would take the appellant's car to get something for the dinner. In natural course of event, if the deceased was to get something for the dinner for the appellant or, for that matter, for the family, he would have also taken the appellant along with him and would have then returned home along with the eatables. The appellant's explanation that the deceased had gone to buy some chicken, dropping him (the appellant) at his house defies logic and human probability. Then, the appellant later on changed his stand and stated that he (the deceased) had gone with a person supporting a French cut beard. Not only this, when PW12 and deceased's other family members were looking for the deceased, they noticed the appellant's car (which appellant stated was taken by the deceased to the chicken shop) parked closed to the deceased's house. It defies

logic that the deceased would leave the appellant's car near his house and would proceed to the appellant's house along with his so called customer (the bearded person) in some public transport to be murdered by the unknown/unidentified bearded person. Thus, the appellant has failed to show as to when and how he parted company with the deceased. His explanations were contradictory, unnatural and have gaping holes.

17. It is true that Meena (PW-19), the appellant's maidservant has not supported the prosecution version regarding appellant's visit to his house at Rajender Nagar along with the deceased and his subsequent leaving the house at about 8:00 p.m. all alone after locking the room in question wherefrom the deceased's dead body was recovered on 17.06.2007. She has also not supported the prosecution version as to the extra judicial confession allegedly made by the appellant to her. Thus, the extra judicial confession was rightly discarded by the Trial Court from consideration. The question for consideration is whether PW-19's statement that the deceased and one French cut bearded person had visited the appellant's house in appellant's absence and stayed there and then left after sometime is believable or not and whether the appellant can draw any advantage out of PW-19's testimony.

18. PW-19 in her examination-in-chief deposed as under:-

“About a year ago I had been working as a domestic help in the house of accused Yogesh Kumar present in the court today. During my employment in the house of accused I was staying in his house at 290, double storey, Rajender Nagar. Accused used to go for his business from his house at about

10 a.m. and use to return back at about 7 or 8 p.m. On 16th May or June last year accused had left his house at about 10.00 a.m. I bolted the door of his house from inside. The wife of the accused had gone to her parental house. Accused did not return back home in the night. At about 8.00 a.m. the bell of the house rang therefore I opened the door. At the door one man supporting beard and Jitender whom I know prior to the incident as he had previously come to the house of the accused. Jitender asked for a glass and I brought and placed the same on the table. On the instruction of Jitender I went inside my room. After about half an hour I heard the voice outside the house that I should shut the door again as the persons who had come are going again. I came at the door and bolted the door from inside. Accused had not returned to the house in the night and in the morning police had come to the house. I did not know what has happened in the night. Police had come to the house of the accused and had search the house. One of the room of the house was locked from outside and the same was opened by the police. I saw that the dead body of Jitender was lying inside the room. Police gave me 2-3 slaps. More police officials came at the house and they brought the accused. Police took away the dead body of the Jitender. I was interrogated by the police. My statement was recorded before the Magistrate but I do not remember the date.”

19. Since PW-19 resiled from her previous statement Ex.PW-19/PA made to the police on 17.06.2007 and Ex.PW-19/PB made to the Metropolitan Magistrate under Section 164 Cr.P.C., the witness was permitted to be cross-examined by the learned APP. She stuck and denied that the appellant and the deceased were together in the appellant's house on the evening of 16.06.2007.
20. We have extracted PW-19's court testimony earlier. According to PW-19, Jitender and one French cut bearded person came to the

appellant's house at about 8:00 p.m. on 16th May or June in the year 2007. PW-19 firstly talked about the deceased visit to the appellant's house at 8:00 a.m. Even if this is assumed that PW-19 wanted to convey that the deceased's visit took place on 16.06.2007 at 8:00 p.m., she talks about the appellant's absence from his house since the previous day, i.e. 15th June, 2007 which is not even the appellant's case as according to the prosecution evidence and his own evidence, he was very much in Delhi and was in the deceased's company on the evening on 16.06.2007. Thus, there was no question of the appellant not staying at his own house on the previous evening and even during day time on 16.06.2007. The appellant wants us to believe that the deceased visited his (appellant's) house in his absence accompanied by a bearded person. According to PW-19, while the said persons were leaving, they asked PW-19 to shut the door. PW-19's testimony is unbelievable and unacceptable. Had the bearded man really visited the appellant's house along with the deceased and had that bearded person committed the deceased's murder, he would have silently sneaked out of the house as an offender would not like anybody to notice him, particularly when he is unknown to the persons around. Moreover, as stated earlier, from PW2's testimony it is established that the deceased and the appellant were together on 16.06.2007 at least between 8:00/8:30 p.m. This fact is even admitted by the appellant in his statement under Section 313 Cr.P.C. Thus, from PW-19's testimony, it is evident that she has deposed falsely to help the appellant. Hence, her testimony is of no avail either to the prosecution or to the defence.

21. In view of the above discussion and from the evidence adduced by the prosecution, apart from the recovery of the dead body from the appellant's house in the morning of 17.06.2007, the following circumstances are clearly and conclusively established, *i.e.*, :

- (i) That the deceased and the appellant were together on 16.06.2007 till about 8:30 p.m.;
- (ii) That at about 9:00 p.m., the appellant had attended to the phone call made by PW2 to the deceased and the appellant had represented to the deceased that the deceased was in the toilet and that they were near Zakhira (Punjabi Bagh);
- (iii) That at about 9:30 p.m., the appellant reached PW2's and deceased's home and informed PW2 that the deceased had gone to Kays Chicken Corner, Deep Market, Ashok Vihar to get chicken for dinner and was just returning;
- (iv) That PW2 made several calls to the deceased on his mobile which remained unattended;
- (v) That when PW2 and deceased's family members persisted about the deceased's whereabouts, the appellant changed his stand and stated that after dropping him (appellant), he had left (to get chicken) with a French cut bearded person;
- (vi) That the appellant's car was found parked near the house of the deceased;
- (vii) That the appellant and PW12 went to the appellant's home in the wee hours of 17.06.2007. At that time, PW12 noticed one

of the rooms of the appellant's flat being locked and in the attached toilet of that very room the deceased's dead body was found in the morning;

(viii) That the appellant returned to Ashok Vihar with the keys of the car, who subsequently left the area without informing PWs2, 5 or 12 or any other family members of the deceased;

(ix) That the appellant's explanation to the witnesses that the deceased had left with the person supporting a French cut beard has been found to be false;

22. Thus, on the basis of the circumstances established it cannot be said that there is just a suspicion against the appellant. Thus, *M. Abbas* and *Alok Nath Dutta* are not attracted to the facts of this case and are of no avail to the appellant. On the other hand, the above circumstances taken together complete the chain of evidence to conclude that it was none else other than the appellant who had committed the deceased's murder. There is no circumstance which may point out or which may be consistent with the appellant's innocence. Thus, the Trial Court rightly concluded that the prosecution case against the appellant was established beyond shadow of all reasonable doubt.

23. It is true that the investigation is defective in as much as the call details of the deceased's, the appellant's and PW2's phones would have shown the appellant's and deceased's locations at various times and would have also corroborated PW2's version. On the allegation in recording the FIR, the following facts may be noticed. The information about presence of the dead body in appellant's house vide

DD No.12A (Ex.PW-1/A) was given at 10:30 a.m. SI Ranveer Singh (PW22) was handed over the DD entry who proceeded to the spot. Simultaneously, factum of presence of dead body was also brought to the notice of Inspector Amrik Singh, Additional SHO (PW23). It is established from the testimony of PW22 that on recovery of the dead body, crime team was informed. PW23 also reached the spot and investigation was handed over to him. It is proved that the appellant, who was owner of the house where the dead body was found, was also present at the time of arrival of PW22 and PW23. The endorsement Ex.PW23/A clearly reveals that the appellant's conduct was found to be suspicious. The *rukka* was despatched from the spot at about 2:30 p.m. This time gap of three-four hours in sending the *rukka* for the registration of the case, in the circumstance of the case, is clearly understandable as the IO wanted to get some substantial evidence before naming the appellant as an accused. Therefore, it cannot be said that there is inordinate delay in lodging the FIR. Moreover, the delay in the instant case is of no consequence as there is no question of any padding or weaving any story in the FIR. What has been stated in the *rukka* sent to the Police Station for registration of the case is that the appellant's activities appeared to be suspicious? Since no story had been invented, the small delay, if any, was inconsequential.

24. Similarly, some memos were prepared at the spot for seizure of various articles. Appellant's signatures were admittedly not obtained thereon. The contention raised on appellant's behalf that the memos become suspicious for want of appellant's signatures is of no consequence as the appellant was a suspect and he ultimately became

an accused and faced trial. Thus, the I.O.'s wisdom in not obtaining the appellant's signatures on the memos cannot be faulted.

25. It is true that the investigating agency failed to obtain the call details of various telephones. As stated by us earlier, that would have been an important piece of evidence and would have further corroborated the prosecution version. However, in every case of defective investigation, an accused cannot be acquitted, if the evidence produced *de hors* the defective investigation is sufficient to bring home guilt of the accused beyond all reasonable doubt. In such matters, the accused cannot take any advantage of defective investigation, unless the "defective investigation" casts reasonable doubt about the prosecution case. A three Judge Bench of the Supreme Court in *Hema v. State*, (2013) 10 SCC 192, analysed the law on the subject and reiterated that if the evidence adduced is reliable, the contaminated conduct of the police officials or defective investigation will not entitle the accused to be acquitted. Relevant portion of the report in *Hema (supra)*, is extracted hereunder:

"14. It is also settled law that for certain defects in investigation, the accused cannot be acquitted. This aspect has been considered in various decisions. In C. Muniappan v. State of T.N. [(2010) 9 SCC 567 : (2010) 3 SCC (Cri) 1402], the following discussion and conclusions are relevant which are as follows: (SCC p. 589, para 55)

"55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given

to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation.”

15. *In Dayal Singh v. State of Uttaranchal [(2012) 8 SCC 263 : (2012) 4 SCC (Civ) 424 : (2012) 3 SCC (Cri) 838 : (2012) 2 SCC (L&S) 583], while reiterating the principles rendered in C. Muniappan[(2010) 9 SCC 567 : (2010) 3 SCC (Cri) 1402] , this Court held thus: (Dayal Singh case [(2012) 8 SCC 263 : (2012) 4 SCC (Civ) 424 : (2012) 3 SCC (Cri) 838 : (2012) 2 SCC (L&S) 583] , SCC p. 276, para 18)*

“18. ... Merely because PW 3 and PW 6 have failed to perform their duties in accordance with the requirements of law, and there has been some defect in the investigation, it will not be to the benefit of the accused persons to the extent that they would be entitled to an order of acquittal on this ground.”

16. *In Gajoo v. State of Uttarakhand [(2012) 9 SCC 532 : (2012) 3 SCC (Cri) 1200 : (2012) 2 SCC (L&S) 782], while reiterating the same principle again, this Court held that: (SCC p. 540, para 19)*

“19. ... A defective investigation, unless affects the very root of the prosecution case and is prejudicial to the accused, should not be an aspect of material consideration by the court.”

17. *Since, the Court has adverted to all the earlier decisions with regard to defective investigation and*

outcome of the same, it is useful to refer the dictum laid down in those cases: (Gajoo case [(2012) 9 SCC 532 : (2012) 3 SCC (Cri) 1200 : (2012) 2 SCC (L&S) 782] , SCC pp. 540-44, para 20)

“20. In regard to defective investigation, this Court in Dayal Singh v. State of Uttaranchal [(2012) 8 SCC 263 : (2012) 4 SCC (Civ) 424 : (2012) 3 SCC (Cri) 838 : (2012) 2 SCC (L&S) 583] while dealing with the cases of omissions and commissions by the investigating officer, and duty of the court in such cases, held as under: (SCC pp. 280-83, paras 27-36)

‘27. Now, we may advert to the duty of the court in such cases. In Sathi Prasad v. State of U.P. [(1972) 3 SCC 613 : 1972 SCC (Cri) 659] this Court stated that it is well settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the court to see if the evidence given in court should be relied upon and such lapses ignored. Noticing the possibility of investigation being designedly defective, this Court in Dhanaj Singh v. State of Punjab [(2004) 3 SCC 654 : 2004 SCC (Cri) 851] , held: (SCC p. 657, para 5)

“5. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.”

28. Dealing with the cases of omission and commission, the Court in Paras Yadav v. State of Bihar [(1999) 2 SCC 126 : 1999 SCC (Cri) 104] enunciated the principle, in conformity with the previous judgments, that if the lapse or omission is committed by the investigating agency, negligently or otherwise, the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts, otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.....”

26. In view of foregoing discussion, we are of the view that the prosecution has been able to prove its case against the appellant beyond shadow of all reasonable doubt. The Trial Court rightly convicted the appellant for the offence under Section 302 IPC. The impugned judgment does not warrant any interference.
27. We accordingly affirm the judgment of conviction and the order on sentence passed by the Trial Court. The appeal is consequently dismissed.

(G.P. MITTAL)
JUDGE

(SANJIV KHANNA)
JUDGE

APRIL 30, 2014
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