

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

% *Judgment Reserved on : October 30, 2014*
Judgment Delivered on : November 10, 2014

+ **CRL.A.1184/2014**

MOHD.TANVIR Appellant
Represented by: Ms.Inderjeet Sidhu, Advocate with
Ms.Shruti Tiwari, Advocate

versus

STATE Respondent
Represented by: Ms.Aashaa Tiwari, APP
Insp.Surender, PS Keshavpuram

CRL.A.1185/2014

MOHD.JAFAR Appellant
Represented by: Mr.Azhar Qayum, Advocate

versus

STATE Respondent
Represented by: Ms.Aashaa Tiwari, APP
Insp.Surender, PS Keshavpuram

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS.JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. Process of criminal law was set into motion when at around 08:40 AM on December 31, 2011, W.HC Rajeshwari recorded DD No.9A, Ex.PW-28/A, noting therein that an unknown person has informed over

the telephone that the dead body of a boy was lying in a MCD park which was in the front of the office of the SDM, Rampura.

2. Being handed over a copy of DD No.9A, accompanied by Ct.Naresh PW-16 and Ct.Suresh PW-20, SI Surender Singh PW-28, reached the park. In the meantime, Insp.Vijay Kumar PW-29, also reached the park having received said information. The police officers saw the dead body of a male child aged about three to four years in the bushes. The child was wearing a shirt and knickers which were smeared with blood. A pair of slippers, also smeared with blood, was lying near the dead body.

3. After sometime, the crime team reached the spot on being summoned. SI Davender PW-12, in-charge, Mobile Crime Team, North West District, inspected the spot and dead body. It was noted that there were strands of hairs and straw in the right hand of the child. SI Davender prepared the crime team report Ex.PW-12/A. Being relevant, we note the following portion of the crime team report Ex.PW-12/A:-

*“12.ARTICLES WHICH MAY BE SEIZED BY THE I.O.
Blood & Blood stained Earth with its control, 1 pair PURPLE
colour chappal & bush grass from Rt Hand of deceased along
with some hairs.” (Emphasis Supplied)*

4. Ct.Subhash PW-13, Photographer, Crime Team, took seven photographs of the spot Ex.PW-13/A1 to Ex.PW-13/A7 and dead body; negatives whereof are Ex.PW-13/B1 to Ex.PW-13/B7.

5. In the meantime, one Mohd.Chand PW-1, reached the spot and identified the dead child as his son Mohd.Afridi (hereinafter referred to as the ‘Deceased’).

6. SI Surender Singh made an endorsement Ex.PW-28/B beneath the copy of DD No.9A at about 11:30 AM on October 31, 2011 and sent the same through Ct.Suresh to the police station for FIR to be registered. At the police station HC Parmod Kumar PW-2, registered FIR No.335/2011, Ex.PW-2/D, for an offence punishable under Section 302 IPC.

7. Since an argument was advanced with reference to the contents of the endorsement Ex.PW-2/B, we note the same. It is in vernacular and loosely translated it reads as under:-

Respected Duty Officer Police Station Keshav Puram Delhi it is humbly submitted that on receiving aforesaid DD entry I SI along with Ct.Naresh No.2200/NW and Ct.Suresh No.865/NW reached the MCD park situated in front of SDM office where inside the park dead body of a child facing downwards was lying on the grass grown on the ground in the grove of trees. Lot of blood had oozed from the neck of the dead body and spilled on the shirt of boy and the ground. There were deep cut marks on the neck and right hand of boy. The head of dead body of boy was in the west direction. A slipper of left foot smeared with blood was lying near the right hand of boy and a slipper of right foot was lying at some distance from the left hand of boy. There was some grass in the fist of right hand of boy. Crime team was summoned at the spot and the spot was got inspected and photographed. Enquiries were made from the people living nearby but no witness was found at the spot. In the meantime, Mohd.Chand S/o Mohd.Israel R/o H. No.269, Roomal Wali Gali, Rampura came at the spot and identified dead child as his son Mohd.Afridi aged 4 years. From aforesaid report and facts and circumstances of the case, it appears that an offence under Section 302 IPC has been committed. Hence, this endorsement is being sent through Ct.Suresh

No.865/NW to the police station. After registering the case the investigation be handed over to SHO Sir Vijay Kumar Inspector who along with his staff has reached the spot. Senior officers be informed through special messenger.

8. After the FIR was registered the investigation of the case was taken over by Insp.Vijay Kumar PW-29.

9. Insp.Vijay Kumar lifted blood from the spot on a gauze, blood stained earth, earth control, slippers lying at the spot and straw of grass and strands of hairs held in the fist of the deceased vide memo Ex.PW-16/A.

10. On the same day i.e. October 31, 2011, the dead body was sent to the mortuary of Babu Jagjivan Ram Memorial Hospital, where at about 06:40 PM Dr.Bhim Singh PW-7 conducted the post-mortem of the deceased and prepared the post-mortem report Ex.PW-7/A.

11. The post-mortem report Ex.PW-7/A of the deceased records that the following external injuries were found on the person of the deceased:-

“1. Incised wound 6.5 cms x 1.5 cms x 1.5 cms front of neck at the level of thyroid, the under line skin tissues, thyroid vessels trachea and esophagus shows cut through and through, tailing of wound on right side.

2. Incised wound 1 cm x 0.5 cm just above injury no.1 merges with the injury no.1 on left side of neck.

3. Incised wound 2.5 cm x 0.5 cm x 02 cm just above the injury no.1, inner and merges with injury no.1.

4. Incised wound 5 cm x 1 cm x 0.8 cm, front and outer aspect of right forearm, in ulnar area 2.8 cm above wrist joint.”

12. The post-mortem report records that the death was caused due to haemorrhagic shock consequent upon excessive blood loss due to injury No.1 (cut throat injury); all the injuries were ante-mortem, fresh and caused by a sharp edged weapon; that injury No.1 was sufficient to cause death in the ordinary course of nature and that the deceased died 16-18 hours before the post-mortem was conducted. Meaning thereby, the death took place around 10:40 PM – 12:40 midnight in the intervening night of October 30, 2011 and October 31, 2011.

13. After conducting the post-mortem, Dr.Bhim Singh PW-7, handed over a blood sample of the deceased on a gauze, nail clippings and scalp hair of the deceased as also the shirt and the knickers worn by the deceased to Insp.Vijay Kumar who seized the same vide memo Ex.PW-16/B.

14. Insp.Vijay Kumar recorded the statements of Mohd.Chand PW-, father of the deceased and Zubeda Begum PW-5, mother of the deceased under Section 161 Cr.P.C. on October 31, 2011 wherein they stated that the deceased was found missing from the house since about 06:00 PM on October 30, 2011 and that the appellants who were their neighbours may be involved in the death of their son since Mohd.Chand (father of the deceased) had a quarrel with the appellants a week prior and that the appellants were missing from their residence.

15. Insp.Vijay Kumar recorded the statement of Mohd.Rehmat PW-3, a neighbour of the deceased under Section 161 Cr.P.C. on November 01, 2011 wherein he stated that he along with the appellants is staying as a tenant in one room in the House bearing Municipal No.269, Rimal Wali Gali, Rampura and that in the night of October 30, 211 appellant

Mohd.Tanvir had informed him that he and Mohd.Jafar had murdered the deceased.

16. Since the needle of suspicion was strongly pointing towards the appellants the police set out to apprehend them.

17. On November 01, 2011 at about 07:00 PM Insp.Vijay Kumar accompanied by HC Subash Chand PW-24 and SI Surender Singh PW-28, went to the room in house bearing Municipal No.269, Rimal Wali Gali, Rampura where the appellants were residing and arrested appellant Mohd.Tanvir from there. Appellant Mohd.Tanvir was interrogated and his disclosure statement was recorded. We need not note the contents of disclosure statement of appellant Mohd.Tanvir for neither any recovery was effected nor was a fact discovered pursuant to the said statement made by appellant Mohd.Tanvir. Insp.Vijay Kumar noted that there were blood stains on the shirt worn by Mohd.Tanvir when he was apprehended and therefore he seized the same vide memo Ex.PW-24/D in the presence of HC Subhash Chand PW-24 and SI Surender Singh PW-28.

18. Thereafter appellant Mohd.Tanvir was taken to BJRM Hospital where Dr.Anil examined appellant Mohd.Tanvir and prepared his MLC Ex.PW-9/A. The MLC Ex.PW-9/A of Mohd.Tanvir records that an abrasion of size 1 cm x 1 cm was found on the left eyebrow of Mohd.Tanvir.

19. After conducting the medical examination of Mohd.Tanvir, the doctor handed over the blood sample and strands of hair of Mohd.Tanvir to SI Deepak Bhardwaj PW-31, who seized the same vide memo Ex.PW-31/A.

20. Insp.Vijay Kumar recorded the statement of Nitin Sharma PW-6, under Section 161 Cr.P.C. on November 02, 2011 wherein he stated that on October 30, 2011 at about 05:30 – 06:00 PM he had seen the deceased with the appellants near Chaudhary Hotel, Rampura, Delhi.

21. On November 03, 2011 a police team comprising of SI Rakesh Duhan PW-25 and HC Jitender PW-10 arrested appellant Mohd.Jafar at Samastipur, Bihar and brought him to Delhi.

22. Appellant Mohd.Jafar was taken to BJRM Hospital on November 04, 2011 where Dr.Anil examined him and prepared the MLC Ex.PW-26/A recording the presence of undernoted external injuries:-

“1. Old & incised wounds present on index finger of right hand (terminus part)

2. Old scar present on left hand thumb”

23. After conducting the medical examination of Mohd.Jafar, the doctor handed over the blood sample and strands of hair of Mohd.Jafar to Ct.Prabhu Shah PW-16, who in turn handed over the same to Insp.Vijay Kumar vide memo Ex.PW-17/A.

24. On being interrogated by Insp.Vijay Kumar in the presence of SI Surender Singh appellant Mohd.Jafar made a disclosure statement wherein he stated that he can get recovered the blade used to inflict the injuries on the deceased and the shirt worn by him (Mohd.Jafar) when the deceased was killed.

25. Pursuant thereto, Mohd.Jafar led Insp.Vijay Kumar and SI Surender Singh to the park where the body of the deceased was found and got recovered a shaving blade which was concealed in the bushes near the

place/point where the body of the deceased was lying which blade was seized vide memo Ex.PW-28/E.

26. Thereafter Mohd.Jafar led Insp.Vijay Kumar and SI Surender Singh to a room in house bearing Municipal No.269, Rimal Wali Gali, Rampura (where he was staying) and got recovered a shirt hung on a khunti (spike) in the room which was seized vide memo Ex.PW-28/G.

27. On November 05, 2011 Mohd.Jafar was again taken to BJRM Hospital to obtain opinion regarding the injuries found on his person as recorded in the MLC Ex.PW-26/A. Dr.Bhim Singh PW-7 examined the injuries and opined as under:-

“1. Healed incised wound 0.5 cm with flap of skin healed present over outer surface of right index finger of right hand.

OPINION: Injury is simple in nature, about 6-7 days old and could be possible by sharp edged weapon like blade due to grasping by finger and thumb.” (Be it noted here that the aforesaid opinion has been given by Dr.Bhim Singh PW-7, at point X in the MLC Ex.PW-26/A on appellant Mohd.Jafar.)

28. On November 15, 2011 the shaving blade recovered at the instance of appellant Mohd.Jafar was sent to Dr.Bhim Singh for his opinion whether the injuries on the deceased could be caused by the blade. Vide opinion Ex.PW-7/B Dr.Bhim Singh opined that the four injuries on the deceased were possible to have been caused by the shaving blade in question.

29. The articles seized during investigation were sent to Forensic Science Laboratory, Delhi for serological/DNA examination.

30. Vide FSL report Ex.PW-23/A it was opined that blood seized from the place where the body of the deceased was found was human blood having group A; human blood was detected on earth seized from the place where the body of deceased was found but produced no reaction when tested for blood group; human blood was detected on the slippers seized from the place where the body of deceased was found but produced no reaction when tested for blood group; human blood was detected on the hair found clutched in the fist of the deceased but produced no reaction when tested for blood group; human blood of group A was detected on shirt and knickers worn by the deceased at the time of his death; human blood was detected on nail clippings and scalp hair of the deceased but produced no reaction when tested for blood group and blood groups of appellants Mohd.Tanvir, Mohd.Jafar and deceased are A, B and A respectively.

31. Vide FSL report Ex.PW-27/A it was opined that blood detected on the shirt recovered at the instance of appellant Mohd.Jafar and the shirt worn by appellant Mohd.Tanvir at the time of his arrest and shaving blade recovered at the instance of appellant Mohd.Jafar is similar with stains on blood sample of the deceased and that alleles from blood sample of deceased are accounted in the alleles of blood detected on the shirt recovered at the instance of appellant Mohd.Jafar, the shirt worn by appellant Mohd.Tanvir at the time of his arrest and shaving blade recovered at the instance of appellant Mohd.Jafar.

32. Vide FSL report Ex.PW-30/A, it was opined that DNA profile obtained from blood sample of appellant Mohd.Tanvir is matching with DNA profile obtained from hair found clutched in the fist of the deceased.

33. Armed with the aforesaid material(s), the Investigating Officer filed a challan against the appellants charging them of murdering the deceased. Charges were framed against the appellant for having committed an offence punishable under Section 302 IPC read with Section 34 IPC.

34. At the trial, the prosecution examined 32 witnesses.

35. Mohd.Chand PW-1, the father of the deceased, deposed that in the year 2011 he was residing with his family in one room in a tenanted house bearing Municipal No.269, Rimal Wali Gali, Rampura, while the appellants were staying in another room in said (tenanted) house. He works in a factory manufacturing slippers. On October 30, 2011 at about 07:30 PM he returned home from his workplace. His wife Zubeda Begum told that him at about 05:00 – 05:30 PM she had gone to the market to purchase vegetables and that the deceased was playing in their room in the building. When she returned to the house at about 06:00 PM she found that the deceased was not present in the room nor anywhere around. She further informed him that she had looked around for the deceased in the adjoining houses but could not find him. Therefore along with the neighbours he went to search the deceased but could not find him. On the next day i.e. October 31, 2011 at about 09:00 AM he learnt that the dead body of a boy was found in the park in front of MCD Office and therefore he went to the park where he saw the dead body of his son lying near the bushes. About one week prior a quarrel took place between him and the appellants since appellant Mohd.Tanvir had disconnected his cable connection. At that time appellants had threatened him with dire consequences. His wife had also informed him that the appellants were present outside their room when she had gone to the market and that

when she returned the appellants were not present in the house. He noted that the appellants were not present in their room in the night of October 30, 2011 when he was searching for his son.

36. We note that Mohd.Chand was cross-examined by the appellants essentially on the point that no quarrel took place as alleged by him a week prior. Pertinently, Mohd.Chand was not cross-examined by the appellants on the point that the deceased was missing since the evening of October 30, 2011.

37. Mohd.Rehmat PW-3, deposed that he works in a factory manufacturing slippers. In the month of October, 2011 he and appellants were residing as tenants in one room in house bearing Municipal No.269, Rimal Wali Gali, Rampura. On October 30, 2011 the deceased who was the son of his neighbour Mohd.Chand was found missing. He along with the parents of deceased looked for the deceased but he could not be found. On the said day i.e. October 30, 2011 the appellants did not return to the room where they were staying. On October 31, 2011 he was present in his factory when at about 10:00 – 10:30 AM appellant Mohd.Jafar came there and met him. Appellant Mohd.Jafar was in a perplexed condition at that time. When he enquired from Mohd.Jafar about his absence from the room in the previous night Mohd.Jafar told him that he gone to meet someone. Thereafter Mohd.Jafar demanded some money from him and upon his refusal to give the money Mohd.Jafar left the factory. After finishing his work he returned to his room in the evening of October 31, 2011. Appellant Mohd.Tanvir was present in the room at that time. When he enquired from Mohd.Tanvir about his absence from the room in the previous night he told him that he and Mohd.Jafar had murdered the deceased in the MCD Park in

Rampura. On hearing the same he became nervous and shocked and thus did not disclose said fact to anyone due to fear.

38. Being relevant, we note the following portion of cross-examination of Mohd.Rehmat by appellant Mohd.Jafar:-

“Mohd.Chand was my neighbour. I did not make any complaint to the police regarding missing of the child. I don’t know, if Mohd.Chand made any complaint to the police or not. Vol. He might have lodged a complaint to the police and on the date of missing of child, we were not having any apprehension about any mis-happening with the child.”

39. Being relevant, we note the following portion of cross-examination of Mohd.Rehmat by appellant Mohd.Tanvir:-

“Accused Mohd.Tanvir told me that, “Maine Aur Mohd.Jafar Ne Milkar Mohd.Chand Ke Ladke Ko MCD Park, Rampura, Mein Le Jakar Kaat Diya Hai”, at about 10.00 PM. At that time, I and accused Mohd.Tanvir were only present there. Due to fear, I did not disclose the said fact of killing the child to Fahim and other boys who were tenant in the same room, in which I was tenant. Police came to my room in the night hours, after 12.00 midnight on the intervening night of 31.10.2011 and 01.11.2011. The room of Mohd.Chand was just after one room from my room. I immediately did not disclose the fact of killing the child, as told by accused Mohd.Tanvir, to Mohd.Chand.”

40. Mohd.Aftab PW-4, deposed that the deceased was his nephew. On October 30, 2011 he learnt that the deceased was missing from his house since 06:00 PM. He along with other persons looked for the deceased. Pertinently, the deposition of the witness that the deceased was missing from his house since 06:00 PM on October 31, 2011 was not controverted during cross-examination by the appellants.

41. Zubeda Begum PW-5, the mother of the deceased, deposed that on October 30, 2011 at about 05:30 PM she had gone to the market to purchase vegetables. The deceased and her other two children were present in their room at that time. When she was leaving for the market she saw the appellants standing outside her room. She returned to her room at about 06:00 PM and noted that the deceased was not present in the room. Both the appellants were also not present. She made efforts to search the deceased but he could not be found. At about 07:00 PM her husband Mohd.Chand returned from work. She informed her husband about the deceased being missing. Her husband and other persons searched for the deceased. At about 08:30 PM Mohd.Jafar came to his room, broke the lock of the door of his room, took out a bag and hurriedly went from the house. On October 31, 2011 she learnt that a dead body is lying in a park upon which she immediately went to the park and saw the dead body of the deceased lying near the bushes. A week prior a quarrel took place between her husband and the appellants since Mohd.Tanvir had disconnected their cable connection. At the time of quarrel the appellants had threatened her husband with dire consequences. The appellants went missing from their room from October 30, 2011.

42. We note that Zubeda Begum PW-5, was cross-examined by the appellants essentially on the point that no quarrel took place a week prior. Pertinently, Zubeda Begum was not cross-examined by the appellants on the point that the deceased was found missing since the evening of October 30, 2011.

43. Nitin Sharma PW-6, deposed that he was manufacturing dies of shoes and slippers in his factory. Mohd.Chand, father of the deceased, has been working in his factory since last four-five years. He had visited

the room in the house bearing Municipal No.269, Rimal Wali Gali, Rampura where Mohd.Chand was residing on several occasions. The family members of Mohd.Chand including his children are known to him. On October 30, 2011 at about 05:30 – 06:00 PM he was going to his factory when he saw the appellants near Chaudhary Hotel. The appellants were taking away the deceased with them and the deceased was weeping at that time. He did not ask the appellants as to where they were taking the deceased since they were neighbours of Mohd.Chand.

44. Being relevant, we note the following portion of the cross-examination of Nitin Sharma PW-6:-

“It is correct that after seeing the child Afridi with accused Mohd.Tanvir and Mohd.Jafar in weeping condition, I went to my factory. At that time, I did not tell this about this fact to anyone regarding the fact of child Afridi with accused Mohd.Tanvir and Mohd.Jafar, as I did not feel it necessary to do so....On 30.10.2011, Mohd.Chand came to factory, but I did not meet him in the evening hours. I meet him on 31.10.2011 in the morning, when I came to know about the incident. Vol. I told this fact to the family members of child. Police recorded my statement at PS on 02.11.2011 i told the fact about the taking away of child Mohd.Afridi by both the accused, to Mohd.Chand on 31.10.2011 itself and he told this fact to the police, then police called me and recorded my statement.”

45. Dr.Bhim Singh PW-7, proved the post-mortem report Ex.PW-7/A of the deceased and the opinion Ex.PW-7/B regarding weapon of offence. Additionally, he proved the opinion regarding injuries found on person of Mohd.Jafar given by him at point X in the MLC Ex.PW-26/A of Mohd.Jafar. Being relevant, we note following portion of cross-examination of witness by appellant Mohd.Jafar:-

“There are no chances of the blood of the person holding the blade coming out since in the present case flap of the skin had come out showing that the blade was held in a slanting position. Moreover, the skin of the palm is hard that is why in the given situation there are very little chances that the blood would come out. I had conducted the post mortem of the deceased and that is why I can say that the injury caused to the deceased was by the same blade which was produced before me and is already exhibited as Ext.PW7/1. It is wrong to suggest that I had given the subsequent opinion at the asking of the investigating officer without any application of mind.”

46. Tabbassum PW-8, deposed that she is residing as a tenant in a room in house bearing Municipal No.269, Rimal Wali Gali, Rampura. On October 23, 2011 at about 08:00 PM appellant Mohd.Tanvir disconnected the cable and electricity connections of the room of Mohd.Chand upon which a quarrel took place between them and Mohd.Chand who had slapped Mohd.Tanvir. Appellant Mohd.Jafar came there and supported Mohd.Tanvir. Both the appellants were under the influence of liquor at that time. Mohd.Chand had also slapped Mohd.Jafar. Landlord Satpal and other tenants pacified the matter. On the same day i.e. October 23, 2011 at about 09:30 – 10:00 PM she heard appellant Mohd.Jafar saying that he would make Mohd.Chand childless for having slapped him.

47. Dr.V.K.Jha PW-9, deposed that Dr.Nitin had examined Mohd.Tanvir and prepared his MLC Ex.PW-9/A under his supervision.

48. Satpal Singh Khari PW-11, deposed that he is the owner of the house bearing Municipal No.269, Rimal Wali Gali, Rampura and Mohd.Chand, appellants and Mohd.Rehmat were residing as tenants in his house. On October 23, 2011 a quarrel had taken place between

Mohd.Chand and appellants over cable connection. Pertinently, it was suggested to the witness during the cross-examination by the appellants that Mohd.Chand was not his tenant.

49. SI Devender Singh PW-12, deposed that the crime team report Ex.PW-12/A was prepared by him. Ct.Subhash PW-13, deposed that photographs Ex.PW-13/A1 to Ex.PW-13/A7 were taken by him; negatives whereof are Ex.PW-13/B1 to Ex.PW-13/B7.

50. Ct.Naresh Kumar PW-16, deposed regarding the role played by him in the investigation of the present case as noted by us in the foregoing paragraphs. Pertinently, the witness deposed about the presence of strands of hair in the fist of the deceased.

51. D.S.Paliwal PW-23, Senior Scientific Assistant, Biology/DNA Finger Printing, FSL, Delhi, Dr.Dhruv Sharma PW-27, Assistant Director (Biology), FSL, Delhi and Dr.Rajender Kumar PW-30, Deputy Director (Biology), FSL, Delhi proved the FSL reports Ex.PW-23/A, Ex.PW-27/A and Ex.PW-30/A respectively.

52. Dr.Deepak Chugh PW-26, proved the MLC Ex.PW-26/A of Mohd.Jafar.

53. SI Surender Singh PW-28 and Insp.Vijay Kumar PW-29, deposed regarding the role played by them in the investigation as noted by us in the foregoing paragraphs. Pertinently, the two witnesses deposed that some strands of hair and straw of grass were found clutched in the right hand of the deceased at the time when the body of the deceased was found; which depositions were not specifically controverted during cross-examination of the witnesses by the appellants. Be it noted here that Insp.Vijay Kumar PW-29, stated in his cross-examination that no report

regarding missing of the deceased was lodged by his parents at the police station.

54. In their examination under Section 313 Cr.P.C. except admitting that the appellants and the family of the deceased as also Mohd.Rehmat PW-3 were staying as tenants in the house bearing Municipal No.269, Rimal Wali Gali, Rampura, the appellants denied every incriminating circumstance.

55. Being relevant, we note following portion of the statement of appellant Mohd.Jafar under Section 313 Cr.P.C.:-

“Q.27: It is in evidence against you that according to PW29 Insp.Vijay Kumar that he took you accused Mohd.Jafar to BJRM Hospital and made a request to autopsy surgeon Dr.Bhim Singh to give a subsequent opinion with regard to the injury showing the use of a shaving blade on the fingers of you accused Mohd.Jafar and Dr.Bhim Singh examined the hand of you accused Mohd.Jafar and gave his subsequent opinion Ex.PW26/A informing that there were certain injuries present on the fingers of you accused Mohd.Jafar which could be possible while use of shaving blade for slitting/slashing the throat of the child. What have you to say about it?

Ans: Opinion has been given on the asking of IO. I want to clarify that the injuries present on my finger were old injuries for last many months.

Q91: Do you wish to say anything else?

Ans: I am innocent. I have been falsely implicated in the present case by the police officials to solve a blind murder case. I have no previous enmity with the complainant or his family however they have implicated me at the instance of police. The police instead of apprehending the actual culprit has implicated me in this case in connivance with the father of the child only to work out the same. I have nothing to do with the alleged incident.”

56. Being relevant, we note following portion of statement of appellant Mohd.Tanvir under Section 313 Cr.P.C.:-

“Q91: Do you wish to say anything else?”

Ans: I am innocent. I have been falsely implicated in the present case by the police officials to solve a blind murder case. I have no previous enmity with the complainant or his family however they have implicated me at the instance of police. The police instead of apprehending the actual culprit has implicated me in this case in connivance with the father of the child only to work out the same. I have nothing to do with the alleged incident.”

57. The appellants did not lead any evidence in defence.

58. Vide judgment dated May 09, 2014 and order dated May 24, 2014 the learned Trial Judge convicted the appellants of having committed the murder of the deceased and sentenced them to undergo imprisonment for life respectively. In reaching the conclusion of guilt, it has been held by the learned Trial Judge that the prosecution has been able to establish following circumstances, which circumstances when seen cumulatively, unerringly point towards the guilt of the appellants:-

a) The FSL report Ex.PW-27/A establishes presence of blood of the deceased on the shirt worn by appellant Mohd.Tanvir at the time of his arrest, which in turn establishes that appellant Mohd.Tanvir was present with the deceased at the time when the deceased was murdered.

b) The FSL report Ex.PW-27/A establishes presence of blood of deceased on the shirt recovered at the instance of appellant Mohd.Jafar, which in turn establishes that appellant Jafar was present with the deceased at the time when the deceased was murdered.

c) The FSL report Ex.PW-27/A establishes the presence of blood of deceased on the shaving blade recovered at the instance of appellant Mohd.Jafar, which in turn establishes that the said shaving blade recovered at the instance of appellant Mohd.Jafar was used to cut/slash the throat of the deceased.

d) The FSL report Ex.PW-30/A establishes that strands of hairs found clutched in the right fist of the deceased was that of appellant Mohd.Tanvir when seen in conjunction with the fact that few straw of grass were also found clutches in the hand of the deceased and an abrasion was found on the left eyebrow of appellant Mohd.Tanvir establishes that Mohd.Tanvir had caught hold of the deceased when he i.e. the deceased was being murdered and the deceased had put up a stiff resistance and tried to escape from the clutches of the murderer.

e) The opinion given by Dr.Bhim Singh PW-7, that the injury found on the index finger of the right hand of appellant Mohd.Jafar was possible to have been caused by a sharp edged weapon such as blade due to grasping by finger and thumb establishes that it was appellant Mohd.Jafar who had inflicted the cut injuries on the throat and the forearm of the deceased.

f) The testimonies of Mohd.Chand PW-1, father of the deceased, Zubeda Begum PW-5, mother of the deceased, Tabassum PW-8, neighbour of the family of the deceased and Satpal PW-11, landlord of the deceased establish the motive of the appellants to murder the deceased inasmuch a one week prior to the death of the deceased the appellants had a quarrel with Mohd.Chand, the father of the deceased,

threatened him i.e. father of the deceased with dire consequences and to make him childless at the time of said quarrel.

g) The testimony of Nitin Sharma PW-6, establishes that the deceased was last seen alive in the company of the appellants and there was proximity between the time of last seen and time of death of deceased.

h) The testimony of Mohd.Rehmat PW-3, establishes that appellant Mohd.Tanvir had made an extra-judicial confession to Mohd.Rehmat to the effect that he and Mohd.Jafar had committed the murder of the deceased.

i) The conduct of appellant Mohd.Jafar subsequent to the murder of the deceased was most suspicious inasmuch as he i.e. Mohd.Jafar was in perplexed condition on October 31, 2011 (established through the testimony of Mohd.Rehmat PW-3) and fled to his native village in Bihar soon after the murder of the deceased.

59. Aggrieved by the aforesaid, the appellants have filed above captioned appeals.

60. During the hearing of the above captioned appeals, following seven arguments were advanced by the learned counsel for the appellants:-

A The first submission advanced was that the (alleged) recovery of strands of hair found clutched in the right fist of the deceased is doubtful for the reason the factum of said recovery does not find a mention in the endorsement Ex.PW-28/B prepared by SI Surender Singh PW-28. Counsel argued that had the strands of hair been found clutched in the right fist of the deceased as claimed by the prosecution the same would have surely found a mention in the endorsement Ex.PW-28/B,

particularly when a perusal of the endorsement Ex.PW-28/B shows that the articles which were found near/around the dead body of the deceased have been noted in the said endorsement.

B The second submission advanced related to the conduct of the parents of the deceased (Mohd.Chand PW-1 and Zubeda Begum PW-5) pertaining to their claim that their son was found missing from the house at around 06:00 PM on October 30, 2011. Counsel argued that if this was so it was to be expected that the parents would have lodged a missing person report on October 30, 2011. Therefrom counsel urged that an inference has to be drawn : that the deceased was not missing from his house either in the evening of October 30, 2011 and had stayed in his house in the morning. There was a probability that in the morning of October 31, 2011 when the child went out, somebody murdered him. Taking the argument to its logical conclusion it was urged that in said view of the matter it becomes immaterial that the child was seen with the appellants in the evening of October 30, 2011. The argument was with the caveat that it should not be taken as an admission by the appellants that the testimony of Nitin Sharma PW-6 had to be believed.

C The third submission advanced was linked to the second submission relating to the alleged abnormal conduct of the parents of the deceased in not lodging a missing person report. Counsel argued that the conduct of the parents of the deceased of rushing to the park soon after receiving the information that a dead body of a boy was lying in the park is again abnormal. Why would they rush to the park if they only learnt that a dead body was lying in the park? Was the query posed.

D The fourth submission advanced pertained to the veracity of the testimony of Nitin Sharma PW-6. Counsel pointed out that the statement of Nitin Sharma under Section 161 Cr.P.C. was recorded on November 02, 2011 i.e. two days after the recovery of the dead body of deceased, which as per learned counsel was clearly indicative of the fact that Nitin Sharma is a planted witness.

E The fifth submission advanced pertained to the recovery of the shirt worn by appellant Mohd.Tanvir at the time of his arrest. Counsel argued that Mohd.Tanvir was arrested from the room where he was staying at about 07:30 PM on November 01, 2011. The death of the deceased had taken place around 10:40 – 12:40 PM on October 30, 2011 as per the post-mortem report Ex.PW-7/A. Counsel argued that it is highly improbable that appellant Mohd.Tanvir would have continued to wear a blood stained shirt for two days.

F The sixth submission advanced pertained to the shirt got recovered at the instance of appellant Mohd.Jafar. Counsel argued that the shirt was recovered hanging from a spike in the room shared as residence by Mohd.Jafar, Mohd.Tanvir and Mohd.Rehmat, which room was visited by the Investigating Officer on November 01, 2011 when Mohd.Tanvir was arrested and thus the recovery of the shirt at the instance of Mohd.Jafar from the same room on November 05, 2011 was highly tainted.

G The last submission advanced pertained to the shaving blade got recovered at the instance of appellant Mohd.Jafar. Counsel urged that concededly the crime team was summoned to the place where the dead body of the deceased was found and thus one has to presume that the crime team would have thoroughly investigated in or around the area

where the dead body was found and it is unbelievable that the crime team could not see the blade in question.

61. Dealing with the first submission advanced, the factual narratives noted by us herein above bring out that on being handed over a copy of DD No.9A, SI Surender Singh PW-28, accompanied by Ct.Naresh PW-16 and Ct.Suresh PW-20, reached the park where they saw the dead body of a boy aged 3-4 years. Crime team was summoned at the spot and reached the park shortly thereafter. SI Davender PW-12, in-charge, Mobile Crime Team, North West District inspected the spot where the body of the deceased was lying.

62. SI Surender Singh PW-28, scribe of the endorsement Ex.PW-28/A has no doubt recorded what he saw at the scene of the crime including that there was grass in the right fist of the deceased; and has not recorded that he saw strands of hair in the grass, but that would not mean that there was no hair in the grass clutched in the right fist of the deceased. SI Surender Singh wrote in the endorsement what he could visually see with a naked eye and when we look into the photographs Ex.PW-13/A-1 to Ex.PW-13/A7 we cannot see the strands of hair but can see the grass in the right fist of the deceased, for the obvious reason the thickness of hair is a few microns and unless there is a bunch of hair in the fist, few strands of hair which are intermingled with grass would obviously not be seen by the naked eye. Only when one forensically examines the contents of the clutched fist can one identify what is being clutched on to.

63. The second submission was that it would be the natural conduct of parents whose infant child is found missing at 06:00 PM to report said fact to the police within reasonable period of time if the infant child

cannot be located. The argument would be that if when it became dark the child was not to be found the natural conduct of the parents would be to inform the police. The argument as noted above runs further that this would mean that the child was not missing from his house in the evening nor during the night and in all probability left the house in the morning. Somebody killed the child thereafter.

64. The aforesaid argument overlooks the post-mortem report Ex.PW-7/A of the deceased. As per the post-mortem report, the deceased died between 10:40 PM – 12:40 midnight in the intervening night of October 30, 2011 and October 31, 2011 and thus the question of the deceased being in his house in the night does not arise. We further note that Mohd.Chand PW-1, father of the deceased, Zubeda Begum PW-5, mother of the deceased and Mohd.Aftab PW-4, uncle of the deceased, have deposed that the deceased was found missing around 06:00 PM on October 30, 2011, which depositions have not been controverted by the appellants during the cross-examination of the said witnesses.

65. From the fact that the deceased died anytime between 10:40 PM to 12:40 midnight of the intervening night of October 30, 2011 and October 31, 2011 we have proof of the fact that the child did not spend the night in his house. And yet we have the parents of the deceased not lodging a missing person complaint with the police. The conduct of parents when their child who is an infant does not return home by darkness would certainly be to report the matter to the police. But in the instant case as a matter of fact the parents have not done so. But is this conduct so unnatural that it destroys the credibility of the claim of the parents, to which we find corroboration by Mohd.Rehmat PW-3 and Mohd.Aftab

PW-4 that the two had joined the parents when they were searching for their infant son. We do not think so.

66. Whilst it may be true that the conduct of a rational parent would be to inform the police if an infant does not return home by dark, but a conduct to the contrary would not be irrational for those who live in the slums and unauthorized colonies where one witnesses not only young children but even infants loitering around in the night or sleeping around wherever they find a place to sleep, with the parents unmindful of their absence or perhaps a little concern of the child being absent but not perturbed because probably they are used to the child occasionally sleeping in the house of a friend and returning the next day. Not that they do not love their children, but the toil of their lives somewhat diminishes their emotions which evince profitlessness in the same. The helpless miseries of the poor, wandering gaunt and hunger-stricken, drone out their melancholy ditties. The decisiveness of the moral nerve is somewhat found missing. They become sodden with despair due to the oppressive loneliness, and as they lose faith in just about everything around them, they do not think and behave as an enlightened soul would. They sometimes stand silently by even when fiendish wrongs are perpetrated before their very eyes. As against an enlightened soul whose blood would boil with rage at the very sight of enormities callously inflicted, they silently bear these miseries. Unfortunately and with head hanging in shame, it has to be accepted that in the slums and unauthorized colonies one finds a population eaten up by every social and physical melody. This explains why cries of victims are not heard by the inhabitants of the slum, for we have experienced arguments in each and every case of a physical crime in a slum that how come nobody around

heard the shrieks of the victim. If the cry was the first time that a wail of hopeless misery had sounded on the ears of the slum dweller, the matter would be heard with concern. But it is because the slum dweller hears of it so often, even the exceedingly bitter cries, which have become familiar in the ears of the slum dweller, is ignored just as the roar of motor vehicles racing on the roads adjacent to the slums. Either the slum dweller is too busy or too idle or perhaps indifferent to spare it a thought. Only now and then on rare occasions one hears a clear voice giving better articulate utterance. Seen in the backdrop of life in a slum or a resettlement colony one would not be wrong to state that the volume of dull, squalid horror of great darkness gradually obscures the light of day from the life of these unfortunate sufferer fellows whom one meets every day in the streets. It confronts the same *'hope springs eternal in the human breast'*. Seen in light of the fact that the deceased admittedly died around midnight of the intervening night of October 30, 2011 and October 31, 2011, the rationality to the conduct of his parents in not informing the police can be gleaned from the few words we have penned. After all, the father of the deceased was a labourer in a factory and was living with his wife and three children in a one room tenement in an unauthorized colony.

67. The third submission, which was linked to the second, therefore needs no further discussion in view of what we have written in the preceding paragraph. But we find no logic in the argument that it was an abnormal conduct for the parents to rush to the park when they heard that the dead body of a child was noted in the park. Whilst it may be true that for the reasons given by us in the preceding paragraph, there is rationality in the lack of concern which an enlightened soul would show if his infant

child does not return home by dark, but that would not mean that the parents would not sense something amiss when they learnt of the fact that the dead body of a child has been found nearby. Whatsoever be the disillusionment in their lives and whatsoever be the darkness shadowing their soul, the parents instinct would lead them to the spot.

68. There is some merit in the fourth submission concerning the creditworthiness of Nitin Sharma PW-6. He has deposed that he recognized the deceased who was the son of his employee because he had met him when he used to visit the residence of Mohd.Chand. He claims to have seen the child weeping. The natural conduct of Nitin Sharma, who is an enlightened soul – he is the owner of a factory and hence does not suffer the miseries of a slum dweller, would be to walk up to the child and ask him why was he crying. Further, he volunteering information of having seen the child in the company of the appellants on November 02, 2011 has to be taken with a pinch of salt because the dead body of the child was discovered in the morning of October 31, 2011 and thus one can presume that Mohd.Chand did not report for work at the factory on October 31, 2011 and November 01, 2011. Surely Nitin Sharma would have enquired the reason for Mohd.Chand's absence and would have learnt that Mohd.Chand's son has been killed by somebody. He would have surely enquired as to under what circumstances the young unfortunate infant was killed and if indeed he saw what he claimed to have seen in the evening of October 30, 2011, he would have volunteered said information promptly because as a reasonable man one can impute him knowledge of the importance of the information which he had and the importance of it being shared with the police.

69. We thus ignore the testimony of Nitin Sharma, but would emphasize the fact that the testimony of Zubeda Begum PW-5 would establish that the appellants were seen in their one room tenement which they shared with Mohd.Rehmat PW-3 which was in the same building in which Zubeda Begum, her husband and children resided and the conjoint testimony of Zubeda Begum and Mohd.Rehmat PW-3 would prove that the appellants were found missing thereafter and continued to remain missing till they were apprehended.

70. We take up together the fifth and the sixth submission advanced. Mohd.Tanvir was arrested around 7:30 PM on November 01, 2011 and the case of the prosecution is that blood of the deceased was detected on the shirt which he was wearing when he was apprehended. The FSL Report Ex.PW-27/A has not been challenged and thus we have proof of the fact that blood of the victim was found on the shirt. It is not uncommon for people in the slums and unauthorized colonies not to change their clothes for days together. That Mohd.Tanvir did not notice blood on his shirt is obvious. In the absence of challenge to the DNA Report the argument by Mohd.Tanvir is sans any reasons. Even Mohd.Jafar has not challenged the FSL Report Ex.PW-27/A which proves that blood of the deceased was detected on the shirt got recovered at the instance of Mohd.Jafar. Whilst it may be true that the shirt was recovered from the same room three days after the police had visited the room for the first time, but from the fact proved from the FSL Report Ex.PW-27/A, in the peculiar facts of the instant case nothing turns on the fact that the shirt was recovered from a room which was visited by the police three days earlier.

71. Recoveries made by the police from open spaces and from a place which the police has visited on an earlier occasion are looked upon by Courts with suspicion because of the evolution of law in the early part of the 17th Century in England when Judges found planting being resorted to by the sheriff and hence the Courts crafted the rule of caution against accepting such recoveries unless there was something more, of a kind, when the raised eyebrows would be dropped. It is not the law that such recoveries are per se inadmissible. Now, a person is not expected to be wearing two shirts at the same time and that on two shirts blood of the deceased was detected proves that there were two persons, each wearing one shirt, when the child bled. The raised eyebrows concerning the recovery of the shirt at the instance of Mohd.Jafar are bound to drop in view of the FSL Report Ex.PW-27/A.

72. The last submission concerning the recovery of the blade by appellant Mohd.Jafar overlooks the photographs Ex.PW-13/A1 to Ex.PW-13/A7 which show that the dead body was surrounded by dense bushes and a grove of trees with grass all around. It was possible that a small shaving blade, lying hidden in the dense bushes, was not seen. It would be akin to finding a needle in a hay stack. Besides, the FSL Report Ex.PW-27/A establishes presence of blood of the deceased on the shaving blade, meaning thereby that the blade in question had a distinct identity mark thereon and the incriminating factor would be the knowledge of Mohd.Jafar that the blade used to inflict the injuries on the victim was lying at the spot wherefrom it was recovered.

73. That apart, having not challenged the FSL Report Ex.PW-30/A we have proof of the fact that hair found clutched in the right fist of the

deceased was that of Mohd.Jafar. Thus, Mohd.Jafar's participation in the crime is independently proved by said report.

74. Though learned counsel for the appellants had not challenged the claim of Mohd.Rehmat PW-3 that Mohd.Tanvir had made an extra judicial confession to him, but we find Mohd.Rehmat's testimony in said regard to be a figment of imagination and his claim of not having disclosed said fact at the first available opportunity is the reason for our opinion. Residing in a room in the same building where the deceased resided with his parents, he had nothing to fear when, as claimed by him Mohd.Tanvir made the confession in the evening of October 31, 2011 and fled. The dead body of the child had been recovered in the morning of October 31, 2011. His first instinct would be to tell the parents of the confession made by Mohd.Tanvir.

75. We note that the index finger of the right hand of Mohd.Jafar was injured and Dr.Bhim Singh had opined that the injury was 6 -7 days old, Dr.Bhim Singh had examined Mohd.Jafar on November 05, 2011 and therefore the injury would relate back to October 30, 2011. The opinion of the expert is that the injury was caused when a sharp edged object was grasped between the thumb and the index finger. The post-mortem report of the deceased and the photographs show that firstly an attempt was made to cut the arteries on the wrist and thereafter the neck was sawed. The post-mortem report shows that the incised wound reached the trachea and the esophagus, meaning thereby the blade was moved to and fro along the front of the neck with considerable force applied. Mohd.Jafar could not explain the said injury when examined under Section 313 Cr.P.C. and his explanation that he had injured his finger and thumb a few months ago is a false explanation and this is further incriminating

evidence against him. Similarly appellant Mohd.Tanvir had an abrasion on his left eyebrow, which he failed to explain, and was possibly the result when the child struggled when firstly his wrist was being cut and then the neck.

76. An analysis of the evidence led in the instant case shows that the prosecution has been successful in establishing following circumstances:-

(i) The deceased and his family appellants were residing as tenants in the house bearing Municipal No.269, Rimal Wali, Rampura. (The said fact has been admitted by the appellants in their statements under Section 313 Cr.P.C.)

(ii) A quarrel had taken place between Mohd.Chand PW-1 and appellants on October 23, 2011 i.e. one week prior to the death of deceased. Tempers had flared in said quarrel and appellants had threatened the father of the deceased with dire consequences and make him childless at the time of said quarrel. (Established through the testimony of Mohd.Chand PW-1, Zubeda Begum PW-5, Tabassum PW-8 and Satpal PW-11).

(iii) The deceased went missing from his house between 05:30 – 06:00 PM on October 30, 2011. (Established through the testimony of Mohd.Chand PW-1, Zubeda Begum PW-5 and Mohd.Aftab PW-4).

(iv) The appellants were present in the house wherefrom the deceased went missing at about 05:30 PM on October 30, 2011. (Established through the testimony of Zubeda Begum PW-5)

(v) The death of the deceased had taken place between 10:40 PM to 12:40 midnight in the intervening night of October 30, 2011 and October

31, 2011. (Established through the post-mortem report Ex.PW-7/A of the deceased).

(vi) Appellant Mohd.Jafar had fled to his native place in Samastipur, Bihar after the death of the deceased. (Established through the testimony of SI Rakesh Duhan PW-25 and HC Jitender PW-10, who had arrested appellant Mohd.Jafar at Samastipur, Bihar)

(vii) Blood of deceased was detected on the shaving blade recovered at the instance of appellant Mohd.Jafar. (Established through the FSL report Ex.PW-23/A).

(viii) Injuries found on person of deceased were possible to have been caused by the shaving blade recovered at the instance of appellant Mohd.Jafar. (Established through the opinion Ex.PW-7/B prepared by Dr.Bhim Singh PW-7)

(ix) Injury found on index finger of right hand of appellant Mohd.Jafar at the time of his arrest on November 03, 2011 was six-seven days old and possible to have been caused by sharp-edged weapon such as blade due to grasping by finger and thumb. (Established through the opinion given at point X by Dr.Bhim Singh PW-7, on the MLC Ex.PW-26/A of appellant Mohd.Jafar)

(x) False explanation by Mohd.Jafar as regards the injury in question.

(xi) Injury on Mohd.Tanvir which he could not explain.

(xii) Blood of deceased was detected on the shirt worn by appellant Mohd.Tanvir at the time of his arrest. (Established through the FSL report Ex.PW-23/A).

(xiii) Blood of deceased was detected on the shirt recovered at the instance of appellant Mohd.Jafar. (Established through the FSL report Ex.PW-23/A).

(xiv) Hair of appellant Mohd.Tanvir was found clutched in the right hand of the deceased at the time of recovery of (dead) body of the deceased. (Established through the FSL report Ex.PW-30/A).

77. The afore-noted fourteen circumstances proved by the prosecution, when seen cumulatively, lead to an irresistible conclusion that the appellants had committed the murder of the deceased.

78. In view of above discussion, the above captioned appeals are dismissed.

79. TCR be returned.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

NOVEMBER 10, 2014
mamta