

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

% *Judgment Reserved on: December 05, 2014*
Judgment Delivered on: December 10, 2014

+ **CRL.A. 1046/2014**

KHALIL AHMED Appellant
Represented by: Mr.B.S. Joon, Mr.A.S. Tokas,
Mr.Varun Chugh and
Mr.Siddharth Joon, Advocates
versus

STATE OF NCT OF DELHI Respondent
Represented by: Ms.Asha Tiwari, APP for the
State with Insp.Anand Yadav,
PS Jamia Nagar.

+ **CRL.A. 1300/2014**

SONVIR @ SOMVIR THR. HIS FATHER PAPPU SINGH Appellant
Represented by: Mr.Ravindra Narayan,
Advocate
versus

STATE NCT OF DELHI Respondent
Represented by: Mr.Lovkesh Sahani, APP for
the State with Insp.Anand
Yadav, PS Jamia Nagar.

+ **CRL.A. 1506/2014**

SULTAN @ RAJESH Appellant
Represented by: Mr.Alamgir, Advocate
versus

THE STATE (GOVT OF NCT OF DELHI) Respondent
Represented by: Ms.Asha Tiwari, APP for the
State with Insp.Anand Yadav,
PS Jamia Nagar

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Khalil Ahmed, Sonvir @ Somvir, Sultan @ Rajesh are convicted for the offence of robbery and murder of Vimlesh and Meena vide the impugned judgment dated June 03, 2014 and directed to undergo imprisonment for life and to pay a fine of ₹25,000/- each for offence punishable under Section 302/34 IPC and rigorous imprisonment for 5 years and a fine of ₹10,000/- each for offence punishable under Section 392/34 IPC vide the order on sentence dated July 11, 2014.

2. Learned counsels for Khalil Ahmed and Sultan @ Rajesh contends that this is a case of no evidence against the appellants. In the charge-sheet no witness was cited who had last seen Khalil and Sultan @ Rajesh with the deceased. Roopa PW-1 deposed about the last seen evidence after one year of the incident, though this fact was not stated by her in the inquiry of the juvenile. Rajni and Gulshan PW-10 and PW-11 respectively did not depose in the Court having last seen the appellants with the deceased. The alleged recovery of ₹3 lakhs, two wrist watches, four pieces of gold jewellery and 8 silver ornaments at the instance of Khalil; ₹40,000/-, two gold chains, one wrist watch, 15 other items of gold jewellery, two pairs of pajeb and six silver coins from Sultan @ Rajesh cannot be made the basis of conviction,

as no TIP of the said articles was got conducted during investigation. Further the said recovery was made belatedly after a period of 20 days in the absence of any public witness. Even in the Court no witness identified the jewellery to be that of the deceased. The learned Trial Court erroneously convicted the appellants on the ground that they did not seek the superdari of the jewellery. Thus Khalil Ahmed and Sultan @ Rajesh be acquitted.

3. Learned counsel for Sonvir @ Somvir submits that Khalil was the one who gave information to the Police and was also present when the dead bodies were recovered. The alleged recovery of blood stained knife and shirt have been planted on him. There is no evidence that Sonvir was last seen with the deceased. The alleged recovery of 15 gold jewellery articles, 2 pairs of silver pajeb, six silver coins and cash of ₹50,000/- have not been identified to be belonging to the deceased. The knife was allegedly recovered wrapped in a newspaper which was not seized. No opinion of the post-mortem doctor was taken qua the weapon. Hence the recovery of knife is not connected to the offence committed. No TIP of the jewellery was got conducted during investigation. The alleged chance prints of Sonvir are also planted. Reliance is placed on 2010 (2) LRC 33 (SC) Mushir Khan @ Badshah Khan & Anr. Vs. Stae of Madhya Pradesh to contend that evidence of finger prints is not substantive evidence and the same could be at best corroborative. Hence appellant Sonvir @ Somvir be also acquitted.

4. The explanation of Sonvir @ Somvir in his statement under Section 313 Cr.P.C. is that of false implication and that he never visited the house of the deceased. According to him he was a taxi driver and Sultan @ Rajesh was the driver of the deceased. Deceased hired his taxi through Sultan and at that time he had exchanged his telephone number with Sultan. Later on

he was implicated because his telephone number was with them. He surrendered to the Police as his father was taken to the Police Station by the Police officials. No recovery was effected at his instance and the same was planted. He stated that he would examine his father Pappu Singh, however he was not examined as a defence witness.

5. Sultan @ Rajesh in his statement under Section 313 Cr.P.C. also took the plea of false implication and stated that he was innocent and was working as a driver with the deceased Vimlesh and Roopa who did not like him. He complained against Roopa to Vimlesh deceased and thus he was falsely implicated. He did not lead any defence evidence.

6. Khalil Ahmed in his explanation under Section 313 Cr.P.C. stated that he was present at the spot being on duty when Police visited there. Police took him to the Police Station as a witness and detained him for 14 days and thereafter falsely implicated him in this case as an accused. He examined Sartaj Ahmed DW-1 and Mohd.Naseem DW-2 in his defence.

7. Sartaj Ahmed DW-1 stated that on October 20, 2009 at about 10/11 AM he was present near the house of Vimlesh at Jamia Nagar and saw the gate of the house locked; when he peeped inside the house from a hole in the door he saw the articles lying scattered inside the house. He called the neighbours. Khalil Ahmed was also present there who called Police at 100 number. He got an iron smith to break open the lock. After breaking the lock they found dead body of an eunuch lying inside. Khalil was later apprehended by the Police and taken to the Police custody. When he went to the Police station to meet Khalil he was denied meeting. In his cross-examination he admitted that Khalil was his elder brother and that Khalil was working as a driver with Vimlesh at that time. Both of them i.e. Khalil

Ahmed and Vimlesh were married and their marriage was registered in the year 1993. 'N' a juvenile was the son of Khalil Ahmed and was residing at the house of Vimlesh along with Khalil Ahmed. Sartaj Ahmed even knew Sultan who was employed as driver by Vimlesh. On October 20, 2009 he went to the house of Vimlesh on being called by Khalil Ahmed, however he did not know Somvir.

8. Mohd.Naseem DW-2 deposed that he was employed as driver with Vimlesh and also used to look after goods belonging to said Vimlesh. On October 20, 2009 at about 6/7 AM on reaching Saheen Bagh he knocked the door, however none responded so he returned back to his house. Khalil Ahmed was also with him. He contacted other eunuchs namely Roopa, Gulshan and Rajni to enquire about the same. Khalil Ahmed called the PCR using mobile phone of Roopa and then Sartaj brought some key maker. After opening of the house of Vimlesh, Khalil and others went inside, however as the goats of Vimlesh were crying he took them to Jaitpur.

9. On October 20, 2009 a PCR information was received at 11.45 informing that at Saheenn Bagh C-190, Keener Wali building "*Ghar Ke bahar Se Lock Laga Hua Hai or ghar ke andar kuch garbar lag rahi hai*". The same was recorded vide DD No.18A at PS Jamia Nagar. HC Suresh reached the spot and vide DD No.24A recorded at 1.25 PM called the crime team, photographer and that senior officers be sent. The Police officers who reached the spot vide DD No.18A found that the lock of the main gate was got opened with the help of key maker. On entering the main gate dried blood was found on the floor and on the right side a Maruti Car 800 DL-6C-A-3414 of blue colour with all the four tyres deflated was found parked. On the left hand side inside the bathroom, a dead body with salwar suit was

lying. The body was identified to be that of Meena Kinner, aged 30 years. There were injury marks on her neck and right arm. On going up the stairs near the bathroom a blue colour chappal was found. In the hall on the first floor, another dead body was found on the double bed which was identified to be that of Vimlesh Kinner, aged 45 years. The said body also had injury marks on the neck, chest, arm, toe, index finger etc. Articles were found scattered in the house and on the stairs to the second floor, second blue colour plastic chappal was also found. Since no eye-witness was found of the incident, on the basis of this information FIR No.315/2009 was registered at PS Jamia Nagar on the same day.

10. Dr.Sunay M PW-2 conducted the post-mortem on the deceased Vimlesh and authored the post-mortem report Ex.PW-2/A. According to him the cause of death was shock due to haemorrhage caused by the injuries mentioned hereinafter. Injuries No.12, 14 and 15 individually and all other injuries collectively were sufficient to cause death in the ordinary course of nature. All the injuries except 2, 3 and 4 were caused by sharp weapon and injuries No.15, 16, 17 and 20 were caused by sharp pointed weapon. He also noticed the corresponding cuts on the blouse and pattice of the deceased. Time since death was opined to be about three days. He noticed the following injuries on the deceased:

“1. Stab wound of size 5 x 2 cm present on posterior lateral aspect of left leg on its upper part, at a distance of 3 cm from popliteal fossa of knee, 43 cm from heel of left foot. Wound is 3 cm deep, directed backwards, inwards and downwards. Extravasation of blood present in and around the wound.

2. Contusion dark red in colour of size 6 x 3 cm present on outer aspect of left leg (mid-part) at a distance of 22 cm from the heel of left foot.

3. *Contusion, dark red in colour of size 8 x 2 cm obliquely placed on back of lower part of left thigh.*
4. *Contusion, dark red in colour of size 6 x 2 cm obliquely placed in parallel with wound No.3 at a distance of 3 cm from it; on back of left thigh.*
5. *A stab wound of size 5 x 2.25 x 8 cm (l x b x h) present on outer aspect of left shoulder. Wound was directed inwards, upwards and backwards. Underlying muscles, blood vessels and other soft tissue in the part of wound were cut.*
6. *Three incised wounds, skin deep placed on upper 1/3rd of back of left arm, obliquely placed parallel to each other one below the other. They were of size 12 x 0.2 cm, 13 cm x 0.4 cm and 8 x 0.7 cm respectively from above downwards.*
7. *Incised wound of size 9.5 x 2 cm present on back and outer aspect of left arm and elbow, obliquely placed. Wound was bone deep.*
8. *Two incised wounds, placed in inverted V-shape, situation on dorsal aspect of left forearm. The wound was 17 x 2 cm and 16 x 2 cm respectively and wound was muscle deep.*
9. *An incised wound, skin, deep, obliquely placed present on back of left arm of size 14 x 0.7 cm.*
10. *An incised wound, skin deep, obliquely placed of size 8 x 0.7 cm present on upper anterior aspect of right shoulder.*
11. *An incised wound of size 5 x 3 cm present in first web space of left foot, left first phalangio-metatarsal joint is fracture and dislocated.*
12. *Incised wound of size 22 x 4 cm present on left ear, left forehead and left temporal region of scalp. Subscalp haemorrhage present beneath this injury. Linear fracture of scalp bone on left fronto-temporal region of size 15 x 1 cm, present beneath this incised wound with the outer table of skull all along the fracture line is depressed. Sub-dural haemorrhage present on left fronto-parietal temporal region.*
13. *An incised wound of size 8 x 2 cm, horizontally placed over left parietal region of scalp. Subscalp haemorrhage*

present on left parietal region. Wound was bone deep. Incised mark present on skull bone region corresponding to this wound.

14. Two incised wound horizontally placed, parallel to each other on right side of occipital region of scalp. Subscalp haemorrhage present in occipital region. Two linear fractures present on occipital region of skull corresponding to these injuries. Sub-dural haemorrhage present in occipital region of brain.

15. Stab wound of size 6.9 x 4 x 9 cm present on right side of neck, directed inwards, backwards and downwards. Neck muscles, larynx and carotid blood vessels of right side are cut. Blood clots present in the wound. Wound was placed obliquely, 2 cm from the angle of mandible right, 3 cm from right clavicle bone.

16. A stab wound of size 4.3 x 2 cm, directed forwards, downwards and inwards, tip of the wound enters the mouth, placed on left cheek of face (masseter muscle region) path of the wound was 4 cm.

17. Stab wound of size 2 x 1 x 2.2 cm present on medial aspect (inner) of right eye.

18. Incised stab wound, of size 6 x 3 x 9 cm present on right side of chest inner aspect. The wound was directed outwards, slightly downwards and forwards. The wound was within the breast tissue. The tailing of incised wound was present which was directed obliquely upwards and left.

19. Incised wound skin deep with contusions present on palmar aspect of right hand in ring finger and middle finger region. Incision is of size 2 x 1 cm.

20. Incised wound, skin deep, of size 9 x 2 cm present on scalp obliquely placed over the left and right parietal region.

21. Stab wound of size 2 x 1 x 2.3 cm present on upper part of right side of back, directed downwards, inwards. Wound is of shape sketched on the PM report.”

11. Dr. Susheel Sharma PW-7 conducted the post-mortem on the body of

Meena and authored the report Ex.PW-7/A. According to her the cause of death was shock. Injury No.1, 2, 3, 4 and 5 individually and collectively were sufficient to cause death in the ordinary course of nature. Injury No.6, 7, 8, 9 and 10 collectively contributed to cause death in the ordinary course of nature. All injuries except injury No.7 and 8 were caused by sharp pointed heavy weapon and injury No.7 and 8 were caused by blunt force impact. The time since death was opined to be 3 – 5 days prior to the starting of the post-mortem. The doctor noticed the following injuries on the deceased:

- “1. A cut throat injury 11 cm long, split wide open, present at front aspect of neck, cut the trachea, oesophagous, both side neck vessels and surrounding neck tissue. Margins are blood stained and clean cut. Cut throat wound superficially cut the cervical spine at level C-5 cervical vertebra.*
- 2. A stab wound 8 x 2.5 cm obliquely placed present at left side of upper back aspect of neck, margins are clean cut. A blood stained track directed downward, forward and inward passing through wound cutting the major vessels of left side of neck and connecting with injury No.1 internally.*
- 3. A stab wound 3 x 1.5 cm, margins clean cut, present at middle aspect of left side of neck at outer aspect, blood stained track directed downward, inward and forward cutting the major vessels of neck and connecting with injury No.1 internally.*
- 4. A stab wound 4 x 2 cm x muscle deep present at lower, left outer aspect of neck track directed downward, inward and forward, associated with haematoma.*
- 5. A stab wound 2.5 x 1 cm, clean cut, present at right side of neck, at lower 1/3 of neck, situated 1 cm rightward to injury No.1. A blood stained track internally connected to injury No.1.*
- 6. An incised looking lacerated wound 7 x 1.5 cm x bone*

deep, present at left cheek, margins are clean cut and some places irregular, associated with haematoma.

7. A laceration 4 x 2 cm x brain cavity deep, present at frontal aspect of scalp, associated with depressed fracture injury 11 cm in circumference of underlying bone, sub-scalp haematoma and extra dural haemorrhage, duramater laceration and underlying brain matter injury at fronto-parital region of brain associated with haematoma.

8. A laceration 5 x 1 cm x bone deep present at left occipital region of scalp situated 4 cm back and above to left mastoid tip.

9. A chop wound (cut and laceration) 5.5 x 2 cm upto mid line present at inner aspect of right wrist associated with cut injury of carpal bones and surrounding tissue, associated with haematoma.

10. An incised wound 11 x 3 cm bone deep present at inner aspect of right forearm associated with haematoma.”

12. Inspector Amrit Raj PW-32A who got registered the FIR stated that he found one person Khalil Ahmed who introduced himself to be the husband of deceased Vimlesh. On his pointing out the spot was inspected and site plan was prepared. Finger print expert SI N.K.Sharma visited the spot and picked up six chance prints from the spot. He found three eunuchs Rajni, Gulshan and Roopa at the spot. He recorded their statements who expressed their doubt upon Khalil Ahmed and Sultan @ Rajesh. On October 21, 2009 father and brother of Vimlesh identified the dead body and on October 23, 2009 two eunuchs including Kajal identified the dead body of deceased Meena. Thus the post-mortem of Vimlesh was got conducted on October 21, 2009 and that of Meena on October 23, 2009. On the basis of a secret information on November 03, 2009 they apprehended Rajesh @ Sultan who disclosed the names of Sonvir @ Somvir, ‘N’ and Khalil Ahmed

to be involved in conspiracy with him. Rajesh was having a bag which was found to be containing 15 items of gold jewellery, two pairs of payjeb, six silver coins, cash of ₹2 lakhs, one wrist watch of ICICI make, two photographs of the deceased Vimlesh. Rajesh led to the house of Sonvir @ Somvir who met them outside their house. He got recorded his disclosure statement vide Ex.PW-20/B. On searching the bag 15 items of gold jewellery, 2 items of silver, six coins of silver, cash of ₹50,000/- recovered. Sonvir @ Somvir led the Police to his house and brought out one dagger and one shirt which were found to be blood stained. Sonvir @ Somvir led the Police to the house of Khalil Ahmed at Hari Nagar who was found standing near his house at Ganda Nala bus stand. He was carrying a bag with him. On searching the bag some gold jewellery, two wrist watches and cash of ₹3 lakhs were recovered from his bag which he was carrying. Khalil Ahmed then led to the apprehension of 'N'. On November 07, 2009 Rajesh and Sonvir led the Police to Village Bhind District Muraina to get recovered the Maruti Van of the deceased, where it transpired that a Maruti Van white colour having a broken number plate with 27 written on it was found abandoned on November 08, 2009 and had been seized. The articles recovered from the said Maruti Van were also seized. The accused further led to a place near gate No.2 of Punj Lyod factory and on the pointing out of the accused one broken piece of number plate on which 86 was written was recovered from the bushes. On November 12, 2009 Rajesh @ Sultan led the Police to the garage of quarter No.86, Type-2, Jal Vihar and brought out a polythene bag after digging the earth which contained cash of ₹40,000/- and two gold chains. The same were also seized vide memo Ex.PW-20/B. On further secret information Bhura was apprehended. Finger prints of accused

Rajesh @ Sultan and Sonvir @ Sombir were taken. This is how the Police claim to have solved the case.

13. To base the conviction against the appellants herein the prosecution relies upon the recovery of cash, gold and silver articles from the three appellants, recovery of knife and blood stained shirt at the instance of Sonvir @ Somvir, recovery of blood stained shirt at the instance of Rajesh, the last seen evidence, the post-mortem report, the FSL report, report of finger print expert and the conduct of absconsion of Rajesh.

LAST SEEN EVIDENCE

14. Prosecution relies upon the evidence of Roopa PW-1, Rajni PW-10 and Gulshan PW-11 to establish that the appellants were last seen with the deceased. Rajni and Gulshan in their deposition did not state that they had met Vimlesh on the October 17, 2009 as deposed by Roopa PW-1. Both Rajni and Gulshan deposed that Vimlesh was residing at C-190, Saheen Bagh and Sultan was the driver of Vimlesh. 'N' was residing with Vimlesh. Meena was also residing with the deceased. Since Vimlesh was their Guru they would give the collection amount to Vimlesh who would give them their shares. 5/6 months prior to the incident 'N' had stolen cash of ₹9 lakhs of Vimlesh and thus she had shunted him out of the house, however 2/3 months prior to Diwali 'N' again came back. They identified Khalil who used to initially drive the vehicle of Vimlesh and later lived with her and that 'N' was Khalil's son. However neither Rajni nor Gulshan deposed that they met Vimlesh on October 17, 2009. Rajni deposed that the last time she saw Vimlesh was on the Diwali day. After Diwali she could not come to Vimlesh for two days being tired. She received a call from Gulshan that Guruji was not traceable. Khalil also made call to her. Gulshan also

deposed that she last met Vimlesh on October 13, 2009 and thereafter did not go to work for a few days due to sickness. She received a call from Khalil on October 19, 2009, however expressed her inability to come at night time. When in the morning of October 20, 2009 they all collected outside the house of Vimlesh, they found the door locked, on peeping inside they noticed blood stains and thus Police was called.

15. Thus the only evidence with the prosecution of last seen is that of Roopa. Roopa deposed that she was associated with Vimlesh for last 15-16 years. In the year 2009 one 'N', Sultan and female eunuch Meena were residing with Vimlesh in her house at C-190, Saheen Bagh. 'N' had stolen ₹8-9 lakhs from Vimlesh around Holi festival in the year 2009. Thus he was sent out of the house. However, later on again he was called back. She stated that the last time she met Guruji i.e. deceased Vimlesh was on October 17, 2009 when she was with Vimlesh till 10.00 PM. When She left the house of Guruji, 'N', Sultan, Khalil and Meena were present in the house. She told Guruji that she was unwell and therefore would not come the next day. On October 19, 2009 she received a call at 3.00 PM from Khalil informing that the mobile phone of Sultan, Meena and Vimlesh were switched off. At about 5.30 PM Khalil along with his wife came to her house at Faridabad. She told him that she was not feeling well and would come to the house of Guruji, the next day. On October 20, 2009 they all got together outside the house of Vimlesh and on peeping inside found blood and broken bangles and thus called the Police. Roopa stated that Khalil and Vimlesh were sharing the relationship of husband and wife. In cross-examination Roopa was confronted with her statement Ex.PW-1/DA recorded under Section 161 Cr.P.C. on October 20, 2009 wherein the fact

that when she left the deceased Vimlesh's house on October 17, 2009 'N', Sultan and Khalil were present in the house was not recorded. In her statement Ex.PW-1/DA she only stated that she suspected 'N', Sultan and Khalil of having committed the offence. This is a major improvement. Thus the sole evidence of Roopa with regard to having last seen 'N', Sultan and Khalil at the house of Vimlesh on October 17, 2009 at 10.00 PM cannot be relied upon.

RECOVERY OF JEWELLERY AND CASH FROM THE APPELLANTS

16. As per the prosecution when the three appellants were arrested they were holding bags in their hands and from the possession of Sultan @ Rajesh ₹40,000/- in cash, two gold chains, one wrist watch, 15 gold items, two pairs of payjeb and six silver coins were recovered which were seized vide memo Ex.PW-22/B and Ex.PW-25/A. At the instance of Sonvir @ Somvir 15 gold items, ghungroo, pair of payjeb, six silver coins and ₹50,000/- were recovered which were seized vide memo Ex.PW-21/A. At the instance of Khalil Ahmed four gold items, two wrist watches, eight ornaments of silver and ₹3 lakhs in cash were recovered which were seized vide Ex.PW-31/A. None of these jewellery articles were subjected to Test Identification Parade during the investigation. Even in the dock no witness identified that the jewellery recovered at the instance of the three appellants belonged to the deceased.

17. Mohd.Ayub brother of Vimlesh appeared as PW-5 in the witness box. He denied the suggestion of the learned APP that on November 04, 2009 he was shown the jewellery recovered from the possession of the accused persons and he identified the said jewellery articles to be belonging to Vimlesh. The jewellery articles were thus not identified to be that of

deceased for the reason that none of the family members of Vimlesh were living with her and those living i.e. Meena was killed and rest were accused.

18. The learned Trial Court has held the recovery of the jewellery articles incriminating against the appellants on the ground that the appellants have not claimed jewellery items, cash, etc. allegedly recovered from their possession as belonging to them. We are afraid that the reasoning of the learned Judge is contrary to the legal principles that the prosecution is required to prove its case. The prosecution has not proved the jewellery recovered from the appellant belonged to the deceased thus the recovery of the jewellery article cannot be held to be connected with the offence. However the accused were not absolved to explain the possession of large amount of jewellery and cash under Section 106 of the Evidence Act especially Rajesh and Sonvir who were working as drivers.

RECOVERY OF THE WEAPON OF OFFENCE

19. It is the case of the prosecution that when Sonvir @ Somvir was arrested he led to the recovery of a knife which he had concealed/wrapped in a newspaper. The said weapon of offence was seized vide Ex.PW-21/D. On examination by the FSL though the same was found to be stained with human blood, however no blood grouping could be given. Further no opinion was sought from the post-mortem doctor whether the injuries to the deceased were possible by the said weapon of offence. In the absence of any witness identifying the weapon of offence used in the commission of crime or the opinion of the post-mortem doctor that the injury was possible by the said knife or the FSL report regarding the blood of the deceased being found, the knife not be said to be connected with the offence. Thus the recovery of knife at the instance of Sonvir @ Somvir cannot be used as

incriminating against him.

RECOVERY OF BLOOD STAINED SHIRTS

20. Pursuant to arrest Sonvir @ Somvir led the Police party to room No.15 in the house of Teja Chaudhary on the ground floor. From under a table he took out a bucket and from the bucket he took out one blood stained knife wrapped in a paper and a blood stained shirt which were seized vide memo Ex.PW-21/D. On November 04, 2009 Rajesh @ Sultan got recovered a blood stained shirt of cream colour from the third floor of house No.C-190, Saheen Bagh from under the logs of wood which was seized vide memo Ex.PW-21/G. The said two shirts were sent for analysis to the FSL and as per the FSL report Ex.PW-33/A both the shirts were found to be stained with human blood of 'B' group origin which was found on the bed sheet etc. at the place of occurrence and thus was of the deceased. The recoveries of shirts of the Somvir and Rajesh which were stained with the blood of the deceased are thus incriminating qua Somvir and Rajesh.

RECOVERY OF CAR

21. On November 01, 2009 ASI Udai Bhan Singh Parmar PW-23 while posted at Noorabad, District Muraina, Madhya Pradesh received an information about a Maruti Van abandoned near gate No.2, Punj Lyod Factory, Noorabad. He reached the spot and found the Maruti Van with a broken number plate bearing No.DL-2CR-2786 of white colour. He seized the Maruti Van under Section 25 of the Police Act. On checking the Van one pair of black colour shoes with right shoe having blood stain, one rope made partly of plastic and partly of adichika, one hasiya (darati), one visiting card of some coaching centre with address of Jamia Nagar, New Delhi, one match box and two books were found. Pursuant to arrest Rajesh

@ Sultan and Sonvir @ Somvir disclosed with regard to abandoning of the car 20 Kms from Gwalior. Thus they were taken to Muraina by Inspector Amrij Raj on November 08, 2009. The vehicle which had already been seized as unclaimed on November 01, 2009 was handed over. Rajesh @ Sultan and Sonvir @ Somvir led the Police party near gate No.2, Punj Lyod factory from where the Van had already been recovered and got recovered part of broken number of plate bearing No.86 from the garbage near the factory. The said broken number plate was seized vide memo Ex.PW-23/I. Nand Kishore PW-26 from the Transport Authority, I.P. Estate, New Delhi appeared in the witness box. He brought summoned record pertaining to vehicle DL-2CR-2786 on the basis of which he deposed that the vehicle was registered in the name of Ms.Vimlesh. He exhibited the copies of the vehicle registration duly attested by motor vehicle Inspector as Ex.PW-26/A. This witness has not been cross-examined. Thus the prosecution has proved that the Maruti Van DL-2CR-2786 which was in the name of Ms.Vimlesh was abandoned near gate No.2 of Punj Lyod factory at Noorabad and was recovered from there which evidence is incriminating qua the appellants.

CHANCE PRINTS

22. On November 20, 2009 the crime team was called at the spot and PW-8 SI Naresh Kumar Sharma in-charge, Finger Prints Bureau, Crime Branch lifted 6 chance prints from the first floor of the said house. Vide his report Ex.PW-8.A it is noted that the chance prints Q1 to Q3 three in number were lifted from the iron box of the first floor, Q4 from the show case glass and Q5 & Q6 from the iron safe. The said chance prints were analysed with the sample finger/ palm impressions of Sultan @ Rajesh and Sonvir @ Somvir by PW-35 Shri R.N.Rawat, Srnior Finger Prints Expert, Finger Prints

Bureau. Vide his report Ex.PW-35/A he opined that the chance print marked Q1 was identical with the specimen right palm impression of Sultan @ Rajesh and chance print marked Q5 identical to the specimen left palm impression of Sonvir @ Somvir. However the specimen Chance print of Rajesh @ Sultan and Sonvir @ Somvir were not taken in the presence of a Magistrate.

23. In the decision reported as 191 (2012) DLT 225 Sapan Haldar & Anr. Vs. State a full Bench of this Court held that while taking the finger prints or palm impressions which were included in “measurements” the weight of the authorities is that if by way of rules or executive instructions the manner is prescribed to take the measurements then alone can an investigating officer under Section 4 of the Identification of Prisoners Act, 1920 obtain the measurements but strictly as per manner prescribed and it would be imminently desirable as per the decision in (1978) 3 SCC 435 Mohd.Aman & Ors. Vs. State of Rajasthan to follow the procedure ordained under Section 5 of the Identification of Prisoners Act, 1920. No rules having been framed in Delhi and procedure as prescribed under Section 5 of the Identification of Prisoners Act having not been followed we would thus discard the evidence of the palm impressions of Sultan @ Rajesh and Sonvir @ Somvir being found on the iron box and the iron safe.

ABSCONSION

24. The prosecution by the evidence of Roopa and Gulshan have been able to prove that Sultan was the driver of Vimlesh and after the incident he was not available. Sultan was arrested on November 03, 2009. Unlike Khalil qua whom all witnesses have stated that on October 19, 2009 he called up the witnesses and even went to the house of Roopa to find out the

whereabouts of Vimlesh, Sultan though the driver of Vimlesh was not traceable. It is thus proved by the prosecution that after the incident Rajesh @ Sultan absconded and could be arrested only on November 03, 2009.

CONCLUSION

25. Since the Prosecution has not been able to prove any incriminating evidence against Khalil except that he was found in possession of jewellery and cash which in our opinion cannot be incriminating as a standalone piece of evidence as the witnesses have stated that Vimlesh and Khalil Ahmed were living as husband and wife and thus could own and possess jewellery and cash. Thus Khalil Ahmed is entitled to the benefit of doubt. As regards Sonvir @ Somvir and Sultan @ Rajesh the prosecution has proved beyond reasonable doubt the recovery of shirts at their instance which were found to be blood stained with the blood of group of the deceased i.e. 'B' group, unaccounted jewellery and cash, recovery of the Maruti Van DL-2CR-2786 from Noorabad near the gate No.2 of Punj Lyod factory, the piece of broken number plate of the said Van from a garbage nearby, that the Maruti Van belonged to deceased Vimlesh and against Sultan @ Rajesh the conduct of absconsion as well, we uphold the judgment of conviction and order on sentence qua Sonvir @ Somvir and Sultan @ Rajesh.

26. Accordingly the two appeals i.e. CrI.A.1300/2014 and CrI.A.1506/2014 are dismissed. The appellants therein will undergo the remaining sentence. CrI.A.1046/2014 is disposed of acquitting Khalil Ahmed of the charges framed. Superintendent Tihar Jail is directed to release Khalil Ahmed forthwith if not required in any other case.

27. T.C.R. be returned.

28. Four copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the other three to be handed over to the appellants.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

DECEMBER 10, 2014
‘ga’