

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Crl. Appeal No.D- 230-DB of 2010
Date of Decision : 18.02.2015**

Kulbir and another

..... Appellants

Versus

State of Haryana

..... Respondent

**CORAM: HON'BLE MR. JUSTICE M.JEYAPPAUL
HON'BLE MR. JUSTICE DARSHAN SINGH**

Present : Mr. Ashwani Bharadwaj, Advocate
learned Counsel for appellant no.1.

Mr. Jagdeep Singh Virk, Advocate
learned counsel for appellant no.2.

Ms. Tanisha Peshawaria, Advocate
learned DAG, Haryana.

- 1. Whether Reporters of Local papers may be allowed to see the judgment?Yes**
- 2. To be referred to the Reporters or not?Yes**
- 3. Whether the judgment should be reported in the Digest?Yes**

DARSHAN SINGH, J.

1. The present appeal has been preferred against the judgment of conviction dated 23.12.2009, vide which both the appellants have been held guilty and convicted for the offences punishable under Sections 364, 302, 201, read with Section 34 Indian Penal Code (for short IPC). Appellant

Kulbir was further held guilty and convicted for the offence punishable under Section 25 of the Arms Act, 1959 and the order on quantum of sentence dated 24.12.2009, vide which the appellants were sentenced as under:-

Appellant Kulbir			
U/s	Imprisonment	Fine	In default
364 IPC	R.I for 5 years	Rs.2000/-	RI for 1 month
302 IPC	R.I for life	Rs.5000/-	RI for 2 months
201 IPC	R.I for 2 years	Rs.1000/-	RI for 15 days
25 Arms Act	R.I for 1 year	Rs.500/-	RI for 7 days

Appellant Ajay			
U/s	Imprisonment	Fine	In default
364 IPC	R.I for 5 years	Rs.2000/-	RI for 1 month
302 IPC	R.I for life	Rs.5000/-	RI for 2 months
201 IPC	R.I for 2 years	Rs.1000/-	RI for 15 days

2. The sequence of the events leading to the present prosecution are that PW-15 Sanjay, the brother of the deceased Shamsher @ Sonu moved an application Ex.PS to PW-16 SI Balwant Singh alleging therein that his brother Shamsher @ Sonu was a truck driver. On 24.06.2007 at about 12.00 O'clock in the noon, he alongwith his brother and mother was present on the roof of their house. In the meantime, a young boy aged about 20-22 years came to

their house and called the name of Sonu. His brother came down from the roof in the courtyard and asked to said boy that he does not know him. Then, that boy told him that he and Vijay Pal, both were the drivers on the vehicle of the relative of Ravinder Khati and he should drop him at the house of said Ravinder Khati. A Maruti car was parked near their house, in which 2-3 boys were sitting. They took his brother Sonu alongwith them. He was looking from the roof. Thereafter, Sonu was searched by them with their relatives, but he had not returned. They had doubt that appellants Kulbir and his friend appellant Ajay @ Makhan and other boys had taken away his brother with intention to kill him as Naseeb, the brother of Kulbir who was a truck driver had died 10-11 months ago due to electric shock near Delhi. Due to this motive, they had taken his brother with intention to kill him. The family of Kulbir had a grudge against them from that very day. On this application Ex.PS, the formal FIR Ex.PB/1 was registered and the investigation was started.

3. SI Balwant Singh along with complainant went to the place of occurrence. He inspected the spot. On 29.06.07, both the appellants were arrested. On interrogation, appellants Kulbir and Ajay suffered the disclosure statements Ex.PT and Ex.PU respectively admitting their

guilt. In pursuance of the said disclosure statements, they pointed out the place of occurrence, where the dead body of Shamsheer @ Sonu was found lying in the fields of 'Jawar' near Rajgarh Julana. The dead body was identified by the complainant and PW-17 Raj Singh. The memo of pointing out the place the place of occurrence Ex.PT/1 and Ex.PU/1 respectively were prepared. SI Balwant Singh carried out the inquest proceedings and prepared the inquest report Ex.PR/1. The photographs of the dead body were taken and the dead body was sent to General Hospital, Jind for postmortem examination. From there, the dead body was referred to PGIMS, Rohtak, where the postmortem examination was conducted on the dead body on the next day. On 29.06.07 itself, in pursuance of the disclosure statement Ex.P.C, accused-appellant Kulbir got recovered a Maruti Car bearing registration No. DL-3-CF-8090 used in the commission of the offence which was taken into possession vide memo Ex.PD. Accused were again interrogated on 1st July 2007. Appellant Ajay suffered the disclosure statement Ex.PG. In pursuance of that he got recovered one plastic rope from near the place of occurrence, which was taken into possession vide memo Ex.PG/1. Appellant Kulbir also suffered the disclosure statement Ex.PH and in pursuance thereof he got recovered

one .315 bore pistol used for the commission of crime, which was also taken into possession vide memo Ex. PH/1 after preparing the sketch Ex.PH/2.

4. On 01.07.2007, PW-19, Inspector Babu Lal arrested co-accused Pardeep and Deepak (since acquitted) on the basis of secret information. They also suffered the disclosure statements Ex.PX and Ex.PY respectively admitting their involvement in the commission of the crime. In pursuance of their disclosure statement, they pointed out the place where the dead body was thrown. The crime articles were sent to the Forensic Science Laboratory for examination. On completion of the formalities, the report under Section 173 Code of Criminal Procedure (for short Cr.P.C) was presented in the Court.

5. The present appellants alongwith their co-accused Pardeep and Deepak were charge sheeted for the offences punishable under Sections 364, 302, 201 read with Section 34 of IPC. Appellant Kulbir was also charge sheeted for the offence punishable under Section 25 of the Arms Act, to which appellants pleaded not guilty and claimed trial.

6. In order to substantiate its case, the prosecution examined as many as nineteen witnesses.

7. When examined under Section 313 Cr.P.C, the appellants pleaded that they are innocent and have been

falsely implicated by the police at the instance of the complainant party, which is inimical to them and it was a blind murder.

8. In defence, evidence, the accused examined Dharmender, Bureau Chief, Dainik Bhaskar, Bhiwani as DW-1 who produced the news items Mark A, B and C.

9. On appreciating the evidence on record and the contentions raised by learned counsel for the parties, appellants were held guilty and convicted for the offences punishable under Sections 364, 302, 201 read with Section 34 of IPC. Appellant Kulbir was further held guilty and convicted for the offence punishable under Section 25 of the Arms Act. They were awarded the sentence as mentioned in the upper part of the judgment. Their co-accused Deepak and Pardeep were acquitted of the charges.

10. Aggrieved with the aforesaid judgment of conviction and order of sentence, the present appeal has been preferred.

11. We have heard Mr. Ashwani Bharadwaj, Advocate, learned Counsel for appellant no.1, Mr. Jagdeep Singh Virk, Advocate, learned counsel for appellant no.2 and Ms. Tanisha Peshawaria, Advocate, learned Deputy Advocate General, for the State of Haryana and have have meticulously examined the record of the case.

12. Initiating the arguments, learned counsel for the appellants contended that the occurrence is alleged to have been taken place on 24.06.2007, but the FIR has been registered only on 28.06.2007 with a delay of four days. No satisfactory explanation has been given for this delay, which renders the prosecution case doubtful.

13. They further contended that in fact the dead body was already recovered on 28.06.2007, which is evident from the statement of PW-2 EHC Mahavir Singh, who has stated that they reached at Police Station Julana on 28.06.2007 in the evening. There was no other purpose of the police to visit Police Station, Julana. They further contended that the identity of the dead body was established on the basis of the documents recovered from the pockets of the wearing apparels of the deceased. After the identity of the deceased was revealed with the help of those documents, certainly the information might have been given to the Bhiwani Police. They further contended that PW-7 ASI Brahm Dass, the photographer had stated that they reached at the spot at about 9.00/10.00 a.m. on 29.06.2007. Whereas, as per the prosecution story, the accused had suffered the disclosure statement at about 12.00/12.30 p.m. So, the police party had reached at the place where the dead body was lying even before recording the disclosure statements of the

appellants. Thus, they contended that the prosecution story that the dead body was recovered on the basis of the disclosure statements made by the appellants, stands shattered. Moreover, they contended that the news item Marks A, B and C totally renders the prosecution case doubtful. In the news item, it is mentioned that the dead body was already located by the Julana Police kept in a gunny bag. Thus, they contended that the disclosure statements of the appellants have only been fabricated to create evidence against them.

14. They further contended that the recovery of the dead body and other articles is alleged to have been effected in the area of Police Station, Julana. But, no entry has been made in the Daily Diary Register of Police Station, Julana about the visit of Investigating Officer and his companions to the area of Police Station Julana, which also renders the recoveries doubtful.

15. They further contended that the provisions of Section 27 of the Evidence Act have been misused by the Investigating Officer. Three disclosure statements of the appellants have been recorded with different versions. So, the recovery based on such disclosure statements is not reliable. They further contended that it is not probable that the accused will conceal the weapon of offence nearby the

dead body. So, the recovery of the pistol and rope from the possession of the appellants can not be relied upon.

16. They further contended that the accused were not earlier known to the prosecution witnesses. No test identification parade of the appellants have been arranged after their arrest. In the application Ex.PS, PW-15 Sanjay, the complainant, has nowhere mentioned that the person who had come to their house to call the deceased was appellant Ajay. If, he would have been known to Ajay and would have identified him, he must have mentioned in the application itself that his brother was called by appellant Ajay. They further contended that in the complaint Ex.PS, it is also nowhere mentioned that appellant Kulbir was the person who was sitting in the Maruti Car. Later on during the trial, he has made the improvement to this effect. Thus, they contended that the improved version of the complainant with respect to the identity of the appellants can not be relied upon.

17. They further contended that no evidence has been collected by the Investigating Officer with respect to the ownership of the Maruti car allegedly used in the commission of the offence and accused-appellants are not at all connected with the said car, which also shatters the chain of the circumstantial evidence.

18. They further contended that the motive alleged by the prosecution for the commission of the offence is also not established. No case was lodged nor any complaint was moved by appellant Kulbir against the deceased with respect to the death of his brother Naseeb. If appellant Kulbir would had any grievance against the deceased in connection with the death of his brother, he must have moved complaints to the police and other authorities. It shows that there was no motive for the appellants to commit the murder of deceased Shamsheer @ Sonu.

19. They further contended that two accused namely Deepak and Pardeep have been acquitted by the learned trial Court on the same set of evidence. The same benefit should have been given to the present appellants. Thus, they contended that the conviction of the appellants have been wrongly recorded by the learned trial Court.

20. On the other hand, learned State counsel contended that the case of the prosecution is based on sound circumstantial evidence. Appellant Ajay was the person who had come to the house of the deceased on 24.06.2007 to call him and took the deceased along with him. Thereafter, he never returned alive. She further contended that the appellants have suffered the disclosure statements in pursuance of which they got recovered the

dead body, pointed out the place of occurrence and also got recovered the weapons of offence. The medical evidence shows that deceased has suffered the fire arm injury. The report of Forensic Science Laboratory also corroborates the prosecution case. She further contended that the appellants also had the motive for the commission of the offence, as appellant Kulbir suspected the hand of the deceased in the death of his brother Naseeb. Thus, she contended that the chain of the circumstantial evidence is complete and clearly establishes the guilty of the appellants. She contended that mere this fact that two co-accused have been acquitted, is no ground to make the appellants entitled for acquittal.

21. We have duly considered the aforesaid contentions.

22. Admittedly, there is no direct evidence to establish the commission of the offence. It is settled principle of law that it is not necessary that in order to establish the commission of offence, there must be the direct evidence. The conviction can be based even on the basis of the circumstantial evidence, as the man may tell a lie, but circumstances can never. The Hon'ble Supreme Court in case **Sharad Birdhichand Sarda Versus State of Maharashtra (1984) 4 SCC 116** has laid down the golden principles to prove the cases on the basis of circumstantial

evidence as under:-

“(1) The circumstances from which the conclusion of guilty is to be drawn should be fully established.

(2) The facts so established should be consistent only with the hypothesis of the guilty of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) The circumstances should be of a conclusive nature and tendency.

(4) They should exclude every possible hypothesis except the one to be proved, and

(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

23. In the instant case also the prosecution has relied upon the following incriminating circumstances:-

- 1. Last scene theory.**
- 2. Disclosure statements of the appellants, pointing out the place of occurrence and recovery of the dead body.**
- 3. The medical evidence.**
- 4. The recovery of the weapons of offence and Car.**
- 5. Motive.**

1. Last scene theory:-

24. Complainant Sanjay while appearing in the witness box has deposed that on 24.06.2007 at about 12/1.00 noon, he along with his mother and brother were present in their house on the roof. In the meanwhile, one boy came to their house and called the name of Shamsheer @ Sonu, who was with them and came down. His brother told that boy that he did not know him. Then, he asked his brother that he and Vijay Pal was working as a driver on the vehicle of the relative of Ravinder Khatri and that his brother should take them to the house of Ravinder Khatri. He further deposed that his brother accompanied that boy and at that time he also saw from the roof that 2-3 boys were sitting in a Maruti car which was parked in a street at some distance from their house. His brother was taken in that vehicle by them. His brother did not turn up in the house and they searched for his brother in their relations. He further deposed that they develop suspicion that Kulbir, Ajay and his friends has taken his brother Shamsheer @ Sonu for the purpose of killing him. He further deposed that he can identify accused Ajay, who had come to call his brother and Kulbir who is present in the Court today. Similar facts have been mentioned by complainant in the application Ex.PS moved by him to the SHO of Police Station, Sadar Bhiwani, on the basis of which FIR has been registered.

25. No doubt, in his application Ex.PS complainant Sanjay has not mentioned the name of the boy, who had come to their house to call his brother Shamsheer @ Sonu deceased. But, while appearing in the witness box, he has categorically deposed that the said boy was appellant Ajay. The application Ex.PS has been written by complainant Sanjay, who is a layman and may not be conversant with the drafting of legal document and the technicalities. Due to that reason, he might not have mentioned the name of appellant Ajay as the person who had come to their house to call his brother. But, in the application Ex.PS, it has been categorically mentioned that his brother Shamsheer @ Sonu has been taken away in the vehicle by Kulbir and Ajay with intention to kill him. So, the name of the appellant Ajay clearly figures in the application Ex.PS from the very beginning and while appearing into the witness box, the complainant has further clarified the matter that appellant Ajay was the same boy who had come to their house to call his brother Shamsheer @ Sonu. So, it is established that the deceased was taken away from his house by appellant Ajay and thereafter, he was never scene alive and his dead body was recovered from a Jawar field near village Rajgarh Julana.

26. Thus, deceased Shamsheer @ Sonu was last seen

in the company of appellant Ajay, who took him from his house in a Maruti Car on the pretext of telling the house of Ravinder Khati of their village and thereafter, he was never seen alive and ultimately his dead body was recovered in pursuance of the disclosure statements of the appellants. Once, it is established that the deceased was last seen in the company of the accused, it becomes the duty of the accused to explain how the victim met with homicidal death. But, in the instant case, no explanation at all has been rendered by the appellants. They have simply pleaded their false implication at the instance of the complainant due to enmity.

27. We do not find any substance in the contentions raised by learned counsel for the appellants with respect to the identity of the appellants. No doubt, no test identification parade has been held after the arrest of the appellants. But, this lapse on the part of the prosecution may not adversely affect the prosecution case. As it is the settled principle of law that the identification of an accused in the Court is the substantive evidence. The Hon'ble Supreme Court in case **Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi) 2010(2) RCR (Criminal) 692** has laid down that it is the dock identification, which is a substantive piece of evidence. Therefore, even where no

test identification parade is conducted, no prejudice can be caused to the case of the prosecution. In case **Mulla and another Vs. State of U.P, 2010(2) RCR (Criminal) 176.**

Again the Hon'ble Apex Court has laid down that the necessity for holding an identification can only arise when the accused persons are not known to the witnesses. Failure to hold test identification parade does not make the evidence of identification in the Court inadmissible, rather the same is very much admissible in law. It was further laid down that substantive evidence is the evidence given by the witness in the Court and if that evidence is found to be reliable, then the absence of corroboration by test identification is not material. In view of the aforesaid ratio of law, the identification of an accused by a witness in the Court is the substantive evidence of the identification. If that evidence is reliable, the absence of the prior test identification parade will not adversely affect the prosecution case.

28. The name of appellant Ajay and Kulbir are categorically mentioned in the application Ex.PS moved by complainant Sanjay to the Police, on the basis of which the FIR has been registered. Complainant Sanjay has also categorically deposed that appellant Ajay had come to their house to call his brother Samsheer @ Sonu. He even heard

the conversation between appellant Ajay and deceased Shamsheer @ Sonu while standing on the roof. So, he had sufficient opportunity to observe and preserve the features of appellant Ajay and to identify him at the subsequent occasion. While appearing in the witness box, he has categorically identified appellants Ajay and Kulbir. The testimony of complainant Sanjay on the point of identification of the appellants could be shaken in the cross-examination.

29. As deceased Shamsheer @ Sonu was deceitfully taken away from his house by appellant Ajay. So, he being the abductor could only tell as to what happened to the deceased after his abduction. The Hon'ble Apex Court in case **Sucha Singh Vs. State of Punjab (2001) 4 Supreme Court Cases 375** has laid down as under:

“The abductors alone could tell the court as to what happened to the deceased after they were abducted. When the abductors withheld that information from the court there is every justification for drawing the inference, in the light of all the preceding and succeeding circumstances adverted to above, that the abductors are the murderers of the deceased.”

30. Thus, the circumstances leading to the death of Shamsheer @ Sonu were especially in the knowledge of the

appellants being the abductors, but they have not revealed any information in their statements under Section 313 Cr.P.C as to what happened to Shamsheer @ Sonu, which resulted in his death. The withholding of the said explanation on the part of the appellants raises an adverse inference against them under Section 106 of the Evidence Act to draw an irresistible conclusion that they were the murderers.

2. Disclosure statements of the appellants, pointing out the place of occurrence and recovery of the dead body.

31. From the statement of PW-15 Sanjay complainant, PW-17 Raj Singh and PW-16 SI Balwant Singh, the Investigating Officer, it comes out that appellant Kulbir and Ajay were interrogated on 29.06.2007. Appellant Kulbir suffered the disclosure statement Ex.PT and appellant Ajay suffered the disclosure statement Ex.PU. In pursuance of their disclosure statements, they pointed out the place of occurrence from where the dead body of Shamsheer @ Sonu was also recovered.

32. There is no material on record to establish that the dead body was actually recovered on 28.06.2007 as alleged by the learned counsel for the appellants. PW-2 EHC Mahavir Singh has simply stated in the cross-examination that they reached in Police Station, Julana in the evening on

28.06.2007. This witness has nowhere stated that the dead body was recovered on that day and they had visited the Jawar fields of Partap resident of village Rajgarh, from where the dead body was recovered. It can not be presumed that the police of Police Station, Julana must had given any information to the police of Police Station, Bhiwani about the recovery of the dead body on 28.06.2007 in the absence of any evidence. PW-7 ASI Brahm Dass, Photographer, no doubt has stated in the cross-examination that they reached at the spot at 9.00/10.00 a.m (on 29.06.2007). SHO, Police Station, Julana along with other police employees and public persons were also present at that time. As per the statement of PW-16 SI Balwant Singh, the accused were apprehended at about 12 o'clock and thereafter, they were interrogated and suffered the disclosure statements leading to the recovery of the dead body. No doubt, there is a contradiction in the statement of PW-7 ASI Brahm Dass, the Photographer and PW-16 SI Balwant Singh about the time of their visit to the place from where the dead body was recovered. But, this sole contradiction is no ground to discard the entire version of the prosecution, based on reliable evidence.

33. In the defence evidence, accused has brought on file the news items Mark A, B and C to contradict the

prosecution version with respect to the recovery of the dead body and the manner in which the dead body was recovered. But, the said news reports have no evidentiary value as DW-1, Dharmender, Bureau Chief, Dainik Bhaskar, Bhiwani has admitted in the cross-examination that he did not report the matter regarding these news nor he had any personal knowledge regarding the incident. The accused have not examined the press reporter who had gathered the information. The source of these news reports is also not known. So, the news reports from Mark A, B and C are not proved in accordance with the law. It is also not known on what basis the facts mentioned in news items were published. So, these news items have no evidentiary value and can not be taken into consideration.

34. In pursuance of their disclosure statements, appellants have pointed out the place of occurrence from where the dead body has been recovered. There is no material on record to establish that this place was earlier in the knowledge of the prosecution witnesses or the police. The pointing out of the place of occurrence thus shall be admissible as the conduct of the accused under Section 8 of the Evidence Act. A Division Bench of this Court in case **Anupam alias Anup Versus State of Haryana, 2006(1) RCR(Criminal) 56**, has laid down that the pointing out of

the place by the accused to the police where the offence was committed will be admissible as conduct of the accused under Section 8 of the Evidence Act. The same principle of law has been laid down by the Hon'ble Apex Court in cases **Parkash Chand Vs. State (Delhi Administration), AIR 1979 Supreme Court 400 and Himachal Pardesh Administration Versus Om Parkash, AIR 1972, Supreme Court 975**. Thus, the pointing out of the place of occurrence by the accused will also be a relevant incriminating circumstance as the conduct of the accused.

35. From the statements of PW-15 complainant Sanjay, PW-16 SI Balwant Singh, the Investigating Officer of the case, PW-17 Raj Singh, it is proved that in pursuance of their disclosure statements, the appellants have got recovered the dead body of Shamsheer @ Sonu lying in a Jawar field in the Revenue Estate of village Rajgarh. This is a clinching incriminating circumstance against the appellants. The Hon'ble Supreme Court in Case **State of Maharashtra Vs. Suresh, 2000(1) RCR (Criminal) 149** has laid down as under:-

“We too countenance three possibilities when an accused points out the place where a dead body or an incriminating material was concealed without stating that it was concealed by himself. One is that he himself would have concealed it.

Second is that he would have seen somebody else concealing it. And the third is that he would have been told by another person that it was concealed there. But if the accused declines to tell the criminal Court that his knowledge about the concealment was on account of one of the last two possibilities the criminal Court can presume that it was concealed by the accused himself. This is because accused is the only person who can offer the explanation as to how else he came to know of such concealment if he chooses to refrain from telling the Court as to how else he came to know of it, the presumption is a well justified course to be adopted by the criminal Court that the concealment was made by himself. Such an interpretation is not inconsistent with the principle embodied in Section 27 of the Evidence Act.”

36. As already discussed, the appellants were the abductors of deceased Shamsheer @ Sonu. They have not explained the circumstances leading to his homicidal death and thereafter, the dead body has been recovered on the basis of their disclosure statements, which is another strong incriminating circumstance against the appellants.

3. Medical Evidence:-

37. The postmortem examination on the dead body of deceased Shamsheer @ Sonu has been conducted by PW-12 Dr. Basant Lal Sirohiwal, Professor, Department of Forensic

Medicines, PGIMS, Rohtak on 30.06.2007 and he found the following injuries on his person:-

External Injuries:-

- (i) There was a fire arm entry wound of size 1.5 X 1.2 cm situated on the front middle of chest slightly on the right side 8 cm from the right nipple and just outer to the sternum and 9 cm below the sternal notch, 145 cm above the right heel. It was full of maggots. The skin was denuded. The abraded color was partially appreciated. It has entered into second intercostals space near sternum and touching the lower border of second rib. Then it entered the chest cavity after piercing the pleura and the right lung border entered into the heart through pericardium and after traveling the upper right aspect of heart and its appendages went back into the 5th rib crossing through and though in paravertebral region and found lodged in the muscles under skin on the right side back aspect where it was palpable 153 cm above the right heel and 3.5 cm from midline and recovered from that place. The effusion of blood was present on fracture ends of ribs. The plural cavity on right side containing about one litre of fluid blood.
- (ii) The neck skin was decomposed and missing all around. The hyoid bone was showing inward compression fracture of both cornua with effusion on fracture ends and mucosa inside was appreciated. Congestion around the larynx was present.

The bullet was 2.8 cm and tapping as depicted in the diagram. The track and direction- the bullet had entered the chest cavity via 2nd inter costal space and then percardium and heart and on the back via 5th rib reached on the back just beneath the skin. The direction was from front to back slightly upwards and right to left.

Scalp was missing on the top of the head and sides and forehead. The skull was exposed and there was no fracture seen. The brain was liquified and decomposed. Plurea was decomposed. The lungs were soft and decomposed having postmortem bullae. The heart was soft, flabby and decomposed. Tongue was soft decomposed. Lips missing. The stomach was containing 500 cc of undigested food material and gases. The walls were soft and decomposed. The large intestine were containing fecal matter and gases was soft and decomposed. The liver was solft and decomposed with internal architecture defused. Spleen was soft, pulpy and decomposed. The kindeys were soft decomposed with internal architecture defused. The bladder was empty and having postmortem bullea on its mucosa.

The third molar has erupted, teeth having attrition + -. The inner end of clavical was fused. The epiphysis of long bones fused. The body of sternum was fused whereas the xiphoid and manubrium were not fused.

As per his opinion, the cause of death in this case was due to fire arm injury to the chest via injury no. 1 and

its complications coupled with manual strangulation. All the injuries were ante mortem and recent in duration.

38. The aforesaid medical evidence clearly establishes that deceased Shamsheer @ sonu after his kidnapping was subjected to the physical assault. He suffered the manual strangulation and fire arm injury, which led to his death. The appellants were abductors of the deceased. They had not come forward with any explanation as to how the deceased suffered the manual strangulation and fire arm injury. Even, though these facts were in the special knowledge of the appellants. So, there is no escape from the conclusion that the said injuries have been caused to the deceased by the appellants.

4. Recovery of weapons of offence and car:-

39. From the statements of PW-2 EHC Mahavir Singh and PW-16 SI Balwant Singh, it comes out that Kulbir has suffered the disclosure statement Ex.PC and in pursuance thereof he got recovered the Maruti car bearing registration No. DL-2-CF-8090, which was used for the kidnapping of the deceased. Unfortunately, the Investigating Officer, has not collected the evidence about the ownership of the car. This is lapse on the part of the Investigating Officer. It is settled principle of law that the lapses on the part of the Investigating Officer in the investigation of the case is no

ground for the acquittal of the accused. This fact is established that the car which was used in this occurrence has been recovered in pursuance of the disclosure statement made by appellant Kulbir.

40. As per the statement of PW-5 HC Balbir Singh and PW-16 SI Balwant Singh appellant Kublir has suffered the disclosure statement Ex.PH and in pursuance of the said disclosure statement, he got recovered one .315 bore pistol from the Jawar fields near village Rajgarh Julana on 01.07.2007. Similarly, appellant Ajay suffered the disclosure statement Ex.PG and in pursuance thereof he got recovered the rope of the green colour from the Jawar fields from nearby the place where the dead body was recovered.

41. Mere this fact that the Investigating Officer has not made any entry in the Daily Diary Register of Police Station Julana with respect to his visit to the area of Police Station Julana in connection with effecting the recoveries is again a lapse and merely an irregularity on the part of the Investigating Officer. The recovery of the dead body at the instance of the appellants, the recovery of weapon from the possession of both the appellants and recovery of the car at the instance of appellant Kulbir is fully established from the consistent, cogent and reliable evidence adduced by the prosecution. Learned counsel for the appellants have not

been able to point out any material contradiction in their statements. So, mere this lapse and irregularity on the part of the Investigating Officer that he had not made any entry of his arrival in the area of Police Station, Julana in the Daily Diary Register of that Police Station will not wash out the evidence adduced by the prosecution to establish the recoveries.

42. As per the medical evidence already discussed, the cause of death in this case was the fire arm injury to the chest of the deceased coupled with the manual strangulation. At the time of the postmortem examination, the doctor has recovered the bullet from the dead body, which was kept in the sealed packet. The said bullet and the country made pistol recovered from the appellant Kulbir and the rope recovered from the appellant Ajay were sent to the Forensic Science Laboratory for examination. Ex.PK is the report of the Forensic Science Laboratory, which shows that the bullet recovered from the body of the deceased has been fired from the country made .315 bore pistol recovered from the possession of appellant Kulbir. The clothes of the deceased were also sent to the Forensic Science Laboratory. The Forensic Science Laboratory report further depicts that the holes of the T-shirt of the deceased have been caused by a bullet projectile. Thus, it is established that country made

pistol recovered from appellant Kulbir, was the weapon of offence and was used to fire the shot at deceased Shamsheer @ Sonu. The said fire arm injury was one of the cause of death of deceased Shamsheer @ Sonu.

43. Learned counsel for the appellants have contended that as per the report of the Forensic Science Laboratory Ex.PK/1, no skin or hair could be detected on the plastic rope. But, that will not help the appellants. It may be possible that the rope for the purpose of strangulation might have been fixed at such a place where the sticking of the skin/hair may not be possible. But, there is no denial to the fact that the rope can certainly be used for the purpose of strangulation. Thus, the weapons of offence have been recovered from the possession of appellants in pursuance of their disclosure statements, which is another incriminating circumstance against the appellants.

5. Motive:-

44. It is well known that motive for the commission of an offence is generally a difficult area for the prosecution to prove. One can not normally see into the mind of another. In certain cases, the prosecution may not be able to exactly establish the motive for the commission of the offence. The view that the absence of motive would dislodge the entire

prosecution story is perhaps giving one factor an importance which is not due to it. Motive is in the mind of the accused which can seldom be fathomed with any degree of accuracy.

In case **Mannu Sao Vs. State of Bihar 2010(3) RCR (Criminal) 813**, the Hon'ble Supreme Court has laid down as under:-

“With the development of law, now it is a settled principle that motive is not absolutely essential to be established for securing conviction of an accused who has committed the offence, provided the prosecution has been able to prove its case beyond any reasonable doubt.”

45. But, in this case there is sufficient evidence to prove even the motive for the commission of the offence. PW-15, complainant Sanjay has categorically deposed that brother of Kulbir namely Naseeb and the deceased were working on a truck. Said Naseeb had died due to electric shock about 10-11 months earlier near Delhi and due to this reason his brother had been taken away by them. PW-3 ASI Raghuraj Singh, posted at PP Harsh Vihar, Police Station Nand Nagri, Delhi has proved the memo Ex.PE, vide which the inquest report with respect to the death of Naseeb was handed over to the Investigating Officer. So, it can not be stated that the appellants had no motive for the commission of the offence. They, might be suspecting the

hand of deceased Shamsheer in the death of Naseeb, the brother of appellant Kulbir. Moreover, both the appellants in their statements under Section 313 Cr.P.C have also taken the plea that they have been falsely implicated at the instance of the complainant party, which is inimical to them. So, the appellants have themselves admitting the enmity, which could also be the motive for the commission of the offence.

46. In the application Ex.PS, complainant Sanjay, has categorically mentioned that they have been searching his brother Shamsheer @ Sonu in their relations and when they could not succeed, the matter was reported to the police. He has also deposed that on 25.06.2007, he went to Police Post Mundhal for reporting the matter about missing of his brother, but the police officials asked him to make search for his brother in their relations. Even thereafter, he had visited the police post for making the inquiries. If the police officials were negligent/lethargic in taking cognizance of his complaint, the complainant can not be held at fault for causing any delay in reporting the matter to the police. Moreover, mere delay in lodging the FIR is no ground to reject the prosecution case, when the guilt of the accused is otherwise proved from the evidence on record.

47. Mere this fact that co-accused Depak and

Pardeep have been acquitted by the learned trial Court is also no ground to make the present appellants also entitled for acquittal. It is the function of the Court to apply its judicial mind to appreciate the evidence qua each accused and then to determine their complicity for the commission of the offence. Learned trial Court did not find the evidence produced by the prosecution sufficient for the conviction of co-accused Deepak and Pardeep. So, their acquittal was entirely on different footing and will not render any help to the present appellants.

48. Thus, keeping in view our aforesaid discussion, the case against the present appellants is based on cogent, convincing, sound and reliable circumstantial evidence. So, we do not find any legal infirmity or impropriety in the conviction of the appellants recorded by the learned trial Court. Thus, the conviction and sentence of the appellants as recorded by the learned trial Court is hereby maintained and affirmed.

49. Resultantly, the present appeal has no merits and the same is hereby dismissed.

(M. JEYAPPAUL)
JUDGE

(DARSHAN SINGH)
JUDGE

February 18, 2015

s.khan