

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No. D-250-DB of 2010

Date of Decision: 12.10.2015

Parmod and Others

...Appellants

Versus

State of Haryana

...Respondent

**Coram: Hon'ble Mr. Justice Hemant Gupta
Hon'ble Mrs. Justice Raj Rahul Garg**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters? Yes
3. Whether the judgment should be reported in the Digest?

Argued By: Mr. H. N. Sahu, Advocate for the appellants.

Ms. Mayuri Lakhanpal, Advocate as amicus-curiae.

**Mr. Vivek Saini, Assistant Advocate General, Haryana
for the respondent-State.**

Raj Rahul Garg, J.

1. This appeal is directed against the judgment dated 24.12.2009 rendered by learned Additional Sessions Judge, Gurgaon whereby appellants-accused were convicted for the offence punishable under Sections 201, 302, 396, 412 of the IPC. Vide order on sentence dated 08.01.2010, each one of the accused was sentenced to undergo imprisonment for life and a fine of Rs. 50,000/- for offence under Section 302 IPC. In default of payment of fine, to

further undergo simple imprisonment for two years; for offence under Section 396 IPC, each one of the accused were sentenced to undergo rigorous imprisonment for a period of 10 years and a fine of Rs. 5,000/- with default clause; for offence under Section 201 IPC, each one of the accused was sentenced to undergo rigorous imprisonment for a period of 3 years and a fine of Rs. 5,000/- with default clause and for offence under Section 412, each one of the accused was sentenced to undergo rigorous imprisonment for a period of 10 years and a fine of Rs. 5,000/- with default clause. All the substantive sentences were ordered to run concurrently.

2. It may be mentioned here that 5th accused namely Lalit alias Bittu alias Lithar son of Panna Lal, being juvenile, was sent for his trial before the Juvenile Justice Board.

3. Brief facts of the case are like this; that on 14.11.2006, Ghanshyam son of Dhani Ram lodged report, Ex. PB, with the police to the effect that his son Ashish had left Gwalior for Gurgaon for the purpose of getting job, on 29.10.2006. Ashish was MBA. On that very day, Rohit, a friend of Ashish, at about 11.40 PM, gave a telephonic call at the house of the complainant and made inquiry as to why Ashish had not reached Gurgaon. To this, complainant replied that Ashish had already left for Gurgaon on 29.10.2006. Rohit further reported that Ashish told him on mobile phone No. 9350113937 that he had reached IFFCO Chowk and would reach Sector-15 within 15 minutes but his son did not reach there. As such, complainant lodged report regarding missing of Ashish at Gurgaon, on 31.10.2006. Complainant expressed that some unknown person might have kidnapped his son. He further

disclosed that his son was wearing blue shirt and black pant. On this report, formal FIR, Ex. PB/2, was recorded.

4. ASI Ramanand along with police party was present at IFFCO Chowk in connection with this case on 05.11.2006. Eknad and Ashok, brother of the deceased, met him. When they were talking about this case, an information was received about the foul smell coming out of a sewerage near Leisure Valley Park, Gurgaon. When the police party reached there, a dead body was seen, lying in the aforesaid sewerage. It was taken out. Ashok identified the dead body as that of his younger brother Ashish. Photograph of the dead body was obtained. Inquest report, Ex. PC, was prepared. Rough site plan of the spot was prepared as Ex. PD. An application, Ex. PC/1, was moved before the doctor for post-mortem examination of the dead body. After post-mortem, the dead body was handed over to the relatives.

5. On 06.11.2006, further investigations of this case were handed over to Inspector Sanjeev Kumar. That day, when he was present in the court complex during the investigations of this case, a secret informer met him and disclosed that the persons who commit murders and throw the dead bodies after robbing them, are Parmod, Rohtash, Mukesh, Ravi and Lalit, residents of village Bhorakalan and they had a Max jeep bearing registration No. HR-61-1154. Those persons were seen nearby Bhorakalan and in case of *nakabandi*, they can be apprehended. On this information, *nakabandi* at IFFCO Chowk was laid. At that time, police officials including ASI Tej Ram, Constable Manoj Kumar etc. were present with Inspector Sanjeev Kumar. At about 12.00 in the noon, a Max jeep bearing No. HR-61-1154 came towards Jaipur side.

Signal was given to the jeep to stop. After aforesaid jeep came to a halt, they found five persons sitting in the jeep. On inquiry, they disclosed their names as Parmod, Lalit, Rohtash, Mukesh and Ravi.

6. On interrogation, accused-Parmod gave disclosure statement, Ex. PE, regarding commission of 26 murders, dacoities and robberies etc. He also disclosed about the commission of the murder of Ashish during the intervening night of 29.10.2006 and also about the manner in which murder was committed. He further disclosed that he can give 'nishandehi' of the place where they had thrown the dead body of Ashish, after committing the murder near Leisure Valley Park. He also disclosed that mobile phone and one pocket diary of the deceased-Ashish fell to his share and he had kept the same concealed in village Thodi, District-Bulandshaher in the residence of his maternal uncle and can get the same recovered after giving 'nishandehi'. ASI Tej Ram signed this memo as witness. Accused-Parmod also signed this memo.

7. Likewise, on interrogation, accused-Rohtash gave disclosure statement, Ex. PA, and disclosed that driving licence and one identity, card having photo of some Mohinder Singh behind the photo of Ashish, fell to his share and he had kept the same concealed at Alvar in our rented house and can get the same recovered by giving 'nishandehi'. This disclosure statement was signed by Constable Rakesh Kumar as witness, besides Rohtash.

8. Similarly, accused-Mukesh suffered disclosure statement, Ex. PL, to the same effect. Constable Manoj Kumar signed this disclosure statement besides accused-Mukesh. Accused-Ravi also gave disclosure statement, Ex. PK, to the same effect and this disclosure statement was signed by ASI

Subhash Chander as witness whereas Ravi-accused also signed this memo.

9. Accused-Lalit was interrogated. He also suffered disclosure statement but since he is not the accused before this Court, therefore, we need not discuss the disclosure statement given by this accused as well the recovery effected at his instance.

10. Max jeep bearing No. HR-61-1154 was recovered from the possession of accused-Rohtash, vide memo Ex. PF, on 06.11.2006. This memo was signed by ASI Tej Ram and ASI Subhash Chander as witnesses. On the same day, all the accused, turn by turn in pursuance with their aforesaid disclosure statements, gave 'nishandehi' of the place where they had thrown the dead body after commission of murder. The demarcation memo regarding accused-Parmod is Ex. PMM; accused-Mukesh is Ex. PNN; accused-Ravi is Ex. POO; accused-Lalit is Ex. PQQ and that of accused-Rohtash is Ex. PRR. Constable Bijender Singh signed aforesaid memos as witness. All the accused also signed their respective memos whereas accused-Mukesh thumb marked the same. Statements of witnesses were recorded. Case property was deposited with the MHC of the police station and the accused were lodged in the police lock-up.

11. On 07.11.2006, accused retracted their earlier disclosure statements and stated that they had kept concealed the articles at their respective houses. Thus, all the accused were interrogated separately at Sohna. Accused-Parmod suffered disclosure statement, Ex. PP, to the effect that the mobile phone and pocket diary of the deceased were kept concealed by him in an almirah at his house in village Bhorakalan which he can get recovered after

giving 'nishandehi'. He further disclosed that a leather belt, which was used by him in commission of murder during the intervening night of 29.10.2006, was thrown by him about two acres away from the Leisure Valley Park in the bushes which he can get recovered after demarcating the place. EHC Dharam Pal signed this disclosure statement as attesting witness. Accused-Parmod also signed it.

12. On interrogation, accused-Rohtash gave disclosure statement, Ex. PQ, to the effect that driving licence of deceased and one I-card having blue color *Feeta* and iron chain, fell to his share and he had kept concealed the same after wrapping in polythene at the '*Tand*' in his house situated at village Bhorakalan. He further disclosed that he can get the same recovered by giving 'nishandehi'. This disclosure statement was signed by Constable Amit Kumar as witness. Accused-Rohtash also signed it. Accused-Mukesh, on interrogation, suffered disclosure statement, Ex. PSS, to the effect that two papers of deceased which fell to his share, were kept hidden by him in the '*Chhappar*' of his house at village Bhorakalan and he can get the same recovered by giving 'nishandehi' of the place. Constable Manoj Kumar signed this memo as witness. Accused-Mukesh also thumb marked it. Accused-Ravi, on interrogation, gave disclosure statement, Ex. PTT, to the effect that one paper of deceased, written in red and black letters, fell to his share and he had kept concealed the same in the almirah of his house in village Bhorakalan and can get the same recovered after giving 'nishandehi'. This disclosure statement was signed by EHC Shishpal as witness whereas accused-Ravi also put his signature on it. Likewise, Lalit was also interrogated and suffered disclosure statement and got

recovered two papers of the deceased from his house.

13. On the same day, accused-Parmod led the police party to the place, disclosed by him in his disclosure statement, where he had thrown the leather belt in the bushes and got recovered the same after giving 'nishandehi' of the place. This belt was made into a separate sealed parcel sealed with the seal of 'TR' and then taken into police possession, vide memo Ex. PVV. This memo was attested by Constable Bijender Singh as witness. Rough site plan of the place of recovery of the belt was prepared as Ex. PWW. Statements of witnesses were recorded.

14. On 09.11.2006, accused-Parmod led the police party and got recovered mobile phone and pocket diary of the deceased in pursuance with his disclosure statement. The same were identified by Ashok Kumar as the one belonging to deceased-Ashish. These were converted into a sealed parcel sealed with the seal of 'TR' then taken into police possession, vide recovery memo Ex. PK. ASI Shamshuddin and Ashok Kumar signed this memo as witnesses. Rough site plan of the place of recovery was prepared as Ex. PXX. Accused-Rohtash, in pursuance with his disclosure statement, led the police party to the disclosed place and got recovered one driving licence and I-card of deceased-Ashish. The same were identified by Ashok as the one belonging to deceased. Same were converted into a parcel sealed with the seal of 'TR' and were taken into police possession, vide memo Ex. PL. Ashok Kumar and EHC Dharam Pal signed this memo as witnesses. Rough site plan of the place of recovery was prepared as Ex. PYY. Thereafter, accused-Mukesh, in pursuance with his disclosure statement, led the police party to the disclosed place and got

recovered Admission Letter of Madhya Pradesh Lok Seva Aayog on which name of Ashish was written and a computerised photograph of Ashish was also there. Ashok, brother of the deceased, identified the said letter as the one belonging to his brother Ashish. The same was made into a sealed parcel, sealed with the seal of 'TR' and taken into police possession, vide memo Ex. PM. This memo was signed by Ashok Kumar and EHC Jai Singh as witnesses. Rough site plan of the place of recovery was prepared as Ex. PZZ. Thereafter, accused-Ravi led the police party to the disclosed place in pursuance with his disclosure statement and got recovered carbon copies of two receipts on which 'Jivaji University Gwalior' was written. Name of Ashish was also there. The aforesaid receipts were identified by Ashok as the one belonging to deceased. The same were converted into a sealed parcel, sealed with the seal of 'TR' and taken into police possession, vide memo Ex. PN. This memo was signed by Ashok Kumar and Constable Amit Kumar as witnesses. Rough site plan of the place of recovery was prepared as Ex. PAAA. Statements of witnesses were recorded. Case property was deposited with the MHC of the police station. On 13.11.2006, EHC Ajay Singh handed over four papers of call details of phone No. 9899399085 of deceased-Ashish and the same were taken into possession, vide recovery memo Ex. PK. These call details' papers are Ex. PJ, Ex. PJ/1 and Ex. PJ/2. Recovery memo was signed by EHC Ajay Singh as witness.

15. On 20.11.2006, Harish Chander handed over RC of Max Mahindra jeep bearing No. HR-56-5321. RC was taken into possession, vide memo Ex. TS. Harish Chander signed this memo as witness. Original copy of RC is Ex. P21. Photographs taken by Raju, Photographer, were also obtained by the

Investigating Officer. Statement of Raju under Section 161 Cr.P.C. was recorded. On the same day, scaled site plan, Ex. PR, was got prepared from Sarwan Kumar, Draftsman.

16. On 20.11.2006, Inspector Sanjeev Kumar moved application, Ex. P24/A, before the Dr. B.B. Aggarwal and produced one leather belt before him for taking his opinion as to if death can be committed after strangulation with the help of aforesaid belt or not. To which, doctor gave his opinion by making endorsement, Ex. PW24/B, to the effect that possibility cannot be ruled out. On 16.12.2006, an application, Ex. P11, was moved before Ilaqa Magistrate for obtaining his permission to get the Brain Mapping test, Lie Detection test and Narco Analysis test of accused done at CFL, Bagalore. Vide order, Ex. PKK, the aforesaid application was allowed.

17. On 22.11.2006, ASI Tej Ram was sent to Registering Authority-cum-GTO, Jind for taking the previous record of aforesaid Max Mahindra jeep so as to know as to if the vehicle No. HR-61-1154 is the same vehicle or that this RC is fake and fabricated. On this application, Registering Authority made endorsement Ex. PG/1. Two receipts of Jivaji University Gawalior, recovered from accused-Ravi are Ex. P1 and Ex. P2; silver color diary and Motorola phone, recovered from accused-Parmod, are Ex. P3 and Ex. P4; driving licence and identity card of Ashish, recovered from accused-Rohtash, are Ex. P7 and Ex. P8; Admit Card of Ashish, issued by Madhya Pradesh Lok Seva Aayog Indore, recovered from accused-Mukesh is Ex. P9; belt is Ex. P1 (there are two documents as Ex. P1). After completion of necessary investigations, the accused were put to trial by filing challan against them.

18. Finding a prima-facie case against the appellants-accused, they were charge-sheeted for committing offence punishable under Sections 201, 302, 396, 412 of the IPC. After taking entire prosecution evidence, statements of accused, under Section 313 Cr.P.C., were recorded, wherein each one of the accused denied each allegation appearing against them and pleaded his innocence and false implication.

19. After hearing both the sides and appraising the entire evidence and material on record, the learned Additional Sessions Judge, Gurgaon recorded the impugned judgment of conviction and order on sentence as mentioned in the earlier part of this judgment.

20. We have heard Mr. H. N. Sahu, Advocate for the appellants and Mr. Vivek Saini, Assistant Advocate General, Haryana for the state of Haryana besides appraising the entire evidence and material on record.

21. It is a case of circumstantial evidence. Ashish (deceased) left Gwalior for Gurgaon in search of a job as he was MBA pass. He left Gwalior on 29.10.2006. He was to reach Gurgaon the very day but something else was written in his fate. Rohit, a friend of Ashish, was keeping track. When he did not reach Gurgaon, Rohit gave a telephonic call at the house of Ashish and inquired as to why he did not reach Gurgaon. He was told that Ashish had left for Gurgaon on 29.10.2006. Rohit tried to contact Ashish but could not. He also received message on his phone from Ashish at 10/10.15 PM that Ashish was at Nizamuddhin Railways Station and shall reach within one or one and half hours. Thereafter, he received call from Ashish who informed that he had reached IFFCO Chowk and shall reach his house No. 108, Kirit Nagar, Sector-

15, Gurgaon within 15 minutes. But he did not reach there within 15 minutes. However, Rohit had gone to sleep and in the morning he found that Ashish had not reached his house. Thereafter, he again contacted telephonically at the house of Ashish. Ashok, brother of Ashish, inquired about the whereabouts of the Ashish and thereafter on 31.10.2006, the report regarding missing of Ashish was lodged with the police. Later on, investigations were made in this case and on 05.11.2006 on receipt of information that foul smell is coming out of the sewerage at Leisure Valley Park, the police accompanied by Ashok and Eknad reached there and found that the bad smell was coming out from a gutter near Leisure Valley park and thereafter the door of the gutter was opened and found that dead body was lying in the gutter and the same was taken out which was identified by Ashok as that of Ashish. Thereafter, on receipt of information against accused, after laying *Naka*, they were arrested while they were coming by a Max jeep and thereafter on interrogation they suffered disclosure statements regarding commission of this crime as well the place where they had thrown the dead body of deceased after committing this crime and further about getting concealed the belongings of the deceased which fell to their share and also about spending of amount of Rs. 800/- which was robbed of the deceased. They also got recovered, Ex. P1 to Ex. P9, the articles belonging to deceased from their houses, respectively, on their 'nishandehi'. Thus, it is a case where the circumstantial evidence is such which completes the chain of evidence as not to leave any reasonable doubt for the conclusion consistent with the innocence of the accused and in all human probability the act has been done by the accused.

22. In order to convict the accused on the basis of circumstantial evidence, the following conditions must be fulfilled:

1. The circumstances from which the conclusion of guilt is to be drawn should be fully established;
2. The facts so established should be consistent only with the hypothesis of the guilt 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;
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. It was contended by learned counsel for the appellants-accused that in fact accused were involved in some other case. As the present case was unsolved, therefore, only in order to solve this case, these very appellants-accused have been implicated falsely in this case. This argument of learned counsel for the appellants-accused is not tenable as Ashish-deceased left Gwalior for Gurgaon only on 29.10.2006. When he did not reach Gurgaon and his whereabouts were not known, missing report was lodged by his father

Ghanshyam PW-3 on 31.10.2006. Ashok as PW-6 deposed that when Ashish did not reach Gurgaon, he inquired from his relatives regarding his whereabouts. But when till evening he was found nowhere, he caught GT Express train for Gurgaon at about 11.00 PM on 30.10.2006 and on 31.10.2006, he received a missed call from the mobile of his brother Ashish bearing No. 9899399085 and thereafter report Ex. PB was lodged with the police regarding missing of Ashish. As per PW-6 Ashok, on 02.11.2006, he received four calls from the mobile phone of Ashish on his mobile No. 9229409404 and a demand of Rs. 50,000/- as ransom was raised stating that his brother Ashish was in their custody and if he wants to get him released, he had to pay him Rs. 50,000/- and he was directed to come at Rajiv Chowk, Gurgaon. When he was hearing the calls on mobile, the voices of 4-5 persons were heard.

24. Again on 03.11.2006, he received three missed calls from the mobile phone of Ashish and again demand of Rs. 50,000/- was repeated. On 05.11.2006, in the morning, when Ashok along with his brother-in-law (*Jija*) Eknad was present at IFFCO Chowk they met ASI Ramanand. By that time, ASI Ramanand received secret information through informer that near the Leisure Valley, foul smell is coming from the gutter and thereafter the dead body of Ashish was recovered. Thereafter, on 06.11.2006, accused were arrested. As such, it cannot be said that the present case was an unsolved case and thus only in order to solve this case, the accused have been implicated falsely by the police. On the other hand, PW-12 Dharam Pal, witness of disclosure statement of accused-Parmod, PW-13 HC Amit, witness of disclosure statement of accused-Rohtash, PW-10 HC Manoj, witness of

disclosure statement of accused-Mukesh, PW-43 Inspector Sanjeev and PW-6 Ashok prove the recoveries which accused Parmod, Rohtash, Mukesh and Ravi got effected in pursuance with their disclosure statements (recoveries of Ex. P1 to Ex. P9). Even the belt got recovered by accused-Parmod, vide memo Ex. PVV, which was later on produced before the Dr. B.B. Aggarwal for seeking his opinion as to if the death of deceased can be caused by the aforesaid belt, Ex. P-1; the doctor opined that the possibility of the same cannot be ruled out. This evidence on record completes the chain of evidence consistent only with the hypothesis of the guilt of the accused.

25. It is also on record that the accused of this case were found indulging in such like crimes. Their *modus operandi* is to give lift to the unknown people and then to rob them and to take their lives by killing them. Ashish is also the victim of such crime. For a paltry amount of Rs. 800/-, he has been killed.

26. The next argument raised by the learned counsel for the appellants-accused is that since nobody had seen the accused committing this crime, therefore, there should have been identification parade of the accused and in the absence of same, accused cannot be convicted. This argument is absurd. The identification parade is relevant only if somebody has seen accused committing a crime but could not give their proper identification. It is not a case where anybody had seen the accused committing the crime. As such, there was no question of conducting identification parade of the accused.

27. The next argument of learned counsel for the appellants-accused is this that no independent witness was joined in the investigations of the case

either at the time of recording disclosure statements of accused or at the time of effecting recoveries at their instances. Even no independent witness was joined in the investigations of the case from IFFCO Chowk. Had any independent witness been joined in the investigations, the prosecution case would have been disclosed. This argument is again not sustainable as it is nowhere the requirement of law that in case no independent witness is joined in the investigations, the testimonies of official witnesses cannot be made basis of the conviction. Had that been the position, the senior police officials, gazetted officer of the police would have been discredited. It is the settled proposition of law that the testimonies of official witnesses are at par with the testimonies of non-official witnesses and if the testimonies of official witnesses are consistent and inspire confidence in the mind of the Court regarding guilt of the accused, the conviction can well be based. In this case, besides official witnesses even Ashok, brother of deceased, was joined as witness who fully supported the prosecution case by appearing as PW-6. Simply because Ashok is related to deceased, it cannot be said that his testimonies cannot be taken into consideration or that he is an interested witness. There is no material on the file to show as to how Ashok, PW-6, was interested in getting the accused convicted. There is no enmity either of the police or that of PW-6 Ashok with the accused. On the other hand, keeping in view the nature of the offence committed by the accused and further the fact that they had been indulging in such like crimes, it was very very difficult for PW-6 Ashok as well for the police to involve accused falsely in this case. It is also well known that where the murders are committed, independent witnesses are generally reluctant to

give evidence because of the fear that by giving evidence, they will make the assailants an enemy and might expose them to very serious risks. It is difficult for anyone to stand as a witness against accused of such like crimes. Short of repetition, I have already discussed above that the statements of PW-12 Dharam Pal, PW-13 HC Amit, PW-10 HC Manoj, PW-6 Ashok, PW-43 Inspector Sanjeev, PW-5 ASI Tej Ram and PW-2 ASI Ramanand are consistent and inspire confidence in the mind of the Court regarding guilt of the accused. With the recovery of mobile phone and pocket diary of Ashish from the possession of accused-Parmod, driving licence and I-card of Ashish with his photograph from the possession of accused-Rohtash besides other papers belonging to deceased from the possession of four accused, the involvement of accused in this crime stands established as otherwise there is no explanation available on the file as to how the accused came in possession of documents belonging to deceased.

28. Receipt Ex. PH/1, belonging to Ashish-deceased, which was taken into police possession, vide memo Ex. PH, proves the fact that the mobile phone bearing IMEI No. 358916005247395, recovered from the possession of accused-Parmod, was purchased by Ashish and further call details, Ex. PJ, Ex. PJ/1 and Ex. PJ/2, show that from the mobile phone No. 9899399085 of Ashish, having IMEI No. 358916005247395, telephonic calls were made to mobile No. 9229409404 on 31.10.2006, 02.11.2006 and 03.11.2006 belonging to Ashok, brother of deceased. Thus, recovery of mobile phone from the possession of accused-Parmod clearly establishes the involvement of accused-Parmod in this crime and also establishes the fact that Rs. 50,000/- were

demanded by the accused as ransom from Ashok in spite of the fact that Ashish was already murdered by them on 29.10.2006.

29. Not only this, even Max vehicle No. HR-61-1154, recovered from the possession of accused-Rohtash, was having registration No. HR-56-5321. Original RC in this regard is Ex. P21. Harish as PW-16 deposed that the aforesaid Max vehicle was in his name and the same was sold by him to Rohtash on 01.04.2006 for a consideration of Rs. 2,62,000/-. He also identified Rohtash in the Court as the one to whom he sold the aforesaid vehicle. Further from the statement of PW-20 Sat Narain who proved copy of old registration as Ex. P20/1, copy of Form No. 28 as Ex. 20/2, copy of confirmation letter as Ex. P20/3, copy of NOC as Ex. P26/4, copy of affidavit as Ex. P20/5, copy of another affidavit as Ex. P20/6 and copy of registration as Ex. P20/7; it stands established that accused-Rohtash had purchased the aforesaid Max vehicle bearing No. HR-56-5321 from Harish PW-16. This documentary evidence further establishes the involvement of Rotash in this crime as the vehicle in question was taken into police possession at the time when the appellants-accused were travelling in the aforesaid vehicle and were apprehended. The fake registration certificate and fake number plate, put on the vehicle, speaks volume about the involvement of accused in this crime. With these clinching evidence on the file, if no independent witness was joined in the investigation, it hardly makes any difference and at least does not make a case of acquittal.

30. The next argument raised by learned counsel for the appellants-accused is that the making calls to the brother of deceased by accused from the phone of deceased looks absurd as there was no need for the accused to make a

call to the brother of the deceased from the mobile phone of the deceased. They could use some other phone for the purpose. This argument is nothing but only imaginary one. No one can predict the mind of the accused. Even otherwise, it was quite natural for the accused to use the mobile phone of the Ashish-deceased so as to gain confidence of the brother of the deceased that in fact deceased was in their custody. The accused must not have used their own mobile phone as otherwise they could have been easily located and pinpointed as the one making a ransom call. Thus, this contention of learned counsel for the appellants-accused is not sustainable.

31. It was next argued by learned counsel for the appellants-accused that in this case recovery of belt was got effected by accused-Parmod from an open place. The place of recovery was easily accessible to all and sundry. As the accused cannot be said to be in exclusive possession of belt. Of course, accused-Parmod got recovered the belt from an open place, yet, the place was known to him alone and after giving 'nishandehi' of the place he got recovered leather belt, Ex. P1. He had thrown away the same at the distance of two acres from the place where they done Ashish to death. Since accused led the police party to that place and got recovered the leather belt Ex. P1, therefore, it cannot be said that with this belt accused did not commit the crime. Particularly, when the Dr. B.B. Aggarwal also opined that the possibility of causing death of Ashish by strangulation with the aforesaid belt cannot be ruled out.

32. The next argument advanced by learned counsel for the appellants-accused is this that the prosecution has attributed recoveries of articles, Ex. P1 to Ex. P-9, to each one of the accused so as to implicate them

falsely in this case. Simply because each one of the accused had got one or the other article/paper/receipts/mobile phone/I-card recovered; that would not mean that they have been falsely implicated by the police in this case. Each one of the accused, as discussed above, suffered disclosure statements having kept concealed the article coming to their share, in their houses and then getting the same recovered by leading the police party to the disclosed place. Thus, recoveries of the articles belonging to Ashish-deceased effected from the possession of the accused also pinpoints the involvement of the accused in this crime.

33. However, no offence under Section 412 IPC is made out as the accused are dacoits themselves. They are not the one to whom booty was transferred. Section 412 IPC applies to a receiver of the plunder of dacoity by a person distinct from the dacoit himself. As such, the appellants-accused are acquitted of the offence under Section 412 IPC.

34. As a result, the afore-mentioned circumstances leading to this crime are fully established on the file from which the conclusion of guilt is to be drawn and further the afore-discussed evidence on record is consistent only with the hypothesis of the guilt of the accused and is not explainable on any other hypothesis except that the accused are guilty.

35. For the reasons recorded above, the impugned judgment of conviction and order on sentence are modified to the extent indicated above. Accordingly, the appellants-accused are acquitted of the offence under Section 412 IPC whereas regarding offences under Sections 302, 396 and 201 of the IPC, the impugned judgment of conviction dated 24.12.2009 and order on

sentence dated 08.01.2010 are maintained.

36. Dismissed.

(Hemant Gupta)
Judge

(Raj Rahul Garg)
Judge

12.10.2015
Waseem Ansari