

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 9th October, 2015

CRA No.531-DB of 2010

Farid @ Mohd. Farid

...Appellant

Versus

State of Haryana

...Respondent

Present: Mr. Vinod Ghai, Senior Advocate, with
Mr. S.S.Sandhu, Advocate, for the appellant.

Mr. Vivek Saini, AAG, Haryana,
for the respondent-State.

Mr. Vikas Bahl, Senior Advocate, with
Mr. Mandip Singh, Advocate, for the complainant.

CRA No.550-DB of 2010

Ashok Kumar

...Appellant

Versus

State of Haryana

...Respondent

Present: Mr. G.S.Hooda, Advocate,
for the appellant.

Mr. Vivek Saini, AAG, Haryana,
for the respondent-State.

CRA No.558-DB of 2010

Dalip

...Appellant

Versus

State of Haryana

...Respondent

Present: Mr. R.S.Rai, Senior Advocate, with
Mr. Deepinder Brar, Advocate, for the appellant.

Mr. Vivek Saini, AAG, Haryana,
for the respondent-State.

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

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

HEMANT GUPTA, J.

This order shall dispose of aforesaid three appeals i.e. CRA No.531-DB of 2010; CRA No.550-DB of 2010 & CRA No.558-DB of 2010 preferred by Farid @ Mohd; Ashok Kumar and Dalip (hereinafter all the three accused are referred as 'A-1'; 'A-2' & A-3' respectively) against the judgment of conviction dated 16.04.2010 and order of sentence dated 21.04.2010 passed by the Additional Sessions Judge, Fast Track Court, Gurgaon, whereby the appellants were convicted for the offences punishable under Section 120B IPC/364A IPC read with Section 120B IPC and under Section 302 IPC read with Section 120B IPC and sentenced to undergo for varying terms as mentioned in the order of sentence.

The prosecution case was set in motion on the basis of complaint made by Rajender Ahuja son of late Shri Dharam Chand Ahuja on 06.02.2008 at about 10.25 AM. In his complaint (Ex.PE), Rajender Ahuja stated that he has two sons namely Sunil Ahuja, aged about 35 years and Neeraj Ahuja, aged about 30 years. He stated that his son Sunil Ahuja has been living alongwith his family at House No.1103, Sector 9-A, Gurgaon, whereas his other son Neeraj Ahuja lives with him. He further stated that today i.e. 06.02.2008 at about 4.50 AM, he received a call on his mobile No.9871928074 from mobile phone No.9911607548, which is in the name of his son Dr. Sunil, when some unknown persons disclosed him that his son Sunil is in their custody, as they have kidnapped him and if he wants his son, he shall have to pay Rs.20 lacs to

them. They also threatened him that if he reported the matter to the police, then his son Sunil would be killed. After few minutes i.e. at about 4.56 AM, he (Rajender Ahuja) made a back call on the mobile phone of his son, which was attended by the same person and he was again asked to arrange Rs.20 lacs and that notes should be of Rs.100/- denomination. The person also told him that the Alto car of Sunil bearing registration No.DL3CA-AG 3121 is parked at the Petrol Pump, near Vanish Filling Station, Sector 9A, Gurgaon and that the key is lying on front tyre under driver's seat side. Thereafter, he made a call to his daughter-in-law Smt. Anju on her mobile No.9810416297 and enquired from her about Sunil. Upon which, his daughter-in-law told him that Sunil left last evening i.e. on 05.02.2008 at about 8.50 PM saying that there is some defect in his car and that he would return after getting it repaired, but Sunil had not returned home. He further stated that at about 5.08 AM, his daughter-in-law also made a call on Sunil's mobile, but the same was attended by some unknown person, who again demanded Rs.20 lac as ransom. Thereafter, after talking to his relatives, Rajender Ahuja moved the complaint (Ex.PE). On the basis of such complaint, FIR Ex.PJ/1 was registered for an offence under Section 364-A IPC.

On the same day, ASI Abdul Sahid alongwith other officials visited Sunil's house i.e. House No.1103, Sector 9A, Gurgaon and also the place, where the car was stated to be parked. The car bearing registration No.DL3CA-AG 3121 was taken into possession vide recovery memo Ex.PF.

It was on 07.02.2008, the police party headed by ASI Dalip Singh, while on patrol duty, found the dead body of Sunil lying near the Sahoi river bank on Delhi-Jaipur road, which was identified by Neeraj, brother of the deceased. After completing the inquest proceedings and after recording the

statement of Neeraj (Ex.PB), the dead body of Sunil was sent for post mortem examination through Constable Ashok Kumar. On receipt of such information, an offence under Section 302 IPC was added in the FIR.

Thereafter, the investigation was handed over to Inspector Radhey Shyam. On 08.02.2008, Inspector Radhey Shyam recorded the supplementary statements of Rajender Ahuja, Neeraj and Anju i.e. father, brother and wife of the deceased respectively. During investigation, Inspector Radhey Shyam recorded the statement of Ishu Kinra on 09.02.2008 to the effect that on 05.02.2008 at about 8.45 PM, when he had gone to petrol pump, Sector 9, Gurgaon to get fuel for his motor-cycle, he saw deceased - Dr. Sunil in the company of his tenant namely Farid and two other persons namely Ashok and Dalip and also took into possession call details of Mobile Nos.9910635610 (A-1), 9899249783 (A-2), 9818385352 (A-3) & 9911607548 (Sunil - deceased) vide memo Ex.PR. On 10.02.2008, after obtaining information to the effect that the accused were noticed in Faridabad within the area of Sector-14, Inspector Radhey Shyam alongwith other police officials and Neeraj Kumar, brother of the deceased, reached at Neelam Chowk, where Neeraj identified the accused persons when they were proceeding on motor-cycle bearing registration No.HR-26-AN-9360. After apprehending the accused, their personal search was carried out as a result of which three mobile phones were recovered, which were taken into possession vide memo Ex.P2.

It was on 11.02.2008 during interrogation, accused Farid (A-1), Dalip (A-3) and Ashok (A-2) suffered disclosure statements Exs.P44, PX and PY respectively with regard to the concealment of the belongings of the deceased. On the same day, the accused led the police party to the place, where the dead body was thrown and got the place demarcated. From the said

place, accused Farid got recovered a *dupatta*, which was used in committing the offence. The same was taken into possession after converting into sealed parcel. Accused Farid also got recovered jacket of the deceased from the bushes adjacent to Toll barrier, which was taken into possession vide recovery memo Ex.PCC. On 12.02.2008, accused Farid suffered another disclosure statement Ex.P45 to the effect that his earlier statement was not true and that he had kept concealed the purse and the mobile of the deceased on the basement of his rented accommodation (house of the deceased). Pursuant to such statement, accused Farid got recovered a purse and mobile lying in the basement, which were taken into possession vide recovery memo Ex.PK. On 13.02.2008, accused Ashok suffered another disclosure statement Ex.PGG to the effect that his earlier statement was not true and that he had kept concealed the mobile phone of the deceased in the toilet at the third floor of HUDA office, Gurgaon. Pursuant to such statement, accused Ashok got recovered the Mobile phone of the deceased from the disclosed place, which was taken into possession vide recovery memo Ex.PJJ. Similarly, accused Dalip suffered another disclosure statement Ex.PHH to the effect that his earlier statement was not true and that he had kept concealed the locket of the deceased in his house at Ambedkar Nagar, Gurgaon. Pursuant to such statement, he got recovered the locket of the deceased from the disclosed place, which was taken into possession vide recovery memo Ex.PLL. Thereafter, after completing the necessary formalities, all the accused were made to stand trial.

To prove the guilt against the accused, the prosecution has examined as many as 23 witnesses. Apart from examining the witnesses of formal nature as well as PW-2 ASI Dalip Singh; PW-10 ASI Abdul Sahid and PW-23 Inspector Radhey Sham, the Investigating Officer, the prosecution also

examined PW-1 Dr. Mahesh Narang, MO, General Hospital, Rewari, who conducted the post-mortem examination on the dead body of Sunil Ahuja on 08.02.2008 at about 10.00 AM. He proved the post mortem examination report as Ex.PA. He deposed that as per the opinion of the Board, cause of death is asphyxia due to strangulation, which was anti mortem in nature and sufficient to cause death in due course of nature. In his cross-examination, he stated that the possibility of death of the deceased during the night of 06.02.2008 and in the early morning of 07.02.2008 cannot be ruled out.

After conclusion of prosecution evidence, the statements of the accused were recorded under Section 313 Cr.P.C. They were put all the incriminating circumstances appearing against them in the prosecution evidence. They denied the prosecution case and pleaded false implication at the instance of the complainant.

After going through the evidence on record, the learned trial Court found that the prosecution has succeeded in proving the charge against the appellants and accordingly convicted and sentenced them, as mentioned above.

Before this Court, learned counsel for the appellants have vehemently argued that the prosecution has miserably failed to complete the chain of circumstances leading to only one inference that it is the appellants and the appellants alone, who have committed offences under Section 364A IPC and under Section 302 IPC read with Section 120B IPC. It has been contended that the prosecution has introduced PW-20 Ishu Kinra having seen the deceased with the accused on 05.02.2008, but the Investigating Officer recorded his statement only on 09.02.2008. It is also argued that the prosecution has failed to prove any motive in kidnapping of the deceased and later his murder. It is contended that the prosecution agency based its case on

the recovery of *dupatta* and jacket as well as purse and mobile of the deceased, which were taken into possession pursuant to the disclosure statement of Farid. Thus, it is argued that the jacket and *dupatta* are the articles commonly available and, therefore, there is no particularity attached with such articles said to be recovered pursuant to the disclosure statement of appellant Farid. It is also contended that the prosecution has relied upon the mobile details. Mobile No.9910635610 is attributed to Farid, but the same is in the name of Subhash Giri. Similarly, mobile No.9911607548 said to be of Sunil is not in his name, but in the name of Vinod son of Ganga Ram c/o Bhagat Singh, VPO Khandsa, Gurgaon.

It has been further contended that as per PW-9 Anju Ahuja, wife of the deceased, the police has recovered purse containing driving licence of her husband and one mobile make 'Nokia 1110' from the drawer of a table lying in the basement of her house, however, how such articles could be kept in the basement of the house of the deceased after the occurrence is not explained by the prosecution. Still further, PW-9 Anju Ahuja has disclosed the involvement of the appellants to the Police on 08.02.2008, such delay in conveying apprehension remains unexplained. The mobile recovered pursuant to the disclosure statement of Farid was without SIM card. It is further contended that the mobile recovered pursuant to the disclosure statement of Ashok is also without SIM card. The gold locket was said to be recovered from Dalip, which was taken into possession vide memo Ex.PLL. Recovery of such articles is supported only by the Police officials and such articles of common use cannot link the appellants with the commission of crime.

We have heard learned counsel for the parties at length and with their assistance gone through the record carefully. The prosecution case was

initiated on the statement (Ex.PE) of PW-4 Rajender Ahuja –father of the deceased, who said to have received a call on 06.02.2008 at about 4.50 AM on his mobile No.9871928074 from mobile No.9911607548 of his son Sunil (deceased), demanding ransom of Rs.20 lacs. After few minutes i.e. at about 4.56 AM, he called back on the mobile phone of his son, which was attended by the same unknown persons and he was again asked to arrange Rs.20 lacs. Such incoming and outgoing calls are proved to have been made or received, when PW-17 Pawan Singh, Nodal Officer, Idea Cellular Limited, produced the call details as Ex.P32 relating to mobile No.9911607548. As per such details, two outgoing calls were made to Mobile No.9871928074 at 4.45 AM and 4.47 AM on 06.02.2008. Such details also show that there is an incoming call from mobile No.9871928074 at 4.52 AM. Similarly, such details also show that there is an incoming call from mobile No.9810416297 of Anju Ahuja on 06.02.2008 at about 5.03 AM. It is, thereafter, the mobile of Sunil (deceased) has not responded to any call. The deceased was carrying this mobile number has come out in the evidence of PW-4 Rajender Ahuja, father of the deceased and PW-9 Anju Ahuja, wife of the deceased. PW-17 Pawan Singh, Nodal Officer, who produced the record of mobile No.9911607548 from 10.01.2008 to 15.02.2008, has deposed that such mobile number was in the name of Vinod son of Ganga Ram c/o Bhagat Singh, VPO Khandsa, Gurgaon. He has also proved the ID chart of the towers as Ex.P35. In his cross-examination, PW-17 Pawan Singh stated that he cannot tell as to who had talked on a particular number and neither there is any such mechanical device to ascertain as to who was talking with whom. Thus, the fact that PW-4 Rajender Ahuja, father of the deceased, received a call on his mobile from mobile No.9911607548, which was used by his son, on 06.02.2008 and that he called back on the said mobile

number of his son after few minutes, stands corroborated from the call details Ex.P32.

Similarly, the statement Ex.PE made by PW-4 Rajender Ahuja to the effect that he was told that the Alto car of Sunil bearing registration No.DL3C-AG-3121 was parked at the Petrol Pump, Sector 9A, Gurgaon and the key was lying on front tyre under driver's seat side stands corroborated, when PW-10 ASI Abdul Sahib stepped into witness-box and deposed that on 06.02.2008, he taken into possession a car bearing No.DL3C-AG-3121, as the same was parked at Patrol Pump, Sector 9, Gurgaon vide recovery memo Ex.PF attested by HC Suraj Singh and Rajender Ahuja.

It was on 08.02.2008, PW-4 Rajender Ahuja expressed his suspicion on the appellants i.e. Farid, who was the tenant of Sunil; Dalip, his employee and one Ashok, as they were missing since then and also gave their mobile numbers. In his cross-examination on behalf of accused Farid, he stated that Farid belongs to Bihar and that he speaks Hindi. He admitted that Farid could not speak Haryanvi language, as he speaks in Bihari accent. He also stated that the telephonic call given to him or to Anju was not in the voice of Farid. In his further cross-examination on behalf of Ashok, he stated that the distance between his house and that of his son's house i.e. H.No.1103, Sector 9-A, Gurgaon, is about ½ Km. and that the petrol pump where their car was parked is at a distance of about 1 Km. from his residence. He stated that he had seen Ashok accused at the house of his son 10/12 times, but he had not talked with him. He stated that on 06.02.2008 at about 7.30 AM, he had talked with Anju, his daughter-in-law and enquired about Farid – tenant and she told him that he is not in the house. He admitted that he did not mention the names of these three accused in his report to the police as he did not express any

suspicion on these accused on that day. In his further cross-examination on behalf of accused Dalip, PW-4 Rajender Ahuja stated that he know accused Dalip for the last about 5-6 months prior to this occurrence and that he used to talk with Dalip frequently. He stated that Dalip was employed in the Finance Company, which was being run by his son and Farid accused. Dalip had left the service of the Finance Company at the time of this occurrence. He stated that Dalip also belongs to Bihar and that he cannot tell correctly with confirmation as to whether this voice was of Dalip or of any of these accused. However, he stated that the voice could be of Ashok accused because he was belonging to Faridabad and was residing at Faridabad. He stated that after his daughter-in-law talked with that person on that mobile phone, he tried to talk or contact that person on that mobile phone from which he was speaking, but it was reported that the mobile phone is switched off.

The fact that the statement of witness that the person on mobile phone of his son was talking in Haryanvi dialect has come out in his cross-examination as that of Ashok, as the other two accused Farid and Dalip, belong to Bihar.

PW-9 Anju Ahuja, wife of the deceased, deposed that all the accused are known to her. She deposed that Farid accused was tenant in the basement of her house alongwith his brother, whereas Dalip Kumar used to work in the finance office of her husband and Ashok was seen by her while coming to other two accused. She deposed that all these three accused were also found missing since the evening of 05.02.2008. She deposed that accused Farid was like her brother, as he and her husband were enjoying very friendly relations. She also deposed that few days back, her husband told her that he had given a loan of Rs.1 lac to Farid and now he was showing reluctance in

paying that amount. She deposed that since he suspected the involvement of all the three persons, so she disclosed in this regard to the police on 08.02.2008. She deposed that on 12.02.2008, police had come to her house alongwith Farid accused and that he (Farid) led the police to the basement of her house and after opening the lock of the basement, he took out a purse of her husband containing his driving licence and one mobile make 'Nokia 1110' out of a drawer of the table lying there. In her cross-examination on behalf of accused Farid, PW-9 Anju Ahuja stated that the police did not call any person from the public on 12.02.2008, when police had brought Farid to her house though her house is located in abadi. In cross-examination on behalf of accused Ashok, she stated that Ashok never remained tenant in their house and nothing was recovered from Ashok in her presence. Farid, Ashok and Dalip were arrested on 10.02.2008. In further cross-examination on behalf of Dalip, she admitted that they had no money dealing with Dalip accused and that Dalip used to do finance job with her husband. She denied the suggestion that her husband was not doing the business of finance rather he was doing the business of finance in the partnership of Farid accused.

PW-20 Ishu Kinra is the most important witness of last seen, who has seen the deceased alongwith the accused on the night of 05.02.2008. He deposed that after getting the fuel in his motorcycle on 05.02.2008 at about 8.30/8.45 PM from the petrol pump, Sector 9, Gurgaon, he noticed the car of Dr. Sunil Ahuja, which was lying parked in front of the wine/liquor vend located near the petrol pump. He noticed that Sunil Ahuja was sitting in his car alongwith his tenant Farid and one more person, who was being called as Ashok by Farid. He deposed that there was also one more boy named Dalip on a motorcycle, which was parked behind the car and that person was talking on

a mobile phone. He deposed that since Dr. Sunil and two other occupants of the car were taking drinks at that time, he did not think proper to disturb them. He deposed that he knew Dr. Sunil Ahuja, as he was working in a dental lab and used to go to Dr. Sunil Ahuja in connection with collection of dental samples. He deposed that he made statement in this regard to the police on 09.02.2008. In his cross-examination on behalf of Farid, PW-20 Ishu Kinra stated that he used to go to the house of Dr. Sunil Ahuja and at that time, he used to see Farid accused, who was his tenant, sitting with him in the basement. He stated that on 09.02.2008, he came to know from the neighbourhood that ransom of Rs.20 lacs was demanded from Dr. Sunil Ahuja and for non-payment of that money, he has been murdered. He stated that he had told this fact to the police at about 4.30 PM at the house of father of Dr. Sunil Ahuja. In his cross-examination on behalf of accused Dalip, he admitted that the deceased doctor was a very famous dentist and incident of his missing was known to the whole city of Gurgaon. However, he stated that he had gone to Sitarpur (Utrakhnad) on 06.02.2008 at about 8.30 AM in connection with fixing up a dental chair of one Dr. Vijay and came back on 08.02.2008 in the evening. He stated that the car was parked in between the petrol pump and the metalled road. He stated that he had seen Dalip accused two or three times in the month of October, 2007 in the office of the Finance Company of Dr. Sunil. He had gone only twice to the Finance office during lunch time because sometimes, Dr. Sunil Ahuja used to call him there for making payment.

The fact that PW-20 Ishu Kinra seen the deceased and all the three accused in the car near petrol pump, Sector 9 Gurgaon on 05.02.2008 stands proved from the recovery of car from the petrol pump, which location was disclosed by one of the accused on phone to the father of the deceased. The

fact that the accused were near the petrol pump stands also corroborated by the call details produced by the prosecution. PW-16 Mr. R.K.Singh, Technical Manager -cum- Nodal Officer, Bharti Airtel Limited, New Delhi has produced the record pertaining to mobile Nos.9818385352 (Dalip) and 9910635610 (Farid) as Exs.P23 and P26 respectively. He deposed that mobile No.9818385352 was in the name of Dalip Kumar son of Om Parkash, H.No.611/52, Ravi Nagar, Basai Road, Gurgaon, whereas mobile No.9910635610 was in the name of Subhash Giri son of Bharat Giri, H.No.826, Ground Floor, HSB, Sector 21-B, Fatehpur Chandela, Faridabad, Haryana. In his cross-examination, he stated that every mobile hand set has its own IMEI number and that mobile No.9910635610 for the period from 15.01.2008 to 06.02.2008 using mobile instrument/hand set having IMEI No.356031012682830. He stated that it is correct that all the call details as mentioned in Ex.P26 have been made from mobile Ex.P29 (Samsung mobile). Similarly, after opening another Samsung mobile Ex.P31, he stated that IMEI No.359688010238763 tallies with calls reflected in Ex.P23.

PW-21 Jyotish Chandra Moharana, Alternative Nodal Officer, Vodafone SR, Mobile Service Limited, New Delhi produced the call records pertaining to subscriber Ashok Kumar son of Ram Kishan, who was issued SIM card No.30003859749 by their company on his mobile No.9899249783. He proved the customer agreement form as Ex.P39. He also proved the call details of this mobile Number from 01.02.2008 to 02.05.2008 as Ex.P40. He deposed that IMEI number from which these calls were made is 354533014414660. After opening the back cover of Nokia mobile phone (Ex.P41), he deposed that IMEI No. of this phone is 354533014414660.

From the testimonies of PW-16 Mr. R.K.Singh and PW-21 Jyotish Chandra Moharana, who have produced the call details Exs.P-23, P-26 & P40, it stands established that all the accused were present near the petrol pump on 05.02.2008, when PW-20 Ishu Kinra noticed them with Dr. Sunil - deceased. Accused Farid and Dalip had Airtel Mobile connections; accused Ashok had Vodafone connection, whereas the mobile used by the deceased had Idea mobile SIM card. From a perusal of Ex.P26 (call details of Farid), it reveals that accused Farid and Dalip were together on 05.02.2008, as they were within the range of same mobile Tower No.47793 at 18:29:30 and 19:11:13. The mobile of the deceased was also in the same tower range at 19:28:20 and at tower No.47113 at 20:08:13. The mobile of appellant Dalip was in the same tower range i.e. 47113 at 20:20:07; tower No.03302 at 21:10:10, 21:35:32 and 21:58:52. As per Ex.P23 (call details of Dalip), the accused Dalip and Ashok were also within range of same tower Nos.03302 at 21:39:02. The accused Ashok was constantly in touch with Dalip accused from 16:37:48 to 22:10:16 on 05.02.2008 inasmuch as 11 calls had been exchanged between them. Similar is the call details of Ashok (Ex.P40). Thus, all the three accused were moving together in the evening of 05.02.2008 and also on 06.02.2008. Such mobile data corroborates the oral testimony of PW-20 Ishu Kinra of his seeing them together on 05.02.2008 having liquor near petrol pump. Such call details also corroborate the statement of PW-4 Rajender Ahuja in respect of receiving a phone call from the mobile of his son – Sunil.

The argument that the prosecution has failed to explain the delay in recording the statement of PW-20 Ishu Kinra is again not tenable. PW-20 Ishu Kinra deposed that after getting the fuel in his motorcycle on 05.02.2008 at about 8.30/8.45 PM from the petrol pump, Sector 9, Gurgaon, he saw that

Dr. Sunil and two other occupants of the car were taking drinks at that time and that he did not think proper to disturb them. He deposed that he knew Dr. Sunil Ahuja previously, as he was working in the dental lab at that time and he used to go to Dr. Sunil Ahuja for collection of dental samples. In his cross-examination, PW-20 Ishu Kinra has stated that he had gone to Sitapur (Uttarakhand) on 06.02.2008 at about 8.30 AM in connection with fixing up a dental chair of one Dr. Vijay and had come on 08.02.2008 in the evening. He also stated that on 09.02.2008 he came to know from his neighbours that ransom of Rs.20 lacs was demanded from Dr. Sunil Ahuja and for non-payment of that money, he has been murdered. It is, thereafter, he had told this fact to the police at about 4.30 PM at the house of father of Dr. Sunil Ahuja on 09.02.2008. The testimony of PW-20 Ishu Kinra has not been shattered in the cross-examination in any manner. He has given the vivid description of all the persons noticed by him on 05.02.2008 alongwith the deceased. Such part of the statement is supported by the call details of the accused. There is nothing on record, which could create doubt about the veracity on the aforesaid witness and why he should depose falsely against the appellants. There is no case of enmity attributed to the witness against the appellants. The most damaging part is the recovery of car of Dr. Sunil Ahuja from the petrol pump, Sector 9, Gurgaon as told to PW-4 Rajinder Ahuja, where he has seen the accused and the deceased together.

We do not find any merit in the argument that the prosecution has failed to explain as to how purse and mobile phone of the deceased could be kept in the basement of the house of the deceased after the occurrence. From the testimonies of PW-4 Rajender Ahuja, father of the deceased; PW-9 Anju Ahuja, wife of the deceased and PW-20 Ishu Kinra, it stands established that

accused Farid was residing as tenant in the basement of the deceased's house i.e. House No.1103, Sector 9A, Gurgaon. From the call details (Ex.P26) of accused Farid, it transpires that both Dalip and Farid were again moving together. It is apparent from call at 02:46:25 within the range of tower No.02003; at 03:28:42, 03:33:12 and 04:31:29 within the range of tower No.47793. Then there is an incoming call on the mobile of the Farid within tower range of tower No.47793 on 06.02.2008 at 07:39:04 AM from tower No.47792 from Mobile No.9810416297 pertaining to Anju Ahuja-wife of the deceased. Then outgoing call to Anju at 07:46:45 when both were in the range of tower No.47793. There are three more outgoing calls to Anju Ahuja at 10:00:10, 10:00:46 and 10:12:48 when both the mobiles were in the same tower range i.e. Tower No.45661. There are incoming and outgoing calls between Farid and Dalip from 10:44:10 to 10:53:30 on 06.02.2015, when the mobiles were in the range of same towers i.e. tower Nos.06482 or 49062. This shows that at that time accused Farid is present at his rented premises and/or is roaming near the house of the deceased. As per PW-9 Anju Ahuja, the police had come to her house on 12.02.2008 alongwith Farid-accused and that he (Farid) led the police to the basement of her house and after opening the lock of the basement, he took out a purse of her husband containing his driving licence and one mobile make 'Nokia 1110' out of a drawer of the table lying there. No suggestion was put that the accused never resided in the premises in question or no such article was recovered at his instance. The prosecution has categorically established that the articles belonging to the deceased were recovered from the possession of the accused and at his instance. The accused did not offer any explanation as to how and under what circumstances the

deceased's articles came into his possession. In the absence of any prior enmity, this witness was not expected to favour the police.

We also do not find any merit in the argument that the mobiles recovered pursuant to the disclosure statement of Farid and Ashok were without SIM cards, therefore, such circumstance creates doubt in the prosecution case. It was on 11.02.2008 during interrogation, all the accused namely Farid (A-1), Dalip (A-3) and Ashok (A-2) suffered disclosure statements Exs.P44, PX and PY respectively with regard to the concealment of the belongings of the deceased. On the same day, they led the police party to the place, where the dead body was thrown and got the place demarcated. However, on the next day i.e. 12.02.2008, accused Farid suffered another disclosure statement Ex.P45 to the effect that his earlier statement was not true and that he had kept concealed the purse and the mobile of the deceased on the basement of his rented accommodation (house of the deceased). Pursuant to such statement, accused Farid led the police party to House No.1103, Sector 9-A, Gurgaon and got recovered a purse of red colour containing driving licence of the deceased Sunil Ahuja and mobile 'Nokia 1110' having IMEI No.353937018461513, but without number and battery. Such recovery process has been witnessed by Anju wife of Dr. Sunil – deceased. She identified the purse and mobile as that of his husband. The mere fact that such mobile is without SIM is not sufficient to doubt the prosecution story, as the deceased was not using such mobile. In fact, the mobile, which the deceased was using, was recovered pursuant to the disclosure statement (Ex.PGG) of accused Ashok from a tank lying in the toilet at the third floor of HUDA Office, Sector 14, Gurgaon vide recovery memo Ex.PJJ. A perusal of recovery memo Ex.PJJ reveals that the mobile phone marked 'Samsung' was switched off and after

activating the same its No. was found to be 9911607548. Though as per PW-17 Pawan Singh, Nodal Officer, said number was in the name of Vinod son of Ganga Ram c/o Bhagat Singh, VPO Khandsa, Gurgaon, but the fact that the deceased was carrying this mobile number has come out in the evidence of PW-4 Rajender Ahuja, father of the deceased and PW-9 Anju Ahuja, wife of the deceased. PW-17 Pawan Singh also proved the call details relating to mobile No.9911607548 as Ex.P32, which show that two outgoing calls were made to Mobile No.9871928074 at 4.45 AM and 4.47 AM on 06.02.2008. Such details also show that there are incoming calls from mobile No.9871928074 at 4.52 AM and mobile No.9810416297 (Anju Ahuja) on 06.02.2008 at about 5.03 AM.

The argument that *dupatta* and jacket are the articles commonly available and there is no particularity attached with such articles said to be recovered pursuant to the disclosure statement of appellant Farid is also not tenable. Both *dupatta* and jackets were taken into possession pursuant to the disclosure statements Ex.P44; Ex.PX and Ex.PY made by all the accused. Such *dupatta* was used in strangulating the deceased. As per PW-1 Dr. Mahesh Narang, MO, General Hospital, Rewari, who conducted the post-mortem examination on the dead body of Sunil Ahuja, the cause of death is asphyxia due to strangulation, which was anti mortem in nature and sufficient to cause death in due course of nature. No doubt, *dupatta* and jacket are the articles commonly available, but it cannot be said that the *dupatta* recovered from near the place from where the dead body was found, is not a circumstance against the accused. The recovery of an article purported to be used in the commission of an offence and its recovery from near the dead body is relevant fact.

Similarly, the jacket was recovered vide recovery memo Ex.PCC pursuant to

the disclosure statement of accused Farid from the waste and scrap lying on a vacant plot near Toll Tax Barrier, Kherki Daula on the road from Jaipur to Delhi. There is no material on the file to show that the place of concealment of Jacket was visible to all. Accused-appellant concealed the Jacket. It was within his exclusive knowledge and it is he who led the police party to the aforesaid place and got recovered the same from the waste and scrap lying on a vacant plot near Toll Tax Barrier. All the three accused in their confessional statements disclosed the place where the body was thrown after the murder. Even otherwise in view of the natural, wholly truthful and convincing statements of the prosecution witnesses, the prosecution case is said to be proved beyond reasonable doubt.

We also do not find any merit in the argument that recovery of gold locket of the deceased vide memo Ex.PLL pursuant to the disclosure statement of Dalip (Ex.PHH) is not that of reliable nature. After his arrest on 10.02.2008, the accused Dalip suffered disclosure statement (Ex.PX) on 11.02.2008 disclosing that he has kept concealed the gold locket of Dr. Sunil in Bawal Factory Area at the tenanted room of his friend. However, on 13.02.2008, accused Dalip improved his earlier disclosure statement (Ex.PX) and disclosed vide disclosure statement Ex.PHH that he had kept concealed the gold locket of deceased in his own room of house situated in Ambedkar Nagar under the pillow lying on his cot. It is, thereafter, accused Dalip got recovered the gold locket from the disclosed place pursuant to his disclosure statement Ex.PHH. The said fact cannot be doubted only for the reason that no independent witness has been examined, when such fact is proved by PW-23 Inspector Radhey Shyam. The mere fact that such witness is the police official is not sufficient to discard his testimony. Being police official, the Court may

scrutinize his statement with more care and caution. But if after careful and cautious scrutiny, the Court comes to the conclusion that the same is reliable and trustworthy, the same can be made basis for conviction. There is nothing on record that the official witness was inimical towards the accused. He had no ill-will or enmity against the accused to falsely implicate them in the present case. From the statements of the prosecution witnesses, it cannot be accepted that such gold locket has been planted against accused Dalip. There is nothing to suggest that as to why PW-23 Inspector Radhey Shyam would falsely implicate the accused.

The argument that motive to commit crime remained unproved, as such the prosecution case cannot be said to be free from doubt is again not tenable. The prosecution has led evidence of financial transactions between the deceased and the accused Farid. Farid had his companions Dalip and Ashok. The evidence led by the prosecution is that Sunil Ahuja – deceased and Farid were having partnership in the business of finance. In this regard, partnership deed Ex.P42 dated 12.06.2007 has been proved. Though accused Farid has denied his signatures on this partnership deed, but PW-22 Gulshan Rai, Deputy Director, FSL, Madhuban, who compared the signatures of appellant Farid on partnership deed dated 12.06.2007 (Ex.P42) with his standard signatures on various documents such as vakalatnama, Fard and remand letter, opined that the signatures are of one and the same person. He also proved his report Ex.PQ in this regard. Thus, it stands established that Farid was having partnership in the finance business with Sunil Ahuja – deceased. While stepping into witness box, PW-9 Anju, wife of Sunil Ahuja – deceased, has deposed that 10 or 15 days before the occurrence, her husband told her that a sum of Rs.1 lac was borrowed by Farid accused and that he was reluctant in

repaying the same. It has also come in evidence that all the accused were on visiting terms to Dr. Sunil Ahuja. PW-4 Rajender Ahuja and PW-9 Anju Ahuja expressed suspicion on all the accused on 08.02.2010, as they were missing since 05.02.2008. As per call details pertaining to the mobiles of Dalip, Farid and Ashok numerous calls have been exchanged on 05.02.2008 and on 06.02.2008. Except false implication, there is no explanation as to why all the appellants were talking frequently on phone in the odd hours and in close proximity of the occurrence. The evidence produced by the prosecution clearly established that all the three accused have conspired together and are actively involved in the commission of crime. With this evidence, it cannot be said that accused are entitled to any benefit on this account.

In view of the above, we find that the learned trial Court has considered the entire evidence in correct perspective to return a finding that the prosecution has succeeded in proving the charges against the appellants. The judgment of conviction and order of sentence recorded by the learned Additional Sessions Judge do not suffer from any patent illegality or irregularity.

Consequently, the present appeals are dismissed.

(HEMANT GUPTA)
JUDGE

October 9, 2015
Vimal

(LISA GILL)
JUDGE