

**IN THE HIGH COURT FOR THE STATES OF PUNJAB &
HARYANA, AT CHANDIGARH**

Date of Decision: August 04, 2015

Criminal Appeal No. D -332-DB of 2011

Sonu aka Surender --- Appellant

Versus

State of Haryana ---Respondent

WITH

Criminal Appeal No. D-478-DB of 2011

Naveen aka Bholi ---Appellant

Versus

State of Haryana ---Respondent

Criminal Appeal No. D-567-DB of 2011

Lalit and others ---Appellants

Versus

State of Haryana ---Respondent

Criminal Revision No. 3147 of 2009

Naveen aka Bholi ---Petitioner

Versus

State of Haryana ---Respondent

AND

Criminal Revision No. 333 of 2012

Paras Ram ---Petitioner

Versus

State of Haryana and others ---Respondents

CORAM : **HON'BLE MR. JUSTICE T.P.S. MANN**

HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN

Present: Shri Vikram Punia, Advocate for the appellant
(In Criminal Appeal No. D-332-DB of 2011).

Shri Anuj Balian, Advocate for the appellants
(In Criminal Appeal No. D-567-DB of 2011).

None for the appellant
(In Criminal Appeal No.D-478-DB of 2011).

None for the petitioner
(In Criminal Revision No.3147 of 2009).

Shri Bijender Dhankar, Advocate for the petitioner
(In Criminal Revision No.333 of 2012).

Shri Dhruv Dayal, Deputy Advocate General, Punjab
for the respondent-State.

1. *Whether Reporters of local papers may be allowed to see the Judgment? Yes/No*
2. *To be referred to the Reporter or not? Yes/No*
3. *Whether the judgment should be reported in the Digest? Yes/No*

MAHAVIR S. CHAUHAN, J.

Appellants herein and Mohammad Bilal Anwar Ashrafi were tried for the offences punishable under Sections 364 read with Section 34, Section 120-B, Section 302 read with Section 34 and Section 201 read with Section 34 of the Indian Penal Code, 1860 (here-in-after referred to as the 'IPC') and vide judgment of conviction dated March 14, 2011 and order of sentence dated March 15, 2011 have been convicted and sentenced by the court of learned Additional Sessions Judge, Sonipat (here-in-after referred to as the 'trial court') as under:

Name	Section (IPC)	Sentence (RI)	Fine (Rs.)	In default
Lalit	302/34 364A/34 120-B	Life Imprisonment Life Imprisonment Life Imprisonment	2000/- 2000/- 2000/-	2 months 2 months 2 months
Naveen aka Bholi	302/34 364A/34 120-B 201/34	Life Imprisonment Life Imprisonment Life Imprisonment 3 years	2000/- 2000/- 2000/- 2000/-	2 months 2 months 2 months 2 months
Sonu aka Surender	302/34 364A/34 120-B 201/34	Life Imprisonment Life Imprisonment Life Imprisonment 3 years	2000/- 2000/- 2000/- 2000/-	2 months 2 months 2 months 2 months
Mohammad Akbar aka Raju	302/34 120-B	Life Imprisonment Life Imprisonment	2000/- 2000/-	2 months 2 months
Mohammad Anwar aka Disco	302/34 120-B	Life Imprisonment Life Imprisonment	2000/- 2000/-	2 months 2 months
Mohammad Bilal Anwar Ashrafi	201/34	3 years	2000/-	2 months

All the substantive sentences have been ordered to run concurrently.

02. Criminal Appeal No. D-332-DB of 2011 has been brought by Sonu aka Surender, Criminal Appeal No. D-478-DB of 2011 by Naveen aka Bholi and Criminal Appeal No. D-567-DB of 2011 by Lalit, Mohammad Akbar aka Raju and Mohammad Anwar aka Disco, to challenge their conviction and award of punishment while Criminal Revision No. 3147 of 2009 has been brought by Naveen aka Bholi to challenge order dated September 17, 2008 dismissing his application for treating him as a juvenile and Criminal Revision No. 333 of 2012 has been preferred by Complainant Paras Ram to seek enhancement of sentence of the appellants and for grant of adequate compensation. The three appeals and two Criminal Revisions involve common questions of fact and law and, as such, are proposed to be disposed of by this common judgment being penned down in Criminal

Appeal No. D-332-DB of 2011, Sonu aka Surender versus State of Haryana.

Fact situation:

03. Put concisely, prosecution story suggests that Paras Ram (PW1), in addition to being an agriculturist, was also running a weigh-bridge in village Dhatury. His son Dharmesh Kumar (the deceased), aged about twenty years, was studying in BA Part-I in CRA College, Sonipat. At or around 08.30 p.m. on March 27, 2008, Dharmesh Kumar left home in Alto Car bearing registration No. HR 4CA 4838 (belonging to his father, Paras Ram-PW1) saying that he, alongwith his friends, was going to Panipat. At or around 06.30 a.m. on March 28, 2008 he (PW Paras Ram) received a telephone call at his landline telephone from Dharmesh Kumar's cell phone No. 9813827284 asking him to arrange an amount of Rs. 10,00,000/- otherwise, his son, Dharmesh Kumar, who was in the custody of some unknown persons, would be killed. A similar call from that very cell phone was attended to by his nephew, Ashok Kumar (PW2) at about 10.00 a.m. Same message was received repeatedly. He took it lightly thinking it to be a joke. Dharmesh Kumar, however, did not return home and his (Paras Ram's) efforts to trace him out also proved futile. While going to the Police Station, he came across SI Ranjit Singh (PW16) at Bhighan Chowk and narrated before him the whole episode in the form of a statement, Exhibit PA, based whereupon a formal First Information Report (here-in-after referred to as the 'FIR'), Exhibit PA/2, was recorded at Police Station, Murthal under Section 364A, IPC, at 06.25 a.m. on March 29, 2008 by ASI Rajbir Singh.

Investigation:

04. During investigation, on March 29, 2008 Rajbir (PW3) told the

Investigating Officer that while returning from Sonipat to his village Bhighan at or around 08.30 p.m. on March 27, 2008 when he reached Bhighan Chowk on the G.T. Road, he saw that Dharmesh Kumar was driving a Alto Car bearing registration No. HR 4CA 4838 and Naveen aka Bholi was occupying the seat by his side while Lalit and Sonu aka Surender were occupying the rear seat. Investigating Officer, accordingly, arrested appellant Naveen aka Bholi on March 30, 2008 who, vide disclosure statement, Exhibit PE, confessed to have killed Dharmesh Kumar and to have kept concealed the car etc. at Bilaspur (Madhya Pradesh). Offence of Section 302, IPC, therefore, was added.

05. In the meantime, on March 30, 2008 at or around 01.45 p.m. Police of Police Station, Bawana (Delhi) received a call from some unknown person from a public telephone that a dead body was floating in Bawana Canal (also called West Yamuna Canal) near Hanuman Mandir. ASI Karan Singh (PW13) reached the disclosed place; got the dead body salvaged; got its photographs (Exhibits P20 to P29) clicked; got the spot inspected by mobile crime team; after dead body was identified by Ashok Kumar (PW2) and Rajbir (PW3), he prepared Inquest Report, Exhibit PP/1; and sent the dead body for autopsy. A team of doctors, including Dr. Kulbhushan Goel (PW10), conducted post mortem on the dead body.

06. Investigating Officer arrested Sonu aka Surender and Lalit on March 31, 2008 and Mohammad Akbar aka Raju and Mohammad Anwar aka Disco on April 01, 2008. On being interrogated, Mohammad Akbar aka Raju made a disclosure statement and thereby offered to get recovered the mobile phone used by him to talk to Lalit while Mohammad Anwar aka Disco, vide his disclosure statement, Exhibit PK/1, offered to get recovered

the cable wire used to kill Dharmesh Kumar by strangulating his neck before his dead body was thrown by Lalit, Sonu aka Surender and Naveen aka Bholi in the canal. They also got recovered, pursuant to their disclosures, mobile phone (Exhibit P20) and the cable wire (Exhibit P4).

07. During interrogation, Sonu aka Surender also suffered a disclosure statement, Exhibit PG, on April 03, 2008 and pursuant thereto got recovered mobile phone, Exhibit P1, belonging to Dharmesh Kumar. Lalit also made a disclosure statement, Exhibit PH, and pursuant to it got recovered one pick-axe (Kassi), Exhibit P2, pieces of cable wire, Exhibits P3 to P5, and one mobile phone, Exhibit P6. Naveen aka Bholi suffered another disclosure statement, Exhibit PJ, and pursuant to it got recovered the Alto Car, Dharmesh Kumar's purse, Exhibit P7, his identity card, Exhibit P8, issued by his college, another identity card, Exhibit P9, issued by Hartron Workstation, Registration Certificate of the car, Exhibit P10, and two learning licences, Exhibits P11 and P12 as also photographs, Exhibits P13 to P18 of Dharmesh Kumar and Exhibit P19 of some unknown person.

08. Mohammad Bilal Anwar Ashrafi also suffered a disclosure statement, Exhibit PC, and pursuant thereto got recovered the motor cycle statedly used in the commission of the crime.

09. Visual site plan, Exhibit PT, of the place of occurrence as also Exhibits PT/1 to PT/5 of the places of recoveries were prepared, statements of witnesses were recorded and on completion of investigation a report in terms of sub-section (2) of Section 173 of the Code of Criminal Procedure, 1973 (here-in-after referred to as 'the Code') was prepared and was presented before the learned Jurisdictional Magistrate.

Proceedings before the trial court:

10. On committal of the case to the Court of Session, learned trial court, having found a prima facie case for commission of the offences punishable under Section 364 read with Section 34, Section 120-B, Section 302 read with Section 34 and Section 201 read with Section 34, IPC, against the accused, charged them for those offences. Accused pleaded not guilty to the charge and claimed to be tried.

11. During trial Paras Ram (PW1), besides reiterating the prosecution story, proved his statement, Exhibit PA. Ashok Kumar (PW2) corroborated statement of Paras Ram (PW1) to the extent of receipt of repeated ransom calls and added that Rajbir (PW3) had told him that he had seen Dharmesh Kumar in the company of Naveen aka Bholi, Lalit and Sonu aka Surender and that in his presence mobile phone (Exhibit P1) of Dharmesh Kumar was recovered at the instance of Sonu aka Surender while Lalit's disclosure had led to recovery of a pick-axe, Exhibit P2, broken pieces of cable wire, Exhibits P3 to P5, and a mobile phone, Exhibit P6. Rajbir (PW3) reasserted on oath that at or around 08.30 p.m. on March 27, 2008 he had seen Dharmesh Kumar in the company of Naveen aka Bholi, Sonu aka Surender and Lalit in a car bearing registration No. HR 4CA 4838. Raj Kumar (PW4) revealed that in his presence Naveen aka Bholi had suffered a disclosure statement, Exhibit PJ, and pursuant to it had got recovered belongings of Dharmesh Kumar (the deceased). Maman (PW5) apprised the learned trial court that he had witnessed recovery of a mobile phone, Exhibit P20, and a cable wire, Exhibit P4, at the instance of Mohammad Akbar aka Raju and Mohammad Anwar aka Disco, respectively.

12. HC Kartar Singh (PW6), HC Bijender Singh (PW7), HC Tejpal (PW8), Fingerprints Expert, Achal Singh (PW9), SI Matadin (PW11), Dr. Randip Kumar (PW12), ASI Karan Singh (PW13), Patwari Satbir Singh (PW14), EHC Ramphal (PW15), and SI Ranjit Singh (PW16) highlighted how the investigation in the matter progressed while Dr. Kulbhushan Goel (PW10), in addition to proving on record post mortem report, Exhibit PP, stated that dead body of the deceased was brought to the hospital with the history that it was found in Western Yamuna Canal, near Sector 2, Bawana and on examination of the dead body on March 31, 2008, it was found:

- i. there was ligature pressure abraded contusion mark all around the neck running transversely about 5 cms below the ears, of width about 3 cms over front and 2 cms on the back. Ligature mark was well marked and the skin above and below was dark greenish while ligature marks were pinkish brown; and
- ii. there was full skin deep cut (incised) slightly curved 5 cms long and 0.2 cms wide, transversely placed over middle and right side of forehead with bruising at margins.

On dissection of the body there was massive subcutaneous and platysmal bruising over front and sides of neck. Deeper neck layers were also bruised with extra vasation of blood. Signs of early decomposition were also seen in soft tissues. There was fracture sub luxation of left superior horn of thyroid with mark bruising around.

Further, according to Dr. Kulbhushan Goel (PW10), all the injuries were ante mortem in nature; injury No. 1 was a ligature mark; injury No. 2 was caused by a relatively sharp-edged weapon; cause of death was asphyxia consequent upon ligature strangulation; mode of death was homicidal; ligature pressure over the neck was sufficient to cause death in ordinary course of nature; and time elapsed since death was about three and

half days.

13. Accused denied the incriminating circumstances appearing in the prosecution evidence when put to them in terms of Section 313 of the Code and reasserted plea of their innocence and false implication.

14. No evidence in defence was adduced.

15. Learned trial court, on hearing both the sides and appraising the evidence, concluded that the prosecution was able to prove guilt of the accused beyond reasonable doubt and, as such, convicted and sentenced them as here-in-before stated.

16. We have heard learned counsel for the appearing parties besides examining the record.

Evidence analysed:

17. In the first instance it has been argued on behalf of the appellants that Paras Ram (PW1) being the father, Ashok Kumar (PW2) and Raj Kumar (PW4) being cousins, and Maman (PW5) being elder brother of brother-in-law (sister's husband) of the deceased (Dharmesh Kumar) and Rajbir (PW3) being fast friend of Ashok Kumar (PW2) are highly interested in the success of the prosecution story and, as such, evidence of these witnesses cannot be relied upon in the absence of independent corroboration which is conspicuously missing in the instant case. The contention, in our considered opinion, lacks merit.

18. The term 'interested' postulates that the witness has some direct or indirect 'interest' in having the accused somehow or other convicted due to animus or for some other oblique motive (per **Namdeo v. State of Maharashtra, 2007(4) SCALE 337:2007(4) JT 618**). Further, interested evidence is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. Nor can

it be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon. Although in the matter of appreciation of evidence, no hard and fast rule can be laid down, yet, in most cases, in evaluating the evidence of an interested or even a partisan witness, it is useful as a first step to focus attention on the question, whether the presence of the witness at the scene of the crime at the material time was probable. If so, whether the substratum of the story narrated by the witness, being consistent with the other evidence on record, the natural course of human events, the surrounding circumstances and inherent probabilities of the case, is such which will carry conviction with a prudent person. If the answer to these questions is in the affirmative, and the evidence of the witness appears to the court to be almost flawless, and free from suspicion, it may accept it, without seeking corroboration from any other source. Since perfection is seldom to be found, and the evidence of a witness, more so of an interested witness, is generally fringed with embellishment and exaggerations, however, true in the main, the court may look for some assurance, the nature and extent of which will vary according to the circumstances of the particular case, from independent evidence, circumstantial or direct, before finding the accused guilty on the basis of his interested testimony (vide **Hari Obula Reddy & Ors. Vs. The State of Andhra Pradesh, (1981) 3 SCC 675**).

19. Paras Ram (PW1) being father of the deceased, it was natural that the kidnappers would call him to ask for ransom. Similarly, nothing unnatural can be seen in this witness disclosing the factum of ransom call to his nephew, Ashok Kumar (PW2) and the latter attending the subsequent call(s). Learned counsel for the appellants have attempted to discredit evidence of these witnesses with regard to receipt of ransom calls by contending that number of the landline telephone and call details of the mobile phone used for the purpose have not been proved and for that reason an adverse inference needs to be drawn against the case of the prosecution as best evidence has been withheld from the court. The contention, however, has failed to impress us firstly because, as stated here-in-before, it was most natural for these two witnesses to receive the ransom calls and secondly, rather more importantly, because defence did not cross-examine these witnesses as regards their depositions with regard to receipt of ransom calls by them and, as such, is deemed to have accepted their statements as correct.

20. Rajbir (PW3) is an auto-rickshaw driver and usually ferries passengers between village Bhighan and Sonipat. He being friendly with Ashok Kumar (PW2) can be presumed to be acquainted with the deceased (Dharmesh Kumar), his cousin. Appellants Naveen aka Bholi, Sonu aka Surender and Lalit, as revealed by this witness, are known to him since their birth, they being from his village. While going to Sonipat when he stopped his auto-rickshaw at Bhighan Chowk on the G.T. Road to let some passengers alight therefrom at or around 08.30 p.m. on March 27, 2008, he saw the above-stated three appellants and the deceased in the car that had stopped there to ensure that main road was clear so as to enable the car to

cross it. We do not see anything uncommon or unnatural in this part of the testimony of Rajbir (PW3). Not only this, even the defence has thought it wasteful to confront him with a suggestion that he did not see the deceased (Dharmesh Kumar) in the company of appellants Naveen aka Bholi, Sonu aka Surender and Lalit at or around 08.30 p.m. on March 27, 2008, as stated by him.

21. Evidence of Rajbir (PW3) with regard to recovery of Alto Car and belongings of the deceased (Dharmesh Kumar) finds corroboration in the depositions of Ashok Kumar (PW2), EHC Ramphal (PW15) and SI Ranjit Singh (PW16). Similarly, his statement that appellant Sonu alias Surender got recovered mobile phone, Exhibit P1, belonging to the deceased pursuant to his disclosure statement, Exhibit PG, and appellant Lalit made a disclosure statement, Exhibit PH, and pursuant to it got recovered one pick-axe (Kassi), Exhibit P2, pieces of cable wire, Exhibits P3 to P5, and one mobile phone, Exhibit P6, find support in the depositions of Ashok Kumar (PW2) and SI Ranjit Singh (PW16).

22. An effort has been made to discredit evidence of Rajbir (PW3) by pointing out that while identifying the dead body of the deceased at the time of its recovery from the canal he had revealed that he is a farmer by profession but while appearing as PW3 before the learned trial court he has described himself as an auto-rickshaw driver. The effort, in our well thought view, deserves outright rejection firstly because no law prohibits a farmer from running an auto-rickshaw while being engaged in the avocation of farming; secondly because when he described himself as an auto-rickshaw driver defence did not think it necessary to cross-examine him on this aspect of his statement, nor has he been confronted with a suggestion to the

contrary; and lastly because he has not been confronted with his statement made before the police of Police Station, Bawana, describing himself as a farmer and, as such, provisions of Section 145 of the Indian Evidence Act, 1872 ('Evidence Act' for short) have remained uncomplied with and, consequently, the contention so raised by the defence becomes unavailable to it.

23. Another endeavor to discredit evidence of Rajbir (PW3) has been put in by the learned counsel for the appellants by referring to a sentence in his cross-examination saying that appellants Naveen aka Bholi, Sonu aka Surender and Lalit did not meet him often for many days and inspite of the time being 08.30 p.m. (meaning dark) he could identify their faces as also that of the deceased (Dharmesh Kumar). It has also been contended that it is quite improbable that this witness could meet the afore-stated appellants and the deceased at Bhighan Chowk on the G.T. Road at 08.30 p.m. even though according to Paras Ram (PW1) the deceased had left his house at 08.30 p.m. itself. However, we find the criticism to be totally unfounded. Evidence of a witness, as per settled position, has to be considered in its entirety and no conclusions can be drawn by picking stray sentences from here and there. If the evidence of Rajbir (PW3) is read as a whole, it comes out that the three appellants seen by him with the deceased belong to his village, i.e. village Bhighan and he has been very categorical in saying that he knows them since their birth, they being residents of his village and that where car of the deceased had stopped and was seen by him, there was sufficient light. As regards the time of departure of the deceased from his house and the time when he was seen by this witness in the company of the afore-stated three appellants, it only needs to be stated that

Paras Ram (PW1) and Rajbir (PW3) have given the time by approximation and, incidentally, defence has not questioned their statements with regard to departure of the deceased from his house and Rajbir (PW3) having seen him in the company of Naveen aka Bholi, Sonu aka Surender and Lalit.

24. Raj Kumar (PW4) has deposed with regard to recovery of the Alto Car and Dharmesh Kumar's purse, Exhibit P7, his identity card, Exhibit P8, issued by his college, another identity card, Exhibit P9, issued by Hartron Workstation, Registration Certificate of the car, Exhibit P10, and two learning licences, Exhibits P11 and P12 as also photographs, Exhibits P13 to P18 of Dharmesh Kumar and Exhibit P19 of some unknown person, from a deserted brick kiln pursuant to disclosure statement, Exhibit PJ, suffered by Naveen Kumar aka Bholi while being interrogated in police custody. His evidence to this effect has been corroborated by the depositions of Rajbir (PW3), EHC Ramphal (PW15) and SI Ranjit Singh (PW16).

25. Similarly, evidence of Maman (PW5) with regard to recovery of a mobile phone, Exhibit P20, at the instance of appellant Mohammad Akbar aka Raju pursuant to his disclosure statement, Exhibit PK, and that of piece of cable wire, Exhibit P4, at the instance of Mohammad Anwar aka Disco pursuant to his disclosure statement, Exhibit PK/1, has been duly corroborated by what has been stated by SI Ranjit Singh (PW16).

26. It may not be out of place to point out here that the defence has not been able to bring on record anything, either in the cross-examination of the witnesses examined by the prosecution or by leading evidence in defence, to show that witnesses examined by the prosecution either had an animus hostile to the accused or have derived any benefit for themselves or

for someone else they may be interested in, by getting the accused falsely implicated in this case. Further, death of Dharmesh Kumar by strangulation has remained undisputed and it is absolutely improbable and unbelievable that PWs Paras Ram, Ashok Kumar, Raj Kumar and Maman would enact a false story to implicate the accused herein and let the real culprit(s) go scot free.

Recovery of Pick-axe, Exhibit P2:

27. It is also sought to be argued on behalf of the appellants that recovery of pick-axe, Exhibit P2, at the instance of appellant Lalit is an evident effort of the prosecution to introduce false evidence in so far as it is nobody's case that a pick-axe was used in the occurrence. The endeavor, however, lacks substance. Ashok Kumar (PW2), Rajbir (PW3) and SI Ranjit Singh (PW16) have been unanimous as regards recovery of pick-axe, Exhibit P2, at the instance of appellant Lalit. It has come in the evidence of Dr. Kulbhushan Goel (PW10) that one of the injuries found on the body of the deceased (Dharmesh Kumar) was a "full skin deep cut (incised) slightly curved 5 cms long and 0.2 cms wide, transversely placed over middle and right side of forehead with bruising at margins". Such a wound is possible by use of a pick-axe which has a curved edge. Dr. Kulbhushan Goel (PW10), incidentally, has not been cross-examined on behalf of the defence nor has he been confronted with a suggestion that such a wound is not possible by use of a pick-axe as Exhibit P2 is.

Role of Mohammad Akbar alias Raju & Mohammad Anwar alias Disco:

28. Towards the end, it has been argued, and we feel successfully, on behalf of Mohammad Akbar alias Raju & Mohammad Anwar alias Disco that the prosecution has failed to show how names of these appellants came

to the light and has also failed to bring any evidence, whatsoever, to connect them with the crime. It comes out from the record that SI Ranjit Singh (PW16), Investigating Officer of the case, has only said that he arrested these appellants on April 01, 2008 and that on being interrogated they suffered disclosure statements, Exhibits PK and PK/1, respectively, inter alia, confessing that they had killed the deceased (Dharmesh Kumar) at the instance of appellants Sonu alias Surender and Naveen alias Bholi; and also got recovered a mobile phone, Exhibit P20, statedly used by Mohammad Akbar aka Raju to talk to appellant Lalit, and a cable wire, Exhibit P4, which was statedly used by Mohammed Anwar aka Disco and Lalit to strangle neck of the deceased. The prosecution, however, has not brought any evidence, whatsoever, to establish use of mobile phone, Exhibit P20, and cable wire, Exhibit P4, in the commission of the crime in any manner in so far as call details of the mobile phone to establish link of Mohammad Akbar aka Raju with Lalit and forensic examination of the cable wire to show that it had human blood or fingerprints of Mohammad Akbar aka Raju on it, have not been proved on record while part of statements, Exhibits PK and PK/1, relating to stated confession of these appellants is hit by the provisions of Sections 25 and 26 of the Evidence Act and, as such, is inadmissible in evidence. Beyond this, there is no material to show their complicity or culpability as regards death of Dharmesh Kumar.

Summary:

29. Analysis of the evidence available on record manifestly brings out that the prosecution while being unsuccessful in establishing guilt of appellants Mohammad Akbar alias Raju & Mohammad Anwar alias Disco, has proved, beyond reasonable doubt, that the deceased left his house on

March 27, 2008 (at about 08.30 p.m.) in a Alto Car bearing registration No. HR 4CA 4838 telling Paras Ram (PW1) that he was going to Panipat in the company of his friends; he was last seen in the company of appellants Naveen alias Bholi, Sonu alias Surender and Lalit by Rajbir (PW3) at Bhighan Chowk at or around the same time on that very evening; his dead body was seen floating in Bawana Canal at or around 01.45 p.m. on March 30, 2008; and his belongings and the car as also the pick axe and cable wire used to kill him have been recovered at the instance of appellants Naveen alias Bholi, Sonu alias Surender and Lalit pursuant to their disclosure statements establishing that they alone knew about these articles; and medical evidence brought on record by Dr. Kulbhushan Goel (PW10) has established that besides a curved incised wound on the forehead, on the neck of the deceased there was a ligature mark which was ante mortem in nature and has been responsible for forcing breath out of body of the deceased. Appellants Mohammad Akbar alias Raju & Mohammad Anwar alias Disco, thus deserve an acquittal and the appeals qua appellants Naveen alias Bholi, Sonu alias Surender and Lalit are found to lack merit and, therefore, deserve dismissal.

Criminal Revision No. 3147 of 2009:

30. This Criminal Revision has been preferred by Naveen alias Bholi to impugn the correctness of order dated September 17, 2008 whereby his prayer to treat him as a juvenile has been discarded by learned Principal Magistrate, Juvenile Justice Board, Sonapat.

31. As nobody has put in appearance on behalf of the petitioner, we have perused the record and it is found that the learned Juvenile Justice

Board recorded statement of Suresh Kumar (AW1), father of the petitioner in support of petitioner's claim for declaring him a juvenile and those of Sheela Devi (RW1) and SI Chandervir Singh (RW2) on behalf of the respondent-State and after an in-depth analysis of the evidence produced on both the sides, recorded a definite finding that the petitioner was not a juvenile on the date of the occurrence.

32. A perusal of the impugned order reveals that on behalf of the petitioner reliance was placed on photocopies of Middle Standard Examination and Secondary School Examination, Exhibits A1 and A2, respectively, to show that date of birth of the petitioner is April 06, 1991 and the respondent-State had relied upon Birth Certificate, Exhibit RW2/A showing that a son named Ganga Ram was born to Suresh and Leelawati of village Bhighan on December 09, 1987 and photocopy of Admission and Withdrawal Register (Exhibit DW1/A) showing that Naveen son of Suresh Kumar of village Bhighan had date of birth November 10, 1988 (in words) and 10.11.1984 (in figures). Statement of Suresh Kumar father of the petitioner is also available on record wherein he has very categorically stated that he has one daughter and one son and had got recorded date of birth of his son in the register maintained by village Chowkidar. Learned Juvenile Justice Board read this statement alongwith that of SI Chandervir Singh (RW2) according to whom son of Suresh Kumar was initially named Ganga Ram and his name was later on changed to Naveen. Though the date of birth and name as recorded in Exhibit DW1/A does not tally with the date of birth and name in Exhibit RW1/A, but admission of Suresh Kumar (AW1) that he has only one son and his failure to produce the date of birth entry in village Chowkidar's record as also to rebut statement of SI

Chandervir Singh (RW2) that name of Suresh Kumar's son was changed from Ganga Ram to Naveen at a later date, coupled with the common practice prevalent in the rural areas of getting date of birth entry recorded at the time of admission of a child, by approximation and at times on the lower side, renders interference with the finding recorded by the learned Juvenile Justice Board rejecting petitioner's claim of juvenility, uncalled for, moreso in view of the fact that the impugned order does not suffer from any procedural and/or jurisdictional error which could warrant such interference.

Criminal Revision No. 333 of 2012:

33. Criminal Appeal-D-748-DB of 2010 was filed by complainant Paras Ram to seek enhancement of sentence awarded to the appellants and for grant of suitable compensation to him. However, vide order dated January 31, 2012 this Court ordered that it be treated as a Criminal Revision and ordered to be heard alongwith Criminal Appeal-D-478-DB of 2011. Learned counsel for the petitioner though has confined the prayer to grant of compensation only but has failed to show any material to justify petitioner's prayer for compensation as also to explain why remedy of bringing a suit for compensation/damages has not been availed of. Section 357 of the Code allows discretion to the learned trial court to order the whole or any part of the fine recovered to be applied in defraying the expenses properly incurred in the prosecution or in the payment of compensation to any person for any loss or injury caused to him by the offence. Learned counsel for the petitioner has not been able to point out any illegality, irregularity or jurisdictional error in manner the learned trial court has dealt with the matter of compensation. In this view of the matter, we regret our disinclination to interfere.

Conclusion:

34. As a natural consequence of what has been said and discussed in the preceding paragraphs, Criminal Appeal No. D-332-DB of 2011, brought by Sonu aka Surender, Criminal Appeal No. D-478-DB of 2011, brought by Naveen aka Bholi, Criminal Revision No. 3147 of 2009, brought by Naveen aka Bholi to challenge order dated September 17, 2008 dismissing his application for treating him as a juvenile and Criminal Revision No. 333 of 2012, preferred by Complainant Paras Ram to seek compensation are dismissed. Criminal Appeal No. D-567-DB of 2011 brought by Lalit, Mohammad Akbar aka Raju and Mohammad Anwar aka Disco is dismissed as regards appellant Lalit but is accepted as regards appellants Mohammad Akbar aka Raju and Mohammad Anwar aka Disco and both of them are acquitted of the offences of which they have been charged and convicted. They shall be set at liberty forthwith provided that they are not wanted in any other case. Amount of fine, if already deposited by them, shall be refunded to them as per procedure known to law.

[T.P.S. Mann]
Judge

[Mahavir S. Chauhan]
Judge

August 04, 2015
adhikari