

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

Date of Decision: March 31, 2015

Criminal Appeal-D-05-DB of 2011

Krishan --- Appellant

Versus

State of Haryana ---Respondent

AND

Criminal Appeal-D-06-DB of 2011

Shamsher Singh --- Appellant

Versus

State of Haryana ---Respondent

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

Present: Shri Gaurav Gupta, Advocate for the appellants.

Shri Randhir Singh, Additional Advocate General, Haryana 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.

These two appeals brought by convicts Krishan and Shamsher

Singh are directed against judgment of conviction dated November 16, 2010

and order of sentence dated November 18, 2010 whereby learned Additional Sessions Judge, Narnaul (here-in-after referred to as, 'the trial court') has convicted and sentenced them as under:

Under Section (IPC)	Sentence (R.I.)	Fine (Rs.)	In Default (R.I.)
397/34	Seven years	1,000/-	01 year
302/34	Life	2,000/-	02 years
201/34	Three years	500/-	01 month

All the substantive sentences have been ordered to run concurrently.

Factual Matrix:

02. Conspectus of events leading to filing of the instant two appeals, put as concisely as one may, reflects that Surender Singh aka Satender aka Kala (the deceased), who was working as a driver with M/s. JSP Service Pvt. Ltd., New Delhi, drove a truck bearing registration No. HR 55B 4965, loaded with tube steel pipes fixed behind refrigerators, from Indore (Madhya Pradesh) to go to Delhi. On May 17, 2008 SI Dilbagh Singh (PW15), on receipt of information that dead body of an unknown person was lying at Kotputli Road in the area of village Nangal Sodha, reached there and on verification having come to know that the deceased belonged to village Khedar, informed his relatives. Nanak (PW3), brother of the deceased, informed Hari Kishan (PW13), maternal uncle of the deceased. Hari Kishan (PW13) and Nanak (PW3) went to the disclosed spot and identified dead body of the deceased. Hari Kishan (PW13) made a statement, Exhibit PQ, before the investigating officer at 09.35 a.m. on May 17, 2008, based whereupon a formal First Information Report (for short, 'FIR'), Exhibit PF, was recorded at 10.30 a.m on that very day by ASI

Ganeshi Lal (PW7). SI Dilbagh Singh (PW15) inspected the spot; prepared rough site plan, Exhibit PA, and inquest report, Exhibit P2; got the spot photographed; and recorded statements of witnesses. Dr. Ashok Kumar (PW9) and Dr. Rekha Yadav conducted post mortem on the dead body of the deceased.

03. In the meanwhile, SI Hira Lal (PW10), while posted at CIA Staff, Jind, received a secret information on May 19, 2008 that the appellants herein had looted the goods loaded in the truck after killing the deceased and were trying to sell the looted goods in the area of Police Station, Uchana. He, accordingly, reached there and arrested the appellants under sub-section (1) of Section 41 of the Code of Criminal Procedure, 1973 ('CrPC', for short). When interrogated, appellants suffered disclosure statements, Exhibit PK, and Exhibit PL, under Section 27 of the Indian Evidence Act, 1872 ('Evidence Act', for short) and pursuant thereto got demarcated the place where the truck was parked as also the loaded truck, vide memorandum, Exhibit PM.

04. On May 20, 2008 when the appellants were being produced before learned Area Magistrate at Narwana, investigating officer, having come know of it, reached the court and with the leave of the court formally arrested the appellants. On being interrogated appellants suffered disclosure statements, Exhibits PR and PS, and pursuant thereto got demarcated, vide memorandum, Exhibit PT, the place where dead body of the deceased was thrown by them, besides getting recovered, vide memorandum, Exhibit PE, a spare wheel of the truck, Exhibit P1, and deed of mortgage, Exhibit PD, vide which the spare wheel was mortgaged by the appellants with

Dharambir (PW4).

05. On May 21, 2008, on being interrogated again, appellants suffered disclosure statements, Exhibits PU and PV, and pursuant to these statements got recovered, vide memorandum, Exhibit PX, chappals (Exhibits P8 and P9), and clothes of the deceased (Exhibits P6 and P7) from underneath the long seat at the back of driver's seat of the recovered truck.

Proceedings before committing & trial court:

06. On completion of investigation, a report in terms of sub-section (2) of Section 173, CrPC, was presented before the learned Area Magistrate.

07. After the case was committed to the Court of Session, learned trial court, on hearing the prosecutor and the defence, found a prima facie case triable under Sections 302, 397 and 201 read with Section 34 of the Indian Penal Code, 1860 ('IPC', for short) to be made out against the appellants and charged them accordingly. Appellants pleaded not guilty to charge and claimed to be tried.

08. During the trial deceased's brother Nanak (PW3) told the learned trial court that on May 16, 2008 he received a telephonic message from Police Station, Nangal Chaudhary regarding dead body of the deceased; conveyed it to his maternal uncle, Hari Kishan (PW13); accompanied Hari Kishan (PW13) to the disclosed place; and identified dead body of the deceased lying in the ditches near main road, and that a diary, Exhibit P4, recovered from pocket of the deceased was taken in police possession vide memorandum, Exhibit PB. Hari Kishan (PW13) proved his statement, Exhibit PQ, and reasserted on oath the entire prosecution version. Chand Singh Yadav (PW14) informed the learned trial

court that truck bearing registration No. HR 55B 4965 was loaded with DWCB steel tubes from Dewas and was to come to Gurgaon but was looted on the way by some unknown persons. Anoop Singh (PW16) proved that the deceased was employed as a driver by M/s. JSP Service Pvt. Ltd., New Delhi and was coming from Indore to Delhi after loading goods from Indore. Dharambir (PW4) revealed that on May 16, 2008, the appellants had mortgaged with him a spare wheel of a truck for Rs. 2400/- vide deed of mortgage, Exhibit PD, after removing it from the truck. SI Dilbagh Singh (PW15), ASI Ganeshi Lal (PW7), SI Hira Lal (PW10), EHC Raj Kumar (PW11), HC Dharambir (PW8), HC Surender Singh (PW12), Constable Vinod Kumar (PW6), Constable Krishan Kumar (PW5), Photographer Mahender (PW2) and Patwari Data Ram (PW1) deposed with regard to various steps taken for progress of the investigation. Dr. Ashok Kumar (PW9) proved on record post mortem report, Exhibit PJ, and pictorial diagram, Exhibit PJ/1, showing seats of injuries on the person of the deceased and testified on oath that cause of death of the deceased was asphyxia as a result of strangulation which was ante mortem in nature and was sufficient to cause death in ordinary course of nature.

09. Incriminating circumstances appearing in the evidence of the prosecution when put to the appellants in terms of Section 313, CrPC, were denied as incorrect and plea of innocence and false implication was reiterated by them.

10. Appellants did not adduce any evidence in their defence.

11. Learned trial court, on hearing the prosecutor and the defence and appraisal of evidence, reached a conclusion that the prosecution was

able to prove its case beyond reasonable doubt and, accordingly, convicted and sentenced the appellants as here-in-before stated.

For & against the impugned judgment & order:

12. We have appraised the record of the case in the light of the submissions made at the bar.

13. Learned counsel for the appellants has argued that the prosecution has utterly failed to establish its case, much less beyond reasonable doubt. According to him there is no evidence to show that the appellants had any motive to kill the deceased or the deceased either was killed by the appellants or was last seen in their company. Learned counsel though has not disputed that death of deceased was caused by strangulation, as revealed in the post mortem report, Exhibit PJ, and in the deposition of Dr. Ashok Kumar (PW9) but contends that the circumstances brought on record by the prosecution do not even point a finger of suspicion towards the appellants, leave apart proof of their guilt beyond reasonable doubt.

14. Per Contra, learned State counsel has pointed out that Chand Singh Yadav (PW14) has proved that truck bearing registration No. HR 55B 4965 was loaded with DWCB steel tubes from Dewas and was to come to Gurgaon but was looted on the way. Anoop Singh (PW16) has proved that the deceased was employed as a driver by M/s. JSP Service Pvt. Ltd., New Delhi and on the fateful day was driving truck bearing registration No. HR 55B 4965. In their disclosure statements, Exhibits PK, PL, PR, PS, PU and PV, the appellants revealed that they boarded the truck, which the deceased was driving, on the way; killed the deceased by throttling his neck with the help of a “Parna”; mortgaged a spare wheel of the truck to arrange money to

fill diesel tank of the truck; threw dead body of the deceased and the “Parna” in a pit adjacent to the road; and concealed beneath long seat, behind driver’s seat of truck No. HR 55B 4965, underwear, trousers and chappals of the deceased and they ultimately got demarcated, vide memorandum, Exhibit PM, the place where the truck was parked by them, vide memorandum, Exhibit PT, got demarcated the place where dead body was thrown and vide memorandum, Exhibit PX, got recovered the chappals (Exhibits P8 and P9), and clothes (Exhibits P6 and P7) of the deceased, from beneath the long seat behind driver’s seat of the recovered truck and Dharambir (PW4) has revealed that on May 16, 2008, the appellants had mortgaged with him a spare wheel of the truck for Rs. 2400/- vide deed of mortgage, Exhibit PD, after removing it from the above said truck. According to learned State counsel above stated chain of circumstances is complete to such an extent that every hypothesis of innocence of the appellants is ruled out and the only conclusion that can be reached on the basis of the evidence available on record is that the appellants killed the deceased with a view to dishonestly misappropriating the goods loaded in the truck.

15. No other or further point has been urged on either side.

Principles governing a case based on circumstantial evidence:

16. In a case where no direct evidence to prove guilt of an accused is available, or say in a case based on the evidence which is of a circumstantial nature-as the case in hand is, the prosecution is required to pick up and prove bits and pieces of evidence or say the circumstances from which the conclusion of guilt of an accused is to be drawn. Such circumstances should, in first instance, be fully established, and all the facts

so established should be consistent with the hypothesis of guilt of the accused. Not only this, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved, viz. guilt of the accused. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

Linchpin of prosecution's case:

17. In the case in hand death of the deceased by strangulation has been proved by post mortem report, Exhibit PJ, and in the deposition of Dr. Ashok Kumar (PW9). Defence also does not dispute this part of the evidence. But, admittedly, there is no direct evidence to connect the appellants with the killing of the deceased. Prosecution highly relies upon evidence of Chand Singh Yadav (PW14) to show that he has proved that truck bearing registration No. HR 55B 4965 was loaded with DWCB steel tubes from Dewas and was to come to Gurgaon but was looted on the way; that of Anoop Singh (PW16) to claim that the deceased was employed as a driver by M/s. JSP Service Pvt. Ltd., New Delhi and was driving that truck on the fateful day; disclosure statements, Exhibits PK, PL, PR, PS, PU and PV statedly suffered by the appellants to reveal that they (the appellants) boarded the truck, which the deceased was driving, on the way, killed the deceased by throttling his neck with the help of a "Parna", mortgaged a spare wheel of the truck to arrange money to refill diesel tank of the truck; threw dead body of the deceased and the "Parna" in a pit adjacent to the road; and concealed beneath long seat behind driver's seat of truck No. HR

55B 4965, underwear, trousers and chappals of the deceased; demarcation vide memorandum, Exhibit PM, of the place where the truck was parked by the appellants; memorandum, Exhibit PT, of the place where dead body was thrown by them; memorandum, Exhibit PX, whereby the appellants got recovered the chappals (Exhibits P8 and P9), and clothes (Exhibits P6 and P7) of the deceased from beneath the long seat behind driver's seat of the recovered truck; and a revelation made by Dharambir (PW4) that on May 16, 2008, the appellants had mortgaged with him a spare wheel of the truck for Rs. 2400/- vide deed of mortgage, Exhibit PD, after removing it from the above said truck, as they needed money to purchase oil for the truck.

Commencement of journey by the deceased:

18. First of all, point of commencement of journey and destination of the truck, which the deceased was driving, are in doubt. If Hari Kishan (PW13), maternal uncle of the deceased is to be believed, the deceased started his journey from Indore and was to deliver the goods loaded in the truck at Gurgaon and Faridabad. According to Chand Singh Yadav (PW14), Section Head, HRM, STI Sanoh India Pvt. Ltd., the loaded truck was coming from Dewas to Gurgaon and Faridabad. In Goods Receipt, Exhibit PW14/B, address of the consignor is given as STI Sanoh India Ltd., Dewas and that of the consignee as STI Sanoh India Ltd. Faridabad. However, according to Anoop Singh (PW16) the deceased was driver on truck No. HR 55B 4965 and was coming from Indore to Delhi after loading the goods from Indore. No one from Delhi Punjab Freight Carriers, the transporter, has been examined to clear the air as regards the starting point of the journey and destination of the truck.

Four disclosures of the appellants:

19. Reliance placed by the prosecution on disclosure statements, Exhibits PK, PL, PR, PS, PU and PV, statedly suffered by the appellants to reveal that they boarded the truck which the deceased was driving, on the way, killed the deceased by throttling his neck with the help of a “Parna”, mortgaged a spare wheel of the truck to arrange money to refill diesel tank of the truck, threw dead body of the deceased and the “Parna” in a pit adjacent to the road and concealed beneath long seat behind driver’s seat of truck No. HR 55B 4965, underwear, trousers and chappals of the deceased; demarcation vide memorandum, Exhibit PM, of the place where the truck was parked by the appellants; memorandum, Exhibit PT, of the place where dead body was thrown by them; memorandum, Exhibit PX, whereby the appellants got recovered the chappals (Exhibits P8 and P9), and clothes (Exhibits P6 and P7) of the deceased from beneath the long seat behind driver’s seat of the recovered truck, is wholly misplaced.

Scope of Section 27, Evidence Act:

20. It may be noted that Section 25 of the Evidence Act makes inadmissible a confession made to a police officer as against a person accused of any offence and Section 26 of the Evidence Act mandates, “No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person”. Section 27 of the Evidence Act, which makes a “fact discovered in consequence of information received from a person accused of any offence, in the custody of a police officer”, is an exception to Sections 25 and 26 of the Evidence Act. Reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information

given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance, however, attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered. At one time it was held that the expression “fact discovered” in Section 27, Evidence Act is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact (see *Sukhan v. Crown*, AIR 1929 Lah 344 ; *Rex v. Ganee*, AIR 1932 Bom 286). Now it is fairly settled that the expression “fact discovered” includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this.

21. Hon’ble Supreme Court of India interpreted Section 27 of the Evidence Act, in *Mohd. Inayatullah v. State of Maharashtra*, (1976) 1 SCC 828 :AIR 1976 SC 483:1976 SCC(Cri) 199:1976 CriLJ 481 as under:

*“11. Although the interpretation and scope of Section 27 has been the subject of several authoritative pronouncements, its application to concrete cases is **not always free from difficulty. It will therefore be worthwhile at the outset, to have a short and swift glance at the section and be reminded of its requirements. The section says:***

“Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved.”

12. The expression “provided that” together with the phrase “whether it amounts to a confession or not” show that the section is in the nature of an exception to the preceding provisions particularly Sections 25 and 26. It is not necessary in this case to consider if this section qualifies, to any extent, Section 24, also. It will be seen that the first condition necessary for bringing this section into operation is the discovery of a fact,

albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only "so much of the information" as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word "distinctly" means "directly", "indubitably", "strictly", "unmistakably". The word has been advisedly used to limit and define the scope of the provable information. The phrase "distinctly relates to the fact thereby discovered" is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered.

13. *At one time it was held that the expression "fact discovered" in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact (see Sukhan v. Crown, AIR 1929 Lah 344 ; Rex v. Ganee, AIR 1932 Bom 286). Now it is fairly settled that the expression "fact discovered" includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this (see Palukuri Kotayya v. Emperor, AIR 1947 PC 67; Udai Bhan v. State of Uttar Pradesh, AIR 1962 SC 1116)."*

22. Observations made by the Privy Council in ***Palukuri Kotayya v. Emperor, AIR 1947 PC 67***, are to the following effect:

"It is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this and the information given must relate distinctly to this fact. Information as to past user or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the

discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which stabbed A', these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

23. Above-stated statement of law has been reiterated by the Hon'ble Supreme Court of India in ***Amitsingh Bhikamsingh v. State of Maharashtra-AIR 2007 SC 676***.

Inadmissibility of the disclosure statements:

24. When tested on the touchstone of Section 27, Evidence Act and the cited judgments, disclosure statements, Exhibits PK, PL, PR, and PS, are inadmissible in evidence to extent the appellants are shown to have disclosed that they boarded the truck which the deceased was driving, on the way, killed the deceased by throttling his neck with the help of a "Parna", mortgaged a spare wheel of the truck to arrange money to refill diesel tank of the truck, threw dead body of the deceased and the "Parna" in a pit adjacent to the road and concealed beneath long seat behind driver's seat of truck No. HR 55B 4965, underwear, trousers and chappals of the deceased.

Recovery of truck and demarcation of the place where the truck was parked & dead body of the deceased was thrown:

25. Demarcation of the place where the truck was statedly parked and recovery of the truck vide memorandum, Exhibit PM, and demarcation of the place where dead body of the deceased was statedly thrown, vide memorandum, Exhibit PT, are inconsequential because the truck is shown to have been recovered from a public road near the fields of Ratia son of Maman of village Khatkhar. This is not a place which was exclusively in the knowledge of the appellants. It has been admitted by SI Hira Lal (PW10)

and EHC Raj Kumar (PW11) that the place from where the truck is shown to have been recovered is a busy road and traffic police and local police patrol that area frequently. Even some officers pass through that area. It has also come in the deposition of EHC Raj Kumar (PW11) that the truck was parked by the appellants at the place from where it was recovered, two days before the date of recovery, viz. May 19, 2008. This means that the truck was parked there since May 17, 2008. While SI Hira Lal (PW10) has contradicted his own statement with regard to visit to the place of recovery by saying that he did not visit the spot where the truck was parked on May 17, 2008, it is highly unbelievable that the truck remained parked on a busy road for two days and was not noticed by the patrolling police parties, the officers frequenting the road and owner of the nearby fields. Neither any witness from around the place of recovery, nor Ratia, owner of the nearby fields nor any official from Police Station, Uchana, which had jurisdiction over the place of recovery, was joined with the demarcation/recovery.

26. The place where dead body of the deceased was statedly thrown by the appellants is shown to have been demarcated on May 21, 2008 at the instance of the appellants vide memorandum Exhibit PT, pursuant to their disclosures, Exhibits PR and PS recorded on May 20, 2008. It is also found to be an effort of the investigating agency to introduce false circumstances to complete the chain because much prior thereto, viz. on May 16, 2008, Nanak (PW3) had received an intimation from Police Station, Nangal Chaudhary regarding dead body of the deceased and during night on that very day he, accompanied by his maternal uncle, Hari Kishan (PW13), claims to have reached Police Station, Nangal Chaudhary and then, in the company of the police to have reached village Nangal Sodha and to have

found dead body of the deceased lying there in the ditches near the main road. If Hari Kishan (PW13) is to be believed, information with regard to dead body of the deceased was received on May 17, 2008 and on that very day the dead body was recovered. SI Dilbagh Singh (PW15), investigating officer of the case, however, claims to have reached the spot where dead body of the deceased was lying, at about 09.35 a.m. on May 17, 2008 and to have intimated relatives of the deceased (without naming the relatives) on that day only. It may be added here that the prosecution has made no endeavour to reconcile statement of Nanak (PW3) with those of Hari Kishan (PW13) and SI Dilbagh Singh (PW15) as regards date of communicating information with regard to spotting of dead body of the deceased, as also to explain how SI Dilbagh Singh (PW15) was able to identify the dead body as that of the deceased, Surender Singh aka Satender aka Kala, and his relatives and from where he came to know of telephone number of Nanak (PW3) even though he did not know the deceased and his relatives before the date of occurrence.

Recovery of mortgage deed & spare wheel of the truck:

27. Recovery of mortgage deed, Exhibit PD, and spare tyre of the truck, Exhibit P1, vide memorandum, Exhibit PE, is another circumstance relied upon by the prosecution to connect the appellants with the killing of the deceased. These articles are shown to have been recovered by SI Dilbagh Singh (PW15) on May 21, 2008 pursuant to the disclosure statements, Exhibits PR and PS, shown to have been suffered by the appellants before him on May 20, 2008. Interestingly, the appellants are shown to have made a similar disclosure on May 19, 2008 before SI Hira Lal (PW10) vide their statements, Exhibits PK and PL. The question why

necessary recoveries were not effected by SI Hira Lal (PW10) immediately after recording statements, Exhibits PK and PL on May 19, 2008 and what necessitated repetition of the exercise on May 20, 2008 by SI Dilbagh Singh (PW15), has remained unanswered. It may also be noted that in Exhibits PK, PL, PR and PS, the appellants are shown to have mortgaged the spare wheel on a hotel for Rs. 2000/- (without naming the hotel and its location) but the spare wheel, Exhibit P1, and the mortgage deed, Exhibit PD, are shown to have been recovered from Dharambir (PW4), who happened to be a shopkeeper running a general merchandise outlet near Dev Filling Station, Hudina.

Another circumstance that needs mention here is that the mortgage deed, Exhibit PD, mentions the mortgage amount as Rs. 2400/- (as against the figure “Rs. 2000/-” mentioned in Exhibits PK, PL, PR and PS) and Dharambir (PW4) though stated that appellant Shamsheer Singh had come to him to mortgage the spare wheel, Exhibit P1, and had executed the mortgage deed, Exhibit PD, but when called upon to identify appellant Shamsheer Singh, he identified appellant Krishan as appellant Shamsheer Singh and failed to name the person who had removed the spare wheel from the truck before handing it over to him.

Recovery of deceased's belongings:

28. Circumstances attending on recovery of chappals (Exhibits P8 and P9) and clothes (Exhibits P6 and P7) vide memorandum, Exhibit PX, pursuant to disclosure statements, Exhibits PU and PV, stated to be made by the appellants, are still stranger. The disclosures are shown to be made, and these articles recovered on May 21, 2008 from beneath the long seat behind driver's seat of the recovered truck. SI Hira Lal (PW10) claimed that the

truck was taken in possession (on May 20, 2008 vide memorandum, Exhibit PO) after it had been thoroughly frisked and that nothing was recovered from the driver's cabin, while, according to EHC Raj Kumar (PW11) in the driver's cabin were lying some wearing clothes and some clothes for cleansing the vehicle, as also a "Parna". As afore-stated, the truck was taken in police possession by SI Hira Lal (PW10) in the presence of EHC Raj Kumar (PW11) vide memorandum, Exhibit PM, on May 19, 2008. In view of mutually destructive statements of SI Hira Lal (PW10) and EHC Raj Kumar (PW11) and statement of SI Hira Lal (PW10) that the truck was taken in police possession after its thorough frisking on May 19, 2008, recovery of chappals (Exhibits P8 and P9), and clothes (Exhibits P6 and P7) vide memorandum, Exhibit PX on May 21, 2008, is rendered highly doubtful. Even otherwise, it is quite improbable that the appellants would have kept the wearing clothes and chappals of the deceased in the driver's cabin of the truck and thereby facilitate the prosecution to recover and use the same against them even though these articles are not that costly or rare artifacts which could not be destroyed or thrown away.

Apprehension of the appellants:

29. Even time, place and manner of apprehension of the appellants are doubtful. SI Hira Lal (PW10) claims to have started from the Police Station at or around 09/10 a.m. and to have received the secret information at or around 11/12 O'clock in the noon on May 19, 2008. However, according to EHC Raj Kumar (PW11), the police party had left the police station at or around 08.00 a.m. and had reached the disclosed place at about 10.30 a.m. on May 19, 2008. As claimed by EHC Raj Kumar (PW11), SI Hira Lal (PW10) had identified the appellants and there was no market and

no member of the public near the place from where the appellants were apprehended. However, according to SI Hira Lal (PW11), neither he nor anyone else in the police party knew the appellants who were apprehended from in front of a shop and some persons from the public were also present there. Who identified the appellants and how the police reached them, has remained a mystery. Daily Diary Reports (DDR) that might have been recorded indicating time of departure from, and return of the police party headed by SI Hira Lal (PW10) to, the police station after apprehension of the appellants, have been kept away from the Court.

Motive:

30. Even claim of the prosecution that motive behind killing of the deceased by the appellants was dishonest misappropriation of the goods loaded in the truck, seems to be unacceptable because were it so, the appellants would have put in efforts to at least conceal the goods if they were unable to sell them away. However, no such effort is shown to have been made by them inspite of availability of sufficient opportunity till their arrest on May 19, 2008. Reluctance of the prosecution to include offence of Section 404, IPC, against the appellants speaks volumes and only conclusion that emerges therefrom is that even the prosecution was not sure of the motive behind killing of the deceased.

Conclusion:

31. Analysis of the circumstances brought on record by the prosecution, thus, reveals that let alone completing the chain of circumstances so as to rule out every hypothesis of innocence of the appellants and to indicate only towards their culpability, prosecution has failed to bring any evidence, whatsoever, to connect the appellants with the

commission of the crime.

32. In the consequence, the appeals succeed and are allowed. Impugned judgment and order are set aside. Appellants are acquitted of the offences of which they have been charged and convicted.

33. If not required in any other case, appellants be set at liberty forthwith.

34. Amount of fine, if already deposited by them, shall be refunded to the appellants as per procedure known to law.

[T.P.S.Mann]
Judge

March 31, 2015
adhikari

[Mahavir S. Chauhan]
Judge