

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved On : March 01, 2016*
Judgment Delivered On : March 15, 2016

+ **CRL.A.143/2016**

RANJEET MUKHIYAAppellant
Represented by: Mr.Ajay Verma, Advocate with
Ms.Manjeeta Kumari, Advocate

versus

STATERespondent
Represented by: Mr.Varun Goswami, APP
Insp.Satish Kumar, IO and ASI
Satbir, P.S.Bawana

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. At 10:47 AM on September 08, 2013 ASI Pramod Kumar PW-5 noted vide DD No.22PP, Ex.PW-5/A that PCR has informed of a person lying dead at Factory No.B-5, Sector-2, Bawana Industrial Area. He handed over a copy of the daily diary entry to SI Jitender Joshi PW-26 who, accompanied by HC Vinod PW-21 and Ct.Satyapal PW-24, left for the factory and on reaching found the main gate locked. HC Sukhdev PW-14, In-charge of a PCR Van also reached. The four police officers met Lalu Mukhiya PW-19, a labour contractor, who informed that Laxman Mukhiya (the deceased) was lying dead inside and he did not have the key with him. Therefore, as directed by SI Jitender Joshi, HC Vinod and HC Sukhdev broke open the lock at the gate of the factory

and all entered inside to find deceased lying dead in a head room above the staircase well (ledge/mumty) leading up to the second floor. In the meanwhile Jagdish Kumar PW-9, the owner of the factory also reached.

2. SI Jitender Joshi recorded the statement Ex.PW-26/A of Jagdish Kumar, as per which he had employed three labourers : named Jumman Paswan, the deceased and the accused : Ranjeet Mukhiya; all of whom used to reside in his factory. On September 07, 2013 he had handed over ₹1,800/- to the accused in presence of the deceased and Lalu Mukhiya. The money was to be divided amongst the three labourers employed by him. Since some material had to be supplied, at around 07:00 AM today, from his mobile number 9212095078 he made a call to mobile number 9718335231 which was with the accused, but got no response and therefore he called up Lalu Mukhiya and requested him to check at the factory and after sometime Lalu Mukhiya informed him that the factory was locked from outside, at which he told him to jump over the main gate and find out what was wrong. Lalu Mukhiya informed him after sometime that having scaled the main gate he found the deceased lying dead in the ledge and the other two labourers missing. Therefore, he made a telephonic call to the police informing of the deceased lying dead inside his factory.

3. Making an endorsement Ex.PW-24/B beneath the statement Ex.PW-26/A, SI Jitender Joshi sent HC Vinod Kumar to PS Bawana for FIR to be registered. ASI Yogender Singh PW-4 registered FIR No.36/2013, Ex.PW-4/A for an offence punishable under Section 302 IPC.

4. At that point of time Insp.Satish Kumar PW-28 took over the investigation and summoned the crime team. Insp.Anil Kumar PW-8, prepared the crime team report Ex.PW-8/A; recording therein that 'a

mobile phone without battery is found near the dead body'. ASI Karambir PW-6, Photographer from crime team took twenty one photographs Ex.PW-6/A-1 to Ex.PW-6/A-21 of the spot; negatives whereof are Ex.PW-6/B-1 to Ex.PW-6/B-21. Insp.Satish Kumar prepared the rough site plan Ex.PW-28/B of the spot. He seized blood stained earth and earth control from the ledge (mumty) of factory where the deceased was lying dead vide memo Ex.PW-9/B.

5. A black coloured mobile phone was seized by Insp.Satish Kumar from a bucket in the ledge as recorded in the seizure memo Ex.PW-9/D. Inquest papers were prepared and the dead body was sent to the mortuary of BSA Hospital, where around 12.30 P.M. on September 12, 2013, Dr.Vijay Dhankar PW-23, conducted the post-mortem and prepared the post-mortem report Ex.PW-23/A, recording therein that sixteen external injuries were found on the person of the deceased; death was caused due to combined effect of hemorrhagic shock and cranio cerebral damage consequent to multiple injuries to the body and injuries found on person of deceased were ante-mortem, fresh before death, caused by blunt force and sufficient to cause death in the ordinary course of nature. He recorded therein that 500 CC of yellowish coloured semi-digested food was in the stomach. After the post-mortem Dr.Vijay Dhankar handed over the clothes and blood sample of the deceased on a gauze to HC Dharampal Singh PW-25 vide memos Ex.PW-25/A to Ex.PW-25/C.

6. Jumman Paswan and the accused were the obvious suspects in view of what Jagdish Kumar told SI Jitender Sethi. Whereas the accused was found absconding, Jumman Paswan informed that he had left the factory to meet his ailing son, which fact was found to be correct and thus the needle of suspicion pointed towards the accused.

7. On October 04, 2013, in the presence of SI Jitender Joshi and Ct.Rajbir PW-20, Insp.Satish Kumar arrested the accused from village Firozpur, District Sonapat, Haryana. His disclosure statement Ex.PW-22/C was recorded, and ignoring the confession, relevant would it be to note that he told that he could get recovered an iron pipe with which the deceased was injured as also the clothes he was wearing at the time of the incident. He led the police officers to a vacant ground in front of factories No.B-11 to B-20, Sector-2, DSIDC, Bawana and got recovered an iron pipe, a T-shirt and a half pant from within the bushes which were seized vide memo Ex.PW-20/B.

8. At the pointing of Insp.Satish Kumar, Insp.Mahesh Kumar PW-3, a draftsman, prepared the site plan to scale Ex.PW-3/A of the spot and marked point B from where a black coloured mobile phone was seized.

9. The iron pipe recovered at the instance of the accused was sent to Dr.Vijay Dhankar for opinion and vide Ex.PW-23/B he opined that the external injuries on the deceased could be caused by the iron pipe. Sent to forensic examination, vide FSL Reports Ex.PW-27/A and Ex.PW-27/B it was opined that the blood detected on the iron pipe and the T-shirt had some profiles of DNA generated from the blood sample of the deceased.

10. Insp.Satish Kumar obtained the call details (CDRs) Ex.PW-11/C of mobile number 9212095708 belonging to Jagdish Kumar owner of the factory and Cell ID chart Ex.PW-11/D regarding location of mobile number 9212095708 on September 08, 2013. An analysis of CDRs Ex.PW-11/C and Cell ID Chart Ex.PW-11/D of mobile number 9212095708 brings out that two calls were made from mobile number 9718335231 (mobile number purportedly belonging to deceased) to mobile number 9212095708 belonging to Jagdish Kumar, owner of

factory, in the afternoon of September 08, 2013; the details whereof are as under:-

S. No.	Time of Call	Duration of Call	Location of mobile number 9718335231 at the time of making call	Location of mobile number 9212095708 at the time of receiving call
1.	12:09:50 on September 08, 2013	26 seconds	C-88, Khasra No.4226, Village Badli, Delhi – 110 042.	C-88, Khasra No.4226, Village Badli, Delhi – 110 042.
2.	12:10:54 on September 08, 2013	72 seconds	C-88, Khasra No.4226, Village Badli, Delhi – 110 042.	C-88, Khasra No.4226, Village Badli, Delhi – 110 042.

11. At the trial, the prosecution examined twenty eight witnesses. We eschew reference to the formal and procedural witnesses and note the testimonies of only the relevant witnesses as per whose testimonies, the learned Trial Judge has returned a finding of guilt against the accused.

12. Jumman Paswan deposed that he was a labourer in the factory and on the seventh day of a month of a year, both month and year which he did not remember he had left the factory to meet his ailing son leaving the deceased, accused and Lalu Mukhiya at the factory and next day he learnt that the deceased had been murdered and the accused was absconding.

13. Jagdish Kumar deposed in sync with his statement Ex.PW-26/A, contents whereof we have briefly noted while recording the narratives. Pertinently, neither any question nor any suggestion was put to him by the accused regarding two calls received by him on his mobile number

9212095708 from mobile number 9718335231 in the afternoon of September 08, 2013.

14. Rajeev Ranjan PW-11, Nodal Officer, Tata Tele Services Ltd., deposed that the SIM card pertaining to mobile number 9212095708 was issued to one Jagdish Kumar (owner of the factory). He proved the call record details Ex.PW-11/C and Cell ID chart Ex.PW-11/D of/pertaining to mobile number 9212095708 for September 08, 2013.

15. Soti Lal Yadav PW-16 deposed that he met the accused on September 08, 2007 at Labour Chowk, Gurgaon and since accused requested him for a job he hired the accused for loading goods in vehicles and after about a week one Laxman Rai hired the accused.

16. Laxman Rai PW-17, deposed that in the year 2012 he used to provide labour to Amira Rice Mill. On September 08, 2013 contractor Soti Lal brought the accused to him for employment purposes. Accused worked under him as a casual labour from September 18, 2013 to October 01, 2013.

17. Lalu Mukhiya deposed that he had got the accused, the deceased and Jumman Paswan employed with Jagdish Kumar and all used to reside in the factory. On September 07, 2013 Jagdish Kumar paid ₹1,800/- to the accused for being distributed amongst the accused, the deceased and Jumman. On September 07, 2013 he, accused and the deceased ate chicken and drank liquor in the factory and he left. The next morning he received a call from Jagdish Kumar that the accused was not responding on his mobile phone and therefore he went to the factory and found it locked. On being informed, Jagdish told him to jump inside and find out what was wrong. He did so. He saw the deceased lying dead. He informed Jagdish, who in turn informed the police and the police came. The lock at the gate was broken.

18. SI Jitender Joshi and Insp.Satish Kumar deposed on the lines of factual narratives noted by us in the foregoing paras.

19. Being relevant, we note following portion of the cross-examination of SI Jitender Joshi:-

“Factory No.B-5, Sector-2, DSIIDC, Bawana where the occurrence took place, was constructed upto 1 ½ floor at the time of occurrence. The kunda of the main gate of the factory was broken by us on or about 11.20 am. When the kunda was broken by us, Lalu Mukhiya was present with us alongwith 10-12 public persons. I had requested those public persons to join the proceedings, but none joined except Lalu Miharukhiya. It is correct that IO had not seized the plastic bucket, from inside which, the mobile phone with earphone lead and railway ticket was recovered. It is wrong to suggest that I had not joined the investigation or that no exhibits were lifted by IO in my presence or that PW Lalu Mukhiya or that PW Jagdish Kumar had also not joined investigation.”

20. Being relevant, we note following portion of the cross-examination of Insp.Satish Kumar:-

“It is correct that the recovery of the weapon of offence and clothes were effected from industrial area. The said recoveries were effected in between 8.30pm to 9.00pm. It is correct that few of the factories were opened at that time. I had visited three factories prior to effecting the recoveries. I had requested 7-8 workers of the said three factories for joining investigation, but the said workers refused to join the investigation. I had not recorded their names and addresses and I had also not served any notices to the said workers. I had not mentioned in case diary the fact that I had visited three factories and requested 7-8 workers for joining investigation. It is correct that after effecting the recoveries and during the sealing procedure I had not requested any of the workers/formens of any of the factory situated there

for joining investigation. The writing work after recovery was conducted while standing in front of zypsy under street light. I had prepared the site plan of the place of recovery. I had shown the position of street light in the said light plan.”

21. In his statement under Section 313 Cr.P.C. Ranjeet pleaded innocence and denied having committed murder of the deceased. Being relevant, we note following portion of statement of accused Ranjeet recorded under Section 313 Cr.P.C.:-

“Q3. It is further in evidence against you that PW19 Sh. Lalu Mukhiya provided you accused Ranjit Mukhiya resident of Bihar, deceased Laxman Mukhiya and PW2 Jumman Paswan as labourers in the factory of PW9 Sh. Jagdish Kumar. What you have to say?

Ans. It is correct.

Q4. It is further in evidence against you that PW19 Sh. Lalu Mukhiya on the demand of factory owner PW9 Sh. Jagdish Kumar or due to shortage of labourers, also used to work in the factory of PW9 Jagdish Kumar. What you have to say?

Ans. It is correct.

Q5. It is further in evidence against you that you accused Ranjit Mukhiya, deceased Laxman Mukhiya and PW2 Jumman Paswan used to reside inside the aforesaid factory premises of PW9 Sh. Jagdish Kumar and used to work in the factory of PW9. What you have to say?

Ans. It is correct.

Q14. It is further in evidence against you that after you accused Ranjit Mukhiya brought chicken, you all three had consumed liquor and in the

meantime, you accused Ranjit Mukhiya also cooked up the chicken. Thereafter, you all ate the chicken. What you have to say?

Ans. *It is correct.*

Q15. *It is further in evidence against you that thereafter, PW19 Lalu Mukhiya left the factory of PW9 Sh. Jagdish and when PW19 left the factory, you accused Ranjit Mukhiya and Laxman Mukhiya (since deceased) were present inside the room of the factory. What you have to say?*

Ans. *It is correct.*

Q22. *It is further in evidence against you that when PW19 Lalu Mukhiya went to first floor from staircase i.e. towards mumti, he found Laxman Mukhiya lying dead having injury over his face and blood and was also lying near his body. What you have to say?*

Ans. *It is not within my knowledge, however it was revealed to me that Laxman Mukhiya was found lying dead. I went to purchase vegetables and when I reached back I found Laxman Mukhiya dead and thereafter due to fear I ran away.*

Q25. *It is further in evidence against you that PW19 Lalu Mukhiya had also informed PW9 Jagdish Kumar that you accused Ranjeet Mukhiya was absconding from the factory but mobile phone belonging to you accused Ranjeet Mukhiya, was lying inside bucket at mumti of the factory premises i.e. at the place where you accused Ranjeet and PW2 Jumman used to cook food. What you have to say?*

Ans. *I went to purchase vegetables on that night and when I returned back to the aforesaid factory premises, I found Laxman Mukhiya lying dead and*

thereafter due to fear I ran away while leaving my mobile phone at the spot.

Q128. *What else you have to say?*

Ans. *I am innocent and have been falsely implicated. I have not committed the murder of Laxman Mukhiya. Infact I had consumed liquor with deceased Laxman Mukhiya on the intervening night of 07/8.09.13 and thereafter I went outside for purchasing vegetables and after purchasing vegetables when I had returned back to the aforesaid factory after about ½ hour, I found Laxman Mukhiya lying dead in the aforesaid factory and due to fear I ran away while leaving my mobile phone and one railway ticket at the spot. Factory owner and other persons falsely named me in the commission of murder of Laxman Mukhiya. I had no enmity with deceased Laxman Mukhiya. Some robber might have entered inside the factory in my absence and committed the murder of Laxman Mukhiya and I have been falsely implicated in the present case. No recovery were got effected by me and the same were planted by the police.”*

22. In defence, accused examined his brother Sanjay Mukhiya as DW-1, who deposed that around two years ago his brother i.e. accused called him at 09.00 A.M. one day and told him that in the preceding night he had consumed liquor with the deceased and thereafter had gone outside the factory to purchase food and when he returned he saw the deceased lying dead and due to fear his brother ran away. Being relevant, we note following portion of the cross-examination of Sanjay:

“I do not remember the mobile number or phone number from which accused Ranjeet Mukhiya made a call to me. I also do not remember today the phone number over which I attended the call.

I have not brought any telephone instrument or call details to establish that the accused Ranjeet Mukhiya had made a call to me....It is also correct that till date I had not informed either the police or to any higher officials of the police to the effect that infact my brother i.e. accused Ranjeet Mukhiya had made a call to me.”

23. Vide impugned judgment dated August 31, 2015 it has been held by the learned Trial Judge that the prosecution has succeeded in establishing the guilt of the accused and as a result has convicted him of having committed an offence punishable under Section 302 IPC and has sentenced him to undergo imprisonment for life and pay fine in sum of ₹5,000/-; in default to undergo simple imprisonment for three months.

24. In so concluding, the learned Trial Judge has held as follows:-

- a) The post-mortem report Ex.PW-23/A of the deceased establishes that death of deceased was homicidal in nature.
- b) The testimony of Lalu Mukhiya establishes that deceased was last seen alive in the company of the deceased. A careful analysis of post-mortem report Ex.PW-23/A of the deceased, particularly the recordings contained therein that fluid, semi-digested food, fecal matter and gases were present in the body of deceased, not only corroborated the testimony of Lalu Mukhiya that he, the accused and the deceased had consumed chicken and liquor before he left the factory in the night of September 07, 2013, leaving the deceased alone in the company of the accused, but also establishes that the death of the deceased had taken place soon after he was last seen alive in the company of the accused.
- c) The circumstance that the death of the deceased had taken place soon after he i.e. the deceased was last seen alive in the company of the accused, when coupled with the circumstance that there is nothing on

record to suggest the possibility of any other person having visited the factory around the time of the death of the deceased or being the author of the crime and failure of the accused to explain as to what happened between him and the deceased after Lalu Mukhiya left the factory leaves no manner of doubt that the accused is the perpetrator of the crime of murder of the deceased.

d) The defence sought to be established by the accused through the testimony of his brother Sanjay does not inspire confidence for the reasons:- (i) being real brother of accused, Sanjay had every reason to depose falsely in order to save his brother; (ii) Sanjay had given no details whatsoever in his testimony about the purported call made to him by the accused regarding murder of the deceased; (iii) there is contradiction between the statement of the accused recorded under Section 313 Cr.P.C. and the testimony of Sanjay, inasmuch as the accused had stated that he had gone outside the factory in the night of September 07, 2013 to purchase vegetables but Sanjay has deposed that accused had left the factory to purchase food. In any case, there was no occasion for the accused to go outside the factory in the night of September 07, 2013 to purchase food since it stood established that the accused had taken dinner with the deceased and Lalu Mukhiya; (iv) testimony of Sanjay stood demolished upon failure of Sanjay to disclose in his cross-examination either the telephone number on which he received the call from the accused regarding murder of the deceased or number from which the accused had called him; and (v) admission of Sanjay in his cross-examination that he never informed the police or court about the purported call made by the accused regarding murder of the deceased.

e) The failure of the accused to explain the circumstances as to how his mobile phone was recovered from near the dead body of deceased, coupled with the fact that the accused did not attend the calls made by Jagdish Kumar in the morning of September 08, 2013 lends credence to the case of prosecution that the accused is the perpetrator of crime of the murder of the deceased.

f) The testimonies of Soti Lal Yadav and Laxman Rai establish the abrupt manner in which the accused left the employment of Jagdish Kumar immediately after the murder of the deceased, which conduct of the accused is another pointer towards his guilt.

g) The false plea taken by the accused in his statement under Section 313 Cr.P.C. serves as an additional link in the chain of circumstances appearing against the accused.

h) DNA profile generated from the blood on the iron pipe and T-shirt recovered at the instance of the accused matching that from the blood sample of the deceased clinches the accused being the perpetrator of the crime.

25. Learned counsel for the accused argued in appeal that it is a cardinal principle of circumstantial evidence that circumstances appearing against an accused, taken collectively, are incapable of explanation on any reasonable hypothesis, save that of the guilt sought to be proved against the accused. Counsel argued that it is the case of the prosecution that the police had recovered the mobile phone belonging to the accused from a bucket lying in the mumty leading to the second floor of the factory and the accused was nowhere found in the factory at that time. Learned counsel urged that the analysis of CDRs Ex.PW-11/C of mobile number 9212095708 shows that two calls were made from mobile number, 97183358231 belonging to the accused, to mobile number

9212095708 belonging to the owner of factory : Jagdish Kumar, and duration of said two calls was 26 seconds and 72 seconds respectively. Meaning thereby, that someone other than the accused had access to the mobile phone of the accused and used the same to make calls to the owner of the factory : Jagdish Kumar, which in turn implies that someone other than the accused was present inside the factory around the time the deceased was murdered. Counsel argued that in these circumstances, the possibility that 'said some other person' had murdered the deceased cannot be ruled out and thus benefit of doubt should be given to the accused.

26. As is evident from the afore-noted conspectus of facts, the present case is based on circumstantial evidence.

27. The well known rule governing circumstantial evidence is as follows:-

- a) The circumstances from which the inference of guilt of the accused is drawn have to be *proved beyond reasonable doubt* and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances;
- b) The circumstances are of a *determinative tendency* unerringly pointing towards the guilt of the accused;
- c) The circumstances, taken collectively, are incapable of explanation on any reasonable hypothesis save that of the guilt sought to be proved against him.

28. The Courts have added two riders to the aforesaid principle; namely, (i) there should be no missing links but it is not that every one of the links must appear on the surface of the evidence, since some of these links can only be inferred from the proved facts and (ii) it cannot be said

that the prosecution must meet any and every hypothesis put forward by the accused however far-fetched and fanciful it may be.

29. We may only add, circumstantial evidence in order to furnish a basis for conviction, requires a high degree of probability, that is, so sufficiently high, that a prudent man considering all the facts, feels justified in holding that the accused has committed the crime.

30. The learned Trial Judge has gone into great pains in concluding that testimony of Lalu Mukhiya establishes that the deceased was last seen alive in the company of the accused soon before his death. In so concluding, the learned Trial Judge has analyzed the testimony of Lalu Mukhiya with the post-mortem report Ex.PW-23/A of the deceased and other facts and circumstances of the case.

31. But, this kind of mechanist capturing of witness (Lalu Mukhiya's testimonay) was totally unwarranted in the present case, in view of the admission made by the accused in his statement under Section 313 Cr.P.C. that he and the deceased were all alone in the factory soon before the death/murder of the deceased. In fact, what was required was an application of mind and careful consideration of the defence taken by the accused : of having parted company with the deceased, as he left to buy vegetables and on return saw the deceased dead and out of fear he absconding.

32. In order to highlight the approach which ought to have been taken by the learned Trial Court, we deem it appropriate to give an illustration.

33. In the decision reported as AIR 1972 SC 922 *Khatri Hemraj Amulakh vs. State of Gujarat*, the accused was acquitted by the learned Court of Sessions of the charge of having murdered his wife, which acquittal was set aside by the High Court. Matter reached the Supreme Court. Pithily put, the case set up by the prosecution was that three

incriminating circumstances were appearing against the accused viz. (i) after their marriage, the accused was not on speaking terms with his father-in-law and did not allow the deceased to visit her father's house. The deceased used to complain to her father that the accused used to maltreat her; (ii) the accused was seen in a state of excitement around the time when the deceased was murdered; and (iii) the accused was seen running towards a police station soon after the deceased was murdered and at that time his clothes were stained with blood. In his statement under Section 342 Cr.P.C. (corresponding to Section 313 Cr.P.C. in the new Code) the accused denied having murdered his wife or having maltreated her. The accused however admitted that he was seen running towards the police station with blood on his clothes and on his hands, which he explained as follows:-

“At that time I was going to police station. My clothes were stained with blood. At that time I had gone home from my shop and found the door of my house closed. So again I went to my shop, and then again I returned. At that time I thought that my wife might have gone to answer the call of nature and the door must have been closed. Then I opened the door, and my wife appeared to have been murdered. Then in order to see whether she was alive or dead, I tried to lift her and at that time my clothes and persons were stained with blood. At that time her both the hands were bent. She had cuts on her neck. So I was going running to inform the police about this, and at that time Govind had seen me going to the police station, I informed the P.S.I., that someone has killed my wife. I told the P.S.I., that I did not know as to who has murdered my wife. Then P.S.I., abused me, slapped me and told me that I was the murderer of my wife. Then I was arrested. Then I was taken to the Mamlatdar after about 10 or 12 days. Mamlatdar had asked me as to what I was knowing about the offence? I told him I knew nothing and I was

threatened to confess. But I did not confess. On that day old Chappies were lying near my house.”

34. Holding that first two circumstances relied upon by the prosecution had not been proved, with reference to the third, the Supreme Court noted the statement of the accused under Section 342 Cr.P.C. and opined thereon as follows:-

“As regards the prosecution evidence that the accused after the occurrence was seen running towards the police station with blood stains on his clothes, we are of the opinion that the accused has furnished a plausible explanation. According to the accused, when he came to his house and found his wife with a number of injuries on her back, he tried to make her sit in order to find out whether she was alive or dead. We find nothing unnatural or improbable in the above conduct of the accused. It is obvious from the Gujarati version of the statement of the accused, to which a reference has been made by the High Court, that the accused wanted to make sure at that time as to whether the deceased was alive or not. There was, in our opinion, no element of improbability in the above conduct of the accused or his subsequent conduct in running with the blood-stained clothes to the police station to immediately inform police about the murder of his wife.”

35. The present case required similar approach by the learned Trial Judge, as was adopted by the Supreme Court in Khatri Hemraj's case (supra). The defence taken by the accused as to how and in what circumstances he parted company with the deceased soon before the deceased was murdered warranted a very thorough and critical analysis, which we find missing in the impugned judgment.

36. The defence taken by the accused in his statement under Section 313 Cr.P.C. is as follows:-

“I am innocent and have been falsely implicated. I have not committed the murder of Laxman Mukhiya. Infact I had consumed liquor with deceased Laxman Mukhiya on the intervening night of 07/8.09.13 and thereafter I went outside for purchasing vegetables and after purchasing vegetables when I had returned back to the aforesaid factory after about ½ hour, I found Laxman Mukhiya lying dead in the aforesaid factory and due to fear I ran away while leaving my mobile phone and one railway ticket at the spot. Factory owner and other persons falsely named me in the commission of murder of Laxman Mukhiya. I had no enmity with deceased Laxman Mukhiya. Some robber might have entered inside the factory in my absence and committed the murder of Laxman Mukhiya and I have been falsely implicated in the present case. No recovery were got effected by me and the same were planted by the police.”

37. Does the aforesaid defence taken by the accused inspire confidence?

38. In our opinion, the answer to the aforesaid question is an emphatic NO. Reason(s) being:- (i) The defence taken by the accused is bereft of many vital details such as, what time did Lalu Mukhiya leave the factory in the night of September 07, 2013? What time did the accused go outside the factory to purchase vegetables in the night of September 07, 2013? etc. (ii) There is a gaping hole in the defence taken by the accused in that, there was no occasion for the accused to go out of the factory to buy vegetables in the night time on the fateful day, particularly when admittedly the accused had eaten dinner with the deceased and Lalu Mukhiya; (iii) Most importantly, the accused failed to examine the vegetable vendor from whom he purportedly purchased vegetables on the fateful day or any other person to prove his defence of alibi; and (iv) The lock being put on the gate of the factory, if some outsider had entered

after accused left the factory and murdered the deceased and fled thereafter, he would not have locked the factory from outside. The putting of the lock on the gate is an indication of the job being that of some insider.

39. A careful analysis of the evidence led by the prosecution; the defence taken by the accused and other facts and circumstances brings out following (incriminating) circumstances appearing against the accused:-

- a) The deceased was last seen alive in the company of the accused soon before the murder.
- b) Accused failed to explain as to how and in what circumstances he parted company with the deceased before the deceased was murdered.
- c) The mobile phone of the accused was recovered from a bucket lying in the ledge where dead body of deceased was found, as evident from the testimonies of police officers associated with spot investigation, Crime Team report Ex.PW-8/A and site plan to scale Ex.PW-5/A. (The conduct of the accused of having left behind his mobile phone in the factory coupled with the fact that the accused never returned to factory to fetch the same is highly indicative of the fact that the accused got perplexed after committing murder of the deceased and left behind the mobile phone in the factory in his hurry to leave the factory).
- d) Accused left the factory to never return after the murder of deceased without giving any intimation whatsoever to owner of factory Jagdish Kumar as is evident from the testimonies of Jagdish Kumar, Soti Lal Yadav and Laxman Rai.
- e) DNA profiles generated from iron pipe and t-shirt recovered at instance of accused Ranjeet were found to be similar to the DNA profile generated from blood sample of the deceased.

(f) We note here that considerable emphasis was given by learned counsel for accused Ranjeet upon the fact that no independent witnesses were joined by the police at the time of recovery. In this regard, suffice it to note the dictum of law laid down by Supreme Court in the decision reported as (2002) 2 Crimes 63 (SC) Ambika Prasad vs. State that non-joining of independent witnesses by the police would vitiate the recovery made at the instance of an accused person only if a taint is shown in the recovery proceedings. In the instant case, no taint whatsoever has been shown in the recoveries of iron pipe and t-shirt made at the instance of the accused.

g) Failure of the accused to prove his alibi.

40. The six circumstances enumerated above unerringly point towards the fact that the accused is the perpetrator of the crime.

41. Regarding the argument advanced by learned counsel for the accused that two calls made at 12:09 P.M. and 12:10 P.M. on September 08, 2013 from mobile number 9718335231 belonging to the accused shows that somebody else was in possession of the phone and was in or around the factory where the deceased was murdered, the legal answer would be that neither Jagdish Kumar to whose mobile number two calls were made was quizzed on this aspect nor the investigating officer and therefore no argument can be advanced on a surmise. The decision of the Supreme Court reported as AIR 1975 SC 290 Rahim Khan v Khurshid Ahmad may profitably be noted, wherein it was observed as under:-

“.....The entry with which we are concerned is 5072A and this is not unusual when by mistake a clerk has written identical figures for two entries. Moreover there is no cross-examination on this point and in the absence of cross-examination giving an opportunity to the witness to explain the

circumstances from which an inference is sought to be drawn, no such inference--particularly of forgery and publication of documents--can be permitted to be raised.” (Emphasis supplied)

42. In the decision reported as 1988 (Supp) SCC 686 State of UP V Anil Singh, the eye-witness wrote a report giving fairly all the particulars of the occurrence and lodged the same with the report within few minutes of the occurrence. An argument was raised by the defence that it was impossible for the witness to prepare such an exhaustive report and lodge the same with the police so soon after the occurrence. The said argument was repelled by Supreme Court on the ground that the witness in question was not specifically cross-examined on said point.

43. In the decision reported as (2005) 9 SCC 298 Sunil Kumar v State of Rajasthan great stress was laid by the defence on the facts that there was delayed dispatch of the FIR to the Ilaqa Magistrate and delayed recording of the statements of the witnesses under Section 161 Cr.P.C. One of the reasons which weighed with Supreme Court for not drawing an adverse inference against the prosecution was that no question was put to the Investigating Officer regarding the aforesaid delay.

44. But there is a possible explanation concerning the two calls made. Testimony of Jagdish Kumar shows that he had repeatedly made calls from his mobile number 9212095708 to the mobile number 9718335231 of the accused and there was no response. These would have shown in the mobile phone of the accused as missed calls. When Insp.Satish Kumar saw the mobile phone his instinct would be to ring back because some lead could lie therein. Indeed this is what had happened because at the hearing of the appeal Insp.Satish Kumar who was present in the Court said so. We only add one line of caution for the police. This ought to

have been recorded in the case diary. Insp.Satish Kumar said that in future he would be careful and would do so.

45. The appeal is accordingly dismissed.

46. TCR be returned.

47. Copy of the judgment be sent to the Superintendent Central Jail Tihar for his record.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

MARCH 15, 2016
mamta