

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

% **Reserved on : 14th December, 2015**
Date of Decision : 15th January, 2016

+ **CRL.A. 1368/2013**

PRAMOD Appellant

Through: Mr. Vishal Raj Sehijpal, Mr.
Farooq Chaudhary, Mr. Harsh
Prabhakar (DHCLSC) and Mr.
Anirudh Tanwar, Advocates
along with appellant in person

Versus

STATE Respondent

Through: Mr. Varun Goswami, APP along
with Inspector Sanjeev Arora-PS
Ahsok Vihar

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.K.GAUBA

R. K. GAUBA, J:

1. The appellant stands convicted for the offences of abduction and murder of Anil Puri Goswami on 02.10.2008, out of vengeance for the victim had got married to Pooja who was lawfully wedded wife of the former, primarily believing the evidence about he being inexplicably in

contact with the victim, and having led to the discovery of the dead body besides his own blood-stained trousers.

2. Anil Puri Goswami, aged 28 years, son of Goswami Krishan Puri (PW-12), resident of 65, Sawan Park Extension, Ashok Vihar, Phase-III, Delhi, a computer engineer by profession, was married to a girl named Pooja Rani daughter of Om Prakash resident of village & post office Datoli, Tehsil Gannaur, District Sonapat (Haryana) on 16.04.2008. On 2.10.2008, he left home riding his motorcycle bearing registration No. DL4SAW 8943 (“the motorcycle”) at about 10. a.m. to attend some customer. He did not return home. His father (PW-12) lodged a missing report at 9.45 a.m. on 3.10.2008 in police station Ashok Vihar (“the police station”) vide DD No.37B (Ex.PW16/A). Since he could not be traced, his father (PW-12) suspected he had been abducted. He, thus, lodged FIR (Ex.PW-13/A) on the basis of his statement (Ex.PW-12/A), endorsed (vide Ex.PW-16/B) at 9.45 a.m. on 6.10.2008 by SI Sahab Singh (PW-16). During the investigation that followed, the dead body of Anil Puri Goswami (hereinafter referred to variously as “the victim” or “the deceased”) was recovered, statedly at the instance of the appellant, from *Ganda Nala* (drain) close to Mukhmelpur Bandh area on 12.10.2008.

3. On the basis of report under Section 173 of the Code of Criminal Procedure, 1973 (“Cr.P.C”) submitted on 06.01.2009, followed by two supplementary reports, three persons were brought to trial in Sessions Case No. 125/2011, they including the appellant (shown as the first accused) besides Satbir @ Satta son of Baljit Singh and Shailender @

Monu son of Krishan Singh (shown as second and third accused respectively), all residents of District Sonapat, Haryana.

4. It was indicated in the charge-sheet(s) that Pooja had earlier got married to the appellant on 21.11.2007 and had entered into the matrimony with the victim on (16.4.2008) against her wishes and had continued her contact with the first husband (the appellant), engaging him in telephonic conversations, using mobile phone number 9971756717 calling him at mobile phone No. 9996793484 in his use. It was the case for prosecution that the appellant had felt perturbed over the second marriage of Pooja and had conspired with the other two persons to liquidate the victim. He allegedly struck an acquaintance with the victim and allured him out of his house on 2.10.2008 in connection with some business proposition, communicating with him through calls at mobile phone No. 9810525768 (hereinafter referred to as “the mobile phone of the victim”) in use of the deceased, he (the appellant), having used SIM card no. 9718490182, and with the aid and assistance of his associates, subjected him to being killed and his dead body disposed of at the place from where it would be later recovered.

5. According to the charge-sheet, suspicion having fallen on the appellant on account of call detail records (CDR) of the mobile phone of the deceased, upon being called to the police station on 12.10.2008, through notice under Section 160 Cr.P.C, he was interrogated during which he made disclosures confirming the aforementioned background facts and also the involvement of the second and third accused as his

partners in crime. It was stated that the appellant led the investigating officer, Inspector Anand Lakra (PW-25), and witnesses, to the drain in Mukhmelpur area and got the dead body of the deceased recovered, the autopsy performed whereon in due course confirmed it to be a case of culpable homicide amounting to murder.

6. The charge-sheet submitted also stated that on 14.10.2008, the second accused (Satbir @ Satta) was arrested pursuant to disclosure of the appellant and at his instance the motorcycle of the victim was recovered from the parking of the metro station in the area of Lucknow road. The third accused (Shailender @ Monu), whose role had also allegedly been disclosed by the appellant could not, however, be immediately traced. Thus, in the charge-sheet dated 06.01.2009, trial of the appellant, and the second accused, was sought, the name of Pooja, described as a suspect, however, being shown in column No.12 with the observation that sufficient evidence against her could not be collected.

7. On 13.5.2009, a supplementary report under Section 173 Cr.P.C. was submitted, *inter alia*, indicating that the third accused (Shailender @ Monu) had absconded and after processes under Sections 82, 83 Cr.P.C had been issued against him, he had been declared proclaimed offender. This supplementary charge-sheet also stated that Pooja, a suspect in the case, had committed suicide on 1.2.2009. The evidence confirming her marriage with the appellant on 21.11.2007, gathered during further investigation, was also submitted with this report.

Additionally, the prosecution also submitted the report of Forensic Science Laboratory (FSL).

8. On 10.9.2009, second supplementary charge-sheet was submitted stating that the third accused Shailender @ Monu had come to be arrested in case FIR No. 176/2007 under Sections 395/397/34 of Indian Penal Code, 1860 ("IPC") of police station Sadar, Sonapat, Haryana and with the approval of the concerned magisterial court he had been arrested in present case on 6.8.2009 and brought to Delhi for investigation. It was also stated that during interrogation, the said third accused had made certain disclosures about the weapon of offence (*knife*) used for the murder of Anil Puri Goswami, but inspite of search (in the drain as allegedly pointed out by the third accused), the same could not be traced.

9. By judgment dated 17.9.2013, the second and third accused were acquitted, while the appellant was held guilty and convicted as charged for the offences punishable under Sections 364 and 302 IPC for he having abducted the victim in order that he might be killed and for having committed his murder. By order dated 28.9.2013, the appellant, was sentenced to imprisonment for life with fine of Rs.10,000/- for offence under Section 302 IPC and rigorous imprisonment for six years with fine of Rs.6,000/- under Section 364 IPC. The trial court directed that in case of default in the payment of fine, he shall further undergo simple imprisonment for one year and six months, respectively on the two counts and shall be entitled to benefit of Section 428 Cr.P.C.

10. Feeling aggrieved with the aforementioned result of the trial, and the order on sentence, this appeal has been preferred assailing the findings recorded in the impugned judgment.

11. The prosecution has mustered sufficient evidence to bring home the fact that the appellant was married to Pooja Rani, daughter of Om Prakash, resident of village & post office Datoli, Tehsil Gannaur, Sonapat (Haryana) on 21.11.2007 in Arya Samaj Vedic Marriage Mandal, Jamuna Bazar temple, Delhi, as per vedic rites and ceremonies. Rajesh Kumar Mishra (PW4) was the priest whose services were availed for the said ceremony by Deepak Chaudhary (PW3), an advocate practicing from chamber no.C-64, Tis Hazari Courts, Delhi and also the President of Arya Samaj Vedic Marriage Mandal with office at Jamuna Bazar, Delhi, at the instance of the appellant. The copy of the marriage record (Ex.PW3/B), certificate of marriage (Ex.PW3/C), affidavit of Pooja Rani (Ex.PW3/D), self attested copy of the school leaving certificate of Pooja Rani (Ex.PW3/E), affidavit of appellant (Ex.PW3/F), self attested copy of the ration card of appellant (Ex.PW3/G), self attested copy of the ration card of Pooja (Ex.PW3/J) and marriage photograph (Ex.PW3/K) comprise the substantive documentary proof maintained by PW3 in his office connected to the professional services rendered by him to the appellant for arranging the marriage. These documents along with self attested photocopy of election I-card (Ex.PW3/H) of Amit son of Vijay Singh (PW6) and self attested copy of election I-card (Ex.PW3/I) of Amit son of Rakesh (PW5), both of whom are shown by the marriage

record and certificate to be witnesses to the marriage ceremony were handed over by PW3, to the investigating officer (PW25) whereupon these documents were seized vide memo (Ex.PW3/A). PW4 identified the appellant as the person named Pramod whose marriage with Pooja was solemnised by him on 21.11.2007 at the instance of PW3.

12. PW5 and PW6 were reluctant to support the prosecution case to above effect. PW5 conceded his acquaintance with the appellant and stated that he (appellant) had called him to the temple near Nigam Bodh Ghat, where he had taken over his ID proof and then set him free. He conceded that his uncle (PW6) had also accompanied him to the said place on the said date. PW6 similarly stated that he had accompanied his nephew (PW5) to a place outside the temple where a priest was present with a boy and a girl. He stated that he was carrying his own election I-card and had signed some documents. They pleaded ignorance as to what was purpose of their ID proofs or signatures being taken. Both were declared hostile and cross-examined by public prosecutor, at which stage they were confronted with the relevant entry in the marriage register (Ex.PW3/B), marriage certificate (Ex.PW3/C) and the marriage photograph (Ex.PW3/K). They conceded the marriage register entry and marriage certificate contained their respective signatures and the photograph depicted not only the bridegroom and the bride but also both of them present in their company as witnesses. They also identified their signatures on the photocopies of their respective ID proofs (Ex.PW3/H and Ex.PW3/I). Clearly, their hesitation to support the theory of marriage of the

appellant with Pooja stems out of their anxiety not to be the source for confirming the incriminating fact against their acquaintance (the appellant).

13. Rohit Giri (PW2) is also an acquaintance of the appellant as both of them hail from village Datoli in District Sonapat, Haryana and had been classmates. This witness was brought in by the prosecution to prove that the appellant had been involved in a love-affair with Pooja and had got married to her. Though the witness disowned any such knowledge, during cross-examination by the public prosecutor, he confirmed that the marriage photograph, marriage register entry, and marriage certificate depicted the marriage of the appellant with Pooja.

14. The appellant denied the prosecution case about he being involved with Pooja or having entered into a formal marriage ceremony with her on 21.11.2007. But, interestingly, during the recording of prosecution evidence, he admitted the aforementioned documents gathered by the investigating officer from the custody and control of PW3. He suggested to PW3 and PW4 that there was no formal marriage ceremony and only the abovementioned documents regarding the marriage got prepared, after some money had been paid to PW4. Both PW3 and PW4 refuted this suggestion as incorrect and, thus, stood by their respective word that the appellant had actually solemnized marriage with Pooja in Arya Samaj Vedic Mandir, Jamuna Bazar, Delhi on 21.11.2007. We find no reason why in the face of abundant documentary material, the prosecution case about the said marriage of appellant with Pooja should be disbelieved.

15. Goswami Krishan Puri (PW12), father of the deceased has affirmed on oath that he (deceased) had got married to Pooja daughter of Om Prakash Giri village Datoli District Sonapat, Haryana on 16.04.2008. Given the substantive material available on record to confirm the fact, it is clear that the girl named Pooja with whom the deceased was married on 16.04.2008 is the same as with whom the appellant had been married in Arya Samaj Vedic Marriage Mandal, Jamuna Bazar earlier on 21.11.2007. There is not even a whisper of claim that marriage of Pooja with the appellant as formalized on 21.11.2007 had been dissolved at any stage. Given the circumstances in which the said marriage was performed, it is vivid that Pooja had entered into the said marriage out of her own choice and volition and without knowledge or consent of members of her family, in as much as no one from her side is stated to have participated. The deposition of PW12, the father of the deceased, reflecting her conduct and about she being not happy in her marriage with the deceased has to be understood in this light and against this backdrop.

16. PW12 testified that Pooja had not been happy since the beginning of her “arranged marriage” with the deceased. She would not help out in the household work and would remain engaged in telephonic conversation over her mobile phone. Even after seeing the dead body, she had not shed any tears nor attended the cremation. He deposed that on 08.10.2008, whilst there was no clue available as to the whereabouts of the victim (then missing), Manju, mother of Pooja had come visiting and at that stage, she (Pooja) had handed over her mobile

phone to her (mother). He stated that on 11.10.2008 Raj Kumar, brother of Pooja, had questioned her about her husband having gone missing whereupon she (Pooja) had admitted before her brother Raj Kumar that she was involved in “illicit relation” with the appellant and that the mobile phone in her possession had been given to her, by the appellant for keep and use and it was that instrument with which she would contact him. PW12 further stated that Pooja had revealed that the appellant had extended threats that she should either return to him by 02.10.2008 or he would kill her husband. He stated that Pooja had even given this in writing which (document) was handed over to SHO P.S. Ashok Vihar on 12.10.2008. He further stated that the mobile phone instrument in use of Pooja was taken away by her mother Manju on 08.10.2008 was later handed over by her brother Raj Kumar to the police but without its SIM card or battery.

17. Sushil Puri (PW9), the elder brother of the deceased, while affirming the fact of marriage with Pooja on 16.04.2008 and he having gone missing on 02.10.2008, also deposed about the relationship of Pooja with the appellant. He testified that Raj Kumar had visited the house and he had heard him chastising Pooja stating that she had ruined the family (“*tumne ghar barbad kar diya*”). He deposed that after the appellant had been apprehended, Pooja had cried and had even attempted to commit suicide by consuming *phenyl*. She was, however, saved by her mother who had administered salty water to make her vomit.

18. According to the prosecution evidence, a mobile phone instrument with IMEI no.358961016713811 (Ex.P-7) was handed over by Raj Kumar, brother of Pooja, to the IO on 11.12.2008 whereupon it was seized (vide memo Ex.PW16/M). It was stated that this instrument had been used by her (Pooja) with SIM card no.9971756717 to remain in constant touch with the appellant, even after her marriage with the deceased. Per the evidence of R. K. Singh (PW19), Nodal Officer of Bharti Airtel Ltd. speaking on the strength, *inter-alia*, of customer application form (Ex.PW19/B), the said SIM card was registered in the name of Madan Lal son of Rameshwar Das, resident of house no. 88, Kidwai Nagar, East Delhi-23.

19. Learned counsel for the appellant argued that the prosecution theory about Pooja being in league with the appellant after her marriage with the victim, leading to his murder at the hands of the appellant, is unfounded. It was submitted that the utterance attributed to Raj Kumar to pull up Pooja, over her conduct on or about 11.10.2008, may not necessarily imply objection (of the brother) over her indulgence in relationship outside her marriage with the deceased. It was also pointed out that the document in Pooja's hand, concerning her suspicion as to the involvement of appellant in the abduction and murder of victim has not been shown the light of the day. It was further submitted that neither Raj Kumar nor said Madan Lal have been examined to confirm the allegation that the said mobile phone was at any stage in use of Pooja.

20. Pooja statedly committed suicide on 01.02.2009 and was no longer available to share her side of the story. She was not chargesheeted though she was a suspect during investigation. In our view, the questions as to whether Pooja was an accomplice of the appellant, or was privy to the acts of commission or omission he was indulging in, are mere academic, insofar as the charge against the appellant is concerned. Nothing can turn on the answers either way to these questions vis-a-vis Pooja. As we shall presently see, there is abundant evidence available incriminating the appellant in the crime.

21. Goswami Krishan Puri (PW12) proved that his son (the victim) had left the house at 10:00 AM on 02.10.2008 on the motorcycle for attending to some complaint regarding computer. As per routine practice, the victim would ordinarily return home by 07:00-08:00 PM. Since he did not return on 02.10.2008 by the usual hour, the missing report (Ex.PW16/A) was lodged at 09:45 AM on 03.10.2008 by PW12, with the assistance of his elder son Sushil Puri (PW9). Since the victim could not be traced for several days, the FIR was lodged on 06.10.2008 on the basis of statement (Ex.PW12/A) affirmed by the witness.

22. When the dead body was recovered on 12.10.2008, personal search thereof revealed that the deceased was carrying in the pocket of his trouser mobile phone make Nokia-6600 (Ex.P-6) with IMEI no.356640008534813. The investigating officer (PW25) proved the said seizure, referring in this context to seizure memo (Ex.PW16/G), which is corroborated by ASI Sahib Singh (PW16), the attesting

witness. PW25 affirmed that the said mobile phone was found having SIM no.9810525768.

23. R. K. Singh (PW19), Nodal officer of Bharti Airtel Ltd., deposing, *inter-alia*, on the strength of customer application form (Ex.PW19/G), and photocopy of driving license (Ex.PW19/H), proved that the aforesaid mobile phone (no.9810525768) was registered in the name of the deceased. He also proved, supported by certificate under Section 65-B of the Indian Evidence Act, 1872 (“the Evidence Act”) the CDRs (Ex.PW19/F) of the mobile phone of the deceased for the period 01.09.2008 to 15.10.2008. The prosecution seeks to refer, and the CDRs (Ex.PW19/F) do show three specific incoming calls received on the mobile phone of the deceased on 02.10.2008 from mobile phone no.9718490182, timing of the calls logged by the service provider as 09:28:14, 11:28:33 and 12:08:08 for 169 seconds, 66 seconds and 47 seconds respectively. It is the case for the prosecution that these calls were made by the appellant to the deceased in order to invite him over to some place so that he could be liquidated. In order to bring out this fact, the prosecution relied upon further evidence concerning another mobile phone no.9996793484. But, before we look into that part of the evidence, it is essential that there is clarity about proof concerning user of phone no.9717490182.

24. Amarnath (PW22), Nodal Officer of Idea Cellular proved, on the basis of customer application form (Ex.PW22/B) and photocopy of election ID card (Ex.PW22/C) that mobile phone no.9718490182 was registered in the name of Shamshad son of Suleman, resident of M-

Block, Gali No.2, house no.16, Model Town-III, Delhi-9. Shamshad (PW24) in whose name the mobile phone was taken is the native of District Katihar, Bihar but used to work as a labourer at Nizamuddin Railway Station in 2008. He affirmed that he had lost his voter ID card in that year. Though he had not lodged any report with the police about loss of ID proof, in absence of any further evidence, it cannot be said that Shamshad (PW24) could have had nexus with the said mobile phone. On the contrary, the evidence which we shall note hereinafter reveals it is for the appellant to account for the use of mobile SIM no.9718490182 with the mobile instrument which was all along in his possession and use.

25. The CDRs (Ex.PW22/A) of the aforesaid mobile phone no. 9718490182, supported by certificate under Section 65-B of Evidence Act (Ex.PW22/D), proved by PW22 reveal that the aforementioned three calls to the deceased on 02.10.2008 were made through mobile phone instrument bearing IMEI no.355736021100990. The prosecution, however, sought to highlight that these CDRs (Ex.PW22/A) also show that the mobile SIM no.9718490182 had been initially activated on 06.09.2008 with instrument bearing IMEI no.353632017354930, which was later changed to the other instrument with which the impugned calls were made on 02.10.2008, and further that the phone (SIM no.9718490182) became dysfunctional and went into disuse w.e.f. 03.10.2008 (at 12:39 hours). We flag the facts that the mobile phone SIM no.9718490182 was obtained on fake identity on 06.09.2008 and became dysfunctional on 03.10.2008 soon after the

three abovequoted calls were made to the deceased on 02.10.2008 followed by the victim going missing and his murder. Further evidence adduced by the prosecution demonstrates that the same very instrument (bearing IMEI no.353632017354930) as was used for making first two calls through mobile phone no.9718490182 was in use of the appellant. This, according to the prosecution case, confirms his nexus with the three calls made to the deceased on the morning on 02.10.2008. We presently take note of evidence on this score in some detail.

26. As per testimony of Inspector Anand Lakra (PW25), the appellant had been called to the police station on 12.10.2008 by notice under Section 160 Cr.P.C. issued by SI Sahib Singh (PW16), and after interrogation and in the face of his disclosure (Ex.PW16/A), he was arrested vide arrest memo (Ex.PW16/C), after personal search (vide memo Ex.PW16/D). The said document reveals the arrest to have been formally effected in police station Ashok Vihar at 03:20 PM on 12.10.2008. The personal search memo (Ex.PW16/D) noted that at the time of arrest the appellant was found having in his possession purse containing small amount of money, driving licence and some visiting cards in addition to mobile phone make Nokia-1110 bearing IMEI no.353632017354930 containing airtel SIM no.9996793484. When confronted with above mentioned evidence, in the course of his statement under Section 313 Cr.P.C, the appellant did not raise any dispute as to the correctness of the description of what was seized by the IO during his personal search. He only stated that there was no

notice under Section 160 Cr.P.C and that he had actually been “lifted” from his house by the police on 08.10.2008 and that his personal search was taken on the same date.

27. The fact that mobile phone instrument of above description with SIM bearing no.9996793484, was seized as personal search of the appellant is not disputed. That the said mobile number is registered in the name of the appellant was proved by R. K. Singh (PW19), Nodal Officer of Bharti Airtel Ltd., during his further statement recorded on 11.09.2012, on the basis of customer application form (Ex.PW19/J) and photocopies of election ID card (Ex.PW19/K-1 and 2). PW19 also proved, on the strength of certificate under Section 65-B of Evidence Act (Ex.PW19/R) the CDRs (Ex.PW19/I) in respect of mobile phone no.9996793484. The said CDRs (Ex.PW19/I), though issued for the period 01.08.2008 to 06.10.2008, show that the last call made with said mobile phone number was at 12:20:24 on 02.10.2008. Pertinently, the said phone would also not be used thereafter. What is significant to note is that the said mobile phone no.9996793484 of the appellant had been using the mobile phone instrument bearing IMEI no.353632017354930 throughout, from 12.08.2008 till 02.10.2008, which includes the morning and forenoon of 02.10.2008, when the same instrument was also used for purposes of mobile phone no.9718490182 to contact the deceased on his mobile phone three times.

28. The appellant, when confronted with the abovenoted evidence adduced by the prosecution, stated that he had never used mobile

no.9996793484 and that last calls to the mobile phone of the deceased were not made from his mobile instrument. He would not explain as to how the said mobile phone number is registered in his name on the basis of ID proof. Apparently, denial of the above evidence by the appellant is not true and, thus, he has failed to explain these highly incriminating circumstances.

29. On 12.10.2008 Inspector Anand Lakra (PW25), the investigating officer referred to disclosure statement (Ex.PW16/E) statedly made by the appellant and testified that he (the appellant) had led him, assisted by other police staff including SI Sahib Singh (PW16), to Mukhmelpur *Ganda Nala* (drain) and pointed out the dead body of a male lying there which was seized (vide memo Ex.PW15/F), after the place had been examined by the crime team led by SI Matadeen (PW8) and photographs of the scene had been taken by Constable Dalbir Singh (PW1), member of the crime team. His testimony is corroborated by SI Sahib Singh (PW16), SI Matadeen (PW8) and Constable Dalbir Singh (PW1). The investigating officer had prepared a rough site plan (Ex.PW25/A) depicting the place of recovery of dead body. In due course, he took the assistance of SI Manohar Lal (PW11) who prepared a site plan drawn to scale (Ex.PW11/A). The photographs (Ex.PW1/A-1 to A-12) developed by PW1 on the basis of negatives (Ex.PW1/N-1 to N-12) seen alongside the site plans, and the oral testimony of the relevant witnesses, show that the dead body, covered with clothes, was lying in drain, at a secluded spot away from the view of people at large moving on the road which runs parallel to the drain. Clearly, the road

in question would not see large amount of traffic, in as much as it runs through fields separated on both sides by large tracts of slopey lands covered by bushes and trees. PW25 explained that the dead body had got stuck in the branches of a tree which was rooted in the middle of the drain. The water was flowing, above the knee level, at slow speed. The body could not be seen from the road side. He had found blood lying on the road and also on the pavement made of *kachcha* bricks. Besides the recovery of the dead body, he took into possession samples of the blood (Ex.P-8 and Ex.P-9) from the said two places (vide memo Ex.PW16/H). As mentioned earlier, the mobile phone of the deceased (Ex.P-6) was found in the pocket of his trousers. The said instrument alongwith a black coloured bag, hung across his shoulder, containing another blue coloured bag which, in turn, was found to contain some computer CDs and computer tools besides three diaries (collectively Ex.P-6), were seized (vide memo Ex.PW16/G). The mobile team incharge SI Matadeen (PW8) proved his report (Ex.PW8/A) confirming the aforementioned police proceedings.

30. The investigating officer (PW25) stated under cross-examination that the appellant had come to the police station at noon time on 12.10.2008 accompanied by a village Pradhan, pursuant to notice under Section 160 Cr.P.C. He was arrested, after interrogation for about three hours, and the police proceedings, in the wake of arrest, were completed in about 90 minutes. He stated that the police party had left the police station for *ganda nala* village Mukhmelpur at about 04:00-04:30 PM in two separate vehicles to reach the place where the

dead body was found by 05:00-05:15 PM. According to him, the crime team was informed at about 05:30 PM and the said staff had reached by 06:00 PM. After crime team had completed its inspection and taken photographs, which took about half an hour, they had left the spot by 06:30 PM whereafter the conduct of the search of the dead body, and of the bag found therewith, took about 20-25 minutes. As per the investigating officer, the proceedings were completed at the spot around 07:00-07:15 PM, whereupon the body was sent to the mortuary of Babu Jagjeevan Ram Memorial hospital ("BJRM hospital"), Jehangirpuri, Delhi.

31. The crime team report (Ex.PW8/A), in contrast, talks about the visit and inspection at the place of discovery of the dead body by the police staff led by PW8 to have been conducted from 05:00-05:45 PM on 12.10.2008. PW8, during his cross-examination, stood by his report and stated that the message about the need to inspect the said place had come in his office at 04:00 PM and the team had visited the spot from 05:00 to 05:45 PM. This is what was reiterated by his photographer (PW1). SI Sahib Singh (PW16), other official witness relevant to these proceedings instead confirmed the version of the crime team staff. He was not cross-examined by the defence as to the time when he with the IO had come to the place at the instance of the appellant.

32. The evidence adduced by the prosecution at the trial included the inquest papers comprising, amongst others, the brief facts (Ex.PW16/I-1), death report (Ex.PW16/I-2) and the application for autopsy (Ex.PW16/I). The last mentioned document (Ex.PW16/I) was

submitted under the signatures of SI Sahib Singh (PW16) to the incharge, mortuary of BJRM hospital requesting for autopsy on the dead body of Anil Puri Goswami. It bears an endorsement in the form of rubber stamp impression about the dead body having been received by the mortuary at 04:15 PM on 12.10.2008. According to another endorsement, again in the form of rubber stamp impression, the autopsy had been conducted on 13.10.2008, the report having been issued vide no.1057/2008. The autopsy surgeon confirmed the post-mortem no.1057/2008 under his signature and seal.

33. Referring to the abovementioned endorsement by the mortuary of BJRM hospital on the application for autopsy (Ex.PW16/I), the learned counsel for appellant argued before us that since the dead body had been deposited in the BJRM hospital, Jehangirpuri at 04:15 PM on 12.10.2008, the narration in the evidence about its recovery in *ganda nala* at Mukhmelpur, Delhi at about 05:00-05:15 PM leading to police proceedings at the spot to conclude at 07:00-07:15 PM cannot be correct.

34. In order to have clarity on the subject, pursuant to the request made on behalf of appellant by his counsel, we decided by our order dated 04.11.2015, to probe the matter further in exercise of the jurisdiction under Section 391 Cr.P.C. In the wake of directions given on 04.11.2015, and 19.11.2015, two additional witnesses, namely, Satya Narain Bhardwaj, the Post-mortem Assistant of BJRM hospital (HC-1) and HC Pawan Kumar (HC-2) were examined. Whilst HC-1 produced the relevant record of mortuary of BJRM hospital, HC-2

deposed that he was part of the police team which had gone to the place in question on 12.10.2008 leading to the discovery of the dead body, he being the police official who had shifted the dead body to the mortuary of BJRM hospital under directions of the IO. Opportunity was given to the appellant, through duly instructed counsel, and to the State, to cross-examine/re-examine these witnesses. Besides these two additional witnesses, SI Matadeen (PW8), SI Sahib Singh (PW16) and Inspector Anand Lakra (PW25) were recalled and tendered to be further cross-examined by the defence, followed by re-examination on behalf of the State.

35. On 14.12.2005, we recorded additional/further statement of the appellant under Section 313 Cr.P.C to ascertain his explanation as to the additional incriminating facts and circumstances which had come on record as a result of the above exercise.

36. We have examined the defence submission as to the time of recovery of the dead body in light of the evidence on record in entirety, including the additional material gathered as above. Having regard to the entry in the mortuary register (Ex.HCW1/A), proved to be in the hand of Dinesh, mortuary attendant, we are inclined to accept the fact that the dead body of the victim had actually reached the mortuary of BJRM hospital at 04:15 PM on 12.10.2008 and the event was entered in the record against “token no.52”. Though HC-2, HC Pawan Kumar, made a statement about the sequence of events on 12.10.2008 on the same lines as that of IO (PW25), the fact that the mortuary register entry (Ex.HCW1/A) specifically stating the time of deposit of dead

body as 04:15 PM, was countersigned by him (HC-2), it cannot be said that the endorsement to this effect on the application for conduct of post-mortem examination (Ex.PW16/I) was factually wrong. The entry in the post-mortem diary register (Ex.HCW1/C) may have been recorded by HC-1 on the basis of aforesaid entry in the mortuary register in the hand of mortuary attendant. But, there is further confirmation as to the time by the endorsement on the application for dead body to be preserved (Ex.HCW1/B), also contemporaneously made.

37. PW8, PW16 and PW25 stuck to their respective version as to the time when the dead body had been found, the time of inspection by the crime team, and the time when it was shifted to the mortuary. We, however, do not accept their said claims in the face of documentary evidence provided by the mortuary records, kept and maintained in the course of official business, showing the dead body to have reached the mortuary at 04:15 PM on 12.10.2008.

38. But, to our mind, the above erroneous claim by the prosecution witnesses as to the time of discovery of the dead body cannot detract us from the larger picture emerging on record confirming that the dead body had actually been discovered from the public drain in village Mukhmelpur at the instance of the appellant in the afternoon of 12.10.2008. As noticed above, the dead body had been disposed off seemingly with intent to destroy the evidence, at a secluded spot away from the public gaze. Given the facts and circumstances in which the victim had gone missing, there was indeed no possibility for his dead

body to be recovered, save and except on the basis of disclosures made by the perpetrator of the crime. The victim had no plausible connection with village Mukhmelpur. There is no reason why he would venture to the said area. By the same logic, there is no reason why search would be made by his family, or the police, in the area of village Mukhmelpur in general and that of the public drain in particular. We cannot ignore the fact that it is own case of the appellant that he was picked up from his house on 08.10.2008 by the police and detained thereafter. He denied having been called to the police station for 12.10.2008 on the basis of notice under Section 160 Cr.P.C. In the given scenario, it clearly emerges that while the dead body was discovered from the aforementioned place, pursuant to, and at the instance of, the appellant, it is vivid that the investigating officer, and the staff of mobile crime team, prepared their respective proceedings mentioning the time according to what seemingly would be suiting their respective schedule of the day. Improper though this approach was, we cannot allow any undue benefit to be taken therefrom by the defence. We, thus, unhesitatingly accept the prosecution case that the dead body was recovered, on the pointing out of the appellant, from the secluded place which provided the requisite confirmation as to the disclosure made by the appellant, depicting special knowledge on his part as to the place where the dead body of the deceased had been disposed off after he had been killed.

39. Dr. K. Goel (PW14) conducted the post-mortem examination on the dead body of the victim in the mortuary of BJRM hospital on

13.10.2008. He proved his report (Ex.PW14/A) stating that the body was covered in badly torn and fragile dirty clothes (including shirt, trousers, vest, belt, underwear, socks and shoe) was in a state of decomposition. There was blackish discolouration all over, the tissues of scalp, neck, face and limbs were partly eaten by animals and maggots present all over. He affirmed that external examination of the dead body with internal exploration had given rise to the following findings :-

“(i) Incised penetrating wound 5 x 2 cm over left side chest at anterior axillary line about 21 cm below the axilla. On exploration the injury entered into the chest cavity through left 9th inter coastal space along with cutting of upper margin of 10th rib, pierced left dome of diaphragm and cut the loops of intestines. There was brownish black fluid present in abdominal cavity.

(ii) Incised penetrating wound 5.5 x 1.5 cm transversely placed over left side chest from 8 cm below left clavicle and 5 cm left to the middle line. On exploration it entered into left chest cavity through left third inter coastal space and punctured the left lung. As lungs were decomposed and shrunk, definite depth of the injury could not be opined. Blackish brown fluid was present in the chest cavity.

(iii) Incised penetrating wound 6 x 2 cm over lateral aspect of right side abdomen just above the iliac crest. Injury entered into abdominal cavity and cut intestinal loops at multiple places.

(iv) Incised wound 7 x 2 cm muscle deep over right side back of abdomen.”

40. In the opinion of the autopsy doctor, all four abovementioned injuries, ante-mortem in nature, had been caused by sharp cutting and

penetrating weapon, the death being the combined effect of shock, haemorrhage and respiratory distress consequent upon injuries to intestines and lungs. The first three injuries were sufficient, individually or collectively, to cause death in ordinary course of nature. The death, thus, was homicidal. In his opinion, death had occurred 10-11 days prior to the autopsy, which would coincide with 02.10.2008, the day the victim went missing. The autopsy doctor affirmed that he had preserved the clothes and two teeth of the deceased, which had been handed over to the IO, this fact corroborated by autopsy report (Ex.PW14/A) and the seizure memos (Ex.PW16/K and Ex.PW16/J), clothes of the deceased having been proved as Ex.P-1 (collectively).

41. Inspector Anand Lakra (PW25) further affirmed on oath that on 14.10.2008 that the appellant had led him to village Datoli, District Sonapat, Haryana from where, at his pointing out, the second accused (Satbir @ Satta) was arrested and later the appellant had led him (the IO) to the agriculture fields along Begumpur road where he had got recovered, from beneath the crops of paddy, his clothes i.e. one black trousers and one shirt, which were statedly worn by him at the time of the murder of the victim. These clothes (Ex.P-3 collectively) were seized (vide memo Ex.PW15/E), in the presence, amongst others of Constable (later Head Constable) Satender (PW15) who corroborated the statement of the IO in this regard. The seizure memo (Ex.PW15/E) is also attested by two other witnesses, namely, Ct. Sandeep Singh and a public witness, namely, Japan Singh. The said two attesting witnesses were not examined at the trial. On careful scrutiny of

statements of PW15 and PW25, we find no discrepancy in the evidence about seizure of the clothes at the instance of the appellant. The non-examination of other two attesting witnesses of recovery, in our view, is inconsequential.

42. The evidence on record, including that of HC Satpal (PW10) *moharrar malkhana* and Ct. Surender (PW7), shows that all the relevant exhibits gathered during the course of investigation were sent to the Forensic Science Laboratory (“the FSL”), Rohini. The reports (Ex.PX and Ex.PY) of the examination there were tendered in evidence. These reports, collectively read, show that the trousers recovered at the instance of the appellant on 14.10.2008, kept concealed beneath the paddy crops in village Datoli, District Sonapat, Haryana, bore blood-stains of human origin. Though the ABO grouping thereof was inconclusive, presence of human blood on the said wearing apparel of the appellant is a telling circumstances which required explanation.

43. The following may be noted as the facts and circumstances duly established by the prosecution beyond the pale of any doubts :-

- (i) The appellant, resident of village Datoli, District Sonapat, Haryana became involved with Pooja, daughter of Om Prakash, resident of the same village and married her on 21.11.2007 in a private ceremony arranged at his instance in Arya Samaj Vedic Marriage Mandal Jamuna Bazar temple, Delhi in which Pooja participated out of her own free will and volition;

- (ii) Pooja entered into in an “arranged” marriage with Anil Puri Goswami (the victim), resident of 65, Savan Park Extension, Ashok Vihar, Phase-III, Delhi on 16.04.2008 and started living with him as his wife, but would remain unhappy;
- (iii) The victim, a computer engineer by profession, received a call on his mobile phone no.9810525768 at 09:28:14 hours, the conversation lasting 169 seconds on 02.10.2008, from mobile phone no.9718490182 and left his house on his motorcycle at 10:00 AM telling his family that he was required to go to attend to some computer complaint;
- (iv) The CDRs (Ex.PW19/F) of the mobile phone of the deceased reveal that he had received two more calls from same mobile phone no.9718490182 at 11:28:33 and 12:08:08 hours on 02.10.2008, the said calls lasting 66 seconds and 47 seconds respectively, the mobile phone of the deceased thereafter going into disuse, to be eventually found and recovered from the pocket of the trousers on his dead body partially submerged in water of public drain in the area of village Mukhmelpur;
- (v) Since the victim did not return home by the usual hour in the evening on 02.10.2008, his father Goswami Krishan Puri (PW12) lodged missing report (Ex.PW16/A) with the police at 09:45 AM on 03.10.2008 followed by FIR on the

basis of his statement (Ex.PW12/A) on 06.10.2008 suspecting abduction;

- (vi) The investigation about mobile phone no.9718490182 from which aforementioned three last calls were received by the deceased on his mobile phone brought out that it was registered in the name of Shamshad (PW24) on the basis of misuse of his ID proof (Ex.PW22/C), the connection having been activated on 06.09.2008 with mobile instrument bearing IMEI no.353632017354930 and having become dysfunctional, going into disuse after last call at 12:39 hours on 03.10.2008, the same SIM card (9718490182) having been used for same period with another mobile phone instrument;
- (vii) The mobile phone instrument bearing IMEI no. 353632017354930 make Nokia-1110 had been in use of the appellant for purpose of mobile phone no.9996793484 registered in his name, during the period 01.08.2008 to 02.10.2008, as confirmed by CDRs (Ex.PW19/I), it also having gone into disuse with the last call made at 12:20:24 hour on 02.10.2008;
- (viii) The appellant, upon interrogation, made disclosure (Ex.PW16/B) on 12.10.2008 and led to recovery of the highly decomposed dead body of the victim from public drain (*ganda nala*) in village Mukhmelpur partially

submerged in water and concealed from public view by trees and shrubs along the infrequently used village road;

- (ix) The appellant got recovered his clothes, including trousers (Ex.P-3) kept concealed in fields close to village Datoli, District Sonapat, Haryana on 14.10.2008 which on examination in FSL was found bearing blood-stains of human origin.

44. In our view, the facts and circumstances proved by the prosecution form a complete chain which unerringly points towards the complicity of the appellant in the abduction and murder of Anil Puri Goswami. We elaborate.

45. The facts and circumstances attendant upon the ceremony in Jamuna Bazar temple, Delhi on 21.11.2007 clearly show that the appellant and Pooja had got married to each other out of their own choice, seemingly without the consent of, or participation by, members of their respective families. The manner in which they entered into the wedlock, using the services of an advocate in Delhi, away from gaze of their kin in the native village in District Sonapat, Haryana, further shows that they did not intend to make this a matter of public knowledge or at least the knowledge of their respective families. The fact that Pooja entered into an “arranged” marriage with Anil Puri Goswami on 16.04.2008 shows that her earlier marriage with appellant was kept concealed till that stage. At least the victim and his family would have had no knowledge of it for the simple reason they would have not agreed to arrange marriage of the victim with Pooja, given the

existence or subsistence of her first marriage. Against the above backdrop, it is not difficult to infer the extreme anguish or grudge that would have been entertained by the appellant, particularly against the victim who had taken away his wife. The prosecution has, thus, proved strong motive for the crime.

46. The facts proved unmistakably show that the mobile phone no. 9718490182 was in use of, or accessible to, the appellant on 02.10.2008. The SIM of the said mobile phone number had been activated on 06.09.2008 in mobile phone instrument bearing IMEI no. 353632017354930 which had been in his use since 01.08.2008 for purpose of mobile phone no.9996793484, registered in appellant's name, the same having been found in his possession at the time of his arrest on 12.10.2008. The fact that both mobile phone no.9718490182 taken out on the basis of fake identity of Shamshad (PW24) and also mobile phone no.9996793484 of the appellant went into disuse from 03.10.2008 to 02.10.2008 respectively cannot be sheer co-incidence. The timing of becoming dysfunctional of both SIMs, which at one stage had used a common mobile phone instrument, leads to the obvious inference that the person using them intended the trail on their basis to go dry. Since the instrument in question was found in possession and use of the appellant on 12.10.2008, it was for him to account for the same and give an explanation. The appellant in his statement under Section 313 Cr.P.C has instead chosen to go with total denial. He disowned the mobile phone no.9996793484 without explaining as to how it is registered in his name. This clearly is a false

denial. The absence of explanation of the incriminating circumstance, coupled with false answer, only add to the incriminating material, providing the “missing link”, if any, in the chain of circumstances [*State of Maharashtra v. Suresh* (2000) 1 SCC 471; *Rumi Bora Dutta v. State of Assam* (2013) 7 SCC 417].

47. The fact that the appellant led to the discovery of the dead body dumped and left to rot in a secluded spot in a public drain, shows special knowledge on his part about the circumstances in which the victim had suffered homicidal death. The natural corollary of absence of explanation on this score is that the appellant himself was the perpetrator of the crime, the autopsy report having proved it to be a case of murder. The trousers of the appellant, again recovered from the place of its concealment specially known to him was found to be bearing human blood. Though its group could not established, want of any explanation from the appellant only reinforces the above conclusion [*Khujji @ Surendra Tiwari v. State of Madhya Pradesh* (1991) 3 SCC 627]

48. The nature of injuries found on the dead body and the manner in which it was disposed off unmistakably show that the assailant intended to bring about the death. Thus, the prosecution has established it to be a case of murder.

49. The impugned judgment does not suffer from any error, illegality or impropriety. The guilt of the appellant has been brought home by the prosecution. In the result, we find no merit in the appeal. It is dismissed.

50. The appellant be informed of the result through the Superintendent Jail, and a copy of this judgment be delivered to him.

R. K. GAUBA
(JUDGE)

SANJIV KHANNA
(JUDGE)

JANUARY 15, 2016
nk/ss