

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**1. CRA-D-220-DB-2003
Date of decision:30.03.2017**

Uttam @ Anand

.....Appellant

Versus

State of Haryana

.....Respondent

2. CRA-D-262-DB-2003

Sanjay

.....Appellant

Versus

State of Haryana

.....Respondent

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

Present: Mr. Aman Dhir, Advocate as
Legal Aid counsel for the appellants.

Mr. Praveen Bhadu, Asstt. A.G., Haryana.

H.S. MADAAN, J.

Vide this judgment we propose to dispose of two appeals i.e.

CRA-D-220-DB-2003 filed by accused-convict Uttam @ Anand and **CRA-D-262-DB-2003** filed by accused-convict Sanjay, both of them alongwith Arvind Mishra (declared as proclaimed offender during the trial) were charge-sheeted and then tried by Court of Additional Sessions Judge, Fast Track Court, Sonapat and convicted vide impugned judgment dated 25.01.2003 for offences under Sections 364, 302, 201 read with Section 34 of the Indian Penal Code (“IPC” for short) and vide order dated 29.01.2003 were sentenced as under:-

Name of Convict	Offence	Sentence Awarded
Uttam @ Anand	Under Section 201 IPC	Rigorous imprisonment for three years and to pay a fine of ₹1,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of one month.
	Under Section 302 read with Section 34 IPC	Imprisonment for life and to pay a fine of ₹5,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of three months.
	Under Section 364 IPC	Rigorous imprisonment for seven years and to pay a fine of ₹2,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of two months.

Sanjay	Under Section 201 IPC	Rigorous imprisonment for three years and to pay a fine of ₹1,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of one month.
	Under Section 302 read with Section 34 IPC	Imprisonment for life and to pay a fine of ₹5,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of three months.
	Under Section 364 IPC	Rigorous imprisonment for seven years and to pay a fine of ₹2,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of two months.

Appellants-accused prayed that the impugned judgment and order of their conviction and sentence be set-aside by way of acceptance of their aforementioned appeals and they be acquitted of the charge framed against them.

Briefly stated the facts of the case as per the prosecution story are that on 09.03.2000 complainant-Raju, proprietor of Raju Cable and Video Library Ganaur submitted a written application Ex.PA addressed to SHO, Police Station, Ganaur, in which he had stated that he was running a business of cable and video library; that on 06.03.2000 at about 8:00 p.m. two boys came to him demanding VCR on hiring basis, one of them

disclosed his name as Michael son of Ram Kishan Jogi, resident of near Saraswati School, across Railway Crossing; that when he asked them to bring surety, then they stated that he should send his employee with them to install video at their home who would also verify their residential house; that he accordingly sent his employee, Pawan son of Jagdish Chander Jogi, aged about 17/18 years on his scooter No.DL-8SB-7492 make Chetak with V.C.R. G-10 and three cassettes with them, one of the young boys went on his bicycle whereas the other sat on pillion of the scooter with Pawan Kumar. Thereafter, Pawan Kumar, VCR along with video cassettes etc. were not traceable. The complainant in the application had requested that Pawan Kumar be traced out as soon as possible so that he might not fall in any trouble. Inter alia in the application, it was mentioned that Pawan Kumar was wearing a shirt of pink colour, pant of *Mehandi* colour and canvas shoes of black colour.

On receipt of such application at Police Post, City Ganaur, Report No.17 dated 09.03.2000 was entered in the DDR of said Police Post. On 10.03.2000 ASI Bishamber Lal (hereinafter referred to as the Investigating Officer/I.O.) went to the spot to verify the facts, thereafter, he sent information Ex.PA/1 for registration of the case under Sections 364/34 IPC and on the basis thereof formal FIR Ex.PA/2 was registered by ASI Ram Parkash. Then the police party led by ASI Bishamber Lal went to the spot. The Investigating Officer prepared rough site plan of place of incident as Ex.PO.

On 20.03.2000 complainant-Raju informed that dead body of Pawan Kumar was lying in a gunny bag in the pits between Garhi

Jhanjhara Road and Railway Line in front of rice mill. ASI Bishamber Lal sent report for registration of case for offences punishable under Sections 302/201 IPC, copy of that report being Ex.PA/3. Then ASI Bishamber Lal alongwith police officials went to the spot where dead body of Pawan Kumar was lying. He carried out inquest proceedings preparing report Ex.PP in that regard. The Investigating Officer got clicked photographs of the dead body. The gunny bag in which dead body was lying was taken into possession after preparing its parcel which was sealed with the seal having impression "BM" that parcel was taken into possession vide recovery memo Ex.PD. The Investigating Officer prepared rough site plan of the place of recovery of dead body as Ex.PR.

On 21.03.2000, the Investigating Officer moved an application for getting post-mortem examination conducted on the dead body, copy of that application being Ex.PQ, the application was submitted at General Hospital, Sonapat, but the dead body was sent to PGIMS Rohtak for autopsy. After post-mortem examination the doctor handed a parcel containing clothes of deceased, a lead (wire) which was there on the neck of the deceased. Such articles were taken into possession vide memo Ex.PM/1. Thereafter the investigation of the case was handed over to Inspector/SHO-Ranbir Singh, from Police Station, Ganaur.

On 28.03.2000 Inspector Ranbir Singh (hereinafter referred to as the Investigating Officer/I.O.) arrested all the three accused namely Uttam @ Anand, Sanjay and Arvind Mishra. On 29.03.2000 the accused while in police custody were interrogated by Inspector-Ranbir Singh, first of all accused-Arvind Mishra was subjected to interrogation during course

of which he stated that he had kept three cassettes in an iron box in his rented house and he could get the same recovered. His disclosure statement Ex.PG was recorded.

Thereafter, accused-Sanjay was interrogated, during the course of which he suffered a statement under Section 27 of the Indian Evidence Act Ex.PF that he had concealed a scooter behind the grain market under the paddy straw.

Then came turn of accused-Uttam @ Anand who while being interrogated by the police made a disclosure statement Ex.PH that he had concealed VCR in an iron box in the store of his house and he could get the same recovered.

Thereafter accused got the recoveries effected. Accused-Arvind got recovered three cassettes from his house which were taken into possession vide recovery memo Ex.PE. The Investigating Officer prepared rough site plan of the place of recovery as Ex.PE/1. Then accused Sanjay while in police custody led the police party to the specified place and got recovered scooter from behind the grain market under the paddy straw, which was taken into police possession. The Investigating Officer got prepared rough site plan of place of recovery. Whereas accused Uttam @ Anand in pursuance of the disclosure statement suffered by him got recovered the VCR from his house as per his statement. The VCR was seized vide a memo. The Investigating Officer prepared rough site plan of place of recovery also.

The accused were got medically examined. The case property was deposited in the Malkhana, whereas accused were put up in

the lock up.

After completion of the investigation and other formalities, challan against the accused was prepared and filed in the Court.

When the challan was filed in the Court of Judicial Magistrate Ist Class, Sonapat, copies of documents relied upon therein were supplied to the accused free of cost as provided under Section 207 Cr.P.C.. Thereafter, finding that offences under Sections 302 and 364, IPC were exclusively triable by the Court of Sessions, the Judicial Magistrate Ist Class, Sonapat committed the case to the Court of Sessions Judge, Sonapat vide order dated 04.08.2000. When the case was received in the Court of Sessions Judge, Sonapat, it was entrusted to the Court of Additional Sessions Judge, Sonapat.

Learned Additional Sessions Judge, Sonapat on finding a prima facie case, for the offences under Sections 364, 302, 201 read with Section 34 IPC, against the accused, charge sheeted them accordingly. The accused pleaded not guilty and claimed trial. Thereafter, the case was fixed for evidence of prosecution.

However, it may be mentioned that accused Arvind, during the trial had absented from the Court without any intimation on 18.09.2001 with the result his bail was cancelled and he was ordered to be summoned through non-bailable warrant of arrest, but he could not be arrested despite warrants of arrest being issued against him repeatedly. Ultimately after issuance of proclamation under Section 82 Cr.P.C. against him, he was declared a proclaimed offender.

During the course of evidence of prosecution, it examined as many as fifteen (15) witnesses as per details below:-

PW-1 Ram Kishan, aged about 75 years resident of Ganaur stated that accused-Uttam @ Anand and Sanjay are residing in his neighbourhood; that on 28.03.2000 he and PW-Ramdia were smoking at his house, in the meanwhile accused Uttam @ Anand and Sanjay came to him and stated that due to their mistake Pawan Kumar had been murdered and police was after them and they be produced before police, since he (witness) was old and respectable person in the area. They told that they were taking VCR and deceased-Pawan refused, so they pulled the lead (wire) which was around his neck due to which he had died. In the meanwhile, the police came there and inquired about accused-Uttam @ Anand and Sanjay, therefore, he produced them before the police. They were arrested and their statements were recorded.

PW-2 Raju-complainant supported the prosecution story on material points proving VCR Ex.P1 stating that he had taken it on Superdari. He stated that three cassettes Ex.P2 to Ex.P4 recovered from the accused had been taken into possession vide memo Ex.PE.

PW-3 Jagdish son of Kamal, aged 48 years, resident of Ganaur, father of deceased-Pawan Kumar deposed regarding accused-Uttam @ Anand, while in police custody getting recovered VCR Ex.P1 from the box lying in his house stating that after recovery they had come to Ganaur Mandi behind the grain market, there was an open plot

and a scooter was concealed under the rice straw; that writing work was done there. This witness was declared hostile at the request of Public Prosecutor to the effect that this witness was suppressing truth about the disclosure statement of the accused and permission was granted to the Public Prosecutor to cross-examine the witness. During his cross-examination he almost admitted as correct all the questions put to him.

PW-4 HC Ram Chander, who on 21.03.2000 and 07.04.2000 was posted as MHC tendered his affidavit Ex.PJ and stated that it be read as part of his evidence.

PW-5 UGC Ram Singh stated that on 07.04.2000, he was posted at Police Station Ganaur, he tendered into evidence his affidavit Ex.PK as a part of his evidence.

PW-6 C. Jagbir Singh Draughtsman, who on 13.04.2000 had visited the spot and prepared scaled site plan at the instance of complainant-Raju stated that it is in his hand and bears his signatures.

PW-7 C. Dharambir stated that on 20.03.2000, he was posted at Police Post, City Ganaur, on that day he took dead body of Pawan Kumar to Civil Hospital, Sonapat in the evening for post-mortem examination. However, on 21.03.2000 the doctor at Sonapat referred the case to PGIMS, Rohtak and autopsy on the dead body was done on 21.03.2000. Dead body was handed over to the relatives against receipt Ex.PM. According to this witness the doctor had handed over a lead, clothes, viscera and documents to him which he handed over to SI-Bishamber Lal and those were taken into possession

vide memo Ex.PM/1.

PW-8 Satish son of Jai Bhagwan, aged 25 years, labourer, resident of Ganaur stated that deceased-Pawan Kumar was son of his uncle and he had identified his dead body, besides, collecting the dead body after post-mortem examination by executing receipt Ex.PM.

PW-9 Ashok Kumar son of Manohar Lal, resident of Basant Vihar, Ganaur, District Sonapat stated that the receipt Ex.P5 was taken into possession from him as mentioned in memo Ex.PN; that he was partner with PW-Raju son of Manohar Lal.

PW-10 Inspector Ranbir Singh, who on 28.03.2000 while posted as SHO Police Station, Ganaur had taken up investigation of this case deposed regarding what had been done by him in connection with the investigation of this case.

PW-11 ASI Bishamber Lal, who had carried out investigation of this case initially deposed regarding his part.

PW-12 Jagmohan, photographer, Mohan Studio, Ganaur Mandi, Punjabi Market Ganaur stated that photographs Ex.P6 and Ex.P7 were taken by him as per police request. He proved the negatives as Ex.P8 and Ex.P9.

PW-13 Dr. Ravinder Sahu stated that on 21.03.2000 when he was posted in Department of Forensic Medicine of PGIMS Rohtak, he had conducted post-mortem examination on dead body of Pawan Kumar son of Jagdish Chander, resident of Ward No.5, Ganaur, Sonapat. The body was brought by C. Dharambir No.629 and C. Jaimal

No.1005 and it was identified by Bhawan Kumar and Satish Kumar. Dead body was brought from Garhi Jhanjhara about 2 K.Ms. away from Police Station Ganaur, date of discovery of death was 20.03.2000 at 8:15 p.m. The body was brought on 21.03.2000 at 1:00 p.m. and the post-mortem was conducted on 21.03.2000 at 1:30 p.m. As per information furnished by the Police; the deceased was last seen alive on 6.03.2000 at 8:00 p.m.. The VCR lead (wire) was supposed to have been wrapped around the neck for the purpose.

Approximate length of the body was 172 cm. Received the dead body of a male wrapped in a gunny bag and two white plastic sheets. Body was wearing following articles:-

1. reddish full sleeves shirt with arms folded half way and was torn at places;
2. a whitish *BANIYAN*;
3. a blackish brown pant with hooks and zip closed in situ;
4. a blackish leather belt closed in situ;
5. a brown underwear with a trade mark "DOLLAR";
6. blue coloured sock over right foot; and
7. a whitish metallic *KADA* over the right wrist.

All the clothing and articles were smudged with decomposed tissues and mud at places. Body was in advanced stage of decomposition. Body was emitting foul smell. Skull alongwith mandible and upper two cervical vertebrae found articulated with each other but separated from rest of the body. Skull completely devoid of

scalp. Facial skin missing alongwith rest of soft tissues, so that underlying bones as well as the mandible was exposed. Teeth visible, eye balls missing and eye socket empty. Maggots of size 0.5 to 1 cm crawling all over the body at places. Body and axillary hair were peeled off at places all over the body. P.M. bullae present at places. Skin over the body at places showed darkish discoloration. C3 to C6 vertebrae found to be missing. Lower border of C2 and upper border of C.7 showed gnawing effect as well as over the upper part of chest, both shoulders, super-medial aspect and both clavicles exposed, upper part of manubrium exposed. Skin over the left leg missing alongwith soft tissues, so that both bones were exposed. Left foot missing completely, Abdomen distended. Penis and scrotum distended. Pubic hair black, curly and 3 to 4 cm long and could be peeled off on right traction. Faecal matter passed out.

Brain: Brain was liquified and paste like.

Thorax: Walls described ribs and cartilage healthy.

Pleurae: P.M. bullae seen.

Larynx and trachea: described.

Right and left lungs were softened and shrunken, decomposed. On cut section bleed tinged frothy secretions oozed out. Heart was softened, flabby and empty.

Dental status: All teeth showed mild grinding effect and were loosened in their sockets. Eight upper tooth on both sides not get erupted whereas eighth teeth on lower left side was carious.

Abdomen:

Abdominal well described, peritoneum showed P.M. bullae, mouth described, whereas pharynx and oesophagus were missing, stomach contained about 100 cc of pasty material and gastric mucosa showed congestion. P.M. Bullae present. Small intestines and their contents contained semi digested food material and gases. Large intestine contained faecal matter and gases. Liver appeared to be congested. Spleen was softened and pulpy. Kidneys were somewhat congested. Bladder was empty. Organs of generation external described whereas internal healthy.

Ligating Material:

The witness stated that he had also received alongwith the body a black cord i.e. the ligating material with the sockets at each end and was in two plies, internal circumference was 30 cms and tied by means of fixed knot. It had two free ends one being smaller and measuring 51 cm and other one being longer and measuring 33 cm. There was another single loop of which internal circumference was 32 cm. A black sacred thread with a *TABIZ* was also present alongwith it.

The witness stated that in his opinion the dead body was of a young adult, male individual. However, cause of death could not be determined. Hence viscera had been preserved for chemical analysis.

Probable time that elapsed between death and autopsy was about 1 to 2 weeks. This witness handed over to the police following articles:-

1. Dead body after autopsy.
2. Copy of PMR No.PME/2000/3/16 dated 21.03.2000.
3. Police papers, duly initialled and total 7 in number.
4. Clothing and belongings sealed with five seals.
5. Ligating material sealed with three seals.
6. An envelope containing requisition for chemical analysis sealed five seals.
7. A sealed packet bearing 10 seals containing the viscera in four separate jars for chemical analysis.
8. Sample of seal used.

He proved carbon copy of post-mortem report Ex.PS and inquest report Ex.PP bearing his initials.

While the statement of the witness was being recorded a sealed parcel was ordered to be opened, clothes were taken out, those were shown to the witness and he stated that those were the same clothes which were sealed by him. He further stated that on 19.06.2000 police moved application Ex.PT for taking opinion about the death of the deceased on which he had opined that on 19.06.2000 at 12:45 p.m. ASI Yashpal Singh had clarification from him as to whether the VCR lead (wire) received with the dead body of the deceased-Pawan Kumar could be used to cause strangulation if applied around the neck and from perusal of the postmortem report in which it was mentioned that the said lead was received alongwith the body and that C3 to C6 vertebrae (cervical) were missing; he was of the opinion that a definite

opinion as regards the specific lead (wire) could not be given, however, the VCR lead (wire) could be used as a ligating material to cause strangulation by ligature. He had proved his opinion Ex.PT/1. In the final lines of his examination-in-chief the witness stated that in view of the post-mortem and FSL report Ex.PU the cause of death could not be determined and that even after perusing the report of the Chemical Examiner, he was unable to give a specific opinion about the cause of death of the deceased but the possibility of death having been caused by strangulation by ligature Ex.P10 could not be ruled out.

PW-14 Dr. R.N. Tehlan, Medical Officer, General Hospital, Sonapat deposited that on 20.03.2000 on receipt of police application Ex.PQ for conducting post-mortem examination on dead body of Pawan Kumar, which was in an advanced stage of putrefaction inasmuch as the soft tissue was totally missing from the face and skull bones and parts of the limbs were missing; Maggots were present at places, the dead body was referred to PGIMS, Rohtak for conducting post-mortem examination by Forensic Expert. He proved his endorsement as Ex.PQ/1.

PW-15 Manoj Kumar, proprietor of City Palace, Opposite Bus Stand, Panipat testified that on 08.10.1997 Ashok Kumar resident of Ganaur purchased a VCR make National G-10 for ₹3,000/- from their shop vide bill Ex.PV.

With that the prosecution evidence stood concluded.

Statements of accused were recorded under Section 313

Cr.P.C., in which all the incriminating circumstances appearing against the accused were put to them, but they denied the allegations contending that they are innocent and have been falsely involved in this case.

During their defence evidence the accused examined, Maman Singh son of Man Raj aged 60 years, agriculturist resident of village Jhinhara Garhi, District Sonapat as DW-1. The witness stated that Ramphal and Ram Kishan Jogi are known to him “Ramphal has 4-5 sons including Uttam @ Anand-accused”; that Ramphal and Ram Kishan Jogi are on inimical terms since long; that Ram Kishan leveled a false allegations against Uttam @ Anand etc. sons of Ramphal for molesting a girl before the year 1996. A Panchayat was held in connection with that allegation and the Panchayat declared sons of Ramphal innocent. Injuries were caused to son of Ram Kishan after 20 days and it was alleged that the eldest son of Ramphal caused injuries to son of Ram Kishan. A Panchayat was held and he also participated in that Panchayat as an Arbitrator and told Panchayat that sons of Ramphal are innocent; and that Ramphal and Ram Kishan are neighbours and their relations are strained. Michael is the grandson of Ram Kishan.

With that the defence evidence of the accused stood concluded.

After hearing the arguments, learned trial Court convicted and sentenced accused-Uttam @ Anand and Sanjay as mentioned above

which left them aggrieved and they have preferred the present appeals.

We have heard learned counsel for the appellants, learned Assistant Advocate General, Haryana, besides, going through the record and we find that there is no merit in the appeals.

From statement of complainant-Raju appearing as PW-2 it comes out that deceased-Pawan Kumar had been taken away by accused Uttam @ Anand and Sanjay on the pretext of getting installed VCR at their house on hire basis and thereafter, Pawan Kumar was not seen or heard of. Similarly, the VCR, video cassettes and other ancillary articles and scooter belonging to Raju-complainant were not traceable till they were got recovered by the three accused in pursuance of disclosure statements made by them. The complainant had lodged missing report with the police by submitting written application Ex.PA on 09.03.2000. Subsequently, dead body of Pawan Kumar had been found in decomposed condition and it was a case of unnatural death. Therefore, necessary ingredients of offence under Section 364 IPC, i.e. accused having kidnapped Pawan Kumar for the purpose of committing his murder stand established on the file.

Coming to offence under Section 302 read with Section 34 IPC, though there is no direct evidence that it were the accused who alongwith their co-accused Arvind Mishra (since declared as proclaimed offender) had committed murder of Pawan Kumar, but very strong circumstantial evidence completing the chain of events clearly leads to an irresistible conclusion that it were the accused who had

committed murder of Pawan Kumar and they shared a common intention to do so. While coming to this conclusion we have considered the aspect that accused Uttam @ Anand and Sanjay were last seen in the company of Pawan Kumar-deceased, rather they had kidnapped him on 06.03.2000, thereafter dead body of Pawan Kumar had been recovered. Dead body of Pawan Kumar was detected placed in a gunny bag lying in between railway line and the road on 20.03.2000. The dead body had been identified by complainant-Raju. As such it was for the accused Uttam @ Anand and Sanjay to explain as to how and under what circumstances Pawan Kumar had met his end. They cannot simply wash their hands off the matter saying they are innocent and have been wrongly involved in this case. No previous enmity between the complainant and the accused has been alleged or proved prompted by which he might have involved them in this case wrongly, thus for the reason accused-Uttam @ Anand and Sanjay having been last seen in the company of the deceased a very strong incriminating circumstance against them comes out to be there pointing out that it were they who alongwith their accomplice Arvind Mishra (since declared as proclaimed offender) had committed murder of Pawan Kumar.

Another reason for arriving at such conclusion is that as deposed by PW-1 Ram Kishan, an aged person of 75 years and a retired Government Employee, that accused-Uttam @ Anand and Sanjay known to him and residing in his neighbourhood had approached him on 28.03.2000, while he and PW-Ramdia were smoking at his house

and they told him that due to their mistake Pawan Kumar had been murdered and police was after them and they pleaded with him that they be produced before the police by him being an old and respectable person of the area. The witness stated that both of them had told him that they were taking away VCR but deceased-Pawan Kumar resisted, so they pulled the lead (wire) around his neck due to which he had died. According to the witness, in the meanwhile, the police reached there and asked him about house of Uttam @ Anand and Sanjay, but since they were already present there so he produced them before the police. Police arrested them in this case. The witness was cross-examined extensively on behalf of accused but his credibility could not be shaken on any material point. No reason has been suggested or proved, prompted by which this witness might have come forward to depose against the accused and in favour of the complainant. Although the accused while being examined under Section 313 Cr.P.C. have not said anything which might have shown any enmity between this witness and accused but during their defence evidence they have examined DW-1 Maman Singh. Such witness had stated that Ramphal and Ram Kishan Jogi are known to him, Ramphal had 4/5 sons including Uttam @ Anand-accused. Ramphal and Ram Kishan Jogi are on inimical terms since long inasmuch as Ram Kishan levelled a false allegation against Uttam @ Anand etc. sons of Ramphal for molesting a girl before the year 1996; a Panchayat was held in connection with that allegation and the Panchayat declared sons of Ramphal innocent. Injuries were caused

to son of Ram Kishan after 20 days, it was alleged that the eldest son of Ramphal caused injuries to son of Ram Kishan etc.

In his cross-examination the witness stated that case was registered at police station in connection with injuries caused to son of Ram Kishan, injuries were caused to Kailash son of Ram Kishan. But then no evidence in that regard had been brought on file. As already mentioned, Uttam @ Anand has not taken any plea while being examined under Section 313 Cr.P.C., no such suggestion to PW-1 was put during his cross-examination. Therefore, statement of DW-1 Maman Singh does not help the defence in shaking credibility of PW-1 Ram Kishan. We find that the accused-convicts had every reason to approach PW-1 Ram Kishan and make clean breast of the entire incident. Since it does not come out that those accused-convict are hardened criminals, therefore, it is difficult for the persons entering world of crime freshly to bear the burden of crime on their minds for a long time and it is natural for such type of criminals to blurt out about crime committed by them to relieve themselves of such burden. We do not see any reason to discard testimony of PW-1 Ram Kishan rather his testimony comes out to be convincing and we find it appropriate to place reliance upon it so as to come to conclusion that accused-convict had approached him and made extra judicial confession of their having committed murder of Pawan Kumar by strangulating him with lead (wire) for the purpose of sharing the spoils i.e. distribution of VCR, video cassettes, other ancillary articles and scooter of complainant-Raju

amongst themselves.

Another very powerful corroborating fact which supports prosecution story is that as deposed by PW-10 Inspector Ranbir Singh that accused Arvind Mishra had made a disclosure statement Ex.PG before him on 29.03.2000 that he had kept concealed three cassettes in his house which he could get recovered; accused Sanjay had also made a statement Ex.PF under Section 27 of the Evidence Act that he had kept concealed the scooter in the grain market under the paddy straw, whereas Uttam @ Anand had made a disclosure statement Ex.PH that he had kept concealed VCR in an iron box placed in the store of his house and then all the three accused getting recovered such articles from their possession which were taken into possession and those was found to be belongings of complainant-Raju.

Complainant-Raju appearing as PW-2 had identified such articles to be belonging to him. The accused could not account for possession of such articles that means the accused were in unauthorized and illegal possession of such articles. Those articles were in possession of Pawan Kumar when he had left alongwith accused. Section 114 of the Indian Evidence Act provides that *the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Illustrations The Court may presume:-*

“That a man who is in possession of stolen goods soon after

the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession”

Thus drawing this very presumption it can be safely inferred that the accused had taken away the goods belonging to complainant-Raju from his servant-Pawan Kumar (deceased) which were in possession and while doing so, when the deceased protested / resisted the accused committed his murder and the accused-convicts shared a common intention for doing so. The motive being to distribute the booty amongst themselves so as to cause wrongful gains to themselves and wrongful loss to the complainant. Therefore charge for offence under Section 302 read with Section 34 IPC also stood proved against the accused-convicts. It needs to be mentioned here that medical evidence in this case duly corroborates ocular evidence. The Investigation in this case has been carried out in a fair and impartial manner, the Investigating Officer had no reason to involve the accused in this case wrongly and to challan them falsely. Appellants/accused-convicts namely Uttam @ Anand and Sanjay have failed to render any plausible and convincing explanation for their alleged false implication in this case.

Coming to offence under Section 201 IPC after committing murder of Pawan Kumar the accused-convicts put his dead body in a jute bag leaving it at a deserted place, their purpose was obviously to cause disappearance of offence, their such acts clearly comes within mischief of Section 201 IPC.

Thus we find that the judgment of conviction passed by the trial Court is well reasoned one, based on proper appraisal of evidence and

correct interpretation of law. It does not suffer from any illegality or infirmity and the same is upheld. Whereas appeals are found to be without any merit and are dismissed accordingly.

It is stated that accused Sanjay and Uttam @ Anand are on bail in terms of order dated 02.03.2006 and 04.05.2006 passed by this Court. Their bail orders are cancelled. They are ordered to be taken into custody and made to undergo the remaining sentence. Necessary directions in that regard be issued to Chief Judicial Magistrate, Sonapat.

Necessary intimation be sent to the quarter concerned.

30.03.2017
Gaurav Sorot

(T.P.S.MANN)
JUDGE

(H.S. MADAAN)
JUDGE

- | | | |
|----|------------------------------|-----|
| 1. | Whether reportable? | Yes |
| 2. | Whether reasoned / speaking? | Yes |