

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

**Judgment Reserved On: 17.05.2017**  
**Judgment Pronounced On: 29.05.2017**

**CRL.A. 52 /2016**

**GHANSHYAM @ RAJU**

**... Appellant**

**Through: Mr. Siddharth Yadav and  
Mr. Ankit Aggarwal, Advocates.**

**versus**

**STATE (GOVT. OF NCT OF DELHI)**

**... Respondent**

**Through: Ms. Rajni Gupta, APP for  
State.**

**CORAM:  
HON'BLE MR JUSTICE SIDDHARTH MRIDUL  
HON'BLE MS JUSTICE MUKTA GUPTA**

**J U D G M E N T**

**SIDDHARTH MRIDUL, J.**

**1.** The present appeal instituted under the provisions of section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC'), assails the judgment dated 28.07.2015 and the order on sentence dated 29.07.2015, rendered by the Ld. Additional Sessions Judge, Delhi, in Sessions Case No. 98/2014.

2. By way of the impugned judgment dated 28.07.2015 and order on sentence dated 29.07.2015, the appellant/Ghanshyam *alias* Raju (hereinafter referred to as 'Appellant') was convicted and sentenced as follows:

- i. Imprisonment for Life and fine of Rs.5,000/- under the provisions of Section 302, Indian Penal Code, 1860 (hereinafter referred to as 'IPC'). In default of payment of fine, he has been sentenced to undergo Simple Imprisonment (SI) for a period of 06 months.
- ii. Rigorous Imprisonment for a period of 10 years and fine of Rs.5,000/- under the provisions of Section 394, IPC read with Section 397, IPC. In default of payment of fine, he has been sentenced to undergo SI for a period of 06 months.
- iii. Imprisonment for Life and fine of Rs.5,000/- under the provisions of Section 120-B, IPC. In default of payment of fine, he has been sentenced to undergo Simple Imprisonment for a period of 06 months.
- iv. SI for a period of 01 year under the provisions of Section 411, IPC.

All the sentences have been directed to run *consecutively*. The benefit of section 428, CrPC, has been granted to the Appellant with regard to sections 394 and 411, IPC.

3. The fulcrum of the case of the prosecution is that, on 25/26.05.2008, the Appellant, in conspiracy with the domestic servant 'X' (juvenile in

conflict with law), who was employed in the House No. C-61, Niti Bagh i.e., the residence of Mr. Ashok Goel and Mrs. Lata Goel; and one other co-accused namely Birju @ Sita Ram (absconding), committed robbery in said house. Further, whilst committing robbery, the Appellant along with his said associates, caused the death of Mr. Ashok Goel and Mrs. Lata Goel (hereinafter referred to as the 'deceased victims') by using deadly weapons (viz. knives).

4. On 26.05.2008, pursuant to receiving DD No.9 dated 26.05.2008 [Ex.PW-17/A, Ex.PW-29/A], a police team proceeded to the house of the deceased victims where they were found dead; lying in a pool of blood; and the house was found ransacked. PW-2 and PW-3, the daughter and son-in-law of the deceased victims, respectively; and PW-5, a relative of the deceased victims, also reached the crime spot. An FIR No. 175/2008 dated 26.05.2008, under sections 302/394/398 IPC was registered [Ex.PW-16/A]. The crime spot was investigated by a police team, a crime team and a dog squad; articles were lifted for scientific examination [vide seizure memo Ex.PW-3/A]; and the dead bodies were identified by PW-3 and PW-4 and sent to the mortuary. Post mortem on the dead bodies was conducted [Ex.PW-6/A; Ex.PW-30/A] and the bodies were handed over to PW-3 and PW-4.

5. It is further the case of the prosecution that on 28.05.2008, during the course of investigation, whilst the police team was at the nearby Niti Bagh market, New Delhi, they met PW-7, Ramesh Saini, who was employed as a domestic servant in House No.C-65, Niti Bagh, New Delhi. PW-7 gave a statement to the police [Ex.PW-7/A] that, the appellant made a confession of his guilt to PW-7, inasmuch as, he confessed that he alongwith his brother ('X') and his maternal uncle, had committed robbery at the residence of the deceased and the murder of the deceased victims. The prosecution case is also that, PW-7, 'X' and the appellant were known to each other. Further that, PW-7 informed the police that the appellant worked at House No. C-41, Gulmohar Park, as a domestic servant.

6. Pursuant to recording of the statement of PW-7, the police team proceeded to House No. C-41, Gulmohar Park, on 28.05.2008 itself, where they found the appellant, who was then arrested [vide arrest memo Ex.PW-28/A]. The appellant made a disclosure statement to the police [Ex.PW-28/C]. Thereafter, at the instance of the appellant, the blood stained knife [Ex.PW-28/P-1] used in the commission of the offence, wrapped in a blood stained pant [Ex.PW-28/P-2], was recovered from his possession; alongwith part of the robbed property [Ex.PW-28/P-3; Ex.PW-28/P-4]. Currency notes in the sum of Rs.8970/- were also recovered at the instance

of the appellant. The said articles, including the weapon of offence were seized vide seizure memo Ex.PW-28/E.

7. The case of the prosecution is also that, on 30.05.2008, a police party, proceeded to Bihar in search of 'X'; and recovered part of the robbed property from the house of 'X' in Bihar [vide seizure memo Ex.PW-19/A]. The second police team, alongwith the appellant, left for Bihar on 30.05.2008, and on 03.06.2008, recovered part of the robbed property from the house of the appellant at his instance [vide seizure memo Ex.PW-28/F]. Thereafter, one of the police teams, alongwith the appellant and the recovered robbed property, came back to Delhi. The second police team apprehended 'X' at Calcutta on 13.06.2008 and returned back to Delhi on 15.06.2008. On 16.06.2008, the prosecution recovered *inter alia* another knife at the instance of 'X' [seizure memo PW-3/I] from the lane behind the house of the deceased victims, in the presence of PW-3.

The articles lifted from the crime spot on the date of the incident, i.e. 26.05.2008 as well as the recovered robbed property; the weapons of the offence; other articles recovered from the accused persons, were sent for scientific examination. The FSL results were received thereafter [Ex.PW-31/A, Ex.PW-32/A, Ex.PW-32/B, Ex.PW-32/C, Ex.PW-32/D]. Medical opinion *qua* the weapons of offence was also obtained [Ex.PW-6/B, Ex.PW-6/C, Ex.PW-6/D].

**8.** Learned Counsel appearing on behalf of the Appellant would urge that, the investigation in the present case suffers from various lapses and lacunae, inasmuch as, no attempt was made by the prosecution to join any independent witness at the time of seizure of the robbed articles and of the alleged weapon of crime (knife), recovered pursuant to the disclosure statement of the Appellant.

**9.** Learned Counsel for the Appellant would then draw the attention of this Court to the testimonies of PW-22 and PW-28 in order to asseverate that no evidence has been adduced in support of any investigation conducted by two police teams in Bihar.

**10.** In other words, it has been urged on behalf of the appellant that the prosecution story ought to be disbelieved on the ground that the alleged robbed property recovered from the Appellant has been planted on him.

**11.** It would further be urged that the appellant has been falsely implicated, inasmuch as, no blood was found at the place from where the blood stained knife wrapped in the blood stained pant was recovered. Further, no scientific evidence was obtained with regard to the crime spot and the recovered knife. Furthermore, the finger print expert conducted his investigation one month after the date of the incident [Ex.PW-8/A].

**12.** It would then be urged that the reliance on the alleged extra judicial confession by the appellant to PW-7, is misplaced. In order to buttress this

submission, reliance would be placed on the decision of coordinate bench of this Court in *Ghanshyam Prasad Yadav v. State*, reported as **2013 (1) JCC 74**. Furthermore, it would be contended that PW-7 is a planted witness of the prosecution, inasmuch as, there are contradictions in the statements of PW-29 and PW-7 with regard to the place and time of recording of the statement of PW-7 on 28.05.2008.

**13.** It would further be urged that the alleged conspiracy hatched between the appellant and 'X' has not been made out. Next, it would be urged that there is no evidence to demonstrate the entry and exit of the Appellant from the house of the deceased victims, on the date of the incident i.e. 26.05.2008.

**14.** Per contra, learned Additional Public Prosecutor whilst supporting the impugned judgment in its entirety, would urge that the findings of the Ld. Trial Court require no interference.

**15.** It would be submitted that the prosecution has established by cogent evidence that, the appellant and his co-accused, 'X', in connivance with each other, had conspired to commit robbery and the murder of the deceased victims.

**16.** We have heard the learned counsel appearing on behalf of the parties and perused the entire case record.

17. It is a settled legal position that when recovery is effected pursuant to any statement by the accused, the document prepared by the investigating officer contemporaneous with such recovery need not necessarily be attested by an independent witness. If any such statement leads to the recovery of any article, it is open to the investigating officer to take the signature of any person present at that time, on the document prepared for such recovery. However, if no witness was present, it would not make the document prepared in relation to the recovery, a tainted one and the recovery evidence, unreliable. [Ref: *State, Govt. of NCT of Delhi v. Sunil and anr.*, reported as (2001) 1 SCC 652]

18. In the instant case, the recovery of the part of the robbed articles as well as the blood-stained knife, wrapped in the blood-stained pant belonging to the appellant, was made from Delhi, at the house where the appellant used to work as a domestic servant. The recovery made from Delhi, was pursuant to the disclosure statement of the appellant. Further, part of the robbed articles was also recovered from the house of the Appellant in Bihar, at his instance.

19. Furthermore, a perusal of the testimony of PW-29 would reveal that no public witnesses were found in the locality of the appellant in Delhi, at the time of his arrest. Moreover, it is also clear from a perusal of the testimony of PW-22 that, on 03.06.2008, an attempt was made to join

independent witnesses from the locality of the appellant's house, whilst conducting the investigation in Bihar. However, none joined the investigation at the request of the police team. In this behalf, it would be trite to observe that it is a common experience that public persons are generally reluctant to join police proceedings. Thus, the Court cannot ignore this handicap with which the investigating agency has to discharge its duties. The Court, therefore, instead of doubting the prosecution case for want of public witnesses, must consider the broad spectrum of the prosecution story and then search for the nugget of truth with regard to probability, if any, suggested by the accused. [Ref: *Appabhai & anr. v. State of Gujarat*, reported as AIR 1998 SC 696]

20. In view of the foregoing, the recovery evidence in the present case cannot be considered as unreliable purely, on account of the non-joining of any independent witnesses during the seizure.

21. With regard to the investigation conducted in Bihar, PW-22 has deposed that he alongwith his team left for Bihar, by air, on 30.05.2008 and reached Bihar on the same day. PW-22 has clearly testified that on reaching Bihar, the team made efforts to locate the whereabouts of the co-accused i.e. 'X', as per the latter's name and address on his servant verification form [Ex.PW-29/G]. However, the whereabouts of 'X' could not be traced and the police team contacted the SHO, P.S. Defence Colony,

who supplied another address of 'X' in Bhalva, District Banka, Bihar. The team, alongwith the local police officials of Bihar, including PW-19, then conducted a raid at the house of the co-accused 'X', and recovery of part of the robbed property was made from his house. The police team was joined by the team led by PW-28 on 31.05.2008, in Bihar. Thereafter, on 03.06.2008, the police team alongwith the local police went to the house of the appellant, from where part of the robbed articles were also recovered, at his instance. On 05.06.2008, PW-22, alongwith some police staff and the appellant, took the case property recovered from Bihar, and left for Delhi. The police team reached Delhi on 06.06.2008.

**22.** A perusal of the testimony of PW-28 makes it evident that he alongwith his team, including PW-21, left for Bihar on 30.05.2008, by train, alongwith the appellant. PW-28 has testified that the team reached Bhagalpur, Bihar in the evening of 31.05.2008. On 03.06.2008, the appellant took the team (alongwith the local police) to the Village Bhalva, District Banka, Bhagalpur, and got recovered a brief case make NOVEX, one golden chain with a locket of goddess *sherawali maa*, one ring and one mobile phone make NOKIA. The robbed property was seized vide seizure memo Ex.PW-28/F.

PW-28 further testified that since the police remand of the appellant was slated to expire, the appellant was sent to Delhi with PW-22 along with some police staff, to be produced in Court.

PW-28 further deposed that thereafter, he along with PW-21 and other police staff proceeded to Calcutta on 09.06.2008, to ascertain the whereabouts of the co-accused 'X'. 'X' was arrested on 13.06.2008 at Calcutta. PW-28 also deposed that he was joined by PW-29 at Calcutta on 13.06.2008. The team returned to Delhi on 15.06.2008.

**23.** PW-19 has testified that he accompanied the police team from Delhi to the house of 'X', and also deposed regarding the recovery of robbed property therefrom. Furthermore, the seizure memo Ex.PW-28/F *qua* the robbed property recovered from the house of the Appellant in Bihar, clearly demonstrates that the same has also been signed by PW-19.

**24.** A perusal of the testimony of PW-21 would also show that he accompanied PW-28 to Bihar on 30.05.2008, and that the team remained there upto 09.06.2008.

**25.** PW-29 has testified that PW-22 reached Delhi from Bihar, with the appellant, on 06.06.2008 and deposited the case property in the malkhana. Further deposed that on the intervening night of 28/29.06.2008, PW-28 informed him of the location of 'X' at Calcutta. He further testified that he

reached Calcutta on 13.06.2008 when he was informed that the co-accused 'X' had been arrested. He further deposed that the team returned to Delhi on 15.06.2008.

**26.** In view of the foregoing, it is patently clear that recovery of the robbed property from Bihar has been corroborated by the testimonies of PW-22, PW-28, PW-21, PW-29 and the testimony of PW-19, the local police official of Bihar police. Therefore, the investigation conducted by the police in Bihar cannot be disputed.

**27.** Consequently, in view of the foregoing, the bald assertion of the appellant that the robbed articles are planted to falsely implicate the appellant in the present case, does not hold water and is thus rejected.

**28.** In relation to the scientific evidence, it has been held by the Ld. Trial Court in the impugned judgment that the crime was committed by the appellant with a knife. The weapon of crime was recovered along with a cream coloured pant pursuant to the disclosure statement made by the appellant on 28.05.2008. The biological report [Ex.PW-32/A] has been rendered with a conclusion that blood was found on the knife which was sent for examination; and the serological report [Ex PW32-B] concludes that the blood found on the knife was of 'O' group. Further, a perusal of the said serological report also demonstrates that the blood found on the clothes of both the deceased persons was also having 'O' group.

**29.** Further, the knife recovered pursuant to the disclosure statement of the appellant was also sent to the Department of Forensic Medicine, AIIMS, Delhi, for their subsequent opinion. PW6 (Sr. Resident, Department of Forensic Medicine, AIIMS, Delhi) gave his opinion [Ex.PW-6/B] that the injuries found on the bodies of the deceased could be caused by the said knife. Further, it was opined by PW-6 that the injuries suffered by the deceased victims were sufficient to cause the death in the ordinary course of nature.

**30.** In view of the above, it is apparent that scientific and medical evidence adduced in the present case corroborates the prosecution story, inasmuch as, the knife recovered at the instance of the Appellant was the weapon used by the Appellant in the commission of the offence.

**31.** Furthermore, the argument advanced with regard to the delay in conducting the fingerprint analysis is self-serving, inasmuch as, a perusal of the report furnished by the finger print expert [Ex.PW-8/A], reveals that the examination was conducted by PW-8 on 26.05.2008 i.e., the date of the incident.

**32.** Coming now to the testimony of PW-7. It is a settled legal position that minor discrepancies on trivial matters without affecting the core of the prosecution case, ought not to prompt the Court to reject evidence in its entirety. On the general tenor of the evidence given by the witness, the trial

court upon appreciation of evidence forms an opinion about the credibility thereof. In the normal circumstances the appellate court would not be justified to review it once again without justifiable reasons. It is the totality of the situation, which has to be taken note of. Difference in some minor detail, which does not otherwise affect the core of the prosecution case, even if present, that itself would not prompt the Court to reject the evidence on minor variations and discrepancies. [*Ref: State v. Saravanan & Anr.*, reported as **AIR 2009 SC 152**]

**33.** It has been deposed by PW-7 that two days subsequent to the incident i.e. 28.05.2008, at about 2 P.M., the Appellant came up to him and threatened him to the effect that *“If I made any complaint to the police, he would kill me, like he had killed one old man and one old woman”*. Further, PW-7 deposed that, upon inquiry by him, the Appellant stated that he killed the deceased victims, with the help of the co-accused ‘X’ and the maternal uncle of the Appellant. It has been deposed by PW-7 that later on the same day i.e. 28.05.2008, at about 4 P.M., he met PW-28 at the market near House No.C-65, Niti Bagh, New Delhi, and that his statement was recorded by PW-28 in the police post.

**34.** PW-29 deposed that on 28.05.2008, he alongwith PW-28 and other staff went to the Niti Bagh market, where PW-7 met them. It has been

further deposed that PW-7 was interrogated and his statement was recorded by PW-29 himself.

**35.** PW-28 deposed that he along with other staff reached the shopping complex Niti Bagh, New Delhi, at around 2-2:30 P.M. and left at 3.30 P.M. after recording the statement of PW-7. Further, it has been deposed that the statement of PW-7 was recorded by PW-29 using the bonnet of the Official Gypsy.

**36.** On a conjoint reading of the testimonies of PW-7, PW-28 and PW-29, it cannot be disputed that, the statement of PW-7 was recorded in the afternoon of 28.05.2008, after PW-7 met a police team at shopping complex Niti Bagh, Delhi, comprising of, *inter alia*, PW-28 and PW-29.

**37.** The contradictions in the testimonies of PW-7, PW-28 and PW-29, as regards the exact time, place and the police officer who recorded the statement of PW-7, are minor in nature and do not go to the root of the matter. Further, this Court is not oblivious of the fact that the testimony of PW-7 was recorded almost 2 years after the date of the incident; and the testimonies of PW-28 and PW-29 were recorded almost 07 years after the date of the incident, and therefore, the same are prone to such minor inconsistencies.

**38.** In view thereof, the argument sought to be advanced by the Appellant that PW-7 is a planted witness, inasmuch as, there are

contradictions in the testimonies of PW-7, PW-28 and PW-29 as regards the circumstance in which the statement of PW-7 was recorded by the police team, is untenable.

**39.** The Court in *Ghanshyam Prasad Yadav v. State* (*supra*) placed reliance on the principles enunciated by the Hon'ble Supreme Court with regard to extra judicial confessions in *Sahadevan v. State of Tamil Nadu*, reported as **2012 (5) SCALE 415**. The principles enunciated are reproduced hereinbelow:

- “(i) The extra judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.
- (ii) It should be made voluntarily and should be truthful.
- (iii) It should inspire confidence.
- (iv) An extra judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.
- (v) For an extra judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.
- (vi) Such statement essentially has to be proved like any other fact and in accordance with law.”

“12. In case of circumstantial evidence, the onus lies upon the prosecution to prove the complete chain of events which shall undoubtedly point towards the guilt of the accused. Further more, in case of circumstantial evidence, where the prosecution relies upon an extra judicial confession, the court has to examine the same with a greater degree of care and caution. It is a settled principle of criminal jurisprudence that extra judicial confession is a weak piece of evidence. Wherever the Court, upon due appreciation of the entire prosecution evidence, intends to base a conviction on an extra judicial confession, it must ensure that the

same inspires confidence and is corroborated by other prosecution evidence. If, however, the extra judicial confession suffers from material discrepancies or inherent improbabilities and does not appear to be cogent as per the prosecution version, it may be difficult for the court to base a conviction on such a confession. In such circumstances, the court would be fully justified in ruling such evidence out of consideration.”

**40.** A plain reading of the above principles makes it abundantly clear that an extra judicial confession can be safely made the basis for the conviction of an accused, in the event the same, (i) is made voluntarily; (ii) inspires confidence; (iii) is corroborated by a chain of cogent circumstances and prosecution evidence; and (iv) does not suffer from any material discrepancies and improbabilities.

**41.** In the present case, the Ld. Trial Court with regard to the extra judicial confession made to PW-7 by the Appellant, has held as follows:

“22. Extra judicial confession made by accused Ghanshyam before PW-7 Ramesh Kumar Saini fulfills all requirements laid down by Hon’ble Delhi High Court in the aforesaid case. Thus, confession was made by accused Ghanshyam voluntarily and same inspires confidence of the Court. Extra judicial confession made by accused Ghanshyam is supported by cogent circumstances and is also corroborated by other prosecution evidence viz. recovery of weapon of offence i.e. knife, at the instance of accused, scientific and medical evidence providing that the said knife was used in commission of crime and recovery of part of robbed articles from or at the instance of the accused Ghanshyam. The Court does not find any material discrepancy or inherent improbability. Therefore, the extra judicial confession made by the accused stands proved in accordance with law.”

42. In terms of the decision in *Sahadevan* (*supra*), in our considered view, the Ld. Trial Court is not in error in placing reliance on the extra judicial confession of the appellant, inasmuch as, the extra judicial confession made voluntarily made to PW-7, inspires confidence and has been corroborated by a chain of cogent circumstances and prosecution evidence. Furthermore, the extra judicial confession made by the appellant does not suffer from any material discrepancies and improbabilities.

43. With regard to the offence of conspiracy, the well-settled legal position is that conspiracy is hatched in secrecy and more often than not the same is proved by way of circumstantial evidence. [*Ref: State of Karnataka v. Selvi J. Jayalalitha*, in **Criminal Appeal Nos. 300-303 of 2017 (Arising out of SLP (Crl.) Nos. 6117-6120 of 2015)**, reported as 2017 SCC OnLine SC 134]

44. The Trial Court has found that the testimonies of PW-3, PW-4 and PW-7 clearly establish the acquaintance between the appellant and his co-accused 'X' and that the prosecution has proved beyond reasonable doubt that the Appellant and 'X' conspired to commit robbery and murder at the house of the deceased victims.

45. A perusal of the testimony of PW-3 would reveal that on 18.05.2008, the Appellant and PW-2 went to the house of the deceased

victims where there domestic servant 'X' was also present. A perusal further reveals that on the said date 'X' had also called one of his associates viz. the Appellant, to work in the house of the deceased persons. PW-3 has also testified that, the Appellant was working as a domestic servant in the same neighbourhood as the deceased persons.

**46.** PW-4 deposed that 'X' was working as a domestic servant in the house of the deceased victims. On 18.05.2008, PW-4 went to the house of the deceased to attend their wedding anniversary. He further deposed that, the Appellant was also present in the house of the deceased, and was helping 'X' in serving food. PW-4 further testified that 'X' introduced the Appellant as his cousin who was working in a nearby flat.

**47.** PW-7 identified the Appellant in Court and deposed that the latter was working at House No.C-41, Gulmohar Park, Delhi. It has been deposed by PW-7 that he got to know the Appellant, one month prior to the date of the incident, when they used to go to Mother Dairy in the nearby Niti Bagh market to bring milk. PW-7 further deposed that the Appellant introduced 'X' as his brother. He further deposed that, on the request of the Appellant, he got 'X' appointed as domestic servant at House No.C-8, Gulmohar Park, New Delhi. However, subsequently the services of 'X' were terminated therefrom.

48. Thus, a conjoint reading of the above makes it evident that contrary to what has been contended by the Appellant, the Appellant and 'X' were known to each other. In this behalf, it is trite to observe that in a case of circumstantial evidence when the accused offers an explanation and that explanation is found to be untrue, then the same offers an additional link in the chain of circumstances to complete the chain. [Ref: *Swapan Patra v. State of West Bengal*, reported as (1999) 9 SCC 242; *State of Maharashtra v. Suresh*, reported as (2000) 1 SCC 471; *Kuldeep Singh v. State of Rajasthan*]

In the instant case, the false answer given by the Appellant to the specific questions put to him whilst recording his statement under section 313, CrPC, denying that he knew 'X' and his maternal uncle, Birju, provides the additional link or a missing link in completing the chain of circumstances.

49. In the present case, the prosecution has brought on record medical evidence in the form of the post-mortem report, and the medical opinion clearly establishes that the death of the deceased was caused due to the shock suffered, due to the injuries caused on them [Ex.PW-6/B, Ex.PW-30/A]. Further, it has been opined that the said injuries on the deceased victims could have been caused by the knives which was sent for medical opinion [Ex.PW-6/B].

**50.** On a conjoint reading of the scientific evidence and the medical opinion, the prosecution has unequivocally established that the knives used by the Appellant and his associate, recovered at their instance, were in fact the weapons used in the commission of the crime.

**51.** Furthermore, the prosecution has recovered a major part of the robbed property and the same has been identified by PW-3, daughter of the deceased victims, as belonging to the latter [in the TIP proceedings, Ex.PW-2/B, Ex.PW-24/A, Ex.PW-24/C, Ex.PW-24/D] . The said robbed property was recovered from the respective houses of the Appellant and 'X', at Bihar; and from the Appellant in Delhi. Further, a bare reading of the testimony of PW-7 would reveal that the Appellant has confessed his guilt *qua* the commission of the offence and he has also stated that he, in conspiracy with 'X' and his maternal uncle, committed the robbery and murder in the present case.

**52.** In view of the foregoing, it cannot be said that the Ld. Trial Court erred in holding that the Appellant and his associates conspired to commit the offences in the present case.

**53.** Under the provisions of Section 114 of the Indian Evidence Act, 1872 (hereinafter referred to as 'the Evidence Act'), the Court is empowered to presume existence of certain facts. Illustration (a) to the said provision under Section 114 of the Evidence Act, entitles the Court to

presume that a man who is in possession of stolen goods after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for their possession. If the prosecution by way of evidence, is able to prove beyond reasonable doubt that, the commission of murder and the robbery formed part of one transaction; and the recovery of the stolen properties from the house of some of the accused persons and at their instance, and no explanation from those accused persons on being questioned under the provisions under Section 313 of CrPC is forthcoming, it reasonably points to the guilt of this accused persons, establishing the fact that it is they who committed the murders in the house and then committed robbery and left the scene of occurrence. [*Ref: A. Devendran v. State of Tamil Nadu*, reported as **1997 (11) SCC 720**]

**54.** In the present case, the prosecution has been able to prove that the murder and robbery at the house of the deceased victims were integral parts of the same transaction, owing to the recovery of the robbed property and weapon of offence being made at the instance of the appellant, two days after the date of the incident. Furthermore, the Appellant has raised no defence in the present case and made only bald denials in his statement under section 313, CrPC with regard to the recovery of robbed property and weapon of offence. Thus, the same offers an additional link in the chain of circumstances in order to complete the chain, that the Appellant

and his co-accused 'X' not only conspired to commit robbery at the house of the deceased, but in consequence thereof also committed murder of the deceased.

**55.** In view of the foregoing discussion, the prosecution having established its case beyond reasonable doubt, it cannot be said that the finding of conviction of the Appellant reached by the Ld. Trial Court is perverse, calling for any interference by this Court.

**56.** Coming now to the order on sentence dated 29.07.2015. A five-Judge Constitution Bench of the Hon'ble Supreme Court in *Muthuramalingam & Others v. State*, reported as **2016 (8) SCC 313**, whilst dealing with a reference from a three-Judge Bench, as regards the question "*Whether consecutive life sentences can be awarded to a convict on being found guilty of a series of murders for which he has been tried in a single trial?*", held as follows:

**“34.** In conclusion our answer to the question is in the negative. We hold that while multiple sentences for imprisonment for life can be awarded for multiple murders or other offences punishable with imprisonment for life, the life sentences so awarded cannot be directed to run consecutively. Such sentences would, however, be superimposed over each other so that any remission or commutation granted by the competent authority in one does not ipso facto result in remission of the sentence awarded to the prisoner for the other.

35. We may, while parting, deal with yet another dimension of this case argued before us, namely, whether the court can direct life sentence and term sentences to run consecutively. That aspect was argued keeping in view the fact that the appellants have been sentenced to imprisonment for different terms apart from being awarded imprisonment for life. The trial court's direction affirmed by the High Court is that the said term sentences shall run consecutively. It was contended on behalf of the appellants that even this part of the direction is not legally sound, for once the prisoner is sentenced to undergo imprisonment for life, the term sentence awarded to him must run concurrently. We do not, however, think so. The power of the court to direct the order in which sentences will run is unquestionable in view of the language employed in Section 31 CrPC. The court can, therefore, legitimately direct that the prisoner shall first undergo the term sentence before the commencement of his life sentence. Such a direction shall be perfectly legitimate and in tune with Section 31 CrPC. The converse however may not be true for if the court directs the life sentence to start first it would necessarily imply that the term sentence would run concurrently. That is because once the prisoner spends his life in jail, there is no question of his undergoing any further sentence. Whether or not the direction of the court below calls for any modification or alteration is a matter with which we are not concerned. The regular Bench hearing the appeals would be free to deal with that aspect of the matter having regard to what we have said in the foregoing paragraphs.

(emphasis supplied)”

57. Thus, the following legal position can be clearly culled out from the aforesaid decision:

- i. Life imprisonments can be awarded for multiple offences, in accordance with law, by superimposing them over each other. However, the life sentences cannot be directed to run consecutively.
- ii. Section 31 of the CrPC does not impose any limitation on the concerned Court to direct the convict to undergo the term sentence before the commencement of his life sentence.
- iii. However, the concerned Court cannot direct the convict to undergo the life sentence prior to the commencement of his term sentence. If so directed, it would necessarily imply that the term sentence shall run concurrently.

**58.** In view of the above *dicta*, we are of the view, that the Ld. Trial Court fell into grave error, inasmuch as, there was no direction that the Appellant would first undergo the term sentences under section 411, IPC, and under section 394 read with section 397, IPC; before undergoing the life sentences awarded to him under section 302 and section 120-B, IPC.

**59.** However, after bestowing our anxious consideration to the facts and circumstances of the case, we are of the view that it would sufficiently serve the ends of justice if the term sentences awarded to the Appellant are directed to run concurrently with the life imprisonments awarded to him.

**60.** In view of the foregoing, the Order on Sentence dated 29.07.2015 is modified to the extent that, all the sentences awarded for the commission

of offences punishable under the provisions of sections 120-B, 302, 397, 394, 411, IPC, shall run concurrently.

**61.** The conviction of the Appellant under sections 302, 120-B, 394, 397 and 411, IPC, is however, upheld. The present appeal is accordingly dismissed with the above modification.

**62.** No order as to costs.

**63.** Copy of the judgment be communicated to the appellant through the Superintendent, Tihar Jail and be sent also for updation of the records.

**SIDDHARTH MRIDUL, J.**

**MUKTA GUPTA, J.**

**MAY 29, 2017**  
mk/sb