

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA No.D-329-DB of 2012
Date of Decision : 03.12.2018

Vikas Pandey alias Anita and another. ...Appellants

Versus

State of Haryana. ...Respondent

CORAM : HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Bijender Dhankhar, Advocate for the appellants.

Mr. Vivek Saini, DAG, Haryana.

B.S.WALIA, J.,

1. Appellants have challenged their conviction dated 06.02.2012 and order of sentence dated 09.02.2012, passed in case FIR No.418 dated 27.08.209, under Sections 302, 365, 201, 120-B of Indian Penal Code (hereinafter referred to as ‘IPC’), 1860, Police Station Central Faridabad, whereby they were imposed the punishment as under :-

Name of Accused	Offence U/s	Period of Sentence (RI)	Fine Imposed (in ₹)	Period of sentence in default of payment of fine (SI)
Vikas Pandey alias Anita	302/120-B IPC	Life Imprisonment	50,000/-	One Year
	364/120-B IPC	Seven Years	30,000/-	Six Months
	201/120-B IPC	Three Years	20,000/-	Three Months
Shri Kant Pandey alias Bobby	302/120-B IPC	Life Imprisonment	50,000/-	One Year
	364/120-B IPC	Seven Years	30,000/-	Six Months
	201/120-B IPC	Three Years	20,000/-	Three Months

2. Learned counsel for the appellants contended that there were material contradictions in the statements of prosecution witnesses, learned trial Court had relied upon inadmissible statements of witnesses, alleged recovery had not been proved in accordance with law, recording of disclosure statements was shrouded in doubt, parts of the dead body allegedly recovered were not identifiable and could not be said to be the body parts of deceased Braham Dutt Kaushik and that even the wife of the deceased was not examined by the prosecution, thus chain of events was not complete, therefore, the prosecution had miserably failed to prove the link evidence, that in a case based on circumstantial evidence, motive played an important role but in the instant case, no motive had been alleged in the complaint, IMEI number of the mobile phones of the accused were not verified by the prosecution, prosecution had miserably failed to prove the case against the appellants, therefore, the judgment of conviction and order of sentence passed by the learned trial Court was liable to be set-aside and the appellants acquitted.

3. Per contra, Mr. Vivek Saini, learned DAG, Haryana reiterated the reasoning of the judgment of the learned trial and contended that the appellants had been rightly convicted and sentenced to undergo imprisonment.

4. As per the prosecution story, Vandana Kaushik wife of Braham Dutt Kaushik son of Shri Jagram Kaushik, resident of House No.326, Sector-17, Faridabad, went to Police Post Sector 16, Faridabad on 18.08.2009 and made a statement that her husband was running a workshop at 17/3, Mathura Road, Fardiabad, and that her brother-in-law, Umesh Kaushik, who was also running a workshop near the workshop of her husband had told her that on 17.08.2009, her husband was in the workshop upto 03:00 p.m., where after

he went somewhere by driving Skoda Car No.HR51-V-2475. She further stated that she talked to her husband on 17.08.2009 at about 05:00 p.m. on his mobile No.98100-38947, but her husband told her that he had gone for some work and that she should talk later on. However, she continued dialing her husband's mobile number which was responding upto 02:00 a.m., where after it started coming switched off. Accordingly, DDR, Ex.PN was lodged in the matter. Thereafter, an application was moved by the police to the Cyber Cell, requesting for call details of Mobile No.98100-38947 from 01.08.2009 to 19.08.2009 and as per call details, location of Braham Dutt Kaushik on 17.08.2009, at 02:38 p.m., was found to be in the area of Sector 16-A, Faridabad and at that time, Braham Dutt Kaushik was found to have made a call to Mobile No.98189-30900 belonging to accused Anita alias Vikas Pandey (Eunuch). Thereafter, Braham Dutt Kaushik made a call at about 03:20 p.m. to Mobile No.99718-63014 belonging to accused Bobby Pandey. Accordingly, on the basis of the suspicion, call details of accused persons were called for and on the basis of verification, location of Braham Dutt Kaushik and the accused after 3:30 p.m. was found in the area of Chattarpur Delhi. On 27.08.2009, complaint Ex.PA, was moved to DCP, Faridabad, by Mohan Lal Sharma, Satish Kaushik, Ved Kaushik, Umesh Kaushik and Manoj Kaushik regarding Braham Dutt Kaushik being missing since 17.08.2009 along with Skoda car bearing No.HR51-V-2475 and praying for action against accused Anita alias Vanisha and other unknown persons so as to ascertain the whereabouts of Braham Dutt Kaushik. On the basis of the complaint, Ex.PA, FIR under Sections 365 and 120-B IPC was registered against accused Anita and unknown persons. Investigation was set into motion. Statements of witnesses were recorded. Both accused were

arrested on 30.09.2009, and subsequently suffered disclosure statements that they along with Shamsher Singh had committed the murder of Braham Dutt Kaushik and after cutting his dead body into pieces, had thrown the same in the Yamuna river. Thereupon, Sections 302 and 201, Indian Penal Code were added in the proceedings against the accused and after completion of investigation, challan to prosecute the accused was submitted in the Court of the learned Illaqa Magistrate, who after making compliance with the provisions of Section 207, Code of Criminal Procedure (hereinafter referred to as the 'Cr.P.C.'), committed the case to the Court of Sessions vide order dated 04.12.2009.

5. Thereafter, both accused were charge-sheeted on 04.03.2010, for offences punishable under Sections 120-B, 364, 302 and 201 IPC, to which, they pleaded not guilty and claimed trial.

6. In support of its case, the prosecution examined as many as 36 witnesses. All the incriminating evidence produced by the prosecution was put to the accused in their statements recorded under Section 313 Cr.P.C. Accused controverted the same, pleaded innocence and false implication. Although the accused opted to lead evidence in defence but none of the accused produced any evidence in defence, consequentially, the same was closed.

7. PW-1, Mohan Lal, one of the complainants deposed that Braham Dutt Kaushik was his real nephew, that he owned a Skoda Car bearing regd. No.HR51-V-2475, that on 17.08.2009, his nephew had received a call from Delhi, where after he left office at 3/3:30 p.m. and that he was having ₹80,000/- in cash and two mobiles with SIM Nos.98100-38947 and 92684-48500 with him at that time. Missing report was lodged in Police

Post, Sector-16, Faridabad, by his wife on 18.08.2009. He along with other relatives met DCP, Faridabad and made a written complaint Ex.PA.

8. PW-35, SI Sanjeev Kumar i.e. Investigating Officer of the case, deposed that while he was posted as Incharge, Police Post, Sector-16, Faridabad, Vandana Kaushik, came there on 18.08.2009, and made a statement that her husband was missing whereupon DDR entry, Ex.PN was made, that during investigation, it was found that Braham Dutt Kaushik was having two mobiles bearing Nos.92684-48500 and 98100-38947, call details record of the same were requisitioned from the Cyber Cell for the period 01.08.2009 to 19.08.2009 and the same comprised 85 pages (Ex.PS) and was also recorded in Compaq Disc (Ex.PS/1), that as per call details, a call was made at 2.38 p.m. on 17.08.2009 from Mobile No.98100-38947 by Brahm Dutt Kaushik to mobile No.98189-30900 belonging to accused Anita alias Vikas Pandey, that location of Braham Dutt Kaushik was pinpointed in the area of Sector 16-A Faridabad. Subsequently, Braham Dutt Kaushik made a call to mobile No.99718-63014 belonging to accused Bobby Pandey at about 3:20 p.m., that the accused persons despite being directed, failed to turn up at the Police Post for verification of the position as emerging in the call details record of 17.08.2009, whereupon, call details record of accused persons were requisitioned and on verifying the same, location of Braham Dutt Kaushik as well as the accused was found in the area of Chattarpur, Delhi, after 3:30 p.m. Thereafter, on the basis of application Ex.PA, FIR was registered and investigation of the case entrusted to PW-35.

9. PW-35 further deposed that on 28.08.2009, statement of Bijender son of Parshadi and Samay Singh son of Ramji Lal was recorded and from the same, it came to his notice that on 18.08.2009, the accused initially tried to

open the door of Skoda car bearing regd. No.HR51-V-2475 but on being unsuccessful in doing so, the accused removed the car with the help of a crane, search was made and accused were arrested and brought from Kolkata to Police Station Faridabad and on 31.08.2018, accused, Vikas Pandey and Bobby Pandey alias Shrikant Pandey suffered disclosure statements (Ex.PO and Ex.PO/1 respectively) admitting involvement in the crime. Accordingly, Sections 302 and 201 of IPC were added in the proceedings against them.

10. PW-35 further deposed that he along with PW-18, Arun and PW-29, Divesh Bhardwaj proceeded to Kalindikunj on the demarcation of accused and the accused persons as per their disclosure statements took them to Barrage No.6, where they had dumped the parts of the dead body of Braham Dutt Kaushik. Demarcation memo (Ex.PO/2) was prepared and on demarcation of accused persons, four pieces of dead body of Braham Dutt Kaushik were recovered and the same were taken into custody vide recovery memo (Ex.P1) after getting them photographed. Site plan of recovery (Ex.PM/1) was prepared. Statements of Arun Jamadar and Divesh Bhardwaj were recorded under Sections 161, Code of Criminal Procedure.

11. Thereafter, on 01.09.209, PW-35 along with Divesh Bhardwaj, Umesh Kaushik, Ved Kaushik, HC Sumer and Constable Ishwar and two drivers went to Barrage No.6 and started searching for the remaining parts of the dead body of Brahm Dutt Kaushik and while searching, they found sandles, belt, baniyan i.e. vest and bed sheet just beneath the barrage, numbered as Ex.P4 to Ex.P10 and the same were taken into police custody vide recovery memo Ex.PR/1. Site plan Ex.PR/2 was prepared and statement of Ved Kaushik and Divesh Bhardwaj was recorded under Section 161 Cr.P.C. 13. Thereafter, PW-35 along with Ved Kaushik, accused Vikas

Pandey, HC Sumer and Constable Ishwar went to Pushp Vihar and on the demarcation of accused Vikas Pandey, Skoda car bearing regd. No.HR51-V-2475 was taken into custody vide memo Ex.PO/C. Memo of demarcation Ex.PO/4 and site plan Ex.PO/5 was prepared. Custody of Skoda car was handed over to the SHO. Thereafter, they came back to Chattarpur, Delhi and recovered the bed, stained with blood and the same was taken into possession vide memo Ex.PR/2 from the house of domestic servants of the accused Vikas namely Sunita wife of Dalip Singh and Santosh wife of Kumar Pal. Statement of Divesh Bhardwaj was also recorded under Section 161 Cr.P.C.

12. On 02.09.2009, PW-35 along with HC Sumer, Constable Ishwar, Ved Kaushik, Umesh Kaushik and Divesh Bhardwaj reached Barrage No.6 at Kalindi Bridge, Noida where two divers i.e. (gotakhor) namely Jai Kishan alias John and Bunty, residents of Madanpur Khadar, Delhi were arranged and search was started for the other parts of the dead body of Braham Dutt Kaushik. PW-35 further deposed that after searching for 1½ to 2 hours, they recovered two polythene bags of black colour and on removing aquatic weeds, out of one of the polythene bags, the head of Braham Dutt Kaushik was recovered while from the other polythene bag, two forelimbs and two feet were taken into possession vide memo Ex. PP/2. Statements of witnesses namely Ved Kaushik, HC Sumer and drives Jai Kishan alias John and Bunty were recorded by PW-35 and site plan of place of recovery Ex.PR/3 was prepared.

13. PW-35 deposed that on 04.09.2009, he along with HC Sumer and accused Vikas alias Anita went to Jafruddin and Sahabuddin, residents of Nut Colony, Chattarpur, who had white washed the room of accused Vikas

alias Anita on his asking, at the instance of the accused persons and recorded their statements. Thereafter, they went to Mannu Generators and Cranes Services, Malviya Nagar, Delhi at the instance of the accused and recorded the statement of Rajiv son of Sudesh Kumar and crane driver Shanker son of Nanu Lal. Thereafter, they went to Madangir, Delhi, where accused identified Luhar Ishka. They also went to Jindal Plastic Store, Madangir, New Delhi and recorded the statement of Nand Lal, Shopkeeper. Then they came back to Chattarpur, where statement of goldsmith namely Ram Gopal was recorded.

14. On the basis of evidence led by the prosecution, the learned trial Court convicted and sentenced the appellants to undergo punishment as per details given in the opening paragraph of this judgment.

15. We have considered the submission of learned counsel for the parties and have carefully gone through the entire evidence and record.

16. Admittedly, conviction in the instant case is on the basis of circumstantial evidence on account of there being no direct evidence of the commission of the crime. As per the prosecution version, Braham Dutt Kaushik was present in his workshop situated at 17/3, Mathura Road, Faridabad till about 3:00 p.m., on 17.08.2009 where after he went away and was thereafter not seen by the family members, leading to report by his wife, Vandana Kaushik at Police Post, Sector-16, Faridabad on 18.08.2009 on the basis of which DDR Ex. PN was registered. The DDR has been proved on record as Ex.PN and on the basis of complaint Ex.PA, moved by Mohan Lal Sharma, Satish Kaushik, Ved Kaushik, Umesh Kaushik and Manoj Kaushik to the DCP, Faridabad on 27.08.2009 regarding Braham Dutt Kaushik as well as his Skoda car bearing regd. No.HR51-V-2475 being missing, FIR

was registered against Anita and unknown persons. Call details comprising 85 pages-Ex.PS as well as the testimony of PW-35 i.e. the Investigating Officer, proves that there was exchange of mobile call between Braham Dutt Kaushik and the two accused and that on the basis of the call details of mobile No.98100-38947, belonging to Braham Dutt Kaushik, his location was identified on 17.08.2009 at 2:38 p.m., in the area of Sector 16-A, Faridabad, at which point of time, Braham Dutt Kaushik made a call to mobile No.98189-30900 belonging to accused Anita alias Vikas Pandey. Braham Dutt Kaushik thereafter at about 3:20 p.m made a call to mobile No.99718-63014., belonging to accused Bobby Pandey. On verification of the call details of accused of 17.08.2009 after 3:20 p.m., location of Braham Dutt Kaushik and the accused was found in the area of Chattarpur, Delhi, where after the accused were arrested. Thereafter on 31.08.2009 accused made disclosure statements Ex.PO and Ex.PO/1. Disclosure statement Ex.PO of accused, Vikas Pandey alias Anita, is reproduced as under:-

“I am resident of Kokatta and has been living at Chhatarpur in Delhi for some time ago. My brother who is handicapped also lives with me. I am well acquainted with Braham Dutt who is resident of Faridabad and I continued to meet him many times. We also call him by the name of Rahul. I had taken money on loan from many persons including a goldsmith from whom I had also taken gold on loan. A debt of Rs.4-5 Lacs had already accumulated on me and our friend Shamsheer Khan, who is resident of Gaya (Bihar), had also been undergoing a debt of Rs.40,000/-. We always used to plan how we should pay off the

debt. On 17.8.2009, I got a call on my mobile phone from Braham Dutt. At this, we called Braham Dutt on our rented house in Delhi on some pretext or the other and also called Shamsheer Khan there. We had already put our heads together that Braham Dutt owned a Skoda car after calling him there and committing his murder, we could pay all our debt by selling his skoda car. According to our pre-planning, we made Braham Dutt drunk. When he got intoxicated completely, Shri Kant alias Bobby gave him a blow of the rod. Then I pushed him down. When he fell down, both of them repeatedly hit on his head with an iron rod which resulted into his death on the spot. Accordingly, to our preplanning, we cut his body into bits. We put the different parts of his body into black coloured polythene bags numbering eight to ten; and put the bags into a hired Indica car, we also boarded the said car and we threw down the weapons and dead body into Yamuna after reaching the bridge in Sarita Vihar which is over Yamuna river. Thereafter, I along with Bobby kept staying at Chhatarpur till 24.08.2009. We parked the skoda car bearing No.HR51-V-4275 near Pushp Vihar Church Gate, Delhi, so that we could sell it from there. Thereafter, Shamsheer Khan left for Gaya (Bihar) with his money and mobile. Out of fear, we left the Skoda car there and went to Kokatta. After the murder, we hired a Indica car from Tyagi Tour and Travels. I purchased two daws in order to cut the dead body and one wooden gutka were purchased from a blacksmith and the polythene bags from the market. The room

was smeared with blood stains which we covered by white washing the same. Besides this, the double bed which had stains of blood as given to my maid Sunita and we put the mattresses having the stains of blood into a dustbin. I can let know about the place of murder and where we dumped the dead body. I can also help in recovering the skoda car. I can also help in finding out the hideout of Shamsheer Khan who had the money and mobile of Braham Dutt Kaushik.”

17. Disclosure statement of Shri Kant alias Bobby Ex.PO/1 dated 31.08.2009 is more or less on the same lines as of accused Vikas Pandey alias Anita. Thereafter, on 01.09.2009, accused Vikas Pandey made another disclosure statement Ex.PS, which reads as under:-

“After we had murdered Braham Dutt Kasuhik, we sold his mobile telephone silver black in colour Marks 6300 to Babbu son of Radhey Shyam for Rs.2,000/-. Babbu is still in possession of this mobile phone and I can get recover this mobile phone”

18. Thereafter, there is another disclosure statement of accused Vikas Pandey dated 07.09.2009 and the same is also numbered as Ex.PS. The same is as under:-

“We were telling a lie till now out of fear. After committing murder of Braham Dutt Kaushik on 17.8.2009, we left with our bag and baggage for Kokatta to our permanent address. I had left for Kolkata for hiding the concerned two daws which we used for cutting his dead body into bits, iron rods which we

used in murdering him after hitting him on his head and a mobile telephone of Tata Company, under my clothes, I have kept all these weapons and a mobile telephone in an iron almirah among the clothes which is lying in my room. After this, we were escaping from our house out of fear. Nobody known about these weapons except me. I am the only one who knows where the weapons and mobile phone are kept. After demarcation, I can get recover the mobile phone and weapons.”

19. Another disclosure statement of accused Vikas Pandey dated 11.09.2009 is Ex.PT on the file and the same reads as under:-

“I am permanent resident of Kolkata. I am Hijra/Kinner (eunuch). One of my brother is employed in Bank in Kolkata and second brother Shri Kant alias Bobby is handicapped by both of his feet. I have been living in Delhi for a quite long time. I have also a married sister in Kolkata. My mother had been ill for the last few days and I got her treated in Max Hospital and I spent Rs.1,50,000/- on her treatment. After this, I had borrowed ornaments of huge amount from a goldsmith of Delhi. We had also a rented house there of which we had to pay the monthly rent. My brother had been staying with me and his friend Shamsher Khan had also been living with us in the same house for the last 7/8 days. Shamsher Khan was also under a debt of Rs.40,000/-. On 11.08.2009, all of us were present at our Chhatarpur house in Delhi and were discussing how to clear the debt. It was during this period that we put our heads

together to kill Braham Dutt Kaushik, a resident of Faridabad and to take into our possession the money and also to sell his Skoka car and from the money so received from the sale of his car, we would pay our debt and rest of the money would be disbursed amongst ourselves and then we would leave for Kolkata. On 13.08.2009, we contacted Braham Dutt Kaushik on his mobile telephone but Braham Dutt Kaushik alias Rahul told us that he along with his children is in Haridwar and after coming from Haridwar, he will talk to us. On 17.08.2009, Rahul contacted us on telephone and told that he was coming to us. On that day, all three of us were in chhatarpur, Delhi. I asked him to come there. According to our planning, we made Braham Dutt Kaushik alias Rahul drunk after his arrival. We had made him drunk in the drawing room. Thereafter, on the pretext of watching TV, I took him to the first room and after taking him there, knowingly we set the TV on high volume and as per planning, my younger brother Shri Kant alias Bobby Pandey and Shamsheer Khan had already brought down two iron rods from the roof. When Braham Dutt Kaushik was watching TV in a state of intoxication, Shamsheer Khan hit him with iron rod on his head from his back. When Braham Dutt Kaushik alias Rahul got off the bed all at once, Shamsheer Khan gave two or three blows of the iron rod on his head. After that in consternation, Shri Kant fell down on account of being a handicap. Braham Dutt Kaushik also fell down on the bed and began to writhe. I took up the iron rod from Shri Kant and I hit

Braham Dutt Kaushik repeatedly on the back side of his head. I continued hitting him till he breathed his last. Thereafter, we got him off the bed. According to Shamsheer Khan's advice, I went to the market in a car and brought the articles including two daws, one wooden Gutka and black coloured polythene bags for cutting the dead body into bits. Thereafter, Shamsheer Khan cut his body into three or four pieces and all of us packed these pieces into the polythene bags and also packed the daws, wooden gutka and his clothes in a black coloured polythene bag. We also set the documents, whatever Braham Dutt Kaushik had with him, on fire on the roof of the house and we also swept off all the blood which was lying split in the room and also got that room white washed. I also hired a car from the Tyagi Tours and Travels Company to throw off the said weapons into the river. We threw of the said weapons and the pieces of dead body in the Yamuna river from the Yamuna bridge. Thereafter, we came back home. Next day, my brother Shri Kant Sold mobile Phone 6300 which was owned by Braham Dutt Kaushik alias Rahul to Babbu for Rs.2,000/- and we got the Skoda car removed by crane and left it near the Church as its key was lost some where. We threw the blood smeared mattresses into dustbin which was lying near our house and handed over the blood stained bed to the maid servant. Shamsheer Khan left with the money which was possessed by Braham Dutt Kaushik alias Rahul. Besides this, iron rods which were used by three of us for his murder by hitting him on his

head and a mobile telephone of Tata Company which was owned by Braham Dutt Kaushik alias Rahul, had been kept hidden by us among the clothes in an iron almirah in room no.1. I can get the black coloured mobile phone of Tata Company and both the iron rods recovered from my rented house while going there personally. Nobody knows about their hiding place except me and my brother.”

20. Ex.PT/1 is the disclosure statement of accused Shri Kant alias Bobby dated 11.09.2009, which is identical to the disclosure statement Ex.PT of accused Vikas Pandey.

21. Although confession by a accused while in the custody of a police officer is not admissible by virtue of Section 25 of the Indian Evidence Act, 1872, (hereinafter referred to as ‘the Act, 1872’) but when the statement made by an accused consists of several parts some of which constitute a general confession of guilt and some of which leads to discovery, the statement to the extent of discovery is admissible. In the case in hand, the portion of disclosure statement that the accused had called Braham Dutt Kaushik at their house at Chhatarpur, Delhi and made him drunk, committed his murder, cut his body into parts and threw the same in the Yamuna river is not admissible on account of the same being incriminatory. However, the portion of the statement leading to recovery of the bed, pieces of dead body, iron rods, mobile phone and skoda car are admissible by virtue of Section 27 of the Act, 1872. The plea of learned counsel for the appellants that recording of the disclosure statements and recoveries purportedly made in pursuance thereof is shrouded in doubtful

circumstances, as PW-35, SI Sanjeev Kumar and PW-36, Inspector Jitesh Kumar stated that both the accused were interrogated and their disclosure statements were recorded in the presence of police personnels and further that pieces of body parts recovered were not identifiable, therefore, it could not be said to be parts of body of deceased Braham Dutt Kaushik, besides, even DNA test got conducted by the prosecution failed and wife of deceased, Braham Dutt Kaushik was not examined by the prosecution, therefore, chain of events was not complete and the appellants deserve to be acquitted, has no merit as the authenticity of the disclosure statement made and resulting recoveries is not doubtful. There is no doubt that mobile Nos.92684-48500 and 98100-38947 belong to deceased Braham Dutt Kaushik and as per call details record, Ex.PS, the location of deceased Braham Dutt Kaushik was established in the area of Sector 16-A, Faridabad on 17.08.2009 at 2:38 p.m., from where he had a mobile talk with accused Vikas Pandey alias Anita on mobile No.98189-30900 and with accused Bobby Pandey on mobile No.99718-63041 at about 03:20 p.m. The details of the aforementioned calls are mentioned at point 'A' and 'B' in Ex.PS. PW-35, SI Sanjeev Kumar specifically deposed that after verifying the said call details, the location of Braham Dutt Kaushik and the accused was found in the area of Chhatarpur Delhi after 3:30 p.m. The same proves that the deceased was in the company of the accused after he went missing on 17.8.2009 but, the (SIM card) of the phone number on which the deceased called on 17.8.2009 at 2:38 p.m. and 3:20 p.m. were recovered along with the handsets from the accused at the time of arrest. Recovery in respect thereto has been proved in accordance with law. Therefore, non-verification of IMEI number is inconsequential especially in the light of other

overwhelming evidence connecting the accused with the commission of the offence. As per the prosecution version, deceased Braham Dutt Kaushik went missing along with his Skoda car bearing No.HR51-V-2475 on 17.08.2009. PW-35, SI Sanjeev Kumar, deposed that on coming to know about the location of mobile number of deceased and accused, he along with HC Sumer Singh and Constable Ishwar went to Chhatarpur, Delhi near Dhaan Mill on 28.08.2009 and recorded the statement of Bijender son of Parshadi and Samey Singh son of Ramji Lal from which he came to know that on 18.08.2009, accused firstly tried to open the door of Skoda car belonging to deceased Braham Dutt Kaushik but when they could not succeed in opening the door of said car, then they removed the car with the help of a crane. Bijender son of Parshadi also appeared in the witness box as PW-2 and deposed on oath that he was running a Dhaba for the last about 10-15 years at Chhatarpur Pahari adjoining the house of Sanjeev whose younger brother was Ashok and that said house was having four floors which had been given on rent. Ground floor of the house was on rent with a Nigerian while on the second floor, Bobby and Vinita @ Babita were living on rent. He further deposed that on 18.08.2009, in the morning, he saw a blue coloured Skoda car No. HR51-V-2475 standing on the road in front of the house of the accused with Bobby, Vinita and a mechanic trying to open its window glass by stating that the key of the car had been lost whereupon he asked them as to whom the vehicle belonged and they told him that the vehicle was of their brother. The door of the car could not be opened at that time and on the same day i.e. at about 3:30 /4:00 p.m., both accused took away the vehicle with the help of a crane. In his cross-examination, PW-2, stated that it was not a police crane which

removed the Skoda vehicle, rather it was some rented crane which had lifted the vehicle. The testimony of PW-35 and PW-2 finds corroboration from the statement of PW-10, Rajeev Kumar who deposed that he was owner of Mannu Generator and Crane Service and that on 18.08.2009, he received a call on his mobile that a crane was required near Dhan Mill Chhatarpur to lift and tow a car as the key of the car had been lost and that the car was to be dropped near a Church at Pushp Vihar. He further deposed that the crane was sent in front of Dhan Mill Chatarpur Pahari with its driver Shankar and that Shankar came back and told him that the car lifted and towed through the crane was a Skoda car, besides he gave him Rs.600/- which was charged. Prosecution also examined PW-21, Shankar, who stated that on 18.08.2009, he took the crane as per the directions of his employer Rajeev Kochar, near Dhan Mill, Chatarpur Pahari, Delhi and the number of crane was DL-1C-1198, that accused Vikas Panday present in the Court was present at the spot and on his directions, he had lifted the Skoda car with the help of the crane and taken the same near Pushap Vihar in front of the Church and left the car there and charged Rs.600/- from the accused Vikas and gave the same to his employer. Further SI PW-35 deposed that he along with Ved Kaushik, accused Vikas Pandey, HC Sumer and Constable Ishwar went to Pushap Vihar and on demarcation of accused Vikas Pandey, Skoda car bearing no.HR51-V-2475 was taken into custody vide recovery memo Ex.PO/3. From the evidence as discussed above, it is established that the accused after removing the Skoda car, which was parked in front of their residence with the help of a crane, parked the same near Saint Terasa Church, Pushap Vihar, Delhi.

22. Regarding recovery of parts of dead body of Braham Dutt Kaushik, PW-35, SI Sanjeev Kumar deposed that on demarcation of accused they proceeded to Kalindikunj along with PW-18, Arun, Divesh Bhardwaj PW-29 and the accused persons as per their disclosure statements Ex.PO and Ex.PO/1 took them to barrage No.6, where they dumped the parts of the dead body of Braham Dutt Kaushik and got demarcated the said place. Demarcation memo Ex.PPO/2 was prepared and on the demarcation of the accused persons, four pieces of dead body of Braham Dutt Kaushik were recovered which were taken into police possession vide memo Ex.P1, after getting them photographed. Site plan of recovery Ex.PM/1 was prepared. Statements of Arun Jamadar and Divesh Bhardwaj were recorded under Section 161 Cr.P.C. The parts of dead body were kept in the mortuary in Noida. On the next day i.e. 01.09.2009, he along with Divesh Bhardwaj, Umesh Kaushik, Ved Kaushik, HC Sumer and Constable Ishwar and two drivers went to Barrage No.6 and started searching for the remaining parts of the dead body of Braham Dutt Kaushik. When they were searching, they found sandles, belt, baniyan i.e. vest and bed sheet just beneath the barrage which are Ex.P4 to Ex.P10. PW-29, Divesh Bhardwaj and PW-31 Ved Kaushik proved the recovery of the parts of the dead body of Braham Dutt Kaushik besides that of bed sheets, belt, pair of sandles, one baniyan and polythene.

23. Recovery of iron rods and mobile phone of the deceased stands proved from the testimony of PW-19, PW-34 and PW-36 and other witnesses. PW-34, deposed that on 11.09.2009, both the accused suffered disclosure statements Ex.PT and Ex.PT/1 and on the basis of the same, got recovered iron rods Ex.PW/2 and Ex.PT/3, which were taken into police

possession vide memo Ex.PT/4. PW-36, Inspector Jitesh Kumar also testified that on 11.09.2009, disclosure statements Ex.PT and Ex.PT/1 were recorded regarding the weapon of offence used in the crime and mobile phone make Tata Indicom and the accused got recovered two iron rods i.e. Ex.PT/2 and Ex.PT/3 and mobile phone of the deceased on the same day. PW-19, Satya Parkash Tripathi alias Babbu son of Radhey Shyam testified that he was residing in Chhatarpur Pahari, 60 Feet Road, Dhan Mill, Compound, New Delhi for the last about four years. Both the accused present in the Court i.e. Vikas Pandey and Bobby Pandey used to reside in his neighbourhood so he knew them. He further deposed that accused Bobby Pandey had sold mobile Nokia, Model-6300 Silver Black colour on 19.08.2009 to him for an amount of Rs.2,000/- and he asked for the bill of the mobile whereupon accused Bobby told him that he would give the same after 2/4 days. He deposed that he firstly used SIM No.98683-35339 in that mobile for about eight days and then used GSM number of Reliance Company. He further stated that the aforesaid mobile was taken in possession by the police vide memo Ex.PJ and mobile was Ex.P3. Thus, recovery of body parts, Skoda car, bed, iron rods and mobile phone also stands proved as per the disclosure statements of accused and aforesaid recoveries are admissible by virtue of Section 27 of the Act, 1872. Further, from the testimony of PW-7, Raju Yadav and PW-17, Satish Tyagi, it stands established on record that the accused hired an Indica car bearing No.DL-3CV-8094 from Tyagi Tours and Travels. PW-7 deposed that he took the said car to the residence of the accused where accused and while there when he went to the toilet the accused in the meantime after opening the dickey of the car loaded the articles in the dickey and thereafter they

proceeded to Saket, then to Pushap Vihar, Kalkaji, Sarita Vihar and then to Kalindikunj where the accused got stopped the vehicle near the canal and the person sitting beside him entangled him in talks and asked him to open the dickey, rest of the two passengers also alighted from the back seat of the car and took out something from the dickey and threw it in the canal. Though PW-7 was declared hostile on the point of identification but in his cross-examination conducted by the Public Prosecutor, he deposed that the person sitting beside him was perhaps one of the accused and when the attention of the witness was drawn towards accused standing in the court, then he pointed out towards accused Shri Kant alias Bobby. Though this witness did not identify accused Vikas Pandey alias Anita but from the testimony of PW-17, Staish Tyagi, it stands proved that it was accused Vikas Pandey who went to Tyagi Tours and Travels for getting booked the car.

24. In order to complete the chain of circumstances, the prosecution examined PW4, Nand Lal Jindal and PW-20, Ishka. PW-4, Nand Lal Jindal, owner of Jindal Plastic Store situated at Madangir, admitted in his cross-examination conducted by the Public Prosecutor that accused Vikas Pandey alias Anita had come to his shop and purchased one packet of dustbin polythene for Rs.50/-. He further deposed that one packet consisted of 30 polythene bags and that each bag could carry weight upto ten kilograms. PW-20, Ishka deposed that she was Luhar by caste and she prepares iron drati, kassi daw etc. and that about one year back, both the accused present in the court had come to her and purchased two daws and a wooden gutka for Rs.900/-. Statements of PW-4 and PW-20 find corroboration from the statement of PW-8, Parvesh Kumar Sharma and PW-17, Satish Tyagi, who proved that the above named accused booked

Innova car No.Dl4CAE-4963 of Tyagi Tours and Travels on 17.08.2009 and it was PW-8 Parvesh Kumar Sharma who took the accused to Madangir Market for purchase of wooden gutka etc.

25. Further as per the prosecution version, the accused after committing the murder of Braham Dutt Kaushik got white washed the room in order to conceal/remove the blood stains. In connection therewith, the prosecution examined PW-11, Jafruddin who deposed that about seven months ago, accused present in the Court had got white washed one room in their house situated in front of Dhan Mill by stating that pigeon had come in the fan due to which blood stains were there therefore whitewashing was to be done.

26. As per the medical evidence led by the prosecution, PW-3, Dr. Naresh Raj, proved the post mortem report as Ex.PB and deposed that on 01.09.2009, he was posted as Mortuary Medical Officer, Gautambudh Nagar. On that day, at about 3:45 p.m., he conducted the postmortem on the dead body whose name was given as Braham Dutt Kaushik son of Shri Jagram Kaushik, resident of House No.326, Sector-17, P.S. Central, District Faridabad. The body was decomposed and infested with maggots, its orbits were empty and external genitals were missing. There was amputation of the right lower limb at the level of the hip, lower part had been cut with a sharp object, right thigh had been separated from the right leg by amputating with a sharp object, right foot was missing, amputation of the left lower limb at the level of the hip had been made with a sharp object, left leg was separated from the left thigh with a sharp object, left leg and left foot were missing, both upper limbs were amputated with a sharp object at the level of shoulders, both upper limbs were missing, there was amputation of the head at the level of the neck with a sharp object, head was missing, parts of the

body were wet at places and patches of mud were seen. On opening the thoracic cavity, both the lungs were found to be softened and liquefied. Both sides of the heart were empty. On opening the abdomen, softening and liquefaction was seen in all the viscera. Death had occurred due to shock and hemorrhage. He further stated that during postmortem, five parts of the body were found i.e. one right foot, one right hand, knee, part of forearm and part of arm. All parts were decomposed and full of mud and some skull hair were present in mud and parts of body.

27. Although as per FSL report Ex.PM it is nowhere mentioned that the DNA test failed but it is written that there is no amplification of DNA in the collected items, therefore, no opinion can be given in this case. However, in such like cases, benefit cannot be given to the accused on account of defective investigation as has been held by Hon'ble the Supreme Court in Acharambath Pradeepan and another vs. State of Kerala 2007 (1) RCR (CrL.) 928, wherein it has been held that defective investigation by police itself may not lead to a conclusion that the accused is innocent and in case of defective investigation, the only requirement is of extra caution by the Court while evaluating evidence and that in such circumstances, it is not just and proper to acquit the accused solely as a result of defective investigation. In the instant case, the accused is not entitled to the benefit of non-production of DNA report particularly when the identification of parts of dead body of Braham Dutt Kaushik has been proved by the prosecution by leading ample evidence in the shape of PW-31, Ved Kaushik, who specifically deposed in his examination in chief that with the help of little hair on the head, he identified the head to be of Braham Dutt Kaushik and that Braham Dutt Kaushik had dark black spot on his index finger like a mole and the

recovered hand had also such like mole/black spot and that the mole was helpful in identifying the dead body to be of Braham Dutt Kaushik. Thus, the parts of the dead body of Braham Dutt Kaushik as recovered have been identified with certainty to be the parts of dead body of deceased Braham Dutt Kaushik. No benefit can therefore be derived by the accused on the ground that the body parts recovered were not identifiable and could not be said to be body parts of deceased Braham Dutt Kaushik.

28. Although the argument of learned counsel for the appellants is that Vandana Kaushik wife of deceased Braham Dutt Kaushik, who lodged DDR, Ex.PN, was not examined by the prosecution, therefore, an adverse inference was liable to be drawn, however, we do not find any substance in this argument also because DDR, Ex.PN was duly proved by PW-27, HC Sumer Singh. Moreover, Mohan Lal, one of the complainants, appeared in the witness box as PW1 and deposed in his examination in chief that Vandana had lodged report with the police on 18.08.2009 i.e. the next day after Braham Dutt had gone missing. He also deposed that Vandana had told him that Braham Dutt Kaushik was having with him Rs.70,000/- 80,00/- when he left for Delhi. The statement of PW1 is also relevant and admissible in the context of Section 6 of the Act, 1872 as it proves that Braham Dutt Kaushik had left for Delhi on 17.08.2009. It has also come in the disclosure statements that the accused were in need of money for various purposes including that accused Vikas Pandey had to pay money to the goldsmith from whom he had purchased jewellery on credit. The testimony of PW-12, Ram Gopal proves aforesaid fact as PW-12 stated that accused Vikas Pandey had purchased gold jewellery worth Rs.2,70,000/- from him on credit basis but had not paid the amount to him till date. Besides from the statement of

PW-2, PW-6, PW-7, PW-8, PW-10, PW-11, PW-12, PW-19 and PW-21 and other evidence on record, it stands established that both the accused used to reside in a rented accommodation at Chhatarpur Pahari, Delhi in front of Dhan Mill. Identity of both the accused is also established from their statements. Although the prosecution witnesses were subjected to a detailed cross-examination but their credibility could not be shattered. Thus the prosecution, proved that the accused while hatching criminal conspiracy abducted Braham Dutt Kaushik and after committing his murder, threw his dead body parts in Yamuna river after cutting the body into pieces so as to cause disappearance of evidence.

29. It is in such a case as the instant case where the case rests upon circumstantial evidence it has been held by Hon'ble Supreme Court in Gambir vs. State of Maharashtra AIR 1982 SC (1157) that:-

“The circumstances from which an inference of guilt was sought to be drawn must be cogently and firmly established; (2) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; and (3) the circumstances taken cumulatively should form a chain so complete that there was no escape from the conclusion that within all human probability the crime was committed by the accused and none else. The circumstances evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocent.”

30. In a murder case, the fact that the deceased was last found in the company of the accused is an important link in the chain of circumstances pointing to the guilt of the accused, but it cannot be deemed to be conclusive, unless it is further established that during the interval between the time when the deceased and accused were last seen together and the time at which the victim died, every circumstance was inconsistent with the innocence of the accused. The circumstances should of conclusive nature and tendency and should be such as to exclude every hypothesis but the one proposed to be proved. From the position noted above it emerges that the evidence on the file and circumstances proved against the accused are incriminating in nature and form a chain so as to connect one circumstance with the other, ultimately connecting the circumstances with the hypothesis of the having murdered Brahm Dutt Kaushik. The prosecution successfully proved the calls between the mobile number of the deceased and the accused on 17.08.2009 at 2:38 p.m. and 03:20 p.m. as also the location of the accused and the deceased in Chhatarpur, that is the area of residence of the accused, after 3:30 p.m.. Even the recovery of the Skoda car and weapons of offence as also the mobile phone of the deceased, which was sold by the accused to PW-19, Satya Parkash Tripathi alias Babbu were recovered on the basis of disclosure statement and the recoveries have been proved in accordance with law. Besides bed was recovered from the maid of the deceased, body parts of the deceased, the purchase of black polythene bags, in which the body parts of the deceased were disposed off by the accused and recovery of the body parts in black polythene bags from Yamuna river on the disclosure statement of the accused, have also been proved by the prosecution beyond doubt. It emerges that the evidence on the file and

circumstances proved against the accused are incriminating in nature and form a chain of events so as to connect one circumstance with the other, ultimately connecting the circumstances with the hypothesis that in all probability it was the accused who committed the murder of Brahm Dutt Kaushik. In the circumstances, the prosecution has proved the guilt of the accused beyond reasonable doubt.

31. Accordingly, we do not find any circumstance warranting interference with the well reasoned judgment of conviction and order of sentence passed by the learned trial court. Accordingly, the appeal being bereft of merit is dismissed.

(A.B. CHAUDHARI)
JUDGE

(B.S.WALIA)
JUDGE

03, December, 2018
rajesh.k.khurana

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

