

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

CRL.A. 568/2003

Reserved on: 5th October, 2018

Decided on: 30th October, 2018

PREM PAL

.....Appellant

Through: Mr.B.Badrinath, Advocate (DHCLSC).

versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr.K.S.Ahuja, APP for State.

+

CRL.A. 358/2003

VIJENDER SINGH

.....Appellant

Through: Mr.S.K.Sharma, Mr.Rahul Sharma
and Mr.Prayas Aneja, Advocates.

versus

STATE GOVT. OF NCT OF DELHI

.....Respondent

Through: Mr.K.S.Ahuja, APP for State.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE VINOD GOEL**

J U D G M E N T

Dr. S. Muralidhar, J.:

1. These appeals are directed against the judgment dated 20th March 2003 passed by the learned Addl. Sessions Judge, New Delhi in Sessions Case No.183 of 1999 arising out of FIR No.364 of 1998 registered at Police Station (PS) Okhla Industrial Area, convicting the Appellants for the

offences under Sections 120B, 364, 302 and 201 IPC read with Section 392 IPC.

2. These appeals are also directed against an order on sentence dated 26th March 2003 whereby both Appellants was sentenced to life imprisonment and fine of Rs.50,000/- each and in default to undergo 6 months' imprisonment for the offence under Section 302 IPC; to life imprisonment with fine of Rs.60,000/- each and in default to undergo 6 months' imprisonment for the offence under Section 364 IPC. They were sentenced to life imprisonment for the offence under Section 120B IPC and to 7 years' imprisonment and fine of Rs.30,000/- and in default to undergo 6 months' simple imprisonment for the offence under Section 201 IPC. For the offence under Section 392 IPC, both were sentenced to rigorous imprisonment for 10 years with fine of Rs.50,000/- and in default to undergo 6 months' imprisonment. The trial Court also specified the amounts to be paid as compensation to the wife of the deceased out of the fine amounts required to be paid by the Appellants.

3. At the outset, it requires to be noticed that the two Appellants, Prem Pal (Accused No.1: A-1 and the Appellant in CrI.A.568 of 2003) and Vijender Singh (A-2 and the Appellant in CrI.A.358 of 2003) were sent up for trial along with Bhagwan Singh (A-4) and Dhara Singh (A-3). By the same impugned judgment dated 20th March 2003, A-4 was held guilty of the offence under Section 411 IPC and A-4 of abetment in regard to the stolen property punishable under Section 411 read with Section 109 IPC. By the same impugned order on sentence dated 26th March 2003, A-3 was

sentenced to the period already undergone whereas A-4 was sentenced to the period already undergone with the fine of Rs.5,000/- and in default to undergo one month's imprisonment.

Charge

4. The charge against the two Appellants were that along with co-accused Vijender Yadav (not arrested) they entered into a criminal conspiracy on or before 10th May 1998 to abduct Satish Gupta (the deceased), to rob him, inflict injuries on him and commit his murder and destroy the evidence of commission of murder thereby committing the aforementioned offences punishable under Sections 120B read with 364, 394, 302 and 201 IPC.

5. *Inter alia* the charge against A-3 and A-4 was that they had purchased the jeep DL 2CJ 6687 which A-1 and A-2 (along with the absconding co-accused) had robbed from the deceased, thereby committing the offence punishable under Section 411 read with Section 34 IPC.

Version of PW-6

6. The case of the prosecution, as spoken by his brother Raj Kumar (PW-6), is that the deceased was running a ration shop in Delhi at Prahladpur Chowk which was near his residence. The deceased had an Armada jeep and had employed a driver. According to PW-6, the deceased used the jeep some times for carrying passengers.

7. According to PW-6, on 10th May 1998 he happened to visit the deceased at his ration shop along with one Sajan Bansal (PW-1), Gopal (not examined) and another Raj Kumar (also not examined). PW-6 stated that he

was in the business of export of clothes and that day he had come to the shop of the deceased because he had to get material from one Mr. Chadha (not examined) who had his shop in the vicinity of the ration shop. According to PW-6 between 11 and 11.30 am 3 persons came to the shop of the deceased and started talking to him about going to Bareilly, Uttar Pradesh (U.P.). PW-6, thereafter, left the shop and subsequently learnt that the deceased had taken his Armada jeep and gone with those persons.

8. When no call was received from the deceased on 11th or 12th May, 1998 PW-6 is supposed to have called up Suman Kumar (PW-12), the brother-in-law (*behnoi*) of the deceased who was at Soron. According to PW-6, PW-12 told him that the deceased had come to Soron at 11 pm on the night of 10th May 1998 and had taken meals there.

9. On 13th May 1998, PW-6 accompanied by PW-1, Gopal, Raj Kumar and one Mukesh (also not examined) went in a Tata sumo jeep to Soron. They reached there between 2 and 3 am and proceeded to search the deceased at around 7 am. They were accompanied by PW-12 and other local persons from Soron.

10. According to PW-6, while searching for the deceased they first went to Sahaswan about 40 to 45 kms from Soron and contacted the police there. From there they went to Badayun and reached there at around 2 am. From there PW-6 made a call to Delhi and he was told that he should immediately reach Soron.

11. PW-6 states that on reaching Soron they were told about a dead body

having been found near the railway track about 3 kms away from Soron. They found the body was without its head. Nevertheless, PW-6 could identify the body to be that of the deceased because the nail of one thumb of one foot was partly broken. According to PW-6 “the body was badly eaten up and hands and legs were there and there was underwear on the body and there was *kalawa* on a hand of my brother. The underwear was partly burnt. I could also identify my brother from *kalawa* and partly burnt underwear.”

Post mortem

12. The post-mortem of the body was conducted by Dr. Narinder Babu (PW-3) on 15th May 1998 at 3 am. This was at the District Hospital, Etah (UP). The body was found to be in an advanced stage of decomposition with nails being easily detachable. Hairs and teeth were absent. Maggots were crawling all over the body. The interior body was also in an advanced stage of decomposition. The skull with lower jaw had separated from the trunk. The bone of skull and lower jaw were present and the ribs were exposed. There was no viscera as it had already been eaten up. Some muscles and ribs at some places with skin of the pelvic bone intact were found. The pelvic viscera was absent. Thigh, knee joint, legs and feet were intact with decomposed skin. There were muscles at the back of chest. Brain matter was absent.

13. According to PW-3 the cause of death could not be ascertained as a result of the advanced stage of decomposition and the absence of viscera. On the body, there were no clothes that could be recovered. PW-3

estimated the time of death to be about 4 days prior to the post-mortem. In his cross-examination, PW-3 clarified that the period since death could have an error of one day + or – on either side.

14. PW-6 and the others returned to Delhi on 14th May 1998. It may be mentioned that in his cross-examination, PW-6 clarified that in the missing report lodged by him on 13th May 1998 with the Delhi Police, he had not stated about the 3 persons having visited his brother at the ration shop and about their plan to go to Soron or Bareilly. He did not say specifically that 3 persons were seen by him nor did he give any description. He further clarified that he did not tell the UP Police on 14th May 1998 that he had seen 3 persons sitting in the shop of his brother on 10th May 1998 at around 11 or 11.30 am. According to him, seeing the dead body of his brother lying before him he was “emotionally disturbed.”

Zeroing in on the accused

15. How they came to come across the accused is described by PW-6 as follows. On 11th August 1998 i.e. more than 3 months after the deceased was last seen by PW-6, PW-6 received a telephone from PW-12 that one Armada jeep had been seized by the police of PS Narki in U.P. and was available in the said PS at Narki.

16. PW-6 then went to the Nehru Place Crime Branch which was investigating the present case. Sub Inspector (SI) Jawahar Singh (PW-16) and 3 other police persons accompanied PW-6 to PS Narki. There they found the Armada jeep standing with the fake number plate. PW-6 identified the vehicle to be the jeep of the deceased.

17. By this time, A-3 had been apprehended by the police of PS Narki. According to PW-16, they met the Station Officer (SO) Hari Shankar Soni (PW-14) of PS Narki. PW-14 told them that a jeep was found standing opposite the house of Ved Pal (PW-10) in village Garhi Har Rai, District Firojabad (UP). In his deposition PW-14 stated that the said jeep was seized by SI Naimmuddin (not examined) attached to Police Post (PP) Nagla Beech which was part of PS Narki. The jeep was seized under the Motor Vehicles Act, 1998 on 3rd August 1998 in respect of which DD No.20 was recorded at PS Narki (Ex.PW-14/A).

18. PW-16 reached PS Narki there along with PW-6 and identified the Armada jeep as belonging to the deceased. They checked the engine number, chassis number and it tallied to the registration documents of the vehicle and a fake number plate had been fitted to it.

19. According to PW-14 on 13th August 1998 he received information from an informer that A-4 and A-3 were at the house of PW-10 in village Garhi Har Rai in order to take back the armada jeep which they have parked outside the house of PW-10. PW-14 then immediately went to the said village with the police. While A-3 could be arrested A-4 succeeded in running away.

20. PW-14 states that he then informed PW-16 in Delhi about the arrest of A-3. Thereafter, A-3 was interrogated. A-3 disclosed that his brother-in-law A-2, his associate A-1 and Vijender Yadav (not arrested) who were residents of village Ram Nagar Jaitoly District Etah had brought the Armada jeep to A-3 and told him that the jeep had been booked by them

from Delhi for Bareilly on 10th May 1998 and that the deceased was owner and was also driving the jeep. They are supposed to have disclosed that they have killed the owner and now wanted the jeep to be disposed of.

21. At the pointing out of A-3, PW-14 went to village Jaitoly with the Inspector Preetam Singh (not examined) from Delhi. They reached the village at around 10 pm. Both A-1 and A-2 were apprehended by them.

22. In his cross-examination, PW-14 stated that A-1 had been apprehended at around 10 or 11 pm “from tube-well outside the village and no village person had gathered there.” A-2 was also with A-1 and apprehended from there. In his cross-examination PW-16 maintained that “Vijender (A-2) was arrested from Ram Nagar, the village of Prem Pal (A-1) from a field where there was a room. It was a kothara in the field made by bricks.”

23. It appears that much later on 1st September 1998 a seizure memo was drawn up (Ex.PW-6/B) about the wrist watch of the deceased having been recovered from a tin box of A-1 from his house at Ram Nagar Jaitoly, District Etah. In the personal search of both the accused (Ex.PW-1/A and Ex.PW-1/B) nothing was shown to have been recovered. The disclosure statement of A-3 was Ex.PW-1/C and this was dated 13th September 1998 i.e. more than one month thereafter. He purportedly disclosed that he had purchased the Armada jeep for Rs.25,000/-. The disclosure statement of A-1 (Ex.PW-14/F), signed by both A-1 and A-2 is supposed to have been made in the presence of PW-14. The Armada jeep was seized vide seizure memo (Ex.PW-1/D).

24. Thereafter, A-1, A-2 and A-3 were produced before the Chief Judicial Magistrate (CJM), Narki and brought to Delhi in transit remand.

TIP

25. An application for conducting the Test Identification Parade (Ex.PW-7/A) was moved before the learned Metropolitan Magistrate (MM), Patiala House Courts. The endorsement on the said application by the MM was that there was no time left on that date i.e. 27th August 1998 and then the date for TIP was fixed for 28th August 1998 with specific direction that the accused should be kept in muffled face till the TIP is conducted.

26. The further proceedings in the TIP show that as far as A-1 is concerned he declined to take part as, according to him, the police already had his photographs (3 in number) taken in the PS. He was also photographed outside the Firozabad Court. A further endorsement in the proceedings was that neither police officials connected with the case nor witnesses were present inside the room when the aforementioned proceedings were conducted. Three witnesses and PW-16 remained outside the jail boundary during the proceedings.

27. As far as the TIP of A-2 is concerned, he too stated that his photographs were taken by the police when he was kept in PS for about 4 – 5 days. A similar endorsement was made as in the case of A-3 by the learned MM. The TIP of the wrist watch was also got done.

28. Subsequently, A-4 was also arrested on 9th March 1999 and he gave a disclosure statement (Ex.PW-15/B).

29. After filing of the charge-sheet the charges against A-1 to A-3 were framed as already noticed, by the trial Court on 27th May 2000.

Statements under Section 313 Cr PC

30. For the prosecution, 16 witnesses were examined. When the incriminating circumstances were put to the Appellants they denied them. Both Appellants claimed that they had been falsely implicated. A-1 and A-2 maintained that they had been arrested from their respective houses, A-1 from village Ram Nagar in Etah and A-2 from Sangam Vihar in Delhi.

Defence evidence

31. For the defence, three witnesses were examined. Taj Singh (DW-1) stated that he knew A-3 and A-4 but not the other two. He spoke about the quarrel between them. A-4 was the owner of a fruit park and A-3 had been employed there. There had been a quarrel between the two about wages. A *panchayat* was held to settle the quarrel but it could not be resolved.

32. Chander Pal (DW-2) spoke of A-4 belonging to his village and about A-3 having worked with A-4 and having had a dispute with the latter over wages. Rajinder (DW-3) was the owner of a hotel and a driver and transporter who resided at Lal Masjid near the water works on the bye-pass road in Agra. According to him on 24th May 1998 A-1, A-2, A-3 and A-4 had come to his hotel and taken food. According to him one Satish, a leader of the Bahujan Samaj Party (BSP), also came to that hotel and they started discussing about selling the Armada jeep.

33. According to DW-3 the deal was finally stroke at 2.27 lakhs. On 25th May 1998, Rs.25,000/- was paid by the said Satish to A-2. Satish sought 8 more days' time for making the balance payment. On 1st June 1998 Satish's vehicle met with an accident near Hussaini village in Firozabad and his brother broke one of his feet. On 2nd June 1998, A-1, A-2 and A-3 are stated to have come to the water works crossing and demanded balance from Satish. He told them that his vehicle had met with an accident. He asked them to await the arrival of A-4.

34. When A-4 reached there, Satish told him he should pay Rs.50,000/- or Rs.60,000/- to the three accused. A-4 went to arrange for the money while Satish went to retrieve his vehicle. According to DW-3, A-4 gave A-2 Rs.62,000/- and then all of them left the village. In his cross-examination by the APP he stated that he did not know what had happened to the jeep. He knew that the Armada jeep had a Delhi number but did not remember the number. DW-3, therefore, confirmed that A-2 and A-4 were involved in the sale of the stolen Armada jeep to Satish.

Impugned judgment of the trial Court

35. In the impugned judgment, the trial Court came to the following conclusions as regards the circumstantial evidence:

- (i) The attack on the credibility of the PW-6 was unwarranted. There was sufficient opportunity for PW-6 to have noticed the three persons who came to the shop of the deceased. His identification of A-1 and A-2 among the said three persons was believable.
- (ii) The case of PW-6 was that the three persons including A-1 and A-2

had come to the deceased and told him that the jeep was requisitioned by PW-12 for going somewhere and to Bareilly. The trial Court held: “it seems from the evidence that Satish Kumar Gupta who was running a ration shop was simultaneously doing the business of driving jeep on hire.” It was further held:

“Unfortunately, on that day, driver was not with him and thinking that he would be able to make money, as jeep was required for a longer route, he himself accompanied accused persons to Soron. Accused person gave reference of his brother in law to befool him with malafide intention.”

- (iii) If PW-6 had not been present at the time of the conversation with the deceased and the three persons who had come to take the jeep “there would have been no information with him that Satish had gone towards Soron. The fact that he had called PW-12 showed that PW-6 was both credible and truthful.”
- (iv) No doubt had been raised by the accused about the identity of the dead body. The dead body was correctly identified by PW-6 and this showed that the deceased had been taken by the three persons including A-1 and A-2 to Soron in order to rob him of his armada jeep which was worth of around Rs.3 lacs.
- (v) The deceased on the night of 10th May 1998 reached the hotel of one of his relative Bobby Gupta (PW-4) in Soron and took meals. The deceased did not stay at Soron and told PW-4 that he would be returning. But he was not allowed to go beyond Soron and was killed in Soron itself as was evident from the recovery of the dead body.
- (vi) DD No.20 recorded at PS Narki was a natural circumstance about the seizure of jeep by the UP Police without knowing that jeep was

involved in this case. Later on, the UP Police arrested A-3 who was associated with A-4. It was A-3 who disclosed to the IO how the jeep reached in the hands of A-4. There was no reason to disbelieve the testimonies of PW-14 and PW-16 in this regard. The involvement of A-1 and A-2 were revealed from the disclosure of A-3. DW-3 fortified the claim of the police by stating that A-1, A-2 and A-3 had come to his hotel and talked for the sale of jeep to Satish.

- (vii) In his statement under Section 313 Cr PC, A-4 had stated that A-2, A-3 and some other person had come to his house on 24th May 1998 and asked about the sale of the armada jeep and he then referred them to Satish who used to ply jeep and it is Satish who purchased jeep from them and paid an advance of Rs.25,000/-. Thus from the statement of A-4 and the testimony of DW-3, the involvement of A-1 and A-2 in the crime stood established.
- (viii) The evidence of Harish Kumar (PW-11) was unreliable and his testimony had to be ignored. The other witnesses, however, appeared to be natural and trustworthy.
- (ix) Even though the recovery of the wrist watch was supposed to have happened on 13th August 1998 and the seizure memo was dated 1st September 1998, there was no reason for the UP Police to falsely arrest A-1 and A-2 and implicate them. A-3 was related to A-2 and there was no reason why he would have falsely got his own brother-in-law arrested.
- (x) Because of improper investigation, the accused could not be acquitted. Even if the testimony regarding recovery of wrist watch was ignored, the prosecution case stood proved.

(xi) According to the trial Court, the following circumstances stood proved against A-1 and A-2:

“1. Accused Prem Pal and Vijender along with one more person came to the shop of Satish Gupta and told him that jeep was being requisitioned by his brother-in-law at Soron.

2. Satish accompanied Prem Pal and Vijender Singh in Armada jeep from Delhi for Soron on 10.5.98 in the afternoon at 2 pm. Satish was seen by PW-4 Bobby Gupta at Soron in his hotel. He had taken meals there and accused Vijender and Prem Pal and one more person were with him at about 11 pm on 10.5.98 and left his hotel around 11 p.m.

3. Dead body of Satish was recovered on 14.5.98 from a jungle in Soron, the post mortem report shows that time since death was around four days - plus-minus - one day, which shows that Satish Kumar Gupta had been murdered sometime on the night of 10/11.5.98, near Soron itself and his dead body was thrown in the jungle was looted.

4. Jeep of Satish Kumar was found on 3.8.98 parked in abandoned condition opposite the house of PW Ved Pal.

5. This jeep was sold by accused Prem Pal and Vijender Singh through accused Dhara to accused Bhagwan Singh, as per testimony of DW.3 as well as testimony of witness of PW Satish. Rs.25,000.00 was given in advance by accused Bhagwan Singh who mortgaged his property and paid Rs.62,000.00 more to accused Prem Pal and Vijender Singh.

6. At the time of sale, Dhara had accompanied Prem Pal and Vijender Singh and jeep to Dhaba of PW.3. Jeep was given a fake registration no. and was plied by accused Bhagwan Singh between Agra and Etah as per testimony of PW Satish.”

(xii) Since the each of the above links was proved conclusively against A-1 and A-2, they were held guilty of the offences as aforementioned

and sentenced by the trial Court in the manner noted hereinbefore.

36. This Court is heard the submissions of Mr. B. Badrinath, learned counsel appearing for A-1 on behalf of the Delhi High Court Legal Services Committee (DHCLSC) and Mr. S.K. Sharma, learned counsel appearing for A-2. The Court has also heard the submissions of Mr. K.S. Ahuja, learned APP for State.

Law in relation to circumstantial evidence

37. This is the case based on circumstantial evidence, the law in relation to which is fairly well settled. The following observations made by the Supreme Court in ***C. Chenga Reddy v. State of Andhra Pradesh (1996) 10 SCC 193*** are instructive on the manner in which the circumstantial evidence is to be weighed:

“21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In the present case the courts below have overlooked these settled principles and allowed suspicion to take the place of proof besides relying upon some inadmissible evidence.”

38. In ***Ramreddy Rajeshkhanna Reddy v. State of Andhra Pradesh (2006) 10 SCC 172***, the Supreme Court opined:

“26. It is now well-settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and

clinging evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well-settled that suspicion, however, grave may be, cannot be a substitute for a proof and the Courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence.”

39. Finally, in ***Rajendra Pralhadrao Wasnik v. The State of Maharashtra (2012) 4 SCC 37***, the Supreme Court held:

“12. There is no doubt that it is not a case of direct evidence but the conviction of the accused is founded on circumstantial evidence. It is a settled principle of law that the prosecution has to satisfy certain conditions before a conviction based on circumstantial evidence can be sustained. The circumstances from which the conclusion of guilt is to be drawn should be fully established and should also be consistent with only one hypothesis, i.e. the guilt of the accused. The circumstances should be conclusive and proved by the prosecution. There must be a chain of events so complete as not to leave any substantial doubt in the mind of the Court. Irresistibly, the evidence should lead to the conclusion which is inconsistent with the innocence of the accused and the only possibility is that the accused has committed the crime.

13. To put it simply, the circumstances forming the chain of events should be proved and they should cumulatively point towards the guilt of the accused alone. In such circumstances, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person.”

40. Thus, the following key principles of evaluation of circumstantial evidence, as enumerated in ***Padala Veera Reddy v. State of Andhra Pradesh 1989 Supp (2) SCC 706***, emerge from the decisions discussed

hereinabove:

- (1) The circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;
- (2) Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
- (3) The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused and none else; and
- (4) The circumstantial 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 and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

Last seen

41. The first circumstance that requires to be discussed is the circumstance of last seen. According to the trial Court, the prosecution had been able to conclusively show that A-1, A-2 along with one more person came to the shop of the deceased on 10th May 1998 and told him that the jeep was being requisitioned by his brother-in-law at Soron. On this circumstance the two witnesses who are relevant, are PW-6 and PW-1.

42. According to PW-6, when he visited the shop of the deceased on 10th May 1998 between 11 and 11.30 am, he was accompanied by PW-1 and two others namely Gopal and Raj Kumar (not examined). However, this

part of the testimony of PW-6 is not corroborated by PW-1. His narration begins by his stating that the deceased was living “just opposite my house”. His narration begins not on 10th May 1998 but on 13th May 1998, the date on which he along with PW-6 and Mukesh, Gopal (not examined) went to Soron in search of the deceased. He added that “in-laws of Satish were also taken with us.” This fact was not mentioned by PW-6.

43. According to PW-6, he saw three persons coming and talking to the deceased in the ration shop but this again was not spoken by PW-1. There is merit in the contention of learned counsel for the Appellants about there being no reason for PW-6 to be present at the shop of the deceased on 10th May 1998 at 11 – 11.30 am. If indeed he was accompanied by PW-1 then certainly PW-1 would have spoken about it.

44. When he was cross-examined by counsel for the accused, PW-1 stated “the deceased Satish had met me lastly on 10th May 1998. It was around 8 or 9 am in the morning when he met me. He used to visit me.” This is at odds with what PW-6 states.

45. At this juncture, it must be noticed that the law in relation to the evidence of a related witness requires such evidence to be scrutinised carefully and to be independently corroborated. In this case, PW-6 being the brother of the deceased, the Court will have to carefully test his evidence to see if it is corroborated by other evidence. The last seen circumstance is certainly a material particular since the prosecution is trying to prove that A-1, A-2 came along with a third person to Delhi to lure the deceased away with the jeep.

46. The other person who could have spoken about the deceased last seen being seen with the accused was his brother-in-law PW-12 who was at Soron and at whose instance the deceased is supposed to have taken his Armada jeep there accompanied by A-1, A-2 and one other person. However, according to PW-6 when he spoke to PW-12 on 12th May 1998 enquiring about the deceased PW-12 had told him that the deceased had eaten dinner at the house of PW-12 at 11 pm.

47. PW-1 also speaks about this. In his cross-examination, he states as under:

“The information about Satish having reached Soron was received from Suman Gupta brother in law of Satish when we made STD call to him because Satish had not come back. He informed that Satish had taken dinner on the night of 10th.”

48. PW-6, on the other hand, states that he made a call not on 12th May but on 13th May to PW-12 and further states:

“Suman Gupta told me that my brother Satish Chand had come to Soron on the night of 10th May at about 11 p.m. and had taken meals there.”

49. What PW-12 himself states is quite something else. According to PW-12, PW-6 had given him a call on 12th May 1998 enquiring if the deceased had come when the vehicle to which he replied in negative. PW-6 told him that the deceased had gone from Delhi with 3 persons in the Armada jeep on 10th May. He then states:

“On 13th May, 98 Raj Kumar and some more person from Delhi reached my home in the early hour of 13th May. My nephew Bobby had told us that Satish had come on his hotel on the

night of 10th May and told that he would be going towards Bareilly so we started searching for him on road going towards Kachla.”

50. In other words, PW-12 did not tell PW-6 about the deceased having had meals with PW-12 on 10th May 1998 at 11 pm. When one turns to the evidence of PW-4 whose *tau ji* was PW-12 and who ran the hotel in Soron, he states the deceased had come from Delhi in the Armada jeep on 10th May 1998 at about 11 pm. He states that there were three more persons with him “who were known to him.” He confirmed:

“They had come to take meals at my hotel. I told my Fufa to visit my house also but he refused and stated that he along with his known persons had to proceed to Bareilly so he took meal and left Hotel. I had seen those three persons and I can identify them. Out of the persons present in the court, one person in the white shirt and other behind in the Cream shirt were with him. The witness had pointed to accd. Bijender (white shirt) and accused Prem Pal (cream Shirt) as the persons who were with Satish Kumar on that day.”

51. When asked who else was with PW-4 when the deceased and the others had come to his hotel he mentioned “one pandit ji of Soron namely Harish Kumar was with him.” PW-4 further stated that the house of PW-12 “is about 10 – 20 steps away from my hotel.”

52. The other witness who was a witness of last seen would be Harish Kumar (PW-11). He states that he was at a hotel of Bobby at around 10.30 to 11 pm on 10th May 1998. He saw “a white colour Tata sumo coming and halting and there were four persons in that Tata sumo.” When they got down he noticed that one of them was the deceased who related to PW-10 was known to him. The others were strangers to PW-11. The deceased

enquired from PW-4 that PW-12 was in town. PW-4 told him that PW-12 had gone out of Soron. PW-4 asked the deceased to take meals and come to his house but the deceased told him that he was in a hurry and with three passengers who were with him and he had to visit Bareilly. All of them then took meals at the hotel of PW-4 and then left in the Tata Sumo. The two accused identified by PW-11 were A-1 and A-3.

53. When the APP put a further question to this witness with the permission of Court he was unable to say if A-2 was a third person and he again said that it is possible that A-3 “was not among the three persons but as far as my memory goes he was one of them.”

54. All these witnesses confirmed that on 13th May 1998, in the early hours, PW-6 and the others came looking for the deceased and they also confirmed finding the dead body near the railway track and PW-6 identified the dead body to be that of the deceased.

55. A collective reading of the above witnesses i.e. PWs 1, 4, 6, 11 and 12 reveals that the deceased was seen at Soron with his jeep (which PW-11 talks of being a Tata Sumo, but it could have been an Armada) with three persons. It does not appear that PW-12 saw these persons at all whereas PWs 4 and 11 did. While PW-4 is able to identify A-1 and A-2 as being present PW-11 was able to identify A-1 and A-3 but not A-2. Therefore, the person common to the identification by both PW-4 and PW-11 was A-1.

56. The Court is not convinced about the evidence of PW-6 when he says that he saw A-1 and A-2 at the shop of the deceased in Delhi. Even we keep

this evidence out as far as last seen is concerned, closer to the date when the deceased was last seen i.e. the night of 10th May 1998, he was seen in the company of A-1 with their being uncertainty whether A-2 and A-3 were also there.

57. The law and relation to last seen is that time, place when the dead body is found next should not make the evidence of last seen remote. As far as the place where the dead body is found, since it is 3 kms from Soron when the deceased was last seen was at least one of the accused the evidence does appear reliable.

58. In terms of time, since the body was highly decomposed and the post-mortem happened 5 days after the last seen i.e. 15th May 1998 the estimation of time of death could not be accurate. But the estimation of 4 days, even after giving a margin of one more day, does bring it closer to the night of 10th May 1998. That does, therefore, also bring the last seen evidence more approximate as far as A-1 is concerned.

Finding the Armada jeep

59. The next circumstance is the seizure of the Armada jeep of the deceased from outside the house of Ved Pal (PW-10). His evidence shows that A-4 is known to him. A-4 had brought the white colour Armada jeep and parked it in front of the house of PW-10. He did that by stating that there was a checking by the Road Transport Office (RTO) and that he would take away the jeep after 3 or 4 days. PW-10 confirms that the police officer of PS Narki came there and asked about the jeep and he told them that it belonged to A-4 and the SO took away the vehicle from his house. This happened on

around 23rd July. PW-10 correctly identified A-4. There was no cross-examination whatsoever of this witness.

60. There is corroboration of this part of the evidence of PW-10 by SI Hari Shankar Soni (PW-14). He confirms the seizure of the jeep from outside the house of PW-10. He also confirms about the arrest of A-3 at village Garhi Har Rai on receipt of information from an informer which was the same village where the house of PW-10 was. He stated that A-4 succeeded in running away. A-3 disclosed that A-1 and A-2 along with one Vijender Yadav had brought to him the Armada jeep for being sold.

61. The entire evidence of the jeep being found outside the house of Ved Pal (PW-10) and his confirming that it was brought there by A-4 appears to be reliable and trustworthy with PW-10 not being subjected to any cross-examination whatsoever. The further evidence of PW-14 who is attached to PS Narki corroborates this totally.

62. The arrest of A-3 from the village of PW-10 and the evidence that A-4 ran away at that point of time also points the culpability of both A-3 and A-4. There was no question of any false implication or fabrication of evidence as regards the discovery of the jeep. The connection of A-3 and A-4 to the jeep and in turn of A-3 with A-2 who was his own brother-in-law also gets further established.

63. It is not disputed that A-3 is the brother-in-law of A-2. According to PW-14 the disclosure by A-3 was to the effect that A-1, A-2 and Vijender Yadav had brought the Armada jeep to him on 11th July 1998 i.e. more than

2 months after 10th May 1998 and asked him to sell the jeep. The evidence of PW-14 comes across as trustworthy and reliable. A-1, A-2 were, therefore, found in possession of that jeep offered no explanation as to how they came to the possession of that jeep if not from the deceased himself since they were last seen with him on the night of 10th May 1998.

64. In this context, it does appear to the Court that with A-2 also having come with A-1 to sell the jeep when he approached A-3 the evidence of PW-4 about his having seen A-1 and A-2 at his hotel on the night of 10th May 1998 with the deceased appears reliable and trustworthy.

65. There has been considerable argument about the identification of A-1 and A-2. It would be recalled that they declined the TIP on the ground that their photographs were taken. However, the TIP proceedings make it clear that none of the witnesses or the police were present when both A-1 and A-2 were produced in muffled faces. There was no occasion for A-1 and A-2 being shown to PW-4 or PW-11. A-1 and A-2, therefore, did undertake the risk of a negative inference being drawn against them for refusing the TIP.

66. The Court is, therefore, satisfied that this circumstance of the discovery of the stolen jeep has been conclusively proved by the prosecution. It has been conclusively proved that both A-1 and A-2 stole the Armada jeep from the deceased who was himself driving it at that time.

Recovery of wrist watch not proved

67. The evidence regarding the recovery of the wrist watch of the deceased is indeed a pointer to the lapses of the investigating agency. The trial Court

is right in its observation that the failure by PW-16 to properly explain how the seizure memo of that wrist watch is dated 1st September 1998 when A-1 was arrested on 13th August 1998 makes this part of the evidence unreliable and liable to be discarded. The disclosure statement of A-1 and A-2 being jointly signed by them would be relevant fully in so far as the recovery of wrist watch is concerned since by this time the jeep had already been recovered. This Court concurs with the trial Court that the recovery of the wrist watch is not a reliable piece of evidence.

68. At the same time, the Court also concurs with the trial Court that notwithstanding this, the evidence as the recovery of the jeep is convincing and is a circumstance against the accused.

Identification of the dead body

69. A submission was also made about there being no mention by the doctors of any clothes on the body or *kalawa* on the wrist of the dead body, whereas PW-6 says that he identified the dead body by those two objects. Given the highly decomposed state of the dead body where maggots were crawling and the dead body itself having been brought for the post-mortem examination in a bundle of cloth, it is quite possible that by the time the post-mortem was conducted, these two objects either fell off or could not be noticed.

70. Moreover, the post-mortem itself appears to have happened two days after the finding of the dead body i.e. on 15th May 1998. It seems highly unlikely that PW-6 could have wrongly identified the dead body to be that of his deceased brother. There are several witnesses including PW-4 and

PW-11 who speak of identification of the dead body by PW-6 apart from the police witnesses i.e. PW-14. Consequently, the Court does not see much difficulty in accepting that the circumstance of the discovery of the dead body and its identification by PW-6 as being that of the deceased.

71. It was also submitted that the photographs of the vehicle were not shown to PW-10 and he was not asked to identify the vehicle. However, there was no cross-examination whatsoever of PW-10 to discredit his testimony. No such doubt appears to have been created by the defence counsel although they had full opportunity to ask PW-10 if indeed the jeep that was ultimately seized was the same that was parked outside his house.

72. As regards the conduct of PWs-4 and 12 in not speaking to the police till about 3 months after the dead body was discovered, it appears that the entire process got triggered with the discovery of jeep and it is only thereafter that the police started piecing together the jigsaw puzzle. The non-execution of the daily diary entry regarding the recovery of the jeep is also not problematic since the evidence of PWs 14 and 17 about the seizure of the jeep outside the house of PW-10 is found to be trustworthy and truthful.

Statements of A-3 and DW-3

73. The Court also concurs with the conclusion drawn by the trial Court on a collective reading of the statement made by A-4 together with the evidence of DW-3. In his statement under Section 313 Cr PC, A-3 specifically mentions that A-2 and A-4 along with Ram Krishan and Ganpat had come to his house on 24th May 1998 asking to sell the Armada jeep and

then he referred them to Satish who had purchased it from them by paying Rs.25,000/- as advance. Satish also asked them to talk to A-4 regarding the balance payment to be made up after 15 days. A-4 confirmed having arranged Rs.62,000/- by mortgaging his land to a person in Allahabad. Likewise, DW-3 has again confirmed the sale of the Armada jeep to the said Satish by A-2 and A-1. This too clinches the case as far as A-2 is concerned.

Chain of circumstances proved

74. The following circumstances stand proved:

- (i) Although there may not be any reliable evidence about A-1 and A-2 having come to Delhi to take the deceased away, the evidence of PW-4 and PW-11 confirms that the deceased was accompanied by A-1 and A-2 in the jeep from Delhi and took meals at the hotel of PW-4 at around 11 pm. It, therefore, constitutes credible evidence of the deceased being last seen with the two accused.
- (ii) The discovery of the dead body of the deceased on 13th May 1998 from near the railway track.
- (iii) The post-mortem confirming the time of death more or less closer to the time of 9th May 1998.
- (iv) The discovery of the stolen jeep outside the house of PW-10 and the link between that fact and A-1 and A-2 through the disclosure of A-3.
- (v) The sale of the jeep by A-1 and A-2 to Satish through A-4 as

confirmed by DW-3.

(vi) The fact that the jeep was given a fake registration number and was being plied between Agra and Etah by A-4 has been confirmed by Satish Chand (PW-5).

Conclusion

75. This Court accordingly concurs with the trial Court that the above proved circumstances form a complete chain and point unmistakably to the guilt of A-1 and A-2. The trial court rightly held them guilty for the offences with which they were charged. This Court also confirms the sentences, the fine amounts and default sentences awarded to A-1 and A-2 by the trial Court. It is clarified that the sentences will run concurrently.

76. The bail bond and surety bond of both Appellants stand cancelled. They are directed to surrender immediately failing which they shall be taken into custody forthwith to serve out the remainder of their sentences.

77. The appeals are accordingly dismissed. The trial court record be returned forthwith together with a certified copy of this judgment.

78. A copy of this judgment, and a soft copy of the paper-book, also be sent by the Registry through a Special Messenger forthwith to the Secretary, Delhi State Legal Services Authority (DSLISA) to inquire into whether and what compensation, the legal representatives (LRs) of the deceased victim might be entitled to in terms of the Victims' Compensation Scheme framed under Section 357 A Cr PC. The amount, if any, found payable should be

disbursed to the LR's without delay. This entire exercise be completed by the Secretary DSLSA preferably within three months from today.

S. MURALIDHAR, J.

VINOD GOEL J.

OCTOBER 30 2018

tr

