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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on : May 24th, 2018

Date of Decision : July 27, 2018

+ **CRL.A. 126/2018**

SHEETAL

..... Appellant

Through: Mr. Joginder Tuli with Mr. Ashu Kumar, Ms. Joshini Tuli and Ms. Divya Jangid, Advocates

versus

STATE

..... Respondent

Through: Ms. Aasha Tiwari, APP for the State

AND

+ **CRL.A. 247/2018**

INDERJEET SINGH

..... Appellant

Through: Mr. K. Singhal, Mr. Nishant Bhardwaj, Advocates

versus

STATE

..... Respondent

Through: Ms. Aashaa Tiwari, APP for the State, SI Sandeep Kumar, PS Alipur

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT OF THE COURT

1. The present Criminal Appeals have been filed by the appellants- Sheetal (Crl.A. 126/2018) and Inderjeet Singh (Crl.A. Nos.247/2018) under Section 374(2) Cr.P.C. against the common judgment of conviction dated 23.12.2017 and common order on sentence dated 29.01.2018 passed by learned Additional Sessions Judge, Rohini Courts, Delhi whereby, the appellants have been convicted under Section 302/120B IPC. For the offence punishable u/s 120B IPC, the appellants have been sentenced to undergo rigorous imprisonment for a period of five years each and a fine of Rs. 5000/- each and in default of payment of fine, they shall undergo simple imprisonment for one month each. They have been further sentenced to undergo life imprisonment for the offence punishable u/s 302 IPC and a fine of Rs. 25,000/- each, and in default of payment of fine, they shall undergo simple imprisonment for a period of six months each. Both the sentences were ordered to not run concurrently.

2. It is the case of the prosecution that on 28.02.2014, upon receiving information through a PCR call, Vide DD No. 7A that a dead body was seen lying near a water tank at Pusta Road, Thokar No. 13, in a field near Jhangola Village, SI Jaibeer and Const. Rajbir reached the spot. Insp. Mahesh Kumar on getting the information also reached the spot along with SI Kamlesh, HC Praveen and HC Ramesh. They found that a dead body of a male Sikh aged about 45 years was lying there. It appeared to them that due to heavy impact the body was crushed, and blood was also lying near the head of the deceased. The dead body was lying near a berry tree and bushes, in

which a blood-stained stone was lying. The deceased was wearing a grey colour pant, a jersey and a white coloured striped shirt, and was also wearing a hawai slippers of green and white colour. Half of the face of the deceased was covered with a black coloured turban. The scene of crime was got examined by the crime team and the photographs were taken. As per the report of the crime team Ex PW-4/A, the right eye and the forehead of the deceased were having injury marks and one Driving License (DL No. 0120100066867) and cash worth Rs.800/- was recovered from the inner pocket of the deceased's pant. The name and address mentioned on the Driving License was of one Satwant Singh, S/o Narottam Singh, R/o H.No. 3566/2011, Gali No. 95, B-Block, Sant Nagar, Burari. There was no eye witness at the scene of crime. It appeared that the deceased was killed by a stone, which was lying in the bushes nearby and was stained in blood. Accordingly, the case was registered under section 302 IPC.

3. During the investigation, dead body of the deceased was sent to BJRM Hospital and the body of the deceased was preserved for 72 hours. The blood- stained stone, blood near the head and blood stained earth were lifted and were sealed in different pullandas and the same were taken into possession. The driving Licence and Rs.800/- recovered from the possession of the deceased were also seized by the police. Thereafter, the case was got registered under section 302 IPC. Thereafter, the statement of the informant Ved Pal- PW6 was recorded under section 161 Cr.P.C. The son of the deceased, namely, Napinder Singh @ Nonu- PW3 and the brother of the deceased, namely,

Sanjeev S/o Narotam Singh identified the deceased in the mortuary of BJRM Hospital vide EX PW-5/A and disclosed that his name is Satwant Singh S/o Narotam Singh R/o H.No. 3566/11 Gali No. 95B, Sant Nagar, Burari which was also mentioned in the driving license recovered from the deceased.

4. The IO obtained the mobile numbers of the wife of the deceased Sheetal @ Kamaljeet Kaur i.e., the accused No. 2 and the CDR of the same were also called. On 01.03.2014, the Post Mortem of the deceased Satwant Singh was conducted at BJRM Hospital. In the Post Mortem report EX PW- 15/1, the doctor opined that *“Death was due to cranio - cerebral damage, consequent upon multiple injuries to the head. All injuries were ante mortem, fresh in duration. Injury No. 1 is caused by hard heavy blunt object like stone, injury NO. 2, 3 and 4 could be caused by hard blunt object like Rod or like weapon. Injuries, sufficient to cause death in ordinary course of nature”*.

5. On 02.03.2014, the brother of the deceased recorded his supplementary statement under section 161 Cr.P.C EX PW-5/B & 5/C. He alledged that his sister-in-law Sheetal @ Kamaljeet Kaur-A2, had illicit relations with her neighbor, Inderjeet Arora- A1. He further stated that the deceased and his wife had quarrels regularly. He suspected that this was the cause of his brother’s murder. On 03.03.2014 the neighbor, Inderjeet Arora-AI was arrested vide arrest memo EX PW-9/D. On his interrogation, the suspect Inderjeet Arora allegedly confessed that he had illicit relations with the wife of the

deceased Sheetal @ Kamaljeet Kaur. He is claimed to have stated that in the afternoon of 27.02.2014, he along with the co-accused– Sheetal and the brother of the co-accused– Sheetal viz. Harender Singh- PW8 had gone to Nirankari Park and had planned the murder of the deceased. Sections 120B/34 of the IPC were added in the case. He further stated that he had asked the deceased to accompany him for a drive. After some time, the appellant- Inderjeet stopped the car to urinate. When the deceased was urinating, the appellant- Inderjeet hit him with a rod from behind at the back of his head and then put his body back in the car. Thereafter, upon seeing a vacant area, he dumped the body of the deceased at the spot from where it was recovered.

6. During investigation, Inderjeet Arora pointed out the place of incident, and his car bearing registration No. HR-55KT-7689 Ritz, on which a fake number plate bearing no. DL-3CK-0548 was put up and the same number was used during the murder of the deceased. The keys, RC, and the original No. plate of the car which was replaced intentionally, was recovered from the house of Inderjeet Arora. The blood- stained clothes which were worn by Inderjeet Arora were also recovered from behind the almirah in his room. The mobile phone of Inderjeet Arora having mobile No. 9958433349 was got recovered. From the place of occurrence, about ten to twelve steps in the East direction, a blood- stained iron rod was got recovered from a wheat field. The bloodstained seat covers of his car, which was used during the commission of the offence, were also recovered. The same

were sealed in different pullandas. Section 482 IPC was also added to the case.

7. On 04.03.2014, the wife of the deceased Sheetal@kamaljeet Kaur-A2 was also arrested vide arrest memo EX PW- 10/1. After performing the last rites of the deceased, the wife of the deceased confessed that she had planned the murder of her husband and that on 27.02.2014, she alongwith Harinder-PW8 had gone to the Nirankari Park on a motorcycle and met the accused Inderjeet Arora there and subsequently planned the murder of the deceased. The mobile phone used by the accused Sheetal for holding conversations with Inderjeet Singh was got recovered. On 05.03.2014, Harinder s/o Samarpal Singh was roped into the investigation. He confessed that in the afternoon of 27.02.2014, he along with his sister Sheetal @ Kamaljeet Kaur A-2 had gone to the Nirankari Park on a motorcycle where his sister A-2 and Inderjeet Arora A-1 had spoken in private. His statement was recorded u/s 161 Cr.P.C. The CCTV cameras installed in the Nirankari park had captured the footage where Sheetal and Inderjeet Arora had met. The police took the footage in their possession.

8. On 13.03.2014, a subsequent opinion was taken from the autopsy surgeon regarding the heavy blood- stained stone and the blood stained iron rod and the Dr. stated that *“The Injury No.1 could be possible due to above examined stone, and injury no.2,3 and 4 could be caused by above mentioned iron rod”*.

9. During the investigation, the call details of the mobile phone number of the deceased Satwant Singh, and his son Napinder@Nonu were called for and checked. After the call detail analysis was done, it was discovered that the accused Shetal@Kamaljeet Kaur-A2 had called the co-accused from her mobile phone no. 7838025834 on his mobile phone no. 9958433349. As per the case of the prosecution, on the day of incident, accused Sheetal@kamaljeet Kaur-A2 had taken with her the mobile phone no. 9811675493 of the deceased Satwant Singh on purpose, and had given to the accused, the mobile phone No. 9654522842, which was usually kept at her home and was used for home purposes, so that the location of the accused Inderjeet appears to be near his house, as subsequently claimed by Inderjeet. On 27.01.2014, accused Inderjeet Arora had called the accused Sheetal@kamaljeet Kaur to inform her that Satwant Singh had been killed. Thereafter, Sheetal@Kamaljeet Kaur had called her family members and complained to them that Satwant Singh has not returned home since evening on a false pretext, and to mislead them. On 16.05.2014, Section 201 IPC was further added in the case. On completion of investigation, charge sheet was filed in the Court.

10. Charge for the offence under Section 302, 120B, 34 IPC was framed against both the appellants, to which they pleaded not guilty and claimed trial.

11. To prove its case, the prosecution examined 24 witnesses including, Mr. Napinder Singh@Nonu (PW3)- Son of the deceased,

Sh. Rajeev Singh (PW5)- Brother of the deceased, Mr. Harinder Singh (PW8)- Brother-in-law of the deceased, Sh. Sohan Lal (PW13)- Car washer.

12. After completion of prosecution evidence, statement of the accused persons under Section 313 Cr.P.C. was recorded, in which they claimed innocence and denied the entire case of the prosecution. The accused persons examined three defence witnesses namely, Govind Lal Arora (DW1)- Uncle of Inderjeet, Sh Tarun Arora (DW2)- Younger brother of Inderjeet, and Ms. Taranjeet (DW3)- Daughter of the deceased.

13. On appreciation of evidence and material brought on record, the trial court convicted the appellants under Section 302 and 120B IPC vide impugned judgment dated 23.12.2017 and order on sentence was passed on 29.01.2018. Feeling aggrieved of the same, the appellants have preferred the instant appeal against their conviction under Section 302/120B IPC.

14. Learned counsel for the appellant- Sheetal @ Kamaljeet Kaur has argued that in the cross examination of the brother of the deceased Sh Rajeev Singh (PW5), he stated that his sister- in- law Sheetal@Kamaljeet Kaur had confessed to him that she had an illicit relationship with the accused Inderjeet Singh, and that is the reason why she had planned the murder of his brother along with the accused Inderjeet, so as to remove the obstacle in their illicit relationship in the meeting which took place at Nirankari Park. Thus, as per the

testimony of PW5, the appellant Sheetal had made an extra-judicial confession of her involvement in the crime to PW-5. Ld. Counsel submits that the said extra judicial confession is not established, since there is no corroboration of the same. On the contrary it is pointed out that PW8 had accompanied the accused Sheetal to Nirankari Park, and PW8 in his cross examination stated that he had remained with the accused Sheetal@Kamaljeet Kaur throughout, when Sheetal@Kamaljeet Kaur had gone to the Nirankari Park on 27.02.2013 along with him. PW8 in his cross- examination denied that he was sent away on the pretext of getting a bottle of water and, therefore, the offence u/s 120B is not made out. Since the accused Sheetal @ Kamaljeet Kaur has been implicated only on the basis of conspiracy, which has not been established between the two accused persons, Sheetal is liable to be acquitted.

15. To support this argument, Ld. counsel has referred to Ex. PW 5/B– the further statement of Rajiv Singh PW-5 under Section 161 Cr.P.C, where PW5 states that there used to be frequent quarrels between the Appellant and his deceased brother. PW5 further alleged that Sheetal and Inderjeet had illicit relations and that he suspected Inderjeet to be responsible for the murder of his brother, Satwant Singh. However, PW5 in his testimony recorded before the Court was wavering. In his cross examination, PW5 did not support his claim of the alleged extra marital affair of his sister in law, appellant- Sheetal herein, or of the conspiracy. Learned counsel further argues that the calls between both the Appellants do not conclusively establish the

fact that Sheetal had any extra marital affair, or was party to any conspiracy to commit the murder of the deceased. He further argued that as per the malkhana register Ex PW12/3, the recovery of the Karbon Mobile Phone of black colour- used by the appellant-Sheetal@Kamaljeet Kaur to call her husband- the deceased, and Inderjeet Singh Arora, was deposited on 03.03.2014. However, the seizure memo of the same is of 04.03.2014 and that this creates a doubt in the recovery of the mobile phone and the prosecution story.

16. Learned counsel for the appellant Inderjeet Arora submits that SI Kamlesh, who is a witness to the recoveries has not been examined. Thus, the recoveries attributed to the accused Inderjeet Arora are doubtful and probablise the defence that they are planted. Learned counsel further submits that the Call Detail Record of the mobile phone of the deceased and the mobile phone instrument were not produced, which could have established his location and movement. He submits that the said failure raises a presumption against the prosecution under section 114(9) Evidence Act. He has placed reliance on *Umesh Kumar vs State 2017 SCC Online Del 11490* to press the contention that in cases of circumstantial evidence, the prosecution is bound to prove the entire chain of circumstances beyond reasonable doubt. Learned counsel has further relied upon the judgments in *Prabhoo Vs State of Uttar Pradesh, (1963) 2 SCR 881*; *Raj Kumar @ Raju vs State, 2010 SCC Online Del 2014*; *Oliver Kujur & Anr. Vs State of Delhi 2014 SCC Online Del 3017*; *Mohd. Shahid vs State, ILR (2014) III Delhi 2282* to argue that the recovery

of blood stained clothes at the instance of the accused Inderjeet Arora is an extremely weak piece of evidence. To counter the case of the prosecution that the DNA of the samples drawn from the recovered clothes of accused Inderjeet; the iron rod; the stone, and; the seat covers of the car of the accused Inderjeet matched with the DNA of the deceased, reliance is placed on *Premjibhai Bachubhai Khasiya vs State of Gujrat & Anr.*, 2009 SCC Online Guj 12076, wherein it was observed that even where the DNA samples match, by itself, that would not be sufficient to draw the conclusion of guilt. However, if the DNA samples do not match, it is now fairly accepted that the accused would be entitled to the benefit of the doubt. Learned counsel also places reliance on *Sameer @ Mustakim vs State Crl.A. No. 17/2018*, in which this Court acquitted the appellant since the recovery of weapon of offence was doubtful.

17. While defending the impugned judgment, learned APP Ms. Aasha Tiwari has argued that the accused Inderjeet, in his statement Ex. PW 9/G had disclosed about his role and had also led the police party to get recovered the car used with the fake number plate; car key and the RC of the car vide Ex. PW9/H; the original number plate vide Ex PW9/J; his blood stained clothes vide Ex. PW9/K; the blood stained seat covers of the car vide Ex. PW 9/L, and; the iron rod vide Ex. PW9/M. She further submits that the DNA of the blood on the stone recovered from the bushes Ex. PW9/A, matched with the DNA of the deceased vide the FSL report Ex. PW23/2. She submits that the blood- stained stone had 3-4 hair strands, DNA of

which has also been matched with the DNA of the deceased vide Ex. PW23/2. She has placed reliance on *State Govt of NCT of Delhi vs Sunil and Another, 2000(7) SCALE 692*, to argue that the non involvement/joining of independent witness is not fatal to the case of the prosecution.

18. We have heard Ld. Counsels and have given our thoughtful consideration to the matter.

19. The contention raised by the counsel for the appellant Sheetal is that the recovery of the Mobile Phone of the appellant Sheetal, which she used to call her deceased husband and accused Inderjeet Singh Arora is doubtful, as the same was allegedly seized on 04.03.2014, but the same was shown to have been deposited in malkhana one day earlier on 03.03.2014.

20. The Arrest Memo of the appellant Sheetal Ex.PW10/1 shows that her arrest was effected at her place of residence i.e., H. No. 3566/11, Gali No. 95, B Block, Sant Nagar, Burari, Delhi on 04.03.2014 at 9:30 a.m. The recovery made, with respect to the incident, on the personal search of Sheetal includes a mobile phone of Sheetal which was seized vide memo Ex.PW24/6. As recorded in the malkhana register vide entry Ex.PW12/2, the recovery of the mobile phone of appellant Sheetal was of 03.03.2014, but the seizure memo Ex.PW24/6 shows that it was seized on 04.03.2014 which creates a doubt in the recovery of the mobile phone of Sheetal. We find merit in this submission of the appellant Sheetal. Thus, the recovery of the

mobile phone instrument of accused Sheetal cannot be relied upon by the prosecution.

21. On appreciation of the evidence brought on record, we are of the view that the alleged conspiracy between Sheetal and Inderjeet has not been established. The said conspiracy is alleged to have been hatched on account of the illicit relationship between the two accused. That relationship itself has not been established, as the only evidence relied upon in this regard are the CDRs of the mobile phones of the two accused. A scrutiny of the CDR of the accused Inderjeet Arora (Ex.PW-20/2) shows that the following calls were made between the two accused having mobile phone numbers (Inderjeet- 9958433349) & (Sheetal 7838025834) between 15.02.2014 to 21.02.2014:

Date	Duration	Time
15.02.2014	119 seconds	08:54:56
	42 seconds	19:24:40
17.02.2014	526 seconds	08:22:04
18.02.2014	176 seconds	18:16:54
19.02.2014	31 seconds	20:10:27

21.02.2014	20 seconds	20:19:57
	132 seconds	20:52:27

22. Ex. PW-20/2– which is the CDR of the mobile phone of the accused Inderjeet Arora in respect of mobile phone number 9958433349, shows that after 21.02.2014, no call was exchanged between them till 27/28.02.2014, or even thereafter by using the said mobile numbers. The prosecution has not led in evidence any other CDRs of other mobile connections allegedly used by them. Thus, there is nothing placed on record to claim that the two accused were in regular touch with each other while putting their conspiracy into action.

23. The said position is evident from the CDR of the accused Sheetal Ex. PW-21/2 as well. Thus, no call was exchanged between the two accused by use of their respective mobile phones brought on record after 21.02.2014, even though the homicide of the deceased took place on the night on 27/28.02.2014. Though, the CDR of the accused Sheetal Ex. PW-21/2 has been obtained only till 26.02.2014, the CDR of the accused Inderjeet Arora Ex. PW-20/2 till 01.03.2014 has been brought on record. Even after the death of the deceased on the night of 27/28.02.2014, it appears that no calls were exchanged between the two accused till 01.03.2014, as would have been expected had there been the conspiracy between them to commit murder of the

deceased. Thus, the CDR of the two accused does not establish a criminal conspiracy between them to commit murder of the deceased. We may also observe that most of the calls exchanged between the two accused were of relatively short duration, which also contradicts the hatching of a conspiracy between the two accused to commit such a serious crime.

24. No doubt, PW5-Rajeev in his statement recorded under Section 161 Cr.P.C. vide Ex.PW5/B, stated that there used to be frequent quarrels between his deceased brother and Sheetal, and that Sheetal had confessed to the police, after the last rites of his deceased brother, that she and Inderjeet had illicit relations and that the deceased was murdered in association with Inderjeet. However, as rightly pointed out by the learned counsel, PW5 in his statement before the court has wavered and his testimony is a complete flip flop.

25. PW24-ACP Jitender Singh in his deposition stated that on 02.03.2014, Sh. Rajiv Singh (PW5) brother of deceased had come to the PS and had made a statement u/s 161 Cr.P.C wherein he had “suspected” the wife of deceased to be behind the murder of deceased. Had Sheetal confessed to PW-5 regarding her alleged illicit relationship with accused Inderjeet, and about her conspiring with Inderjeet to kill the deceased, and about the murder of the deceased by Inderjeet, PW-5 would not have conveyed only his suspicion to PW-24. In fact, he would have made a frontal and direct accusation against the accused to PW-24. That was not done, which renders the theory of an extra judicial confession by the accused Sheetal, doubtful. PW5-

Rajeev Singh in his cross examination denied the suggestion that there used to be frequent quarrels between Satwant Singh and Sheetal. Hence the case of the prosecution that Sheetal had an illicit relationship cannot be said to have been conclusively established.

26. Thus, apart from the extra-judicial confession made by Sheetal, there is nothing on record to show that she was a part of the conspiracy of the murder of her husband. We may also observe that even if it were to be accepted that there was some illicit extra marital relationship between the two accused that, by itself, does not prove the hatching of conspiracy between the two accused to commit the murder of the deceased. The aspect of conspiracy would need examination independently on the strength of the evidence led by the prosecution.

27. It is settled law that extra judicial confession is a weak piece of evidence. It has to be dealt with utmost caution and needs corroboration. It is also settled law that an extra-judicial confession can be made the basis of conviction, but due care and caution must be exercised by the Courts to ascertain the truthfulness of the confession. Before the Court proceeds to act on the basis of an extra-judicial confession, the circumstances under which it is made, the manner in which it is made and the persons to whom it is made must be considered along with the two rules of caution. It has to been seen whether the evidence of confession is reliable, and whether it finds corroboration.

28. In *S.Arul Raja v. State of Tamil Nadu*, (2010)8SCC233, it was observed that the concept of an extra-judicial confession is primarily a judicial creation, and must be used with restraint. Such a confession must be used only in limited circumstances, and should also be corroborated by way of abundant caution. The Supreme Court while relying upon *Ram Singh v. Sonia and ors.* (2007) 3 SCC 1, has observed that when there is a case founded on an extra-judicial confession, corroborated only by circumstantial evidence, then the Courts must treat the same with utmost caution. The said principle was affirmed in *Ediga Anamma v. State of AP*, (1974) 4 SCC 443 and *State of Maharashtra v. Kondiba Tukaram Shirke*, (1976) 3 SCC 775. While relying upon *Pakkirisamy v. State of T.N.*, (1997) 8 SCC 158, at page 162, in which it was observed that:

“8. ...It is well settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession. It is no doubt true that extra-judicial confession by its very nature is rather a weak type of evidence and it is for this reason that a duty is cast upon the court to look for corroboration from other reliable evidence on record. Such evidence requires appreciation with a great deal of care and caution. If such an extra-judicial confession is surrounded by suspicious circumstances, needless to state that its credibility becomes doubtful and consequently it loses its importance. The same principle has been enunciated by this Court in Balwinder Singh v. State of Punjab....” (emphasis supplied)

29. Further in *Kavita v. State of T.N. (1998) 6 SCC 108*, it was observed that:

“4. There is no doubt that convictions can be based on extra-judicial confession but it is well settled that in the very nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon the veracity of the witness to whom it is made. It may not be necessary that the actual words used by the accused must be given by the witness but it is for the court to decide on the acceptability of the evidence having regard to the credibility of the witnesses.”
(emphasis supplied)

30. As per the testimony of PW5-Rajeev, after the last rites of his brother, when police interrogated accused Sheetal, she disclosed everything and confessed to commission of the murder of his brother in association with accused Inderjeet. Apart from the disclosure statement Ex.PW10/3 of the accused Sheetal, there is no other evidence on record to establish that any such confession was made by the accused before the police.

31. Pertinently, DW3 Taranjeet, who is the daughter of the deceased and accused Sheetal, in her deposition stated that her parents had cordial relations and had never had a quarrelsome relationship. DW3 further deposed in her cross examination that her mother had never confessed about her illicit relationship with Inderjeet Singh and that for this reason, she had got her father murdered. DW-3 Taranjeet being the daughter of the deceased, was not expected to take sides and to depose falsely to save her mother after knowing that she had an

illicit relationship with the co-accused Inderjeet Arora and after learning that her father had been killed by Inderjeet Arora. Even if she wanted to save her mother i.e. the accused Sheetal, she would not have shielded the accused Inderjeet Arora by making such a statement. Thus, her testimony deserves to be relied upon like that of any other credible witness.

32. So far the testimony of PW5 regarding making of extra judicial confession by the accused Sheetal is concerned, this Court is of the considered opinion that the testimony of PW5 is a weak piece of evidence and the same alone cannot be made basis to convict the accused. As noticed herein above, he kept swaying from one side to other. Being the brother of the deceased, he would have spared anyone including his sister- in- law, had she been responsible for the murder of his brother due to an illicit relationship. As observed by Supreme Court, the extra judicial confession must be corroborated by a strong piece of evidence, but in the present case, apart from the disclosure statement Ex.PW10/3-which otherwise cannot be read against an accused, there is no other corroborative evidence against the accused Sheetal.

33. PW8-brother of Sheetal@Kamaljeet Kaur, turned hostile and did not support the case of the prosecution. In his cross examination by the Ld. APP he stated that he had gone to Nirankari Park and had taken his sister Sheetal along with him and Inderjeet Arora was already present there. He denied the suggestion that he was sent away by Inderjeet Arora on the pretext of getting a bottle of

water, and when PW8 returned with a bottle of water, he saw Inderjeet Arora and his sister whispering to each other and upon seeing PW8 come, they stopped whispering and ended their conversation. In his cross examination, PW8 stated that he did, in fact, escort his sister Sheetal to the Nirankari Park on 27.02.2014, and Inderjeet Arora was present there. Inderjeet Arora did talk to his sister but in a very formal manner and in his presence at all times.

34. Since there is no evidence or material on record to connect accused Sheetal with hatching of a criminal conspiracy to murder the deceased, we are of the view that the appellant Sheetal deserves acquittal for the offence under Section 120 B and 302 IPC.

35. So far as the accused Inderjeet Singh is concerned, he too cannot be convicted for the offence under Section 120B IPC, as the only co-accused Sheetal has already been acquitted for the said offence, and a single person cannot be said to commit a criminal conspiracy. So, he also deserves to be acquitted under Section 120B IPC.

36. Now the only allegation remaining against the accused Inderjeet Singh is for the offence under Section 302 IPC.

37. The accused Inderjeet Singh Arora got recovered several articles connected with the crime, which include his clothes- which were stained with the blood of the deceased; the original number plate of his car Ritz; his car with a false number plate; RC of the car; blood stained seat covers – the DNA found on it matched with the DNA of

the sample drawn from the deceased and; the weapon of the offence i.e. Iron Rod. Pertinently, even the DNA of the blood found on the iron rod matched with that of the deceased. The seizure memos of his mobile phone is Ex.PW9/F, RC with car key is Ex.PW9/H, the original number plate is Ex.PW9/J, clothes of the accused is Ex.PW9/K, the seat covers is Ex.PW9/L and iron rod used in the commission of the offence is Ex.PW9/M. The recoveries were made in the presence of SI Kamlesh Kumar and HC Parveen. The FSL report Ex.PW23/1 shows that the blood stained stone, iron rod, pant and shirt of the accused Inderejeet, blood stained seat cover, blood stained iron rod and hair of the deceased were examined apart from other exhibits. As per the detailed report, DNA profile generated from the blood of the deceased matched with that found on the stone, iron rod, pant and shirt of the accused Inderejeet, seat covers, of his car, iron rod and hair of the deceased.

38. Learned counsel for Inderjeet contended that SI Kamlesh was not examined, and no explanation has come on record for his non-examination. Thus, the alleged recoveries are doubtful and cannot be relied upon by the Court.

39. Though, it is correct that SI Kamlesh has not been examined by the prosecution as a witness to corroborate the recovery of articles from, or at the instance of the accused Injderjeet, but we are of the view that each and every witness need not to be examined on every single aspect, when other witnesses have been examined to prove the same. In the present case, the recovery of above mentioned

articles at the instance of the accused Inderjeet has duly been proved by PW9 Praveen and non-examination of the other recovery witness, in our opinion, is not fatal to the case of the prosecution and no prejudice has been caused to the accused due to non-examination of SI Kamlesh. No adverse inference can be drawn against the prosecution due to the said failure. In ***Baldev Singh v. State of Haryana (2015) 17 SCC 554***, the Supreme Court observed:

“The contention at the hands of the learned Senior counsel for the appellant is that non-examination of Chander Singh, SI who prepared rukka and who investigated the case raises serious doubt about the prosecution case. The material on record would show that Chander Singh, SI who investigated the case was not examined by the prosecution inspite of several opportunities. No doubt, it is always desirable that prosecution has to examine the investigating officer/police officer who prepared the rukka. Mere non-examination of investigating officer does not in every case cause prejudice to the accused or affects the credibility of the prosecution case. Whether or not any prejudice has been caused to the accused is a question of fact to be determined in each case. Since Ram Singh, PW 1 was a part of the police party and PW 1 has signed in all recovery memos, non-examination of Chander Singh, SI could not have caused any prejudice to the accused in this case nor does it affect the credibility of the prosecution version.”

40. Pertinently, even though the investigating officer was not examined, the Supreme Court did not find the same to be fatal to the case of the prosecution, since other police witness- part of the police

party, was examined by the prosecution. The present is a case on a much stronger footing, since SI Kamlesh was not the Investigating Officer and was only one of the members of the police party, who happened to witness the recovery proceedings. Though he was not examined, the other recovery witness PW9 Praveen has testified and established the recoveries from the accused Inderjeet Arora.

41. It is further contended on behalf of the accused that no independent witness was joined in the investigation at the time of recovery of articles at the instance of the accused. Learned APP for the State has countered this submission. He submitted that non-involvement/joining of independent witness is not fatal to the case of the prosecution. Reliance has been placed on *State Govt of NCT of Delhi vs Sunil and Another*, [2000 (7) SCALE 692]. It is apparent from the record that no independent witness was joined during the recovery of articles at the instance of the accused Inderjeet, but the fact cannot be ignored that the general public usually remains reluctant to join the police investigation for many reasons. The people consider it as undue harassment; wastage of time; harassing, as it involves being called to the police station and Courts repeatedly; and; the fear of earning the wrath of someone who may be involved in a serious crime. Thus, in our view, non-joining of public witnesses in the investigation does not affect the case of prosecution and the case of prosecution cannot be discarded on that ground alone.

42. Learned counsel for the appellant Inderjeet Arora has submitted that the recovery of the iron rod is from an open public

place, and for that reason, the same cannot be relied upon. We do not find any force in this submission of learned counsel for the reason that the body of the deceased itself was lying near the water tank close to Thokar No.13 in Village Jhangola. Thus, it was in a far flung surrounding that the body of the deceased was found. The seizure memo in respect of the iron rod Ex. PW-9/M shows that the accused Inderjeet Arora led the police party to the place where the iron rod was thrown by him- which was about 10-12 steps towards the east inside a wheat field. Thus, the iron rod was not recovered from an open barren land, such that it would be visible to any person who may visit the place. The iron rod was recovered from the wheat field which shows that the same was lying hidden in the standing crops. In this regard, we may refer to the judgment of the Supreme Court in ***State of Himachal Pradesh v. Jeet Singh***, (1999) 4 SCC 370, wherein it was held:

*“26. There is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is “open or accessible to others”. It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others, it would vitiate the evidence under Section 27 of the Evidence Act. **Any object can be concealed in places which are open or accessible to others. For example, if the article is buried in the main roadside or if it is concealed beneath dry leaves lying on public places or kept hidden in a public office, the article would remain out of the visibility of others in normal circumstances. Until such article is disinterred, its hidden state would***

remain unhampered. The person who hid it alone knows where it is until he discloses that fact to any other person. Hence, the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible to others. If it is not, then it is immaterial that the concealed place is accessible to others.

27. It is now well settled that the discovery of fact referred to in Section 27 of the Evidence Act is not the object recovered but the fact embraces the place from which the object is recovered and the knowledge of the accused as to it (Pulukuri Kottaya [Pulukuri Kottaya v. Emperor, AIR 1947 PC 67 : 74 IA 65]). The said ratio has received unreserved approval of this Court in successive decisions. (Jaffar Hussain Dastagir v. State of Maharashtra [(1969) 2 SCC 872] , K. Chinnaswamy Reddy v. State of A.P. [AIR 1962 SC 1788] , Earabhadrapa v. State of Karnataka[(1983) 2 SCC 330 : 1983 SCC (Cri) 447] , Shamshul Kanwar v. State of U.P. [(1995) 4 SCC 430 : 1995 SCC (Cri) 753] , State of Rajasthan v. Bhup Singh[(1997) 10 SCC 675 : 1997 SCC (Cri) 1032] .)” (emphasis supplied)

43. The fact that the accused led the police party to an inconspicuous place and got recovered the weapon of offence i.e. iron rod - which was seized vide memo Ex.PW9/M, clearly establishes the knowledge of the accused Inderjeet Arora with regard to the place where the said iron rod was located, and his knowledge that the said iron rod was the weapon of offence. The fact that the said iron rod was the weapon of offence stands established by the doctors opinion Ex.PW15/2 and the FSL Report Ex.PW23/1 to 23/3. The said

recovery is clearly admissible under Section 27 of the Evidence Act. Thus, the circumstance of the knowledge of the accused that the recovered rod was used to strike the deceased, and his knowledge about where the said iron rod was left/ thrown after the commission of the offence stand duly proved. He has, however, not offered any explanation for his knowledge of these facts.

44. Learned counsel contends that the accused was at home on the day of incident and to prove his defence, he examined DW1 Sh. Govind Lal Arora who, in his testimony stated, that Inderjeet Singh Arora is his nephew and he had visited Inderjeet's house on 27.02.2014 and had eaten dinner with Inderjeet and his brother and the wife of Inderjeet's brother on 27.02.2014. On 27.02.2014, when DW1 proceeded to leave for his house, drizzling had started to which Inderjeet and his brother compelled DW1 to stay till the weather gets better and then leave thereafter. Consequently, DW1 had stayed at their house for the night and had left for his house next morning on 28.02.2014 at about 8-8:30AM. Similarly, DW2 Tarun Arora in his statement had stated that he had requested his uncle DW-1 to stay the night as it was raining on the night of 27.02.2014, and DW1 had acceded to this suggestion. DW2 further stated that Inderjeet was present in the house in the morning of 28.02.2014 and had not gone anywhere and was at his residence on 28.02.2014.

45. Both DW-1 and DW-2 are the relatives of the accused Inderjeet Arora- DW-1 Govindlal Arora is the uncle of the accused, and DW-2 Tarun Arora is the younger brother of the accused. They

are both interested witnesses and, therefore, their testimony would have to be taken with a pinch of salt and would need corroboration for the same to be accepted.

46. Apart from the statement of these witnesses, there is no definite evidence brought on record to establish that DW-1 was, indeed, with the accused and his brother DW-2 and his wife on the 27th of February, 2014. Pertinently, DW-2 in his cross examination states that DW-1 had not attended his marriage, and he had not visited his house at the time of the death of his mother. These answers of DW-2 suggest that DW-1 was not particularly close to the family of the accused and his brother, thereby raising a doubt as to whether he would stay back after dinner, and not return to his home on account of some rain.

47. Let us now examine the testimony of DW-1 and DW-2. As per the testimony of DW-1, he finished his dinner at the house of the accused at about 9-9:30 p.m. When he came out to leave for his house, he saw that a drizzle had started. He was asked by the accused and his brother to stay back as the weather did not improve. He stayed back in the night and slept in the room of Inderjeet Arora. He states that he left the next morning at 8-8:30 a.m. He states that from 5:30 p.m. on 27.02.2014 till 8:30 p.m. (sic a.m.) on 28.02.2014, neither he had gone from the house nor the accused Inderjeet Arora had left the said house.

48. From the testimony of DW-1, it emerges that after having his dinner, he retired for the day. Pertinently, he is a 64 year old person. Thus, if the accused left the room after he had gone to sleep, and the accused came back before he woke up the next morning, DW-1 would not even come to know of it. As per the postmortem report Ex. PW-15/1, which was prepared on 01.03.2014 at 11:20 a.m., the time since then death was around 36 hours. Thus, the approximate time of death of the deceased was around 11:20 p.m. on 27.02.2017, which is much after DW-1 had decided to stay back after his dinner around 9-9:30 p.m.

49. The accused Inderjeet Arora and the deceased were neighbours, residing in the same locality. Thus, it is quite possible that DW-1 may not even have realized when the accused may have slipped away after he had gone to sleep, and returned to the room later in the night and slept without the same being noticed by DW-1.

50. The testimony of DW-1 needs corroboration for it to be accepted, and there is no corroboration in the form of undeniable, undisputed or independent evidence of the version narrated by him with regard to the whereabouts of the accused Inderjeet Arora on the fateful night.

51. Similarly, the testimony of DW-2, the younger brother of the accused Inderjeet Arora is of no avail to the accused. He has deposed on the lines of DW-1. However, he was in a separate room with his wife on the fateful night, and the possibility of his learning

that the accused had left the house later in the night is even more remote. Pertinently, in his examination in chief, he, inter alia states *“It might be possible for a shorter period of duration he might have gone to gali outside the house, but mostly he remained present at the house”*.

52. The aforesaid statement made by DW-2 in his examination in chief assumes significance. Pertinently, it is not in his cross examination that he has made the said statement. Thus, it appears that DW-2 did perceive that the accused had left the home for some time on the night of 27.02.2014. The accused did not declare DW-2 hostile on this aspect, and did not seek to cross examine him as to on what basis he had claimed that the accused might have left the home for a shorter period and gone in the gali, and what he meant when he stated that the accused “mostly” remained present in the house. Thus, the plea of alibi set up by the accused has not been proved satisfactorily, and the said defence is rejected.

53. The appellant Inderjeet Arora has also contended that PW-13 Sohan Lal had turned hostile and had not supported the case of the prosecution. PW-13 was the person running the Jagadamba Service Station between Nathpura to Burari, where the accused had sent his car for washing. We do not find any merit in the submission of the appellant premised on the hostility of PW-13.

54. The testimony of a hostile witness need not be completely disregarded. The testimony of such a witness, insofar as it

is corroborated by other evidence brought on record, may be relied upon. In this regard, we may refer to the judgment of the Supreme Court in ***Bhajju v. State of Madhya Pradesh***, (2012) 4 SCC 327, wherein it was held:

“35. Now, we shall discuss the effect of hostile witnesses as well as the worth of the defence put forward on behalf of the appellant-accused. Normally, when a witness deposes contrary to the stand of the prosecution and his own statement recorded under Section 161 CrPC, the prosecutor, with the permission of the court, can pray to the court for declaring that witness hostile and for granting leave to cross-examine the said witness. If such a permission is granted by the court then the witness is subjected to cross-examination by the prosecutor as well as an opportunity is provided to the defence to cross-examine such witnesses, if he so desires. In other words, there is a limited examination-in-chief, cross-examination by the prosecutor and cross-examination by the counsel for the accused. It is admissible to use the examination-in-chief as well as the cross-examination of the said witness insofar as it supports the case of the prosecution.

36. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence. Section 154 of the Evidence Act enables the court, in its discretion, to permit the person, who calls a witness, to put any question to him which might be put in cross-examination by the adverse party.

37. *The view that the evidence of the witness who has been called and cross-examined by the party with the leave of the court, cannot be believed or disbelieved in part and has to be excluded altogether, is not the correct exposition of law. **The courts may rely upon so much of the testimony which supports the case of the prosecution and is corroborated by other evidence.** It is also now a settled canon of criminal jurisprudence that the part which has been allowed to be cross-examined can also be relied upon by the prosecution. These principles have been encompassed in the judgments of this Court in the following cases:*

- (a) Koli Lakhmanbhai Chanabhai v. State of Gujarat [(1999) 8 SCC 624 : 2000 SCC (Cri) 13] ,*
- (b) Prithi v. State of Haryana [(2010) 8 SCC 536 : (2010) 3 SCC (Cri) 960] ,*
- (c) Manu Sharma v. State (NCT of Delhi) [(2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385] and*
- (d) Ramkrushna v. State of Maharashtra [(2007) 13 SCC 525 : (2009) 2 SCC (Cri) 427]” . (emphasis supplied)*

55. PW-13 has deposed that in the month of February last year (the statement of PW-13 was recorded on 05.03.2015 and, therefore, the last year would be 2014) on the day following the night when it had rained, a person “*who perhaps was the accused present in the Court (witness has pointed out towards the accused Inderjeet and stated “shakal main farak ah gaya hai”)*” brought his car for washing. He further stated that the car was having the smell of liquor and the person who had brought the car asked him to remove the seat covers. The person took away the car and after some days the police had brought the said person to him and he had informed the police that the said person had got his car washed from him. PW-13 was declared

hostile in that stage, and on his cross examination by the APP, he admitted that the car was Ritz. He also admitted that the front seat cover was quite wet. Though he denied the suggestion that there were red spots on the seat cover, and that he did not know of his statement recorded by the police, he admitted that the seat cover was seized by the police vide seizure memo Ex. PW-9/2. He could not identify the accused with definiteness as the person who had brought the car, and volunteered by stating “*changes ho gai hai*”. Pertinently when PW-13 was cross examined by the accused, he, firstly, stated that “*I had only taken of the seat covers on asking of the accused but had not taken them for the purpose of washing*”. He also denied the suggestion “*that accused Inderjeet had never brought his car to me and had never had the seat covers removed*”. He denied the suggestion that he was deposing falsely under the pressure of police.

56. From the testimony of PW-13, it is evident that when he initially deposed on 05.03.2015, he endeavoured to save the accused. Though he claimed that he did not know what had been recorded in his statement Ex. PW-13/A by the police, he admits his signatures on the seizure memo Ex. PW-9/2. Pertinently, he did not claim that he had been made to sign blank documents, or made to sign documents without reading them. Thus, his failure to recognize the accused Inderjeet and denial of red spots on the car seats cannot be accepted. The repeated remarks made by PW-13 that “*shakal mein farak ah gaya hai*” and “*changes ho gai hai*” themselves show that PW-13 was conscious of and appreciated the fact that the original face seen by

him – of the person who had brought the Ritz car to him for washing in February 2014, had undergone changes. When a person says that the face of another person has undergone changes, what he is doing is to make a comparison between the two faces i.e. one that he saw earlier, and the one he is seeking while making his statement. Pertinently, PW-13 did not say that the accused produced before him in Court is definitely not the person who had brought the Ritz car for washing in February 2014. He was able to discern the fact that the same face, which he had seen a year ago, had undergone changes. Coupled with it is the fact that when PW-13 was cross examined by the accused on 10.02.2017, he denied the suggestion that the accused Inderjeet had never brought his car to him, or had never got the seat covers removed.

57. So far as the non production of the CDR of the deceased is concerned, it is not the case of the prosecution that the deceased was carrying his mobile phone when the accused Inderjeet Arora took him along with him. In fact, the case of the prosecution is that the mobile phone of the deceased remained with the accused Sheetal at home. Thus, there was no useful purpose to be served for the prosecution by leading in evidence the said CDR.

58. The aforesaid discussion shows that the prosecution has been able to conclusively establish the complete chain of circumstances, which lead only to one conclusion i.e. of the accused Inderjeet Arora having murdered the deceased. The recovery of the Ritz car of the accused with a false number plate is indicative of his

intention to cover his steps and hide the identity of the vehicle and, consequently, his own identity at the time of commission of the offence, and soon thereafter. The recovery of the original number plate on the disclosure of the accused Inderjeet establishes his knowledge about the same. Pertinently, he has not explained as to why the number plate of his car was changed, and a false number plate was put on the car – as found when it was seized. The act of the accused Inderjeet Arora in taking his car for washing at the service station of PW-13 in February 2014, on the day following the rain in the night in the month of February’ 2014, which coincides with the fateful night (as per the statement of DW-1 and DW-2), and the statement of PW-13 that he had removed the seat covers from the said car which were then seized by the police vide Ex. PW-9/L, and were found to contain the blood, the DNA whereof matched with that of the deceased, establishes that the accused had taken the deceased in his car in a bleeding condition. The discovery of the body of the deceased at a remote location i.e. near a water tank at Thokar No.13 in a field near Jhangola Village and the seizure of the iron rod at the behest of the accused Inderjeet Arora shows that the accused was not only aware of the location of the iron rod, but also the fact that the same had been used to strike the deceased with it. The opinion of the doctor that the said iron rod could be the one used to cause the injury suffered by the deceased, conclusively establishes that the accused had used the said rod - apart from the stone, to attack the deceased. Pertinently, the accused failed to give any explanation as to how he was aware of the location of the iron rod in the field and about the fact

that the iron rod had been used to attack the deceased leading to the definite conclusion that it is the accused who had used the iron rod to attack the deceased. He failed to explain how the blood of the deceased came on his car seat covers.

59. The postmortem report Ex. PW-15/1 states that the death was due to cranio-cerebral damage consequent upon multiple injuries to the head. Injury nos. 2, 3 and 4 could be caused by hard blunt object like rod or weapon, whereas injury no.1 could be caused by blunt object like a stone. The report also states that injuries were sufficient to cause death in ordinary course of nature. On the iron rod, another medical opinion was given by the doctor which is Ex. PW-15/2 to state that injury no.1 could be possible due to the examined stone, and injury nos.2, 3 and 4 could be caused by the iron rod in question.

60. Thus, in our view, the prosecution has been able to complete the chain of circumstances, and the only conclusion which emerges clearly points to the guilt of the appellant Inderjeet Arora in the commission of the murder of the deceased.

61. However, the prosecution has failed to make out any case against the appellants for the commission of offence under Section 120-B IPC. So, both the appellants are acquitted for the offence under Section 120B IPC. Appellant Sheetal is also acquitted for the offence under Section 302 IPC.

62. Consequently, as discussed above, the impugned judgment of conviction and order on sentence passed against the appellant-Sheetal is set aside. She is acquitted of the charges leveled against her. She be set at liberty forthwith, if not required in any other case.

63. The judgment of conviction passed against the appellant Inderjeet Singh Arora for the offence under Section 302 IPC is hereby upheld and his conviction is sustained.

64. Consequently, both the appeals stand disposed of in the aforesaid terms.

(VIPIN SANGHI)
JUDGE

(P.S. TEJI)
JUDGE

JULY 27, 2018