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

Reserved on: November 22, 2017

Pronounced on: January 05, 2018

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CRL.A.362/2016

VIPIN KUMAR SALUJA

..... Petitioner

Through: Mr.Azhar Qayum, Advocate with
Mr.Narender Kumar, Advocate.

Versus

STATE

..... Respondent

Through: Ms. Kusum Dhalla, APP

CORAM: JUSTICE S.MURALIDHAR

JUSTICE I.S. MEHTA

J U D G M E N T

Dr. S. Muralidhar, J.:

1. This appeal is directed against a judgment dated 6th November, 2015 passed by the learned Additional Sessions Judge, New Delhi in S.C.No.88/2013 arising out of FIR No.17/2008 registered at Police Station (PS) Rohini convicting the Appellant under Sections 302, 364, 392, 201 and 411 of the Indian Penal Code ('IPC') and the order on sentence dated 16th November, 2015 whereby:

(i) for the offence under Section 302 IPC, the Appellant was sentenced to undergo life imprisonment along with fine of Rs.50,000/- and in default to undergo simple imprisonment for 2 years;

(ii) for the offence under Section 364 IPC, he was sentenced to

imprisonment for life and fine of Rs.50,000/- and in default to undergo simple imprisonment for 2 years;

(iii) for the offence under Section 392 IPC, to undergo RI for 10 years and fine of Rs.25,000/- and in default to undergo simple imprisonment for one year;

(iv) for the offence under Section 201 IPC to undergo RI for 7 years and pay fine of Rs.15,000/- and in default to undergo SI for six months;

(v) for the offence under Section 411 IPC to undergo RI for 3 years.

Case of the prosecution

2. The case of the prosecution is that Sunil Kumar @ Bitoo (Accused No.1-A-1) and co-accused “P” (who at the time of commission of offence was stated to be below 18 years and whose trial, therefore, was separate) were old friends. A-1 was residing at Ekta Enclave, Peeragarhi, Delhi with Ravi Kant @ Raju (PW-64) who was also from Bhiwani. A-1 was running a placement office under the name and style of M/s Suraj Security. A-1 became friends with the Appellant, Vipin Kumar Saluja (A-2) who was then working with M/s Pushpak Security.

3. “P” had suffered losses in betting involving cricket and A-1 had suffered losses in business. According to the prosecution, A-1, A-2 and “P” met in the room of A-1 where PW-64 was also present. A-1, A-2 and “P” planned to loot a vehicle and after killing its driver sell the vehicle through one Bunty, a friend of “P” at Muraina in Madhya Pradesh. It is stated that PW-

64 refused to participate in the said plan.

4. On 7th January, 2008, A-2 went to the office of M/s Pawan Hans Motors Tours and Travels, the proprietor of which was Bhim Singh (PW-3). At around 3.30 p.m. while PW-3 was sitting in his office, A-2 approached one of the drivers Upender Anand @ Sonu (the deceased) who was washing an Innova vehicle bearing No. DL 1Y A 6096 outside the office. Thereafter, Sonu along with A-2 entered the office. A-2 informed PW-3 that he required a vehicle on hire to go to Mussoorie. A-2 disclosed his name to PW-3 as Sanjay Chaudhary, resident of A-203, Avantika, Sector-2, Rohini, Delhi. A-2 stated that he needed to leave in about half an hour's time and gave a Reliance mobile number.

5. PW-3 told A-2 that the rate for hiring the vehicle would be @ Rs.8.50 per km plus U.P. Tax amounting to Rs.750/-. A-2 then asked Sonu to reduce the rates and in turn Sonu asked PW-3 to do so since the vehicle was being hired for two days. PW-3 then agreed to a rate of Rs.8 per km and total tax of Rs.500/- for the U.P. State. A-2 then left stating that the vehicle should be sent to his residence within half an hour. Thereupon, Sonu returned home to collect his uniform and clothes and returned to the office of Pawan Hans Tours and Travels between 4.30 and 4.45 p.m. He was followed by A-2 who asked Sonu to hurry. PW-3 noticed that A-2 was wearing a pant but carrying his coat in his hand. A-2 left in the vehicle with Sonu driving it at around 4.45 p.m. At the time when Sonu had returned to the office to take the vehicle, Sandeep (PW-7), a nephew of PW-3 was sitting there and PW-7 issued the duty slip and handed it to Sonu. One Anil Kumar (PW-5) who

was also in the business of Tours and Travels was sitting in the office of PW-3 at that time.

6. The story of the prosecution is that when A-2 proceeded with the vehicle being driven by Sonu, A-1 and “P” also boarded the vehicle near Jaipur Golden Hospital, Delhi. They reached Mussoorie between 12 and 12.30 in the night. A-2 pretended to contact his brother-in-law and said that his phone was not reachable. All of them then left Mussoorie. After about 15-20 minutes, A-1 claimed to be throwing up and had the vehicle stopped. At that time, “P” hit Sonu on his head with a bottle due to which Sonu became unconscious. “P” then strangled Sonu with his waist belt and put him in the rear of the vehicle. While “P” himself sat in the driver’s seat and began driving the vehicle, A-1 and A-2 sat in the rear side keeping Sonu under restraint. A-1 and A-2 took away Sonu’s rings, credit cards, two mobile phones and cash. After moving ahead when they realized that Sonu was dead, the accused stopped the vehicle at an isolated place and threw Sonu’s dead body somewhere on the road to Dehradun. They reached Yamuna Nagar via Saharanpur and then proceeded to Agra.

7. According to the prosecution, on the way to Agra, one of the tyres of the Innova car suffered a puncture. They then replaced it with the spare tyre without getting the puncture fixed. Just prior to Agra Bridge, another tyre of the Toyota Innova vehicle got punctured which “P” then got repaired from a local shop. While at Agra, the traffic police challaned the vehicle for Rs.200/-. On the said challan “P” wrote his name as “Ravi Sharma”.

8. While they were at Agra, the vehicle was spotted by Krishan Dutt (PW-4) who was another driver working with Pawan Hans Tours and Travels. PW-4 then called PW-3 stating that he had seen the car standing on a jack just before Bhagwan Talkies at Agra. PW-3 then told PW-4 that the said Innova had not gone to Agra. He asked PW-4 to inquire about the vehicle. When PW-4 went near the vehicle, he found it to be locked. One person who was present there told PW-4 that Sonu, the driver had gone to get the puncture repaired. PW-4 then asked that person to convey to Sonu when he returns and ask him to talk to PW-4 on his mobile. Later, when Krishan Dutt called Sonu on his mobile, it kept ringing but no one picked up the phone.

9. On reaching Agra, PW-4 called up PW-3 to ask for Sonu's second mobile number. (PW-3 enquired as to why he required Sonu's second mobile number). PW-4 then told PW-3 that Sonu was not picking up the call on the first number. PW-3 then asked how PW-4 could have seen Sonu at Agra when in fact he had gone to Mussoorie. PW-3 then gave PW-4 the other mobile number of Sonu and asked PW-4 to again check whether the Innova was parked on the roadside. When PW-4 went back to the spot, the Innova had vanished. PW-4 then informed PW-3 accordingly. PW-3 then tried reaching Sonu but was unsuccessful. He then immediately asked PW-4 to lodge a complaint with the Police.

10. At this stage, it requires to be noticed that there were two mobile numbers of Sonu. One was 9971483884 (which was switched off when PW-3 tried calling it) and the other was 9212693595 (which kept ringing unanswered when PW-3 tried calling it). PW-3 also tried calling the mobile

No.9311226999 which was given by A-2 to him while booking the car. However, it was not reachable.

Investigation

11. On 9th January, 2008 a phone call was received from P.S. Civil Lines, Muraina, M.P. at P.S. Rohini stating that a Toyota Innova vehicle with the same registration number as disclosed by PW-3 had been found abandoned there. On 10th January 2008, PW-3 along with Ashok Anand (PW-16), father of Sonu came to PS Rohini and gave the information that the dead body of an unknown person had been found abandoned on the Dehradun-Mussoorie road. The description of that dead body appeared to be similar to that of Sonu. PW-3 came to know of this through a news report published in the Dehradun Daily.

12. Thereupon Inspector Virender Dutt Uniyal (PW-53) of PS Rajpur, Dehradun was contacted and he confirmed the information. Sub-Inspector Krishan Kant (PW-60), PW-3 and PW-16 thereafter proceeded to PS Rajpur, Dehradun where PW-16 identified the dead body to be that of his son, Sonu. FIR No.3/2008 dated 9th January 2008 was registered at PS Rajpur under Sections 302, 201 IPC. By this time, the post mortem of Sonu's body had already been performed by Dr. N.S. Bisht (PW-24) on 10th January 2008 at the Government Doon Hospital, Dehradun. PW-24 noticed the following injuries on the dead body:

“External Injuries:

- 1) Nose cut of leaving 5cm x 5 cm bone deep wound with remnant of nasal bone therein

2) Graze marks below right nipple in an area about 12 cm x 6 cm.

Internal Injuries:

1) Right lower 6 ribs fractured with right haemothorax about 500 ml in quantity.

2) 6 cm x 4 cm sized frontal subdural haematoma.”

13. PW-24 gave his opinion that death was due to shock as a result of right haemothorax and frontal subdural haematoma. The time of death was assessed to be 24 hours prior to the time of post mortem. The dead body of Sonu was handed over to PW-16 and his relatives at Dehradun.

14. The investigation of the case was transferred to the District Investigation Unit (‘DIU’) Outer District. On 28th January 2008 Sub-Inspector Bikram Singh (PW-43) reached P.S. Civil Lines, Muraina, M.P. and collected the documents of the abandoned Innova vehicle and recorded the statements of Gajender (PW-18) and Munna @ Ram Prakash Tiwari (PW-19). He also collected the carbon copy of the WT Message and related documents of case FIR No.1 of 2008 dated 8th January, 2008 under Section 102 of Cr PC registered at P.S. Civil Lines, Muraina, M.P. The cover of the stepney which had some finger prints on it was kept in the carton on the instructions of the finger print expert and were seized and brought to Delhi.

15. ASI Narender Singh (PW-8) examined the stepney cover. It must be mentioned at this stage that the chance prints found on the stepney cover matched with the left index finger impression of A-2, the Appellant. The

report of the FSL, Rohini regarding the specimen hand writing of “P” was obtained as per which the signature of “Ravi Sharma” on the police crane Bill of Agra Traffic Police matched with the specimen writing of “P”. The blood stained part of the middle seat of the Innova Vehicle matched with the blood samples of the parents of Sonu as per the DNA Profile report of the FSL.

16. The Innova vehicle was brought back to Delhi. On 7th February 2008, investigation of the case was entrusted to Inspector Ram Avtar (PW-59) of the DIU, Outer District. From the vehicle, the burnt beedi butts, parts of broken glass bottle, blue coloured back cover of Nokia mobile phone and blood stained part of the middle seat left portion was cut out and seized. On 7th March 2008, the vehicle was released on *superdari* to PW-3. PW-59 collected the photograph of the deceased taken from the spot which at that time did not have marks of injury on the nose and the neck. Since there was an observation in the post mortem report of PW-24 that the nose was found cut off and a deep wound with remnants of nasal bone whereas SI Virender Dutt Uniyal (PW-53) had stated that the nose was intact, a further opinion of PW-24 was sought. He opined that it was possible that the nose could have been cut off as a result of animal bite.

17. On 15th April 2008, the investigation of the case was assigned to the Special Cell under the supervision of Inspector Bhramjeet Singh (PW-17). PW-17 then circulated the IMEI number of the instrument of Sonu and his mobile number 9971483844 to various telecom service providers. From the information gathered, it transpired that the said IMEI number was used with

the mobile No.9812844410 on 12th January, 2008. It was issued in the name of Pyare Lal, resident of District Bhiwani, Haryana. Arjun @ Sonu was found at that address. Arjun Singh (PW-23) stated that on 11th January, 2008 while going to his college, his classmate Ajay (PW-30) told him that a Chinese mobile phone instrument was available for a sum of Rs.2,500/-. PW-30 then took PW-23 to meet a person who was aged between 25-30 years, height 5'7" and bald in front and PW-23 then purchased the said mobile phone from that person.

18. On the following day, PW-23 inserted a SIM Card of mobile No.9812844410. He dialled his other number at his home being 9728058283 to check the phone instrument. After 2-3 days, PW-30 took back the mobile instrument from PW-23. PW-30 when later questioned by the police, stated that he had received a call on his mobile number 9729433735 from Mukesh (PW-27), a carpenter who was his friend, asking him to come to the Bhiwani Bus Stand. When PW-30 went there, he met PW-27 with two other persons, one of whom was aged 30 years with height 5'7" with a small paunch and bald head wearing a cream coloured suit having a blue coloured bag on his shoulder. The other person was 5'6" height, fair complexion, tough built, short hair, having moustache, round face and aged 22-24 years. Both of them appeared tired and their clothes were dirty. PW-27 told PW-30 that they were his friends. He requested PW-23 to keep the person wearing cream coloured suit in his room for 4-5 days. Thereafter, PW-30, PW-27 and the two persons went to the room of PW-30. The person wearing the suit remained in the room of PW-30. That evening the person disclosed his name to PW-30 to be Vipin. He showed 2 ATM cards and stated that he did not

have any money in his bank. He also showed him one Chinese mobile instrument and asked PW-30 to try and sell it. PW-30 noticed that one of the ATM Cards with Vipin had the name of Seema written on it. On the next day, Vipin showed his mobile handset to PW-30 and asked him to get it sold.

19. On 11th January, 2008 PW-30 called PW-23 to his room and the said mobile handset was sold to him for Rs.2,500/-. Thereafter, A-2 left the room of PW-30 stating that he had to go to Kalanore. After about 4-5 days, PW-27 told PW-30 that he wanted the phone back, as a result of which, PW-30 took the phone back from PW-23 and handed the same back to PW-27.

20. PW-27 told the police that A-1, who was his friend, contacted him at about 8 am on 9th January, 2008 and asked him to come to Bhiwani Bus Stand. When PW-27 went there, he found A-1 in the company of A-2. A-1 introduced A-2 to PW-27 as his friend and requested that A-2 should be permitted to reside with him for 4-5 days. At this stage, PW-27 noticed A-1 was wearing gold ring on his finger. PW-27 took it to put the same on his own finger and gave it back to A-1. He confirmed what transpired in the room of PW-30 on the following day when the phone was sold by A-2 to PW-23. He also confirmed taking back the phone from PW-23. He stated that he put several SIM Cards in the said mobile phone instrument and was using the same but was not aware from where A-2 had got the phone. PW-27 then produced the said Chinese mobile phone instrument which was seized by the police.

21. On 25th April 2008, A-1 and “P” were arrested from Satnali, District Mahendergarh. On a personal search of A-1, one ring was found which belonged to deceased Sonu. “P” was also arrested. On his personal search, a purse containing photograph of the deceased Sonu was found. Both A-1 and “P” are stated to have given disclosure statements thereafter to the police. On the pointing out of “P”, the CD Screen of the Toyota Innova car was recovered from his house. The TATA Indicom phone of Sonu was recovered from “P’s” friend Arun (PW-6). The phone used by “P” during the incident was recovered from Dharmveer (PW-56), the brother of Karamjeet @ Goli from Mahendergarh.

22. During the course of investigation, a mobile phone with number 9827599812 was seized from Bunty @ Mohan Kumar Sharma from Muraina, M.P. On 25th April, 2008 “P” pointed out the tyre puncture repair shop on Agra Highway where he got the puncture of the Toyota Innova vehicle repaired. Komal (PW-58), the owner of the tyre puncture shop and whose assistant and relative, Chottey Lal, was also present, identified “P” as the person who had got the puncture repaired from their shop.

23. On 1st May, 2008, A-2 (the Appellant herein) was arrested from Malviya Nagar, Delhi on the pointing out of “P”. On his personal search, the following items were recovered from his possession:

- “a) One black coloured leather purse containing State Bank Cash cum Debit Card bearing name of Upender Anand;
- b) ICICI Bank True Value Card bearing name of Upender Anand;

c) ICICI Bank True Value Card bearing name of Seema Devi; and

d) ICICI Bank Ltd. Payment receipt dated 03.01.2007 issued in the name of Upender Anand”

24. A-2 disclosed that the above articles belonged to Sonu. A-2 was found wearing a whitish coloured ring with white pearl on his right hand which he stated to be belonging to the deceased. A bag was recovered from the Appellant which contained a cream coloured coat which was dirty. He disclosed that he had taken it from the room of his friend Raju while hiring the vehicle. From the disclosure statement of A-2, the mortgaged ring was seized from Neeraj Saini (PW-42).

25. After *superdari* was given of the car to PW-3, he produced before the IO a jack of a Maruti 800 car which he had found in the Innova car.

26. On 2nd May 2008, A-2 was produced with a muffled face before the Court of the Metropolitan Magistrate for carrying out his Test Identification Parade (‘TIP’). He, however, refused stating that he had already been shown to the witnesses. On the following day, 3rd May 2008, PW-3, PW-27, PW-4 and PW-23 were called to the PS and all of them identified A-2.

27. The TIP proceedings of the recovered articles were carried out as well. PW-27, PW-23 and PW-16 identified the Chinese mobile phone as that belonging to the deceased Sonu. PW-16 and PW-6 identified the TATA Indicom mobile phone as belonging to the deceased. PW-16 also identified the two gold and one silver ring and the wallet of the deceased. Ravi Kant @

Raj (PW-64) identified his cream coloured coat. PW-3 identified the recovered CD Screen which had been removed from his vehicle and PW-58 identified the jack of Maruti 800 as belonging to his tyre repair shop.

Charges

28. After completion of the investigation, a charge sheet was filed. Among the charges framed as far as the Appellant was concerned, was that he along with "P" and A-1 had entered into criminal conspiracy on 6th January, 2008 to hire a taxi on 7th January, 2008 on the pretext of his going to Mussoorie with an intention to kidnap or abduct the driver of such taxi for the purpose of murdering him and sell the vehicle at Muraina, M.P. thereby committing an offence punishable under Section 120-B IPC.

29. The second charge was that in furtherance of the above submission the vehicle was hired and the deceased was called in a manner prescribed hereinbefore and thereby committed an offence punishable under Section 364/120B IPC. The third charge was of strangulating the deceased with belt with an intention to commit his murder and thereby committed an offence punishable under Sections 302/120B IPC.

30. The fourth charge was making the evidence disappear by throwing away the dead body thereby committing an offence punishable under Sections 201/120B IPC. The fifth charge was committing theft of the Toyota Innova and personal belongings/articles of the driver of the vehicle and voluntarily causing his death, thereby committing offence punishable under Section 392 read with 120B IPC.

31. Additionally, a separate charge was framed against the Appellant for the offence under Section 411 IPC for being in possession of some of the stolen articles.

32. The prosecution examined 71 witnesses. In his statement under Section 313 Cr PC, the Appellant denied the circumstances that were put to him. When asked whether he had anything to say, the Appellant stated that the IO had acted in connivance with the PWs in order to falsely implicate him in the present case. The Appellant chose to not to lead any evidence in defence.

Impugned judgment of the trial Court

33. In the impugned judgment, the following circumstances were culled out by the trial Court *qua* the Appellant as having been established by the prosecution:

- i) PWs 3, 5 and 7 had identified the Appellant as the person who had booked the Toyota Innova vehicle and as having left with the said vehicle with the deceased on the evening of 7th January, 2008,
- ii) Finger prints of the Appellant had been found on the stepney cover of the vehicle.
- iii) The presence of vehicle at Agra stood established from the records produced by PWs 38, 39,
- iv) The Appellant was seen by PW-4 in Agra on 8th January, 2008 with the vehicle when it was standing on a jack.

v) The Appellant was also seen by PW-57 with the vehicle when the puncture of the said vehicle was repaired at Agra on 8th January, 2008. The deceased Sonu was not seen with the said vehicle when it was in Agra

vi) The deceased was last seen in the company of the Appellant at around 4.30 pm on 7th January, 2008. Given the post mortem report placing the death of the deceased at about 24 hours prior to 3 pm on 10th January 2008, and it being a winter month, it could be said that the deceased was last seen in the company of the Appellant.

vii) The mobile set recovered from PW-30 has been established to be belonging to the deceased Sonu. It was proved to be in the possession of the Appellant who sold it to PW-23 who later gave it to PW-27 from whom it was recovered.

viii) The ATM card of State Bank of Travancore and two ATM cards of ICICI Bank belonging to the deceased and his wife were recovered from the possession of the Appellant.

34. When all the above incriminating circumstances were put to the Appellant, he denied them but did not offer any explanation. This was an additional link in the chain of circumstances. With all the other circumstances having been proved, the failure of the prosecution to prove the motive for the crime would not come in the way of the Appellant being convicted for the offences with which he has been charged. For the offence under Section 120B IPC all the accused, including the Appellant, were acquitted. The trial Court by a separate order on sentence dated 16th

November, 2015 awarded sentence and fines in the manner already noticed.

Submissions on behalf of the Appellant

35. Mr. Azhar Qayum, the learned counsel appearing for the Appellant, made the following submissions:

- i) Prior to 15th April, 2008 when the investigation was transferred to PW-70, none of the police officials had knowledge of the IMEI number of the deceased. The only source was the CDRs which had been provided to the IO only on 12th June, 2008 by PW-20. How PW-70 could have circulated the IMEI number to the service providers prior thereto was not explained.
- ii) No finger prints, foot prints, blood, hair any mark/evidence or any eye witness were found which established the presence of the Appellant in the vehicle.
- iii) Although, the prosecution case was that the murder took place in the intervening night of 7th and 8th January, 2008, the post mortem report stated that the death occurred on 9th January, 2008.
- iv) No recovery as such was affected from the Appellant of any article in the vehicle; even the recovery of the CD screen from “P” was not free from doubt.
- v) The DNA report was not proved by the DNA Expert or its author. It was merely exhibited in evidence by PW-70.
- vi) Even the biological report (Ex.PW70/D2) was not proved by its author.

Further while PW-70/E1 mentions that no saliva was found on Exhibit 1, the DNA report mentions that human saliva was detected on Exhibit 1. The chance prints evidence could not be relied upon since the chance prints were lifted from the vehicle when it was in the open condition.

vii) There were mutual contradictions in the statements of PWs 8 and 33. The ownership of the two ATM Cards and 1 credit card had not been proved in the absence of any certificate under Section 65-B of the Indian Evidence Act. PW-42 did not support the story of the prosecution that the Appellant was found wearing a gold ring which belonged to the deceased.

viii) Although the prosecution story involved the active role of “P” and A-1, A-1 had been acquitted of the offences under Section 302, 364, 392 and 301 of IPC.

ix) The vehicle had been booked under the name of Sanjay Chaudhary. There was no evidence to show that the Appellant had falsely used such a name. No booking slip was produced by PW-3.

x) No public witnesses were associated with the recoveries and, therefore, they could not have been relied upon.

xi) During the examination of PW-3, the Appellant was asked to wear the coat (Ex.P3) which was found to be tight at the place of the armpit and it was found that the front buttons could not be closed. Even the predecessor of the trial Court noticed that it was not fit to the size of the Appellant.

xii) The arrival date in the duty slip (Ex.PW3/F1) of the Toyota Innova Vehicle was 7th January, 2008 and there was overwriting and cutting while writing the figure 8 in the dated 08.01.2008. Even the name of the driver was not mentioned in the said duty slip.

xiii) The permission of the learned Metropolitan Magistrate to obtain the finger prints of the accused persons was not taken and, therefore, lifting of the finger prints and the said evidence had to be rejected in toto.

Submissions of learned APP

36. In reply to the above submissions, Ms. Kusum Dhalla, the learned APP, submitted that in the present case, the chain of circumstances established by the prosecution was complete. In particular, reference was made to the forensic evidence in the form of finger prints and handwriting which were matched and as well as biological and serological evidence which totally corroborated the case of the prosecution. The trial Court had rightly referred to Section 293 Cr PC where the scientific reports should be exhibited without examining the author of the report. Reference was also made to the medical evidence which proved beyond doubt that the death of the deceased was homicidal and established that the deceased was last in the company of the Appellant.

37. The learned APP submitted that the CDRs of the mobile phones also clearly established that the mobile handset of the deceased was used by PWs 23 and 27 who in turn had bought it from the Appellant. Reference was also made to the recoveries made from the Appellant upon his arrest and his

inability to explain the circumstance under which he was found in possession of various articles belonging to the deceased. The TIP proceedings as regards the articles recovered at the instance of the Appellant clearly showed that they belonged to the deceased. The refusal of the Appellant to participate in his own TIP proceedings was without any justification and this too pointed to his guilt. The mere fact that A-1 was acquitted did not in any manner detract from the guilt of the Appellant which was established beyond reasonable doubt.

Last seen evidence

38. The Court would first like to dwell on the evidence of the Appellant being last seen in the company of the deceased. The evidence of PW-3, Bhim Singh, the owner of Pawan Hans Tour and Travels clearly establishes that it was the Appellant who came to book the Toyota Innova vehicle by stating that he wanted to go to Mussoorie. Although the name disclosed by the Appellant was 'Sanjay Chaudhary', PW-3 was able to clearly identify the Appellant in Court.

39. There was nothing to show that prior to the TIP of the Appellant which was arranged on 2nd May 2008, the Appellant had been shown to any of the witnesses. It was only after his refusal to participate in a TIP on 2nd May, 2008 that PWs 3 (Bhim Singh), PW-4 (Krishan Kant), PW-27 (Mukesh) and PW-23 (Arjun) were called to the police station by the IO (PW-17) to identify him. The Court concurs with the finding of the trial Court in this regard that the refusal of by the Appellant to participate in the TIP, therefore, was not justified. The subsequent identification by PW-3, PW-27,

PW-23 and PW-24 of the Appellant in the Court clearly establishes that it was the Appellant who was last seen taking the vehicle with the deceased driving it. The evidence of PW-4 who saw the Appellant near the vehicle at Agra standing on a jack and without the deceased Sonu being present, completes the chain in this regard.

Movement of the vehicle

40. It is significant that PW-4 also noticed that the Innova was standing on the jack which did not belong to Innova but some other vehicle. There was also other evidence to show that the vehicle in question was in Agra. PW-38, S.I. Rakesh Kumar was Head Constable at the traffic police line Agra and he had *challaned* the vehicle on 8th January, 2008 at 1.15 p.m. The said *challan* (Ex.PW-14/B) bore the registration number of the Toyota Innova vehicle. There was no cross-examination of PW-38. The said *challan* was collected by S.I. Bhushan Azad (PW-49) on 12th May, 2008. The log book of the Traffic Control (Wireless), Agra was produced by S.I. Prem Singh (PW-39) and this too contained information regarding presence of the Toyota Innova vehicle at Agra.

41. This also corroborated the version of PW-4 who noticed the vehicle at Agra and correctly identified the Appellant as the person who was standing near the vehicle. As regards the repair of the puncture of the tyre of the vehicle at Agra, the evidence of Komal (PW-58) and Chhottey Lal (PW-57) has been discussed at some length by the trial Court. Nothing much came from the cross-examination of these two witnesses. They appear to be natural witnesses who had no reason to falsely implicate the Appellant. PW-

57 identified the Appellant as being near the car and the other person being “P” who was not present in Court.

Finger print evidence

42. The further evidence that shows the presence of the Appellant in the car when the murder of the deceased took place was the chance prints lifted from the stepney which matched the index finger of the Appellant. Manoj Kumar (PW-9), the finger print expert received the specimen prints of 11 suspected persons. He found the chance print Q3 lifted from the stepney to be identical to the left index finger impression (S1) of the Appellant. He submitted his report (Ex.PW-9/A) in this regard and denied the suggestion in his cross-examination that it was manipulated. There was no objection by the Appellant at any time about his specimen prints being taken without prior permission of the Magistrate. He cannot, therefore, be permitted to do so now.

43. The vehicle was first examined by PW-33, P.C. Pandey, a DSP in Bhopal who was posted as Finger Print Expert at Muraina. On the asking of S.I. Vikram Singh, he reached Muraina and inspected the said car and found the finger prints on the Stepney cover lying inside the vehicle. He handed over the Stepney cover to the in charge for keeping it safely. He denied the suggestion in the cross-examination that the said Stepney cover that was produced in Court was not the one he saw in the car or that no finger prints were lifted by him.

44. PW-8, ASI Rahul Dutt posted at the Finger Print Bureau, ATS was part of the crime team who saw the vehicle which had been earlier examined by the Muraina Crime team. He removed the cello tape from the Stepney cover

and marked the chance prints Q1 to Q4. The evidence of these three witnesses, i.e., PWs 33, 8 and 9 thus establish the recovery of the chance prints and its matching with the specimen print of the Appellant.

45. The submission that there was a gap of 20 days from the locating of the vehicle and the lifting of the chance prints and that this gave scope for manipulation is without basis. The chance prints were first noticed on 28th January, 2008 and developed on 29th January, 2008. The Appellant was apprehended on 1st May, 2008. The question of manipulating the chance prints of the accused on the Stepney cover was, as rightly pointed out by the trial Court, ruled out. PW-43 was assigned the investigation of the case on 21st January, 2008 and went to Muraina on 28th January, 2008. He then called the finger print expert PW-33 to examine the vehicle. On the directions of PW-33, the Stepney cover was kept in a separate cartoon as it contained the finger prints.

46. It, therefore, appears that the police officials of P.S. Muraina did not get the vehicle examined by a finger print expert earlier. It happened only after PW-43 reached there. In the circumstances, the delay in lifting the chance prints cannot be said to be fatal to the case of prosecution.

Medical evidence

47. The medical evidence also more or less fixed the time of the offence. The post mortem put the approximate time as 24 hours prior to the examination. However, as rightly pointed out by the trial Court, the variation regarding time of the death when body is found in cold atmospheric condition cannot be ruled out. The body was found in January, 2008 which was winter time. Thus even if the time of death was opined to be 24 hours

since the time of examination, i.e. 3 pm on 10th January 2008, there could be a variation in the time of death. PW-24 was in fact not cross-examined by any of the accused. His information regarding the death having been caused as a result of the injuries which were ante mortem remained unchallenged. The above evidence clearly established that the time of death of the deceased was approximate to the time when he was last seen in the company of the Appellant.

Discovery of the body of the deceased

48. Apart from the finger print evidence and the medical evidence, there is overwhelming evidence regarding discovery of the body of the deceased at Dehradun on 9th January, 2008. The testimonies of PWs 3, 13, 16, 36, 37, 53, 60 and 67 corroborated each other and was not seriously challenged by any of the accused.

Conduct after the crime

49. What was also very significant as far as the Appellant is concerned is his conduct in reaching Bhiwani and selling the mobile phone belonging to the deceased to PW-23. The prosecution was able to establish that PW-30 (Ajay) and PW-23 (Arjun) who were classmates. PW-30 was friends with Mukesh, PW-27 who was working as a carpenter. PW-27 had been called by A-1, Sunil whom he identified in the Court correctly.

50. The prosecution was able to prove through PW-27 that on 9th January, 2008, he received a call at 8 am from A-1 asking him to come to Bhiwani Bus stand where he met A-1 in the company of A-2. PW-27 correctly

identified A-2. A-1 requested PW-27 to arranged accommodation for A-2. This led PW-27 to call PW-30 who was his friend to the bus stand requesting him to give accommodation to A-1 for 4-5 days. PW-30 also correctly identified both A-1 and A-2 in Court. Therefore, the presence of A-2 at Bhiwani is more than adequately established.

51. Then we have the evidence of PW-23 (Arjun) to whom the Chinese mobile phone of the deceased was in fact sold by A-2. This happened when PW-30 took PW-23 in his room where he met A-2. PW-23 also correctly identified A-2 in the Court. The CDRs have more than adequately proved the fact of PW-30 inserting the SIM card of his own mobile number into the instrument, making his call to his other mobile number to make sure it was working and returning the Chinese mobile phone to PW-30 who in turn returned it to PW-27. The Court is therefore, not able to agree with the submission of counsel for the accused that despite no recovery being made from A-2 himself, the fact that he sold the Chinese mobile phone of the deceased to PW-23 is not proved. There is overwhelming evidence, therefore, to show that it was the Appellant who had sold the Chinese mobile phone to PW-23 which is then taken back by PW-27 and recovered from him.

Other forensic evidence

52. There were burnt pieces of bidi butts, broken glasses and one back cover of a Nokia mobile phone recovered from the vehicle. One portion of the left side of the middle seat of the vehicle which was blood stained was also cut out and preserved. While it is true that the biological report (Ex.PW-70/D1)

was not proved by examining its author Dr. A.K. Srivastava, Assistant Director (Biology) of FSL, Rohini, as rightly pointed out by the trial Court, this was a document which was covered by Section 293 (4) (e) of the Cr PC.

53. The trial Court rightly distinguished the decision in ***Keshav Dutt v. State of Haryana (2010) 9 SCC 286*** where the conviction was sought to be based solely on the report of the handwriting expert. In the present case, however, this was one other piece of evidence and not the only piece of evidence relied upon by the prosecution to prove the guilt of the accused. On the other hand, as explained in ***Dhananjay Reddy v. State of Karnataka (2001) 4 SCC 9***, ***State of HP v. Mast Ram (2004) 8 SCC 660*** and ***Rajesh Kumar v. State (2008) 4 SCC 493*** under Section 293 (4) of the Cr PC, the trial Court can accept documents issued by any of the six officers enumerated therein as valid evidence without examining the author of the documents.

54. On the question of inconsistency in the two reports, that is, Ex.PW-70/D1 and PW-70/E1, the trial Court has analysed it as under:

“131. Another submission was made that there was inconsistency regarding human saliva on Ex.1 i.e. beedi butts in the report Ex.PW70/D1 and EX.PW70/E1. While the first referred states saliva was present on Ex.1, the note no.1 of the second report states that there was no human saliva. It is however to be seen that the report EX.PW70/E1 on top of the second page reveals that DNA could not be isolated from Ex.1. It therefore appears that there may be a typographical error in the said report. However the fact remains that EX.PW70/E1 does not give any DNA profiling report regarding the beedi butts. The said inconsistency is therefore inconsequential.”

55. The Court is not able to agree with the counsel for the accused that the

above finding is not one that is possible to arrive at in the facts and circumstances of the case.

Arrest of the appellant

56. As regards the arrest of the Appellant and the recovery of the articles, the trial Court has discussed extensively the evidence of IO (PW-70), S.I. Pankaj Kumar (PW-63), S.I. Bhushan Azad (PW-49) and concluded that the apprehension of the Appellant on 1st May, 2008 from near the property at A-539, Chirag Delhi after giving him some chase stood proved.

57. As regards the fitting of the coat, it appears that the coat actually belonged to PW-64 and he said that when he came back to his room after returning from Bahadurgarh on 2/3 January, 2008, he found his cream coloured coat missing. He identified this in the Court and also could identify the tailor from whom he got it stitched. He wore it and it fit him properly. The trial Court noticed that PW-64 had been consistent regarding "P" as well as the fact that his cream coloured coat went missing when he came back to Delhi from Bahadurgarh. Therefore, this corroborated the case of the prosecution that A-2 had taken away the coat of PW-64 and used it during the incident. The fact that the coat did not fit A-2 is entirely beside the point as PW-also noticed him carrying it on his arm and not wearing it.

58. Among the articles recovered from A-2 were the ATM cards of SBT and ICICI Bank which were proved as belonging to the deceased by PW-1 and PW-10 respectively. Section 65B of the IEA would, therefore, not be applicable. There was no need therefore for any 65B evidence and in any

event no such objection was raised before the trial Court. As regards the TIP of the recovered articles, the evidence of PW-16 who identified the Chinese mobile phone and the rings as belonging to his son could not be shaken by A-2. It was indeed obligatory for A-2 to explain how he came into possession of these articles of the deceased. His refusal to offer any explanation adds one more link to the chain of circumstances.

The IMEI number

59. There is one other aspect which requires to still be dealt with, viz., PW-70 being able to send to the service providers the IMEI number of the mobile phone belonging to the deceased even before it was formally handed over. The trial Court in this regard has noted as under:

“150. PW70 Insp. Brahmjeet Singh was cross examined on this aspect. He has deposed that he had gained knowledge that the mobile handset with IMEI number 355857900404760 of the deceased was being used by somebody on 16.04.2008. He stated that he had not given any written notice to the Service Provider under Section 160 of the Cr.P.C. in this regard but voluntarily explained that he had sent a request to the Service Provider through his official e-mail ID.

151. The CDRs relied upon clearly prove that mobile handset with IMEI number 355857900404760 was being used by the deceased Upender Anand with mobile number 9971483844 which as per CAF EX.PW20/B belongs to Upender Anand. This very mobile handset with IMEI number 355857900404760 was found to be used by PW23 and PW27 as deposed by them and as corroborated with the respective CDRs of the mobile phones being used by them. In these facts and circumstances, even if it can be said that there is no written record of PW70 seeking the said information on or before 16.04.2008, his explanation that he had obtained the information by sending an e-mail is believable. Thus nothing turns on the said submission

of the accused persons.

152. From the CDRs referred to above, it stands proved that the mobile handset with IMEI number 355857900404760 was used by the deceased Upender Anand till 07.01.2008. Thereafter it was used on 12.01.2008 by PW23 Arjun and subsequently by PW27 Mukesh. These records, corroborates the version of the prosecution witnesses PW23 and PW27”

Motive

60. In a case of circumstantial evidence, the failure to prove the motive would become significant if none of the other circumstances are clearly established by the prosecution. However, as in the present case, where each of the other circumstances has been proved beyond reasonable doubt, the mere fact that the prosecution might not have been able to prove the motive does not in any way prevent the inevitable conclusion that the other circumstances which stand proved point unerringly to the guilt of the Appellant.

Conclusion

61. This Court is unable to find any error whatsoever in the above analysis of the evidence by the trial Court and concurs with the conclusion drawn by it in the impugned judgment.

62. The Court, therefore, finds no merit in any of the grounds urged by the Appellant to assail the impugned judgment and order on sentence of the trial Court. The appeal is accordingly dismissed but, in the circumstances, with no order as to costs.

63. The trial Court record is directed to be returned forthwith together with a certified copy of this judgment.

S. MURALIDHAR, J.

I.S. MEHTA, J.

JANUARY 05, 2018
'anb'

