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

+ **CRL.A. 506/2018 & Crl M (Bail) 711/2018**

**KASIF**

..... Petitioner

Through: Mr. K. Singhal, Advocate with Mr.  
Prasanna and Mr. Nishant B., Advocates.

versus

**STATE NCT OF DELHI**

..... Respondent

Through: Mr. Hirein Sharma, APP.

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

**JUDGMENT**

**10.07.2018**

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**Dr. S. Muralidhar, J.:**

1. This appeal is directed against the judgment dated 24<sup>th</sup> April 2018 passed by the learned Additional Sessions Judge (Central), Delhi and the order on sentence of the same day in Sessions Case No.09/2015 arising out of FIR No.145/2010 registered at Police Station (PS) Civil Lines convicting the Appellant for the offence punishable under Section 302 Indian Penal Code (IPC) and sentencing him to imprisonment for life with a fine of Rs.100/-, and in default of payment of fine to undergo simple imprisonment (SI) for one week.

***Charge***

2. The charges against the Appellant were that

(i) he along with the two co-accused, that is, Asif S/o Rahmat Ali (A-1) and Javed @ Munna s/o Fahimuddin (A-3) entered into a criminal conspiracy on

or before 29<sup>th</sup> July 2010 to murder Danish S/o Islamuddin (the deceased) thereby committing an offence punishable under Section 120-B IPC and

(ii) on the intervening night of 29<sup>th</sup>/30<sup>th</sup> July 2010 three of them pursuant to the above criminal conspiracy murdered the deceased thereby committing the offence punishable under Section 302 IPC.

3. At the outset, it requires to be noted that by the impugned judgment, the trial Court has acquitted all three accused of the charge under Section 120B IPC and A1 and A3 of the offence under Section 302 IPC. The Appellant (A-2) alone was convicted for the offence under Section 302 IPC.

***The crime scene***

4. At around 7:15 a.m. on 30<sup>th</sup> July 2010 information was received at PS Civil Lines, Delhi which was noted as DD No.10A that the dead body of an unknown person was lying outside Sant Parmanand Hospital on the main road near the taxi stand. The Station House Officer (SHO) of PS Civil Lines Anil Kapoor (PW-10) on receiving the said information went to the spot where he found that SI Bhupinder (PW-3) along with Constable (Ct.) Anil were already at the spot. The dead body was of a male of approximately 25 years of age. There was a deep cut injury on the neck and one coloured plastic rope was also found encircled around the neck. A bloodstained knife was found near the body of the deceased.

5. A personal search of the dead body was carried out by PW-3 who found a SIM card of Vodafone company from the left pocket of the jeans of the

deceased. This was taken into possession as was the knife. The blood found at the spot was also taken along with the earth control and separately preserved. A site plan (Ex.PW10/A) was also prepared.

6. PW-10 inserted the SIM card into his mobile phone and found that its validity had already expired. He recharged the SIM card and found that it was having mobile No.7838802782. He then contacted the service provider and found that the said SIM card had been issued at the address A-11, Hathi Khana Park, Bara Hindu Rao. In the meanwhile, the FIR was registered on the *rukka* drawn up by PW-3.

#### ***Post mortem***

7. The body of the deceased was sent to the mortuary. Dr.S. Lal (PW-7) conducted the post mortem and found “multiple incised cut throat injury intermingling with each other to form a large wound of size 11 x 7cm paravertebral deep over middle front of neck. The wound was horizontally placed with multiple tailing of wound present on right side. The wound cut the underline structure of neck like muscles, trachea and neck vessels on both sides. The cut fracture was also seen over third cervical vertebrae. Total depth of the wound was approximate 5cm.”

8. PW-7 opined that the death was due to shock and haemorrhagic shock due to ante mortem cut throat injury which was produced by a sharp edged weapon. There were two other abrasions on the neck itself. The post mortem was conducted on 31<sup>st</sup> July 2010 and the time of death was held to be about 36 hours prior to the examination. PW-10 visited the address at which the

SIM card was issued with a photograph of the dead body. One Rizwan identified the dead body to be that of Danish @ Moin Akhtar. The relatives of the deceased were called at the police post (PP) Ahata Kidara. Islamuddin and Nawabuddin (PW-5) who were the father and cousin brother respectively of the deceased arrived at the PP and identified the photographs of the deceased.

### ***Investigation***

9. Thereafter, on 31<sup>st</sup> July 2010 itself PW-10 along with his staff went to the Subzi Mandi Mortuary where the relatives of the deceased were already present. They identified the dead body and the statements of Islamuddin and PW-5 to that effect were recorded. In the initial statements of Islamuddin and PW-5, no allegations were made against anyone by them.

10. According to PW-10, for the first time on 2<sup>nd</sup> August 2010, that is, more than 3 days after the killing of the deceased, Islamuddin, his father, informed PW-10 for the first time that on the intervening night of 29<sup>th</sup>/30<sup>th</sup> July 2010 at around 1:15 a.m. Asif (A-1), Kasif (the present Appellant) (A-2) and Javed (A-3) had called Danish out of his home. According to Islamuddin, his son Danish was last seen together with the said three accused. However, even PW-5, the cousin of the deceased, did not tell the police about the three accused being last seen with the deceased till about six days after the incident.

11. PW-10 is supposed to have mentioned in the case diary that Islamuddin and PW-5 disclosed who the deceased was last seen with but for some

reason did not draw up their individual statements to that effect under Section 161 Cr PC.

12. The third feature of this case is that the three accused were very much present throughout the investigation and appeared as and when called by the Investigating Officer ('IO'). They were interrogated in detail but nothing incriminating qua each of them emerged.

13. For nearly three years after the incident no arrests were made. It is seen that throughout this period, the investigation was handled by several IOs. Till 10<sup>th</sup> September 2010 it was conducted by the SHO Anil Kapoor (PW-10); and between 11<sup>th</sup> September 2010 and 29<sup>th</sup> April 2010, the investigation was handled by Inspector Rakesh Kumar (PW-17). Thereafter, it was entrusted to Inspector Jitender Kumar from 3<sup>rd</sup> May 2011 to 10<sup>th</sup> May 2011, that is, for just one week. Inspector Yudhvinder Singh (PW-18) handled it from 28<sup>th</sup> May 2011 till the end of 2011; Inspector Gopi Chand handled it from 3<sup>rd</sup> January 2012 to 8<sup>th</sup> August 2012; Inspector Pradeep Kumar from 17<sup>th</sup> August 2012 to 11<sup>th</sup> September 2012, Inspector Sajjan Singh Yadav from 12<sup>th</sup> September 2012 to 2<sup>nd</sup> November 2012, Inspector Rohtash Kumar from 3<sup>rd</sup> November 2012 to 9<sup>th</sup> March 2013 and Inspector Ravinder Kumar (PW-23) from 11<sup>th</sup> April 2013 to 13<sup>th</sup> December 2013. A final report under Section 173(2) Cr.P.C. was filed on 13<sup>th</sup> December 2013 without arresting the accused persons. Further investigation was conducted by Inspector Rajesh Sinha (PW-24).

14. During the course of investigation, a Wagon R No. DL-6CC-0332 was

seized and was sent to the Forensic Sciences Laboratory ('FSL') Rohini. The forensic team at the FSL collected the exhibits from the said car and handed over two sealed parcels containing blood stained piece of carpet from the back seat of the car and the blood stained piece from near the back side of the left seat of the car near window. These exhibits were then retained at the FSL Rohini for DNA Analysis.

15. The charge sheet noted as under:-

“The investigation carried out by the initial IO also revealed that Javed @Munna is the son of Sahjahan Begum who is the real sister of Islamudeen. Kasif is also related to Islamudeen & Nawabudeen as he is the son in law of Sahjahan Begum. Asif is associate of Kasif and Javed @ Munna and also residing in the same locality of Bara Hindu Rao. Islamudeen and Sahjahan Begum both brother and sister are having old family enmity between them and each of them and each of them does not leave any chance to allege against each other.”

16. The Wagon R car DL 6CC 0332 was found to be under the ownership of the father of the present Appellant. It was taken into possession by the IO and sent to the FSL. The two exhibits prepared by the FSL from the car were subsequently examined. Both these exhibits were of blood stains found on the rear seat of the car and on a small portion of the carpet.

17. With the FSL result awaited and with very little progress being made, Islamuddin, father of the deceased filed a complaint under Section 200 Cr PC before the Court of Chief Metropolitan Magistrate (CMM) on 13<sup>th</sup> September 2010. In para-2 of the said complaint, Islamuddin, the father of the deceased asserted as under:-

“2. That at about 1 a.m., Respondents No.1 to 3 came to the house of the complainant and asked about the son Moin Akhtar @ Danish. Since the above said persons are residing in the neighbourhood and the complainant used to know them personally, asked the son who was having his meal to see them. The above said persons started to talk with my son Moin Akhtar @ Danish and after sometime above said persons asked my son to accompany them, at which I pointed out that it was quite late so they may come tomorrow but the same said that they are remaining in the nearby and assured that Moin Akhtar @ Danish shall come soon and they took him in a WagonR car. At that time my cousin Nawabuddin S/o Late Nizamuddin waived my son.”

18. The investigation was then entrusted to the District Investigation Unit (DIU) on 9<sup>th</sup> May 2011. On 8<sup>th</sup> June 2011, Inspector Yudhvinder Singh (PW18) recorded the statements of Islamuddin and Nawabuddin (PW-5). PW-18 also recorded the statements of one Shahimuddin (PW-6) and Zahiruddin (PW-2) as being the last seen witnesses under Section 161 CrPC.

19. Despite this for nearly two more years nothing much happened. On 11<sup>th</sup> April 2013, the investigation was entrusted to Inspector Ravinder Kumar (PW23). He recorded the statements of Ms. Shaheen (PW-4) (daughter of Islamuddin) under Section 161 CrPC. She too claimed that on the night of 29<sup>th</sup>/30<sup>th</sup> July 2010 at around 12-12.30 am the three accused had come to their residence and called the deceased who was taking his meal to come outside. Although she declined, stating that her brother was taking his meal, the deceased went out saying that he would be back within a few minutes. The next day she came to know that the deceased had been murdered.

***The charge sheet***

20. In the charge sheet filed by PW-23 on 13<sup>th</sup> December 2013, it was noted as under:-

“Although in complaint u/s 200 Cr.P.C. Islamuddin father of the deceased has categorically alleged about cause of the grudge between his deceased son Danish and Kasif but in this regard despite of every possible efforts no other supportive evidence could be obtained so far.”

21. The charge sheet further noted that the exhibits taken out from the Wagon R car contained human blood. The stomach of the deceased contained semi-digested food which showed that the deceased had consumed food not long before his death. The charge sheet did not name the three accused as such but placed their names in Column 12, since as noted therein, there was “no other material evidence in respect of the murder of the deceased Danish could be obtained so far.” It was further noted that “Although efforts were carried out by all the respective IOs but neither motive behind the murder is supported by any evidence nor any eye witness supporting this fact could come forward.” It was sought to be explained why PW-10 had not reduced in writing under Section 161 CrPC about Islamuddin stating that the deceased was last seen with the three accused. This was because “Islamudeen and Sahajahan Begum were the real brother and sister and family of both of them were having several criminal involvements.”

22. Further the IO (PW-23) interrogated the three accused at length and also cross-checked their statements but “nothing incriminating was found against them by him.” PW-23 further stated in the charge sheet that he had

“conducted the investigation on the other aspects of the enmity but no clue could be obtained so far. The suspected persons Javed @Munna, Kasif and Asif were also interrogated by the previous IOs and the undersigned also in respective time but even after the necessary cross check nothing incriminatory was found”.

23. The charge sheet further noted as under:-

“Investigation also revealed that Islamudeen the father of the deceased and Nawabudeen the cousin of the deceased are having old enmity with the family of Sahajahan Begum who is the sister of Islamudeen. In past in 1999 they have registered criminal cases against each- other for kidnapping their daughters. And in 1998 Islamudeen the father of the deceased was arrested with Nawabudeen and Fahimudeen u/s 307/34 IPG vide case FIR.No.152/98 P.S.B.H.Rao. In this case Islamudeen attempted murder by firing gun shot on Irfan who was son of Sahajahan Begum (sister of Islamudeen). In this case Nawabudeen and Fahimudeen were acquitted but Islamudeen was convicted on 14.09.07 for R.I-for one and half years whose appeal is stated to be pending in Hon’ble High Court of Delhi.

In view of the above involvement it seems that Islamudeen could have concocted the last seen theory with the interested PVVs Nawabudeen the nephew, Kumari Saheen the daughter and his other associates Jahirudeen and Sahimudeen. The suspicion also expressed on the third day of the discovery of the dead body by Islamudeen, Jahirudeen and Sahimudeen were specifically produced by him as PWs after a gap of about 11 months. In his complaint u/s 200 Cr.P.C which was filed by him on 13.09.2010 after 45 days Islamudeen has mentioned only two witnesses to the incident of last seen and there is no mention of Jahiruddin and Sahirudeen.

All possible efforts to link the suspects Javed @Munna, Kasif & Asif with the commission of offense were carried out. These

three suspects are also having criminal involvements against them. Beside stern police interrogation, polygraphic tests of the suspects were also carried out but nothing incriminating found against them which could led to their arrest. The polygraphic test of Javed @ Munna and Kasif was not supportive and the test of Asif could not be carried out due to his lever damage.”

24. The charge sheet noted that the suspects had not been arrested “as there is insufficient evidence.” The result of the exhibits sent for DNA finger printing was still awaited. It was stated that the supplementary charge sheet would be filed after the receipt of the DNA profile report.

***Status reports before the MM***

25. A status report was submitted in the Court of the learned MM on 8<sup>th</sup> March 2013 stating that no specific evidence had been received till then. Thereafter another status report was filed by Inspector Rajesh Sinha (PW-24) in the Court of learned MM on 12<sup>th</sup> July 2014 where *inter alia* it was noted that the analysis of the mobile numbers of the accused was mentioned. The present Appellant had two mobile numbers ending with ‘1679’ and ‘6939’. The analysis of the CDR of the mobile No.1679 for 29<sup>th</sup> and 30<sup>th</sup> July 2010 revealed that the Appellant started his day from Ramesh Park, Laxmi Nagar and reached at Hathi Kana, Azad Market and Tyre Wali Gali at 10 a.m. and remained there till about 5:42 p.m. Thereafter he reached at Model Basti, Katra Neel and Matia Mahal, Jama Masjid. The last call on 29<sup>th</sup> July 2010 from this mobile phone was at 8:20 p.m. and his location as per Cell ID and ID Chart was at Matia Mahal, Jama Masjid.

26. The CDR of mobile No. ‘6939’ was also analysed for the period 1<sup>st</sup> July

2010 to 30<sup>th</sup> July 2010. Calls were made by this mobile phone only upto 25<sup>th</sup> July 2010. It was then noted as under:-

“As per CD no. 17 dated 06-09-10 alleged Kasif was interrogated and he had revealed the mobile no. of another alleged person **Aasif**, the number is 9971449842. The CDR was searched in the E-mail of the SHO Civil Line and CDR of the above no. was found there. The CDR has been called for the period 15 July to 4 August. The CDR revealed that only three calls are with this mobile phone. At about 3:30 he was at Sidhipura, from 10:51 PM to 11:05 PM he remained at Model Basti. Next call is at 11:47 AM on 30-07-10 when he was at Rani Jhansi Road.”

27. The deceased was found to have two mobile Nos. ‘6315’ and ‘8090’ (corresponding to the SIM card found on his person). The CDR of ‘8090’ for the period 14<sup>th</sup> to 30<sup>th</sup> July 2010 showed as under:-

“The first call on this no. is at 3:37 PM. The places to which he remained on 29-07-10 are Pahargunj, Hathi Khana, Abid Razi MCD Park, Mangol Puri, DV Gupta Road. On 29-07-10 he remained at Hathi Khana from 10:57 PM to 00.21 AM next day i.e. for 24 minutes. Then he came to Abid Razi MCD park, remained there from 00:22 to 00:30 hrs on 30-07-10. He came to Hathi Khana for less than a minute and again reached at Abid Razi park and remained there from 00:46 to 00:59 hrs. At 1:12 hrs he came to Hathi Khana. Last call there is at 01:18 hrs. Thereafter there is no call.”

28. The supplementary charge sheet concluded as under:-

“Looking into the locations of mobile phones used by the deceased and the alleged persons no conclusion can be drawn as to whether they were together at any point of time on the day of incident of this case, that is, on the night intervening 29 & 30-07-2010. As the mobile phone of Kasif has no conversation after 8:20 PM on 29-07-10 when his location as per CDR, is at Matia Mahal, Jama Masjid. Location of Aasif is at Model Basti

at 11:05 PM on 29-07-10 (Last Call) when the location of deceased was at Hathi Khana. Both these places (Hathi Khana and Model Basti) are approximately one and half Kilometers apart, Munna @ Javed carries no mobile phone. Also the body of deceased was found at a place which is approximately 5/6 kms. i.e. at Under Hill Road, away from Hathi Khana, where the deceased resided.”

29. The last status report was filed in the Court of the learned MM by PW-24 on 16<sup>th</sup> September 2014 where the cases filed by the families of Islamuddin and his sister Sahajahan Begum against each other were listed out. The criminal record of the three accused was also obtained. The present Appellant was found to be involved in 8 cases which were mostly of theft. However, it emerged that even PW-5 was found to be involved in 44 cases with most of them being of theft. No involvement of the deceased in any criminal case came to light. This status report stated “In view of the above it cannot be concluded that Kasif, Aasif and Munna bear a deep grudge against the deceased or against his father which could lead to the murder of the deceased. Rather Islamuddin has harmed Sajjo so far. Also DNA analysis report from FSL is not ready till yet.”

30. The learned MM was said to be unhappy with the laxity of the investigation and observed so to that effect in her order dated 13<sup>th</sup> March 2014 whereby the DCP (North) was asked to assign the case to any known competent Inspector.

### ***The DNA report***

31. The DNA report was submitted on 31<sup>st</sup> October 2014 and *inter alia* it confirmed that the DNA profile from the source of exhibits A4a (kurta of the

deceased) and A4e (handkerchief of the deceased) was similar to the DNA profile from the source exhibits A8 (blood stained piece of carpet), A9 (blood stained gauze cloth piece lifted from car) and A9 (blood stained gauze cloth lifted from scene of crime).

32. On 5<sup>th</sup> March 2015 a further supplementary charge sheet was filed in the Court of learned MM. It was further noted that after the receipt of the above report of the DNA analysis, the three accused persons were called to join the investigation on 8<sup>th</sup> December 2014, which they did. They were then arrested and were in judicial custody at the time of filing of the said supplementary charge sheet. It was accordingly stated that sufficient evidence had come against the accused on record to show their involvement in the case. Charges were thereafter framed against the accused by the trial Court on 22<sup>nd</sup> July 2015.

### ***The trial Court's judgment***

33. During the trial, in order to prove that the deceased was last seen in the company of the three accused, the prosecution examined PW-2, PW-4, PW-5 and PW-6. Of the above witnesses, the trial Court declined to believe the evidence of PWs 2 and 4; and PW6 turned hostile. That left only PW-5, who was held by the trial Court to be reliable.

34. It must be noted at this stage that Islamuddin died at the stage of investigation itself and therefore, there was no occasion for his version to be tested in the Court. PW-5 testified that he saw that the “deceased was made to sit in the said Wagon R car” by the three accused. It is further held by the

trial Court that the non-recording of the statements of Islamuddin and PW-5 by the IO under Section 161 Cr P C and simply mentioning their examination in case diaries “will not result in automatic discarding of last seen witness i.e. PW5.

35. The trial Court then discussed the collecting of the portion of the carpet and the rear seat of the car which purportedly contained blood stains and sending it to the FSL. Since it was confirmed that the blood of the deceased was found on these samples, it was concluded that “murder of Danish was committed in a WagonR Car due to which blood fell in it.” It was concluded therefore that the testimony of PW-5 is corroborated by scientific evidence.

36. The trial Court accepted the plea of the counsel for the defence that it was not clear who had fixed the seal on the two parcels A8 and A9 which were sent to the FSL for testing. This was attributed to the negligence of the IOs. The trial Court observed “it is very clear that extremely poor kind of investigation was being conducted in a very casual manner by the investigating officers.” However, at the same time it was held that the IOs were neither overzealous nor had any motive to falsely implicate the accused persons. Since the seals on the other parcels remained intact, it was concluded that it was not possible for the IO to plant blood of the deceased in the carpet and back seat of the car.

37. The DNA report was held to be reliable and it was held that the scientific evidence “has proved beyond doubt that the blood of the deceased was found in the Wagon R of Kasif”. The discrepancy in mentioning of the car

No. DL 4CL 0332 instead of DL 6CC 0332 in the FSL report was held to be “minor clerical mistake .... which is required to be ignored.” Although the Wagon R car was in the name of the father of Kasif, PW-5 had proved that on the day of the incident, the three accused had taken away the deceased in that car and it was Kasif who had produced it before the police for seizure. According to the trial Court, “the blood found on the exhibits picked up from the car clinches the issue.”

38. In response to the submission of the defence counsel that the CDRs showed calls being made by the deceased even as late as 1.18 am, who was present at Hathi Khana and, therefore, was not in the company of the accused, the trial Court disagreed stating that nothing had emerged from the CDRs in favour of the accused persons or against them. In response to the plea of the defence about the parking register showing the Wagon R to be parked at the trans Yamuna Laxmi Nagar between 12:30 a.m. on 30<sup>th</sup> July 2010 which is about 15 kms. away from the place and which made it improbable for blood to be found in the said Wagon R car at the time of killing of the deceased, the trial Court simply stated that the way the IO collected the photocopy of the parking register of the person running the parking on that night, the IO's complicity with the accused could not be ruled out. The trial Court did not wish to comment on the submissions but observed that “what is the level of investigation is writ large.” The photocopy of the register was held to be inadmissible in evidence.

39. After observing the incompetence and negligence of the IOs, the trial Court held that the DNA test having proved beyond reasonable doubt the

version of PW-5 that the deceased was taken by the accused persons in the WagonR and further that benefit of doubt ought to be given to A-1 and A-3. A-2, the present Appellant, was not given the benefit of doubt because it was him who had taken the deceased in his car and it was his duty to explain how blood stains were found in his car even after a few months. The present Appellant was accordingly convicted for the offence under Section 302 IPC and sentenced in the manner indicated.

40. This Court has heard the submissions of Mr. Kanhaiya Singhal, the learned counsel for the Appellant and Mr. Hirein Sharma, the learned APP for the State.

#### ***Analysis of the DNA Report***

41. The central plank of the case of the prosecution is that the blood stains found on the rear seat and the carpet of the car of the Appellant (which belonged to his father) matched the DNA profile of the blood of the deceased thereby fixing his culpability.

42. In fact, it is the aforementioned DNA profile report that has persuaded the trial Court to convict the present Appellant despite disbelieving the prosecution case qua his two co-accused, that is, A-1 and A-3 who were also seen last in the company of the deceased according to PW-5 who was held to be reliable and believed by the trial Court.

43. In the first place, it requires to be noticed that in the present case, despite investigation by several IOs, nothing incriminating could be found against the three accused for more than three years. The incident occurred on 30<sup>th</sup>

July, 2010 whereas the accused persons were arrested in December, 2014. The vehicle in question, i.e., the Wagon R belonging to the father of the Appellant, was taken into possession by the police on 17<sup>th</sup> September 2010 after it was produced by the Appellant himself. This was more than a month and a half after the incident. It must be observed that if indeed the Appellant was guilty of the crime of murder, it is highly unlikely that he would allow the blood stains in the car to remain without any attempt to remove them for this length of time or that he would produce the car with these bloodstains before the police, of his own accord.

44. When it was first deposited and seized under memo Ex.PW9/A, the police did not notice any blood marks in the vehicle. The car keys were not deposited in the *malkhana*. The car itself was simply kept in the open in the police station. This is evident from the deposition of Sub Inspector Ram Tirath (PW-9) who stated as under in response to the following question:

“Q- When you seized the vehicle, whether the door of it was locked or open?

Ans. The vehicle should have been locked but I am not sure. I took the key of vehicle from malkhana. It is wrong to suggest that the key of the car was never seized nor it was deposited In malkhana. It is wrong to suggest that I had not taken the car to FSL as keys of the car has not been seized and was not available in malkhana. The car was not sealed at the time of its seizure, It is wrong to suggest that car was not seized in my presence. No public witness was called at the time of seizure of car. I cannot tell when accused Kasif produced the car in PS, he was accompanied by other persons. I do not remember whether engine number and chassis number were seen and checked by IO at the time of its seizure. It is wrong to suggest that I do not remember the aforesaid fact as the car was not seized in my

presence. I donot know whether IO had inspected the said car from inside or not. It is wrong to suggest that the car was not seized in my presence that is why, I do not know about the fact. It is correct that at the time of seizure of the car, no blood was visible to me because I had not inspected the vehicle from inside.”

45. For about 11 days thereafter, the vehicle simply continued to remain in the open. It was then driven to the FSL. Here again, it is not clear who took it to the FSL. According to PW-9:

“On 28.09.2010, on the direction of the IO Inspector Rakesh Kumar, I took the aforesaid car from the malkhana of PS Civil Lines to FSL Rohini alongwith HC Naresh vide request letter of the IO. FSL officials inspected the said car and handed over two sealed parcels to me. I returned to the PS Civil Lines with the said car and handed over the said sealed parcels to the IO. IO seized the said both parcels vide seizure memo Ex.PW9/B bearing my signature at point A. I deposited the said car in the malkhana.”

46. However, according to ASI Naresh Kumar (PW-11):

“On 28.09.2010, I was posted at PS Civil Lines as Head Constable. On that day, at the instructions of IO/Inspector Rakesh Kumar, I had taken out one Wagon-R car bearing registration no. DL 6CL 0332 from malkhana of PS Civil Lines and went to FSL Rohini for the inspection of the abovesaid car. I contacted the relevant department at FSL Rohini for the inspection of the car and the same was inspected by FSL Rohini. Some samples were lifted from the car and they have prepared the pullandas of the same and sealed with the seal of FSL Rohini and handed over the same to me. I came back to PS Civil Lines with the abovesaid car and handed over the pullandas to the IO and car was again deposited in malkhana.”

47. What is strange is that in his cross-examination PW-11 admitted as under:

“I did not make any DD entry when I left the PS alongwith above mentioned vehicle to FSL. Vol., DD entry may have been made by the IO. I do not remember whether I put my signatures in malkhana register at the time of handing over the car or depositing the same in malkhana after examination. I do not remember if I had put my signature in FSL

.....

On 28.09.2010, the keys of the car was handed over to me by the IO. The said keys were not given to me in sealed condition. When the car was handed over to me, it was parked in open space within the boundary of police station, it is correct that when I received the car, it was given to me by unlocking it by the IO. I do not remember whether the locks of the car were sealed or not. I am unable to show any document to prove that vehicle was handed over to me and was deposited in FSL by me.”

48. While it is unclear whether it was PW-9 or PW-11 who took the car to the FSL, what is clear is that:

(i) The car which was deposited with the police by the Appellant himself on 17<sup>th</sup> September, 2010 remained in the police station till 28<sup>th</sup> September, 2010 without actually being kept in a sealed condition.

(ii) The keys of the car were not sealed. In other words, it was open to anyone to simply open the car during this period. It was under the control of the IO but he took no effort to make sure that the seized car was kept in a tamper proof condition.

(iii) The integrity of the case property, namely, the car stood compromised when on 28<sup>th</sup> September 2010 the keys were given either to PW9 or PW11 or both to open the car with the key, sit in it and drive it to the FSL.

49. It is not understood why the crime team was not immediately called to inspect the car at the PS soon after the Appellant had deposited it at the PS. This was the only way of ensuring that the valuable evidence in the car was not tampered with. If indeed the Appellant had used the car on the night of the incident and the deceased was seen seated in the car with the accused, as claimed by PW-5, the finger prints/chance prints in the car would have constituted extremely valuable pieces of evidence.

***Integrity of samples not maintained***

50. The other serious problem that has emerged is that the samples collected from the car by the FSL were also compromised. In the first place, the Scientific Officer in the FSL who purportedly lifted the blood stained samples, namely, from the carpet and the seat was himself/herself not examined for reasons best known to the prosecution. Secondly, when they were first lifted, they were put into parcels with the seal of 'FSL' and handed over to the concerned policeman who then gave it to the IO. This is clear from the deposition of PW-11 who stated as under:-

“The inspection in FSL had taken place in my presence. All the seals were put by FSL on the pullandas in my presence and seal was of FSL. It is incorrect to suggest that no pullanda was lifted from car no. DL 6CL 0332 on 28.09.2010 in my presence by officials of FSL and no pullanda was prepared after lifting the exhibits from abovementioned car by the officials of FSL.”

51. It was sought to be suggested by the learned APP that the mention of 'FSL' was with reference to the serial number and not the seal, which was that of 'RT'. However, the evidence of ASI Ram Kumar (PW-22), who was the MHC (M) and who proved the relevant entries in the *malkhana* register

(Ex.PW-22/A), shows that when he sent the articles deposited with him to the FSL, Rohini through Constable Surrender on 21<sup>st</sup> October 2010, they were described as under:-

“9. One pared sealed with the seal of RT containing blood stained piece of carpet lifted from back seat of car no.DL 4CL 0332.

10. One parcel duly sealed with the seal of RT containing blood stained piece lifted from the back side of left seat of the car no.DL 4CL 0332.”

52. How the seal of ‘FSL’ got changed to that of ‘RT’ has not been explained by the prosecution. The relevant extract of the *malkhana* register (Ex.PW-22) showed that on 28<sup>th</sup> September, 2010 Inspector Rakesh Kumar had deposited two sealed envelopes as under:

“On one envelope, "FSL no.2010/SEC-100 & particulars of this case and exhibit -1 blood stained piece of carpet from back of car" was mentioned.

On another sealed envelope which was of khaki colour, "FSL No.2010/SEC-100/, particulars of present case c and Exhibit - 2 (blood stained piece from near the backside of left seat of the car near window””

53. The above discrepancies should have been explained and clarified by the prosecution but that was not done.

54. Further, it was not clear that the samples taken by the FSL were from the car that was produced by the Appellant as there was no reference to any engine number or chassis number of the car. Also, it was not clear what happened to the carpet itself as only a small portion containing the blood

stains was sent to the FSL for testing. If the larger portion would have been preserved, it would have been possible to compare whether the portions that had been taken away did constitute part of the larger portion.

55. The inescapable conclusion is that there were serious lapses committed by the IO in first lifting the blood stained samples from the car and then in preserving those samples. The integrity of the samples clearly was compromised making any report of the analysis of such samples to be unreliable. The question is not whether the police would deliberately plant any blood samples in the car. The question is whether when the car was kept in an open condition with the keys of the car not being sealed and being available with the IO, and also with serious lapses having been committed in the collection of the samples and the preservation of the samples, the report of analysis of such samples could be relied upon. The answer has to be, in the circumstances, in the negative. In this context, the Court would like to refer to the decision in *Manpreet Singh v. State* 2004 72 DRJ 28 where again blood stains were sought to be lifted from the car which was lying in the Police Station unlocked and unprotected and this Court held the said evidence to be unreliable. As rightly observed by the trial Court in the present case, the IOs have approached the task of unearthing the truth in the most casual manner.

#### ***Evidence of PW-5***

56. The manner in which the trial Court has proceeded to analyse the evidence of PW-5 for concluding that the deceased was last seen in the company of the Appellant and the two co-accused raises more questions

than it does answers. In the first place PW-5, for about six days after the death of the deceased, did not come forward to tell the IO that he had seen the deceased last in the company of the three accused. Given that there is a previous history of enmity between the families of PW-5 and of the accused, it is unimaginable that PW-5 would be a silent bystander when the deceased was 'made to sit' in the Wagon R by the accused without even raising any protest.

57. Stranger still is the fact that he would not disclose this information to the police soon after the discovery of the dead body of the deceased. Secondly, it is not clear whether it was Islamuddin who noticed the deceased in the company of the accused and disclosed this fact subsequently to PW-5 or as claimed by PW-5, it was he himself who first saw the deceased in the company of the accused and then disclosed this fact to Islamuddin. The prosecution has made no attempt to resolve this glaring contradiction.

58. A further aspect of the matter is that the theory of 'last seen' itself loses significance if one goes by the CDRs collected for the mobile phones used by the deceased which according to the prosecution showed his presence to be nowhere near the place where he was ultimately murdered at the relevant time. Further, it showed that he was in contact with other persons, namely, the sister of Ishrar at around 1.18 am, who was not examined. If the person who the deceased had been speaking to at that late hour had been examined, it should have been possible to ascertain where the deceased was located at that hour. Clearly, certain events took place between the time the accused was last seen with the deceased which was around 11 to 11.30 pm and 1.18

am when the last entry is found in the CDR of the mobile phone used by the deceased.

59. There were as many as 44 criminal cases of theft and other crimes against PW-5 and numerous criminal cases filed by the families of the deceased and families of the accused against each other. All this has been discussed in the charge sheet, the supplementary charge sheet and the status reports. This previous enmity made it unsafe for reliance to be placed entirely on the evidence of PW-5 to prove the circumstance of 'last seen' particularly when one of the other prosecution witnesses who spoke about the same 'last seen' namely PW-6 turned hostile and with PWs 2 & 4 being disbelieved by the trial Court itself.

***All links in the chain of circumstances not proved***

60. In any event, in the case of circumstantial evidence, it is not sufficient for the prosecution to prove just one link in the entire chain of circumstances and expect to prove the guilt of the accused. It is trite that each link constituting the complete chain of circumstances is required to be proved beyond reasonable doubt and the complete chain must unerringly point to the guilt of the convicted accused and no one else.

61. In the context of the links of the chain of circumstances, none of the witnesses has thrown light on what the motive for the commission of crime was. This certainly formed an important link particularly when other links in the chain of circumstances were not satisfactorily proved. In ***Arjun Marik v. State (1994) Supp 2 SCC 372*** the Supreme Court observed as under:

"... mere absence of proof of motive for commission of a crime cannot be a ground to presume the innocence of an accused if the involvement of the accused is otherwise established. But it has to be remembered that in incidents in which the only evidence available is circumstantial evidence then in that event the motive does assume importance if it is established from the evidence on record that the accused had a strong motive and also an opportunity to commit the crime and the established circumstances along with the explanation of the accused, if any, exclude the reasonable possibility of anyone else being the perpetrator of the crime then the chain of evidence may be considered to show that within all human probability the crime must have been committed by the accused."

62. The Court is, therefore, not able to concur with conclusions drawn by the trial Court regarding the guilt of the Appellant. After noticing that the 'level of investigation' in the present murder case, was at 'such a low level' and 'ten I.O.s had been changed', the trial Court still proceeded to convict the Appellant on such weak evidence.

63. The manner in which the trial Court has dealt with the evidence concerning the parking register is also most unsatisfactory. The parking register showed that the very same Wagon R car stood parked in the Trans Yamuna Laxmi Nagar Area from 12.30 am to 10.15 am on 30<sup>th</sup> July, 2010. The versions of the prosecution witnesses about the deceased being seen with the accused in the car either from 12.30 am or 1.00 am or even earlier at 11.45 pm was simply unbelievable since the place at which it was parked from 12 midnight onwards was 15 kms away.

### ***Conclusion***

64. For all of the aforementioned reasons, this Court is of the view that the

Appellant is entitled to the benefit of doubt with the prosecution having failed to prove his guilt for the offence under Section 302 IPC beyond all reasonable doubt. The impugned judgment of the trial Court and the order on sentence are hereby set aside. The Appellant is acquitted of the offence under Section 302 IPC and is directed to be set at liberty forthwith unless wanted in some other case.

65. The appeal is allowed and the pending application is disposed of in the above terms. The Appellant will fulfil the requirement of Section 437A Cr PC to the satisfaction of the trial Court at the earliest. The trial Court record be returned forthwith together with a certified copy of this judgment.

**S. MURALIDHAR, J.**

**VINOD GOEL, J.**

**JULY 10, 2018**  
*'anb'*