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

Judgment reserved on: 24th February, 2018
Judgment pronounced on: 26th April, 2018

+ CRL.A. 1277/2014

MOHD. YASIR Appellant

Through : Mr.Sarin Naved, Advocate.

versus

STATE Respondent

Through : Ms.Aasha Tiwari, APP.
SI Ramesh Kumar, PS Chandni Mahal.

+ CRL.A. 320/2015

STATE (GOVT OF NCT OF DELHI) Appellant

Through : Ms.Aasha Tiwari, APP.
SI Ramesh Kumar, PS Chandni Mahal.

versus

MOHD. FAIZAN & ANR Respondents

Through : Mr.Javed Ahmed, Advocate for R-1.
Mr.Sarin Naved, Advocate for R-2.

CORAM:-

HON'BLE MR JUSTICE S.P.GARG

HON'BLE MR JUSTICE C. HARI SHANKAR

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(JUDGMENT)

1. On 23rd November, 2012, charges were framed, against Mohd. Yasir – the appellant in Crl Appeal 1277/2014 – and Mohd. Faizan – the respondent in Crl Appeal 320/2015 – under Section 302/34 of the Indian Penal Code, 1860 (IPC). Additionally,

charges were also framed, against, Mohd. Yasir under Section 392/397 IPC, and under Section 411 IPC. The trial, that ensued, resulted in the conviction, of Mohd. Yasir under Section 302 and Section 392 read with section 397 of the IPC, and in the acquittal, of Mohd. Faizan, of the charges against him. Thus ultimately, Mohd. Yasir is in appeal, before us, against his conviction, and the State is in appeal, before us, against the acquittal of Mohd. Faizan.

The case of the prosecution

2. The case, put up by the prosecution, was as under:

(i) Ikhtikar Ahmed (PW-8) was at his shop, located at 1969-70, Chandni Mahal, Delhi, at about 3:30 PM on 14th June, 2012, when his nephew Mohd. Zuber approached him, accompanied by his friend Mohd. Yasir, requesting for a loan of ₹ 5.5 lakhs, to buy mobile phones. Mohd. Zuber was engaged in the sale and purchase of mobile phones, and had entered into a deal with a dealer, whereunder he had to pay the dealer ₹ 10.5 lakhs. Out of the said amount, he had already paid ₹ 5 lakhs, and had to pay the balance ₹ 5.5 lakhs, failing which the advance amount of ₹ 5 lakhs, paid by him, would be forfeited. Ikhtikar Ahmed acceded to the request, and gave, to Mohd. Zuber, the sum of ₹ 5.5 lakhs, as asked by him, comprising 10 packets of currency notes of rupees 100/-each and 8 packets of currency notes of ₹ 500/-

each. Carrying the said cash, Mohd. Zuber and Mohd. Yasir left the shop of Ikhtikar Ahmed at about 5 PM. Thereafter, Ikhtikar Ahmed communicated, several times, with his nephew Mohd. Zuber, on his mobile No. 9268634480, and was assured that, after executing the deal, Mohd. Zuber would return home. However, at 11:30 PM, the mobile phone of Mohd. Zuber was 'switched off'. On his nephew failing to return home, Ikhtikar Ahmed began to suspect that Mohd. Yasir had kidnapped him, out of greed for the money that he was carrying.

(ii) In the circumstances, Ikhtikar Ahmed approached the Police Post at Turkman Gate, at about 9:50 AM on 15th June, 2012, and recorded his complaint (Ex. PW-8/A), to the above effect, to SI Mohit Yadav (PW-32).

(iii) In the circumstances, PW-32 SI Mohit Yadav endorsed the statement (Ex. PW-32/A) of Ikhtikar Ahmed, and had an FIR registered, for offence punishable under Section 365 of the IPC.

(iv) Thereafter, PW-32 SI Mohit Yadav interrogated Mumtaz Begum (PW-4), the mother of Mohd. Zuber, who revealed that Mohd. Yasir had visited her house between 7 PM and 8 PM on 14th June, 2012, whereafter Mohd. Zuber and Mohd. Yasir left the house, together, carrying the amount of ₹ 5.5 lakhs.

(v) Accordingly, PW-32 SI Mohit Yadav visited the house of Mohd. Yasir, but could not find him there.

(vi) Secret information was received, to the effect that Mohd. Yasir, along with a friend, was present near Delite Cinema. Accordingly, a raiding party, comprising of HC Raj Kumar, Ikhtikar Ahmed, Ansar Ahmed (PW-9) and Nasir, was constituted by PW-32 SI Mohit Yadav, which left for Delite Cinema, where the secret informer pointed towards Mohd. Yasir, who was standing there with his friend Mohd. Faizan. Mohd. Yasir and Mohd. Faizan were, thereupon, apprehended and brought to the Police Post, Turkman Gate.

(vii) During their interrogation, it was revealed that Mohd. Yasir and Mohd. Faizan had murdered Mohd. Zuber, and that the dead body of Mohd. Zuber was lying in a Santro car, with registration No. DL-4C-J-4773, which had been borrowed from Mohd. Maviya (PW-7), and that the amount of ₹ 5.5 lakhs, being carried by Mohd. Zuber had also been looted by them. The interrogation further revealed that, out of the said amount, ₹ 75,000/- was given, by Mohd. Yasir to Mohd. Wasim (PW-5), from whom he had taken a loan of ₹ 50,000/-, and asked Mohd. Wasim to pay ₹ 25,000/- to Mohd. Abdul Basit (PW-6), from whom he had taken a loan of ₹ 25,000/-. Mohd. Yasir and Mohd. Faizan disclosed that they could point out the car and the dead body,

whereupon the Police Party, accompanied by PW-8 Ikhtikar Ahmed, PW-9 Ansar Ahmed and Mohd. Nasir, proceeded to Gandhi Market, Mata Sundari Road, where Mohd. Yasir and Mohd. Faizan pointed towards the Santro car DL-4C-J-4773, which was standing there. They also pointed towards the dead body lying in the said car. Pointing Out Memos were prepared accordingly. The crime team was summoned, which inspected and photographed the car. The dead body of Mohd. Zuber was found, in the car, between the rear and front seats, covered with a polythene. A surgical blade was also recovered which, as per the disclosure statement of Mohd. Yasir and Mohd. Faizan, was the weapon of offence, used to kill Mohd. Zuber. Fingerprints were lifted from the car, and exhibits were seized. The key of the car was also recovered, on a personal cursory search of Mohd. Yasir. The dead body of Mohd. Zuber was sent to the mortuary of the Maulana Azad Medical College (MAMC), for preservation.

(viii) Mohd. Yasir and Mohd. Faizan were, thereupon, arrested. The personal search of Mohd. Yasir resulted in the recovery of one Nokia make mobile phone with Vodafone connection No. 9899367446 and ₹ 1000/-, whereas the personal search of Mohd. Faizan resulted in recovery of one Nokia make mobile phone with connection No. 9718321626 and cash of ₹ 600/-.

(ix) Thereafter, the disclosure statements of Mohd.Yasir and Mohd. Faizan were recorded, wherein they disclosed that they had concealed their bloodstained clothes and the amount stolen from Mohd. Zuber in their respective houses. Additionally, Mohd. Yasir disclosed that he had hidden the mobile phone of the deceased Mohd. Zuber at his house. The accused Mohd. Yasir and Mohd. Faizan offered to have the said items recovered from their respective houses.

(x) Mohd. Yasir, thereafter, led the Police Party to his house at No. 3206, Gali Pahari Wali, Fatak Teliyan, Delhi, wherefrom he produced bloodstained blue jeans, a brown check shirt and bloodstained black and white Reebok shoes, from the *almirah* in the courtyard. These were seized and sealed in separate *pullandas*. Mohd. Yasir also produced cash of ₹ 2.23 lakhs from the locker of the said *almirah*, which was also seized and sealed.

(xi) Mohd. Faizan led the police party to his house at 1132, Bazaar Matia Mahal, Jama Masjid, Delhi wherefrom the *almirah*, he produced his bloodstained clothes, comprising one black and grey and one blue and white shirt. These clothes were also sealed. Mohd. Faizan also produced a black Samsung make mobile phone, stating that it belonged to the deceased Mohd. Zuber. The said phone was also seized and sealed. Mohd. Faizan further produced cash

of ₹ 245,900/- from the bed, which was also seized and sealed.

(xii) The Police Party returned, thereafter, to the Police Station, and further investigation was handed over to Insp. Satish Malik (PW-33).

(xiii) The I/O Insp. Satish Malik (PW-33) proceeded, thereafter, to the mortuary of MAMC where, after conducting inquest, the dead body of Mohd. Zuber was sent for post-mortem whereafter, the dead body was handed over to his relatives. The exhibits, including viscera, blood sample, etc., were seized by the I/O.

(xiv) The statements of PW-5 Mohd. Wasim and PW-6 Mohd. Abdul Basit were recorded, during investigation, and the amounts of ₹ 50,000/- and ₹ 25,000/-, paid to them by Mohd. Yasir, seized. It was revealed, therefrom, that Mohd. Yasir had actually paid ₹ 75,000/- to PW-5 Mohd. Wasim, at about 2 AM on 15th June, 2012, requesting him to pay ₹ 25,000/-, out of the said amount, to Mohd. Abul Basit (PW-6), against the loan, taken by Mohd. Yasir from him. Accordingly, Mohd. Wasim (PW-5) handed over ₹ 25,000/- to Mohd. Abul Basit (PW-6) at 2:30 AM.

3. On 17th June, 2012, Mohd. Yasir and Mohd. Faizan were produced before the doctor at the Lok Nayak Jayprakash Narayan

(LNJP) Hospital, where the blood sample was taken. They were, thereafter, sent to judicial custody.

4. Forensic inspection of the Santro car, in which the dead body of Mohd. Zuber had been found, was conducted on 18th June, 2012. Some strands of hair, found on the floor of the car, were seized and sealed.

5. All seized exhibits were sent for analysis. Certain chance fingerprints, which were also found, were sent to the Finger Print Bureau for the purpose of comparison. Copies of Call Detail Reports (CDRs), and Customer Application Forms, of the mobile phones belonging to Mohd. Yasir and Mohd. Faizan, were obtained, collected and analysed.

6. Challan was, thereafter, filed, against Mohd.Yasir and Mohd. Faizan, for committing offences punishable under Sections 364/365/392/397/302/411/34 IPC.

7. After complying with Section 207 of the Code of Criminal Procedure (Cr.P.C.), the case was committed to the Court of Sessions on 9th October, 2012, where it was registered as Sessions Case No 69/2012.

8. Consequent to receipt of report from the Finger Print Bureau, supplementary challan was filed before the court of the learned MM, which, after compliance with Section 207 of the

Cr.P.C., was committed to the Court of Sessions on 30th April, 2013, and registered as Sessions Case 94/2013, which was clubbed with the main Sessions Case 69/2012.

9. On 23rd November, 2012, charges were framed against Mohd. Yasir and Mohd. Faizan under Sections 302/34 IPC, with separate charge against Mohd. Yasir under Section 392/307 and Section 411 IPC, and against Mohd. Faizan under Section 411 IPC. Both the accused pleaded not guilty and claimed trial.

The Evidence

10. In the backdrop of the above, it would be appropriate to examine the evidence available in the case.

11. The prosecution led the evidence of 34 prosecution witnesses (PW-1 to PW-34), whereas Mohd. Yasir and Mohd. Faizan led the evidence of the four defence witnesses (DW-1 to DW-4).

12. It would be in the fitness of things to refer to the relevant portions of the testimonies of these witnesses, under various heads, *seriatim*.

A. Events prior to the incident

A.1 Borrowing, by Mohd. Yasir, of ₹ 50,000/-from Mohd. Wasim (PW-5) and ₹ 25,000/-from Abdul Basit (PW-6):

13. PW-5 Mohd. Wasim, a relative of Mohd. Yasir, deposed, in his examination-in-chief on 15th February, 2013, that, about 2 to 2 ½ months prior to the murder of Mohd. Zuber, Mohd. Yasir had borrowed ₹ 50,000/- from him and that, on 15th June, 2012, between 1.30 and 2.00 AM, Mohd. Yasir called him to his house, where he gave him ₹ 75,000/- in cash, stating that ₹ 50,000/-, out of the said amount, was towards repayment of the loan taken from him, and requested him to pay the balance ₹ 25,000/- to Abdul Basit (PW-6) from whom he had borrowed the said amount. He further stated that, as directed by Mohd. Yasir, he paid ₹ 25,000/- to Abdul Basit (PW-6), the very same night. He further stated that on the next day i.e. 16th June, 2012, on being summoned, Abdul Basit and he went to the Police Station, where they were informed of the murder of Mohd. Zuber, whereupon, he handed over, to the police, the cash amount of ₹ 50,000/- given to him by Mohd. Yasir, which was seized *vide* Seizure Memo Ex. PW-5/A. He identified the said cash, which was desealed and shown to him in Court.

14. Ex. PW-5/A, which was signed by Insp. Satish Malik (PW-33), as well as by Const. Sandeep (PW-28) and Const. Mukesh (who was not made a witness) notes that, on being summoned, PW-5 Mohd. Wasim had come to the Police Station, and handed over ₹ 50,000/-to Insp. Satish Malik (PW-33), stating that the said

amount was part of ₹ 75,000/-which had been given to him by Mohd. Yasir at about 2.00 AM on 15th June, 2012, purportedly representing the amounts borrowed by him, from Mohd. Wasim (PW-5) and Abdul Basit (PW-6). The memo notes the statement of Mohd. Wasim that, out of the said amount of ₹ 75,000/-he had handed over ₹ 25,000/-to Abdul Basit (PW-6).

15. PW-6 Abdul Basit identified Mohd. Yasir in Court, and supported the above version by acknowledging that about 2 months prior to the murder of Mohd. Zuber, Mohd. Yasir had borrowed ₹ 25,000/-from him and that, at about 2.30 AM on 15th June, 2012, Mohd. Wasim had come to his house and given him ₹ 25,000/-, stating that the said amount had been given to him by Mohd. Yasir as representing the loan taken by him from Abdul Basit. He further deposed that, on the next date, i.e. 16th June, 2012, Mohd. Wasim, (PW-5) and he, ie. Abdul Basit, went to the Police station, where they were informed about the murder of Mohd. Zuber, whereupon he, too, handed over to the police, the cash amount of ₹ 25,000/-given to him by Mohd. Wasim, which was duly seized *vide* Seizure Memo Ex.PW-6/A, which was signed by him. As in the case of Mohd. Wasim (PW-5), he, i.e. Abdul Basit also identified, in the Court, the said cash amount of ₹ 25,000/- when shown to him.

16. Ex. PW-6/A, i.e. the Seizure Memo relating to ₹ 25,000/- handed over to the police by Abdul Basit (PW-6) was, for all intents and purposes, identical to Ex. PW-5/A and it does not,

therefore, require to be referred to in detail. Suffice it to state that Ex. PW-6/A was also signed by Insp. Satish Malik (PW-33) and witnessed by Const. Sandeep (PW-28) and Const. Mukesh, as well as by Abdul Basit (PW-6).

17. Insp. Satish Malik (PW-33), in his examination-in-chief on 15th March, 2014, also vouched for the above facts, and went on to state that the parcels containing the amount of ₹ 50,000/-, given by PW-5 Mohd. Wasim and ₹ 25,000/-given by PW-6 Abdul Basit, were handed over, by him, to the MHC(M). He was not cross-examined on this aspect. The fact of the said deposit, with the MHC (M) [PW-34 HC Kishan Chand], by Insp Satish Malik, also stands acknowledged by the evidence of PW-34 itself, in his examination-in-chief on 29th March, 2014.

18. The fact of Mohd. Yasir having borrowed ₹ 50,000/-from Mohd. Wasim and ₹ 25,000/-from Abdul Basit, and of his having returned the said amount, totalling ₹ 75,000/- to Mohd. Wasim on 14th June, 2012, thereby stands established.

A.2 Borrowing of the car by Mohd. Yasir:

19. PW-7 Mohd. Maviya, from whom Mohd. Yasir had allegedly borrowed the Santro car, wherein the dead body of Mohd. Zuber was found, deposed, in his examination-in-chief, that, about three to four months prior to the murder, he had purchased the said Santro car registered DL-4C-J-4773 from

Mr. A.N. Sharma (PW-10) for ₹ 58,000/-. He stated that, on 14th June, 2012, from about 6.00 PM, Mohd. Yasir had “made calls” to his mobile phone 9210099689, requesting him for permission to borrow his car and had met him near Faiz Ilahi Masjid at about 9.30 PM; accompanied by Mohd. Zuber, reiterating the request for permission to borrow his car for about 1 to 1 ½ hours, which he allowed. He identified the car from the photographs ex. PW-1/1 to PW-1/21, which were shown to him in court. He stated that, after having left the premises in his car, he had made several attempts to call Mohd. Yasir but did not receive any response. Ultimately, at about 6.00 AM on the next day 15th June, 2012, he stated that he visited the house of Mohd. Yasir, but found him absent, though Mohd. Zuber’s mother and his two uncles were there. He stated that he met Yasir, next, at about 4-4.30 PM on the same day i.e. 15th June, 2012, at the Police Post, where he remained till about 8.00 PM, and that, during the said period, he was interrogated by Insp. Satish Malik, (PW-33) for about 30 minutes.

20. The CDRs relating to Mobile No. 9899367446 (Ex. PW-30/A), which was used by Mohd. Yasir, and which are supported by the requisite certificate under Section 65-B of the Evidence Act (Ex. PW-30/B) stand proved by PW-30 Deepak, the Nodal Officer of Vodafone Mobile Service Ltd, *vide* his examination-in-chief on 15th January, 2014, which was not subjected to cross examination. A glance at the said CDRs reveals that, in fact, calls were made, from No. 9899367446 to No. 9210099689 (i.e. the No. of PW-7 Mohd. Maviya) at 18:07:07, 19:19:06, 19:46:34, 20:01:42,

20:18:32, 20:19:35, 20:50:47, 20:54:12, 21:06:33 and 21:19:40 hours on 14th June, 2012, whereafter the calls ceased. This vouchsafes not only the statement, of PW-7 Mohd. Maviya, that Mohd. Yasir had been calling him, from 6 PM on 14th June, 2012, but that, in fact, Mohd. Yasir was desperate to be allowed to borrow the car.

21. It is important to note, here, that the Customer Application Form (Ex. PW-14/A) and connected documents in the form of the Voter Identity Card, etc., which were provided by Deepak (PW-30) indicate that the No. 9899367446 was issued, not to Mohd. Yasir, but to Mohd. Saddam Hussain (PW-14). However, the fact that he had allowed Mohd. Yasir to use the said No. was admitted, by Mohd. Saddam Hussain, in his statement, dated 25th August, 2012, under Section 164 of the Cr.P.C. (Ex. PW-14/1) though, during examination-in-chief before the learned ASJ, Mohd. Saddam Hussain turned hostile, and sought to deny having ever been issued the No. 9899367446, as well as his statement dated 25th August, 2012 *supra*. The said “hostility” of Mohd. Saddam Hussain does not, however, perturb us, as the CDRs relating to No. 9899367446, seen in juxtaposition with the deposition of PW-7 Mohd. Maviya, are sufficiently clinching, by way of evidence, to prove the usage, by Mohd. Yasir, of the No. 9899367446.

22. The fact that PW-7 Mohd. Maviya was the owner of the Santro car DL-4C-J-4773 stands proved by the deposition, in court, of PW-10 A.N. Sharma read with PW-12 Dina Nath. PW-10 A.N.

Sharma deposed, in his examination-in-chief on 26th August, 2013, that he had purchased the said car, from the Santro company and had, on 27th June, 2010, sold the car to PW-12 Dina Nath. He further submitted that, despite several requests on his part, PW-12 Dina Nath did not transfer the car in his name. PW-12 Dina Nath stated, in his examination-in-chief on 26th August, 2013, that he had sold the said car to PW-7 Mohd. Maviya.

23. The fact that, on 14th June, 2012, Mohd. Yasir had borrowed, from Mohd. Maviya, the Santro car, in which the dead body of Mohd. Zuber was later found, and that Mohd. Yasir was desperate to get possession of the car from Mohd. Maviya, thereby, stand proved.

B. Lending of money by PW-8 Ikhtikar Ahmed to Mohd. Zuber and Mohd. Yasir, finding of dead body of Mohd. Zuber next morning, apprehension and interrogation of Mohd. Yasir and Mohd. Faizan and recoveries effected from them

24. PW-8 Ikhtikar Ahmad, the uncle of Mohd. Zuber deposed, in his examination-in-chief on 18th February, 2013, that, on 14th June, 2012, at about 3.30 PM, Mohd. Zuber had come to his shop accompanied by Mohd. Yasir, requesting him to advance a loan of ₹ 5.5 lakhs, so that he could purchase mobiles, stating that he had settled a deal with a dealer of mobiles for ₹ 10.5 lakhs, out of which advance ₹ 5 lakhs had already been paid and that, in case he defaulted in paying balance ₹ 5.5 lakhs, the earlier paid amount of ₹ 5 lakhs would be forfeited. He, thereupon, advanced the

requested loan of ₹ 5.5 lakhs to Mohd. Zuber, informing his wife (who was not made a witness) of the said fact. Mohd. Zuber and Mohd. Yasir, thereupon left with the said amount, stating that they would return within 2-3 hours. However, he deposed that, on their failing to do so, he called Mohd. Zuber, on his mobile number, 9268634480, at about 11.00 PM, and was informed that the deal had not yet been executed, and that Mohd. Zuber would return after the goods were delivered to him. He tried the mobile No. of Mohd. Zuber an hour later, at 12 midnight, but found the No. to be switched off. Thereafter, he made efforts to search for Mohd. Zuber, but without success. He further acknowledged that he did not make any inquiry at the house of Mohd. Yasir, though he knew him very well, being of the same *biradari* (caste).

25. PW-8 Ikhtikar Ahmed further deposed that, on finding it impossible to effect any communication with Mohd. Zuber, he, on the next day i.e. 15th June, 2012, lodged a complaint (Ex.PW-8/A) with the police, between 9 AM and 9:30 AM, alleging that he suspected Mohd. Yasir to have kidnapped Mohd. Zuber. Thereafter, at about 2.00 to 2.15 PM, he went to the residence of Mohd. Zuber, where he was met by Mumtaz Begum (PW-4) and Ansar Ahmed (PW-9) (the uncle of Mohd. Zuber) and Mohd. Nasir (who was not made a witness), and found that the entire neighborhood had gathered there. The police also arrived at the spot, and interrogated Ansar Ahmad (PW-9) and Mohd. Nasir. PW-8 Ikhtikar Ahmed went on to state that, at about 2.45 PM, the police received a call that Mohd. Yasir and his friend were seen

near the Delite Cinema, whereupon they proceeded to the spot, accompanied by Ansar Ahmad (PW-9), and himself. Near the Delite Cinema, they found Mohd. Yasir and Mohd. Faizan (whose identity they did not know at the time). The Police team apprehended Mohd. Yasir and Mohd. Faizan, and brought them to the Police Post, Turkman Gate, where they were interrogated, on which occasion the companion of Mohd. Yasir disclosed his name to be Mohd. Faizan. Mohd. Yasir and Mohd. Faizan both confessed to having killed Mohd. Zuber and concealed his body in a Santro car, and offered to disclose the spot where they could find the car. PW-8 further went on to state that Mohd. Faizan and Mohd. Yasir led the police team, accompanied by Ansar Ahmed (PW-9), Mohd. Nasir and himself, to the Santro car, where the key of the car was produced, by Mohd. Yasir, from his pant pocket, using which the car was opened and photographs were taken by the members of the Mobile Crime Team, who had been called to the spot in the meanwhile. He further deposed that, inside the car, a dead body, wrapped in a polythene, was found, which was discovered to be that of Mohd. Zuber was found, and that the body bore an injury at the neck. Near the body, a blood stained surgical blade was found, which was sealed in a pullanda and sealed *vide* seizure memo Ex. PW-8/E. Apart from the said blade, a portion of the blood stained seat cover, plastic sheet with which the dead body had been covered and car key were also sealed and seized *vide* Seizure Memos exhibited as Ex. PW-8/C, PW-8/D and PW-8/F, all of which bore the signature of PW-8 Ikhtikar Ahmad. Mohd. Yasir and Mohd. Faizan were arrested, thereafter, *vide*

Arrest Memos Ex. PW-8/G and PW-8/H, both of which bore his signature. They were also subjected to personal search *vide* Personal Search Memos Ex. PW-8/I and PW-8/J, which were also signed by him. The dead body of Mohd. Zuber was, thereafter dispatched to the Hospital mortuary.

26. PW-8 Ikhtikar Ahmed went on to depose that, thereafter, the disclosure statements of Mohd. Yasir and Modh. Faizan were recorded, which were exhibited Ex. PW-8/K and Ex. PW-8/L, and which were both signed by him on every page. He confirmed that Mohd. Yasir had stated, in his disclosure statement (Ex.PW-8/A) that he had hidden his share of the amount stolen from the deceased Mohd. Zuber at his house, and that he could get the said amount, as well as his blood stained clothes and shoes, recovered, and that Mohd. Faizan in his disclosure statement (Ex.PW-8/L) stated that he had concealed his share of the amount stolen from the deceased Mohd. Zuber at his house, where he had also kept the mobile phone and the blood stained clothes of Mohd. Zuber. He further confirmed that, subsequently, Mohd. Yasir lead the police team to his house where, from his *almirah*, he retrieved Rs 2.23 lakhs in cash, blood stained jeans, a blood stained check shirt and blood stained Reebok shoes which were all sealed with seal mark 'MY' and seized, *vide* memos Ex. PW-8/M, Ex. PW-8/N both of which were signed by him. Thereafter, Mohd. Faizan led the police team to his house, where from the *Diwan*, he retrieved ₹ 245,900/-which was sealed with a seal marked 'MY', as well as a bloodstained black pant and check shirt as well as one black Samsung make

mobile phone sealed and seized *vide* Seizure Memos Ex. PW-8/P and Ex. PW-8/Q, which were also signed by him. He also acknowledged that the Police team had prepared the Site Plans of the sites of recovery, which were exhibited as Ex. PW-8/R and Ex. PW-8/S, which were also signed by him.

27. The Call Detail Records (CDRs) of Mobile No. 9268634480, operated by Tata Tele services, and belonging to Mohd. Zuber, were provided by Mr. Rajeev Ranjan (PW-29), Nodal Officer, Tata Tele services, and were exhibited as Ex. PW-29/80. Supporting documents, in the form of the Customer Application Form, Voter Identity Card, etc., along with the requisite certificate under Section 65B of the Indian Evidence Act, 1872, were also produced by PW-29, and proved by him in his examination-in-chief on 15th January, 2014. A perusal of the said CDRs reveals that, at 11.06 PM on 14th June, 2012, a call, lasting 24 seconds was, indeed, made, to the Mobile No. of Mohd. Zuber, from the mobile No. of PW-8 Ikhtikar Ahmed, which was 9212326134.

28. Ex. PW-8/A, when read, is found to set out the facts, relating to the request for ₹ 5.5 lakhs, made by Mohd. Zuber to PW-8 Ikhtikar Ahmed, his lending the said amount, the departure of Mohd. Zuber, carrying the said amount, in the company of his friend Mohd. Yasir, and the repeated efforts made, thereafter, by PW-8 Ikhtikar Ahmed, to contact Mohd. Zuber, as stated by him in his deposition and referred to hereinabove. The said statement, of

Ikhtikar Ahmed, has been signed by the Incharge Police Post Turkman Gate, on 15th June, 2012.

29. It is also seen that Ex. PW-8/B to PW-8/S, the particulars of which are as per the above statement of PW-8 Ikhtikar Ahmed, were all signed by SI Mohit Yadav, the Incharge of PP Turkman Gate (PW-32), and witnessed by Ikhtikar Ahmed (PW-8), Ansar Ahmed (PW-9), Mohd. Nasir and HC Raj Kumar.

30. PW-4 Mumtaz Begum, the mother of the deceased Mohd. Zuber deposed, in her examination-in-chief on 15th February, 2013, that Mohd. Zuber used to purchase and sell mobiles. She stated that, on 14th June, 2012, at about 5.45 PM, Mohd. Zuber reached home carrying, cash of Rs. 5.5 lakhs, which he said, he had obtained from his uncle Ikhtikar Ahmed (PW-8), to buy mobiles. She further stated, at about 7.00 – 8.00 PM, Mohd. Yasir (whom she identified in Court) came to their house, whereafter Mohd. Yasir and Mohd. Zuber left, Mohd. Zuber carrying Rs. 5.5 lakhs in cash. She stated that Mohd. Zuber was wearing blue jeans and red shirt with black lines and said that he was going to Karol Bagh for buying mobiles. She identified Mohd. Yasir in court.

31. PW-9 Ansar Ahmed, the uncle of Mohd. Zuber, in his examination-in-chief on 23rd April, 2013 confirmed the fact that, on 15th June, 2012, he had gone to the house of his sister Mumtaz Begum (i.e. the mother of Mohd. Zuber), on his being informed, by her, that Mohd. Zuber had not returned home since the previous

night, and that, while they were present there, PW-8 Ikhtikar Ahmed came there with the police, who recorded the statement of Mumtaz Begum. Thereafter, he confirmed having proceeded, with the police and PW-8 Ikhtikar Ahmed to the house of Mohd. Yasir, but found no one there, whereafter they returned to Police Post Turkman Gate. He also stated that, at the Police Post Turkman Gate, the Police received a call, whereafter the police officials proceeded, which PW-8 Ikhtikar Ahmed, towards Delight Cinema, but that he did not accompany them, as he went to perform his prayers. (However, in cross-examination, he stated that he did not accompany the police team as they did not ask him to do so, and that, on that day, he did not offer prayers.) He stated that he returned after about half an hour, and found both the accused, i.e. Mohd. Yasir and Mohd. Faizan, at the Police Post, being interrogated. Thereafter, about 1 ½ hours later, the Police personnel left Police Post Turkman Gate, along with Mohd. Yasir and Mohd. Faizan, to Mata Sundari Road, and he followed them. Once they reached there, Mohd. Yasir gave the key, of the Santro car, parked there, to the IO, who called for five other persons, who arrived there, inspected the car and opened it using the key given by Mohd. Yasir. Inside the car, they found the dead body of Mohd. Zuber, covered in a plastic sheet. He also testified to the fact that there was blood, in the car, at various places. He further confirmed that photographs of the car were taken before it was opened, as well as thereafter. He further stated that, from the car, one surgical blade was retrieved, which was sealed and seized by the Police, exhibited as Ex. PW-8/B, which bore his signature. He also

confirmed that a piece of the rear seat, a piece of rexin from the rear right side door, and the seat cover of the front seat, were also sealed and seized, *vide* Seizure Memo Ex. PW-8/C, PW-8/E and PW-9/A, all of which bore his signature. Thereafter, the Police officials recorded the disclosure statements of Mohd. Yasir and Mohd. Faizan. The contents of the said disclosure statements, as stated by him, were similar to the version provided by PW-8 Ikhtikar Ahmed. He further confirmed that, after the recording of the said statements, they proceeded to the house of Mohd. Yasir and Mohd. Faizan, and also deposed with respect to the retrieval of various items therefrom, at the instance of the said accused. PW-9 identified Mohd. Yasir and Mohd. Faizan in court, as well as the various exhibits referred to hereinabove, which were shown to him.

32. PW-32 SI Mohit Yadav, was posted at the Police Post Turkman Gate deposed, in his examination-in-chief on 28th January, 2014, that, at about 9:45 AM on 15th June, 2012, Ikhtikar Ahmed (PW-8) got a statement, regarding the kidnapping of Mohd. Zuber, recorded (Ex. PW-8/A), whereupon he made an endorsement on the said statement and sent it to HC Raj Kumar (who was not co-opted as a witness), for the lodging of an FIR, under Section 365 of the IPC. He stated that, thereafter, he went with Ikhtikar Ahmed to the residence of Mohd. Zuber, where they met his mother Mumtaz Begum (PW-4) who, in her statement recorded at the occasion, stated that her son Mohd. Zuber had been last seen with Mohd. Yasir, and had not been seen since the

previous night. From there, they proceeded to the residence of Mohd. Yasir, where they were informed that he, too, was missing since the previous night. Thereafter, they returned to the Police Post at Turkman Gate, with Ikhtikar Ahmed (PW-8) and Ansar Ahmed (PW-9) where HC Raj Kumar gave him a copy of the FIR and the original *rukka*. SI Mohit Yadav further stated that, at about 2:45 PM, he received secret information that Mohd. Yasir and Mohd. Faizan were seen near the Delite Cinema, whereupon he proceeded to the spot, with HC Raj Kumar, Ansar Ahmed (PW-9) and Mohd. Nasir (who was not made a witness). (In cross examination, however, SI Mohit Yadav stated that Ikhtikar Ahmed and Ansar Ahmed had remained at the Police Post.) Having reached the spot near Delite Cinema, SI Mohit the other stated that they apprehended Mohd. Yasir and Mohd. Faizan, on their being pointed out, to him, by Ikhtikar Ahmed, and recorded their disclosure statements. Mohd. Yasir stated, in his disclosure statement (PW-8/K) that he had hidden the clothes and shoes, worn by him at the time of committing the murder of Mohd. Zuber, at his house, along with his share of the money stolen from Mohd. Zuber. Similarly, Mohd. Faizan stated, in his disclosure statement (PW-8/L) that he, too, had hidden his clothes, the amount stolen from Mohd. Zuber, and his mobile phone, at his house. SI Mohit Yadav further deposed that, from there, they proceeded to Gandhi Market, along with Ansar Ahmed (PW-9) and Mohd. Nasir, where Mohd. Yasir and Mohd. Faizan pointed out the Santro car to them, regarding which separate Pointing Out Memos (Ex. PW-8/U and PW-32/B) were prepared by him. The Mobile Crime Team was,

thereupon, summoned, who arrived and took photographs of the car, as well as chance prints. The key of the car, which was given by Mohd. Yasir, was handed over to the Mobile Crime Team who, using the same, opened the car. The dead body of Mohd. Zuber wrapped in polythene, was found in the car, along with a surgical blade lying near it. He stated that the surgical blade, a piece of the bloodstained back seat cover, a piece of the polythene using which the body of Mohd. Zuber had been covered, a piece of the bloodstained driver seat and a piece of the bloodstained rexin, found in the car, were sealed and seized by him *vide* Seizure Memos exhibits PW-8/B, PW-H/C, PW-H/D, PW-9/D and PW-8/D respectively, all of which were signed by Mohd. Yasir, Mohd. Faizan, and him. The key of the car, which had been given to them by Mohd. Yasir was also seized *vide* Seizure Memo Ex. PW-8/F. In Court, he was shown Exhibits PW-1/1 to PW-1/21, which were identified by him as the photographs of the car, taken at the spot. Thereafter, the dead body of Mohd. Zuber was sent to the mortuary of the Lok Nayak Jayprakash Narayan (LNJP) Hospital (hereinafter referred to as “the Hospital”), and the Site Plan of the area was prepared by him, exhibited as Ex. PW-8/T, which was also signed by him, Mohd. Yasir and Mohd. Faizan.

33. PW-32 SI Mohit Yadav further stated that, from the Gandhi Market area, they proceeded to the residence of Mohd. Yasir, who produced, from an *almirah*, a bloodstained shirt, bloodstained jeans and bloodstained Reebok shoes, which were stated, by him, to have been worn at the time of commission of the crime. These were

sealed and seized *vide* Seizure Memo Ex. PW-8/N, which was signed by him and Mohd. Yasir. Mohd. Yasir further produced, from the *almirah*, cash of ₹ 2.23 lakhs, which was also seized *vide* Seizure Memo Ex. PW-8/M. He prepared a Site Plan of the said place, which was exhibited as Ex. PW-8/R.

34. From the residence of Mohd. Yasir, according to the statement of PW-32 SI Mohit Yadav, they proceeded to the residence of Mohd. Faizan, who also produced, from an *almirah* in the room, bloodstained pants and shirt, stating that he had been wearing these at the time of the incident. The said clothes were, therefore, seized *vide* Seizure Memo Ex. PW-8/P. Mohd. Faizan also produced are mobile phone (seized *vide* Ex. PW-8/Q) and cash of ₹ 2,45,900/- from the *Diwan* in the room, which was also seized *vide* Seizure Memo Ex. PW-8/O. Both the said Seizure Memo's were signed by Mohd. Faizan and by him, i.e. PW-32 SI Mohit Yadav. SI Mohit Yadav further stated that he prepared a Site Plan of the place of recovery at the residence of Mohd. Faizan, which was also signed by Mohd. Faizan and by him, and exhibited as Ex. PW-8/S. From the residence of Mohd. Faizan, they returned to the Police Station, where the case property was deposited, by him, i.e. SI Mohit Yadav, with the MHC(M). Further investigation was entrusted to Insp. Satish Malik (PW-33). SI Mohit Yadav further deposed that he prepared the Arrest Memos (Exh. PW-8/G and PW-8/H), as well as the Personal Search Memos (Ex. PW-8/I and PW-8/J) of Mohd. Yasir and Mohd. Faizan, which were signed by the said accused and by him. In court, PW-32 SI Mohit Yadav

identified Mohd. Yasir and Mohd. Faizan, as well as all the exhibits referred to in his statement. The fact of deposit, by SI Mohit Yadav, of the seized case property, with the MHC (M), also stands acknowledged by the MHC (M) SC Kishan Chand (PW-34), in his examination-in-chief on 29th March, 2014.

35. PW-1 Const. Dinesh Kumar, of the Mobile Crime Team deposed, in his examination-in-chief, that, on 15th June, 2012, he reached Gandhi Market, Mata Sundari Road along with SI Pankaj (PW-16) and ASI Pawan Kumar (PW-3) where they noticed a white Santro car, with registration No. DL-4CJ-4773, with its windows closed. On opening the door of the said car, a dead body was found in the rear seat. He further deposed that he took 21 photographs of the spot, exhibited as Ex. PW-1/1 to PW-1/21.

36. PW-16 SI Pankaj Kumar, in his examination-in-chief on 26th October, 2013, vouchsafed the above statement of PW-1 Const. Dinesh Kumar, regarding the finding of the dead body in the white Santro car DL 4 CJ 4773. Photographs Ex. PW-1/16 to PW-1/21 were shown to him, and identified, by him, as the photographs of the car, and exhibits PW-1/1 to PW-1/15, the photographs of the car, taken in his presence. He further stated that, when his team reached Gandhi Market, SI Mohit Yadav (PW-32), along with his staff, met him, and that the car had also been inspected by the fingerprint expert ASI Pawan Kumar (PW-3). He further stated that, after the car was opened by a member of the Mobile Crime Team, a dead body was found wrapped in a maroon coloured

polythene, on the rear seat of the car, and there was a lot of blood in the car. It was further stated that the deceased had sustained an injury on his throat, and that one surgical blade was also found on the rear door frame at the right side of the car. He stated that, after inspection of the scene of the crime, the crime report was prepared, which was exhibited as Ex. PW-16/A, and which bore his signature. Details of the fingerprints, as lifted by ASI Pawan Kumar (PW-3), it was stated, were also contained in the said report.

37. PW-3 ASI Pawan Kumar, the fingerprint expert of the Mobile Crime Team, also supported the above statements, during his examination-in-chief on 15 February, 2013, by acknowledging that, at 5:20 PM on 15th June, 2012, he, along with SI Pankaj (PW-16) and the photographer Const. Dinesh (PW-1) had reached Gandhi Market, where they had met the police officials and the IO. He attested to having seen the white Santro car DL 4 CJ 4773. He stated that he was able to localise two fingerprints (Q-1 and Q-2) on the rear view glass of the car and 8 chance prints, with one (Q-3) on the right side of the body of the car, another (Q-4), on the left rear window glass and 6 chance prints on the left rear window glass inside the car (Q-5 to Q-10).

C. Registration of FIR

38. PW-2 HC Bhup Singh working as Duty Officer at PS Chadni Mahal deposed that, at about 11 AM on 15th June, 2012, HC Raj

Kumar had brought, to him, the *rukka*, signed by SI Mohit (PW-32), which was endorsed by him *vide* Ex. PW-2/B, and that as per the recital of evidence in the *rukka*, he registered FIR under Section 365 of the IPC, for kidnapping. He further stated that he gave a copy of the FIR, and the *rukka*, to HC Raj Kumar, who left for the Police station, to deliver the *rukka* and the FIR to the IO.

D. Dispatch of Samples to FSL

39. PW-15 HC Satish, who was working as MHC (M) and was posted at PS Chandni Mahal confirmed, in his examination-in-chief on 26th October, 2013, having sent nine sealed parcels to the Forensic Science Laboratory (FSL), Rohini through Const. Saquid Hussain (PW-11), and having received, from Const Saquid Hussain, the copy of the Road certificate and original acknowledgement issued by FSL. He further confirmed having sent three sealed parcels, two bearing the seal of “LNH” and one bearing the seal of “SN”, to FSL through Const. Sandeep Moun (PW-28), and having received, later, the original acknowledgement issued by the FSL in respect of the said exhibits. He confirmed that all exhibits remained intact, while in his custody.

40. The above statement of PW-15 HC Satish stood vouchsafed by the depositions of PW-11 Const. Saquid Hussain and PW-28 Const. Sandeep Moun, who confirmed having received the said exhibits from PW-15 HC Satish, the deposit, thereof, at the FSL Rohini, and the handing over, to PW-15 HC Satish, the original

acknowledgement issued by the FSL and the Road certificates relating to the said consignments. Neither of the said witnesses was cross-examined.

E. Medical Evidence:

41. Having thus distilled the factual evidence forthcoming in the present matter, we proceed to the medical evidence, as available from the Hospital.

42. PW-18 HC Naveen, who, at the relevant time, was posted at Police Post Turkman Gate, deposed, in his examination-in-chief on 20th November, 2013, that, as instructed by the IO SI Mohit Kumar Yadav (PW-32), he, on 15th June, 2012, reached the mortuary of the JPL Hospital, to guard the dead body of Mohd. Zuber and that, on the next day, i.e. 16th June, 2012, Insp. Satish Malik (PW-33) arrived at the hospital with Const. Brahmajeet (who was not made a witness), and had the post-mortem, on the dead body of Mohd. Zuber, done. He further deposed that, after the post-mortem, the doctor handed over, to him, one *pullanda* duly sealed with the seal of “MAMC JB 10”, containing the clothes of the deceased Mohd. Zuber and another box containing his viscera, along with an envelope addressed to the Director, CFSL, which were seized *vide* Seizure Memo Ex. PW-18/A, which bore his signature. The said deposition of PW-18 HC Naveen stands borne out by PW-18/A, i.e. the Seizure Memo of “viscera and other articles”, which details the above exhibits, and bears the signature of the IO inspector

Satish Malik (PW-33), Const Brahmajeet and of himself, i.e. of HC Naveen (PW-18).

43. PW-33 Insp. Satish Malik acknowledged, in his examination-in-chief on 15th March, 2014, having taken over investigation of the case relating to FIR No. 90/12, from SI Mohit Yadav the other (PW-32) on 16th June, 2012, and having interrogated Mohd. Yasir and Mohd. Faizan on the said day. He identified them in Court. He further deposed that, thereafter, he proceeded to the MAMC mortuary, accompanied by Ikhtikar Ahmed (PW-8) and Ansar Ahmed (PW-9), who identified the dead body as being that of Mohd. Zuber, relating to which the statements given by them were exhibited as Ex. PW-9/B and Ex. PW-8/B, both of which bore his signatures. (We find this to be true, on a perusal of the said exhibits.) He further confirmed having got the post-mortem of Mohd. Zuber done and, thereafter, having handed over the dead body to Ansar Ahmed and Ikhtikar Ahmed. He also confirmed the seizure of the exhibits handed over by the doctor who conducted the post-mortem (PW-21 Dr Jatin Bodwal), and that the Seizure Memos relating to the said exhibits were prepared by HC Naveen (PW-18) and Const. Brahmajeet. He confirmed that the parcels had been deposited with the MHC (M). He, thereafter, went on to refer to the submission, by Mohd. Wasim (PW-5), and Abdul Basit (PW-6), of the amounts of ₹ 50,000/- and ₹ 25,000/-, to which reference has already been made hereinabove. He further stated that the blood samples of Mohd. Yasir and Mohd. Faizan were taken, sealed and seized *vide*

Seizure Memo Ex. PW-19/A, whereafter they were produced before the learned Metropolitan Magistrate and sent to Judicial Custody (JC). The blood samples of Mohd. Yasir and Mohd. Faizan were also deposited with the MHC (M). He further deposed that, on 18th June, 2012, the Santro car, in which the body of Mohd. Zuber had been found, was examined by a team from the FSL, who pointed out the presence of hair strands in the car, which were, accordingly, sealed by him with the seal “SM”, and seized, *vide* Seizure Memo Ex. PW-33/C, in the presence of HC Kishan Chand (PW-34) and HC Rakesh (who was not co-opted as a witness). He also deposed that the chance prints, found on the car, were sent for comparison, with a search slip, to the Finger Print Bureau (FPB), whereas the seized exhibits were sent to FSL, for their opinion. The weapon of offence was also sent to the forensic department of the MAMC, for an opinion as to whether injury was possible from the said weapon or not. He thereafter collected the post-mortem report, as well as the CDRs relating to the mobile phones of Mohd. Yasir, Mohd. Faizan and Mohd. Zuber. Thereafter, he prepared the challan and filed it in the Court.

44. PW-33 Insp Satish Malik went on to depose, further, that the opinion, from the forensic department of the MAMC, regarding the possibility of the injury, on the body of the deceased Mohd. Zuber, having been caused by the seized surgical blade, was positive and that, as per the report from the FPB, the chance prints of Mohd. Yasir were found identical with the search slip. One more palm print, which was found, was also tested at the FPB,

which reported that the palm print of Mohd. Yasir was found identical with the chance print. The letter, sending the palm prints to the FPB, signed by PW-33 Insp. Satish Malik, was exhibited as Ex. PW-22/G.

45. PW-19 Const. Jai Singh, in his examination-in-chief dated 20th November, 2013, deposed that, on 17th June, 2012, he took Mohd. Faizan, and Const. Mansukh (who was not co-opted as a witness) took Mohd. Yasir, to the LNG Hospital, for medical examination, whereafter the blood samples of the said accused were handed over, by the doctor, in separate sealed *pullandas*, as well as on a gauze piece, all of which were given to the IO and seized *vide* Seizure Memo Ex. PW-19/A.

46. Dr. Yousuf Azad, who prepared MLC No 107924 (Ex. PW-20/A), of Mohd. Yasir, and MLC 107925 (Ex. PW-20/B), of Mohd. Faizan, on 17th June, 2012, deposed, in his examination-in-chief on 20th November, 2013, that Mohd. Yasir and Mohd. Faizan had been brought to him by Const. Mansukh and Const. Jai Singh (PW-19) respectively. He also confirmed the fact of his having handed over the blood samples, as well as blood on a gauze, of Mohd. Yasir and Mohd. Faizan, to Const. Mansukh and Const. Jai Singh, respectively, after conducting medical examination.

47. The post-mortem of Mohd. Zuber was conducted by Dr. Jatin Bodwal, who deposed as PW-21, and confirmed, in his examination-in-chief on 20th November, 2013, that he had found

five external injuries on the body of the deceased Mohd. Zuber, of which Injuries No.s 1 to 4 were caused by a sharp edged weapon, whereas Injury No. 5 was caused by blunt force trauma. The cause of death was opined, by him, to be “haemorrhagic shock consequent upon injury to neck vessels via Injury No 1 “which is sufficient to cause death in ordinary course of nature”. He further confirmed that, consequent upon post-mortem, the viscera of Mohd. Zuber was preserved in a box, and his blood sample was taken on a gauze, all of which were sealed with the seal of MAMC JB 10. In re-examination, PW-21 Dr Jatin Bodwal recalled that, on 11th April, 2013, Inspector Satish Malik had sent the surgical blade, retrieved from the Santro car, to him, to seek his opinion as to whether the injuries noted in his post-mortem report could be caused by the said blade, or not, and that, *vide* his report (Ex. PW-21/C), he had opined that the injuries mentioned in his post-mortem report could possibly be caused by the said surgical blade or any other similar weapon.

48. The MLC report, prepared by Dr Jatin Bodwal, which was exhibited as Ex. PW-21/B, reads, to the extent it is relevant, thus:

“Date and Time of post-mortem examination: 16/06/2012
at 10:40 AM.

I. CASE PARTICULARS:

FIR No 90/12 Dated 15/6/2012 PS Chandni Mahal

Name of the Deceased: Mohd. Zuber s/o
Zulfikar Ahmed

IV. BRIEF HISTORY AS PER I/O:

Deceased was dead in an abandoned car near Gandhi market on 15/6/2012. He was last seen alive on 15/6/2012 with his friend.

VI. EXTERNAL GENERAL APPEARANCE:

Clothing: 1 bloodsoaked shirt, one trouser, one handkerchief and 1 Cotton Belt.

Above mentioned clothes and built were sealed and handed over to I/O.

VIII. PROBABLE TIME SINCE DEATH:

About one day.

IX. EXTERNAL EXAMINATION

1. Incised wound 13.5 cm x 5 cm x 1 cm (horizontally placed) was present on front of neck, 6 cm below the chin in midline, 4 cm from left angle of mandible on left side and 5 cm from the right angle of mandible on right side. On dissection rent was present on following tissues, neck muscles and superficial vessel on left side, thyrocricoid member in midline and neck muscle and superficial vessel on right side.
2. Incised wound 10 cm x 2 cm x 0.5 cm (horizontally placed) was present on the left side of front of neck, with dealing in right direction, 1 cm above Injury No 1 and underlying subcutaneous tissue and muscles were exposed.
3. Superficial incised wound 1 cm x 0.3 cm x 0.2 cm was present on back of distal phalanx of left thumb.
4. Superficial incised wound 1 cm x 0.3 cm x 0.3 cm was present on back of middle of left little finger.

5. Bruise 2 cm x 1.5 cm red, was present on back of right shoulder, 2 cm below acromian process.

OPINION:

The cause of death is haemorrhagic shock consequent upon injury to neck vessels via injury No 1, which is sufficient to cause death in ordinary course of nature.

Injury No 1, No 2, No 3 and No 4 are caused by sharp edged weapon.

Injury No 5 caused by blunt force trauma.

All injuries are antemortem.”

Evidence from the FPB and the FSL:

49. Ct. Mahavir (PW-24), of PCR Central Zone and SI Balwant Singh (PW-27) of PS Chandni Mahal, deposed, in their examination-in-chief on 21st November, 2013, and 2nd December, 2013, regarding obtaining of the finger prints of Mohd. Yasir and Mohd. Faizan. PW-24 Const. Mahavir stated, in his deposition, that Insp. Satish Malik (PW-33) had brought Mohd. Yasir, to him, at the Dossier Cell, where finger prints of both his hands were taken, exhibited subsequently, as Ex. PW-22/B. He identified Mohd. Yasir in Court. SI Balwant Singh (PW-27) similarly, deposed that the finger prints of Mohd. Faizan and Mohd. Yasir were taken in the Court, and were subsequently exhibited as Ex. PW-27/A and PW-27/B respectively, which bore his signatures as well as the

signatures of learned MM. Similarly, the palm prints of Mohd. Faizan and Mohd. Yasir were also taken.

50. As already noted hereinabove, chance prints Q-1 to Q-10 were sent to the FPB for analysis and opinion. A letter, dated 3rd August, 2012 was also sent, by the SHO of PS Chandni Mahal (PW-33 Insp. Satish Malik), enclosing, therewith, specimen finger/palm prints of Mohd. Yasir and Mohd. Faizan. The report, dated 25th October, 2012 of the FPB, thereon (Ex. PW-22/A), to the extent it is relevant, read thus:

- “1. Chance prints marked as Q5 and Q6 are inter-se identical.
2. Chance print marked as Q6 is IDENTICAL with A right thumb impression marked S-2 on the finger impression slip of Mohd. Yasir S/O Mohd. Sadiq.
3. Chance print marked as Q8 is IDENTICAL with Left thumb impression marked S-1 on the finger impression slip of Mohd. Yasir S/O Mohd. Sadiq.
4. Chance print marked Q 10 is palm print, hence it cannot be searched on the record of the Bureau.
5. Chance prints marked Q1 to Q4, Q7 and Q9 are either faint, partial or smudged and do not disclose sufficient number of ridge details in their relative positions for comparison, they are UNFIT for comparison/search.”

51. Subsequent to recovery of the single palm print, from the Santro car, PW-33 Insp. Satish Malik wrote to the FPB, on 4th December, 2012 (Ex. PW-22/G), requesting for an opinion thereon, enclosing, with the letter, specimen palm prints of Mohd.

Yasir and Mohd. Faizan. The report of the FPB (Ex. PW-22/H) found the said palm print to be identical to that of the left palm of Mohd. Yasir.

52. The above opinions, of the FPB were proved, by PW-22 Ravindra Kumar Jain, Inspector, Finger Print, *vide* his deposition, before the learned ASJ, on 21st November, 2013.

53. The FSL, in its report dated 31st December, 2012 (Ex. PW-23/a) signed by Indresh Kumar Misra (PW-23), stated that blood was detected on various exhibits, submitted for analysis. Of these, however, the serological report (Ex. PW-23/B), also signed by PW-23 Indresh Kumar Misra, was either non-reactive or inconclusive, with respect to all exhibits except Ex. '4c' (large seat cover), '6a' (the shirt of Mohd. Yasir), '7a' (the shirt of Mohd. Faizan), '8a', '8b' and '8c' (the clothes of the deceased Mohd. Zuber and '9' (the gauze piece stained with the blood of the deceased Mohd. Zuber). Serological analysis detected the blood, on all these exhibits, to be of "A" group.

54. The above report, dated 31st December, 2012, was proved, by Indresh Kumar Mishra deposing as PW-23, in his examination-in-chief dated 21st November, 2013. He stated, therein that, though blood was detected on all exhibits, grouping was possible only with respect to Ex. 4c , 6a, 7a, 8a, 8b and 9 as being of "A" group. He was not cross examined.

55. DNA fingerprinting was also undertaken. As per the report, dated 15th April, 2013, of the DNA Fingerprinting Unit (Ex. PW-31/A), no DNA could be isolated from the blood sample of Mohd. Yasir or of Mohd. Faizan, owing to degradation of the sample. DNA fingerprinting was, however, possible, of the strands of hair isolated from the car, but remained inconsequential, as the DNA profile was found to be that of female.

56. Insofar as Ex. 1, 6a, 6b, 6c, 7a, 7b, 8 and 9 *supra* were concerned, blood was detected, on DNA fingerprinting, on all the exhibits except Exhibit 7b. The conclusion of the analysis, as contained in the report of the DNA Fingerprinting Unit dated 15th April, 2013 (Ex. PW-31/B) may be reproduced thus:

“The DNA profile (STR analysis) performed on the source of exhibits ‘1’ (surgical blade), ‘6a’ (shirt of accused Mohd. Yasir), ‘6b’ (jeans pants of accused Mohd. Yasir), ‘7a’ (shirt of accused Mohd. Faizan) and ‘9’ (blood gauze of deceased) is sufficient to conclude that *the biological stains present on the source of exhibits ‘1’ (surgical blade), ‘6a’ (shirt of accused Mohd. Yasir), ‘6b’ (jean pants of accused Mohd. Yasir) and ‘7a’ (shirt of accused Mohd. Faizan) found similar to the biological stain of the source of Ex. ‘9’ (blood gauze of deceased).*”

(Emphasis supplied)

57. To cut a long story short, though it was not possible to match the blood, found on any of the exhibits, as belonging either to Mohd. Yasir or to Mohd. Faizan, as no DNA fingerprinting, of the blood samples of Mohd. Yasir, or of Mohd. Faizan, was possible, DNA fingerprinting of the blood found on exhibits ‘1’, ‘6a’, ‘6b’ and ‘7a’ was found to match with the blood contained

on the blood gauze carrying the blood sample of the deceased Mohd. Zuber.

58. PW-31 Shashi Bala Pahuja, Senior Scientific Officer, Biology, FSL, who had signed the DNA Fingerprinting report on each page, was examined, with respect to the above FSL reports and DNA profile. After recounting the details of the report, she concluded as under:

“On examination, I conclude that DNA performed on the source of Ex. 1 (surgical blade), Ex. 6a and Ex. 6b (shirt and jeans pant of accused Mohd. Yasir), Ex. 7a (shirt of accused Mohd. Faizan), Ex. 9 (blood on gauze of deceased) is sufficient to conclude that biological stains present on the source of Ex. 1, Ex. 6a, Ex. 6b, Ex. 7a found similar to the biological stain of source of Ex. 9.”

59. The DNA fingerprinting that was carried out in the present case, therefore, resulted in a forensic breakthrough, of sorts, so far as the case of the prosecution is concerned, as it confirmed that the blood of the deceased Mohd. Zuber was found on the shirt and jeans of Mohd. Yasir, as well as the shirt of Mohd. Faizan.

G. Statements of Mohd. Yasir and Mohd. Faizan under Section 313 of the Cr.P.C.

60. The statements of Mohd. Yasir and Mohd. Faizan under Section 313 of the Cr.P.C, were recorded on 3rd April, 2014, in both cases.

61. Mohd. Yasir and Mohd. Faizan, in their statements under Section 313 of the Cr.P.C. either denied, or professed ignorance, with respect to all allegations against them. As such, nothing substantial would result by referring, in detail, to their statements.

H. Defence Evidence

62. DW-1 Zainuddin deposed, on 1st May, 2014, that, on the night of 14th June, 2012, he was witness to a quarrel between PW-8 Ikhtikar Ahmad, and the deceased Mohd. Zuber (whose name he did not recall), and that, on his inquiry about the same, he was rebuffed and told that it was their family dispute. He localized the time of alleged quarrel as 11.30 PM.

63. DW-2 Mohd. Sawlin, the father of the sister-in-law of Mohd. Yasir deposed that, on 15th June, 2012, at about 5.00AM, he saw certain persons pulling/dragging Mohd. Yasir, and was unable to intervene in the matter.

64. DW-3 Shahnawaj Hasan deposed, on 1st May, 2014, that Mohd. Faizan used to work at his medical store and had last visited the shop on 16th June, 2012 at 10.15AM.

65. DW-4 Mohd. Aslam, the neighbor of Mohd. Faizan, deposed, on 1st May, 2014, that he had met Mohd. Faizan at about 4.30 PM on 15th June, 2012, whereafter his family members had come to him and told them that Mohd. Faizan had been called by

the police, Police Post Turkman Gate. He further deposed that the police at Police Post Turkman Gate had interrogated Mohd. Faizan inside the police chowki, asking them to wait outside.

Impugned Judgement

66. In the impugned judgment, dated 17th July, 2014, the learned ASJ analyzed the evidence available in the present case thus:

(i) The learned ASJ first addressed the reliance, by the learned APP appearing for the State, on the fact that the deceased Mohd. Zuber was last seen in the company of Mohd. Yasir. The learned ASJ, accepted as correct, the fact that an amount of ₹ 5.5 lakhs had been lent by PW-8 Ikhtikar Ahmad to the deceased Mohd. Zuber, when he visited his premises with Mohd. Yasir. A contention, advanced by the defence, to the effect that the said amount had not been reflected in the account books of PW-8 Ikhtikar Ahmad was repelled, by the learned ASJ, observing – correctly in our opinion – that, in India many businessmen did not maintain detailed books of account, in respect of every transaction undertaken by them. The fact that the IO had recovered ₹ 5.43 lakhs, out of the said amount, was also treated as a factor establishing the lending, by PW-8 Ikhtikar Ahmad, of ₹ 5.5 lakhs to the deceased Mohd. Zuber. The fact of extension of the said loan by PW-8 Ikhtikar Ahmad to Mohd. Zuber was also found to be corroborated by the

evidence of PW-4 Mumtaz Begum. Further, the statement of PW-7 Mohd. Maviya, to the effect that Mohd. Yasir had borrowed his car on 14th June, 2012, and that Mohd. Yasir and the deceased Mohd. Zuber had left in the said car, was also found to be credible. In these circumstances, the learned ASJ held, applying Section 106 of the Evidence Act, that the onus to explain what happened, after they had left together in the car of Mohd. Maviya, after 9.30 PM, was on Mohd. Yasir but that the said onus had not been discharged by him. In these circumstances, the learned ASJ found no reason to disbelieve the allegation, of the prosecution, that Mohd. Yasir was the last person seen in the company of the deceased Mohd. Zuber.

(ii) While deciding this issue, the learned ASJ opined that there was apparent inconsistency, between the last seen evidence and the time of death, as per the MLC Ex. PW-21/B of Mohd. Zuber, in that the MLC opined that death had taken place about 24 hours prior to postmortem (which took place at 10.40 AM on 16th June, 2012). We do not, however, find any such discrepancy, in view of the fact that Mohd. Yasir was last seen, in the company of the deceased Mohd. Zuber at 9.30 PM, when they met PW-7 Mohd. Maviya and borrowed his car, which is not inconsistent with the opinion, in the MLC Ex. PW-21/B, that the death had taken place around 10.40 AM on 15th June, 2012.

(iii) The learned ASJ proceeds, thereafter, to reject the submission, advanced by learned counsel for Mohd. Yasir, regarding the length of time between the last sighting of Mohd. Yasir, in the company of the Mohd. Zuber, and the time when Mohd. Zuber was supposed to have met his end, which was more than 12 hours. He holds that, by virtue of 106 of the Evidence Act, the onus lay on Mohd. Yasir to explain what had happened after 9.30 PM on 14th June, 2012, which he had failed to do.

(iv) The learned ASJ next considers the evidence of PW-5 Mohd. Wasim and PW-6 Abdul Basit. It had been sought to be contended, on behalf of the accused before the learned ASJ, that no reliance could be placed on the testimony of PW-5 Mohd. Wasim and PW-6 Abdul Basit as they had not taken any acknowledgment from Mohd. Yasir, while advancing loan to him. The learned ASJ holds that, in view of the previous acquaintance between Mohd. Wasim and Abdul Basit with Mohd. Yasir, the advancement of loan to Mohd. Yasir, without obtaining an acknowledgment, was not unusual.

(v) The learned ASJ, thereafter, found that the disclosure statement of Mohd. Yasir and Mohd. Faizan had been recorded after the dead body of Mohd. Zuber was recovered from the Santro car and was not, in fact, recorded at Police Post, Turkman Gate as deposed by PW-32. Even so, it was

found that the statements of PW-8 Ikhtikar Ahmad and PW-9 Ansar Ahmad, as also PW-32 SI Mohit Yadav indicated that Mohd. Yasir and Mohd. Faizan had pointed out the car and the dead body. In these circumstances, the learned ASJ addressed the issue of whether the evidence of recovery of dead body was admissible, not having been preceded by any disclosure statement. On the basis of the evidence, the learned ASJ held that the prosecution had succeeded in proving the recovery of the car, as well as the dead body, on the pointing out, thereof by Mohd. Yasir, but that the evidence was insufficient to indicate such recovery on the pointing out of Mohd. Faizan.

(vii) The learned ASJ held, further, that the presence of the finger prints of Mohd. Yasir, in the car, has proved, beyond all reasonable doubt that he was travelling in the car and ‘probably he was driving the car’. The learned ASJ further held that the presence of finger prints of Mohd. Yasir (Ex. Q6, Q8 and Q10) on the rear view glass of the car indicated that he was driving the car and he adjusted the rear view glass as per his own convenience. The absence of any chance prints on the steering and gear of the car, it was opined, was insufficient to disregard the above evidence, as Mohd. Yasir could have removed/cleaned the finger prints from the steering or gear but forgotten to clean the prints from the rear view glass. It was further observed, that in these circumstances, the onus to explain his presence, in the car in

which the dead body of Mohd. Zuber was found, was on Mohd. Yasir which he failed to discharge.

(viii) The learned ASJ has, next, adverted to the evidence in the form of the CDRs, and the inferences and conclusions which, in his view, emerged therefrom. He observes, in this regard, thus:

(a) Though the mobile No. of the deceased Mohd. Zuber was, undisputedly, 9268634480, the alleged mobile numbers of Mohd. Yasir and Mohd. Faizan were disputed. PW-14 Mohd. Saddam Hussain deposed, in his initial statement, that 9899367446 was the No. being used by Mohd. Yasir; however, before Court, he turned hostile. Similarly, though the prosecution urged that Mohd. Faizan was using the No. of a close relative Mohd. Rizwan, 9718321626, he was not examined, despite his being present in the Court.

(b) The fact that 9899367446 was the mobile No. being used by Mohd. Yasir, however, stood established from the testimony of PW-7 Mohd. Maviya, who deposed that several calls had been made, to his mobile phone (the No. of which was, undisputedly 9810099689) by Mohd. Yasir, from 6 PM onwards, on 14th June, 2012. A perusal of the

CDRs of mobile No. 9899367446 (Ex. PW-30/A) revealed that 7 calls had been made, from the said No., to PW-7 Mohd. Maviya, between 18:07:07 to 21:19:40 hours on 14th June, 2012. Similarly, on 15th June, 2012, PW-7 Mohd. Maviya made 7 calls, to mobile No. 9899367446 during the period 01:54:22 to 08:59:21 hours on 15th June, 2012. This indicated that 9899367446 was, indeed, the mobile No. being used by Mohd. Yasir.

(c) Mohd. Yasir, no doubt, denied, in his statement under Section 313 of the Cr.P.C., the allegation that he was using mobile No. 9899367446. However, in the absence of his citing any other No. as the one being used by him, such denial failed to be of any consequence.

(d) As regards Mohd. Faizan, however, the prosecution had not been able to lead enough evidence to establish usage, by him, of the mobile No. 9718321626.

Having thus come to the conclusion that the prosecution had been unable to localise the mobile No. being used by Mohd. Faizan, the learned ASJ, nevertheless, went on to embark on a detailed analysis of the CDRs relating to mobile No. 9718321626. In our view, this analysis was superfluous,

once the learned ASJ had held that there was insufficient evidence to establish that the said No. was being used by Mohd. Faizan.

(ix) The learned ASJ, thereafter, proceeds to discredit the alleged recovery, from the residence of Mohd. Yasir, of bloodstained clothes, bloodstained shoes and cash, reasoning, in this regard, thus:

(a) PW-32 SI Mohit Yadav, while deposing as to the said recovery, also stated that (i) he did not remember for how long he stayed at Meerdard Road, (ii) he did not remember the time at which he reached the house of Mohd. Yasir, (iii) at the said house, a relative of Mohd. Yasir met them, and produced the key of the house; however, he did not disclose the name of the said relative, (iv) though the said relative opened the lock, he did not supply a copy of the Seizure Memo to him; neither did he record the statement of the said relative or join any neighbour at the time of recovery, (v) he did not remember for how long they stayed at the house of Mohd. Yasir, (vi) at the residence of Mohd. Faizan, though the family members of Mohd. Faizan were present, he did not ask them to join the proceedings; neither did he involve any public person therein, though public persons were available in the colony round-the-clock

and (vii) from the house of Mohd. Faizan, they proceeded to PS Chandni Mahal; however, no arrival entry was made.

(b) PW-8 Ikhtikar Ahmed deposed, in his cross-examination, that his statement had been recorded twice, on 15th June, 2012, firstly, when he went to Police Post Turkman Gate to lodge the complaint and, thereafter, at Gandhi Market. As such, the statement of PW-8 Ikhtikar Ahmed was recorded even prior to the alleged recovery effected from the house of Mohd. Yasir and Mohd. Faizan. Further, PW-8 deposed that he did not visit PS Chandni Mahal, in connection with this matter, whereas the case of the prosecution was that his statement was recorded by PW-32 SI Mohit Yadav after midnight at the Police Station.

(c) Regarding arrival at the house of Mohd. Yasir, PW-8 Ikhtikar Ahmed deposed that they reached the said house between 9:10 and 9:20 PM, and were met by the mother of Mohd. Yasir. As against this, PW-9 Ansar Ahmed deposed that they reached the house of Mohd. Yasir, between 9.00 and 9.15 PM, where the uncle of Mohd. Yasir named Shakir, met them, and opened the lock, using the key which was in his possession. As such, there was discrepancy in the

versions of various witnesses, even as regards the persons whom they encountered, when they reached the house of Mohd. Yasir.

(e) The assertion, of the prosecution that, recovery, from the house of Mohd. Yasir and Mohd. Faizan was effected at night, was demolished by the evidence of PW-34 HC Kishan Chand, who deposed that the case properties had been deposited, with him, by PW-32 SI Mohit Yadav during the day on 15th June, 2012. On being questioned, by the Court, in this regard, however, he clarified that his deposition was based on his memory and improved it to say that PW-32 SI Mohit Yadav, had deposited the *pullanda* in the evening, but prior to sunset.

(f) As such, even going by the evidence of these witnesses, two versions emerged regarding the time of effecting the recovery of the alleged incriminating articles from Mohd. Yasir and Mohd. Faizan. This cast reasonable doubt regarding the very fact of the recovery having been effected at all. Further, as the evidence indicated that the family members of the Mohd. Yasir were aware that the police was searching for him, it was impossible to believe that he concealed the incriminating articles in his house. For this reason,

too, the factum of recovery of the incriminating articles was doubtful.

(g) The learned ASJ further expressed doubts regarding the evidence of ownership of the Santro Car with registration No. DL-4C-J-4773, in which the body of Mohd. Zuber had been found, but noted, correctly, that the issue before the Court was not the ownership of the car but as to whether Mohd. Yasir had or had not borrowed the said car from PW-7 Mohd. Maviya, and that the fact of such borrowal of the car, by Mohd. Yasir from Mohd. Maviya, stood proved, by the prosecution, beyond all reasonable doubt.

(h) The learned ASJ, thereafter, embarked on a detailed examination of the disclosure statement of Mohd. Yasir (Ex. PW-8/K). In view of Section 27 of the Evidence Act, this analysis, in our view was entirely unwarranted, as the disclosure statement could be relied upon only to the extent it pertained to the recovery of articles, by the persons making the said statement.

(x) Having thus detailed various infirmities in the investigation, and discrepancies in the evidence that has emerged consequent thereupon, the learned ASJ proceeded,

nevertheless, to convict Mohd. Yasir, under Section 302 of the IPC, for committing the murder of Mohd. Zuber, on the ground that the prosecution had been able to prove the following facts/circumstances, which brought home the offence of murder to Mohd. Yasir, beyond all reasonable doubt:

- (a) that PW-8 Ikhtikar Ahmed lent ₹ 5.5 lakhs to Mohd. Yasir, at around 5 / 5.30 PM on 14th June, 2012, carrying which Mohd. Zuber left his shop, in the company of Mohd. Yasir,
- (b) that Mohd. Yasir and Mohd. Zuber left the house of Mohd. Zuber, between 7.00 and 8.00 PM, carrying the said amount,
- (c) that PW-7 Mohd. Maviya met Mohd. Yasir and Mohd. Zuber at 9.00/9.30 PM, near Faiz Ilahi Masjid,
- (d) that PW-7 Mohd. Maviya lent his car to Mohd. Yasir, at his request,
- (e) that, between 1.30 AM and 2.00 AM, Mohd. Yasir met PW-5 Mohd. Wasim and gave him ₹ 75,000/- stating that ₹ 50,000/- was towards the loan taken from him and ₹ 25,000/- was towards the loan taken from PW-6 Abdul Basit,
- (f) that, around 2.30 AM on 15th June, 2012, PW-5 Mohd. Wasim delivered ₹ 25,000/- to PW-6 Abdul Basit as instructed by Mohd. Yasir,

- (g) that Mohd. Yasir did not return home that night,
- (h) that, later that morning, Mohd. Yasir and Mohd. Faizan were apprehended, and brought to P.P. Turkman Gate,
- (i) that Mohd. Yasir disclosed, in his disclosure statement that the dead body of Mohd. Zuber was lying in the Santro car parked at Gandhi Market,
- (j) that Mohd. Yasir, thereafter, accompanied the police team to Gandhi Market, where he pointed out the car, in which the dead body of Mohd. Zuber was found,
- (k) that chance prints were lifted from the car,
- (l) that a surgical blade was also recovered from the car, containing the blood of Mohd. Zuber, and PW-21 Dr. Jatin Bodwal opined that the fatal injury sustained by Mohd. Zuber could have been caused by the said blade,
- (m) that the finger prints and palm prints of Mohd. Yasir were found identical to the chance prints found on the rear view glass of the car, and
- (n) that Mohd. Yasir was the person last seen in the company of deceased Mohd. Zuber, and had failed to discharge the onus cast on him by Section 106 of the Evidence Act, to explain what had happened after he, along with Mohd. Zuber, left in the car borrowed from Mohd. Maviya.

In these circumstances, the learned ASJ held that, despite several discrepancies, both in the investigation as well as in the evidence reconnoitered therefrom, the prosecution had succeeded in bringing home, to Mohd. Yasir, the offence of committing the murder of Mohd. Zuber. Mohd. Yasir was, accordingly, convicted under Sections 302, and 392 read with 397 of the IPC, though he acquitted Mohd. Yasir of the charge under Section 307/411 IPC. However, it was held that the prosecution had not been successful in establishing its case against Mohd. Faizan, who, consequently was acquitted of the charges against him.

67. *Vide* subsequent order dated 21st July, 2014, the learned ASJ sentenced Mohd. Yasir to rigorous imprisonment for life and fine of ₹ 5 lakhs and with default punishment of four years simple imprisonment, for the offence under Section 302 of the IPC. As such, no separate sentence was passed for the offence punishable under Sections 392/397 of the IPC. The benefit of Section 428 of Cr.P.C. was also extended to Mohd. Yasir.

Rival submissions before this Court

Submissions on behalf of Mohd. Yasir

68. Mr. Sarin Naved, learned counsel appearing on behalf of Mohd. Yasir advanced the following submissions, in support of his client:

(i) The factum of lending, of ₹ 5.5 lakhs, to the deceased Mohd. Zuber, by PW-8 Ikhtikar Ahmed, was not proved, as, though Ikhtikar Ahmed admitted that though he was in the habit of maintaining books of accounts, he acknowledged that no entry had been made therein, regarding the lending of ₹ 5.5 lakhs to Mohd. Zuber. Moreover, the identity of the third party, to whom the said money had to be paid, by Mohd. Zuber, for buying the mobile phones, was never revealed.

(ii) No reliance could be placed on the fact that Mohd. Yasir was the person in whose company the deceased, Mohd. Zuber had been last seen, in view of the fact that Mohd. Yasir was stated to have been last seen in the presence of Mohd. Zuber at 9.30 PM on 14th June, 2012, whereas the death of Mohd. Zuber took place around 10.30 AM, on 15th June, 2012, over 12 hours thereafter.

(iii) There was no sufficient evidence, to the effect that 9899367446 was the phone No. of Mohd. Yasir. PW-7 Mohd. Maviya, had stated that Mohd. Yasir's No. was 95877... 727, whereas PW-14 Mohd. Saddam Hussain, in whose name the said No. had been taken, denied knowing Mohd. Yasir at all.

(iv) It was unbelievable that a person would, after killing a friend for money, go around the city repaying old debts at 2 AM in the morning.

(v) PW-5 Mohd. Wasim deposed that he had met Mohd. Yasir late at night on 14th June, 2012. However, there was no evidence to support this statement. Neither was there any evidence to suggest that Mohd. Yasir had ever taken a loan from Mohd. Wasim in the first place.

(vi) The post-mortem report fixed the time of death of Mohd. Zuber at around 10:30 AM, whereas the Police alleged, on the basis of the disclosure statement of Mohd. Yasir, that the murder had happened a few hours prior thereto.

(vii) It was also unbelievable that Mohd. Yasir would, after committing the murder of Mohd. Zuber, return home, in bloodstained clothes, at a time when his relatives were sitting in his house.

(viii) In these circumstances, the learned ASJ had rightly disbelieved the allegation of recovery, of the bloodstained clothes, and other articles, from the house of Mohd. Yasir.

(ix) While PW-32 SI Mohit Yadav had deposed that he had recorded the disclosure statements of Mohd. Yasir and Mohd. Faizan at the Police Post, before proceeding to Gandhi Market, where the dead body of Mohd. Zuber was discovered, the disclosure statements themselves have averred that the dead body of Mohd. Zuber had already been recovered prior thereto.

(x) The depositions of PW-8 Ikhtikar Ahmed, PW-9 Ansar Ahmed and PW-32 SI Mohit Yadav, seen in conjunction, clearly indicated that the disclosure statements of Mohd. Yasir and Mohd. Faizan were not recorded at Police Post Turkman Gate, as stated by SI Mohit Yadav.

(xi) The alleged murder weapon did not bear the fingerprints of Mohd. Yasir. Neither was there any scientific evidence to connect Mohd. Yasir to the murder of Mohd. Zuber.

(xii) The mere fact that Mohd. Yasir allegedly left the house of Mohd. Zuber, with him, on the night of 14th June, 2012, did not shift the burden of proof, on him, to disprove the allegation of his having murdered Mohd. Zuber. This reading, of Section 106 of the Evidence Act, by the learned ASJ, was completely flawed.

69. Mr. Javed Ahmed, appearing for Mohd. Faizan, submitted that all the facts cited in evidence against his client could, at worst, make out a case of his client having been seen in the company of Mohd. Yasir in the late evening of 14th June, 2012, and nothing more, especially as the fact of recovery of bloodstained clothes, and other items, from Mohd. Faizan, have rightly been disbelieved by the learned ASJ.

70. Ms. Asha Tewari, learned APP appearing for the State, submitted that the evidence on record was more than sufficient to link Mohd. Yasir as well as Mohd. Faizan to the murder of Mohd.

Zuber. She basically reiterated the case of the prosecution, which has already been set out in exhaustive detail herein above.

Analysis

71. Before proceeding to examine the evidence, it would be appropriate to revisit some of the basic principles relating to appreciation of circumstantial evidence. The three broad guiding principles, governing appreciation of circumstantial evidence, with respect to the extent to which such evidence would bring the offence home to the alleged offender, are, it is well settled, that (i) the circumstances should form a complete chain, without any “missing link”, (ii) the circumstances, seen holistically, should be compatible only with the guilt of the accused, and incompatible with his innocence, and (iii) the circumstances should be incapable of any explanation or conclusion, other than that the accused had perpetrated the crime in question.

72. The above principles relating to appreciation of circumstantial evidence, iterated most authoritatively in *Sharad Birdhichand Sarda vs State of Maharastra*, (1984) 4 SCC 116, and followed in a host of decisions thereafter, are well appreciated and well-recognised, and are, by now, part of legal lore. This Court feels it necessary, however, to emphasise the fact that, while applying these principles of appreciation of evidence – or, for that matter, applying any principles for appreciation of evidence in criminal cases – the court is required to be mindful, at every

instant, of the fact that the ultimate *raison d'etre*, of the entire forensic exercise being undertaken by it, is to punish the offender guilty of the crime that has been committed. Judging a criminal case is, no doubt, an exercise in forensics; the Court should, however, be cautious not to allow it to degenerate into an exercise in hyper-forensics. Once, applying the above principles, to the circumstantial evidence available before it, the court is able to hold a particular person, accused of the crime, to be, in fact, the offender and perpetrator thereof, it is no part of the duty of the Court to strain its sinews and ferret out, weasel-like discrepancies and inconsistencies in the evidence before it, oral or documentary – unless, of course, such discrepancies or inconsistencies serve to cloud any of the circumstances, or render such circumstance or circumstances doubtful of immediate acceptance. Once, however, indisputable circumstances exist which, in the opinion of the court, unerringly bring the offence home to the offender, *other* inconsistencies or incongruities in the evidence would not weaken the case against such offender. The basis of the approach of the Court, while assessing circumstantial evidence, in a criminal case has, therefore, to, firstly, isolate the circumstances which may be treated as indisputable and, thereafter, examine whether such circumstances, seen holistically and in conjunction with each other, bring the offence unerringly home to the accused. If they do, conviction must follow; equally, if they do not, acquittal would result.

73. What, then, are the circumstances which, in the present case, may be regarded as indisputable? For this, it would, in our opinion, be best if we were to dissect the charge, in this case, into its essential “ingredients”.

74. The charge, against Mohd. Yasir as well as Mohd. Faizan, as levelled by the prosecution in this case, was of committing the murder of Mohd. Zuber, in order to purloin the amount of ₹ 5,50,000/–, which he was carrying. In order to establish the charge, the following three facts would be required to be established:

- (i) that Mohd. Zuber was actually carrying ₹ 5,50,000/–,
- (ii) that the said money was stolen by Mohd. Yasir and Mohd. Faizan, and
- (iii) in order to do so, Mohd. Yasir and Mohd. Faizan committed the murder of Mohd. Zuber.

75. We proceed to examine each of these ingredients, *seriatim*.

76. The possession, by Mohd. Zuber, of ₹ 5,50,000/– is attributed, by the prosecution, to the lending, of the said amount, to him, by PW-8 Ikhtikar Ahmed, his uncle.

77. We do not find any reason to doubt the fact that PW-8 Ikhtikar Ahmed had, in fact, lent ₹ 5,50,000/– to Mohd. Zuber. PW-8 has, in his examination-in-chief on 18th February, 2013, deposed as under:

“ On 14.06.2012 at about 3:30 PM, Mohd. Zuber along with his friend Mohd. Yasir came to my shop. Mohd. Zuber was dealing in sale purchase of mobile phone but he did not have any shop. Mohd. Zuber had asked for ₹ 5.5 lakh to purchase the mobile phone. I asked him where he would invest the said amount, he told me that he had already settled a deal for a sum of ₹ 10.5 lakh and he had given ₹ 5 lakh to the dealer in advance and if the balance amount is not paid, his advance amount would be forfeited.

Thereafter, I asked Mohd. Zuber to wait at the shop and I went to my house to bring the amount. I brought ₹ 5.5 lakh from my house. I had given the said amount to Mohd. Zuber after putting the amount in a black colour polythene. The said amount was in the denomination of as under:

50 currency notes of ₹ 1000/- each.

8 packets (each packet of 100 currency notes) of ₹ 500/- each.

10 packet (each packet of 100 currency notes) of ₹ 100/- each.

I had given the said amount to Mohd. Zuber at about 5 AM in the presence of Mohd. Yasir. Thereafter, both left from my shop.”

Much has been sought to be made, by the defence in this case, of the fact that (i) though he was admittedly maintaining books of account, PW-8 Ikhtikar Ahmed admitted that he had not entered the above loan of ₹ 550,000/-, in the said books of account, and (ii) Ikhtikar Ahmed had not even chosen to query Mohd. Zuber regarding the identity of the person to whom he owed such a large sum of money. We, however, do not find anything suspicious in either of these circumstances, given the fact that PW-8 Ikhtikar Ahmed was the uncle of Mohd. Zuber. We agree with the finding, of the learned ASJ, that the entry of every such transaction, in the

books of account, cannot be regarded as either necessary or invariable. We have to bear in mind the fact that the transaction was not in the normal course of business of PW-8 Ikhtikar Ahmed, but was more akin to a gift of love and affection, and that it would not normally be expected that PW-8 Ikhtikar Ahmed, as the uncle of Mohd. Zuber, would enter the said transaction in his books of account. For the same reason, we do not espy anything unusual in PW-8 Ikhtikar Ahmed not asking for the particulars of the person to whom Mohd. Zuber was required to make payment.

78. The fact of PW-8 Ikhtikar Ahmed having lent ₹ 5,50,000/- to Mohd. Zuber, moreover, finds support from the evidence of other witnesses as well. PW-4 Mumtaz Begum deposed that, on 14th June, 2012, Mohd. Zuber had left the house at 2.00 PM and had returned at 5.45 PM, carrying with him ₹ 5.5 lakhs (which she claims to have seen) which, on her enquiring, was disclosed, by him, to have been borrowed from PW-8 Ikhtikar Ahmed.

79. The evidence of PW-5 Mohd. Wasim, and PW-6 Abdul Basit, too, serve to support the above statement of PW-8 Ikhtikar Ahmed. PW-5 Mohd. Wasim deposed that, at 1.30-2.00 AM, on 15th June, 2012, Mohd. Yasir had called him to his house and given him ₹ 75,000/-, stating that ₹ 50,000/-, out of the said amount, represented the loan he had earlier taken from Mohd. Wasim and requesting Mohd. Wasim, to remit the balance ₹ 25,000/- to PW-6 Abdul Basit, from whom, too, Mohd. Yasir had borrowed the said amount. He further confirmed that he had, the

same night, given the amount of ₹ 25,000/- to PW-6 Abdul Basit. PW-6 Abdul Basit also confirmed the fact that at around 2.30 AM on 15th June, 2012, Mohd. Wasim had given him ₹ 25,000/-, stating that the said amount had been handed over, to him, by Mohd. Yasir. Further support, for the above, if at all it were required, is to be found in the further deposition, of PW-5 Mohd. Wasim and PW-6 Abdul Basit, to the effect that, on 16th June, 2012, they handed over the said amounts to the police authorities, on being informed about the murder of Mohd. Zuber having taken place in the interregnum.

80. The amounts so handed over by Mohd. Yasir and Mohd. Faizan were sealed, with the initials 'SM' and seized, and were identified by PW-6 Abdul Wasim, when shown to him in Court.

81. In view of the above, we are of the considered opinion that there can be no dispute about the fact that PW-8 Ikhtikar Ahmed had, at 5.00 PM on 14th June, 2012, lent ₹ 5.5 lakhs to Mohd. Zuber, in the presence of Mohd. Yasir, and that Mohd. Yasir and Mohd. Zuber left his shop carrying the said amount.

82. That takes us to Chapter 2.

83. The charge against Mohd. Yasir and Mohd. Faizan, was not that of theft of money from Mohd. Zuber, but of kidnapping him and of subsequently committing his murder, and Mohd. Yasir stands, convicted, by the learned ASJ, therefor. We have, therefore,

to examine whether a complete and unbroken chain of circumstances exists, which would indicate, unequivocally and without any scope for doubt that, after having left the premises of PW-8 Ikhtikar Ahmed with the amount of ₹ 5.5 lakhs in cash, Mohd. Yasir, either himself or in concert with Mohd. Faizan, murdered Mohd. Zuber and apportioned, between themselves, the said amount of ₹ 5.5 lakhs.

84. Undoubtedly, the first aspect to be examined, in this regard, is the allegation that Mohd. Yasir borrowed the Santro car, in which the body of Mohd. Zuber was later found, from Mohd. Maviya on 14th June, 2012.

85. PW-7 Mohd. Maviya, in his deposition, stated that, since at 6 PM on 14th June, 2012, several calls were made, by Mohd. Yasir on his mobile, asking for his car. We have already found hereinabove that the CDRs relating to the mobile number of Mohd. Maviya (PW-7) indicated that, as many as five calls were made, to the said number, from mobile number 9899367446 which must, therefore, be presumed the number being used by Mohd. Yasir. The fact that the said number was being used by Mohd. Yasir also find support from the initial statement of Mohd. Saddam Hussain under Section 164 of the Cr.P.C, though, before the Court, he turned hostile. However, as we have already noticed hereinabove, in view of (i) the deposition of PW-7 Mohd. Maviya, (ii) the CDR records of mobile No.9210099689, which was being used by Mohd. Maviya, and (iii) the initial statement of PW-14,

Mohd. Saddam Hussain, under section 164 of the Cr.P.C., his subsequent resiling, from the said statement, by turning hostile, at the stage of trial, cannot be accorded any significance.

86. PW-7 Mohd. Maviya went on to depose that, at about 9.30 PM, he was approached by Mohd. Yasir near the Faiz Illahi Masjid, accompanied by Mohd. Zuber and that, on the persistent requests of Mohd. Yasir, he agreed to lend his car to him for a short while, whereupon Mohd. Yasir and Mohd. Zuber left in his car. He also recognized his car from the photographs Ex. PW-1/1 to Ex. PW-1/21, which were shown to him in Court.

87. We, therefore, are convinced that the fact of Mohd. Yasir having been allowed, by PW-7 Mohd. Maviya, the use of his white Santro car and, consequently, of Mohd. Yasir and Mohd. Zuber driving away, in the said car, from the area of the Faiz Illahi Masjid, at 9:30 PM on 14th June, 2012, stands established.

88. But what next? Did Mohd. Yasir, either himself or in unholy association with Mohd. Faizan proceed, thereafter, to murder Mohd. Zuber, by slashing his throat, and leaving his body in their white Santro car at Gandhi Market?

89. A brief relook at the available evidence, regarding what transpired, after Mohd. Yasir and Mohd. Zuber left, at 9.30 PM, from Faiz Illahi Masjid, in the car of Mohd. Maviya, would be apposite at this juncture.

90. PW-7 Mohd. Maviya deposed that, after Mohd. Yasir and Mohd. Zuber left, in his car, at about 9.30 PM, he called the mobile number of Mohd. Yasir at 11.00 PM, but that there was no response. He further stated that, at about 6.00 AM, the next day ie. 15th June, 2012, he went to the house of Mohd. Yasir in search of him, but could not find him there though the mother and uncle (*mausa*) of Mohd. Zuber were there.

91. PW-7 Mohd. Maviya further deposed that Mohd. Yasir and Mohd. Faizan were interrogated at the Police Post, Turkman Gate, but their statements were not recorded, apparently because they were ambivalent in nature. He, however, acknowledged that, at about 5.00 PM, Mohd. Yasir and Mohd. Faizan led the police team as well as himself and PW-9 Ansar Ahmed to Meerdard Road, Gandhi Market, where they pointed out the white Santro Car, in which the body of Mohd. Zuber was later found. He deposed that the mobile crime team inspected the car and took the photographs, Ex. PW-1/1 to Ex. PW-1/21 which, as already noted hereinabove, were identified by PW-7 Mohd. Maviya as to be those of his car. PW-8 Ikhtikar Ahmed further deposed that the dead body of Mohd. Zuber, wrapped in a polythene, was found on the rear seat in the said car, which was also splattered with blood on the rear seat, foot rest and elsewhere inside it. He also testified finger prints having been lifted by the mobile crime team, from the car.

92. PW-8 Ikhtikar Ahmed, too, stated, in his deposition during trial, that the statements of Mohd. Yasir (Ex. PW-8/K) and Mohd. Faizan (Ex. PW-8/N) were recorded by the Incharge of Police Post, Turkman Gate and that, in the said submissions, Mohd. Yasir disclosed having been secreted ₹ 2.23 lakhs constituting his share in the amounts stolen from Mohd. Zuber, at his residence, along with his blood stained clothes and Reebok shoes, while Mohd. Faizan, similarly, deposed that his share of the booty (Rs. 2,49,000/-) was hidden at his house along with the blood stained clothes and the mobile phone of Mohd. Zuber. Ikhtikar Ahmed further deposed that, he, thereafter, accompanied the police team to the residences of Mohd. Yasir and Mohd. Faizan and that while Mohd. Yasir retrieved from his *almirah* (cupboard) cash of ₹ 2.23 lakhs, along with his blood stained jeans, blood-stained check shirt and blood stained Reebok shoes, Mohd. Faizan retrieved ₹ 2.45 lakhs from the *Diwan* in his residence, along with his blood stained black pant and lined shirt, and one mobile phone.

93. The fact of Mohd. Yasir and Mohd. Faizan pointing out the Santro car at Gandhi Market and the dead body of Mohd. Zuber being found therein, as well as the presence of the surgical blade and blood splattered on various places in the car, also stand vouchsafed in the deposition of PW-9 Ansar Ahmed, PW-9 further went on to corroborate the fact of disclosure statements having been made by Mohd. Yasir and Mohd. Faizan, followed by their producing, from their respective residences, cash and blood stained

clothes/shoes, as recited by PW-8 Ikhtikar Ahmed and as reflected in the Seizure Memos drawn up on the said occasions.

94. SI Pankaj Kumar of the Mobile Crime Team (PW-16) also deposed regarding the discovery of the dead body of Mohd. Zuber in the white Santro car at Gandhi market, as well as of the surgical blade in the car, along with the presence of blood at various places in the car.

95. In view of the above evidence, we find no reason to discard the submission, of the prosecution, that Mohd. Yasir and Mohd. Faizan, in their disclosure statements, disclosed the places where there were bloodstained clothes and, in the case of Mohd. Yasir, his bloodstained shoes, were secreted, in their residences, and that, thereafter, they first pointed out the car in which the dead body of Mohd. Zuber was found and proceeded, later, to their respective residences, from which the articles in question were retrieved by them and handed them over to the Police authorities.

96. Given the fact that this is a case dependent, for its life or death, on circumstantial evidence, we would be required to determine whether, even at this stage, the chain of circumstances, to link the murder of Mohd. Zuber, to Mohd. Yasir and/or Mohd. Faizan, is complete. Insofar as Mohd. Yasir was concerned, the evidence, as reconnoitred thus far, indicates that:

- (i) Mohd. Zuber, accompanied by Mohd. Yasir, borrowed ₹ 550,000/- from his uncle Ikhtikar Ahmed, at around 5 PM on 14th June, 2012,
- (ii) at about 9:30 PM on the same day, Mohd. Yasir borrowed a white Santro car from Mohd. Maviya, and left, in the said car, accompanied by Mohd. Zuber,
- (iii) the fact that several calls were made by Mohd. Yasir to Mohd. Maviya between 6.00 PM and 9.20 PM, indicates that Mohd. Yasir was in urgent and desperate need of the car,
- (iv) at about 1:30 AM – 2 AM on the next day, i.e. 15th June, 2012, Mohd. Yasir handed over ₹ 75,000/- to Mohd. Wasim,
- (v) later, Mohd. Yasir accompanied the Police team to Gandhi Market, where he pointed out the white Santro car,
- (vi) the body of Mohd. Zuber was actually found in the car, as disclosed by Mohd. Yasir, and,
- (vii) later, after his disclosure statement, Mohd. Yasir took the investigation team to his residence, wherefrom he retrieved cash, stated by him to be his share of the amount stolen from Mohd. Zuber, as well as his clothes and shoes, which were bloodstained.

Insofar as Mohd. Faizan was concerned, the evidence, as emerged up to this point, merely indicates that

- (i) he, too, accompanied Mohd. Yasir and the Police team to Gandhi Market, where he pointed out the white

Santro car in which the body of Mohd. Zuber was found and

(ii) later, after his disclosure statement, Mohd. Faizan took the investigation team to his residence, wherefrom he retrieved cash, stated by him to be his share of the amount stolen from Mohd. Zuber, as well as his clothes, which were bloodstained.

97. Inasmuch as Mohd. Yasir was aware of the fact that Mohd. Zuber was carrying Rs. 5,50,000/- given to him by PW-8 Ikhtikar Ahmed, the motive, for Mohd. Yasir to do away with Mohd. Zuber and appropriate the money for himself, stands established. This is supported by the fact that, at 2.00 AM on 15th June, 2012, Mohd. Yasir paid ₹ 75,000/- to Mohd. Wasim.

98. That takes us to the forensic evidence available in the present case, as emerging from the laboratories of the reputable Forensic Science Laboratory, Rohini.

99. The initial examination, routine as well as serological, of the exhibits submitted to the FSL, clearly, led nowhere. Blood was, undoubtedly, found on the large seat cover, the shirt of Mohd. Yasir, the shirt of Mohd. Faizan, the clothes of the deceased Mohd. Zuber, as well as the cloth piece containing the blood swab of Mohd. Zuber, all of which were found to be of 'A' group. While this may conceivably justify a doubt that the blood found on the shirt of Mohd. Yasir, the shirt of Mohd. Faizan and the large

seat cover, belonged to the deceased Mohd. Zuber (inasmuch as the serological analysis of the blood found on the gauze piece clearly established the blood group of the deceased Mohd. Zuber to be 'A'), it is not possible, any which way, to elevate the said doubt to any level of certainty, for two reasons, viz. that (i) the blood group of Mohd. Yasir and Mohd. Faizan were never established, and it was quite possible that their blood group was also 'A' and (ii) no Rhesus Factor determination was attempted, and, in the absence of Rhesus Factor determination, any result of attempted blood group matching must always remain indeterminate.

100. The results of the DNA Fingerprinting, also carried out by the FSL were, however, far more unequivocal. *The conclusion of the DNA Fingerprinting, which already stands reproduced by us hereinabove, clearly established that the blood found on the shirt and jeans of Mohd. Yasir, as well as the shirt of Mohd. Faizan, was that of the deceased Mohd. Zuber.* The said DNA Fingerprint report, as already noted hereinabove, was proved, before the court, by PW-31 Shashi Bala Pahuja.

101. Further, the fact that the biological stains present on the surgical blade, seized from the Santro car, were also found, in the DNA Fingerprinting Report (Ex. PW-31/B) to be similar to the biological stain on the gauze piece containing the blood of the deceased Mohd. Zuber, seen in conjunction with the fact that the surgical blade was recovered from the car in which the dead body

of Mohd. Zuber was found, also establishes – in our view, conclusively – that the surgical blade was indeed the weapon of offence, with which Mohd. Zuber was killed, by slashing his throat despite the fact that no fingerprints were actually found on the surgical knife itself.

102. We may rely, in this regard, on a very recent decision, rendered by a coordinate bench of this Court on 16th April, 2018, in *Mahender @ Ganja vs State [Crl Appeal 1025/2016]*, in which the incriminating report consequent on DNA analysis was regarded as clinching, in order to connect the accused to the crime.

103. Decidedly, the above finding, consequent to the DNA Fingerprinting exercise carried out by the FSL, provided one more link, in the chain of circumstances seeking to connect Mohd. Yasir the murder of Mohd. Zuber.

104. The last piece of evidence, to which we intend to refer, to conclude our discussion in this case, is the report of the FPB, to which, too, we have alluded, in detail, hereinbefore. At the cost of repetition, it may be recounted that the fingerprint matching exercise, conducted by the FPB, resulted in the isolation of chance prints Q6 and Q8, as well as the palm print Q10, as being those of Mohd. Yasir. The report of the FPB (Ex. PW-22/A) was proved by PW-22 Ravindra Kumar Kain.

105. The evidence of PW-3 ASI Pawan Kumar, Finger Print Expert of the Mobile Crime Team, during trial, indicates that chance prints Q6 and Q8, as well as palm print Q 10 were lifted from the rear view glass installed inside the car. We agree with the observation, of the learned ASJ, that the presence of the fingerprints of Mohd. Yasir, on the rear view glass inside the car, in which the body of Mohd. Zuber was found, was significant. We also appreciate the observation, of the learned ASJ, that the rear view glass of a car would ordinarily be handled by the driver thereof and that, therefore, the report of the FPB indicates, *prima facie*, that Mohd. Yasir was driving the car.

106. With that, in our view, the pieces of the jigsaw have fallen completely into place. Let us proceed, therefore, to examine whether, qua Mohd. Yasir and Mohd. Faizan, a complete picture, incontrovertibly indicating the commission of the murder of Mohd. Zuber, by one or both of them, has emerged.

107. In the case of Mohd. Yasir, it stands established that (i) he was with Mohd. Zuber when PW-8 Ikhtikar Ahmed lent ₹ 550,000/- to Mohd. Zuber, (iii) thereafter, he borrowed the white Santro car, in which the body of Mohd. Zuber was later found, from Mohd. Maviya, the evidence indicating that he was desperate to get possession of the car (in this connection, we note the fact that the repeated calls, from 6 PM to 9:20 PM, on 14th June, 2012, to the phone No. of Mohd. Maviya were all made from the No. of Mohd. Yasir, indicating that it was Mohd. Yasir,

rather than Mohd. Zuber, who was intent on obtaining possession of the car), (iv) Mohd. Yasir was in the front seat of the car, and had, in fact, operated the rearview mirror, (v) something happened, which resulted in the blood of Mohd. Zuber landing on the shirt, as well as the jeans, which were being worn by Mohd. Yasir in the car, (vi) in the meanwhile, Mohd. Yasir paid ₹ 75,000/–, to Mohd. Wasim, (viii) the bloodstained shirt, and jeans, of Mohd. Yasir, had been hidden, by him, in the *almirah* in his house, along with an amount of ₹ 2.23 lakhs, disclosed, by him, to be his share of the amount stolen from the deceased Mohd. Zuber and (ix) he pointed out the car, belonging to Mohd. Maviya, in which the body of Mohd. Zuber was later found.

108. It also stands established that the person with whom Mohd. Zuber was last seen alive was Mohd. Yasir. There is no evidence of any intervening circumstance, or any other witness, which would indicate that Mohd. Zuber did not continue to remain in the company of Mohd. Yasir, till his death. Seen in totality and in conjunction with the other available circumstantial evidence, we do not feel that the credibility of the circumstance of Mohd. Yasir having been the person last seen in the company of Mohd. Zuber, stands in any way eroded by the distance of time between such sighting and the death of Mohd. Zuber. We draw sustenance, in this regard, from the fact that PW-8 Ikhtikar Ahmed saw them together at 3.30 PM, PW-4 Mumtaz Begum, saw Mohd. Yasir in the company of Mohd. Zuber, at around 8.00 PM, and PW-7 Mohd. Maviya saw them together at 9.30 PM.

109. These facts, in our view, result in an unbroken chain of circumstances, unerringly indicating that the fatal injury, on the neck of the deceased Mohd. Zuber, had, in fact, been inflicted by Mohd. Yasir, using the surgical blade which had been recovered from the white Santro car, in which the body of Mohd. Zuber was found. They are incompatible with any other hypothesis, and no other premise, regarding the manner in which Mohd. Zuber met his end, is possible.

110. In the case of Mohd. Faizan, however, the picture remains far from complete. The evidence only goes to indicate that (i) the blood of the deceased Mohd. Zuber was also found on the shirt which was retrieved, by him, from the *almirah* in his room, along with cash of ₹ 2.45 lakhs, stated, by him, to be his share of the amount stolen from Mohd. Zuber, and (ii) he also pointed out the car, in which the body of Mohd. Zuber was found. The evidence does not disclose any point of time when Mohd. Faizan was in the company of Mohd. Zuber. There is nothing to indicate, either, when Mohd. Faizan joined Mohd. Yasir and Mohd. Zuber, so as to be a participant in the commission of the crime of killing Mohd. Zuber. Neither were the fingerprints of Mohd. Faizan found anywhere in the Santro car, as would naturally be expected, were he also to be actively involved in the killing of Mohd. Zuber. On the face of it, therefore, it is not possible to hold that Mohd. Faizan was involved, either actively or passively, in the kidnapping, or in the murder of Mohd. Zuber, or even in the theft

of the amount being carried by him, after having borrowed the same from PW-8 Ikhtikar Ahmed.

Conclusion

111. The inevitable sequitur, from the above discussion, would be that the conviction, of Mohd. Yasir, by the learned ASJ, under Section 302, as well as Section 397 of the IPC, deserves to be sustained, and we do so. Inasmuch as the charge under Section 307 and 411 of the IPC are concerned, the question of conviction of Mohd. Yasir, thereunder, would not arise, in view of his conviction under Section 302 and 397.

112. We also concur with the decision, of the learned ASJ, to acquit Mohd. Faizan of the charges against him, which cannot be said to have been established beyond reasonable doubt.

113. Inasmuch as we have concurred with the ultimate conclusion arrived at by the learned ASJ, we are not expressing our opinion with respect to the individual findings of the learned ASJ, with some of which we have not been able to agree, as our discussion hereinabove amply demonstrates.

114. The sentence imposed, by the learned ASJ on Mohd. Yasir being the minimum imposable under Section 302 of the IPC, no occasion arises for us to interfere therein. However, we modify the default sentence stipulated in the impugned judgment, in the event

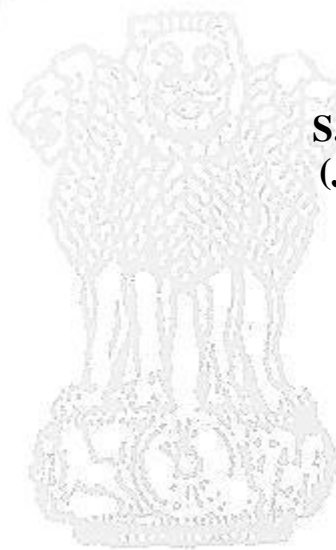
of non payment of fine from four years to six months Simple Imprisonment.

115. Subject to the above limited modification, both the appeals before us are dismissed.

**C.HARI SHANKAR
(JUDGE)**

**S. P. GARG
(JUDGE)**

April 26, 2018
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