

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

+ **Crl.A.No.1341/2012**

Judgment reserved on : 1st August, 2018

Date of decision : 2nd August, 2018

VIJAY @ RINKU

..... Petitioner

Through: Mr. Anupam Sharma, Mr. Shivam
Gupta, Advocates.

versus

STATE

..... Respondent

Through: Ms. Aashaa Tiwari, Additional
Public Prosecutor for State.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE JUSTICE MS. ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. This judgment shall dispose of the Criminal Appeal filed by the appellant Vijay @ Rinku i.e. the appellant herein S/o Sh. Harshwardhan assailing the impugned judgment dated 16.07.2012 and impugned order on sentence dated 20.07.2012 passed by the District Judge Incharge/ Additional Sessions Judge, District Courts, Rohini in Sessions Case No. 114/2010 arising out of FIR No.532/2007, registered at PS Mukherjee Nagar under Sections 364/392/302/201/411/120B/202/216 of the Indian Penal Code, 1860 (hereinafter

referred to as “IPC”) whereby the appellant was convicted for the offence punishable under Section 120B of the IPC and Sections 392/302/364/120B of IPC, and vide the impugned order on sentence dated 20.07.2012 was sentenced to undergo life imprisonment under Sections 302/120B of the IPC and to pay a fine of Rs.2000/- and in default of the payment of the fine to undergo simple imprisonment for a period of six months. Vide the said impugned order on sentence, the convict i.e. the present appellant was also sentenced to undergo rigorous imprisonment for a term of ten years each under Sections 364/392 r/w 120B of the IPC and was directed to pay a fine of Rs.2000/- each for the said offence and in default of payment of the said fine to undergo simple imprisonment for six months each. No separate sentence under Section 120B was awarded to this convict.

2. The appeal was instituted on 31.10.2012. Delay of 186 days in institution of this appeal was condoned vide order dated 26.11.2012 whereby CrI.M.A.No.19094/2012 was allowed. The appeal was admitted on 26.11.2012 and the trial Court record was requisitioned. The appellant in the instant case is in custody which is reflected in the order dated 26.11.2012 itself.

PROSECUTION VERSION

FIR No.532/2007

P.S. Mukherjee Nagar

3. The prosecution version brought forth on record is to the effect that on 3.12.2007 FIR **0/2007** under Sections 364/393/302/201 of IPC was received from P.S. Patiali, District Etah, U.P. by post whereupon the SHO of PS Mukherjee Nagar made an endorsement on the same and handed it over to the Duty Officer, PS Mukherjee Nagar for registration of the case and entrusted the investigation to the SHO Inspector Shyama Pant, which investigation had subsequently been assigned to Inspector Ajay Kumar, whereupon FIR No. 532/2007 at PS Mukherjee Nagar was registered on the basis of FIR No. 0/2007, PS Patiali with regard to the murder of one Vinod Kumar after looting of the Tavera DL-IYA-4120 of which he was the driver.

FIR No.0/2007
P.S. Patiali, District Etah, UP.

4. The FIR No. 0/2007 PS Patiali, District Etah was lodged on the complaint of Sh. Manoj Kumar, real brother of Vinod Kumar (since deceased), who had intimated the SHO Kotwali Patiali that his real brother used to drive the said Tavera DL-IYA-4120 belonging to Golden Travel and on 31.10.2007 at 9:00 AM this vehicle had been booked from his house No. 21B/16, Lal Bagh Azadpur vide mobile No. 9910831326 from Delhi to Aligarh and was to return in the morning but the vehicle did not return as per the time schedule and intimation in relation thereto was given by the owner of the vehicle at PS Mukherjee Nagar on 01.11.2007.

5. On 01.11.2007 itself intimation was received from PS Patiali, District Etah telephonically, that the dead body of some unknown person was lying on the way in a *Bajra* field between village Sukhri Khera and Jasmai and from that body, a purse had been recovered containing a driving licence and a driver's bag with the particulars of Vinod S/o D.P. Singh R/o D-325 Nathipura, Delhi and on receipt of this information the complainant Manoj Kumar went to PS Patiali and identified the dead body of his brother Vinod Kumar.

FIR No.0/2007

P.S. Mau, Darwaja, District Farukhabad, U.P.

6. Another FIR No. 0/2007 under Section 411 of the IPC registered at PS Mau Darwaja, District Farukhabad, U.P. was received on 08.12.2007 in the office of the ACP, Model Town at PS Mukherjee Nagar, as per which the vehicle in question i.e. vehicle Tavera DL-IYA-4120 was reported to have been seized by SI Karuna Shankar Vajpayee with his police team from PS Mau Darwaja and one of the accused Vijay Pratap @ Beenu (one of the co accused in the trial in Sessions Case No. 114/2010, who was convicted under Section 202 and 411 of the Indian Penal Code, 1860 vide the impugned judgment and sentence) was reported to have been arrested and it was also informed that two other accused namely, Ashish S/o Chander Pal and Vijay @ Rinku i.e. the appellant herein (the present appellant) were successful in escaping from the

vehicle. Section 411 of IPC is stated to have been added to FIR No. 532/2007 in view of the recovery of the vehicle.

ARREST AND INVESTIGATION QUA APPELLANT

7. As per the charge-sheet under Section 173 of the Code of Criminal Procedure (Cr.P.C.), the IO went to the spot, prepared the site plan, recorded the disclosure statement, investigation was conducted and arrested the appellant herein Vijay @ Rinku and interrogated him, who made a disclosure statement and was thereafter produced in Court on 10.12.2007 and police custody remand of the said accused i.e. the appellant herein was granted and the accused i.e. the appellant herein Vijay @ Rinku along with the staff was taken to Farukhabad and allegedly the accused/the appellant herein pointed out to the place of commission of the murder and to the spot of occurrence and the pointing out memo was prepared.

8. SI Chander Bhan prepared the site plan of the spot of recovery of the dead body at the pointing out of SI Satpal Singh of PS Patiali. SI Chander Bhan and thereafter along with the accused Vijay @ Rinku i.e. the appellant herein came to the PS Mukherjee Nagar and had also handed over a production warrant at the Police Station Fatehgarh for production of the co-accused Vijay Pratap @ Beenu and he also recorded the statements in relation to the aspect of search of the co-accused Ashish. SI Chander Bhan deposited the case property along with

the recovery memo and recorded the statements of the witnesses and handed over the case file to the Investigating Officer at PS Mukherjee Nagar at Delhi.

9. As per the prosecution version set forth in the charge-sheet on 15.12.2007, the IO on production of the co-accused Vijay Pratap @ Beenu interrogated him with the permission of the Court and arrested him formally in view of the grounds found against him, whereafter further the investigation was entrusted to Inspector Shyama Pant who sought issuance of NBWs against the co-accused Ashish from the Court whereafter the investigation of the case was transferred to the District Investigating Unit North West where it was entrusted to Inspector Ajay Kumar and the provisions of Section 120B/202/216 of IPC were added for the purpose of investigation in consultation with the prosecution branch and senior officers. Inspector Ajay Kumar got photocopies of relevant documents prepared and recorded the statements of witnesses whereafter along with the SHO PS Mukherjee Nagar, Inspector Ajay Kumar along with the accompanying staff went to PS Patiali, Etah and PS Mau Darwaja, Farukhabad for further investigation and an attempt was made to trace out the accused Ashish and furthermore the vehicle Tavera DL-IYA-4120 was seized and the statements of witnesses were recorded and the vehicle was brought to Delhi and deposited in the Malkhana. As per the charge-sheet, the co-accused Ashish

could not be arrested and was avoiding arrest and the requisite proclamation under Section 82 Cr.P.C. was got issued against him.

10. During the course of investigation, the mobile crime team inspected the vehicle Tavera DL-IYA-4120 and recorded statements of witnesses and the crime team report was handed over to the IO. The said Tavera DL-IYA-4120 was further taken to the FSL Rohini for examination by Inspector Ajay Kumar for examination by the scientists at the FSL, Rohini and the finger prints on the left rear view mirror were taken and put into an envelope which was sealed with the seal of 'AK' and was seized and the vehicle i.e. Tavera DL-IYA-4120 along with sealed envelopes were deposited in the Malkhana. The said Tavera DL-IYA-4120 vehicle was also thereafter released to its owner Sh.Kuldeep Singh S/o Pratap Singh on superdari. Chance finger prints taken from the vehicle were also sent by Inspector Ajay Kumar to the Finger Print Bureau, Malviya Nagar for examination and as the accused Ashish could not be traced out the proclamation under Section 83 Cr.P.C. was also initiated against him, and he was thereafter declared a proclaimed offender (P.O.). As per the charge-sheet, the investigation conducted brought forth that Vijay @ Rinku i.e. the appellant herein (the present appellant) and the co-accused Ashish (the P.O.) and a friend of theirs had together telephonically booked the Tavera DL-IYA-4120 from the Golden Travel and on reaching PS Patiali District Etah, they had in conspiracy

with each other, murdered the driver of the said Tavera vehicle i.e. the deceased herein Vinod Kumar and threw his dead body into the field and looted the vehicle, where after the accused Vijay @ Rinku i.e. the appellant herein and Ashish had taken the vehicle to village Adhevli, the village of the accused Ashish and as per the charge-sheet, the name of the third person who was associated with Vijay @ Rinku i.e. the appellant herein and Ashish (the P.O) could not be ascertained.

11. The FSL report dated 24.03.2009 No.FSL-2008/B-719 BIO No.213/08 submitted on 25.9.2009 indicated that blood of human origin was found on the T-shirt, Banyan (i.e.,vest), through Pant of **blood group 'A'** which had been sent for examination, the piece of thread, wrist watch and a pair of shoes, a pair of socks and underwear, a gauze clothe piece and the pieces of seat cover sent for examination were found having blood on them of human origin, the blood grouping could not be identified.

PROSECUTION EVIDENCE LED

12. 26 prosecution witnesses were produced during the trial viz.:

1. **Sh.V.Shankara Narayanan examined as PW1**
2. **Manoj Kumar as PW2**
3. **Sh.Kuldeep Singh as PW3**
4. **Singh Raj as PW4**

5. **Sh.Hira Lal Gupta as PW5**
6. **Rajan as PW6**
7. **Insp. Shyam Pant as PW7**
8. **Jwala Prashad as PW8**
- 8A **Dr.Sayed Mohd. as PW8A**
9. **Rameshwar as PW9**
10. **SI Satpal as PW10**
11. **Ct. Raj Narain as PW11**
12. **HC L.N.Sharma as PW12**
13. **Ct. Arvind Kumar as PW13**
14. **SI Suraj Bhan as PW14**
15. **ASI Narender Singh as PW15**
16. **Ct. Keshav Parshad Raman as PW16**
17. **HC Surender Kumar as PW17**
18. **Insp. R.C.Dahiya as PW18**
19. **Ct. Brij Behari as PW19**
20. **HC Satish Kumar as PW20**
21. **Vishal Gaurav as PW21**
22. **HC Mukesh Sharma as PW22**
23. **SI Chander Bhan as PW23**

24. SI Karuna Shankar Vajpayee as PW24

25. ACP Indira Sharma as PW25

26. Insp. Ajay Kumar as PW26

13. **PW-9-Rameshwar** S/o Balwant R/o Village and Post Office Saholi, PS Patiali, Distt. Kashiram Nagar, U.P., stated that he used to work as a chowkidar at village Sahori under PS Patiali and stated that whilst he was coming from his village to the PS he saw the dead body lying in a Bajra field between the village Sukti Khera and Jasmai and thus he immediately reached the PS and got the information written through **Jwala Prasad (PW-8)** and handed over the information to the In-charge of the police station.

14. **PW-8** put forth in the witness box by the prosecution was Mr. Jwala Prashad s/o Late Sh. Vijay Singh r/o Village Nangla Karan, PO Patiali, District Kashiram Nagar, UP, who testified to the effect that he is a resident of the aforesaid village and is running a tea stall in front of PS Patiali and that on 01.11.2007 at about 3-4 p.m. during the day Rameshwar **PW-9**, who is a police chowkidar and is a resident of village Sukti Khera came to him and told him that a dead body had been found at Sukti Khera village in the fields and **PW-9** had asked him to write down this information to be given to the police and the **PW-8** wrote down whatever **PW-9** had told him (i.e., **PW-8**) about the dead body having been found in the fields of village Sukti Khera and handed over the

same to Rameshwar (i.e. **PW-9**). **PW-8** stated that his statement was recorded by the police.

15. **PW-10 SI Satpal**, PS Dholna, Janpath Kashiram Nagar, U.P. testified to the effect that on 01.11.2007 he was posted as an SI at PS Patiali and at about 3:05 PM, the chowkidar Rameshwar S/o Balwant **PW-9** gave an information of the body of an unknown person lying in a Bajra field, whereupon on receipt of this information immediately DD No. 26, copy of which is **Ex. PW-10/A** was lodged. Thereafter he, **PW-10** reached the spot along with his staff and prepared the panchnama of the dead body and recovered a leather purse containing a driving licence and Rs.100/-, which brought forth the identification of the deceased as being Vinod Kumar S/o Dharampal Singh R/o B-324, Nathupura, Delhi. This witness also testified to the body having been sent for postmortem on the same day at about 5:30 PM along with an application for conducting the same i.e. **Ex.PW-10/C** and testified to having got the body of the deceased photographed at the spot vide application **EX.PW-10/E**.

16. As per the prosecution version on 02.11.2007, the post-mortem on the body of the deceased was done at the District Hospital, Etah and the FIR was thereafter registered as Nil/2007, copy of which is **Ex.PW-7/A**. Dr.Sayed Mohd. **PW-8A**, Pathologist, Distt. Hospital, Etah examined as **PW-8A** testified to having conducted the post-mortem on the body of the unknown deceased on

02.11.2017 on the application **EX.PW-10/C** having been submitted and testified to **Ex.PW-8A/A** being the post-mortem report. He further testified to the effect that the time since death was about 30 hours. The said post-mortem report indicates that eight articles including the T-shirt, vest, pant, a pair of shoes, a pair of socks, underwear, a religious thread on the hand and a wrist watch had been seized and sealed by the doctor and handed over to the police after they were sealed with the seal of the hospital.

17. **PW-10** put forth in the witness box by the prosecution was Sub Inspector Satpal, posted at PS Dholna, Janpath Kashiram Nagar, UP, who *inter alia* during his cross examination stated that the photographs of the dead body were taken at his instance but the same had not been placed on the record since they were meant only for the purposes of identification and since the dead body had been identified by his relatives, the said photographs had become irrelevant and he does not possess the photographs any longer. This witness further stated that during the investigation by the officers of PS Mukherjee Nagar, he had accompanied the investigating team to the spot where the dead body was found and participated in the investigation to that limited extent. He however stated that he did not remember the date when the police officers from PS Mukherjee Nagar had come Delhi but they had come after 2-3 days. He denied further that he had prepared the various documents at the instance of the IO of this case.

18. **PW-11** put forth in the witness box by the prosecution was Ct. Raj Narain, No. 169, posted at PS Ganj Rundwara, District Kashiram Nagar, UP, who testified to the effect that on 02.11.2007, he was posted at PS Patiali as a constable Clerk from 6.00 a.m. till 6.00 p.m. and on that day at about 7.00 a.m. on the basis of the written Tehrir of one Manoj s/o Sh. Dharampal Singh r/o Village Nathupura, Delhi, he registered the FIR No. 174/07 under Sections 364/392/302/201 Indian Penal Code, 1860, copy of which was **Ex.PW11/A**. He also testified that earlier a Nil/07 FIR had been registered, copy of which was **Ex.PW7/A**.

19. **PW-2** put forth in the witness box by the prosecution was Mr. Manoj Kumar, brother of the deceased Vinod Kumar, who testified to the effect that his brother Vinod Kumar was a driver with the Golden Travel, Mukherjee Nagar and that on 31.10.2007, his brother had gone somewhere to UP in a Tavera vehicle and that he learnt that one Monu had booked the Tavera vehicle on 31.10.2007 at around 9.00 a.m. and on 01.11.2007, he (**PW-2**) received a telephonic call from PS Patiali, District Etah, that they had received a dead body and one driving license, which contained particulars of his brother and their residential address on which information he (**PW-2**) went to Mukherjee Nagar and he made an inquiry from Kuldeep Singh, the owner of the travel company and thereafter, he made a telephonic call at PS Patiali and then they reached at

PS Patiali and he (**PW-2**) identified the dead body of his brother Vinod Kumar, purse and driving licence and made the complaint **Ex.PW2/A**. He further testified to the post-mortem on the dead body of his brother having been conducted where after they brought back the dead body to Delhi. He further stated that later on the case was transferred to PS Mukherjee Nagar by the UP Police and Inspector Shyama Pant had made inquiries from him. He also informed that on 01.11.2007 the vehicle had not returned.

20. *Inter alia*, **PW-2** identified the purse of his deceased brother as **Ex.P1** and driving licence, some documents, visiting cards, Rs.100/-, one batch number and some coins of his deceased brother as **Ex.P2** collectively.

21. **PW-3** examined by the State was Mr. Kuldeep Singh s/o Sh. Pratap Singh, owner of Golden Travel situated at 113, New Kishore Market, Kingsway Camp, Delhi, who testified to having received a telephonic call from Monu on his mobile phone on 31.10.2007 at about 8.00 / 8.15 a.m. and stated that Monu had demanded one Qualis or Tavera vehicle to go to Aligarh and on inquiry from **PW-3**, Monu had informed that they would return on the same day by 5-6 p.m. as they were going to get the bride. *Inter alia*, he testified to having sent the Tavera vehicle bearing no. DL-1YA-4120 to Lal Bagh at the address which was given to him by Monu and that he also gave the mobile number to his Manager so that the vehicle could be sent to Monu or Monu could be contacted.

He stated further that he had told the Manager that he settled the rates with the party at Rs.1,000/- out of which Rs.500/-, had been received. He further stated that his Manager informed him that the driver Vinod Kumar had gone with those boys, who were going to Aligarh and that in the evening, neither the vehicle nor the driver came back but **PW-3** did not find it strange because as a normal practice whenever the vehicle or the driver got late, the drivers were permitted to go back home directly and report on the next day morning. He further stated that on the next morning when Vinod Kumar (since deceased) did not come, he gave a call to his wife as to why Vinod Kumar had not reported for duty, and his wife told him that Vinod Kumar had not returned and she herself was worried. He further stated that thereafter about 10-15 minutes, he received a call from the wife of the deceased Vinod Kumar that she had received a telephone call from PS Patiali, District Etah that a dead body had been found and she was called to identify the same on the basis of the license found in the pocket of the dead body. **PW-3** stated that he himself took the brother and other relatives of the Vinod Kumar to Patiali and identified the dead body of the Vinod Kumar which was lying in the Police Station Patiali and that after the identification of the dead body of Vinod Kumar, the post-mortem was conducted and the dead body was handed over to the brother and relatives of the deceased on the next day which they brought to Delhi on the same day. He

further stated that those three boys, who had hired the vehicle were missing along with vehicle and thus **PW-3** suspected that they had killed his driver and thus **PW-3** requested the police. He further testified to having handed over the photocopy of the application of the deceased Vinod Kumar vide which he Vinod Kumar had applied to him i.e., **PW-3** for taking a job and testified that the same had been seized by the police of PS Mukherjee Nagar vide memo **Ex.PW3/A** along with the RC of the vehicle bearing no. DL-1YA-4120 **Ex.P1** and permit **Ex.P2**.

22. **PW-4** produced by the prosecution was Mr. Singh Raj s/o Chajan Singh, Manager of Golden Travel, stated that he had taken the Tavera vehicle bearing no. DL -1YA 4120 along with the driver Vinod Kumar to Lal Bagh where they parked their vehicle near the Masjid. Thereafter, Vinod Kumar had made a telephone call to the party and the party asked them to wait there and after 15-20 minutes three persons came there and told them that they had booked the vehicle and stated that they would come back in the evening itself as they were going to Aligarh but that those persons who took away the vehicle were found missing along with these three persons. This witness further stated that he learnt on the next day of some incident having taken place with the driver Vinod Kumar as per information received at PS Mukherjee Nagar from PS Patiali and he came to know that Kuldeep Singh along with his brother and other relatives

of Vinod Kumar had left for Patiali and thereafter Kuldeep Singh brought the dead body of Vinod Kumar. He also stated that the persons who took away the vehicle and the vehicle were found missing and they suspected that those three persons had killed Vinod Kumar and had taken away their vehicle and that later on the vehicle was recovered from Farukabad. *Inter alia*, this witness identified the accused Vijay @ Rinku i.e. the appellant herein as being one of the boys who had gone with the driver to Aligarh and as being the person who had given him Rs.500/- out of the advance to be paid for the journey.

23. On being cross-examined on behalf of the accused / the appellant herein, however, this witness stated that he had not stated the name of the accused / the appellant herein Vijay @ Rinku i.e. the appellant herein as being the person, who had given him R.500/- and stated that he was not aware of the name of any person.

24. **PW-5** put forth in the witness box by the prosecution was Sh. Hira Lal Gupta s/o Sh. Parshu Ram Shah, who testified to the effect that he runs a STD booth / shop at N-25/A-252, Lalbagh, Azadpur, Delhi and stated that on 31.10.2007 at about 7/8 a.m., one boy namely Ashish who resides in the nearby jhuggi came to his shop and he had made a telephone call from his shop to the travel agent and booked one vehicle to go out of Delhi with the name of Monu. This witness further stated that at about 9 / 9.15 a.m., again a call was received

at his shop and it was attended by Ashish and he talked with the caller by the name of Monu and there were two more boys with Ashish and thereafter Ashish left his shop along with those two other boys and after about half an hour a vehicle came there and Ashish along with those two boys went away. *Inter alia*, this witness stated that on 08.12.2007, the police had come to his shop and he had taken the police to the Jhuggi of Vijay @ Rinku i.e. the appellant herein but he was not found there and he further stated that Ashish was residing on the upper floor of the jhuggi of Rinku. He further stated that from the jhuggi of Ashish, his photograph was found. This witness also testified that on the next day, he along with the police went to the jhuggi of Vijay @ Rinku i.e. the appellant herein and on his pointing out, the accused Vijay @ Rinku i.e. the appellant herein was apprehended and he was arrested vide memo **Ex.PW5/A** and his personal search was conducted vide personal search memo **Ex.PW5/B** and that he **PW-5** had signed both the memos. He further stated that Vijay @ Rinku had made a disclosure statement **Ex.PW5/C**. *Inter alia*, **PW-5** also **identified the accused Vijay @ Rinku i.e. the appellant herein during his testimony recorded on 18.03.2010 in the Court as being the person, who had come to his shop with Ashish on 31.10.2007 and had remained standing outside his shop when Ashish was talking on telephone.**

25. On being cross-examined on behalf of the accused / the appellant herein, this witness stated that he had been residing in Lal Bagh for 2½ years i.e. from 2005 to 2008 and stated that his brother in law had opened the STD booth but he did not know when he had started it. He however stated that he used to open the STD Booth at about 7.00 a.m and keep the same open till 10.00 p.m. **PW-5** further testified to the effect that the distance of the jhuggi of the accused Vijay @ Rinku i.e. the appellant herein was about 200 feet from his shop / STD booth, which was situated at Main Lal Bagh Chowk. He further stated that the gali in which the Jhuggi of Vijay @ Rinku i.e. the appellant herein is situated passes from in front of his booth and that Vijay @ Rinku i.e. the appellant herein was a frequent visitor of his booth. He further stated that when Ashish was making a call, a large number of other boys were also present. He further stated that his shop being situated at the main chowk, a large number of persons normally stop at his shop. **He admitted that on 31.10.2007, Vijay @ Rinku i.e. the appellant herein had not entered inside the shop and rather stated that the accused Vijay @ Rinku was outside with a number of boys.**

26. **PW-6** examined by the prosecution was Mr. Rajan a Driver, who stated that on 19.01.2008, he along with the police of PS Mukherjee Nagar went to PS Mau Darwaja, District Farukabad and had driven back the Tavera vehicle No.

DL-1YA-4120 to Delhi on the next date and left the same at PS Mukherjee Nagar in relation to which his statement was recorded by the IO.

27. **PW-7** examined by the prosecution is Inspector Shyama Pant, who stated that on 03.12.2007, on which date FIR No. 532/07 was marked to him on the basis of the zero FIR received from PS Patiali, District Etah, UP. He testified to having recorded the statement of Kuldeep Singh, the owner of the Tavera vehicle bearing no. DL-1YA-4120 and Singh Raj Singh, Manager of the Golden Travel and stated that thereafter he proceeded on leave and handed over the case file to the SHO Inspector Indira Sharma and testified that further investigation was carried out by her. This witness denied that the statements of Singh Raj and Kuldeep Singh had not been correctly recorded and denied that their signatures had been obtained on blank papers.

28. **PW-12** put forth in the witness box by the prosecution was HC L.N. Sharma, No. 102 NW, PS Shalimar Bagh, who testified to the effect that on 03.12.2007, he was posted at PS Mukherjee Nagar as a Duty Officer from 9.00 a.m to 5.00 p.m. and on that day at about 12.15 in the afternoon, a communication **Ex.PW12/A** was handed over to him by the SHO of PS Shalimar Bagh which communication had been sent by the SSP Etah, and the SHO PS Shalimar Bagh made an endorsement on the same on the basis of which, he recorded the FIR No. 532/07 under Sections 364/392/302/201 IPC

and testified to **Ex.PW-12/B**, being the computer copy of the said FIR and testified to the endorsement on the communication sent by SSP Etah as **Ex.PW-12/C** and that after registration of FIR, the investigation was handed over to the Addl. SHO Shyama Pant.

29. **PW-13** put forth in the witness box by the prosecution was Ct. Arvind Kumar, No. 177 (Clerk) posted at the office of Kshetra Adhikari, Amritpur, District Farukabad, UP, who testified to the effect that on 04.11.2007, he was posted as Ct. Clerk PS Mau Darwaza, District Farukabad on that day at about 22.15 hours SI Karuna Shankar Bajpai handed over to him, one seizure memo of a Tavera vehicle bearing registration no. DL-1YA-4120, which was recovered from the possession of the accused Vijay Pratap Singh and on the basis of which, he recorded NIL FIR under Section 411 IPC bearing serial no. 270/07 which runs into two pages. He further testified that the same is **Ex.PW-13/A** and the seizure memo is **Ex.PW-13/B**.

30. **PW-14** put forth in the witness box by the prosecution was SI Suraj Bhan, No. D-3806, Police Training School, Model Town, North West District, who testified that on 24.01.2008, he was posted as I/C Mobile Crime Team, NW District and on that day, he received information from PS Mukherjee Nagar and thus he reached PS Mukherjee Nagar, NW District where he found a white

Tavera parked at the gate of the PS which he inspected and gave his report as **Ex.PW-14/A**. He also testified to the effect that SI Narender Singh, who was the member of the Crime Team and **a finger print expert also lifted the finger prints from the rear mirror of the car.**

31. **PW-15 examined by the prosecution was ASI Narender Singh, Finger Print Expert, Finger Print Bureau, 3rd Floor, PS Kamla Market, Delhi, who testified to the effect that on 24.01.2008, he was a member of the mobile crime team NW District and was posted as a finger print expert and that they were called by the PS Mukherjee Nagar to examine a Tavera car which was involved in an accident and on receipt of the information, they went to PS Mukherjee Nagar where they found a white Tavera no. DL 1YA 4120 parked at the police station and on examining the same, he found two chance prints on the rear view mirror of the car and that the finger print could not be lifted as the photographer had refused to photograph the mirror saying that it was not possible so he handed over the mirror to the IO on 31.01.2008. This witness further testified to his report in this regard as being Ex.PW-15/A and his subsequent report being Ex.PW-15/B.**

32. **PW-16 examined by the prosecution was Ct. Keshav Parshad Raman, who testified to the effect that on 20.01.2008, he was posted as a Constable in PS Mau Darwaja, Janpath, Farukabad, UP and on that date, he had handed over**

the Tavera car of white colour bearing No. DL 1YA 4120 to two police officers who had come from PS Mukherjee Nagar, Delhi and these two officials namely SI Ram Chander and Inspector Ajay Kumar seized the said vehicle and took possession of the said car. On being cross-examined on behalf of the accused i.e. the appellant herein, **PW-16, stated that these two police officials were not accompanied by any public person and stated that as soon as the vehicle was handed over to him in the PS, he had simply locked the same and kept it in the PS. He further stated that at the time he handed over the said vehicle to these officers, who had come from Delhi Police, he had observed that the front wind shield was cracked from one side showing that something had hit the same. He stated further that he did not recollect whether this crack was towards the driver's side or the other side and he did not inspect the vehicle from inside and could not say whether there was a stereo attached to it or any other additional appliances attached to it. He further stated that he did not recall the condition in which the vehicle was taken whether by driving the same or by a crane. He further stated that he had checked the number plate of the vehicle but in his opinion the number plate was present on the back side but not on the front. He denied that the record had been fabricated in PS and that no vehicle was recovered, nor handed over, nor seized as claimed.**

33. **PW-17** put forth in the witness box was HC Surender Kumar, No. 581/NW PDT North West District, who testified to the effect that on 28.01.2008, he was posted in DIU North West District and on that date, he received the process under Section 82 Cr. P.C. against the accused Ashish, s/o Chander Pal and stated that his report was **Ex.PW-17/A** on the basis of which the accused Ashish was declared a P.O. by the Court.

34. **PW-18** put forth in the witness box was Inspector R.C. Dahiya, No. D-867, ATO, PS Uttam Nagar, Delhi, who testified to the effect that on 19.01.2008, he was posted in DIU North West District as SI and on that date, he along with Inspector Ajay Kumar, Ct. Brij Bihari left for investigation of this case for District Etah, Farukabad, UP through a taxi and they reached at PS Patiali District, Etah where Inspector Ajay Kumar had recorded the statement of one Jawala Parshad, thereafter they went to Mau Darwaja, District Farukabad and they took one SI Karuna Shanker from the police station and reached at Village Adaweli in search of the accused Ashish but they found the house of the accused Ashish locked and his whereabouts could not be ascertained. **He further stated that thereafter they came back to PS Mau Darwaja, Farukabad and Inspector Ajay Kumar had moved an application for releasing the vehicle DL IYA 4120 before the SO, SI Kamal Hassan of PS Mau Darwaja, which application was allowed and the said vehicle which**

was already parked in the premises of PS Mau Darwaja was taken into possession vide a seizure memo Ex.PW-16/A. This witness further stated that Ct. Kesha Parshad Raman of PS Mau Darwaja was interrogated and his statement was recorded by Inspector Ajay Kumar. He further stated that thereafter they went to PS Patiali and met the chowkidar, Rameshwar of the PS in his village and his statement was recorded by the IO. This witness further stated that the public persons who took them to the house of chowkidar Rameshwar was relieved by the IO and they left for Delhi along with the said vehicle and the same was got deposited in the Malkhana of PS Mukherjee Nagar.

35. This witness on being cross-examined on behalf of the accused i.e. the appellant herein stated that they went in a taxi which was hired by Inspector Ajay Kumar to Etah and Farukabad and they first went to PS Patiali but he could not tell the name of the private driver and the IO had not recorded the statement of that private taxi driver. He further stated that a DD was lodged in the PS Patiali but he did not know the number of that DD. *Inter alia*, **PW-18** further testified to the effect that a person from the nearby house informed him about the accused Ashish whose house was found locked and that Ashish had gone somewhere and he did not disclose as to where and when Ashish had gone. He further stated that he could not give the name and house number of the

person who had given such information but stated that perhaps it was a Pradhan of the village, who informed them and stated that he could not give the name of that Pradhan and he did not know whether the statement of that Pradhan was recorded or not. He further stated that they remained in the village for about 30-45 minutes and they had gone to the house of the accused Ashish at about 11 a.m. and did not come back to the house of the accused again. **The witness further testified to the effect that on 20.01.2008 in the morning hours, they went to PS Mau Darwaja and had taken a vehicle and that the aforesaid Tavera was driven by one Rajan who accompanied them from Delhi as sent by the owner of the Tavera vehicle and that two persons sat in the Tavera vehicle and Rajan had a duplicate key of the Tavera vehicle. He further stated that he could not remember whether the police officials of PS Mau Darwaja had handed over any key of the vehicle to the IO or not and that the said vehicle was opened with the key and started with the same key, which was with Rajan.**

36. On cross-examination, the witness stated that the IO had made inquiry from 3-4 other persons of the village regarding the accused Ashish but he could not give the addresses of those villagers and the IO had not recorded statements of any villager of the village of Ashish. This witness further stated that the IO had made inquiry from the neighbour of the accused Ashish but he cannot tell

his name. **He also testified to the effect that no photograph of the Tavera vehicle was taken in his presence in the police station or any where.** *Inter alia*, the witness denied that had deposed falsely at the instance of the IO.

37. **PW-19** was Ct. Brij Behari, N. 6489/Security, Vinay Marg, Delhi, who testified to the effect that on 19.01.2008, he was posted at DIU North West District and on that day, he along with Inspector Ajay Kumar along with SI Ram Chander had taken a private taxi and proceeded for Etah, UP and had reached at PS Patiali and the IO Inspector Ajay Kumar had made inquiries in the PS and had met one chowkidar whose name he did not remember and the IO recorded the statement of the chowkidar and thereafter they went to District Farukabad, UP and stayed in a hotel and in the morning, **they went to PS Mau Darwaja and they found the Tavera vehicle bearing no. DL IYA 4120 in the PS and the person who accompanied them from Delhi checked the said vehicle.** *Inter alia*, this witness stated that they had made entries of their arrival in the PS and they had taken about 3 or 3-½ hours at the police station. He further stated that the IO took the aforesaid vehicle into possession with the permission of the SO vide seizure memo **Ex.PW-16/A** and thereafter, they all came back to PS Patiali again. He further stated that Inspector Ajay Kumar made inquiries from the Chai wala and the IO collected the copy of FIR from the PS Patiali and they came back to Delhi and the aforesaid vehicle was got

deposited in the malkhana of PS Mukherjee Nagar. This witness further testified to the effect that on **29.01.2008**, they again started the investigation of this case and they took the aforesaid Tavera vehicle from PS Mukherjee Nagar vide RC No. 4/21 and went to FSL Rohini and that the said vehicle was got inspected by the FSL Rohini through the scientist Sh. V. Shankarnaraya, who gave the exhibits and sealed them in four envelopes and the same were handed over to the IO and the said envelopes were sealed with the seal of AK and thereafter seized by the IO vide seizure memo **Ex.PW-19/A**. *Inter alia*, this witness testified to the effect **that the scientist Sh. V. Shankarnaryanan had also handed over one box containing rear side mirror which was fixed inside the car and the statement of that scientist was recorded.** He further stated that he had taken the aforesaid vehicle Tavera, the four envelopes and the said box and had deposited the same in the malkhana of PS Mukherjee Nagar. **This witness further stated that he joined the investigation on 23.02.2008 with the IO and on that date, he had taken one sealed parcel and the report from the MHC(M) of PS Mukherjee Nagar and had taken the same to the Finger Print Bureau, Malviya Nagar and that the official of the Finger Print Bureau opened the same and examined the exhibits and thereafter resealed the same.** He further stated that after some time they had handed over the exhibits and the sample seal to him with the seal of the office of the Finger Print

Bureau, Malviya Nagar and he had brought the same and deposited the same in the malkhana of PS Mukherjee Nagar. This witness also testified to the effect that on 03.03.2008, on the instructions of Inspector Ajay Kumar, he had gone to District Hospital, Etah and had taken the sample seal of the hospital and brought the same and had deposited the same in the malkhana of PS Mukherjee Nagar and his statement was recorded. He further stated that he did not tamper with the seal of the exhibits during the period the same remained in his possession.

38. **On being cross-examined on behalf of the accused Vijay @ Rinku i.e. the appellant herein, *inter alia*, it was stated by this witness that the pullandas were not sealed in his presence and said that the FSL officials opened the parcel in his presence and examined the exhibits i.e. mirror and thereafter resealed the exhibits in his presence. This witness further stated that thereafter they had come back to Delhi from Etah and Farukabad at about 10 – 10.30 p.m. and they had left Farukabad at about 11 – 12 noon on 20.02.2008. He denied that he did not go anywhere from PS Patiali or that he did not go to PS Mau Darwaja or that he had tampered with the seal of the exhibits.**

39. **PW-20** put forth in the witness box was HC Satish Kumar, No. 1962/NE, PS New Usmanpur, who testified to the effect that on 15.12.2007, he was posted at PS Mukherjee Nagar and was working as a Constable and on that date, he

joined the investigation of his case with the IO SHO Smt. Indira Sharma and came to Tis Hazari Courts where the accused Vijay Pratap Singh @ Veenu was produced by the UP police before the Court of MM and the Investigating Officer after taking permission from the Court had interrogated him and on being satisfied, the IO arrested him vide memo **Ex.PW20/A** whereafter the said accused was remanded to judicial custody.

40. **PW-21** put forth in the witness box was Sh. Vishal Gaurav, Nodal Officer, Bharti Airtel Limited, D-184, Okhla Industrial Area, Delhi, who testified to having brought the original record of the subscriber Shailender Kumar having mobile no. 9910831326 and also brought the copy of application form which is **Ex.PW-21/A** bearing his initial and seal of the witness. The witness also testified to the address of the subscriber along with the copy of election identity card in support of his address, copy of which is **Ex.PW-21/B**.

41. **PW-22** put forth in the witness box was **HC Mukesh Sharma, No. 61/Traffic, Defence Colony Circle**, who testified to the effect that on **13.12.2007**, he was posted as the MHC(M) at PS Mukherjee Nagar and on that day SI Chander Bhan had deposited one pullanda duly sealed with the seal of the hospital and he had received the same vide entry no. 2620 of register no. 19.

On 20.01.2008 Inspector Ajay Kumar had deposited one Tavera vehicle bearing no. DL 1YA 4120 of white colour and he received the same vide entry no. 2395. On 29.01.2008 Inspector Ajay Kumar had deposited the pullanda duly sealed with the seal of AK and he had received the same vide RC no. 2401.

On 29.01.2008 he had sent the aforesaid vehicle to FSL Rohini through Ct. Brij Bihari vide RC No. 4/21 and he had brought back the vehicle on the same day and he had received the same from him and on 30.01.2008, he had released the aforesaid vehicle on superdari.

On 31.01.2008 Inspector Ajay Kumar deposited the pullanda containing two chance prints and he had received the same vide RC no. 2404 and the finger prints / chance prints were sent to the FSL Malviya Nagar through Ct. Brij Bihari on 22.02.2008 who brought the aforesaid exhibits and he had received the same vide entry 2404.

On 03.03.2008 Inspector Ajay Kumar deposited the sample seal duly sealed with the seal of the hospital and he had received the same vide entry no. 2428.

On 27.02.2008, this witness had sent the exhibits to the FSL Rohini through Ct. Brij Bihari vide RC no. 16/21 which could not be deposited by him and he brought the same and he had received the same from him with

the intact seal and on 03.03.2008, he had sent the same exhibits again to the FSL, Rohini through the same constable vide RC No. 17/21 and he had received the copy of the receipt from him.

On 22.09.2009, he had received the exhibits and one envelop duly sealed with the seal of FSL and deposited the same in the malkhana and the copy of entry is Ex.PW-22/A bearing his signatures at point-A.

The photocopies of the aforesaid entries are Ex.PW-22/A1 to Ex.PW-22/A-5 and the copies of RC No. 4/21 and RC No. 17/21 are Ex.PW-22/B and Ex.PW-22/C respectively bearing his signatures at point-A.

On being cross-examined, the witness stated that he had physically checked the aforesaid Tavera vehicle when the same was deposited with him and the key of the aforesaid vehicle was also deposited. *He admitted that the fact of depositing of the keys with him is not mentioned in the relevant entries. He further stated that he did not remember as to how many keys were there and he did not check the vehicle while opening the same with the keys and he could not tell as to what was there inside the car. He stated that he handed over the keys to the superdar and he could not tell as to how he had taken the vehicle from the malkhana of the police station. He further stated that he did not remember whether the keys of the said vehicle were duly*

sealed or not and he kept the aforesaid keys in the malkhana. He further stated that the pulandas were deposited with him, were already sealed.

42. **PW-23** put forth in the witness box was SI Chander Bhan, No. D-3662, PS Adarsh Nagar, who testified to having been posted at PS Mukherjee Nagar on 08.12.2007 when he joined the investigation of this case with Inspector Indira Sharma and accompanied her along with HC Narender, Ct. Yogesh and the Manager of Travel Agency namely Singh Raj, who were present at Noor-Ul-Huda Masjid, Lal Bagh, GT Road and Inspector Indira Sharma prepared the site plan at the instance of Singh Raj vide memo **Ex.PW-23/A** in his presence. According to this witness, Heera Lal, the STD owner was interrogated by the IO / SHO Indira Sharma and Heera Lal had shown the jhuggi of Ashish and Vijay Pratap @ Rinku but they could not be traced out there. The IO recorded the statement of both these witnesses and they came back to the police station where his statement was recorded. The witness further testified to the effect that **on 09.12.2007, he had again joined the investigation, he along with the IO, HC Narender and Ct. Yogesh reached Lal Bagh where Heera Lal Gupta pointed out to the jhuggi of Ashish and Rinku for their arrest where the accused Vijay @ Rinku i.e. the appellant herein met them and was thus apprehended and arrested vide Ex.PW-5/A and her personal search was conducted vide memo Ex.PW-5/B where after the accused Vijay @ Rinku i.e.**

the appellant herein was interrogated and his disclosure statement was recorded vide **Ex.PW5/C**. This witness also testified that the statement of Heera Lal was recorded and thereafter they came back to the police station. He also stated that Singh Raj had come to the police station and identified the accused Vijay @ Rinku i.e. the appellant herein as the same person and his statement was recorded. This witness *inter alia* stated that on **10.12.2007**, the further investigation of this case was handed over to him and as he had the production warrant of accused Vijay Pratap Singh @ Veenu on that date and he along with HC Narender and Ct. Rajeev Tomer and **the accused Vijay @ Rinku i.e. the appellant herein had left the police station for out station. He further testified that on 11.12.2007**, they all reached Police Station Patiali, District Etah, UP and he had taken a pullanda first from PS Patiali stated to contain the clothes of the deceased duly sealed with the seal of hospital and seized the same vide seizure memo **Ex.PW-23/B**. He further stated that thereafter they along with police staff, SI Satpal of PS Patiali and the accused reached in a field pointed by the accused as the field in which, he along with the co-accused Ashish and Vijay @ Veenu had thrown the dead body of the deceased after killing him. **PW-23** prepared the site plan **Ex.PW-10/D** and also prepared pointing out memo **Ex.PW-23/C** and recorded the statement of SI Satpal and they left for Fatehgarh, District Farukabahd after leaving SI Satpal of PS Patiali.

Significantly, this witness stated that on 12.12.2007 all of them including Vijay @ Rinku i.e. the appellant herein reached at PS Mau Darwaja and SI Karuna Shanker Vajpayee for search of co-accused Ashish but he could not be traced out. (Inter alia, PW-23 identified the accused Vijay @ Rinku i.e. the appellant herein arrested by SHO in his presence).

43. This witness on being cross-examined on behalf of the accused Vijay @ Rinku i.e. the appellant herein stated that on 09.12.2007, **they went to the jhuggi of accused Vijay @ Rinku i.e. the appellant herein at about 5.30 p.m. and apprehended him while he was sitting in his jhuggi. The witness admitted that the time of the arrest shown in the arrest memo of accused Vijay @ Rinku i.e. the appellant herein is 7.00 p.m. and voluntarily said that after the apprehension of the accused at 5.30 p.m. he was interrogated by the IO and thereafter he was arrested. It was admitted by this witness that the IO had not mentioned the exact number of place of arrest in the arrest memo of accused Vijay @ Rinku i.e. the appellant herein but stated that the jhuggi from where the accused was apprehended was a double storey house and the disclosure statement of the accused was recorded in the area of Lal Bagh jhuggi and he denied that no disclosure statement was recorded in his presence at Lal Bagh where the accused Vijay @ Rinku i.e. the appellant herein was arrested. He further stated that he could not tell as to who had written the**

disclosure statement of the accused Vijay @ Rinku i.e. the appellant herein and denied that IO had taken the signatures of the accused Vijay @ Rinku i.e. the appellant herein on a blank paper which was converted into disclosure statement. *Inter alia*, this witness denied that the accused had surrendered in the police station and stated that he could not tell whether the IO enquired as to where the accused was present on the day of the incident. It was further stated by this witness that the IO had recorded the statement of Heera Lal only at Lal Bagh and admitted that the IO had not recorded the statement of any neighbour of the accused Vijay @ Rinku i.e. the appellant herein in his presence on 08.12.2009 and 09.12.2009 when he was a member of investigating team but denied that the accused i.e. the appellant herein had been falsely implicated in this case and that he was deposing falsely.

44. **PW-24** put forth by the prosecution in the witness box was SI Karuna Shankar Yajpayee, PS Bewar District Manपुरi, UP, who stated that he was posted at PS Mau Darwaja as an SI on 04.11.2007 and on that day, he along with Ct. Shashi Bhan Tiwari and Ct. Vijay Shankar were on patrolling and that they were present at the crossing of Hathia Pur Village and at about 8.20 p.m, he received information that a car of the make Tavera bearing no. DL IYA 4120 had been stolen from Delhi and that the occupant would sell the said car in Kanpur and on this information, he called Ct. Rajan Singh and Mukesh Dubey

who were already patrolling in the said area and they thereafter all the police officials went to Adevli Turn near Hathia Pur turn and a nakabandi was done there at Adevli turn and at about 8.30 p.m., the said car was found coming from the side of Farukabad and when it was stopped, the accused Vijay Partap @ Veenu was found driving the said car but two other persons managed to escape from the car. He further stated that the accused Vijay Pratap who was driving the car was apprehended at the spot and on interrogation the accused did not produce any ownership documents and disclosed that they had robbed the said car from Delhi and the driver of the said car had been murdered and they had thrown his dead body in the jurisdiction of police station Patiali, District Etah, UP having no option. He (**PW-24**) had prepared the seizure of the said car and had apprehended the accused persons vide memo **Ex.PW-7/B** and thereafter he got the case registered against the accused at PS Mau Darwaja, District Farukabad, UP vide NIL FIR under Sections 41/411 of the Criminal Procedure Code, 1973 read with Section 411 IPC and that thereafter the IO of the FIR NIL gave the information to the IO of the present case.

45. On being cross-examined on behalf of the accused Vijay @ Rinku i.e. the appellant herein, the witness stated that the person who managed to escape was on the front seat and another was on the rear seat and that the person who managed to escape was driving the vehicle and another person who managed to

escape was sitting in the rear seat of the vehicle. **In reply to a specific Court query to the accused Vijay @ Rinku i.e. the appellant herein as to who was driving the said car, the witness stated that the car was driven by accused Vijay @ Rinku i.e. the appellant herein as told to him by Vijay Partap @ Veenu. The witness admitted that he had not stated before the police at the time of recording of his statement under Section 161 Cr.P.C. about the driving of vehicle Tavera by accused Vijay @ Rinku i.e. the appellant herein and all the four accused persons were standing in front of the case.**

46. On being cross-examined on behalf of the accused Vijay Partap @ Veenu, the witness admitted that Vijay Pratap was not driving the car at all and he further stated that Vijay Partap had disclosed to him that the said car was robbed by Ashish and Vijay @ Rinku i.e. the appellant herein and he could not tell whether Vijay Partap @ Veenu was with them at the time of robbery. He further stated that he had not made any interrogation in relation to this aspect qua the accused Vijay Partap @ Veenu.

47. **PW-25** put forth in the witness box by the prosecution was ACP Indira Sharma of the CAW Cell, PS Kirti Nagar, West District, Delhi, who stated that she had taken over the investigation of the case on 06.12.2007 from Inspector Shyama Pant, who had proceeded on leave. She further stated that prior to the same, on 03.12.2007, she was posted as SHO in PS Mukherjee Nagar and on

that day FIR Nil / 2007 under Sections 364/392/302/201 IPC PS Patiali, District Etah, UP total 29 papers were received at PS Mukherjee Nagar through the office of the ACP Model Town as the same were sent to the office of ACP by the SSP, Etah, UP and the papers which were received in their office were **Ex.PW-12/A, Ex.PW-11/A, Ex.PW-2/A (complaint of Manoj Kumar), Ex.PW-10/A, Ex.PW-10/B, Ex.PW-10/C, Mark Ex.PW-25/A, Ex.PW-10/E and Ex.PW-8/A** and she had made an endorsement over **Ex.PW-12/A** and had marked the case to the Addl. SHO Inspector Shyama Pant for necessary action and investigation after registration of the FIR. As observed hereinabove, the Addl. SHO Inspector Shyama Pant took over the investigation on 06.12.2007 and stated that she perused the case file and on 08.12.2007, another Nil FIR PS Mau Darwaja, District Farukabad, UP was received regarding recovery of the vehicle Tavera bearing no. DL 1YA 4120 and stated that the UP police of PS Mau Darwaja had already arrested the accused Vijay Partap @ Veenu s/o Chattarpal and had placed the documents on the file. She further stated that she had called the Manager of the Golden Travel Agency namely Singh Raj and thereafter involved the said Singh Raj in the investigation, he along with HC Chander Bhan , HC Narender Chikkara, Ct. Yogesh had gone to Noor Ul Hada Masjid at Model Town, Delhi at GTK Road and there he inspected the spot and prepared the site plan on the pointing out of Singh Raj **Ex.PW-23/A** which he

signed. He further stated that she thereafter had made a call on mobile no. 9910831326 and the phone was attended by the person namely Hira Lal Gupta, who stated that the said STD booth and the said mobile number belongs to him and thereafter they reached at the said STD booth of Hira Lal Gupta at Lal Bagh Jhuggies no. N25/A, 12 Lal Bagh, Azadpur, Delhi for the search of Vijay @ Rinku i.e. the appellant herein and Ashish but in vain and that the jhuggi of Ashish was on roof of Vijay @ Rinku i.e. the appellant herein and one photograph of Ashish was there in his jhuggi and Hira Lal identified him through his photograph as Ashish. He recorded the statement of Hira Lal Gupta and relieved him. The IO also stated that thereafter they came back to police station and he recorded the supplementary statement of Singh Raj and the statement of his accompanying staff. *Inter alia*, the witness testified to the effect that **on 09.12.2007**, on the identification of Hira Lal **they apprehended Vijay @ Rinku i.e. the appellant herein** as being the boy who had come to his shop along with his associates to make a call and thus the accused Vijay @ Rinku i.e. the appellant herein was apprehended and was interrogated and the accused confessed to his guilt and made a disclosure statement **Ex.PW-5/C** bearing his signatures at point X and thereafter he was arrested vide memo **Ex.PW-5/A** and personal search was conducted by SI Chander Bhan vide memo **Ex.PW-5/B**.

48. On being cross-examined, **PW-25** denied that the number 9910831326 belongs to Shailender Shah and stated that each time, she had talked on the said phone number with Hira Lal but she had not verified whether the subscriber of the said phone was Shailender Shah or not and that the vehicle was booked by Ashish in the assumed name of Monu and this fact was told to him by Hira Lal and there were two other boys accompanying Ashish and one of them was named Vijay and the other was not known to him by name.

49. During cross-examination on behalf of the accused / the appellant herein, the witness further testified to the effect that the Tavera vehicle **had not been recovered by her during investigation till 16.12.2007** and stated that on **08.12.2007**, the information has been received from PS Mau Darwaja regarding apprehension of the accused and recovery of vehicle. She further stated that the statement of the owner of vehicle was not recorded by her and that the owner of the vehicle was examined by Inspector Shyama Pant. She denied that since Ashish was residing at the same jhuggi at the first floor, thus, the name of the accused / the appellant herein has been falsely implicated in the present case. She further denied that the accused Vijay @ Rinku i.e. the appellant herein was arrested on the basis of the disclosure statement made by the accused Vijay Partap @ Veenu and rather stated that the accused / the appellant herein had been arrested on the identification of Singh Raj and Hira Lal.

50. **PW-26** put forth in the witness box was Inspector Ajay Kumar, SHO PS Rani Bagh, Delhi also one of the Investigating Officers of the case, who was entrusted the file of the present case on 10.01.2008 when he was posted at the DIU, North West as an Inspector and stated further that on a perusal of the case file and during investigation Sections 120B/202/216 IPC were added. He stated further that on **19.01.2008**, he along with SI Ram Chander and Ct. Brij Bihari after taking permission for out station had gone to PS Patiali, District Etah, UP where he recorded the statement of the witnesses and thereafter they had gone to **PS Mau Darwaja, District Farukabad, UP where they made a search for the accused Ashish and seized the Tavera vehicle bearing no. DL 1YA 4120.** He further testified to the effect that after reaching PS Mukherjee Nagar, he deposited the case property in the malkhana and had recorded the statement of the witnesses. **He further stated that the vehicle was got inspected by the Crime Team on 24.01.2008 and the Incharge Crime had given his report Ex.PW-14/A and the Crime Team took into possession the rear view mirror on which two chance prints had appeared.** He further stated that the said Tavera vehicle had been got inspected through the scientific expert of the FSL Rohini, Delhi at the office of the FSL, who lifted some stains and kept the same in envelopes and all four envelopes were then sealed with the seal of AK separately and seized vide seizure memo **Ex.PW-19/A.** He further stated that as

long as the vehicle Tavera remained with him during transit, it remained intact and was not tampered with. He further stated that after getting the vehicle examined by the FSL expert, he had deposited the same in the malkhana and had also deposited the said four envelopes in malkhana.

51. This witness further testified to the effect that on 31.01.2008, the Crime Team finger print expert had handed over to him the rear view mirror, which was converted into a pullanda which was sealed with the seal of AK and seized through a seizure memo **Ex.PW15/B**. He further stated that the said mirror was sent to the Finger Print Bureau, Malviya Nagar for examination through Ct. Brij Behari and during the course of investigation on 03.03.2008, he had seized the sample seal of Civil Surgeon Office, Etah which was produced before him by Ct. Brij Behari vide seizure memo **Ex.PW/B**. This witness identified **Ex.PW-26/D** as being the application of the deceased for seeking employment which was produced by Kuldeep Singh and **Ex.PW-26/D1** as being the complaint which was made by Kuldeep to the Police Station. This witness also identified **Ex.26/P1** as being one rear view mirror which had been taken out and was sent by him to the Finger Print Bureau, Malviya Nagar. *Inter alia*, **PW-26** testified to **Ex.PW-26/F** as being the crime scene report which was prepared by the Senior Scientific Assistant, FSL. He testified to **Ex.26/G** as being the application for issuing the process under Section 82/83 Cr.P.C. seeking before court that

Ashish could not be arrested and be declared Proclaimed Offender. **On being cross-examined on behalf of the accused Vijay Partap @ Veenu, the witness stated that when the rear view mirror had been taken into possession, no public witness was present there and attested the memo.** This witness further stated that he was present when the crime team inspected the vehicle and took the rear view mirror from the vehicle and later it was handed over to him. *Inter alia*, this witness denied that there were a number of public witnesses present at the time of the seizure of the rear view mirror. *Inter alia*, this witness denied that when the crime team official took the rear view into possession number of public persons were present there and that he did not deliberately join them. He further stated that at the time **Ex.PW-15/B** was prepared the accused was in custody when the rear view mirror was taken into possession. *Inter alia*, this witness denied that he had not conducted a fair investigation and denied that he had not sent the rear view mirror which was taken into possession to FPB and denied that in place of that mirror another mirror was sent to FPB.

**STATEMENT U/S 313 OF THE CODE OF CRIMINAL PROCEDURE,
1973 OF THE APPELLANT**

52. In his statement under Section 313 of the Code of Civil Procedure, 1973, the accused Vijay @ Rinku i.e. the appellant herein stated in relation to **Ex.PW-1/A** i.e. the biological report and **Ex.PW-1/B** i.e. serological report prepared by V. Shankar Narayanan to the effect that the same were not recovered from him

and thus did not bear the signatures of any public witness. He denied having made any disclosure statement and stated that the police had taken his signatures on several blank papers when he was in police custody. He also denied that he had been arrested on the pointing out of Hira Lal and stated that he was arrested from the Bhajan Pura bus stand and that the police had obtained his signatures on blank papers and subsequently the same were used as memos. *Inter alia*, the accused stated that he was innocent and had been falsely implicated in this case on the disclosure of the co-accused Vijay Paratap @ Veenu as he is the brother of Ashish, who had picked quarrel with him in October, 2007 and had also given beating to him and that the disclosure was made by the accused Vijay Partap @ Veenu due to the enmity between brother of Vijay Partap @ Veenu and him.

53. In his statement under Section 313 of the Code of Civil Procedure, 1973, the accused Vijay Partap Singh @ Veenu stated that he is innocent and had been falsely implicated in this case. He further stated that the truth is that Ashish is his brother and that the police had come to his house and had taken him away to the local PS and pressurized him to produce his brother and also retained him at the PS wrongfully and that the police had told his father that if they did not produce Ashish then the other son i.e. accused Vijay Partap Singh @ Veenu would also be implicated in the case.

54. In support of his plea of innocence, the accused Vijay @ Rinku i.e. the appellant herein produced three witnesses as **DW-1, DW-2 & DW-3**.

DEFENCE EVIDENCE LED BY APPELLANT

55. **DW-1** Sh. Harpal Singh s/o Sh. Bhawar Singh stated that on 31.10.2007, Vijay @ Rinku i.e. the appellant herein (his nephew (Bhanja) i.e. his sister's son i.e. the present appellant had come to his house and stated that he stayed at his house for three days and returned to his house on 02.11.2007 and that on 10.10.2007, he (**DW-1**) had gone to the house of Vijay @ Rinku i.e. the appellant herein and Ashish was there and they had quarrelled with each other and that both came down from the first floor and in his presence the accused Ashish had threatened Vijay to finish his life and had also threatened to implicate him i.e. Vijay @ Rinku i.e. the appellant herein in a false case. He also stated that after 15-20 minutes, the accused left the house of Vijay @ Rinku i.e. the appellant herein and DW1 stayed there for 1 – 2 hours but Ashish did not return to the house of Vijay @ Rinku i.e. the appellant herein. **DW-1** further deposed that even after 10.10.2007, he used to go to the house of Vijay @ Rinku i.e. the appellant herein and he had come to know from the neighbours of Vijay @ Rinku i.e. the appellant herein that Ashish had not returned after 10.10.2007 to the house of Vijay Singh. *Inter alia*, **DW-1** stated that on the day

of arrest, he was with the accused Vijay @ Rinku i.e. the appellant herein and had accompanied him as he had to purchase a stool (small table).

56. **DW-2** Zabar Singh s/o Sh. Mohar Singh stated that on 10.10.2007 at about 7.00 p.m., the accused Ashish picked a quarrel with the accused Vijay @ Rinku i.e. the appellant herein on the issue of demanding rent as Ashish was a tenant of Vijay @ Rinku i.e. the appellant herein. He, DW-2 being a neighbour of Vijay @ Rinku i.e. the appellant herein intervened in the dispute between Vijay @ Rinku i.e. the appellant herein and Ashish and due to this intervention the dispute was mitigated, however, the accused Ashish threatened the accused Vijay @ Rinku i.e. the appellant herein that he would implicate his name in a case, and from then the accused Ashish did not return to the house of Vijay @ Rinku i.e. the appellant herein. **DW-2** further stated that the accused Vijay on the day of his stated arrest was out of his house as he had gone to Trans Yamuna near Bhajan Pura to the house of his maternal uncle on 08.12.2007 and while returning he was arrested on 09.12.2007 and he (DW-2) came to know this fact through the maternal uncle of accused Vijay @ Rinku i.e. the appellant herein.

57. **DW-3** Kailash s/o Sh. Bhajan Lal stated that on 10.10.2007 both Vijay @ Rinku i.e. the appellant herein and Ashish picked up a quarrel on the issue of demand of rent and that **DW-3** was present at the time of quarrel and due to the intervention of people of locality including him, the quarrel was mitigated. This

witness also stated that at the time of departure from the house of Vijay @ Rinku i.e. the appellant herein, the accused Ashish threatened Vijay @ Rinku i.e. the appellant herein for implicating him in a false case and also with dire consequences and started residing in front of the house of Vijay @ Rinku i.e. the appellant herein and after threatening Vijay @ Rinku i.e. the appellant herein, the accused Ashish did not return and did not enter into the tenanted room but was residing on the roof, on the second floor, and that the quarrel took place at the third floor of the house. In the evening, **DW-3** heard from the people residing near his house about the arrest of Vijay @ Rinku i.e. the appellant herein from Bhajan Pura.

CONTENTIONS RAISED

58. Arguments were addressed on behalf of the State by the learned Additional Public Prosecutor for the State Ms. Aasha Tiwari, who contended that the prosecution evidence led by the prosecution substantially established through the circumstantial evidence on record the guilt of the accused Vijay @ Rinku i.e. the appellant herein qua the commission of offences punishable under Sections 392/302/364 r.w.s. 120B IPC, 1860 and Section 120B of IPC, 1860 beyond a reasonable doubt in relation to the abduction of the driver Vinod (since deceased) and robbery of the Tavera vehicle bearing no. DL 1YA 4120 from the driver Vinod (since deceased) and his murder pursuant to the criminal

conspiracy between the appellant herein, and the co-accused Ashish (a proclaimed offender) and another accused whose particulars were not established.

59. On behalf of the accused / the appellant Vijay @ Rinku i.e. the appellant herein, it was however contended by learned counsel Mr. Anupam S. Sharrma that the conviction of the appellant was on the basis of circumstantial evidence which in the facts and circumstances of the instant case was wholly inconclusive, incomplete, unconnected and inconsistent with the guilt of the appellant herein, and which was not totally inconsistent with his innocence and that there are several gaps left in the evidence and that the circumstantial evidence led does not lead to the inescapable conclusion of guilt of the appellant.

60. On behalf of the accused / the appellant herein, it was thus contended that neither the identification of the accused / the appellant herein had been established through the infirm testimony of Singh Raj (**PW-4**), nor was it established as to under what circumstances and when the subsequent finger prints of the accused / the appellant herein were taken for comparison with the said alleged chance prints taken from the rear view mirror of the Tavera vehicle; that there was nothing on the record to establish that the alleged chance prints had been taken of the accused / the appellant herein himself on 12.12.2007

when the accused / the appellant herein was taken to PS Mau Darwaja, District Farukhabad, U.P where the vehicle was parked since its recovery on 08.12.2007; that the vehicle was handed over by several persons between 08.12.2007 when it was seized and in view of the gap between the date 22.02.2008 when the rear view mirror was sent to FSL, Rohini the possibility thus of chance prints remaining on the vehicle was virtually impossible.

61. It was contended on behalf of the accused / the appellant herein that the identification of the appellant herein through the testimony of Singh Raj (**PW-4**) on the basis of his having seen the deceased in the company of the appellant is inconsequential taking into account the factum that there was no mention of Singh Raj (**PW-4**) in the initial first complaint made by Kuldeep Singh (**PW-3**) **i.e. Ex.PW6/D1**. It was submitted on behalf of the accused / the appellant herein that admittedly Singh Raj (**PW-4**) did not know the accused / the appellant herein from before and thus it was essential for the prosecution to have got the identity of the accused / the appellant herein established by conducting a Test Identification Parade conducted as per the provisions of law but that no such efforts were taken and that on the contrary the accused / the appellant herein was shown to Singh Raj (**PW-4**) when he was in police custody, which is inadmissible in terms of Section 162 Cr.P.C. It was also submitted on behalf of the accused / the appellant herein that the subsequent identification of the

accused / the appellant herein in the Court was of no legal consequence and no description of the person, who had hired the vehicle was given by Singh Raj (PW-4) in his first statement recorded under Section 161 Cr.P.C. and that though Singh Raj (PW-4) had stated that he had handed over the duty slip in relation to the hiring of the vehicle to the police but no such slip was filed by the prosecution on the record.

62. It was further submitted on behalf of the accused / the appellant herein that there was a huge time gap between the deceased having been seen by Singh Raj (PW-4) in the company of the appellant herein and when the dead body was found and as such the possibility of there being other intervening amenities during the said period could not be ruled out. It was thus submitted on behalf of the accused / the appellant herein that the trial Court had erroneously placed reliance upon the evidence of Singh Raj (PW-4) in order to convict the accused / the appellant herein.

63. Another contention raised on behalf of the accused / the appellant herein was that the trial Court had erred in drawing a presumption under Section 106 of the Indian Evidence Act, 1872 though the prosecution had failed to discharge its initial burden of proof beyond reasonable doubt.

OBSERVATIONS OF THE TRIAL COURT

64. The learned trial court vide the impugned judgment has observed to the effect that the testimony of Singh Raj (**PW-4**), Manager of Golden Travel was significant in as much as on 31.10.2007 when he reached his office, the owner of the Golden Travel, Mr. Kuldeep Singh (**PW-3**) told him that one vehicle Tavera was to be sent to Aligarh from Lal Bagh, Azadpur, Delhi whereafter Singh Raj (**PW-4**) took the vehicle Tavera bearing no. DL 1YA 4120 along with its driver Vinod (since deceased) to Lal Bagh, Azadpur, Delhi and parked it near the Mazjid and that this statement of Singh Raj (**PW-4**) was corroborated by the testimony of the owner of the Golden Travel Agency, who had stated that on 31.10.2007 at about 8.00/8.15 a.m., he had received a telephonic call from Monu on his mobile phone, who wanted one Qualis or Tavera vehicle to go to Aligarh to bring the bride. Singh Raj (**PW-4**) as per the trial record stated that he demanded advance and was paid Rs.500/- by the accused / the appellant herein and that Singh Raj (**PW-4**) had identified the accused / the appellant herein as being one of the three persons, who sat on the rear side of the vehicle, which was being driven by the driver Vinod (since deceased). The learned trial Court has also placed reliance on the testimony of Hira Lal Gupta (**PW-5**), who runs the STD Booth / shop at N-25/A-252, Lalbagh, Azadpur, Delhi, who had stated that the accused Ashish with two more boys had come to his shop on 31.10.2007 and had come inside his shop and **the accused Vijay @ Rinku i.e.**

the appellant herein remained standing outside when Ashish was talking on the telephone. As observed vide the impugned judgment, Hira Lal Gupta (PW-5) also identified Vijay @ Rinku i.e. the appellant herein in the Court at the time of his statement before the Court and further stated that on 08.12.2007 when the police came to his shop, he i.e. Hira Lal Gupta (PW-5) had taken the police to the jhuggi of Vijay @ Rinku i.e. the appellant herein but he was not found there and that on the next day on his pointing out, Vijay @ Rinku i.e. the appellant herein was arrested vide memo Ex.PW5/A. The Trial Court thus has held that the testimony of Hira Lal Gupta (PW-5) also corroborated the statement of Singh Raj (PW-4) that the accused / the appellant herein was amongst the three persons, who had hired the Tavera Vehicle in question to go to Aligarh.

ANALYSIS

65. **The testimony of Kuldeep Singh (PW-3), the owner of the Golden Travel Agency nowhere identifies the appellant herein nor does it identify any of the persons who hired the Tavera Vehicle bearing no. DL 1YA 4120. He categorically admits that he had not seen the person, who had called him and that he had only spoken to the person on the phone when he wanted to get the vehicle booked. This witness has also admitted in his cross-examination that he had not seen the accused persons leaving for**

Aligarh and that it was his Manager Singh Raj (PW-4), who had gone to the spot and had dealt with the persons, who had gone to Aligarh.

66. Singh Raj (PW-4) the Manager of the Golden Travel through his testimony had stated that he had taken the Tavera vehicle bearing no. DL 1YA 4120 with the driver Vinod (since deceased) at Lal Bagh, Azadpur, Delhi and thereafter made a telephone call to the party on their phone number which had been supplied to him by their owner Kuldeep Singh (PW-3) and the party asked them to wait there and after 15-20 minutes three persons came there and told them that they had booked the vehicle and told that they would come in the evening itself as they are going to Aligarh and that the persons who took away the vehicle were found missing along with these three persons. This witness further stated that he learnt on the next day of some incident having taken place with the driver Vinod Kumar as per information received PS Mukherjee Nagar and that an information had been received from PS Patiali and he came to know that Kuldeep Singh along with the brother and other relatives of Vinod Kumar had left for Patiali and thereafter Kuldeep Singh brought the dead body of Vinod Kumar. He also stated that the persons who took away the vehicle and their vehicle were found missing and they suspected that those three persons had killed Vinod Kumar and had taken away their vehicle and that later on their vehicle was recovered from Farukabad. **This witness stated that he can**

identify the accused Vijay @ Rinku i.e. the appellant herein as the person who had given him Rs.500/- as one of the boys who had gone with the driver to Aligarh out of the advance to be paid for the journey. He further stated that he cannot identify the other accused persons since it was a matter of a short span and he had spoken to the accused persons on the limited aspect of money to be paid.

67. On being cross-examined on behalf of the State by Ms. Asha Tiwari, the learned Addl. Public Prosecutor, Singh Raj (PW-4) had stated that along with the police he had reached the STD shop in the jhuggi of Lal Bagh, Azadpur where they met Hira Lal Gupta (PW-5) on 31.10.2007 and had gone in the search of accused Ashish who had made a telephone call from his shop from mobile no. 9910831326 and had booked a vehicle with the name of Monu and thereafter they had made a call twice from there and thereafter he alongwith his associates went away from there and that thereafter the police searched the accused in the jhuggi but he was not found there.

68. On being cross examined on behalf of the accused / the appellant herein before the Trial Court, Singh Raj (PW-4) had stated that he had stated in the Court that he had told the Investigating Officer that Monu had given Rs.500/- and rather volunteered that he did not know the name of any person and he had only told that one boy had given him Rs.500/- and that he had identified him in

the Court “today” i.e. on the date of his testimony recorded on 17.03.2010. **He further stated that the question of his giving any name to the Investigating Officer, did not arise since he did not know the name of any of the boys.** He further stated that his statement had been recorded by the police on three occasions. The witness further denied that he had signed on any blank papers and rather stated that he had signed on the side but stated that he did not remember whether he had signed the same after reading what was written by the Investigating Officer. **The witness further stated that his statements were recorded by the police on 04.12.2007, 08.12.2007 and 09.12.2007 and that in his statement, he had not mentioned the name of Vijay @ Rinku i.e. the appellant herein, who had given Rs.500/- and stated that he was not aware of the name and that he had been called by the police to the police station where the accused was arrested but denied that the police had told him the name of the accused Vijay @ Rinku i.e. the appellant herein i.e. the appellant herein and only then his statement was recorded. He further stated that on 09.12.2007 his statement was recorded in the evening after the accused Vijay @ Rinku i.e. the appellant herein was arrested and stated that his statement was recorded at the police station but he did not remember whether the accused Vijay @ Rinku i.e. the appellant herein was present at that time in the police station. He also stated that during the**

investigation when they had gone to Lal Bagh, Hira Lal Gupta had told the police that one boy namely Ashish had made a call from his STD booth with the name of Monu. This witness further stated that in his presence, Hira Lal Gupta did not tell the police nor did he tell him that Vijay @ Rinku i.e. the appellant herein was not the person who had made the call from his booth. This witness further stated that he had not received any call from Monu and stated that the call was received by Kuldeep Singh (**PW-3**), the owner of the Golden Travel Agency and he could not tell what clothes the boys were wearing and of which colour and that the incident was of 2 - ½ years back and he had remained at the spot for a very short time. He further stated that he cannot tell whether the jhuggi from where the booking was made does not belong to Rinku i.e. the appellant herein and volunteered that he was only told by Kuldeep Singh to take the vehicle and park the same at Masjid where the boys would meet him. He further stated that he had given the duty slip at the police station containing the phone number from which the phone was made and stated that he could not tell the number and stated that he had not received the call. He also stated that he had not given the detailed description of three boys who had taken the vehicle to the police but denied that he had falsely implicated the accused Vijay @ Rinku i.e. the appellant herein at the instance of the Investigating Officer.

69. **PW-5** Sh. Hira Lal Gupta s/o Sh. Parshu Ram Shah stated that on 31.10.2007 at about 7/8 a.m., one boy namely Ashish who resided in the nearby jhuggi came to his shop and he had made a telephone call from his shop to the travel agent and booked one vehicle for going outside Delhi by the name of Monu and at around 9/9.15 a.m. again a call was received at his shop and the same was attended by Ashish and he talked with the caller by the name of Monu. **PW-5** further stated that there were two more boys with Ashish and Ashish had left his shop along with two other boys and after about half an hour a vehicle had come there and Ashish along with two other boys had gone away. **PW-5** further stated that on 08.12.2007, the police came to his shop and he took the police to the jhuggi of Vijay @ Rinku i.e. the appellant herein but he was not found there and **PW-5** had taken the police where Ashish was residing on the upper floor of the jhuggi of Rinku (i.e. the appellant herein Vijay @ Rinku) and from this jhuggi of Ashish, his photograph was found. **PW-5** further stated that on the next day, he along with the police had gone to the jhuggi of Vijay @ Rinku i.e. the appellant herein and on his pointing out, the accused Vijay @ Rinku i.e. the appellant herein was apprehended vide arrest memo **Ex.PW5/A** and made his disclosure statement **Ex.PW5/C** on which **PW-5** had signed.

70. **This witness stated that the accused Vijay had come to his shop with Ashish on 31.10.2007 but stated that the accused Vijay @ Rinku i.e. the**

appellant herein remained standing outside the shop when Ashish was talking on telephone. He had identified the accused Vijay @ Rinku i.e. the appellant herein in the Court on the date of his testimony i.e. on 18.03.2010.

71. This witness on being cross examined on behalf of the accused / the appellant herein stated that the distance of the jhuggi of Vijay @ Rinku i.e. the appellant herein is about 200 feet from his shop / STD booth which was situated at Main Lal Bagh Chowk. He admitted that the accused Vijay @ Rinku i.e. the appellant herein was a frequent visitor of his booth. **He also admitted that when Ashish was making a call, a large number of other boys were also present and that his shop being situated at the main chowk, a large number of persons normally stop at his shop. He admitted that on 31.10.2007, the accused Vijay @ Rinku i.e. the appellant herein had not entered inside the shop and that he was outside with the number of boys. He admitted that in his presence Vijay @ Rinku i.e. the appellant herein had not spoken to Ashish and that he did not go to the police where the vehicle had come and that the police had recorded his statement on two occasions and he had signed the same only after reading them. He admitted that he had not received any threats and that he had only received a telephone call from the brother of the accused asking for a compromise.**

72. **PW-7** Inspector Shyama Pant, No. D1/917, Crime Cell, Police Headquarters was entrusted the investigation of this case on 03.12.2007 and stated that on 04.12.2007, he had recorded the statement of Kuldeep Singh, the owner of the Tavera vehicle bearing no. DL 1YA 4120 and Singh Raj, Manager of the Golden Travel. Thereafter he proceeded on leave. He stated that he had recorded the statement of Singh Raj and Kuldeep Singh at their residence.

73. The Investigating Officer of the case ACP Indira Sharma, CAW Cell examined as **PW-25**, who as the SHO of the PS Mukherjee Nagar had taken over the investigation of the case on 06.12.2007 as the initial Investigating Officer Inspector Shyama Pant was on leave stated that she had called the Manager of the Golden Travel Agency namely Singh and joined him in the investigation and went to Noor Ul Hada Masjid at Model Town Delhi at GTK Road and there she prepared the site plan on the pointing out of Singh Raj **Ex.PW23/A** and thereafter she made a call on the mobile phone no. 9910831326, which was attended by Hira Lal Gupta who told her that the STD booth and the said mobile number belongs to him and then they reached at the said STD booth at Lal Bagh Jhuggi and joined Hira Lal Gupta in the investigation and made inquiries from him and pursuant to the information collected from Hira Lal Gupta, they reached Jhuggi No. N-25/A-12, Lal Bagh, Azadpur, Dlehi for the search of Vijay @ Rinku i.e. the appellant herein and

Ashish (the Proclaimed Offender) but in vain and from the jhuggi of Ashish which was situated on the roof of Vijay @ Rinku i.e. the appellant herein, one photograph of Ashish was found and Hira Lal Gupta had identified him through the photograph as Ashish and the Investigating Officer recorded the statement of Hira Lal Gupta and relieved him. On the next date i.e. on 09.12.2007, he during investigation along with three other police officials reached at the STD booth of Hira Lal Gupta at Lal Bagh and after taking him they went to the jhuggi of Vijay @ Rinku i.e. the appellant herein and Hira Lal Gupta identified one boy who was inside the jhuggi as Vijay @ Rinku i.e. the appellant herein and that they had apprehended the accused Vijay @ Rinku and interrogated him and that the accused Vijay @ Rinku i.e. the appellant herein confessed to his guilt and made a disclosure statement.

74. *Inter alia*, it was stated by **PW-25** that the Manager, Singh Raj (**PW-4**) came to the police station of his own and identified the accused Vijay @ Rinku i.e. the appellant herein as one of the said three boys to whom the vehicle had been handed over near Noor-ul-Hada Masjid and she recorded his supplementary statement and released them. It was also stated by **PW-25** that on 10.12.2017, the accused was produced before the Metropolitan Magistrate concerned at the Tis Hazari Courts and an application for five days' Police custody remand was moved and the production warrant was issued for the co-

accused, namely, Vijay Pratap @ Beenu who had already been arrested at Police Station Mau Darwaja Distt. Farukhabad (U.P.). **PW-25** stated further that thereafter they came back to the police station and after discussion with the senior officer, the case file was handed over to SI Chander Bhan who had taken the accused outstation with the police party.

75. *Inter alia*, **PW-25** identified the accused Vijay Kumar @ Rinku, i.e., the appellant herein and the co-accused Vijay Pratap @ Beenu who were present in Court on the date of her testimony i.e., on 1.2.2011. On being cross-examined, the witness stated that the vehicle had been booked by Mr.Ashish in the assumed name of Monu as told to her by Hira Lal who also informed her that there were two other boys accompanying Ashish and one of them was Vijay @ Rinku i.e. the appellant herein and the others were not known to him by names.

76. This witness also stated that there was only one floor on the Jhuggi of the accused and that she did not know how many rooms were constructed at the Jhuggi of the accused but she had seen only one room. She also stated that she had not recorded the statement of the owner of the vehicle. She has denied that since the co-accused Ashish (Proclaimed Offender) was residing in the same jhuggi on the first floor, she had falsely implicated the accused in this case. She denied that the accused Vijay @ Rinku i.e. the appellant herein had been arrested on the basis of the disclosure statement made by the co-accused Vijay

Pratap @ Beenu and stated that the accused Vijay @ Rinku i.e. the appellant herein had been arrested on the identification of Singh Raj and Hira Lal Gupta. She further admitted that the co-accused Vijay Pratap @ Beenu was already under the custody of the U.P. Police prior to the arrest of Vijay Pratap @ Beenu. She stated that she did not record the statement of Vijay Pratap @ Beenu and stated that Vijay Pratap @ Beenu was formally arrested on 15.12.2007 after he was produced by the U.P. Police from judicial custody and that during the interrogation Vijay Pratap @ Beenu had disclosed that Ashish (Proclaimed Offender) was his brother and that she did not know about any quarrel. She further submitted that she had no knowledge if the accused Vijay had sustained injuries which were known as grievous and was also not aware about a call of an incident in relation to a quarrel between Vijay @ Rinku i.e. the appellant herein and Ashish made to the PCR. She denied that the accused Vijay @ Rinku i.e. the appellant herein were not identified by Hira Lal Gupta and Singh Raj.

77. *Inter alia*, PW-25 stated that every time she made a call on the mobile No.9910831326, it was Hira Lal Gupta, who spoke and though she denied initially that the said number belonged to Shailendr Shah, then went on to state that she had not verified whether the subscriber of the said phone was Shailender Shah or not.

78. Vishal Gaurav officer from Bharti Airtel Limited, examined as **PW-21** testified through his statement that he had brought the original record of the subscriber having mobile No.9910831326 and further stated that his statement was not recorded by the police during investigation.

79. It is essential to observe that **PW-4** Sh. Singh Raj on whose identification the accused Vijay @ Rinku i.e. the appellant herein was arrested had categorically stated that he had not given the name of any boy to the Investigating Officer, as he did not know the names. He had also stated that he had not given the detailed description of the three boys who had taken the vehicle to the police. He stated that his statement was recorded by police on 4.12.2007, 8.12.2007 and 9.12.2007. He admitted that his statement did not mention the name of Vijay @ Rinku i.e. the appellant herein thereby and stated that he was not aware of his name. He further stated that he had been called by the police to the police station where the accused Vijay @ Rinku i.e. the appellant herein had been arrested.

80. Significantly, it was testified by the **PW-25**, ACP Indira Sharma, that on the identification of Hira Lal, they had apprehended the accused Vijay @ Rinku i.e. the appellant herein on 9.12.2017 and interrogated him and she *inter alia* stated that she had recorded the supplementary statement of Hira Lal and relieved him and then came back to the police station. She further stated that

the Manager, Singh Raj came to the police station of his own and he had identified the accused Vijay i.e. the appellant herein as one of the said three boys to whom the vehicle was handed over. Through her statement on oath ACP Indira Sharma does not anywhere state that Vijay @ Rinku i.e. the appellant herein was identified by **PW-4** Singh Raj as being the person who gave Rs.500/- towards part payment for the vehicle journey as had been testified by the **PW-4** Singh Raj. As already observed herein above, this witness **PW-4** Singh Raj sated that he identified the accused Vijay @ Rinku i.e. the appellant herein as a person who had given Rs.500/-and had gone with the driver to the Aligarh. He significantly stated that he could not identify the other accused persons since it was short span and he had talked to the accused persons on the limited aspect of the money to be paid. There has been no Test Identification Parade application filed by the Investigating agency and no Test Identification Parade of the accused Vijay @ Rinku i.e. the appellant herein was ever conducted and **PW-4** Singh Raj in his testimony dated 17.03.2010 had stated the incident was of almost 2-½ years back and he had stayed at the spot for a very short time, and had also stated that he had learnt of the name of the co-accused Ashish (the proclaimed offender) when Hira Lal Singh told the police that one boy of the name of Ashish had made a call from the STD Booth under the name of Monu, and that in his presence Hira lal Singh i.e. **PW-5** did not tell

the police nor **PW-4** Singh Raj that Vijay @ Rinku i.e. the appellant herein was not the person who had made the call from the booth and thus the identification of the accused Vijay @Rinku, i.e., the appellant herein in view of this having been virtually identified for the first time by Singh Raj in Court makes his identification wholly as it does not establish his identity, as being the person who had paid Rs.500/- to **PW-4** Singh Raj and that he had accompanied the other boys in the Tavera vehicle.

81. The other aspect which cannot be over looked is that even if we accept that the deceased was last seen in the company of the accused Vijay @Rinku and Ashish (the proclaimed offender) all that can be brought forth through the testimony of **PW-4** Singh Raj is that Rs.500/- were paid by the accused Vijay @ Rinku i.e. the appellant herein to him on 31.10.2007 as Manager of Golden Travel for the journey by DL- 1YA 4120, a Tavera, which was to be driven by the driver Vinod (since deceased) to Aligarh.

82. Even if, the testimony of **PW-5** Hira Lal Gupta, the owner of the STD Booth shop from where the telephone call was stated to have been made to the driver by the Ashish co-accused (since declared Proclaimed Offender) who made a call in the name of Monu is accepted, it is essential to observe that all he states is that on 31.10.2007, Ashish had come to make the telephone call to the travel apart to book a vehicle and that he was accompanied by two other boys

and that one of those boys was the accused Vijay @ Rinku i.e. the appellant herein who remained standing outside the shop when Ashish (proclaimed offender) was talking on the telephone and who admittedly had not even entered inside the shop and on 31.10.2007 and was outside with a number of boys and in his presence Vijay @ Rinku i.e. the appellant herein did not speak to Ashish (proclaimed offender). Significantly, this witness **PW-5** stated that after half an hour the vehicle had come there and Ashish (since declared a proclaimed offender) alongwith the other boys had gone away and that he **PW-5** had not gone to the place where the vehicle had come.

Thus, what comes forth through the testimony of **PW-5** Hira Lal Gupta is the sole circumstance of the appellant Vijay @ Rinku, who allegedly accompanied Ashish is that he stood out the side of shop of Hira Lal Gupta, where Ashish the proclaimed offender went inside allegedly to the shop of the Hira Lal Gupta to book a vehicle. This sole circumstance cannot fall within the domain of even last seen evidence to make the appellant culpable for the murder of the deceased.

83. The witness **PW-3** Kuldeep, owner of the travel agency in the name of Golden Travel does not depose in relation to the identification of the accused persons in any manner.

84. As laid down by the Hon'ble SC in *State of Maharashtra Vs. Sukhdev Singh and Another (1992) 3 SCC 700* great care must be exercised before acting on a belated identification in Court of witnesses who cannot be said to be independent and unbiased. In the case of identification by total strangers and as laid down there in, in the case of total strangers, it is not safe to place implicit reliance on the evidence of the witnesses who just had a fleeting glimpse of the person identified or who had no particular reason to remember the person concerned, if the identification is made for the first time in Court. A Test Identification Parade if held promptly and after taking the necessary precautions to ensure its credibility would lend the required assurance which the Court ordinarily seeks to act on it. As laid down in the said verdict vide para 25 thereof, in the absence of such Test Identification Parade, it would be extremely risky to place implicit reliance on identification made for the first time in Court after a long time of lapse. Vide paragraph 25 of this verdict reference was also made as under on the verdict of the Hon'ble Supreme Court in *Kanan Vs. State of Kerala (1979) 3 SCC 319* wherein the Hon'ble Supreme Court observed : -

“It is well settled that where a witness identifies an accused who is not known to him in the Court for the first time, his evidence is absolutely valueless unless there has been a previous T.I. parade to test his powers of observation. The idea of holding T.I. parade under Section 9 of the Evidence Act is to test the veracity of the witness on the question of his capability to identify an unknown person whom the witness may have seen only once. If no T.I. parade is held then it will be wholly unsafe to rely on his

testimony regarding the identification of an accused for the first time in Court.”

85. Vide the impugned judgment reliance has been placed on the finger prints of the accused Vijay @ Rinku i.e. the appellant herein having been allegedly matched with the chance finger prints found on the rear view mirror of the Tavera DL 1YA 4120. In relation to this aspect, it is essential to observe that the vehicle was taken from Delhi on 31.10.2007 and was recovered on 4.11.2007 by **PW-24** SI Karuna Shanker Bajpai of PS Mao Darwaja when he forcibly stopped the vehicle which was being driven by the accused Vijay Pratap @ Beenu s/o Chand Ram and the other accused persons Ashish (Proclaimed Offender) and Vijay @ Rinku i.e. the appellant herein were stated to have got down from the vehicle and were stated to have run away. It is thus only the disclosure statement of Vijay Pratap Singh, the co-accused which makes allegations against the appellant herein. Significantly, Vijay Pratap Singh @ Veenu has been convicted only u/s 411/202 of the Indian Penal Code, 1860.

86. The learned Trial Court has observed to the effect that in the instant case, the seized articles i.e. rear view mirror **Ex.PW26/B1** of the vehicle in question on which the thumb impression of the accused / the appellant herein was found through an alleged chance print thereon were produced in Court evidence and that **PW-19** Ct. Brij Bihari's testimony that the FSL Rohini scientist V. Shankarnaryanan had taken exhibits and sealed them and given to the

Investigating Officer had been corroborated by the testimony of **PW-22**, the then MHC(M) HC Mukesh Sharma, which brought forth that duly sealed parcels containing the rear view mirror were sent to the Finger Print Bureau, Malviya Nagar for Expert's report and that the witness stated that he had not tampered with the seal of the exhibits till the same remained in his possession. The expert's report **Ex.PW26/F** was also held to be credible to the extent that human blood was found to have been recorded on the seat cover of the Tavera vehicle and on the clothes of the deceased though the blood groups of the blood could not be detected.

87. **Ex.PW15/A**, the report in relation to the examination of the Tavera vehicle indicates two chance prints on the rear view mirror having been found on 24.01.2008 by **PW-15** SI Narender Singh, which could not be lifted as the photographer refused to photograph the mirror saying that it was not possible to do so, and thus, he handed over the mirror to the Investigating Officer on 31.01.2008 and the learned Trial court observed that **Ex.PW14/A**, the report given by SI Suraj Bhan (**PW-14**) who inspected the vehicle indicates that there were two chance prints Q1 and Q2 found on the rear view mirror which were photographed, which testimony was held to have been corroborated by **PW-26**, the IO, who stated that on 31.01.2008, the crime team's finger print expert had handed over to him the rear view mirror and he had converted it into a pullanda

and sealed the seal the same with the of AK and seized it vide a seizure memo **Ex.PW15/B**. It was observed by the learned Trial Court further that *inter alia*, the IO had stated that he had sent the mirror for the finger print expert's report to Fingerprint Bureau, Malviya Nagar through Ct. Brij Bihari and when the fingerprint expert from the Crime Team had pointed out the two chance prints on the rear view mirror and the mirror was sent to Fingerprint Bureau with signature of the accused which tallied with the thumb impression of accused Vijay @ Rinku i.e. the appellant herein, there was no reason not to rely on the evidence. The learned Trial Court also repelled reliance placed on behalf of the accused i.e. the appellant herein in the present case placing reliance on ***Musheer Khan @ Badshah Khan and another Vs. State of MP I (2010) SLT 465 SC*** and in the case ***Mohd. Aman and Another Vs. State of Rajasthan AIR 1997 SC 2960*** observing to the effect that the said pleadings relied upon on behalf of the accused were distinguishable and that in the present case the expert's report was corroborated by evidence of the finger prints recovered.

88. On behalf of the appellant, it was contended that the report of the finger print bureau **Ex.PW26/E** had not been proved as per law and the expert who examined the finger prints was not examined and the report **Ex.PW26/E** was got proved through Inspector Ajay Kumar **PW-26**. Qua this aspect, it is essential to observe that the report is reported to be admissible u/s 293 Cr.P.C.

and thus the tendering of it by the IO Inspector Ajay Kumar does not negate from the factum of the said report having been prepared as detailed therein, for in terms of Section 293 of the Code of Criminal Procedure, 1973 such a report would *per se* be admissible in evidence, though it was open for the learned Trial Court to summon and examine any such expert as to the subject matter of the report, if it so considered fit.

89. However, the other contention that has been raised on behalf of the appellant is significant and material and cannot be overlooked. This is so in as much as it has been contended on behalf of the appellant herein that there is no evidence that the finger impression mark S1 on the specimen finger impression slip was that of the appellant which had been compared the chance prints under Q1 and Q2 in as much as no witness had deposed on this aspect and as to what circumstances the specimen fingerprints prints were obtained. It was thus contended that the learned Trial Court had erred in holding that the chance finger prints found on the rear view mirror on the Tavera Vehicle bearing no. DL 1YA 4120 were those of the appellant herein. This contention of the appellant herein is undoubtedly correct in as much as there is no proof at all on the record that the specimen finger prints of the appellant were taken at any stage nor is there any document on the record to indicate that any leave of the court was taken to take the specimen finger print of the accused / the appellant

herein at any stage and thus it is essential to draw an adverse inference against the State in relation to this very material aspect of the investigation. This is so in as much as the appellant was in custody from 04.11.2007.

90. Another contention raised on behalf of the appellant herein was that SI Narender Singh **PW-15** the finger print expert of the fingerprint Bureau who was the member of the Crime Team North West District had categorically testified to the effect that on 24.01.2008, he had gone to the PS Mukherjee Nagar where he found a white Tavera vehicle parked at the police station and had examined the same. He had found two chance prints on the rear view mirror of the vehicle and that the finger prints could not be lifted as the photographer had refused to take photograph of the rear view mirror saying that it was not possible and **PW-15** had handed over the rear view mirror to the IO on 31.01.2008 and the IO had seized the same vide memo **Ex.PW15/B** on 31.01.2008 and **PW-15** had advised the IO to get the rear view mirror photographed by an expert from the fingerprint Bureau, Malviya Nagar.

91. It has been submitted on behalf of the appellant that this deposition of SI Narender Singh **PW-15** that the photographs could not be obtained was not reflected in the crime team report **Ex.PW15/A**, which aspect is apparently correct as borne out on a perusal thereof and rather the SOC Examination Report **Ex.PW15/A** is to effect : -

S.O.C. EXAMINATION REPORT

1. FPB/SOC Sl. No. 90 Dated 24.01.2008
2. FIR No. 532/07 Dated _____ U/s 34/392/201/216/34 IPC
3. P.S. Mukherjee Nagar P.P. _____ Distt. NW Delhi/New Delhi.
4. Name of the IO Insp. Ajay Kr. DIU / NW
5. Name of the Complaint -
6. Modus Operandi Tavera Car No. DL 1YA 4120, hired by the culprit and later on murdered the driver.
7. Place of Offence -
8. Property stolen -
9. Date and time of offence -
10. Date and time of examination 24/1/08 between time 3:15 to 4:00 p.m.
11. Articles examined and chance prints developed on Tavera No. DL 1YA 4120 rear view of car Tavera

Sl. No.	Name of the articles	Nomenclature of chance Print developed	No. of chance print developed	Powder used
1.	2.	3.	4.	5.
1).	Rear view (Mirror) of car Tavera having Regd. No. DL 1YA 4120	Q1 Q2	2.	Self developed

12. Description of article if any sent to Bureau for photograph/LAB Exm.
13. Instructions to the IO
 1. To get the chance prints photographed by police photographer if already not done or preserve the Scene of Crime.
 2. _____ (not legible)

Sd/-
FINGER PRINT EXPERT
For DIRECTOR
FINGER PRINT BUREAU
DELHI POLICE

SHO / _____

according to which Q1 and Q2 were chance prints developed i.e. they were as developed from the rear view mirror of the vehicle Tavera bearing no. DL 1YA 4120 on 24.01.2008 in total contrast to the deposition of **PW-15**. Even if the

portion at paragraph 13 of this report **Ex.PW15/A** is taken into account, it nowhere reflects that SI Narender Singh **PW-15** had asked the IO to get the mirror photographed by the Expert Print Bureau, Malviya Nagar.

92. Significantly, the vehicle bearing no. DL 1YA 4120 was seized vide memo **Ex.PW16/A** by Inspector Ajay Kumar, then posted as Inspector, DIU North on 19.01.2008 in the presence of SI Ram Chander and Ct. Brij Bihari from PS Mau Darwaja, District Farukhabad, U.P and this vehicle was deposited at Police Station Mukherjee Nagar on return from Patiali, District Etah, U.P and was got inspected by the Crime Team on 24.01.2008 and vide report **Ex.PW14/A** of SI Suraj Bhan, two chance prints were indicated to be there on the rear view mirror inside the car i.e. Q1 and Q2 of which photographs were taken.

93. Significantly, SI Suraj Bhan (**PW-14**) Incharge of the Mobile Crime Team, NW on 24.01.2008 stated that he had reached Police Station Mukherjee Nagar, North West District on receipt of information from PS Mukherjee Nagar and found a white Tavera vehicle parked at the gate of the police station, which he inspected and gave his report **Ex.PW14/A** bearing his signatures at point-A. **This witness further stated that SI Narender Singh was a member of the Crime Team and a finger print expert had also lifted finger print from the rear view mirror of the car. Strangely as already observed hereinabove SI**

Narender Singh, the member of the Crime Team Mobile, North West District posted as finger print expert on 24.01.2008 has stated as observed hereinabove that they had gone to examine the Tavera vehicle bearing no. DL 1YA 4120 parked at the police station Mukherjee Nagar and he had found two chance finger prints on the rear view mirror but that the chance finger print could not be lifted as the photographer had refused to photograph the mirror saying that it was not possible so he handed over the mirror to the IO on 31.01.2008.

94. The two testimonies of SI Suraj Bhan (**PW-14**) and SI Narender Singh (**PW-15**), who both went to the PS Mukherjee Nagar on 24.01.2008 at the same time are in total contrast with each other. As per the testimony of SI Narender Singh, photographs were not taken as the finger prints could not be lifted from the rear view mirror of the car as the photographer had refused to photograph the mirror saying that it was not possible to do so and thus SI Narender Singh had handed over the mirror to the IO on 31.01.2008 in relation to which he stated that he had so reported vide **Ex.PW15/A**, which has already been observed hereinabove does not find mention in **Ex.PW15/A**. **Ex.PW15/B** is the seizure memo prepared by Inspector Ajay Kumar bearing the signatures of SI Narender Singh, Finger Print Expert to the effect that he had seized the rear view mirror from the Tavera vehicle bearing no. DL 1YA 4120 in as much as he

had been told that there were two chance prints on the same, and the rear view mirror of the vehicle was kept in one box and he put it in a cloth and sealed the same with the seal of AK. According to Inspector Ajay Kumar, the vehicle had been got inspected on 24.01.2008 and the Incharge Crime Team had given his report **Ex.PW14/A** and the crime team possessed the rear view mirror on which two chance prints appear and the vehicle was also got inspected through the scientific expert of the FSL Rohini, Delhi and at the office of the FSL, the scientific expert lifted some stains and kept the same in envelopes and all the four envelopes were sealed with the seal of AK separately, which were seized vide seizure memo **Ex.PW19/A**. This witness stated that so long as the Tavera vehicle remained with him during transit the same was intact and not tampered with and that after examination of the same through the scientific expert of FSL Rohini, Delhi, he deposited the same alongwith four envelopes in the malkhana.

95. He further stated that on 31.01.2008, the crime team finger print expert handed over to him the rear view mirror which was converted into a pullanda and was sealed with the seal of AK and seized vide seizure memo **Ex.PW15/B** and he had sent the rear view mirror to the Finger Print Bureau, Malviya Nagar for examination through Ct. Brij Bihari.

96. Ct. Brij Bihari examined as **PW-19** stated that after seizure of the Tavera vehicle on 19.01.2008 as deposited at the malkhana PS Mau Darwaja, on

29.01.2008 the Tavera vehicle had been brought was taken from the police station Mukherjee Nagar vide RC 4/21 to the FSL Rohini, Delhi and was got inspected by the FSL expert, who took the exhibits and sealed the same in four envelopes which were handed over vide **Ex.PW16/A** to the IO, which were sealed with the seal of AK after seizure vide memo **Ex.PW19/A**.

97. **PW-22** HC Mukesh Sharma testified to the effect that on 31.01.2008, Inspector Ajay Kumar had deposited one pullanda containing two chance prints which were received vide Road Certificate No. 2404, which were sent to the Finger Print Bureau, Malviya Nagar through Ct. Brij Bihari on 22.02.2008. It was thus contended on behalf of the appellant that though it had been deposed by ASI Narender Singh that the photographer had refused to take the photographs and as testified by **PW-15** ASI Narender Singh that he had advised the IO to get them examined by the Finger Print Bureau, Malviya Nagar as per **Ex.PW26/E**, the photographs of the chance prints Q1 and Q2 along with negatives were received from the police photographer for examination, which were developed by North West District, Crime Investigation Team and thus there was a contradiction in the testimonies of the prosecution witnesses.

98. Ct. Brij Bihar (**PW-19**) stated that he had taken the sealed parcel to the Finger Print Bureau, Malviya Nagar on 23.02.2008 whereas HC Mukesh Sharma (**PW-22**) stated that he had sent the finger chance print to the FSL on

22.02.2008. It has thus been contended on behalf of the appellant herein that the report **Ex.PW26/E** was not of the chance print allegedly lifted from the vehicle. It was further submitted on behalf of the appellant herein that thus the non examination of the photographer of the chance prints was fatal to the prosecution version.

99. The vehicle in question was first recovered on 04.11.2007 at the Adevli turn when it was coming from the side of Farukabad and while it was driven by the co-accused Vijay @ Veenu and two other persons had managed to escape from the said car as testified by **PW-24** SI Karunashanker and was deposited at PS Mau Darwaja, District Farukhabad, U.P.

100. Ct. Keshav Raman (**PW-16**) examined by the State, testified to the effect that on 20.01.2008, he was posted as the Ct. at PS Mau Darwaja, Janpath, Farukabad, UP and on that date, he had handed over the Tavera car of white colour bearing No. DL 1YA 4120 to two police officers i.e. SI Ram Chander and Inspector Ajay Kumar, who had come from PS Mukherjee Nagar, Delhi. This vehicle was driven from Farukabad, UP to PS, Mukherjee Nagar, Delhi by one Rajan (**PW-6**) on 20.01.2008. As per seizure memo **Ex.PW16/A** vide which the vehicle had been handed over to Inspector Ajay Kumar and SI Ram Chander of the Delhi Police, the front wind shield of the vehicle was cracked and there was no number plate on the front of the vehicle.

101. Significantly, the Tavera vehicle in question was at PS Mau Darwaja from 04.11.2007 till 20.01.2008 as brought forth through the testimonies of **PW-13** Ct. Arvind Kumar, then Ct. Clerk PS Mau Darwaja on 04.11.2007 and **PW-22** HC Mukesh Sharma as the then MHC(M) at PS Mukherjee Nagar.

102. The testimony of **PW-23** SI Chander Bhan that he had left Delhi on 10.12.2007 with the appellant herein, who was in police custody remand and reached PS Mau Darwaja on 12.12.2007. Thus, the contention of the appellant herein that possibility of his finger prints having been taken on the rear window of the vehicle on 12.12.2007 while in the police custody at PS Mau Darwaja cannot be overlooked, and makes the entire prosecution version circumspect.

103. The learned Trial Court has observed vide para 88 of the impugned judgment to the effect : -

“The non explanation of accused Vijay @ Rinku about how death of victim driver occurred in the statement under Section 313 Cr.P.C. served as a missing link to complete chain of circumstances appearing against him or additional in the chain of incriminating circumstances appearing against him”

104. It is essential to observe that it is for the prosecution to discharge the burden of proof and the non explanation of the appellant as to how the death of the victim driver occurred in the statement u/s 313 of the Code of Criminal Procedure, 1973 when the appellant has claimed innocence and has denied all the incriminating evidence led against him, is insufficient to form a missing link

to complete the chain of the circumstances appearing against him or in addition in the chain of incriminating circumstances. The circumstance of the last seen together of the appellant with the deceased in the Tavera Vehicle which is also not so established in the instant case beyond a reasonable doubt and much less to the hilt, itself does not lead to the inference that it was the appellant who committed any crime towards the conspiracy of abduction for robbery and consequential murder of the deceased driver of the Tavera vehicle. As laid down by the Hon'ble Supreme Court in a catena of verdicts in ***Kanhaiya Lal Vs. State of Rajasthan, (2014) 4 SCC 715, Arjun Marik Vs. State of Bihar, 1194 Supp. (2) SCC 372, Bharat Vs. State of M.P., (2003) 3 SCC 106, Anjan Kumar Sharma and Others Vs. State of Assam, a verdict dated 23.05.2017 of the Hon'ble Supreme Court in Criminal Appeal No. 560/2014, Satpal Vs. State of Haryana, a verdict dated 01.05.2018 of the Hon'ble Supreme Court in Criminal Appeal No. 1892/2017, Nizam and Anr. Vs. State of Rajasthan, a verdict of the Hon'ble Supreme Court dated 04.09.2015 in Criminal Appeal no. 413/2007***, it has to be held that in the case of circumstantial evidence the Court has to examine the entire evidence in its entirety and ensure that the only inference that can be drawn from the evidence is the guilt of the accused. In the instant case no weapon of offence was recovered from the appellant nor was the Tavera vehicle No. DL-IYA-4120 recovered from the appellant and there are

many apparent lapses in the investigation and missing links in relation to the non conducting of the TIP of the appellant, coupled with the factum that the probability of the finger prints of the appellant having been planted on 12.12.2007 at PS Mau Darwaja where the Tavera vehicle was placed after seizure, to which police station the appellant was taken during police custody remand as testified by **PW-23** SI Chander Bhan, with the appellant having not even been apprehended at the spot, nor from the vehicle, coupled with the factum that even as brought forth from the testimony of **PW-5** Hira Lal Gupta, the appellant did not come to his shop to make any call for booking of the vehicle, coupled with the testimony of **PW-15** ASI Narender Singh who categorically testifies that the photograph of the rear view mirror of the Tavera vehicle on which there were chance prints could not be taken, coupled with the factum that as per the testimony of **PW-14** SI Suraj Bhan who testified to the effect that **PW-15** ASI Narender Singh a member of the crime team and a finger print expert had also lifted the finger prints from the rear view mirror which is in total contrast with the testimony of **PW-15** ASI Narender Singh who has testified to the effect that he had found two chance prints on the rear view mirror of the car and that the finger prints could not be lifted as the photographer had refused to photograph the mirror saying that it was not possible and thus he had handed over the rear view mirror to the IO on

31.01.2008, all bring forth that in the facts and circumstances of the case there is no sufficient evidence to connect the appellant herein with the commission of the crime of the conspiracy of murder of the deceased driver Vinod of the Tavera vehicle and of his abduction for looting of the vehicle.

105. Undoubtedly as laid down in *State of Bombay Vs. Kathi Kalu Oghad 1961 (2) Crl. L.J. 856* by the Hon'ble Eleven Judges Bench of the Supreme Court to the effect : -

"To be a witness" may be equivalent to "furnishing evidence" in the sense of making oral or written statements, but not in the larger sense of the expression so as to include giving of thumb impression or impression of palm or foot or fingers or specimen writing or exposing a part of the body by an accused person for purpose of identification. "Furnishing evidence" in the latter sense could not have been within the contemplation of the Constitution-makers for the simple reason that-though they may have intended to protect an accused person from the hazards of self- incrimination, in the light of the English Law on the subject-they could not have intended to put obstacles in the way of efficient and effective investigation into crime and of bringing criminals to justice. The taking of impressions or parts of the body of an accused person very often becomes necessary to help the investigation of a crime. It is as much necessary to protect an accused person against being compelled to incriminate himself, as to arm the agents of law and the law courts with legitimate powers to bring offenders to justice. Further more it must be assumed that the Constitution-makers were aware of the existing law, for example, s.73 of the Evidence Act or ss. 5 and 6 of the Identification of prisoners Act (XXXIII of 1920). Section 5 authorises a Magistrate to direct any person to allow his measurements or photographs to be taken, if he is satisfied that it is expedient for the purposes of any investigation or proceeding under the Code of Criminal Procedure to do so Measurements' include finger impressions and foot-print impressions. If any such person who is directed by a Magistrate, under S. 5 of the Act, to allow his measurements or photographs

to be taken resists or refuses to allow the taking of the measurements or photographs, it has been declared lawful by S. 6 to use all necessary means to secure the taking of the required measurements or photographs. Similarly, S.73 of the Evidence Act authorises the Court to permit the taking of finger impression or a specimen handwriting or signature of a person present in Court, if necessary for the purpose of comparison.”

xxxxxx.....

xxxxxx.....

..... A specimen handwriting or signature or finger impressions by themselves are no testimony at all being wholly innocuous because they are unchangeable except in rare cases where the ridges of the fingers or the style of writing have been tampered with. They are only materials for comparison in order to lend assurance to the Court that its inference based on other pieces of evidence is reliable. They are neither oral nor documentary evidence but belong to the third category of material evidence which is outside the limit of 'testimony'.

106. As regards the contention that the specimen finger print impression of the appellant have not been proved nor contended by the State to have been taken by the Investigating Officer under any direction of the Magistrate as provided in terms of Section 5 of the Identification of Prisoners Act, (XXXIII of 1920) and appeared to have been taken by the police independently, as reported by this Court in *Sunil Kumar V. State N.C.T. of Delhi 2010 SCC OnLine Del 1326 : (2010) 91 AIC (Sum 4) 3* that may not be necessary in terms of Section 4 of the Identification of Prisoners Act, (XXXIII of 1920) as observed vide para 26 of the verdict to the effect : -

“26. It is true that the specimen finger print impressions of the appellants were taken by the IO directly and not through the Magistrate as provided in Section 5 of Identification of Prisoners

Act. But, that, to my mind was not necessary because Section 4 of Identification Prisoners Act specifically provides that any person who has been arrested in connection with an offence punishable with rigorous imprisonment for a term of one year or upwards shall, if so required by a police officer, allow his measurements to be taken in the prescribed manner. In view of the independent powers conferred upon a police officer under Section 4 of the Act, it was not obligatory for him to approach the Magistrate under Section 5 of the Act. He would have approached the Magistrate, had the appellants refused to give Specimen Finger Print Impressions to him. Therefore, no illegality attaches to the specimen finger print impressions taken by the Investigating Officer.”

107. Furthermore vide the verdict of the Hon’ble Supreme Court in *Sonvir @ Somvir Vs. State of NCT of Delhi* dated 02.07.2018 it has been observed vide para 51 of the judgment delivered by Justice Ashok Bhushan : -

“In view of the foregoing discussion we are of the opinion that view of the Delhi High Court that evidence of fingerprints of the accused has to be discarded cannot be supported for the reasons given in the impugned judgment of the Delhi High Court”

108. Vide para 22 & 23 of the judgment of this Court which was assailed before the Hon’ble Supreme Court in *Sonvir @ Somvir* (Supra) it had been observed to the effect : -

“i. The Full Bench judgment of the Delhi High Court in Sapan & Another Vs. State 191 (2012) DLT 225 lays down that only when by way of rules or executive instruction the manner is prescribed to take the measurements then alone an IO under Section 4 of the 1920 Act can obtain the measurements.

ii. It would be eminently desirable as per the decision in Mohd. Aman and Anr. Vs. State of Rajasthan (1997) 10 SCC 44 to follow the procedure ordained under Section 5 of 1920 Act.

iii. No rules having been framed in Delhi and procedure as prescribed under Section 5 of the 1920 Act having not been followed we would discard the evidence of the palm impression of Sonvir Alias Somvir.”

109. However, in the said case in *Sonvir @ Somvir* (Supra) itself it was laid down by the Hon’ble Supreme Court to the effect :-

“51. In view of the foregoing discussion we are of the opinion that view of the Delhi High Court that evidence of fingerprints of the accused has to be discarded cannot be supported for the reasons given in the impugned judgment of the Delhi High Court.

*52. Even if, we accept that fingerprints of appellant’s, chance print Mark Q5 (taken from iron safe) was identical to the specimen of left palm impression of Sonvir, it does not complete the chain of circumstances unerringly pointing out fingers to the appellant, that it was the appellant who committed the murder. Law of conviction based on circumstantial evidences is well settled. It is sufficient to refer to the judgment of this Court in *Ramesh and Others vs. State of Rajasthan*, (2011) 3 SCC 685 where in para 17 following has been held:*

“17. Before we proceed with the matter, it has to be borne in mind that this case depends upon circumstantial evidence and, as such, as per the settled law, every circumstance would have to be proved beyond reasonable doubt and further the chain of circumstances should be so complete and perfect that the only inference of the guilt of the accused should emanate therefrom. At the same time, there should be no possibility whatsoever of the defence version being true.”

53. Thus, even if, above evidence is not discardable the entire chain of circumstances is not complete to unmistakeably point out the guilt to the appellant.

54. In result, the appeal is allowed. The appellant stands acquitted of the charges under Sections 302, 392 read with Section 34 of the IPC. The appellant is directed to be released forthwith, if not required in any other case.”

110. Similarly as in the case in *Sonvir @ Somvir* (Supra), in the instant case, the factum that the appellant was in police custody at the time when he was taken to PS Mau Darwaja on 12.12.2007 where the Tavera vehicle was placed after seizure, coupled with the factum that the investigation in relation to chance finger prints on the rear view mirror of the Tavera vehicle commenced only on 24.01.2008 as indicated by the testimonies of **PW-14** SI Suraj Bhan and **PW-15** **ASI Narender Singh**, the probability of the chance finger prints of the appellant being taken on the rear view mirror of the Tavera vehicle during the course of the investigation cannot be held to be improbable.

111. Furthermore, the available record establishes that the circumstances against the appellant of his having accompanied Ashish, a co-accused since declared proclaimed offender, and of his having been seen outside the shop of **PW-5** Hira Lal Gupta, when Ashish made a telephone call for booking a vehicle, and of the appellant having been apprehended then from his jhuggi on 09.12.2007 pursuant to a disclosure statement of the co-accused Vijay Pratap, (since convicted u/s 411/202 of the Indian Penal Code, 1860) and chance finger prints stated to be of the appellant on the rear view mirror of the stolen Tavera

vehicle, driven by the accused, for the seizure of which there was no leave of the Court taken qua the specimen finger prints of the appellant who was in judicial custody coupled with the factum that the appellant was taken to PS Mau Darwaja in police custody on 12.12.2007, where the Tavera Vehicle No. DL-IYA-4120 was available since 04.11.2007, makes it apparent that the circumstances put forth against the appellant even if accepted to be the gospel truth are insufficient to form so complete a chain of evidence to point to the exclusive conclusion of the guilt of the appellant herein.

112. Thus, the circumstantial evidence against the appellant being not inconsistent with the innocence of the appellant Vijay @ Rinku, it is held that the prosecution has been unable to discharge the burden of proof placed on it and thus the conviction of the appellant herein Vijay @ Rinku under Sections 301/201 of the Indian Penal Code, 1860 and under Section 364 r.w. Section 392/120B of the Indian Penal Code, 1860, and under Section 120B of the Indian Penal Code, 1860 vide the impugned judgment dated 16.07.2012 passed by the District Judge Incharge/ Additional Sessions Judge, District Courts, Rohini, and consequential order on sentence dated 20.07.2012 in Sessions Case No. 114/2010 arising out of FIR No.532/2007, registered at PS Mukherjee Nagar is set aside and the appellant herein Vijay @ Rinku is acquitted in relation to all

the charges framed against him in relation thereto vide order dated 26.03.2009 in the said case and is directed to be set of liberty forthwith.

113. The Crl.A.No.1341/2012 is thus allowed. Copy of the judgment be sent to the Superintendent Jail, Delhi and the appellant through to the Superintendent Jail, Delhi.

ANU MALHOTRA, J.

ACTING CHIEF JUSTICE

2nd AUGUST, 2018.
MK/SV

