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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 30th July 2018
Decided on: 10th August 2018

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SUNIL @ SONU

CRL.A. 513/2017

..... Appellant
Through: Ms. Purnima, Advocate for
Mr.Ajay Verma, Advocate.

versus

STATE

..... Respondent
Through: Mr. Hirein Sharma, APP.

+
NEERAJ MANN

CRL.A. 1130/2016

..... Appellant
Through: Mr Rahul Sharma and
Mr.AnreshKaushik, Advocates.

versus

STATE

..... Respondent
Through: Mr. Hirein Sharma, APP.

+
INDERJEET

CRL.A. 158/2017

..... Appellant
Through: Ms. Saahila Lamba, Advocate.

versus

STATE

..... Respondent
Through: Mr. Hirein Sharma, APP.

+
SUBHASH

CRL.A. 583/2017

..... Appellant

Through: Ms. Purnima, Advocate for Mr.
Ajay Verma, Advocate.

versus

STATE

..... Respondent
Through: Mr. Hirein Sharma, APP.

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

J U D G M E N T

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Dr. S. Muralidhar, J.:

1. These four appeals are directed against the judgment dated 24th August 2016 passed by the learned Additional Sessions Judge – III, North District, Rohini Courts, in SC No.57394/16 arising out of FIR No.157/2010 registered at PS Alipur whereby the four Appellants herein were convicted for the offence under Section 302/34 IPC. These appeals also seek to assail the order on sentence dated 19th September 2016 whereby each of the four convicted Appellants was sentenced to imprisonment for life along with fine of Rs.10,000/- each and in default of payment of fine, to undergo simple imprisonment for one year each.

2. At the outset, it requires to be noticed that with the Appellants having already undergone more than 7 years of incarceration at the time of admission of these appeals, all four of them have been granted suspension of their sentence subject to terms by separate orders passed in each of their appeals.

3. The charge was that at around 9 pm on 18th May 2010, in front of the MCD Park, at the vacant plot of Mool Chand Rohila, Alipur Garhi, the four Appellants, i.e. Neeraj Mann (A-1), Sunil @ Sonu (A-2), Subhash (A-3), and Inderjeet (A-4), in furtherance of their common intention, committed the murder of Ashok Kumar ('the deceased') and threw away his dead body so as to cause the evidence to disappear and to screen themselves from punishment and thereby committed an offence punishable under Section 302/201/34 IPC.

Discovery and identification of body

4. The criminal justice process was activated when DD No.32A was recorded at PS Alipur at 6:44 pm on 21st May 2010 about a highly putrefied dead body being found at a vacant plot near the MCD Park at Alipur Village, near the transformer and that the dead body was under several stones.

5. SI Mukesh Kumar (PW-18) reached the spot accompanied by Ct. Sanjeev Singh (PW-1) and Ct. Vijender (PW-15). According to PW-18:

“There was a vacant plot of Mool Chand Rohilla wherein two heap of dung cake were there and near the said heap of dung cake the cow dung was lying where one naked dead body of a male was found lying having its face towards earth and some bricks and rope were found lying on the dead body and it was in highly putrefied condition.”

6. The name Ashok Kumar was tattooed on the right hand of the dead body. Inspector Dinesh Kumar Sharma (PW-19), the then SHO of PS Alipur also reached the spot. The endorsement made on DD No.32A and the *rukka* prepared was handed over to PW-1 for registration of the FIR. The crime

team also reached there and took photographs. A private photographer took photographs on the directions of the SHO and SI Sanjay Gade (PW-7).

7. After PW-1 reached the spot with a copy of the FIR, the SHO took into possession four bricks having the mark of 'SKB' inscribed on them in a plastic bag. The thin rope bundle was also taken into possession in a polythene bag. A bunch of hair lying under the head of the dead body was also seized. A rough site plan (Ex.PW-18/A) was prepared by the SHO at the instance of PW-18. This rough site plan simply showed the cow dung heap and the place where the dead body was found with letter 'A'. This vacant plot was on the other side of the road opposite the MCD Park.

8. According to PW-19, the IO in the present case, at around 9 pm, one Basant Kumar (PW-11) arrived at the spot. He informed PW-19 that his brother Ashok has not returned home since 18th May 2010. The description of the dead body matched the description given by PW-11 with regard to his missing brother Ashok. PW-18 and PW-11 were then sent to BJRM Hospital. After returning, PW-11 told PW-19 that the dead body was indeed that of his missing brother Ashok. According to PW-19, at that time, PW-11 informed the IO that he had last seen his brother on 18th May, 2010 at around 9 pm in the company of A-1 to A-4 at the bus stand of Dayal Market, Alipur. The statement of PW-11 under Section 161 Cr PC was recorded by PW-19. Thereafter, accompanied by PW-18, PW-11, and other police staff, PW-19 went to the houses of A-1 to A-4 but could not find them there.

Post-mortem examination

9. The post-mortem examination of the deceased was conducted by Dr K.

Goyal (PW-14) on 22nd May 2010 and on external examination, the following injuries were noticed by him:

- “1. Lacerated wound 3 x 0.25 cm over left side forehead just above the lateral margin of left eyebrow with crushed margins.
2. Lacerated wound 1 cm long over left side forehead just above medial end of left eyebrow with crushed margins.
3. Lacerated wound 5 x 1 cm with crush margins vertically placed over right parieto temporal region posteriorly
4. Lacerated wound 2.5 x 0.5 cm with crush margins over right parietal region placed obliquely.”

10. On internal examination, the following was noticed:

“there was sub scalp bruising with haematoma over all over right fronto- parieto- temporal regions. Fissure fracture right parietal and right temporal bones with clots. Meninges were intact. Brain matter was pulpy with large amount of mixed blood on the right side.”

11. According to PW-14, all injuries were ante mortem in nature caused by impacts of hard blunt object. The cause of death was cranio-cerebral injuries which were sufficient in the ordinary course of nature to cause death. It was confirmed that the death was homicidal and the time since death “was about 4-5 days”. The post mortem having been undertaken at 12:30 pm on 22nd May 2010, as is evident from the post mortem report (Ex.PW-14/A), the time of death, according to the medical report, would have been at any time between 12:30 pm on 17th May 2010 and 12:30 pm on 18th May 2010. However, PW-11 purportedly saw the deceased with the four accused last at around 9 pm on 18th May 2010. This discrepancy will be discussed subsequently.

12. The two bricks purportedly used for committing the offence were shown to PW-14. According to PW-14, injuries nos.1 to 4 mentioned in the post mortem report could have been caused by those bricks.

Arrests and recoveries

13. According to PW-19, on 23rd May 2010, he along with his staff, accompanied by PW-11, proceeded in the official gypsy in search of the accused persons. When they reached the liquor shop at Alipur, “a secret informer met me, who informed me that accused persons wanted in the present case were present behind bushes behind Khampur Radio Station”. When they reached the Khampur Radio Station “three persons were found sitting under the *kikar* tree”. PW-11 identified the said persons as those with whom the deceased was last seen by him. The said three persons, who were apprehended, revealed their names to be those of A-1, A-2, and A-3.

14. From the personal search of A-2, a black purse was recovered from his pant pocket. The purse contained the passport size photograph, voter ID card, and cash of Rs.225/-. PW-11 identified the passport sized photograph and voter ID card as that of his deceased brother. These articles were converted into a *pullanda* and seized. The three accused are purported to have made disclosure statements after their arrest and led the police inside the MCD Park and pointed out the scene of crime as near the wall on the north-east side.

15. They also led the police to the vacant plot of Mool Chand Rohila (not examined) in front of the MCD Park where, in a heap of cow dung, they had hidden the dead body. This pointing out, of course, is of no value at all as

this place was already known to the police. It is then stated that A-1 took the police to a tree from under which he produced a red polythene bag purportedly containing the clothes of the deceased. That bag contained *khaki* coloured pants, light pink colour *kachha*, half sleeved shirt with three broken buttons, green colour *baniyan*, and a pair of slippers. All these were seized. A-3 is stated to have led the police to the north-east side of the open plot, where he purportedly pointed out to a brick having the mark of 'SKB' with which he had hit the head of the deceased and killed him. The said brick purportedly carried bloodstains and hair. This was taken into possession and sealed.

16. A further unscaled site plan (Ex.PW-11/J) was prepared to show the places of the recovery. Five spots were marked on this site plan, i.e. Marks A to E. Mark A depicted the spot where the four accused and the deceased supposedly drank liquor together. Mark B denotes the place where the four accused allegedly murdered the deceased. Mark C was where the bloodstains of the deceased's blood were found whereas Mark D showed the spot under the tree from where the red polythene bag containing the clothes of the deceased was found. Lastly, Mark E was the spot situated in an open lot across the road from where the dead body was found hidden.

17. It must be mentioned at this juncture that on 27th May, 2010, PW-19 accompanied by Ct.Sushil(PW-16) and PW11 went in search of A-4. Apparently, it was PW11 who informed PW19 that A4 could be apprehended from the country-made liquor shop at Alipur. On the pointing out of PW-11, A4 is stated to have been arrested and interrogated. He too made a

disclosure statement about him getting recovered a brick used by him in the commission of the offence. He again took the police to the MCD Park and pointed out the spot near the wall and again pointed to all the places already visited by the police. From the north-east side, he pointed out to a brick used by him in killing the deceased. That brick had blood stains.

18. A site plan (Ex.PW-11/Q) was prepared in regard to this recovery. This unscaled site plan showed four spots marked, i.e. Marks A to D. The narration for Marks A and B are similar to those of Marks A and B in the earlier site plan (Ex.PW-11/J). Mark C denoted the place from where the brick and blood stains were recovered at the instance of A-4. Mark D, similar to Mark E in the earlier site plan, denoted the place where the dead body was found hidden.

Forensic report

19. The FSL report dated 16th February 2012 (Ex.PW-19/E1) pertained to four parcels containing four exhibits: Ex.1 was a brick having dark stains and hairs; Ex.2 was a brick having dark stains at places; Ex.3 was two teeth; and Ex.4 was black filamentous material described as ‘scalp hair of deceased Ashok Kumar’. DNA could only be isolated from Ex.2 and Ex.3 whereas it could not be isolated from Ex.1 and Ex.4. The report concluded that “the DNA profile from the source of exhibit ‘3’ (teeth) was matching from the DNA profile from the source of exhibit ‘2’ (blood stains present on the brick)”. Therefore, this report revealed nothing that would connect any of the accused persons to the crime.

Findings of the trial Court

20. Supplementary statements of the four accused were recorded and the charge sheet was thereafter filed. Charges were framed in the manner indicated hereinabove on 9th May 2011. For the prosecution, 19 witnesses were examined. When incriminating circumstances were put to the accused under Section 313 Cr PC, each of them denied them. Each of them claimed to have been falsely implicated and offered to lead defence evidence. In particular, the recoveries were all denied as having been planted on them.

21. On behalf of the defence, Rajesh Kumar (DW-1) was examined. He stated that he was present when A-1 was arrested from his own house. He also states in his cross-examination that A-1 is not related to him but that they are merely residents of the same village.

22. In the impugned judgment, the trial Court has culled out the circumstances which supposedly formed a complete chain and pointed to the guilt of the accused persons. These were the following circumstances:

“Circumstance of last seen
Circumstance of recovery of brick, i.e. weapon of offence, at the instance of Subhash.
Circumstance of recovery of wallet
Circumstance of recovery of clothes of deceased.
Circumstance of recovery of brick, i.e. weapon of offence, at the instance of Inderjeet.”

23. The trial Court came to the following conclusions:

- (i) The prosecution had proved beyond doubt that the deceased was last seen in the company of the accused.
- (ii) The recoveries of the weapons of offence, i.e. bricks, in the presence

of PW-11 and police officials have been proved. As regards the recovery of the wallet from A-2, it was held to be satisfactorily identified and the response of the accused was a mere denial. Reliance was placed on the depositions of PWs- 11, 12, 18, and 19 of which the last three were police witnesses. The minor contradictions in these depositions did not go to the root of the matter.

- (iii) As regards the recovery of the clothes of the deceased, the trial Court accepted their recovery from under a tree on the pointing out of the accused. The said witnesses were consistent and corroborated each other. This was even without public witnesses being associated. There was no need for PW-11 to falsely implicate the accused.
- (iv) The trial Court also believed the evidence of the prosecution as regards the recovery of the brick at the instance of A-4. With all the circumstances in the chain having been successfully proved, the trial Court concluded that these circumstances pointed unerringly towards the guilt of the accused.

24. Accordingly, the trial Court proceeded to sentence them in the manner indicated hereinbefore.

Law relating to circumstantial evidence

25. This is a case based on circumstantial evidence. The law relating to circumstantial evidence, as explained in several decisions, including ***Sharad Birdichand Sarda v. State of Maharashtra AIR 1984 SC 1622***, ***Tanviben Pankajkumar Divetia v. State of Gujarat (1997) 7 SCC 156***, ***Harishchandra Ladaku Thange v. State of Maharashtra AIR 2007 SC***

2957, and *Vithal Eknath Adlinge v. State of Maharashtra AIR 2009 SC 2067*, is fairly well-settled. The conditions precedent that must be fully established to bring home the conviction of an accused on the basis of circumstantial evidence have been explained as under:

- “(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned ‘must’ or ‘should’ and not ‘may be’ established;
- (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
- (3) the circumstances should be of a conclusive nature and tendency;
- (4) they should exclude every possible hypothesis except the one to be proved; and
- (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

26. In *Gagan Kanojia v. State of Punjab (2006) 13 SCC 516*, the Supreme Court opined:

“9. ... Indisputably, charges can be proved on the basis of the circumstantial evidence, when direct evidence is not available. It is well settled that in a case based on a circumstantial evidence, the prosecution must prove that within all human probabilities, the act must have been done by the accused. It is, however, necessary for the courts to remember that there is a long gap between ‘may be true’ and ‘must be true’. Prosecution case is required to be covered by leading cogent, believable and credible evidence. Whereas the court must raise a presumption that the accused is innocent and in the event two views are possible, one indicating to his guilt of the accused and the other

to his innocence, the defence available to the accused should be accepted, but at the same time, the court must not reject the evidence of the prosecution, proceeding on the basis that they are false, not trustworthy, unreliable and made on flimsy grounds or only on the basis of surmises and conjectures. The prosecution case, thus, must be judged in its entirety having regard to the totality of the circumstances. The approach of the court should be an integrated one and not truncated or isolated. The court should use the yardstick of probability and appreciate the intrinsic value of the evidence brought on records and analyze and assess the same objectively.”

Testimony of PW-11

27. The Court first discusses the evidence of PW-11 who is most critical for the entire case of the prosecution. He is the brother of the deceased. According to him, the deceased used to play an instrument in a brass band for marriage functions and was doing piecemeal labour work. He simply states that on 21st May 2010, he came to know that a dead body of a male by the name of Ashok had been found at the MCD Park. What he states thereafter is very critical. He states that “I found the dead body in Dung Cake Protection Heap (Bitora) and found the name Ashok was engraved on the hand of said dead body. Thereafter, his body was shifted to mortuary of BJRM Hospital. The dead body was naked at that time.”

28. In fact, this is completely contrary to what is stated by PWs- 18 and 19, the police officers. It may be recalled that according to PW-18, there was no one present at the site when he reached there and found the dead body. According to him, many public persons had gathered at the spot. He stated that “I tried to make the dead body identified from those public persons but to no avail”. According to PW-18, it was only after the SHO had sent the

dead body to the mortuary that PW-11 reached the spot and was then taken to the mortuary where he identified the dead body to be that of his brother. Likewise, PW-19 also states that it is only after the dead body was sent to the mortuary of the BJRM Hospital that PW-11 arrived at the spot. Therefore, this by itself is a major contradiction in the evidence of PW-11.

29. Secondly, according to PW-18 and 19, PW-11 was sent to the mortuary along with PW-18 to identify the dead body. Yet, when one looks at the post-mortem report (Ex.PW-14/A), it shows that the post-mortem examination began at 12:30 pm on 22nd May 2010 and it has been noted that the body was identified by Ct. Bijender (PW-15). The question that arises is that if PW-11 had already identified the dead body at the mortuary on the night of 21st May 2010, why wasn't he brought at that stage to identify the body?

30. According to PW-11, on 18th May 2010, he saw his brother, the deceased, last in the company of the accused persons at Dayal Market Sabzi Mandi, Alipur, near the bus stand at around 9 to 9:15 pm when he was returning from his official duties. According to PW-11, he asked his brother why he was with the accused and asked him to go to his house to which the deceased responded that "he would be coming within half or one hour". However, the deceased did not return. According to PW-11, "he searched for the deceased but could not trace him". In his cross-examination, he was confronted with his previous statement under Section 161 Cr PC wherein he did not state that "I searched for my brother in our relations but could not trace him out".

31. It must be mentioned here that according to the prosecution, the motive for the crime was that the accused had borrowed some money from the deceased who was demanding its return and, so as to avoid repayment of the sum, they somehow decided to eliminate him. If this was the motive, then the answer given by PW-11 in his cross-examination that “my brother was not on inimical terms with all the accused persons” and that he had in fact stated in his previous statement that the “accused persons were friends of his brother” did not make any sense. In his deposition in Court, he tried to deny that he had stated to the police that the accused were friends of his brother but he was confronted with his previous statement where he did say so.

32. There is a mystery about why PW-11 did not lodge any missing persons report with the police until the dead body was found on 21st May 2010, three days after he last saw him. The trial Court has accepted the explanation offered by PW-11 that he did go to the police but they did not record any complaint of his and asked him to continue searching for the deceased. If indeed PW-11 had last seen the deceased in the company of the four accused whom he recognised, his first course of action would have been to look for these accused persons and enquire from them as to the whereabouts of his brother. That he does not seem to have done this raises serious doubts as to whether in fact he saw them with his brother on the evening of 18th May 2010.

33. The trial Court has discussed the evidence of PW-18 in this regard. He stated in his cross-examination, “As per my knowledge no missing report was lodged in the police station in respect of the deceased Ashok Kumar”. It

is unlikely that if PW-11 had visited the PS at any time earlier, PWs- 18 and 19 would not know of it. In his cross-examination by the learned counsel for A-1, PW-18 reiterated that “As per my knowledge Basant who is the brother of the deceased Ashok Kumar, has not made any complaint with regard to missing of deceased Ashok Kumar”. This is as categorical as it can get and yet the trial Court has brushed it aside observing that PW-18 “does not say that missing report was not lodged, rather he is not sure whether any missing report was lodged or not”. The trial Court has missed the answer given by PW-18 in his cross-examination by the learned counsel for A-1 which is categorical and not vague.

34. Consequently, the Court finds that the attempt by PW-11 to explain his inaction when he found that the deceased had not returned home after he last saw him on 18th May 2010 is not at all convincing. If indeed he asked his brother why he was with the accused, it meant that he did not approve of his brother being with the accused. This made it all the more curious that he did not bother about the deceased having gone missing. The trial Court, in the circumstances, should not have simply accepted the explanation of PW-11 that sometimes his brother used to return home “after 2-3 days, therefore, he has not enquired for 2-3 days about his brother from accused persons does not raise any doubt”.

35. Particularly considering that the accused persons were previously known to PW-11, his not enquiring from them about his deceased brother cannot be accepted as a natural course of conduct. This too makes the narration of events by PW-11 unreliable. No doubt, PW-11’s testimony will not be

considered doubtful only because he is a close relative of the deceased. However, the settled legal position is that the testimony of such a witness has to be carefully scrutinized and has to be corroborated by other evidence gathered.

36. In *State of Bihar v. Basawan Singh AIR 1958 SC 500*, the Constitution Bench of the Supreme Court held:

“The correct Rule is this: if any of the witnesses are accomplices who are particeps criminis in respect of the actual crime charged, their evidence must be treated as the evidence of accomplices is treated; if they are not accomplices but are partisan or interested witnesses, who are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested by the application of diverse considerations which must vary from case to case, and in a proper case, the court may even look for independent corroboration before convicting the accused person.”

37. In *Waman v. State of Maharashtra (2011) 7 SCC 295*, the law was summarized thusly:

“It is clear that merely because the witnesses are related to the complainant or the deceased, their evidence cannot be thrown out. If their evidence is found to be consistent and true, the fact of being a relative cannot by itself discredit their evidence. In other words, the relationship is not a factor to affect the credibility of a witness and the courts have to scrutinise their evidence meticulously with a little care.”

38. In the present case, therefore, if one has to proceed on the basis of the evidence of PW-11, corroboration of the material statements made by him will have to be sought. In this aspect, barring PW-11, we have no other

witness who talks about the deceased being seen with the accused at 9 pm on 18th May 2010.

39. If one were to seek corroboration by the medical evidence, then this assertion of PW-11 becomes extremely doubtful. As already noted, the post-mortem report opines the time of death to be 4-5 days prior to 12:30 pm on 22nd May 2010. Even if we were to take the time since death to be 4 days, it still would not reconcile with PW-11's claim that he last saw the deceased in the company of the accused persons at 9 pm on 18th May 2010. This 8 hour discrepancy is one that would fall outside of even the most lenient margin of error. Therefore, the testimony of PW-11 finds no corroboration from the medical evidence. His deposition is central to the prosecution's case for proving the circumstance of 'last seen'. However, with it being riddled with inconsistencies and contradictions, the Court does not find that the said circumstance has been proved satisfactorily.

Doubts surrounding discovery of the dead body

40. With regard to the vacant plot from where the dead body was recovered, two important pieces of evidence were never gathered by the police. The plot belonged to one Mool Chand Rohila but he was never examined and, therefore, not cited as a witness. Secondly, as confirmed by Ct. Poonam (PW-12), the call about the dead body being discovered at the open plot was received at the PCR at 6:37 pm from one Rajvir whose mobile number was also noted in the PCR form (Ex.PW-12/A). The IO did not make any effort to trace this person through his mobile number.

41. The Court has also seen the scaled site plan (Ex.PW-3/A). The entire area seems to be heavily built up. There is a *gali* separating the two sites, i.e. the site from where the dead body was recovered which lay to the west and the site from which the bricks purportedly used in commission of the murder were recovered, which lay to the east. The dead body would have had to have been carried a considerable distance across the *gali* from one side to the other. In fact, the plot on which the body was found does not abut the *gali* and, in fact, is situated behind another plot which abuts the *gali*. No mention is made in any of the disclosure statements of the accused persons carrying the dead body across the *gali* to the vacant plot. No explanation is offered by the prosecution for this anomaly. PW-11 also does not state how he came to know about the dead body lying on the vacant plot and how he reached there on his own. There is a huge gap in this narration.

Unconvincing arrests

42. A circumstance not discussed by the trial Court is the arrest of the accused persons themselves. As has become routine in a large number of cases, the move to arrest an accused person always begins with information passed on by a 'secret informer'. In the present case too, according to PW-19, on 23rd May 2010, when they reached the liquor shop at Alipur, a secret informer met him and informed him that the accused persons wanted in the present case were present in the bushes behind Khampur Radio Station. At this time, PW-19 was supposedly accompanied by PW-11. When PW-11 was questioned about this in his cross-examination, he had to admit that in his previous statement (Ex.PW-11/DA), there is no mention of secret information disclosed to the witnesses in the PS. In ***Kanhai Mishra @***

Kanhaiya Misra v. State of Bihar (2001) 3 SCC 451, the Supreme Court observed that “the witness has nowhere stated from whom he received the secret information inasmuch as such information cannot be made a basis to prove this circumstance for being used against the appellant”.

43. But for the secret information, PW-19 could not have proceeded to arrest the accused persons. Even then, the circumstances of the arrests are shrouded in mystery. According to PW-19, three of the four accused, i.e. A-1, A-2, and A-3, were found “sitting under the *kikar* tree when they reached Khampur Radio Station”. Why the three accused would be sitting in such an open place after committing a heinous crime is not explained. In fact, the tree under which they were supposed to be sitting appears to be very close to the alleged place of the murder of the deceased if one goes by the scaled site plan (Ex.PW-3/A). This entire circumstance of arrest of the three persons is, therefore, not very convincing. The Court has also perused the arrest memos of A-1, A-2, and A-3 which show the times of arrests as: A-1 at 3:15 pm; A-2 at 2:15 pm; and A-3 at 2:45 pm. No explanation is forthcoming as to why there appears to have been a uniform 30 minute gap between each of the arrests when the three accused persons are stated to have been sitting together under a tree. This only further lends credence to the submission of the learned counsel for the accused that these documents have been prepared not at the time of the accused persons being taken into custody but only later at the PS.

44. The recoveries made from their persons are also shrouded in mystery. It is beyond this Court’s comprehension why A-2 would still be carrying the

purse of the deceased. Nothing was recovered from the persons of A-1 and A-3 except for Rs.10 cash. The fact that PW-11 has endorsed the pertinent documents does not lend great credence when his own story is highly doubtful. No other public persons were joined and no attempt to do so seems to have been made.

45. Even as regards the arrest of A-4 from near a country-made liquor shop, it appears to be PW-11 who informed PW-19 that A-4 could be apprehended from that place. However, PW-11 himself states that “on 27th May 2010 accused Inderjeet present in Court today was arrested near country-made liquor shop”. He does not state that it was he who told PW-19 about this. Even in his cross-examination, he offers no credible explanation as to how he knew about the presence of A-4 at the spot in question. He is supposed to have been “consuming liquor when he was apprehended”. However, none of the MLCs pertaining to any of the accused are available on the record.

46. Consequently, in the considered view of this Court, the arrests of the accused persons and the recoveries made from their persons cannot be said to have been proved by the prosecution beyond reasonable doubt.

Doubtful recoveries

47. Two bricks were purportedly used by the accused persons in the murder of the deceased. One blood stained brick was recovered on 23rd May 2010 at the instance of A-3 and the other was recovered on 28th May 2010 at the instance of A-4. It is pertinent to note that the brick recovered at the instance of A-4 was located very close to the spot from where A-1 got recovered the red polythene bag containing the clothes of the deceased on 23rd May 2010.

Surely, had the police searched the area thoroughly, they would have come across this blood stained brick earlier itself.

48. Furthermore, bricks are common objects. Recoveries made pursuant to disclosures under Section 27 IEA lose all significance if what is recovered is a common object which can be easily located without any difficulty. Both bricks have been recovered from a vacant plot which is a highly unusual place for the accused persons to have left the blood stained 'weapons of offence'. It must also be noticed at this stage that although a bundle of rope was found near the spot, what that rope was used for has also not been explained.

49. The trial Court has referred to the fact that the FSL report confirms the blood stains on the bricks were that of the deceased. This by itself does not connect the accused with the crime since these bricks were not in the possession of the accused but were simply recovered from an open plot on their purported pointing out. They were not shown to be so carefully hidden as not to be detected.

50. The Court also finds the recovery of the bag containing the clothes of the deceased to be doubtful. Therefore, the recoveries of the weapons purportedly used to kill the deceased do not convince the Court.

No motive established

51. The prosecution has sought to argue that the motive for the commission of this murder was for the four accused to avoid having to repay the sum of money which they had borrowed from the deceased. However, this remains

unsubstantiated. It is not the case that the four accused sought to steal from the deceased and therefore, the recovery of the wallet from the possession from one of the accused is hardly of any help to the prosecution case. In fact, the wallet contained as little as Rs.225/- and it appears improbable and unbelievable that the four accused would commit murder so as to misappropriate such a measly sum.

52. Another important piece of evidence which might have helped the prosecution is testing the viscera of the deceased for the presence of the alcohol since the case of the prosecution is that the accused were drinking with the deceased shortly prior to his death. This angle has not been fully probed by the prosecution.

Conclusion

53. The trial Court has placed excessive reliance on the testimonies of PWs-17, 18 and 19, all of whom are police officers. What the trial Court has failed to notice is that all of the seizure memos and all of the arrest memos have been signed by the same set of people. In other words, PW-11 has been made to sign numerous documents and he has been used throughout for all the arrests and recoveries made by them. PW-11 himself does not inspire confidence that he is speaking the truth and therefore, the arrests and recoveries made with his involvement are equally tainted and do not inspire confidence.

54. Oddly enough, the trial Court appears to have acquitted the accused for the offence under Section 201/34 IPC which means that the trial Court has accepted that they made no attempt to conceal evidence of the commission

of the crime. However, the dead body has been recovered at a fair distance from the spot at which the offence was purportedly committed. This only adds further mystery and begs the question as to who might have concealed the dead body if not for the accused persons. No explanation is made for this gap in the chain of circumstances.

55. It is trite that each circumstance has to be proved beyond reasonable doubt and the circumstances proved must form a complete chain which points only to the guilt of the accused and nobody else. The evidence gathered in the present case and proved by the prosecution does not persuade the Court that it is only the accused persons and no one else who could be held guilty for the murder of the deceased.

56. The impugned judgment and order on sentence convicting each of the accused for the offence under Section 302/34 IPC is set aside. The appeals are allowed.

57. The Appellants will fulfil the requirements of Section 437A Cr PC to the satisfaction of the trial Court at the earliest. The bail and surety bonds furnished by the Appellants are hereby discharged. The trial Court record be returned forthwith along with a certified copy of this judgment.

S. MURALIDHAR, J.

VINOD GOEL, J.

AUGUST 10, 2018/‘anb’