

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

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Judgment delivered on: 22nd November, 2019

+ CRL.A. 521/2018

1. MEERA DEVI

...Appellant

Through: Mr. Ajay Verma, Advocate
with Ms. Katyayini and Mr.
Shubham Gupta, Advocates.

versus

STATE (NCT) OF DELHI

...Respondent

Through: Mr. Ravi Nayak, APP for State.

+ CRL.A. 372/2018

2. KANWAR SINGH

...Appellant

Through: Mr. K. Singhal and Mr. Nitish
Mittal, Advocates.

versus

STATE (NCT) OF DELHI

...Respondent

Through: Mr. Ravi Nayak, APP for State.

CORAM:

JUSTICE SIDDHARTH MRIDUL

JUSTICE I.S.MEHTA

JUDGMENT

I.S. Mehta, J.:

1. Instant appeals are arising out of a common judgment dated 19.12.2017 and order on sentence dated 06.01.2018 in SC No. 52212/16 arising out of FIR No. 395/2007 under Sections 302/201/34

IPC PS Punjabi Bagh, Delhi. Both the Appellants have been convicted under Sections 302/34 IPC and sentenced to undergo Life Imprisonment with fine of Rs. 30,000/- each and in default to undergo further Simple Imprisonment for one year. For the offence under Sections 201/34 IPC they have been sentenced to undergo Rigours Imprisonment for five years with fine of Rs. 5,000/- each and in default to undergo further Simple Imprisonment for six months. All the sentences were directed to run concurrently.

2. The brief facts stated are that on 31.05.2007 at about 11 PM, a DD, DD No. 87B Ex.PW9/A was registered at PS Punjabi Bagh. As per the DD, a sack (*katta*), blood stained from outside, was found lying on Diesel road which leads to Madipur.

3. On receiving this information, ASI Ombir Singh alongwith Ct. Hawa Singh visited the spot and found a blood stained pink colour sack containing torso of a man. The head, legs and arms were missing from the said torso. Torso was dressed in a banyan and underwear which were also stained with blood.

4. ASI Ombir on basis of DD No. 87B prepared a *Rukka* Ex.PW16/A and handed over the same to Ct. Hawa Singh and sent him to PS Punjabi Bagh. Ct. Hawa Singh came back at the spot alongwith computerized copy of FIR Ex.PW9/B and I.O. Inspector Gurmeet Singh too reached at the spot who called the Crime Team, Photographer and Dog Squad. Earth control was taken and blood sample from the torso was also taken, parcels were prepared with seal of GSP and site plan of the spot was prepared. The torso parcel was

deposited in Mortuary of Sanjay Gandhi Memorial Hospital for preserving.

5. The missing person squad was informed and pamphlets were got printed and special team was constituted for distributing the pamphlets in different places.

6. On 03.06.2007 while Ct. Sanej and Ct. Harjeet were distributing the pamphlets in D-Block, J.J. Colony, Shakurpur, Delhi they met a lady, Smt. Babita PW4 who told them her brother Raju @ Raj Kumar R/o D-526, J.J. Colony, Shakurpur, Delhi was missing for the last 3-4 days and her sister-in-law (*bhabhi*) Meera Devi has not given a satisfactory reply about his missing. Thereafter, both constables suspected the circumstance under which Raj Kumar went missing and took Babita to PS Saraswati Vihar where Missing Person Register was maintained. On checking the Register they did not find any missing report of deceased Raju @ Raj Kumar. On this, Ct. Sanej Kumar telephonically informed IO Inspector Gurmeet Singh about the same. ASI Ombir Singh and Ct. Hawa Singh talked to Babita in this respect and took Babita to mortuary of Sanjay Gandhi Memorial Hospital where a torso was shown to her and complainant Babita indentified the torso to be of her brother Raj Kumar on the basis of old injury mark on the shoulder, underwear and banyan.

7. She further narrated to the police that deceased before going missing told her, his wife has illicit relationship with neighbour Kanwar Singh @ Haduman and she, thus, suspected involvement of Kanwar Singh and Meera Devi in commission of crime. On this information, two police teams were constituted for taking further

action. Thereafter, on 03.07.2007 raiding team reached at J.J. Colony, Shakurpur. First team consisting of SHO, Lady Ct. Sudesh and Ct. Harjeet apprehended Meera Devi and after interrogation she was arrested at 4 PM. Second team consisting of ASI Ombir, Ct. Sanej and complainant Babita identified Kanwar Singh and apprehended him and after interrogation he was arrested from his House No. D-528, J.J. colony, Shakurpur, Delhi at about 4:30 PM.

8. Subsequently, accused Meera Devi made disclosure statement Ex.PW13/D and disclosed, her husband was a TSR driver and was a drug addict. She further stated, her husband had an accident 4 years ago and received injury on his right shoulder, as a result, his right hand was deformed. During that relevant period she got involved in sexual relationship with one Kanwar Singh @ Haduman. Later, Raju @ Raj Kumar come across their illicit relationship and since then, matrimonial discord arisen between them. Accused Meera Devi and accused Kanwar Singh @ Haduman planned to eliminate Raju @ Raj Kumar to get rid of the problem.

9. On 30.05.2007 accused Meera Devi made her children to sleep on the roof of the house, House No. D-526, J.J. Colony, Shakurpur, Delhi (as shown in the site plan Ex.PW8/A). She laid alongwith her husband on the bed under the pretext of sleeping, however, she was waiting for Kanwar Singh to reach, to execute a plan of elimination of her husband Raju. She at about 12 PM opened the door and left the door unlocked to let Kanwar Singh @ Haduman enter into the house to eliminate Raju @ Raj Kumar. Accused Kanwar Singh came from his house, House No. D-528, J.J. colony, Shakurpur, Delhi and

entered into house of Raju alongwith a knife. On direction of co-accused Kanwar Singh accused Meera Devi stifled her husband Raju's mouth through her *sari* and Kanwar Singh hit the deceased on his neck through his knife and after some time due to the consequential injury Raju @ Raj Kumar died on the bed. Thereafter, they chopped off the dead body of the deceased into six pieces and kept the same under the bed covered with *Dari* looking for appropriate time to dispose of the parts of the dead body to hide evidence against them. They cleaned visible spots of blood on floor.

10. On 31.05.2007, Meera Devi sent her children out of her house to play. Accused Kanwar Singh fetched Pink Polythene bags to the house of accused Meera Devi and thereafter, both the accused persons put the parts of dead body into different Pink Polythene bags and torso into a *Katta*. The head, blood stained cloths and knife Ex.PW13/M was kept in a raxine bag. The accused Kanwar Singh took the pink polythene bags containing human flesh, knife, blood stained cloths and torso to different places to dispose of and to remove evidence against them. The accused Kanwar Singh further removed blood stained *Dari* from house of Meera Devi on 01.06.2007. Accused Meera got recovered a blood stained plywood (which was cut from bed) and pink polythene from her house, same were seized vide Seizure Memo Ex.PW13/F.

11. Similarly, accused Kanwar Singh too made a Disclosure Statement Ex.PW13/E on similar lines and affirmed contents of disclosure statement of accused Meera Devi and further disclosed that he has thrown the bag containing legs of the deceased Raju into a

Nala (sewer) located in front of A-Block, Shakurpur, Delhi. He further disclosed, he has taken bag containing arms and other bag containing head alongwith one plastic bottle of petrol at about 9:30 PM and reached to Dhaula Kuan by a TSR and got down from it on pretext of nature's call and threw the bag containing arms of the deceased towards North in a jungle and left TSR. He further disclosed, raxine bag containing head of the deceased was removed by him by boarding a bus towards Alwar and he got down at Sohna Lake, Gurgaon and threw the bag into the bushes and thereafter he burned the head of the deceased Raju with help of petrol which he took from his motorcycle. He further disclosed, he could get recover the same on his pointing out. On the pointing out of accused Kanwar Singh, blood stained knife was recovered and was seized vide Seizure Memo Ex.PW13/M, severed legs of deceased was recovered and seized vide seizure memo Ex.PW13/G, Blood stained towel with pink polythene was recovered and seized vide seizure memo Ex.PW13/H, severed head of deceased was recovered and seized vide seizure memo Ex.PW13/I, Blood stained semi burnt clothes was recovered and seized vide seizure memo Ex.PW13/J, Blood stained carpet/dari/mat was recovered and seized vide seizure memo Ex.PW13/L.

12. The post mortem of the torso was got conducted. Post Mortem Report Ex.PW10/A indicates cause of death is due to strangulation (Asphyxia). After post mortem, body of the deceased was handed over to the relatives vide Handing Over Memo Ex.PW4/D. After post mortem, doctor handed over 7 parcels sealed with the seal of Sanjay

Gandhi Memorial Hospital Mortuary, Magolpuri, Delhi same were deposited in the MHC(M) PS Punjabi Bagh.

13. Thereafter, on 15.06.2007 all the exhibits were sent to the FSL Rohini and blood sample of Master Ashu was also taken in the FSL, Rohini for DNA test to match teeth of the dead body of the deceased Raju @ Raj Kumar. Later, DNA Report Ex.PW22/A and Ex.PW22/B revealed that the blood sample of Master Ashu is biologically related to the teeth of the deceased. On 25.06.2007, draftsman SI Manohar Lal was called who prepared scaled site plan Ex.PW8/B of the place from where Torso of the deceased was found, he also prepared Scaled Site Plan Ex.PW8/A of the house of the deceased i.e. D-526, J.J. Colony, Shakurpur. He also prepared rough site plan of recovery of both the legs Ex.PW19/D, rough site plan of recovery of Dao/Knife and bags Ex.PW19/E, rough site plan of place of recovery of burnt head and burnt clothes Ex.PW19/F.

14. Thereafter, Insp. Gurmeet Singh reached Sanjay Gandhi Memorial Hospital, Mangol Puri, Delhi and got preserved the burnt head and legs. Case property was got deposited in MHC(M) by him. After completion of the investigation presented the Chargesheet under Section 302/201/34 IPC.

15. Subsequently, on 08.05.2008 charges were framed against both accused persons for offences punishable under Sections 302/34 and 201/34 IPC. Both accused persons pleaded not guilty and claimed trial.

16. The prosecution in order to prove its case has examined 22 witnesses i.e. Ram Singh (PW1), SI Lalit Kumar (PW2), HC Jaibir

Singh (PW3), Smt Babita (PW4), Naresh Kumar (PW5), Kumari Divya Rathore (PW6), Sh. Sohanbir Singh (PW7), SI Manohar Lal (PW8), HC Bal Kishan (PW9), Dr. V.K. Jha (PW10), HC Krishan Kumar (PW11), L/Ct. Sudesh (PW12), Ct. Sanej (PW13), Ct. Hawa Singh (PW14), Ct. Niyazuddin (PW15), Retd. Ombir Singh (PW16), Ct. Prabhat Kumar (PW17), HC Mahender Singh (PW18), Insp. Gurmeet Singh (PW19), Dr. Lingaraj Sahoo (PW20), Sh. Naresh Kumar (PW21), Sh. A. K. Srivastava (PW22) and thereafter the statement of both appellant/accused was recorded under Section 313 Cr.P.C. on 14.02.2012.

17. After conclusion of arguments, Trial Court vide its Judgment dated 19.12.2017 and Order on sentence dated 06.01.2018 convicted both the accused/appellants under Sections 302/201/34 IPC. Hence, the present appeals.

18. Ld. Counsel on behalf of appellant Meera Devi has submitted that prosecution has failed to prove illicit relation between accused Meera Devi and co-accused Kanwar Singh and statement of Babita PW4, Kumari Divya PW6 and Sohanbir Singh PW7 is not sufficient to reach to the conclusion that there was an illicit relation between the appellants. Mere suspicion is not enough as none of the witnesses has seen them together.

19. Ld. Counsel further submitted that as per the case of the prosecution, Babita PW4 had gone to the house of the deceased on 01.06.2007, same was nowhere deposed by Babita PW4 in the court. Ld. Counsel further submitted that it was told by Divya (PW6) to

Babita (PW4) that she has seen blood on 31.05.2007 and submitted, had Divya seen blood in morning of 31.05.2007, she could have informed same to Babita (PW4) when Babita visited her home on 01.06.2007, so, story of prosecution becomes doubtful. Ld. Counsel further submitted that Divya has admitted that in the month of May 2007, they used to sleep at 10 PM and at the time of her cross examination, she has deposed that her father had returned home at 11:30 PM on 30.05.2007 and if PW6 had gone to sleep at 10 PM on the roof, then, how could she tell that her father had returned from job on 30.05.2007 at 11:30 PM. I.O. Inspector Gurmeet Singh PW19 has admitted that initially, he did not record statement of any neighbour of accused Meera Devi and he has also admitted during his cross examination that statement of Sohanbir was recorded on 20.08.2007 and since the statement of Sohanbir was not recorded promptly, so, the story of the prosecution becomes doubtful. The statement given by the PWs are different from each other and doesn't prove the facts of the case presented by the prosecution in front of the court, thus, creating doubt in the prosecution story.

20. Ld. Counsel further submits that post mortem of the deceased was conducted by Dr. V.K. Jha PW10 on 05.06.2007 and this witness has deposed during his cross examination that the dead body was identified by Ct. Prabhat and how could Ct. Prabhat identify the body of the deceased, when, deceased was not known to him personally. So, the identity of the body of the deceased is disputed and the prosecution has failed to prove that the torso and other parts of the body recovered in the present case were of Raj Kumar or anyone else.

He further stated that PW10 has admitted in his cross-examination that there was no mark of identity on the body of the deceased and Babita PW4 during her cross examination failed to tell on which shoulder of deceased Raj Kumar the mark of injury was present at the time of identification of the dead body of Raj Kumar.

21. Ld. Counsel further submits that PW4 Babita has admitted that she had a quarrel with accused Meera, so, there is a ground for her to depose against accused Meera. At the same time PW6 Divya is tutored by PW4 Babita, who is her 'BUA' and when PW6 was subjected to cross examination, she deposed that on 01.06.2007, her Bua visited her house and thereafter, she had come on 05.06.2007 and also submitted that if PW4 Babita did not go to the house of this PW6 on 03.06.2007 then, the entire story of the prosecution is proved to be false, as PW4 has deposed that on 03.06.2007, she visited house of her brother Raj Kumar and found police personnel circulating pamphlets regarding recovery of a torso and she also alleged to have identified the torso of her deceased brother Raj Kumar on 03.06.2007 and PW4 during her cross examination has failed to tell the colour of the undergarments of the deceased, so, the testimonies of PW4, PW6 & PW10 are found to be inconsistent and that since the testimonies of the prosecution are found to be inconsistent with each other, thus, accused Kanwar Singh cannot be convicted. He relied on ***Hanumant Vs. The State of Madhya Pradesh***, AIR 1952 SC 343.

22. Ld. Counsel further submits that Kumari Divya PW6 is minor daughter aged about 14 years and she has been manipulated by PW4 Babita. Ld. Counsel further submits that there is material

contradiction in the statement of witnesses which creates doubt and relied upon ***Bodh Raj @ Bodha and Ors. v. State of Jammu and Kashmir*** 2002(8) SCC 45.

23. Ld. Counsel further submits that there was no injury found on body of the deceased Raju, absence of injury on person of deceased Raju itself creates doubt whether death of deceased Raju was homicidal death. Ld. Counsel further submits that prosecution in the instant case failed to prove specific roles played by accused persons, mere fact that appellant had illicit relationship with co-accused Kanwar Singh cannot establish guilt of commission of offence.

24. Ld. Counsel further submits that prosecution has not proved the act committed by them as to what happened on day of the incident and what roles were played by the accused persons and it only created a story. He relied on ***Dhan Raj @ Dhand v. State of Haryana*** CRL. APPEAL No. 1410/2010 of Supreme Court.

25. Ld. Counsel further submits that prosecution failed to prove complete chain of the events to bring home guilt of the accused persons and submitted that Appeal of the appellant be allowed and appellant be acquitted. He relied upon ***Baba Fakkadnath @ Mulla @ Dharampal & Ors. v. State of U.P.*** 2018 High Court of Allahabad.

26. Ld. Counsel on behalf of the Appellant Kanwar Singh has submitted that the prosecution failed to prove the specific role played by appellant Kanwar Singh. He has further submitted that in the present case there is no evidence proved on record that appellant Kanwar Singh participated in commission of the crime.

27. Ld. Counsel has further submitted that mere allegation of the crime committed by the appellant Kanwar Singh is not enough and even if the version of the prosecution is taken to be gospel truth then appellant Kanwar Singh cannot be convicted under Section 302/34 as evidence of the crime committed i.e. taking away of body parts of the deceased and the material evidence recovered from the house of appellant Meera Devi on 31.05.2007 only constitutes conviction under Section 201 IPC only. He further submitted that appeal of the Appellant be accepted and impugned Judgment and Order on sentence be set aside. He relied on *Uppala Bixam v. State of A.P.* 2018 SCC Online SC 2193.

28. Per contra, ld. APP has submitted that the prosecution case is based on circumstantial evidence and prosecution has proved its case beyond reasonable doubt against both the Appellants and there is no eye witness in the present case.

29. Ld. APP has further submitted that Kumari Divya (PW6) is daughter of the Appellant Meera Devi who has deposed against her mother and statement of PW6 inspires confidence in absence of any outer influence on her person.

30. Ld. APP has further submitted that the prosecution has also proved the recoveries at the instance of appellant Kanwar Singh @ Haduman which were in the personal knowledge of the appellant Kanwar Singh.

31. Ld. APP has further submitted that as per the DNA profiling (STR analysis) Report Ex.PW22/A and Ex.PW22/B blood sample of Master Aashu has biological relation with teeth of Deceased and

therefore, the appeal of the appellants be dismissed. He relied on ***Asar Mohammad and Ors v. State of U.P.*** CRL. Appeal No. 1617 of 2011 in Supreme Court of India.

LAST SEEN THEORY

32. The doctrine of Last seen becomes relevant when the deceased was last seen in the company of the accused before his death. Para 22 of Supreme Court Judgment in ***State of U.P. v. Satish*** (2005) 3 SCC 114 is relevant, same is reproduced as under:-

"22. The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases."

33. The prosecution in order to establish Last Seen Theory examined Kumari Divya PW6, daughter of Appellant Meera Devi, who deposed that on the night of 30.05.2007 her mother (Meera Devi) made her alongwith her two brothers to sleep on the roof of the house. She further deposed that her parents i.e. deceased Raj Kumar and Accused Meera Devi slept together in the house at about 11:30 PM and thereafter she did not see her father on the next day i.e. 31.05.2007 at around 8 AM in the house, on inquiring about his

whereabouts from her mother, accused Meera Devi told to her that her father Raj Kumar has gone to work. She noticed lot of blood where her father was sleeping with Appellant Meera Devi. Meera Devi was cleaning the blood stains on the floor. On asking of PW6 about the stains and her cleaning the stains, she disclosed that it is not blood and same is colour of cloth. She further deposed, she has not seen her father alive thereafter. She further deposed that her mother had illicit relation with appellant Kanwar Singh.

The statement of PW6 Kumari Divya that she had seen her father in the company of her mother on 30.05.2007 at about 11:30 PM when her parents slept together and thereafter deceased going missing is strengthen by the Post Mortem Report Ex.PW10/A dated 05.06.2007 wherein the cause of death was shown as asphyxia and time since death is approx 5 days, which covers the gap of deceased being last seen with accused Meera Devi.

The contention of Ld. Defence Counsel that PW6 is a tutored witness and there is a delay in recording the statement of PW7 Sohanbir Singh loses its significance as the statement made is directly against her mother. A normal child will not allege against her mother to implicate falsely and there is no cross examination on behalf of the accused for false implication. The presence of PW7 Sohanbir Singh outside of his house on the date of the incident is not denied in the statement under Section 313 Cr.P.C. The statement of the PW6 Divya is corroborated with the statement of PW4 Babita on the point of visit of PW4 Babita on 01.06.2007 at house of Meera Devi, PW6 has clarified in her cross examination that PW4 Babita visited her

house at about 1 PM - 2 PM. The statement of PW6 Divya having seen blood in morning in her house on 31.05.2007 is concerned, the same was clarified by her mother on 31.05.2007 itself that same was not blood but was colour of the cloth. There was no suspicion in the mind of PW6 that her father went missing and she has believed the version given by her mother as true. PW4 Babita who is paternal aunt (*Bua*) of PW6 is a married woman who does not live with PW6 Divya and there was no occasion for suspecting missing of Raju by PW4 and PW6 then.

PW6 Divya specifically stated in her examination-in-chief that she with her own naked eyes has seen her mother and father sleeping in their house inside a room on night of 30.05.2007. Therefore, this statement cannot be suspected to be untrue for want of specific question in the cross examination. The facts narrated by PW6 is natural, consistent, corroborative and inspires confidence. PW4 Babita too is a material witness and her statement is consistent, corroborative and inspires confidence. There is no allegation of false implication at her instance in the present case.

Moreover, manner in which deceased went missing is in the personal knowledge of the Appellant Meera Devi under Section 106 of Indian Evidence Act. As such the statement of PW6 goes against both the accused persons. Reliance is placed on *Mahavir Singh v. State of Haryana* (2014) 6 SCC 716.

The contention of Ld. Defence Counsel PW17 Ct. Prabhat is a introduced witness who has identified dead body of the Deceased without knowing him personally too loses significance. The torso

dead body was identified by PW4 Babita in the mortuary of the Sanjay Gandhi Memorial Hospital, however, PW17 Ct. Prabhat was on duty in the mortuary of Sanjay Gandhi Memorial Hospital to guard the parts of the dead body till Post Mortem was performed.

The contention of Ld. Defence Counsel that there is inconsistency in the statement of PW4, PW6 and PW10, loses significance as same is not a material contradiction.

ARREST

34. The prosecution, on finding the blood stained sack containing the torso of the deceased, was in search of the accused person who committed the crime. During the investigation, suspicion was raised qua Meera Devi and Kanwar Singh.

35. Thereafter prosecution formed 2 teams. First team consisting of Insp. Gurmeet Singh PW19, Lady Ct. Sudesh PW12 and Ct. Harjeet who reached at house of Meera Devi i.e., House No. D-526, J.J. Colony, Shakurpur, Delhi. Accused Meera Devi was interrogated by Insp. Gurmeet Singh (I.O.) PW19 and then she was arrested from her house at 4 PM on 03.06.2007 vide Arrest Memo Ex.PW13/B and her personal search was carried out by Lady Ct. Sudesh vide Personal Search Memo Ex.PW16/A. The statement of Insp. Gurmeet Singh PW19 is corroborated with the statement of ASI Ombir Singh PW16 and Lady Ct. Sudesh PW12. Accused Meera Devi in her statement under Section 313 Cr.P.C. too has not specifically denied that she was not arrested from her house at 4PM on 03.06.2007.

36. Accused Kanwar Singh too resides in the neighbourhood of Accused Meera Devi at House No. D-528, J.J. Colony, Shakurpur, Delhi. On 03.06.2007 Second Police team consisting of ASI Ombir PW16, Ct. Sanej PW13 and complainant Babita PW4 apprehended Accused Kanwar Singh at the pointing out of the complainant Babita. Accused Kanwar Singh was interrogated by Insp. Gurmeet Singh and thereafter he was arrested vide Arrest Memo Ex.PW13/B at about 4:30 PM. Insp. Gurmeet Singh proved his Arrest Memo Ex.PW13/B and his Personal Search Memo Ex.PW13/C. Statement of Insp. Gurmeet Singh is corroborated with the statement of ASI Ombir PW16 and Ct. Sanej PW13. Accused Kanwar Singh in his statement under Section 313 Cr.P.C. too has not specifically denied that he was not arrested from his house at 4:30 PM on 03.06.2007.

37. Consequently, it is apparent on the record that accused Meera Devi was arrested from her house at about 4 PM on 03.06.2007 and Kanwar Singh was arrested from his house at about 4:30 PM on 03.06.2007.

RECOVERIES

1. Recovery of Torso of the deceased

38. The recovery of torso was got effected on the source information i.e. DD. No. 87B Ex.PW9/A at about 11 PM on 31.05.2007 which resulted into a *Rukka* Ex.PW16/A and subsequently an FIR, FIR No. 395/2007 Ex.PW9/B in PS Punjabi Bagh. The source information DD 87B is proved by PW9 HC Bal Krishan.

Both the accused persons in their statement under Section 313 Cr.P.C. has not denied torso having been recovered as shown in Scaled Site Plan Ex.PW8/B on 31.05.2007 vide DD 87B as a suspicious object lying in a blood stained *Katta* on Diesel Road leading to Madipur at about 11 PM on 31.05.2007.

2. Formal Search Recovery

from House of Meera Devi

39. On 03.06.2007 PW19 Insp. Gurmeet Singh alongwith his team consisting Ct. Sanej PW13, ASI Ombir PW16 and Ct. Harpreet carried out a formal search of house of Accused Meera Devi i.e House No. D-526, J.J. Colony, Shakurpur, Delhi. The team found some blood on plywood of the bed and pink polythene. The plywood (Ex.P1) was separated by a saw (*aari*) and pink polythene (Ex.P2) were turned into a parcel and was sealed with the seal of GSP and was seized vide Seizure Memo Ex.PW13/F.

The statement of Insp. Gurmeet Singh PW19 is corroborated with the statement of Ct. Sanej PW13 and ASI Ombir PW16 on the material point.

The accused in her statement under Section 313 Cr.P.C. did not deny the recovery of blood stained plywood and pink polythene from her house.

3. Recovery at the instance of

Accused Kanwar Singh:-

- i. Recovery of Legs & polythene bag* 40. The accused Kanwar Singh soon after his arrest on 03.06.2007 made Disclosure Statement Ex.PW13/E and led the police team consisting of Insp. Gurmeet Singh PW19, ASI Ombir PW16 and Ct. Sanej PW13 and Ct. Harjeet towards a *Nala* near *Pulia* A-Block Shakurpur, Delhi and pointed out a place in *Nala* where he has thrown polythene bag containing Legs of the deceased. Accused Kanwar Singh volunteered to pick the same and he went into the *Nala* and picked out the polythene bag (Ex.P8) which was containing legs of the deceased, same was seized vide Seizure Memo Ex.PW13/G.
- ii. Recovery of Dao (knife).* Further, on the same day, in pursuance to Disclosure Statement Ex.PW13/E, accused Kanwar Singh led same police team to a Jungle area near Cantonment Area, Brar Square, Dhaula Kuan, Delhi and pointed to a bush and got recovered Dao/Knife (Ex.P7) wrapped in a towel. Same was seized vide Seizure Memo Ex.PW13/M.
- iii. Recovery of blood stained towel & pink polythene* Further, on the same day, in pursuance to Disclosure Statement Ex.PW13/E, accused Kanwar Singh led same police team to Jungle area near Cantonment Area, Brar Square, Dhaula Kuan, Delhi where he has thrown polythene bag containing hands of the deceased alongwith blood stained towel. Accused Kanwar Singh could not get recovered the hands of the deceased. However, polythene bags (Ex.P4) and blood stained towel (Ex.P3) was recovered. Same was seized vide Seizure Memo Ex.PW13/H.
- iv. Recovery of burnt* Further, on the same day, in pursuance to Disclosure Statement Ex.PW13/E, accused Kanwar Singh led same police team to Sona

human head & burnt clothes Road, Gurgaon near Rama Farm House and got recovered one burnt human head which was seized vide Seizure Memo Ex.PW13/I and burnt clothes (Ex.P5) of the deceased and one burnt raxine bag (Ex.P8). Same was seized vide Seizure Memo Ex.PW13/J.

v. Recovery of blood stained carpet/dari Further, on the same day, in pursuance to Disclosure Statement Ex.PW13/E, accused Kanwar Singh led same police team to a dried *Nala* in between pole No. 464 and 465 ahead to Rithala Metro Station and accused Kanwar Singh got recovered one blood stained Carpet/*Dari* (Ex.P6). Same was seized vide Seizure Memo Ex.PW13/L.

41. The recovery Memo is proved by Insp. Gurmeet Singh PW19. Statement of Insp. Gurmeet Singh is corroborated with statement of PW13 and PW16 on the material point. As such the statement of PW19, PW16 and PW13 are relevant as the recoveries of Legs of the deceased vide Seizure Memo Ex.PW13/G, burnt Head of the deceased vide Seizure Memo Ex.PW13/I, Dao/Knife vide Seizure Memo Ex.PW13/M, Blood Stained Towel and two Pink Polythene from the site of pointing out of Hands of the deceased vide Seizure Memo Ex.PW13/H, Semi burnt clothes of the deceased vide Seizure Memo Ex.PW13/J and blood stained Carpet/*Dari*/Mat vide Seizure Memo Ex.PW13/L were got effected at the instance of accused on his personal knowledge which is relevant under Section 27 of Indian Evidence Act, 1872 and goes against him.

42. Accused Kanwar Singh in his statement under Section 313 Cr.P.C. has not specifically denied that articles were not recovered at his instance.

43. As such, recovery of the aforesaid articles is based on personal knowledge. Moreover, recovery was made within a few hours of their arrest and there was no occasion for attributing outside influence of false implications by planting witnesses. Therefore, the recovery is relevant under Section 27 of Indian Evidence Act, 1872.

MEDICAL EVIDENCE

Post mortem Report

44. Dr. V.K. Jha (PW10), Medical Officer, BJRM Hospital who has conducted the post mortem on the body of deceased Raju @ Raj Kumar on 05.06.2007 at 1:30PM at BJRM Hospital, Delhi. The Post Mortem Report proved on the record is Ex.PW10/A. Dr. V.K. Jha found the following external injuries: -

External Examination:

1. Head – scalp hair burnt, eyes burnt, separation of head and Neck is at the middle of neck.
2. Trunk- Baniyan, underwear attached with it. Total length of Trunk 68 cm. Post-mortem peeling of cuticle present all over the trunk, maggots crawling all over. Gaseous distention of scrotum present. Wrapped in two polythene sheet paid.
3. Lower limb- both lower limbs amputated from neck of femer. Packed in two polythene sheet.

All parts anatomically fit into each other respectively. Total teeth were 32 and there was billowing in undulating lines which were gradually disappearing at the auricular surface of public syphilis.

On total examination, following injuries were observed on the body of the deceased:-

- i. Head- There was separation of head and neck at its middle of neck.
 - ii. Neck- Pressure abrasion on both sides of tissues attached to the cut parts of the neck with bruising on adjacent tissues and trachea was drawn inside the chest cavity.
45. The cause of death is asphyxia consequent to pressure over neck structures produced by other party which is ante-mortem in nature. Separation of the body parts was post-mortem in nature. Weapon used in separation of body parts was sharp and serrated.
46. The date of the incident is intervening night of 30th and 31st and the proximity of death as per the post mortem report Ex.PW10/A is five days which connects to time of the occurrence of the incident.

FSL Report (DNA Report and Serological Report)

47. Prosecution examined Insp. Gurmeet Singh PW19 who deposed that on 05.06.2007, after post mortem, the doctor handed over 7 parcels with seal of Sanjay Gandhi Memorial Hospital Mortuary, Mangolpuri, Delhi with sample seal and same were taken by Insp. Gurmeet Singh PW19 in his possession vide Seizure Memo

Ex.PW16/B and deposited with MHC(M) PS Punjabi Bagh vide Register No. 19 entry No. 3506 vide Ex.PW18/C.

48. On 07.06.2007, ASI Ombir PW16 on instructions collected parcel containing Dao/Knife from MHC(M) PS Punjabi Bagh and an application Ex.PW19/H for opinion of Autopsy Surgeon and deposited same in intact condition vide Road Certificate No. 34/21/07.

49. On 14.06.2007, ASI Ombir collected subsequent opinion. Accordingly, he went to Sanjay Gandhi Memorial Hospital and deposited the parcel and application there. ASI Ombir thereafter, deposited the parcel back to the MHC(M) with seal of Sanjay Gandhi Memorial Hospital.

50. On 15.06.2007, PW19 Insp. Gurmeet Singh alongwith PW16 ASI Ombir collected 15 parcels and 3 sample seals from MHC(M) and took the said parcels to FSL Rohini for analysis. 13 parcels were deposited in Biology Department vide RC No. 98/21/07; one parcel was deposited in DNA Fingerprint Department vide RC No. 99/21/07; and one parcel was deposited in chemical department vide RC No. 101/21/07 and deposited the same in FSL Rohini with intact seals. On the same day, blood samples of Master Ashu (son of deceased) was obtained in FSL Rohini for purpose of DNA test for matching with the teeth of deceased. Later, Insp. Gurmeet Singh collected the FSL Reports Ex.PW21/A, Ex.PW21/B, Ex.PW22/A, Ex.PW22/B and deposited it in MHC(M) PS Punjabi Bagh. The statement of PW19 is corroborated with the statement of PW16 ASI Ombir and PW18 HC Mahender Singh, MHC(M) P.S. Punjabi Bagh.

51. PW22 Sh. A.K. Srivastava after receiving sealed parcels containing two pieces of Teeth Ex.1a and Ex.1b and blood sample of Master Ashu Ex.2, which was collected in the office of FSL, Rohini, was analysed. It was found that blood sample of master Ashu has biological relation with the teeth of the deceased. DNA Report is Ex.PW22/A, relevant extract from the report is reproduced as under :-

*"The DNA profiling (STR analysis) performed on the exhibits provided is sufficient to conclude that the **Exhibit '2' (Blood sample of Master Aashu)** **has biological relation with the Exhibit '1a and '1b' (Teeth of the Deceased).**"*

52. PW21 Sh. Naresh Kumar on 15.06.2007 was posted as Sr. Scientific Assistant (Biology) at FSL, Rohini received 13 sealed parcels with intact seals. Parcel No.1 to 7 were sealed with the seal of GSP and Parcel No. 8, 10 to 14 were sealed with the seal of Sanjay Gandhi Memorial Hospital Mortuary, Mangol Puri, Delhi. Parcels were examined and contents were checked vide Report Ex.PW21/A and his detailed Report is Ex.PW21/B. Relevant extract of the report is reproduced below:-

<i>Exhibits</i>	<i>Species of origin</i>	<i>ABO Group/Remarks</i>
<i>'1' Earthy Material</i>	<i>Human</i>	<i>No reaction</i>
<i>'2' Earthy Material (Control)</i>	<i>No reaction</i>	<i>---</i>
<i>'3' Blood stained gauze</i>	<i>Human</i>	<i>No reaction</i>
<i>'4' Plywood piece</i>	<i>Human</i>	<i>'B' Group</i>
<i>'5' Towel</i>	<i>Human</i>	<i>'B' Group</i>
<i>'6' Cloth pieces</i>	<i>Human</i>	<i>'B' Group</i>
<i>'7' Dari (Mat)</i>	<i>Human</i>	<i>'B' Group</i>

'10' Gauze cloth piece	Human	No reaction
'11' Gauze cloth piece	Human	No reaction
'12' Blood stained gauze	No reaction	---
'13a' Banian	No reaction	---
'13b' Underwear	No reaction	---
'14' Polythene pieces	Human	No reaction

53. As per the reports 'Human Blood' having 'B' Blood Group was found on following:

- i. Blood Stained Plywood piece which was cut from bed of accused Meera Devi from her House.
- ii. Blood Stained Towel (Ex.P3) which was recovered by accused Kanwar Singh from Jungle area near Cantonment Area, Brar Square, Dhaula Kuan, Delhi as the place where he threw polythene containing Towel and hands of the deceased.
- iii. Blood Stained Burnt cloth pieces (Ex.P5) found from Sona Road, Gurgaon near Rama Farm House as the place where he threw Raxine bag containing Head and Burnt clothes of the deceased.
- iv. Blood Stained Carpet/Dari/Mat (Ex.P6) which was allegedly was used to cover the body of the deceased on the night of the incident and was later thrown by accused Kanwar Singh at a dried *Nala* near Rithala Metro Station.

54. Accused did not put any suggestion to ASI Ombir PW16 that sealed parcels were tampered while transporting the parcels from MHC(M) PS Punjabi Bagh to Sanjay Gandhi Memorial Hospital, further from Sanjay Gandhi Memorial Hospital to MHC(M) PS Punjabi Bagh and from there to FSL Rohini.

Thus, it is apparent before us that Torso was having Human Blood Group 'B', The blood stained Plywood recovered from pointing out of Accused Meera Devi from her house, House No. D-526, J.J. Colony, Shakurpur, Delhi which was seized vide Seizure Memo Ex.PW13/F too was having Human Blood Group 'B', the Blood Stained Towel (Ex.P3) which was wrapped on the severed Hands of the deceased and thrown in the Jungle, Dhaula Kuan and got recovered at the instance of Accused/Appellant Kanwar Singh is also having Human Blood Group 'B', Blood Stained Burnt cloth pieces (Ex.P5) recovered from Sona Road, Gurgaon near Rama Farm House at the instance of Accused/Appellant Kanwar Singh is also having Human Blood Group 'B' and Blood Stained Carpet/*Dari*/Mat (Ex.P6) which was lying in the room of house of Meera Devi where the crime was committed and was recovered from a dried *Nala* near Rithala Metro Station at the instance of Accused/Appellant Kanwar Singh is also having Human Blood Group 'B' which connects both the accused persons.

55. Contention of the Ld. Counsel for appellant Kanwar Singh that if any evidence is there against appellant Kanwar Singh, it is only of removing the evidence of the commission of the crime which is punishable under Section 201 IPC and not under Section 302 IPC, this does not seems to be correct on the following grounds:-

- i. The nature of the offence committed and the manner of dislocation of body of the deceased into 6 pieces i.e. head, torso, two legs and two arms is just improbable until and unless

it is supported by third person, in the instant case, appellant Kanwar Singh is the neighbour having allegation of illicit relation with wife of the deceased, appellant Meera Devi.

- ii.* Both accused persons have not disputed the recovery of head/skull from Sona Road, Gurgaon near Rama Farm House which indicates the involvement of both persons in commission of the crime. The said suggestion put to PW16 ASI Ombir is relevant, same is reproduced as under:-

"...It is incorrect to suggest that the face of deceased was completely burnt and only skeleton was left there."

- iii.* The charge framed against the appellant Kanwar Singh is under Section 302/201/34 IPC vide Order on Charge dated 08.05.2008, appellant Kanwar Singh did not prefer appeal or revision against the said order on charge.
- iv.* Such plea taken by the Appellant Kanwar Singh is at Appellate stage without denying his involvement in commission of crime in his statement under Section 313 Cr.P.C. which is reproduced as under:-

"Q.22. It is further in evidence against you that PW-7 Sh. Sohanbir Singh, who was residing in the neighbourhood of deceased Raju @ Raj Kumar deposed that on 31.05.2007 at around 8.00-8.30 pm, he noticed that you were taking out petrol from your red coloured motorcycle in a plastic bottle and he also suspected that you and your co-

accused Meera were behind the murder of Raj Kumar. What do you have to say ?

Ans. I do not know.

Q.26. It is further in evidence against you that PW-6 further deposed that on the same day i.e. 31.05.2007, you came to the house of PW-6 around 11.00 AM - 12.00 PM and stayed there and then took something in polythene from under the bed and went outside and you came many times on that day (night) and always took something in a polythene underneath of the bed and went outside the house of PW-6. What do you have to say ?

Ans. I do not know.

Q.27. It is further in evidence against you that PW-6 deposed that her mother Meera-your co-accused had illicit relations with you accused Kanwar Singh @ Haduman and after the night of 30.05.2007, PW-6 had not seen her father alive. What do you have to say ?

Ans. I do not know."

MOTIVE

56. PW6 Kumari Divya deposed, her mother appellant Meera Devi had illicit relation with appellant Kanwar Singh. The statement of PW6 gains the strength from statement of PW4 Smt. Babita, sister of the deceased who too deposes, his deceased brother Raju @ Raj

Kumar before the incident disclosed to her on 27.05.2007 about his coming to know the fact that his wife accused Meera Devi and his neighbour accused Kanwar Singh are having illicit relations.

57. She was worried about her brother going missing and not getting proper reply for reason of not lodging missing report with police by accused Meera Devi even after lapse of more than 36 hours. Moreover, existence of the illicit relations between the appellants is admitted by the appellants in their own suggestion to PW19 Insp. Gurmeet Singh which is reproduced as under:-

"It is wrong to suggest that accused Meera and Kanwar Singh are falsely implicated in the present case as they were having illicit relationship."

Thus, it is apparent in the present facts and circumstances, motive behind commission of the crime by both accused persons was to eliminate deceased Raju @ Raj Kumar as they were already involved in illicit relationship and common goal for them was to eliminate him to get rid of him.

58. The suspicion on the basis of recovery having been effected at the instance of appellant having personal knowledge, under Section 27 of Indian Evidence Act, goes against both the appellants.

59. As discussed above, what is emerging on the record before us is the chain of circumstance which is consistent and interdependent since deceased Raj Kumar @ Raju went missing till his torso was got recovered and later other body parts got recovered at the instance of appellant Kanwar Singh.

60. The reliance placed by the Appellant Meera Devi and Kanwar Singh on *Hanumant* (supra), *Bodh Raj* (supra), *Dhan Raj* (supra), *Baba Fakkadnath* (supra) and *Uppala* (supra) is misplaced and is of no help to them.

61. The chain of circumstances indicates that a torso was found on 31.05.2007 at Diesel Road vide DD No. 87/B, same was taken into possession and was sent to Sanjay Gandhi Memorial Hospital Mortuary for preserving. In pursuance to torso having been recovered, the prosecution distributed pamphlets for its identification. In pursuance to identification, PW4 Babita, sister of the deceased, came forward and identified the torso to be of her brother Raju @ Raj Kumar on basis of old injury mark on shoulder and suspected hands of accused Meera Devi and her beau Kanwar Singh. The Post Mortem Report Ex.PW10/A dated 05.06.2007 proves cause of death is asphyxia coupled with separation of body parts which was post-mortem in nature through consequential Weapon of Offence, Knife Ex.P7, Moreover, time since death was stated to be 5 days which is precisely the time when deceased was last seen with accused Meera Devi.

PW6 Divya, last seen her father in company of her mother in her house on the bed on 30.05.2007 at about 11:30 PM. Accused Meera Devi is unable to explain the manner of Raj Kumar going missing from the house under Section 106 Indian Evidence Act. The statement of PW6 Divya inspires confidence as same is coming against her natural mother in absence of any outside influence.

The manner of commission of crime through asphyxia by accused Meera Devi in instant circumstances, could be possible only with help of third person as there is no external injury found on the torso.

The blood stains found on plywood of the bed where incident took place matches with blood of torso, Blood stained burnt cloth pieces Ex.P5, (found with head/skull) Blood Stained Carpet/*Dari*/Mat Ex.P6, (from which deceased's body was covered on night of incident) and Blood stained towel Ex.P3 all recovered at pointing out of accused Kanwar Singh.

The Blood sample taken from son of the deceased proves biological relation (Ex.PW22/A) with Teeth of skull of the deceased which got recovered at the instance of accused Kanwar Singh.

The blood group i.e. Human blood Group 'B' on burnt cloth pieces Ex.P5 matches with the Blood found on plywood from house of accused Meera Devi.

The recoveries of severed body parts of the deceased i.e. head and legs and blood stained articles i.e. Blood stained towel Ex.P3, blood stained burnt cloth pieces Ex.P5, Blood stained Carpet/*Dari* Ex.P6 and Knife Ex.P7 soon after arrest of accused Kanwar Singh at his instance indicates his personal knowledge under Section 27 of Indian Evidence Act, and his involvement in commission of the crime.

The facts stated above are interdependent and the cumulative effect of the circumstance only indicates the involvement of both the accused persons in the commission of the crime. Reliance is placed on

Asar Mohammad and Ors. v. State of U.P. 2018 SCC Online SC 2179.

62. Therefore, we unhesitatingly are of the opinion that both the appellants are guilty of the offence committed, there is no merit in both the appeals, same are dismissed. Impugned Judgment dated 19.12.2017 and Order on sentence dated 06.01.2018 passed by the Learned Additional Session Judge is upheld. All pending applications (if any) are disposed of. One copy of this judgment be placed in CRL. A. 372/2018.

63. LCR file be sent back forthwith along with a copy of this judgment. No order as to costs.

I.S.MEHTA, J.

SIDDHARTH MRIDUL, J.

22 NOVEMBER, 2019