

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

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Judgment delivered on: 24th October, 2019

+ CRL. A. 733/2017

SACHIN

...Appellant

Through: Mr.Arun Sharma, Advocate.

Versus

STATE (NCT OF DELHI)

...Respondent

Through: Mr.Ravi Nayak APP for State.

+ CRL. A. 996/2017

SUNIL

...Appellant

Through: Ms.Inderjeet Sidhu, Advocate
(DHCLSC) with Ms.Shefali Vats,
Advocate.

Versus

STATE (NCT OF DELHI)

...Respondent

Through: Mr. Ravi Nayak APP for State.

+ CRL. A. 623/2017

PRABHA

...Appellant

Through: Mr.Joginder Tuli, Ms.Joshini Tuli,
Ms.Babita Rana, Ms.Divya Javgid
and Ms.Garima Shakya, Advocates.

Versus

STATE (NCT OF DELHI)

...Respondent

Through: Mr. Ravi Nayak APP for State.

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. Instant Criminal Appeals arise from the Judgment dated 27.05.2017 and Order on Sentence dated 02.06.2017 in SC No. 2216/2016, arising from FIR No. 134/2011, PS Jaitpur, New Delhi, whereby the Appellant/Accused Sachin, Appellant/Accused Sunil and Appellant/Accused Prabha were convicted under Section 302, 120B and 201 IPC; and were sentenced to undergo imprisonment for life and fine of Rs. 3,000/- each for the offence punishable under Section 302 IPC, imprisonment for life and fine of Rs. 1,000/- each for the offence punishable under Section 120B IPC, and imprisonment for 2 years and fine of Rs. 1,000/- each for the offence punishable under Section 201 IPC; and all the sentences were directed to run concurrently.

2. Brief facts stated are that, deceased Rakesh got married to Accused Prabha on 11.12.2008, as per Hindu rites and customs at Delhi. The Deceased and Accused Prabha lived together for 6-7 months as husband and wife in same home, later, some differences arose between them, consequently, Accused Prabha left matrimonial home and started staying with her parents in paternal home in House No. B-401, Gali No. 9, Meethapur, Om Nagar, Delhi. Deceased was having visiting terms at his in law's house and oftenly used to meet

Accused Prabha at Meethapur house, deceased shared this information with his father Khadak Prasad.

3. On 04.05.2011 at about 3 PM father of Accused Prabha calls father of deceased and tells him that his son had gone to Rajasthan to attend marriage of a friend and he (father of Accused Prabha) himself alongwith his wife is going to Jhansi to attend a marriage leaving behind his niece Mamta and his daughter Prabha in Meethapur house. He asked if deceased Rakesh would accompany the girls at Meethapur house. This information was given by Khadak Prasad to his son Rakesh (deceased), to which Rakesh agreed and went to Meethapur house on the same day. Deceased Rakesh on 05.05.2011 at about 9 AM came back to his own house. On same day at about 5 PM, brother of deceased, Balram, intimated to, Accused Prabha that deceased would not be joining them at Meethapur house on that night. Next day on 06.05.2011, Accused Prabha made a call to his Father in law Khadak Prasad for sending Rakesh to accompany them at Meethapur house as they feel frightened at night due to absence of male member in the house. Khadak Prasad asked his son Rakesh for the same and deceased went to the Meethapur house by his motorcycle (Honda Stunner) bearing registration number DL 6S AD 1670. He reached to house of Prabha on 06.05.2011 at about 8:30 PM and he informed the same to his younger brother Balram at about 9 PM.

4. On the next day i.e. 07.05.2011 Balram calls deceased on his phone No. 9873813447 and the same was found switched off. Thereafter, Balram calls Accused Prabha to find out whereabouts of his brother, Accused Prabha tells to Balram that Rakesh left her house

at about 6 AM. Subsequently, Balram keeps on calling the deceased, but the mobile phone of Rakesh was found to be switched off. Subsequently, father of the deceased (Khadak Prasad) visited the Meethapur house and had a talk with his Daughter in Law Accused Prabha who tells him that deceased left her house at about 6 AM, she further tells him that deceased was trying to leave at 10 PM on motorcycle but she stopped him by taking away key of his motorcycle. Thereafter, whereabouts of deceased Rakesh was not known to Khadak Prasad and he lodged missing report vide DD No. 32A on 08.05.2011.

5. On the basis of the missing report DD No. 32A was got registered, investigation was carried out by ASI Jitender who collected the call detail records of phone No. 9911751609 from office of ACP and investigated the call details. Subsequently, on 21.05.2011 statement of Khadak Prasad Ex.PW3/A was recorded which created suspicion on Prabha, Sachin and one Arjit. On basis of the statement, FIR No.134/11 was registered under Sections 364 IPC and further investigation was handed over to SI Dara Singh.

6. Thereafter, further investigation was handed over to Inspector Surender Singh, who after going through CDR found frequent calls from Phone No. 9891417631, which on checking was found out to be of Sachin. He then formed a team including ASI Rajpal, ASI Jitender, Ct. Jagat and other police staff and apprehended Sachin at Old Bus Station, Ghaziabad, U.P. and after interrogation Accused Sachin was arrested vide Arrest Memo Ex.PW11/A. Later, Inspector Madan Pal Bhati too joined the investigation and accused Sunil was apprehended

within 2 hours at the pointing out of accused Sachin. The accused Sunil was interrogated and was arrested vide Arrest Memo Ex.PW11/C. Accused Sachin and Accused Sunil made Disclosure Statement Ex.PW2/A and Ex.PW2/B respectively.

7. Accused Sachin in his Disclosure Statement admitted his involvement and his guilt and stated that co-accused Prabha is known to him prior to the incident as both were classmates in DPMI Institute, Ashok Nagar. He stated that he and Prabha became friends about 6 months back and they both used to visit each others house in absence of their parents and also used to chat on mobile phone. He stated that he had physical relation with accused Prabha since October 2010 and they used to make plans to eliminate Rakesh in order to get married with each other. Co-accused Prabha feared in case Rakesh is not eliminated before their completion of DPMI course, she would be sent back to her matrimonial home, which she did not wanted because of her infatuation with accused Sachin. Co-accused Prabha on 01.05.2011 disclosed to accused Sachin that her parents are going to Jhansi, U.P. on 06.05.2011 and her brother is already at Rajasthan for his friend's marriage at the same time and they made a plan to eliminate deceased Rakesh by calling him at her Meethapur house and accused Sachin should arrange sleeping pills. For the aforesaid purpose, he took help of his Alto Car driver Accused Sunil, as per the plan, Co-accused Prabha made a call to him on 06.05.2011 at about 10:30 PM that she has called her husband Rakesh at her house and she has already mixed Alprax in mirinda soft drink which she gave to Rakesh to drink and after consuming the said mirinda, Rakesh fell in

deep sleep at her house and then Prabha instructed Sachin to come soon at her house to execute their plan. Accused Sachin conveyed this plan to Co-accused Sunil and told him that their duty is to strangulate Rakesh as he is already lying intoxicated in Prabha's house and they took Alto car No. UP 16 AC 1329 silver color belonging to Sachin and reached Prabha's house at about 12 AM on 07.05.2011 and Prabha opened the door. Rakesh was lying on the bed in front room in deep sleep, in one another room Mamta (Cousin sister of Accused Prabha) was lying in deep sleep too. Thereafter, Prabha handed over her *chunni* to strangulate Rakesh who was lying on the bed, Sachin alongwith Sunil strangulated Rakesh while Prabha held Rakesh's legs and eliminated Rakesh on the bed. Thereafter, Sachin and Sunil left Prabha's house with body of Rakesh, body of Rakesh was put in Alto car driven by Sunil while Sachin drove Motorcycle of Rakesh bearing registration No. DL 65 AD 1670. Accused Sachin on the way threw away the Motorcycle in the bushes near Pushta Road and boarded Alto Car. Co-accused Sunil drove car towards Gopalpur Village and after crossing Gopalpur they threw away the dead body of Rakesh into the bushes and they came back to their house at Ghaziabad. The Co-accused Prabha remained in touch via Phone No. 8750240715 with Sachin on Phone No. 9891417631 and was keeping close watch to give effect to proper execution of their plan. Accused Sachin intimated the throwing of Motorcycle and dead body in the respective places to Prabha.

8. Both Accused Persons Sachin and Sunil led the police party to UPSIDC Jungle. I.O. alongwith the complainant Kharak Prasad took

both the accused persons alongwith the police staff to PS Sikandarabad, Bulland Sher where necessary information was given and SI Dirender Singh accompanied the I.O. alongwith the other staff and left PS Sikandarabad towards the place where both accused persons Sachin and Sunil pointed out the dead body of Rakesh at Gopalpur Village near UPSIDC Jungle and pointed out the place where they threw the dead body of Rakesh. I.O. videographed the site with a private camera where dead body was found and made Site Plan Ex.PW11/DB. I.O. thereafter collected exhibits vide Seizure Memo Ex.PW13/A from the site and made Panchnama Ex.PW2/C of the skeleton of Deceased Rakesh all the exhibits were deposited into the *Malkhana* of PS Sikandarabad. He also called crime team, photographer took photo of the site and draughtsman made Scaled Site Plan Ex.PW17/DA. Thereafter, at the pointing out of the accused Sachin and Sunil skeleton dead body alongwith dark grey pant, grey shirt and shoes which complainant told that Deceased worn on the date of the incident, same was recovered. The skeleton, pant, shirt and shoes of the deceased were taken into possession vide Seizure Memo Ex.PW3/DA, same were deposited in *Malkhana* PS Sikandarabad, Bulland Sher and I.O. recorded statement of the witnesses and further investigation was handed over to Inspector Madanpal Bhati.

9. The I.O. Inspector Madan Pal Bhati on 23.05.2011 alongwith HC Shyamlal and W/Ct. Shakuntala left PS Jaitpur in search of Accused Prabha. They reached to house of Prabha, House No. B-401, Gali No.9, Om Nagar, Jaitpur, New Delhi, and interrogated Accused

Prabha and later she was arrested vide Arrest Memo Ex.PW10/A. She made Disclosure Statement Ex.PW10/C.

10. In pursuance to the Disclosure Statement, accused Prabha led the police team to her house on 24.05.2011 and got recovered one *chunni* which was used to strangle Rakesh, same was seized vide Seizure Memo Ex.PW12/A. She further got recovered one Samsung Mobile Phone IMEI No. 357492032007245 having 2 SIM cards Nos. 9911751609 and 8750240715. She told first one was her own number and second one was given to her by Sachin, same were seized vide Seizure Memo Ex.PW36/A.

11. On 24.05.2011, in pursuance to Disclosure Statement of Accused Sachin, he got recovered Alto Car No. UP 16 AC 1329 same was seized vide Seizure Memo Ex.PW9/A in which Dead Body of the Deceased Rakesh was transported from the house of the co-accused Prabha to Gopalpur Village near UPSIDC Jungle where the body was then thrown. Accused Sunil too got recovered the Motorcycle of Rakesh parked near his house, House No.282, Rajiv Colony, Ghaziabad, U.P. Motorcycle was without registration plate and was having engine No. MJC40E9043529 and chassis No. ME4JC402M88022539 which matched to the motorcycle of Rakesh and was seized vide Seizure Memo Ex.PW9/B.

12. On 10.06.2011, I.O. Inspector Madan Pal Bhati joined Father and Mother of the deceased and took them to FSL Rohini for their blood collection for the purpose of DNA Matching. FSL Report Ex.PW31/C-1 and Ex.PW31/C was filed later. Thereafter, I.O. Inspector Madan Pal Bhati was transferred from PS Jaitpur. On

21.07.2011 further investigation was carried out by Inspector Vipin Kumar Sharma.

13. In pursuance to her Disclosure Statement, On 16.08.2011 Prabha also got recovered Handkerchief and Socks of Deceased Rakesh which were seized vide Seizure Memo Ex.PW13/C. On the same day, I.O. Inspector Vipin Kumar Sharma alongwith Ct. Kishan Pal gone to Principal, DPMI and got admission documents of Accused Prabha and Sachin, same were seized vide Seizure Memo Ex.PW13/B.

14. Thereafter, I.O. Inspector Vipin Kumar Sharma recorded statements of all the witnesses under Section 161 Cr.P.C. and on completion of the investigation Chargesheet was filed against Sachin, Sunil and Prabha under Sections 328/302/201/120B IPC on 18.08.2011. The Trial Court framed the charge on 11.01.2012 against the accused persons Sachin, Sunil and Prabha under Section 120B, 328, 302 and 201 IPC and Accused Persons pleaded not guilty.

Prosecution examined 38 witnesses SI Hira Singh (PW1), Balram (PW2), Khadak Prasad (PW3), Smt. Dharmi (PW4), Karamvir Singh (PW5), Rajvir Singh (PW6), Rati Ram (PW7), Smt. Mamta (PW8), Ct. Ajay (PW9), HC Shyam Lal (PW10), Ct. Gajender Pal Singh (PW11), W/Ct. Shakuntala (PW12), Ct. Kiran Pal (PW13), HC Satya Narayan (PW14), HC Kanwar Singh (PW15), HC Girish Kumar (PW16), Ct. Joginder Singh (PW17), Ct. Amrendra Pratap Singh (PW18), Pawan Singh (PW19), Ct. Surendra Kumar (PW20), SI Jitender (PW21), Deepak (PW22), SI Dirender Singh (PW23), Anuj Bhatia (PW24), Dr. Sachin Kumar (PW25), Chander Seikar (PW26),

ASI Prem Chand (PW27), Pratap Singh (PW28), HC Rajbir Singh (PW29), SI Dara Singh (PW30), Inspector Vipin Kumar Sharma (PW31), SI Manish Kumar (PW32), Inspector Mahesh Kumar (PW33), Inspector Surender Singh (PW34), Ms. Shashi Bala (PW35), Inspector Madan Pal Bhati (PW36), HC Hari Singh (PW37) and Ct. Ravinder Kumar (PW38).

15. Arguments were heard and evidence was recorded by the Trial Court. Trial Court Convicted all the three accused persons vide Judgment dated 27.05.2017 and Order on Sentence dated 02.06.2017 in SC No. 2216/2016.

Appellant/Accused Persons aggrieved from the said judgment and Order on Sentence preferred instant appeals.

16. Ld. Counsels on behalf of Accused/Appellant Sachin and Accused/Appellant Sunil submitted that the prosecution has failed to prove conspiracy in the instant case. Ld. Counsels further submitted that the arrest of Accused Sachin was dated 22.05.2011 at 2:15 PM from Old Bus Stand, Ghaziabad, U.P. and arrest of Sunil was on the same day at 4 PM from Opposite Santosh Medical College and both in pursuance to their Disclosure Statement got recovered Dead Body (Skeleton), clothes and shoes of the Deceased Rakesh from UPSIDC Jungle vide Seizure Memo Ex.PW13/A are of no consequence as the prosecution was already in knowledge of the place of recovery on the basis of electronic evidence available with them. Ld. Counsels further submitted that the subsequent recoveries at the instance of Sachin in pursuance to his Disclosure Statement of Alto Car (UP 16 AC 1329) vide Seizure Memo Ex.PW9/A on 24.05.2011 from near his house,

House No. 454, Gali No.3, Sanjay Colony, Ghaziabad, U.P. and recovery by Accused Sunil in pursuance to his Disclosure Statement of Motorcycle Honda Stunner (DL 6S AD 1670) belonging to deceased Rakesh vide Seizure Memo Ex.PW9/B on 24.05.2011 from near his house, House No. 282, Rajiv Colony, Ghaziabad, U.P. are hit by Section 27 of Indian Evidence Act as all the facts were already in the knowledge of the police on the basis of the electronic evidence. He further stated that recovery of the car and motorcycle was effected 3 days later, hence the recoveries are not admissible evidence qua the Appellant/Accused Sachin and Sunil.

17. The Ld. Counsel Inderjeet Sidhu on behalf of Appellant Sunil further submitted that Appellant Sunil was not named in the FIR and the prosecution has failed to adduce any legal evidence against appellants for participating in conspiracy to murder and is entitled to acquittal for benefit of doubt. He relied on *Koli Mala Bijal v. State* AIR 1954 Kutch 22, *Jaffer Hussain v. State* AIR 1970 CrL.L.J. 1659, *Manoj Kumar v. State* 196 (2013) DLT 243 (9DB) and *Ram Kishore @ Romi v. State* 2016 Law Suit (Delhi).

18. Ld. Counsel Joginder Tuli on behalf of Accused Prabha has submitted that the prosecution failed to prove conspiracy against Appellant Prabha, the Call Detail Records of Co-Appellant Sachin Mobile No. 9891417631 and two other numbers 9911751609 is in name of one Varun and No. 8750240715 in name of one Beni Singh, both the owners of their respective mobile numbers have not been examined to prove that in fact said two numbers were not used by them. Ld. Counsel further submitted that the recovery of 2 SIM cards

and mobile phone from Prabha is not legally proved as admitted by PW36 Inspector Madan Pal Bhati that the ownership of mobile phone alleged to be recovered from house of Prabha was from a room which was already open. Ld. Counsel further submitted that prosecution failed to examine the manager/owner of the DPMI institute to prove that Appellants Prabha and Sachin were student of DPMI institute and knew each other prior to the date of the incident. Ld. Counsel further submitted that recovery of *Chunni* vide Seizure Memo Ex.PW12/A is of no consequence for want of cause of death and is of no relevance. Ld. Counsel further submitted that the court below went wrong in saying that Alto car no. UP 16 AC 1329 recovered at the instance of Co-Accused Sachin was owned by Prabha. He relied on *State of Karnataka v. M.V. Mahesh* (2003) 3 SCC 353, *Digambar Vaishnav & Ors. v. State of Chhattisgarh* 2019 (4) SCALE 254 and *Manish Sharma @ Pappan v. The state NCT of Delhi* 2018 (2) JCC 840.

19. On the contrary, Ld. APP for State submitted that prosecution has proved complete chain of the circumstance against all the accused persons and Court below has rightly convicted the accused persons. He relied on *Inder Singh & Anr. v. State* (1978) 4 SCC 161, *Inspector of Police, Tamil Nadu v. John David* CrI.A. 384/2002 Supreme Court and *Vijay v. State (NCT) of Delhi* (2014) 4 JCC 2494.

20. Before us are Appeals arising from circumstantial evidence, admittedly there are no eye witnesses available in the present appeals. Consequently, the prosecution case has to be established on the basis of the available chain of circumstances. The circumstances which could show guilt of the accused persons and no one else and the

circumstances from which an inference as to the guilt of the accused person is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In this context the observation of SC in ***Gurpreet Singh v. State of Haryana*** (2002) 8 SCC 18 in para 21 is relevant, same is reproduced as under:

*"21. Admittedly there is no eyewitness available in the matter under a consideration and the prosecution case is sought to be established from the circumstantial evidence and it is in this sphere the settled law as noticed above is that circumstances from which the conclusion of guilt is drawn should be proved and thus circumstances must be conclusive in nature. The established circumstances should also be complete and there should not be any missing link in the chain of evidence. The court ought thus to scrutinise the evidence and deal with each circumstance and thereafter find the chain of the established circumstances being complete, in the event, the answer is in the affirmative, there should not be any hesitation in the matter of return of a verdict of guilt on the basis of circumstantial evidence. In the event, however, there is a snap in the chain and the conclusion may not steadfastly point or reach the accused, the latter is entitled to a benefit of doubt. In this context C the observations of this Court in *Kundula Bala Subrahmanyam v. State of A.P.* lend credence to the view expressed above. "*

LAST SEEN THEORY

21. The prosecution in order to establish last seen theory of deceased Rakesh being in the company of Appellant Prabha soon before his death has examined PW8 Mamta (Cousin Sister of Prabha) who was staying in House No. B-401, Gali No. 9, Meethapur, Om

Nagar, Delhi on 6th and 7th May 2011 and has deposed that deceased Rakesh came in the dining room and accused Prabha served him a cold drink Mirinda after mixing Lemon Juice, she was also served the same drink and she felt giddiness and later all of them took meals, she left Rakesh in the company of Prabha at about 10-10:30 PM and she then went to sleep in a room which was on side of the main gate. When she woke up on the next morning she saw socks and handkerchief of Rakesh lying there, she enquired from Prabha about Rakesh, Prabha told her that Rakesh left the house and has left socks and handkerchief there to wash. During cross examination she clarified she did not see appellant Sunil in the house on the intervening night of 6th and 7th of May 2011.

22. Deceased being in the company of Prabha on intervening night of 6th and 7th May 2011 is corroborated with the statement of PW2 Balram (Brother of the deceased) who has stated that on 06.05.2011 Rakesh left house on his Motorcycle No. DL6S AD 1670 to reach house of Prabha in Meethapur. Balram called Rakesh at around 9:30 PM to his Phone No. 9873813447 and Rakesh confirmed that he has reached Prabha's house. He also deposed that he called Prabha on 07.05.2011 at about 8 AM to know whereabouts of Rakesh and Prabha told him that Rakesh already left her house at 6 AM.

23. Statement of Mamta PW8 is further corroborated with PW3 Khadak Prasad who too says that he received call from Prabha on 06.05.2011 at about 4 PM on his mobile and Prabha requested to send Rakesh to her house as she feel scared in absence of male members and thereafter Rakesh went to the house of Prabha on his motorcycle

and on the next morning when his son Balram tried to contact Rakesh on his phone, his phone was switched off. The statement of PW8 Mamta is not disputed by Prabha in her statement under Section 313 Cr.P.C. Answer to Q.12 is reproduced as under:

"I neither called PW-2 Balram nor PW3 Khadak Prasad as alleged. However, it is correct that in the evening of 06.05.2011, at about 8-8:15 PM, Rakesh had come to my house on a motorcycle."

24. It is thus clear that deceased Rakesh stayed at house of Prabha on the intervening night of 6th and 7th of May 2011 and thereafter he went missing which led to registration of missing person report vide DD No. 32A on 08.05.2011 by Khadak Prasad.

CALL DETAIL RECORDS

25. The house of the Appellant Prabha is situated at House No. B-401, Gali No. 9, Meethapur, Om Nagar, Delhi. The Appellant Sachin resides at House No. 454, Gali No.3, Sanjay Colony, Arthala, Ghaziabad, U.P. as per his Customer Application Form Ex.PW19/F for issuance of Mobile Number 9891417631. The Appellant Sachin also applied for Driving Licence, the application Form of Driving Licence Ex.PW19/G bears same address as that in his Customer Application Form.

26. The Appellant Sunil resides at House No. 282, Rajiv Colony, Mohan Nagar, Ghaziabad, U.P. as per his Customer Application Form Ex.PW22/A for issuance of Mobile Number 9811713764. The Appellant Sunil also applied for Driving Licence, the application

Form of Driving Licence Ex.PW22/D bears same address as that in his Customer Application Form.

27. The CDR Ex.PW19/A of Mobile No. 9891417631 (Sachin) and CDR Ex.PW19/A of Mobile No. 98911713764 (Sunil) shows that accused Sachin and Sunil both were in touch with each other alongwith the holder of mobile Number 9911751609 and 8750240715 on 06.05.2011 and 07.05.2011. The Location chart of Vodafone, Delhi Ex.PW24/H shows that deceased Rakesh and Appellant Sunil were at the location Cell ID No. 3148 i.e. Om Nagar, Meethapur. The location of phone No. 9911751609 and 8750240715 was at Cell ID No. 11711 of IDEA (as per PW19) which also shows location of Om Nagar, Meethapur.

28. Admittedly, deceased Rakesh was at House No. B-401, Gali No. 9, Meethapur, Om Nagar, Delhi after 8:30PM onward alongwith his Wife Prabha and Mamta. The Appellant Sachin resides at House No. 454, Gali No.3, Sanjay Colony, Arthala, Ghaziabad, U.P. The Appellant Sunil resides at House No. 282, Rajiv Colony, Mohan Nagar, Ghaziabad, U.P. however, the mobile phone of appellant Sachin and Sunil shows that they were in the location of the Meethapur and the conversation taken place among them is reproduced as under:

<u>Date</u>	<u>Time</u>	<u>From</u>	<u>To</u>	<u>Duration in (Secs)</u>	<u>Location of</u>	<u>Cell ID</u>	<u>Location</u>	<u>Remarks</u>
6.5.11	17:15	9891417631	9811713764	28	9891417631	46222	N/A	Sachin calls Sunil.
					9811713764	03421	Noida, Sector 58	
6.5.11	20:57	9891417631	9811713764	24	9891417631	46222	N/A	Sachin calls Sunil.
					9811713764	26561	Arthala, Mohan Nagar	
6.5.11	21:43	9891417631	9811713764	25	9891417631	46221	N/A	Sachin calls Sunil.

					9811713764	26561	Arthala, Mohan Nagar	
7.5.11	1:43	9891417631	9811713764	42	9891417631	11893	N/A	Sachin calls Sunil. Sunil reaches Meethapur.
					9811713764	31481	Om Nagar, Meethapur	

29. The CDR of relevant calls are reproduced for general reference:

<u>Date</u>	<u>Time</u>	<u>From</u>	<u>To</u>	<u>Duration in (Secs)</u>	<u>Location of</u>	<u>Cell ID</u>	<u>Location</u>
4.5.11	11:37	9873813447	9911751609	203	9911751609	11711	Om Nagar, Meethapur
					9873813447	10462	Asola, Fatehpur Beri
5.5.11	20:16	9811713764	9891417631	26	9891417631	46221	N/A
					9811713764	26561	Arthala, Mohan Nagar
5.5.11	21:17	9891417631	9811713764	19	9891417631	45402	N/A
					9811713764	26561	Arthala, Mohan Nagar
5.5.11	22:08	9818034557	9911751609	15	9911751609	11711	Om Nagar, Meethapur
5.5.11	22:14	9911751609	9873813447	138	9911751609	11711	Om Nagar, Meethapur
					9873813447	32111	Chattarpur Extension
5.5.11	22:17	9891417631	9911751609	452	9911751609	11711	Om Nagar, Meethapur
					9891417631	45402	N/A
5.5.11	22:40	9811751900	9911751609	137	9911751609	11711	Om Nagar, Meethapur
6.5.11	16:49	9911751609	9873813447	24	9911751609	11711	Om Nagar, Meethapur
					9873813447	32113	Chattarpur Extension
6.5.11	17:15	9891417631	9811713764	28	9891417631	46222	N/A
					9811713764	03421	Noida, Sector 58
6.5.11	19:49	9911751609	9873813447	23	9911751609	11711	Om Nagar, Meethapur
					9873813447	10341	Manglapuri, Sultanpur
6.5.11	20:57	9891417631	9811713764	24	9891417631	46222	N/A
					9811713764	26561	Arthala, Mohan Nagar
6.5.11	21:00	9818034557	9873813447	10	9873813447	31481	Om Nagar, Meethapur
6.5.11	21:00	9891417631	9911751609	SMS	9911751609	11711	Om Nagar, Meethapur
					9891417631	46222	N/A
6.5.11	21:01	9911751609	9891417631	SMS	9911751609	11711	Om Nagar, Meethapur
					9891417631	46222	N/A
6.5.11	21:02	9891417631	9911751609	SMS	9911751609	11711	Om Nagar, Meethapur
					9891417631	46222	N/A
6.5.11	21:12	9911751609	9891417631	SMS	9911751609	11711	Om Nagar, Meethapur
					9891417631	46222	N/A
6.5.11	21:24	9891417631	9911751609	SMS	9911751609	11711	Om Nagar, Meethapur
					9891417631	46222	N/A
6.5.11	21:35	9891417631	9911751609	124	9911751609	11711	Om Nagar, Meethapur
					9891417631	46222	N/A
6.5.11	21:43	9891417631	9811713764	25	9891417631	46221	N/A
					9811713764	26561	Arthala, Mohan Nagar
6.5.11	22:34	9891417631	8750240715	87	8750240715	11711	Om Nagar, Meethapur

					9891417631	46221	N/A
6.5.11	23:19	9891417631	8750240715	62	8750240715	11711	Om Nagar, Meethapur
					9891417631	45642	N/A
6.5.11	23:43	9891417631	8750240715	293	8750240715	11711	Om Nagar, Meethapur
					9891417631	13552	N/A
7.5.11	0:09	9891417631	8750240715	142	8750240715	11712	Om Nagar, Meethapur
					9891417631	12392	N/A
7.5.11	0:18	9891417631	8750240715	1	8750240715	11711	Om Nagar, Meethapur
					9891417631	NA	N/A
7.5.11	0:19	9891417631	8750240715	738	8750240715	11711	Om Nagar, Meethapur
					9891417631	11712	Om Nagar, Meethapur
7.5.11	1:43	9891417631	9811713764	42	9891417631	11893	N/A
					9811713764	31481	Om Nagar, Meethapur
7.5.11	1:49	9891417631	8750240715	26	8750240715	11712	Om Nagar, Meethapur
					9891417631	10961	N/A
7.5.11	2:19	9891417631	8750240715	82	8750240715	11711	Om Nagar, Meethapur
					9891417631	40022	N/A
7.5.11	3:24	9891417631	8750240715	56	8750240715	11711	Om Nagar, Meethapur
					9891417631	64922	N/A
7.5.11	7:55	9818034557	9911751609	17	9911751609	11713	Om Nagar, Meethapur
7.5.11	9:07	9891417631	9911751609	2264	9911751609	11711	Om Nagar, Meethapur
					9891417631	46222	N/A
7.5.11	10:26	9818034557	9911751609	37	9911751609	11711	Om Nagar, Meethapur
7.5.11	10:58	9811751900	9911751609	206	9911751609	11712	Om Nagar, Meethapur
7.5.11	11:15	9891417631	9911751609	590	9911751609	12392	N/A
					9891417631	46222	N/A
7.5.11	12:00	9891417631	9911751609	SMS	9911751609	13552	N/A
					9891417631	46222	N/A
7.5.11	12:55	9811751900	9911751609	80	9911751609	15402	N/A
7.5.11	14:04	9911751609	9811751900	49	9911751609	10803	N/A
7.5.11	16:10	9811751900	9911751609	281	9911751609	11711	Om Nagar, Meethapur
7.5.11	16:16	9811751900	9911751609	68	9911751609	11711	Om Nagar, Meethapur

30. The CDRs indicates that deceased Rakesh was present at the house of his wife Prabha after 8:30 PM on 06.05.2011 and went missing before 8 AM on 07.05.2011 and both the appellant Sachin and Appellant Sunil were in the location of Meethapur instead of their respective residence.

ARREST

Sachin

31. Prosecution has examined Ct. Gajender Pal Singh PW11 who joined investigation on 21.05.2011 alongwith SHO Insp. Surender PW34, HC Satyanarayan PW14, Complainant Kharak Prasad PW3 and other police officials and visited house of Accused Sachin where he was found missing and on 22.05.2011, on pointing out of the secret informer, Accused Sachin was arrested from Old Bus Stand, Ghaziabad, U.P. near Santosh Medical College. One LG Mobile phone from his possession was also got recovered vide Memo Ex.PW21/B.. The statement of PW11 is corroborated with statement of Insp. Surender (PW34), SI Jitender (PW21) and HC Satyanarayan (PW14). Accused/Appellant Sachin did not examine any witness to prove otherwise. Thus, it is apparent from Arrest Memo Ex.PW11/A, Personal Search Memo Ex.PW11/B, Disclosure Statement Ex.PW2/A and the ocular statement of aforesaid witnesses that Accused Sachin was arrested at Ghaziabad, U.P. from Old Bus Stand near Santosh Medical College on 22.05.2011 at about 2:15 PM.

Sunil

32. Prosecution has examined Ct. Gajender Pal Singh PW11 who joined the investigation on 21.05.2011 alongwith SHO Insp. Surender PW34, HC Satyanarayan PW14, Complainant Kharak Prasad PW3 and other police officials. Accused Sunil was arrested at the pointing out of Co-Accused Sachin from opposite Santosh Medical College Main Gate vide Arrest Memo Ex.PW11/C at about 4 PM. Accused Sunil have neither denied his arrest at the pointing out of Co-Accused Sachin nor he lead any evidence on this material point to prove

contrary. Thus, the ocular statement of the aforesaid witnesses and available records prove that the Accused Sunil was arrested at pointing out of Co-Accused Sachin on 22.05.2011 at about 4 PM and was arrested from Opposite of Santosh Medical College Main Gate, Ghaziabad, U.P.

Prabha

33. Prosecution has examined HC Shyam Lal PW10 who has deposed that he has joined the investigation in the present case on 23.05.2011 alongwith Insp. Madan Pal Bhati PW36 and W/Ct. Shakuntala PW12 and they reached house of Prabha i.e. House No. B-401, Gali No. 9, Meethapur, Om Nagar, Delhi and they met Accused Prabha. I.O. Insp. Madan Pal Bhati interrogated her and she made Disclosure Statement Ex.PW10/C and she was arrested vide Arrest Memo Ex.PW10/A and her Personal Search was got conducted by W/Ct. Shakuntala vide Personal Search Memo Ex.PW10/B. The statement of HC Shayam Lal PW10 is corroborated with statement of Insp. Madan Pal Bhati PW36 and W/Ct. Shakuntala PW12. Accused Prabha neither deny her arrest from her house nor she has lead any evidence on this material point to prove contrary. Thus, the ocular statement of the aforesaid witnesses and available records prove that the Accused Prabha was arrested on 23.05.2011 at about 9:30 AM vide her Arrest Memo Ex.PW10/A.

RECOVERY

Recovery of Dead Body (Skeleton) at instance of Accused persons Sachin and Sunil

34. The deceased Rakesh was last seen at House No. B-401, Gali No. 9, Meethapur, Om Nagar, Delhi on the intervening night of 6th and 7th of May 2011 and thereafter went missing which resulted into registration of Missing Person Report on 08.05.2011 vide DD No. 32A. Accused Sachin and Sunil became suspects on the basis of their constant calls among 9891417631(Sachin), 9811713764(Sunil), 9911751609 and 8750240715. During interrogation on 22.05.2011 Accused Sachin made Disclosure Statement Ex.PW2/A and confessed to his involvement in commission of the crime with the help of Accused Sunil and others, on his pointing out Accused Sunil too was arrested within 2 hours. Both the accused persons were arrested on the same day. In pursuance to their Disclosure Statements both the Accused persons led the police team to a place where both of them threw away the dead body of Deceased Rakesh on 07.05.2011 into UPSIDC Jungle and got recovered the Dead Body and belongings of deceased Rakesh as per the Site Plan Ex.PW11/DB. They got recovered Skeleton (Jaw bone, big leg bone, 2-3 other bones), clothes i.e. grey shirt and dark grey pant and black shoes of deceased Rakesh which were identified by complainant Khadak Prasad and the articles were seized vide Seizure Memo Ex.PW13/A and Panchnama Ex.PW2/C was prepared by SI Dhirender Singh PW23 of PS Sikandrabad, Bulland Sher on the same day i.e. 22.05.2011. After recovery of the aforesaid articles, S.I. Dhirender Singh deposited the same in the *Malkhana* of PS Sikandrabad, Bulland Sher, U.P. Statement of Ct. Kiran Pal PW13 is corroborated with I.O. Insp.

Madan Pal Bhati PW36, Balram PW2, Khadak Prasad PW3 and SI Dhirender Singh PW23.

35. The recovery of Skeleton, clothes and shoes at the pointing out of both the accused persons Sachin and Sunil gains importance and inspires confidence to attribute the personal knowledge towards both the accused persons Sachin and Sunil who got recovered the aforesaid articles on the basis of their personal knowledge as the recovery effected was on the same day and was within a few hours of their arrest in a jungle and there was no occasion for attributing outside influence or false implications by planting the witnesses. Para 145 of *State (NCT of Delhi) v. Navjot Sandhu* (2005) 11 SCC 600 is relevant, same is reproduced as under:-

"145. Before parting with the discussion on the subject of confessions under Section 27, we may briefly refer to the legal position as regards joint disclosures. This point assumes relevance in the context of such disclosures made by the first two accused viz. Afzal and Shaukat. The admissibility of information said to have been furnished by both of them leading to the discovery of the hideouts of the deceased terrorists and the recovery of a laptop computer, a mobile phone and cash of Rs. 10 lacs from the truck in which they were found at Srinagar is in issue. Learned senior counsel Mr. Shanti Bhushan and Mr. Sushil Kumar appearing for the accused contend, as was contended before the High Court, that the disclosure and pointing out attributed to both cannot fall within the Ken of Section 27, whereas it is the contention of Mr. Gopal Subramaniam that there is no taboo against the admission of such information as incriminating evidence against both the informants/accused. Some of the High Courts have taken the view that the wording "a person" excludes the applicability of the Section to more than one

person. But, that is too narrow a view to be taken. Joint disclosures to be more accurate, simultaneous disclosures, per se, are not inadmissible under Section 27. 'A person accused' need not necessarily be a single person, but it could be plurality of accused. It seems to us that the real reason for not acting upon the joint disclosures by taking resort to Section 27 is the inherent difficulty in placing reliance on such information supposed to have emerged from the mouths of two or more accused at a time. In fact, joint or simultaneous disclosure is a myth, because two or more accused persons would not have uttered informatory words in a chorus. At best, one person would have made the statement orally and the other person would have stated so substantially in similar terms a few seconds or minutes later, or the second person would have given unequivocal nod to what has been said by the first person. Or, two persons in custody may be interrogated separately and simultaneously and both of them may furnish similar information leading to the discovery of fact. Or, in rare cases, both the accused may reduce the information into writing and hand over the written notes to the police officer at the same time. We do not think that such disclosures by two or more persons in police custody go out of the purview of Section 27 altogether. If information is given one after the other without any break almost simultaneously, and if such information is followed up by pointing out the material thing by both of them, we find no good reason to eschew such evidence from the regime of Section 27. "

36. The contention of Ld. Counsel for Appellant Sachin and Sunil that police already knew the place where Skeleton was thrown is not convincing as the suspicion against Sachin and Sunil arisen on the basis of CDR and not on the basis of telephonic call recording and there was no occasion for the prosecution to get information of the

location of the dead body of deceased Rakesh. The recovery of dead body was got effected at the instance of both the accused persons.

Recovery of Sachin's Mobile (9891417631)

37. The prosecution has examined SI Jitender PW21 who deposed that he joined the investigation in the present case and on 22.05.2011 Accused Sachin was apprehended on the pointing out of the secret informer and proved Ex.PW21/B which indicates during interrogation, one Mobile phone from his possession got recovered from Old Bus Stand, Ghaziabad, U.P., same was seized vide Seizure Memo Ex.PW21/B. This statement is corroborated with the statement of I.O. Insp. Surender Singh PW34. The Seizure Memo Ex.PW21/B shows that LG Mobile Phone was having IMEI No. 353543040699409 and SIM Number 9891417631 was recovered from possession of Accused Sachin on 22.05.2011. Accused Sachin does not deny in his statement under Section 313 Cr.P.C. that LG phone and phone number does not belong to him. Thus, the ocular statement of the aforesaid witnesses and available records prove that the said LG Mobile Phone was recovered at the instance of Accused Sachin on 22.05.2011 which goes against Accused Sachin.

Recovery of Alto Car (UP-16-AC-1329)

38. The prosecution has examined I.O. Insp. Madan Pal Bhati PW36 of PS Jaitpur who deposed that he on 24.05.2011 alongwith Ct. Gajender PW9, Ct. Ajay PW11, W/Ct. Shakuntala PW12 and Ct. Kiran Pal PW13 were lead by the accused Sachin to his house in Sanjay Colony, Ghaziabad, U.P. and there he pointed out his Alto Car

bearing Number UP16 AC 1329 which was used in the commission of the offence, same was seized vide Seizure Memo Ex.PW9/A. The said statement is corroborated with the statement of Ct. Gajender and Ct. Ajay. Accused Sachin in his statement under Section 313 Cr.P.C does not deny his ownership of the Alto Car having registration number UP 16 AC 1329.

The finding of the court below, the Alto car UP 16 AC 1329 which was used in the commission of the offence was in the name of Prabha is contrary to the records.

The Ex.PW29/B indicates the Alto car does not belong to Accused Prabha. However, the Alto car is registered in the name of Girwar Singh, father of accused Sachin. The car was released to Girwar Singh vide *Malkhana* register Ex.PW29/B.

Recovery of Motorcycle of deceased Rakesh (DL-6S-AD-1670)

39. Prosecution has examined Ct. Gajender PW11 who deposed that he joined investigation on 24.05.2011 of the present case alongwith Ct. Ajay PW9, I.O. Insp. Madan Pal Bhati PW36 and other police officials. Accused Sunil in pursuance to his further Disclosure Statement Ex.PW9/C lead the police team to his house in a *Moholla* (Rajiv Colony, Ghazibad, U.P.) and pointed out a motorcycle belonging to deceased Rakesh which was without Number plate and was having engine No. MJC40E9043529 and chassis No. ME4JC402M88022539 which matched to the motorcycle of Rakesh and was seized vide Seizure Memo Ex.PW9/B. Accused Sunil in his statement under Section 313 Cr.P.C does not deny that the aforesaid

motorcycle did not belong to Rakesh. Statement of Ct. Gajender is corroborated with the statement of Ct. Ajay and I.O. Insp. Madan Pal Bhati which goes against the accused Sunil.

MEDICAL EVIDENCE

Post mortem Report

40. The prosecution has examined Dr. Sachin Kumar PW25 who conducted the Post Mortem of the dead body of Deceased Rakesh on 24.05.2011 which was brought by Ct. Amrendra PW18. The Post Mortem Report proved is Ex.PW25/A. The para 15 of said Post Mortem Report is reproduced as under:-

"cause of death, sex, age and duration (since of death) could not be ascertain hence bones preserved for further examination."

41. Ex.PW25/A indicates death but cause of death, sex, age and duration since death could not be ascertained.

FSL Report (DNA Report)

42. Prosecution has examined I.O. Insp. Madan Pal Bhati PW36 who deposed that on 10.06.2011 he took Kharak Prasad PW3 and Smt. Dharmi PW4 (Father and Mother of the Deceased) to CFSL Rohini for taking their blood samples for purpose of DNA Profile and Ct. Girish PW16 brought sealed pulanda of bones from PS Jaitpur MHC(M) to FSL Rohini and the same were deposited in FSL Rohini. FSL Officials took the blood sample of Khadak Prasad and Smt. Dharmi. Statement of I.O. Madan Pal Bhati PW36 is corroborated with statement of Khadak Prasad PW3 and Smt. Dharmi PW4.

43. Prosecution has examined SI Manish Kumar PW32 who too deposed that on 25.05.2011 he was posted in PS Jaitpur. On that day, he alongwith HC Kanwar Singh PW15 went to PS Kotwali, Secunderabad, U.P. and collected exhibits i.e. One cloth pulanda, one other cloth pulanda containing clothes and shoes, one glass jar and one vial all of which were sealed with seal of PMBSR of that police station. He seized the same vide Seizure Memo Ex.PW3/DA and he recorded the statement of HC Prem Singh. He deposited the said articles in *Malkhana* and recorded the statement of HC Kanwar Singh.

44. Prosecution examined HC Girish PW16 who deposed that he on 10.08.2011 was posted in PS Jaitpur. On that day, on being asked by the MHC(M), he took one jar, one bottle having seal of PMBSR alongwith one seal of PMBSR and deposited in FSL, Rohini and was given RC No. 71/21/11. The aforesaid case property was deposited to the MHC(M) by him against the register of MHC(M) and the case property was not tampered with till it remained in his possession. Copy of RC in Ex.PW16/A and the receipt of FSL Rohini is Ex.PW16/B.

45. Prosecution has examined HC Rajbir Singh PW29 who deposed that on 22.05.2011 he was posted as MHC(M) in PS Jaitpur, Insp. Madan Pal Bhati PW36 deposited two sealed pulanda with seal of "MP" in *Malkhana*. On the same day, Insp. Surender PW34 deposited cash Rs. 150/- belonging to Sunil which was recovered from personal search of Accused Sunil. He also deposited Cash of Rs. 2,650/- and one LG mobile phone of Accused Sachin. Entry to the aforesaid was made in Register No.19 at Serial No. 547.

46. The statement of SI Manish Kumar PW32 is corroborated and is consistent with the statement of HC Girish PW16 till the case property is deposited with the FSL vide RC No. 71/21/11. The aforesaid statement indicates that the case property was never tampered with before it reached FSL Rohini. Khadak Prasad PW3 and Smt. Dharmi PW4 has already given their blood samples to FSL Rohini officials. The sealed pulandas were deposited with FSL Rohini, on analysing the samples, FSL Report Ex.PW31/C was given, same is reproduced as under:

" DNA FINGERPRINTING UNIT

FSL:DNA REPORT NO.2011/DNA-6437/665 DNA-134/2011 Dated-2/1/2012

To,

*The S.H.O
P.S. Jaitpur
New Delhi*

Sir,

Please refer to your letter No.3414/SHO/Jaitpur dated 27.10.2011 regarding DNA fingerprinting test of one sealed Forensic parcel in case FIR No. 134/11 dated 21.05.2011, U/s 328/302/201/120B IPC, P.S. Jaitpur, New Delhi received in DNA unit on 27.10.2011.

DESCRIPTION OF THE SOURCE

Forensic Sample received

Parcel 1: One sealed cloth parcel sealed with the seal of "PMBSR" containing exhibit '1'.

Exhibit 1: One skull with teeth,two long bones and one piece of rib. Two teeth taken out from skull for Examination.

DNA EXAMINATION:

*The exhibit '1' was subjected to DNA isolation. The DNA was isolated from the exhibit '1' and DNA profile was prepared for the exhibit '1'. **STR analysis** was used for the sample. Data was analyzed by using Genescan and Genotyper Software.*

RESULTS OF EXAMINATION

The alleles from the source of exhibit '2' (Blood sample of Smt Dharmi Bai) & exhibit '3' (Blood sample of Sh. Karak Singh) vide FSL No 2011/DNA-3060 are accounted in the alleles as from the source of exhibit '1' (teeth).

CONCLUSION

The DNA profiling (STR analysis) performed on the exhibit provided is sufficient to conclude that the source of exhibit '2' (Blood sample of Smt Dharmi Bai) & exhibit '3' (Blood sample of Sh Karak Singh) vide FSL No 2011/DNA-3060 are the biological mother & father of the exhibit '1' (teeth).

Note:

Remnants of the exhibits have been sealed with seal of SB FSL DELHI.

Sd/-

Ms. SHASHI BALA

Senior Scientific Officer (Biology)

DNA UNIT; FSL DELHI"

47. As per the DNA Report, DNA of skeleton matches with the DNA of the PW3 and PW4.

MOTIVE

48. The prosecution in order to prove the motive examined Khadak Prasad PW3 who deposed that he heard accused Prabha threatening her husband after their quarrel in February 2010 that she would get him killed through some anti-social elements. Prosecution further examined Smt. Dharmi PW4 who too has deposed on similar lines i.e. Appellant Prabha in February 2010 threatened she would get Rakesh killed through anti-social elements as there was a matrimonial discord between the deceased and accused Prabha. Besides parents, prosecution has also examined Ct. Kiran Pal PW13 who deposed that he joined investigation on 16.08.2011 and had gone to DPMI Institute, New Ashok Nagar, New Delhi alongwith I.O. and seized Admission forms of Sachin and Prabha, Attendance register and other document vide Seizure Memo Ex.PW13/B.

49. The statement of Khadak Prasad PW3 and Smt. Dharmi PW4 qua Appellant Prabha is not of much relevance as deceased Rakesh

often used to go to the house of Accused Prabha and on the date of incident too, deceased Rakesh visited the said house on asking of his father PW3 and he reached the house at about 8:30 PM. The statement of PW13 Ct. Kiran Pal too doesn't inspire confidence in absence of proving the admission forms and attendance register i.e. Ex.PW13/B indicating both Accused Sachin and Accused Prabha were studying together in DPMI Institute. However, failure to prove motive in the case of circumstantial evidence is not fatal by itself, if motive is proved it would definitely strengthen the prosecution case. Reliance placed on *Amitava Banerjee @ Amit v. State of West Bengal* (2011) 12 SCC 554.

50. As discussed above, what is emerging on the record before us is the chain of circumstance which is consistent and interdependent since deceased Rakesh went missing till his dead body was got recovered at the instance of Sachin and Sunil and each chain of the circumstance pin points towards the involvement of appellant Sachin and appellant Sunil.

51. So far, the recovery of the *Chunni* vide Seizure Memo Ex.PW12/A and recovery of Handkerchief and socks of deceased from the house of Prabha vide Seizure Memo Ex.PW13/C at the instance of Accused Prabha is concerned, same is inconsequential as the Post Mortem Report does not show any ligature mark on the dead body/skeleton of the deceased. Moreover, It is apparent on the record that deceased Rakesh reached to the said house of Prabha at 8:30 PM.

Therefore, no substantial legal evidence is coming on the record against Prabha. The recovery of Mobile phone with SIM number

9911751609 and 8750240715 from possession of Prabha is inconclusive for want of proving the said numbers were used by Prabha. As Customer Application Forms of both the numbers indicate owner to be one Beni Singh and one another Varun who were not examined.

52. The contention of Ld. Counsel for Appellant Sunil that Accused Sunil was not named in the FIR is inconsequential in presence of the recoveries which got effected at his instance.

53. The reliance placed by the Appellant Sachin and Sunil on *Koli Mala Bijal* (supra), *Jaffer Hussain* (supra), *Manoj Kumar* (supra) and *Ram Kishore* (supra) is of no help to them.

54. The aforesaid facts are interdependent and leaves no room except to show involvement of accused persons in the crime committed. Reliance is placed on *Inspector of Police, Tamil Nadu v. John David* (2011) 5 SCC 509. Therefore, we find no merit in appeals of accused Sachin and Sunil, same are dismissed. Judgment dated 27.05.2017 and Order on Sentence dated 02.06.2017 in SC No. 2216/2016 qua Sachin and Sunil is upheld.

55. However, the accused/appellant Prabha is given benefit of doubt, consequentially, the appeal of Appellant Prabha (CRL. A. No. 623/2017) is allowed and impugned judgment and order on sentence against her is set aside. She forthwith be set free unless wanted in any other case. She will comply with the requirement under Section 437A Cr.P.C. by furnishing a bond to the satisfaction of the trial Court for the amount as may be determined by the Trial Court. Fine amount,

if any deposited as per the impugned Judgment and order on sentence, be refunded to the Appellant Prabha.

56. A copy of this judgment be also placed in CRL.A. Nos. 996/2017 & 623/2017. The trial Court record be sent back together with a certified copy of this judgment.

No orders as to cost.

I.S.MEHTA, J.

SIDDHARTH MRIDUL, J.

24 OCTOBER, 2019