

\$~R-34, 35 & 36

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

Judgment Reserved on: 22nd October, 2019
Judgement pronounced on: 11th December, 2019

+ CRL.A. 859/2017

SONU @ ASHUTOSH TIWARI Appellant

Through: Mr.S. B. Dandapani, Advocate

versus

STATE Respondent

Through: Ms. Aashaa Tiwari, APP for the State
with Insp. M.P. Singh, PS C.R. Park
and Insp. Ram Niwas, SHO Nabi
Karim

WITH

CRL.A. 1123/2017 & CRL. M. (BAIL) 430/2019

DALIP TRIPATHI Appellant

Through: Mr. Ajay Verma, Ms.Katyayini,
Mr.Shubham Gupta and Ms.Pratiksha
Tripathi, Advocates

versus

STATE Respondent

Through: Ms. Aashaa Tiwari, APP for the State

AND

CRL.A. 1146/2017

DEEPAK KUMAR @ DEEPAK GAUTAMAppellant

Through: Mr. K. Parameshwar, Advocate with
Mr. M.V. Mukunda, Advocate

versus

STATE Respondent

Through: Ms. Aashaa Tiwari, APP for the State

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

1. Present Appeals arise out of a common judgment dated 22.07.2017 passed by the learned Additional Sessions Judge, South-East District Saket Courts, New Delhi in Sessions case No. 2240/2016, in FIR No. 128/2011, registered under Sections 365/394/302/411/34 of the Indian Penal Code (hereinafter referred to as 'IPC') whereby the Learned Sessions Judge found the Appellants guilty and sentenced them as follows:

“In view of the above discussion, I am of the view that prosecution has proved the offence punishable under Section 302 read with Section 34 IPC beyond reasonable doubt against the accused persons namely, Deepak Kumar, Ashutosh Tiwari and Dalip Tripathi. Further, prosecution has proved the offence punishable under Section 394 read with Section 34 IPC beyond reasonable doubt against the accused persons namely, Deepak Kumar, Ashutosh Tiwari and Dalip Tripathi. Hence, accused persons namely Deepak Kumar, Ashutosh Tiwari and Dalip Tripathi are convicted for the offences punishable under Section 302 and 394 read with Section 34 IPC. But accused persons namely, Deepak Kumar, Ashutosh Tiwari and Dalip Tripathi are acquitted for the offence punishable under Section 365 read with Section 34 IPC. Accused Rakesh Kumar is acquitted for the offence punishable under Section 201 and 411 IPC. Accused persons namely, Deepak Kumar, Ashutosh Tiwari and Dalip Tripathi are acquitted for the offence punishable under Section 411 IPC.”

2. The facts of the case as stated by the trial court are that:

“The case of the prosecution is that a complainant of Ankur Bansal was received in Police Station vide DD No. 8-A dated 18.06.2011 wherein it was stated that his father Vinod Kumar Gupta left the residence H-33, Masjid Moth, GK-2, New Delhi-48 at about 9:00 pm yesterday 17.06.2011 saying that he is going to Jasola and will come back within 1 and half hours. He did not come back and his mother tried to contact him on mobile phone number 9971299792 and 9971299772, these phones were found switched off after 11:30 pm in the night. At about 2:00 am in night, he got call on their residence number 29227879 and the caller told that he was from Kasna, Greater Noida Police Station and vehicle number DL 4CN 5247 had been found abandoned. His father had not come home and he suspected that he had been abducted by someone.

2. On the basis of above complaint, the present case vide First Information Report (FIR) number 128/2011 under Section 365 of Indian Penal Code, 1860(in short IPC) was registered at the Police Station Chitranjan Park (C.R. Park) and investigation took up. Ankur Bansal had lodged a missing report to the effect vide DD No. 49-B, dated 18.06.2011 at 6:50 am in Police Station C.R. Park. Investigation revealed that car number DL 4C NE 5237 was found abandoned in the jurisdiction of Police Station Kasna, Greater Noida, Uttar Pradesh which was taken into possession from said Police Station Kasna vide seizure memo dated 18.06.2011 by Sub-inspector Mukesh Kumar. The hue and cry notices of abducted Vinod Kumar Gupta were circulated in the adjoining districts and information was also uploaded on ZIP net.

3. The call details of cell phone number 9971299792 and 9971299772 of abducted person Vinod Kumar Gupta were obtained and analysed and found that Vinod Kumar Gupta had received last call on cell phone number 9971299792 from cell phone number 8858858895 at 8:40 pm on 17.06.2011. The holder of the cell phone was not identified and on further examination of call details of cell phone number 9971299792, it revealed that Vinod Kumar Gupta had made a call on cell number 9559069976. Both these two cell phones were found to be of Uttar Pradesh East Airtel and Uttar Pradesh East Uninor respectively. The call details of these two cell phones were obtained and analysed on which it revealed that holder of cell phone 9628469398 was in regular contact with holder of cell number 8858858895 and 9559069976 and its location was not in eastern Uttar Pradesh on 17.06.2011. The call details of cell number 9628469398 were obtained and examined. As the movements of holder of this cell phone was very suspicious so a trap was laid on the house of one of the contact of holder of this cell phone in Tilak Nagar and Assistant Sub Inspector Ved Vir along with staff was sent to Pratapgarh, Uttar Pradesh on 19.06.2011 on the basis of CDRs and A trap was laid in an around the house of the contract of cell number 9628469398 in Tilak Nagar where accused Deepak Kumar was arrested on 20.06.2011 and his disclosure statement was recorded. He got recovered the railway ticket of Unchahar to Delhi JCD on 19.06.2011 of Rs. 119 and cash of Rs. 6,500/- which was shared from the booty from his two associates Dalip Tripathi and Sonu @ Ashutodh Tiwari Accused Deepak Kumar also got recovered mobile phone make

G'Nine having SIM card number 9628469398 and IMEI number 352569041275593 and 352569041275601 used in the conspiracy and execution of plan of robbery and murder which was taken into possession through seizure memo dated 20.06.2011.

3. Accused Deepak Kumar also got recovered a dead body of a male person from room/kitchen of the house which were identified as the dead body of abducted person Vinod Kumar Bansal by his son Ankur Bansal. On the recovery of the dead body, the local police of Police Station Phase II, Noida, Uttar Pradesh was called and inquest proceedings were carried out by them. 14 cigarette buds were found scattered on the grass of lawn of scene of crime i.e. House No. B-156, Sector-92, Noida, Uttar Pradesh. The cash of Rs. 5500/-, one gold chain, two diamond rings and two mobile phones of deceased were also found robbed off and therefore, Section 394/302/411/34 IPC were added to the case.

4. Assistant Sub-Inspector Vedvir Singh who was already in Pratapgarh, Uttar Pradesh was provided the relevant information, who conducted raid in village Shahpur and arrested Sonu @ Ashutosh Tripathi on 20.06.2011 and recorded his disclosure statement. He got recorded one golden/diamond ring robbed off from the deceased and also got recovered a part cash of Rs.9500/- out of the shared booty. He also made a pointing out to a shop i.e. Shredha Jewellers and also identified the owner of the shop whose name later known as Rakesh Soni who received a looted golden chain for Rs. 60,000/- on 19.06.2011. Said Rakesh Soni

was arrested who disclosed that he had melted the golden chain to avoid identification and arrest.

5. On 23.06.2011, accused Sonu and Deepak made a pointing out memo to a corner of a nallah (drain) adjacent to Bhrahamputra Complex, Sector-29, Noida from where one mobile phone make Nokia having SIM card of Airtel company and IMEI number 353792045720963 was taken out by diver namely Sunil and other mobile phone make Nokia, Model 2730 without SIM card having IMEI number 359370038982587 was taken out by diver Mohammad Jasim and said mobiles were taken into possession vide seizure memo.

6. The accused Dalip Tripathi was also arrested on 23.06.2011 by Assistant Sub-inspector Vedvir Singh from Faridabad, Haryana and a golden/diamond ring was recovered from the left pocket of his pant which was seized and taken into possession through seizure memo.

7. After investigation, police report under Section 173 of the Code of Criminal Procedure, 1973 (in short 'Code') was filed against the accused persons for the offences punishable under Section 365, 394, 302, 411 read with Section 34 IPC before the learned Metropolitan Magistrate, South-East District, Saket Court, New Delhi. The learned Metropolitan Magistrate committed the case to the Court of Session vide order dated 01.10.2011.

8. Vide order dated 25.08.2012, charges were framed against the accused Deepak Kumar, Sonu @ Ashutosh Tiwari and Dalip Tripathi for the offences punishable under Section 365, 394 and 302 read with Section 34 IPC. Charge for the offence punishable under Section

411 IPC was also framed against the accused Deepak Kumar, Sonu @ Ashutosh Tiwari and Dalip Tripathi separately. Against the accused Rakesh Kumar, charge was framed for the offences punishable under Section 201 and 411 IPC.”

3. To bring home the guilt of the accused persons, the prosecution has examined 34 witnesses in all. The incriminating evidence and circumstances were put to the Appellants during their statements recorded under Section 313 of Code of Criminal Procedure wherein they denied the allegations and claimed that they have been falsely implicated in the case. The Appellants chose not to examine any witness in their defence.

COMMON ARGUMENTS RAISED ON BEHALF OF THE APPELLANTS DEEPAK KUMAR @ DEEPAK GAUTAM, DILIP TIWARI AND SONU @ ASHUTOSH TIWARI

4. Learned Counsel for the Appellants opened their submissions by contending that the impugned judgment dated 22.07.2017 is based on conjectures and surmises and the same is against the facts and the settled proposition of law as the learned Trial Court has ignored and omitted the material evidence and has disregarded the cogent evidence in favour of the appellants and has failed to appreciate the basic matter in dispute, as to how the appellants have been categorized as the actual perpetrators of the crime because there is no evidence on record to establish that the appellants were involved in the commission of the alleged offence.

5. Learned counsel for the appellants further submitted that since the case of the prosecution is based on circumstantial evidence, the entire chain of events had to be proved in a manner to arrive at a just conclusion of guilt of the accused persons without any hypothesis of guilt, which has not been done in the present case and if the chain of events is broken, in that case the benefit of doubt has to be given to the accused/Appellants. To substantiate their arguments, learned counsel for the Appellants relied upon the case of *Vilas Pandurang Patil vs State of Maharashtra* reported in **2004 6 SCC 158**; *Suresh & Ors vs state of Haryana* reported in **(2018) 18 SCC 654**; *Satish Nirankari vs State of Rajasthan* reported in **(2017) 8 SCC 497**; *State of Goa vs Sanjay Thakran & Anr* reported in **(2007) 3 SCC 755** and *Chandru @ Chandrasekaran vs State Rep. by Deputy Superintendent of Police CB CID and Anr* reported in **2019 (3) SCALE 280**.
6. Learned counsel for the appellants further contended that the learned Trial Court had relied on the recoveries effected at the behest of the Appellants pursuant to their disclosure statements, however, none of the recoveries have any evidentiary value and do not fall within the purview of Section 27 of the Indian Evidence Act, for the following reasons:
- That as per the case of prosecution the dead body of the deceased was recovered from House No. 156, Sector 92, Noida Uttar Pradesh at the instance of appellant/Deepak Kumar on 20.06.2011, in the presence of two independent witnesses Santo (PW-5) & Vinod Kumar (PW-12). However, the aforesaid

recovery is not an incriminating evidence against the appellant/accused and cannot be relied upon for enforcing his conviction because the independent witnesses failed to identify appellant/Deepak Kumar in court and do not support the case of prosecution.

- The prosecution has placed reliance on the recoveries of (*mobile phone G'NINE with IMEI No.352569041275593 and 3525690412755601 with one SIM of Vodafone company having number 9628469398, gold ring of the deceased, two Nokia C E 0434 black colour, Model 2730-I mobile phones of deceased of having IMEI No. 353792045720963 and IMEI No. 359370038982587*) recovered at the instance of appellants (*Deepak Kumar @ Deepak Gautam, Dilip Tiwari And Sonu @ Ashutosh Tiwari*), however, the same is doubtful as the abovementioned recoveries are not admissible as evidence in the eyes of law, for the reason that the same were planted in order to falsely implicate the appellants and no genuine and sincere efforts were made by the investigating officer to prove the recoveries with the presence of any Independent/Public witness.
- The two mobile phones (*Nokia C E 0434 black colour, Model 2730-I*) of deceased were recovered from the drain near Brahamputra Commercial Market, Sector- 29, Noida, Uttar Pradesh on 23.06.2011 with the help of two divers Sunil (PW-21) and Jasim (PW-22). However, the same cannot be relied upon as incriminating evidence against the appellants as both

the aforesaid prosecution witnesses have failed to identify the appellants-accused.

7. Learned counsel for the Appellants further contended that the prosecution had failed to prove that the accused persons shared common intention or motive to commit the alleged offence and hence, they cannot be held guilty for the offence punishable under Section 34 of IPC. It was further emphasized that the importance of motive in a case of circumstantial evidence is paramount and the absence of motive in a case of circumstantial evidence is critical to the version of the prosecution.
8. Learned counsel for the Appellant further submitted that the medical & scientific evidence is not corroborating with the version of the prosecution, for the reason that as per the post-mortem conducted on 20.06.2011 at 4:40 PM, the possible time of death was opined to be 3-4 days. However, the same is contrary to the medical jurisprudence as it usually takes 5-6 days for a corpse to decompose totally and in such condition the deceased could not be alive on 17.06.2011.
9. Learned counsel for the Appellants further argued that the arrest of the appellant/Deepak Kumar is suspicious and the prosecution has falsely implicated him in the present case. It was highlighted that as per the story set up by the prosecution, the call detail records of the deceased bearing mobile number 9971299792 and 8858858895 were analyzed, subsequent to which the appellant/Deepak Kumar was arrested from Tilak Nagar. Moreover, the prosecution has failed to build any connection between the call detail record of the appellant and his involvement in the commission of the alleged offence, for the reason

that the Mobile bearing number 9628469398 was registered in the name of one Arjun and no endeavours were made by the investigating officer for ascertaining the identity and location of Arjun. It was further submitted that the abovementioned mobile number was not active during 16.06.2011 to 18.06.2011 and when the Cell ID location was traced, the tower location was found to be near Old Delhi Railway Station on 17.06.2011, which is approximately 43 km away from where the dead body of the deceased was retrieved.

10. Learned Counsel for the Appellants further contended that the testimony of PW-12 (Driver of the deceased) creates a serious dent in the chain of events projected by the prosecution. As per the testimony of PW-12, he already had knowledge about the demise of the deceased at about 6 AM on 18.06.2011 i.e. before the dead body was even retrieved. Learned Counsel for the appellants further argued that the police is required to carry out a fair and thorough investigation and collect favorable and unfavorable evidence against a suspect, but in the instant case there are serious discrepancies in the investigation conducted by the police which go to the root of the matter and the learned Trial Court erred in ignoring the effect of the defective investigation. Learned counsel highlighting the lacunae in the investigation pointed out: -

- That as per the version of the prosecution, fourteen cigarette butts were recovered from House No. 156, Sector 92, Noida Uttar Pradesh, however the cigarette butts and the Saliva swabs of the deceased and Appellants were not forwarded to the Forensic Science Department for DNA Analysis;

- As per the story set up by the prosecution, PW-3 (*Son of the deceased*) claims to have received a call from Police Station Kasna, Greater Noida, Uttar Pradesh regarding the discovery of the car DL 4C NE 5237 in an abandoned condition which was used by the deceased, however, no evidence has been led by the Prosecution to ascertain the identity of the caller who had informed PW-3 (*Son of the deceased*) regarding the location of the above-mentioned car. Further the investigation agency has failed to procure any chance prints from the abandoned car as well as from the scene of crime, i.e. H. No. 156, Sector-92, Noida;
 - Moreover, the investigation agency has failed to examine the involvement of any other person apart from the Appellants in the commission of the alleged offence as the deceased was having various properties in Delhi, which were on rent and he was having a range of disagreements with his tenants with respect to the eviction of the aforesaid properties.
11. Lastly, it was urged by the learned counsel for the Appellants that in view of the aforesaid facts and circumstances, the prosecution has failed to prove the case against the Appellants beyond reasonable doubt and had failed to complete the chain of events; hence, the impugned judgment is liable to be set aside.

SUBMISSIONS ON BEHALF OF THE STATE

12. Ms. Aashaa Tiwari, learned APP for State, on the other hand, strongly refuted the submissions made by the counsel for the Appellants and

submitted that since the impugned judgment is based on proper appreciation of the facts and evidence, no interference in the same is called for by this Court; that the statements of prosecution witnesses and medical/scientific evidence are corroborative in nature and the prosecution has been able to prove its case beyond reasonable doubt.

13. Learned APP for State further submitted that the prosecution has relied upon the recovery of the dead body, the recovery of the phones of the deceased and the recovery of the ornaments worn by the deceased at the instance of the Appellants and there is no cogent reason to doubt the aforementioned recoveries on the ground that the same were not effected in the presence of an independent witnesses. To substantiate her arguments learned APP for State relied upon the case of *Pulukuri Kottaya & Ors. v. Emperor* reported in *AIR (34) 1947 Privy Council 67* and *State v. Sunil & Anr* reported in *(2001) 1 SCC 652*.
14. Learned counsel for the State further contended that certain errors were made by the Investigating Agency during investigation, however, those errors or omissions do not affect the outcome of the case and no benefit can be extended to the accused for such defects, which lead to their acquittal.
15. Learned APP for State further submitted that motive is a relevant factor in all criminal cases, whether based on direct or circumstantial evidence, but the inability to establish motive in a case of circumstantial evidence is not always fatal to the prosecution version. To substantiate her arguments learned APP for State relied upon the case of *State of Himachal Pradesh v. Jeet Singh* reported in *AIR*

1999 SC 1293, State of Uttar Pradesh v. Babu Ram reported in ***AIR 2000 SC 1735*** and ***Ragnayaki v. State by Insp. of Police*** reported in ***(2004) 12 SCC 521***.

16. Learned APP for State further submitted that the post-mortem report was not proved on record and the case was remanded back during the hearing of the Appeal on the request of the prosecution for adducing additional evidence. She laboured hard to contend that the Appellants failed to raise any objections at the time of recording of evidence of PW-34 (Dr. Devender Kumar) who proved the post-mortem report (in relation to the state of decomposition of body), as such the appellants cannot raise any objections at this stage.
17. Counsel for the State further argued that the testimonies of the prosecution witnesses so examined and the circumstantial evidence produced on record prove the guilt of the appellants. She further emphasized that the investigating officer was not able to trace the registered owners (Shiv Shankar, Rama Rani and Arjun) of the mobile numbers 9559069976, 9628469398 and 8858858895, for the reason that the addresses so provided were found to be inaccurate and false.
18. Counsel for the state finally argued that the evidence produced on record as well as the circumstances proved by the prosecution, form a complete chain pointing unequivocally towards establishing the guilt of the accused persons. Based on these submissions counsel for the State urged that the well-reasoned judgment of the learned Trial Court calls for no interference by this Court.

19. We have heard learned counsel for the parties at considerable length and have also perused the entire material placed on record including the record of the Trial Court.
20. Before analysing factual aspects, it may be stated that for a crime to be proved it is not necessary that the crime must be seen to have been committed and must, in all circumstances, be proved by direct ocular evidence by examining before the court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, that is, the evidentiary facts. To put it differently, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed and the only necessary principle is that the circumstances so formed should point only towards the guilt of the accused and no other possibility. It is on these golden principles that the facts of the present case are to be weighed.

INCEPTION OF THE CASE

21. The case of the prosecution is that the police machinery was set into motion on filing of a missing report by PW-3 (Son of Deceased) at Police Station Chitranjan Park (*Ex. PW-1/D-1*) in pursuance to a phone call received by PW-3 (Son of the Deceased) at 2:00 AM on 18.06.2011 regarding his father's Corolla car bearing number DL 4

CN 5237 being found abandoned near Kailash Hospital, Greater Noida. The missing report (*Ex. PW-1/D-1*) has been reproduced below:

“SUBJECT:- Missing of my father V.K. Bansal since 9:00 clock evening from G.K-2.

We are resident of H-33 Masjid Moth GK-2 N.D-48 and on evening of 17/06/2011 my father V.K. Gupta/ Bansal has left the home at 9:00 clock in evening to return back by 10:00 but he has not reached back home since then and we got a call from Greater Noida Police Station that they found his Car 5237 abandoned at Greater Noida but not Mr. Bansal. His Phone No. 9971299792, 9971299772 are also switched off. Kindly send Rescue team for his search and inform me ASAP.

*Ankur Bansal (Son)
9810028129, 29227879
H-33, Masjid Moth, GK-2
New Delhi-48”*

22. Subsequent to the phone call received by PW-3 from the Police, he along with his relatives went to Police Station, Kasna, Greater Noida in order to retrieve the car. On examining the condition of the vehicle, it was found that the car was neither damaged nor had the deceased met with any accident; however, the whereabouts of his father were unknown. After returning from P.S. Greater Noida, PW-3 (Son of the deceased) filed a complaint of abduction of his father at Police Station Chitranjan Park at 11:00 am on 18.06.2011 and the same is marked as (*Ex.PW-3/A*) which reads as under:

*“To
SHO, CR Park, Delhi*

Sub: Regarding abduction of my father Mr. V.K. Gupta

Sir,

It is to inform you that my father Shri. Vinod Kumar Gupta left residence H-33 Masjid Moth GK-2, New Delhi – 48 at about 9:00 pm yesterday 17.06.2011 saying that “I am going to Jasola and will come back within 1½ Hour”. He did not come back and my mother tried to contact him on mobile phone Number 9971299792, 9971299772, these phones were found switched-off after 11:30pm in the night.

At about 2:00 am in night, we got call on our residence number 29227879, the caller told that he is from Kasna, Greater Noida P.S. and vehicle number DL 4 CN 5237 has found abandoned. My father has not come home and I suspect that he has been abducted by someone.

Kindly take legal action.

(Ankur Bansal) Age - 29 years
9810028129
H-33, Masjid Moth, GK-2
New Delhi-48”

23. In order to prove the aforesaid two complaints i.e. (**Ex. PW-1/D-1**) & (**Ex. PW-3/A**) on record, the prosecution examined the son of the deceased as PW-3. The deposition of PW-3 (Son of the deceased) reads as below:

“On 17.06.2011, I was present alongwith my wife Smt. Priyanka Bansal, my mother Smt. Prem Lata Bansal, my new born son Agrim Bansal and my father Late Sh. Vinod Kumar Bansal at the residence at H-33, Masjid Mor, GK-II, New Delhi. **At about 08:30/09:00 pm, my father had left the home in his Corola Car**

bearing No. DL-4CN-5237 stating that he was going to Jasola and that he will return within 1 ½ -2 hours, but he did not came back by 11:00 pm. Then, my mother called him on his mobile phone numbers 9971299792 and 9971299772, which were found switched off. Then, at around 02:00 am in the night, we got a telephonic call from Police Station Greater Noida regarding the fact that our aforesaid Car was found abandoned near Kailash Hospital, Greater Noida. On receiving this information, we were shocked that my father might have met with an accident or some mis-happening was happened with him. Then, I called some of my relatives and approached Police Station C.R. Park at about 03:30 am and lodged a missing report. I have seen the same, which is already exhibited as Ex.PW1/D-1, bearing my signature at point-A.

Thereafter, we alongwith relatives and neighbours went to Police Station Kasna, Greater Noida and found that our Corola Car bearing No. DL-4CN-5237 was found there and we were informed that the said Car was found abandoned in front of Kailash Hospital, it was found that the Car had not met with an accident and was not damaged in anyway, but there was no clue about the whereabouts of my father. Thereafter, I came to Police Station C.R. Park and informed the police that my father might abducted and requested the police to take action and gave a complaint to the police in this regard at about 11:00 am, which is Ex.PW3/A, bearing my signature at point-A.”

In his cross-examination PW-3 stated the following:

“My mother had received telephone call made from PS Kasna, Greater Noida. My mother had made telephonic call from her mobile phone at both the

mobile phones of my father, which were found switched off. On 20th June, 2011, I reached PS C.R. Park alongwith my driver Vinod and two of my relative namely Sh. Naresh Kumar (my father-in-law) and Sh. Mohinder Garg (my uncle). I do not remember the exact time. It was morning hour approximately between 08:00 to 09:00 am. We left the Police Station within 5-10 minutes of reaching there. Apart from us, there were six-seven police officials in a Police Van, who had accompanied us to Section-92 (Sic.), Noida. We reached there between 10:00 to 11:00 am.

XXXX

XXXX

XXXX

I do not know, if the police had taken the photographs of my car No. DL-4CN-5237. I do not know, if the police had recorded the statement of my relatives, my family members in respect of the recovery of Car, when we reached at PS Kasna.....”

24. Moreover, the testimony of PW-3 (Son of the deceased) further finds corroboration from the testimony of PW-4 (brother in law of the deceased) who deposed as below:

“Sh. Vinod Gupta was my brother in law (behnoi). On 18.06.2011, I alongwith Delhi Police went to Police Station Kasna, UP. A Toyota Corolla car bearing no.DL4CNE 5237 was inspected and photographed in the police station Kasna, UP. Thereafter, the car was seized by the Delhi Police officials vide seizure memo Ex. PW4/A bearing my signature at point A. The car was brought back to Delhi.

Today, I have seen the Toyota Corolla car bearing no. DL4CNE 5237, which was parked in the parking of the Court premises brought by Ankur

Bansal, my nephew. Witness identified the car. Same is already Ex.MO-1.

25. The statement of PW-33 (Insp. Ram Niwas) is reproduced below:

“On 18.06.2011, I was posted as Sub-Inspector at PS C.R. Park. On that day, a complaint was received from one Ankur Bansal regarding abduction of his father. On the contents of the complaint, a case u/s 365 IPC was made out. Accordingly, the rukka was prepared by me and same is Ex.PW33/A, it was thereafter, handed over to the Duty Officer for registration of FIR. After registration of the case, investigation was further assigned to me by the Duty Officer.”

26. The fallout of the aforesaid testimonies establishes the following facts:

- That the deceased left his house on 17.06.2011 at 9:00 pm and informed his family that he is going to Jasola and will return within 2 hours. On 18.06.2011 the Complainant PW-3 received a call at 2:00 am from Police Station Kasna and was informed that his father's Toyota Corolla car bearing registration number DL 4C NE 5237 was found abandoned near Kailash Hospital, Greater Noida. Therefore, from the testimonies of PW-3 (Son of the deceased) which is corroborated by ***Ex. PW-1/DI***, it is established that the deceased left his house on 17.06.2011 at 8:00 pm and did not return to his residence. It is also established that the Toyota Corolla car of the deceased was recovered by the Police which is corroborated by the

testimonies of PW-3 (Son of the deceased) and PW-4 (brother in-law of the deceased);

- It is established that PW-3 had lodged a complaint stating that his father had been abducted. The testimony of PW-3 is corroborated with the testimony of PW-33 (Insp. Ram Niwas) with **Ex. PW-3/A**;
- It is established that the Toyota Corolla car bearing registration number DL 4C NE 5237 belonging to the deceased was inspected by the Mobile Crime Team and Photographs were taken from different angles and no finger prints were lifted from the vehicle by the crime team members. The same has been corroborated by PW-14 (SI Babu Ram), PW-15 (HC Bhagwan Singh), PW-23 (SI Mukesh Kumar) read with Ex.PW15/A (Mobile Crime Report) and **Ex.PW4/A** (seizure memo).

27. The major emphasis of the counsel for the appellants was that the prosecution has failed to prove as to how they found appellant/Deepak, who is the first accused in the chain of circumstances, from where the case of the prosecution commences found its inception. It is argued that the number 9971299792 (used by the deceased) was in constant touch with phone numbers 8858858895 and 9959069976. These two phone numbers were in constant touch with 9628469398 which was recovered from the Appellant.
28. Learned Counsel for the Appellants vehemently argued that the Call Detail Records of the phone numbers of the deceased and the phone number recovered from the Appellant proves that there was no connection between the deceased and the Appellants. Learned

Counsels emphasized that this number was not active during 16.06.2011 till 18.06.2011 when the deceased was murdered. It was further argued that the number 9873392591 was never in touch with the deceased. It was submitted that the registered owner of number 8858858895 was neither investigated nor examined.

29. The case of the prosecution is that the appellant Deepak was arrested from Tilak Nagar after a trap was laid by the investigating agency to capture him. The learned APP further contended that the call details of the abducted person were analysed and it was found that he had received the last call on 17.06.2011 in the morning from one cell phone bearing number 8858858895 and this mobile phone pertained to service provider operating under the name and style of Uninor Company. The call details of this suspected number were also checked and holder of another cell phone bearing number **9628469398** of TATA UP was found in touch with this number and the location of both these two cell phones was found to be in Old Delhi Railway Station on 17.06.2011.
30. In this regard we concur with the findings of the learned Trial Court in its judgment dated 22.07.2017 which has observed as under:-

110. Hence, as per testimony of PW-7, since 06.06.2011, one Shiv Shankar was owner of mobile number 8858858895 and since 04.04.2012, the said mobile number was issued to one Rajeshwari. But said Shiv Shankar and Rajeshwari have not been examined by the prosecution. No other prosecution witness except PW-7 (nodal officer) has deposed regarding use of said mobile number in the present case. In disclosure statements of accused Ashutosh Tiwari and Dalip Tripathi, said mobile phone finds mention but same cannot be taken into

consideration against accused persons being only disclosure statements. The mobile phone in which said SIM number was used, has also not been recovered. Hence, the testimony of PW-7 does not help to the case of prosecution.

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118. Hence PW-31 has stated regarding phone number having last four digit '9398'. The mobile phone number 9628469398 is having last four digit '9398' and hence witness has deposed regarding phone number 9628469398. Further, I have already held that mobile phone G'NINE with IMEI No.352569041275593 and 352569041275601 with one SIM of Vodafone company having number 9628469398 was recovered from the possession of accused Deepak Kumar. The mobile number 9628469398 at the relevant point of time was not registered in the name of accused Deepak from whose possession the mobile phone having mobile number 9628469398 was recovered. It was expected from the prosecution to give clarification/explanation in this regard but no explanation has been come forward. But it is also true that people may use the mobile number which is registered in the name of other. In the present case, mobile phone G'NINE with one SIM of Vodafone company having number 9628469398 was recovered from the possession of accused Deepak Kumar and therefore, he was also expected to explain as to how and from whom he received said SIM of Vodafone company having number 9628469398. But, he has explained nothing in this regard in his statement under Section 313 of the Code. Hence, it has been proved that call detail records of mobile phone number 9628469398 which was recovered from the possession of accused Deepak, from the period 01.05.2011 to 30.06.2011 is Ex.PW-13/C.

119. From the testimony of PW-13, Kaushik Ghoshal, it has been proved that telephone no.9873392591 was registered in the name of Raj Kumar; that call detail records of the said mobile phone number from the period 01.06.2011 to 19.06.2011 are Ex.PW-13/G. PW-17

Meena has proved that accused Deepak who is the husband of her sister Seema stayed with her in her house about three years ago in the month of June or July and on next day, accused Deepak before leaving her house had made call to someone from her mobile phone no. 9873392591. PW-17 has also proved that she or husband had not talked to any persons on the mobile no. 9628469398. As per PW-13 Kaushik Ghoshal phone no. 9873392591 was registered in the name of Raj Kumar but as per PW-17 Meena, said phone, no. 9873392591 was being used by her. It was expected from the prosecution to give clarification/explanation in this regard but no explanation has been come forward. But it is also true that people may use the mobile number which is registered in the name of other. On analyzing the call detail records Ex.PW-13/G pertaining mobile no. 9873392591, it shows that four calls were made from mobile no. 9873392591 to mobile no. 9628469398 on 19.06.2011. Mobile no. 9628469398 was recovered from the possession of the accused Deepak Kumar and hence, accused Deepak Kumar had made said four calls from mobile no. 9873392591 to mobile no. 9628469398 on 19.06.2011. But it has not been clarified on behalf of the prosecution as to why accused Deepak Kumar had made said four calls from the mobile no. 9873392591 to his mobile no. 9628469398 on 19.06.2011. Further, the call detail records Ex.PW-13/G do not show any call from mobile no. 9873392591 to mobile no. 9971299772 or 997129792 which belonged to deceased. Hence, testimony of PW-17 Meena does not help to the case prosecution.

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125. Hence, as per testimony of PW-30, mobile number 9559069976 was belongs to one Rama Rani. But said Rama Rani has not been examined by the prosecution. No other prosecution witness except PW-30 (nodal officer) has deposed regarding use of said mobile number in the present case. In disclosure statements of accused Dalip Tripathi Kumar Tripathi, said mobile phone finds

mention but same cannot be taken into consideration against accused persons being only disclosure statement. The mobile phone in which said SIM number was used, has also not been recovered. The call detail records of said mobile number was not available in CDR front-end Module System because record was kept available only for one year. Hence, the testimony of PW-30 does not help to the case of prosecution.”

Arrest

31. Learned counsel for the appellants vehemently argued that the arrests of the appellants are doubtful as the same have not been carried out in presence of independent witnesses. Learned counsel further contended that the testimonies of relevant witnesses clearly depict that the appellants were picked from their houses and have been falsely implicated in the present case. Learned counsel further contended that it is borne out from the records that the Investigating Agency has manipulated the records of arrest. In this context, it is necessary to refer to the testimony of PW-33(Investigating Officer) of the present case who deposed as under:-

“On 20.06.2011, at about 06:00 am, I alongwith SI Mukesh Kumar went to Tilak Nagar, where I nabbed a person, whose name later known as Deepak, today present in the Court (correctly identified by the witness). The said Deepak was interrogated and arrested formally vide arrest memo already exhibited as Ex. PW-23/A, bearing my signature at Point-B. His personal search was conducted vide memo already exhibited as Ex, PW-23/B, bearing my signature at point-B. His disclosure statement was recorded vide memo already exhibited as Ex. PW23/C, bearing my signature at point-B. In pursuant to said disclosure

statement, accuse got recovered the robbed amount of Rs. 6,500/- in denomination of note of Rs. 500/- and railway ticket from Unchar to Delhi, which were taken into possession vide seizure memo already exhibited as Ex.PW23/D, bearing my signature at point-B. Accused also got recovered the mobile phone having last four digit as 9398 from his pant pocket, which he was using in the commission of present case. The said mobile phone was seized vide seizure memo Ex. PW-23/E, bearing my signature at Point-B. Accused was brought to the police station alongwith the recovered articles and status of investigation was apprised to the senior officials.”

32. Further, PW-23 (SI Mukesh Kumar) affirmed the arrest of Deepak who deposed that:-

“After registration of the FIR, the investigation was assigned to Sub-Inspector Ram Niwas. On 20th June, 2011, at about 06:00 am, I alongwith SI Ram Niwas reached at House No. B-4/27, Tilak Nagar, where accused Deepak after interrogation was arrested. His arrest memo (Ex. PW-23/A) bears my signature at Point-A. His personal search was carried on vide memo Ex. PW-23/B, bearing my signature at Point-A.....”

33. The testimony of PW-29 (ASI Ved Vir Singh) stood corroborated with the testimony of PW-28 (HC Sanjeev) who joined the investigation alongwith Constable Mahinder Kapoor and Balwinder, who deposed that:-

*“At Kunda, I received a telephonic information from SHO, PS C.R. Park regarding apprehension of one accused in this case **at Delhi and he disclosed that the two accused persons are available at Village Shahpur***

*near Kunda, District Pratapgrah, U.P. Pursuant to information, we reached at village Shahpur and reached at the house of accused Dilip. Accused Dilip could not be found in his house. **His brother informed us that Dilip had come yesterday but left the house without any information.** Some persons gathered there. I asked about the house of Ashutosh @ Sonu and they told me the location of his house in village Shahpur. None of those persons were ready to go to the house of Ashutosh @ Sonu with us.*

We all reached at the house of Ashutosh @ Sonu and met his mother. She told us that accused Ashutosh @ Sonu was available inside the house. Ashutosh @ Sonu was apprehended and arrested him vide arrest memo (Ex.PW28/A) bearing my signatures at point-B. His personal search was conducted vide memo (Ex.PW28/B) bearing my signatures at point-B.....

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*.....On the way, pursuant to secret information we stop at village Pallah, near Nahar situated on the road leads from Badarpur to Ballabgarh bye pass. We were standing there and waiting accused Dilip. **In the meantime, one person came from Pallah village side, he was pointed out by the secret informer who was standing at some distance. We apprehended that person on the pointing out secret informer. On inquiry, the name of that person was revealed as Dilip wanted in this case. I made inquiry from Dilip. I arrested the accused Dilip in this case vide his arrest memo Ex. PW28/H bearing my signatures at point B. His personal search was also conducted vide memo Ex. PW28/J bearing my signatures at point B. I recorded the disclosure statement of accused Dilip which is Ex. PW28/K bearing my signatures at point B. Accused Dilip had produced one gold ring after taking out it from left pocket of his wearing pant.....***

34. Moreover, the appellant Deepak in his statement recorded under Section 313 Cr.P.C. has accepted the fact that he was arrested from Tilak Nagar and stated that:-

“Q9. It is further in evidence against you that on 20.06.2011, at around 06:00 am, PW-33 Inspector Ram Niwas alongwith SI Mukesh Kumar went to Tilak Nagar, where one person was nabbed, whose name was later on revealed as Deepak, the accused present in this case (correctly identified by the witness). Thereafter, he was interrogated and arrested vide arrest memo Ex. PW-23/A and your personal search was conducted vide memo Ex. PW-23/B and your disclosure statement Ex. PW-23/C was recorded. What you have to say?

Ans. I was arrested from the house of my sister-in-law (saali) in Tilak Nagar and falsely implicated in this case. I had not made any disclosure statement and my signatures were obtained on blank paper and were used later on against me.”

35. From the perusal of the testimonies of PW-33 (Insp. Ram Niwas) and PW-23, (SI Mukesh Kumar), it is evident that during investigation it was revealed that the bearer of Mobile Phone no. 9628469398 is having close association with the alleged perpetrators of the crime and on the basis of Call Detail Records, the appellant/Deepak was arrested from Tilak Nagar in whose possession mobile phone bearing No. 9628469398 was recovered. The testimony of PW-29 (ASI Ved Vir Singh) and PW-28 (HC Sanjeev) reveals the manner in which appellant/accused Sonu @ Ashutosh Tiwari and Dalip Tripathi were arrested from Village Shahpur, District Pratapgrah, Uttar Pradesh and Village, Pallah, Faridabad, respectively. Perusal of the arrest memo's **Ex. PW-23/A, Ex. PW-28/A, Ex. PW-28/H**, reveals that the arrests

had been effected at the instance of police witnesses only and no independent witness had attested the arrest documents. In this context, we tend to rely on the judgment rendered by the Apex Court in the case of ***Baldev Singh vs. State of Haryana*** reported as (2015) 17 SCC 554, wherein the Supreme Court while dealing with the issue of absence of the Independent witness at the time of arrest has held as under:-

*“10. There is no legal proposition that evidence of police officials unless supported by independent evidence is unworthy of acceptance. **Evidence of police witnesses cannot be discarded merely on the ground that they belong to police force and interested in the investigation and their desire to see the success of the case.** Prudence however requires that the evidence of police officials who are interested in the outcome of the result of the case needs to be carefully scrutinised and independently appreciated. **Mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness.***

*11. Observing that no infirmity is attached to the testimony of police officials merely because they belong to police force and that conviction can be based on the testimony of police officials in **Girja Prasad v. State of M.P., (2007) 7 SCC 625**, it was held as under:-*

“25. In our judgment, the above proposition does not lay down correct law on the point. It is well settled that credibility of witness has to be tested on the touchstone of truthfulness and trustworthiness. It is quite possible that in a given case, a court of law may not base conviction solely on the evidence of the complainant or a police official but it is not the law that police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other

independent evidence. The presumption that every person acts honestly applies as much in favour of a police official as any other person. No infirmity attaches to the testimony of police officials merely because they belong to police force. There is no rule of law which lays down that no conviction can be recorded on the testimony of police officials even if such evidence is otherwise reliable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence. But, if the court is convinced that what was stated by a witness has a ring of truth, conviction can be based on such evidence.

26. It is not necessary to refer to various decisions on the point. We may, however, state that before more than half-a-century, in **Aher Raja Khima v. State of Saurashtra AIR 1956 SC 217**, Venkatarama Ayyar, J. stated:

“40. ... The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not judicial approach to distrust and suspect him without good grounds therefore. Such an attitude could do neither credit to the magistracy nor good to the public. It can only run down the prestige of the police administration.”

27. In **Tahir v. State (Delhi) (1996) 3 SCC 338**, dealing with a similar question, Dr A.S. Anand, J. (as His Lordship then was) stated:

“6. ... Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form the basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case.” (emphasis added)

36. Accordingly, in view of the decision rendered by the Apex Court as well as on appreciation of the evidence produced by the prosecution, we find no reason to disbelieve the testimonies of the police officials. Hence the contention raised by the learned counsel that the arrest of the accused is unworthy of acceptance or false/doubtful is without force.

RECOVERIES

37. Learned Counsel for the appellants vociferously argued that the recoveries effected at the instance of the Appellants cannot be relied upon as same have been planted on the appellants in order to falsely implicate them. Learned Counsel further contended that the recoveries are doubtful as the same were made in the presence of police personnel and no genuine and sincere efforts were made by the investigating officer to prove the recoveries with the presence of any Independent/Public witnesses.
38. On the other hand, learned APP for the State argued that the recoveries were made pursuant to the disclosure statements of appellants which are admissible under Section 27 of the Indian Evidence Act. Moreover, the argument that the recoveries were made in the presence of police witnesses only and are therefore highly doubtful is without any force as there is nothing on record to disbelieve the testimonies of the police witnesses.

39. The Trial Court while dealing with the aspect of recovery of the dead body, two gold rings and two mobile phones belonging to the deceased has held as under:-

“59. Further, prosecution has examined six witnesses to prove the recovery of dead body of deceased and fourteen cigarette butts from the house no. 156, Sector 92, Noida, Uttar Pradesh at the instance of accused Deepak Kumar. Two witnesses i.e. PW-33 Inspector Ram Niwas and PW-23 Sub-Inspector Mukesh are from Delhi Police. PW-16 Sub-Inspector Ashwani Kumar is from Police Station Phase II, Noida, Uttar Pradesh. PW-3 Ankur Bansal is complainant/son of deceased. PW-12 Vinod Kumar is driver of deceased and PW-5 Santo is mason who was residing on 17.06.2011 at the house from where dead body of deceased was recovered on 20.06.2011. All the six witnesses have corroborated each other on the aspect of recovery of dead body from the House no. 156, Sector 92, Noida Uttar Pradesh. The recovery memo of dead body of deceased Ex. PW-3/B is bearing signatures of PW-3, PW-12 and PW-23 who have identified the same thereon. PW-3, PW-16, PW-23 and PW-33 have identified the accused Deepak from whom instance the said dead body was recovered. PW-5 and PW-12 could not identified the accused Deepak due to lapse of time but they have categorically deposed that dead body was recovered from the said house no.156 and at that time one accused was present. The testimony of PW-3, PW-12, PW-23 and PW-33 cannot be discarded only on the ground that they are interested witnesses being police officer investigating the case or assisting in investigation or being son of the deceased or driver of the deceased particularly when their deposition inspire the confidence. PW-5 is independent witness who supported the case of prosecution on the aspect of recovery of dead body of deceased at said house no.156. This witness has proved also that he along with

his family was residing at said house no.156 and in the month of June, three persons came there and asked him to vacate the same; that they had also talked with the so called owner, who also asked him to vacate the house and he immediately vacated the house on 17.06.2011.

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66. PW-28 and PW-29 have been cross-examined by the accused persons but nothing have been come against the case of prosecution. Both the witnesses have stated in their respective cross examination that they went to Kunda, Pratapgarh in Indica car; that there were two rooms and a veranda in front of rooms in the house of accused Ashutosh; that the main door of saidhouse was bolted from inside; that door was knocked and mother of accused Ashutosh opened the same; that accused Ashutosh and his mother were present there and after some time brother of the said accused reached there; that the pant from which the recovery was effected, was on the hanger (khuti) of the room; that ring was sealed in the veranda; that the serial number of the currency notes were not noted down; that no mark or initial were mentioned to distinguish them from other similar notes. Hence, both the said witnesses told in their respective cross-examination the same number of rooms and veranda in the said house of accused Ashutosh; the same place where pant was lying from which recovery was effected; the same number of person present at the house; same person who was come later on there. They both have identified the accused Ashutosh Tiwari and currency notes of Rs 9500/-(Ex.MO-9/A-1 to Ex. MO-9/A-17) during trial. The identity of the said ring was not disputed as mentioned in the evidence of these two witnesses. I find no material contradiction/discrepancy (Sic.) in the deposition of said two witnesses in respect of arrest and recovery at his instance from his said house. Hence, it has been proved that accused Ashutosh Tiwari @ Sonu was arrested vide arrest memo Ex. PW-

28/A from his house at village Shahpur near Kunda, District Pratapgarh, Uttar Pradesh and pursuant to his disclosure statement currency notes of Rs. 9500/- (Ex.MO-9/A-1 to Ex. MO-9/A-17) and one gold ring having nine pieces of diamond were recovered from the pant lying on the hanger/khuti of the room of said house on 20.06.2011

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79. The disclosure statement of accused Deepak Kumar (Ex. PW-23/C) was recorded on 20.06.2011 by Inspector Ram Niwas (PW-33) in which he disclosed that he could point out the place where they have thrown the mobile phones of Sethji (deceased). The disclosure statements of accused Ashutosh Tiwari were recorded two times, first said statement (Ex. PW-28/C) was recorded on 20.06.2011 by Assistant Sub-inspector Ved Vir Singh (PW-29) and second statement (Ex. PW-31/A) on 21.06.2011 by Inspector Ajay Sharma (PW-31). In both said disclosure statements, accused Ashutosh Tiwari had disclosed that he could point out the place where they have thrown the mobile phones of Sethji (deceased). Accused Deepak and Ashutosh led the police officers i.e. PW-26, PW-31 and PW-33 to the drain near Commercial Complex, Noida where they had thrown the two mobile phones of deceased and from where two mobile phones were recovered with the help of divers Sunil (PW- 21) and Jasim (PW-22). Both the divers have deposed regarding pointing the place by two boys by throwing the stone, where they had thrown the mobile phones. They have also deposed regarding recovery of one mobile phone each by them. They both were called by the police officers (PW-31 and PW-33). One independent witness Ali Mohd (PW-19) has also deposed regarding recovery of two mobile phones from the said drain at the instance of two accused persons. This witness was a car mechanic and

having a counter at Brahmaputra Commercial Market, Sector -29, Noida from where said drain was 20/25 ft.

80. The pointing out cum seizure memo of said two mobile phones Ex. PW-19/A is bearing the signatures/thumb impressions of Head Constable Lile Singh (PW-26), Ali Mohd.(PW-19), Sunil (PW-21), Jasim (PW-22) and Sub-inspector Ram Niwas (PW-33) as witnesses. And their signature upon said memo have been identified by all the said five witnesses during trial. Said memo goes to show that the mobile which was taken out from drain by diver Sunil was of make Nokia C E 0434 having IMEI No. 353792045720963 and SIM Card was of Airtel and 8991101001183961356-H-1 was written on the SIM Card. And the mobile phone which was taken out from drain by diver Jasim was of make Nokia C E 0434, black colour, Model 2730-I, IMEI No. 359370038982587 and there was no SIM Card therein.

81. Accused Deepak Kumar and Ashutosh Tiwari have been correctly identified by PW-26, PW-31 and PW-33. It appears that PW-19 was not asked to identify the said two accused persons by the learned public prosecutor but in his deposition he mentioned the phrase 'two accused persons' which has some meaning. PW-21 had expressed his inability to identify the said two accused persons but he stated that as far as recollect their names were Deepak and Rahul. The name of Deepak has been rightly stated by him. PW- 22 has rightly mentioned name of said two accused as Sonu and Deepak but he had wrongly pointed out towards accused Dalip Tripathi who was stated by him similar to one of those two accused persons. But, he correctly pointed out towards accused Deepak. I find no material contradictions/discrepancies in the testimony of above mentioned said six witnesses. and in this regard Judgment passed by Hon'ble Supreme Court in State of Madhya Pradesh v. Dal Singh & Ors., Criminal Appeal

No.2303 of 2009 decided on 21.05.2013 can be referred wherein at para no. 7, it had been observed:

“So far as the discrepancies, embellishments and improvements are concerned, in every criminal case the same are bound to occur for the reason that witnesses, owing to common errors in observation, i.e., errors of memory due to lapse of time, or errors owing to mental disposition, such as feelings shock or horror that existed at the time to occurrence. The court must form its opinion about the credibility of a witness, and record a finding with respect to whether his deposition inspires confidence. “Exaggeration per se does not render the evidence brittle. But it can be one of the factors against which the credibility of the prosecution’s story can be tested, when the entire evidence is put in a crucible to test the same on the touchstone of credibility.” Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of a statement made by the witness at an earlier stage. “Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions.” The omissions which amount to contradictions in material particulars, ie., which materially affect the trial, or the core of the case of the prosecution, render the testimony of the witness as liable to be discredited.”

82. Hence, from the testimony of PW-19, PW-21, PW-22, PW-26, PW-31 and PW-33, it has been proved that two mobile phones both make Nokia CE 0434 were recovered from the drain, Brahamputra Commercial Market, Sector- 29, Noida, Uttar Pradesh on 23.06.2011 at the instance of accused Deepak Kumar and Ashutosh Tiwari.”

40. At the outset, we deem it appropriate to examine the law in relation to admissibility of recoveries effected at the instance of the accused persons pursuant to their disclosure statements. Section 27 of the Indian Evidence Act, 1872 provides that whatever information is given by the accused in consequence of which ‘*a fact is discovered*’ the same would be admissible in evidence, regardless of the fact that such information amounts to confession or not. The basic idea embedded under Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from an accused; such a discovery is true and admissible. The information might be confessional or non-inculpatory in nature, but if it results in discovery of a fact, it becomes reliable information.
41. In this regard, we rely on the decision of the Apex Court in the case of ***Sanjay and Ors. vs. The State (N.C.T. of Delhi)*** reported in ***AIR 2001 SC 979*** wherein the Apex Court culls out the principle that disclosure statement of the appellants might be confessional or non-inculpatory in nature, but if it results in discovery of a fact it becomes a reliable piece of information. Hence, the legislature permitted such information to be used as evidence by restricting the admissible portion to the minimum. Relevant paragraphs of the aforesaid judgment reads as under:-

16. The most important circumstance for the prosecution in the case is the disclosure statements of the accused persons and recoveries of the stolen property, blood stained shirt and weapon of offence

consequent upon such statements. The admissibility of the statements made by the accused persons to the police is challenged on twin grounds, i.e., (i) factually no such statement was made, and (ii) the statement made was inadmissible in evidence.

17. Section 25 mandates that no confession made to a police officer shall be proved as against a person accused of an offence. Similarly, Section 26 provides that confession by the accused person while in custody of police cannot be proved against him. However, to the aforesaid rule of Sections 25 to 26 of the Evidence Act, **there is an exception carved out by Section 27 providing that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Section 27 is a proviso to Sections 25 and 26. Such statements are generally termed as disclosure statements leading to the discovery of facts which are presumably in the exclusive knowledge of the maker. Section 27 appears to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true and accordingly it can be safely allowed to be given in evidence.**

18. As the Section is alleged to be frequently misused by the police, the courts are required to be vigilant about its application. The court must ensure the credibility of evidence by police because this provision is vulnerable to abuse. **It does not, however, mean that any statement made in terms of the aforesaid section should be seen with suspicion and it cannot be discarded only on the ground that it was made to a police officer during investigation. The court has to be**

cautious that no effort is made by the prosecution to make out a statement of accused with a simple case of recovery as a case of discovery of fact in order to attract the provisions of Section 27.

19. The position of law in relation to Section 27 of the Act was elaborately made clear by Sir John Beaumont in *Pulukuri Kottaya and others v. Emperor* (1947) L.R. 74 I.A. 65 wherein it was held:

"Section 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceding section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that discovery of a fact in consequence of information received from a person accused of any offence in the custody of a Police Officer must be deposed to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence; but clearly the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. Normally the section is brought into operation when a person in police custody produces from some place of concealment some object, such as a dead body, a weapon, or ornaments, said to be connected with the crime of which the informant is accused. Mr. Megaw, for the Crown has argued that in such a case the 'fact discovered' is the physical object produced, and that any information which relates distinctly to that object can be proved. Upon this view information given by a person that the body

*produced is that of a person murdered by him, that the weapon produced is the one used by him in the commission of a murder, or that the ornaments produced were stolen in a dacoity would all be admissible. If this be the effect of section 27, little substance would remain in the ban imposed by the two preceding sections on confessions made to the police, or by persons in police custody. **That ban was presumably inspired by the fear of the Legislature that a person under police influence might be induced to confess by the exercise of undue pressure. But if all that is required to lift the ban be the inclusion in the confession of information relating to an object subsequently produced, it seems reasonable to suppose that the persuasive powers of the police will prove equal to the occasion, and that in practice the ban will lose its effect.** On normal principles of construction their Lordships think that the proviso to S. 26, added by S. 27, should not be held to nullify the substance of the section. In their Lordships' view it is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that "I will produce a knife concealed in the roof of my house" does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement*

the words be added 'with which I stabbed A' these words are admissible since they do not relate to the discovery of the knife in the house of the informant."

20. In *State of Uttar Pradesh v. Deoman Upadhyaya* 1960CriLJ 1504 this Court held that Sections 25 and 26 were manifestly intended to hit an evil, viz., to guard against the danger of receiving in evidence testimony from tainted sources about statements made by persons accused of offences. These sections form part of a statute which codifies the law relating to the relevancy of evidence and proof of facts in judicial proceedings. The State is as much concerned with punishing offenders who may be proved guilty of committing of offences as it is concerned with protecting persons who may be compelled to give confessional statements. **Section 27 renders information admissible on the ground that the discovery of a fact pursuant to a statement made by a person in custody is a guarantee of truth of the statement made by him and the legislature has chosen to make on that ground an exception to the rule prohibiting proof of such statement. The principle of admitting evidence of statements made by a person giving information leading to the discovery of facts which may be used in evidence against him is manifestly reasonable.**

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21. In *Mohmed Inayatullah v. The State of Maharashtra* 1976CriLJ481 it was held that expression '**fact discovered**' includes not only the physical object produced but also place from which it is produced and the knowledge of the accused as to that. Interpreting the words of Section "**so much of the information**" as relates distinctly to the fact thereby discovered, the Court held that the word "**distinctly**" means "**directly**", "**indubitably**", "**strictly**", "**unmistakably**". The word has been advisedly used to limit and define the scope of provision inculpatory information.

The phrase "distinctly" relates "to the fact thereby discovered". The phrase refers to that part of information supplied by the accused which is the direct cause of discovery of a fact. The rest of the information has to be excluded.

*22. In Earabhadrapa alias Krishnappa v. State of Karnataka 1983CriLJ846 it was held that for the applicability of section 27 of the Evidence Act two conditions are pre-requisite, viz., (i) **information must be such as has caused discovery of the fact, and (ii) the information must 'relate distinctly' to the fact discovered.** Under Section 27 only so much of the information as distinctly relates to the fact really thereby discovered, is admissible. While deciding the applicability of Section 27 of the Evidence Act, the Court has also to keep in mind the nature of presumption under Illustration (a) to (s) of Section 114 of the Evidence Act. The Court can, therefore, presume the existence of a fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relations to the facts of the particular case. In that case one of the circumstance relied upon by the prosecution against the accused was that on being arrested after a year of the incident, the accused made a statement before the police leading to the recovery of some of the gold ornaments of the deceased and her six silk sarees, from different places which were identified by the witness as belonging to the deceased. In that context the court observed:*

"There is no controversy that the statement made by the appellant Ex.P-35 is admissible under S. 27 of the Evidence Act. Under S. 27 only so much of the information as distinctly relates to the facts really thereby discovered is admissible. The word 'fact means some concrete or material fact to which the information directly relates."

23. In a latest judgment this Court in *State of Maharashtra v. Damu, S/o Gopinath Shinde & Ors.* 2000 CriLJ 2301 has held that the Section 27 was based on the doctrine of confirmation by subsequent events and giving the section actual and expanding meanings, held:

"The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature, but it results in discovery of a fact it becomes a reliable information. Hence the legislature permitted such information to be used as evidence by restricting the admissible portion to the minimum. It is now well settled that recovery of an object is not discovery of a fact as envisaged in section. The decision of the Privy Council in *Pulukuri Kottaya v. Emperor* AIR 1947 PC 67 is the most quoted authority for supporting the interpretation that the 'fact discovered' envisaged in the section embraces the place from which the object was produced; the knowledge of the accused as to it, but the information given must relate distinctly to that effect."

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25. In his disclosure statement accused Mohabat Ali had stated:

"I got gold jewellery watches, cameras and clothes which are lying at my home. The revolver and Kirpan used in the commission of the offence are also lying in my house. I can recovered the (looted)

property and the weapon of offence from my house at Mangolpuri. I can also get arrested Ramkishan, the seller of the revolver."

26. *The relevant portion of statement of accused Nawabuddin is as under:*

"I took jewellery and watches of my and Sanjay's share to my residence. Sanjay dropped me on scooter. I can get recovered the (looted) property from my residence."

27. *Raising objections to the words "after commission of the offence" appearing in the disclosure statement of Vinod and "looted property" in the statement of Nawabuddin, the learned counsel for the appellants submitted that the whole of the statement was hit by Sections 24 to 26 of the Evidence Act and Section 162 of the Code of Criminal Procedure. We are not inclined to accept such a general statement. Even if the objectionable words (bracketed above) are deleted, the appellants cannot be conferred with any benefit which would entitle them to acquittal. It is not disputed that consequent upon the disclosure statements made, the articles mentioned therein were actually recovered at their instance from the place where such articles had been hidden by them. The mere use of the words "looted property" in relation to the articles seized which were found to have been taken away after the commission of the crime of murder and robbery would not change the nature of the statement. **The words do not implicate the accused with the commission of the crime but refer only to the nature of the property hidden by them which were ultimately recovered consequent upon their disclosure statements.***

Hyper technical approach, as projected by the defence counsel would defeat the ends of justice and have disastrous effect. The property recovered consequent upon the making of the disclosure statements has been

proved to be the property of the deceased, stolen after the commission of the offence of robbery and murder.

28. Besides Section 27, the courts can draw presumptions under Section 114, Illustrations (a) and Section 106 of the Evidence Act. In *Gulab Chand v. State of M.P.* [1995]3SCR27 where ornaments of the deceased were recovered from the possession of the accused immediately after the occurrence, this Court held:

"It is true that simply on the recovery of stolen articles, no inference can be drawn that a person in possession of the stolen articles is guilty of the offence of murder and robbery. But culpability for the aforesaid offences will depend on the facts and circumstances of the case and the nature of evidence adduced. It has been indicated by this Court in *Sanwat Khan v. State of Rajasthan* AIR 1956 SC 54 that no hard and fast rule can be laid down as to what inference should be drawn from certain circumstances. It has also been indicated that where only evidence against the accused is recovery of stolen properties, then although the circumstances may indicate that the theft and murder might have been committed at the same time, it is not safe to draw an inference that the person in possession of the stolen property had committed the murder. A note of caution has been given by this Court by indicating that suspicion should not take the place of proof. It appears that the High Court in passing the impugned judgment has taken note of the said decision of this Court. But as rightly indicated by the High Court, the said decision is not applicable in the facts and circumstances of the present case. The High Court has placed reliance on the other decision of this Court rendered in *Tulsiram Kanu v. State* AIR 1954 SC 1. In the said decision, this court has indicated that the

presumption permitted to be drawn under Section 114, Illustration (a) of the Evidence Act has to be drawn under the 'important time factor'. If the ornaments in possession of the deceased are found in possession of a person soon after the murder, a presumption of guilt may be permitted. But if several months had expired in the interval, the presumption cannot be permitted to be drawn having regard to the circumstances of the case. In the instant case, it has been established that immediately on the next day of the murder, the accused Gulab Chand had sold some of the ornaments belonging to the deceased and within 3-4 days the recovery of the said stolen articles was made from his house at the instance of the accused. Such close proximity of the recovery, which has been indicated by this Court as an 'important time factor', should not be lost sight of in deciding the present case. It may be indicated here that in a latter decision of this Court in Earabhadrapa v. State of Karnataka 1993 (2) SCC 330, this Court has held that the nature of the presumption and Illustration (a) under Section 114 of the Evidence Act must depend upon the nature of evidence adduced. No fixed time-limit can be laid down to determine whether possession in the recent or otherwise and each case must be judged on its own facts. The question as to what amounts to recent possession sufficient to justify the presumption of guilt varies according as the stolen article is or is not calculated to pass readily from hand to hand. If the stolen articles were such as were not likely to pass readily from hand to hand, the period of one year that elapsed cannot be said to be too long particularly when the appellant had been absconding during that period. In our view, it has been rightly held by the High Court that the accused was not affluent enough to possess the

said ornaments and from the nature of the evidence adduced in this case and from the recovery of the said articles from his possession and his dealing with the ornaments of the deceased immediately after the murder and robbery a reasonable inference of the commission of the said offence can be drawn against the appellant. Excepting an assertion that the ornaments belonged to the family of the accused which claim has been rightly discarded, no plausible explanation for lawful possession of the said ornaments immediately after the murder has been given by the accused. In the facts of this case, it appears to us that murder and robbery have been proved to have been integral parts of the same transaction and therefore the presumption arising under Illustration (a) of Section 114 Evidence Act is that not only the appellant committed the murder of the deceased but also committed robbery of her ornaments."

29. In the instant case also, the disclosure statements were made by the accused persons on the next day of the commission of the offence and the property of the deceased was recovered at their instance from the places where they had kept such properties, on the same day. In the same affect are the judgments in *Mukund Alias Kundu Mishra & Anr. v. State of M.P.*; 1997 Cri LJ 3182 and *Ronny Alias Ronald James Alwaris & Ors. v. State of Maharashtra* 1998 CriLJ 1638. In the latter case the Court held:

"Apropos the recovery of articles belonging to the Ohol family from the possession of the appellants soon after the robbery and the murder of the deceased (Mr. Mohan Ohol. Mrs. Runi Ohol and Mr. Rohan Ohol) which possession has remained unexplained by the appellants the presumption under Illustration (a) of Section 114 of the Evidence Act will be attracted. It needs no

discussion to conclude that the murder and the robbery of the articles were found to be part of the same transaction. The irresistible conclusion would therefore, be that the appellants and no one else had committed the three murders and the robbery."

30. The disclosure statements by the accused persons stand established by the testimony of Satish Khanna (PW22) and the investigating officer. The trial court was, therefore, justified in relying upon the circumstances of the disclosure statements of the accused persons and consequent recovery of stolen property blood stained shirt of Vinod appellant besides weapon of offence. We find no substance in the submission of the learned defence counsel that as no independent witnesses were associated with the recoveries, doubt is created in the prosecution version Satish Khanna (PW-22) is the natural witness being brother of the deceased to be present during the investigation when the accused at stated to have made the statements within the meaning Section 27 of the Evidence Act."

42. Having perused the reasoning of the Trial Court in the present case as well as the dicta of the Apex Court in relation to admissibility of recoveries effected at the instance of the accused persons pursuant to the disclosure statements, we deem it appropriate to examine the testimonies of the relevant prosecution witnesses. PW-3 (Ankur Bansal/Son of the deceased) in his examination-in-chief has deposed as under:

"3. Then, in the morning hours of 20.06.2011, I was called to the Police Station C.R. Park and a boy named Deepak was already in the custody of the police. At the instance of the said boy Deepak, who had accompanied the team of SHO and other police

officials and myself at House No. B-156, Sector No. 92, Noida, which was a built up house in a plot belonging to my mother, where we found the dead body of my father Late Sh. Vinod Kumar Bansal from the kitchen of the said house. I identified the dead body of my father. I identify my signature at point-A on the pointing out cum recovery of the dead body memo, which is Ex.PW3/B. Police prepared site plan of the place of the recovery of dead body, which is Ex.PW3/C, bearing my signature at point-A. Police had also collected some buds of the cigarette, which were 14 in number, which were sealed and seized by the police. I am a witness to the seizure memo of the same, which is Ex.PW3/D, bearing my signature at point-A. Noida police also reached at the spot and prepared panchnama, which is Ex.PW3/E, bearing my signature at point-A. After postmortem on the dead body, the same was handed over to us on 20.06.2011.

4. After a few days, police from C.R. Park informed me that they had apprehended two more persons in connection with our case and **that some belongings of my father i.e. rings had been recovered by the police and those items could be released to us by the Court. I appeared in the Court of Metropolitan Magistrate and had identified two rings belonging to my father before the Metropolitan Magistrate.** I can identify my signature on TIP proceedings if shown to me. Thereafter, the said two rings as well as Corrola car was released me on superdari by the Court of Metropolitan Magistrate. I identify my signatures on superdarinama regarding release of car (Ex.PW3/F) bearing my signature at point A. I identify my signatures on superdarinama regarding release of rings (Ex.PW3/G) bearing my signature at point A.”

In his cross-examination he has deposed that:

“Noida police official had reached there within 20-25 minutes. Noida police officials had come by two-three

gypsy like vehicle. My car was following the police van. Accused Deepak was accompanying with the police. No one was residing in the adjoining houses of House No. B-156, Sector-92.”

43. PW-33 (Insp. Ram Niwas) in his examination-in-chief has deposed that:

“Thereafter, I alongwith accused Deepak, SHO, PS C.R. Park and other Senior officials proceeded to Noida, U.P. On the instance and identification of the accused Deepak, a dead body of male person was recovered at B-156, Sector-92, Noida, near Omax Building, which was highly decomposed. The pointing out of scene of crime and recovery memo of dead body was prepared by me and same is already exhibited as Ex.PW3/B. The dead body was also identified by the son of the deceased. SHO, PS C.R. Park informed the local police of Noida. The cigarette buds were found scattered on the grass outside the room, where dead body was found. The cigarette buds were taken into possession vide memo already exhibited as Ex.PW3/D, bearing my signature at point B. The sketch of place of recovery/place of occurrence was prepared by me on my observation and same is already exhibited as Ex.PW3/C. I recorded the statement of witnesses and Section 302 IPC was added during investigation.

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On 23.06.2011, both the accused persons namely Deepak and Ashutosh led the police party to the ‘Nala’ near commercial complex Noida from where the accused persons got recovered the two mobile phones that were robbed off from the deceased and thrown in the ‘Nala’ with the help of two divers. The recovery memo was prepared, which is already exhibited as Ex.PW19/A, bears my signature at point B.

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Accused Dilip also led us to the 'Nala' near commercial complex Noida, Sector-29, where he alongwith co-accused had thrown the robbed mobile phones of deceased. IO prepared the pointing out memo of the said place already exhibited as Ex.PW31/F, bearing my signature at point A."

In his cross-examination, he has deposed as under:

"There was number plate depicting the plot number affixed at Plot No. B-156. Crime Team was called by SHO, PS C.R. Park at about 11.45 am. I do not know at what time crime team reached there, but I had left the spot. Local Police of Noida reached in two vehicles consisting of 8/9 police officials, who reached at about 11.30 am. I remained at the place of recovery for about two hours. Noida police was present at the place of recovery, when I left from there. I had recorded statements of Ankur Bansal, Santu, SI Mukesh and driver of Ankur Bansal, at the spot. Santu was one of the mason, who was called from under construction building. Four more labourers were working at the construction site.

Recovery was effected from the kitchen constructed in the plot. The said plot had no permanent gate or door affixed at its outer boundary. The doors of the rooms were found to be closed, but not bolted either from inside or outside. It is correct that there were passersby on the road in front of the plot, but their frequency was very less. The said cigarette buds were sent to FSL for their examination.

I had recorded disclosure statement of accused Deepak, at the place of his arrest, in the presence of SI Mukesh. No audio or video was prepared.

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On 23.06.2011, I alongwith accused Deepak and Ashutosh with SHO/IO had departed from PS C.R park

at about 02.30 pm in Government Gypsy. I do not remember the registration of the same. The distance is about 15 km police station. **The divers were called by myself after reaching at the place of recovery. I had personally gone from Nala to kalandikunj to take the divers.** It took half an hour to returned back. I do not remember if the local police was informed by the IO or not. I do not recollect if any payment was made by the IO to the divers. Main road was at a distance of about 100 meters from the Nala. Public persons had gathered there on seeing the police officials. Site plan and photographs of this spot were not prepared. It is wrong to suggest that accused Deepak and Ashutosh had not pointed out the said Nala as alleged or that no divers were called by me or that nothing as stated by me above has been done by me in this case or that I am deposing falsely. **It is further wrong to suggest that pointing out memos in that regard were prepared in the police station itself. It is wrong to suggest that divers were not joined and planted in this case.**”

44. PW-5 (Sh. Santo) in his examination-in-chief has deposed as under:

“After about three days, police had reached at house no. 156, where I was called. One person was also accompanied with the police, who had got vacated the house from me alongwith two other persons. **One dead body was found in the kitchen of premises no. 156.** None identified the dead body at the spot. I do not know about the identity of dead body. Name of person, who got recovered the dead body could not be revealed to me at the spot. Since 2 ½ -3 years have been lapsed, therefore, I cannot identify the said person in the Court. Police had recorded my statement. Police had seized

the dead body vide seizure memo (Ex. PW3/B) bearing my thumb impression at point B.....”

In his cross-examination he has deposed that:

“It is wrong to suggest that no such dead body was recovered in my presence from the house no. 156. It is wrong to suggest that three persons came at the spot or that asked me to vacate the house no. 156.....”

45. PW-23 (SI Mukesh Kumar) in his examination-in-chief has deposed as follows:

“Thereafter I alongwith the IO SI Ram Niwas, complainant Ankur Bansal, his driver and other senior officials reached at House No. B-156, Sector-92, Noida and at his instance, we reached in the kitchen of the said house and at the instance of accused Deepak, dead body of Vinod Kumar Gupta, father of the Ankur Bansal, was recovered from the said kitchen. Local police officials also reached there. Ankur Bansal identified the dead body of his father Vinod Kumar Gupta. IO prepared the pointing out memo vide Ex. PW-3/B bearing my signature at point ‘C’ and accused Deepak put his signature at point ‘D’. IO also prepared the site plan of the recovery of the dead body vide Ex. PW-3/C which bears my signature at point ‘C’. The dead body was taken in possession by the local police of P.S. Sector-92, Noida.....”

46. PW-12 (Sh. Vinod) in his examination-in-chief has deposed that :

*“.....As far as, I can recollect on 20th, I had accompanied Sh. Ankur Bansal, s/o Sh. V.K. Bansal to Sector-92, Noida. Our car had followed the Police van. **One person, who was in the custody of the police was accompanying with the police in Police Van, when we had reached at Sector-92, Noida. I had gone inside the house from where dead body of Sh. V.K. Bansal was found. Dead body was seized by the police. I have seen***

the seizure memo of dead body Ex. PW3/B, bearing my signature at point-C. I also identify my signature at point-B on the site map (Ex. PW3/C). I also identify my signature at point-B on the seizure memo of cigarette butts (Ex. PW3/D). Since, three years have lapsed since the incident, therefore, I am not in position to identify the person, who had accompanied with the police at house at Sector-92, Noida. I am illiterate. Now, I do not remember even the name of the said person. I am not in a position to recollect the name of the said person, who had accompanied with the police, if the same disclosed to me and cannot identify him even, if he is shown to me. Due to lapse of time, I forget the name and description of his physique.”

In his cross-examination, he has deposed as under:

“.....At the time, when we reached there, there was no person inside the house at Sector-92, Noida, where dead body was found. Some public persons had gathered outside the house after seeing the police.....

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Police had prepared site map of the house at Sector-92, Noida, while we were present at Sector-92, Noida. Wife of Sh. Ankur Bansal had not accompanied us at Sector-92, Noida. There were one-two relatives of Sh. V.K. Bansal, when we were at Noida. There were four police officials, who were in police uniform apart from the driver and there were two other persons, who were in police uniform. I cannot say which of those two persons was in the custody of the police. It is wrong to suggest that I am deposing falsely being driver of Sh. V.K. Bansal (deceased) as well as son of deceased.”

47. PW-16 (SI Ashwani Kumar) in his examination-in-chief has deposed that:

“On 20.06.2011 I was posted at PS: phase II, NOIDA, UP. On that day on the request of Delhi Police, I had reached B-156, Sector-92, NOIDA UP, where I saw one dead body of male person lying in the kitchen. The said dead body was identified by Ankur Bansal as of his Father V.K. Bansal. The accused Deepak was also present at the spot along with the police on whose instance the dead body was recovered. I had prepared the inquest papers vide Ex. PW/3/F running into three pages bearing my signatures at point B.”

I can identify the accused Deepak, if produced before me. The witness has identified the accused Deepak by pointing towards him.”

48. HC Sanjeev who was examined in the Court as PW-28 deposed as under:

“IO had inquired accused Sonu @ Ashutosh. Accused had confessed his involvement in the offence of this case. IO had arrested the accused Sonu @ Ashutosh vide his arrest memo Ex.PW28/A, bearing my signature at point-A. This personal search of accused was also carried out vide personal search memo Ex.PW28/B, bearing my signature at point-A. IO had interrogated the accused and recorded his disclosure statement Ex.PW28/C, bearing my signature at point-A. Pursuant to his disclosure statement, he pointed out his pant, which was hanging in the house and he got recovered Rs. 9500/- cash alongwith one golden colour ring having 9 stones (nug).

...We apprehended the said person, whose name after inquiry, was revealed as Dalip, who was wanted in this

case. On the cursory search of accused Dalip, one golden ring having one big nug was recovered. Accused Dalip was arrested in this case vide arrest memo (Ex.PW28/H) bearing my signatures at point-A. His personal search was conducted vide memo (Ex.PW28/J) bearing my signatures at point-A. ₹100/- were found from the personal search of accused. IO had interrogated the accused and recorded his disclosure statement (Ex. PW28/K) bearing my signatures at point-A. The golden ring having one big nug was sealed with the seal of VVS in a cloth pullanda and seized vide seizure memo (Ex.PW28/L) bearing my signatures at point-A. Seal after use was handed over to me. We brought accused Dalip at Delhi and case property was deposited in the malkhana. My statement was recorded by the IO.”

49. PW-29 (ASI VedVir Singh) deposed as under:

“...His disclosure statement (Ex. PW-28/C) was recorded bearing my signatures at point-B. Pursuant to his disclosure statement he pointed out his pant, which was hanging in his house. He took out Rs. 9500/- and one gold ring having nine pieces of diamond and produced the same before me. He disclosed that some of the money was taken from the body of deceased and some money was earned by selling gold chain of deceased. The ring was belonging to the deceased.

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I recorded the disclosure statement of accused Dilip which is Ex.PW28/K bearing my signatures at point B. Accused Dilip had produced one gold ring after taking out it from left pocket of his wearing pant. The ring was having one piece of stone like diamond and stated that the same was belonged to deceased Vinod Gupta. I sealed the said ring in a cloth pulanda with seal of VVS and seized the same vide seizure memo Ex.PW28/L bearing my signatures at point B. The seal

*was handed over to HC Sanjeev Kumar after use. Thereafter, we return back to Delhi. I handed over the case file alongwith the accused to the SHO. **The case property was deposited in Malkhana.** The accused was got medically examined and then he was lodged in the lock up. I identify the accused Ashutosh @ Sonu, Dilip and Rakesh Soni who are present in the court.”*

In his cross-examination, he deposed as under:

“...The pant from which the recovery was effected was on the hanger (khutti) of the room. Several clothes were hanging on the Khutti inside the room. It was a full pant. I do not remember the colour of the pant. Pant was not seized. The money and the ring were found bare (not wrapped in any paper or cloth) in the same pocket. At the time of said recovery mother and brother of accused Ashutosh and two other public persons were also present. The ring was sealed in the Veranda. I had not mentioned the serial number of currency notes in the seizure memo Ex.PW28/D. I had not put my initials or any mark on the currency notes to distinguish them from other similar currency notes. The currency notes were not sealed. I had not prepared any memo as regards handing over the seal to HC Sanjeev. I had taken back the seal from HC Sanjeev in the Police station on the next day. I had not prepared any memo at the time of receiving back the seal from HC Sanjeev. I remained in the house of Ashutosh for about 1½ to 2 hours.

I had not taken any photographs from the alleged place of recovery. I had not prepared any site map of the place of recovery.

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It is wrong to suggest that I am deposing falsely. It is wrong to suggest that I had never joined the investigation of present case or that accused had been falsely implicated in the present case. It is further

wrong to suggest that nothing has been recovered from the pointing out of accused Sonu @ Ashutosh. It is wrong to suggest that alleged recovery has been planted upon the accused. It is wrong to suggest that all the documents have been prepared in the PS CR Park. It is wrong to suggest that none of the accused made any disclosure statement. It is wrong to suggest that disclosure statements was made by me on my own.

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The accused Dalip was overpowered and caught by me along with HC Sanjeev. Rest of the team was standing at a distance. We had waited for accused Dalip at spot for about 15-20 minutes at the spot. None of the public person joined the investigation. We had offered our search prior to conducting search of accused Dalip, however, he refused to carry out our search. There is no written memo was prepared to this effect.

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We had not informed the local police about the said proceedings in respect of accused Dalip and recovery from his possession. Ring was recovered from the left pocket of his wearing pant.”

50. PW-19 (Ali Mohd.) in his examination-in-chief has deposed as under:

“I am residing at G-95, Abu Fazal Enclave, Jamia Nagar, Delhi. I am car mechanic and having a counter at Brabamputra commercial Market, Sector-29 Noida. I do not remember the exact date. As far as I can recollect, in the afternoon hours, in June-2011, police officials had come alongwith two accused persons in the market at Brahamputra Comercial Market, Sector-29 Noida. There is a Nala (drain) near market and the place where my counter is situated. At the instance of the accused persons, two divers, who had

come along with the police official had taken out two mobile phones from the Nala, which were seized by the police officials. I identify my signature at point-A on Ex.PW19/A on pointing out –cum-seizure memo of mobile phones.”

51. PW-21 (Sh. Sunil) in his examination-in-chief has deposed that:

“I am diver (gotakhor) by profession. I do not remember the month but the date was 23 of the year of 2011, on that day I along with Jasim were taken to Ganda Nala in Noida by our thekedar and the police. Two persons were accompanied with the police. The said two persons had pointed out the place in the Ganda Nala by throwing the piece of stone where they thrown the mobile phone. I along with Jasim jumped inside the Ganda Nala and took out one mobile phone each and handed over the same to police. The Police seized the same vide seizure memo Ex. PW-19/A bearing my LTI at point B. I do not remember sector number where from we took out mobile phones from Ganda Nala. I do not remember the faces of the those two persons as three four years have passed since then. But as far as recollect their names were Deepak and Rahul. I cannot identify those two persons, if produced before me.”

52. PW-22 (Sh. Mohd. Jasim) in examination-in-chief has deposed as under:

“I am diver (gothakhor) by profession. Earlier I was residing at B-52, KalindiKunj, New Delhi. On 21.06.2011, I along with Sunil and the kedar Bhola were taken to Ganda Nala in Noida Sector-33 by the police. Two accused persons were accompanied with

the police officials. At the instance of police we made efforts to search mobile phones from the Nala. I along with Sunil jumped inside the Ganda Nala and took out one mobile phone each and handed over the same to police. The police seized the same vide seizure memo Ex. PW-19/A bearing my LTI at point C. The name of the said two boys who were accompanying with the police were Sonu and Deepak. I can make efforts to identify those two persons, if produced before me. Witness points out towards accused Deepak and Dilip as the persons who were similar to the persons present with the police at the time when they had taken mobile phones from the Nala.”

In his cross-examination he deposed that:

“... I had not told the name of Deepak and Rahul to Sunil, other diver who has accompanied with me today in the Court. I had seen the faces of those two boys at the time of taking out mobile phone from the drain and they were standing near the drain. Those boys had thrown stone in the drain to point out the place where mobiles were thrown by them. Police had not made any public persons as witness to the proceedings. There was mud in the drain whose depth was upto my stomach. Police was having an old gypsy. The time when we took the mobile phone from the drain might be 2.00/2.30 pm. It is wrong to suggest that I am deposing falsely at the instance of police. It is wrong to suggest that those boys had not pointed the place by throwing stone in the Nala.”

53. PW-26 (HC Lile Singh) in his examination has deposed that:

“On 23rd June 2011, I alongwith SHO Ajay kumar, SI Ram Niwas, another staff member and accused Sonu

@ Ashutosh & Deepak had gone to Kalandi Kunj from where two divers were hired and then we had gone to Sector-29, Noida near Bharamputra Market near drain (Nala). Both the accused persons namely Sonu @ Ashutosh and Deepak pointed out the place in the Nala adjoining the road, pursuant to their disclosure to the effect that they had thrown two mobile phones belonging to Sh. V.K.Bansal, after robbing and killing him. With the assistance of divers namely Sunil & Jasim two mobile phones were taken out from the Nala. One mobile phone each was taken out by both the divers. SHO Ajay Kumar prepared a seizure memo-cum-pointing out memo, which is Ex.PW19/A, bearing my signature at point-D. One public witness Ali, whose full name I am not able to recollect had also witnessed the said memo (Ex.PW19/A). Accused Deepak and Sonu are present in the Court today, correctly identified by the witness. I can identify the case property i.e mobile phones if shown to me. At this stage, MHC (M) has produced two mobiles in unsealed condition, both make Nokia. One mobile is C-500 and IMEI number is 353792045720963. IMEI number of other mobile phone is 359370038982587. Both phones are shown to the witness, who identifies the same and states that both mobile phones were recovered from nala at the instance of accused persons. Mobile phones are (Ex. MO-7) and Ex. MO-8)."

54. PW- 31 (Insp. Ajay Sharma) in his examination-in-chief has deposed as under:

"... On 23.06.2011, at the instance of accused Deepak and Ashutosh @ Sonu, two mobile phones of deceased which were thrown in the gandanala, were recovered

from gandanala, adjacent to Brahmaputra Complex, Sector 29, Noida, UP with the help of two divers namely Sunil and Mohd. Sajim vide seizure cum pointing out memo of place of recovery which is (Ex. PW-19/A) bearing my signatures at point X.

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I can identify the case property i.e. mobile phones if shown to me. At this stage, MHC(M) has produced two mobiles in unsealed condition, both make Nokia. One mobile is C-500 and IMEI number 353792045720963. IMEI number of other mobile phone is 359370038982587. Both phones are shown to the witness, who identifies the same and states that both mobile phones were recovered from gandanala at the instance of accused persons. Mobile phones are Ex MO-7 and Ex. MO-8.”

(RECOVERY OF DEAD BODY)

55. The police officers i.e. PW-23(SI Mukesh Kumar)& PW-33 (Investigating officer) went in the police vehicle and were followed by the complainant i.e. PW- 3 (Ankur Bansal/Son of the deceased)in his own vehicle along with PW-12 (driver) and other police witnesses.

- a) From the perusal of testimonies of the police witnesses i.e. PW-16 (SI Ashwani Kumar), PW-23 (SI Mukesh Kumar) and PW-33 (Insp. Ram Niwas), it is revealed that the dead body of the deceased (**Ex. PW-3/B**) was recovered from the kitchen of House No. B-156, Sector No. 92, Noida which belongs to the deceased at the instance of the appellants Deepak in presence of police witnesses. The testimonies of all the police witnesses corroborate the testimonies of each other and further **Ex. PW-3/B** (recovery memo of the Dead

body), *Ex. PW-3/C* (Site plan without scale), *Ex. PW-25/A* (scaled site plan) also supports the version of the prosecution.

- b) The testimony of PW-3 (Ankur Bansal/Son of the deceased) and PW-5 (Santo) further proves that the dead body was recovered at the instance of the appellant/Deepak from House No. B-156, Sector No. 92, Noida. The dead body of the deceased was identified by PW-3 who deposed that “*At the instance of the said boy Deepak, who had accompanied the team of SHO and other police officials and myself at House No. B-156, Sector No. 92, Noida, which was a built up house in a plot belonging to my mother, where we found the dead body of my father Late Sh. Vinod Kumar Bansal from the kitchen of the said house. I identified the dead body of my father.*”
- c) Even though PW-5 (Santo) was not able to identify the appellant Deepak, however, he unequivocally deposed that “*One dead body was found in the kitchen of premises no. 156.*”
- d) Further the testimony of PW-12 (Vinod) corroborates the testimony of PW-3 (Ankur Bansal/Son of the deceased) and PW-5 (Santo) and police witnesses PW-16 (SI Ashwani Kumar), PW-23 (SI Mukesh Kumar) and PW-33 (Insp. Ram Niwas) which establishes the presence of the appellant, at whose instance the recovery of the dead body was affected. PW-12 (Vinod) deposed that “*I had gone inside the house*

from where dead body of Sh. V.K. Bansal was found. Dead body was seized by the police.'

56. From the above discussion, it is clear as to how the dead body was recovered at the instance of the appellant/Deepak from House No. B-156, Sector 92, Noida.

(RECOVERY OF THE GOLD RINGS OF THE DECEASED)

57. In addition to the aforesaid, the record reflects that two gold rings belonging to the deceased were recovered from the Appellants Dalip Tripathi and Sonu @ Ashutosh. The appellant Dalip Kumar Tripathi was arrested vide arrest memo (*Ex. PW-28/H*) from Faridabad at the pointing out of the secret informer. His personal search was also conducted vide memo *Ex. PW-28/J* and his disclosure statement was recorded vide *Ex. PW-28/K*. The seizure memo *Ex. PW-28/J* reveals that a gold ring was recovered from appellant/Dalip Kumar Tripathi which belonged to the deceased. The other gold ring was recovered from Appellant/ Sonu @ Ashutosh. Appellant/Sonu @ Ashutosh was arrested pursuant to which his personal search was conducted vide memo *Ex. PW-28/A*. His disclosure statement was recorded (*Ex. PW-28/C*) pursuant to which he pointed out towards his pants which were hanging in the house. He took out a gold ring which had nine pieces of diamonds. The ring was seized vide seizure memo *Ex PW-28/D*.
58. From the perusal of testimonies of police witnesses i.e. PW-28 (HC Sanjeev) and PW-29 (ASI Ved Vir Singh), it is evident that two gold rings were recovered from the appellants /Dalip Kumar Tripathi and appellant/Sonu @ Ashutosh pursuant to their arrests and disclosure

statements in the presence of police witnesses. The testimonies of both the police witnesses corroborate the testimonies of each other and further *Ex. PW-28/H* (Arrest memo of Dalip Tripathi), *Ex PW-28/J* (seizure memo of gold ring recovered from Dalip Tripathi), *Ex. PW-28/A* (Personal search memo of Sonu @ Ashutosh) and *Ex PW-28/D* (seizure memo of gold ring recovered from Sonu @ Ashutosh) also supports the version of the prosecution.

59. Hence, from the perusal of the record it is evident that recoveries of the rings were made at the instance of the appellants Dalip Tripathi and Sonu @ Ashutosh. Moreover, the identification of both the rings which belonged to the deceased by PW-3 (Ankur Bansal/Son of the deceased) further strengthens the case of the prosecution.

(RECOVERY OF MOBILE PHONES OF THE DECEASED)

60. The record reflects that in pursuance of the disclosure statements and on pointing out of the appellants/Deepak Kumar and Sonu @ Ashutosh Tripathi, two mobiles phones were recovered from Ganda Nala adjacent to Brahamaputra Complex, Sector 29, Noida, U.P.

- a) From the perusal of testimonies of police witnesses i.e. PW-26 (HC Lile Singh) and PW-31 (Insp. Ajay Sharma), it is revealed that two mobile phones were recovered from the Ganda Nala adjacent to Brahamaputra Complex, Sector-29, Noida, UP by PW-21 (Sunil, Gothakhor) and PW-22 (Mohd. Jasim, Gothakhor). The testimonies of both the police witnesses are corroborative and further *Ex. PW-19/A* (seizure and pointing out memo of the two mobile phones) also supports the version of the prosecution.

b) The testimony of PW-21 (Sunil)/Gothakhor, PW-22 (Mohd. Jasim/Gothakhor) further proves that the two mobile phones were recovered pursuant to the pointing out of the appellants from the Ganda Nala adjacent to Brahmaputra Complex, Sector-29, Noida, UP by PW-21 (Sunil, Gothakhor) and PW-22 (Mohd. Jasim, Gothakhor). Testimony of the PW-19 (Ali Mohd./Mechanic) further corroborates the version of PW-21 (Sunil, Gothakhor) and PW-22 (Mohd. Jasim, Gothakhor) who deposed that ‘At the instance of the accused persons, two divers, who had come along with the police official had taken out two mobile phones from the Nala, which were seized by the police officials. I identify my signature at point-A on Ex.PW19/A on pointing out—cum-seizure memo of mobile phones.’

61. Though there are few minor inconsistencies in the testimonies of the two divers i.e. PW-21 (Sunil, Gothakhor) and PW-22 (Mohd. Jasim, Gothakhor), however, the inconsistencies are not so grave and do not go to the root of the case. Moreover, we cannot lose sight of the fact that PW-21 (Sunil/Gothakhor) during the recording of his testimony has rightly mentioned the name of the appellant as Deepak and PW-22 (Mohd. Jasim/Gothakhor) has correctly identified appellant/Deepak in Court. Hence, from the perusal of the record, it is further evident that two mobile phones had been recovered at the instance of the appellants/Deepak and Sonu @ Ashutosh from the Ganda Nala adjacent to Brahmaputra Complex, Sector-29, Noida, UP.

62. Though, at the time of recovery of two mobile phones from the Ganda Nala adjacent to Brahmaputra Complex, Sector-29, Noida, UP, the Investigating Agency has produced PW-19 (Ali Mohd./Mechanic) as an Independent witness. However, learned counsel for the appellants laboured hard to contend that recoveries are doubtful as the same were made in the presence of police personnel and no genuine and sincere efforts were made by the investigating officer to prove the recoveries with the presence of any Independent/Public witnesses. In this regard, we tend to rely on the judgment of the Apex Court in the case of **Baldev Singh vs. State of Haryana** reported as (2015) 17 SCC 554, wherein the Hon'ble Supreme Court held as follows: -

*“10. There is no legal proposition that evidence of police officials unless supported by independent evidence is unworthy of acceptance. **Evidence of police witnesses cannot be discarded merely on the ground that they belong to police force and interested in the investigation and their desire to see the success of the case.** Prudence however requires that the evidence of police officials who are interested in the outcome of the result of the case needs to be carefully scrutinised and independently appreciated. **Mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness.***

*11. Observing that no infirmity is attached to the testimony of police officials merely because they belong to police force and that conviction can be based on the testimony of police officials in **Girja Prasad v. State of M.P., (2007) 7 SCC 625**, it was held as under:-*

“25. In our judgment, the above proposition does not lay down correct law on the point. It is well settled that credibility of witness has to be tested on the touchstone of truthfulness and trustworthiness. It

*is quite possible that in a given case, a Court of law may not base conviction solely on the evidence of the complainant or a police official but it is not the law that police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption that every person acts honestly applies as much in favour of a police official as any other person. **No infirmity attaches to the testimony of police officials merely because they belong to police force. There is no rule of law which lays down that no conviction can be recorded on the testimony of police officials even if such evidence is otherwise reliable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence.** But, if the Court is convinced that what was stated by a witness has a ring of truth, conviction can be based on such evidence.*

26. It is not necessary to refer to various decisions on the point. We may, however, state that before more than half-a-century, in **Aher Raja Khima v. State of Saurashtra AIR 1956 SC 217**, Venkatarama Ayyar, J. stated:

“40. ... The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not judicial approach to distrust and suspect him without good grounds therefore. Such an attitude could do neither credit to the magistracy nor good to the public. It can only run down the prestige of the police administration.”

27. In Tahir v. State (Delhi) (1996) 3 SCC 338, dealing with a similar question, Dr A.S. Anand, J. (as His Lordship then was) stated:

‘6. ... Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form the basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case.’
(emphasis added)

63. The case of the prosecution is fortified from the unequivocal recoveries of the dead body, gold rings and two mobile phones at the instance of the appellants. The perusal of testimonies of the PW-3 (Ankur Bansal/Son of Deceased) and PW-5 (Santo) and police witnesses PW-16 (SI Ashwani Kumar), PW-23 (SI Mukesh Kumar) and PW-33 (Insp. Ram Niwas) establishes that the dead body of the deceased was recovered from House No. B-156, Sector 92, Noida, UP at the instance of the appellant/Deepak. Further, the testimonies of the PW-28 (HC Sanjeev) and PW-29 (ASI Ved Vir Singh) it has been established that the gold rings, which belonged to the deceased, had been recovered at the instance of the appellants Dalip Kumar Tripathi and Sonu @ Ashutosh Tiwari. The testimony of the Independent witness PW-19 (Ali. Mohd.) as well as the testimonies of the two divers i.e. PW-21 (Sunil, Gothakhor) and PW-22 (Mohd. Jasim, Gothakhor) clearly depict that the recovery of the mobile phones belonging to the deceased have been recovered from Ganda Nala adjacent to Brahmaputra Complex, Sector-29, Noida, UP. Accordingly, the prosecution has proved the recoveries of dead body,

the two gold rings and mobile phones of the deceased at the instance of the appellants and as such the arguments raised by counsel for the appellants in relation to recoveries holds no ground.

MEDICAL EVIDENCE

64. The next argument raised by learned counsel for the appellants is that the prosecution has failed to prove the dreadful condition of the body of the deceased. They contended that as per the post-mortem report (*Ex. PW-34/A*), the skin had fallen off the bones of the deceased, the body was totally decomposed, the brain was in a liquefied condition and maggots were present all over the body which in the usual course takes at least 3-5 days to happen. Placing reliance on the 26th Edition of the Modi's Medical Jurisprudence, they contended that the death of the deceased might have occurred even before 17.06.2011. The relevant portion of 26th Edition of the Modi's Medical Jurisprudence has been reproduced as under:

“In three to five days or more, the sutures of the skull, especially of children and young persons are separated, bones are loosened and the liquefied brain runs out. The teeth become loose in their sockets and may fall off. The next stage of putrefaction is known as colliquative putrefaction, which begins from five to ten days or more after death. During this stage, the walls of the abdomen become softened, and burst open protruding the stomach and intestine. The thorax, especially in children bursts. The diaphragm is pushed upwards.

If the putrefactive processes still go on, the tissues become soft, loose and are converted into a thick, semi-fluid, black mass. They ultimately separate from the bones, and fall off. The bones are consequently

exposed, and the orbits are empty. The cartilages and ligaments are similarly softened, and ultimately the bones are destroyed, so that after some years no trace of the body is left. The time taken up by these changes varies considerably with the temperature and the medium in which the body lies.”

65. To put rest to this controversy, it is necessary to peruse the testimony of the doctor who proved the post-mortem report on record. The doctor was examined as PW-34 (Dr. Devender Kumar Verma) who deposed that:

“On 20.06.2011 I was posted as a mortuary medical officer at Noida District Hospital. On that day, I have conducted Post-mortem of Sh. Vinod Kumar Gupta, age 56 years, S/o Late. Sh. Jai Narayan Gupta. During post-mortem I found anti-mortem injuries like body swelling, skin was decomposed. Ligature mark of 4.8 cm was found on the neck, and ligature mark of 10 cm below chin. Ligature mark 12 cm below right ear, and ligature mark 14 cm on left side ear were also found. Cut inside lower lip was found. A piece of cloth was found inside the mouth and maggots were present on mouth and whole body. The brain was liquefied. The trachea was congested. Both lungs were decomposed. After post-mortem I had prepared detailed report in this regard same is Ex. PW-34-A bearing my signature at point A.

*I have also seized belongings of deceased and handed over to the police. I took out viscera from the dead body and preserved the same for final opinion of the cause of death as I could not ascertain the cause of death on that time. **On 29.08.2012 on the basis of viscera report I opined that there was presence of ethyl alcohol on the stomach of the deceased and cause of death was by strangulation.** I have prepared my report in this regard which is Ex. PW-34/B bearing my signature at point A.”*

In his cross-examination he deposed that:

“I did not click the photographs of the body of the deceased. It is correct that the skin of the deceased became decomposed. I handed over the cloth found from mouth of the deceased to the pharmacist. I do not know about the impression of the seal. As the same was done by the pharmacist. I also handed over the viscera to the pharmacist. I do not know about the impression of the seal put on the viscera as the same was done by the pharmacist. Pharmacist has handed over the viscera in my presence after my seal and signature to the concerned police official. Ligature marks were easily visible. No other doctor was with me during post-mortem.

It is wrong to suggest that I could not prepare post-mortem report correctly as skin of the deceased was decomposed. Family members of the deceased were available outside of post-mortem house at the time of post-mortem. It is wrong to suggest that I have wrongly prepared the post-mortem report and subsequent opinion on the instance of the family member of the deceased and police officials. I do not remember the color and length of the cloth which was found in the mouth of the deceased.”

66. In this relation, PW-3 (Ankur Bansal/Son of the deceased) deposed that his father (the deceased) after receiving a call, left the home at around 8:00 p.m. on 17.06.2011. The relevant portion of the testimony reads as under:

“On 17.06.2011, I was present alongwith my wife Smt. Priyanka Bansal, my mother Smt. Prem Lata Bansal, my new born son Agrim Bansal and my father Late Sh. Vinod Kumar Bansal at the residence at H-33, Masjid Mor, Gk-II, New Delhi. At about 08:30/09:00 pm, my father had left the home in his Corola Car bearing

No. DL-4CM-5237 stating that he was going to Jasola and that he will return within 1½ -2 hours, but he did not come back by 11:00 pm. Then, my mother called him on his mobile phone numbers 9971299792 and 9971299772, which were found switched off.”

67. A bare perusal of the testimony of PW-34 (Dr. Devender Kumar Verma) clearly indicates that no questions were asked by the counsel for the Appellants in connection with the time of death of the deceased as well as in connection to the condition of the body of the deceased and therefore, at this stage, it is not open for the learned counsel for the appellants to raise any objection in this regard. The testimony of PW-3 (Ankur Bansal/Son of the deceased) alongwith ***Ex.PW-1/A*** (First Information Report), ***Ex. PW-1/D-1*** (Missing complaint of the deceased), ***Ex. PW-2/A*** (Copy of DD Entry Register) as well as the Call Detail Records of the phone numbers of the deceased proves that Mr.V.K. Bansal (the deceased) was alive on 17.06.2011 till 08:40 pm (when last call received by deceased) and the Postmortem report (***Ex. PW-34/A***) establishes that **‘there was presence of ethyl alcohol on the stomach of the deceased and cause of death was by strangulation’**.

MOTIVE

68. Learned Counsel for the Appellants have argued that the prosecution is unable to establish the link between the Appellants and the deceased. For the same reason, no motive can be attributed to the Appellants and they cannot be connected to the murder of the deceased.

69. Learned prosecutor on behalf of the State has argued that motive is a relevant factor in all criminal cases whether based on testimony of eyewitness or circumstantial evidence. However, it is generally a difficult area for the prosecution to bring on record what is in the mind of the Appellant/Accused. Even if the investigation officer would have succeeded in knowing it through interrogation, the same cannot be made a part of the record due to the legal bar.
70. We agree with the submissions made by learned prosecutor which is supported by various decisions rendered by the Apex Court. The Hon'ble Supreme Court in the case of *State of Himachal Pradesh v. Jeet Singh* reported in *AIR 1999 SC 1293* has held that:

*“35. No doubt it is a sound principle to remember that every criminal act was done with a motive **but its corollary is not that no criminal offence would have been committed if prosecution has failed to prove the precise motive of the accused to commit it.** When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended.*

*In this context we may extract the observations made by a two Judge Bench of this Court (Dr. A.S. Anand, J - as the learned Chief Justice then was and Thomas, J) in *Nathuni Yadav v. State of Bihar**

Motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally

see into the mind of another. Motive is the emotion which impels a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many a murders have been committed without any known or prominent motive. It is quite possible that the aforesaid impelling factor would remain undiscoverable. Lord Chief Justice Campbell struck a note of caution in R.V. Palmer (Shorthand Report at p. 308 CCC May 1856) thus:

But if there be any motive which can be assigned, I am bound to tell you that the adequacy of that motive is of little importance. We know, from experience of criminal courts that atrocious crimes of this sort have been committed from very slight motives; not merely from malice and revenge, but to gain a small pecuniary advantage, and to drive off for a time pressing difficulties.”

71. We also place reliance on the recent decision of Hon’ble Supreme Court in ***Sukhpal Singh Vs State of Punjab*** reported in **2019 SCC Online SC 178**, where the Apex Court has held that the inability of the prosecution to establish motive in a case of circumstantial evidence is not always fatal to the prosecution case. Relevant portion of the aforesaid judgment is extracted below:

“15. The last submission which we are called upon to deal with is that there is no motive established against the Appellant for committing murder. It is undoubtedly true that the question of motive may assume significance in a prosecution case based on circumstantial evidence. But the question is whether in a case of circumstantial evidence inability on the part of the prosecution to establish a motive is fatal to the prosecution case. We would think that while it is true that if the prosecution establishes a motive for the

accused to commit a crime it will undoubtedly strengthen the prosecution version based on circumstantial evidence, but that is far cry from saying that the absence of a motive for the commission of the crime by the accused will irrespective of other material available before the Court by way of circumstantial evidence be fatal to the prosecution. In such circumstances, on account of the circumstances which stand established by evidence as discussed above, we find no merit in the appeal and same shall stand dismissed.”

(emphasis supplied)

72. Although motive is a relevant factor, however, in all criminal cases it cannot always be brought on record absence of a clear motive is not always fatal to substantiate the version of the prosecution. In the present case, the recovery of the body of the deceased as well as the mobile phones of the deceased were made at the instance of the Appellants which in itself is an overwhelming circumstance which connect the Appellants with the commission of the crime. Hence, the argument raised by counsel for the appellant that motive has not been proved holds no ground.

MINOR CONTRADICTIONS

73. So far as the contention of the counsel for the appellants in relation to contradictions in the testimony of PW-3 (Ankur Bansal/Son of the deceased) is concerned, we deem it appropriate to refer to the dicta of the Apex Court in ***Lal Bahadur and Ors. vs. State (NCT of Delhi)*** reported in **(2013) 4 SCC 557** wherein the Apex Court has held that:

“19. So far as the contradictions and inconsistencies in the evidence of the prosecution witnesses, as pointed out by the counsel for the Appellants, are concerned,

we have gone through the entire evidence and found that the evidence of the witnesses cannot be brushed aside merely because of some minor contradictions, particularly for the reason that the evidence and testimonies of the witnesses are trustworthy. Not only that, the witnesses have consistently deposed with regard to the offence committed by the Appellants and their evidence remain unshaken during their cross-examination. Mere marginal variation and contradiction in the statements of the witnesses cannot be a ground to discard the testimony of the eye-witness who is none else but the widow of the one deceased. Further, relationship cannot be a factor to affect credibility of a witness.

In the case of State of Uttar Pradesh v. Naresh and Ors. (2011) 4 SCC 324, this Court observed:

30. In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence.

9. Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for

being tested on the touchstone of credibility."
(Ed: As observed in Bibhuti Nath Goswami v. Shiv Kumar Singh (2004) 9 SCC 186 p.192.

Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited. [Vide State v. Saravanan(2008) 17 SCC 587, Arumugam v. State (2008) 15 SCC 590, Mahendra Pratap Singh v. State of U.P. (2009) 11 SCC 334, and Sunil Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra (2010) 13 SCC 657.]”

74. Perusal of the testimony of PW-3 (Ankur Bansal/Son of the deceased) reveals that there are certain inconsistencies, however applying the decision rendered by the Apex Court, in our view, inconsistencies and improvements in the testimony of the prosecution witness that are minor in nature and do not go to the root of the case nor do they affect the outcome of the case. Accordingly the contention of learned counsel for the appellants is thus without force.

DEFECTIVE INVESTIGATION

75. The counsel for the appellants have further argued that 14 cigarette butts were recovered from the crime scene but no effort was made by the investigation agency to get the saliva test of these butts in order to connect the same with the appellants or to form a chain connecting it with the appellants. Moreover, the investigation was followed in a lethargic manner as no fingerprints were lifted from the crime scene by the investigation agency.

76. In *Gajoo vs. State of Uttarakhand* reported in 2013 Cri LJ 88 the Apex Court has very elaborately dealt with the law relating to defective investigation. Relevant portion of which reads as under:-

“19. Now, we turn to the last submission on behalf of the accused that no serologist report was obtained in relation to the Daranti, Ext. 2 and blood stained pyjama, Ext. Ka 5, and therefore, the prosecution case should fail. This argument does not impress us at all. No doubt both these exhibits were not sent to the laboratory for obtaining serologist report, but the absence thereof per se would not give any advantage to the accused. This is merely a defect in investigation. A defective investigation, unless affects the very root of the prosecution case and is prejudicial to the accused, should not be an aspect of material consideration by the court. PW5 has duly proved the recovery of Daranti, Ext. 2 and the blood stained pyjama, Ext. Ka 5 and has duly stood the test of cross-examination in court. Both these articles were recovered by the investigating officer Brahma Singh, PW6 and the recoveries have been duly established before the court. The recoveries having been proved and the case of the prosecution being duly supported by two eye-witnesses, PW2 and PW3 and two witnesses, PW4 and PW5 who were present immediately after the occurrence, have proved the case of the prosecution beyond any reasonable doubt.

20. In regard to the defective investigation, this Court in the case of Dayal Singh and Ors. v. State of Uttaranchal 2012 (7) Scale 165 while dealing with the cases of omissions and commissions by the investigating officer, and duty of the Court in such cases held as under:

22. Now, we may advert to the duty of the Court in such cases. In the case of Sathi Prasad v. The State of U.P. (1972) 3 SCC 613, this Court stated that it is well settled that if the police records become suspect

and investigation perfunctory, it becomes the duty of the Court to see if the evidence given in Court should be relied upon and such lapses ignored. Noticing the possibility of investigation being designedly defective, this Court in the case of Dhanaj Singh @ Shera and Ors. v. State of Punjab (2004) 3 SCC 654, held, "in the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.

23. Dealing with the cases of omission and commission, the Court in the case of Paras Yadav v. State of Bihar AIR 1999 SC 644, enunciated the principle, in conformity with the previous judgments, that if the lapse or omission is committed by the investigating agency, negligently or otherwise, the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts, otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party. In the case of Zahira Habibullah Sheikh and Anr. v. State of Gujarat and Ors. (2006) 3 SCC 374, the Court noticed the importance of the role of witnesses in a criminal trial. The importance and primacy of the quality of trial process can be observed from the words of Bentham, who states that witnesses are the eyes and ears of justice. The Court issued a caution that in such situations, there is a greater responsibility of the court on the one hand and on the other the courts must seriously deal with persons who are involved in creating designed investigation. The Court held that legislative

measures to emphasize prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the Courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair, as noted above, to the needs of the society. On the contrary, efforts should be to ensure fair trial where the accused and the prosecution both get a fair deal. Public interest in proper administration of justice must be given as much importance if not more, as the interest of the individual accused. The courts have a vital role to play.

(Emphasis supplied)

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26. In the case of State of Karnataka v. K. Yarappa Reddy 2000 SCC (Crl.) 61, this Court occasioned to consider the similar question of defective investigation as to whether any manipulation in the station house diary by the Investigating Officer could be put against the prosecution case. This Court, in Paragraph 19, held as follows:

19. But can the above finding (that the station house diary is not genuine) have any inevitable bearing on the other evidence in this case? If the other evidence, on scrutiny, is found credible and acceptable, should the Court be influenced by the machinations demonstrated by the Investigating Officer in conducting investigation or in preparing the records so unscrupulously? It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the Court in the case cannot be allowed to depend solely on the probity of

investigation. It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinized independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the action taken by the investigation officers. Criminal Justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case.

27. In Ram Bali v. State of Uttar Pradesh (2004) 10 SCC 598, the judgment in Karnel Singh v. State of M.P. (1995) 5 SCC 518 was reiterated and this Court had observed that 'in case of defective investigation the court has to be circumspect while evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigation officer if the investigation is designedly defective'.

28. Where our criminal justice system provides safeguards of fair trial and innocent till proven guilty to an accused, there it also contemplates that a criminal trial is meant for doing justice to all, the accused, the society and a fair chance to prove to the prosecution. Then alone can law and order be maintained. The Courts do not merely discharge the function to ensure that no innocent man is punished, but also that a guilty man does not escape. Both are public duties of the judge. During the course of the trial, the learned Presiding Judge is expected to

work objectively and in a correct perspective. Where the prosecution attempts to misdirect the trial on the basis of a perfunctory or designedly defective investigation, there the Court is to be deeply cautious and ensure that despite such an attempt, the determinative process is not sub-served. For truly attaining this object of a 'fair trial', the Court should leave no stone unturned to do justice and protect the interest of the society as well.

29. This brings us to an ancillary issue as to how the Court would appreciate the evidence in such cases. The possibility of some variations in the exhibits, medical and ocular evidence cannot be ruled out. But it is not that every minor variation or inconsistency would tilt the balance of justice in favour the accused. of course, where contradictions and variations are of a serious nature, which apparently or impliedly are destructive of the substantive case sought to be proved by the prosecution, they may provide an advantage to the accused. The Courts, normally, look at expert evidence with a greater sense of acceptability, but it is equally true that the courts are not absolutely guided by the report of the experts, especially if such reports are perfunctory, unsustainable and are the result of a deliberate attempt to misdirect the prosecution. In Kamaljit Singh v. State of Punjab 2004 Cri.LJ 28, the Court, while dealing with discrepancies between ocular and medical evidence, held, "It is trite law that minor variations between medical evidence and ocular evidence do not take away the primacy of the latter. Unless medical evidence in its term goes so far as to completely rule out all possibilities whatsoever of injuries taking place in the manner stated by the eye witnesses, the testimony of the eye witnesses cannot be thrown out."

30. Where the eye witness account is found credible and trustworthy, medical opinion pointing to alternative possibilities may not be accepted as conclusive. The expert witness is expected to put before the Court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by examining the terms of science, so that the court, although not an expert, may form its own judgment on those materials after giving due regard to the expert's opinion, because once the expert opinion is accepted, it is not the opinion of the medical officer but that of the Court. {Plz. See Madan Gopal Kakad v. Naval Dubey and Anr. (1992) 2 SCR 921: (1992) 3 SCC 204}.

21. The present case, when examined in light of the above principles, makes it clear that the defect in the investigation or omission on the part of the investigating officer, cannot prove to be of any advantage to the accused. No doubt the investigating officer ought to have obtained serologist's report both in respect of Ext. 2 and Ext. 5 and matched it with the blood group of the deceased. This is a definite lapse on the part of the investigating officer which cannot be overlooked by the Court, despite the fact that it finds no merit in the contention of the accused."

77. Returning to the facts of the present case, the contention of the counsel for the appellants that 14 cigarette butts were recovered from the crime scene but no effort was made by the investigation agency to conduct the saliva test of these cigarette butts in order to connect the same with the appellants and that the investigation was lackadaisical as no fingerprints were lifted from the crime scene by the investigation agency and the same can be categorized as a case of

defective investigation but the same cannot be a ground to acquit the appellants. Thus the prosecution has placed on record other relevant material, when considered in totality, is enough to hold the appellants guilty and the appellants cannot be given the benefit of the defects in the investigation.

CONCLUSION

78. We deem it necessary to refer to the case of ***Mohd. Azad vs. State of West Bengal*** reported in ***AIR 2009 SC 1307*** wherein the law related to circumstantial evidence has been extensively dealt by the Apex Court. Relevant portion of which reads as under:-

“ 9. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See Hukam Singh v. State of Rajasthan 1977 Cri LJ 639; Eradu and Ors. v. State of Hyderabad 1956 Cri LJ 559; Earabhadrapa v. State of Karnataka AIR 1983 SC 446; State of U.P. v. Sukhbasi and Ors. 1985 Cri LJ 1479; Balwinder Singh v. State of Punjab 1987 Cri LJ 33; Ashok Kumar Chatterjee v. State of M.P. 1989CriLJ 2124. The circumstances from which an inference as to the guilt of the accused 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 Bhagat Ram v. State of Punjab AIR 1954 SC 621, it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.

10. We may also make a reference to a decision of this Court in C. Chenga Reddy and Ors. v. State of A.P. 1996

Cri LJ 3461 , wherein it has been observed thus:

In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence....

11. In Padala Veera Reddy v. State of A.P. and Ors. AIR 1990 SC 7, it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

- (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;*
- (2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;*
- (3) the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and*
- (4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.*

12. In State of U.P. v. Ashok Kumar Srivastava [1992] 1 SCR 37, it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be

found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

13. Sir Alfred Wills in his admirable book "Wills' Circumstantial Evidence" (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt, (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted".

14. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touch-stone of law relating to circumstantial evidence laid down by this Court as far back as in 1952.

15. In Hanumant Govind Nargundkar and Anr. v. State of Madhya Pradesh 1953 Cri LJ 129 wherein it was observed thus:

It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be

a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

16. A reference may be made to a later decision in *Sharad Birdhichand Sarda v. State of Maharashtra* 1984CriLJ1738. Therein, while dealing with circumstantial evidence, it has been held that onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are:

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

17. These aspects were highlighted in *State of Rajasthan v. Rajaram* 2003 Cri LJ 3901; *State of Haryana v. Jagbir Singh and Anr.* 2003 Cri LJ 5054 and *Kusuma Ankama Rao v. State of A.P.* Criminal Appeal No. 185/2005 disposed of on 7.7.2008.

79. After having discussed the material on record in detail and analyzing the same on the scale of well established rules of criminal jurisprudence, we can safely conclude that the prosecution has established the following circumstances leading to the guilt of the appellants i.e. the arrest of the appellant from Tilak Nagar in pursuance of the technical investigation conducted on phone number 9628469398; the recovery of the mobile phone bearing number 9628469398 from the appellant Deepak Kumar; the recovery of the dead body from House No. 156, Sector 92, Noida, Uttar Pradesh at the instance of the appellant Deepak; the arrest of the appellant Sonu @ Ashutosh at the instance of the appellant Deepak and recovery of one gold ring from the appellant Sonu @ Ashutosh Tripathi; the recovery of the two mobile phones belonging to the deceased from the Ganda Nala at the instance of the appellants Deepak Kumar and Sonu @ Ashutosh Tiwari; the arrest of the appellant Dalip Tripathi and recovery of one gold ring belonging to the deceased from the appellant Dalip Tripathi; the medical evidence on record as discussed above, proving that the deceased was alive on 17.06.2011.
80. Having discussed the circumstances established by the prosecution as noted above, we are not inclined to interfere with the well-reasoned judgment of the Trial Court.
81. Accordingly, the appeals are dismissed. The conviction and sentence of the appellants Deepak Kumar @ Deepak Gautam, Sonu @ Ashutosh Tiwari and Dalip Tripathi are upheld.
82. Trial Court Record be sent back along with a copy of this judgment.

83. A copy of this judgment be also sent to Superintendent of Jail, Tihar Jail Delhi.

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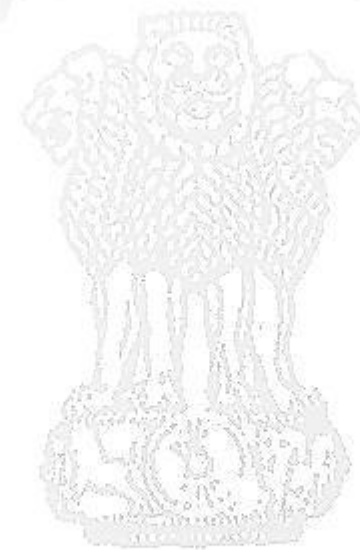
In view of the order passed in the appeal, the present application is rendered infructuous and the same is dismissed.

Application stands disposed of.

SANGITA DHINGRA SEHGAL, J.

MANMOHAN, J.

DECEMBER 11, 2019
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