

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.790 of 2015

Arising Out of PS. Case No.-443 Year-2012 Thana- BARAUNI District- Begusarai

1. Md. Chand @ Chandelwa @ Chand Miyan, S/o late Md. Sattar
2. Addu Mian @ Md. Azad @ Addu @ Md. Azad Miyan @ Md. Ajad Both are
R/o Vill. - Malhipur, P.S. - Barauni Chakia, Dist. - Begusarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 716 of 2015

Arising Out of PS. Case No.-443 Year-2012 Thana- BARAUNI District- Begusarai

Saukat Miyan S/o- Taslim Miyan R/o Vill- Malhipur, P.S.- Barauni Chakia,
Dist- Begusarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 779 of 2015

Arising Out of PS. Case No.-443 Year-2012 Thana- BARAUNI District- Begusarai

MD. ABDUL RAJJAK @ NEPALI @ ABDUL RAJJAK @ NEPALI MIYAN
S/o Batoran Miyan R/o Vill- Malhipur, P.S.- Barauni Chakia, Dist- Begusarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 810 of 2015

Arising Out of PS. Case No.-443 Year-2012 Thana- BARAUNI District- Begusarai

Md. Yunus @ Md. Yunis Son of Rahmat of Resident of Malhitpur, P.S.-
Barauni, in the District of Begusarai

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 349 of 2016

Arising Out of PS. Case No.-443 Year-2012 Thana- BARAUNI District- Begusarai



Barkat Mian S/o Md. Ilyaas, R/o Malhipur, P.S.- Barauni Chakiya O.P.,
District- Begusarai

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1260 of 2016

Arising Out of PS. Case No.-443 Year-2012 Thana- BARAUNI District- Begusarai

Perwej Alam @ Perwez Mian S/o Shaukat Mian Resident of Village-
Malhipur, P.S. Barauni, District- Begusarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 790 of 2015)

For the Appellant/s : Mr. Manohar Prasad Singh, Advocate
Mr. Niranjan Parihar, Advocate

For the Respondent/s : Ms. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 716 of 2015)

For the Appellant/s : Mr. Vikramdeo Singh, Advocate

For the Respondent/s : Ms. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 779 of 2015)

For the Appellant/s : Mr. Vikramdeo Singh, Advocate

For the Respondent/s : Ms. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 810 of 2015)

For the Appellant/s : Mr. Anil Singh, Advocate
Mr. Prabhu Narayan Sharma, Advocate
Mr. Amril Anunay, Advocate

For the Respondent/s : Ms. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 349 of 2016)

For the Appellant/s : Mr. Krishna Prasad Singh, Sr. Advocate
Mr. Braj Bhushan Poddar, Advocate

For the Respondent/s : Ms. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 1260 of 2016)

For the Appellant/s : Mr. Arun Kr. Sinha, Advocate
Mr. Amit Narayan, Advocate

For the Respondent/s : Ms. Shashi Bala Verma, APP

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

and

HONOURABLE MR. JUSTICE KHATIM REZA

CAV JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)**

Date : 11-10-2022

A police case, registered as Barauni (Chakia) P.S.



Case No. 443 of 2012 in the district of Begusarai, gave rise to two Sessions Trials i.e. Sessions Trial No. 429 of 2013 and Sessions Trial No. 259 of 2015.

2. By judgment and order dated 06.07.2015 and 15.07.2015 passed by the trial court in Sessions Trial No. 429 of 2013, the appellants Md. Chand @ Chandelwa @ Chand Miyan and Addu Mian @ Md. Azad @ Addu @ Md. Azad Miyan @ Md. Ajad [Cr. Appeal (DB) No. 790 of 2015], Barkat Mian [Cr. Appeal (DB) No. 349 of 2016], Md. Yunus @ Md. Yunis [Cr. Appeal (DB) No. 810 of 2015], Saukat Miyan [Cr. Appeal (DB) No.716 of 2015], Md. Abdul Rajjak @ Nepali @ Abdul Rajjak @ Nepali Miyan [Cr. Appeal (DB) No. 779 of 2015] and Md. Bittu @ Wasim Akram have been convicted and sentenced as under :-

Appellant Number	Convicted under Section	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
CRIMINAL APPEAL (DB) No.790 of 2015				
1.	364/149 of the I.P.C.	Imprisonment for life	5,000/-	S.I. for one year
	120-B/149 of the I.P.C.	Imprisonment for life	5,000/-	S.I. for one year
	302/149 of the I.P.C.	Imprisonment for life	5,000/-	S.I. for one year
	201/149 of the I.P.C.	R.I. for seven years	5,000/-	S.I. for one year
	Section 27(1) of the Arms Act	R.I for three years	5,000/-	S.I. for one year
2.	364/149 of the I.P.C.	Imprisonment for life	5,000/-	S.I. for one year
	120-B/149 of the I.P.C.	Imprisonment	5,000/-	S.I. for one year



		for life		
	302/149 of the I.P.C.	Imprisonment for life	5,000/-	S.I. for one year
	201/149 of the I.P.C.	R.I. for seven years	5,000/-	S.I. for one year
	Section 27(1) of the Arms Act	R.I for three years	5,000/-	S.I. for one year
CRIMINAL APPEAL (DB) No. 349 of 2016				
1.	364/149 of the I.P.C.	Imprisonment for life	5,000/-	S.I. for one year
	120-B/149 of the I.P.C.	Imprisonment for life	5,000/-	S.I. for one year
	302/149 of the I.P.C.	Imprisonment for life	5,000/-	S.I. for one year
	201/149 of the I.P.C.	R.I. for seven years	5,000/-	S.I. for one year
	Section 27(1) of the Arms Act	R.I for three years	5,000/-	S.I. for one year
CRIMINAL APPEAL (DB) No. 810 of 2015				
1.	364/149 of the I.P.C.	Imprisonment for life	5,000/-	S.I. for one year
	120-B/149 of the I.P.C.	Imprisonment for life	5,000/-	S.I. for one year
	302/149 of the I.P.C.	Imprisonment for life	5,000/-	S.I. for one year
	201/149 of the I.P.C.	R.I. for seven years	5,000/-	S.I. for one year
	Section 27(1) of the Arms Act	R.I for three years	5,000/-	S.I. for one year
CRIMINAL APPEAL (DB) No. 716 of 2015				
1.	364/149 of the I.P.C.	Imprisonment for life	5,000/-	S.I. for one year
	120-B/149 of the I.P.C.	Imprisonment for life	5,000/-	S.I. for one year
	302/149 of the I.P.C.	Imprisonment for life	5,000/-	S.I. for one year
	201/149 of the I.P.C.	R.I. for seven years	5,000/-	S.I. for one year
	Section 27(1) of the Arms Act	R.I for three years	5,000/-	S.I. for one year
CRIMINAL APPEAL (DB) No. 779 of 2015				
1.	364/149 of the I.P.C.	Imprisonment for life	5,000/-	S.I. for one year
	120-B/149 of the I.P.C.	Imprisonment for life	5,000/-	S.I. for one year



	302/149 of the I.P.C.	Imprisonment for life	5,000/-	S.I. for one year
	201/149 of the I.P.C.	R.I. for seven years	5,000/-	S.I. for one year
	Section 27(1) of the Arms Act	R.I for three years	5,000/-	S.I. for one year
Md. Bittu @ Wasim Akram				
1.	364/149 of the I.P.C.	Imprisonment for life	5,000/-	S.I. for one year
	120-B/149 of the I.P.C.	Imprisonment for life	5,000/-	S.I. for one year
	302/149 of the I.P.C.	Imprisonment for life	5,000/-	S.I. for one year
	201/149 of the I.P.C.	R.I. for seven years	5,000/-	S.I. for one year
	Section 27(1) of the Arms Act	R.I for three years	5,000/-	S.I. for one year

3. Co-convict Bittu @ Wasim Akram has also preferred an appeal before this Court giving rise to Cr. Appeal (DB) No. 759 of 2015. However, when these appeals were taken up for hearing, he took up the plea of juvenility and, therefore, the said appeal has not been heard along with the present set of appeals.

4. We have been informed at the bar that Saukat Miyan the appellant in Cr. Appeal (DB) No. 716 of 2015 died during the pendency of the appeal. Cr. Appeal (DB) No. 716 of 2015, therefore, stands abated in the absence of any application by a near relative of the appellant seeking leave to continue the appeal under the *proviso* to Section 394 of the Cr.P.C.

5. By judgment and order dated 26.10.2016 and 28.10.2016, passed by learned Additional Sessions Judge-IV,



Begusarai in Sessions Trial No. 259 of 2015, arising out of the same Barauni (Chakia) P.S. Case No. 443 of 2012, the appellant Parwej Alam @ Parwez Mian has been convicted and sentenced as under:-

CRIMINAL APPEAL (DB) No. 1260 of 2016			
Convicted under Section	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
364/34 of the I.P.C.	Imprisonment for life	5,000/-	S.I. for one year
120-B/34 of the I.P.C.	Imprisonment for life	5,000/-	S.I. for one year
302/34 of the I.P.C.	Imprisonment for life	5,000/-	S.I. for one year
201/34 of the I.P.C.	R.I. for five years	5,000/-	S.I. for one year
Section 27(1) of the Arms Act	R.I for three years	3,000/-	S.I. for one year

6. The abovementioned Judgments of Convictions and the Orders of Sentences are under challenge in the present appeals.

7. As all these appeals arise out of the same criminal case i.e. Barauni (Chakia) P.S. Case No. 443 of 2012 they have been heard together and are being disposed of by the present common judgment and order.

8. We have heard Mr. Manohar Prasad Singh, learned counsel appearing on behalf of the appellant in Cr. Appeal (DB) 790 of 2015, Mr. Vikramdeo Singh, learned counsel appearing on behalf of the appellants in Cr. Appeal (DB) No. 716 of 2015 and Cr. Appeal (DB) No. 779 of 2015, Mr. Anil Singh, learned counsel appearing on behalf of the appellant in Cr. Appeal (DB)



No. 810 of 2015, Mr. Krishna Prasad Singh, learned counsel appearing on behalf of the appellant in Cr. Appeal (DB) No. 349 of 2016, Mr. Arun Kumar Singh, learned counsel appearing on behalf of the appellant in Cr. Appeal (DB) No. 1206 of 2016 and Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State in all the appeals.

9. One Subodh Kumar (P.W.-16), the father of the deceased is the informant of the case, on whose written report dated 14.12.2012 the aforesaid Barauni (Chakia) P.S. Case No. 443 of 2012 came to be registered. According to him, on 09.12.2012 at 7.45 p.m., his son was getting repeated calls on his mobile phone whereafter he took his meal in a hurry and left the home, hurriedly. He was carrying with him a mobile phone with a SIM bearing No. 9608251421. The deceased is said to have disclosed to the informant that, as usual, he was going to the place of his partner Sanjeev Singh and further he would sleep at his shop, as was his routine. [We must mention here for clarity that from the prosecution's case, as disclosed in the First Information Report (F.I.R, for brevity), it is evident that the name of the deceased was Sanjeev Kumar Singh whereas his partner's name has been described in the F.I.R. as Sanjeev Singh, son of Sudhir Singh. The said Sanjeev Singh has been



examined as P.W.-4 with his name as “Sanjeev Kumar Singh”, son of Sudhir Singh. It is evident from the *fardbayan* and evidence on record that the names of the deceased and his partner (P.W.-4) were similar/identical]. The deceased did not return on the next date i.e. 10.11.2012 and since the informant could not get any clue about the deceased, he reported to the police in the evening of 11.11.2012 stating therein that his son (the deceased) had started a business dealing with scraps which was being objected to by the persons dealing with the same business, namely, Shaukat Miyan (an appellant), his partner Abdul Rajjak @ Nepali (an appellant), Barkat Mian (an appellant), Addu Mian @ Azad (an appellant) and Md. Chand @ Chandelwa, who acting in conspiracy with each other appeared to have abducted the deceased with an intention of killing him. The informant (P.W-16) had filed a missing report to the police on 11.12.2012 to the effect that his son was missing from the night of 09.12.2012 from his scrap shop. He disclosed that despite all efforts having been made, he could not locate his son. He disclosed in the F.I.R. that from the time when the deceased had started the scrap business, Shaukat Miyan (an appellant since deceased) and Md. Abdul Rajjak @ Nepali (an appellant) had been threatening him of dire



consequences. They had threatened the informant that if his son (the deceased) continued with his business in scraps, he would be killed.

10. Restatement of the informant was recorded by the police. Investigation by the police led to arrest of the persons named in the F.I.R.. Md. Bittu @ Wasim Akram is said to have made confessional statement before the police to the effect that he had come in contact with Parwej Alam [appellant of Cr. Appeal (DB) No. 1260 of 2016] who was engaged with other persons of the village in dealing with scraps, stolen from Barauni Thermal Power Station (BTPS, for brevity). He is said to have further disclosed to the police as to how conspiracy was hatched up to kill the deceased and in furtherance of the said conspiracy, he (Md. Bittu), Md. Parwej Alam (an appellant), Md. Guddu, Md. Abdul Rajjak (an appellant), Md. Chand @ Chandelwa (an appellant), Addu Mian @ Azad (an appellant) and Md. Yunus (an appellant) had killed the deceased. According to the said confessional statement made before the police by Md. Bittu the deceased was assaulted and shot dead by them. When the deceased died, his dead body was lifted and thrown near the southern boundary of BTPS, and thereafter the dead body was concealed by putting it in a ditch and covering



the same with stone chips. His *Gamcha*, muffler, shawl and slippers were also there, which he was wearing. Thereafter, he and others came out of the BTPS by scaling over its boundary wall and went back to their respective places. He also disclosed that the mobile phone of the deceased was also flung away somewhere in a ditch, near the place where he was killed. His SIM card was taken out of the mobile phone which was also thrown away. The firearm i.e. the pistol used by him for shooting was also thrown away by him in the same ditch filled with water. The said confessional statement was recorded by the police on 16.12.2012 at 3:30 pm.. Appellants, Addu Mian @ Md. Azad, Md. Chand @ Chandelwa, and one Nehru Kumar @ Tonish Kumar also made confessional statement before the police of same nature as disclosed by the co-convict Md. Bittu.

11. The persons, who had confessed their guilt during the course of investigation, namely, Bittu @ Wasim Akram, Addu Mian @ Azad, Md. Chand @ Chandelwa and Nehru Kumar @ Tonish Kumar were taken to the place which was disclosed by them to be the place where the dead body of the deceased was concealed. The police officials, the family members of the deceased reached at the place as disclosed by the aforesaid persons i.e. the abandoned pump house on the



north side of BTPS switch yard. All the four accused persons were thereafter separately asked to indicate the place where the dead body was buried. All of them separately pointed towards the same place. The dead body of the deceased was recovered from the place, based on the confessional statements made separately by the accused persons before the police. Inquest report was prepared. Torn shirt of the deceased, his slippers, the inner which he was wearing were identified by the informant i.e. the father of the deceased and family members of the deceased.

12. The officer, who prepared the inquest report, found gun shot injuries on the person of the deceased and the face of the deceased badly smashed. The seizure list was prepared of the articles seized from the said place in the presence of seizure list witnesses, namely, Ram Nandan Singh P.W.-3 and Pankaj Kumar Singh, P.W.-1.

13. Initially, the F.I.R. was registered for the offence punishable under Sections 364, 120B/32 of the Indian Penal Code ('I.P.C.' for short) but subsequently Sections 302 and 201 of the I.P.C. were added by the order of the learned Chief Judicial Magistrate, consequent upon the recovery of the dead body of the deceased. On completion of investigation, the



police submitted its charge-sheet, whereafter, cognizance was taken by the learned Chief Judicial Magistrate, Begusarai on 16.03.2013.

14. It is also noteworthy that charge-sheeted accused, Dhananjay Kumar, claimed his juvenility before the learned Chief Judicial Magistrate which was sent for inquiry to the Juvenile Justice Board. Further, by an order dated 14.05.2013, the records of Tanvir @ Guddu, Parwej Alam and Nehru Kumar were separated and sent to the Juvenile Justice Board for inquiry. The claim of the juvenility of Parwej Alam [appellant of Cr. Appeal (DB) No. 1260 of 2016] was turned down. He filed a Criminal Revision before this Court giving rise to Criminal Revision No. 372 of 2015 challenging the order of the Juvenile Justice Board whereby his juvenility claim was rejected. The said Criminal Revision No. 372 of 2015 has been dismissed as not pressed by an order of this Court dated 25.07.2022. Nehru Kumar @ Tonish Kumar has been declared a juvenile as has been noted in the beginning. The appellant, Md. Bittu @ Wasim Akram of Cr. Appeal (DB) No. 759 of 2015 whose appeal was also taken up for hearing by this Court alongwith these appeals has filed an application seeking a declaration that he was a juvenile as on the date of occurrence.



Hearing of the said appeal has, therefore, been separated from these appeals.

15. Charge was framed against the appellants for commission of offence punishable under Sections 363/34, 302/34, 201/34 and Section 120B of the Indian Penal Code.

16. As these appellants and others pleaded innocence they were put to trial. At the trial, the prosecution examined 18 witnesses. Inquest report and the postmortem report were proved at the trial. The prosecution relied on the call detail record at the trial which were exhibited as Exhibits to substantiate the prosecution's case.

17. After closure of the evidence of prosecution witnesses, the evidence emerging against the accused were explained to them by the Trial Court, seeking their explanation, if any. The persons put on trial denied to have given any confessional statement before the police. They claimed that they were falsely implicated.

Evidence of Prosecution Witnesses

18. Evidence of the informant (P.W.-16) is most crucial on various aspects and, therefore, his evidence is being noted first.

19. While supporting the prosecution's case, as



disclosed by him, in his written report to the police on 13.12.2012, PW-16 deposed that as the deceased did not return on 10.12.2012, he started searching for him and during that course he went to the shop where the deceased would usually sleep in the night but found the shop closed. When on 11.12.2012 also, the informant could not get any trace about the deceased, he lodged a missing report with the police on 11.12.2012. He further, deposed that on 13.12.2012, the appellant Parvez mysteriously fled away when the informant had looked at him. He proved motive behind the occurrence which was the business rivalry in dealing with the scraps stolen from BTPS. He proved the recovery of the dead body of the deceased from the place indicated by four persons, namely, Addu, Bittu, Chandelwa and Tonish Kumar. Recovery of the dead body was made after these persons separately pointed towards the place where the dead body of the deceased was concealed. He deposed that wife, brother-in-law and others who were present there, had also identified the dead body of the deceased. He identified the persons put on trial, namely, Shaukat, Nepali, Bittu, Addu, Chandelwa and Yunus.

20. P.W.-1, Pankaj Kumar Singh, is the seizure list witness. He proved the seizure list which was prepared in his



presence. Based on the information provided by Addu, Bittu, Chandelwa and Nehru, dead body of the deceased was recovered which was concealed in the premises of BTPS. He supported the prosecution's case of business rivalry as the motive behind the occurrence. He further deposed that on 09.12.2012, in the morning, he had seen Shaukat, Nepali, Parvez, Guddu, Chandelwa, Dhananjay, Bagadwa, Chand Mian and Nehru standing near the scrap shop of Nepali who were talking to each other. He identified the accused, namely, Shaukat, Nepali, Yunus, Bittu, Barkat and Chandelwa in Court.

21. P.W.-6 Siyaram Singh, in his deposition has supported the evidence of P.W.-1, both of whom were together on 09.12.2012 at 10:00-11:00 O'clock, when they had seen Shaukat, Nepali, Addu, Bittu, Nehru, Parvez, Dhananjay, Guddu, Barkat, Yunus conversing together near the scrap shop of Shaukat. During the trial, he firstly identified Yunus, Barkat Nepali, Shaukat, Addu but subsequently he described Addu as Yunus and Yunus as Addu. He correctly identified other accused persons present in the dock.

22. P.W.-2, Binod Singh, in his deposition proved recovery of the dead body of the deceased who had identified the dead body of the deceased and testified that he had



identified the shirt of the deceased. It is the evidence of P.W.-2 that he had gone to pick up in a jeep, Santosh Kumar (PW-8) who was coming from Patna and bring him to his house at Malhilpur. On way to his house, when he reached on the soling road near BTPS, he had seen Dhananjay Mishra, Nehru and the deceased together, with the aid of Jeep lights who were going northwards. Apparently, he is a witness to the deceased in company of the accused Dhananjay Mishra and Nehru. He is also a witness to the recovery of the dead body of the deceased from the place where it was found buried.

23. It will be useful to refer at this juncture to the evidence of P.W.-8 (Santosh Kumar) who deposed that he had gone to Patna and had returned from Patna in the night of 12.12.2012 by Danapur-Hawrah train. He had deboarded the train at Hatdidah Railway Station at about 11.30-12.00 O'clock in the night. At Hatdidah Railway Station, his co-villager Binod Singh (P.W.-2) had come to receive him in a Jeep. At about 1.00 am he saw, with the headlights of the Jeep, Nehru @ Tonish, Dhananjay Mishra with the deceased who were going towards gate of BTPS. P.W.-8 further deposed in his evidence that he had accompanied the informant (P.W.-16) to the place where the police were present with four persons, namely, Bittu, Addu,



Chandelwa @ Chand and Nehru @ Tonish and based on their disclosure the police had recovered the dead body. He further deposed that at 11:30 am on the same day, the police had recovered blood stained bricks, a SIM card, blood stained grass and stains of blood from the plaster on the nearby boundary wall. The police had prepared a seizure list in the said process. He proved his signature on the seizure list which was marked as Exhibit-4. He identified all the accused persons, they being his co-villagers, who were present at the trial. When he was asked in the cross-examination to show the railway ticket to support his evidence that he had come in a train from Patna to Hathidah, he expressed his inability as that was not available with him.

24. P.Ws. 2 & 8, had thus, seen the deceased last with the aforesaid accused persons near the boundary wall of BTPS moving towards the gate of the BTPS as per their depositions at the trial.

25. P.W.-3, Ram Nandan Singh a co-villager of the deceased also proved the recovery of the dead body of the deceased and seizure of Muffler, blood stained towel, inner collar, piece of shirt etc. by the police and proved his signature on the seizure list, exhibited as Exhibit 1/1. He also proved



recovery of a Nokia mobile phone in the night of 16.12.2012 from the possession of Addu Mian. He further deposed that on 09.12.2012 at about 11.45-12.00 in the night, when he was going to his house alongwith one Ashok Singh (PW-15), resident of Barbigha from BTPS, they had seen seven persons, namely, Md. Yunus, Barkat, Bittu, Addu Mian, Chandelwa and Guddu and Parwez moving towards eastern of the B.T.P.S. In response to a query made by Ashok Singh (PW-15), P.W.-3 had told him that they were thieves and they commit theft in the BTPS. He supported the prosecution's case that the deceased was being threatened for starting his business in scraps stolen from BTPS by Shaukat and Nepali Mian, who were already into the said business. In his cross-examination, he disclosed that he was a security guard in BTPS and on the date of occurrence, after having been relieved from his duty, he had proceeded from there and he had met Ashok Singh (PW-15) at the bus-stand. P.W.-3, thus, is apparently a witness of presence of Yunus, Barkat, Bittu, Addu, Chandelwa, Guddu and Parwez near the place of occurrence.

26. Evidence of P.W.-15 deserves to be read with evidence of P.W.-3 who were there together, coming from BTPS. He deposed that when he got down at 10:00-10:15 pm in



the night at BTPS bus-stand, he saw P.W.-3, Ram Nandan Singh coming in a bicycle. He went to the quarter of his brother-in-law (*Bahnoi*, the informant of the case) in the campus of Thermal Power Station. His evidence is in conformity with evidence of P.W.-3 to the effect that they had seen the above named persons i.e. Parwez, Guddu, Yunus, Barkat, Chandelwa, Addu and Bittu who were identified by P.W.3 and had told him that they were thieves and they might be there for committing theft. He slept at the house of the informant. He is a witness to the recovery of the dead body of the deceased by the police from the campus of BTPS after digging the place. He identified Bittu, Chandelwa and Addu who were present at the time of examination-in-chief. He also supported the prosecution's case that from the place of occurrence, muffler, slippers and a wrapper were recovered. Further, a SIM card for a mobile phone, blood stained brick, blood stained soil, blood stained plaster were also recovered. A seizure list was prepared on which he had put his signature. Based on his deposition, Exhibits-2/5 and Exhibits 2/6 were marked. In cross-examination, however, he said that the seized items were not put for T.I. parade.

27. P.W.-4, Sanjeev Kumar Singh was the partner of



the deceased. He supported the prosecution's case about the business rivalry between the deceased and the persons put on trial, who were running a trade dealing with scraps for the last 15 years. He further deposed that in the night of 09.12.2012, he had gone to Kagaria Rahimpur Tola and at about 8.15 pm, the deceased had informed him that 'the goods' were likely to reach. The telephone line, however, got disconnected. The deceased used to sleep in the medical-shop of PW-4 but on 10.12.2012, in the morning, when he (P.W.-4) returned to his village, he did not find the deceased in the shop. Evidence of P.W.-4 supports the prosecution's case of business rivalry and thus a motive behind commission of offence.

28. P.W.-5, Manoj Mishra is witness to seizure of a Nokia Mobile with a Voda SIM from the right-pocket of Wasim Akram @ Bittu's pant in his presence. He is a witness to the seizure list marked as Exhibit-2/2 in relation to recovery of Nokia mobile phone with a vodaphone SIM.

29. P.W.-7 is a witness to the recovery of the dead body of the deceased from the campus of BTPS. He had also put his signature on the inquest report which has been exhibited as Exhibit 2/3. He deposed that after hearing noise he had come to the place of occurrence.



30. P.W.-9, a *Daffadar*, is witness to the arrest of Chandelwa, Nehru @ Tonish, Bittu and Addu and recovery of the dead body of the deceased based on confessional statement made before the police. In his cross-examination, he deposed that no one's statement was taken at the place from where the recovery of the dead body was made.

31. P.W.-10, a *Chowkidar*, testified the arrest of Md. Chand @ Chandelwa, Nehru @ Tonish, Bittu and Addu and deposed that based on their confessional statement made before the police officials, they were taken to the place near pump house of BTPS, from where the dead body of the deceased was recovered. P.W.-10 was one of them who had participated in exhuming the dead body, according to his evidence.

32. P.W.-11, Balmiki Singh, is another *Chowkidar* is also a witness to the recovery of the dead body of the deceased upon disclosure made by Chand @ Chandelwa, Nehru @ Tonish, Bittu and Addu in their separate confessional statements made before the police during investigation. He had also participated in digging up the place leading to recovery of the dead body.

33. P.W.-12, Dr. Hari Narayan Singh, who was posted as Deputy Superintendent, Sadar Hospital, Begusarai had



conducted the postmortem on the dead body of the deceased whereas P.W.-13, Dr. Raju was posted as medical officer on the said date at the Sadar Hospital, Begusarai. They proved following external and internal injuries on the body of the deceased based on the postmortem report:-

“Whole body Swollen foul smelling maggot.

Face distuted due to multiple trauma.

Skull fractured.

Lacerated wound: 6”X6” X deep to chest cavity on right side of chest.

lacerated wound - 2”X1” deep to chest cavity on right side back below right scapula margin inverted with charring around wound.

lacerated wound - 1/2” X1” X deep to abdominal Cavity on right lumber region of back, margin inverted with black charring, around wound.

lacerated wound - 1/2”X2”X deep to abdominal cavity on right side interior abdominal way.

On Dissection

Dark clot in chest Cavity, right lungs and vessels lacerated, Dark blood clot in abdominal cavity with multiple gut perforations. Stomach and bladder-empty.

Cause of death:

Haemorrhage and shock due to above injuries caused by firearm time since death: within seven days”

34. This witness has also testified that Dr. Hari Narayan Singh (PW-12) was present at the time of postmortem as an observer and he was Deputy Superintendent of the Hospital. In



cross-examination (PW-13) opined that injuries found on the dead body was caused by firearms but some were caused by non-firearms weapon also. In his cross-examination, this witness has also opined that injury No. 1 may be caused by hard and blunt substance and it is sufficient to cause the death of deceased. PW-13 has further deposed in his cross-examination that he had not found bullet inside the dead body. In cross-examination in para-15 PW-13 further deposed that dead body starts decomposing after 36 hrs of death.

35. The investigating officer was examined as P.W.-17. Apart from proving the missing report in respect of the deceased, received on 11.12.2012, he proved registration of F.I.R. on 14.12.2014. He deposed in his evidence that he had received the CDR of the mobile number belonging to the deceased and had found that on 09.12.2012, there was a phone call on the deceased's mobile phone from a mobile phone bearing No. 9570624311 for a duration of 295 seconds from 19:25 to 23:20. Further, the deceased had talked on the mobile number 95768946756 for 248 seconds at 20:02 O'clock. The mobile number of the victim was 9608251421. Upon inquiry it was learnt that the said phone number 9570624311 was being used by Bittu. Based on the analysis of call detail reports (CDR) and Consumer Application Forms (CAF), searches and raids were conducted and during the course of raid Addu Mian



was arrested. Subsequently, Chand @ Chandelwa, Nehru @ Tonish, Bittu and Addu were also arrested. The four persons arrested were separately interrogated. They made their separate confessional statements, one by one (बारी बारी से), leading to recovery of the dead body of the deceased. He proved his signature on the inquest report as Exhibit-2/3, carbon copy of which was already marked as Exhibit-5.

36. Mr. Manohar Prasad Singh, learned counsel appearing on behalf of the appellants in Cr. Appeal (DB) No. 790 of 2015, has submitted that their conviction is primarily based on the so called confessional statements made by them before the police during the course of investigation leading to recovery of the dead body of the deceased. It has been argued that there is no eye-witness to the occurrence and though it is the prosecution's case that four persons, namely, Bittu @ Wasim Akram, Addu Mian @ Azad, Md. Chand @ Chandelwa and Nehru Kumar @ Tonish Kumar made confessional statements before the police disclosing as to how the deceased was killed by them, the prosecution has not been able to establish as to who made the confessional statement first before others also confessed their guilt before the police. He has placed reliance on the Supreme Court's decision in case of



Mohd. Yunus Ali Tarafdar v. State of West Bengal reported in ***(2020) 3 SCC 747*** to contend that conviction of the appellant merely on recovery of the dead body of the deceased based on the so called confessional statement of these appellants is not justified as confessional statement made before the police has no evidentiary value. He submits that the case of the prosecution is based on circumstantial evidence and the prosecution has failed to establish that the chain of evidence is so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the appellants. Reliance has also been placed on the Supreme Court's decision ***Anuj Kumar Gupta v. State of Bihar*** reported in ***(2013) 12 SCC 383***.

37. In addition, learned counsel for the appellant in Cr. Appeal (DB) No. 790 of 2015 has placed reliance on the following decisions of the Supreme Court, to persuade the Court that the prosecution has failed to prove beyond all reasonable doubts, the charges framed against them of the commission of the offences punishable under Sections 364 read with 149, 302 read with 149 and 201 of the Indian Penal Code :-

- (i) 2013 AIR SC 4528 (Jai Chand vs. State of Himachal Pradesh)



(ii) 2004 AIR SC 2865 (Anter Singh vs. State of Rajasthan)

(iii) 2007 AIR SC 1681 (Geejaganda Somaiah vs. State of Karnataka)

38. Mr. Vikramdeo Singh, learned counsel appearing on behalf of the appellant Md. Abdul Rajjak @ Nepali in Cr. Appeal (DB) No. 779 of 2015 has submitted that the only evidence which is there on record, so far as this appellant is concerned, is in the deposition of PW-1 to the effect that this appellant and other co-convicts were seen in the morning of 09.12.2012 standing near the scrap shop and were conversing with each other. He contends that son of the appellant (Guddu) was also seen by PW-1 with this appellant and others in the morning of 09.12.2012. Merely on the basis of suspicion that the appellant and others might have assembled to hatch up a conspiracy to kill the deceased, the trial court has recorded the finding of the appellant's conviction in the impugned judgment. He has contended that it is not even a case of grave suspicion much less any conclusive evidence to establish the charge of conspiracy under Section 120-B of the Indian Penal Code.

39. Mr. Krishna Prasad Singh, learned Senior Counsel appearing on behalf of the appellant in Cr. Appeal



(DB) No. 349 of 2016 has submitted that the evidence which has come against this appellant at the trial is in the deposition of PWs. 3 and 15, that they had seen this appellant with other co-convicts/accused at 11:30 pm. in the night, going towards BTPS. He contends, referring to the evidence of PW-15, that he is said to have inquired from PW-3 as to where the appellant and others were going in response to which PW-3 had told PW-15 that they were thieves and were going to commit theft in BTPS. Except for the said circumstance, there is no other evidence to justify the conviction of the appellant (Barkat Mian) of Cr. Appeal (DB) No. 349 of 2016.

40. Mr. Anil Singh, learned counsel representing the appellant Md. Yunus @ Ms. Yunis of Cr. Appeal (DB) No. 810 of 2015 has pointed out that his conviction is primarily based on the evidence of PW-3 and PW-15, who claimed at the trial to have seen this appellant with other co-convicts/accused while going towards BTPS in the night at 11:45 pm. on 09.12.2012. He has submitted that the PWs. 3 and 15 are apparently chance witnesses to the presence of this appellant with other co-convicts, namely, Bittu @ Wasim Akram, Addu Mian @ Md. Azad, Md. Chand @ Chandelwa and Perwej Alam @ Perwez Mian, going towards eastern side of the BTPS and



are not fully reliable. He has submitted that the requirement under Section 313 of the Code of Criminal Procedure has not been duly followed inasmuch as all circumstances, which emerged on the basis of the evidence of the prosecution witnesses, were not duly explained by the trial court to the appellant. He has submitted that so far as this appellant is concerned, his conviction by the trial court is based on no evidence and in no case it can be said that chain of circumstances were proved to be complete by the prosecution at the trial to establish appellant's participation in commission of the offence in any manner, as the only possible view. He has placed reliance on the Supreme Court's decision in case of **AIR 1984 SC 1662 and 2017 (4) PLJR (SC) 322**. He has contended that suspicion, however, grave cannot take place of the proof.

41. Mr. Arun Kumar Sinha, learned counsel appearing on behalf of the appellant Perwej Alam @ Perwez Mian in Cr. Appeal (DB) No.1260 of 2016, has submitted that this appellant came to be implicated during the course of investigation based on the call detail reports (CDR) showing his talks with Addu Mian @ Md. Azad, one of the those, on the basis of whose confessional statement the dead body of the deceased was recovered. He has contended that the call detail



reports is in the nature of electronic evidence, which has not been proved in accordance with the mandatory requirement under Section 65B of the Evidence Act, inasmuch as no certificate was produced from the person or the authority, requisite under Section 65B of the Evidence Act. He has submitted that in any event, only evidence that the appellant was in touch with the co-accused Addu Mian @ Md. Azad cannot a basis of presumption that he had been conspiring with him to commit murder of the deceased.

42. Ms. Shashi Bala Verma, learned Additional Public Prosecutor appearing for the State has submitted that the prosecution has been able to establish its case beyond all reasonable doubts that the deceased was killed by the appellants Md. Chand @ Chandelwa and Addu Mian @ Md. Azad of Cr. Appeal (DB) No. 790 of 2015 in conspiracy with the other co-convicts who are the appellants before this Court. She has submitted that in the present case the dead body of the deceased was recovered based on the confessional statements made by the appellants Md. Chand @ Chandelwa and Addu Mian @ Md. Azad as well as Bittu @ Wasim Akram and Nehru Kumar @ Tonish Kumar. The dead body was recovered in the presence of prosecution's witnesses who have supported the



prosecution's case that recovery of the dead body was made from the place as was indicated by the said four persons, in their presence. She has contended that it is not a case of mere recovery by the police rather it is a case where the said four persons after having separately confessed before the police about their involvement in commission of the offence had shown, in the presence of other witnesses the place from where the dead body was recovered. All of them had separately pointed towards the same place from where the dead body was recovered. She further contends that the prosecution has thus been able to establish at the trial the motive behind the occurrence. Further, there is evidence to the effect that all the accused persons were seen together at several places soon before the commission of offence and therefore the trial court has rightly held the appellants guilty of offence punishable under Sections 302 of the Indian Penal Code with the aid of Section 120B thereof. She contends that impugned judgment of conviction of the trial court is based on due scrutiny and appreciation of evidence on record, which doesn't suffer from any legal infirmity requiring this Court's interference.

43. We have perused the impugned judgment and order of the trial court as well as the lower court records. We



have examined the depositions made by the prosecution witnesses and the exhibits proved at the trial. We have given our thoughtful consideration to the rival submissions made on behalf of the appellants in the facts and circumstances of the present case. We have considered it apt to begin with the case of the appellants Md. Chand @ Chandelwa and Addu Mian@ Md. Azad of Cr. Appeal (DB) No. 790 of 2015, first.

44. Addu Mian @ Md. Azad, Md. Chand @ Chandelwa (the appellants herein) Nehru Kumar @ Tonish Kumar, Bittu @ Wasim Akram are said to have made their confessional statements before the Investigating Officer, (PW-17). From the evidence of Investigating Officer, it appears that the accused persons, who had made their confessional statement separately pointed towards the same place where the dead body was found concealed. The dead body of the deceased was identified by father of the deceased (PW-16)/ mother of the deceased/ maternal uncle of the deceased (PW-15). Further, the Investigating Officer recovered blood stained printed towel, a pair of sleepers, white collar muffler and a piece of shirt which the deceased was wearing. Blood stained soil and grass were also recovered. The recovery of the dead body of the deceased and other articles were made, based on confessional statement



of Addu Mian @ Md. Azad, Md. Chand @ Chandelwa, Nehru Kumar @ Tonish Kumar, Bittu @ Wasim Akram. From the evidence of the prosecution's witnesses, particularly, PW-16 (father of the deceased) and PW-15 (maternal uncle of the deceased), it is evident that they proved recovery of the dead body from the place as indicated by Addu Mian @ Md. Azad, Md. Chand @ Chandelwa, Nehru Kumar @ Tonish Kumar, Bittu @ Wasim Akram.

45. In such view of the matter, we are not convinced with the submission advanced on behalf of the appellants, with the aid of the Supreme Court's decision in case of *Mohd. Yunus Ali Tarafdar* (supra). In the said case conviction was based on the recovery of the watch, which was with the deceased, pursuant to the confessional statement of *Mohd. Yunus Ali Tarafdar* (supra). Based on the confessional statement before the police, a receipt issued by the owner of the watch shop was seized from *Mohd. Yunus Ali Tarafdar*, the appellant before the Supreme Court, during the course of investigation. Subsequently, the watch was seized from the shop with the counterfoil of the receipt on which the signature of *Mohd. Yunus Ali Tarafdar* (supra) was found. In such circumstance, a plea was taken by the defence that the appellant



in that case was coerced by the police in signing the counterfoil of the receipt and that the receipt was not seized by from the house of the appellant of that case. In such circumstance and other circumstances available before the Supreme Court in case of ***Mohd. Yunus Ali Tarafdar*** (supra) the Supreme Court held that the circumstances relied upon by the prosecution to prove the guilt of the appellant in that case was not complete.

46. The facts in the present case are different on material particulars. In the present case, the concealment of the dead body by the persons who made their confessional statements, upon its recovery from the place separately indicated by them in the presence of other witnesses, stands proved. It would be useful at this juncture to notice the Supreme Court's decision in case of ***Bheru Singh v. State of Rajasthan*** reported (1994) 2 SCC 467, which succinctly lays down the law as far as admissibility of confessional statement made by the accused to the police officer is concerned, paragraphs 16 and 19 of which are relevant and are being reproduced hereinbelow:-

'16. A confession or an admission is evidence against the maker of it so long as its admissibility is not excluded by some provision of law. Provisions of Sections 24 to 30 of the Evidence Act and of Section 164 of the Code of Criminal Procedure deal with confessions. By virtue of the provisions of Section 25 of the Evidence Act, a



confession made to a police officer under no circumstance is admissible in evidence against an accused. The section deals with confessions made not only when the accused was free and not in police custody but also with the one made by such a person before any investigation had begun. The expression "accused of any offence" in Section 25 would cover the case of an accused who has since been put on trial, whether or not at the time when he made the confessional statement, he was under arrest or in custody as an accused in that case or not. Inadmissibility of a confessional statement made to a police officer under Section 25 of the Evidence Act is based on the ground of public policy. Section 25 of the Evidence Act not only bars proof of admission of an offence by an accused to a police officer or made by him while in the custody of a police officer but also the admission contained in the confessional statement of all incriminating facts relating to the commission of an offence. Section 26 of the Evidence Act deals with partial ban to the admissibility of confessions made to a person other than a police officer but we are not concerned with it in this case. Section 27 of the Evidence Act is in the nature of a proviso or an exception, which partially lifts the ban imposed by Sections 25 and 26 of the Evidence Act and makes admissible so much of such information, whether it amounts to a confession or not, as relates to the fact thereby discovered, when made by a person accused of an offence while in police custody. Under Section 164 CrPC a statement or confession made in the course of an investigation, may be recorded by a Magistrate, subject to the safeguards imposed by the section itself and can be relied upon at the trial.

19. *From a careful perusal of this first information report we find that it discloses the motive for the murder and the manner in which the appellant committed the six murders. The appellant produced the bloodstained sword with which according to him he committed the murders. In our opinion the first information report Ex. P-42, however is not a wholly confessional statement, but only that part of it is admissible in evidence which*



does not amount to a confession and is not hit by the provisions of Section 25 of the Evidence Act. The relationship of the appellant with the deceased; the motive for commission of the crime and the presence of his sister-in-law PW 11 do not amount to the confession of committing any crime. Those statements are non-confessional in nature and can be used against the appellant as evidence under Section 8 of the Evidence Act. The production and seizure of the sword by the appellant at the police station which was bloodstained, is also saved by the provisions of the Evidence Act. However, the statement that the sword had been used to commit the murders as well as the manner of committing the crime is clearly inadmissible in evidence. Thus, to the limited extent as we have noticed above and save to that extent only the other portion of the first information report Ex. P-42 must be excluded from evidence as the rest of the statement amounts to confession of committing the crime and is not admissible in evidence.'

47. In case of ***Sandeep v. State of U.P.*** reported in ***(2012) 6 SCC 107***, the Supreme Court, discussing the law on admissible portion of the confessional statement of an accused has held that whenever and wherever the recoveries are made, the same are admissible in evidence and it is for the accused in such situation to explain to the satisfaction of the Court as to how they came into possession or planting the same at the places from where they were recovered. The Supreme Court in case of ***Sandeep*** (supra) has further held that such part of the statement which does not in any way implicate the accused but is mere statement of facts would only amount to mere admissions which can be relied upon for ascertaining the other



facts, which are intrinsically connected with the occurrence, while at the same time, the same would not in any way result in implicating the accused in the occurrence directly.

48. It will be useful at this stage to refer to the Supreme Court's decision in case of **Anuj Kumar Gupta v. State of Bihar** reported in **(2013) 12 SCC 383**, dealing with the facts which were similar to the facts of the present case, as would appear from paragraphs 15, 16, and 17 thereof which read as under:-

"15. Since the confessional statement was made before the investigating officer (PW 9), it is necessary to note what exactly was the confession stated to have been made, which enabled the IO to make some progress in his investigation. According to PW 9, he recorded the confession of the appellant at 11.30 p.m. on 23-4-2002. He also stated that based on the information furnished by the appellant, he also arrested Arun Mandal who also made a confession, which was identical to the one made by the appellant. Though PW 9 would refer to very many statements alleged to have been admitted by the appellant and co-accused Arun Mandal, in our considered opinion, the only part of the admission, which can be noted and accepted as admissible in the evidence related to the identification of the place where the dead body of the deceased Chhotu was found, based on the admission of the appellant and the co-accused.

16. Insofar as the said part of the evidence of PW 9 read along with the admission found in Exhibits 4 and 5 is concerned, it has come out in evidence that the appellant was taken to the place called Maldiha Dhar (a river stream) along with PW 4, the paternal uncle of the deceased where the dead body of the deceased Chhotu was recovered from the water of Maldiha Dhar. PW 9 stated that



since Maldiha Dhar (stream) fell within the jurisdiction of Barhara PS of District Purnea, he could not immediately lift the body from that place, that he left the dead body at that very place under the protection of armed forces and, therefore, after getting necessary official clearance, the body was handed over to the police station of his jurisdiction and the same was sent for carrying out necessary post-mortem. PW 4 in his evidence also corroborated the abovesaid version of PW 9 by stating that he proceeded along with PW 9, as guided by the appellant and the co-accused Arun Mandal and that they reached the place Maldiha Dhar, where the dead body was found as pointed out by the appellant and co-accused. He also stated that he identified the dead body as that of his nephew Chhotu, the deceased. He further stated that the eyes of the dead body were open, the tongue was protruding out and that there were marks of throttling on the neck of the deceased.

17. From the above evidence of PW 9, supported by the version of PW 4, it has come to light that at the instance of the appellant and the co-accused Arun Mandal, the body of the deceased Chhotu was recovered from Maldiha Dhar (river stream) and that it was noted at that time the eyes of the dead body and the tongue were protruding out. There were also signs of marks on the neck of the deceased Chhotu. The said part of the confessional statement as recorded by PW 9 cannot be said to straightaway implicate the appellant and the co-accused to the killing of the deceased. Leaving aside the rest of the part of the admission, the identity of the place at the instance of the appellant and the co-accused, as to where the dead body of the deceased was lying, which was exclusively within the knowledge of the appellant, was certainly admissible by virtue of the application of Section 8, read along with Section 27 of the Evidence Act."

49. After having considered the aforesaid circumstances the Supreme Court held in case of **Anuj Kumar**



Gupta (supra) in paragraphs 18 and 19 as under :-

“18. In such circumstances, in the absence of any convincing explanation offered on behalf of the appellant-accused as to under what circumstances he was able to lead the police party to the place where the dead body of the deceased was found, it will have to be held that such recovery of the dead body, which is a very clinching circumstance in a case of this nature, would act deadly against the appellant considered along with rest of the circumstances demonstrated by the prosecution to rope in the appellant in the alleged crime of the killing of the deceased. Therefore, once we find that there was definite admission on behalf of the appellant by which the prosecuting agency was able to recover the body of the deceased from a place, which was within the special knowledge of the appellant, the only other aspect to be examined is whether the appellant came forward with any convincing explanation to get over the said admission. Unfortunately though the above incriminating circumstance was put to the appellant in the Section 313 CrPC questioning where he had an opportunity to explain, except a mere denial there was no other convincing explanation offered by him.

19. Thus, we reach a conclusion that the said circumstance of recovery of the body of the deceased from the place called Maldiha Dhar (a river stream) at the instance of the appellant as spoken to by PW 9, is supported by the evidence of PW 4; we have to only see whether rest of the circumstances considered by the trial court, as well as the High Court, were sufficient to confirm the ultimate conviction of the appellant and the sentence imposed on him. On this aspect when we perused the judgment of the trial court, as well as the High Court, the following circumstances have been found to be established:”

50. Taking a cue from the decision rendered by the Supreme Court in case of **Anuj Kumar Gupta**, we are of the



considered view that in the present case also though the incriminating circumstances were explained to the appellants in terms of Section 313 of the Code of Criminal Procedure and were given an opportunity to respond, except for denial and false implication, there was no other convincing explanation given by them.

51. Situated thus, in our considered view, the judgment of conviction and order of sentence recorded by the trial court against the appellants Addu Mian @ Md. Azad and Md. Chand @ Chandelwa in Cr. Appeal (DB) No. 790 of 2015, does not required any interference. Cr. Appeal (DB) No. 790 of 2015, is accordingly dismissed.

Cr. Appeal (DB) No. 779 of 2015

52. This appellant (Md. Abdul Rajjak @ Nepali @ Abdul Rajjak @ Nepali Miyan) has been convicted, based on the evidence of PW-1 that he had seen this appellant and others with the deceased in the morning of the date of occurrence. We do not find any evidence adduced at the trial to prove beyond all reasonable doubts that this appellant was a party to any criminal conspiracy to commit murder of the deceased. It has been rightly submitted on behalf of this appellant that a suspicion howsoever strong cannot take the place of legal



evidence. We are of the opinion, that his conviction is unsustainable in the absence of adequate evidence to prove his complicity. The appellant Md. Abdul Rajjak @ Nepali accordingly stands acquitted of the charge of the offences punishable under Sections 364/149, 120B/149, 302/149, 201/149 of the Indian Penal Code and Sections 27(1) of the Arms Act. Cr. Appeal (DB) No. 779 of 2015 is accordingly allowed.

Cr. Appeal (DB) No. 810 of 2015 and Cr. Appeal (DB) No. 349 of 2016

53. Appellants Md. Yunus @ Md. Yunis in Cr. Appeal (DB) No. 810 of 2015 and Barkat Mian in Cr. Appeal (DB) No. 349 of 2016 have been convicted based on the evidence of PW-3 and PW-15 to the effect that they were seen along with other persons made accused in the case, at 11:45 pm. on 09.12.2012 going towards BTPS. We have perused the evidence of the prosecution witnesses. On the basis of analysis of the deposition of witnesses, we find that the only evidence which has come against these appellants is that they were seen along with other persons made accused in the case, at 11:45 pm. on 09.12.2012 going towards BTPS. We do not find any certain and explicit evidence on record justifying conviction of these



appellants. The presence of these appellant near the place of occurrence with other co-accused/co-convict persons, can at the maximum be a reason to nurture suspicion, but it cannot take the place of legal proof. It has been repeatedly held by the Courts that suspicion however, great it may be, cannot take place of legal proof. "Fouler the crime higher the proof" is a well established principle of criminal justice, repeatedly emphasized by the Courts. There is no legal proof on record to justify the finding of conviction of these appellants. Accordingly the judgment of conviction recorded by the trial court against these appellants for commission of offences punishable under Sections 364/149, 120B/149, 302/149, 201/149 of the Indian Penal Code and Sections 27(1) of the Arms Act cannot be upheld. They stand acquitted of the aforesaid charges giving them benefit of doubt. These appeals are thus allowed.

Cr. Appeal (DB) No. 1260 of 2016

54. The implication of this appellant in connection with the crime is on the basis of CDR (Call Detail Report) obtained by the police disclosing the fact that he was in touch with Addu Mian @ Md. Azad. Further, he was seen with other accused persons at 11:45 pm. on 09.12.2012 going towards the



eastern side of BTPS, as in the case of the appellants (Md. Yunus @ Md. Yunis and Barkat Mian). We are convinced with the submission advanced on behalf of the appellant that the said CDR, which is in the nature of electronic evidence, has not been proved in accordance with the requirement under Section 65B of the Evidence Act. Further, in his case also PW-3 and PW-15 have stated in their evidence that this appellant was seen with other persons near the BTPS. The evidence based on which this appellant has been convicted cannot be said to be clinching, justifying his conviction with the aid of Section 120B of the Indian Penal Code. The conviction recorded by the trial court thus cannot be upheld.

This appellant stands acquitted of the charge.

This appeal is accordingly allowed.

55. Resultantly, Cr. Appeal (DB) No. 790 of 2015 is dismissed. Cr. Appeal (DB) No. 716 of 2015 stands abated. Cr. Appeal (DB) No. 779 of 2015, Cr. Appeal (DB) No. 810 of 2015, Cr. Appeal (DB) No. 349 of 2016 and Cr. Appeal (DB) No. 1260 of 2016 are allowed. The appellants of Cr. Appeal (DB) No. 779 of 2015, Cr. Appeal (DB) No. 810 of 2015, Cr. Appeal (DB) No. 349 of 2016 and Cr. Appeal (DB) No. 1260 of 2016 are on bail. Consequent upon their acquittal, the



appellants stand discharged from the liabilities of bail
bonds/sureties as the case may be.

(Chakradhari Sharan Singh, J)

I agree.
Khatim Reza, J :

Rajesh/Anand

AFR/NAFR	NAFR
CAV DATE	01.08.2022
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(Khatim Reza, J)

