

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

% Reserved on: 20th September, 2022
Pronounced on: 20th October, 2022

+ CRL.A. 554/2019

RISHI RALLAN Appellant

Represented by: Ms. Inderjeet Sidhu, Advocate
(DHCLSC) with Mr. Priyank
Sharma, Advocate.

versus

STATERespondent

Represented by: Mr. Prithu Garg, APP for State
with Insp. Mangesh Tyagi and
Insp. Rajesh Kumar PS Spl. Cell.

+ CRL.A. 696/2019

JASWANT Appellant

Represented by: Mr. Pramod Kr. Dubey, Sr. Adv.
(DHCLSC) with Mr. Amit Singh
Chauhan (DHCLSC), Mr. Akshat
Sharma & Mr. Syed Hamza,
Advocates.

versus

STATERespondent

Represented by: Mr. Prithu Garg, APP for State
with Insp. Mangesh Tyagi and
Insp. Rajesh Kumar PS Spl. Cell.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. These appeals have been filed assailing the impugned judgment dated 29th January 2019 passed by the learned Trial Court convicting the

appellants for offence punishable under Section 365/302/201/120-B IPC and under Section 25 of the Arms Act; and order of sentence dated 13th February, 2019 sentencing both the appellants for rigorous imprisonment for life of fine of Rs. 25,000/- for offence punishable under Section 302 IPC r/w Section 120 B IPC (SI for three months in default thereof); rigorous imprisonment for 7 years and fine of Rs. 10,000/- for offence punishable under Section 365 r/w Section 120 B IPC (SI for three months in default of payment of fine); rigorous imprisonment for 7 years and fine of Rs. 10,000/- for offence punishable under Section 201 r/w Section 120 B IPC (SI for three months in default of payment of fine); rigorous imprisonment for three years each and fine of Rs. 5000/- (SI for three months in default thereof) for offence punishable under Section 25 Arms Act. All these sentences were to run concurrently except for the one for offence punishable under Arms Act.

The Incident:

2. As per the case of the prosecution, appellants along with other co-accused Asha (since deceased), A (juvenile), S (juvenile) and Kiran Pal in furtherance of criminal conspiracy hired Innova Car number DL-4 CAE 5596 on 24th June, 2010 from Yatrika Tourist Centre, Opposite New Delhi Railway Station, Paharganj, for Haridwar-Dehradun-Mussoorie. They travelled to these locations and somewhere on the way murdered the driver of the said vehicle Manish Mann (the deceased) on 26th June 2010 and threw his dead body to cause disappearance of the evidence. Accused A and S were juvenile and produced before the Juvenile Justice Board. Accused Asha expired during pendency of the trial and proceedings against her abated *vide* order dated 7th July, 2014 of the learned Trial Court. Appellant Jaswant, Asha 'A' and 'S' were arrested in this case on 29th September, 2010 and upon their disclosure

appellant Rishi Rallan was arrested from Tis Hazari Court on receipt of information that he would be produced before the Court in FIR No. 106/2010 PS Rajender Naga, as per which a pistol and six live cartridges were recovered from appellant Rishi Rallan and a magazine of pistol with three live cartridges recovered from appellant Jaswant. The trial was conducted together for both FIRs (Nos. 106/2010 and 170/2010). After completion of the investigation charge-sheet was filed and charges were framed against the appellant under Section 302/365/201 r/w Section 120 B IPC in FIR No. 170/2010 and under Section 25 of the Arms Act in FIR No. 106/2010. The prosecution examined 45 witnesses in support of the case, statements of the appellants were recorded under Section 313 Cr.P.C. and none of the accused persons led any evidence in their defence.

Submissions on behalf of the Appellants

3. Through their respective appeals and arguments on their behalf led by learned counsel, it was submitted that the case of the prosecution was totally based upon circumstantial evidence, they failed to prove a composite unbroken chain and link in the pieces of evidence presented. It was contended that the booking of the car was done in the name of one Satya Prakash (PW-8) on 24th June, 2010 by PW-5 Deepak Kumar and no connection has been established of the appellants with PW-5 or PW-8. It was contended that the genuineness of the booking receipt issued by Yatrika Tourist Centre was not proved nor was there any evidence that booking was not done by Satya Prakash. PW-5 had stated that he had first called another driver by the name of Amit to carry the passengers in the Innova. Subsequently, it was not possible for Amit to reach in time, therefore he recommended name of the deceased and that Amit was neither investigated nor examined and no corroboration was presented

for this version of PW-5 relating to Amit. The prosecution has not presented any fuel receipt to show the proposed travel of the car on the alleged journey to Haridwar/Dehradun/Mussoorie. The alleged mobile phone used by the appellant Jaswant was not linked to him since the CAF of the number used by the appellant was in the name of one Mr. Narender Pratap. Moreover, two mobiles purportedly recovered from appellant Rishi Rallan in FIR No. 106/2010 were not deposited in the *maalkhana* and neither exhibited in the present case. Attention was drawn to the visitor register of Gayatri lodge in Haridwar, where, as per the prosecution the appellants had stayed prior to committing the crime. As per the prosecution, the appellant along with other individuals came to the lodge around 2:30 a.m., but the subsequent entry in the register shows at 10:00 a.m. and therefore entry in the register itself is *ex-facie* false. Moreover, there is mention of Sh. Munna Lal in the said register who is the father of PW-8 and PW-8 was not examined on this aspect. Counsel for the appellants further contended that there was no evidence led by the prosecution that the Innova had been hired from Yatrika Tourist Centre from Delhi, ever left Delhi at the relevant time or regarding alleged motive of the crime to decamp with the car since the car was found abandoned and in a damaged condition. The three chance prints which were recovered by the investigation team were never sent to FSL for examination nor steps taken to match the DNA of the hair samples recovered from the Innova car. There was also no match for the human blood found in the car in the FSL report. The recovery of the driving licence of the deceased from the house of the appellant is doubtful and inadmissible as there were no independent witnesses and the alleged recovery was highly delayed, and the genuineness of the driving licence was not examined through the concerned RTO. The CDR

of appellants was not brought on record. Dock identification of the appellants by PW-10 fails to inspire confidence since no TIP was conducted and the appellant was taken with others to Haridwar during the investigation. The ballistic report prepared by the investigation agencies only points that the gun was in working condition and there is no connection established between gun recovered in FIR No. 106/2010 and the cause of death in the instant case (the opinion of the doctor on the weapon of offence was also not obtained). It was further contended that the last seen theory as propounded by PW-10, being the owner of the lodge at Haridwar cannot be used to draw an inference against the appellants. PW-8's presence crops up as part of the evidence, but it was not examined on various aspects relating to a possible involvement. The counsel for the appellant Rishi Rallan further contended that there was no evidence that he accompanied the co-accused in the hired car, nor was he seen by PW-10 along with the other co-accused and therefore, there was no evidence to connect him with the other four co-accused. Further, there was no evidence recovered from the said car found abandoned to prove that it was used by the appellants for committing any crime and there was thus a serious absence of motive attributable to the appellants.

Counsels for the appellants have *inter alia* relied upon judgments [*inter alia Sheo Swarup V. King Emperor* AIR 1934 PC 227; *Sujit Biswas V. State of Assam* (2013) 12 SCC 406; *Kali Ram V. State of H.P.* (1973) 2 SCC 808; *State of Punjab V. Sucha Singh* (2003) 3 SCC 153; *Narendra Singh & Anr. V. State of M.P.* (2004) 10 SCC 699; *Sunil Kundu & Anr. V. State of Jharkhand* (2013) 4 SCC 422; *Motilal & Anr. V. State of Rajasthan* (2009) 7 SCC 454] to support their

contention that suspicion, however, grave it may be, cannot take the place of proof. In case of two reasonable conclusions on the basis of evidence on record and faulty investigation, the benefit of doubt will be given to the accused. They have also relied upon the decision of ***Magan Bihari Lal V. The State of Punjab*** AIR 1977 SC 1091 and ***Ram Chandra V. State*** 1957 CriLJ 559 that expert opinion must always be received with great caution. As regards to the recoveries made from the house of the appellants where their families reside, the Learned Counsel relied upon the decision of ***Vijay Kumar V. State of Rajasthan*** (2014) 3 SCC 412 that it cannot be said that the articles were in exclusive possession of appellants & they came to be recovered only on the information furnished by them. Further, in respect to the completion of the chain of evidence and proximity of time of death and last seen with the deceased, presumption of innocence and motive of the appellant, reliance has been placed on *inter alia* decisions in ***Sharad Birdhichand Sarda V. State of Maharashtra*** (1984) 4 SCC 116; ***Riaz Ali V. State (Govt. of NCT) Delhi*** CrI. A. No. 909 of 2010; ***Kailash Gaur & Ors. V. State of Assam*** (2012) 2 SCC 34; ***Rishipal V. State of Uttarakhand*** (2013) 12 SCC 551 and ***Nandu Singh V. State of Madhya Pradesh (Now Chhattisgarh)*** CrI. A. No. 285 of 2022, 2022 LiveLaw SC 229 to contend that in case of circumstantial evidence, chain of circumstances should be of conclusive nature and should be consistent only with the hypothesis of the guilt of the accused. Absence of motive weighs in the favour of the accused.

Submission on behalf of the Prosecution

4. Learned Additional Public Prosecutor (APP) countering the submissions of the appellants contended that there was serious

incriminating circumstantial evidence against the appellants. *Firstly*, the mobile number (in the name of Satya Prakash) was obtained on 23rd June, 2010, just a day before the booking of the Innova Car and as per the CAF it was the driver's license of PW-8 Satya Prakash which was given as an ID proof. PW-8 deposed that he had lost his driving license somewhere in Delhi 5-6 years before his deposition. Moreover, the signature of Satya Prakash on the CAF and on the self-attested copy of the DL, do not match with that in his deposition. *Secondly*, as regards the booking of the Innova Car, the testimony of PW-1 Anil Kumar (deceased's younger brother) was noteworthy since as per him the deceased had received a phone call from Yatrika Tourist Centre regarding a booking for Haridwar-Dehradun-Mussoorie trip and he left to service that booking at about 2:30 p.m. on 24th June, 2010. On 25th June, 2010, the deceased had called PW-1 and told him that he was in Haridwar along with the tourists and then called again on 26th June, 2010 and told him that he may leave for Mussoorie along with the tourists either in the evening or the next morning. Thereafter, the deceased never called PW-1 and his phone was switched off. *Thirdly*, as regards to the trip to Haridwar-Dehradun-Mussoorie by the accused persons, the testimony of PW-10 would make it evident that the appellants along with the co-accused had arrived at Gayatri Lodge, Bhoopat Wala, Haridwar, Uttarakhand at about 2:00 a.m. on 25th June, 2016 in an Innova Car bearing Delhi number, made the booking in the name of Satya Prakash which was in the writing of the appellant Jaswant, (the writing having been matched later) and as per PW-10 all of them left the lodge the next morning along with the Innova Car and the deceased. This last seen evidence was critical as far as the deceased being together with the appellant and the co-accused is concerned. *Fourthly*, the CDRs of the

deceased and the mobile phone was used by appellant Jaswant and appellant Rishi Rallan where the CAF/CDR/location chart is duly proved along with the certificate under Section 65-B of the Indian Evidence Act would show that right from 24th June, 2010 to 26th June, 2010 the locations of the deceased and the appellants were similar and on 27th June, 2010 while the location of the mobile phone of the deceased was not found but that of the appellant was found at Bapa Nagar, Karol Bagh, Delhi. *Fifthly*, the discovery and identification of the dead body on 26th June, 2010 and 7th July 2010 respectively were duly proved by the relatives of the deceased. *Sixthly*, the discovery of the Innova Car of the deceased on 22nd July, 2010 was with the fake number plate (DL-5CAB2434) while the original registration number was DL-4CAE5596. PW-18, Chander Shekhar deposed that he had prepared the fake number plates on the asking of appellant Jaswant for a sum of Rs. 150/-. *Seventhly*, the attention of this Court was drawn by the learned APP to the various disclosures and recoveries made at the instance of the appellants including the stay at Gayatri Lodge, the fake number plates, the driving license of the deceased, the mobile phone and the key of the Innova Car etc. As per the learned APP the chain of the circumstances was firmly established to prove the guilt of the appellants beyond reasonable doubt.

The Evidence:

5. The evidence, necessary and relevant for the assessment of this case, is *inter alia* as under:

5.1 PW-1, Anil Kumar was the younger brother of the deceased Manish who deposed that the deceased used to drive his own Innova vehicle which was attached with tourist services and his mobile number

was 9350770516. On 24th June, 2010, his brother received a call from Yatrika Tourist Centre, Pahar Ganj that there was a booking for Haridwar-Dehradun-Mussoorie and they instructed him to attend the call. The deceased left for the same purpose at about 2:30 p.m. for the booking which was done in the name of Satya Prakash having given the address of Gole Market along with phone No. 7838618126. On the next day at about 3:00 p.m. the deceased called his number 9313737041 and mentioned that he was at Haridwar along with the tourists. On 26th June, 2010, the deceased again called PW-1 at about 8:00 a.m. and then in the evening at about 8:30 p.m. stating that he would, along with those persons, leave for Mussoorie either in the evening or the next morning, and after that he never called him. When PW-1 tried to contact him, his mobile was switched off and when he went to Yatrika Tourist Centre he was shown a slip where the address and phone number of the party who booked was mentioned. PW-1 went to Gole Market to contact the persons at the given address, but it was revealed that there was no such address available in Gole Market. Having unable to contact his brother with the phone being switched off, he lodged a complaint at PS Pahar Ganj (Ex PW-1/A)

5.2 PW-5, Deepak Kumar Sinha, the employee of Yatrika Tourist Centre deposed that he was working with the centre in Pahar Ganj where on 23rd June, 2010 two persons in a routine manner came to the centre to enquire about hiring a Innova and said that they would call the next day. On the next day, he received a call for taking Innova Car on rent as taxi. PW-5 told them to pay an advance of Rs. 1000/- and asked for a copy of their identity proof. The caller mentioned that he was sending his son with ID proof and advance. At about 2.00 p.m., one boy came on motorcycle and handed over cash of Rs. 1000/- and showed his identity

proof for booking of Innova Car for Haridwar- Dehradun -Mussoorie. PW-5 called one Amit to ask him to service this booking but since he was not available at the required time demanded by the customer, Amit arranged for other Innova Car which was driven by the deceased. PW-5 produced the original travel coupon booklet with the relevant entry No. 449 exhibited as Ex.PW-5/A. He stated that the vehicle was booked in the name of Satya Prakash and his mobile no. was mentioned as 7838618126 and the number of driver Manish Maan (the deceased) was mentioned as 9350770516. The vehicle was booked for address House No. 113, Block No. 67, Gole Market Sector-3 Delhi. He stated that the photo, which was appearing on the driving licence given as identity proof for the booking, copy of which he had kept, was not of the boy who had come for the booking. The boy had been identified by him during the trial before the Juvenile Justice Board.

5.3 PW-8, Satya Prakash deposed that he was working as a driver and lost his driving licence 5 to 6 years back somewhere in Delhi and got another driving licence issued from the Janakpuri Authority on 13th January, 2006. He did not know anybody by the name of Rishi Rallan or Jaswant and stated in his cross-examination that he had not lodged any complaint regarding the loss of his original DL.

5.4 PW-14, Mahesh Chand whose address was used by the appellants, stated that he had been residing at that address i.e. House no. 67/113 Gole Market, New Delhi since 15th July, 2009 and was working as a driver in the Ministry of Rural Development, Krishi Bhawan, New Delhi and he does not know any person named Jaswant or Rishi Rallan or the other co-accused. He stated he had never booked any taxi from his

residence, and he had no relation with the accused persons. No cross-examination was done of PW-14.

5.5 PW-18, Chander Shekhar deposed that in the year 2010 he prepared the number plates of vehicle No. DL-5CAB-2434 on a plastic board on the asking of one Jaswant, for a sum of Rs. 150/-, whom he identified in Court. He further stated that prior to that incident appellant Jaswant had also got prepared number plates and of vehicles from him and also brought the vehicles, but on this occasion, he had not brought the vehicle and therefore he did not check the registration of the Vehicle. PW-18 identified the two number plates shown to him in court which were made by him on the asking of the appellant Jaswant. In his cross-examination he further confirmed that he had prepared number plates of the vehicles on the asking of appellant Jaswant on a couple of occasions and at one time he had brought the vehicle as well.

5.6 The last seen witness PW-10, Pawan Kumar was the owner of Gayatri Lodge Bhoopat Wala, who stated that he was residing on that address along with his family members on the ground floor and running a small confectionery shop and had constructed the first and second floor for rent during the Kumbh festival in the year 2010. Since he had not registered the said house in the name of Gayatri Lodge he did not put any sign outside the house. On 25th June, 2010 according to PW-10 at about 2:00 a.m. he saw one Innova vehicle bearing Delhi number parked outside the road and there was one driver along with one lady and five gents asking them about Dharmshala. PW-10 was on the scooty, and he offered them room on the first floor of his lodge and they booked the said room in the name of Satya Prakash. The entry in the register was made by one person named Jaswant and all the said persons left his

lodge the next morning after paying a sum of Rs. 800 as rent. He did not take ID proof as it was night hours. He further testified that the driver of the Innova was having strong built also came up to the room of the six persons with their luggage and after leaving the luggage asked PW-10 whether any room was available for him. There being no vacant room the driver went to his vehicle and slept. Later, on 2nd October, 2010 when the police officials from Delhi came with the accused person he identified them to be the same as those who had hired the room that night. He also identified the deceased as the driver of the Innova whom he had seen on that night of 25th June, 2010 from the photograph of the dead body shown by the police. In his cross-examination he stated that he had not checked the identify card of Satya Prakash the name in which they had taken the booking, however one ID proof was shown but he did not keep a copy since it was 2:00 a.m. in the wee hours of the night. He remembered the color of Innova car as grey and stated that the accused persons vacated the room at about 10.00 a.m. on 26th June, 2010.

5.7 PW-11, Gulsanovar, deposed that on 26th June, 210 he was coming to his village Mohand from Dehradun in his Bolero when about 11.00 p.m. he reached Datkali Mandir towards Saharanpur where he saw a dead body of the side of the road. He informed the police at Mohand Chowki and the panchnama was conducted in his presence. He stated that the body had one red colour nylon rope around the neck.

5.8 PW-12, SI N.P. Singh, posted as Station Officer at PS Bihari Garh, District Saharanpur, UP deposed that the FIR No. 114/10 under Section 302/201 IPC was handed over to him regarding the dead body found by PW-11 and he inspected the spot and prepared a site plan and try to get the body identified. On 1st July, 2010, he published

photograph of the deceased in the newspaper for identification of the body. On 10th July, 2010, he came to know that, when he came back from his leave, the dead body was identified and the case had been transferred to Delhi.

5.9 PW-15, SI Shyam Lal posted at PS Bihari Garh deposed that after the discovery of the dead body by PW-11 he prepared a request for conducting the *post mortem* and obtained the PM report. Since the body was unidentified it was cremated by burying the body. On 7th July, 2010 when the police of PS Pahar Ganj came to them they went to District Magistrate who deputed SDM Saharanpur and they went to spot where the dead body was buried and it was exhumed in the presence of the SDM.

5.10 PW-3 Ashok Shokeen cousin of the deceased deposed that on 7th October, 2010 they reach PS Pahar Ganj and on identification of the photograph of the deceased's body they went to Saharanpur and identified the dead body as that of Manish Mann after it was exhumed.

5.11 PW-4 Sri Bagwan, uncle of the deceased, also similarly identified the dead body in the presence of the SDM when it was exhumed.

5.12 PW-37, Inspector Subhash Meena posted at PS Pahar Ganj deposed that on receiving the information the dead body was recovered in Saharanpur they were able to match it to the photographs from the missing person report of the deceased and he took the relatives to Saharanpur to have the body identified.

5.13 PW-23, Dr. Rajesh Kumar, posted at District Hospital, Saharanpur, UP stated on 30th June he conducted *post mortem* of a body of unknown male aged about 42 years and found that the time of

duration of death was about 3-5 days. He reported that there was *ante mortem* injury No.1 gunshot wound of size 1.5 cm x 1.5 cm x muscle deep left size of chest, 13 cm below the nipple and another exit wound size 2.5 cm x 2.5 cm connected to injury no.1 on the left size of the chest 7cm below the left nipple. There was traumatic swelling on the right side of the chest and yet another gunshot wound of size 1.5 cm x 1.5 cm which had gone deep on procedure after the right hand 3 cm below from the ribs and an exit wound of 2.5 cm x 2.5cm connected to that injury on interior aspect of right hand near the base of the thumb. His opinion was that the case of death was shock and hemorrhagic as a result of *ante mortem* injury.

5.14 PW- 24, Inspector Raman Kumar of PS Pahar Ganj stated that he received information on 2nd July, 2010 regarding abduction of the deceased on a complaint lodged by PW-1. For his investigation, he issued wireless messages to SP Haridwar and Dehradun and placed advertisements on Doordarshan and Akashwani, visited various areas of Haridwar and Mussoorie and gave wide publicity of hue and cry notice and contacted various police authorities in the area. On 6th July, 2010 when shown photograph of the dead body being circulated, he was able to call the relatives of the deceased who identified the photographs and then the investigation of the case was handed over to Inspector Subhash Meena, the Investigating officer.

5.15 PW-37 Inspector Subhash Meena, Investigating Officer deposed that he was entrusted with the investigation and on receipt of the information and the dead body and having matched with the missing report, he ensured exhumation of the body and identification by the relatives of the deceased. Further, on 22nd July, 2010, an information was

received regarding recovery of one Innova Car. They reached PS Prasad Nagar and found one Innova car having plate number DL-5CAB-2434 but on checking engine and chassis number of the vehicle, it was revealed that the original number of the vehicle was DL-4CAE-5596. The crime team was called on the spot, the car was inspected and some articles were recovered from the car and were taken into possession.

5.16 PW-44 Inspector Rajesh Kumar deposed that on 29th September 2010, he was posted at Crime Branch, Sunlight Colony, Delhi where the investigation of the case had been transferred. They were already tracking down the case and he received secret information that the assailants involved would come to Millennium Park near the ISBT Sarai Kale Khan. He constituted a raiding party of 11 police officers, all except one in civil dress, informed the ACP, reduced the information vide DD no.7 and reached the said place. PW-44 asked 5-6 public persons to join the raiding party, but none agreed and went away. They apprehended four of the appellants Jaswant, A, S and Asha from that park. During police remand on 2nd October, 2010, the four persons led them to Gayatri Lodge Bhoopat Wala where they stated that they had stayed and on the next day on 3rd October, 2010 led them to the milestone mentioning Dehradun 20 KM on Saharanpur- Dehradun route and all four of them pointed out the place where they committed the murder of Manish, the driver of the Innova Car hired by them. Separate pointing of memo was prepared. The party went to PS Bihari Garh since it falls in their jurisdiction and reported the issue. On 4th October, 2010, he received information that the wanted accused Rishi Rallan will appear in Tis Hazari Courts from Tihar Jail in. FIR No.106/2010 PS Rajender Nagar and after obtaining information from learned ACMM, the appellant Rishi was formerly arrested, and his disclosure statement was

recorded. Later the appellant led them to Bhoopat Wala Colony pointed to the lodge where they had stayed and then later to the same spot where he had pointed out that they had murdered and thrown the dead body. On 6th October, 2010, he sent request letters to respective mobile companies for obtaining CDRs of the mobile numbers. On obtaining these CDRs it was found that the mobile number used by appellant Jaswant was registered in the name of the Narender Kumar however in the column of the local inquiry name of the Jaswant was found written in the CAF. Appellant Jaswant later disclosed that he was using mobile phone No. 9266013389 in mobile phone make Virgin at the time of the incident and the same was recovered from his personal search and he was arrested in Arms Act case in FIR No. 106/210 which was then retrieved from the malkhana of PS Rajendra Nagar. Further, on the disclosure of appellant Jaswant they were led to Chander Shekhar the person who got the fake number plate made and also to House No. 11678, Gali No 2, Sat Nagar, Delhi fourth floor where one polythene containing driving licence of deceased Manish and two visiting cards of Yatrika Tourist Centre and Delhi Kamboj Family Restaurant were recovered and duly sealed. Appellant Rishi led them to Chona Mandi, Pahar Ganj House No. 2731, Gali No. 7 and got recovered the key of the vehicle from the pocket of the bag kept on the table and it was also duly sealed. Appellant Rishi Rallan further disclosed that he had used a mobile make MAXX having two SIM cards at the time of the incident and he had, after the incident, given the mobile phone to his friend Brij Mohan for selling the same. On the disclosure of the appellants, accused Kiran Pal @ Asif was arrested. On 6th October, 2010 PW-44 obtained the specimen handwriting of the appellant Jaswant on 20 sheets (Ex.PW-38/R1).

5.17 PW-9, Brij Mohan Vikas salesman at Sony Goods shop Karol Bagh testified that on 8th November 2010 stated that when the police came to his house to ask about the mobile phone he gave the Maxx mobile phone of black color which was given to him for sale by appellant Rishi who was residing in a rented premises in front of his house, but he had not been able to sell it and the police accordingly seized the same.

5.18 In the statement recorded under Section 313 appellant Rishi Rallan stated that he had a property dispute with his stepmother, and he had gone to PS Rajender Nagar for some enquiry where he was falsely arrested along with accused Jaswant after 2^{1/2} months and was falsely implicated in the case. Appellant Jaswant also stated that he was called at Rajender Nagar near Ganga Ram Hospital and was falsely implicated in the case. Kiran Pal also stated that he was lifted from his residence at Loni in respect of some enquiry and some other 4-5 persons were also lifted by the police.

Analysis

6. Having examined the evidence on record and appreciation of submissions of all the parties, this Court is of the considered view that the prosecution has been able to prove the guilt of the appellants beyond reasonable doubt, for *inter alia* the following reasons:

6.1 The body of the deceased was found on 26th January, 2010 by PW-11 and reported to PS Bihari Garh District, Saharanpur. On 27th June, 2010 as per the testimony of the doctor who conducted the *post mortem* in Saharanpur, the dead body had multiple gunshots wounds which were *ante mortem* in nature sufficient to cause death. It is therefore evident that the death of the deceased Manish Mann was

homicidal in nature. Further, the testimonies relating to the exhumation of the dead body on 7th July, 2010, which was initially buried in 'Kabristan' being unidentified, was later identified by the relatives of the deceased, PW-3 and PW-4.

6.2 The booking of the Innova car was done from Yatrika Tourist Centre Pahar Ganj as is evident from the travel book register Ex. PW-5/A which shows at serial no. 449 that the Innova with registration no. DL-4C-5596 with driver Manish having Mobile No. 9350770516 had been assigned for the booking in the name of Mr. Satya Prakash (Mob. 7838618126) referred by Munna Lal Ji and bound to Haridwar-Dehradun-Mussoorie (departure 24th June, 2010 at 9:00 p.m.). As per the travel voucher, the journey was expected for four days since the rates at the bottom are noted at Rs. 150x4 and the tentative date for return was noted as 27th June 2010 at about 10:30 p.m. The address of the person who had booked was given as House No. 113, Block No. 67 Gole Market, Delhi the pickup to be at Gole Market.

6.3 The fact that the deceased was the one driving the Innova car with his mobile number being 9350770516 and had left on 24th June, 2010 in relation to booking from Yatrika Tourist Centre from Haridwar-Dehradun-Mussoorie, is corroborated fully by PW-1 the younger brother of the deceased who had given specific details of being in the knowledge that his brother had indeed being assigned this touring job and had left. In fact, the presence of the deceased on 25th January, 2010 at Haridwar and 26th June, 2010 heading for Mussoorie on the next day is evident from the testimony of PW-1 who said that he had received a call from the deceased on those dates mentioning so. It was PW-1 who was the complainant and had tried to contact his brother since 27th June, 2010

and found his mobile switched off. Thus, corroborates the fact that the deceased had indeed taken people who made booking in the name of Satya Prakash, picked them up from Gole Market, gone to Haridwar and then later were expected to leave from Mussoorie on the 26th June, 2010 evening or the 27th June, 2010 morning and thereafter his phone was switched off and he was completely unavailable.

6.4 CAF of the mobile no. 7838618126 exhibited as PW-28/A shows that it is issued in the name of Satya Prakash son of Sh. Munna Lal of address F-2/15 Mohan Garden, Uttam Nagar on 23rd January, 2010 and the ID for the application form was given as the driving licence, copy of which is attached with the CAF. There are three elements of this CAF which prove that the said mobile was not actually allotted to Satya Prakash PW-8 but was falsely taken in his name. *Firstly*, as per the testimony Satya Prakash PW-8 it is evident that he had lost his driving licence 5 to 6 years back and therefore his driving licence could potentially be used by anybody who was in possession of it. *Secondly*, the address given of PW-8 at the time of deposition was the same as that in the driving licence and also in the CAF (F-2/15 Mohan Garden, Uttam Nagar, New Delhi). However, booking made for the Innova was on a different address of Gole Market, clearly not an avowed address of PW-8. *Thirdly*, the signatures on the CAF, don't seem similar at all to the once on the driving licence, as also the signatures when compared with that on the deposition of PW-8 would show that somebody else as Satya Prakash had signed that form. This number is also found appearing on the register of the Gayatri Lodge in Haridwar where the appellants had stayed and were identified by PW-10, the owner of the lodge. The relevant register of the lodge is exhibited as Ex. PX-2. Since the fact of the register of the Gayatri Lodge was discovered pursuant to information

received from the appellant Jaswant in his disclosure statement Ex. PW-38/A, it would be admissible and proved under Section 27 of Indian Evidence Act.

6.5 As regards the address, which is given on the taxi booking form, on examination of the address PW-14 was brought into the witness box who stated categorically that he had been residing at that address since 2009 and he had no connection with the matter of the appellants, nor he booked the taxi. In fact, he was driver working in the Ministry of Rural Development, Krishi Bhawan, New Delhi. No cross-examination of PW-14 was made by any of the appellants. None of the appellants conducted any substantial cross-examination of PW-8 on not lodging any complaint relating to the loss of his driving licence. The appellants contended before this Court that it could have been PW-8 who ought to have been suspected, since the mobile was issued in his name and his name was found on the travel booking receipt as well as the register of the lodge, however they chose not to cross question him or the person who was at the Gole Market address i.e. PW-14 at all. Their testimonies would therefore be termed as credible, cogent, and sustainable.

6.6 The arrival at Haridwar by the appellants is evident from the testimony of the PW-10 who is the owner of Gayatri Lodge, Bhoopat Wala who categorically stated that the appellants whom he identified later had arrived at about 2:00 a.m. in wee hours of 25th June, 2010 in Innova bearing Delhi number and had stayed at his lodge in the room. The entry register Ex. PW-X/2 shows that the entry was made in the name of Satya Prakash but was made by one person whom he later identified as appellant Jaswant. This Court also had the occasion to examine the entry register of the lodge having summoned it from the

maalkhana in order to clearly peruse the entry. He also identified the photograph of the dead body as the driver of Innova whom he had seen that night having driven the appellants. Learned APP had also drawn attention to the cross-examination of PW-10 where in a suggestion given by the counsel of the appellant Jaswant and Kiran Pal is “*it is correct that where accused persons met me in Innova car for the first time there were shops and dharmshala. I remained there for two minutes. I had a talk with accused Jaswant*”

It is evident that this response was recorded to the suggestion that the appellants were indeed present at his lodge and what was being suggested was the circumstances and the locations of where he met them first.

6.7 The last seen evidence of PW-10 that the appellants left his lodge on 26th June, 2010 after paying Rs. 800/- towards rent is also extremely relevant. Clearly, the deceased was driving the appellants onwards to Haridwar-Dehradun-Mussoorie on that day, which fact can be corroborated by the testimony of PW-1 his brother as already stated above.

6.8 The body of the deceased was found in District Saharanpur which is the same area in the belt between Haridwar-Dehradun-Mussoorie and therefore, is another circumstance which connects to the fact that the deceased was indeed with the appellants on that journey.

6.9 The journey of the appellants and the deceased is evident from an analysis of the CDR/location of the phone number of the deceased (9350770516), the mobile used by appellant Jaswant (9266013389), the mobile recovered from appellant Rishi Rallan (9911654931 and 9911654731), the phone issued in the fake ID of Satya Prakash

(7838618126). The analysis would show that on 24th June, 2010 at about 8:00 p.m. the location of the mobile phone of the deceased, the appellant Rishi Rallan were found near DMRC, Rama Krishna Station, near Gole Market flats, Delhi, which was evidently the time of departure.

6.10 Even though the location chart for the Satya Prakash fake ID number was not produced, on a query by this Court to the learned APP to find out the corresponding locations for the cell ID's which are stated in the CDRs, it was also found at the same location as these other two numbers. On 25th June, 2010, the location of the mobile phone of the deceased, appellant Rishi Rallan, appellant Jaswant and mobile in the name of Satya Prakash fake ID were all found in Bhoopat Wala, Haridwar, which was the time they were staying at Gayatri Lodge. On 26th June, 2010 the location of the mobile in the name of Satya Prakash fake ID and the deceased were found at Bhoopat Wala while at 2:30 p.m. that same day locations of the mobile phones of Rishi Rallan were found at Mussoorie, while as regards the deceased the last call on his number was at 09:09 a.m. which was at Bhoopat Wala. It seems evident by connecting the approximate time estimated for the murder of the deceased on 26th June, 2010 and the phone of appellant Rishi Rallan, it could concatenate to that after killing the deceased the appellants had continued in the journey in the Innova car to their original destination Mussoorie. On 27th June, 2010 the location of the mobile phone of appellant Rishi Rallan and appellant Jaswant were both found at Bapa Nagar, Karol Bagh, Delhi, clearly evidential of the fact that they had returned from their journey.

6.11 The mapping of these mobile phone address and their locations is clearly dispositive of the fact that appellant Jaswant and appellant Rishi

Rallan were both together on the journey and their track can be traced from Delhi to Haridwar and then to Mussoorie and back to Delhi running in the same location as that of the deceased, except that the deceased phone goes into radio silence and switched off mode at 09:09 a.m. on 26th June, 2010. Both the appellants have not offered any explanation in their statement recorded under Section 313 that they were not in these locations of Haridwar, Mussoorie on those days (as evident from the locations chart of their mobile phones). The learned APP brought to the attention of this Court that in response to question 1 in his statement the appellant Rishi Rallan stated that *"I never booked the aforesaid car but it was Ashu who had hired the taxi"* therefore it is evident that the appellant was in the knowledge of the booking of car but had only attributed the act of booking the car to Ashu. The fact that mobile phone of Rishi Rallan was issued in his name is evident from the perusal of the CAF Ex. PW-26/A and EX. PW-26/B which is signed by appellant Rishi Rallan along with the self attested copy of his driving license.

6.12 The handwriting of appellant Jaswant in the register of Gayatri Lodge was examined by handwriting expert PW-45 and it was matched with the specimen signature of appellant Jaswant as stated in the report of the expert Ex. PW-45/A, which is clinching evidence of the fact that appellant Jaswant was indeed the one who was present at Gayatri Lodge, Bhoopat Wala, Haridwar on that day. The Innova car which had been allocated to the appellants (in the fake name of Satya Prakash) had Registration No. DL-4C-5596 as evident from Ex. PW-5/A, the travel coupon booklet. However, when the car was found abandoned at Ganga Mandir Marg, Prasad Nagar, Delhi by PW-20 it was found with the number plate DL-5CAB-2434 which was later found to be fake while

the original registration was later found to be that which was on the travel coupon booklet. PW-18 deposed later that he had prepared the fake number plate which was shown in the Court for appellant Jaswant for a sum of Rs. 150/- and in fact further stated that he had done that earlier for appellant Jaswant as well. The keys of the Innova car were recovered from the appellant Rishi Rallan, from a bag lying on the table in a room in his house *vide* seizure memo 6th October, 2010 Ex. 4/C pursuant to a disclosure statement of the appellant Ex. PW-38/L which would be admissible and proved as evidence under Section 27 of the Indian Evidence Act being an object/fact discovered in consonance of the information received from a person in custody.

6.13 The driver license of the deceased was discovered pursuant to disclosure made by appellant Jaswant from his house *vide* seizure memo dated 6.09.2010 Ex. PW-4/B which is an extremely relevant piece of evidence in the chain of circumstantial evidence that prosecution requires to prove guilt beyond reasonable doubt. Along with the driver's license, the visiting card of Yatrika Tourist Centre was also recovered and seized.

Conclusion

7. In light of the above discussion and analysis, this Court finds that the guilt of the appellant for the murder of the deceased has been proved beyond reasonable doubt and duly supported by circumstantial evidence by the prosecution. Consequently, this Court finds no error in the impugned judgment of conviction and order on sentence by the learned Trial Court.

8. Appeals are accordingly dismissed.

9. Copy of this judgment be uploaded on website and be also sent to Superintendent, Tihar Jail for intimation to the appellant and updating of records.

(ANISH DAYAL)
JUDGE

(MUKTA GUPTA)
JUDGE

October 20, 2022/rk

