

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

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Reserved on: 10th November, 2022

Pronounced on: 23rd December, 2022

CRL.A. 968/2018

VIKRAM @ MANOJ

..... Appellant

Represented by: Mr. K.K Manan, Senior Advocate
with Ms. Udit Bali, Mr. Ajit
Singh and Ms. Komal Vashisht,
Advocates.

versus

STATE (GNCT OF DELHI)

....Respondent

Represented by: Mr. Prithu Garg, APP for the
State with Insp. Kuldeep Singh,
PS Vasant Kunj, North.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This appeal assails the impugned judgment and order of the learned Trial Court dated 12th July, 2018 convicting the appellant for offences punishable under Section 364/365/302/201/34 IPC. Co-accused Vijay Pehalwan was also convicted for the same offences as the appellant, however, was absconding by the time the sentencing order was passed on 26th July, 2018 and was declared a proclaimed offender and arguments on sentencing on behalf of Vijay Pehalwan could not be heard and remained pending awaiting his production. The appeal also assails the order on sentence dated 26th July, 2018 sentencing the appellant to rigorous imprisonment for life and a sum of Rs.10,000/- as

fine (one year simple imprisonment for default in payment) for offence punishable under Section 302/34 IPC, rigorous imprisonment for ten years and fine of Rs. 5000/- (six months simple imprisonment in default) for offence punishable under Section 364/34 IPC, rigorous imprisonment for five years and fine of Rs. 3000/- (six months simple imprisonment in default) for offence punishable under Section 365/34 IPC and rigorous imprisonment for three years and fine of Rs.2000/- (two months simple imprisonment in default) for offence punishable under Section 201/34 IPC. All sentences were to run concurrently. The impugned judgment and order also acquitted the appellant of offence under Section 25 of the Arms Act.

The Incident

2. As per the case of the prosecution on 26th May, 2011 at around 10:30 p.m., a missing report *vide* a DD No.62-B (Ex. PW-2/DB) was registered at PS Vasant Kunj (North) on the complaint of PW-2 Baljit Singh who stated that his father Raghuvir Singh (deceased) aged around 62 years had left home at 8:00 a.m. on that day, had gone to the plot bearing No.150A/9, Kishangarh, Delhi as per routine and had not returned home. He further stated that his mother was also there with his father but around 10:00 a.m. his father was conversing with a man who had arrived in a long vehicle of yellow colour and was taken by him in the car which was being driven by another person. An FIR No.127/2011 under Section 365/34 IPC was registered. On the next day 27th May, 2011 at about 12.00 p.m., the complainant again visited the police station and informed that he had come to know that co-accused Vijay Pehalwan who was their neighbour was the one who had taken away the deceased in his car which was being driven by somebody else. He stated

that Vijay Pehalwan had criminal antecedents and had threatened the victim at the complainant's shop at about 10-15 days ago in relation to a money matter and he must have abducted the victim. During inquiry, the IO obtained the CDR of mobile number of Vijay Pehalwan (9911730966) provided to him by PW-1 and PW-2 and found that there was a call between the said number and the complainant's mobile number (9911222561) and the current location of Vijay Pehalwan's phone number was shown at Vadodara, Gujarat. After seeking permission from seniors, the IO along with the complainant and police staff left for Vadodara and reached the next day, however, they could not find the accused and returned to Delhi on 31st May, 2011. On 1st June, 2011, the IO came to know about the recovery of a dead body of an unknown man within the jurisdiction of PS Sushant Lok, Gurgaon qua which FIR No.114/2011 had been registered. He visited the police station where he was shown photographs of the dead body and was informed that *post mortem* had been done and the body had been cremated by officials of PS Sushant Lok, Gurgaon. The complainant was called to PS Vasant Kunj (North) and when shown the photographs, he identified the dead body and clothes to be of his father (victim) and his statement was recorded as Ex. PW-2/C. On 18th June, 2011 accused Vijay Pehalwan who was in custody at PS Vasant Kunj (South) in relation to FIR No. 127/2011, disclosed that he was responsible for the murder of the deceased along with his accomplice, the appellant. On raiding the residence of the appellant on the address provided by Vijay Pehalwan, the appellant was apprehended *vide* an arrest memo (Ex. PW-5/A) who also gave a disclosure statement. On 19th June, 2011 pursuant to the disclosure, the weapon of offence i.e. a pistol along with magazine and two live cartridges was recovered from the appellant's house. Later,

a Hyundai Accent car registration No.HR-02P-4110 (silver colour) was also recovered at the instance of the appellant and the crime team found blood stains, two gun-shot holes and one fired cartridge in the car. On 20th June, 2011, the IO obtained police remand of Vijay Pehalwan when he was produced by the officials of PS Vasant Kunj (South) in Saket Court. On the intervening night of 24th & 25th June, 2011 upon disclosure of Vijay Pehalwan, articles belonging to the deceased (one gold ring, one silver ring and one wrist watch) were recovered from his residence in Vadodara. Charge-sheet was filed against both the accused and charges were framed. The prosecution examined 45 witnesses in support of the case whereas the statement of the accused persons was recorded under Section 313 Cr.P.C. The accused did not lead any evidence in their defence.

Submissions on behalf of the Appellant

3. The learned senior counsel for the appellant contended that the case of the prosecution was predominantly based on last seen and other circumstantial evidence. He pointed out that the investigation was triggered off by DD No.62-B (Ex. PW-2/DB), statement of Baljit on the basis of which a *rukka* was prepared. Baljit being the son of the deceased had stated that at 10.30 a.m. on 26th May, 2011 his father had gone as per routine to his plot in Kishangarh and he has been missing since then. He stated that his mother had seen him speaking to a person in a long yellow car at about 10.00 a.m. and he had since not returned. The senior counsel contended that there was no whisper of the mother having seen Vijay Pehalwan or the appellant sitting in the car. He further contended that the recovery was of a silver car and not a yellow car. The statement of Baljit PW-2 at 10.30 a.m. did not mention Vijay

Pehlawan despite the reported call at 10.18 p.m. when he said that he had spoken to Vijay Pehalwan and had been threatened to transfer their plot else his father would be killed. Motives as pressed by the prosecution were also contradictory - as per the complainant it was an issue of money whereas as per the mother it was an issue relating to the plot. The senior counsel stressed that Vijay Pehalwan was arrested by PS Vasant Kunj (South) on 16th June, 2011 but the IO of this case of PS Vasant Kunj (North) which is in the same building as that of PS Vasant Kunj (South) did not interrogate him till much later when he made disclosures on 18th June, 2011 and then on the 20th June, 2011. The appellant was arrested only on 19th June, 2011 at 12.40 a.m. as per arrest memo Ex. PW-5/A while Vijay Pehalwan was arrested on 20th June, 2011 at 2.45 p.m. Ex. PW-17/A. Reference was drawn to para 88 of the impugned judgment of the learned Trial Court which narrates the sequence of evidence relating to the arrest of the appellant and subsequent disclosures and the arrest of Vijay Pehalwan. The learned Trial Court observes that it was not natural that the IO of this case does not know about the apprehension of the accused till 18th June, 2011 and then did not take him into custody till 20th June, 2011. It was contended that the location of the appellant was in Delhi and not Haryana as per the CDR Ex.6/A which shows that on 26th May, 2011 from 10:33:05 hours to 12:50:22 hours his location was at cell ID No.24192 which as per PW 6 in his cross says as per CDR, cell phone was used in Delhi NCR not Haryana. He also drew attention to para 16 of the Writ Petition (CRL) No.912/2011 filed by PW-1 and PW-2 before this Court seeking investigation by the crime branch or special cell to ensure a fair and proper investigation incorporating Section 302 on the basis that the body of the deceased had been recovered with bullet shot injuries on 26th May,

2011 from within the jurisdiction of PS Vasant Kunj. The averments in the petition showed that the local police at Vasant Kunj had not even recorded the statement of petitioner No.1 i.e. PW-1 who was an eye witness to the incident, however, Ex. PW-1/DA shows that a statement had been recorded of PW-1 under Section 161 Cr.P.C. on 27th May, 2011 itself. The counsel contended that as per Ex. PW-2/A, the statement of PW-2 recorded on 27th May, 2011, there was an improvement since he states on the next day that the person in the car was Vijay Pehalwan and the motive was extortion of money. He also contended that there was no call at 10:18 p.m. on the phone of Vijay Pehalwan as per the CDR on the number which was being used by him. Extending his contentions to the appellant, the learned senior counsel stated that the appellant had been convicted under Section 302/34 IPC only on the basis of testimony of PW-1 who claimed to having last seen the deceased but since he had already been shown to the witness he refused to participate in the TIP. Also, he was arrested on 19th June, 2011 at 12:40 a.m. from his house and was not absconding and it was also unnatural for him to park the concerned car in the front of his *gali* in case he had been involved in the crime. Moreover, in the photographs, all tyres of the car were flat which would show that the said car had been taken from the earlier seizures of the police and that the key of the car was never deposited in the *malkhana*. The name of the appellant essentially surfaced on alleged disclosure by Vijay Pehalwan while he was in custody in the neighbouring police station in the same building. No site plan was prepared regarding the last seen and blood-stained clothes and *chappal* handed over by the police were not sent to FSL. What was sent to the FSL was only blood sample from the car which did not show any results. There was also a contradiction since in the

statement Ex. PW-2/A it was stated by PW-2 that his father was wearing a *safed pajama* and cream colour shirt but the body which was found was reported by PW-30 to be having white *pajama* and a grey colour *kurta*. The learned senior counsel stressed on the point that despite PW-2 having been told by his mother at 8.00 p.m. that the father had been taken away in the morning he does not disclose it in the missing report nor does he mention that at 10.18 p.m. he has had a communication with Vijay Pehalwan.

Submissions on behalf of the Prosecution

4. The learned Additional Public Prosecutor (APP) in response to the submissions by the counsel for the appellant submitted that the case of the prosecution was based on circumstantial evidence. There was categorical last seen evidence since the deceased was with his wife (PW-1 Omwati) when he was taken away by accused Vijay Pehalwan in the car driven by the appellant. The deceased and his wife, as a matter of routine, used to visit their plot every morning and evening to tend to their cattle and on 26th May, 2011 while they were present at the plot, at about 9:45 a.m. - 10:00 a.m. Vijay Pehalwan came, had a brief conversation with the deceased, made him sit in the car and took him away. She had identified the driver of the car, which was the appellant, as well as the car which was produced in the Court premises. Since the husband had not been taken forcefully there was no occasion for her to cause alarm and therefore did not inform the police immediately but told their son PW-2 in the evening that day. The learned APP contended that PW-2 had received a phone call from Vijay Pehalwan at about 10.00-10.15 p.m. on 26th May, 2011 when he was told to transfer the plot in Vijay Pehalwan's name otherwise he would kill his father. He did not

mention the name of Vijay Pehelwan in the missing report out of fear of harm being caused to his father since he was in the custody of Vijay Pehalwan who was a feared criminal of that area. PW-2 informed PW-1 about the phone call on the next day and then visited the police station at the behest of PW-1 and informed the IO about the phone call. The said phone call was confirmed from the CDR of PW-2 and Vijay Pehalwan. The learned APP contended as regards refusal of the appellant to participate in the TIP, there was nothing on record to suggest that PW-1 had seen the appellant after that incident prior to the TIP proceedings either in the police station or otherwise. He further countered the submission by the appellant's counsel that the TIP was conducted when the appellant was in police custody by drawing attention to the order of the learned MM dated 19th June, 2011 as per which he had been remanded to judicial custody and was produced for TIP on 23rd June, 2011 for the TIP proceedings. The learned APP further took support from the evidence gathered from the CDRs which showed multiple phone calls between the appellant and convict Vijay Pehalwan on dates from 20th May, 2011 to 27th May, 2011. Moreover, the phone call between PW-2 and Vijay Pehalwan on 26th May, 2011 also stood proved by the CDRs. There was also the recovery of the weapon of offence from the appellant which was a country-made pistol with magazine and two live cartridges *vide* a seizure memo Ex. PW-5/A and the Hyundai Accent car found parked in front the house of the appellant with gun-shot holes on the back and blood stains and one empty cartridge *vide* a seizure memo Ex. PW-5/G. Later, another fired bullet was recovered from the said car and was sent for FSL examination which was found to have been fired from the said pistol. The learned APP contended that the articles belonging to the deceased had been recovered from Vijay

Pehalwan from his flat in Vadodara, Gujarat *vide* a seizure memo Ex. PW-20/A and had been duly identified by PW-2. The motive was clear as per PW-2 who had stated that Vijay Pehalwan had threatened him over the phone asking him to transfer the plot in his name failing which he would kill his father. The *alibi* presented by Vijay Pehalwan that he was in Gujarat on 26th May, 2011 could not be proved by him and moreover, the CDR of his number showed his location in Delhi at around 7:00 p.m. on 26th May, 2011 and at Vadodara at around 10:18 p.m.

The learned APP has *inter alia* relied on *Amit v. State of Maharashtra*, (2003) 8 SCC 93, *Arvind v. State*, 2009 SCC OnLine Del 2332 to further the proposition that conviction can be based solely on last seen evidence in appropriate cases; *Gangadhar Behera v. State of Orissa*, (2002) 8 SCC 381 on the issue of discrepancy in witness testimony and credibility of related witness. Reliance has also been placed on *Motiram Padu Joshi v. State of Maharashtra*, (2018) 9 SCC 429 where the Hon'ble Supreme Court has reiterated its view on credibility of related witness.

Evidence

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

5.1 PW-1 Smt. Omwati, wife of the deceased, testified that on 26th May, 2011 she and her husband had gone, as per routine, to visit their plot in Kishangarh at around 8:00 a.m. At about 9:45-10:00 a.m., a big car came to their plot and halted in which Vijay Pehalwan was sitting

while her husband was standing at the gate of the plot. Vijay Pehalwan called her husband saying that “*chacha ure ku aa*” and thereafter their conversation lasted for about 10 minutes. Vijay Pehalwan then held the hand of her husband and stated “*chal beth garhi main*” and took her husband. The car was being driven by some other person whom she had not seen earlier. The husband did not return till evening, and she told her son Baljit PW-2 in the evening. PW-2 apprised her that Vijay Pehalwan had visited the shop about 10-15 days back and said something to her husband. PW-2 further told that he called up Vijay Pehalwan in the night of 26th May, 2011 and was told by him that they should transfer the plot in his name otherwise he would eliminate her husband. She got upset with her son who had not disclosed this in the evening of 26th May, 2011 itself. However, they reported the matter to the police on 26th May, 2011. She identified both Vijay Pehalwan and the appellant as the person driving the car in Court. She identified the personal articles which were recovered by the police in that Court as also the Hyundai Accent car of silver colour (regn. No. HP-02P-4110) as the one in which her husband was taken by the accused. In her cross-examination, she stated that she was not alarmed by her husband being taken away by Vijay Pehalwan since they did not have any enmity with him.

5.2 PW-2 Baljit Singh, son of the deceased, testified that on 26th May, 2011 when he reached his house at about 8:00 p.m. in the evening from his shop, his mother PW-1 enquired if his father was at the shop. When he answered in the negative, she said that in the morning at about 10:00 a.m. his father had been taken away by Vijay Pehalwan and another person and had not returned since. Knowing that Vijay Pehalwan had a

criminal background, he searched for his father and not having located him, lodged a missing report in the police station (Mark PW-2/A). He stated that before lodging the missing report he had made a call to Vijay Pehalwan at about 10.00-10.15 p.m. and spoke to him when Vijay Pehalwan stated that he should transfer the plot situated near the goshala in his name otherwise he would kill his father. He stated that he had not disclosed this conversation to the police or anyone since his father was in the custody of Vijay Pehalwan. He identified Vijay Pehalwan in the Court. As per PW-2, the police asked him to wait till morning since Vijay Pehalwan was their neighbour, but since his father did not turn up, he went to the police station at about 12.00 noon and related the sequence of the events to the police (statement is exhibited as Ex. PW-2/A). He also gave the number of Vijay Pehalwan (9911730966) to the police which was saved on his mobile phone No. 9911222561. On 1st June, 2011, he was taken to Gurgaon at PS Sushant Lok and shown photographs and some clothes which he identified as that of his father. He had also identified the gold ring, silver ring and wrist watch before the District Court at Saket after one and a half months from the date of the incident.

5.3 PW-3, the Scientific Officer from Forensic Science Laboratory (FSL), examined the Hyundai Accent car and found blood in the boot of the car, left side of the back seat and middle of the back seat of the car. The blood stains were examined, and report is exhibited at Ex. PW-3/A. In her cross-examination, she stated that she had not been asked to determine the blood group.

5.4 PW-24, Dr. Mathur who had conducted the *post mortem* deposed that there were external injuries on the dead body including a lacerated wound 4 mm X 4 mm on left side chest, with one 1 mm of abrasion collar piercing subcutaneous tissue, muscles, intercostal muscles between 8 and 9 ribs, left lower lobe of lung and the diaphragm and the posterior abdominal wall making an exit wound below and medial to left shoulder tip; another lacerated wound 4 mm X 4 mm on left side abdominal wall with an abrasion collar and piercing the subcutaneous tissue, muscles, peritoneum, intestine and the posterior abdominal wall making an exit wound on right buttock above and medial to right heel. The cause of death was shock and haemorrhage following *ante mortem* multiple firearm injuries and the injuries described were sufficient to cause death in normal course of life. The time since death was approximately 3-5 days and the *post mortem* report Ex. PW-24/A was dated 29th May, 2011, time 13:45 hours. In his cross-examination, he stated that when the dead body was brought to him it did not have any money, jewellery or wristwatch.

5.5 PW-41 SI Ravi Babu, the initial Investigating Officer (IO), deposed that on 26th April, 2011 he was entrusted a missing report DD No.62-B lodged by Baljit Singh regarding his missing father. On the next morning, his statement was recorded Ex. PW-2/A, endorsement was made and handed over for registration of FIR. He then reached the plot at Kishangarh and conducted inquiries including from the mother of the complainant who told him about the last seeing him with Vijay Pehalwan and another person. Baljit gave the mobile number of Vijay Pehalwan as 9911730966 and he collected call detail records as per which it was revealed there was a conversation between Baljit and Vijay

Pehalwan and at that time the location of Vijay Pehalwan was at Vadodara. Pursuant to permission by the senior officers, a team left for Vadodara but despite inquiries could not locate the accused and came back to Delhi on 1st June, 2011. On that day, they got to know about recovery of a body within jurisdiction of PS Sushant Lok, procured the photographs and showed them to Baljit who identified the same as that of his father. On 16th June, 2011, he came to know about the arrest of the accused Vijay Pehalwan by PS Vasant Kunj (South) and then on 18th June, 2011 came to know from the Sub-Inspector at PS Vasant Kunj (South) that Vijay Pehalwan had disclosed about his involvement in the murder of the deceased as also the involvement of the appellant. They raided the residence of the appellant whom he identified in Court who was subsequently arrested. Upon the disclosure of the appellant who mentioned that Vijay Pehalwan had handed over the pistol to him as well as cash of Rs.1.06 lacs he recovered both the pistol and the cash from the almirah at his home. The pistol was found containing two live cartridges and was seized along with the cash and four mobile phones. The Hyundai Accent Car regn no. HR-02P-4110 was also recovered at the instance of the appellant, which was parked in front of his house in the *gali* and stated that he had returned in this car with Vijay Pehalwan to the Kishangarh plot to pick up the deceased and thereafter moved towards the Andheria Mor whereupon Vijay Pehalwan asked the deceased to give his plot and upon his refusal fired two shots on him and dumped the body in the jungle of village Ghata. He later dropped Vijay Pehalwan at the airport and returned back to his house and parked his car. Later, appellant took the police party and pointed out the plot at Kishangarh where they had taken the deceased in the car and to the place where he was shot and where his body was ultimately dumped, as per

the appellant. The TIP of the appellant was conducted on 23rd May, 2011 and prior to that the appellant was sent to judicial custody in muffled face. On the next day, they came to know about arrest of Vijay Pehalwan by PS Vasant Kunj (South) and post interrogation in the Court he was arrested in this case as well. Later, on 21st June, 2011, the crime team again inspected the car and SI Jitender lifted blood from the car and also lifted a bullet from the dicky of the car which was seized. He later testified about the recoveries upon the disclosure of Vijay Pehalwan from Vadodara, Gujarat of two rings - one silver and one gold, and one wrist watch from an almirah in the flat of which the TIP was conducted on 13th July, 2011 by PW-2.

5.6 PW-39 ACP Satpal Singh, who was the subsequent IO and took over the investigation from PW-41 on 04th July, 2011, deposed that further investigation was conducted by him including analysing the details of the CDRs, getting the TIP conducted of the articles, procuring the travel details of Vijay Pehalwan and tracing the ownerships of various mobile numbers. Supplementary charge-sheets were presented by him to present the various reports by the FSL.

5.7 The appellant in his statement recorded under Section 313 Cr.P.C. stated that he had been falsely implicated in the case and recoveries effected from him had been planted and denied using the mobile number which was recovered from him.

Analysis

6. An examination of the evidence on record and appreciation of the contentions of the parties, the following aspects relevant to the assessment of this matter are as under:

6.1 As per the *post mortem* report, Ex. PW-24/A, the death of deceased Raghuvir Singh was evidently homicidal in nature as the cause of death was two firearm injuries detailed in the *post mortem* report with entry and exit wounds and piercing critical parts of the body. The dead body had been lying in the jungle in the jurisdiction of PS Sushant Lok and had been already cremated but photographs have been taken. The photographs as well as the clothes which were recovered from the dead body of the deceased were identified by PW-2 as that of his father

6.2 The deceased was last seen by PW-1 his wife on 26th May, 2011 at about 9:45-10:00 a.m. when pursuant to a conversation with convict Vijay Pehalwan who had come in his car driven by another person (whom she later identified as the appellant) had taken the deceased with him and the deceased had been missing since that time. There was a considerable doubt which was raised by the counsel for the appellant regarding the production of the appellant in unmuffled condition and his refusal, therefore, to participate in the TIP. The contention of the appellant was that on 19th June, 2011 when his application for TIP had been moved, the appellant was not sent to judicial custody and when the TIP was fixed for 23rd May, 2011 it had been refused by the appellant having been taken to the place of incidence in unmuffled condition as well as being in police custody. On a perusal of the record, this Court finds that this contention of the appellant is unfounded and baseless and factually incorrect since it is evident that a request was made on 19th

June, 2011 when the appellant was produced before the Court of the Duty MM at Saket with a request for five days judicial custody remand. The Magistrate has endorsed on that application as under:

“IO with case file accused from PC in muffled face.... Heard. Accused is remanded to JC to till 23rd June, 2011.”

On 23rd June, 2011, his TIP was conducted. The TIP proceedings were exhibited as Ex. P-Z which clearly show that the appellant was produced in muffled face on 23rd June, 2011 but refused to be part of the TIP on the ground that he had been shown to the victim in the PS by the IO. It is evident from the arrest memo Ex. PW-5/A of the appellant that he was arrested on 19th June, 2011 at 12.40 a.m. and was thereafter produced in muffled face for JC remand for five days as per the record (*supra*). There is no evidence to suggest in his pointing out memo Ex. PW-5/K of the place where he picked up the deceased along with co-accused Vijay Pehalwan that there was any family member of the deceased including PW-1 who was present at that time on pointing out. Careful assessment of the records, therefore, do not bear out the contention of the counsel for the appellant as regards him being shown to the family of the victim in the police station and thereby legitimizing his refusal for the TIP. It has been held in series of judgments *inter alia Mohd. Anwar v. State (NCT of Delhi)*, (2020) 7 SCC 391 at para 13, *Manu Sharma v. State (NCT of Delhi)*, (2010) 6 SCC 1 at para 246-249 and *Rajesh v. State of Haryana*, (2021) 1 SCC 118 at para 43 – 43.12 that an adverse inference ought to be drawn for refusal of TIP without any justification. The appellant, therefore, was duly identified by PW-1 in the Court as the person who was driving the car which had picked her husband up on 26th May, 2011.

6.3 PW-1's identification of Vijay Pehalwan in the Court is also relevant since she had already stated in her testimony that she knew Vijay Pehalwan prior to the incident. This is further corroborated by the testimony of PW-2 who had testified that Vijay Pehalwan was his neighbour, whom he identified in Court and had been born in Kishangarh itself and knew him from prior.

6.4 There was recovery from the appellant of a 9 mm pistol and a Hyundai Accent car, silver colour from his house which PW-1 identified in the Court as that which had been driven by the appellant along with Vijay Pehalwan to pick up her husband on the day of the incident. The ballistics report Ex. PW-39/F reported that the country-made pistol (marked W/1) chambered for 9 mm cartridges was found in working order and the bullet recovered from inside the Accent car (marked BC/1) had been fired from the country-made pistol and not from any other firearm even of the same make and bore as every firearm had its own individual characteristic marks. The report also correlated the country-made pistol to the 9 mm fired cartridge case marked C/1 recovered from the car. Further, the holes present on the backseat of the Accent car were reported to have been caused by bullet projectiles and two of them were bullet entry holes fired from a distance beyond blackening range. The third hole was found to be a bullet exit hole. This report of the ballistics expert sufficiently and conclusively corroborates the presence of two bullet mark holes in the rear-seat of the car, the lead piece of the bullet found in the dicky of the car, the bullet having exited from the seat to the back and the two firearm injuries which were found on the body of the deceased. The approximate time of death as per the *post mortem* report Ex. PW-24/A was 3-5 days prior to the date of the autopsy on 29th

May, 2011 and would, therefore, corroborate the time of the death of the deceased on 26th May, 2011 which was proximate to the time when he was last seen by his wife PW-1.

6.5 The recovery of the pistol from the appellant's house and the recovery of the Hyundai Accent car from outside his house is yet another important link in the chain of circumstantial evidence. There were also blood stains which were lifted from the seat of the car, however, they were not analysed further by the FSL. The serological report dated 30th September, 2011 Ex. PW-39/G simply reported that the origin of the blood was human.

6.6 The analysis of the call records would show that the appellant was using the mobile No.9253865430 which was seized from him as per seizure memo Ex. PW-5/F and the CAF was exhibited as Ex. PW-6/B and Ex. PW-6/C showing that it was issued in the name of the appellant Vikram Singh. The CDR in respect of this number Ex. PW-6/A shows multiple calls between the appellant and the convict Vijay Pehalwan between 20th May, 2011 and 27th May, 2011. The mobile phone No. used by Vijay Pehalwan was 9911730966 which as per the testimony of PW-2 was the number from which he had exchanged a phone call on the night of 26th May, 2011 and was corroborated by the CDR records of PW-2's mobile No.9911222561 (CDR Ex. PW-9/A). The mobile number attributed to convict Vijay Pehalwan was in the name of Rajiv Shokeen (as per the testimonies of PW-9 who exhibited the original CAF, PW-7 who was the seller of the SIM and PW-22 who deposed that the SIM was issued to one Rajiv Shokeen) who testified as PW-16 that he had lost his phone a year and a half back. A tabulation supplied by

the learned APP is reproduced herein to show the exchange of calls between the appellant and convict Vijay Pehalwan

S. No.	Date	Time (hrs.)	Duration (Seconds)
1.	20.05.2011	10:55:05	101
2.		15:05:11	38
3.		18:07:04	16
4.	21.05.2011	17:17:14	21
5.	22.05.2011	08:11:56	57
6.		15:18:00	151
7.		21:27:23	80
8.	23.05.2011	07:00:28	14
9.		17:33:24	13
10.		17:51:56	69
11.	24.05.2011	11:48:51	9
12.		12:16:14	103
13.		13:51:22	6
14.		16:47:43	156
15.	26.05.2011	07:31:56	72
16.		07:52:26	21
17.	27.05.2011	10:17:15	18
18.		13:14:13	11
19.		13:45:18	102

6.7 The testimony of PW-2 that convict Vijay Pehalwan had threatened him over phone on 26th May, 2011 asking for transfer of the plot in his name else he would kill his father and additionally that 10-15 days prior to the incident Vijay Pehalwan had come to his shop and had threatened him and his father on account of some money transaction. While the appellant had not provided any alibi, convict Vijay Pehalwan took the alibi that he was in Gujarat on 26th & 27th May, 2011, however,

did not lead any evidence in this regard neither gave any suggestions to the prosecution witnesses. PW-13 Rajinder Kumar, Assistant Manager, IGI Airport, identified the official certificate as per which passenger Hari Singh Mehlawat Vijay travelled on 26th May, 2011 by flight No. AI9619 on a ticket (Ex. PW-13/A and PW-13/B). The time of travel has not come into evidence and no suggestion has been put to PW-13 on behalf of the convict during cross-examination.

6.8 It is also important to note that there was recovery of the articles of the deceased at the instance of convict Vijay Pehalwan from his flat in Vadodara, Gujarat *vide* a seizure memo Ex. PW-20/A in the intervening night of 24th – 25th June, 2011. The deposition of PW-41 in this regard is corroborated by PW-23 ASI Rai Singh and the said articles were duly identified by PW-2 in TIP proceedings (Ex. PW-2/D) and in the deposition in Court. PW-1 also confirmed in her deposition that these articles belong to the deceased and were worn by him on 26th May, 2011 when he was picked up by the appellant and the convict Vijay Pehalwan.

6.9 Since Vijay Pehalwan has been already convicted by the learned Trial Court *vide* judgment dated 12th July, 2018 and has not filed an appeal assailing the conviction, circumstances against him would be considered as being sustained and conclusive. The presence of the appellant in the car along with Vijay Pehalwan, being last seen along with him by PW-1, having been in consistent communication with Vijay Pehalwan as evident from the CDR records on the day of the incident, prior to that and the day after that as well, the weapon being recovered from the appellant which was correlated by the ballistics expert to the bullet holes and cartridge recovered in the Hyundai Accent car also

recovered from the appellant, would in the considered opinion of this Court sustain the appellant's conviction as concluded by the learned Trial Court.

6.10 As regards the contention of the counsel for the appellant that it was unnatural that PW-41, the IO had come to know about the arrest of convict Vijay Pehalwan in another case by PS Vasant Kunj (South) on 16th June, 2011 which is present in the same building as PS Vasant Kunj (North) and despite that did not come to know of the disclosure made by Vijay Pehalwan till 18th June, 2011 and thereafter was only arrested on 20th June, 2011 at the District Court, Saket when he was being produced in another FIR No.127/2011, in view of this Court would not dent, dilute or erode the circumstantial evidence which is consistent and cogent regarding the guilt of the appellant proven beyond reasonable doubt by the prosecution. There is no appeal by convict Vijay Pehalwan before this Court to examine said circumstances.

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.

8. Consequently, this Court finds no error in the impugned judgment of conviction and order on sentence by the learned Trial Court. Appeal is 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 updation of records.

**(ANISH DAYAL)
JUDGE**

**(MUKTA GUPTA)
JUDGE**

DECEMBER 23, 2022/mk

