

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

% Reserved on: 18th November, 2022
Decided on: 28th March, 2023

+ **CRL.A. 318/2022**

SUNDAY CHINAKA UCHEM Appellant
Represented by: Mr. Dinesh Malik (DHCLSC),
Mr. Akash Saini & Mr. Puneet
Jain, Advocates.

versus

STATE NCT OF DELHI Respondent
Represented by: Mr. Mukesh Kumar, APP for
the State.

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CRL.A. 212/2022

EZIEFULA SAMUEL UCHEMGBU Appellant
Represented by: Mr. Kanhaiya Singhal, Ms.
Priyal Garg, Mr. Prasanna, Mr.
Chetan Bhardwaj, Mr. Udit
Bakshi & Mr. Ajay Kumar,
Advocates.

versus

STATE NCT OF DELHI Respondent
Represented by: Mr. Mukesh Kumar, APP for
the State.

+

CRL.A. 214/2022

KEENETH CHIDI ONYEAGHALA Appellant
Represented by: Mr. Kanhaiya Singhal, Ms.
Priyal Garg, Mr. Prasanna, Mr.
Chetan Bhardwaj, Mr. Udit
Bakshi & Mr. Ajay Kumar,
Advocates.

versus

STATE NCT OF DELHI

..... Respondent

Represented by: Mr. Mukesh Kumar, APP for
the State.

+

CRL.A. 372/2022

BAYEM VICTOR

..... Appellant

Represented by: Mr. Madhav Khurana
(DHCLSC) with Mr. Kartikeya
Dang & Mr. Samarth K. Luthra,
Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Represented by: Mr. Mukesh Kumar, APP for
the State.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MR. JUSTICE ANISH DAYAL

ANISH DAYAL, J.

1. These appeals have been preferred by four appellants viz. Sunday Chinaka Uchem (hereinafter referred to as “Chinaka”), Eziefula Samuel Uchemgbu (hereinafter referred to as “Samuel”), Keeneth Chidi Onyeaghala (hereinafter referred to as “Keeneth”) and Bayem Victor (hereinafter referred to as “Victor”).

2. By these appeals, the appellants assail the impugned judgment and order dated 30th March, 2022 convicting the appellants for offences punishable under Sections 302/34 IPC, Section 392/34 IPC and appellants Victor, Samuel and Emenike Decland Nwaegbe (hereinafter referred to as

“Emenike”) for offences punishable under Section 14 of the Foreigners Act; and order on sentence dated 21st April, 2022 awarding the following sentences:

- i) The appellants were all sentenced to undergo imprisonment for life with fine of Rs.10,000/- each and simple imprisonment for a period of 3 months each in default of payment of fine.
- ii) The appellants were sentenced to undergo imprisonment for 3 years for offences punishable under Section 392/34 IPC and fine of Rs.5000/- each, simple imprisonment for a period of 1 month in default of payment of fine;
- iii) The appellant Victor, Samuel and Emenike were sentenced with an imprisonment of 1 year and fine of Rs.5000/- each, with simple imprisonment for a period of 1 month in default of payment of fine for offences punishable under Section 14 of the Foreigners Act.
- iv) All sentences were to run concurrently with each other.

The Incident and the Investigation

3. As per the case of the prosecution, the appellants along with Emenike, who are Nigerian nationals, were accused of murdering Gurcharan Singh Sawhney after committing robbery in his office in pursuance of a conspiracy between them. The estimated time of robbery and murder was around 12.45 PM on 31st August, 2011. Information of the incident was received through PCR calls recorded as DD No. 24A, 25A and 26A out of which 26A was most specific about the death of the deceased. The police team including the IO went to the spot and came to know that the victim was taken by the PCR Van to Deen Dayal Hospital. No eye-witness was located there and they

came to know that the victim was brought dead to the hospital. The statement of Deepak who was an employee of the deceased was recorded. The police team reached the spot where the crime team was already there, inspected the place, took photographs and the IO found that 2 CCTV cameras in the shop were broken. There was a black colour bag with Rs.2 lakhs in it, while Rs.1.34 lakhs and 2 gold coins were there on a shelf in the cabin of the deceased. Other articles of the deceased were seized by the IO as well as paper cutters and scissors were secured.

4. FIR was registered on the complaint of Deepak (Ex.PW-2/A) who stated that he was working with the deceased for the last 5/6 years. The deceased ran a shop in the name of Sawhney International Western Union Money Transfer and dealt in foreign exchange, ticketing, courier and other trades. The deceased had another shop near Nawada Metro Station which was taken care of by an employee Pooja. The day of the incident was Wednesday and it was a weekly off for Deepak who came to the shop only around 9.30 AM to clean it. After having cleaned it, the other employee Sonia Arora reached the shop and around 10.30 AM when the deceased reached the shop, Deepak went away leaving Sonia and the deceased in the shop. At about 1.30 PM he received a call from Pooja from the second shop at Nawada that Sonia was with her and a person Satish, who had gone to the shop to change the printer cartridge, saw that Gurcharan Singh was lying on the floor of his cabin. Deepak immediately reached there and saw that CCTV cameras outside the cabin were broken and the deceased was lying on the floor with blood dripping from his mouth. He went to the adjacent shop owner Akash to inform him, who came to the shop and called the police and the ambulance.

5. Pooja and Sonia who are both real sisters also reached the hospital. As per their statement, at around 11.45 AM, 4 Nigerian nationals had come to the shop and after exchanging some money they wanted to buy some articles for which the deceased sent Sonia with the Nigerian nationals to their second shop at Nawada. When all of them reached Nawada Metro Station, a fifth Nigerian national met them. The 4 Nigerians did not go further to the shop and said that the fifth person will accompany her to the Nawada shop. While Sonia took the fifth Nigerian person to the Nawada shop, the other 4 went away and the fifth person who had gone to the Nawada shop also left after reaching the shop. Sonia stayed at the Nawada shop with her sister. The IO pursuant to the investigation retrieved the video footage in the DVR recording the CCTV images and it was found that the 4 Nigerian nationals were present in the shop between 12.25 to 12.53 PM. A photographer, Daman Kumar, who was apparently proficient in dealing with video recording was called to the spot who copied the recordings to VCDs. The IO then seized the CPU, modem, CCTV and VCD. He also seized the bills of the mobile phone with number 9810119918 of the deceased.

6. Sonia after seeing the CCTV footage identified one of the Nigerian nationals as accused Chinaka who had come that day to exchange currency. She knew him because he was a regular visitor to the shop and she handed over a copy of his passport which was in the records. Further, the copy of the Western Union Money Transfer Form which mentioned the phone number of Chinaka as 9711759531 was then probed and CDRs were called for. It came to be known that he used to call a number 9654731690 frequently and locations of both these phones were in Tilak Nagar market near the place of incident on 31st August, 2011. On verification of the copy

of the passport of Chinaka from the Nigerian Embassy, it was found that it was fraudulently obtained and not valid. It was further discovered that the mobile phone of the deceased was being used by some phone number 9312345302 and upon tracking, this number was traced to Surender Singh, who stated that the phone was given to him by Rajesh Kumar, who was a cab driver. Rajesh told the Police that on 31st August, 2011 he took 5 Nigerian nationals to Chandigarh and after dropping them at the bus stand in Sector-17 he parked his taxi and took a brief nap and when he woke up, he found one Nokia C-3 mobile phone without SIM card in the car behind the driving seat. Since he could not find any claimant for the same, after returning to Delhi he inserted his SIM but could not understand the function, so gave the phone to his acquaintance Surender Singh, who then inserted his number. The said Nokia C-3 was the mobile phone of the deceased Gurcharan Singh.

7. On 4th September, 2011 the accused Chinaka was detained from a hotel at Kolkata by Police team and brought to Delhi. He was arrested and foreign currency, passport, receipts of hotel and a Nokia mobile with SIM card 9711759531 was seized. Accused Victor was arrested from Chennai Railway Station by Police team on 04.09.2011 when he alighted a train and was flown to Delhi. Foreign currency and other articles were seized from him including a Nokia phone with SIM number 9654731690. Pursuant to further investigation the location of the other two accused (Keeneth and Eziefula) was located at Mumbai and both of them were apprehended on 6th September, 2011 from Hotel Residency in Mumbai and brought to Delhi. Foreign currency and some articles as well as mobile phones with SIM cards were seized from them. Later, the TIP of Victor was conducted through witness Sonia Arora who identified him as one of the 4 Nigerian nationals

who had come to the shop on that day as was also visible in the CCTV footage. The charge-sheet was filed by the investigating officer followed by another supplementary charge-sheet. The case was committed to Sessions Court and charges were framed on 12th December, 2012. The prosecution examined 68 witnesses. The statements of the accused were recorded under Section 313 Cr.P.C. and no witness was led in evidence by the defence.

Submissions on behalf of appellant Sunday Chinaka Uchem

8. Learned counsel for the appellant Chinaka in support of the appeal submitted, *inter alia*, that the cause of death was asphyxia produced by ligature strangulation of neck in combination with craniocerebral injury made by blunt impact over-head, as per the opinion of PW-6, Dr. Komal Singh. However in her cross-examination, on both the weapons i.e. scissors or paper cutter on being shown to her, she had stated that the blunt impact made over the head could not have been caused by these weapons. Further, she stated that this kind of ligature may be caused by a cloth. Though as per the prosecution the cable wire recovered from near the body was used by the accused in commission of the crime, no opinion relating to the wire was taken by the prosecuting agency. He further adverted to the testimony of PW-2 who stated that the head scarf (*patka*) of Mr. Sahni was also found on the spot and therefore there being no opinion in relation to the wire, which the prosecution contends is the weapon in question, any other theory cannot be imported. As regards the arrest of the appellant Chinaka from Kolkata, it was contended that as per the prosecution, Insp. Rajesh and Constable Yashvir went to Kolkata to arrest him but no tickets or proof regarding their travel has been shown including that of PW-36, I.O. As regards the

testimony of PW-15, Ajit Kumar Guria, the Administrative Officer at Hotel Mayur Residency Kolkata, who was brought in by the prosecution to establish the stay of appellant Chinaka at the hotel, it was submitted that he stated in his cross-examination that he had not seen the accused at the hotel and the documents in question were not prepared in his presence. Further, the testimony of PW-14, Monirul Julfikar to prove that the appellant was arrested on 3rd September, 2011 at Hotel Green View, Kolkata was also not corroborated, since he stated in his cross-examination that he was not present at the time of check-in or when the police arrived. As regards the issue of recovery of currency notes from the appellant Chinaka, it was submitted that a meagre amount of Rs.250/- along with 1200/- dollars as recovered from him, cast doubt on the recoveries particularly when the appellant had been travelling from Delhi to Chandigarh and then returning to Delhi and then to Kolkata, as per the prosecution, and also paying rent of rooms of Rs.6000/- for two days. Further, since an amount of Rs.3.5 lakh was found near the deceased, the intent to rob the deceased was not made out. As regards the motive of killing, besides the recovery of the money as aforesaid near the deceased, the appellant did not come with any weapon. The recovery of the cable wire is doubtful and seems to have been planted. As regards the call detail records, no location details have been sought by the I.O. for the appellant's mobile number which is confirmed by the testimony of PW-17, the Nodal Officer.

Submissions on behalf of Eziefula Samuel Uchemgbu and Keeneth Chidi Onyeaghala

9. Learned counsel for the appellants Samuel and Keeneth submitted in support of their appeal that the case was based on circumstantial evidence and could be at best be broken down into establishment of motive, the alleged CCTV footages, the recovery of a mobile phone by the driver of the taxi to Chandigarh, and the alleged arrest and recoveries. As regards the alleged visit of the accused to the shop of the deceased, it was contended that the prosecution has not examined any neighbour of the shop to establish the visit, or obtain the CCTV footage from the Metro Station, or obtain the CDRs of Pooja and Sonia. Further, no chance prints/fingerprints of the accused were found, and the fact that cash was found even after the alleged robbery would erode the case of the prosecution. Adverting to the testimony of PW-1, Sonia regarding the time sequence of events, it was submitted that since the distance between Tilak Nagar office and Tilak Nagar Metro Station is a walking distance of 10 minutes, it is not possible that at 1.20 PM when the fifth Nigerian left from Tilak Nagar Metro Station, Satish could have called Sonia at 1.25 PM informing her about the death. Besides that no CCTV footage was taken from Tilak Nagar Metro Station even if the four accused had gone back to the office of the deceased from the Metro Station, they could have reached before 1:10 PM. It was submitted that there was no FSL report regarding the authenticity and genuineness of the CCTV footage and therefore it has to be discarded. The alleged certificate under Section 65B of the Indian Evidence Act is not given by a person in-charge and as per the provisions of law. As per the deposition of PW-2, the CD of the CCTV footage was prepared by PW-7, Pooja who was not authorised to perform the task. Further, if the four accused had reached office at about 1:10 PM then as per the CCTV footage their presence at the office before 12:53 PM could

not be substantiated. The CCTV footage would only show the accused entering and exiting the place of incident and there was no clip which showed the committing of the offence. It was submitted that a strong suspicion based on circumstances cannot replace a proper proof and reliance was placed on the decision of the Supreme Court in *State of Odisha v. Banabihari Mohapatra*, 2021 SCC OnLine SC 121. The FSL report qua the comparison of pictures of the accused with the pictures in CCTV footage has not been done. Even testimonies of PW-56 and PW-48 were confused in the identification since one identified ‘accused Chinaka as Samuel’ and the other identified ‘accused Samuel as Victor’. PW-1 and PW-22 had both stated that they had seen the accused persons at the police station. As regards the arrest of the accused persons in different locations, no proof of any travel documents has been provided. The identification by PW-22 therefore in the dock is of no significance, since he had stated that he had seen the accused on 4th September, 2011 in the police station and also that “*sabki shakal eek jaisi hai*”. The CDR of the mobile number 7503543689 is only taken up to 29th August, 2011, since the location charts of the different numbers have not been produced. The recovery of cash including foreign currency from the accused is not incriminating since they are foreign nationals and it is highly probable for them to carry foreign currency which was in any case not of much value. No CCTV footage of Hotel Residency, Mumbai where the two accused, Samuel and Keeneth, had stayed was placed on record by the I.O. The entries in the hotel register are also in the name of Jeremiah and Charles and do not relate to the said accused. The recovery of the cash, gold coins from the cabin of the deceased by PW-59, the I.O. makes it evident that there was no intention to rob/loot the deceased or to kill him. No CDR call

between PW-5 and PW-1 has been placed to show that PW-5 had called PW-1 and vice-versa relating to the printer cartridge and the discovery of the body of the deceased. PW-5 also does not give any intimation after seeing the body to any of the neighbours of the shop or to the police since he was the first person to see the deceased lying on the ground. No further investigation/inquiry was made by the I.O., nor was any inquiry made from the open shops at the ground floor. Further, no fingerprints were lifted from the key to the cupboard. Besides, various other important witnesses like Kishan (cleaner in the office), owner of Akash Deep Garments (the shop at the ground floor) and Kamal (cleaner at the office of Pooja International) have been examined, as also the owners of two mobile numbers.

Submissions of behalf of appellant Bayem Victor

10. Learned counsel for the appellant Victor submitted in support of his appeal that there were contradictions in the testimony of (PW-1) and (PW-5) since PW-5 states in his testimony that he does not remember the date and month but only the year 2011 when PW-1 had called him regarding the cartridge. Besides, PW-5's conduct was unnatural since he states that he made a telephone call to PW-1 to tell her about the deceased and then gave the cartridge to Gandhi Cycle Wala and asked him to take the cartridges from him. This was not natural since he would not have the composure to deliver cartridges or inform PW-1 having already noticed the deceased. The CCTV footage, it was submitted, was inadmissible since, as per PW-2's testimony, Pooja prepared the CD of the CCTV footage and gave it to the police. PW-7, Pooja, however, states that PW-19, Daman, the Computer Operator came and prepared the CD. PW-19, Daman confirmed that he had

prepared the CD. It was submitted that Daman was not an expert or qualified person to prepare the CD of the CCTV footage and even the PW-59, the I.O. in his cross-examination confirms that he has not made any request to a computer expert from the police department to assist him in this procedure. While he had taken the services of Daman, admittedly he was not aware if Daman was an expert in any manner possible. The certificate under Section 65B of the Indian Evidence Act was not in accordance with the provisions and cannot be admitted in evidence. The DVR sent to FSL was also not admissible since there was no proper certificate under Section 65B. The FSL witness PW-62 states in her testimony that she could not say if the CD had been prepared from the DVR and that she had not examined if any editing, alteration or tampering with the DVR had been done or not. Reliance was placed on the decision of the Hon'ble Supreme Court reported as ***Rahul v. State***, (2022) SCC Online SC 1532. The DVR was seized by the I.O. on 31st August, 2011 and was forwarded to the FSL only on 14th November, 2011, after a delay of 75 days and the possibility of tampering could not be ruled out. As regards the CDR records, it was contended that the location charts were not taken by the I.O., as per PW-17 no Cell ID chart was provided to the police as they were not asked for in regard to phone numbers 9654731690, 9711759531 and 8447175107. As regards travel to Mumbai by PW-48 and PW-56, it was contended that no travel documents have been placed by the prosecution. The arrest memo of the appellant showed the place of arrest as New Delhi. PW-48 states in his cross-examination that nothing was given by him in writing to the local police as well as Crime Branch, Mumbai. Also there is a contradiction as to the time the appellant was detained at Chennai Railway Station since PW-48

states that the train arrived at 04:55 AM whereas in his cross-examination he states that the appellant was intercepted at 6:00 AM and the boarding time for the flight is shown at 6:10 AM. It is not possible that having been detained at 6:00 AM they could have boarded the flight to Delhi. The recovery of T-shirt from the alleged residence of the appellant in Uttam Nagar, New Delhi would be belied by the testimony of PW-12, Landlady's brother who stated that he could not identify them or remember the same. Further, the TIP of the appellant was not in accordance with law since PW-1 and PW-22 stated that they had seen the accused persons in the police station and PW-2 stated that he had been shown the photographs of the accused persons. There was delay in taking the TIP as the appellant was arrested on 4th September, 2011 and TIP was conducted on 12th September, 2011.

Submissions of the Prosecution

11. Learned APP in support of the case of the prosecution contended that pursuant to the investigation and the testimonies, the prosecution has been able to establish as per the following evidence the guilt of the accused. As regards appellant Chinaka, there was eye-witness identification testimony of PW-1 on the CCTV since he was a regular customer as well as that of PW-22, the cab driver to Chandigarh. The CDRs would show that he was in constant touch with the other accused before and after the commission of the crime (Ex.17/P). The recovery of the foreign currency (E.PW-36/B) and the copy of the Western Union Money Receiving Form dated 13th May, 2011 (Ex.PW-36/F) are also significant besides the receipt of Hotel Green View (Ex.PW-14/A) and of Hotel Mayur Residency in Kolkata (Ex.PW-15/A to Ex.PW-15/C). The passport seized from the appellant (Ex. PW-36/F) was

found to be fake after verification and the mobile No. 9711759531 which had been mentioned on the photocopy of the passport seized from the shop (Ex.PW-36/E) would also go to prove his involvement in the crime. As regards appellant Victor, it was contended that PW-1 had correctly identified him in TIP besides also in the Court. Further, there was recovery of the foreign currency from him (Ex.PW-52/D and PW-52/A-6). The mobile No. 9654731690 used by him was the same number used in the phone of the deceased before leaving that phone in the taxi at Chandigarh. As per the CDR records he was in constant touch with other accused before and after the commission of crime as also there was seizure of his passport and one flight ticket in his name from Chennai to Delhi (Ex.PW-52/C). As regards appellant Samuel, both PW-1 and PW-22 had identified him, though he had refused his TIP. He was in constant touch as per the CDR with all the co-accused on and after the day of the crime. His personal search had revealed an air-ticket of Indigo Flight in the name of Joreemiah Obuneke (Ex.PW-48/H). Besides, four mobile phones with one of the numbers as 7503443689 that was used during the commission of the crime and two passports with the name of Samuel and Joreemiah Obumneka. As regards the appellant Keeneth Chidi, he had refused his TIP but the CDR had shown that he was constantly in touch with other co-accused on the day of the crime and on the next day. There was recovery of foreign currency from him (Ex.PW-48/L), and PW-1 and PW-22 had identified him. His search had revealed one Indigo Air Flight ticket in the name of Charles Kechichkwa (Ex.PW-48/G) and two mobile phones including No. 8447175107 used on the day of the commission of the crime as well as a passport with the name Charles. As regards appellant Emenike, he had been identified in Court by PW-1 and

PW-22 and as per the CDR he was in touch with the other co-accused regarding the position of Sonia before and after they left her with him at Tilak Nagar Metro Station.

12. The learned APP stressed on the CCTV footage which showed that the deceased had come to the office at about 11:04 AM, entered his cabin, went out and came back at 12:08 PM and then never left the office. The accused persons went to his office twice or thrice, and after 12:37 PM finding the deceased alone, they came and committed the murder around 12:45 PM and broke the camera at 12:53 PM. The CCTV footage shows that from 12:08 PM nobody entered the cabin of the deceased and at 12:37 PM everybody left the office including PW-1, and at 12:43 and 12:45 PM all four accused had come back to the office and entered the cabin of the deceased and broke the camera at 12:53 PM, which evidence was enough to prove the guilt of the accused. The minutes in the CCTV footage also corroborate with the CDR records showing, *inter se*, communication during that time between the accused. All the mobile numbers used by the accused were obtained on fake IDs and the location of the accused persons as per the CDR on 1st September, 2011 is at Haryana at 11:00 AM in the morning, which corroborates with the testimony of PW-22.

Analysis of Evidence

13. Perusal of relevant aspects of the evidence placed by the prosecution and pursuant to a detailed assessment of the contentions of the learned counsels for the appellants has lead to an inescapable conclusion that the appellants were indeed guilty of the crime they have been charged for. The

following, *inter alia*, would substantiate this conclusion and opinion of this Court.

- i) Even though there was no eye-witness who would testify the commission of the crime, the silent witness in the form of CCTV in the shop of the deceased provides sufficient and incontrovertible evidence about the guilt of the accused. There is a doubt which has been raised by the counsel for the appellant regarding authenticity of the said CCTV footage. However, it is important in this context to examine testimony of PW-59, Insp. R.S. Meena/ the I.O. The I.O. testifies that on that date when he went to the spot of the incident they found two CCTV cameras installed inside the shop and both had been broken and were lying on the floor. These two broken cameras were lifted and seized vide memo Ex.PW-2/1 along with PW-7, Pooja who was the employee at the shop. They played the footage of the CCTV camera in the shop itself and found that the four Nigerians had entered into the office, one of whom PW-1 identified as appellant Chinaka. PW-1, Sonia could identify Chinaka since she used to come in the office for exchange of foreign money and he also produced photocopies of the passport of Chinaka, forms of Western Union Money Receipts and the mobile number noted on the said documents as 9711759531 which were accordingly seized.
- ii) PW-59 who possibly expedited the investigation called the computer expert Daman Kumar to prepare two CDs of the CCTV footage of recording from 12:25 PM to 12:53 PM of the day of the incident. One of the CDs was seized vide memo Ex.PW-54/A and the other was handed-over to Daman Kumar to prepare snapshots, since he was a photographer. Daman Kumar prepared the photographs which were exhibited and also gave a certificate under Section 65B (Ex.PW-59/B). The CCTV system, DVR, computer CPU

and mobile installed in the office of the deceased were seized *vide* memo (Ex.PW-7/A).

iii) The DVR was examined by PW-62 from FSL Rohini who testified that the DVR and the CD (Ex.1 and Ex.2) were found having the same contents contained in the two video files. During the examination of the footage she had not observed any breakage in the time-line and she had extracted that date and copied it on a CD. No damage was observed in the DVR at the time of the examination. She denied the suggestion that there was any manipulation observed by her in the DVR at the time of its examination.

iv) In these facts and circumstances, it would be difficult to dispense with the CCTV footage as being unreliable, inadmissible or being tampered with in any manner possible. While the copy produced by Daman was preserved and corroborated later with the original DVR contents, the original DVR content was also checked and corroborated for its consistency by the FSL witness. Besides this, Court had the opportunity to play the said CCTV footage and carefully observe it. A timestamp based sequence of events as noted in the said CCTV footage, when played in the Court, was prepared and is provided hereunder:

CCTV Timeline 11:50 AM – 12:53 PM

<u>Timestamp</u>	<u>Activity</u>
11:50:10	Keeneth enters alone. Hands over cash to Sonia.
11:51:18	Sonia hands over exchanged currency to Keeneth. Keeneth leaves.
12:00	Owner comes out of his room. A man wearing a turban enters the

	shop. Both go inside.
12:02:48	Turbaned man leaves shop.
12:03	Owner leaves the shop.
12:08:14	Owner returns.
12:25:38	Samuel and Victor enter the shop. Both go inside.
12:29:08	Victor goes out of the shop, stands on landing talking on a mobile phone.
12:29:25	Chinaka and Keeneth enter the shop. Victor is still on landing. Chinaka goes inside. Keeneth sits down in the secretarial area.
12:29:54	Victor re-enters the shop and goes inside.
12:30:17	Chinaka comes to sit with Keeneth.
12:31:00	Chinaka and Victor come out and exit the shop. Chinaka goes inside.
12:33:22	Chinaka comes back to sit with Keeneth, hands him cash.
12:34:14	Chinaka goes back inside.
12:34:31	Victor and Samuel re-enter the shop. Samuel is holding a backpack. Both go inside.
12:36:56	Victor, Samuel and Chinaka emerge from inside. They stand in the shop.
12:37:30	Sonia leaves the shop. Victor, Samuel, Chinaka, Keeneth all leave a few moments later.
12:43	Chinaka and Keeneth re-enter the shop. Chinaka goes inside, Keeneth waits in the secretarial area.
12:45:00	Victor and Samuel re-enter the shop. Both go inside.
12:46:22	Keeneth goes inside.
12:48	Keeneth steps into the secretarial area then back inside quickly, twice.
12:48:30	Keeneth brings an office chair from inside, places it next to the

	desk in the secretarial area, and goes back inside.
12:48:50	Keeneth steps into the secretarial area, looks momentarily out of the window onto the stairwell below that leads to the shop, goes back inside.
12:49	Keeneth steps into the secretarial area, searches desk drawers and compartments, does not find anything, goes back inside.
12:51:05	Keeneth steps into the secretarial area, looks again onto the stairwell, wears the backpack, paces between inside and secretarial area.
12:52:07	Keeneth puts something into backpack, goes back inside.
12:53:25	Keeneth emerges from inside, destroys the camera.

v) Further, to embellish preference to the CCTV footage the relevant photographs with timestamps are being also placed hereinbelow in order substantiate the sequence of events.





vi) This sequence of events shows that at 12:08 PM the deceased had returned to his shop and thereafter at 12:25 PM Samuel and Victor entered the shop and went inside. At 12:29 PM Victor goes out of the shop and makes a phone call (this matches with the call detail records where Victor has called Chinaka at this time). Immediately, thereafter Chinaka and Keeneth also entered the shop and Chinaka went inside to the cabin of the deceased while Keeneth sat down in the secretarial area. Various interactions seem to be happening at that point of time till 12:36:56 PM, when all three emerge from inside the cabin and at 12:37:30 PM all four leave along with Sonia from the shop. At 12:43 PM Chinaka and Keeneth re-enter and Chinaka goes inside while Keeneth waits in the secretarial area and thereafter Victor and Samuel also go inside the cabin and thereafter Keeneth also goes inside. Thereafter, at 12:46:22 PM all four of them are inside the cabin of the deceased. Between 12:48 and 12:52 PM, only Keeneth comes out into the secretarial area, looks around in a highly restless manner, looks out of the window into the stairwell, as if checking to see if somebody is coming, searching the desks, drawers and compartments of the secretarial desk, wearing the backpack and then pacing from up and down from inside the cabin to outside secretarial area and then putting something into the backpack. At 12:53:25 PM Keeneth is seen as looking up to the camera and destroying the CCTV camera.

vii) This sequence makes it absolutely evident that there was no need to break the CCTV camera if the five were not involved in anything which was ordinary and were doing the business transactions. The breaking of the camera at 12:53 PM clearly suggests that the group wanted to destroy the evidence of their presence at that shop at that time. Between 12:43 and

12:53 PM till the camera was destroyed at least three of the accused continued to be inside the cabin of the deceased. Therefore, there was enough time for them to commit the crime in that period. Also sudden strange behaviour of Keeneth being highly restless between 12:46:22 PM when he goes inside the cabin till 12:53:25 when the CCTV is broken including rummaging through the draw of the secretarial desks and nervously looking down at the stairwell to presumably see if somebody was coming, clearly shows that wrong act had been committed and there was no other person in that shop at that time. The Courts have considered the CCTV footage as relevant evidence if it has not been tampered with (refer *inter alia Arvind Singh v. State of Maharashtra*, (2021) 11 SCC 1 and *Mukesh v. State*, (2017) 6 SCC 1, as well as decision of this Court in *Manoj v. State*, 2022 SCC OnLine Del 2559.

14. The discovery of the body immediately thereafter by PW-5, Satish who upon being called by PW-2 to provide a printer cartridge at their shop testifies that when he went inside the shop he saw the deceased lying on the floor “unconscious” and the CCTV cameras were lying broken. It was perfectly natural conduct for him to have immediately called PW-1, Sonia to inform her about the same. Members of the public are known to get perplexed seeing an unusual condition and seeing that he was alone at that time in the shop and seeing a man lying unconscious with the CCTV broken; his natural reaction could have been to not get involved in any manner and go away from there. Upon PW-1 calling PW-2, Deepak to go and check, at about 1:30 PM he arrived at the office and found the deceased lying on the floor and bleeding and the CCTV was broken and thereafter he lodged the said complaint. This sequence of events cannot be challenged or diluted so

easily by the appellants considering that it gets corroborated by the testimonies of PW-1, PW-2, PW-5 and the sequence of events as recorded in the CCTV.

15. The testimony of PW-22, Rajesh who was a cab driver is extremely relevant and corroborative and in context. PW-22 states that on 31st August, 2011 he was contacted by his friend Ankit at around 11.30 PM on telephone regarding 5 Nigerian passengers. Ankit had told him that he had 5 Nigerian passengers but since the AC of his car was not working, he requested PW-22 to drop them to Chandigarh in his car. Ankit dropped the 5 Nigerian passengers on the intervening night of 31st August, 2011 and 1st September, 2011 at PW-22's place. PW-22 took these 5 Nigerian passengers to Chandigarh and dropped them at Sector 17, Bus Stand, Chandigarh. The fare which had been agreed of ₹3000/- was handed-over to PW-22. As per PW-22 he parked his car near the bus stand and slept off in the car and woke up at about 11.00 AM to clean his vehicle. He found, during the cleaning, one mobile phone inside the car near the foot mat. He checked around in the area to search for the Nigerian passengers but since they could not be found he came back to Delhi. He inserted his SIM card in the mobile phone which he had found (PW-22's SIM was 9873528453). Thereafter, he had exchanged this mobile phone which he had found with the mobile of his friend Surender Singh. PW-22 had been located by the Police based on this mobile phone that he had retrieved from his taxi belonging to the said Nigerian passengers. In his cross-examination, he stated that he did not talk with any of the accused persons while on way to Chandigarh but he was able to identify them since they were with him for five hours during the journey from Delhi to Chandigarh. He identified all the accused persons in Court.

The defence had agitated the issue that PW-22 in his cross-examination has stated that “*sabki shakal ek jaisi hai*” and therefore his identification could not be relied upon. However, his testimony is corroborated also by the CDR records as per which not only were the accused persons in touch with each other before and after the incident but also their location charts show that they had left from Delhi on the night of 31st August, 2011 and reached Chandigarh on 1st September, 2011 in the morning. The location of the accused Chinaka, Victor, Keeneth, and Samuel as per the CDR on 1st September, 2011 is at Haryana at 11.00 AM in the morning which reflects that they all travelled together in the cab of PW-22, Rajesh. The CDR location of PW-22, Rajesh on 1st September, 2011 is also in Haryana and is exhibited as PW-17/E.

16. Further, the Call Detail Records of Chinaka would show that he was in touch with Victor on 31st August, 2011 at least 5 times, with Keeneth 15 times, with Samuel 2 times and Emenike 1 time. Also Keeneth was in touch with Samuel on 31st August, 2011 at about 11 times and Samuel was in touch with Emenike 13 times and with Keeneth 11 times on 31st August, 2011. Besides from these particular figures, each of these accused have been in touch with each other throughout the day on 31st August, 2011 in between the time periods of 11.00 in the morning till about mid-night.

17. It would be important to also advert the circumstances surrounding the arrest of the accused. PW-59, the I.O. after having obtained the phone number of Chinaka from the Western Union Money Receipt which was in the office of the deceased and given to him by PW-1, Sonia, requisitioned the Call Detail Records and came to know after analysis that the location of his mobile number was at West Bengal and the location of other mobile

9654731690 which was later identified as the mobile used by Victor, was coming from Mumbai with whom Chinaka's mobile phone was in constant touch. PW-51, Insp. Rajesh Kumar testified that pursuant to coming to know that the mobile number of Chinaka was located in West Bengal, they formed a team and went to Kolkata and after reaching Kolkata, they stayed in a hotel there. Pursuance to surveillance of the said number of Chinaka, they located it as coming from Banerjee Road and using the Cell ID location software they reached the hotel called Mayur International, where they came to know that he has just checked out of the hotel. Later the location of the phone was coming from Park Street area around hotel Green View and when they entered the hotel they were told that this person had just checked in and they opened the door and took Chinaka to Delhi, where he was produced at PS Tilak Nagar around mid-night and was duly arrested.

18. The arrest of Victor on 4th September, 2011 was led by PW-48 after putting surveillance on the phone number which was identified as that of Victor and was seen as moving towards Mumbai. The raiding party of PW-48 and PW-46 along with supporting staff went to Mumbai, coordinated with their counterparts in Crime Branch, Mumbai and with their help traced the last location of the number at mid-night on 2nd September, 2011 to be on Chhatrapati Shivaji Terminal (CST), Railway Station, but he could not be located. Later, on 3rd September, 2011 they found that the number was moving towards Karnataka and therefore figuring that he would be travelling by train, they zeroed in on the train going to Chennai at the relevant time which crossed Gulbarga, Karnataka and reached Chennai at 4.00 AM. They travelled from Mumbai to Chennai on 3rd September, 2011 at night by air, reached Chennai and when the passengers came out at about 4.55 AM on the

morning of 4th September, 2011 they noticed a Nigerian/ African person coming out of the Railway Station, whose face was resembling the snapshots which they had from the CCTV footages. He was intercepted and his name was revealed as Victor. They boarded the earliest available flight to Delhi and he was taken to PS Tilak Nagar and he was arrested. Later Samuel and Keeneth were arrested from Mumbai as well by PW-48 using the location of the mobile numbers. They were both staying at Hotel Residency, Dongri, Mumbai and were arrested finally on 6th September, 2011. Between the four accused who were arrested, about USD 3000 were recovered and 100 pounds along with about ₹50,000/- in Cash as also about 6 phones, multiple passports, and flight tickets from Mumbai to Delhi, all of which were duly seized and have been exhibited. The passports found on accused Samuel and Keeneth were in the names of Charles and Jeremiah, who finally disclosed their actual names as Samuel and Keeneth. They were clearly travelling and staying in India with dual and fake identities. It was found that the passport recovered from Chinaka was fake as per the report of the High Commission of the Kingdom of Lesotho (Ex.59/G). The visa of Victor was neither registered nor extended (exhibited as PW-59/R); Samuel as stated above, had two passports one in the name of Samuel and the other in the name of Jeremiah; Keeneth had a passport in the name of Charles. Visas of all the accused were neither registered nor extended and were exhibited as Ex.59/R. The testimonies of all the Police witnesses as regards the circumstances surrounding the arrest from Mumbai, Chennai corroborate each other and there are no major discrepancies which would bring about a reasonable doubt regarding their arrest.

19. As regards the weapon of the offence, it had been stated by PW-6, the Doctor who gave the post-mortem report that the deceased had sustained 7 external injuries as also internal injuries and the cause of death was asphyxia, produced by ligature strangulation of the neck in combination with craniocerebral injury made by blunt impacts over the head. Both in combination and individually could cause death in the ordinary course of nature. When shown the scissor and the paper cutter, which had been seized from the spot, PW-6 stated that blunt impacts made over the heads could not have been caused by these two weapons. However, he volunteered that injury no. 1, a, c and 4, a, b, c could be caused by the paper cutter. Further, as regards strangulation, he said it must be with some kind of ligature and it could be a cloth. The death was therefore clearly homicidal caused by strangulation.

20. The Hon'ble Supreme Court of India in *State of Rajasthan v. Kalki*, (1981) 2 SCC 752 and *Anurag v. State*, 2009 SCC OnLine Del 534 has held that minor discrepancies of witnesses are bound to occur due to passage of time as well as natural lapses of memory. These minor discrepancies will not exculpate the accused as long as the material evidence points to the guilt of the accused. Therefore, as regards the contentions of the counsels for the appellants with regard to discrepancies in the testimonies of the witnesses, it is the considered opinion of this Court that in view of the substantial evidence as analysed above particularly of the CCTV footage, they may not be relevant to create reasonable doubt regarding the guilt of the appellants.

21. It is clear from the above analysis that the prosecution has been able to prove its case beyond reasonable doubt on the basis of circumstantial evidence as also the undeniable evidence obtained from the CCTV footage.

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

22. Appeals are accordingly dismissed.

23. Copy of the judgment be uploaded on the website and be also sent to the Superintendent Jail for updation of record and intimation to the appellants.

CRL.M.B. 864/2022 in CRL.A. 318/2022; CRL.M.B. 869/2022 in CRL.A. 212/2022; CRL.M.B. 956/2022 in CRL.A. 372/2022

Applications are disposed of as infructuous.

**(ANISH DAYAL)
JUDGE**

**(MUKTA GUPTA)
JUDGE**

MARCH 28th, 2023/‘ga’