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

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Reserved on: 30.01.2023

Decided on: 26.06.2023

+ **CRL.A. 727/2019**

SUBHASH CHAND

..... Appellant

Represented by: Mr.Madhav Khurana, Advocate with
Ms.Divya Jhalani, Advocate.

versus

STATE

..... Respondent

Represented by: Ms.Shubhi Gupta, APP for the State
with Inspector K.P.Singh, P.S.Cyber
Central, District and SI Rajiv Ranjan,
P.S.Mayapuri.

+ **CRL.A. 783/2019**

AMIT alias NITU

..... Appellant

Represented by: Ms.Manika Tripathy, Advocate with
Mr. Ashutosh Kaushik, Mr. Manish
Vashishth and Mr. Roshan Roy, Advs.

versus

STATE

..... Respondent

Represented by: Ms.Shubhi Gupta, APP for the State
with Inspector K.P.Singh, P.S.Cyber
Central, District and SI Rajiv Ranjan,
P.S.Mayapuri.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE POONAM A. BAMBA



POONAM A. BAMBA,J.

1.0 Vide these appeals, the appellants, namely, Subhash Chand and Amit alias Nitu have challenged the judgment dated 11.02.2019 passed by Ld. Addl. Sessions Judge-05 (West), Tis Hazari Courts, Delhi, (“**impugned judgment**” in short), whereby the appellants were convicted in FIR no. 165/2014, PS Maya Puri, u/Ss. 302/365/392/201/34 Indian Penal Code, 1860 (‘**IPC**’ in short); and order on sentence dated 02.03.2019, whereby both the appellants were sentenced to :-

- (i) rigorous imprisonment **for life** each **under Section 302/34 IPC** and fine of Rs. 10,000/- each, in default of payment of fine, to further undergo RI for three months;
 - (ii) rigorous imprisonment for **Six years** each **under Section 365/34 IPC** each and fine of Rs.5,000/- each, in default of payment of fine, to further undergo RI for one month;
 - (iii) rigorous imprisonment for **eight years** each **under Section 392/34 IPC** and fine of Rs.5,000/- each and in default of payment of fine, to further undergo RI for one month;
 - (iv) rigorous imprisonment for **Five years** each **under Section 201/34 IPC** and fine of Rs.3,000/-each, in default of payment of fine, to further undergo RI for one month.
- All the Sentences of both the appellants were to run concurrently.

2.0 Briefly stating, the prosecution case is that on 08.04.2014 at about 12:55 pm, an information was received from phone no. 28114734 that 6-7



criminals had snatched vehicle bearing no. DL-1LM-1354 Mahindra ('Mahindra pick up' in short) from one person Billu on which DD no. 12A (Ex. PW12/A) was recorded. Same was assigned to HC Vijay Singh (PW-16) for necessary action. He along with Constable reached the given spot where robbery of one Mahindra pick up van was revealed. As the incident occurred in the area of PS Kashmiri Gate, call was transferred to the PS Kashmiri Gate recorded vide DD no. 37A (Ex. PW12/B), where similar information at about 12:30 pm was recorded vide DD no. 16PP (Ex. PW2/A); and accordingly, SI Anand Singh (PW-25) In-charge Police Post (PP) Inter-State Bus Terminal (ISBT) Kashmiri Gate, Delhi also reached there. Another information was received from PS Usmanpur from aforesaid phone no. 28114734, which was recorded vide DD no. 18PP at PP ISBT PS Kashmiri Gate. SI Anand Singh (PW-25) called at the aforesaid number 28114734 which was attended by one Anil who informed that his employer namely Jatin Gupta (PW-1) along with Subhash (appellant) have left for the place of incident i.e., ISBT flyover. On which, SI Anand Singh along with Ct. Anil reached the said spot and searched for the complainant, who could not be found. Subsequently, mobile number of Jatin Gupta was obtained and he was contacted on the said number. SI Anand Singh along with HC Dinesh met Jatin Gupta (PW-1) and Subhash Chand at ISBT Flyover. Thereafter, statement of Jatin Gupta (Ex. PW1/A) was recorded. Subash Chand during interrogation confessed to his guilt and disclosed that he along with his nephew Amit @ Nitu in a pre planned manner, had committed the murder of the deceased (Naresh @ Billu) by strangulating after giving him one tablet and with an intention to rob the scrap which was being carried in Mahindra pick up but the said vehicle had to be abandoned as it ran out of CNG. On



which, the appellant Subhash Chand was asked to make a call to his co-accused Amit @ Nitu to come to ISBT. On reaching, Amit @ Nitu was also interrogated and he also confessed to his guilt. Said information was recorded vide DD no. 23PP (Ex. PW2/C). Thereafter, SI Anand Singh (PW-25) at about 9:45 pm on 08.04.2014 visited Police Station Mayapuri and produced copies of the aforesaid DDs no. 16PP (Ex. PW2/A), 18PP (Ex. PW2/B), 23PP (Ex. PW2/C) and also the statement of PW-1 Jatin Gupta before Insp. Vipin Kumar, (SHO of PS Maya Puri) (PW-28), who made his endorsement on the same and got FIR (Ex. PW-22/B) registered. Further investigation was marked to Insp. Prabhu Dayal (PW-34) and both the suspected persons (appellants/accused persons) were produced before Insp. Prabhu Dayal PW-34. During investigation, PW-34 Ins. Prabhu Dayal called crime team and in the meanwhile, PW-4 Surender Singh (brother of Naresh @ Billu/deceased) also came to the police station and he was also joined in the investigation.

2.1. Thereafter at about 11:55 pm, Ins. Prabhu Dayal (PW-34) along with SI Pankaj Kumar (PW-27), ASI Sukhbir Singh (PW-26), Ct. Krishan and Ct. Vijay Pal, complainant/PW-1 Jatin Gupta and Surender Singh (PW-4) along with crime team consisting of ASI Ajit Singh (PW-17), Udham Singh, Finger Print Expert (PW-20) and Ct. Parvinder, photographer (PW-19) reached at Main Link Road, Near Shahibabad Bus Depot, Site-IV, adjoining Vasundhara, Sec. 2 and 4, Red light, opposite Lavanya Party Lawn. There, both the appellants pointed towards a Mahindra Pickup no. DL-1LM-1354 stationed on the left side of the road. On inspection of Mahindra pick up, a dead body having one light yellow colour nylon rope around its neck, was



found inside the said vehicle. Mahindra pick up was inspected by the crime team vide report Ex. PW-17/A, finger prints were lifted and 17 photographs of the spot (Ex. PW-19/P.1 to Ex. PW-19/P.17) negatives of the same (Ex. PW-19/N.1 to Ex. PW-19/N.17), were taken. Thereafter, Insp. Prabhu Dayal (PW-34) prepared the site plan (Ex. PW-1/H) at the instance of the complainant Jatin Gupta. He took into possession the dead body of Naresh @ Billu along with nylon rope and danda, which was used in strangulation of the deceased, vide seizure memos Ex. PW1/B and Ex. PW1/D; and also seized Mahendra Pick Up along with copper scrap in total 34 bags vide seizure memo Ex. PW-1/C. On search of Mahindra Pick up, registration certificate (**RC**) of the same (Ex. P-8), driving license (**DL**) (Ex. P-7) of the deceased Naresh @ Billu, two white colour envelopes (Ex. P-1/A and Ex. P-1/C) one of Riya Industries and another of Rashmi Classic Pvt. Ltd, were found and the same were also taken into possession vide memos Ex. PW-1/O and Ex. PW-1/E, respectively. Both the appellants/accused persons were arrested at the pointing of the complainant vide arrest memos Ex. PW-1/F and Ex. PW-1/G, their personal search was conducted vide memos Ex. PW-1/J and Ex. PW-1/K and their disclosure statements Ex. PW-1/L and Ex. PW-1/M were recorded. On return, dead body of Naresh was got examined vide MLC (Ex. PW24/A) and then preserved in DDU Hospital; exhibits/case property was deposited in the Mal khana and statements of the witnesses were recorded. MLC (Ex. PW24/A) of the deceased reads:

*“Name : Naresh @ Billu s/o Mangi Ram Age 45 yrs.
Sex – Male E. No. 82637*

MLC no. 3788



Residence :- RZ-48/207, Gah No. 6, West Sagarpur, New Delhi.

Date & Time : 09.04.14 10.05 am

Brought by : Constable Bishan Kumar 2703/W

...

Pt. declared brought dead to casualty.

Body packed and sent to mortuary for post-mortem examination

*L/E – **Rope tied around patient's neck** ”*

2.2. After completion of inquest proceedings, post-mortem of the dead body of Naresh @ Billu was got conducted by PW-23 Dr. B.N. Mishra, Medical Officer, DDU Hospital, vide post mortem report Ex. PW23/A, who reported and opined as under:

“P. M. No : 450/2014

Dated: 09.04.2014

*DD No: 165/2014 Dated: 08.04.2014 PS: - **Mayapuri***

*(1) Dead body of : Naresh @ Billu, Age: 45 years, Sex: Male,
S/o Late Sh. Mange Ram*

Address: RZ-48/207, Gali No. 6, west Sagarpur, New Delhi.

...

(2) Body Sent by: Insp. Prabhu Dayal (SHO, PS: Mayapuri)

(3) Body identified by : Surender Singh (Brother) and Deepak (Son)

*(4) Date & Hour of Receipt of inquest papers: - 09.04.2014 at about
12:30PM*

*(5) Date & Hour of **Starting Autopsy**: - **09.04.2014 at 12:45PM***

*(6) Autopsy completed at: - **09.04.2014 at 01:45PM***

BRIEF HISTORY (As per inquest Papers): Alleged history available on record that on dated 08.04.2014 at about 5.45 AM, the deceased left the factory along with his vehicle loaded with brass and his dead body was found inside the same vehicle at 01.35 AM on dated 09.04.2014 on the road side at Sahibabad, Ghaziabad, U.P. there



after recovery of the body, it was brought in DDU Hospital for medical examination wherein declared brought dead at 10:05 AM.

GENERAL DESCRIPTION .

Clothes worn & Their Condition : Khakhi colour shirt, bluish pant, orange baniyan and white kaccha. The upper part of shirt, showed blood staining without any tearing on any clothings.

GENERAL EXAMINATION

- *Rigor mortis : Stage of passing off.*
- *Post Mortem Staining : Present on the face, neck, chest, abdomen and lower parts of legs.*
- *Condition of eyes : Both eyes closed and swollen up highly congested conjunctivae and patty Subconjunctival haemorrhage on both eyes.*
- *Mouth/Tongue : Partly opened with tip of tongue protruded out.*
- *Ligature material (plastic/nylon rope) present in situ with encircled tightly around the neck by two times without any knot.*
- *The face suffused, congested and swollen up.*
- *The bleeding with froth present from nostrils and mouth.*
- *The initial stage of putrefaction set up. The whole body relatively swollen up, greenish discolouration were right side of abdomen and chest with sign of marvelling present over right side of chest and left flank area*
- *The skin over chest and abdomen is liable to easy peeling out.*

EXTERNAL EXAMINATION : External Injuries :-

1. Ligature mark present all around the neck placed horizontally above the thyroid cartilage with groove formation. The total length of ligature mark was equal to neck circumference i.e. 40cm and 2.5 cm to 3cm in width. The surface and margins of groove contused and relatively parchmented with blackish in colour. On dissection of the skin at neck area the underlined soft tissue i.e. fascia, muscles, larynx and pharynx extensively contused with multiple foci of extravagated blood. The right cornua of hyoid bone fractured with collection of blood at fractured site.

2. Multiple bruises of size 5cm x 2cm to 2cm x 1cm present on the left side of forehead, chin and anterior part of neck (below the ligature mark) with blackish brown in colour.

INTERNAL EXAMINATION

**A- HEAD**

.....

NECK

..... *The right cornua of hyoid bone fractured with tracheal mucosa highly congested and covered by blood tinged froth.*

CHEST (THORAX)

1. *Ribs and Chest Wall : NAD except sign of putrefaction.*
2. *Oesophagus : Oesophageal mucosa congested and detached from upper one third part of it and multiple bloody streaks.*

...

4. *Lungs : Both lungs congested, oedematous and suffused with petecheal haemorrhages on its surface.*
5. *Heart and pericardial sac : Filled by frothy blood with soft and flabby in nature.*

...

*Preserved items: (1) clothes (2) **Ligature material (nylon rope)** (3) Blood (in sodium fluoride) and Viscera (in common salt solution) for chemical analysis 4. Blood in gauze piece, sealed with seal of "DFMT, DDU" Hospital and handed over to I.O. for purpose of identification. The blood and viscera have been preserved for chemical analysis to rule out any concomitant poisoning.*

OPINION :

1. *The cause of death was due to asphyxia as a result of constriction of the neck during events of ligature strangulation by using the ligature material (Nylon rope) which is recovered from the neck.*
2. *The injury no. 1 (ligature strangulation) was sufficient to cause death in ordinary course of nature.*
3. *The injury no. 2 could have been received during scuffle/struggle.*
4. *In reference to consumption of any poisonous / sedatives shall be opined after receipt of FSL report.*
5. ***Manner of death is homicide.***
6. ***TIME SINCE DEATH: Approx. 28-30 hours prior to post mortem examination and about 12 hours at the time of recovery of the body.***
7. ***TOTAL No. of inquest papers : Twenty one (21) papers enclosed with signature.***



Dated: 09.04.2014

sd/-

*Dr. B. N. Mishra
Medical Officer cum Medico Legal expert & criminologist
Department of Forensic Medicine
DDU Hospital, Hari Nagar, New Delhi"*

2.3 After postmortem, dead body was handed over to son Deepak Kumar (PW-5) vide receipt Ex. PW-4/B. Sealed exhibits of the deceased were seized by Ins. Prabhu Dayal (PW-34) vide seizure memo Ex. PW-26/A. Despite efforts, the rehri (from where the frooti was purchased) and medicine shop, could not be located. Exhibits were sent to the FSL, Rohini. After collecting the ownership documents, Mahindra pick up along with loaded material (copper scrap), was released on superdari.

2.4. During investigation, Ins. Prabhu Dayal (PW-34) sent the finger prints (search slip) of the appellants/accused persons to Finger Print Bureau for matching and collected the PCR Form Ex. PW-31/A. Call details records (**CDR**) of mobile no. 9718896445 of appellant Subhash Chand, of mobile no. 7859864004 of appellant Amit @ Nitu and of mobile no. 9350115252 of deceased Naresh @ Billu, were collected. Scaled site plan Ex. PW-30/A was prepared.

2.5 After completion of investigation, charge-sheet was filed against the appellants/accused persons for the offences punishable u/Ss. 365/328/392/302/ 201/34 IPC.

3.0 To prove its case, the prosecution examined 35 witnesses.



4.0 The appellant Subhash Chand chose not to lead any evidence in defence. The appellant Amit @ Nitu produced one witness, namely, DW-1 Sh. Dinesh, in his defence.

5.0. Ld. Counsel for the appellant Subhash argued that the present case is based on circumstantial evidence and the prosecution has failed to prove complete chain of circumstances connecting the appellant with the crime. It was argued that the statements of the wife of the deceased Smt. Sudesh Devi (PW-6) and brother-in-law Praveen Kumar (PW-7), the witnesses of last seen, were recorded on 05.06.2014 that is, after an unexplained delay of two months after the incident though they lived in the same house. Same creates doubt about their being the witnesses of last seen and therefore, their testimonies need to be discarded. Learned counsel for the appellant also argued that as per the prosecution story, the appellants gave intoxicant laced frooti to the deceased but neither was any intoxicant found in the body of the deceased as per FSL report nor was the *rehri wala* from whom the frooti was allegedly purchased, could be traced.

5.1 Leaned counsel further argued that chance prints from the rope and the Mahindra pick up, did not match with that of the appellant Subhash. Ld counsel also argued that it has come in the testimony of PW-3 Wasim Ali that he does not deal with scrap which clearly shows that he was a planted witness. Thus, the prosecution failed to connect the chain of circumstances to the appellant so as to prove his guilt beyond reasonable doubt. Therefore, the appellant deserves acquittal.



5.2 Learned counsel for the appellant Amit @ Nitu argued that PW-7 is the pivotal witness on whom the entire case against the appellant rests. PW-7 did not know appellant Amit @ Nitu and stated that he knew the appellant only through Subhash. His testimony is doubtful also for the reason that despite coming to know about missing of the deceased he did not state that he had seen his deceased *jija* with the appellants. Ld counsel also argued that there are even discrepancies in the statement of PW-7 Praveen Kumar and IO PW-34 Prabhu Dayal. PW-7 stated that the deceased was seated in between accused Subhash and accused Amit @ Nitu. Whereas, PW-34 does not say anything about PW-7 having seen Amit. He also argued that even if for a while, the testimony of PW-7 is believed, the appellant Amit @ Nitu was not identified by him. Ld counsel further argued that PW-7 brother in law of the deceased is an interested witness therefore, the appellant Amit @ Nitu cannot be convicted solely on the basis of his testimony. Ld counsel also argued that PW-3 Wasim Ali was not dealing with scrap. Further, during his deposition he was not sure about accused Amit @ Nitu being the second person who visited his shop. He also submitted that during his examination, it was noticed that he had named Subhash and Nitu written on his left arm. Same creates serious doubt about credibility of PW-3. Ld counsel also argued that even FSL report does not corroborate prosecution story of intoxicant having been administered to the deceased.

5.3 Learned counsel further argued that PW-10 Patan Deen Sukha @ Anil, also talks only about the appellant Subhash having visited the factory. Thus, there is no evidence against the appellant Amit @ Nitu. He has been implicated simply because he is the nephew of the appellant Subhash.



Learned counsel also argued that prosecution has not alleged much less proved any motive on the part of the appellant to kill the deceased. Thus, the prosecution has totally failed to prove any case against the appellant Amit @ Nitu.

6.0 *Per contra*, the learned Prosecutor argued that PW-1 Jatin Gupta deposed that he had hired the services of the deceased for loading brass scrap in his Mahindra pick up, which was loaded the previous night i.e., on 07.04.2014 and was parked in the godown. It was picked up by the deceased Naresh @ Billu on 08.04.2014 at about 5:30 am, for whom the gate was opened by their employee Patan Deen @ Anil (PW-10). This fact also finds corroboration in the testimony of the deceased's son Deepak Kumar (PW-5) and his wife Sudesh Devi (PW-6) who have deposed that the deceased had left home on 08.04.2014 at about 5/5:30 am for Mayapuri but did not return in the afternoon as promised. Learned Prosecutor also submitted that PW-6 Sudesh Devi even stated that her husband/deceased had also told her that he has to take the machine of Subhash from Kashmiri Gate. The fact that the deceased left from the factory early morning on 08.04.2014 in the loaded Mahindra Pick Up also finds corroboration in the deposition of PW-10 Patan Deen Sukha. She argued that their testimonies are further corroborated by PW-14 Amit Mittal, to whom the scrap was to be delivered by the deceased; and also by PW-3 Wasim Ali who was contacted by the appellants for sale of the scrap after looting the same. Learned Prosecutor further argued that pursuant to their disclosure, the appellants had taken the police team to Sahibabad where they had left Mahindra pick up with the body of the deceased lying inside. She further submitted that the body of the deceased



was found with the ligature material i.e., yellow colour nylon rope wrapped around his neck. The said fact also finds corroboration in MLC (Ex. PW24/A) of the deceased whereby he was declared brought dead. Further, it is established vide post mortem report Ex. PW 23/A and testimony of Dr B.N Mishra that the deceased died due to asphyxia as a result of constriction of the neck and injury no. 1 (i.e., ligature strangulation) has been opined by Dr B.N Mishra (PW-23) to be sufficient to cause death in the ordinary course of nature.

6.1 Learned Prosecutor further argued that the testimony of the prosecution witnesses is further corroborated by CDRs of mobile phone of the appellant Subhash bearing no 9718896445, the appellant Amit @ Nitu 7859864004 and that of the deceased bearing no 9350115252. CDRs of the appellants' mobile phones show that repeated calls and messages were exchanged between them since about little more than one week prior to the date of the incident. Even on the previous night i.e., 07.04.2014, calls were exchanged between the appellants. She also argued that the appellant Subhash was also in touch with the deceased in last few days and even on 07.04.2014 and in the early morning of 08.04.2014 at about 5:30-5:35. The fact that the deceased picked up his Mahindra from the factory early morning on 08.04.2014 as has been stated by PW-1 and PW-10, is also corroborated by call made by the deceased to Patan Deen Sukha (PW-10) on his mobile number 9811425714. Ld. Prosecutor also submitted that location of the appellant Subhash at the relevant time also corroborates the testimonies of these witnesses. Record of the appellant's mobile phone shows his movement from Mayapuri towards East Delhi and thereafter, from Preet



Vihar to Mayapuri Industrial Area when he visited Jatin Gupta-PW-1's at his godown to inform him about Mahindra pick up having been looted. Learned Prosecutor further argued that the appellant Subhash tried to create a false story of the Mahindra pick up having been looted which became his trap. Learned Prosecutor submitted that the testimony of above witnesses is also corroborated by medical evidence and CDRs of the appellants/deceased and their location at the relevant time. Same clearly connect the appellants to crime.

7.0 We have duly considered the submissions made by both the sides and have perused the record.

8.0 PW-1 Jatin Gupta deposed that he has a scrap godown at B-57, Phase-I, Maya Puri. On 07.04.2014, he hired the services of the deceased Naresh @ Billu for loading brass scrap in his Mahindra Pick-Up. After loading the scrap, the vehicle was left by the deceased at his godown. Next morning i.e. on 08.04.2014, the deceased/Naresh @ Billu left the godown with that vehicle at about 05:30 a.m. The gate of the godown in the morning was opened by his worker namely Anil @ Patandin (PW-10). At about 10:00-10:300 a.m. that day (08.04.2014), he received a telephone call from his client Amit Mittal of Riya Industries (PW-14), who informed that the material had not yet reached him. To find out about the same, he called the deceased Naresh @ Billu but his phone was switched off. At about 11:45 a.m. -12:00 p.m., the appellant Subhash (duly identified) came to his godown and told that Mahindra Pick-Up was looted at Kashmere Gate flyover by 5-6 persons. Anil made a call at number 100. They received phone calls from



Police Station Kashmere Gate and were asked to reach at Kashmere Gate flyover. He along with Subhash (appellant), his (PW-1's) cousin brother Ankit and his father-in-law went to the place where the appellant Subhash had told about the happening of the incident. Police officials from PS Kashmere Gate had also reached. The appellant Subhash told the police officials that Mahindra Pick-Up had been looted from there. Thereafter, they went to PS Kashmere Gate where inquiry was made with the appellant. During sustained inquiry, the appellant Subhash told that he along with his nephew namely Amit @ Nitu boarded Mahindra Pick-Up at Maya Puri in the early morning and on the way both of them offered a frooti mixed with sedative to the deceased Naresh @ Billu, which was consumed by him. Thereafter, they took Mahindra Pick-Up from the deceased and took the vehicle to various places and crossed the border, but got confused and CNG of the vehicle also got over at Sahibabad. They killed the deceased with the help of a rope and a bamboo stick after tying the rope in the neck of the deceased Naresh; they left loaded Mahindra Pick-Up and the body of the deceased Naresh at Sahibabad. Thereafter, the appellant Subhash visited PW-1 Jatin Gupta at Maya Puri and narrated a false story of the vehicle having been looted. Appellant Subhash also told that they were in need of money as they were under heavy debts and were not getting wages and hence planned to murder the deceased and sell the looted brass scrap. PW-1 further stated that on the direction of police officials, the appellant Subhash called his nephew Amit @ Nitu at ISBT, Kashmere Gate on the pretext of escaping from there. But on arrival, appellant Amit @ Nitu (duly identified) was also apprehended.



8.1 PW-1 further deposed that statement Ex.PW1/A was recorded at PS Kashmere Gate. PW-1 also stated that thereafter they went to PS Maya Puri and from there they left for the scene of crime i.e. Opposite New Lavanya Party Lawn, Sahibabad, where Mahindra Pick-Up was found standing with dead body of the deceased inside; the dead body had rope tied around his neck with bamboo stick (Ex.P-2) and brass scrap was lying loaded in the vehicle. Dead body was recovered vide memo Ex.PW1/B and Mahindra Pick-Up was recovered vide memo Ex.PW1/C. Rope with bamboo stick was sealed and seized vide seizure memo Ex.PW1/D. He also stated that tax invoice (Ex.P-1) was also recovered from the vehicle, which was also seized vide memo Ex.PW1/E. Rough site plan (Ex.PW1/H) was prepared; crime team inspected the site. Both the appellants i.e. Subhash and Amit @ Nitu were arrested vide arrest memos Ex.PW1/F and Ex.PW1/G, respectively. Their personal search was conducted vide personal search memos Ex.PW1/J and Ex.PW1/K, respectively. Their disclosure statements Ex/PW1/L and Ex.PW1/M, respectively, were recorded. PW-1 further stated that mobile number of the deceased was 9350115252. He also stated that brass scrap in 34 bags was released to him on superdari vide *supurdiginama* Ex.PW1/N, which he duly identified. He also identified bamboo *danda* having steel grip at one end with escorts engraved on it (Ex.P-2) as the same, which was recovered at the instance of the appellants, vide seizure memo Ex.PW1/D. PW-1 could not tell the colour of the rope (Ex.P-3), which was found around the neck of the deceased, but on being shown the same during his testimony, he identified reddish peach colour rope as the same which was tied with above said bamboo *danda* and which was untied from the bamboo stick/*danda*. He also stated that only *danda* was sealed and seized. PW-1 also



identified Mahindra Pick-Up (Ex.P-4). He also produced/ identified brass scrap in 34 plastic bags (Ex.P-5). He even identified the photographs A-1 to A-20 as those taken by the crime team at the spot. He also identified mobile phone make Nokia (Ex.P-5) recovered from the appellant Subhash and two mobile phones, one of make Nokia and other of Micromax from the appellant Amit @ Nitu, Ex.P-5 and Ex.P-6, respectively. In response to a leading question by the Ld. Prosecutor, PW-1 admitted that the appellant/Subhash had told that after consuming frooti, the deceased had started losing consciousness and the appellant Amit @ Nitu had made the deceased sit between them; and the appellant Subhash started driving the Mahindra Pick-Up and that on the way they threw away the mobile phone of the deceased after strangulating him. Both the appellants stated that they could get recovered the Mahindra Pick-up and dead body from the Sahibabad. He also admitted that one driving licence (Ex.P-7) of the deceased and RC (Ex.P-8) of Mahindra Pick-Up were also taken into possession from the vehicle vide seizure memo Ex.PW1/O. PW-1 in his cross-examination by the Ld. Prosecutor though admitted that both the appellants were interrogated twice, once at police post Kashmere Gate and second time at PS Maya Puri, he denied that the appellants had confessed to their guilt in his presence.

8.2 PW-1 was not cross-examined with respect to his deposition except asking him whether the confession by the appellant Subhash was made in his presence, to which he replied in negative. He also denied that he had deposed on the lines as suggested by the IO Insp. Prabhu Dayal (PW-34).



8.2.1 PW-1 has stood by his deposition in his lengthy cross-examination on behalf of the appellant Amit @ Nitu. He stated that he had reached ISBT flyover at about 01:30 p.m. He also stated that call at number 100 was made by his staff Anil. He admitted that he had gone to PS Kashmere Gate with the appellant Subhash, Ankit Gupta and S. C. Khandelwal and that he reached PS at 02:30 p.m. and remained there till about 07:30 - 08:00 p.m. He reiterated that the appellant Subhash was asked to make a call to appellant Amit @ Nitu in his presence; and accordingly, Subhash had made a call; and that the appellant Amit @ Nitu had reached PS Kashmere Gate, ISBT at about 06:00 p.m. Inquiry was made from him and he had narrated the facts. He also stated that he remained at PS Maya Puri for about two hours and from PS Maya Puri they left at about 11:30 p.m. - 12:00 midnight for the place where the police officials were told about lying of dead body and that they reached there at about 01:00 a.m. He further stated that initially the appellant Subhash was interrogated by the police officials in his presence, but further stated that he did not confess to his guilt in his presence. He also stated that the appellant Subhash did not tell in his presence that the appellant Amit was with him.

8.3 Testimony of PW-1 is corroborated by the testimony of son of the deceased Deepak Kumar (PW-5) and wife of the deceased Smt. Sudesh Devi (PW-6). PW-5 deposed that his father/deceased was having Mahindra Pick-Up and used to take scrap from the factory and deliver the same. On 08.04.2014, after taking tea, his father left home for Maya Puri at about 05:00 - 5:30 a.m. His father informed him that after de-loading the scrap he had to load the machine of one Subhash and that Amit @ Nitu, nephew of



Subhash had also come. As they had kept *Kirtan* programme on that day, his father assured to return by that time. At about 11:00 - 11:30 a.m., his *mami* Asha, who worked at the factory of Jatin Gupta (PW-1) received a call that his father/deceased was not picking the phone. On which, he tried to contact his father on his mobile no. 9350115252 from his mobile no. 8459686722, but the same was switched off. He then dialed number of Subhash's wife Kanta, who informed that Subhash had gone with the deceased for taking machine and there was nothing to worry. But when his father did not return till evening nor did his phone respond, he again rang Kanta's number, she told that there was some problem with the vehicle and that he should not worry as the appellant Subhash was with the deceased. PW-5 duly identified the appellant Subhash stating that he had been their tenant about 10 years ago. PW-5 further stated that in the evening, he received a phone call from PW-1 Jatin Gupta, who informed that his father has been murdered. His *mausaji* namely Sandeep went to PS Kashmiri Gate and as he was confined to home on account of accident. However, he visited PS Mayapuri at night. He further stated that the appellant Amit @ Nitu, who is nephew of appellant Subhash Gupta, is known to him as he used to visit appellant Subhash's brother, who lived in their neighbourhood.

8.3.1 PW-5 stood by his deposition in cross-examination. He stated that he had received the call from Jatin Gupta during evening time prior to 6.00 pm on 08.04.2014. He also stated that Kanta's mobile number was obtained by him through his sister, who is a close friend of daughter of appellant Subhash and he had dialed Kanta's number at about 1.00 pm. He stated that he visited PS Maya Puri on the night of 08.04.2014 and that his tauji Surrender



Kumar (PW-4) was also present along with others in the police station. He denied that he has falsely implicated appellant Amit @ Nitu whom he did not know prior to the incident.

8.4 PW-6 Smt. Sudesh Devi wife of deceased, also deposed on the same lines. She deposed that her husband/deceased used to ply Mahindra Pick Up and on 08.04.2014, he had left for Mayapuri at about 5.00 am as he had left his vehicle previous night of 07.04.2014 at the factory of Jatin Gupta at Mayapuri for loading of scrap. She also stated that her husband had assured to return by 2.30/3.00 pm for attending kirtan as he had to take the machine of Subhash from Kashmiri Gate. On 08.04.2014, at about 11.00/11.30 am, her bhabhi Asha informed that she had received a phone call from a lady from the company of Jatin inquiring about her husband. She then called her husband's number 9350115252, but the same was switched off. Her son and daughter also dialed her husband's number, but the same was switched off. Her son/PW-5 had also called Kanta, wife of appellant Subhash at about 4.00/4.30 pm and Kanta informed that the Subhash was with the deceased on vehicle and the vehicle has gone out of order and they are getting it repaired. *Kirtan* was over at about 6.30 pm, but her husband did not return. At about 6.30 pm, she received a call from her *bhabhi* Asha informing that her husband was not traceable. Her *bhabhi* then went to the Jatin's factory and on returning home, she informed that appellants Subhash and Amit @ Nitu have been apprehended. At night, she came to know that her husband was no more. PW-6 duly identified appellant Subhash as he was their tenant. She also identified appellant Amit @ Nitu stating that he is the nephew of



Subhash. She also stated that Mahindra Pick Up was in her name and that she had got it released on superdari vide superdginama as Ex. PW-6/A.

8.4.1 PW-6 also stood by her deposition in her cross-examination and stated that her son Deepak had called Kanta at about 4.30 pm and denied that she had falsely implicated appellants. She categorically denied that during the appellant's tenancy, a quarrel had taken place between the appellant Subhash and her husband and due to said reason, the appellant had vacated the house. She rather stated that they were on visiting terms with the appellant and the appellant had lastly visited them to deliver his daughter Sarita's marriage invitation card; and that she had attended Sarita's marriage ceremony about 4 year prior to the date of incident. She categorically denied that the appellant has been falsely implicated on account of this quarrel. It is noteworthy that no such defence of false implication on account of past quarrel during his tenancy period has been taken by the appellant in his statement u/s 313 Cr.P.C. Nor was this defence put to PW-5.

9.0 PW-10 has deposed that he is working as a supervisor in the metal scrap factory of PW-1 Jatin Gupta at B-57, Phase-I, Mayapuri since 2010. Mahindra Pick up of the deceased was loaded with the scrap in the factory in the night of 07.04.2014 and was stationed there. On 08.04.2014, at about 5.00/5.30 am, the deceased telephonically called him at his mobile number 9811425714 from his mobile no. 9350115252 to open the gate of the factory as he had to take his vehicle out. Accordingly, he reached the factory with the key, but while he was still on the way, after about 5 or 10 minutes of the first call, the deceased made another call. He (PW-10) reached the factory and the gate was opened by the gatekeeper Vijay with the key provided by



him (PW-10). Deceased then left the factory at about 5.00 or 5.30 am. He further deposed that at about 11.30 am/12.00 noon on 08.04.2014, one person Subhash (duly identified) came to the factory and informed that 5-6 persons had stopped Mahindra Pick up and snatched the same when they were going and had reached near ISBT Kashmiri Gate nearby Usmanpur Chowki. However, he jumped from the vehicle. He also told that he had gone up to Ghaziabad by an Auto and then returned to the factory by inquiring from people. On this, he (PW-10) called at number 100 from the factory phone number bearing 28114734 and informed the police about the same. After sometime, return call was received from the police inquiring about the facts from him. After sometime, another call was received from Chowki Incharge PP Kashmiri Gate, who conveyed that the person (Subhash), who has given this information, should not be allowed to go and rather should be brought to PP Kashmiri Gate. By that time, PW-1 Jatin Gupta had also come in the factory and was apprised. Thereafter, Subhash was taken to PP Kashmiri Gate by PW-1 Jatin Gupta. In his cross-examination PW-10 stated that he had received calls from police from ISBT Kashmere Gate as well as from PS Maya Puri and also a call back from PCR. They had made general inquiry whether he had made a call and they inquired about the vehicle. He categorically denied that appellant Subhash did not visit the factory or did not inform about the snatching of the vehicle of the deceased.

10.0 Testimony of above witnesses is further corroborated by PW-7 Praveen Kumar, who saw the deceased in his vehicle at about 6.00 am with the appellants. PW-7 deposed that he is a driver by profession and plies



passengers by his vehicle Wagon-R car bearing no. HR-55-8738. On 08.04.2014 at about 5.45 am, he had taken a passenger from Dabri for New Delhi Railway Station. At about 6.00 am, when he reached Mayapuri Chowk, he noticed vehicle of his borther-in-law/Jija in front of his vehicle. When he crossed by the said Vehicle, he saw the deceased on driver seat and the appellant Subhash (duly identified) on conductor seat and appellant Amit @ Nitu was seated between both of them. He then left and continued to his destination. Later in the evening on that day, he came to know about the murder of his jija/deceased. He also stated that both the appellants are already known to him as the appellant Subhash used to ply a bus and was also a tenant in the house of his sister; and that he had seen the appellant Amit @ Nitu once or twice in the bus of the appellant Subhash.

10.1 In his cross-examination, PW-7 stated that on 08.04.2014, he had reached home at around 7.00/8.00 pm. He came to know around 09:00 p.m. that his jija/deceased was murdered. He did not visit the police station on that day and that his statement was recorded by the police on 4/5.6.2014.

11.0 Testimony of PW-1 Jatin Gupta that the scrap was to be delivered to his client Amit Mittal of Riya Industries is corroborated by PW-14 Amit Mittal. PW-14 deposed that he is running a company of manufacturing of gas stove parts in the name of 'Riya Industries' at plot no. 1, Khasra no. 12/8, Mandoli Industrial Area, Delhi for the last 8 years. He used to take raw material from Maya Puri and Sadar Bazar. He further stated that on 07.04.2014, he had finalized a deal with PW-1 Jatin Gupta for supply of brass scrap, which was to be delivered at his factory in the morning of 08.04.2014. PW-1 Jatin Gupta had confirmed that the scrap has been loaded



on the tempo of driver Billu/deceased and would reach his factory. However when the scrap was not delivered till 10.00 am, he telephonically informed PW-1 Jatin Gupta, who assured its delivery as the same had been sent. But in the afternoon, PW-1 Jatin Gupta informed him that his driver had been murdered by two persons namely Subahsh and Amit. He stood by his deposition in his cross-examination. He stated that as their deal was finalized orally/telephonically, he was not able to produce any purchase order. He also stated that he has been dealing with PW-1 Jatin Gupta since 3 years prior to the incident, but he expressed his inability to produce documents of past transaction with PW-1 Jatin Gupta. Nothing could be extracted in his testimony to impeach the same.

12.0 Testimony of PW-1 and PW-10 that on appellant Subhash's informing about snatching of the Mahindra Pick-Up, a call was made at number 100, is corroborated by PW-12, WSI Veera Sharma and DD No. 12 (Ex.PW12/A). PW-12 deposed that on 08.04.2014, when she was posted as Duty Officer at PS Usman Pur, at about 12:55 p.m. an information was received through wireless that 6-7 criminals had snatched vehicle no. DL-1LM-1354 Mahindra from a person Billu after beating him. The said call was received from phone no. 28114734, which was then reduced into writing vide DD No.12 (Ex.PW12/A). She admitted in her cross-examination that the caller of the said call was not known. The relevant portion of Ex.PW12/A reads :

"... Samay 12:55 hrs par darj hai ki B-52 operator ne DO Room aakar tehrir karaya ki Kashmere Gate Bas Adda paar karke Shahadara side 6-7 badmashon ne marpit karke gadi no. DL-1LM-1354 Mahindra Billu naam ke aadmi se chheen li from L/Ct. Anita 3668/PCR Ph. 28114734"



13.0 The deceased left home at about 05-05:30 a.m. as has come in the testimonies of PW-5 and PW-6. Both the witnesses also deposed that the deceased had informed that he had to pick up/load machine of the appellant Subhash from Kashmere Gate; and that Subhash's nephew Amit @ Nitu had also come. PW-10 has stated that the deceased picked up the vehicle from factory at Maya Puri at about 05:30 a.m. PW-7 Praveen Kumar saw the deceased with both the appellants at about 06:00 a.m. at Maya Puri Chowk when he crossed deceased's Mahindra Pick-Up. Thus, the deceased was last seen alive in the company of the appellants at 06:00 a.m. on 08.04.2014. Further, vide testimonies of PW-1 Jatin Gupta and his employee PW-10 Patan Deen @ Sukha, it has come on record that the appellant Subhash visited the factory at Maya Puri at around 11:30/11:45 a.m. - 12:00 p.m. and informed that the Mahindra Pick-Up loaded with scrap was stopped by 5-6 persons at ISBT Kashmere Gate flyover, near Usman Pur Chowki, who looted the same. Call at number 100 was made by Anil (PW-10) from the phone at factory at about 12:55 p.m. It was for the appellants to explain as to what exactly transpired between 06:00 a.m. at 11:30 -11:45 a.m. Mahindra Pick-up with the deceased's dead body inside was rather recovered from Sahibabad at the instance of the appellants.

14.0 Testimony of the above witnesses is further corroborated by PW-25 SI Anand Singh, PW-28 Inspector Vipin Kumar and PW-34 Inspector Prabhu Dayal, the investigating officers regarding receipt of information about robbery of vehicle/car, PW-1 Jatin Gupta along with the appellant Subhash coming to the stated place of incident i.e., ISBT flyover, recording of



statement of Jatin Gupta (PW-1) on which endorsement was made (Ex. PW28/A), *rukka* was prepared and FIR (Ex. PW22/B) was got registered.

15.0 PW-34 Inspector Prabhu Dayal deposed that SHO Nitin Bhatiya had produced both the appellants who had already made disclosure having killed the deceased and his dead body left in Mahindra pick up opposite Lavanya Party Lawn, Sahibabad and further investigation was assigned to him. He stated that crime team was called. He further deposed that he along with the complainant Jatin Gupta (PW-1), Surender, brother of the deceased (PW-4) along with his team consisting of HC Sukhbir (PW-26), Ct. Krishan, Ct. Vijay Pal and others were led by the appellants to the place opposite Lavanya Party Lawn, Sahibabad, UP. Appellants pointed towards the Mahindra Pick-Up, stating that the body was lying in the vehicle. On checking/entering the Mahindra pick up, dead body was found lying in between the dashboard and the conductor side seat. Crime team inspected the vehicle, took photographs Ex. PW 19/P1 to Ex. PW19/P17 and lifted chance prints. He also deposed that on inspecting the dead body, it was also found that one nylon rope of light yellow colour was tied around the neck of the dead body and one side of rope was tied with one bamboo stick/*danda*. One side of the said *danda* was affixed with steel metal. He untied the said *danda*; dead body of the deceased along with nylon rope was seized vide seizure memo Ex. PW1/B, which was signed by both the appellants. He further stated that copper scrap contained in 34 bags/kattas was also found in the vehicle. Inside the dash board, RC of the vehicle and driving license of the deceased was found. Besides, two white envelopes were found which were taken into possession vide memo Ex. PW1/O. Those envelopes contained



one invoice each. Same were seized vide separate seizure memo Ex. PW1/E. The accused Subhash Chand and Amit @ Nitu were interrogated and their disclosure statements Ex. PW1/L and Ex. PW1/M, respectively were recorded. Whereby, they disclosed that they had planned to rob the scrap and to sell the same to a junk dealer in UP with whom they had already talked and they can point out the junk shop and can also point out the said *rehri wala* from whom they purchased frooti. They also revealed that they planned to kill the deceased by giving him some intoxicant mixed in frooti and by strangulating him with nylon rope and bamboo sticks. The accused persons also disclosed that mobile phone of the deceased was broken by them and they can get it recovered. The accused persons were then arrested vide memos Ex. PW1/F (Subhash) and Ex. PW 1/G (Amit @ Nitu) and their personal search was carried out vide memo Ex. PW1/J and PW1/K, respectively. From the personal search of accused Subhash, besides Rs. 401/- one Nokia phone of golden, grey and black colour was recovered. From the personal search of Amit @ Nitu, two mobile phones i.e., Nokia Model no. C1 with two sim cards and Mircromax of white colour, were recovered including a sum of Rs. 40/- and some personal belongings. He further deposed that both the accused persons led them to the shop of junk dealer at Shop No. 60, Mandir Wali Gali, Sahibabad, UP. They met one junk dealer there, who identified accused Subhash stating that he was the person who came to him and talked about selling copper scrap. The accused persons also led them to different metro stations for recovery of the deceased's mobile phone but the same could not be recovered as the accused persons had misled them. *Rehriwala* also could not be traced. He also deposed about shifting of the dead body to mortuary at DDU Hospital, deposit of case



property in malkhana at police station, release of copper scrap and Mahindra Pick-Up vide superdarinama Ex. PW1/N and Ex PW6/A, respectively. After identification and conducting of post mortem of dead body, it was handed over. PW-34 identified all the exhibits in the court. Nothing of substance could be extracted in his cross examination.

15.1 His testimony is corroborated by PW-1 Jatin Gupta, PW-4 Surender and also by other police officials, who accompanied him i.e. PW-26 ASI Sukhbir Singh and PW-27 SI Pankaj Kumar.

16.0 PW-1 Jatin Gupta has deposed that the deceased's mobile number was 9350115252 . Further, PW-5 Deepak Kumar son and PW-5 Smt. Sudesh, wife of the deceased deposed that they tried to contact the deceased on his mobile no. 9350115252, which was switched off. Vide testimony of PW-13 Yogesh Tripathi, Alternate Nodal Officer (**ANO**), Reliance Communication Limited and Customer Application Form (**CAF**) Ex. PW13/C and identity documents, voter i-card, it has come on record that mobile no 9350115252 was in the name of Sudesh Devi wife of Naresh Kumar (deceased) r/o 48/207 West Sagarpur, Nasirpur, New Delhi. He also deposed that as per CAF Ex. PW13/A and voter icard Ex. PW13/A.1 mobile no. 7859864004 is registered in the name of Amit Kumar son of Suresh Kumar R/o 15 Phase-2 & 3, Shivani Enclave, Kakrola Village, Delhi.

16.1 PW-13 also produced CDR for the period 28.03.2014 to 08.04.2014 of aforesaid mobile nos. 9350115252 as Ex. PW 13/E.1 to 13/E.11 and that of 7859864004 as Ex. PW13/B.1 to B.5 and also filed certificate under Section 65B Indian Evidence Act, Ex. PW13/G and Ex. PW13/F, respectively, with respect to both the mobile numbers.



16.2 PW-8 Sarvesh Kumar ANO, Idea Cellular Limited, testified that mobile no. 9718896445 as per CAF PW8/F is registered in the name of Subhash Chand son of Gopi Chand. He also produced CDR of this mobile no. for the period 27.03.2014 to 08.04.2014 (Ex PW8/B) and certificate under Section 65B under Indian Evidence Act, Ex. PW8/A. Both PW-8 and PW-13 were not cross examined by the appellant Subhash. Even in the cross examination on behalf of Amit @ Nitu, nothing of substance could be extracted so as to reflect on the authenticity of the record produced by them.

17.0 As per CDR (Ex. PW8/B) of mobile no. 9718896445 in the name of appellant Subhash Chand, the appellant was in constant touch with co-accused/appellant Amit @ Nitu on his mobile no. 7859864004; repeated calls and messages/SMS were exchanged between the appellants since 28.03.2014 till 07.04.2014 i.e. night before the incident. It is noted that three calls were exchanged between the appellants at 22:55:34, 23:46:01 and 23:57:16 i.e., till late night on 07.04.2014.

17.1 It is also noted that the appellant Subhash was also in touch with the deceased Naresh @ Billu on 31.03.2014, 05.04.2014, 06.04.2014 and even on 07.04.2014 i.e., a day prior to the incident. Not only that, the deceased Naresh @ Billu sent SMSs/made call from his mobile no. 9350115252 to the appellant Subhash at his mobile number 9718896445 in the early morning of 08.04.2014 i.e., the date of the incident at 5:31:44, 5:36:43, 5:37:47; the call made at 05:37:47 lasted for 45 seconds. As per the location ID Chart, location of both, the appellant Subhash and that of the deceased at 5:37 and 5:39 in the morning of 08.04.2014 was at Mayapuri Industrial Area, New Delhi (i.e., at 9, Community Centre, Maya Puri Industrial Area Phase-1 New



Delhi and B-11, Maya Puri Industrial Area Phase-1, respectively). Same also lends credence to the testimony of PW-7 that he had seen the deceased in his Mahindra Pick-Up with the appellants at about 06:00 a.m.; and also to the testimony of PW-1 Jatin Gupta that during sustained enquiry by police officials, the appellant Subhash had told that he along with his nephew/appellant Amit @ Nitu had boarded deceased's Mahindra pick up early morning at Mayapuri itself.

17.2 Further, CDR (PW13/E1 to E11) of mobile number 9350115252 of the deceased, also shows that on 08.04.2014 at 5:26:51 and at 5:47:13, the deceased made two calls to mobile number 9811425714 of Patan Deen Shukha @ Anil, PW-10 and his location was at B-11 Mayapuri Industrial Area Phase 1, Delhi. Same corroborates the testimony of PW-10 that on 08.04.2014 he received a call at about 5/5:30 from the deceased to open the factory gate and then another call was received by him from the deceased within 5-10 minutes of the first call.

17.3 The above also corroborate the testimonies of PW-5 and PW-6 that the deceased had gone to the godown/factory of PW-1 at Mayapuri in the morning at about 5:30 am on 08.04.2014 to pick up his Mahindra Pick-Up.

17.3.1 CDR of mobile no. 9718896445 of the appellant Subhash Ex. PW8/B shows his further movement on 08.04.2014 from 10 am onwards as under:

Time of Call	Location ID
09.53.45	40404-431-32791 Property no. 30 Preet Vihar Community Centre Delhi 10092



10.10.19	4040-400-61152 Kotwali, Mahtma Gandhi Marg, Delhi
12.04.41	40404-118-26231 Mayapuri Industrial Area Phase-1, Delhi
12.04.47	Do.....
12.04.41	40404-118-26231 B-31, Mayapuri Industrial Area Phase-1 Delhi
16.35.14	40404-124-63911 Church Road Kashmiri Gate, Delhi
16.35.56	40404-124-20952 Civil Lines, Delhi
18.03.19	40404-124-63911 Kashmiri Gate, Delhi
18.7.15	-----Do-----

17.4 The above locations show the appellant's movement from Preet Vihar to Mayapuri Industrial Area at 12.04 pm, which corroborates the testimony of PW-1 Jatin Gupta and PW-10 Patan Deen Sukha @ Anil that the appellant Subhash came to his godown at Mayapuri at about 11:45/12 noon and informed that Mahendra pick up has been looted. Further, location of the appellant Subhash at Church Road Kashmiri Gate, Delhi at 16:35 onwards further corroborates the testimony of PW-1 that he along with the appellant Subhash and others then went to the place at Kashmiri Gate flyover where the appellant had told that the incident had happened and thereafter, to PS Kashmiri Gate to lodge the FIR.



17.5 It is seen that as per CDR (Ex. PW13/B1 to B5) of mobile no 7859864004 of appellant Amit @ Nitu shows two calls made by the appellant Subhash Chand to him at 16:35:14 and 16:35:56, when his location was at RZ 52A Nasirpur Raod, Palam, Delhi. Thereafter, two calls were exchanged between both the appellants. The first one made by the appellant Amit to appellant Subhash Chand at 18:03:19 (77 seconds) and the second call was received by him from the appellant Subhash Chand at 18:07:15 (29 seconds), which show the appellant Amit's location at 1288-89, Vardhan Tower, Chaabi Ganj, Kashmiri Gate, Delhi. The aforesaid calls are tabulated below:

CDR of Mobile no. 7859864004 of the appellant Amit @ Nitu of 08.04.2014

Time of Call	Location ID
16.35.14	H.NO. RZ-52A, Nasirpur Road, Palam, Delhi
16.35.56	H.NO. RZ-52A, Nasirpur Road, Palam, Delhi
18.3.19	1288-89, Vardhan Tower, Chaabi Ganj, Kashmiri Gate, Delhi
18.7.15	1288-89, Vardhan Tower, Chaabi Ganj, Kashmiri Gate, Delhi

17.5.1 The above calls and location of the appellant Amit @ Nitu showing his movement from Palam, Delhi to Kashmiri Gate, further corroborate the testimony of PW-1 Jatin Gupta that the appellant Subhash Chand was asked



by the police to make phone call to Amit @ Nitu to reach at ISBT Kashmiri Gate on the pretext of escaping from there and that he had then arrived there.

18.0 Vide testimonies of PW-1 Jatin Gupta and PW-4 Surender Singh, it has come on record that they along with the appellants Subhash and Amit @ Nitu and three-four police officials and crime team went to main Link Road near Sahibabad Bus Depot opposite Party Lawn near Red light of Sector 2 and 4, the spot. Appellants pointed towards Mahindra pick up parked at the spot and stated that they committed the murder of deceased in the said vehicle by strangulating him with the help of a rope which was tied with the bamboo stick. Mahindra pick up was found parked and dead body of the deceased with rope and bamboo stick around his neck was also lying in the vehicle in front of the front seat; the deceased was identified by them. PW-4 further stated that the bamboo stick/*danda* was taken into possession, sealed and seized vide seizure memo Ex. PW1/D; the rope however remained around the neck of the deceased. Though PW-1 stated that rope with bamboo stick was sealed and seized. Testimony of these witnesses is corroborated by MLC of the deceased Ex. PW24/A which records rope was tied around the patient's neck, which was proved by Dr Vinal Sharma, SMO, DDU Hospital, Delhi, who deposed that on local examination, rope was found tied around the patient's neck. He was not cross examined by the appellants and therefore, his testimony remained uncontroverted. Relevant portion of the MLC reads as under:

*"Name : Naresh @ Billu s/o Mangi Ram Age 45 yrs.
Sex – Male E. No. 82637
MLC no. 3788*



....

Date & Time : 09.04.14 10.05 am

...

Pt. declared brought dead to casualty.

....

L/E – Rope tied around patient's neck ”

18.1 The fact that the rope was found around the neck of the deceased at the time of the recovery of the dead body is corroborated by photographs Ex.PW-19/P-1 to Ex.PW-19/P-17.

19.0 Further, vide testimony of PW-23 Dr. B.N Mishra who conducted post mortem and vide his report Ex. PW23/A, it has come on record that ligature mark was found present all around the neck of the deceased; and also, there were multiple bruises on the left side of his forehead, chin and anterior part of the neck below the ligature mark and the cause death of the deceased was opined “due to asphyxia as a result of constriction of the neck during ligature strangulation by the ligature material/nylon rope which was recovered from the deceased’s neck”; and that the injury no. 1 i.e., ligature strangulation was sufficient to cause death in the ordinary course of nature. Time since death has been opined to 28-30 hours prior to post mortem examination (which started at 12:45 pm and concluded at 1:45 pm) on 09.04.2014. As per medical jurisprudence, the time of death could be plus-minus three hours. Thus, the deceased died somewhere around 9 am on 08.04.2014, which further substantiates evidence on record.

20.0 PW-3 Wasim Ali @ Bhola deposed that he has a motor parts shop at border UP. On 06.04.2014, two persons visited his shop and told him that



they wanted to sell brass scrap and asked for his business card which he gave. The witness stated that he was sure about one of those persons who visited his shop on 06.04.2014 and pointed towards the appellant Subhash (duly identified). He however was not sure whether the appellant Amit @ Nitu was the other person who visited him. In response to a leading question by the Id. Prosecutor, he admitted that on 09.04.2014 when the police officials visited his shop, both the appellants were in the police custody. In his cross examination on behalf of the appellant, he categorically denied that he identified the appellant Subhash at the asking of the police. PW-3 stood by his deposition in his cross examination by the appellant. He stated that he deals in sale and purchase of motor parts and does not deal in sale and purchase of *kabaad*/waste material. He also stated that however people visit their shop for selling waste material as his elder brother was dealing in *kabaad*/waste material, who died about five years ago. He further stated that the police officials did not take visiting card from him at PS Mayapuri. Rather, they were already having his visiting card. Thus, nothing of substance could be extracted from PW-3 in his cross examination to impeach his testimony. Testimony of PW-3 Wasim Ali about appellants' visit to him on 06.04.2014 finds corroboration in the Ex. PW8/B, CDR of mobile number 9718896445 of appellant Subhash Chand. Same shows the appellant's location at 8:49:19 on 06.04.2014 at Gaziabad, UP 201015, when he made a call to the deceased at his mobile no. 9350115252.

20.1 PW-3's testimony also corroborates the prosecution version that the appellant Subhash Chand who was going through financial difficulty,



planned to make easy money by selling the scrap which was to be taken by the deceased for delivery and points towards motive for the crime.

21.0 In view of the above, the prosecution has been able to establish beyond reasonable doubt that the deceased left home at about 05:00 -05:30 a.m. for picking his Mahindra Pick-Up from godown/factory of PW-1 Jatin Gupta at Maya Puri to deliver the scrap to PW-14 Amit Mittal of Riya Industries. He picked up his already loaded vehicle at about 05:45 a.m. At about 06:00 a.m. the deceased was seen with the appellants in his Mahindra Pick-Up at Maya Puri Chowk but, he did not reach the destination. At about 10:00 -10:30 a.m., PW-1 Jatin Gupta received a call from PW-14 informing that the scrap had not yet reached him. Accordingly, PW1 called the deceased on his mobile phone, which was switched off. At about 11:45 a.m. - 12:00 p.m., the appellant Subhash came to PW-1's godown and told that Mahindra Pick-Up was looted at Kashmere Gate flyover by 5-6 persons, on which call at number 100 was made. No explanation has come from the appellants as to what transpired between 06:00 a.m. till the appellant Subhash reached PW-1's godown at about 11:45 a.m. - 12:00 p.m. Rather, the appellant Subhash's location as per CDR (Ex.PW8/B) is seen around Preet Vihar Community Centre, at 10:30 a.m. Same also remained unexplained. The appellants took the police party and pointed out/got recovered the Mahindra Pick-Up with the deceased's body lying inside with rope around his neck, from Sahibabad. It has also been established that the appellant Subhash along with one person had visited shop of PW-3 Wasim Ali @ Bhola at border of UP and had enquired about sale of brass scrap on 06.04.2014, which shows motive on the part of the appellants to commit the



crime. Further, vide post mortem report Ex.PW23/A, it has been opined that the deceased died due to asphyxia as a result of constriction of neck during ligature strangulation by using the ligature material/nylon rope recovered around the neck of the deceased and that the said injury was sufficient to cause death in the ordinary course of nature.

22.0 Considering the above facts and circumstances in entirety, the prosecution has been able to successfully establish complete chain of circumstances linking the appellants to the crime. We, therefore, find no illegality in the impugned judgment of conviction and order on sentence.

23.0 Both the appeals are accordingly dismissed.

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

(POONAM A. BAMBA)
JUDGE

(MUKTA GUPTA)
JUDGE

JUNE 26, 2023/manju