



CRA-D-540-DB-2015 &
CRA-D-601-DB-2015

[1]

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-D-540-DB-2015 &
CRA-D-601-DB-2015
Reserved on 31.07.2024
Date of decision: 14.08.2024

CRA-D-540-DB-2015

Dinesh ...Appellant

Versus

State of Haryana ...Respondent

CRA-D-601-DB-2015

Aarti ...Appellant

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. Vinod Ghai, Sr. Advocate with
Mr. Arnav Ghai, Advocate for the appellant
in CRA-D-540-DB-2015.

Mr. Sangram Singh Saron, Advocate
for the appellant in CRA-D-601-DB-2015.

Mr. Manish Dadwal, AAG, Haryana.

Mr. Tanvir Singh Grewal, Advocate for the complainant.

KARAMJIT SINGH, J.

1. The above-mentioned two appeals have been directed against the judgment of conviction dated 13.03.2015 and order of sentence dated 17.03.2015 passed by the Court of Additional Sessions Judge, Narnaul in case having FIR No.301 dated 14.10.2013 under Sections 302, 120-B/34

IPC and Section 25 of Arms Act, Police Station Kanina vide which both the appellants were convicted and sentenced to imprisonment for life under Section 302 read with Section 120-B IPC. Appellant Dinesh is further sentenced to pay a fine of Rs.2 lacs and in default of payment of fine to further undergo simple imprisonment for a period of 6 months. Appellant Aarti is further sentenced to pay a fine of Rs.50,000/- and in default of payment of fine to further undergo simple imprisonment for a period of 3 months. Out of the amount of fine, a sum of Rs.2 lacs was directed to be paid to the parents of deceased as compensation.

2. The prosecution story in brief is that on 14.10.2013, PW-16 ASI Kailash Chand received a telephonic information in Police Station Kanina that dead body of a youth is lying in front of gate of DAV Public School, Kanina. On receipt of the information, PW-16 Kailash Chand ASI along with other police officials reached the spot. He came to know that dead body was of Neeraj, resident of Village Riwasa. PW-5 Rattan Lal uncle of Neeraj and some other family members of the deceased were found there. PW-5 Rattan Lal got recorded his statement Ex.PW-16/A with PW-16 ASI Kailash Chand, wherein he stated that he is residing in Village Riwasa and his younger brother PW-21 Ramphal is residing in Delhi. Deceased Neeraj son of Ramphal was studying in B.Tech 3rd year in DAV College of Engineering, Kanina. On that day, he received intimation that Neeraj was murdered near DAV Public School, Kanina by some unknown person. Then, he and his brother Luxmi Narayan and cousin Nityanand reached the spot and they found blood soaked dead body of Neeraj having stab wound. The deceased was called by some person from hostel of DAV College,

Kanina and was stabbed to death. On the basis of the said statement of complainant PW-5 Rattan Lal, ruqa was sent and consequently, FIR Ex.PW-13/A was registered in the police station by PW-13 ASI Satish Kumar.

3. PW-16 ASI Kailash Chand inspected the spot and prepared the inquest report Ex.PW-11/B and conducted proceedings under Section 174 Cr.P.C. One mobile phone and white ear phone lead were found near the dead body while keys were found in the pocket of the clothes worn by the deceased. The said articles were seized by the police vide memo Ex.PW-4/B. The team for Forensic Science Laboratory (FSL) was also called. The blood stained earth was also lifted and taken into possession vide memo PW-4/A. The dead body was sent for its post mortem examination vide application Ex.PW-11/A. After post mortem examination, the dead body was handed over to its relatives while the clothes of deceased were taken into possession vide memo Ex.PW-14/A. During investigation, the investigating officer moved an application Ex.PW-2/A and took into possession, copies of the relevant documents regarding admission of the deceased in DAV College of Engineering, Kanina and the photo copies of the said document Ex.PW-2/B to Ex.PW-2/H were taken into possession vide memo Ex.PW-2/J. Call detail records Ex.PW-6/D and Ex.PW-6/E of two mobile phone numbers 8930673654 and 8930573647 were collected by the investigating officer vide seizure memo Ex.PW-8/C. Accused Aarti Yadav was arrested on 06.11.2013. During interrogation accused Aarti Yadav suffered disclosure statement Ex.PW-8/A. Two SIM cards having numbers 8930673654 and 9813331052 and one mobile phone produced by Aarti Yadav were taken into possession by the police vide memo Ex.PW-

8/B. On completion of investigation against accused Aarti, police presented challan against her and case was committed to the Sessions Court. The trial Court framed charges against accused Aarti and as she pleaded not guilty, the trial was commenced against her.

4. During further investigation, on 28.03.2014, PW-20 Bhoop Singh got recorded his statement with the police that on 13.10.2013 at about 06:30 PM, he had seen two boys were exchanging hot words by taking names of one another as Deepak and Neeraj.

5. Subsequently, accused Dinesh was arrested in this case on 09.05.2014 by PW-22 Inspector Vinod Kumar and he suffered disclosure statement Ex.PW-19/A and got recovered a knife used in the commission of crime and the same was taken into possession by the police vide memo Ex.PW-18/C and the rough sketch of the said knife is Ex.PW-18/B. Further, on 11.05.2014, Dinesh got recovered one Nokia mobile phone having one sim which was out of order and wallet of black colour having driving licence, one identity card and three photographs of Neeraj pursuant to aforesaid disclosure statement and the said articles were taken into possession vide memo Ex.PW-18/D by PW-22 Inspector Vinod Kumar. The rough site plans with regard to places of aforesaid recoveries were separately prepared by PW-22. After completing the formalities of investigation, police presented supplementary challan against accused Dinesh.

6. The trial Court framed fresh charges under Sections 120-B, 302 read with Section 34 IPC against both the accused and under Section 25 of Arms Act against accused Dinesh Kumar, to which they pleaded not guilty

and claimed trial.

7. In order to prove charges against both the accused, prosecution examined following witnesses:-

PW-1 Manoj Kumar, Photographer who proved photographs Ex.PW-1/A to Ex.PW-1/E of place of occurrence, which were clicked by him on 14.10.2013 on asking of ASI Kailash Chand.

PW-2 Om Parkash, Accountant, DAV Engineer College, Kanina proved the relevant record Ex.PW-2/B to Ex.PW-2/H regarding admission of deceased Neeraj in aforesaid college, which was seized by the police vide memo Ex.PW-2/J.

PW-3 Radhey Shyam, deposed that on 22.08.2013, Aarti daughter of Raj Singh took two mobile sim cards having numbers 8930673654 and 8930673647 of Vodafone, from his shop namely Parul Mobile Repair Center, regarding which he made entry in his register and copy of the same is Ex.PW-3/A which was taken into its custody by the police vide memo Ex.PW-3/B.

PW-5 Rattan Lal, complainant proved his statement Ex.PW-5/A on the basis of which, FIR Ex.PW-13/A was registered against unknown persons. He further stated that one mobile phone of Samsung company was also found lying near the dead body along with one white ear phone lead.

PW-16 ASI Kailash Chand who on receiving the information reached the spot on 14.10.2013, deposed regarding the initial investigation conducted by him at the spot including the proceedings under Section 174 Cr.P.C. and proved inquest report Ex.PW-11/B, photographs Ex.PW-1/A to Ex.PW-1/E of the dead body and its surroundings, recovery memo's Ex.PW-4/A and Ex.PW-4/B and also deposed that after post mortem examination, the clothes of deceased were taken into possession vide memo Ex.PW-14/A. He also proved police request Ex.PW-2/A submitted by him to the college authorities and memo Ex.PW-2/J whereby various documents Ex.PW-2/B to Ex.PW-2/H were taken into possession by the police relating to admission of the deceased in DAV College of Engineering, Kanina. He also proved recovery memo Ex.PW-8/C whereby call detail record Ex.PW-6/D was taken into possession. He also deposed regarding arrest of accused Aarti Yadav which was effected on 06.11.2013, he also deposed regarding disclosure statement Ex.PW-8/A suffered by the said accused and recovery of Nokia mobile phone and two sim cards which were taken into possession vide memo Ex.PW-8/B. He also proved recovery memo Ex.PW-10/A vide which motor cycle No.HR-35-G-6284 was seized by the police. He also proved seizure memo Ex.PW-6/A vide which, he collected call detail records Ex.PW-6/B and Ex.PW-6/C.

PW-4 ASI Kapoor Singh who was member of the police party headed by PW-16, corroborated the statement of said police official, with regard investigation conducted from 14.10.2013 till 09.11.2013 by PW-16.

PW-6 ASI Yogesh Kumar proved memo Ex.PW-6/A vide which he had taken prints of call detail record of mobile phone numbers 8395979104 and 9813331052 i.e. Ex.PW-6/B and Ex.PW-6/C, on the asking of PW-16.

PW-7 ASI Mahesh Kumar, inspected the spot and prepared scaled site plan Ex.PW-7/A of the place of occurrence.

PW-8 ESI Hanuman Singh, who was member of the police party headed by PW-16 on 06.11.2023 deposed regarding arrest of accused Aarti and also proved disclosure statement Ex.PW-8/A suffered by the said accused and further proved recovery memo Ex.PW-8/B vide which Nokia mobile phone and two sim cards having numbers 8930673654 and 9813331052 were taken into possession by the police. He also proved memo Ex.PW-8/C vide which call detail records Ex.PW-6/D and Ex.PW-6/E of mobile phone number 8930673647 and 8930673654 were taken into possession.

PW-9 Bharpur Singh, who was running STD at Kanina was declared hostile.

PW-13 ASI Satish Kumar, proved FIR Ex.PW-13/A registered by him and endorsement Ex.PW-13/B both dated 14.10.2013.

PW-14 ASI Prabhu Dayal (since retired), who was member of the police party headed by PW-16 on 14.10.2013, deposed that after post mortem examination, the concerned doctor handed over one sealed parcel containing clothes of deceased vide memo Ex.PW-14/A. PW-5 HC Mahabir Singh tendered his affidavit Ex.PW-15/A with regard to deposit of case property.

PW-10 Dushyant, deposed that on eve of Dussehra in year 2013, Vikas borrowed his motor cycle No.HR-35-G-6284 and on the same day, at about 8/9 PM Vikas returned the motor cycle to him. After 15/30 days, police from Police Station Kanina came to him and took the said motor cycle into its possession vide memo Ex.PW-10/A. The witness was declared hostile as he was suppressing the truth regarding visit of Dinesh along with Vikas on that day.

PW-11 Dr. Surender Saroha, deposed that on 14.10.2013, he was member of the medical board which conducted post mortem examination of the dead body of Neeraj and he proved police request Ex.PW-11/A and post mortem report Ex.PW-11/C, he also tendered into evidence his duly sworn affidavit Ex.PW-11/D giving detail of the post mortem examination. As per post mortem report, the cause of death was due to stab injury and its complication i.e. hemorrhagic shock. Probable duration between injury and death was variable and between death and post mortem was within 24 hours.

PW-20 Bhoop Singh resident of Birar, deposed that on 13.10.2013, he came to Kanina for purchase of buffalo and while he was returning, he reached near DAV School, Kanina at about 06:25/06:30 PM and saw two boys were standing near the canal channel, one of them was holding mobile phone and having white color ear phone lead in his ears. Another boy was having wheatish color, thin physique and height about 5 ft. 8 inch or 5 ft. 9 inch. The boy having white ear phone lead in his ears was addressing the another boy by name of Dinesh and asked him not to come in between him and Aarti as they are already engaged. Thereafter, both the boys went towards the gate of DAV School and he himself proceeded towards his village. He further deposed that he reported about the aforesaid incident to the police on 28.03.2014 and police recorded his statement in Police Station Kanina.

PW-22 Inspector Vinod Kumar to whom further investigation of the case was entrusted by DGP Crime Branch,

[7]

Haryana, deposed that accused Dinesh was arrested by him on 09.05.2014 and on interrogation, he suffered disclosure statement Ex.PW-19/A and in pursuance to that Dinesh Kumar got effected recovery of knife used by him in commission of crime in presence of PW-21 Ramphal. Rough sketch of knife is Ex.PW-18/B and the said weapon was seized vide memo Ex.PW-18/C. On 11.05.2014, accused Dinesh led the police party to house No.1987, Sector-23-A, Faridabad in presence of PW Ramphal and got recovered one Nokia mobile phone, one black purse/wallet having driving licence, identity card and three photographs of deceased Neeraj and the said articles were seized by the police, vide memo Ex.PW-18/D.

PW-19 ASI Raj Singh, who was member of the police party headed by Inspector Vinod Kumar proved disclosure statement Ex.PW-19/A suffered by accused Dinesh Kumar in his presence on 10.05.2014.

PW-18 ASI Satender Kumar, who was also the member of the aforesaid police party, deposed that on 10.05.2014 accused Dinesh Kumar, demarcated the place of occurrence vide memo Ex.PW-18/A and also got recovered knife vide memo Ex.PW-18/C. He also deposed that on 11.05.2014, accused Dinesh Kumar got recovered one mobile phone, a purse containing driving licence, college identity card and three photos of the deceased vide memo Ex.PW-18/D.

PW-17 SI Shiv Kumar deposed that he prepared supplementary challan against accused Dinesh Kumar.

PW-12 Constable Surender Singh deposed that on 27.06.2014, he deposited three sealed parcels along with sample seal impression in the office of FSL Madhuban and on return, he handed over the concerned receipt to MSC.

PW-21 Ramphal father of the deceased, corroborated the statement of PW-22 and deposed regarding the disclosure statement Ex.PW-19/A suffered by accused Dinesh Kumar and the resultant recovery of knife, he also deposed regarding recovery of one Nokia mobile phone and a purse having driving licence, identity card and three photos of deceased Neeraj, which were taken into possession by the police vide memo Ex.PW-18/A.

PW-15 HC Mahabir who at the relevant time was posted at MHC, Police Station Kanina tendered his affidavit Ex.PW-15/A with regard to deposit of case property in the malkhana of the police station.

8 The prosecution also tendered reports of FSL Ex.PX and Ex.PY. As per report Ex.PX, the knife sent for examination was found to be metallic rusty knife (approximately 24 centimeters) but no blood was detected on the said weapon. As per Ex.PY lower, parna, t-shirt and underwear of the deceased were found to having blood stains of a human being. The blood collected from the spot was also found to be that of a human.

9. On completion of the prosecution evidence, both the accused were examined under Section 313 Cr.P.C. The entire incriminating evidence was put to them, but the accused denied the same and pleaded innocence. Accused Aarti further stated that she got engaged with Neeraj on 14.04.2013 and their marriage was fixed for 28.11.2013 but unfortunately, Neeraj died an unnatural death on 13.10.2013 and even on that day, she talked to the deceased on his mobile phone No.8395979104 from her mobile phone No.9813331052. She further stated that in August 2013 on the asking of her mother Suresh Devi, she purchased two mobile phone sim cards, out of which sim card No.8930673654 was being kept at their residence for use by her mother whereas sim card No.8930673647 was kept by her father. She further stated that on the very next day of death of Neeraj, police visited their house and took away mobile phones having sim numbers 9813331052, 8930673654 and 8930673647. She further stated that she was not having any relation of any kind with co-accused Dinesh and she never talked to him.

10. Accused Dinesh Kumar examined six witnesses in his defence. DW-1 Madan Pal, who was working as a guard in boys hostel of the college of deceased stated that on the day of occurrence, he saw deceased strolling on the road in front of hostel at about 04:30 PM and on that day, during his duty hours, he did not hear any noise. DW-2 Ashok Kumar Chaurasia, owner of House No.1987, Sector-23/A, Faridabad, stated that the police officials of crime branch Haryana had not visited his house and further he never rented out any room to accused Dinesh Kumar. DW-3 Santro Devi, Sarpanch of Village Achina stated that she does not know Sumer Singh, Sat

Narayan, Rameshwar, Mohinder Singh and Vedwanti and Ramkala, sons and daughters of Shish Ram son of Sampat. DW-4 Vipul @ Vipin stated that he is residing near House No.1987, Sector-23/A, Faridabad. He further stated that he never resided in House No.1987, Sector-23/A, Faridabad and further deposed that he does not know accused Dinesh Kumar. DW-5 Jaswant Singh Nambardar of Village Achina was examined to establish the relationship between PW-20 Bhoop Singh and the family of the deceased. DW-6 ASI Yogesh Kumar, Incharge Cyber Cell produced the summoned record with regard to mobile phone Nos.9810547116, 9466490271, 9468132260 & 8010080898. Accused Dinesh also tendered documents Ex.DX/1 to Ex.DX/5 in his defence evidence.

11. After hearing the counsel for the parties, the learned trial Court convicted and sentenced both the accused vide judgment and order dated 13/17.03.2015 as has been detailed in the opening paragraph of this judgment.

12. Being aggrieved, the appellants have filed the present appeals. During pendency of the appeals, the sentence of the appellants was suspended, by this Court.

13. The counsel for the appellants contended that the findings of the trial Court are based on conjunctures and surmises. It was a blind murder and the case is based on circumstantial evidence. The prosecution has miserably failed to complete the chain of events to establish the guilt of the appellants. It has been further contended that the alleged recoveries were planted and otherwise, there is no independent corroboration to the same; that pursuant to the disclosure statement suffered by accused Aarti, no

recovery was effected and that the said disclosure statement is inadmissible in evidence being hit by provision of Section 25 Evidence Act. It has been further contended that even the testimony of PW-20 with regard to last seen evidence does not inspire confidence, he being related witness and remained silent for a period of 5 months to inform the police about what he had seen on 13.10.2013. It has been further argued that the alleged disclosure statement suffered by accused Dinesh and the recoveries effected pursuant thereto are also surrounded by suspicious circumstances. It is further argued that prosecution has also failed to establish that the rusted knife recovered from an open space having no blood stains, was used in commission of crime. It has been further contended that the testimony of PW-21 Ramphal is totally contrary to what has been stated by PW-22 Inspector Vinod Kumar. Even DW-2 Ashok Kumar Chaurasia also falsified the recoveries dated 11.05.2013 stated to be effected from House No.1987, Sector-23-A, Faridabad, at the instance of Dinesh. It has been further contended that the prosecution has failed to connect the concerned sim cards and mobile phones stated to be recovered during investigation of the case, with the alleged occurrence, in any manner. Still further the call detail records were not proved as per law and are not supported by certificate issued by the competent person under Section 65-B of Evidence Act and thus, the same were wrongly considered by the trial Court.

14. On the other hand, counsel for the State and the counsel for the complainant, while supporting the judgment and order dated 13/17.03.2015 passed by the trial Court, have contended that the trial Court rightly convicted and sentenced both the appellants after appreciating the evidence

led by the parties. It has been further contended that no doubt, the entire case is based on circumstantial evidence, but the prosecution has succeeded in establishing the chain of events and the said circumstances are of conclusive nature pointing to the guilt of the accused. It has been further contended that trial Court rightly relied upon the call detail records, even in the absence of certificate under Section 65-B Evidence Act, in light of the law laid down by Hon'ble Supreme Court in *State (NCT of Delhi) Vs. Navjot Sandhu (2005) 11 SCC 600*. In this context, the State counsel has also referred to decisions of Hon'ble Supreme Court in *Sonu @ Amar Vs. State of Haryana 2017 (8) SCC 570* and *Sundar @ Sundarrajan Vs. State by Inspector of Police 2023 Cri. L.R (SC) 473*. It has been further contended that while in police custody both the appellants suffered disclosure statements which are fully proved on the record and recovery of knife used in commission of crime was effected pursuant to the disclosure statement Ex.PW-19/A suffered by accused Dinesh. It has been further submitted that on the basis of the said disclosure statement, purse and other documents belonging to the deceased were also recovered from a house situated in Sector-23-A, Faridabad, on the pointing of accused Dinesh on 11.05.2014. It has been further submitted that the motive on the part of the appellants to commit murder of Neeraj after conspiring together also stands fully proved. It has been further argued that there is enough evidence on the record to prove that the appellants were in regular touch and even on the day of occurrence, they talked to one another using their mobile phones having numbers 8930673647 and 8930673654.

15. We have considered the submissions made by counsel for the

parties and have also gone through the record of the case.

16. In the present case, deceased Neeraj was studying in DAV Engineering College, Kanina and his dead body having stab wound was recovered in the morning of 14.10.2013. The complainant in this case is PW-5 Rattan Lal, paternal uncle of the deceased and on the basis of his statement Ex.PW-16/A police registered FIR Ex.PW-3/A against unknown assailants. Admittedly, there was no eye witness to the occurrence. The entire prosecution case is based on circumstantial evidence.

17. Law with regard to circumstantial evidence is well settled and the Hon'ble Supreme Court in case of ***Sharad Birdhi Chand Sarda vs State Of Maharashtra on 17 July, 1984 reported in (1984) 4 SCC 116*** has held as under:-

"3:3. Before a case against an accused vesting on circumstantial evidence can be said to be fully established the following conditions must be fulfilled as laid down in Hanumat's v. State of M.P. [1953] SCR 1091.

- 1. The circumstances from which the conclusion of guilt is to be drawn should be fully established;*
 - 2. The facts so established should be consistent with the hypothesis of guilt and the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;*
 - 3. The circumstances should be of a conclusive nature and tendency;*
 - 4. They should exclude every possible hypothesis except the one to be proved; and*
 - 5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.*
- These five golden principles constitute the panchsheel of the proof of a case based on circumstantial evidence and in the absence of a corpus delicti.*

18. Keeping in mind the aforesaid position of law, we shall examine the arguments advanced and the evidence adduced by the parties as also the materials on the record.

19. The incriminating circumstances relied upon by the prosecution and held proved by the trial Court are as follows:-

- 1.Last seen evidence.*
- 2.Disclosure statement suffered by accused Aarti and recoveries effected pursuant thereto.*
- 3.Disclosure statement suffered by accused Dinesh and recoveries effected pursuant thereto.*
- 4.Call detail records (CDRs).*
- 5.Motive.*

20. Question that arises for our consideration in the present appeals is whether the aforesaid circumstances and the evidence available on record forms a complete chain pointing only to the guilt of both the appellants.

21. In order to establish last seen evidence, prosecution examined PW-20 Bhoop Singh. While appearing in the witness box, he deposed that on the day of occurrence i.e. 13.10.2013, he saw deceased Neeraj in the company of accused Dinesh at about 06:30 PM and at that time both of them were exchanging hot words and the deceased was carrying mobile phone and then the said witness went towards his village. Admittedly, PW-20 did not inform anyone about the aforesaid incident till 27.03.2014. In his deposition, PW-20 admitted that on the very next day of occurrence i.e. 14.10.2013, he came to know that one dead body of a young boy is found lying inside the gate of the school and then he went there and saw the dead body from some distance and it was of the same boy, who was seen by him on the previous day having white ear phone lead attached to his ears. PW-20 also admitted in his deposition that from October 2013 to March 2014, he was doing his routine business and visiting the villages for sale and purchase of cattle and once or twice he also passed in front of Police Station Kanina but did not go inside the police station. PW-20 has failed to explain as to why, he did not make any statement to the police regarding last seen evidence at the earliest and why he kept on waiting for a period of

5 months to inform about the same to the police. Further, PW-20, while appearing in the witness box did not say anything regarding identity of accused Dinesh who at that time was present in the Court.

22. While appearing in the witness box, PW-20, specifically stated that he was not related with the family of the deceased in any manner. However, he admitted in his testimony that Vidya Devi daughter of Mangtu Ram resident of Village Achina is his wife and Surender Singh is his brother in law. PW-21 Ramphal, father of the deceased, admitted in the Court that Vedwanti is his wife and Shish Ram and Bhatreri Devi are his parents in law and Ramkala is his sister in law. He also admitted that Mahender, Rameshwar, Sumer and Satya Narayan are his brothers in law. He further stated that Mangtu and Shish Ram might be real brothers and sons of Sampat resident of Achina. DW-5 Jaswant Singh Namberdar of Village Achina, deposed that Shish Ram was having four sons namely Mahender, Rameshwar, Satya Narayan and Sumer Singh and two daughters namely Ramkala and Vedwanti. He further stated that Sampat father of Shish Ram was having four sons, namely, Bhuru Ram, Mangtu, Tara Chand and Shish Ram and that Mangtu was having one son Surender and one daughter Vidya Devi and said Vidya Devi is married to Bhoop Singh resident of Village Birar District Jhajjar while Vedwanti daughter of Shish Ram is married with Ramphal resident of Village Riwasa and further stated that Vidya Devi and Vedwanti are cousin sisters. The pedigree table showing lineage of family of Sampat is Ex.DX/5. From the above, it stands proved on the record that PW-20 Bhoop Singh was related to mother of the deceased and thus, is an interested/related witness. In the given

circumstances, as the statement of PW-20 was recorded by the police after about 5 months of the occurrence, it could be easily inferred that he is a made up witness and thus, his testimony is not trustworthy. Even otherwise, the law with regard to last seen evidence theory comes into play where the time gap between the point of time when the accused and deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of crime becomes impossible as has been held by the Hon'ble Supreme Court in ***Bodh Raj @ Bodha And Ors vs State Of Jammu And Kashmir AIR 2002 Supreme Court 3164***. However, in the instant case, the aforesaid gap between the time when deceased was last seen in company of Dinesh and the occurrence/murder was not so small. Thus, last seen evidence theory is not strictly applicable to the instant case.

23. The next incriminating circumstance relied upon by the prosecution is disclosure statement Ex.PW-8/A dated 06.11.2013 and recovery of two sim cards No.8930673654 & 9813331052 and Nokia mobile phone effected from accused Aarti. As per prosecution version, accused Aarti was arrested in this case on 06.11.2013 by PW-16 and during interrogation, she suffered disclosure statement Ex.PW-8/A, in presence of PW-8 ESI Hanuman Singh and ASI Neelam, before PW-16 ASI Kailash Chand. From the perusal of Ex.PW-8/A, it appears to be a confessional statement of accused Aarti wherein she stated that she was having love affair with accused Dinesh, but she was engaged with deceased Neeraj and thus, both the accused planned to kill Neeraj and she further stated that she handed over sim card No. 8930673647 to Dinesh and she herself was using

sim card No.8930673654 to talk with him. As per plan, Dinesh and his companions committed murder of Neeraj. From the perusal of said disclosure statement, it appears that no recovery of any article or mobile phone or sim card was effected pursuant to disclosure statement Ex.PW-8/A. This fact is also admitted by PW-16, who stated that no disclosure statement was suffered by accused Aarti regarding recovery of mobile phone. During trial, prosecution tried to project that recovery of sim cards No.8930673654 and 9813331052 and one Nokia mobile phone was got effected by accused Aarti on the basis of aforesaid disclosure statement Ex.PW-8/A. However, from the perusal of recovery memo Ex.PW-8/B dated 06.11.2013, it is evident that the recovery of aforesaid sim cards and mobile phone was not pursuant to disclosure statement Ex.PW-8/A. This fact is also admitted by PW-16 who stated that mobile phones were taken into possession at the time of her arrest without any formal disclosure statement. Thus, making it amply clear that no recovery/discovery of any article or fact was effected on the basis of disclosure statement Ex.PW-8/A and the said statement being confessional statement made by accused Aarti before the investigating officer is inadmissible in evidence, as per the provision of Section 25 of Evidence Act.

24. The another incriminating circumstance is disclosure statement Ex.PW-19/A and the recoveries effected by accused Dinesh on the basis of said disclosure statement. As per the prosecution version, accused Dinesh Kumar was arrested on 09.05.2014 and thereafter, he suffered disclosure statement Ex.PW-19/A dated 10.05.2014 before PW-22 in presence of PW-21 Ramphal and PW-19 ASI Raj Singh to the effect that he was having

relations with accused Aarti and they planned to kill Neeraj who was already engaged with Aarti and as per said plan, he went to Kanina on a motor cycle on 13.10.2013 and met Neeraj and confronted him on which Neeraj gave him fist blow and then he lost temper and gave knife blow to Neeraj and Neeraj started wreathing in pain and then he removed knife and left the spot and also took away wallet of Neeraj having identity card, driving licence and some cash and then went to near by canal and washed his hands and cleaned blood stained knife and then concealed it in bushes and that he could get the same recovered. Then Dinesh led the police party to the disclosed place and got recovered aforesaid knife used in commission of the crime, in the presence of Sumer Singh and PW-18 ASI Satender Kumar on 10.05.2014 and on 11.05.2014, he got recovered one Nokia mobile phone and purse containing driving licence, identity card and three photographs of the deceased, in presence of PW-21 Ramphal, on the basis of aforesaid disclosure statement Ex.PW-19/A from House No. 1987, Sector 23/A, Faridabad. The evidence led by the prosecution to prove the aforesaid facts is not credible. PW-21 Ramphal, while appearing in the witness box stated on oath that the aforesaid disclosure statement Ex.PW-19/A was suffered by accused Dinesh in his presence on 09.05.2014, on the contrary, PW-22 and PW-19 stated on oath that the aforesaid disclosure statement was suffered by accused on 10.05.2014. Further, even in disclosure statement Ex.PW-19/A, the date written is 10.05.2014. Furthermore, the knife which was stated to be recovered at the instance of accused Dinesh was having no blood stains and even no finger prints were lifted from it. It also emerges from the evidence that recovery of said rusted knife was

effected from an open space accessible to all. Further, the said knife was not shown to the Doctor(s) who conducted post mortem examination of the deceased, at any point of time and even during trial. The said recovery does not find any independent corroboration as so called independent witness Sumer Singh, who attested the recovery memo Ex.PW-18/C, was given up by the prosecution, being unnecessary witness.

25. Even the recovery of Nokia mobile phone and purse containing documents belonging to the deceased, is also surrounded by suspicious circumstances. It is the specific case of the prosecution that aforesaid recovery was got effected by accused Dinesh from House No. 1987, Sector 23/A, Faridabad owned by Ashok Kumar Chaurasia, who while appearing in the witness box as DW-2, clearly stated that police never visited his house and that Dinesh never resided in his house as a tenant. PW-22 and PW-18 admitted in their testimonies that at the time of said visit, one tenant was occupying the concerned room from where the aforesaid recoveries were effected and the said tenant was present at the spot and the room was lying open. PW-22 admitted in his statement that he did not record the statements of owner and aforesaid tenant at the time of effecting the afore-stated recoveries from the room on 11.05.2014. Further, PW-16 admitted in his deposition that on 14.10.2013, he inspected hostel room of deceased and handed over articles belonging to deceased including identity card, purse and photographs to PW-5 Rattan Lal. Thus, making it evident that the documents and purse which as per prosecution, were recovered pursuant to the disclosure statement Ex.PW-19/A dated 10.05.2014, were already handed over to the father of the deceased by the police on 14.10.2013.

Furthermore, the said recoveries were effected from area of Police Station SGM Nagar, Faridabad. However, the investigating officer had not informed the local police of Faridabad before visiting House No.1987, Sector-23/A, Faridabad.

26. Furthermore, from the perusal of testimony of PW-16 and PW-22, it is clear that while appearing in the witness box, they did not narrate the contents of disclosure statement Ex.PW-8/A dated 06.11.2013 suffered by accused Aarti and disclosure statement Ex.PW-19/A dated 10.05.2014 suffered by accused Dinesh, respectively. The Hon'ble Supreme Court in criminal appeal No.985 of 2010 ***Babu Sahebagouda Rudragoudar and others Vs. State of Karnataka***, decided on 19.04.2024 held that when the investigating officer steps into the witness box for proving such disclosure statement, he would be required to narrate what the accused stated to him. The investigating officer essentially testifies about the conversation held between himself and the accused, which has been taken down into writing, leading to discovery of incriminating fact(s). So, mere exhibiting of disclosure statement prepared by the investigating officer during investigation, cannot amount to proof of its contents. While testifying on oath the investigating officer(s) would be required to narrate the sequence of events, which transpired leading to the recording of the disclosure statement, as has been held by the Hon'ble Supreme Court in Criminal Appeal Nos.65-65 of 2022 ***Ramanand @ Nandlal Bharti Vs. State of Uttar Pradesh (UP)*** decided on 13.10.2022. Applying the said principle, in the instant case, we find that the testimonies of PW-16 and PW-22 are not sufficient to prove the factum of disclosure statements dated

06.11.2013 and 10.05.2014 suffered by the appellants under Section 27 of the Evidence Act.

27. The prosecution also relied upon call detail records of mobile phone Nos.8395979104, 9813331052, 8930673654 and 8930573647, in order to prove that accused Dinesh was constantly in touch with accused Aarti to execute their plan and even on the day of occurrence both of them remained in touch with each other on their mobile phones. Admittedly, call detail records relied upon by the prosecution are electronic documents, which were generated with the help of computer. As per the law laid down by Hon'ble Supreme Court in **Anvar P.V Vs. P.K Basheer (2014) 10 SCC 473** and affirmed by three Judges Bench of Hon'ble Supreme Court in **Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and others 2020 (7) SCC 1**, such call detail records being secondary evidence are inadmissible in evidence, if not supported by the certificate issued by the competent person under Section 65-B (4) of Evidence Act. The plea taken by the State counsel that there was no need to produce and prove any such certificate as per the law laid down by Hon'ble Apex Court in **Navjot Sandhu's case** (supra), is totally misplaced. The said case was decided on 04.08.2005 by the Hon'ble Supreme Court and thereafter, a three Judge Bench of Hon'ble Supreme Court delivered judgment dated 18.09.2014 in **Anvar P.V.'s case** (supra) which was later on affirmed by the Hon'ble Supreme Court in **Arjun Panditrao Khotkar's case** (supra). In **Anvar P.V's case** (supra), the Hon'ble Supreme Court held that electronic record by way of secondary evidence must be accompanied by a certificate under Section 65-B of Evidence Act. In the instant case, the trial against the

appellants was commenced in 2014 and final judgment was passed by the trial Court on 13.03.2015. So, the law as has been settled by the Hon'ble Supreme Court in **Anvar P.V's case** (supra) will be applicable to the case at hand. Thus, it is settled position of law that in absence of certificate issued under Section 65-B (4) of Evidence Act, secondary evidence of electronic documents i.e. call detail records Ex.PW-6/B, Ex.PW-6/C, Ex.PW-6/D and Ex.PW-6/E is not admissible in evidence. In the present case, neither any witness from the cellular service provider has been examined nor the certificate under Section 65-B of Evidence Act has been produced. Thus, we are of the view that the trial Court without appreciating the settled position of law with regard to admissibility of electronic documents, wrongly took into consideration the call records Ex.PW-6/B, Ex.PW-6/C, Ex.PW-6/D and Ex.PW-6/E. So, it is held that the aforesaid call detail records are to be eschewed in absence of any such certificate issued under Section 65-B (4) of the Evidence Act.

28. As per prosecution version, at the time of occurrence, accused Dinesh was using mobile phone having sim card No.8930673647. However, during trial, prosecution remained silent with regard to recovery of aforesaid sim card, which was stated to be handed over by accused Aarti to Dinesh much prior to the alleged occurrence.

29. Where the case is based on circumstantial evidence, proof of motive will be an important corroborative piece of evidence. If motive is indicated and proved, it strengthens the probability of commission of the offence. In the present case, father and paternal uncle of the deceased while appearing in the witness box as PW-21 and PW-5, nowhere stated as to the

enmity, if any, between Neeraj and both the accused and why Neeraj was killed by the accused. No doubt, accused Aarti in her statement under Section 313 Cr.P.C. admitted that she got engaged with Neeraj but she specifically denied any friendship or relationship with accused Dinesh. No evidence has been led by the prosecution in order to prove that accused Aarti was having love affair with accused Dinesh, except for call detail records, which are inadmissible in evidence. The prosecution has also relied upon disclosure statements Ex.PW-8/A suffered by Aarti and Ex.PW-19/A suffered by Dinesh to prove that the appellants were having friendship and they planned to eliminate Neeraj, who got engaged with Aarti and she was not happy with the said engagement. This Court has herein above already observed that disclosure statement Ex.PW-8/A is inadmissible in evidence, while disclosure statement Ex.PW-19/A and the recoveries pursuant thereto are surrounded by suspicious circumstances. In the given circumstances, the prosecution has failed to prove any motive attributed to the appellants to commit murder of Neeraj.

30. The trial Court observed that Neeraj was killed by Dinesh pursuant to the criminal conspiracy hatched by both the appellants. For the charge of criminal conspiracy under Section 120-B IPC to be established, 'meeting of minds' of two or more persons for doing an illegal act or an act by illegal means is 'sine qua non'. But it may not be possible to prove any such agreement between the accused persons by a direct proof, but the same may be proved by necessary implication. In the present case, the prosecution has failed to prove that prior to present occurrence, the appellants were knowing each other or were in constant touch with each

other on mobile phones. No one had ever seen Aarti in company of Dinesh. Thus, the prosecution has failed to establish that appellants entered into a criminal conspiracy to kill Neeraj.

31. Suspicion, however, strong it may be, cannot take the place of proof beyond reasonable doubt. Thus, the appellants cannot be convicted merely on the basis of suspicion. Further, in the light of the facts and circumstances as are discussed above, mere abscondance of the accused for long period cannot be sufficient to establish guilt of accused Dinesh, who was arrested in this case on 09.05.2014, after a gap of more than 6 months of the registration of FIR.

32. In light of the above, we are of the view that prosecution has failed to establish links in the chain of circumstances, leading to inescapable conclusion that appellants entered into a criminal conspiracy and in furtherance thereof Neeraj was killed by accused Dinesh. The impugned judgment and order dated 13/17.03.2015 passed by the Court of Additional Sessions Judge, Narnaul are not sustainable and are liable to be set aside.

33. In the result, both the appeals are allowed. The conviction of appellants Dinesh and Aarti under Section 302 read with Section 120-B IPC is set aside and they are acquitted of the charges framed against them. Their sureties stand discharged.

(SUDHIR SINGH)
JUDGE

14.08.2024

Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No