

CRM-A-833-2024 (O & M)

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2024:PHHC:139190-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-833-2024 (O & M)

Date of decision: 23.10.2024

Ravi Solanki @ Ravi Kumar

..... Applicant

V/s

State of Haryana and others

...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. Shiv Kumar, Advocate, for the applicant.

Mr. Ashok Singh Chaudhary, Addl.A.G., Haryana.

JASJIT SINGH BEDI, J.

The present application under Section 378(4) of Cr.P.C. has been filed for grant of leave to appeal against the judgment of acquittal dated 10.04.2024 passed by the Additional Sessions Judge, Faridabad.

2. The present FIR came to be registered on 22.08.2019. The accused came to be acquitted vide judgment dated 10.04.2024. The present application for leave to appeal was filed on 21.05.2024. The matter has come up for final hearing now after more than 05 years of the registration of

the FIR.

3. The present case was registered on the basis of complaint Ex.PD given to the police by Ravi Solanki with the allegations that on 21.08.2019, at about 6.00 p.m., his brother namely Pushpender Solanki, who was wearing yellow coloured T-Shirt, black trouser and black shoes had gone to a bank at Neelam Chowk, Faridabad for some work, but he had not returned till noon on the next day i.e 22.08.2019. He searched for him but failed to trace him. On the basis of his complaint, formal FIR Ex.PR under Section 346 IPC was registered by SI Hari Kishan. Matter was investigated. On 26.08.2019, Kanchan Solanki, a cousin of Pushpender moved application Ex.PK before the police with the allegations that on 21.08.2019, at about 5.00 p.m., he had seen Pushpender Solanki with his friend Dhirender @ Sachin at Pyali Chowk, Faridabad while standing near one I-20 car and two persons were sitting inside the car. They both used to jointly get the loans sanctioned from the Banks for their customers. Pushpender had not returned to his home during that night and his brother Ravi had also come to him in search of his brother. He further alleged that on 26.08.2019, Dhirender @ Sachin met him (Kanchan Solanki) and he (Kanchan Solanki) inquired about Pushpender from him (Dhirender @ Sachin) and he (Kanchan Solanki) told him (Dhirender @ Sachin) that he (Kanchan Solanki) had seen him (Dhirender @ Sachin) in the company of Pushpender on 21.08.2019. Initially, Dhirender @ Sachin did not tell anything but on persistent inquiry, Dhirender told him that he had committed a mistake and on 21.08.2019, he alongwith his companions namely Javed and Krishan had planned to commit the murder of Pushpender and they had taken him towards Mohna in his car

with an intention to kill him and when they reached near a brick-kiln, they murdered him by strangulation. Thereafter, they threw his dead body in the Yamuna river and fled away. He further alleged that when he asked Dhirender to disclose the same to the police, he ran away. He alleged that Dhirender and his companions had murdered Pushpender and action be taken against them. On the basis of application Ex.PK, offences under Sections 114, 201, 302, 364 IPC were added and further investigation was set into motion. On 26.08.2019, secret information was received by SI Mukesh Kumar, Investigating Officer of the case to the effect that accused Dhirender, who had committed the offence in question was present near Chacha Chowk, Parvatiya Colony, Faridabad and thereafter, he alongwith other police officials reached the disclosed place and arrested accused Dhirender alongwith car bearing registration No.HR-87-4417 Ex.MO/17. He suffered a disclosure statement Ex.P10 admitting therein that he alongwith his companions namely Javed and Krishan had abducted Pushpender Solanki and had committed his murder by strangulation and had thrown his dead body in the Yamuna river. On the same day, accused Krishan and Javed were arrested from Dabua Vegetable Market near Pyali Chowk, Faridabad and they suffered disclosure statements Ex.P13 and Ex.P14 respectively admitting having committed the offences in question alongwith accused Dhirender. Offence under Section 404 IPC was added. In pursuance of his disclosure statement, accused Dhirender @ Sachin got recovered two ATM Cards of Punjab National Bank Ex.MO/3 and Bank of Baroda Ex.MO/4, one Aadhar Card Ex.MO/2 of the deceased, photographs of the deceased with his

wife and daughter Ex.MO/5 to Ex.MO/14 and a purse containing a sum of ₹65/- Ex.MO/1 from the vehicle bearing registration No.HR-87-4417. The same were converted into a parcel, sealed with seal "RK" and were taken into possession vide memo Ex.P11. Car bearing registration No.HR-87-4417 was also taken into police possession vide memo Ex.P12. Accused Krishan got recovered one *Parna (swafi)* Ex.P3 from the bushes situated near the place of murder. The *Parna* was converted into a parcel sealed with seal "RK" and the same was taken into possession vide memo Ex.PM. All the accused also demarcated the place from where Pushpender Solanki was abducted vide memo Ex.P15 and the place where deceased was murdered vide memo Ex.PL. Rough site plan of the place of occurrence Ex.PN was prepared. Thereafter, all the accused demarcated the place where from the dead body of deceased was thrown in Yamuna river vide memo Ex.PD/1. Rough site plan of the place where from the dead body was thrown in the Yamuna River Ex.PN/1 was prepared. Case property was deposited in the malkhana. On 27.08.2019, NDRF team was called and search of the dead body was conducted. Photographer Radhey Shyam was also called there. The dead body of deceased Pushpender was found near village Khani Garhi, Distt. Palwal and the same was taken into possession vide memo Ex.PE. Rough site plan of the place of recovery of dead body Ex.PW/1 was prepared. Thereafter, ASI Mahender Singh, PS Chandhat, Palwal in whose jurisdiction the dead body was recovered came there. The dead body was handed over to ASI Mahender vide memo Ex.PF and was shifted to General Hospital, Palwal for conducting postmortem examination but since the dead body was

highly decomposed, the postmortem examination could not be conducted in General Hospital, Palwal and the dead body was kept in the mortuary. Inquest proceedings Ex.PJ/2 were conducted. On 28.08.2019, application Ex.PJ/1 was moved for conducting post mortem examination on the dead body of deceased Pushpender at SHKHM, Nalhar, Nuh and the postmortem examination was conducted vide PMR Ex.PJ. After postmortem examination, the medical officer handed over one parcel sealed with seals of "SHKHM" containing viscera for chemical analysis, a sealed jar alongwith two sample seals containing sternum bone for diatom test, molar teeth for DNA profiling alongwith three seals and a sample seal and clothes, belongings and shoes of deceased Ex.P1(collectively). However, the doctors had mentioned in their report that the final opinion regarding cause of death would be given after receipt of the chemical analysis report of viscera and diatom test report. Diatom report Ex.PA revealed that diatoms were detected in water samples. However, diatom could not be detected in sternum. Chemical Analyst report Ex.PB revealed that common poison was not found in the viscera. On 05.08.2021, after going through the diatom test report and chemical analyst report of viscera, the board of doctors gave a final opinion Ex.-PAV to the effect that no definitive opinion regarding cause of death could be given. However, circumstantial evidence could be taken into consideration. On 10.09.2019, ASI Mahender, PS Chandhat, Palwal handed over six parcels containing case property and same were taken into possession vide memo Ex.PT. On the same day, SI Mukesh Kumar collected 2 liters water from the river where from the dead body was recovered. The same was con-

verted into a parcel, sealed with seal "RK" and was taken into possession vide memo Ex.P16. On 11.09.2019, SI Mukesh Kumar had issued notice Ex.P18 to BITS N BYTES SOFT Pvt. Ltd. Company regarding GPS location of vehicle bearing registration No.HR-87-4417. On 12.09.2019, SI Mukesh Kumar moved application Ex.P17 before Medical Officer, BK Hospital, Faridabad for taking blood sample of mother of deceased Pushpender vide consent form Ex.PO for DNA analysis. After obtaining the blood sample, medical officer, BK Hospital, Faridabad handed over two slides containing blood sample for DNA test bearing two seals of "MOBKH" to the IO and same were taken into possession vide memo Ex.PH. On 14.09.2019, HC Rajinder Singh handed over GPS location of vehicle bearing registration No.HR-87-4417 Ex.PAO which was sent by BITS N BYTES SOFT Pvt. Ltd. and the same was taken into possession vide memo Ex.PAM. Trip report Ex.PAN, Path Report Ex.PAO of GPS system bearing device no.862462032541186 and Activation Code -ZC4NWD installed in vehicle bearing registration no.HR-87-4417 were obtained. On 15.10.2019, Photographer Radhey Shyam handed over six photographs Ex.P1 to Ex.P6 and one CD Ex.P7 alongwith certificate under Section 65-B of Evidence Act Ex.P5 and same were taken into possession vide memo Ex.PX. SI Raj Kumar moved application Ex.PAR before Motor Vehicle Authority, Badkhal for obtaining ownership proof of Car bearing registration No.HR-87-4417 on which it has been reported that accused Dhirender was the owner of the above said car. Certified copy of computerized record of Motor Vehicle Authority Ex.PAT was obtained. On 27.09.2019, three sealed parcels con-

taining case property alongwith sample seals were sent to FSL, Madhuban vide RC no.499. On 10.10.2019, two sealed parcels containing case property alongwith sample seals were sent to RFSL, Bhondsi vide RC no.521. As per report of RFSL Ex.PC, human blood was detected on the clothes and pair of shoes of deceased and as per report of FSL Ex.PAU, the Autosomal STR analysis indicated that DNA profile of teeth of deceased matched with the blood sample of his mother Kamlesh Devi and as such the dead body was of Pushpender. Call details record of mobile no.9718061009, 9650887597 and 7982767486 were obtained. Scaled site plan of the place of occurrence Ex.PV was got prepared through draftsman. After completion of investigation, final report was presented in court for trial.

4. On commitment and on finding a prima facie case, the accused were charge sheeted under Sections 346, 364, 302, 201 IPC vide order dated 17.12.2019 to which they pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined twenty four witnesses. The details of which are as under:-

Sr. No.	Names of witnesses
PW-1	Ravi Solanki – complainant
PW-2	Dr. Shiv Shankar
PW-3	Kanchan Solanki
PW-4	Kamlesh
PW-5	HC Raj Narayan
PW-6	Constable Balkar
PW-7	SI Hari Kishan

PW-8	ASI Sanjeev Kumar
PW-9	ASI Mahender Singh
PW-10	SI Anoj Kumar-draftsman
PW-11	Ct. Ravinder
PW-12	Radhey Shyam-photographer
PW-13	Ajay Kumar, Nodal Officer
PW-14	Sanjay Goel, Nodal Officer
PW-15	HC Rajender Kumar
PW-16	Bhavesh Tiwari-Key Account Manager, Bits N Bytes Soft Pvt. Ltd.
PW-17	SI Raj Kumar
PW-18	ASI Arvind Mohan
PW-19	Sandeep Kumar
PW-20	SI Mukesh Kumar
PW-21	Constable Pawan
PW-22	Deepak Kumar, Nodal Officer
PW-23	HC Sandeep Kumar
PW-24	Inspector Vineet

6. The brief resume of the deposition of these witnesses is as under:

PW1 Ravi Solanki – complainant deposed that on 21.8.2019 at about 5.00-6.00 PM, his younger brother, namely, Pushpender Solanki had gone to a bank at Neelam Chowk, Faridabad for some work but he did not return to home till noon of next day. On 22.8.2019 at 12.00 noon, he moved application Ex.PD to the police. He had also mentioned about the physical features of his brother as well as the clothes and shoes worn by him at the time of leaving his house in the application. He further deposed that on 26.8.2019, the accused led the police party at Yamuna Bridge, village Mohna

and demarcated the place from where they had thrown the dead body of

Pushpender in the Yamuna River vide memo Ex.PD/1 after committing his murder. He also deposed that on 27.8.2019, he remained associated during the investigation with police of Crime Branch, Faridabad when dead body of his brother was recovered by the police at the instance of accused from the Yamuna canal which was taken into possession by police vide memo Ex.PE and the dead body was identified by him. At that time, the dead body of his brother was decomposed. Photographs of the dead body were clicked from a mobile phone. The site plan of the place of recovery of the dead body Ex. PE/1 was prepared in his presence by the Investigating Officer. He also deposed that after getting the postmortem of the dead body of his brother conducted, the same was handed over to him vide memo Ex.PF. During the inquest proceedings under Section 175 Cr.P.C., his statement Ex.PG was recorded. On 12.9.2019, he took his mother Kamlesh Devi for giving her blood sample for DNA analysis and two blood slide samples were handed over to the police in his presence vide memo Ex. PH.

During cross-examination, he stated that while leaving the house on 21.8.2019, the deceased had informed his wife Pooja and mother Kamlesh that he was going to the Bank at Neelam Chowk. His brother was not employed at the time of his death. His brother was having mobile phone. He had last conversation with his brother on his mobile at around 6:00 PM on 21.8.2019. He and his deceased brother were living separately in different houses. In his complaint Ex.PD to the police, he did not inform that he had last conversation with his brother at about 6:00 PM on 21.8.2019. His statements were recorded 4-5 times. He did not disclose in any of his

statements that he had a telephonic conversation with his brother at 6:00 PM on 21.8.2019. The financial condition of his brother was good. His brother had cordial relations with his wife Pooja. There was no special differences between Pooja and his mother. From 21.8.2019 to 26.8.2019, they had searched for the deceased in all relatives. The distance between the house of deceased and that of Kanchan Solanki was 1½ – 2 Kms. They had inquired at the house of Kanchan Solan also about his brother. He had searched for his brother at his own level from 22.8.2019 to 26.8.2019. He admitted that he had identified the dead body of his brother prior to the DNA test report. The official of NDRF had received the information telephonically that a dead body had appeared in the area of village Kani Garhi at Yamuna River bank. He had identified the dead body firstly by seeing the photograph on the mobile and later on by seeing the dead body physically. He admitted that when his brother had left his house in Faridabad, he was in Palwal. He reached at Faridabad on the morning of 22.8.2019. He further stated that prior to 26.8.2019, they did not visit Yamuna River bridge at Mohna in search of his brother. Police did not inform him that they had gone to Yamuna River in search of the deceased prior to 26.8.2019. His mobile number was 9050749520 on which he had received call from mobile number of Pushpender. He had gone to the house of Kanchan on 26.8.2019 at about 5:30/6:00 AM. Although, he had talked with Kanchan between 21.8.2019 to 26.8.2019 but he did not tell him about the missing of Pushpender. He admitted that on 26.8.2019, they had come to know that accused Dhirender had murdered Pushpender. He denied the suggestion that there was dispute

between Kanchan and Dhirender, due to which name of Dhirender has been falsely mentioned to the effect that Kanchan had last seen the deceased with Dhirender on 21.8.2019. He denied the suggestion that no demarcation, no recovery was effected in his presence and he had appended his signatures on the respective memos while sitting in the police station.

PW2 Dr. Shiv Shankar deposed that on 27.8.2019 he was posted as PG in Saheed Hassan Khan Mewati Govt. Medical College, Nuh. On that day, he alongwith Dr. Sahil Sharma and Dr. Bhushan Vashishtha being members of the Board had conducted postmortem of the dead body of Pushpender Solanki. He proved post mortem report Ex.PJ which bore his signatures and signatures of other members of the Board. He further deposed that he had handed over the duly stitched dead body with its belongings in sealed condition, PMR, copy of application for conducting postmortem Ex. PJ/1, inquest papers Ex. PJ/2, sealed envelope for chemical analysis bearing five seals, forwarding letter, sample seal and sealed box with ten seals containing viscera for chemical analysis, details mentioned by them in the postmortem report, a sealed Jar along-with two sample seals containing sternum bone for diatom test, four molar teeth for DNA matching and profiling along-with three seals and a sample seal to the police. However, they had written in the report that the final opinion regarding cause of death would be given after receipt of the chemical analysis report of viscera and diatom test report. After seeing the diatom report Ex.PA, he deposed that diatoms were detected in Ex.-2 (water sample) and Ex.-3 (water sample).

However, diatom could not be detected in Ex.-1 (sternum). After seeing the

chemical analysis report Ex.PB, he deposed that common poison could not be detected in Ex. 1a, 1b, 1c and 1d. However, in RFSL report Ex. PC blood was detected on Ex. -2 (bundle of clothes). He identified clothes, belongings and shoes of the deceased Ex.PI(MO) and bottles and one plastic Jar Ex.P2 which were handed over to the police. He further deposed that on 05.08.2021, while he was posted as Medical Officer in Civil Hospital, Palwal, after going through the diatom test report, chemical analysis report of viscera, he alongwith other members of the Board gave final opinion Ex.PAV. During cross-examination, he stated that injuries as mentioned in the general description of the deceased were not ante-mortem caused by anybody, rather these injuries were by gnawing effect. The possibility could not be ruled out that death was caused by drowning. He admitted that postmortem report with regard to the cause of death was inconclusive.

PW3 Kanchan Solanki deposed that on 26.8.2019, at about 5.30 AM, Ravi had come to his house and told him that his brother was missing since 21.8.2019 and he had lodged the missing report with the police on 22.8.2019. He told Ravi that he had seen Pushpender with Dhirender @ Sachin at Payali Chowk on 21.8.2019 at about 5.00-6.00 PM. Dhirender and Pushpender, his cousin were standing outside one i-20 car and two more persons were sitting inside the car, one was sitting on the driver seat while other was sitting on the rear seat. However, he could not see the faces of the two persons sitting inside the car. He further deposed that at about 8.30-9.00 AM, he was moving towards the house of Ravi Solanki, when he saw

Dhirender @ Sachin present at Nain Chowk. On inquiry, Dhirender @

Sachin stated that on 21.8.2019, he along-with Javed and Krishan was with Pushpender. He also told that they had taken Pushpender towards Mohna where some altercation took place and they murdered him by strangulating and threw his dead body in Yamuna River from the bridge. He also deposed that he asked Dhirender @ Sachin to accompany him to the police station, but he fled away. He then narrated the entire incident to Ravi Solanki. He and Ravi then approached Incharge of this case namely Mukesh, who met them at Payali Chowk and he moved application Ex.PK. He further deposed that on the same day, he and Ravi were accompanying Mukesh ASI and three-four other police officials when at about 3.00 PM, accused Sachin was apprehended from Chacha Chowk, who was in car I-20 of white colour and he was interrogated. Thereafter, accused Javed and Krishan were apprehended from the gate of Dabua Vegetable Mandi. All the accused were taken to Badarpur Crime Branch Office. Thereafter, they went to Mohna road in village Panhara Khurd. He and Ravi were in one vehicle whereas police and accused were in a different vehicle. After crossing a brick-kiln, the vehicle was stopped on a kacha path leading from the main road. Accused Sachin and others identified the spot where they had murdered Pushpender by strangulating vide memo Ex.PL. Accused Krishan got recovered a white coloured Parna/Safi Ex.P3 from bushes situated at a distance of 10-12 feet from the spot stating that with that Safi they had murdered Pushpender by strangulation. The Safi was taken into possession by the police vide memo Ex.PM. Rough site plan of the place of recovery of Safi and place of occurrence Ex.PN was prepared. Accused then led them

and the police at Mohna bridge and identified the spot from where they had thrown the dead body in the Yamuna River. One of the accused told that when they were throwing the dead body, one of the shoes got removed at its own and they threw the dead body with one shoe. They threw the other shoe separately in the River. Rough site plan of the place from where the dead body was thrown Ex.PN/1 was prepared by the police. He further deposed that the NDRF (National Disaster Response Force) team was called as at that time there was heavy flow of water in the River. Efforts were made to trace out the dead body for 6-7 Kms. away in the river through boat but NDRF Team told that it was not possible to trace out the dead body on that day due to darkness. They then went to their respective houses. He identified all the three accused present in the court. He voluntarily stated that he only knew Dhirender @ Sachin, who had told him about the other accused. Dhirender @ Sachin and Pushpender had studied together in the school and later on they had also had a joint business of arranging loans. They had a common office in Nehru Ground, Faridabad.

During cross-examination, he stated that the distance between his house and house of the deceased was about 1½ Kms. Prior to 21.8.2019, he met Pushpender about one month back. He used to meet Pushpender with respect to his occupation being a recovery agent of SBI Credit Card and loans in connection with the demand of any customer for loan. The distance between his house and that of Dhirender was about 1½ -2 Kms. He did not know Dhirender directly. He knew him because he was a friend of Pushpender. He did not remember as to whether his statement was also

recorded by the police at any point of time, apart from his making complaint Ex.PK. On 27.8.2019 at about 8:30/9:00 PM, telephonic call was received at home to the effect that dead body had been recovered. The brick kiln in Panhera Khurd village was at a distance of 30 Kms., from Badarpur Crime Branch. Such type of *Safi* was easily available in the open market. The distance between the brick kiln Panhera village and the Mohna bridge was about 12-14 Kms. It took about 20-25 minutes to complete the proceedings at brick kiln. A team of NDRF reached in his presence at about 6:00 PM. No TIP of the accused Krishan and Javed was got performed in his presence. He denied the suggestion that he did not see the deceased in the company of Dhirender on 21.8.2019 at 6:00 PM at Piyali Chowk.

PW4 Kamlesh deposed that on 12.09.2019, she was called by the police in police station and from there police brought her to B.K. Hospital, Faridabad for taking blood sample and form Ex.PO in this regard bore her photograph and thumb impression. During cross-examination, she stated that she was told that blood sample was being taken for matching the same with his son's DNA. Apart from her, her son, his wife Pooja and two minor sons were residing together. Kanchan Solanki was the son of her Jeth Baljeet. Kanchan Solanki used to reside nearby their residence. She had called Kanchan Solanki on the same night when his son had gone missing.

PW16 Bhavesh Tiwari, Key Account Manager, Bits N. Bytes Soft Private Limited, Gurugram deposed that in the month of September, 2019, the office of the said company was situated at 3rd floor, Plot No.113, Sector-44, Gurugram. One notice under Section 91 Cr.PC dated 11.09.2019

was received in the office for providing record of GPS system bearing Device no.862462032541186 and Activation Code-ZC4NWD installed in vehicle bearing registration No. HR-87-4417 make I-20 Car. On seeing the original Trip report and path report of the abovesaid GPS system for the period 20.8.2019 to 22.8.2019 brought by him, he proved trip report Ex.PAN and path report Ex.PAO as well as certificate under Section 65-B of Evidence Act Ex.PAP. He further deposed that in their record, GPS system was registered in the name of Sachin Jadon with mobile No.9266846684 which was provided by the customer at the time of installation. He also proved certificate about the customer detail as Ex.PAQ. During cross-examination, he stated that their company was governed by Ministry of Telecommunication. He admitted that GPS system could be detached from the vehicle. They manufactured their own GPS system. GPS system was operated through satellite which was connected to a chip in the GPS system.

PW19 Sandeep Kumar, Registration Clerk, State Transport Authority, SDM Office, Badkhal, Faridabad brought the computerized record of Car bearing registration No.HR-87-4417 in the name of Dhirender Pal Singh son of Shri Sher Pal Singh resident of PC 4993, Gali No.4, Parvatiya Colony, Faridabad and tendered its certified copy as Ex.PAT. During cross-examination, he stated that there was nothing to suggest that any GPS device was installed in the vehicle or not. He has not brought any other document except the copy of Ex.PAT. He has not brought the online record. He has not checked the file of registration of that vehicle.

PW20 SI Mukesh Kumar deposed that on 24.08.2019, investigation of the present case was entrusted to him. On that day, he alongwith HC Sandeep and EHC Ravinder was present at Pyali Chowk when complainant Ravi Solanki and Kanchan Solanki came there and moved application Ex.PK. Thereafter, offences under Sections 114, 201, 302, 364 IPC were added and he made report Ex.P8 and sent the same to the police station through Ct. Ravinder for DD entry. Thereafter, he visited the place of occurrence from where deceased Pushpender was abducted and prepared rough site plan Ex.P9. On the same day, secret informer met him at Pyali Chowk, Faridabad and informed him that accused Dhirender was present near Chacha Chowk situated at Parwatiya Colony, Faridabad. They reached the disclosed place and arrested accused Dhirender alongwith his car bearing registration No.HR-87-4417. Accused Dhirender suffered disclosure statement Ex.P10 and in pursuance thereof, he got recovered one ATM Card of Punjab National Bank and one ATM Card of Bank of Baroda, one Aadhar Card of deceased Pushpender, one photograph of deceased Pushpender with his wife and daughter and purse containing a sum of 65/- from the vehicle ₹ bearing registration No.HR-87-4417 which were taken into possession vide memo Ex.P11 after converting the same into a parcel sealed with seal "RK". The car was taken into possession vide memo Ex.P12. He further deposed that on the same day, accused Krishan and Javed were arrested from Dabua Sabzi Mandi near Pyali Chowk, Faridabad and they suffered their disclosure statements Ex.P13 and Ex.P14 respectively.

Thereafter, all the accused demarcated the place of occurrence from where

Pushpender (since deceased) was abducted and the place where Pushpender was murdered vide memos Ex.P15 and Ex.PL respectively. Rough site plan of place where Pushpender was murdered Ex.PN was prepared. Accused Krishan got recovered one white coloured parna(safi) Ex.P3 from the bushes situated near the place of murder. The same was converted into a parcel sealed with seal "RK" and was taken into possession vide memo Ex.PM. All the accused also demarcated the place from where the dead body of deceased was thrown in the Yamuna river vide memo Ex.PD/1 and its rough site plan Ex.PN/1 was prepared. He also deposed that on 27.08.2019, NDRF team was called and search of the dead body was conducted. The dead body of deceased Pushpender was found near village Khani Garhi, Distt. Palwal which was taken into possession vide memo Ex.PE. Rough site plan of the place of recovery of dead body Ex.PE/1 was prepared. Thereafter, ASI Mahender Singh posted at PS Chandhat, Palwal in whose jurisdiction the dead body was found came there and the dead body was handed over to ASI Mahender vide memo Ex.PF. The dead body was shifted to Nalhar Hospital, Nuh for conducting postmortem examination. On 10.09.2019, he went to PS Chandhat, Palwal and ASI Mahender handed over him six sealed parcels containing case property which were taken into possession vide memo Ex.PT. On the same day, he collected two liters water from the river where from the dead body was recovered and the same was converted into a parcel sealed with seal "RK" which was taken into possession vide memo Ex.P16. On 12.09.2019, he moved application Ex.P17 before Medical Officer, BK Hospital, Faridabad for taking DNA sample of mother of deceased

Pushpender and the Medical Officer handed over to him two slides containing blood sample for DNA test bearing two seals of “MOBKH” which were taken into possession vide memo Ex.PH. On 11.09.2019, he had issued notice Ex.P18 to BITS N BYTES SOFT Pvt. Ltd. company regarding GPS location of vehicle bearing registration no. HR-87-4417. On 14.09.2019, MHC Rajinder Singh handed over to him GPS location of vehicle bearing registration no.HR-87-4417 Ex.PAO which were sent by BITS N BYTES SOFT Pvt. Ltd. and the same were taken into possession vide memo Ex.PAM. On 15.10.2019, Photographer Radhey Shyam handed over six photographs Ex.P1 to Ex.P6 and one CD Ex.P7 along-with certificate under Section 65-B of Evidence Act Ex.P5 to him and the same were taken into possession vide memo Ex.PX. Call details records, CAFs, location charts of the mobile phones of deceased and all the three accused were also taken into possession. During cross-examination, he admitted that in the FIR, it was not mentioned whether the missing person was carrying his mobile phone or not. Mobile phone number of the missing person was also not mentioned in the FIR. From 24.8.2019 till 26.8.2019 before meeting Kanchan Solanki, he was investigating the case only from the angle of a missing person. They had gone to Piyali Chowk in search of the missing person. He had reached Piyali Chowk at 9:30 a.m. Kanchan and Ravi Solanki met him at around 11/11:15 a.m. From 9:30 a.m. to 11:15 a.m. he was searching for missing person in the park. He also inquired from nearby shops but he did not know their names. He did not know Kanchan prior to 26.8.2019. Kanchan had informed him that motive of murder was money

transaction for a sum of Rs.1.5 lakhs between deceased and accused Dhirender. He had not provided any documentary evidence with respect to the aforementioned money transaction between deceased and accused Dhirender. From 24.8.2019 to 26.8.2019, name of Kanchan Solanki had surfaced during his investigation. Family members of deceased had informed him that deceased used to often meet Kanchan Solanki. He had inquired from Kanchan Solanki from 24.8.2019 to 26.8.2019. Kanchan Solanki had told him that deceased used to meet accused Dhirender. He also told him that deceased might have gone missing. Accused Dhirender was interrogated at the place of occurrence. No public witness was joined at the time of arrest, disclosure and recovery. They had reached the place of alleged occurrence at about 4:30 p.m. The place of occurrence was a *katcha* path having earthen surface. He had lifted the earth from the place of occurrence. He admitted that swafi (parna) was easily available in the local market. Parna was not soiled. He had not sent the parna to FSL. He had informed senior officers with respect to search of dead body in Yamuna River at about 11:00 a.m. on 26.8.2019. NDRF team was already present at the site (Yamuna bridge) when they reached there. ASI Mahender of local police station had arrived at the spot at about 8:30 p.m. He admitted that water from Yamuna river was not collected by him at the time of recovery of dead body. He had not instructed the board of doctors with respect to taking of sample for DNA profile. He did not know which part of the dead body was taken for DNA profile. He had not taken into possession any licence in the name of M/s BITS N BYTES Software Pvt. Ltd. with respect to

manufacturing and operation of GPS system from the company. The accuracy of the GPS system was not got examined from FSL or any other laboratory. He had not taken into possession GPS location of mobile phone. No memo was prepared by him with respect to identification of purse.

PW23 HC Sandeep Kumar has deposed that on 24.08.2019, he alongwith ASI Mukesh and EHC Ravinder was present at Pyali Chowk when complainant Ravi Solanki and Kanchan Solanki came there and moved application Ex.PK. On 26.8.2019, secret informer met them at Pyali Chowk, Faridabad and informed him that accused Dhirender was present near Chacha Chowk situated at Parwatiya Colony, Faridabad. They reached the disclosed place and arrested accused Dhirender alongwith his car bearing registration No.HR-87-4417. Accused Dhirender suffered disclosure statement Ex.P10 and in pursuance thereof, he got recovered one ATM Card of Punjab National Bank and one ATM Card of Bank of Baroda, one Aadhar Card of deceased Pushpender, one photograph of deceased Pushpender with his wife and daughter and purse containing a sum of ₹65/-from the vehicle bearing registration No.HR-87-4417 which were taken into possession vide memo Ex.P11 after converting the same into a parcel sealed with seal "RK". The car was taken into possession vide memo Ex.P12. He further deposed that on the same day, accused Krishan and Javed were arrested from Dabua Sabzi Mandi near Pyali Chowk, Faridabad and they suffered their disclosure statements Ex.P13 and Ex.P14 respectively. Thereafter, all the accused demarcated the place of occurrence from where Pushpender (since deceased) was abducted and the place where Pushpender was murdered vide

memos Ex.P15 and Ex.PL respectively. Rough site plan of place where Pushpender was murdered Ex.PN/1 was prepared. Accused Krishan got recovered one white coloured parna(safi) Ex.P3 from the bushes situated near the place of murder. The same was converted into a parcel sealed with seal "RK" and was taken into possession vide memo Ex.PM. All the accused also demarcated the place from where the dead body of deceased was thrown in the Yamuna river vide memo Ex.PD/1 and its rough site plan Ex.PN/1 was prepared. He also deposed that on 27.08.2019, NDRF team was called and search of the dead body was conducted. The dead body of deceased Pushpender was found near village Khani Garhi, Distt. Palwal which was taken into possession vide memo Ex.PE. Rough site plan of the place of recovery of dead body Ex.PE/1 was prepared. Thereafter, ASI Mahender Singh posted at PS Chandhat, Palwal in whose jurisdiction the dead body was found came there and the dead body was handed over to ASI Mahender vide memo Ex.PF. The dead body was shifted to Nalhar Hospital, Nuh for conducting postmortem examination. On 10.09.2019, he went to PS Chandhat, Palwal and ASI Mahender handed over to him six sealed parcels containing case property which were taken into possession vide memo Ex.PT. On the same day, he collected two liters water from the river where from the dead body was recovered and the same was converted into a parcel sealed with seal "RK" which was taken into possession vide memo Ex.P16. On 12.09.2019, he moved application Ex.P17 before Medical Officer, BK Hospital, Faridabad for taking DNA sample of mother of deceased Pushpender and the Medical Officer handed over to him two slides

containing blood sample for DNA test bearing two seals of “MOBKH” which were taken into possession vide memo Ex.PH. On 11.09.2019, he had issued notice Ex.P18 to BITS N BYTES SOFT Pvt. Ltd. company regarding GPS location of vehicle bearing registration no. HR-87-4417. On 14.09.2019, MHC Rajinder Singh handed over to him GPS location of vehicle bearing registration no.HR-87-4417 Ex.PAO which were sent by BITS N BYTES SOFT Pvt. Ltd. and the same were taken into possession vide memo Ex.PAM. On 15.10.2019, Photographer Radhey Shyam handed over six photographs Ex.P1 to Ex.P6 and one CD Ex.P7 along-with certificate under Section 65-B of Evidence Act Ex.P5 to him and the same were taken into possession vide memo Ex.PX. Call details records, CAFs, location charts of the mobile phones of deceased and all the three accused were also taken into possession. During cross-examination, he admitted that in the FIR, it was not mentioned whether the missing person was carrying his mobile phone or not. Mobile phone number of the missing person was also not mentioned in the FIR. From 24.8.2019 till 26.8.2019 before meeting Kanchan Solanki, he was investigating the case only from the angle of a missing person. They had gone to Pyali Chowk in search of the missing person. He had reached Plyali Chowk at 9:30 a.m. Kanchan and Ravi Solanki met him at around 11/11:15 a.m. From 9:30 a.m. to 11:15 a.m. he was searching for missing person in the park. He also inquired from nearby shops but he did not know their names. He did not know Kanchan prior to 26.8.2019. Kanchan had informed him that motive of murder was money transaction for a sum of Rs.1.5 lakhs between deceased and accused

Dhirender. He had not provided any documentary evidence with respect to the aforementioned money transaction between deceased and accused Dhirender. From 24.8.2019 to 26.8.2019, name of Kanchan Solanki had surfaced during his investigation. Family members of deceased had informed him that deceased used to often meet Kanchan Solanki. He had inquired from Kanchan Solanki from 24.8.2019 to 26.8.2019. Kanchan Solanki had told him that deceased used to meet accused Dhirender. He also told him that deceased might have gone missing. Accused Dhirender was interrogated at the place of occurrence. No public witness was joined at the time of arrest, disclosure and recovery. They had reached the place of alleged occurrence at about 4:30 p.m. The place of occurrence was a katcha path having earthen surface. He had lifted the earth from the place of occurrence. He admitted that swafi (parna) was easily available in the local market. Parna was not soiled. He had not sent the parna to FSL. He had informed senior officers with respect to search of dead body in Yamuna River at about 11:00 a.m. on 26.8.2019. NDRF team was already present at the site (Yamuna bridge) when they reached there. ASI Mahender of local police station had arrived at the spot at about 8:30 p.m. He admitted that water from Yamuna river was not collected by him at the time of recovery of dead body. He had not instructed the board of doctors with respect to taking of sample for DNA profile. He did not know which part of the dead body was taken for DNA profile. He had not taken into possession any licence in the name of M/s BITS N BYTES Software Pvt. Ltd. with respect to manufacturing and operation of GPS system from the company. The

accuracy of the GPS system was not got examined from FSL or any other laboratory. He had not taken into possession GPS location of mobile phone. No memo was prepared by him with respect to identification of purse.

PW-5-HC Raj Narayan, PW-6 Constable Balkar, PW-7 SI Hari Kishan, PW-8 ASI Sanjeev Kumar, PW-9 ASI Mahender Singh, PW-10 SI Anoj Kumar, Draftsman, PW-11 Constable Ravinder Singh, PW-12 Radhey Shyam, PW-13 Ajay Kumar, Nodal Officer, PW-14 Sanjay Goel, Nodal Officer, PW-15 HC Rajender, PW-17, PW-18 ASI Arvind Mohan, PW-21 Constable Pawan, PW-22 Deepak Kumar, Nodal Officer and PW-24 Inspector Vineet deposed as to the different aspects of the investigation.

7. The prosecution also relied upon the documents as depicted hereunder:-

Sr. No.	Brief description of document
Ex.PA to Ex.PC	FSL Reports
Ex. PD	Complaint
Ex. PD/1	Demarcation memo
Ex.PE	Recovery and identification memo of dead body of deceased Pushpender
Ex.PE/1	Rough Site plant of place of recovery of dead body
Ex.PF	Handing over memo of deceased Pushpender
Ex.PG	Statement of Ravi Solanki
Ex.PH	Recovery memo of blood samples
Ex.PJ	Postmortem Report
Ex.PJ/1	Application for conducting postmortem
Ex.PJ/2	Death report
Ex.PK	Application to SHO

Ex.PL	Demarcation memo of place of occurrence
Ex.PM	Recovery memo of Parna (Safi)
Ex.PN	Rough site plan of place of occurrence
Ex.PN/1	Rough site plan of place from where the dead body was thrown in the Yamuna River
Ex.PO	Identification Authentication Form
Ex.PR	Copy of FIR No.283 dated 22.08.2019
Ex.PS	Endorsement on the complaint
Ex.PT	Revocry memo of the case property
Ex.PU	DDR No.25 dated 27.08.2019
Ex.PV	Scaled Site Plan of the place of occurrence
Ex.PW	Special Report
Ex.PX	Recovery memo of Bori and CD
Ex.PY	Certificate under Section 65B of Indian Evidence Act
Ex.PZ	Customer Application Form
Ex.PAA	Copy of Driving Licence of Rafiq Ahmad
Ex.PAC	Customer Application Form
Ex.PAD	Call Details Record
Ex.PAE	Certificate under Section 65B of Indian Evidence Act
Ex.PAF	Site address
Ex.PAG	Notice under Section 91 Cr.P.C.
Ex. PAH	Customer Application Form
Ex.PAJ	Cell ID Chart
Ex. PAK	CDR
Ex.PAL	Certificate under Section 65B of Indian Evidence Act
Ex. PAM	Cell ID Chart
Ex.PAN	Trip report

Ex.PAO	GPS location
Ex.PAP	Certificate under Section 65B of Indian Evidence Act
Ex.PAQ	Certificate
Ex.PAR	Application to RTA, Badkhal
Ex.PAS	Application to Medical Officer Govt. Medical College, Nuh
Ex.PAT	Vehicle particulars detail
Ex.PAU	FSL Report
Ex.PAV	MLR of Pushpender
Ex.P1 to Ex.P6	Photographs
Ex.P7	CD
Ex.P8	Special Report
Ex.P9	Rough site plan
Ex.P10	Disclosure statement of accused Dhirender @ Sachin
Ex.P-11 & P-12	Recovery memo
Ex.P-13	Disclosure statement of accused Krishan
Ex.P-14	Disclosure statement of accused Javed
Ex.P-15	Demarcation memo
Ex.P-16	Recovery memo
Ex.P-17	Application for taking DNA Sample
Ex.P-18	Notice under Section 91 Cr.P.C.
Ex.P-19	Customer application form
Ex.P-20	Copy of Aadhar Card
Ex.P-21	Number migration form
Ex.P-22	CDR
Ex.P-23	Customer application form
Ex.P-24	Tower Location Chart
Ex.P-25	CDR
Ex.P-26	Certificate under Section 65B of Indian Evidence Act
Mark A	Satellite map
Ex.D1	Statement of Kanchan

8. Statements of the accused were recorded under Section 313 Cr.P.C wherein they denied the allegations of the prosecution and pleaded their false implication. However, no evidence in defence has been led by the accused and same was closed on 10.4.2024.

9. Based on the evidence led, the respondent-accused came to be acquitted vide judgment dated 10.04.2024.

10. The aforementioned judgment is under challenge before this Court.

11. The learned counsel for the applicant contends that sequence of events clearly showed that the offence had been committed at the instance of the acquitted accused. The last seen evidence showed that the accused/respondent No.2 was in the company of the deceased. The recovery of two ATM cards, one Aadhar Card and a photograph of the deceased alongwith his wife and daughter from the vehicle bearing No.HR-87-4417 clearly established that the offence had been committed at the instance of the acquitted accused. He, therefore, prays that leave to appeal be granted.

12. The learned counsel for the State-respondent No.1 while supporting the case of the applicant/complainant contends that the impugned judgment was not based on proper appreciation of the evidence on record and, therefore, the judgment of acquittal was liable to be set aside.

13. We have heard the learned counsel for the parties and examined the record.

14. The prosecution has relied upon the following circumstances against the accused persons to prove the charge:

- (i) Last seen of the deceased in the company of the accused Dhirender @ Sachin on 21.08.2019;*
- (ii) Disclosure statements Ex. P10. Ex. P13 and Ex.P14 suffered by the accused on 26.8.2019 and the consequent recovery of two ATM Cards, one Aadhar Card, one photograph of deceased Pushpender with his wife and daughter and purse containing a sum of Rs.65/- were recovered from the vehicle bearing registration no.HR-87-4417 of accused Dhirender @ Sachin and a parna (saufi) allegedly used in the crime from accused Krishan at their instance from the disclosed place;*

15. As per the prosecution case, the only circumstantial evidence against accused Dhirender is that he was last seen with the deceased and two ATM Cards, one Aadhar Card, one photograph of deceased Pushpender along with his wife and daughter and purse containing a sum of Rs.65/- were recovered from the vehicle bearing registration No.HR-87-4417. Against accused Krishan, the only evidence is that a parna (saufi) allegedly used in the crime, was recovered from him and accused Javed was also with them at the time of occurrence.

16. Accused Dhirender @ Sachin and deceased Pushpender had studied together in School and later on they had also a joint business of loan passing. They had a common office in Nehru Ground, Faridabad. From the statement of PW-1 Ravi Solanki and PW-3 Kanchan Solanki, it stands established that dead body of their brother was found in Yamuna canal. No

dispute has been raised regarding identification of the dead body and so, it

stands firmly established that the dead body recovered on 27.8.2019 and whose post-mortem examination was conducted on 27.8.2019, was that of Pushpender.

17. On 22.8.2019 itself, FIR No.283 was registered at Police Station Saran regarding the missing of Pushpender. Said FIR, copy of which is Ex.PR reveals that it was lodged on the statement of Ravi Solonki (PW-1), the brother of deceased Pushpender. As per the contents of this FIR, on 21.08.2019, at about 6.00 p.m., his brother, namely, Pushpender Solanki, who was wearing yellow coloured T-Shirt, black trouser and black shoes had gone to a bank at Neelam Chowk, Faridabad for some work, but he had not returned till noon on the next day i.e 22.08.2019. He searched for him but failed to trace him. What is most important to notice is that in the said FIR Ex.PR, there is no mention that Pushpender was abducted by anyone. There is no mention that the informant Ravi Solanki or his cousin Kanchan Solanki had seen the accused Dhirender @ Sachin in the company of deceased Pushpender at any point of time. Though PW3 Kanchan Solanki while appearing as PW3 deposed that he had informed Ravi that he had seen Pushpender with Dhirender @ Sachin at Payali Chowk on 21.8.2019 at about 5:00/6:00 PM. This FIR Ex.PR regarding missing of Pushpender was not lodged by PW3 Kanchan Solonki. Most importantly, had PW-3 Kanchan Solanki seen the accused Dhirender @ Sachin with the deceased Pushpender on 21.8.2019 at Payali Chowk for the last time, he would have disclosed this fact to PW1 Ravi Solanki and he would have got mentioned this fact in the FIR Ex.PR as it would have been the most important factor regarding the

missing of Pushpender. PW20 SI/IO Mukesh Kumar deposed in his cross-examination that in the FIR, it was not mentioned whether the missing person was carrying his mobile phone or not. Mobile phone number of the missing person was also not mentioned in the FIR. From 24.8.2019 till 26.8.2019 before meeting Kanchan Solanki, he was investigating the case only from the angle of a missing person. They had gone to Pyali Chowk in search of the missing person. He had reached Plyali Chowk at 9:30 a.m. Kanchan and Ravi Solanki met him at around 11/11:15 a.m. From 9:30 a.m. to 11:15 a.m. he was searching for missing person in the park. He also inquired from nearby shops but he did not know their names. He did not know Kanchan prior to 26.8.2019. Kanchan had informed him that motive of murder was money transaction for a sum of Rs.1.5 lakhs between deceased and accused Dhirender. He had not provided any documentary evidence with respect to the aforementioned money transaction between deceased and accused Dhirender. Family members of deceased had informed him that deceased used to often meet Kanchan Solanki. He had inquired from Kanchan Solanki from 24.8.2019 to 26.8.2019. Kanchan Solanki had told him that deceased used to meet accused Dhirender. No public witness was joined at the time of arrest, disclosure and recovery. He had informed senior officers with respect to search of dead body in Yamuna River at about 11:00 a.m. on 26.8.2019. NDRF team was already present at the site (Yamuna bridge) when they reached there. ASI Mahender of local police station had arrived at the spot at about 8:30 p.m. He admitted that water from Yamuna river was not collected by him at the time of recovery of dead body. He had

not instructed the board of doctors with respect to taking of sample for DNA profile. He did not know which part of the dead body was taken for DNA profile. He had not taken into possession any licence in the name of M/s BITS N BYTES Software Pvt. Ltd. with respect to manufacturing and operation of GPS system from the company. The accuracy of the GPS system was not got examined from FSL or any other laboratory. He had not taken into possession GPS location of mobile phone. No memo was prepared by him with respect to identification of purse. PW22 Deepak Kumar, Nodal Officer deposed in his cross-examination that the radius covered by a particular mobile tower depends on area. In urban area, one mobile tower covers an area of a radius of 2.5 Kms whereas in rural area, one mobile tower covers an area of a radius of 4-5 Kms. PW16 Bhavesh Tiwari has deposed in his crossexamination that GPS system could be detached from the vehicle. He did not know the name of the satellite company from which their GPS system are connected. PW14 Sanjay Goel, Nodal Officer who brought the record pertaining to mobile no.7982767486 of Dhirender Pal Singh deposed in his cross-examination that the range of a mobile tower depends from the density of the active subscribers of Jio company and height of the antenna. He could not tell the exact location of the mobile phone. PW13 Ajay Kumar, Nodal Officer who brought the summoned record pertaining to mobile no.9650887597 of Pushpender deposed in his cross-examination that the range of a mobile tower is of the radius of 0 to 3 kilometers depending on the site. He could not tell the exact location of the mobile phone. He admitted that there may be hundreds of

mobile subscribers under one tower. He admitted that there was no date or time mentioned in Ex.PAF regarding the location.

18. There are material contradictions in the statements of PW-1 Ravi Solanki and PW-3 Kanchan Solanki regarding the last seen evidence. PW1 in his cross-examination deposed that while leaving the house on 21.8.2019, the deceased had informed his wife Pooja and mother Kamlesh that he was going to the Bank at Neelam Chowk. His brother was having a mobile phone. He had last conversation with his brother on his mobile at around 6:00 PM on 21.8.2019. In his complaint Ex.PD to the police, he did not inform that he had last conversation with his brother at about 6:00 PM on 21.8.2019. He searched for his brother at his own level from 21.8.2019 to 22.8.2019. He had gone to the house of Kanchan on 26.8.2019 at about 5:30/6:00 AM. Although, he had talked with Kanchan between 21.8.2019 to 22.8.2019 but he did not tell him about the missing of Pushpender. He admitted that on 26.8.2019, they had come to know that accused Dhirender had murdered Pushpender. PW3 Kanchan Solanki in his cross-examination deposed that the distance between his house and that of Dhirender was about 1½ -2 Kms. He did not know Dhirender directly. He knew him because he was friend of Pushpender. He did not remember as to whether his statement was also recorded by the police at any point of time, apart from his making complaint Ex.PK. On 27.8.2019 at about 8:30/9:00 PM, telephonic call was received at home to the effect that dead body had been recovered. A team of NDRF reached in his presence at about 6:00 PM. No TIP of the accused Krishan and Javed was got performed in his presence. If any such thing

happened on 21.8.2019 as stated by PW-1 and PW3, said fact must have been described in the FIR Ex.PR lodged on 22.8.2019 about the missing of Pushpender. No motive behind the murder of the deceased Pushpender could be proved by the witnesses examined by the prosecution. The cause of death of Pushpender (since deceased) could not be ascertained in this case. PW2 Dr. Ravi Shankar deposed that after going through the diatom test report, chemical analysis report of viscera, he alongwith other members of the Board gave final opinion Ex.PAV. In MLR Ex.PAV, it was mentioned that no definite opinion regarding the cause of death could be given. However, circumstantial evidence could be taken into consideration. PW2 during his cross-examination stated that injuries as mentioned in the general description of the deceased were not antemortem caused by anybody, rather these injuries were gnawing effect. The possibility could not be ruled out that death was causing by drowning. He admitted that postmortem report with regard to the cause of death was inconclusive. PW20 SI Mukesh Kumar investigating officer has deposed that the parna was not soiled and he had not sent the parna (*swafi*) to FSL. He admitted that *swafi* was easily available in the local market.

19. In the aforesaid circumstances, statement of PW3 Kanchan Solanki about the 'last seen' evidence, cannot be said to be reliable.

20. Further, the accused suffered disclosure statement Ex.P10, Ex.P13 and Ex.P14. These disclosure statements did not result in the recovery of any object or any new fact and so, they were said to be inadmissible in evidence. Though, two ATM Cards, one Aadhar Card, one

photograph of deceased Pushpender along with his photograph with wife and daughter and purse containing a sum of Rs.65/- were recovered from the vehicle bearing registration no.HR-87-4417 of accused Dhirender @ Sachin but the vehicle of accused Dhirender @ Sachin might have been used by the deceased for his personal work as both were friends and both had joint business as deposed by PW1 Ravi Solanki. Admittedly, nothing incriminating was recovered on the basis of disclosure statements of accused. The disclosure statements are in fact in the shape of a confession. As per Section 27 of the Indian Evidence Act, a disclosure statement or confessional statement can be looked into evidence if it leads to any discovery of fact.

21. As far as accused Javed is concerned, except the disclosure statement suffered by him, there is no evidence against him.

22. As to how an appeal against a judgment of acquittal is to be dealt with, the Hon'ble Supreme Court in ***Kallu @ Masih & Ors. Vs. State of Madhya Pradesh 2006(1) RCR (Criminal) 427*** has held as under:-

“ 8. While deciding an appeal against acquittal, the power of the Appellate Court is no less than the power exercised while hearing appeals against conviction. In both types of appeals, the power exists to review the entire evidence. However, one significant difference is that an order of acquittal will not be interfered with, by an appellate court, where the judgment of the trial court is based on evidence and the view taken is reasonable and plausible. It will not reverse the decision of the trial court merely because a

different view is possible. The appellate court will also bear in mind that there is a presumption of innocence in favour of the accused and the accused is entitled to get the benefit of any doubt. Further if it decides to interfere, it should assign reasons for differing with the decision of the trial court.”

23. In view of the aforementioned discussion and keeping in view the law laid down in ***Kallu @ Masih & Ors. Case (supra)***, we find no reason to interfere with the well reasoned judgment dated 10.04.2024 passed by the Additional Sessions Judge, Faridabad, whereby accused-respondents No.2 to 4, namely, Dhirender @ Sachin, Krishan and Javed have been acquitted. Therefore, the application for seeking grant of leave to appeal stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

(SUDHIR SINGH)
JUDGE

October 23, 2024
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No