

(2018) 12 DEL CK 0304

In the Delhi High Court

Case No : Criminal Appeal No. 336, 515 Of 2017

Joginder @ Danny & Anr

APPELLANT

Vs

State (Nct) Of Delhi

RESPONDENT

Date of Decision : 19-12-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 100(4), 102(3), 207, 313, 374, 437A, 482
Indian Penal Code, 1860 — Section 120B, 186, 201, 302, 364, 365, 392, 411
Arms Act, 1959 — Section 25
Evidence Act, 1872 — Section 27

Citation : (2018) 12 DEL CK 0304

Hon'ble Judges : S. Muralidhar, J;I.S. Mehta

Bench : Division Bench

Advocate : Hemant Gulati, Aditya Madaan, Hirein Sharma, M.N. Dudeja,
Jitendra Sethi

Final Decision : Dismissed

Judgement

I.S. Mehta, J

1. The Appellants have preferred two separate appeal i.e. (Crl. A. 336/2017 & Crl. A. 515/2017) under Section 374 Read with Section 482 Cr.P.C., against a common judgment and order on sentence dated 22.02.2017 and 28.02.2017 respectively by which all the Appellants have been convicted under Section 364/120B IPC and sentenced to undergo Life Imprisonment with fine of Rs.15,000/- each and in default to undergo further Simple Imprisonment for one year. For the offence under Section 392/120B IPC they have been sentenced to undergo Rigorous Imprisonment for seven year with fine of Rs.5,000/- each and in default to undergo further Simple Imprisonment for three months; for the offence under Section 302/120B IPC sentenced to undergo Life Imprisonment with fine of 25,000/- each and in default to undergo further Simple Imprisonment for one year; for the offence under Section 201/120B IPC sentence to undergo Rigorous Imprisonment for seven years with fine of Rs.10,000/- each and in default to undergo further Simple Imprisonment for one

year, the Appellants have been further convicted for the offence under Section 120B IPC and sentenced to undergo Life Imprisonment with fine of Rs.25,000/- each and in default to undergo further Simple Imprisonment for one year. A-3 is further sentenced to undergo three years Rigorous Imprisonment for the offence under Section 25 Arms Act with fine of Rs.1,000/- in default to undergo Simple Imprisonment for one month. All the sentences were directed to run concurrently. A-3 is further sentenced to undergo three years Rigorous Imprisonment for the offence under Section 411 IPC with fine of Rs.2,000/- in default to undergo Simple Imprisonment for three months.

2. The brief facts stated are that on 05.03.2004 a secret information regarding a Santro car having fictitious number being used in heinous crime by criminals which was parked near C- Block, Mangolpuri in front of house of Laxmi Sasan was received at Police Station, Anti-homicide Section Crime Branch, PrasantVihar. On receiving the said information the same was reduced down into writing vide DD No. 25 at 7:10 PM on 05.03.2004 i.e., ExPW45/X. The said secret information was discussed with ACP, Anti-homicide Section, Crime Branch. Thereafter, Inspector Ajay Sharma (PW7) was directed to verify the information. On this direction Inspector Ajay Sharma alongwith SI Satish Dalal (deceased who was armed with service revolver S.N. 1108 alongwith 5 live cartridge), H.C. Yashpal and one secret informer reached from PS Prashant Vihar to B-Block, Mangolpuri. The said team met one Vijay Kumar Swami (deceased) a public person of the local area at about 8 PM who agreed to assist the police team and agreed to join the raiding party. Consequently, he assisted the raiding party who parked their private vehicle near B-Block Mangolpuri near Nirankari Satsang Bhawan. SI Satish and Vijay Kumar Swami left to verify the information in the C-Block, Tonga Stand Gali, Mangolpuri and did not return. Inspector Ajay Sharma was later unable to trace them either telephonically or through any other means which compelled him to pass on the information to the SHO, Mangolpuri and to other senior officers, this information was reduced down into writing vide DD NO. 36A Ex.PW45/M7. The police officials started search of the missing persons in Mangolpuri and in the adjoining areas.

3. When SI Satish Dalal and Vijay Kmar Swami could not be traced out, a written complaint was given by Inspector Ajay Sharma at 3AM on 06.03.2004 and on the basis of which FIR No. 139/04 Ex.PW16/A under Section 365 IPC was registered at 3:10 AM at PS Mangolpuri.

4. On 06.03.2004 two headless bodies were found, one near Real Polymer factory, Bahadurgarh which was identified to be of Vijay Kumar Swami on the basis of height, body and tattoo on his hand, the spot was got inspected by the Crime team and photograph of the spot were taken, on the spot blood stains, earth control, pieces of strings and hair was lifted and seized and another headless body was found near Agriculture Department, Court complex, Bahadurgarh, Haryana, identified to be of SI Satish Dalal, the spot was inspected by the crime team and photographs were taken, earth control, pieces of strings

were recovered. Both the headless body were lifted from the spot. Thereafter, further information was received that burnt human head (Skull) was found near Deep Properties office at Tikri Kalan. It was identified to be the head of SI Satish Dalal, when they searched further, another human head in half burnt condition was found. It was identified to be of Vijay Kumar Swami, near head of SI Satish Dalal ashes, currency notes, pieces of strings and at some distance ID card of SI Satish Dalal was found. The exhibits were inspected by Finger Print Expert and chance prints were lifted from the recovered ID card. All these exhibits were sealed and seized by police team. Thereafter, the police team returned to Sanjay Gandhi Memorial Hospital alongwith both headless body and the skulls and post-mortem of the dead bodies was got conducted on 6.03.2004 and the articles found at the spot were deposited with MHC(M) on 6.03.2004 vide Entry No. 5407 Ex.PW31/A.

5. The viscera of the deceased SI Satish Dalal and Vijay Kumar Swami after conducting post-mortem was given to I.O. Insp. Azad Singh and deposited with MHC(M) on 7.03.2004 vide Entry No. 5110 Ex.PW31/B.

6. Thereafter, on 07.03.2004 after deposition of the exhibits further investigation was handed over to Inspector K.G. Tyagi. He after going through records, suspected the involvement of Smt. Laxmi Sasan. On 08.03.2004 he constituted four raiding parties. On the basis of secret information, the accused Laxmi Sasan was found to be present at the house of her daughter Moni in C-Block, Mangolpuri at around 9:45 AM and she was apprehended and interrogated, during interrogation she confessed her involvement alongwith co-accused Rajinder @ Jinder, Joginder @ Danny and Vinod Jatav. She made disclosure to this effect and on her pointing out other co-accused persons Rajinder @ Jinder, Joginder @ Danny and Vinod Jatav were found present at Naga Baba Mandir, Mangolpuri and were interrogated and later arrested vide arrest memo. Ex.PW37, Ex.PW23/A1, Ex.PW44/A and Ex.PW39/A. The accused Rajinder @ Jinder in his formal search was found in possession of the service revolver S.N. 1108, belonging to SI Satish Dalal, S.N. 1108 from right side of waist pocket of his pant, same was seized vide seizure memo Ex.PW43/B. Accused persons made disclosure statement that they have strangled the deceased persons i.e. SI Satish Dalal and Vijay Kumar Swami in the house of Rajinder i.e. house No. C-570, Mangolpuri. They have confessed their guilt and made disclosure statement. Thereafter, the accused Rajinder in pursuance to disclosure statement Ex.PW43/C led police party at Shivangi Kunj, Madipur from where Maruti Van No.HR-29J-2904 was got recovered, wherein the blood stained Mat and blood stained chopper was also got recovered vide seizure memo Ex.PW34/D and Ex.PW34/B. The accused Joginder @ Danny made disclosure statement Ex.PW44/C and in pursuance to his disclosure statement he got recovered blood stained clothes and blood stained chopper vide seizure memo Ex.PW44/D and Ex.PW44/E from house of Jugnoo i.e. house No. F-394, Madipur, Delhi. The accused Vinod Jatav in pursuance to his disclosure statement Ex.PW38/A got recovered watch, purse and silver ring belonging to deceased Vijay Kumar Swami from his house

i.e. House No. B-229, Mangolpuri. Accused Laxmi Sasan made disclosure statement Ex.PW37/C and in pursuance to said disclosure statement she got recovered the articles belonging to SI Satish Dalal i.e. Gold ring, wrist watch and purse. Two pairs of shoes vide seizure memo Ex.PW35/C which was worn by accused Rajinder and Joginder at the time of commission of offence were also recovered. I.O. Insp. Azad Singh prepared the rough site plan of the spot vide Ex.PW41/A to D and the same was handed over to Inspector K.G. Tyagi and he prepared a rough site plan of chopper and clothes Ex.PW45/B and all exhibits were sent to FSL for analysis and DNA Finger Printing.

7. After completion of investigation, charge-sheet against the accused persons were filed. Learned Metropolitan Magistrate after complying with the provision of section 207Cr.P.C., committed the case to the Court of Sessions as the offence punishable under Section 302 IPC is exclusively triable by the Sessions Court.

8. Subsequently, on 20.12.2004 all the accused persons were charged for the offences punishable under Sections 120B, 186/120-B, 364/120-B, 392 read with 120-B,302/120-B &201/120-BIPC. A-3 was also charged for the offence punishable U/s 25 Arms Act.

The accused persons pleaded not guilty and claimed trial.

9. The prosecution in order to prove its case has examined 45 witnesses i.e. Dr. Mahender (PW1), Dr. V.K. Jha (PW2), SI Manohar Lal (PW3), Pradeep Sharma (PW4), Sh. Harish Dalal (PW5), SI Naresh Daggar (PW6), Inst. Ajay Sharma (PW7), Insp. Raj Singh (PW8), ASI Azad Singh (PW9), HC Vijay Kumar (PW10), ASI Ram Khilari (PW11), SI Ganga Ram (PW12), SI N. K. Sharma (PW13), Insp. Samay Singh (PW14), Sh. Rajesh kumar Singh (PW15), ASI Dharam Pal (PW16), Sh. Padam Singh (PW17), ASI Randheer Singh (PW18), Sh. Ram Kumar Verma (PW19), ACP R.S. Dahiya (PW20), HC Surender Kumar (PW21), Ct. Naresh Kumar (PW22), Ct. Sri Om (PW23), HC Darvesh (PW24), HC Preet Singh (PW25), HC Lal Chand (PW26), HC Om Prakash (PW27), HC Rajinder Singh (PW28), Insp. H.S.P. Singh (PW29), Insp. Shiv Dayal (PW30), ASI Hari Singh (PW31), Sh. Naresh Kumar (PW32), Sh. Parshuram Singh (PW33), SI Mukesh Kumar (PW34), SI Shiv Raj (PW35), Dr. Anupama Raina (PW36), W/ASI Anil Sharma (PW37), SI R. Srinivasan (PW38), SI Sanjeev Kumar (PW39), HC Anil Kumar (PW40), Retd. Insp Azad Singh (PW41), Samuel (PW42), HC Omender (PW43), SI Jai Singh (PW44) and Insp. K. G. Tyagi (PW45), thereafter, prosecution evidence was closed. The statements under Section 313 Cr.P.C., of accused persons were recorded. The accused persons preferred to examine 5 Defence Witnesses i.e., Sh. Surender (DW-1), Sh. Niranjana (DW-2), Sh. Shanker Lal (DW-3), Smt. Mohini Devi (DW-4), Sh. Jugnoo (DW-4) and closed the defence evidence.

10. After conclusion of arguments, the trial Court vide judgment and order on sentence dated 28.02.2017 convicted the Appellants under Sections 120B, 364/120B, 392/120B, 302/120B and 201/120B IPC and A-3 was also convicted for the offence punishable U/s 25 Arms Act. Hence, the Appellants have preferred

the present appeals.

11. Mr. Hemant Gulati, learned defence counsel for A-1 and A-2 has pointed out that the present case is based on circumstantial evidence. There are large numbers of circumstance in the present case and the prosecution has to prove its case on its own legs and all the chain of the circumstances should be proved in such a manner which could exclude the possibility of any innocence of the accused and relied upon the judgment of the Apex Court in *Sharad Birdhichand Sarda v. State of Maharashtra*, AIR 1984 SC 1622.

12. Mr. Hemant Gulati further argued that investigation carried out by the I.O. Insp. K.G. Tyagi is biased and tainted on the ground that the secret information does not disclose number of the Santro Car. The said information was reduced down into writing vide DD No.25 and SI Satish Dalal and Vijay Kumar Swami proceeded into the area i.e. C-Block Tonga Stand Gali, Mangolpuri. The prosecution did not take immediate step rather comes with the DD No.38A after a gap of 2.5 hours at 11:05 PM on 5.03.2004 and subsequently, an F.I.R. No. 139/2004 Ex.PW16/A was got registered after a gap of 6.5 hours at 3:00 AM on 6.03.2004 and the same is without explaining the delay and the status in seizure of the Santro Car. As per the Inspector Ajay Sharma (PW7) he had gone to the spot after receiving the secret information that a Santro Car with fictitious number plate is being used by the criminals suspected to be involved in heinous crimes and it was found to be parked in front of house belonging to Laxmi Sasan. Incidentally, this information has not been recorded separately by PW7. The FIR Ex.PW16/A also does not show the number of Santro Car that was allegedly used in committing crime.

13. Mr. Hemant Gulati has further pointed out that, even for the sake of argument, Ajay Sharma (PW7) visited the Mangolpuri area to visit the house of Laxmi Sasan to verify the factum of using of Santro Car in heinous crimes. This narration of prosecution story that SI Satish Dalal alongwith Vijay Kumar Swami entered into C-Block, Mangolpuri for verification of secret information is cooked up story of the prosecution as DD No.38A does not show the Santro Car was being used in heinous crimes by the family members of Laxmi Sasan and he further stated that FIR EX.PW16/A registered on 06.03.2004 at 3:00 AM after a delay of 6.5 hours which is unexplained and is fatal to the prosecution version. Particularly, when the information regarding the place i.e. house of Laxmi Sasan at C-Block, Mangolpuri and Santro Car being parked in front of said house. The house of Laxmi Sasan is C-640, Mangolpuri, the house of Rajinder @ Jinder is C-570, Mangolpuri, house of Joginder @ Danny is C-639-640, Mangolpuri and of Vinod Jatav is B-229, Mangolpuri.

14. Mr. Hemant Gulati further pointed out, as per the statement of Sh. Shankar Lal (DW3) who is the neighbour of accused persons has clearly deposed that all the accused persons were present in Holilka Dehan on 05.03.2004 till 11PM and at about 11:30 PM accused Rajinder @ Jinder and Joginder @ Danny were taken away by the police officials of PS Mangolpuri. The prosecution has built up a false

case against accused persons. The arrest of the accused persons shown as per their arrest memos Ex.PW37, Ex.PW23/A1, Ex.PW44/A, Ex.PW39/A are false. I.O. Insp. K.G. Tyagi (PW45) too has admitted during cross-examination that they have not gone to the house of Moni, daughter of Laxmi Sasan who has her house in C-Bock, Mangolpuri. He has further admitted that no public person joined at the time of arrest of accused persons.

15. Mr. Hemant Gulati submits that the version of Sh. Shankar Lal (DW3) is duly supported with the newspaper reporting by TNN, Outlook and Times of India dated 7.03.2004. Therefore, subsequent arrest shown is no consequences and recoveries thereto are all fabricated and manipulated and falsely implicated on the accused persons in the present case and relied upon the judgment of Apex Court in 2014 (2) SCC (Crl) 177.

16. Mr. Hemant Gulati submits, the recovery of blood stained chopper with blood stained clothes from the house No. F-394, Madipur, JJ Colony is no recovery in the eyes of law. Since no public witness has been associated and even the inmates of the house have not been joined, therefore, no reliance can be placed on the recovery of the said chopper and clothes which were alleged to have been recovered by accused Joginder. In this regard, he has placed reliance on State v. Ramesh, 1998 II (Delhi) 42; Jaffar @ Raju v. State (Delhi), 2013 JCC Vol II 1175 and in Dudh Nath Pandey v. State of U.P., AIR 1981 SCC 911.

17. Mr. Hemant Gulati submits that recovery of a purse vide memo Ex.PW38/B from the roof of House No. B-229, Mangolpuri, Delhi cannot be relied upon as the said house is possessed by rest of the family members and no family members or public persons were joined during the course of recovery proceedings and no site plan of the said recovery was prepared. Therefore, recovery as shown is not as per law. The said articles were planted on accused persons to falsely implicate them in the present case.

18. Mr. Hemant Gulati further submits that the recovery of pair of shoes as shown on 12.03.2004 at the instance by Joginder and Vinod Jatav creates doubt for want of compliance under Section 100 (4) Cr.P.C.

19. Mr. Hemant Gulati pointed out that Santro Car bearing No. DL- CQ-6072 was alleged to be recovered from C-570, Mangolpuri, Delhi on 06.03.2004, the said fact is contradicted by Inspector Ajay Sharma (PW7) wherein he has stated that he had not seen any Santro Car or Laxmi Sasan near the park on the date of incident. There is no investigation from where the said car was opened and who has provided them with the key of Santro Car. No investigation was conducted by Insp. K.G. Tyagi (PW45) in this regard.

20. Mr. Hemant Gulati further pointed out, the FSL report regarding the chance print creates doubt, had the chance prints from the said chopper taken from Joginder, should have been given the marking as Q1 and Q1A and in the subsequent recovery marking should have been given as Q2 to Q3. The specimen finger prints of the accused persons have not been taken before any court

including the court of Magistrate. Therefore, no reliance can be placed on the FSL report in this regard.

21. Mr. Hemant Gulati submits that headless bodies alleged to have been recovered near the Real Polymer Factory was of Vijay Swami and another body was found nearby inside the court complex agriculture Institute, Bahadurgarh which was stated to be of SI Satish Dalal, the said recoveries are full of doubt for want of public witnesses and relied upon the judgment of Apex Court in Jaffar @ Raju v. State (Delhi), 2013 JCC Vol II Page 117.

22. Mr. Hemant Gulati submits that the TIP of personal belongings of deceased also creates doubt as TIP proceedings does not show the other similar articles placed in its report Ex.PW15/B and Ex.PW15/C. On the contrary, as per the statement of PW4 Pradeep Sharma who states that he had identified the purse in the proceedings because wife of Vijay told him that it had "V" mark on the purse and similarly, Harish Dalal (PW5) stated that he had identified the purse as there was a "horse" on the said purse. Both these facts are not mentioned in the seizure memo nor in the TIP proceedings.

23. Mr. Hemant Gulati further submits that there is no motive and CDR on record to connect the accused person in the present case, the prosecution has fabricated the documents consequently both the Appellants be acquitted from the charges and relied upon the judgment of Apex Court in State Of A.P. v. Punati Ramulu and Others, 1994 SCC (Cri) 734.

24. Mr. M.N. Dudeja, learned counsel for A-3 argued, the case of prosecution is based on circumstantial evidence. The genesis of incident is highly doubtful and story of prosecution is improbable and is shrouded with mysteries and that no actual investigation of the Santro car was made out on the date of the incident of abduction of the two deceased persons. It is most pertinent to notice that the name of the accused persons were nowhere mentioned in the said DD entry. He further submitted that at 3:10 AM on 06.03.2004 FIR for 'Abduction' of the deceased persons was lodged within hours without even a preliminary search of the missing persons, however no information as to the identity of the alleged abductor was mentioned in the FIR. He further pointed out that the investigating team had no leads from any agency about whereabouts of the missing persons, yet within no time the police recovered the burnt heads, the headless bodies and other personal articles of the deceased persons from far off locations. There is no explanation by the prosecution as to what leads did they have to move in a particular direction to search for the missing persons. He further argued that no CDR report was ever brought on record and it is a mystery as to how did the police reached the locations in Delhi or in Haryana from where they recovered the headless bodies, burnt heads and other articles in such a short span of time without having any access to 'Location charts' in the CDR Report. He has relied on Narayana Reddy @ Babu Vs. State of Karnataka (2016) 14 SCC 212.

25. Mr. Dudeja further argued that the arrest of the appellant Rajinder is doubtful

as the prosecution version depicts that Rajinder alongwith other co-accused persons were arrested from Naga Baba Mandir where they were found hiding behind the bushes on 08.03.2004 at 11:00 AM. Here, it is important to note that the said place of arrest is within 1 Km distance from the residence of accused. He further pointed out, for the sake of argument, if it is assumed that the accused had committed the gravest crime, why would he hide at the place which is in close proximity of his house. As per the prosecution, accused Rajinder was termed as a person of 'Bad Character' who belonged to a family of seasoned criminals, had this been true the accused would have absconded to a safe place from where he could not have got arrested. He further pointed out that on the arrest memo of Rajinder, date of arrest mentioned is 08.03.2004, however this fact is in contradiction with the news articles published on 07.03.2004, press reports given by police itself stating that the names of accused Rajinder and Joginder who have been arrested upon allegations of murder of two police officials. Further, the testimony of Shanker Lal (DW3) was not even taken into account and not even considered. As per his statement in court the accused Rajinder and Joginder were celebrating Holika Dehan alongwith other neighbours till 11 PM on the alleged date of offence i.e. 05.03.2004, he further adds that two police officials at 11:30 PM for the purpose of interrogation apprehended Rajinder and Joginder from their residence and later on, i.e. the next day revealed to them that they have been arrested in a murder case, which is a contradiction making the story of prosecution improbable. He placed reliance on Mohd. Mohsin Vs. State 2018 SCC OnLine DEL 7258.

26. Mr. Dudeja further contended that there was an unexplained delay in sending the samples to FSL and supported his contention by implying that section 102(3) Cr.P.C. was not complied with by the investigating authorities while sending the samples to the FSL. He further stated that the samples along with letter were sent by the investigating team to FSL on 21.05.2004 which was received by the FSL on 24.05.2004, after delay of about 75 days. No explanation has been given by the prosecution about these irregularities. He placed his reliance on Alavi Vs. State of Kerala 1981 SCC OnLine KER 200.

27. Mr. Dudeja further argued that recoveries and seizures are doubtful as there is no signature of public/independent witness on memos, and rule u/s 100(4) Cr.P.C. was not complied with hence all the recoveries made during the investigation are doubtful and are not reliable. He placed reliance on Ravi Kumar Vs. State (2013) 135 DRJ 87 (DB).

28. Mr. Dudeja further argued that there was lapses in investigation such as the stolen Maruti Van which is involved in commission of the offence was said to be recovered on the basis of disclosure statement of accused Rajinder, however, the key of said van has not been brought on record and there is no handing over memo, no sketch prepared for the said Key. Further, mobile phones of the deceased persons found during the investigation were saved from making a case property without any reasonable explanation by the investigating team. Also no

CDR report has been examined and the tracing of deceased persons locations during the date of incidence has been deliberately prevented from coming into light. Also, blood stained clothes recovered during investigation which were based on the disclosures statements were not corroborated with independent evidences as to show that the same clothes were worn by the accused persons during the commission of the alleged offence, hence they are a weak piece of evidence. He placed reliance on Mohd. Shahid Vs. State 2014 SCC OnLine DEL 7569.

29. Mr. Dudeja further argued that lifting of chance prints is highly doubtful as there is no memo of the chance-prints that were lifted from the Maruti Van, the articles seized from the van have been annexed on pages 1178 to 1182 in which there is no mention of the chance prints being lifted from the said Van. Further, the specimen fingerprints of the accused were not obtained under the order of a magistrate and the specimen fingerprints which were obtained from the accused Rajinder were never produced in the court with the report of the expert. SI N.K. Sharma (PW13) the expert who examined the said chance prints but nowhere mentioned his expertise, skills and knowledge on the subject, hence without such explanations evidence of such expert is neither credible nor admissible. He placed reliance on Mohd. Aman Vs. State of Rajasthan AIR 1997 SC 2960. and on State of H.P. Vs. Jailal AIR 1999 SC 3318.

30. Mr. Dudeja further argued that recovery of revolver is highly doubtful as the revolver which was shown to be carried by SI Satish Dalal (deceased) was never issued to him. Insp. Samay Singh (PW14) to this effect corroborated the fact in his statement that no entry about issuance of the revolver to SI Satish Dalal was found in the record of PS Prashant Vihar and the said revolver was actually issued in the name of SI Raj Singh (PW8). The said revolver was never transferred to SI Satish Dalal. This fact has been corroborated with ACP R.S. Dahiya (PW20), further, the entry register on relevant page wherein the revolver was issued to SI Rai Singh (PW26) was found to be cut pasted. Therefore, the case of the prosecution is most improbable, completely devoid of merit, the perversity and illegality is apparent on record particularly in view of the fact that arrest and seizures of articles are not proved in accordance with the law and appellant has been falsely implicated in this case.

31. Per contra, Mr. Sanjay Lao Additional Standing Counsel has submitted that prosecution has examined 45 witnesses to prove its case. Mr. Lao argued that the appellants were arrested at the instance of co-accused Laxmi Sasan on 08.03.2004 From Naga Baba Mandir and made disclosure statement Ex.PW38/A, Ex.PW43/C and Ex.PW44/C. Mr. Lao further argued that when the police team was apprehending the accused Rajinder he took out Revolver from his right dub pocket having 5 live cartridges and was arrested. Mr. Lao further pointed out that the said revolver and the live cartridges were in the possession of SI Satish Dalal before the incident. The change in possession of said Revolver alongwith 5 live cartridges Ex.PW43/B from accused Rajinder is unexplained which is sufficient to

connect him to his guilt. Mr. Lao further argued that beside recovery of the Revolver he made a disclosure statement and thus got recovered the blood stained Maruti Van No. HR-29-J-2904 which was parked at Shivaji Kunj Flats near Shakti Clinic Madipur vide seizure memo Ex.PW34/E. Mr. Lao further pointed out that the key of said Maruti Van was got recovered from personal search of the accused Rajinder Ex.PW23/B1. The Accused Rajinder in pursuance to his disclosure statement got recovered Maruti Van Ex.P31 and blood stained chopper Ex.PW2/M2 and Blood Stained Mat Ex.P30. Mr. Lao further argued that the accused Joginder made disclosure statement and in pursuance to his disclosure statement he got recovered blood stained chopper Ex.PW44/D from F-394 Madipur JJ Colony, house of Jugnoo. He also got recovered blood stained clothes which accused Joginder and Rajinder were wearing at the day of the incident which was seized vide seizure memo Ex.PW44/E. Mr Lao further argued that accused Vinod Jatav too made disclosure statement and in pursuance to said disclosure statement he got recovered a purse, watch and a ring of the deceased Vijay Kumar Swami from his house at B-229 Mangolpuri, and other belongings of the deceased persons. Mr. Lao pointed out that all the accused persons are involved in the offence committed on the date of the incident and the prosecution has proved its case on its own legs through ocular evidence as well as scientific evidence. He further submitted that trial Court has rightly convicted the accused persons and thus their appeal be dismissed and trial court judgment be upheld. He relied on Raju Manjhi v. State of Bihar, 2018 (6) SLT 296. State of U.P. v. Deoman Upadhayaya, AIR 1960 ALL 1 (FB). K. Chinnaswamy Reddy v. State Of A.P. & Anr., 1963 (1) Cri. L. J. 8. Sapna Talwar v. State, 2011 (183) DLT 507. Bachchi Singh v. State (NCT of Delhi), 2011 CrLJ 350. Earabhadrapa v. State of Karnataka, AIR 1983 SCC 446(1).

32. Before us is a case based on Circumstantial Evidence. There is no ocular evidence. Hon'ble Supreme Court on various occasions has laid down the test, reach the inference of guilt of the accused persons through the circumstantial evidence under which this heinous crime has been committed.

33. In the instant case a police officer i.e., deceased SI Satish Dalal armed with revolver S. No. 1108 alongwith one Vijay Kumar Swamy reaches to C-Block, Mangolpuri for confirming a secret information and goes inside the adversarial circumstance leaving behind some of his colleagues and does not come back resulting in registration of FIR subsequently. Obviously, as expected none comes forward due to this adversarial situation to support the prosecution case, therefore, the case of the prosecution is based only on the circumstantial evidence.

Here, Supreme Court in Judgment Bodhraj @ Bodha and Ors. Vs. State of Jammu and Kashmir AIR 2002 SC 3164 is relevant:

"Before analyzing factual aspects it may be stated that for a crime to be proved it is not necessary that the crime must be seen to have been committed and must, in all circumstances be proved by direct ocular evidence by examining before the

Court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, that is, the evidentiary facts. To put it differently circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed."

Recoveries made prior to the arrest of accused persons on 06.03.2004.

34. The FIR of the instant case was registered on the basis of written complaint i.e. Ex.PW7/A by Inspector Ajay Sharma (PW7) on 06.03.2004 at 3:10 AM. The investigation of said FIR Ex.PW16/A was handed over to Inspector Azad Singh (PW41) who in pursuance to FIR, alongwith SI Sukhbir Malik, Ct. Amarnath and Ct. Baljeet took steps to search out the missing persons i.e. SI Satish Dalal and Vijay Kumar Swami. He searched out the area of Sultanpuri and Paschim Vihar and reached to the area of PS, Mangolpuri where Inspector Ajay Sharma (PW7) also joined the search proceedings of missing persons and reached to the area of Sadar, Bahadurgarh where they were informed by duty officer that a dead body is lying in area of PP, Asoda, near village Jakhoda. They reached to the spot i.e. Bahadurgarh-Rohtak Road near Real Polymer factory with help of Head Constable and Constable of Haryana Police, and found one naked headless body of male lying at about 8-10 steps before the main gate of the said Real Polymer Factory, on right side while entering in the gate. Meanwhile, crime team of Haryana Police reached at the spot and HC Surender (photographer of Haryana police) took photographs of the scene of crime. Meanwhile another information was received by ASI Ravinder Singh, ICPP, Asoda, that another headless dead body was lying near Court Complex, Bahadurgarh. On this I.O. Insp. Azad Singh (PW41) kept Ct. Amarnath of Delhi police and Ct. Satnarayan of Haryana Police at the scene of the crime to guard the spot and went towards Bahadurgarh, Haryana where they found another naked headless dead body of male lying inside boundary wall of Haryana Agriculture office. The scene of crime was photographed by HC Surender, Photographer of Haryana Police. The dead bodies were identified by the relatives of both the deceased persons i.e. SI Satish Dalal and Vijay Kumar Swami.

35. Inspector Azad Singh (PW41) took the blood stained earth, from the scene of crime vide seizure memo Ex.PW5/7, earth control sample vide seizure memo Ex.PW5/6 from the scene of crime inside the Bahadurgarh, 3 pieces of string (nada) was also found and seized vide seizure memo Ex.PW5/9. Thereafter, a brick piece found lying at the scene of crime where the naked headless bodies were lying was also seized vide seizure memo Ex.PW5/13. Thereafter, blood stained earth was collected from outside of boundary wall which was seized vide seizure memo Ex.PW5/8, earth control sample was also collected from outside of boundary wall vide seizure memo Ex.PW5/5 and a brick piece was collected at

the scene of crime from outside the boundary wall vide seizure memo Ex.PW5/11. The aforesaid articles were recovered from place situated near to NH10, Bahadurgarh road to right side of main gate of Agriculture office as shown in site plan Ex.PW41/B and exhibits were separately sealed with the seal of AS with the help of cloth. After completing the aforesaid proceedings in presence of witnesses i.e. Inspector Ajay Sharma (PW7), SI Sukhbir Singh Malik, Harish Dalal and Pradeep Sharma, the headless dead body of deceased SI Satish Dalal was kept in a tempo and they came back to the first scene of crime i.e. Real Polymer Factory, Bahadurgarh road. The Inspector Azad Singh collected blood stained earth ExPW4/A, earth control sample vide seizure memo Ex.PW5/4 and 2 pair of String (nara) approximately 9 inches seized vide seizure memo Ex.PW4/G were also collected. Few strands of hair found near the headless body were seized vide seizure memo Ex.PW4/H and the Headless body was identified by Pradeep Sharma, relative of the deceased Vijay Kumar Swami i.e. Ex.PW4/D. The aforesaid articles which were recovered at about 8-10 steps the right in front of the gate of Real Polymer Factory, Bahadurgarh and the same were sealed with a seal of AS with the help of cloth as shown in rough site plan Ex.PW41/A.

36. Meanwhile, Inspector Azad Singh (PW41) received information from SHO, Nangloi that a burnt head of a human being is lying in a plot in the area of Tikri Kalan near Deep Properties. Consequentially, Inspector Azad Singh (PW41) alongwith the team members reached at Tikri Kalan, near Deep Properties, at the scene of crime, where they found a burnt human head behind the room meant for Deep Properties and the same was identified by Harish Dalal. On further investigation they found burnt head of Vijay Kumar Swami too and the same was identified by Pradeep Sharma. Both the heads of Vijay Kumar Swami and SI Satish Dalal were sealed vide identification memo Ex.PW4/E and identification memo Ex.PW5/2 respectively. On further investigation they found ashes of burnt articles which were also seized vide seizure memo Ex.PW5/10. In the ash they also found two pieces of bricks. One of them was having some hair. Those two bricks pieces were kept in a polythene and all the aforesaid articles were seized vide seizure memo Ex.PW5/12 and the same were sealed with the seal of AS. In the burnt ash (where the burnt head was found), one belt in burnt condition in three pieces with buckle with hair, one metal ring of the belt in burnt condition, one coin of Rs.1 in burnt condition, burnt parts of mobile phone, pieces of paint and shirts in burnt condition and half burnt pieces of wood and one cap of bottle of Delhi Excise Liquor were found and the same were seized in separate polythene pack and the same polythene pack sealed with the seal of AS and the same were seized vide seizure memo Ex.PW4/K. One blood stained Banyan and one gents shoe of leather which was found near the burnt head of SI Satish Dalal were found and same were seized in polythene pack and the same polythene pack sealed with the seal of AS and the same were seized vide Ex.PW5/14. Inspector Azad Singh (PW41) also found one ID card of Satish Dalal and same was inspected by finger print expert and he took the chance print from the ID card and thereafter same was lifted in cloth and same was sealed with the seal of

AS and seized vide Ex.PW5/3. He also found burnt currency notes of rupees 500 each with some ash and the said currency notes were put in a match box and same were sealed with the seal of AS and seized vide Ex.PW4/J. He also collected pieces of string (nara), 3 separate pieces of blood stained string (nara) in partly burnt condition seized vide Ex.PW4/C and the same were sealed with the seal of AS. Thereafter, the head of Vijay Kumar Swami was identified by the Pradeep Sharma the relative of deceased Vijay Kumar Swami and the same was seized vide identification memo Ex.PW41/C and he also prepared the rough site plan of the place where the head of Vijay Kumar Swami was found vide Ex.PW41/D. Inspector Azad Singh (PW41) found the Santro Car bearing no. DL-6CQ-6072 which was parked in a park opposite to the house No. C-570, Mangolpuri and the same was seized vide Ex.PW7/B on 6.03.2004. The car was deposited with MHC(M) against entry No. 5407 vide store room register Ex.PW31/A. Inspector Azad (PW41) prepared the inquest paper and got conducted the post mortem of deceased SI Satish Dalal and Vijay Kumar Swami at Sanjay Gandhi Memorial Hospital on 06.03.2004 at 7 PM and the case property was deposited in the malkhana and statements of witnesses were recorded. The doctor handed over the exhibits of SI Satish Dalal vide memo Ex.PW41/O and of Vijay Kumar Swami vide seizure memo Ex.PW41/P and Insp. Azad Singh (PW41) deposited the case property in the malkhana. Thereafter, investigation of the present case was transferred from Inspector Azad Singh (PW41) to Inspector K.G. Tyagi, and the case file of the present case was handed over to Inspector K.G. Tyagi by Inspector Azad Singh.

37. The contention of the learned defence counsel is that Insp. Ajay Sharma (PW7) did not find the said car on 05.03.2004 in front of the house no. C-570, Mangolpuri and the same was found on 06.03.2004. Defence counsels also contended that the alleged recoveries are full of doubt from the spot and the same suffers from material contradiction. It was also contended that the recovery of ID Card from the spot is planted one which does not seems to be correct.

38. Admittedly, Insp. Ajay Sharma, HC Yashpal and Insp. Azad Singh visited the area of Mangolpuri, Delhi on 05.03.2004. The source of information of whereabouts of Santro Car could easily be taken from criminals if they be caught, because of this reason SI Satish Dalal alongwith public person went inside to verify the information, they later did not come back, therefore, the priority for PW7 was to search out the missing persons. Since none was apprehended nor named in the FIR 139/2004 Ex.PW16/A as accused person, recovery of said Santro car found lying in the park is a matter of fact. It does not create any biasness against any of the accused persons and the plea taken by the accused persons that the recoveries were fabricated to falsely implicate them is without merit.

39. In the instant case FIR Ex.PW16/A does not discloses the name of the accused persons. The recoveries got effected as shown in seizure memo

Ex.PW5/7, Ex.PW5/6, Ex.PW5/9, Ex.PW5/13, Ex.PW5/8, Ex.PW5/5, Ex.PW5/11, Ex.PW5/4, Ex.PW5/2, Ex.PW5/10, Ex.PW5/12, Ex.PW5/3, Ex.PW5/14, Ex.PW4/D, Ex.PW4/A, Ex.PW4/G, Ex.PW4/H, Ex.PW4/K, Ex.PW4/J, Ex.PW4/C and Ex.PW4/E does not disclose involvement of accused persons at that point of time, no leads were available to the investigating team. Therefore, there is no reason of any kind of bias or false implication of accused persons at the hands of Inspector Azad Singh. The recoveries effected are simply facts emerging on record to pinpoint the recoveries of dead bodies and skulls of the deceased persons and their belongings and relevant facts connecting for the purpose of further investigation to connect the offender in future course of investigation only. Insp. Azad Singh (PW41) deposited the seized articles in the malkhana vide entry No. 5407 and there was no probability of planting anything for want of knowledge of involvement of offender involved in the crime. Table indicating the recoveries effected on 06.03.2004 i.e. prior to the arrest of accused persons is reproduced in Table 1 as follows:

Table 1

S.No.

Memos

Place

Seizure memo

1

Memo of identification of headless body of Vijay Kumar Swami.

Outside Real Polymer factory

Ex.PW4/D

Police team headed towards Krishi Vibhag after receiving information about another Headless body.

2

Memo of identification of headless body of SI Satish Dalal

Inside of Boundary wall Krishi Vibhag, Haryana

Ex.PW5/7

3

Seizure memo of blood stain earth.

Inside of Boundary wall Krishi Vibhag

Ex.PW5/7

4

Seizure Memo Earth Control.

Inside of Boundary wall Krishi Vibhag

Ex.PW5/6

5

Seizure Memo of Strings.

Inside of Boundary wall Krishi Vibhag

Ex.PW5/9

6

Seizure memo of piece of Brick.

Inside of Boundary wall Krishi Vibhag

Ex.PW5/13

7

Seizure memo of blood stain earth.

Outside of Boundary wall Krishi Vibhag

Ex.PW5/8

8

Seizure Memo Earth Control.

Outside of Boundary wall Krishi Vibhag

Ex.PW5/5

9

Seizure memo of piece of Brick.

Outside of Boundary wall Krishi Vibhag

Ex.PW5/11

Police team after seizing articles from Krishi Vibhag came back to the Real Polymer factory

10

Seizure memo of Ashes.

Behind Deep Properties, Tikri Kalan

Ex.PW5/10

11

Seizure Memo Earth Control.

Outside Real Polymer factory

Ex.PW5/4

12

Seizure memo of strings.

Outside Real Polymer factory

Ex.PW4/G

13

Seizure memo of hair.

Outside Real Polymer factory

Ex.PW4/H

Meanwhile, an information regarding burnt head of human being found lying near Tikri Kalan vide DD No. 09

14

Memo of identification of the head of SI Satish Dalal

Behind Deep Properties, Tikri Kalan

Ex.PW5/2

15

Seizure memo of Ashes.

Behind Deep Properties, Tikri Kalan

Ex.PW5/10

16

Seizure memo of two piece of brick

Behind Deep Properties, Tikri Kalan

Ex.PW5/12

17

Seizure memo of ring of belt, coin in burnt condition, burnt part of mobile phones, burnt clothes etc

Behind Deep Properties, Tikri Kalan

Ex.PW4/K Colly.

18

Seizure memo of parcel containing one vest, one underwear, one cut peice of shirt and one leather shoe.

Behind Deep Properties, Tikri Kalan

Ex.PW5/14

19

Seizure memo of ID Card. Malkhana PW31/G

Behind Deep Properties, Tikri Kalan

Ex.PW5/3

20

Seizure memo of currency note.

Behind Deep Properties, Tikri Kalan

Ex.PW4/J

40. Insofar as the contradictions as alleged during the statements of witnesses are concerned, they are not material contradictions and does not lead to different conclusion to bring the facts on record under doubt. Further, non-joining of public witness at this stage too would not prejudice the accused persons as they have not been named in the investigation of Inspector Azad Singh (PW41).

41. The facts appearing on the record do not show the knowledge of crime exactly committed and involvement of the accused persons till 08.03.2004. Therefore, the information by PW7 vide DD No.38/A Ex.PW45/M7 is as per the facts available to him and there was no such guiding factors to investigate the case in a specific direction. The facts on record explains the situation of fact, which does not call for any explanation of delay in lodging of FIR.

Post-mortem report of the deceased persons

42. The prosecution has examined Dr. V.K. Jha (PW2) who has conducted the post mortem on the dead body of deceased Vijay Kumar Swami on 6.03.2004 at 8PM at Sanjay Gandhi Memorial Hospital, Delhi and found the following injuries:-

External Examination:

1. Pressure abrasion mark present over cut portion of the neck interrupted at various places masked by the cutting of tissues but obvious at cut margins just above. Underlying tissues were massively bruised.

2. Decapitation - cut separation mark incised in nature present over the neck, in front over middle of laryngeal cartilage level and over back incised cut is present at the level of C5-C6 vertebra (cervical). Thus making the decapitation in whole

circumference of the neck. Lower margins of cut portion attached with trunk showed inverted margins.

3. Circular bruising with margin abraded were present over lower part of both forearm.

4. Bruises were present over dorsum of right foot of size 3cm x 2cm. On left shoulder outer aspect of size 2cm x 2cm.

Internal Examination:

1. The skull, face and mandible which showed severe burn with no vital reaction on X-ray. The scalp hair were fully burnt and showed a big hole on right temporal region. The margins were burnt and blackened on wiping out showed burning of bone tissues brain matter roasted.

2. Neck: soft tissues described in injury No.1 and No.2..

3. Chest: Bony cage/ribs intact. Plural cavities normal. Lungs and heart were congested.

4. Abdomen & Pelvis: liver & gallbladder, spleen, kidney and pancreas were congested. Stomach contents were empty. Mucosa was normal. There was no abnormal smell. Small and large bowels contains gases. Urinary bladder and rectum were empty. Genital organs were normal and spinal column were normal.

5. In the skull total teethes present were 31. One lateral upper incisor was missing. After extending the both arms and distance from tip of the middle finger to the opposite middle finger was 5 feet 6 inches which is equal the height of the individual.

Opinion:

The cause of death was due to asphyxia consequent to ligature pressure on throat structures by other party which is ante-mortem in nature. Decapitation was post-mortem in nature. Ligature pressure was sufficient to cause death in ordinary course of nature. The bruising over the portion of wrist are consistent with fastening both hands with rope.

He proved the post-mortem Report Ex.PW2/A and time since death was approximately 23 hours which connects to the time of incident i.e. on 05.03.2004 and that both the hands of deceased Vijay Kumar Swami was tied with rope and his death was caused due to asphyxia consequent to ligature pressure on throat.

43. Dr. V. K. Jha (PW2) has also conducted the post mortem on the dead body of deceased Satish Dalal on 6.03.2004 at 7 PM at Sanjay Gandhi Memorial Hospital, Delhi and found the following injuries: -

External Examination:

1. Pressure abrasion mark present over cut portion of the neck interrupted at

various places masked by the cutting of tissues but obvious at cut margins just above. Underlying tissues were massively bruised.

2. Decapitation - cut separation mark incised in nature present over the neck, in front over middle of laryngeal cartilage level and over back incised cut is present at the level of C7-C6 vertebra (cervical). Thus making the decapitation in whole circumference of the neck. Lower margins of cut portion attached with trunk showed inverted margins.

3. Circular bruising with margin abraded were present over lower part of both forearm.

4. Bruises present over dorsum of left hand 2cm x 2cm, right wrist outer aspect of size 3cm x 2cm on front of chest, left side chest 4cm x 3cm.

5. Abrasion were present over left knee anteriorly size 2cm x 1.5cm, on dorsum of right foot 3cm x 2cm.

6. Burnt skull with mandible having deep burns with blackening all over also received with trunk and extremities.

Internal Examination:

1. The skull, face and mandible which showed severe burn with no vital reaction on X-ray. Scalp tissues were fully burnt and degenerated and showed big hole on left partial and frontal region. Margins were burnt and blackened, on wiping out showed burning of bone tissue and fracture of anterior cranial fossa were seen. Brain matter roasted.

2. Neck: soft tissues mentioned in injury No.1 and No.2..

3. Chest: Bony cage/ribs intact. Plural cavities normal. Lungs and heart were congested.

4. Abdomen & Pelvis: liver & gallbladder, spleen, kidney and pancreas were congested. Stomach contents were empty. Mucosa was normal with no abnormal smell. Small and large bowels contains gases. Urinary bladder and rectum were empty. Genital organs were normal and spinal column were normal.

5. The total teethes present were 32. After extending both arms and distance from tip of the middle finger to the opposite middle finger was 5 feet 10 inches which is equal the height of the individual.

Opinion:

The cause of death was due to asphyxia consequent to ligature pressure on throat structures by other party which is ante-mortem in nature. Decapitation was postmortem in nature. Ligature pressure was sufficient to cause death in ordinary course of nature. The bruising over the portion of wrist are consistent with fastening both hands with rope.

He proved the post-mortem Ex.PW2/E and time since death was 22 hours which connects to the time of incident i.e. on 05.03.2004 and that both the hands of deceased Satish Dalal was tied with rope and his death was caused due to asphyxia consequent to ligature pressure on throat.

Recovery of Revolver S. No. 1108 and 5 live cartridges

44. Inspector K.G. Tyagi took over the case file on 7.03.2004 and on 8.03.2004 constituted four teams for search of suspected accused persons. PW45 was the head of the team-1 along with ASI Jai Singh, HC Narender and Ct. Satish and they were in a Tata Sumo. The team No.2 headed by SI Mukesh along with HC Omender, Ct. Rajnish were in a maruti 800. The team No.3 was headed by SI R. Srinivasan, HC Brahampal and Ct. Anil in another maruti 800. The team No.4 was headed by ASI Shivraj, W/HC Anil Sharma and HC Pawan and they were in a maruti 800. All the teams left the police station at about 6:15 AM on 08.03.2004 and had gone to Mangolpuri area then Wazirpur, JJ Colony where sister of Laxmi was residing, Madipur and Ragbhir Nagar area and also searched all possible hide outs in the said areas upto 9:00-9:15 AM and at about 9:30 AM they reached to the house of her daughter Moni at C-Block after receiving a secret information where accused Laxmi was found present and she was apprehended and thereafter on interrogation she deposed that other accused persons are also present near Naga Baba Mandir, Mangolpuri. Accordingly she was taken there by police team and at the pointing out of accused Laxmi the co-accused persons Rajinder @ Jinder, Joginder @ Danny and Vinod Jatav were apprehended and arrested. The accused Rajinder @ Jinder in the process of being apprehended, tried to take out something from right dub of his pant and when he was apprehended and made formal search of accused Rajinder and from his possession a police service revolver of 0.38 bore alongwith five live cartridges was recovered which belonged to SI Satish Dalal, same was seized vide Ex.43/B.

45. The accused persons during the cross-examination of the HC Omender (PW43) did not put any suggestion that the said revolver was planted. PW43 during his cross examination has clarified that accused Rajinder was apprehended by him with a police revolver bearing S.N. 1108 containing 5 live cartridges.

46. The contention of learned defence counsel that the service revolver S.N. 1108 was never issued in the name of the deceased SI Satish Dalal and documents on record shows that the same was issued in the name of SI Raj Singh has got no force.

47. Initial DD entry i.e. DD No. 25 dated 05.03.2004 at 7:10 PM, prior to SI Satish Dalal going missing, clearly stating that deceased SI Satish Dalal went to the spot with the service revolver S.No. 1108 alongwith 5 live cartridges. Said DD Ex.PW45/X is reproduced as under:-

DD No. 25A Dt. 05.03.04 A.H. Section Crime Board, Prashant Vihar, Delhi

Insp. Ajay Sharma

Its 7:10 PM, a secret informer came to Anti Homicide Section Crime Branch and has given information that one Santro Car which is having fake number plate and is often seen in C-Block, Mangolpuri and is generally parked in a park in front of the house of Laxmi Sasan. This Santro Car is used in committing heinous crimes by putting fictitious number plates. This information was shared with ACP/Anti Homicide who suggested to verify the facts. I alongwith SI Satish Kumar who was having service revolver No. 1108 with 05 live rounds, HC Yashpal and the secret informer leave for Mangolpuri.

SD/-

(AJAY SHARMA)

Inspector , Crime Branch,

Prashant Vihar, Delhi.

48. The possession of service revolver S.No. 1108 was with SI Satish Dalal before him going missing and there cannot be a better proof than DD Ex.PW45/X. So far, the register not showing the said revolver was in possession of SI Satish Dalal and RTI giving information otherwise could be a matter of irregularities which took place within the Department. But, for the purpose of instant case, it is a fact coming on record that SI Satish Dalal was holding revolver No. 1108 alongwith 5 live cartridges before reaching to Mangolpuri area and subsequent recovery of revolver from accused Rajinder is a direct link connecting the accused to his guilt.

Arrest of accused persons

49. Prosecution has examined I.O. Insp. K.G. Tyagi (PW45), who deposed that he took over the further investigation from Insp. Azad Singh (PW41) on 07.03.2004 and on 08.03.2004 constituted four search teams, he was leading the first team with ASI Jai Singh, Ct. Narinder and Ct. Satish. All team left the Police Station at 06:15 AM and had reached to Mangolpuri and started the search for accused persons, he received a secret information that the Accused Laxmi Sasan was present at the house of her daughter Moni, at 09:30 AM on 08.03.2004 they apprehended the accused Laxmi Sasan and she disclosed that other accused persons are present at Naga Baba Mandir, Mangolpuri. They reached at the spot where other accused persons Rajinder @ Jinder, Joginder @ Danny and Vinod Jatav were apprehended on pointing out by accused Laxmi Sasan from behind Naga Baba Mandir, Mangolpuri. Thereafter, Accused Laxmi Sasan (deceased) was arrested vide arrest memo Ex.PW37/A, her personal search was conducted vide personal search memo Ex.PW37/B. Accused Rajinder @ Jinder was apprehended and a police revolver of 0.38 bore bearing serial number 1108 having 5 live cartridges was recovered from Rajinder in his formal search and arrested vide arrest memo Ex.PW23/A1, his personal search was conducted vide personal search memo Ex.PW23/B1. Accused Joginder @ Danny was apprehended and

arrested vide arrest memo Ex.PW44/A, his personal search was conducted vide personal search memo Ex.PW44/B. Accused Vinod Jatav was apprehended and arrested vide arrest memo Ex.PW39/A, his personal search was conducted vide personal search memo Ex.PW39/B. All accused persons made Disclosure statement Ex.PW37/C of Laxmi Sasan, Ex.PW38/A of Vinod Jatav, Ex.PW43/C of Rajinder and Ex.PW44/C of Joginder.

50. The contention of learned defence counsel Mr. Hemant Gulati that accused persons Rajinder and Joginder were not apprehended at the pointing out at Naga Baba Mandir on 08.03.2004, but accused Joginder and Rajinder were taken away by the police of PS Mangolpuri on 05.03.2004 at 11:30 PM does not seem to be correct.

51. Further the contention of learned defence counsel for accused Rajinder Mr. M.N. Dudeja that accused persons were not arrested from Naga Baba Mandir on 08.03.2004 but Appellants Rajinder and Joginder were detained in police station on 07.03.2004 as per the news reports does not give strength to the defence version.

52. The accused Joginder @ Danny has examined Shanker Lal (D2W3) in his defence. As per the version of Shanker Lal (D2W3), accused Joginder and Rajinder were present at the pooja ceremony of Holika Dehan alongwith accused Laxmi Sasan on 05.03.2004 till about 11PM and 2 Police officials at about 11:30 PM took away the accused Joginder and Rajinder from their residence and he followed them to PS Mangolpuri.

53. The version of Shanker Lal (D2W3) is contrary to the facts emerging on the record as the FIR in the instant case Ex.PW16/A was registered at 3:10 AM on 06.03.2004 and investigation in this case had not even started at that point in time. It is further evident that the initial I.O. Insp. Azad Singh (PW41) handed over the further investigation to Insp. K.G. Tyagi (PW45) without stating the names of the accused or suspected persons in the present case. Therefore, version given by Shanker Lal (D2W3) is an afterthought version to create artificial evidence.

54. Accused Vinod Jatav has examined Surender (D4W1). As per Surender (D4W1) at about 5:30 PM on 08.03.2004, when he was sleeping at his house, 10- 12 police officials in uniform took accused Vinod Jatav to PS Mangolpuri. Accused Vinod Jatav also examined Niranjana (D4W2). As per Niranjana on 08.03.2004, in the morning hours he has seen 10-12 police officials taking the accused with them.

55. Statement of both the witnesses are inconsistent in timing, as per Surender (D4W1) accused was taken away at 5:30 PM whereas as per Niranjana (D4W2) it was in morning hours. Whereas Accused Vinod Jatav has stated in his statement under section 313 Cr.P.C. that he was called by the police in PS Mangolpuri, where he went and was detained subsequently on 08.03.2004. Therefore, we find the prosecution version consistent with the facts which inspires confidence.

56. I.O. Insp. K.G. Tyagi (PW45) in his statement has specifically stated that Accused Laxmi Sasan was apprehended at the house of her daughter Moni, who disclosed them the remaining involved accused persons were at Naga Baba Mandir and the accused Laxmi Sasan was then taken to the spot by police team where the remaining accused persons were apprehended and were arrested alongwith accused Laxmi Sasan. The arrest memo of accused Laxmi Sasan Ex.PW37/A, her personal search memo Ex.PW37/B. Accused Rajinder @ Jinder arrest memo Ex.PW23/A1, his personal search memo Ex.PW23/B1. Accused Joginder @ Danny arrest memo Ex.PW44/A, his personal search memo Ex.PW44/B. Accused Vinod Jatav arrest memo Ex.PW39/A, his personal search memo Ex.PW39/B.

57. From the perusal of the arrest memo, Accused persons Rajinder @ Jinder, Joginder @ Danny and Vinod Jatav were arrested at 11 AM and accused Laxmi Sasan was arrested at 10:30 AM on 08.03.2004 in Naga Baba Mandir.

58. The contention of the learned defence counsel that accused persons were arrested on 07.03.2004 as per the news articles of Times Now Network, The Hindu, etc. and not on 08.03.2004 at Naga Baba Mandir at 11 AM loses its significance in light of the accused Vinod Jatav's own statement under Section 313 Cr.P.C. which is corroborated with the respective statements under Section 313 Cr.P.C. of the co-accused persons where they have not stated that they have been arrested on 07.03.2004. The said statement under Section 313 Cr.P.C. is reproduced as under:-

" Q131. It is further in evidence against you that all the aforesaid teams had left the police station at about 6.15 am on 08.03.2004 and had gone to Mangolpuri area then to Wazirpur J.J. Colony where sister of your coaccused Laxmi was residing, then to Madipur and Raghbir Nagar area and made search of all possible hide outs in the said areas up to 9/9.15 am. What you have to say?

Ans. It is incorrect.

Q132. It is further in evidence against you that all the members of aforesaid four teams reached near Kalan Mandir at about 9.30 am and in the meantime, PW45 Inspector K.G. Tyagi received secret information that your co-accused Laxmi was at the house of her daughter namely Moni situated at C Block, Mangolpuri. What you have to say?

Ans. It is incorrect.

Q133. It is further in evidence against you that all the members of aforesaid four teams immediately went to the house of Moni at C-Block and your co-accused Laxmi was found present in the said house. What you have to say?

Ans. It is incorrect. I was called by the police at PS and accordingly, I went to PS Mangolpuri where I was detained.

59. The statement of Insp. K.G. Tyagi (PW45), Ct. Sri Om (PW23), WHC Anil

Sharma(PW37), SI Sanjeev Kumar (PW39) and SI Jai Singh (PW44) proves the arrest memo. Thus, the prosecution has abled to prove that accused persons Rajinder @ Jinder, Joginder @ Danny and Vinod Jatav were arrested from Naga Baba Mandir at 11 AM on 08.03.2004.

Recovery at the instance of Accused persons on 08.03.2004

A. Recovery of blood stained Chopper and blood stained clothes belonging to accused Rajinder and Joginder at the instance of accused Joginder.

60. The accused Joginder @ Danny on 08.03.2004 in pursuance to his disclosure statement Ex.PW44/C led the police team consisting of ASI Jai Singh, H Ct. Narender , Ct. Satish and IO K.G. Tyagi to the house of Jugnoo, the brother-in-law of Accused Vinod Kumar (since deceased), i.e. House No. F-394, Madipur, JJ colony, and took out a polythene bag hidden by him in a space between wooden almirah and wall. It contained two pairs of blood stained clothes i.e. one white grey check shirt, one grey green lined shirt, one cream coloured pant and one grey coloured pant belonging to him and Rajinder. It also containing a blood stain chopper wrapped in between the clothes. The said blood stained chopper was used in severing the head of Vijay Kumar Swami as shown in sketch of chopper Ex.PW44/D and clothes and chopper were seized vide seizure memo Ex.PW44/E. Meanwhile, crime team persons also reached there led by SI N.K. Sharma fingerprint expert and photographer Ram Niwas. They inspected the spot and lifted two blood chance prints from the chopper and marked them as Mark Q2 and Q2A.

61. The contention of learned defence counsel for the appellants that recovery is doubtful for want of independent witness does not ipso facto weaken the case of the prosecution in absence of any suggestion to SI Jai Singh (PW44), Insp. K.G. Tyagi (PW45) and SI N.K. Sharma (PW13) in their cross examination on behalf of appellant that blood stained chopper Ex.PW44/D as well as blood stained clothes Ex.PW44/E were planted on the accused Joginder. The factum of visit of police team at the aforesaid house also corroborates with the statement of Jugnoo (D2W4).

B. Recovery of Maruti Van (HR-29-J-2904) and blood stained chopper at the instance of accused Rajinder.

62. The accused Rajinder in pursuance to his disclosure statement Ex.PW43/C led the police team consisting of SI Mukesh (PW34), HC Omender (PW43), HC Sushil and Ct. Rajnish to Shivangi Kunj, Madipur in a Maruti Car and took them to a place inside the flats and pointed out to one Maruti Van (HR-29-J-2904). The said Maruti van was having blood stains outside its body and was locked. This information was given to Insp. K. G. Tyagi (PW45) and he alongwith crime team and other police staff reached Shivangi Kunj at about 3:30 PM on 08.03.2004. The key of the said Maruti Van was already recovered during the personal search of the appellant Rajinder. Thereafter, SI Mukesh (PW34) opened the Maruti Van through the key in presence of accused Rajinder and I.O. Insp. K.G. Tyagi

(PW45). On opening the van a blood stained chopper was recovered from beneath the mat below the driver seat. Crime team fingerprint expert SI N.K. Sharma (PW13) on inspection lifted 2 chance prints from the chopper recovered from the van and marked them as Mark Q1 and Q1A, seven chance prints recovered from the Maruti Van were given Mark Q3 to Q9. Insp. K.G. Tyagi also lifted blood from various places inside the Maruti Van and three separate parcels were prepared by keeping the blood stained cotton in separate boxes and seized vide seizure memo Ex.PW34/A. Insp. K.G. Tyagi (PW45) also cut a piece of the mat which was blood stained and seized vide seizure memo Ex.PW34/B. Sketch of the chopper was got prepared vide memo Ex.PW34/C. The chopper was then seized vide seizure memo Ex.PW34/D and blood stained Maruti Van was seized vide memo Ex.PW34/E. The aforesaid Maruti Van was bearing a fictitious number plate by the accused persons whereas the said Maruti van is a stolen vehicle and the correct number is DL-4CF-5015. The complaint is proved by SI Gian Chand (PW5) Ex.PW5/A FIR Number is 119/2004 Ex.PW3/B dated 14.02.2004 of PS Shalimar Bagh. The owner of the said Maruti Van i.e. Raghuvir Singh has made complaint that the aforesaid Maruti Van was stolen from in front of his house at about 11:30 PM on 08.02.2004, prior to the present incident.

63. The contention of the learned defence counsel Mr. M.N. Dudeja simplicitor that recoveries are doubtful merely on the ground that public witnesses have not joined the investigation is not sufficient to brush aside the statement of prosecution witnesses i.e. SI N.K. Sharma (PW13), SI Mukesh (PW34), HC Omender (PW43) and Insp. K.G. Tyagi(PW45). The accused at the time of the cross examination has not put any suggestion to the aforesaid Prosecution witnesses that the blood stained chopper was planted on him and was placed in the blood stained Maruti Van from where fingerprints were lifted. The recovery of Maruti van got effected on the basis of the personal knowledge of the accused Rajinder who failed to explain how he came in the possession of the blood stained Maruti Van No. HR-29J-2904 and its key. The recovery of blood stained Maruti Van at the pointing out of the accused Rajinder from Shivangi Kunj inside of the flats attribute the personal knowledge of the accused and no one else, who are connected with the crime so committed had the knowledge of the same. Therefore, The discovery of blood stained Maruti Van at the instance of the accused Rajinder is admissible under Section 27, Indian Evidence Act, 1872 and further recovery of blood stained chopper Ex.PW34/D and blood stained Mat from the car Ex.PW34/B at the instance of the accused goes against the accused and indicates involvement in the crime committed. In this context Apex Court judgment in Raju Manjhi Vs. State of Bihar 2018(7) JT 429 is relevant and para 13 is reproduced below:

"In the case on hand, before looking at the confessional statement made by the accused-appellant in the light of Section 27 of the Evidence Act, may be taken into fold for limited purposes. From the aforesaid statement of the appellant, it is clear that he had explained the way in which the accused committed the crime and shared the spoils. He disclosed the fact that Munna Manjhi was the Chief/

Head of the team of assailants and the crime was executed as per the plan made by him. It is also came into light by his confession that the accused broke the doors of the house of informant with the aid of heavy stones and assaulted the inmates with pieces of wood (sticks). He categorically stated that he and Rampati Manjhi were guarding at the outside while other accused were committing the theft. The recoveries of used polythene pouches of wine, money, clothes, chains and bangle were all made at the disclosure by the accused which corroborates his confessional statement and proves his guilt. Therefore, the confessional statement of the appellant stands and satisfies the test of Section 27 of the Evidence Act."

C. Recovery of Purse, Silver Ring and Driving License belonging to deceased Vijay Kumar Swami at the instance of accused Vinod Jatav.

64. Accused Vinod Jatav in pursuance to his disclosure statement Ex.PW38/A led the police team headed by SI R. Srinivasan alongwith Ct. Bramphal and Ct. Anil to his house, House No. B-229, Mangolpuri and got recovered a purse from a shaft built in his house. The crime team inspected the spot and lifted the chance print from purse and took photograph of same in presence of I.O. K.G. Tyagi (PW45). Thereafter, Inspector K.G. Tyagi checked the purse which was found containing one Timex wrist watch, silver ring, one driving licence and some documents and same were seized vide Ex.PW38/B and the same were sealed with the seal of RSS. The pointing out memo was prepared by I.O. which is Ex.PW38/C.

65. The contention of learned defence counsel that the articles seized were planted on accused does not seems to be correct as no suggestion was given by accused to PW40 regarding same and it is an afterthought version. Neither accused nor any other persons claimed that the recovered items belong to him or any other persons stated to be present in the aforesaid house.

Recovery of 3 pair of shoes on 12.03.2004 at the instance of accused Rajinder, Joginder and Vinod Jatav.

66. On 12.03.2004 the accused persons namely Rajinder, Joginder and Vinod were on PC remand, they were taken out from the lockup for further investigation by Inspector K.G. Tyagi. All the accused persons were separately interrogated by him regarding the shoes which they were wearing at the time of commission of offence and in pursuance to the further disclosure statement of Rajinder @ Jinder and Joginder @ Danny i.e. Ex.PW44/K1and Ex.PW44/K2, the accused Rajinder and Joginder led the police team and got recovered two pairs of shoes worn by them at the time of commission of crime which they hide out on the shelf of bathroom situated adjacent to the house of Jugnoo, House No. F-394, JJ Colony, Madipur, Delhi and further disclosed that Maruti van bearing No. HR-29-J-2904 which was used in the commission of offence was also stolen one. The said two pair of shoes were separately kept in a polythene and sealed in two different pullandas with the seal of KGT and seized vide memo Ex.PW35/C.

On further interrogation of Vinod Jatav, he disclosed hiding out of the shoes and in pursuance of further disclosure statement Vinod Jatav Ex.PW44/K, he too led the police party and got recovered a polythene from the deewan (bed box) lying in his house at H. No. B-229, Mangolpuri, Delhi. The polythene was opened and it was containing a pair of shoes of dark gray colour with mud on it which he was wearing at the time of commission of crime and the same was kept in same polythene and sealed with the seal of KGT and seized vide memo Ex.PW35/P.

67. The accused has not put any suggestion to SI Jai Singh (PW44) in whose presence the said shoes got recovered and nor to PW45 that said shoes were planted one, the argument at this stage is an afterthought version.

68. The law on joint disclosure is settled in relevant paragraph of the Supreme Court In State (NCT of Delhi) v. Navjot Sandhu (2005) 11 SCC 600 which is reproduced here under:-

"145. Before parting with the discussion on the subject of confessions under Section 27, we may briefly refer to the legal position as regards joint disclosures. This point assumes relevance in the context of such disclosures made by the first two accused viz. Afzal and Shaukat. The admissibility of information said to have been furnished by both of them leading to the discovery of the hideouts of the deceased terrorists and the recovery of a laptop computer, a mobile phone and cash of Rs. 10 lacs from the truck in which they were found at Srinagar is in issue. Learned senior counsel Mr. Shanti Bhushan and Mr. Sushil Kumar appearing for the accused contend, as was contended before the High Court, that the disclosure and pointing out attributed to both cannot fall within the ken of Section 27, whereas it is the contention of Mr. Gopal Subramaniam that there is no taboo against the admission of such information as incriminating evidence against both the informants/accused. Some of the High Courts have taken the view that the wording "a person" excludes the applicability of the Section to more than one person. But, that is too narrow a view to be taken. Joint disclosures to be more accurate, simultaneous disclosures, per se, are not inadmissible under Section 27. "A person accused" need not necessarily be a single person, but it could be plurality of accused. It seems to us that the real reason for not acting upon the joint disclosures by taking resort to Section 27 is the inherent difficulty in placing reliance on such information supposed to have emerged from the mouths of two or more accused at a time. In fact, joint or simultaneous disclosure is a myth, because two or more accused persons would not have uttered informatory words in a chorus. At best, one person would have made the statement orally and the other person would have stated so substantially in similar terms a few seconds or minutes later, or the second person would have given unequivocal nod to what has been said by the first person. Or, two persons in custody may be interrogated separately and simultaneously and both of them may furnish similar information leading to the discovery of fact. Or, in rare cases, both the accused may reduce the information into writing and hand over the written notes to the police officer at the same

time. We do not think that such disclosures by two or more persons in police custody go out of the purview of Section 27 altogether. If information is given one after the other without any break almost simultaneously, and if such information is followed up by pointing out the material thing by both of them, we find no good reason to eschew such evidence from the regime of Section 27."
(emphasis supplied)

69. The contention of the learned defence counsel that the I.O. Insp. K. G. Tyagi (PW45) did not join the public witnesses at the time of recovery in the instant case does not weaken the prosecution case as Insp. K.G. Tyagi has clarified during his cross examination that he did not get support from the general public. Moreover, the statement of the police officials cannot be discarded merely on the ground that they belong to the police force particularly when their statements are consistent and trustworthy. In this regard paragraph 10 in Judgment of Supreme Court in Baldev Singh Vs. State of Haryana (2015) 17 SCC 554 is relevant:

"10. There is no legal proposition that evidence of police officials unless supported by independent evidence is unworthy of acceptance. Evidence of police witnesses cannot be discarded merely on the ground that they belong to police force and interested in the investigation and their desire to see the success of the case. Prudence however requires that the evidence of police officials who are interested in the outcome of the result of the case needs to be carefully scrutinized and independently appreciated. Mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness."

DNA of deceased persons Vijay Kumar Swami and SI Satish Dalal

70. The prosecution in order to prove DNA of deceased Satish Dalal and Vijay Kumar Swami has examined ocular evidence of Inspector Azad Singh (PW41) who has stated that on 06.03.2004 he got recovered 19 exhibits and the same were deposited with MHC(M) PS, Mangolpuri, Delhi on the same day. The prosecution has also relied upon DD No.25 Ex.PW45/X to suggest that SI Satish Dalal alongwith other person visited the place in Mangolpuri and entered inside C-Block, Mangolpuri, Delhi. Ajay Singh PW7 has specifically stated that the police person i.e. Satish Dalal alongwith public person went inside C-Block, Mangolpuri area to authenticate the correctness of the secret information recovered as stated in DD No.25 Ex.PW45/X. ASI Hari Singh (PW31) in his statement specifically stated that he on 06.03.2004 received 19 pulandas from Insp. Azad Singh (PW41) and made entry No. 5407 in register no.19. SI R. Srinivasan (PW38) has stated that he took 16 articles from MHC(M) to AIIMS hospital and handed over the same to DNA finger printing Deptt. of Forensic Medicine AIIMS, New Delhi and so long as it remained in his possession it was not tampered with.

71. ASI Hari Singh (PW31) and SI R. Srinivasan (PW38) both have stated that so long as case property remained with them, the case property was not tampered with. The prosecution has further examined Dr. Anupama Raina (PW36) who has

stated that she has received 16 pulandas from MHC(M), PS Mangolpuri containing 5 pulandas with seal of KGT, 7 pulandas with seal of AS, 4 pulandas with seal of SGMH and further took the blood samples of Mrs. Savitri Devi and Mr. Bansi Dhar Swami parents of Vijay Kumar Swami and Varun Dalal and Ashish Dalal sons of SI Satish Dalal. She then opened the sealed parcels and resealed the same and affixed the seal of Deptt. of Forensic Medicine AIIMS and prepared 2 pulandas which was sent to APFSL, Hyderabad. The APFSL Report Ex.PW29/P2 shows that the pulandas so sent from AIIMS were received and after analysis the report was sent to AIIMS to Dr. Anupama Raina (PW36), she on analysing the same prepared DNA report Ex.PW36/B which is reproduced hereunder: -

"A- DNA isolated from the bone and teeth (Exhibit 17Aa) of the deceased have biological relation with the couple Mrs. Savitri Devi (Exhibit A/02) and Mr. Bansi Dhar Swami (Exhibit B/02).

B- DNA isolated from the cloth (Exhibit D/02) has biological relation with Mr. Varun Dalal (Exhibit D/02 and Mr. Ahish Dalal (Exhibit E/02)"

72. The contention raised by the learned defence counsel that the case property was tampered with in connivance with the police in order to facilitate false evidence by the prosecution does not seems to be correct on following grounds:

i. No suggestion on this point was put either to ASI Hari Singh (PW31) or to SI R. Srinivasan (PW38) who brought the case property and deposited it with AIIMS.

ii. The accused persons has not denied that Mrs. Savitri Devi and Mr. Bansi Dhar Swami are not parents of Vijay Kumar Swami and that Varun Dalal and Ashish Dalal are not the sons of SI Satish Dalal for the purposes of DNA analysis.

iii. It is admitted fact that deceased persons are not alive. Moreover, the purpose of sending the aforesaid articles to APFSL, Hyderabad was to analyze factually the articles recovered were of any connection to the incident and not to implicate the false accusations. The accused in their statements under section 313 does not say that the report obtained in DNA report was on the basis of tampering of evidence.

iv. The contention of learned defence counsel that prosecution has not examined the persons who took the property from AIIMS to APFSL, Hyderabad loses its significance on the aforesaid reasons.

FSL Report

73. The prosecution has examined ASI Hari Singh (PW31) who has proved the malkhana register Ex.PW31/C and Ct. Rajinder (PW28) both has specifically stated that Ct. Rajinder received 11 seal items from MHC(M) on 24/5/2004 and deposited the same with FSL, Rohini against the Receipt Ex. PW28/B and vide RC. No. 61/21/04.

74. The prosecution has examined (PW32) Sh. Naresh Kumar Senior Scientific Assistant, FSL, Rohini who has specificaly stated that he received 11 sealed

parcel with intact seal on 24.05.2004 at FSL, Rohini, New Delhi and that he has conducted biological and serological examinations of the exhibits so received and his report is Ex.PW29/P5.

75. Sh. Naresh Kumar (PW32) was not cross examined by the accused persons except by accused Rajinder. The statement given by PW32 thus remains unrebutted qua remaining accused persons except Rajinder. There is no cross examination of this witness pertaining to tampering of any case property and no specific inconsistency appears in cross examination by accused Rajinder.

76. The result of the FSL report Ex.PW29/P5 by Sh. Naresh Kumar is reproduced hereunder :

Exhibits

Species of origin

ABO Group/Remarks

'1' Bone

Human

'B' Group

'2' Bone

Human

No Reaction

'3' A pair of shoes

Human

No Reaction

'4A' A pair of shoes

Human

No Reaction

'4B' A pair of shoes

Human

No Reaction

'5' Earthy Material

Human

'B' Group

'6' Earthy Material

Human

'B' Group

'7' Earthy Material

No Reaction

'8' Earth Control

No Reaction

'9' Blood stained Earth

Human

No Reaction

'10' Earth control

No Reaction

As per the above report, the blood stained pair of shoes i.e. Ex.3, Ex.4A and Ex.4B of the accused persons which were recovered at their respective instances were found to have Human Blood on them.

77. Another result of the FSL report Ex.PW30/P5 by Sh. Naresh Kumar is reproduced hereunder:

Exhibits

Species of origin

ABO Group/Remarks

'1' Mat piece

Human

'B' Group

'2' Cotton wool swab

Human

'B' Group

'5' Shirt

Human

'B' Group

'6' Pants

Human

'B' Group

'7' Shirt

Human

'B' Group

'8' Pants

Human

'B' Group

'9' Weapon of offence

Human

'B' Group

'10'Weapon of offence

Human

'B' Group

'12' Nara

Human

No Reaction

'14' Currency Notes

Human

No Reaction

'15' Piece of Brick

Human

'B' Group

'16' Piece of Brick

Human

'B' Group

'17' Piece of Banian

Human

'B' Group

'18' Underwear

Human

No Reaction

'19' Piece of Cloth

Human

'B' Group

'20' Shoe

Human

'B' Group

'21' Nara

Human

'B' Group

The blood stained chopper Ex.9 and Ex.10 too were having blood which was detected to be of the same blood group as that of the deceased persons.

Therefore, 2 choppers clearly connects the report of FSL, Rohini with the blood group of the deceased.

78. The prosecution has examined Parshuram Singh (PW33), senior Scientific officer who has examined 3 pair of shoes having soil adhering to them and soil describe as blood stained earth control and earth control collected from the spot from where the headless dead bodies of the deceased persons were found. The said Report Ex.PW29/P6 is reproduced as under:-

Exhibit-3 : A pair of shoes having soil adhering to them.

Exhibit-4A : One pair of shoes having soil adhering to them.

Exhibit-4B : One pair of shoes having soil adhering to them. Exhibit-5 :Soil with leafy material described as "blood Stained Earth control".

Exhibit-6 :Soil with leafy material described as "blood Stained Earth control".

Exhibit-7 :Soil described as "Earth control".

Exhibit-8 :Soil described as "Earth control".

Exhibit-9 :Soil described as "Blood Stained Earth control".

Exhibit-10 :Soil with light pink colour material described as "Earth Control".

RESULTS OF EXAMINATION

Examined Samples from Exhibit-5, Exhibit-6, Exhibit-7, Exhibit-8, Exhibit-9,

Exhibit-10 and soil samples taken from Exhibit-3, Exhibit-4A and Exhibit-4B physically and instrumentally, and the following observations were made.

1. Soil in Exhibit-5 and soil Exhibit-7 were found to be possessing similar physical characteristics.
2. Soil in Exhibit-6 and soil Exhibit-8 were found to be possessing similar physical characteristics.
3. Soil Exhibit-9 and soil sample from Exhibit-10 were found to be possessing similar physical characteristics.
4. The soil samples taken from Exhibit-3, Exhibit-4A, Exhibit-4B and soil sample from Exhibit-10 were found to be possessing similar physical characteristics.

79. PW33 has also examined 2 pieces of white strings, described as thread (nada), which were found to be of same thickness, report Ex.PW30/P1 of the same is reproduced hereunder:-

Exhibit-12 :Pieces of white colour string (nara) described as "burnt thread".

Exhibit-21 :Two pieces of white colour string (nara) described as "thread (nara)".

Exhibit-22 :Pieces of white colour string (nara) described as "thread (nara)".

RESULTS OF EXAMINATION

Examined Exhibit-12, Exhibit-21 and Exhibit-22 physically and instrumentally. They were found to be similar in respect of colour, texture, design (knitting pattern), thickness of thread, twist of thread, UV fluorescence and microscopic appearance.

80. The contention of learned defence counsel that IO Insp. K.G. Tyagi has delayed in sending the sealed pulandas to CFSL soon after the incident and irregularities has been committed. This contention of learned defence counsel is a mere contention and it does not prejudice the right of cross examination by the accused persons in this case.

81. The prosecution has examined ASI Hari Singh (PW31), MHC(M) who has proved the malkhana register (store room register). Prosecution has further examined Inspector K.G. Tyagi (PW45) in whose presence SI N.K. Sharma (PW13) took chance print from blood stained chopper Ex.PX recovered from F-394, house of Jugnoo on 08.03.2004 which were marked as Q2 and Q2A, 2 blood chance print from chopper which was found inside the maruti van HR 29 J2904 was parked at Shivangi Kunj near shruti clinic Madipur on 08.03.2004 and the same were marked as Q1 and Q1A , 7 chance print were taken from the aforesaid maruti van and the same were marked as Q3 to Q9, 1 chance print from purse of deceased Vijay Kumar Swami from House No. B-229, house of Vinod Jatav and 1 chance print from purse of deceased Satish Dalal from house No. C-570, house of Rajinder marked as Q11 and proves his report Ex.PW13/B and detail of the chance print Ex.PW13/C.

82. The report of finger print expert Ex.PW13/B loses its significance as the prosecution fails to prove the specimen finger print of the accused persons. It is not the case of the prosecution that the palm print and finger print of the accused persons were taken on 28.03.2004. IO Inspector K.G. Tyagi (PW45) nowhere in his examination in chief has stated that the palm prints and finger print of the accused persons were taken on 28.03.2004 or on any other date in his presence or before the Court.

83. The list of the witnesses and the chargesheet does not disclose who has taken the palm print and finger print of the accused persons, there is no affirmative evidence on the record to show that the palm print and finger print have been taken therefore it is unsafe to conclude and to give importance to the finger print expert report.

TIP of the articles of deceased persons

84. The prosecution has examined Pradeep Sharma (PW4) brother in law of deceased Vijay Kumar Swami who has identified headless dead body of deceased Vijay Kumar Swami found lying near real polymer factory, Bahadurgarh, Haryana, blood stained strings lying near the headless dead body outside Real polymer factory, one skull Ex.PW4/E found lying behind Deep Properties, Tikri Kalan which was identified to be of Vijay Kumar Swami by PW4 and 2 blood stained currency notes were also taken into possession vide Ex.PW4/J on 06.03.2004 and found missing purse, wrist watch and silver ring. The dead body of deceased Vijay Kumar Swami was received by him vide Ex.PW4/L. PW4 identified the belonging of deceased Vijay Kumar Swami i.e. watch Ex.P17, purse Ex.P18 and one silver ring Ex.PW19 on 26.04.2004 at Tis Hazari Court i.e. Court of R.K. Singh. Harish Dalal (PW5) too identified on 06.03.2004 the headless dead body of deceased Satish Dalal Ex.PW5/1 from Krishi Vibhag, Bahadurgarh, Haryana and one head of his brother Satish Dalal and was seized vide Ex.PW5/2 and Identity Card of deceased Satish Dalal Ex.PW5/3 and half burnt blood stained piece of string Ex.PW5/9 and blood stained vest Ex.P23, underwear Ex.P24, piece of cloth Ex.P25 and black leather shoe Ex.P26 vide Ex.PW5/14 and his dead body was handed over to him vide Ex.PW41/N. PW5 identified the belonging of deceased Satish Dalal i.e. purse, a wrist watch and ring 26.04.2004 at Tis Hazari Court in the Court of Sh. R.K. Singh.

Motive

85. The learned defence counsels Mr. Hemant Gulati and Mr. M.N. Dudeja argued that deceased and accused persons were not known to each other nor have any kind of prior association among them.

86. Learned defence counsels further argued that the prosecution failed to bring on record any fact which could show that deceased and accused persons were connected with the activities or any kind of past transaction to attribute the motive to murder of a police officer SI Satish Dalal and a civilian Vijay Kumar Swami. Since, there is no reason appearing on four corners, therefore, the whole

version of the prosecution is false and the prosecution failed to prove the motive in the present case.

87. We, after going through a thoughtful consideration of the emerging facts coming on record, are unable to accept the contention raised by the appellants.

88. What is emerging on the record is the fact that on 05.03.2004 deceased SI Satish Dalal alongwith Inspector Ajay Sharma, HC Yash Pal and one secret informer visited C-Block, Mangolpuri to verify the correctness of secret information and sought the help of deceased Vijay Kumar Swami a Civilian in this regard in an adversarial circumstance.

89. The facts on record shows that both persons who entered inside C-Block, Mangolpuri for verification of correctness of information leaving behind Inspector Ajay Sharma and other team member did not come out which resulted into registration of present FIR 139/2004.

90. The emerging facts on record further indicates that the deceased persons were taken into the house of accused Rajinder i.e. C-570, Mangolpuri (Pointing out memo Ex.PW44/F and Ex.PW43/D) and the accused persons came to know of the fact that SI Satish Dalal and Vijay Kumar Swami belong to the police force, it is obvious reason coming on the record for their elimination to get rid of future course of action and the atrocities. This fact is evident from the recovery of the revolver S.No. 1108 alongwith 5 live cartridges from the accused Rajinder. In such situation it is obvious that offender cannot be allowed to run away. The Apex Court judgment in Mulakh Raj and Ors. Vs. Satish Kumar and Ors. 1992 AIR 1175 para 17 is relevant:

"17. ... Motive always locks up in the mind of the accused and some time it is difficult to unlock. People do not act wholly without motive. The failure to discover the motive of an offence does not signify its non-existence. The failure to prove motive is not fatal as a matter of law. Proof of motive is never an indispensable for conviction. When facts are clear it is immaterial that no motive has been proved. Therefore, absence of proof of motive does not break the link in the chain of circumstances connecting the accused with the crime, nor militates against the prosecution case. ..."

Conclusion

91. As discussed above, the case of prosecution is based on circumstantial evidence, the facts on record brings out six set of recoveries which got effected after registration of FIR Ex.PW16/A.

92. The first set of recoveries are dated 06.03.2004 which were made prior to the arrest of accused persons and the then I.O. Insp. Azad Singh (PW41) did not even knew of involvement of accused persons in the crime. Therefore the factum of recovery itself becomes independent fact to connect the accused persons.

93. The second set of recovery is a revolver S. No. 1108 having 5 live cartridges

Ex.PW43/B in a formal search of the accused Rajinder at Naga Baba Mandir, Mangolpuri just prior to his arrest. This recovery is an incriminating evidence against him as he failed to explain the change in the possession of revolver from SI Satish Dalal to himself.

94. The third set of recoveries are those which got effected in pursuance to the disclosure statements of the accused persons on 08.03.2004. The accused Rajinder in pursuance to his disclosure statement Ex.PW43/C got effected recovery of the stolen and blood stained Maruti Van which was opened through the key recovered from accused Rajinder in his personal search, the original owner of the Maruti Van is one Raghuvir Singh (PW2 in FIR 119/2004) and the number plates were changed from DL-4CF-5015 to HR-29J-2904. The Maruti Van contained blood stained mat and blood stained chopper which matched with that of the deceased persons. As both deceased persons were having "B Group" blood and the accused has not claimed that he belongs to "B blood group" too, neither in his cross examination or in his statement under Sec 313 Cr.P.C. The blood found on the chopper and mat is an incriminating evidence against the accused Rajinder.

Accused Joginder in pursuance to his disclosure statement Ex.PW44/C got recovered blood stained clothes Ex.PW44/E and blood stained chopper Ex.PW34/D. The accused during cross examination of prosecution witness did not put any suggestion that he too belongs to "Human blood B Group" or he has stated so in his statement under Section 313 Cr.P.C. This recovery of blood stained clothes and blood stained chopper also connects to the accused Rajinder as both the accused persons were together at the time of incident.

Accused Vinod Jatav in pursuance to his disclosure statement Ex.PW38/A got recovered Purse and other belongings of deceased Vijay Kumar Swami which were identified by SI Pradeep Sharma (PW4) which is an incriminating evidence against him.

95. The fourth set of recoveries are of 3 pairs of shoes which got effected in pursuance of disclosure statement of Accused Rajinder and Joginder on 12.03.2004 which they were wearing at the time of incident from roof of the house of Jugnoo i.e. House F-394, Madipur, JJ Colony. One pair was got recovered at the instance of Vinod Jatav from his house.

96. The accused during cross examination did not put any suggestion that they have not visited to Real Polymer Factory, Krishi Vibhag or Tikri Kalan on the intervening night of 05.03.2004 and 06.03.2004. The CFSL report Ex.PW29/P6 indicates the soil found on the shoes were similar to that of earth control sample taken from the Real Polymer Factory, Krishi Vibhag and Tikri Kalan. Therefore the same goes against the Accused persons. The accused persons have not claimed the blood belongs to them under Section 313 Cr.P.C.

97. The fifth set of evidence is post-mortem report Ex.PW36/A and Ex.PW36/B which shows that both the deceased persons died due to asphyxia consequent to

ligature pressure on throat structures by other party which is ante-mortem in nature. Decapitation was post-mortem in nature. Ligature pressure was sufficient to cause death in ordinary course of nature. The bruising over the portion of wrist are consistent with fastening both hands with rope. The blood stained strings which was sent to CFSL, Rohini was also found to have human blood of B group which connects that the strings was used for strangulation of deceased persons on the intervening night of 05.03.2004 and 06.03.2004.

98. The sixth set of recoveries are those articles which got effected from three different places i.e. Real Polymer Factory, Krishi Vibhagh and Tikri Kalan and the said recovered articles i.e. blood stained brick Ex.PW5/11, Ex.PW5/12 and Ex.PW5/13 and the blood stained string Ex.PW5/9, Ex.PW4/C and Ex.PW4/G which were recovered on 06.03.2004 matches with the blood on the blood stained chopper Ex.PX and blood stained clothes Ex.PX1 to Ex.PX4 of Rajinder and Joginder which were recovered at the instance of the accused Joginder and also matches to the blood stained chopper Ex.PW2/M2 and blood stained mat Ex.P30 recovered from Maruti Van at the instance of the accused Rajinder on 08.03.2004. The aforesaid recoveries are consistent and indicates that Joginder and Rajinder were together on the date of the commission of the crime.

99. The statement of Pradeep Sharma (PW4) and Harish Dalal (PW5) of indentifying the headless bodies and skulls are corroborated with DNA report Ex.PW36/A and Ex.PW36/B therefore, the prosecution is abled to prove that dead bodies were infact of SI Satish Dalal and Vijay Kumar Swami.

100. The aforesaid set of evidences are so consistent with each other as well as the post-mortem report Ex.PW2/A and Ex.PW2/E, CFSL report Ex.PW29/P4, Ex.PW29/P5 and Ex.PW29/P6, APFSL report Ex.PW29/P2 and DNA report Ex.PW36/A and Ex.PW36/B indicates the involvement of the accused Rajinder and Joginder.

101. Reliance placed by the learned defence counsel on Jawahar Lal V. State 2011(4) JCC 2774, Raju @ Ranthu V. State 2012 (2) JCC 547, Shyam Sunder V. State of Delhi 1996 JCC 35, Balwant Singh V. State 1976 Chandigarh Law Reporter 41 and on Kailash Gour and Ors. Vs. State of Assam 2012 (1) AD (SC) 121 is of no avail to them since the factum of the aforesaid judgment are different from the evidence in the present case. Evidence in the present case are clear, cogent and excludes other hypothesis and points only to the guilt of the accused persons.

102. Reliance placed by the defence counsel on Sharad Birdhichand Sarda v. State of Maharashtra AIR 1984 SC 1622, Gang-rape ordered by village kangaroo court in West Bengal, In Re (2014) 2 SCC 751 and on Court on its own Motion v. Govt. Of NCT of Delhi & Ors WP (C) No.3666/2012 is misplaced as the present case is not one based on mere conjectures or suspicion. Further reliance placed on State V. Ramesh 1998 II AD (Delhi) 42, Dudh Nath Pandey V. State of U.P. 1981 AIR (SC) 911, Dr. Mahender Singh V. State CBI 2003 (1) JCC 218, Mod.

Amaan V. State of Rajasthan 1997 SCC (Cri) 777, Rohit Dhingra @ Anr. V. State 2012 (2) JCC 820, Baldev Singh V. State of Punjab AIR 1991 SC 31, Jaffar @ Raju V. State 2013(2)JCC1175, Mohd. Irfan V. DRI Cri. Appeal No. 783 of 2012 and on State of A.P. V. Punati Ramulu and Ors. 1994 SCC (Cri) 734 by the defence counsel is misplaced in presence of sufficient forensic evidence establishing the involvement of the accused persons in the commission of the crime as discussed above. The common intention of the accused Rajinder @ Jinder and Joginder @ Danny has been clearly established in the facts of the present case since both are related to each other and were living together in the same area where the alleged offence was committed and they both were together in the Maruti Van from where the weapon of offence was also recovered. Moreover, the accused failed to explain the incriminating evidence and circumstances found against them. Also, they have failed to avail of the opportunity granted to them to explain the incriminating circumstance, which clearly points to their guilt.

103. The facts emerging on record are interdependent and connecting to both the accused persons i.e. Rajinder and Joginder with the recovery of service revolver S.No. 1108 alongwith five live cartridges from accused Rajinder and the accused Rajinder is further connected with the recovery in pursuance to the disclosure statement of accused Rajinder of blood stained stolen Maruti Van and blood stained chopper and blood stained mat which were found to have human blood of B group which is admissible under Section 27 of Indian Evidence Act, 1872 and goes against the accused. Accused Rajinder is further connected with the recovery at instance of co-accused Joginder who in pursuance to his disclosure statement got recovered blood stained chopper and blood stained clothes which both accused persons were wearing at the time of committing crime, the blood found on the clothes as well as the chopper are found to be of human blood B group. Accused Rajinder is further connected with the 3 blood stained strings found on 06.03.2004 which were used to tie the hands and to strangle the deceased persons as corroborated with the Post Mortem Report Ex.PW2/A and Ex.PW2/E on the intervening night of 05.03.2004 and 06.03.2004 at the house of Rajinder i.e. C-570, Mangolpuri, the blood found on one of the strings is found to be of human blood B group which connects the accused Rajinder and goes against him. The accused Joginder in pursuance to his disclosure statement got recovered blood stained chopper and blood stained clothes which both accused persons were wearing at the time of committing crime, the blood found on the clothes as well as the chopper are found to be of human blood B group which connects to the offence committed and was done so in presence of accused Rajinder. Further, Accused Joginder is connected with the 3 blood stained strings found on 06.03.2004 which were used to tie the hands and to strangle the deceased persons on the intervening night of 05.03.2004 and 06.03.2004 at the house of accused Rajinder i.e. C-570, Mangolpuri, the blood found on one of the strings is found to be of human blood B group which connects the accused Joginder and goes against him. Both the accused person's

presence is established on the recovery of blood stained stolen Maruti van, the blood found on the Maruti van is Human blood B group which connects to both the accused persons that they used the Maruti van after committing crime to transport the dead bodies to the respective places where headless bodies and skulls were found i.e. Real Polymer Factory, Krishi Vibhag and Tikri Kalan. Both accused persons are further connected with the recovery of articles lying at Real Polymer Factory, Krishi Vibhag and Tikri Kalan from where blood stained brick, piece of Banian of deceased, one single shoe and piece of cloth recovered which were found to have human blood B group further strengthens the prosecution version that both the accused persons visited the aforesaid places on the intervening night of 05.03.2004 and 06.03.2004. The aforesaid facts are interdependent and leaves no room except to show involvement of accused persons in the crime committed. Therefore, we find no merit in the appeal of accused Rajinder and Joginder, as such the same are dismissed.

104. However, allegations against accused Vinod Jatav is concerned, the prosecution failed to take Finger Palm print during the investigation to connect the accused to the crime. Insofar as recoveries are concerned, the same does not prove conclusively against him. Therefore, the accused Vinod Jatav is given benefit of doubt for want of sufficient evidence and only the appeal of Appellant Vinod Jatav is allowed and impugned judgment and order on sentence against him is set aside to this extent. He forthwith be set free unless wanted in any other case. He will comply with the requirement under Section 437A Cr.P.C by furnishing a bond to the satisfaction of the trial Court for the amount as may be determined by the Trial Court. Fine amount, if any deposited as per the impugned Judgment and order on sentence, be refunded to the Appellant Vinod Jatav.

105. A copy of this judgment be also placed in CRL.A. 515/2017. The trial Court record be sent back together with a certified copy of this judgment.