
(2012) 10 DEL CK 0141
In the Delhi High Court
Case No : Criminal A. 177 of 2011

Ramesh

APPELLANT

Vs

State of The NCT of Delhi

RESPONDENT

Date of Decision : 09-10-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 100, 161, 165, 166, 166(3)
Penal Code, 1860 (IPC) — Section 302, 34, 364, 43, 482

Citation : (2012) 9 AD 15 : (2013) 1 JCC 50

Hon'ble Judges : Sanjiv Khanna, J; S.P. Garg, J

Bench : Division Bench

Advocate : Deepak Vohra in Criminal A. 177/2011 and Mr. Sumer Kumar Sethi in Criminal A. 182/2011, for the Appellant; Sanjay Lao, APP for the State, for the Respondent

Final Decision : Allowed

Judgement

S.P. Garg, J.—Ramesh (A-1) and Rukmuddin (A-2) impugn their conviction in Sessions Case No. 93/2010 by which they were convicted for committing offences punishable u/s 302/364/482/43 IPC and sentenced to undergo imprisonment for life with fine. The facts of the case as unfolded in the charge-sheet are as under: As per the charge-sheet, Rajender Yadav (since deceased) was registered owner of Eicher Canter No. HR 55C 1206. He had employed A-1 and A-2 as driver and cleaner, respectively on the said Canter. On the night intervening 19/20.08.2005 at around 3:00 A.M. they both went to the house of the deceased Rajender Yadav and insisted him to accompany them for having negotiations with a customer who wanted to hire the Canter for transportation of goods from Bhiwadi (Rajasthan). Though Rajender Yadav was not keeping good health, he went with them. On 23.08.2005, complainant Raj Singh Yadav, deceased's brother, received a telephone call from A-1 to inform that they were going to Kolkata with the goods. A-1 disconnected the phone when PW-3 wanted to speak to his brother. Further case of the prosecution is that on 20.08.2005 the accused visited PW-5 (Kanwar Singh) at village Utera, P.S. Ateli Mandi, Distt.

Mahender Garh, Haryana to borrow Rs. 500/- for getting diesel. PW-5 saw a person lying in an injured condition in the Canter and from him came to know that he was Rajender Yadav of village Rajokari. On 24.08.2005, he conveyed this information to PW-8 (Vinod Kumar) of village Rajokari who in turn informed the complainant-Raj Yadav. PW-3 (Raj Yadav) visited PW-5 (Kanwar Singh) on 25.08.2005 to verify the information.

2. Further case of the prosecution is that on 28.08.2005 at around 8:00 A.M. when complainant Raj Singh Yadav with his cousin PW-2 (Subhash Yadav) was going to the jhuggies of the accused persons, he saw a vehicle on the red light of village Rajokari and found that it was Canter bearing No. HR-55 1286. The informant saw A-1 sitting on the driver's seat and A-2 accompanying him in the vehicle. When he inquired from A-1 as to where they were going with the vehicle and where his brother was, the traffic light turned green and the accused persons fled with the vehicle towards Kapashera. The complainant suspected that the accused had committed murder of his brother. He lodged First Information Report (Ex. PW-3/A) with the police. SI Jarnail Singh made endorsement over it and sent the rukka for registration of the case u/s 364/34 IPC. Vide DD No. 31A recorded at around 11:45 A.M. on 28.08.2005 the police set-out for the investigation of the case. The investigation was transferred to Inspector G.R. Solanki. At the pointing out of the secret informer and the complainant, the police arrested A-1 and A-2 at Kapashera and recorded their disclosure statements. They recovered weapon of offence (Ex. PW-3/A) used for inflicting injuries to the deceased vide seizure memo (Ex. PW-3/D). The accused persons in their disclosure statements disclosed that after committing Rahender Yadav's murder, they had thrown the body in a well near Patan, Kotputli, District Sikar. The accused led the police team to the said well and recovered the body from there. The investigating officer conducted inquest proceedings and sent the body for post-mortem examination in Delhi. Dr. Sarvesh Tandon (PW-6) conducted post-mortem examination of the body.

3. During investigation, the investigating officer collected the call details record of phones No. 9818543388 and 39522029. The exhibits were sent to Forensic Science Laboratory and reports were collected. The IO recorded statements of the witnesses conversant with the facts and after completion of the investigation submitted a charge-sheet against both the accused for committing the offences mentioned previously. The accused were duly charged and brought to trial.

4. The prosecution examined 17 witnesses to prove the guilt of the accused. Their statements were recorded u/s 313 Cr. P.C. and they pleaded false implication. After considering the rival contentions of the parties and appreciating the evidence and documents on record, the Trial Court by the impugned judgment convicted both the accused. Being aggrieved, the appellants have preferred the appeals.

5. Learned counsel for the appellants while assailing the impugned judgment vehemently urged that the Trial Court did not appreciate the evidence in its true

and proper prospective and fell into grave error in relying upon the uncorroborated testimony of PW-3 (Raj Singh Yadav), PW-5 (Kanwar Singh) and PW-8 (Vinod Kumar) without ensuring their credibility and truthfulness. The investigation was highly faulty and conducted in a slipshod manner. The prosecution could not establish the circumstances of motive and recovery of weapon of offence. The circumstances of last seen, recovery of body at the instance of the accused persons are highly suspicious and doubtful and have not been proved beyond reasonable doubt. The statements of the witnesses are full of contradictions, discrepancies and improvements. The counsel pointed out that the inordinate delay in filing the complaint could also indicate that there was some collateral reason for lodging the complaint against the accused.

6. While supporting the judgment in its entirety, the learned APP urged that it did not call for interference. The prosecution has proved all the incriminating circumstances beyond reasonable doubt and it stands established that it was only the accused and none else who were the perpetrators of the crime. The police was not aware about the deceased's murder and only from the disclosure statements of the accused it discovered that they have thrown the body in a well at a remote place after committing the murder. The accused recovered the body from a well and that place was not accessible to the public at large. The said place was within the special knowledge of the accused only. The Canter in question was recovered from the possession of the accused. They did not explain as to why they did not return to the village after transportation of the goods. The deceased was last seen in the company of the accused and the accused did not explain how and under what circumstances, he parted company with them. Non-existence of motive and non-recovery of exact weapon of offence are not fatal to the prosecution case.

7. We have considered the submissions of the parties and have examined the Trial Court record minutely.

(a) Homicidal death

8. Homicidal death of Rajender Yadav is not under challenge. PW-6 (Dr. Sarvesh Tandon) who conducted autopsy on the body on 29.08.2005 was of the opinion that the cause of death was hemorrhagic shock, consequent upon injury to right lung by a sharp edged weapon. Injury No. 1 was opined sufficient to cause death in the ordinary course of nature. Time since death was fixed 9-10 days. The opinion given in the post-mortem examination report (Ex. PW-6/A) remained unchallenged in the cross-examination. Undoubtedly, it is a case of culpable homicide.

9. The crucial aspect to be determined is who was the author of the injuries to the deceased? At the outset, it may be mentioned that the entire prosecution case hinges upon circumstantial evidence only. It is relevant to note that the Trial Court categorically held that the prosecution was unable to establish accused's motive to murder the deceased. It was also of the opinion that prosecution did

not recover the exact weapon of offence used for inflicting injuries to the deceased. It further observed that the investigation was conducted in a slipshod manner. However, in its opinion, interest of justice demanded that deliberate omission on the part of the Investigating Officer should not be taken in favour of the accused as it would be giving premium for the wrongs of the prosecution designedly committed to favour to them. The Trial Court primarily based conviction on the circumstances of last seen; recovery of Canter from the possession of the accused and recovery of the body of the deceased pursuant to their disclosure statements. These circumstances have been assailed by the counsel for the appellants.

(b) Circumstance of last seen

10. PW-3 (Raj Yadav) for the first time on 28.08.2005 in his statement Ex. PW-3/A revealed to the police that Rajender Yadav went with the accused on the night intervening 19-20/8/2005 at about 3:00 A.M. He testified that both the accused knocked the door of their house that night. He opened the door and inquired from the accused as to what was the matter. The accused told him that they had to load goods in the truck from Bhiwadi, Rajasthan and were to take the goods ahead to some place and wanted Rajender to accompany them to negotiate with a sound party who wanted to hire the truck. Rajender expressed inability to accompany them due to ill health. When the accused insisted, he took the keys with papers and went with the accused. This circumstance of "last seen" alleged by the witness appears doubtful. In the cross-examination, he disclosed that Rajender Yadav lived separately but in the same building. In that eventuality, there was no possibility of the accused persons to knock at his house and to have conversation with him for taking Rajender with them. PW-7 Shyamwati, deceased's wife, merely deposed that she had got the Canter released on superdari. She did not reveal that the accused had visited their residence that night at 3:00 A.M. or that her husband Rajender Yadav had gone with them. She is conspicuously silent as to when Rajender Yadav was to return or he had taken any money with him at the time of his departure. She did not depose if any efforts were made by her or her family members to search Rajender Yadav or the accused prior to 28.08.2005. She also did not explain why no missing person report was lodged with the police for about eight days. She did not testify if at any time she was associated in the investigation. Her statement on material facts was not recorded u/s 161 Cr. P.C. It is not clear if she was informed that Rajender Yadav was seen in injured condition by PW-5 (Kanwar Singh). She did not corroborate PW-3 (Raj Yadav)'s testimony on any aspect.

11. It is not certain if Rajender Yadav or the accused persons had mobile with them. It is unbelievable that after getting telephone call on 23.08.2005, PW-3 or his family members would not remain in touch with the victim. The police did not collect any evidence to establish the deceased's movement with the accused after his alleged departure with them at 3:00 A.M. It is alleged that on 20.08.2005 at about 5:30 P.M., the accused went to PW-5 (Kanwar Singh) at

village Utera, P.S. Ateli Mandi, Distt. Mahender Garh, (Haryana) and A-1 demanded Rs. 500/- from him to arrange diesel. It is further alleged that at that time PW-5 (Kanwar Singh) saw a person lying in injured condition in the Canter and when he made inquiries from A-1 about him, he (A-1) told that he was a thief. PW-5 (Kanwar Singh) further deposed that the person in injured condition told him that he was Rajender from village Rajakouri. He thereafter informed on mobile No. 9818543388 to Vinod on phone 9416340147. We are not convinced that the accused visited PW-5 (Kanwar Singh) residing in Haryana just to get Rs. 500/- to arrange diesel for the Canter. There is inconsistent version whether Rs. 500/- were actually given by PW-5 to A-1 or not. It is highly improbable that Rajender Yadav lying in injured condition in the Canter disclosing his name and village would not seek assistance to inform his relatives or police for the injuries caused to him. PW-5's conduct is also unreasonable/unusual as after coming to know that Rajender Yadav was not a thief and was lying injured in the Canter, he did not confront the accused. There is no explanation why he did not inform the police or his friend Vinod that day itself. It is alleged that the telephone call was made by PW-5 (Kanwar Singh) to Vinod on 23/24.08.2005. PW-8 (Vinod Kumar) revealed that he had received the phone call on the intervening night of 24/25.08.2005. It is alleged that PW-8 conveyed this information to PW-3 (Raj Singh Yadav). Instead of reporting the incident to the police, he allegedly travelled a distance of 300 kilometers to visit PW-5 (Kanwar Singh) to verify the information given to PW-8 (Vinod Kumar). Even after getting the confirmation of the facts from PW-5 (Kanwar Singh) on 25.08.2005, he did not set the police machinery into motion. He intimated the police for the first time about disappearance of his brother on 28.08.2005 at about 11.00 A.M. After registration of the case, the police did not record statements of PW-5 and PW-8 immediately. Statement of PW-8 (Vinod Kumar) and PW-5 (Kanwar Singh) were recorded after a delay of two months on 20.10.2005 and 27.10.2005 respectively. The Investigating Officer did not give plausible and acceptable reasons for the inordinate delay in recording their statements u/s 161 Cr. P.C.

12. It is alleged that PW-5 (Kanwar Singh) had seen Rajender Yadav in injured condition in the Canter on the front seat. However, after the seizure of the truck in question, the IO did not seize the front seat to find out if it had blood-stains. All these circumstances cast serious doubt whether the accused had visited PW-5 (Kanwar Singh) at his village and the accused persons were seen in the company of the deceased on 20.08.2005.

13. The oral evidence is inconsistent with medical evidence. The police allegedly recovered the weapon of offence i.e. wooden piece (Ex. PW-3/I) used for inflicting injuries to the victim from the Canter itself on 28.08.2005 vide seizure memo Ex. PW-3/D. However, the prosecution failed to prove if it was the weapon used to cause injuries. No independent public witness was associated at the time of recovery of the weapon. It was sent to Forensic Science Laboratory. However, FSL report (Ex. PW-16/E) did not depict any blood on it. There was no reason for the accused to retain this "wooden piece" of insignificant value for eight days.

The Investigating Officer did not produce the weapon of offence before Dr. Sarvesh Tandon, autopsy conducting doctor to ascertain if injuries found on the deceased were possible with that weapon. Even when Dr. Sarvesh Tandon appeared in the Court, the weapon was not shown to him. As per the post-mortem report, injury No. 1 was incised penetrating wound caused by a sharp edged weapon. It was not revealed that the wooden piece (Ex. PW-3/I) was sharp pointed object. The Investigating Officer did not prepare its sketch. The Trial Court also observed that the wooden piece was not the weapon of offence used in the crime.

14. The prosecution could not prove the time when the deceased was killed. The post-mortem examination report (Ex. PW-6/A) conducted on 29.08.2005 estimated time since death about 9-10 days. PW-3 (Raj Singh Yadav) claimed that the deceased had gone with the accused on the night intervening 19/20.08.2005. PW-5 (Kanwar Singh) claimed that he had seen Rajender Yadav in injured condition on 20.08.2005 at about 05.30 P.M. in the Canter. Body of the deceased was found in the well on 28.08.2005 in village Pattan, District Siker. There is no evidence on record to infer as to when the body was thrown in the well. It is not clear when the death took place or that the accused persons were in the company of the deceased soon before his death. The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were seen last alive and when the deceased was found dead is so small that possibility any person other than the accused being the author becomes impossible.

(c) Recovery of Canter and body of the deceased

15. We are conscious that recovery of dead body affords a strong and reasonable ground for the presumption that the party at whose instance it was recovered is the real offender. However, the prosecution is required to establish the circumstance beyond doubt. It seems that the prosecution has not presented true facts as to how and under what circumstances, the accused persons were arrested and the alleged disclosure and the purported recovery was made. PW-3 (Raj Singh Yadav)'s conduct is highly unnatural and inconsistent. He claims that on 28.08.2005 while going to the jhuggi of Ramesh (A-1) when he reached near red-light of village Rajokari, he saw the truck. Considering that, the said truck belonged to them, he reached close to it. It was having changed registration No. HR-55-1286. It was being driven by A-1 and A-2 was sitting by his side. He inquired whereabouts of his brother Rajender from A-1. In the meantime, A-1 drove the truck when the light turned green and he was dragged to some distance. Thereafter, he went to the police station and lodged the report (Ex. PW-3/A). He was confronted with the statement where there was no mention that he was dragged. The version given by the witness inspires no confidence. The accused who had allegedly killed Rajender Yadav were not expected to travel through village Rajokari with the Canter in question. PW-3 did not reveal the name of his cousin who was with him at that time. First information report was

lodged at about 11.00 A.M. There was no justification for the informant to delay the information after finding the accused in the truck at about 08.00 A.M. PW-2 (Subhash Yadav) gave a different version and merely stated that on 28.08.2005 at around 08.00 A.M. when they were going to trace the accused at their jhuggi at Rangpuri and reached red light of Rajokari, PW-3, from a distance of about 100 meters, pointed out a Canter belonging to Rajender. Raj Singh immediately reached near the Canter and wanted to approach the driver but it left as the light turned green. PW-2 did not accompany the complainant to the police station. He did not attempt to chase the truck. No information was conveyed to police control room. PW-2 did not corroborate the testimony of PW-3 that he had conversation with A-1 or that PW-3 was dragged to a certain distance. It is hard to believe that after having conversation with PW-3 (Raj Singh Yadav), A-1 and his associate A-2 would not flee from Delhi and would make an attempt at Kapashera to sell the truck.

16. Case of the prosecution is that PW-3 (Raj Singh Yadav) went to the police station and his detailed statement (Ex. PW-3/A) was recorded by Insp. Jarnail Singh. It is mystery why the Duty Officer did not record the First Information Report. The rukka was recorded at the police station itself at 11.00 A.M. on 28.08.2005. The Duty Officer did not send the special report to the concerned area Magistrate. Copy of the First Information Report was delivered to the area Magistrate on 29.08.2005. Soon after the registration of the FIR, the police set out to apprehend the culprits. Strange enough, they immediately got secret information and the secret informer informed at 12.30 P.M. to PW-17 (Insp. Jarnail Singh) that two boys were in search of a buyer to sell the truck/Canter. They immediately reached Kapashera and at the instance of the informer and complainant apprehended two persons and their names were ascertained as Ramesh Kumar (A-1) and Rukmuddin (A-2). They were found in possession of the Canter. Both of them were interrogated at the spot itself and their disclosure statements (Ex. PW-3/B and Ex. PW-3/C) were recorded. The "wooden piece" used for inflicting injuries was recovered from the truck vide seizure memo Ex. PW-3/D. The accused conveniently agreed to recover deceased's body thrown by them in a well. The police came into motion with lightening speed and from the place of apprehension, they directly went first to Kotputli and after travelling 18 kilometres reached village Patan. After covering a distance of 15/20 paces on the road, they were able to recover the body of the deceased from the well on 28.08.2005 itself. It was seized vide seizure memo Ex. PW-3/E. The swiftness shown by the police in registering the case, immediately apprehending the accused with the Canter in question and thereafter, recovering the body from a long distance persuades the court to be on its guard and be cautious while evaluating the worth of their testimonies. The court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible as till that time the police was unaware if any such occurrence had taken place. No permission was taken by the Investigating Officer from the competent Authority to travel out of Delhi. No independent public witness was joined at any stage of

the recovery. When the police reached Pattan, no villager was associated to join the investigation. No information was given to the local police station about the arrival of the police from Delhi and no arrival entry was recorded in the said police station. Delhi Police did not seek assistance from the local police to take the body out of the well. None of the prosecution witnesses revealed the name of the villager/public person who was employed to take the body out of the well with rope. The owner of the fields whose name finds mentioned in the scaled site plan (Ex. PW-11/A) was not informed. Delhi police did not examine any person to ascertain as to how and under what circumstances the body reached in the well and if so, when. It is not certain when, what time and by what mode, the body was thrown in the well. It has come on record that when the body was taken out, it was highly decomposed and foul smell was coming out of the well. The body was in rotten condition. Maggots were present over the body. It is hard to believe that the villagers would not come to know about a body lying in the well having bad smell and would not inform the local police. It is unbelievable that the human body would remain lying undetected for number of days in the well under such circumstances.

17. PW-12 (ASI Mohd. Yasin Khan) deposed that after the recovery of the body, he with Const. Satyawan, Const. Jafar and HC Suresh went in the said Canter to PS Pattan and informed the police about the recovery of the dead body. He however, did not reveal the name of the police Officer to whom the information about the recovery of body was given. He did not allege if any Daily Diary entry was recorded in the police station. No such DD entry was proved on record. The Investigating Officer did not cite any such police official from PS Pattan as a witness in the charge-sheet. No request was made to the Trial Court to summon and prove the DD entry recorded at PS Pattan regarding the recovery of the body at the instance of the accused. We notice that in the lower Court record an attested copy of DD No. 962 dated 28.08.2005 PS Pattan is on record. No witness from PS Pattan was summoned with the original record to prove this DD No. 962. Contents of DD No. 962 reveal that the entry was recorded by ASI M.Y. Khan himself at 08.00 P.M. at PS Pattan himself. It was not recorded by any police official of PS Pattan. The accused were not taken to the police station. The body of the deceased was also not shown to the police Officers at PS Pattan. None of the police Officers from PS Pattan was taken to the spot to confirm that there was recovery of the body from the well. No permission from the competent authority was taken to bring the dead body from Rajasthan State to Delhi. DD No. 962, the carbon copy of which is on record cannot be looked into and has no legal sanctity and does not at all establish that the police of PS Pattan was associated at the time of recovery of the body.

18. The prosecution did not comply with the provisions contained in Section 166(3)(4) Cr. P.C. and its non-compliance, raises doubt to the prosecution story regarding recovery of the body in the well at Pattan. Section 166 Cr. P.C. lays down the procedure to be followed by an officer In-charge of the police station where searches are made outside the limits of the police station concerned. Sub-

section (1) requires an officer incharge of a Police Station or a Police Officer not being below the rank of Sub Inspector making an investigation may require an officer incharge of another Police Station, to cause to a search to be made in any place, in any case in which the former officer might cause such search to be made, within the limits of his own station. It is optional for the former officer to do so. Sub-Section (2) enjoins a duty upon such officer, so required to proceed according to provision of Section 165 Cr. P.C. and forward the things found, if any, to the officer at whose request the search was made. From reading of the said sub-sections 166(3) and (4) Cr. P.C., it is clear that Investigating Officer belonging to one Police Station is permitted to search any place falling within the limits of another police station in certain exigencies without making any requirement to the police officer of the police station where the search is to be conducted in certain exigencies. One such exigency can be when there is possibility of delay in requisitioning the services of a police officer of another police station and such delay could defeat the very purpose of the search. In such circumstances, when search is conducted by the Investigating Officer without requisitioning the services of the officer incharge of the another police station within whose jurisdiction the search was conducted, under Sub-Section (4) he is required to forthwith send notice of the search to the officer incharge of the police station within the limits of which such place is situated, and is also required to send along with such notice a copy of the list, if any, prepared u/s 100 Cr. P.C. He is also required to send to the nearest Magistrate empowered to take cognizance of the offence, copies of the records prepared by him under Sub-Section 1 and 3 of Section 166 Cr. P.C. In this case admittedly the Investigating Officer did not give any intimation to the police of PS Patan within whose restriction the search in the well was conducted before conducting the search. The failure to comply with the directions regulating searches casts doubt upon bona fides of the alleged recovery on the basis of the disclosure, though its failure to comply with the directions of Section 166 Cr. P.C. does not vitiate the trial.

19. The Trial court record contains some photographs and it appears that the truck/Canter in question was photographed. However, these photographs have not been proved. It is not clear as to who had taken the photographs and if so, when and where. The Photographer has not been cited and examined as a witness. None of the prosecution witnesses testified in the court that the photographs of the Canter in question were taken. The Investigating Officer has failed to explain this major lapse. The Investigating Officer rushed for the recovery of the body from the place of apprehension of the accused persons. However, the said photographer was not taken along with the raiding team to the place of the recovery of the body. No photographs of the body recovered from the well were taken.

20. After the Canter (Ex. P4) with its documents was seized vide seizure memo (Ex. PW-3/J), it became a case property. The IO did not deposit the case property in the police station. It is strange that the said Canter was used for

travelling to Pattan and the body of the deceased was allegedly transported in that very Canter to Delhi. There is no record that the Canter in question travelled from one State to other state and no toll tax etc. was paid. The IO did not get the body medically examined at Pattan. No request for conducting post-mortem examination of the body was made there. Curiously, the body which was in decomposed state and had found smell was dumped in a gunny bag in the same Canter and deposited in the mortuary at Delhi. The police did not collect any earth/soil control, blood stained earth from the place of recovery for chemical examination to ascertain that the body was recovered from that spot. It is mystery that nothing was recovered in the search of the body of the deceased. Pant and shirt which the deceased was wearing were sent to FSL along with the gunny bag, bed-sheet, lungi and underwear. However, it was not ascertained if blood on these articles was of "human" origin. It also did not indicate the blood group. It is not certain if these articles belonged to the deceased. Failure on the part of the police to recover the blood stained earth and send it for chemical examination in a serious case of murder creates reasonable doubt as to the genuineness of the prosecution case in regard to the recovery of such material.

21. At the time of their arrest, the accused persons were having small amount of money i.e. Rs. 150/- (A-1) and Rs. 110/- (A-2). The police did not gather any information about the movements of the accused persons during the period from 20.08.2005 to 28.08.2005. It is highly improbable that the accused persons having no money with them would travel to a long distance to Pattan to dispose of the body in a well. We notice that A-1 was original resident of village Chatrampura, police station Pattan, District Siker. There was every chance of A-1's identification there and they could not have taken the risk to throw the body in a well there.

22. All these circumstances cast serious doubt that the body was recovered from the place on the date and time mentioned therein at the instance of the accused.

(d) Delay in FIR

23. There was inordinate delay in lodging the First Information Report with the police. No explanation whatsoever was offered by the complainant for not reporting the incident to the police at the earliest. The deceased went with the accused on the night intervening 19-20/8/2005 at about 3:00 A.M. According to PW-3 (Raj Singh Yadav) he had received telephone call from A-1 on 23.08.2005 to inform that they were taking goods to Kolkata from Bhiwadi, Rajasthan. When he asked A-1 to give telephone to his brother Rajender, he disconnected it. PW-3 never attempted to contact his brother any time. He even did not contact A-1 or A-2 to find out as to where they were or when they were to return to Delhi. There is nothing on record to show that after his departure, Rajender Yadav ever remained in touch with any of his family members. When there was no communication of the deceased with any of his family members for so long and whereabouts of the accused were not known despite alleged visits of the complainant to their residence, it must have alerted him (the complainant) to

suspect something foul. Even when he allegedly got information from (PW-8) Vinod Kumar on 24.08.2005 that (PW-5) Kanwar Singh of village Utera, P.S. Ateli Mandi, Distt. Mahender Garh, Haryana had seen his brother Rajender in an injured condition in the truck and he went to (PW-5) Kanwar Lal on 25.08.2005 to verify the information, he did not bother to seek assistance of the police to trace his missing brother. Only on 28.08.2005 at about 11:00 A.M., he went to the police station to lodge the First Information Report. No explanation was given for the inordinate delay in lodging the report with the police. The version narrated by the informant to the police in his statement Ex. PW-3/A becomes suspect. It is well settled that delay in lodging the FIR often results in embellishment which is a creature of after-thought. On account of delay, the report not only gets bereft of the advantage of spontaneity, but danger creeps in of introduction of coloured vision, exaggerated account or concocted story as a result of deliberation and consultation.

(e) Motive

24. The deceased (Rajender Yadav) was the owner of Canter. There is no material to infer when A-1 and A-2 were employed as driver and cleaner on the Canter. It appears that they were in employment for about one month prior to the incident. PW-8 (Vinod Kumar) with whom A-1 was earlier employed as a driver had recommended A-1's employment on the vehicle. It can be inferred that PW-8 (Vinod Kumar) had no grievance about his conduct and behaviour during his employment with him. There are no allegations that during their employment with the deceased, the accused had any animosity on any account with him. The deceased or his family members had no complaint about their conduct prior to the recovery of the body. Apparently, the accused had no ulterior motive to plan deceased's murder all of a sudden. It is not the prosecution's case that when the deceased went with the accused on the night intervening 19-20/8/2005 at about 3:00 A.M., he had carried substantial money. Learned APP argued that the accused's motive was to misappropriate the sale proceeds of the Canter and they were in search of a prospective buyer to dispose it off. We find no substance in the submission. In that eventuality, there was no occasion for the accused to insist Rajender Yadav to accompany them for transportation of goods. Moreover, for eight days no attempt was made to dispose of the Canter in question. The prosecution could not establish precise motive of the accused to murder Rajender Yadav with whom they had no prior ill-will or animosity. Even though existence of motive loses significance when there is reliable ocular testimony, in a case where the ocular testimony appears to be suspect, the existence or absence of motive acquires some significance regarding the probability of the prosecution case.

(f) Conclusion

25. All these circumstances relied upon by the prosecution have element of strong suspicion but have not been proved conclusively beyond reasonable doubt. The statements of the witnesses are full of contradictions, omissions and

improvements. Virtually there is no clinching evidence on record without infirmities on any circumstance i.e. the deceased was ever seen in the company of the accused or that they were aware about the dead body and pursuant to their disclosure statement, it was recovered from a well. Silence of PW-3 (Raj Singh Yadav) (who became active only on 28.08.2005) for not reporting the incident for eight days baffles the mind of the Court.

26. The accused cannot be convicted on the basis of a scanty, unreliable and faulty investigation which has gaps and holes. Not a single circumstance spoken by the witnesses inspires confidence to establish the guilt of the accused. It is relevant to note that during PW-3 (Raj Singh Yadav)'s examination in the court, he was found in possession of a piece of paper containing the particulars of the case which he was to depose. The said piece of paper was taken on record. PW-3 (Raj Singh Yadav) did not explain as to why he was having the piece of paper containing the particulars to be deposed at the time of his examination in the Court. It is well settled that the prosecution is required to prove its case beyond reasonable doubt and cannot take advantage of the weakness of the defence. If two views are possible on the evidence adduced in the case, one pointing to guilt of the accused and the other to his innocence, the view which is favourable to the accused should be accepted. In cases where the court entertains reasonable doubt regarding the guilt of the accused, the benefit of doubt must be given to the accused and not to the prosecution.

27. In the light of the above discussion we are of the view that the evidence adduced by the prosecution was not sufficient to record the guilt for the offences, the accused had been charged with. Various incriminating circumstances relied upon by the court are not sufficient to draw an inference of guilt of the appellants and the chain of circumstances was not cogently and firmly established and these circumstances have no definite tendency to unerringly point towards the guilt of the accused. In the case of circumstantial evidence, the chain of circumstances should be so complete that there is no escape from the conclusion that in all probability the crime was committed by the accused and none else. The appeals are allowed; the appellants are given benefit of doubt and are acquitted. They be released immediately, if are not required in other case. Trial Court record be sent back immediately.