

(2019) 10 DEL CK 0356
In the Delhi High Court
Case No : Criminal Appeal No. 1117 Of 2018

Sandeep	Vs	APPELLANT
State		RESPONDENT

Date of Decision : 31-10-2019

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 201, 302, 342, 376, 376(2)(g)
Code Of Criminal Procedure, 1973 — Section 164

Citation : (2019) 10 DEL CK 0356

Hon'ble Judges : Manmohan, J; Sangita Dhingra Sehgal, J

Bench : Division Bench

Advocate : Ajay Verma, Aashaa Tiwari

Final Decision : Dismissed

Judgement

Manmohan, J

1. Present appeal has been filed by the appellant-convict challenging the judgment dated 21st August, 2018 passed by the Additional Sessions Judge, Special Fast Track Court, Rohini, Delhi in Sessions Case No.115/2013 arising out of FIR No.337/2009 registered with Police Station Narela convicting him under Sections 201, 302, 342 and 120B IPC and sentencing him to undergo imprisonment for life with fine of Rs. 25,000/- for the offence punishable under Section 120B, imprisonment for life with fine of Rs. 50,000/- for the offence punishable under Section 302 read with Section 120B IPC, imprisonment for five years with fine of Rs.25,000/- for the offence punishable under Section 201 read with Section 120B IPC and imprisonment for three months with fine of Rs.1,000/- for the offence punishable under Section 342 read with Section 120B IPC.

CASE OF THE PROSECUTION

2. The case of the prosecution is that the prosecutrix and the deceased, who were classmates, had fallen in love and wanted to marry each other. However,

the same was not acceptable to the parents of the prosecutrix as they were from the same village and belonged to the same gotra.

3. In October 2006, the prosecutrix had eloped with the deceased, against the wishes of her father, Daya Singh. For the next couple of years, the father of the prosecutrix made many attempts to stop them, including getting FIRs registered against the deceased and forcefully getting the prosecutrix married to another man. However, none of it worked and eventually, the prosecutrix and deceased started living together.

4. On 17th October, 2009 the deceased was invited to the house of the appellant-convict by Inderjeet to celebrate Diwali. The prosecutrix and the deceased had reached the house of the appellant-convict at about 7:30 pm on 17th October, 2009 and met the appellant-convict, his wife Sunil and Inderjeet. Thereafter, Daya Singh and Vijay i.e. the father and brother of the prosecutrix came along with Pawan to the house of the appellant-convict and they all, including the appellant-convict, started beating the deceased. During this time, the prosecutrix was confined to one room where the appellant-convict and Inderjeet raped her.

5. Subsequently, she was brought out to the room where all the other people were beating the deceased. She saw that the deceased was in his underwear and his hands were tied with a rope. The accused persons strangulated the deceased with a rope in front of the prosecutrix.

6. Thereafter, the prosecutrix and Sunil (wife of the appellant-convict) were forcefully taken to the Village Nahara near the double canal in the appellant-convict's van and the dead body of the deceased was thrown into the said canal after being tied with stones. After that, the prosecutrix and Sunil were confined in a room at the appellant-convict's house.

7. On 22nd October, 2009 the prosecutrix and Sunil managed to escape and they went to the house of Sunil's acquaintance in Najafgarh. On 26th October, 2009 they went to the police station and the FIR bearing No. 6337/2009 was registered with Police Station Narela against four persons.

8. The Trial Court had initially charged all the four accused persons namely, appellant-convict Sandeep, Daya Singh, Pawan and Inderjeet under Sections 120B, 302, 201, 342 IPC. But upon inquiry, two of the accused persons - Pawan and Inderjeet were found to be juvenile and on 11th February, 2013 they were directed to face trial before the Juvenile Justice Board. During the pendency of the trial, accused Daya Singh died on 20th July, 2015 and accordingly proceedings against him abated on 15th October, 2015. Consequently, the case survived only against the appellant-convict.

FINDING OF THE TRIAL COURT

9. The trial Court had convicted the appellant-convict under Sections 120-B, 302, 201 and 342 IPC. However, on account of no medical evidence, the appellant-convict had been acquitted of the charge under Section 376(2)(g) IPC. The

relevant portion of the Trial Court judgment is reproduced hereinbelow:-

"123. In the present case, after going through the testimony of prosecutrix, the testimonies of other PWs and other material on record, I am of the considered view that prosecution has proved on record beyond reasonable doubt that there was criminal conspiracy between accused Sandeep and accused Daya Singh (already died), Pawan and Inderjeet (sent for trial before JJ Board) to commit the murder of deceased Virender and in furtherance of that criminal conspiracy accused Inderjeet called deceased Virender Singh and the prosecutrix at the house of accused Sandeep on 17.10.09 and thereafter, all the accused along with one Vijay (juvenile) committed the murder of deceased Virender Singh and thereafter, they all in furtherance of the criminal conspiracy caused the disappearance of the dead body of deceased Virender Singh, by throwing the same into Yamuna Canal, Village Nahra, with an intention to screen themselves from the legal punishment and after throwing the dead body of deceased Virender Singh they wrongfully confined the prosecutrix and Smt. Sunil in the room till 22.10.09.

124. Accordingly, accused Sandeep is convicted in respect of offences under Section 120B IPC, 302 read with Section 120B IPC, 201 read with Section 120B IPCV and Section 342 read with Section 120B IPC.

xxx xxx xxx

128. Now, a perusal of report Ex.PW 45/P shows that human blood was deducted on the said dari but from the report, it is not clear that the said human blood was pertaining to accused Sandeep. Moreover, no human semen was deducted on the said dari.

129. However, semens has been detected in post vaginal swab of prosecutrix but there is no material on record to show that the semens was pertaining to accused Sandeep as no DNA test has been conducted in the present case.

130. In these circumstances, I am of the considered view that prosecution has miserably failed to prove its case beyond reasonable doubt so far as, the offence under Section 376(2)(g) IPC is concerned.

ARGUMENTS ON BEHALF OF THE APPELLANT-CONVICT

10. Mr. Ajay Verma, learned counsel for the appellant-convict stated that the prosecution's case was based on the testimony of the prosecutrix (PW-1) which had not been corroborated. He contended that the testimony of the prosecutrix (PW-1) should not be accepted at its face value since the allegation of rape made by her had not been believed by the Trial Court. He submitted that a witness cannot be believed and disbelieved in parts. He stated that the testimony of the prosecutrix (PW-1) was inconsistent and she had not assigned any specific role to the appellant-convict. He emphasized that in view of the aforesaid, conviction of the appellant-convict cannot be based upon the testimony of the prosecutrix (PW-1).

11. He also contended that there was a considerable delay in lodging the FIR and the prosecutrix (PW-1) had not been able to sufficiently explain the same.

12. He further stated that Sunil i.e. the alleged eyewitness, had not been examined before the Trial Court and in the absence of her testimony, the statement of the prosecutrix (PW-1) cannot be relied upon. He pointed out that Sunil had been stated to be the wife of the appellant-convict by the prosecution during trial, but the same was factually wrong as Sunil was not the wife of the appellant-convict.

13. He stated that the dead body had not been identified as it was in a decomposed condition. He stated that DNA test had not been conducted as per the doctor's recommendation, and therefore it was possible that the deceased was still alive. He pointed out that cousin of appellant-convict, Rajbeer (DW-2) had seen the deceased alive on 19th January, 2012.

14. Learned counsel for the appellant-convict contended that as per the prosecution, the deceased was allegedly murdered on 17th October, 2009 and the dead body was recovered on 26th October, 2009. However, he pointed out, as per the Post Mortem Report the time of death had been stated to be one to two weeks prior to the post mortem examination. Therefore, as per him, the medical evidence was vague and cannot be relied upon.

15. Learned counsel for the appellant-convict stated that the prosecution had failed to connect the vehicle, which was allegedly used to carry the dead body, with the appellant-convict as no documents or receipts had been placed on record.

16. Learned counsel for the appellant-convict lastly stated that the prosecutrix had falsely implicated the appellant-convict in the present case due to vengeance and that he had not committed the murder of the deceased.

ARGUMENTS ON BEHALF OF THE APP FOR STATE

17. Per contra, Ms. Aasha Tiwari, learned APP for the State stated that the prosecutrix (PW-1) had been consistent in her statements and consequently, her testimony was trustworthy and reliable. She further stated that her testimony had been corroborated by other witnesses and materials on record.

18. Learned APP for the State pointed out that the prosecutrix (PW-1), while explaining the delay in registration of the FIR, had specifically deposed that she had been so terrified during the period 17th October, 2009 to 25th October, 2009 that she did not have the courage to go to the police but eventually, she along with Sunil went to the police station on 26th October, 2009 and lodged a complaint.

19. She pointed out that the dead body of the deceased had been identified by the prosecutrix-wife (PW-1), uncle (PW-2) and father (PW-6) of the deceased. She relied upon the statement of the investigating officer (PW-41) wherein he

had stated that the dead body had been identified by the prosecutrix (PW-1) after looking at its face.

20. Learned APP for the State stated that according to the testimony of the prosecutrix (PW-1) the dead body of the deceased, with the help of a rope had been thrown in a canal after being tied with stones and the same had been corroborated by the testimony of SI Somvir Singh (PW-29).

21. She pointed out that the FSL Report (Ex PW-45/O) had confirmed that the rope that was found on the dead body and the rope that was recovered from the house of the appellant-convict was similar in respect of colour, texture, thickness, length, number of strands and number of filaments. She also stated that as per the Post Mortem report (Ex PW-36/A), the cause of death was strangulation by ligature.

22. She contended that the incident happened at the house of the appellant-convict and the said fact had been proved by the testimony of the owner of that house - Ram Chander (PW-10), who had deposed that he had given the said house on rent to the appellant-convict. She stated that the investigating officer (PW-45) had deposed that on 27th October, 2009 a raiding party had gone to the aforementioned house and certain exhibits, including the rope that was used to strangle and tie the hands of the deceased, were seized by the raiding party.

23. Learned APP for the State stated that the maruti van bearing registration number HR 38K 9063 that was used to carry the dead body of the deceased to the canal was purchased by Ashok Kumar (PW-9), and subsequently sold to Ajeet Singh (PW-13) on 6th July, 2009. She relied upon the testimony of Ajeet Singh (PW-13) wherein he had stated that he had given the van to the appellant-convict on a monthly rent of Rs 6,000/- and during that time the appellant-convict had been living in Harijan basti, Narela.

24. She stated that non-examination of Sunil would not materially affect the case of the prosecution as she was untraceable during the trial.

25. Learned APP for the State stated that the deceased had been murdered on 17th October, 2009 and his body had been recovered on 26th October, 2009 i.e. after ten days, which is corroborated by the Post Mortem report (Ex PW-36/A) as it mentions that the time between the death of the deceased and post mortem examination was about one to two weeks.

26. She stated that human semen had been detected in the vaginal swab of the prosecutrix but because the medical exhibits of the appellant-convict had putrefied and no DNA test was conducted, the same could not be connected with the appellant convict. She emphasized that the appellant-convict had been acquitted of the offence under Section 376 IPC as the medical evidence was found lacking and not because the testimony of the prosecutrix was disbelieved by the Trial Court.

COURT'S REASONING

THE TESTIMONY OF THE PROSECUTRIX (PW-1), WHO WAS AN EYEWITNESS TO THE INCIDENT, IS CLEAR, COGENT, CONSISTENT, CREDIBLE, TRUSTWORTHY AND CORROBORATED BY OTHER EVIDENCE AND MATERIAL ON RECORD.

27. Having heard learned counsel for the parties and having perused the evidence on record, this Court is of the view that the prosecutrix (PW-1), who was an eyewitness to the incident, had all throughout been consistent in her statements i.e., tehrir (Ex.PW-1/A), Section 164 Cr.P.C. statement (Ex. PW-1/H) as well as deposition in Court. The relevant portion of the testimony of the prosecutrix is reproduced hereinbelow:-

"We were staying there for about 2½ months, when on 17.10.2009, my husband Virender Singh received a call from accused Inderjeet, resident of my village Mahra, present in the court today (correctly identified) and invited him to Harijan Basti, Narela, Singhu Border at the resident of Sandeep to celebrate Dewali with them. Accused Sandeep, present in the court today (correctly identified) is also resident of my village Mahra. Accused Inderjeet is neighbour of my husband Virender Singh.

On that day, at about 7:00-7:30 p.m, I and my husband Virender Singh (deceased) reached at the house of Sandeep, situated near Radha Swami Satsang, Harijan Basti, Singhu Border, Narela. Accused Inderjeet, present in the court today and Mrs. Sunil W/o accused Sandeep were present there. We had our tea and dinner there in the house of Sandeep.

My father Daya Singh and my brother Vijay (juvenile) facing trial before Juvenile Justice Board and accused Pawan and accused Sandeep, present in the court today (correctly identified) came there in the house of Sandeep and they started beating my husband Virender Singh and I was pushed to another room, and Sunil was threatened and forced towards other side. Accused Inderjeet and Sandeep, present in the court today committed rape with me in that room. The other accused persons were beating my husband in the other room. After raping me in that room, I was taken out from that room by accused Sandeep and Inderjeet and I was taken to the room, where the other accused persons beating my husband Virender Singh. I saw that my husband Virender Singh was beaten with fist and kick blows. He was forced to consume sulfa and he was beaten by kick and fist blows. He was naked at that time and only underwear was on his body. I saw that accused Sandeep and Pawan had tied his hands with rope towards his waste and accused Inderjeet, Vijay and Daya Singh were beating him with kick and fist blows. Accused Inderjeet and Vijay also caught hold his feet and accused Daya Singh had strangulated Virender Singh with rope. They continued to do the above said act till 2:00-3:00 a.m. and when they became sure that Virender Singh had died then they had shifted his dead body in a white colour Maruti Van, having number of Haryana 38A 6063. I and Mrs. Sunil were also forcibly made to sit in that Van after threatening us. The accused persons took us to Village Nahra, near the double canal. The dead body of Virender Singh was thrown in the canal, after tying the same with a stone by the accused

persons.

At about 5:00 a.m., the accused persons again brought me and Mrs. Sunil back to the house of Sandeep. I was threatened and forced to take bath and my clothes were also got changed. All the accused persons also took bath and washed their clothes. I and Mrs. Sunil were confined in that room.

On 22.10.2009, on finding an opportunity, I and Mrs. Sunil escaped from that room, and we went to the house of one known of Mrs. Sunil at Najafgarh. I was so terrified and due to that I had not gone anywhere out.

On 26.10.2009, somehow after collecting courage, I and Mrs. Sunil reached at PS Narela at about 9:00-9:30 p.m. and narrated the incident to SHO. We took the police officials of PS Narela to the place, where the accused persons had thrown the dead body of Virender Singh. The dead body of my husband Virender Singh was found lying in the canal. Police also recorded my statement Ex.PW1/A, bearing my signature at point A."

(emphasis supplied)

28. The aforesaid testimony to the extent it stated that the deceased had been strangled using a rope, his hands had been tied behind his back, he was wearing only an underwear at the time of his death, a stone had been tied around his body and his body had been dumped in a canal around village Nahara, Haryana, is corroborated by the Crime Scene Visit Report (Ex.PW-29/F) as well as the testimony of the investigating officer (PW-29). The relevant portion of the testimony of investing officer (PW-29) as well as the Crime Scene Visit Report (Ex.PW-29/F) are reproduced hereinbelow:-

A. Testimony of SI Somvir Singh, Investigating Officer (PW-29):

"The dead body was found tied with a stone with rope. I untied the rope and removed the stone and the dead body was taken out from the water. The stone was converted in a parcel and sealed with the seal of SS and seized vide seizure memo Ex.PW29/B, which bears my signatures at point A and of HC Ashok Kumar at point B.

The hands and the neck of the dead body were tied with nylon rope and the tongue was coming out from the mouth. Only one cloth i.e. underwear was found on the dead body. The body was swollen due to the drowning but was identifiable."

(emphasis supplied)

B. Crime Scene Visit Report (Ex.PW-29/F):

"Forensic Science Laboratory, Haryana,

Madhuban (Karnal)

Crime Scene Visit Report

Xxx xxx xxx

7. Observations:

Spot, the place where the dead body was detected and its surrounding area were thoroughly examined for the presence of any physical clue related to the crime, Following observations were made from the spot:

- i. Water was seen flowing in the canal.
- ii. A Dead body of a male wearing brown colour underwear was seen lying facing downward in the flowing water of the canal.
- iii. No other clothing was observed on the body of the deceased.
- iv. Deceased was bare feet.
- v. Dead body was observed partially decomposed.
- vi. Tongue was observed protruding out between the teeth.
- vii. A heavy stone in a white colour plastic bag was seen tied on the body in the canal.
- viii. A green colour plastic string was observed tied around the neck of the deceased and the hands of the deceased were observed tied on the back side with the same string."

(emphasis supplied)

29. This Court is of the view that the appellant-convict has erroneously contended that the Trial Court had disbelieved the testimony of the prosecutrix (PW-1) with regards to the rape. It is pertinent to mention that even though semen was detected in the vaginal swab of the prosecutrix (PW-1), yet the same could not be attributed to the appellant-convict as its DNA test was not conducted. Consequently, as there was no medical evidence to corroborate the offence of rape, the appellant-convict had been given benefit of doubt and acquitted under Section 376 IPC.

30. Perusal of the testimony of the prosecutrix (PW-1) reveals that she had been confined by the accused persons including the appellant-convict till 22nd October, 2009 and thereafter, she managed to escape. Finally on 26th October, 2009 she mustered the courage to lodge a complaint with the police. The prosecutrix (PW-1) had duly explained that the delay had occurred because she was scared of filing a complaint. In the opinion of this Court, that is a normal human reaction after suffering such an ordeal and that too at the hands of her father, brother and close relatives. Consequently, there has been no inordinate delay in registration of the FIR.

31. The appellant-convict's argument that the testimony of the prosecutrix (PW-1) cannot be relied upon due to non-examination of Sunil is bereft of merit

inasmuch as, the reason for Sunil's non-examination was that she was untraceable during trial as deposed by the HC Narender Singh (PW-32).

32. Further, the piece of rope that was seized vide seizure memo Ex.PW-1/F from the house of the appellant-convict was similar to the rope found on the dead body of the deceased. The FSL report (Ex PW-45/O) confirmed that the two pieces were part of the same rope. The relevant portion of the FSL report (Ex PW-45/O) is reproduced hereinbelow:-

" Forensic Science Laboratory

Govt. of NCT of Delhi

Sector 14, Rohini, Delhi-110085.

Tel:011-27555811, Fax: 011-27555890

Accredited by the National Accreditation Board for Testing and Calibration

REPORT No.FSL-2009/P-4795/PHY-248/09

Dated 07.07.10

1. Please quote the Report (Opinion) No. & Date in future correspondence & Summons.

2. This report is Perse admissible u/s 293 Cr.P.C.

To,

The Inspector,

Special Staff, Outer Distt.,

Delhi.

Your letter No.243/Insp. Special Staff/Outer District Delhi Dated 16.11.09 regarding three sealed parcels in connection with case FIR No.337/09 Dated 26.10.09 U/S 302/376(G)/342/201/34 IPC P.S. Narela duly received in this office on 17.11.09 through Ct. Rajender No.919/O.D.

xxxx xxxx xxxx xxxx

2. DESCRIPTION OF ARTICLES CONTAINED IN

PARCEL(S)/EXHIBIT(S)

xxxx xxxx xxxx xxxx

Exhibit-1: Two pieces of green colour rope tied together.

xxxx xxxx xxxx xxxx

Exhibit-2: Three pieces of green colour rope tied together.

xxxx xxxx xxxx xxxx

Exhibit-3: Four pieces of green colour rope, tied together in pairs.

RESULTS OF EXAMINATION/OPINION:

Rope pieces in Exhibit-1, Exhibit-2 & Exhibit-3 were examined physically, under microscope, under VISPEC & other measuring tools. It was found that they were similar in respect of color, texture, thickness of rope, length of lay, number of strands in each rope, number of filaments, thickness of each filament, microscopic appearance and appearance under UV light.

(emphasis supplied)

33. Consequently, this Court is of the opinion that the testimony of the prosecutrix (PW-1), is clear, cogent, consistent, credible, trustworthy and corroborated by other evidence and material on record.

THE ARGUMENT OF THE APPELLANT-CONVICT THAT THE MEDICAL EVIDENCE WAS VAGUE IS NOT CORRECT.

34. The fact that a rope was used to strangle the deceased as mentioned by the prosecutrix (PW-1) is further proved by the Post Mortem Report (Ex PW-36/A) wherein it had been stated that the cause of death was 'strangulation by ligature'. The relevant portion of the said report is reproduced hereunder:-

" POST MORTEM REPORT

NAME: Virender

FATHER'S NAME: Shamsheer

OR

HUSBAND'S NAME

CASTE: Jat

RESIDENCE: Mahara P.S. Baroda

SEX: M AGE: About 22 yrs as per P.P.

District: Sonapat Date: 28/10/09

xxx xxx xxx

III-THORAX

1. Walls, ribs and cartilages : Healthy

....ligature material in form of green plastic rope in 1 cm in diameter wrapped around the neck in 2 circles having fixed knot (5 ganthe). On left side one loose end measuring 33 cm and other loose end measuring 33 cm and other loose end measuring 4 cm....

2.Pleurae: Decomposed

3.Larynx and trachese: Described

xxx xxx xxx

VI-REMARKS BY MEDICAL OFFICER

In my opinion the cause of death is strangulation by ligature which is ante mortem in nature.....

xxx xxx xxx

Probable time that elapsed....

xxx xxx xxx

(b) between death and PME: About one to two weeks."

(emphasis supplied)

35. In the abovementioned report, it had been stated that the time between the death of the deceased and the post mortem examination was about one- two weeks. It is the prosecution's case that the dead body had been recovered on 26th October, 2009 i.e. about ten days after he was murdered. Consequently, the argument of the appellant-convict that the medical evidence was vague is not correct.

THE DEAD BODY HAD BEEN DULY IDENTIFIED BY THE WIFE (PW-1), UNCLE (PW-2) AND FATHER (PW-6) OF THE DECEASED.

36. The dead body of the deceased had been identified by the prosecutrix (PW-1), Uncle of the deceased (PW-2) and Father of the deceased (PW-6). Even the investigating officer (PW-29) had deposed that the dead body was identifiable. The first person to identify the dead body was the prosecutrix (PW-1) and the same is confirmed by the testimony of the investigating officer (PW-41). The relevant portion of his testimony is reproduced hereinbelow:-

".....The dead body was identified by Smt. Anil and she told that the dead body was of her husband Virender. The dead body was lying in the water of nahar facing face downwards & the dead body was tied with rope and the stone. Crime team over turned the dead body and by seeing the face of dead body Smt. Anil Devi identified the dead body as of her husband Virender...."

(emphasis supplied)

37. The father of the deceased (PW-6) had identified the body of the deceased. He was cross-examined on this aspect but his testimony remained unshaken. The relevant portion of his cross-examination is reproduced hereinbelow:-

".....It is wrong to suggest that the dead body did not belong to my son. It is wrong to suggest that the dead body was in totally decomposed position, I had identified the dead body from the legs and one injury on the right hand (it was chokhi injury). There was no name tattooed on his hands...."

(emphasis supplied)

38. The uncle of the deceased (PW-2) had also identified the dead body, but he was not cross-examined despite being given an opportunity.

39. In view of the aforesaid testimonies, this Court is of the opinion that the dead body had been duly identified by the wife (PW-1), uncle (PW-2) and father (PW-6) of the deceased. The testimony of Rajbeer (DW-2) stating that he had seen the deceased alive does not inspire confidence.

THE PLACE OF INCIDENT WAS THE HOUSE OF THE APPELLANT-CONVICT AS THE OWNER OF THE SAID HOUSE RAM CHANDER (PW-10) HAD DEPOSED THAT THE APPELLANT-CONVICT HAD TAKEN THE HOUSE ON RENT IN 2009.

40. The prosecution has proved beyond doubt that the place of incident was the house of the appellant-convict as the owner of the said house Ram Chander (PW-10) had deposed that the appellant-convict had taken his house on rent in 2009. The relevant portion of his testimony is reproduced hereinbelow:-

".....I have a house at Singhu Border at plot no.31, at Radha Swami Satsang, Harijan Colony, Narlea, Delhi.... I had rented the said house to one Sandeep, who reside with his wife, namely, Sunil, in the said house. I had rented this house to him in the year 2009. He used to drive one Maruti Van. I can identify accused Sandeep, if shown to me. Accused Sandeep present in the Court today (correctly identified)."

(emphasis supplied)

41. Consequently, it is proved by the above-said testimony that the appellant-convict was living with Sunil in the house of Ram Chander (PW-10).

THE MARUTI VAN THAT WAS USED TO DISPOSE OF THE BODY OF THE DECEASED WAS IN POSSESSION OF THE APPELLANT-CONVICT AT THE TIME OF INCIDENT.

42. From the aforesaid house, the maruti van bearing registration number HR 38K 9063 that was used to dispose of the body of the deceased had been recovered at the instance of the appellant-convict vide seizure memo Ex.PW-33/G. The said van was parked behind the house of the appellant-convict and the testimonies of Ashok Kumar (PW-9) and Ajeet Singh (PW-13) have established that he was in possession of the said van at the time of the incident. The relevant portions of the testimonies of Ashok Kumar (PW-9) and Ajeet Singh (PW-13) are reproduced hereinbelow:-

A) Testimony of Mr. Ashok Kumar (PW-10)

"I had purchased the Maruti Van No.HR-38K-9063, from Shashi Sharma of Faridabad. Later on, I sold this vehicle on 6.7.09, to one Shri Ajeet S/o. Shri Ishwar Singh....."

B) Testimony of Mr.Ajeet Singh (PW-13)

"I have been running a milk dairy. I had purchased a Maruti Van No.HR-38K-9063, from one person namely Ashok Kumar on 6.7.2009, in total consideration of Rs.1,08,000/-. In September, 2009, I had given the said Maruti Van to one person namely Sandeep on monthly rent of Rs.5,000/-..... xxx xxx xxx

At the time, when I had given the said Maruti Van to Sandeep on rent, he was residing in Harijan Basti, Narela."

(emphasis supplied)

43. In fact, Ram Chander (PW-10), the landlord of the appellant-convict, had also deposed that the appellant-convict used to drive a maruti van. Consequently, the prosecution has successfully established that the appellant-convict was in possession of the maruti van bearing registration number HR 38K 9063 on the day of the incident and the same was used to dispose of the body of the deceased.

44. In view of the aforesaid facts and findings, we do not find any reason to interfere with the impugned judgment. The order on conviction and sentence is upheld.

45. Accordingly, present appeal, being bereft of merit, is dismissed. Trial court record be sent back. Copy of the judgment be sent to appellant-convict through Jail Superintendent.