

MoinuddIn Vs. State

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Court : Delhi

Decided On : Sep-04-2013

Judge : Indermeet Kaur

Appellant : Moinuddin

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment reserved on:

22. 08.2013 Judgment delivered on:

04. 09.2013 CRL.A. 1122/2010 MOINUDDIN Through: Appellant Mr.Vivek Sood, Ms.Janhavi Mahana and Mr. V.P.Singh, Advocates. versus STATE Through: Respondent Mr. Sunil Sharma, Additional Public Prosecutor for the State with Inspector Binay Singh from Police Station Hazarat Nizamuddin. CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

1 On 11.09.2006 dead body of Ashraf Ali @ Munna was found in Kusro Park, Hazarat Nizamudin, New Delhi within the jurisdiction of Police Station Hazarat Nizamudin. This body had been located by beat constable Pramod (PW-9); time was 10:15 AM. Information was sent to the local police station which was documented vide DD No. 6-A (Ex.PW-22/A). 2 ASI Jeet Singh (PW-19) accompanied with constable Dharampal reached the spot; blood was found lying

on the spot; a male human dead body about 15-20 steps away from the entrance was found lying in the bushes. Cut wounds were noted on the neck as also on the stomach of the deceased. The deceased was wearing a grey coloured T-shirt and an orange colour legging. A pair of spectacles was lying near the dead body; so also a key ring having a brass plate upon which was inscribed with room No. 8, Haji Guest House. 3 Inspector H.C. Verma (PW-22) also reached the spot. In the course of inquiry made from room No. 8 of Haji Guest House, it was revealed that a couple by the name of Ashraf along with his wife Rubina was occupying room No. 8 of the said guest house since 11.09.2006; they were residents of Bombay. PW-19 on reaching the guest house found the room locked from inside. On opening the door Rubina (PW-8) was found in the room. She disclosed that she had been married to the deceased in the year 1992 and she along with her husband had come to Delhi on 11.09.2006 and was since staying in room No. 8 of Haji Guest House. On 16.09.2006 (fateful day of the incident) she along with her husband had come out of the guest house at about 06:00-06:15 AM when she noted that Moinuddin (resident of her village) was standing there. Moinuddin invited her husband to have tea with him; PW-8 did not want her husband to stay back with Moinuddin but she since she had to meet her brother-in-law and her sister who was not well, she left her husband in the company of Moinuddin and went to meet her sister. She returned back at 01:00 PM where the Manager met her and asked her to accompany her to Khusro Park where on reaching there she found the dead body of her husband. A pair of spectacles and a bunch of key were lying near the body. She suspected Moinuddin to be the culprit and informed the police; she also handed over a letter (Ex.PW-8/B) purportedly written in hand by Moinuddin to her which revealed a passionate infatuation and a one sided love by Moinuddin for PW-8 to which she had never responded. Further testimony of PW-8 being that Moinuddin was offended by her this non-responsive attitude and threatened her that he would not allow her to live with anyone else but with him. Ex.PW-8/B was handed over by PW-8 to the police. 4 Post mortem of the deceased was conducted on 19.09.2006 by Dr Bharat Verma (PW-15). The following four injuries were noted on his body:1.Cut throat wound present over the lower half of the neck measuring 8 cm x 5 cm bone deep oval shape measuring 41 cm in circumference.

2. Stab wound present over the upper half of abdomen triangular shape with base upwards measuring 6 cm x 2 cm x viscera deep with a part of intestine exuding out of the wound.

3. Incised wound measuring 3cm x 0.5 cm x skin deep present over the index finger right hand.

4. Incised wound measuring 2 cm x 0.5cm x skin deep present over the middle finger right hand. They were opined to be ante mortem. The following four internal injuries were also noted: 1. Skin, subcutaneous tissue, muscles, thyroid, larynx and tracheal rings damaged as a result of injury no.1.

2. Perforating wound, through and through present over heart 100 ml of fluid blood present in the cavity.

3. Jugular veins and carotid arteries damages as a result of injury no.1.

4. Stab wound measuring 6cm x 2cm x 0.5cm present over the anterior aspect of liver, extension of injury no.2. Cause of Death: The cause of death in this case was shock as a result of haemorrhage due to multiple injuries. All injuries are ante mortem in nature. Injury No. 1 and 2 are sufficient to cause death in ordinary course of nature either combined or individually. 5 The accused was arrested vide arrest memo Ex.PW-21/A on 21.09.2006 from Vandana Building at Connaught Place. He made a disclosure statement (Ex.PW-21/3) and pursuant to the disclosure statement, he got recovered the weapon of offence used in the commission of the crime which was a knife. This recovery was effected from digging the earth under a tree at Khusro Park. The knife was blood stained. It was seized vide memo Ex.PW-11/A. The sketch of the knife (Ex.PW-20/B) was prepared. This knife had been purchased one day prior to the incident i.e. on 15.9.2006 from the shop of Anil Kumar (PW-11). 6 Anwar, Manager of Haji Guest House was examined as PW-3. He had proved the entries in the register maintained by his office as Ex.PW-3/P-2 evidencing the stay of the deceased and his wife in the guest house. The Manager of Gahlot Guest House (where Moinuddin was staying) had been proved in the testimony of Madan Lal (PW-1) and the entries in the register showing his entry in the guest house on 11.09.2006

and having left the guest house on 16.09.2006 had been proved as Ex.PW-1/B. 7 On 11.05.2010, CrI. Appeal No. 479/2010 (first appeal filed by the appellant) had been disposed of. The following order had been passed:1. During course of arguments in the appeal today and while reading the impugned judgment we find that the learned Trial Judge has not crystallized the incriminating circumstances held established by him against the accused.

2. The discussion in the impugned decision is penned in a most unsatisfactory manner and only after putting in some labour, it could be gathered that the learned Trial Judge has returned the verdict of guilt on the finding that the appellant got infatuated with the wife of the deceased, proved through the letter Ex.PW-8/B held proved to be written by the accused to Rubina, the wife of the deceased through the testimony of Rubina and the report of a handwriting expert.

3. The second incriminating circumstance emerging, is through the testimony of Rubina that in the morning of 16.9.2006 she saw her husband and the accused together outside Haji Guest House; the place where she and her husband were staying and this was the deceased last seen alive.

4. The third piece of incriminating evidence which appears to have emerged is through the testimony of PW-1, pertaining to the conduct and the mental condition of the accused when he left Gahlot Guest House, the place where the accused was held proved to be staying till the evening of 16.09.2006.

5. The fourth piece of incriminating evidence which seems to be emerging is through the testimony of PW-11 who has stated that he sold a knife, stated to be the weapon of offence to the accused with link evidence surfacing pertaining to the recovery of the said knife pursuant to the disclosure statement of the accused which was opined to be the possible weapon of offence and on which human blood was detected.

6. One of the strongest incriminating evidence against the accused, in light of proof of motive, would be the evidence of last seen.

7. This in turn would require proof that Rubina and her Crl.A.No.479/2010 husband were indeed staying, as claimed by Rubina at Haji Guest House till 16.9.2006 for only then can Rubina justify her claim of seeing the appellant in the company of her husband in the morning of 16.9.2006 outside Haji Guest House.

8. The impugned judgment and the relatable testimony of the witnesses show that there is an entry evidencing the deceased accompanied by his wife checking in Haji Guest house on 11.9.2006 and making a departure on 12.9.2006. A cryptic finding has been returned by the learned Trial Judge, that as claimed by the witness i.e. Anwar PW-3, the date 12.9.2006 appears to be a mistake. No reasons have been given by the Judge as to why he has concurred that the same is a mistake.

9. We clarify that the Judges reasons to accept the reason of PW-3 that it is a mistake, have not been stated.

10. It is apparent that the register in question which was exhibited and additionally an entry therein which was exhibited needed to be before the learned Trial Judge when arguments were advanced. Similarly, in the teeth of denial by the accused that he checked into Gahlot Guest House, the register in question and the relevant entry had to be before the learned Trial Judge when arguments were advanced.

11. The Trial Court record which has been sent to this Court does not contain either the visitors register exhibited as Ex.P-1 during the testimony of Madan Lal PW-1. We note that when Madan Lal PW-1 was examined on 5.7.2007, as stands recorded in his testimony, the MHC(M) produced the register which was exhibited as Ex.P-1 and an entry at serial No.10 at page No.54 was exhibited as Ex.PW-1/B.

12. We are pained to note that neither the said register nor the relevant extract thereof which was got exhibited as PW-1/B have been taken on judicial record. The photocopies have also not been taken on the judicial record.

13. Similarly, when Anwar PW-3 deposed on 9.7.2007 to prove that the register Ex.PW-3/P-1, produced by the MHC(M) was seized from him by the investigating officer and that an entry marked in red i.e. Ex.PW-3/P-2 at page 161 of the register

was entered by the husband of Rubina i.e. the deceased when he checked in the guest house on 11.9.2006, neither the register nor the relevant extracts thereof have been taken on record. Even photocopies have not been taken on record.

14. This is not the way to record evidence and note the memorandum thereof, much less deal with the same.

15. It is elementary knowledge, and we expect that a judicial officer of the rank of an Additional Session Judge knows, that where an extract from a register is exhibited, the same has to be photocopied and taken on the judicial record with a clear order recorded to said effect that the original has been seen and returned and photocopy taken on record under signatures of the presiding officer of the Court, or the register as a whole is to be taken on record.

16. The reason is obvious, at the final stage of arguments, the said document may require to be looked into.

17. Indeed, in the instant case, there is a serious controversy whether at all Rubina and her husband continued to stay at Haji Guest House beyond 12.9.2006.

18. The controversy had to be resolved with reference to the entry in the register, which we presume would show the room rent and the amount paid at the time of checking out. This would be an important consideration to determine whether Rubina and her husband stayed at the Guest House till 16.9.2006, having checked in on 11.9.2006, or they checked out on 12.9.2006.

19. For the reason neither the two registers nor the relevant extracts thereof have been taken on the judicial file, it is apparent that when the learned Trial Judge heard final arguments, he proceeded to consider the submissions without having before him the relatable evidence. This has vitiated the impugned decision and hence without expressing any further opinion on the controversy on the arguments advanced, we dispose of the appeal setting aside the impugned judgment and order dated 30.1.2010 by which the accused has been convicted for the offence punishable under Section 302 IPC as also the offence punishable under Section 201 IPC. As a consequence the order of conviction dated 3.2.2010 is also set

aside.

20. The matter is remanded back to the learned Trial Judge with a direction that the relevant registers or the exhibited extracts thereof would be first taken on the judicial record after summoning the same from the MHC(M). Thereafter, copies thereof would be supplied to learned counsel for the accused and the State.

21. Arguments would be reheard and dealing with the submissions urged, reasoned decision would be taken.

22. It is hoped and expected that as required by law, after discussing the evidence and the submissions, the learned Trial Judge would clearly indicate what has been found as incriminating evidence against the accused and in what manner the same completes the chain of circumstantial evidence wherefrom the guilt of the accused can be inferred and innocence ruled out if the learned Trial Judge returns a verdict of guilt and vice-versa if the finding is of not guilty, reasons would be stated with clarity.

23. Since the accused is in jail for about 4 years, we direct that the matter would be listed before the learned Additional Sessions Judge concerned on 17.5.2010, for which date, learned counsel for the accused has undertaken to appear and learned counsel for the State undertakes to inform her counterpart in the District Courts.

24. The learned Trial Judge is directed to hear arguments expeditiously and complete hearing of the arguments latest by 28.5.2010 and thereafter pronounce decision as expeditiously as possible and preferably before the ensuing summer vacations.

25. The Registry is directed to ensure that the Trial Court record is returned to the Court concerned latest by 12.5.2010.

26. Dasti under signatures of the Court Master to learned counsel for the parties. 8 Thereafter the trial Judge in terms of the directions of this Court got the entries in the relevant registers proved and passed a fresh judgment convicting the appellant under Section 302 of the IPC and sentenced him to undergo imprisonment for life

and a fine of Rs.5,000/and in default of payment of fine to further undergo RI for one year. This judgment is now the subject matter of appeal now before this Court.

9 On behalf of the appellant, arguments had been addressed at length. Written submissions have also been filed. Learned counsel for the appellant has pointed out that the register of Haji Guest House (Ex.PW-3/P2) has demolished the version of the prosecution in toto; the entries into this register establish that the deceased and his wife Rubina had checked in the guest house at 01:00 PM on 11.09.2006 and checked out on 12.09.2006; in no manner can this written document be ignored; the version of the prosecution that the entry of 12.09.2006 is a mistake cannot be believed. There is no reason whatsoever as to why this entry would have been made by mistake. The entries in this register thus establish that on 12.09.2006 itself the deceased and his wife Rubina had checked out of the guest house and as such the entire version as set out by the prosecution that Rubina was found in the guest house on 16.09.2006 and had identified the dead body of her husband and thereafter producing a love letter purportedly written by the accused is a farce. PW-8 has even otherwise been highly inconsistent in her version. Her version on oath is that when she reached the guest house at 01:00 PM on 16.09.2006, she met the Manager who took her to Kusro Park directly. This version does not match with the version of PW-3 who has stated that on the fateful day when the Police party reached his guest house they had found room No. 8 of the guest house locked and it was only with the duplicate key that the room was opened and Rubina was found inside the room. Submission being that PW-3 has been planted as a witness by the prosecution only to solve the otherwise unsolved mystery. The crime has been foisted upon the accused when as per his defence which is evident from his statement under Section 313 Cr.P.C. the accused has been picked up from his village in UP when he was sitting in a cloth house of Pradeep Mishra where Sanjay Tiwari and Bhola Pradhan were also present; he had not come to Delhi as is the version of the prosecution. In the alternative even if it is presumed that the accused had come to Delhi on 13.09.2006, since Rubina and her deceased husband had already checked out of the guest house on 12.09.2006 his connection with the murder of Ashraf on 16.09.2006 does not arise. The letter Ex.PW-8/B purported to have been written by the accused was written by him under coercion and threat by the police; he was made to write this

letter in the police station; he however did not deny the fact that Ashraf was the husband of Rubina. He also admitted that both Rubina and the accused were from the same village i.e. village Narayanpur, District Kashi Nagar, UP. His further defence being that there was a property dispute pending between the families i.e. between his grandfather and grandfather of Rubina and that could be the reason why he has been falsely implicated by Rubina. To support his submission reliance has been placed upon Ramreddy Rajesh Khanna Reddy Vs. State of A.P. (2006) 10 SCC 172. submission being that in a case of circumstantial evidence all links and events must be proved which would permit no conclusion other than that guilt of the accused; suspicion however grave cannot take the place of proof. Non-joining of public witnesses for the recovery also casts a shadow of doubt on the recovery of alleged weapon of offence; to substantiate this submission, reliance has been placed upon (2011) 11 SCC 75.S.K. Yusuf Vs. State of West Bengal. Submission being that this is a false case and on all counts the accused is entitled to a benefit of doubt and a consequent acquittal. 10 Learned Prosecutor has refuted these submissions. Submission being that this being a case of circumstantial evidence, all links in the chain stand complete; not only has the motive been proved; the last seen evidence through the version of PW-8 stands un rebutted. It is an admitted case that PW-8 and the accused were known to each; both hailing from the same village; even otherwise the appellant has failed to give any other reason for visiting Delhi except that he was virtually chasing Rubina; recovery of the knife coupled with the conduct of the accused at the time when he checked out at the Gahlot Guest House which is evident from the version of PW-1 establish the fact that it none other than the accused who was responsible for the murder of deceased Ashraf. On no count, the version of the prosecution suffers from any infirmity. The judgment calls for no interference. 11 Record has been perused. 12 This is a case of circumstantial evidence. The law on circumstantial evidence has been clearly laid down by a catena of judgments. The Apex Court has time and again reiterated that all links in the chain of evidence must be so inter-twined that they must singularly, unambiguously and convincingly point to the guilt of the accused. All hypothesis except the hypothesis of guilt of the accused must be established; hypothesis of the innocence of the accused has to be excluded. 13 PW-8 has deposed that on the fateful day i.e. on 16.09.2006 at about

06:00-06:15 AM when she along with her husband had come out of their guest house, they noticed accused Moinuddin standing outside their guest house. PW-8 had to go and visit her brother-in-law and although she was reluctant to leave her husband in the company of the accused yet since the accused has invited her husband to take tea with him; she went to the house of her brother-in-law leaving her husband in the company of the accused. This was at about 06:00-06:15 AM in the morning. PW-8 returned back at 01:00 PM. By that time, her husband was already a dead man. The Manager of their guest house took her to Kusro Park wherein in the bushes she found his dead body; the key of their guest house was found lying next to the dead body. 14 This bunch of keys was in fact the starting point and the initiation of the investigation. The version of the prosecution is that on 16.09.2006 at about 10:15 AM, beat constable (PW-9) had noted that a dead body lying in the bushes of Kusro Park. This was recorded vide DD No.6-A; information had been transmitted by PW-9 to the local police station. The local police comprising of PW-19 and constable Dharampal reached the spot. The dead body was found in an injured condition with blood oozing out; cut wounds were noted on the neck as also on the stomach of the deceased. Deceased was wearing a grey coloured T-shirt and orange colour legging. Clothes had cut marks. A pair of spectacles was lying near the dead body. So also a key ring bearing a brass plate upon which was inscribed room No. 8, Haji Guest House. 15 At the spot, photographs had also been taken by HC Giri Raj Singh (PW-4) negatives of which have been proved as Ex P-1 to P-15 and positives have been proved as Ex. P-16 to P-30. On a perusal of these photographs it is noted that the photo depicting the key ring when examined with a magnifying glass clearly evidences room No. 8 and Haji Guest House written upon it; a telephone number has also been printed upon it. 16 It is thus clear that as early as at 10:15 AM on 16.09.2006 it was revealed that the deceased man was carrying the key of room No. 8 of Haji Guest House. This fact about the key having been found along with the dead body also finds mention in the First Information Report which had been lodged at 12:25 PM on 16.09.2006. 17 PW-19 on reaching Haji Guest House, found the room closed from inside. He has deposed that SHO (PW-22) had also visited the guest house; room was got opened by PW-22 and Rubina was found present in the room. She had handed over a hand-written letter (Ex.PW8/B) and two

photographs which she had taken out from her purse to PW-22. 18 The vehement version of the learned counsel for the appellant that the testimonies of PW-19, PW-22, PW-8 & PW-3 is in conflict with one another is not made out. PW-19 (as noted supra) has deposed that on his reaching the guest house, he found room No. 8 locked which had been got opened by PW-22 wherein Rubina was found inside the room. On this count, PW-22 has deposed that he had accompanied PW-19 to the guest house where they had found the room locked. He is silent on the room having been got opened by him. The further version of PW-22 being during the course of the proceedings Rubina along with the Manager of Haji Guest House arrived at site makes a reference to the visit of PW-8 accompanied by the Manager to the spot; this version of PW-22 is not related to the time when the investigating team had reached the Haji Guest House when they met Rubina for the first time. 19 Rubina has been examined as PW-8. Her testimony is also in conformity with the versions of PW-19 and PW-22. She has deposed that she came back to the guest house at 01:00 PM. The Manager who was on the ground floor took her to Kusro Park where the dead body of her husband was recovered from the bushes. PW-8 like PW-22 is silent on the version of the opening of the room. Mere silence on this aspect by both PW-8 and PW-22 would not constitute a contradiction and cannot be termed as a version in conflict with the version given by PW-19. 20 So also is the version of PW-3 who was the Manager of Haji Guest House. In this context, he has deposed that on 16.09.2006 when the police party came to his guest house and made inquiries about the occupation of room No. 8, he on checking the register told them that it was in occupation of Ashraf and Rubina. They went to check the room which was found to be locked; the room was opened with a duplicate key and on opening it Rubina was found inside. Police informed her that her husband had been murdered; she thereafter accompanied the police party to Kusro Park from where dead body of her husband was recovered. This version of PW-3 again matches with the versions of PW-19, PW-22 and PW-8. He has only elaborated on the opening of the closed room with a duplicate key. 21 There is no discrepancy or conflict in any of these versions. All of them on the same lines have deposed that when the police party had come to the guest house of PW-3, they had gone to check room No. 8 which was found to be locked. On opening it PW-8 was found inside. PW-8 and PW-22 are silent on the

opening of the door but this omission to state this fact does not amount to a contradiction. All the aforementioned PWs have consistently deposed that Rubina had accompanied the investigating team to the spot where the dead body of Ashraf was found. On the first aspect about the status of the room, PW-3, PW-19 and PW-22 are again consistent. Their version being that on reaching the guest house, the room was closed from inside. PW-3 has alone spoken of the room being opened with a duplicate key but this does not amount to a new version being set up as is the elaborate argument of the learned counsel for the appellant. It is only a detail of the version given by the other PWs. Mere silence by the other witnesses on this count cannot and does not amount to a contrary version. All the PWs have in fact toed same line; each version being in conformity with the other. Even in the cross-examination none of the PWs have shifted in their stand; in fact no suggestion has also been given to any of the PWs that each one was giving a version different from the other. 22 The Supreme Court as way back as in AIR 195.(1012) Tahsildar Singh and Another Vs. The State of Uttar Pradesh had the occasion to examine the distinction between the word omission and contradiction and one of the views as tersely put by Burn J.

in re Ponnusami Chetty (i) at page 476 [ILR (1933) 56 Mad 475] was as under: Whether it is considered as a question of logic or language, omission and contradiction can never be identical. If a proposition is stated, any contradictory proposition must be a statement of some kind, whether positive or negative. To contradict means to speak against or in one word to gainsay. It is absurd to say that you can contradict by keeping silence. Silence may be full of significance, but it is not diction, and therefore it cannot be contradiction. At a later stage of the judgment, the learned Judges laid down the following two tests to ascertain whether a particular omission amounts to a contradiction: (i) an omission is not a contradiction unless what is actually stated contradicts what is omitted to be said; and (ii) the test to find out whether an omission is contradiction or not is to see whether one can point to any sentence or assertion which is irreconcilable with the deposition in the Court. 23 Applying this test to the testimony of the aforementioned witnesses, it is clear that the omission/silence on the part of PW-8, PW-19 & PW-22 is not irreconcilable with the version given by PW-3. 24 Thus this argument of the learned counsel for the appellant that all the aforementioned four witnesses have

come with different stories is without any merit; it is rejected. 25 It is in this background that the next argument propounded by the learned counsel for the appellant has to be appreciated. This argument is focused on his submission that Ex.PW-3/P-2 which is the register of Haji Guest House clearly and unequivocally states that Ashraf and his wife Rubina had checked into the guest house on 11.09.2006 but had checked out on 12.09.2006; this being a written document it has to be given a greater credence and has to be read over and above the oral testimony of the witnesses. 26 As noted supra, vide orders of this Court dated 11.05.2010 in Crl. Appeal No. 479/2010, the matter had been remanded back to the trial Judge on this issue and this has been noted in para 8 of the impugned order. The trial Judge after getting the entries in the said register proved had thereafter reiterated its verdict holding the appellant guilty of having committed the murder of Ashraf. 27 Perusal of Ex.PW-3/P2 clearly shows that the entry of arrival of Ashraf and Rubina is of 11.09.2006 and in the departure column, the date of 12.09.2006 has been mentioned. These entries have been proved through PW-3 who was the manager of Haji Guest House. He had deposed that the departure date of 12.09.2006 is probably a mistake; much emphasis has been laid by the learned counsel for the appellant on the word probable which has appeared in this version. 28 The fact that Rubina was in the guest house on 16.09.2006 has gone undisputed; this is not only clear from the version of PW-8 i.e. Rubina herself but also from the versions of PW-3, PW-19 & PW-22 who had interrogated Rubina on the same day itself. PW-3 the manager of the guest house being an independent witness had no reason to make a false statement; he had deposed that the investigating team had come to his guest house on 16.09.2006 wherein Rubina was found in her room and she was then taken to Kushro Park where she had identified the dead body of her husband. 29 In fact it was as early as 10:15 AM on 16.09.2006 that the deceased was found carrying upon him the key of room No. 8, Haji Guest House. This is clear from the testimony of PW-9 and the photo Ex.PW-4/P-9. All these facts establish that even on 16.09.2006 Ashraf and Rubina were still residing in room No. 8 of Haji Guest House; they had not checked out. 30 Testimony of a witness has to be appreciated as a whole; there is no doubt upon this proposition. It also has to be appreciated in the background of the gamut of evidence collected by the prosecution; it is the cumulative set of factors which

have to weigh in the mind of a Judge when he is returning his verdict. A witness is not expected to possess a photographic memory; it is not as if a video tape is replayed on his mental screen. The departure entry in Ex.PW-3/P-2 is thus clearly a mistake and as has been rightly explained by PW-3. 31 Argument of the learned counsel for the appellant that Ashraf and Rubina had checked out on 12.09.2006 is thus clearly falsified. 32 PW-8 has testified that she had left her husband in the company of the appellant between 06:00-06:15 AM on 16.09.2006; she was reluctant to do so but she did leave him with the appellant who had invited him for a cup of tea and since she had to go and meet her brother-in-law and sister, she had left alone. This part of the testimony of PW-8 again remains unrebutted. She has not shifted her stand in her cross-examination. In fact a perusal of her short cross-examination shows that no direct suggestion has also been put to her on this count. PW-8 has returned back to the guest house at 01:00 PM. Her husband had already died by that time. 33 The theory of last seen come into play; this theory being that where the deceased is last seen alive with an accused and soon thereafter the deceased was found dead and there being little possibility of any other person accessing the deceased unless the accused explains the circumstance under which the deceased has died, the accused must own up to the guilt (AIR 200.SC 313.Mohibur Rahman Vs. State of Assam). 34 Except for a bare denial, the appellant has not furnished any explanation on this count. The defence built up by the accused being that he was not in Delhi at the relevant time; he never stayed at Gahlot Guest House; he had been picked up from his native village market and has been falsely implicated. 35 The explanation that he did not stay in Gahlot Guest House is palpably false; this is clear from the version of PW-1 who was the manager of Gahlot Guest House. PW-1 Madan Lal had deposed that on 13.09.2006 Moinuddin had checked into his guest house; the purpose of his visit was inquired from him and he had disclosed that he had come in search of his brother; bed No. 3 had been allotted to him. He stayed in the guest house for three days; on 16.09.2006 at about 05:00-05:30 AM while leaving the guest house, the appellant told PW-1 that he is going for namaz; he came back at about 08:30-09:00 AM. When Moinuddin returned to the guest house, his pant and shirt were blood stained; on inquiry PW-1 was informed by the appellant that he had had a quarrel; PW-1 inquired from him whether the services of a Doctor are required but

the appellant stated that he wanted to check out and was going back to his village; at that time, when he made the departure entry in the register his hands were shaking; on inquiry PW-1 was informed that his hands are shaking because of the quarrel. 36 The entry in the register of Gahlot Guest House has been exhibited as Ex.PW-1/B. This evidences that the appellant had checked into the guest house on 13.09.2006 and he had left the guest house on 16.09.2006; he had signed at the time of leaving; the departure time has been mentioned as 07:20 AM. 37 Vehement submission of the learned counsel for the appellant that if the appellant had departed at 07:20 AM, there is no question of his coming back to the guest house at 08:30-09:00 AM as is the version of PW-1 again negates his version and his credibility is in doubt. 38 Perusal of Ex.PW-1/B shows that the time of departure has been mentioned as 07:20 AM on 16.09.2006. The signatures of the appellant at the time of arrival and at the time of departure are significantly different. Sample hand-writing of the appellant had also been taken by the Court vide Ex.PW-21/C. The signatures on this document match the signatures of the appellant when he had checked into the guest house; at the time when he checked out on 16.09.2006, his signatures are not only shaky but clearly appear to have been penned with a trembling hand. This is evident even to the naked eye. This corroborates the testimony of PW-1 that the appellant at the time of check out was in a nervous state of mind. 39 The departure time has been mentioned as 07:20 AM but this has to be reconciled with the version of PW-1 that the appellant had returned to the guest house at 08:30-09:00 AM in a nervous state of mind. This can well be explained for the reason that a witness when he deposes and attempts to recollect the incident only gives an approximation of time; he is neither expected nor does he give the time according to watch; it does not have to be as per the minute and hour. In this case, the approximation of time by PW-1 is 08:30-09:00 AM whereas as per Ex.PW-1/B the check out time is 07:20 AM. The incident relates to the September, 2006; the witness had come into the witness box after almost about one year i.e. July, 2007. Even otherwise at this time of the year, the sun rises early and whether it was 07:20 AM or 08:30 AM, keeping in view the time sense of every individual which varies from person to person and there being difference of only one hour, this difference is nothing but trivial. No importance can be attached to this argument. 40 The conduct of the accused in this background

also gains importance. Not only has it been established that around the same time i.e. between 13.09.2006 up to the morning hours of 16.09.2006, the appellant was living in Gahlot Guest House which in the vicinity of Haji Guest House (where the deceased and Rubina were also living); it is also an undisputed fact that both Rubina and the appellant were known to each other being from the same village which fact has been admitted by the appellant himself in his statement under Section 313 of the Cr.PC. It would be but strangely coincidental that the appellant and Ashraf being last seen together at about 06:00-06:15 AM and the murder of the deceased having being noted by the beat constable before 10:15 AM, the appellant was un-connected with the crime. His nervous and traumatic state of mind is evident not only from the version of PW-1 but also from his shaky handwriting when he signed his name while departing from Gahlot Guest House. The accused has set up a false defence that he had not stayed at the Gahlot Guest House. 41 The second defence of the appellant that Rubina has deposed against him because of a family rivalry is also not probable as it was not stretched beyond that one answer to Question No.

21. It is settled law that if the accused gives incorrect or false answers during the course of his statement under Section 313 of the Cr.PC, the Court can draw adverse inference against him. (See:- 2012 AIR (SC) 2470 Munna Kumar Upathyaya Vs. State of Andhra Pradesh). The appellant must suffer on this count as well. 42 The letter Ex.PW-8/B has also been written by the appellant to Rubina. There is no dispute on this proposition. Not only has this been established by the CFSL report (Ex.PW-22/F) but the appellant himself admits to this position. His defence on this count being that he was coerced and forced to write this letter before the Police. 43 Contents of this letter show that the appellant was known to Rubina and he had a long hidden infatuation with her; the premise of this letter written in blood in fact suggests that the appellant was a frustrated man and since he could not get married to Rubina, he was hell-bent on not allowing her to have a happy matrimony. The argument of the learned counsel for the appellant that this letter was written under coercion is negated by the fact that information elicited in Ex.PW-8/B was private information which was known to the appellant himself and the question of forcing out such an information from the appellant would not arise as had it been a letter written under threat, it would not have contained all these

private details; these could well have been hidden by him. 44 The further evidence collected by the prosecution was the recovery of blood stained knife which was the weapon of offence which was got recovered pursuant to his disclosure statement (Ex.PW-21/C). This knife was got recovered by him by digging under the earth from the bushes near the entrance of Khusro Park i.e. the place where the incident had occurred. This was on 21.09.2006 i.e. on the date of the arrest of the accused. The recovery memo (Ex.PW-11/A) was witnessed by SI Manoj Kumar (PW-21). No public witness was however joined. 45 A Bench of this Court in MANU/DE/1072/2009 Rafi Ahmed and Anr. Vs. State in the context of non-joining of the independent witness at the time of recovery had relied upon the following observations made by the Supreme Court in decision reported as State Vs. Sunil MANU/SC/0735/2000: Hence it is a fallacious impression that when recovery is effected pursuant to any statement made by the accused the document prepared by the Investigating Officer contemporaneous with such recovery must necessarily be attested by independent witnesses. Of course, if any such statement leads to recovery of any article it is open to the Investigating Officer to take the signature of any person present at that time, on the document prepared for such recovery. But if no witness was present or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The court has to consider the evidence of the Investigating Officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth. We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust. We are aware that such a notion was lavishly entertained during British period and policemen also knew about it. Its hang over persisted during post-independent years but it is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence when a police officer gives evidence in court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the

court to believe the version to be correct if it is not otherwise shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions.

73. Therefore, the mere absence of the independent witness at the time of the recovery of the incriminating articles at the instance of the appellants, is not a sufficient ground to discard the evidence. 46 Thus the non-joining of a public witness at the time of recovery is not by itself sufficient to discard the recovery. 47 The sketch of the knife Ex.PW-20/B shows that it had a blade of 13.2 cm. The subsequent opinion of the post-mortem doctor (PW-15) had been obtained; this opinion has been proved as Ex.PW-15/B. On the perusal of the knife the doctor had opined that the injuries could be possible by the aforementioned weapon. The cut marks (T1- T2) on the clothes of the deceased i.e. on his T-shirt and legging were also opined to have been caused by the aforementioned weapon (Ex-8). This was vide FSL report Ex.PW-22/H. 48 The medical evidence which is post-mortem of the deceased conducted on 19.09.2006 besides noting the external and internal injuries had noted that the death being occurred three days prior which would approximate the time to the time of death of the deceased. 49 The prosecution has established its case to the hilt. All the links of the chain of evidence stand complete. 50 The accused on the fateful day of the incident between 06:00- 06:15 AM was last seen in the company of the deceased. Testimony of PW-8 on this count remains unchallenged. PW-8 had returned back to the guest house at 01:00 PM. The murder had taken place before 10:15 AM when it was noted by the beat constable. It is thus established that the murder had taken place between 06:00 to 10:15 AM. The appellant had checked out of his guest house on 16.09.2006 around that same time; at the time of his check out, he was not only nervous and shaky but his clothes were also blood stained. The fact that Ashraf and Rubina

were living in Haji Guest House which was in the vicinity has also been established not only by the oral version of PW-3 but the document which is the key ring of the room which was a vital piece of evidence and which key ring was found along with the dead body as early as 10:15 AM on 16.09.2006 establishing the factum that both Ashraf and Rubina were still residing in the guest house even on 16.09.2006. Thus the theory of the appellant that the victim and his wife had checked out on 12.09.2006 was belied. The motive for the crime which was his unfulfilled desire to marry Rubina which frustrated him to such an extent that even the letter (Ex PW-8/B) was penned in his blood and was the motive for the crime. This letter in fact speaks volumes. The fact that Rubina was from the same village and was known to him is admitted by the appellant himself. The weapon of offence was also got recovered by the appellant after his arrest from a hidden part of the park. PW-11 Anil Kumar has come into the witness box and deposed that one day prior to the date of incident i.e. on 15.09.2006, the appellant had purchased this knife from him. This witness is also an independent witness and there was no reason as to why he would have made a false statement. This witness had also not been cross-examined. The medical evidence which is the post-mortem report also corroborates the time of death. All links in the chain stand complete. 51 The appellant had produced two witnesses in defence. They were examined as DW-1 and DW-2. They are only on the point of arrest; the defence of the appellant being that he had been picked up from his village and falsely implicated in this case. 52 Relevant would it be to state that neither of these two witnesses have given the date on which the appellant had purportedly been picked up by the police; DW-1 has spoken of the month of September; DW-2 is silent even on the month. Even in his statement under Section 313 of the Cr.PC, the appellant does not give the date when he was picked up by Delhi Police from his village. The arrest memo of the appellant Ex.PW21/A shows that he was arrested on 21.09.2006 from Vandana Building, Connaught Place, Delhi. These defence witnesses have been produced to dislodge the place of arrest; even presuming that the appellant was in his native village on 21.09.2006 and he was picked up from there, it does not wash away the act which he had committed on 16.09.2006; it does not efface the fact that he had stayed in Gahlot Guest House between 13.09.2006 up to 16.09.2006 when he checked out in the early morning hours in a shaky and confused state of mind

having blood stained clothes. 53 This being a case of circumstantial evidence and the law on this aspect being clear, this Court notes that all the links in the chain of evidence stand established. The single hypothesis of the guilt of the accused stand proved. The hypothesis of his innocence stands excluded. The conviction of the appellant calls for no interference. The appeal is without any merit. Dismissed. INDERMEET KAUR, J KAILASH GAMBHIR, J SEPTEMBER 04 2013 A

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