

Mohd.islam Vs. State

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Court : Delhi

Decided On : Sep-17-2013

Judge : Indermeet Kaur

Appellant : Mohd.islam

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment reserved on:10.09.2013 Judgment delivered on:17.09.2013 CRL.A. 1064/2010 MOHD. ISLAM Appellant Through Mr. Ajay Verma, Adv. versus STATE Through + Respondent Mr. Sunil Sharma, APP for State CRL.A. 414/2011 CHANDER SINGH Through Appellant Mr. S.K. Pandey, Adv. versus STATE Through Respondent Mr. Sunil Sharma, APP for State CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

1 There are two appellants before this Court. Both of them are aggrieved by the impugned judgment and order on sentence dated 26.03.2010 and 29.03.2010 vide which they have been convicted for the offence under Sections 302,201 read with 34 of the Indian Penal Code (IPC) and had been sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/- each and in default of payment of fine to undergo SI for a period of three months each for the offence under Section 302/34 of the IPC; for the offence under Section 201 of the IPC,

each of the convicts had been sentenced to undergo RI for a period of five years and to pay a fine of Rs.5,000/- each failing which to undergo SI for a period of three months each. Appellant Mohd. Islam has been separately convicted under Section 25 of the Arms Act as well. For this offence, the appellant Mohd. Islam had been sentenced to further undergo RI for one year. Sentences were to run concurrently. 2 The case as set up by the prosecution was as follows:- (i) On 28.10.2006 at 09:50 AM, DD No.12-A was recorded in the local police station New Ashok Vihar, Delhi to the effect that the PCR had informed them that near bus route No.301, near Kondli, a dead body was found lying in an empty plot. (ii) Rukka was taken by SI Rajesh Dangwal (PW-20) at 11:45 AM on the same day pursuant to which an FIR (Ex.PW-18/A) was registered under Sections 302/201/34 of the IPC. (iii) PW-20 along with constable Dharmender (PW-11) reached the spot i.e. plot of Harkesh, Village old Kondli, Delhi. (iv) The dead body of a young boy was lying in the empty plot; the body was covered with garbage. Cut marks and wounds were noted on various parts of the body. (v) Blood drops were found on the northern side of the body. The blood trail was followed 15-20 steps and reached the house of Hari Prakash (PW-3). This house had 11 rooms, all on the ground floor. The blood trail stopped outside the third room which was reported to be the room of Mohd. Islam. (vi) The room was bolted from outside. On opening it, a cot was found in the room over which the dari, bed sheet, two pillows and one blanket were all blood stained; the broom was also blood stained; blood stains were also found on the walls; one quarter bottle of whisky and another empty bottle of liquor were also lying in the room. (vii) Crime team was summoned. Two chance prints were lifted by Constable Baldan Singh (PW-5); one was lifted from the cover of a book wrapped in a polythene and second print was of blood which was also from the same polythene. (viii) Constable Shiv Om (PW-7) clicked 20 photographs at the scene of crime from different angles, negatives of which were proved as Ex.PW-7/B1 to B20 and positives were proved as Ex.PW-7/A1 to A-20. (ix) The Investigating Officer ACP Gajender Singh (PW-21) made inquiries from the persons present there which included Yogesh (PW-1) and Naresh (PW-2). (x) Exhibits were seized from the scene of crime which included the quarter bottle of whisky which was seized vide memo Ex PW-1/D and the empty liquor bottle was seized vide memo Ex. PW1/J.

Other exhibits which included the blood stained articles as also the blood lying on the floor were also seized by separate memos. (xi) The exhibits were deposited with HC Ramvir Singh (PW-9) who was the then MHC (M) in the police station. Entries to the said effect in register No.19 were proved as Ex.PW-9/A. (xii) The dead body was sent to the mortuary. (xiii) Mangla Kashyap (PW-4), the father of the deceased, a resident of Bihar reached Delhi along with his brother Hukum Singh (PW-6). The dead body was identified vide memo Ex. PW-6/A. (xiv) The post mortem was conducted on 30.10.2006. On external examination, 28 stab wounds were noted upon the body of the victim. They read as under:

1. Abrasion 4 X 2 cms, reddish over left side of forehead 1cm. to right and over the eyebrow.
2. Curved abrasion 1 X 1 c.m, reddish over root of nose.
3. Abrasion 2 X 1 c.m. reddish over left cheek placed 1.5 cm below lower eyelid.
4. Incised wound 10 X 1 X 1 cm over chin placed 1.cm below lower lip, the wound is having superficial extensions at its both end that are.2 cm broad.
5. Cut throat wound 14 X 3 X 3 cms over front and right side of neck placed horizontally. 3 c.m. below mid of chin and 2 c.m above thyroid prominence with a superficial incised wound of size 6 X .05 X .1 cms at its left end and another of size 2 X 5 X 0.1 cm at its left upper end. The wound is cutting through the pharynx, larynx, great vessels of neck and trachea. The tailing was present at its left side outer end.
6. Two superficial incised wounds of size 2 X 0.5 X 0.1 cm and 4 X 0.5 X 0.1 cm over left side of neck place. 5 cm below left mastoid process and 1.5 cm apart. These are placed obliquely tailing at its left outer end.
7. Superficial incised wound of size 10 X 4 X 0.2 cm placed horizontally over thyroid notch. 4 cm above sternal notch and 2 cm below injury No.5. The wound was showing tailing at its left end.

8. Superficial incised wound of size 15 X 1 X 0.2 cm over upper front of chest starting from right side and extending to the left side along upper part of left nipple and extending to 3 cm to right of midline . The wound was placed obliquely with tailing at its outer end.

9. Four superficial incised wounds in a criss-cross manner of sizes 15 X 0.5 X 0.1 cm, 16 X 0.5 X 0.1 cm., 10 X 0.5 X 0.1 cm and 5 X 0.5 X 0.1 cm obliquely placed over lower front of chest 5 cm above lower costal margin.

10. Superficial incised wounds, three in number of sizes 4.5 X 0.2 X 0.1 cm., 3 X 0.1 X 0.1 and 1.5 X 0.1 X 0.1 cms over upper back of left forearms placed 5 cm below tip of elbow . The wounds were placed obliquely with a distance of 0.5 cm. Between upper two and 0.7 cm between lower two wounds. Tailing was at inner lower ends.

11. Incised wounds of size 5 X 1 X 0.1 cm over back of upper left forearm placed 6 cm. below elbow. It was placed obliquely with tailing at its lower inner end.

12. Two superficial incised wounds of size 2 X 0.3 X 0.1 cm. and 4 X 0.1 X 0.1 cm over back of left lower forearm placed 5 cm above wrist. The wounds were placed obliquely with tailing at the upper outer ends.

13. Incised wounds of size 1 X 1 X 0.1 cm over tip of palmar aspect of left index finger with peeling of skin.

14. Incised wound of size 0.5 X 0.1 X 0.1 cm over tip of palmar aspect of right little finger.

15. Incised wound of size 1 X 0.5 X 0.1 cm over palmar aspect of right middle finger placed 0.5 cm below tip.

16. Incised wound of size 1.5 X 0.5 X 0.1 cm over palmar aspect of the tip of right index finger.

17. Incised wound of size 1.3 X 0.5 X 0.1 cm over middle phalanx of palmar aspect of right index finger 2.5 cm above base.

18. Multiple incised wounds of sizes 0.5 X 0.1 X 0.1 cm. And 0.9 X 0.1 X 0.1 cms over lower phalanx of palmar aspect of right index finger.
 19. Incised wounds of size 1.5 X 0.5 X 0.1 cm. over palmar aspect of bases of right middle and ring finger 1.1 cm below base. The wound is placed obliquely.
 20. Incised wound of size 4.5 X 1 X 0.5 cm over middle of right palm placed horizontally 1.0 cm below base of right thumb.
 21. Superficial incised wound of size 1.5 X 0.1X 0.1 cms over thenar eminence of right palm placed 4 cm above right wrist.
 22. Superficial incised wound of size 0.5 X 0.1X 0.1 cm over back of right lower forearm placed 5 cm above wrist.
 23. Abrasion 2.5X0.5, reddish over back of middle of right forearm.
 24. Multiple incised wounds six in number over lower outer part of left leg placed 2 cm above ankle of sizes 5.5 X 2 X 1.5 cm, 4X 1.1 cm, 3.5X 1.1 cm, 3X 1.1 cm, 2X 1.1 cm and 3.5X 1.1 cm with a distance of 1.0 cm between upper two wounds, 4 cm between middle two and 0.5 cm between lower two wounds. The wounds were horizontally placed.
 25. Incised wound of size 3X 1cm X bone deep placed horizontally over middle of shin of left leg.
 26. Three superficial incised wounds of sizes 6X 0.1 X 0.1cm, 6X 0.1 X 0.1cm and 3.5X 0.1 X 0.1cm placed horizontally over mid of sole of left foot placed at a distance of 2 cm between upper two wounds 1 cm between lower two wounds.
 27. Incised wound of size 4X 0.5 X 0.1 cm over middle part of back of right left.
 28. Incised wound of size 4.0 X 0.4 X0.1 cm over upper inner part of right leg placed 14 cm below knee joint.
- (xv) The cause of death was opined as haemorrhage and shock consequent upon cut throat injury. All injuries were ante-mortem in nature and fresh in duration.

Injuries No.1, 2, 3 and 23 could be produced by blunt force impact; injuries No.4 to 22 and 24 to 28 could be caused by some sharp cutting weapon. Injury No.5 was sufficient to cause death in the ordinary course of nature. Time since death was reported to be one and half days. Post mortem report was proved as PW19/A. (xvi) Accused Chander Singh was arrested on the following day i.e. on 28.10.2006 at 07:00 PM from Anand Vihar bus station vide memo Ex.PW-1/L. He made a disclosure statement Ex. PW-1/N. He implicated his co-accused Mohd. Islam. However no recovery was made pursuant to his disclosure statement. (xvii) Accused Mohd. Islam was arrested in another criminal case on 14.11.2006 in District Muradabad, UP. He was produced in the concerned Court at Delhi on 24.11.2006 where he was arrested vide memo Ex.PW12/A. He made a disclosure statement Ex.PW12/B. (xviii) Pursuant to his disclosure statement, accused Mohd. Islam took the police party to the plot from where the body had been recovered; 15-20 steps away from the spot, the accused took out a polythene bag after digging it from earth where his own blood stained clothes were found along with a knife which had allegedly been used in the commission of crime. The knife was blood stained; knife was taken into possession vide Ex.PW-14/B. The subsequent opinion on this weapon of offence Ex.PW-19/B was obtained; it was opined that injuries No.4 to 22 and 24 to 28 could have been caused by the said weapon. The clothes of the appellant were sealed in a pulanda and seized vide memo Ex.PW-14/D. (xix) The scaled site plan Ex.PW-15/A was proved in the testimony of SI Mukesh Jain (PW-15). (xx) The CFSL vide its report Ex.C-1 had opined that blood group O which was the blood group of the deceased was noted not only on the pillow, blanket and cemented material lifted from the spot but also on the blood stained pyjama of the appellant which he had got recovered on 25.11.2006. (xxi) The finger print report Ex. PW-23/B opined that questioned chance prints Ex.Q-1 and Ex.Q-2 lifted from the spot were the finger impressions of accused Mohd. Islam. (xxii) Yogesh had been examined in Court as PW-1. He has unfolded the mystery; his version was to the effect that Mohd. Islam, Chander Singh and Naresh (s/o Mangla Kashyap-hereinafter referred to as the deceased) were having liquor in the room of Mohd. Islam; this was at about 09:30 PM in the evening of 27.10.2006. Thereafter some noises were heard; an altercation was taken place between all three of them. PW-1 asked the deceased to return back to his house

and thereafter PW-1 went back to his own room. (xviii) So also the version of Naresh who had been examined as PW-2. The deceased was his room-mate. Since he did not return back in the evening PW-2 went looking for him; at 11:30 PM, he went to the house of PW-1 but they could not locate the deceased. PW-2 returned back to his house. At about 08:00 AM on the following day i.e. on 28.10.2006, he again went to the house of PW-1 looking for the deceased but could not find him. Thereafter, they learnt about his death. 3 This was the sum total evidence both oral and documentary collected by the prosecution. 4 On the basis of the aforementioned evidence, the trial Judge had convicted both the appellants i.e. Mohd. Islam and accused Chander Singh for having committed the murder of deceased Naresh. They had also been convicted for having destroyed the evidence of the commission of the offence. As noted supra, accused Mohd. Islam had been separately convicted for possession of a knife under Section 25 of the Arms Act. 5 Arguments have been addressed at length. On behalf of Mohd. Islam, it is submitted by learned counsel Mr. Ajay Verma that the testimony of PW-1 which had been heavily relied upon by the prosecution suffers from several infirmities. He is not a witness to the last seen; his version is concocted; it cannot be relied upon; attention has been drawn to the version of PW-4, the father of the deceased; it is pointed out that PW-4 has on oath admitted that PW-1 had told him that he had killed his son and he may do whatever he wants to do in the matter; further version of PW-4 being to the effect that he has reported this incident to the police but the police did not pay heed to this. Attention has been drawn to the examination of the Investigating Officer PW-21 who has also admitted that a complaint had been made to him by the father of the victim wherein in that complaint case accused persons were the witnesses of this case; argument being bordered on the submission that the appellant Mohd. Islam and Chander Singh have been falsely implicated; the real culprits were Yogesh (PW-1) and Naresh (PW-2); they have been let off by the Investigating Officer. Further submission being that it is highly improbable and impossible to believe that a blood stained knife and the so called blood stained clothes of Mohd. Islam were still lying intact after more than one month of the date of the incident and had been got recovered by him; this version can be nothing but a figment of the imagination of the Investigating Officer; that is the reason why no public witness had also been joined

in the recovery. For this proposition reliance has been placed upon AIR 195.SC 11.Surjit Singh Vs. State of Punjab as also 1999 Cr. LJ 26.Deva Singh Vs. State of Rajasthan. For all the aforesaid reasons, the benefit of doubt has to accrue in favour of the appellant and he is entitled to an acquittal. 6 On behalf of appellant Chander Singh arguments had been addressed by Mr. S.K. Pandey. Submission being that apart from the version of PW-1 who is a witness to the so called last seen, there is no evidence with the prosecution to nail the said appellant. It is submitted that the finding of the trial Judge that the appellant Chander Singh had absconded is a wrong fact; submission being that the incident had occurred in the late hours of 27.10.2006; statement of Yogesh (PW-1) had been recorded only in the later part of 28.10.2006 and even as per the case of the prosecution, Chander Singh had been arrested at 07:00 PM on 28.10.2006 and as such it could not be said that Chander Singh had absconded; this is an incorrect finding recorded by the trial Judge. If this part of the evidence is ignored, apart from the shaky testimony of PW-1 on the last seen, there is no other evidence with the prosecution to nail Chander Singh. No recovery has been effected from him; his clothes were not blood stained; no motive has also been established. Thus a single circumstance by itself is not sufficient to convict him; he is entitled to benefit of doubt and a consequent acquittal. 7 Learned public Prosecutor has refuted these submissions. His submission is that on no count does the impugned judgment call for any interference. Apart from the last seen which is the circumstance against both the appellants, both the appellants had also absconded. Further submission being that qua the role of Mohd. Islam, there is also a clinching evidence of the finger prints which had been lifted from his room and the blood stained polythene cover bore his finger impressions; in fact blood was scattered all over the room of Islam; the fact that this room was tenanted out to Mohd. Islam has not been disputed. On no count, do either of the appellants deserve any leniency. 8 Record has been perused. 9 We shall first deal with the submissions of appellant Chander Singh. The most lethal circumstance pitched against this appellant was the circumstance of last seen i.e. appellant Chander Singh having been last seen in the company of the deceased Naresh along with the second appellant Mohd. Islam. 10 PW-1 is a witness to this version. Before dealing with his testimony, it would be relevant to point out that Mohd. Islam,

Chander Singh and Yogesh (PW-1) were all tenants of Hari Prakash (PW-3) in village Kondli. As is evident from the site plan (Ex.PW-21/B), all 11 rooms in the building of PW-3 were on the ground floor. Room No.3 had been tenanted out to Mohd. Islam. This is clear from the version of the landlord PW-3 and in fact in Court this has not been disputed even by learned counsel for the appellant. Chander was also residing in one of the tenanted rooms and so also Yogesh (PW-1). The deceased Naresh was residing separately in Sapera Basti, Village Gharoli.

11 As per the version of PW-1 in the evening of 27.10.2006 at about 07:00 PM, the deceased had come to his house; thereafter he left the house stating that he was going to meet Chander and Islam; at about 09:30 PM, PW-1 heard some noises coming from the room of Islam. He went inside the room and saw the deceased consuming liquor; they were all hurling abuses at one another; PW-1 tried to pacify them and asked the deceased to leave the room. Before he could do that, PW-1 returned to his room. At about 11:30 PM Naresh (PW-2 and the room-mate of the deceased s/o Ram Chander-hereinafter referred to as Naresh) came to his house and made inquiries about the deceased stating that the deceased had not returned to his room; PW-1 narrated the incident which had occurred in the early evening hours to Naresh; Naresh thereafter left for his house. On the next morning i.e. on 28.10.2006 at about 08:00 AM Naresh again visited the room of PW-1 and inquired about the deceased stating that he had not returned to the home at night. PW-1 and PW-2 went looking for the deceased; on reaching near an empty plot close to their vicinity, they saw persons gathered there; police was also present; dead body of the deceased was found lying in the said empty plot covered with stab injuries.

12 In his cross-examination PW-1 admitted that the deceased was a native of his village; it was PW-1 who had in fact brought the deceased to Delhi from his village. All three of them i.e. PW-1, deceased and PW2 were doing the work of flower decoration. PW-1 denied the specific suggestion put to him by the learned counsel for Chander Singh that he was not consuming liquor with the deceased. Relevant would it be to state that no suggestion has been given by the defence counsel that Chander Singh was in fact not present in the room of Mohd. Islam as narrated by PW-1.

13 Version of PW-1 also finds support from the version of PW-2 who was the room-mate of the deceased. He has corroborated the testimony of PW-1. He has admitted that at about 11:30 PM on

27.10.2006 he had gone to the room of PW-1 looking for the deceased where he found PW-1 sleeping in his room; he was informed by PW-1 that the deceased had gone to meet Chander and Mohd. Islam; he has also been informed that the deceased, Chander Singh and Mohd Islam after consuming liquor were fighting with each other. PW-2 thereafter returned back to his house. On the next morning at about 08:00 AM, PW-2 again went to the house of PW-1 in search of the deceased as he had not returned back to his house; since the deceased could not be located both PW-2 and PW-1 went looking for him where they were told that a dead body was lying in the plot of Harkesh; on reaching there they identified the dead body of the deceased. 14 In the one paragraph cross-examination conducted upon PW-2 nothing has been elicited which could discredit his version. 15 A co-joint reading of the versions of PW-1 and PW-2 establish that both the appellants Mohd. Islam and Chander were together with the deceased in the room of Islam where they were all consuming liquor and in fact at about 09:30 PM when PW-1 had gone to the room of Islam, he saw them quarreling with each other and he accordingly advised the deceased to leave the room. As noted supra, counsel for the appellant Chander Singh and neither the counsel for the appellant Mohd. Islam have given any suggestion to PW-1 that they were not present in the room at that time. On a specific query put to the learned counsel for the appellant Mohd. Islam, he in fact has admitted that he cannot dispute his presence in the room on that date. 16 Thus the circumstance of the deceased having been last seen in the company of Mohd. Islam and Chander at 09:30 PM stands established. 17 The dead body of the victim was found on the following day at about 09:50 AM. In this context, it would also be necessary to appreciate the medical evidence i.e. the post mortem report Ex.PW19/A. The post mortem on the victim had been conducted on 30.10.2006 at 01:30 PM; time since death was reported to be one and half days which would approximate the time of death as obviously the death must have occurred prior to the time when it was noticed which would be prior in time to 09:50 AM i.e. sometime in the intervening night of 27-28.10.2006 i.e. around 01:30 AM. 18 PW-4 was the father of the deceased. He has deposed that on 09.10.2006 PW-1 and PW-2 had brought his son to Delhi for the purpose of getting a job; they were all working as flower decorators; on 30.10.2006, he had been informed that his son had been murdered; he came to Delhi along with his

brother. Further version of PW-4 being that he had been informed by PW-1 that Mohd. Islam and Chander were responsible for the death of his son; in one part of his testimony, PW-4 goes on to state that on further questioning to PW-1, PW-1 told him that he had killed his son and which fact PW-4 had told the police officials. Vehement submission of the learned counsel for the appellants on this score is that this version of PW-4 shows that even PW-1 was a suspect and he could in fact have been the culprit and to fortify this submission attention has been drawn to the testimony of Investigating Officer (PW21) who in one part of his cross-examination has admitted that a complaint had been filed in which the witnesses of this case had been arrayed as accused. 19 This complaint is not a part of the record and this Court even on repeated queries put to the learned counsel for the appellant is not able to know the nature of this complaint; it not being a part of the record. However this version of PW-1 would not really help the case of the appellant as admittedly in the first round of investigation, all the aforementioned persons which included PW-1 (Yogesh) and PW-2 (Naresh) were all suspects and they had all been put to interrogation. This is evident from the fact that the finger prints of five persons had been sent for expert opinion which included the finger prints of PW-1 and PW-2 as well. 20 PW-1 and PW-2 were in fact the first persons who were found on the spot at the time when the police visited the spot and noticed the dead body. This is evident from the version of the Investigating Officer (PW21) who had categorically deposed that at the spot two witnesses Yogesh and Naresh had met them and they joined the investigation; their statements were recorded; vice-versa the appellants Mohd. Islam and Chander were both absconding; they were not available for interrogation. 21 Chander Singh had been arrested on the following day i.e on 28.10.2006 at 07:00 PM from ISBT Anand Vihar bus stop vide memo Ex.PW-1/L. His conduct evidences his guilty mind. Admittedly he was a tenant in one of the rooms of PW-3; his room was just two rooms away from where Chander Singh and Islam had been last seen along with the deceased. In his statement under Section 313 of the Cr.PC, he has set up a case of bare denial. On a specific question put to him that he was a tenant in the room of PW-3, he has again made a denial. On a further question that he was last seen in the room of Islam along with the deceased by PW-1, he has again denied the question. 22 In this context, it would be relevant to point out that there was no

reason as to why PW-3 would have deposed against him; there is no enmity or any other ulterior motive imputed to him. This version of Chander Singh that he was not a tenant of PW-3 is also not a part of his defence which was elicited in the cross-examination conducted upon the witnesses of the prosecution. In fact as noted supra, no suggestion has been given to PW-1 that Chander was not with Mohd Islam and the deceased in the room of Islam when PW-1 saw them in the evening of 27.10.2006. The only suggestion given by the learned defence counsel to PW-1 was that Chander was not consuming liquor with the deceased; meaning thereby that Chander had admitted his presence in the room of Islam on that day.

23 The conduct of Chander Singh was extremely abnormal; not only was he not available for interrogation when the police reached the spot in the morning of 28.10.2006 but he was also not available for the whole day thereafter. The role of Chander and Islam had surfaced for the first time only when the statement of PW-1 was recorded. To satisfy ourselves, this Court had asked the Investigating Officer to produce the case diary of this case; the same has been perused; the case diary recorded on 28.10.2006 evidences that investigation had started at about 11:45 AM; statement of PW-1 was recorded by the Investigating Officer around noon time when the role of Chander and Islam surfaced for the first time. It was obviously the guilty mind of Chander which had kept him away from his own house during this entire period. This can be termed as nothing but an abscondance on his part; this conduct of Chander Singh also leads this Court to draw an adverse inference against him. This is coupled with the fact that he had given a wrong explanation in his statement under Section 313 of the Cr.PC; he has made an evasive denial that he was not residing in the tenanted room of PW-3 whereas this version stands demolished. Law is now well settled; giving a false version to the otherwise well established version of the prosecution thus constrains this Court to draw an adverse inference against Chander Singh on this count as well.

24 Thus the circumstances which stand established and proved qua the role of Chander Singh are the circumstances of Chander Singh having been last seen in the company of the deceased along with Mohd Islam on 27.10.2006 where all three of them were consuming liquor in the room of Islam. This was around 09:30 PM. On the following day, the dead body of the deceased was found in an open plot which was 1516 steps away from the room where they were all last

seen together; this is evident from the site plan Ex.PW-15/A. The medical opinion had opined the time of death to be in the intervening night of 27.10.2006 to 28.10.2006 i.e. around 01:30 AM. His act of abscondance coupled with his evasive denials bordering on falsity (in his statement under Section 313 of the Cr.PC) are other circumstances which also weigh against him. 25 Circumstance of last seen also stands fully established qua Mohd Islam. This is evident from the testimony of PW-1 and corroborated by PW-2. The circumstance of abscondance qua Mohd. Islam is even graver. Mohd. Islam fled from the scene of crime on the date of the incident itself and was finally arrested only on 24.11.2006. He had in fact been arrested by the UP police in another case on 14.11.2006; after obtaining permission from the requisite authorities, he was produced before the concerned Court in Delhi only on 24.11.2006 when he was arrested vide memo Ex.PW-12/A. 26 In his statement under Section 313 of the Cr.PC on the specific queries put to him the defence that he sought to set up was that he was never a tenant of PW-3; he has been falsely implicated; he was forced to make a disclosure statement by the police in Muradabad, UP which had led to his false implication in the present FIR. 27 This version is palpably false. There was no reason for PW-3 to have given an incorrect version that Islam was not his tenant. No crossexamination has also been effected of PW-1 by the learned defence counsel that Mohd. Islam was not last seen in the company of the deceased along with co-accused Chander Singh. That apart the finger print expert report had also opined that the two chance prints lifted from this room were the finger impressions of Mohd. Islam. 28 The story does not end here. The Investigating Officer (PW-21) on reaching the scene of crime had noted that there was blood lying in the northern side of the dead body. These blood spots had formed a trail and when traced from the dead body led to room No.3 i.e. room occupied by Mohd. Islam. This room was bolted from outside. On opening it, blood was scattered all over i.e. on the cot, dari and blanket as also on the walls. The crime scene in the room was a scene of blood shed; no explanation was forthcoming from Mohd. Islam on this count either. These were yet the other circumstances against Mohd. Islam. 29 Mohd. Islam was arrested on 24.11.2006. Pursuant to his disclosure statement on 25.11.2006, he led the police party to the room where the murder had been committed and also pointed out the place where the body had been disposed of; by digging 15-20

steps away from this spot he took out a polythene bag in which his blood stained clothes as also the knife were recovered. The recovery memo of the knife is Ex.PW-14/C. The CFSL vide its report Ex.C-1 had opined that the knife had human blood and the payjama of the accused which he had got recovered also bore blood group O which was also the blood group of the deceased. This was yet another piece of evidence against Mohd. Islam. 30 The manner in which the crime was committed is evident from the finding returned that 28 stab wounds had been reported on the body of the victim; the murder having been committed in the room but thereafter the dead body having been dragged to the empty plot of Harkesh from where it was subsequently recovered clearly shows that it was the act of more than one person. The common intention on the part of both the appellants to commit the offence stood established. 31 The last submission of the learned counsel for the appellants is bordered on the report of the CFSL qua the viscera of the deceased. The said report reads as under:

On Chemical, Microscopic, TLC & GC-HS examination, Metallic poisons, ethyl And methyl Alcohol, cyanide, phosphide, alkaloids, barbiturates, tranquilizers and pesticides could not be detected in exhibits 1A, 1B & 1C

3. Submission being that this absence of alcohol in the viscera of the deceased demolished the version of the prosecution that the appellant and the deceased were last seen together consuming alcohol; submission being that no alcohol having been found in the viscera of the deceased, the whole version of the prosecution is fabricated. 33 Relevant would it be to go back to the version of PW-1 on this score. PW-1 had narrated that at the time when he had seen both the accused along with the deceased, they were having alcohol; what was the content of alcohol consumed by the deceased was not known. The only supporting evidence in this regard which was gathered was the recovery of an empty whisky bottle and a quarter bottle of whisky which could have thrown light on the amount of alcohol consumed by each of the three persons. 34 Modis Medical Jurisprudence & Toxicology has recited various factors which could affect the reflection of alcohol in the viscera. This would include the weight of the person, the amount and concentration of alcohol taken, whether taken slowly at intervals or all in one gulp, the presence or absence of food, its quality and quantity, previous

addiction to alcohol and amount of rest or exercise taken after consumption. This extract also recites that there is a possibility of diffusion of alcohol from the stomach into the blood and tissues after death. This literature further suggests that absorption of alcohol is delayed where the stomach contains food. 35 The body weight of the deceased was not known. The stomach contents shows that about 100 gms of semi-digested food and some solid undigested food were found in the walls of the stomach. It is also relevant to note that the murder had occurred sometime in the early morning i.e. around 01:30 AM on the intervening night of 27.10.2006; the viscera had been preserved one and half days later i.e. at 01:30 PM on 30.10.2006 after the post-mortem had been completed. The viscera had been deposited with the MHC(M) (PW-9) on 03.11.2006 and was finally sent to the FSL for examination on 13.12.2006 through constable Narender (PW-13) and was examined in the CFSL on 13.01.2010 i.e. three years and one month later. This is evident from the report (Ex.C-1) of doctor Adesh Kumar which bears the date of 13.01.2010. 36 In this background, even if no presence of alcohol has been noted in the viscera, it would not in any manner affect the credible version of PW-1. 37 The appellants have also rightly been convicted for the offence under Section 201 of the IPC. The Supreme Court in the case of Palvinder Kaur AIR 195.SC 35.had described the essential ingredients for a conviction under Section 201 in the following words:

In order to establish the charge under Section 201, Penal Code, it is essential to prove that an offence has been committed-mere suspicion that it has been committed is not sufficient-that the accused knew or had reason to believe that such offence has been committed and with the requisite knowledge and with the intent to screen the offender from legal punishment caused the evidence thereof to disappear or gives false information respecting such offences knowing or having reason to believe the same to be false.

38 This position was again reiterated by the Supreme Court in AIR 196.SC 82.Suleman Rahiman Mulai. 39 The appellants had attempted to hide the dead body. Thus the conviction under Section 201 of the IPC also stands maintained. 40 Mohd. Islam has been separately convicted for the offence under Section 25 of the Arms Act, 1959 which relates to illegal possession of an arm. Section 39

stipulates the mandatory condition of a sanction. This sanction has to be obtained from the District Magistrate for prosecution of an accused for unlawful possession of an arm. In view of the size of the arm, the mandatory sanction is required which has not been obtained. Conviction under this provision of law is thus not sustainable {See:- AIR 199.(6) SCC 17.Vijender & Others Vs. State of Delhi} 41 The law on the circumstantial evidence is settled. In 2010 (2) SCC 58.Aftab Ahmad Anasari v. State of Uttaranchal etc. the Honble Apex Court has made the following observations:

In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact must be proved individually and only thereafter the Court should consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of the guilt. If the combined effect of all the facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself/themselves, is/are not decisive. The circumstances proved should be such as to exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution case succeeds in a case of circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever extravagant and fanciful it might be. There must be a chain of evidence so far complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability, the act must have been done by the accused. Where the various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court.

42 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 their innocence stands excluded. The conviction of the appellants calls for no interference. Both the appeals are without any merit. Dismissed. Accused Mohd. Islam is in judicial custody. Accused Chander Singh is on bail. Let NBWs be ordered against him and notice to his surety returnable before the trial Court. A

copy of this order be sent to the trial Court who shall ensure compliance. 43 List before the trial Court for directions on 30.09.2013. INDERMEET KAUR, J KAILASH GAMBHIR, J SEPTEMBER 17 2013 A

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