

Drojan Singh Vs. State

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Court : Delhi

Decided On : Dec-06-2013

Judge : Indermeet Kaur

Appellant : Drojan Singh

Respondent : State

Judgement :

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

28. 11.2013. Judgment delivered on:

06. 12.2013 CRL.A. 408/2007 DROJAN SINGH Through: versus STATE Through:
+ CRL.A. 1005/2008 BHUPENDER SINGH Through: versus STATE Through:
Appellant Mr. C.M.Sharma, Adv. Respondent Ms. Richa Kapoor, APP for the
State. Appellant Mr. Ajay Verma, Adv. Respondent Ms. Richa Kapoor, APP
for the State. CORAM: HON'BLE MR. JUSTICE KAILASH GAMBHIR HON'BLE
MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

1 Both the appellants are aggrieved by the impugned judgment dated 21.03.2007 whereby they had been convicted for the offence under Sections 302/34 and 392/34 of the 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 further undergo RI for one year each for the offence under Section 302/34 of the IPC; for the offence under Section 392/34 of the IPC, they had been sentenced to undergo RI

for 10 years and to pay a fine of Rs.5,000/- each and in default of payment of fine to further undergo RI for one year. 2 Version of the prosecution was unfolded in the testimony of the complaint Jaswant Singh (Ex.PW-4/A). His statement was to the effect that on 16.06.1999 when he had returned home at 09:30 PM after attending to his shop at Sadar Bazar, he found his wife (Harbhajan Kaur) lying dead in the bathroom of his house i.e. house No.339, Parmanand Colony, Delhi; household articles were lying scattered; the door of the house was opened; cash, utensils and silver jewellerys were found missing. This complaint had formed the basis of the rukka which had been sent through constable Ram Sanahi (PW-3) pursuant to which FIR (Ex.PW-12/A) under Section 302 of the IPC was registered. 3 The victim had been removed to the Bara Hindu Rao Hospital where her MLC (Ex.PW-8/A) conducted upon her by Dr. S.M.A. Ahsan (PW-8) evidenced that she had been brought in a dead condition. 4 The investigating team headed by the Investigating Officer SI Anil Kumar (PW-18) had reached the spot. Inquest proceedings were conducted. Crime team was also summoned. Photographs of the scene of crime had also been taken by constable Yashpal (PW-5); negatives were proved as Ex.PW-5/A-1 to Ex.PW-5/A-5 and positives were proved as Ex.PW-5/B-1 to Ex.PW-5/B-5. 5 ASI Narendra Singh (PW-9) had lifted four chance prints from the spot; two were lifted from the tape recorder (Q-1 & Q-2); one chance print was lifted from the double bed and the fourth chance print was lifted from a polythene of a guarantee card. Report was proved as Ex.PW-9/A. PW-9 vide his request letter (Ex.PW-9/B) dated 17.06.1999 had returned to the Investigating Officer requesting for sample finger impressions/palm impressions of other suspects and inmates for further inquiry. 6 On the same day i.e. 17.06.1999, the post mortem on the body of the victim (Ex.PW-7/A) was conducted. The following injuries were noted :1. Nail abrasion .3x.2 c.m. over left mandibular region of face.

2. Nail abrasion .5x.2 c.m. over left side face below angle of mouth.

3. Nail abrasion .4x.1 c.m. over left side of face outer to injury no.2.

4. Nail abrasion .1x.2 c.m. over front and left side upper part of neck.

5. Nail abrasion 1.2x.2 c.m. over front and middle part of left side neck obliquely placed two c.m. below and inner to injury No.4.
6. Nail abrasion 1.5x3 c.m. over front and slightly right side middle part of neck obliquely placed 1.5 cm. below injury No.5.
7. Abrasion 1 x 8 c.cm over front and middle right lower part of neck.
8. Abrasion .4 x .2 cm over left allanasaes.
9. Bruise 14 x 10 cm over back of upper part of right arm.
10. 3x 1.5 cm front and inner part of middle right forearm.
11. Abrasion .7 x .4 cm over base and palmar aspect of right index finger.

12. Road pattern abrasion a) 5 x 2 cm. b) 4.5 x 1.5 cm, c) 3x2 cm. d) 5 x 3.5 cm over left side back of lower chest parallel to each other and present in stepping pattern. 7 The opinion on the cause of death was opined as asphyxia consequent to mechanical airway obstruction (smothering). 8 The dead body was identified by Joginder Singh (PW-6), the son of the victim as also by her husband PW-4 and was handed over to PW4 vide memo Ex.PW-4/B. 9 On 22.06.1999, PW-4 had handed over the list of missing articles which had been robbed from his house vide memo Ex.PW-4/C. This list reads herein as under:

1. Some cash amounting to Rs. 2,25,000(Two Lacs twenty five thousand) consisting of notes of Denomination of Rs 500, Rs 100 and Rs. 50.
2. Some Silver coins and silver ring number unknown. Silver coin having HAPPY BIRTHDAY Gursif Kaur 8-3-99 with best compliments from S. Jaswant Singh Juneja's print on them and silver ring having H.B.K printed on it.
3. Some other gold jewellery that my wife Late Harbhajan kaur could only know and identified.

10 On 05.09.1999, PW-4 had expressed a suspicion qua the role of Bhupender in this crime. Pursuant thereto on 22.09.1999 a notice under Section 160 of the

Cr.PC had been issued to Bhupender vide Ex.PW18/T. Bhupender confessed his complicity in the crime as also detailed the role of his co-accomplices Drojan and Dinesh. 11 Bhupender was arrested on the same day i.e. 22.09.1999 vide memo Ex.PW-18/P. Time of arrest was 08:00 pm. His disclosure statement Ex.PW-11/A was recorded. On 27.09.1999 he led the police party to his residence on the first floor of his house No.9/62, Gali No.10-A, Braham Puri, Delhi from where from under the dewan of his bed room, he got recovered a yellow coloured plastic bag which contained Rs.15,000/- and a silver coin upon which the words HAPPY BIRTHDAY GURUSIFT0803.1999 WITH BEST COMPLIMENTS FROM JASWANT SINGH JUNEJA were inscribed. The cash amount comprised of ten notes of Rs.500/- each, 80 notes of Rs.100/- each and 40 notes of Rs.50/- each were exhibited in the Court as Ex.P-7; the silver coin was proved as Ex.P-8. These articles had been seized vide memo Ex.PW-4/E. A perusal of Ex.PW-4/E shows that it has been attested by constable Ram Sanehi (PW-3), PW-4, the complainant and constable Ashok Kumar (PW-15). 12 On the same day accused Drojan had also been arrested vide arrest memo Ex.PW-18/R. His disclosure statement Ex.PW-11/D was recorded. On 24.09.1999 he had led the police party to the ground of his rented property bearing No.9/62, Gali No.10-A, Braham Puri, Delhi from where in a polythene bag from under the taand, he got recovered Rs.10,000/- and a silver coin upon which HBK had been inscribed. These articles were seized vide memo Ex.PW-4/D. A perusal of Ex.PW4/D shows that it has been attested by PW-4, the complainant, constable Lal Chand (PW-11) and constable Ashok Kumar (PW-15). 13 The Finger Print Bureau vide its report dated 06.01.2000 had opined that chance print Ex.Q-1 (lifted from the tape recorder) was identical with the left middle finger (Ex.S-1) i.e. finger impression of accused Bhupender. 14 PW-4 in his supplementary statement while recording his suspicion against Bhupender had informed the Investigating Officer the reasons for suspecting Bhupender; i.e. Bhupender being an ex-employee of PW-4 had left the job because PW-4 had refused to give him an advance of Rs.50,000/- which he had asked on the occasion of the marriage of his sister; this had annoyed Bhupender who had left the job for this reason and because of this grudge which he was nursing against PW-4, he had become a suspect in the eyes of PW-4 and was responsible for the murder of his wife. 15 This is the gist of the version of the prosecution. 16 In the

statement of the accused persons recorded under Section 313 of the Cr.PC, they have both pleaded innocence; they have denied their involvement in the crime. Accused Bhupender has admitted that he was an employee of PW-4 but his explanation is that he had gone to PW-4 to ask for arrears of his salary which had been denied to him and that is why, he had left the job. He is innocent. Innocence was also claimed by accused Drojan. 17 In defence one witness has come into the witness box; she is Beena (DW-1), the landlady of house No.9/62, Gali No.10-A, Braham Puri, Delhi. She has deposed that police has come to her house on 22.09.1999 when they had taken Bhupender with them stating that his finger prints were to be taken. She denied the suggestion that she is the moohboli maa of Bhupender. 18 Arguments have been addressed at length. On behalf of the appellant Bhupender arguments had been addressed by Mr. Ajay Verma, Advocate. Written submissions have also been filed. Arguments qua coaccused Drojan had been addressed by Mr.C.M. Sharma, Advocate. He has also filed his written submissions. Learned counsels for accused submit that this is admittedly a case of circumstantial evidence and unless and until all the links in the chain of circumstances stand complete, a conviction cannot be founded. 19 Qua Bhupender, it is pleaded that the report of Finger Print Bureau cannot be relied upon as admittedly these finger impressions had been taken without permission of the Court and thus it is hit by bar of Section 5 of the Identification of Prisoners Act, 1920. Pertinent at this stage it would be to state that this had become the bone of contention in the course of arguments addressed before an earlier Bench who had vide its order dated 06.04.2011 in view of the conflicting views given by the two Division Benches of this Court referred the matter to the larger Bench. The question framed was as under:

Whether the sample finger prints given by the accused during investigation under Section 4 of the Identification of Prisoners Act, 1920 without permission of the Magistrate under Section 5 of the Evidence Act will be admissible or not

2. The reference was answered by the Full Bench on 30.11.2011. It had noted that these sample finger impressions/palm impressions taken in the course of investigation by the police personnel even without the permission of the Magistrate would not be hit by Section 5 of the said Act. 21 It had noted that the view taken by

the learned Single Judge of this Court in Sunil Kumar @ Sonu Vs. State of NCT of Delhi, Crl. Appeal No.446/2005 decided on 25.03.2010 was the correct view. 22 The appeal against the order of the Full Bench has also been dismissed by the Apex Court. Thus the finger impressions obtained of accused Bhupender and accused Drojan in the course of investigation, even without resorting to permission from the Magistrate were not an illegality. 23 Learned counsel has however assailed the report of the Finger Print Bureau on various other grounds. Submission being that there are conflicting versions of PW-9, PW-15 and PW-18 on the date when the sample finger impressions were taken; the Investigating Officer PW-18 had categorically reiterated that the finger impressions had been taken of Bhupender on 23.08.1999 but thereafter on a subsequent date on oath in Court he has taken a stand that the finger impressions had been taken of Bhupender one week prior to 23.08.1999. There is no explanation for this irreconcilability in the dates. This report also reflects that it was on 25.08.1999 that the finger impressions had been forwarded to the FSL which is again contrary to the version of PW-15 who had stated that the finger impressions had been taken by him to the FSL on 23.08.1999. No reliance can be placed upon such a factual incorrect version. Attention has been drawn to the testimony of DW-1. It is pointed out that the witnesses of the prosecution and the defence witnesses have to be given the same weightage and the version of DW-1 stating that finger impressions of Bhupender had been obtained in September, 1999 cannot be brushed aside. Recovery is also tainted as admittedly the recovery having been effected from a public place and there being no evidence as to why no independent witness had been joined in the recovery, it is unreliable. It would be difficult to conceive that the incident having occurred three months prior to the date of the recovery i.e. the incident which is of June, 1999 and the recovery having been effected in September, 1999 and the cash amount would have been retained by the accused persons as also the items as allegedly recovered from the accused persons and which even otherwise have no material value. It is pointed out that the inscribed coin of HAPPY BIRTHDAY GURUSIFT0803.1999 WITH BEST COMPLIMENTS FROM JASWANT SINGH JUNEJA could have been given by PW-4 on the birthday of his granddaughter to all his guests and Bhupender being an old employee having worked with PW-4 for more than ten years and being on good

terms as in March, 1999, there was every possibility that this coin had been gifted to him by PW-4. Learned counsel for accused Bhupender however fairly submits that this was not a defence taken by him before the trial Court but even presuming that this stand was not, yet this argument of the appellant even at this stage cannot be ignored. Recoveries having been effected from open places are on all counts suspicious; they necessarily have to be discarded. No motive has also been alleged. There is no evidence whatsoever with the prosecution to nail the accused. They both are entitled to a benefit of doubt and a consequent acquittal. 24 Arguments had been refuted by the learned public prosecutor. It is submitted that although there is discrepancy in the dates given qua the sample finger impressions which were obtained of Bhupender but PW18 had come into the witness box to clarify that he had taken these sample impressions one week prior to 23.08.1999. In no manner can it be said that this evidence is tainted. Recoveries also stand proved and so also the motive which is evident from the version of PW-4. The impugned judgment does not call for any interference. 25 We have perused the record and heard the submissions advanced by the learned counsel for the appellants as also the learned public prosecutor. 26 This is admittedly a case of circumstantial evidence. The law on circumstantial evidence is well settled. The circumstance from which the conclusion of guilt is to be drawn must be fully established and all the facts so established must be consistent only with the hypotheses of the guilt of the accused; the circumstance should be of a conclusive nature so as to exclude every hypothesis but the one proposed to be proved. 27 The Supreme Court in Karihai Mishra alias Kanhaiya Misar v. State of Bihar, JT2001(3) SC191 had laid down this well established rule of criminal jurisprudence in the following words: "It is a well-established rule in criminal jurisprudence that circumstantial evidence can be reasonably made the basis of an accused person's conviction if it is of such a character that the same is wholly inconsistent with innocence of the accused and is consistent only with his guilt. The incriminating circumstances for being used against the accused must be such as to lead only to a hypothesis of guilt and reasonably exclude every possibility of innocence of the accused. In a case of circumstantial evidence the whole endeavour and effort of the court should be to find out whether the crime was committed by the accused and the circumstances proved form themselves into a

complete chain unerringly pointing to the guilt of the accused. If the circumstances proved against the accused in a case are consistent either with the innocence of the accused or with his guilt, he is entitled to the benefit of doubt. 28 There are two appellants in this case. Record shows that a gruesome murder of Harbhajan Kaur had been committed in the day of 16.06.1999 at her residence i.e. House No.339, Parmanand Colony, Delhi. The husband of the victim PW-4 had gone for his duty at 10:00 am and returned back at about 09:30 pm. On his return, he saw his wife lying in a pool of blood; the house was ransacked and their belongings had been scattered all over the room; blood was lying at various places. The victim was removed to the hospital where she was declared broad dead. This is evident from her MLC (Ex.PW-8/A) recorded at 11:00 pm. 29 Crime team was summoned at the spot. The photographs evidence the scene of crime. Exhibits were lifted from the spot which included four chance prints; the print in question (Q1) was lifted from the tape recorder which was positioned at point D in the site plan of the house (Ex.PW-18/B) which was the lobby of the house. This tape recorder (Ex.P-1) was seized but it was not sealed. 30 The post mortem on the dead body had opined cause of death as due to asphyxia consequent to mechanical airway obstruction (smothering) 31 Six days later i.e. 22.06.1999 PW-4 had handed over a list of missing articles to the Investigating Officer (PW-18). This list has been proved as Ex.PW-4/C (details noted supra). Apart from an amount of Rs.2,25,000/-, some gold jewellery (details not given), a silver coin and a silver ring were alleged to have been stolen. The silver coin was marked HAPPY BIRTHDAY GURUSIFT0803.1999 WITH BEST COMPLIMENTS FROM JASWANT SINGH JUNEJA. The silver ring was alleged to have a mark of HBK inscribed upon it. 32 There are three circumstances which appear against accused Bhupender. The first circumstance is the report of the finger print expert dated 06.01.2000 which had opined that chance print (Q-1) was identical with the left middle finger (S-1) i.e. finger impression of accused Bhupender. The second circumstance was the recovery of certain items connecting Bhupender with the crime. Another circumstance was the motive qua the role of Bhupender. 33 The report of an expert is a valuable piece of evidence under Section 45 of the Evidence Act. It is a relevant fact. However, the relevancy of each fact has to be tested on the touch stone of the particular case. The relevant witnesses to answer

this circumstance are PW-9, PW-15 and PW-18. 34 PW-9 had lifted four chance prints from scene of crime on 16.06.1999. Two had been lifted from a tape recorder (Q-1 and Q-2). This tape recorder was lying at point D as depicted in the site plan (Ex.PW-18/B) lying in the lobby of the house. This report is Ex.PW9/A. On 17.06.1999 vide Ex.PW-9/B PW-9 had sent a request letter to the investigating officer requesting him to send figure and palm impression of inmates and other suspected persons for purposes of comparison. 35 PW-15 had deposed that on 23.08.1999 he taken finger prints of 11 suspects/inmates to the Finger Print Bureau at Malviya Nagar. This was under the instructions of the Investigating Officer (PW-18). Amongst the list of suspects, the name of accused Bhupender had also figured. In his cross-examination, he admitted that these finger prints had not been taken by him and had been deposited by him with the Bureau under the instructions from the Investigating Officer; the departure entry to this effect was DD No.34-B. 36 PW-18 in this context deposed that on 23.08.1999, he had taken finger prints of suspects and inmates which were sent to the CFSL for comparison. In his cross-examination, he reiterated that it was on 23.08.1999 that he had sent the chance prints to the CFSL. He admitted that he had taken finger prints of accused Bhupender in the police station along with other suspects. He had not taken the permission of the Court before taking these finger impressions. He reiterated that these finger impressions had been sent to the CFSL on 23.08.1999 through PW-15. This witness was recalled again for a clarification and on 14.9.2005 which is his second deposition he clarified that the finger print impressions of Bhupender were taken one week prior to 23.08.1999 i.e. between 16.08.1999 to 23.08.1999. 37 The documentary evidence in this regard is relevant. Record shows that on 19.08.1999, a letter had been addressed by Avinash Trivedi (PW-17) SHO, PS Mukherjee Nagar to the Director FSL:

To The Director FPB, Delhi Police Police Complex PTS Malviya Nagar Delhi Sub: Regarding matching of specimen Finger Prints in the above mentioned case. Sir, This is in response to a letter No.1957/FP8/N. Delhi dt. 09/08/99. In this regard it is submitted that as per the directions of the crime team, the specimen Finger Prints of suspects and inmates have been taken and are being sent through Ct.Ashok No.2037/HW. These specimen finger prints may please be compared with the record and opinion may be furnished at the earliest. Submitted please. Sd

3. This letter reflects that the finger impressions of the suspects including Bhupender had been taken on 19.08.1999 and were sent through PW-15 to the FSL on 23.08.1999. The report of the Finger Print Bureau (06.01.2000) states that the specimen finger/palm prints slip of the suspects had been received from Police Station Mukherjee Nagar in the Bureau on 25.08.1999. This date of 25.8.1999 is irreconcilable with the oral versions of PW-15 and PW-18 who had both stated that the finger impressions of the suspects had been sent on 23.8.1999. A suspicion had been created in the mind of the trial Court who had sought a clarification. This was not qua the dates 23.08.1999 and 25.08.1999 alone but also because of the aforementioned letter dated 19.08.1999. This letter sent by PW-17 dated 19.08.1999 to the Finger Print Bureau had clearly recited that the specimen finger impressions of the suspects had already been taken meaning thereby that they had not been taken on 23.08.1999 but prior to 19.08.1999. In his clarification PW-18 had reversed his stand; he had stated that these finger impressions of Bhupender were taken one week prior to 23.08.1999. No case diary or other documents had been produced in support of this clarification. This incriminating circumstance when put to Bhupender, in answer, it was stated that his finger impressions were taken only in September, 1999. This explanation of Bhupender was substantiated by his defence when he examined DW-1, the landlady of the house where Bhupender was residing, who had on oath stated that it was sometime in September, 1999 that the police had come to their house and taken Bhupender stating that his finger impressions had to be obtained. 39 In AIR 1981 SC911Dudh Nath Pandey Vs. State of U.P., the Supreme Court had noted that the evidence tendered by the defence witnesses cannot always be termed tainted by reason of the fact that the witnesses were being examined by the defence; defence witnesses are entitled to equal respect and treatment as that of the prosecution; they cannot be differentiated and treated differently from the prosecution witnesses. 40 That apart the incriminating circumstance i.e. the report of the FSL (dated 06.01.2000) had even otherwise not been put as an incriminating circumstance to Bhupender. This is clear from the questionnaire forwarded to Bhupender in his statement under Section 313 Cr.P.C. 41 Law is well settled on this issue. A circumstance which is incriminating but which has not been put to the accused cannot be read against

him. It also cannot be said that no prejudice had been suffered by the accused in not putting this circumstance to him and especially when the defence of the accused is that his finger impressions were only taken in September, 1999 whereas what has been examined and had been subject matter of the report of the FSL were the sample finger/palm impressions allegedly taken of Bhupender in August, 1999. 42 In AIR 1984 SC1662 Mohmed Inayatullah Vs. State of Maharashtra, the Apex Court had noted that wherein an incriminating circumstance against the accused not put to the accused in his examination under this Section, such a circumstance has to be excluded from consideration in the trial. 43 Not only is oral testimony of PW-9, PW-15 and PW-18 in conflict with one another but the documentary evidence which is writ large is in contrast to these ocular versions. Even presuming that the witnesses by lapse of memory have not been able to give correct dates, the dates given in the aforementioned documents cannot be ignored. 44 In this scenario, the submission of the learned defence counsel that whether the finger prints were at all taken of Bhupender or not become questionable. This is also relevant in view of the fact that PW-4 had for the first time raised a suspicion upon Bhupender only on 05.09.1999. Moreover this report also not having been put to Bhupender as an incriminating circumstance against him; this circumstance has necessarily to be ignored. 45 The next circumstance alleged against accused Bhupender is the recoveries which were purported to have been effected from under the dewan of his room. This recovery was effected on 27.09.1999. His disclosure statement (Ex.PW-11/A) was recorded on 22.09.1999. In this disclosure statement he had disclosed that he could get recovered part of the cash amount and a silver coin upon which the words HAPPY BIRTHDAY GURUSIFT0803.1999 WITH BEST COMPLIMENTS FROM JASWANT SINGH JUNEJA were inscribed. Recovery was effected from a dewan in the bedroom of his 1st floor residence at 9/62, Gali No.10-A, Brahampuri, Delhi. The articles were seized vide memo Ex.PW-4/E. 46 This memo was attested by PW-3, PW-4 and PW-15 of whom PW-3 and PW-15 were the police witnesses and PW-4 was the complainant. PW-3 in his examination in chief did not whisper a word about any recovery of 27.09.1999. He was permitted to be cross-examined by the learned public prosecutor wherein at that stage, he had stated that on 27.09.1999, the recovery was effected in the manner as narrated in Ex.PW-4/E.

PW-4 stated that he was called in the Police Station on 24.09.1999; he identified Bhupender; he accompanied with the police officials had gone to the house of the accused for making recovery. Admittedly no recovery was effected on that day. Recovery was effected on 27.09.1999. PW-15 also reiterated that on 24.09.1999 he had gone to the house of Bhupender for recovery but no recovery had been effected on that date; recovery had been effected only on 27.09.1999. 47 The disclosure statement of accused Bhupender was recorded on 22.09.1999. Attempt for recovery was made on 24.09.1999. This is clear from the versions of PW-4 and PW-15. Recovery however failed on that date. Recovery was effected only on 27.09.1999. 48 Section 27 of the Indian Evidence Act lifts the partial ban which has been imposed upon confessions being recorded in police custody. It is only so much of the information which leads to a discovery of a fact which is permitted to be read against the accused. The rest of the confession made by him has to be ignored. This Section is in the nature of an exception to the preceding provisions i.e. Sections 25 & 26. The first condition necessary for bringing this Section in to operation is the discovery of fact i.e. a relevant fact in consequence of the information received from a person accused of an offence. The words distinctly and to the fact thereby discovered are the linchpin of this provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. 49 Disclosure statement of Bhupender had been recorded on 22.09.1999. The evidence of PW-4 and PW-15 discloses that no recovery was effected on 24.09.1999 pursuant to the disclosure statement recorded on 22.09.1999. It is not the version of the prosecution that any supplementary disclosure statement was recorded. In the absence of any such evidence on record, the recovery effected on 27.09.1999 does not fall within the parameters of Section 27 of the Evidence Act. 50 In 2007 (2) JCC1617 Mahadev Prasad Pant Vs. State of Delhi where the recovery was effected 5-6 days after the arrest of the accused, doubt about such a recovery had been created. In the present case as well no cogent explanation has been furnished for the recovery having been effected after such long lapse i.e. after five days of the disclosure statement. Recovery is also admittedly in the afternoon and public witnesses had not been joined. The coin (Ex.P-8) is also not a valuable item. 51 The currency notes had no special distinction marks. The submission of the learned defence

counsel that the silver coin with the inscription HAPPY BIRTHDAY GURUSIFT0803.1999 WITH BEST COMPLIMENTS FROM JASWANT SINGH JUNEJA was given to Bhupender as admittedly he was an old employee of PW-4 and it was given to him on the occasion of the birthday of the granddaughter of PW-4 which was in March, 1999; the case of the prosecution being that Bhupender had left the service of PW-4 only sometime in April, 1999. 52 Recovery being suspicious; it cannot be foisted upon the accused. 53 The only other circumstance against accused Bhupender is the motive for him to have committed the crime; motive being that he had asked for an advance of Rs.50,000/- from PW-4 but not having got that advance, he left his 10 years old job and this grievance was probably the reason for his having committed offence. 54 This motive has been alleged in the testimony of PW-4. Perusal of this version shows that the incident had occurred on 16.06.1999; PW-4 never had any suspicion upon accused Bhupender up to 05.09.1999 and it was only then that he thought that Bhupender may be a suspect. In his cross-examination, he admitted that although he had disclosed his suspicion to the police on 05.09.1999 but the police did not take any action against him for the next 10 days. Bhupender in his statement under Section 313 of the Cr.PC admitted that he was an employee of PW-4 but his explanation being that he had gone to PW-4 for his previous dues which were not given which was reason for his leaving the job; he has been falsely implicated. 55 The motive projected even otherwise appears to be weak. Even presuming that this was a motive, this single circumstance of motive by itself would not be sufficient to find a conviction against the accused. 56 Prosecution has not been able to establish its case against accused Bhupender. 57 Qua accused Drojan, the evidence is still little. Against him, the prosecution has pitched the circumstance of recovery alone. This is the recovery of silver coin which has been made pursuant to his disclosure statement (Ex.PW-11/B) recorded on 24.09.1999. This recovery was effected on 24.09.1999. The recovery memo has been proved as Ex.PW4/D. It is attested by PW-4, PW-11 and PW-15. 58 In cross-examination, PW-4 has stated that they took about 30-40 minutes in making the recovery from the house of accused Drojan which was around 01:00 pm in the afternoon. PW-11 admitted that no public person had joined the recovery. PW-15 has mentioned the time as 02:30 pm. 59 This is the only single circumstance pitched against Drojan.

Recovery was admittedly effected three months after the incident. It was from the taand of the residence of the ground floor of his house. Currency notes have no special marks; such notes are easily available. The silver metal/ring having mark of HBK was also an ordinary ring of little value; the incident having occurred three months ago, why Drojan would have still hidden this ring in a poly bag under the taand of his house is difficult to perceive. There were several public persons available in the afternoon and the area was well populated; admittedly no public witness has also been joined. 60 This recovery does not inspire confidence. 61 The prosecution has failed to prove its case against accused Drojan as well. 62 Accordingly, the appeals of both the persons are allowed. Appellant Bhupender is in judicial custody; he be released forthwith. Appellant Drojan is on bail. His bail bonds are cancelled; surety stands discharged. 63 Both the appeals are allowed and disposed of in the above terms. INDERMEET KAUR, J KAILASH GAMBHIR, J DECEMBER06 2013 A

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