

State Vs. Om Prakash and Others

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Court : Delhi

Decided On : Apr-17-2014

Judge : Mukta Gupta

Appellant : State

Respondent : Om Prakash and Others

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

24. h March, 2014 Decided on:

17. h April, 2014 DEATH SENTENCE REF. No.5 of 2012 STATE Petitioner Through: Mr. Lovkesh Sawhney, APP with Inspector Rajesh Kumar, PS Swaroop Nagar. versus OM PRAKASH AND OTHERS Through: Respondent Mr. Sumeet Verma, Advocate. AND CRL. APPEAL No.288 of 2013 SURAJ Appellant Through: Mr. Sumeet Verma, Advocate. Through: Respondent Mr. Lovkesh Sawhney, APP. versus STATE AND CRL. APPEAL No.274 of 2013 SANJEEV Through: Appellant Mr. Sumeet Verma, Advocate. Through: Respondent Mr. Lovkesh Sawhney, APP. versus STATE AND CRL. APPEAL No.156 of 2013 MAYA Through: Appellant Mr. Joginder Tuli with Mr. Ashu Kumar Sharma, Mr. Tarun Nanda and Mr. Vikhyat Bhagi, Advocates. versus STATE Through: Respondent Mr. Lovkesh Sawhney, APP. AND CRL. APPEAL No.105 of 2013 KHUSHBOO @ INDERKALA Through: Appellant Mr.

Sumeet Verma and Ms. Anu Narula, Advocates. versus STATE Through: Respondent Mr. Lovkesh Sawhney, APP. AND CRL. APPEAL No.460 of 2013 OM PRAKASH Appellant Through: Mr. Sumeet Verma, Advocate. versus STATE (G.N.C.T. OF DELHI) Through: Respondent Mr. Lovkesh Sawhney, APP. CORAM: HON'BLE DR. JUSTICE S. MURALIDHAR HON'BLE MS. JUSTICE MUKTA GUPTA Mukta Gupta, J.

1. Criminal Appeals No.105, 156, 274, 288 and 460 of 2013 arise out of the impugned judgment dated 1st October 2012 of the learned Additional Session Judge in Sessions Case No.56 of 2010 whereby all the five Appellants were convicted for offences under Sections 302/323/34 IPC and the order on sentence dated 5th October, 2012 awarding each of the Appellants the death sentence. By the Death Reference No.5/2012 the State has sought confirmation of the death sentence.

2. The Appellants have been convicted for offence under Section 302 read with Section 34 IPC for having murdered Yogesh and Asha in furtherance of their common intention on the 14th June, 2010 between 1 and 5 am at House No.C-101, Gali No.3 I.P. Colony, Delhi. The Appellants Suraj and Maya are the parents of the deceased Asha. Appellant Om Prakash and Khushboo are the uncle and aunt of Asha and Appellant Sanjeev, her cousin, son of Om Prakash. The testimony of Rakesh PW43. PW4 Rakesh is the Complainant, maker of the FIR, and the prosecution case unfolds from his complaint. He has stated that he was a tailor by profession and his brother-in-law Yogesh @ Bhopu, the deceased used to drive a Maruti Van No.DL2L6133 which was owned by PW4 Yogesh, whose parents had passed away, was living in a house adjoining that of PW4 Yogesh was having an affair with Asha, daughter of Appellants Suraj and Maya, resident of C-409, 410, Gokul Puri. About 24-25 days prior to the day of alleged incident Asha along with her mother Maya and maternal aunt (mausi) was passing in front of Yogeshs house, when Asha stated that she would marry Yogesh @ Bhopu and live in his house. On this Maya is stated to have scolded Asha. In the meantime PW4 Rakesh came out. Suraj, Ashas father, also reached there. PW4 Rakesh also called Yogesh outside and asked Asha whether she wanted to marry Yogesh. Asha then stated in the presence of her parents and maternal aunt, Main Shaadi

Karungi to Isi Se Karungi. On hearing this Suraj and Maya started beating Maya and the Appellant Suraj threatened Yogesh that if he talked with Asha he would be killed.

4. On 13th June, 2010 at around 10 to 10.30 pm when PW4 returned home from his workplace, Yogesh @ Bhopu told him that he had received a telephonic call from Asha asking him to come to the house of her uncle Om Prakash Saini situated at Indra Prastha Colony, Gali No.3, C-Block, House No.101 for talks of marriage. The two of them took dinner and thereafter at around 11 to 11.30 pm left in the Maruti Van No.DL2L6133 They reached the house of Om Prakash at around 12 midnight to 12.30 am. The door was opened by Om Prakash who called both of them inside. Inside the house Suraj, Maya, Khushboo, Sanjeev s/o Om Prakash and Asha were also present. They started talking and during the said conversation the other side raised the issue of caste stating that they were Saini and Yogesh and PW4 were Jatavs. Thereafter, Om Prakash and Suraj started abusing and manhandling Rakesh and Yogesh. After hearing the noise some neighbours collected outside the house of Om Prakash. Thereafter, Yogesh and PW4 ran out of the house. PW4 ran in the direction in which the van was parked thinking that Yogesh would follow. However, Yogesh ran in the opposite direction. The keys of the van were with Yogesh and PW4 did not know how to drive. PW4 stopped at a distance from the van and waited for Yogesh. After waiting for a considerable amount of time, when Yogesh did not arrive, PW4 thought that Yogesh might have returned home by another way. Therefore, Rakesh PW4 came to the main road, hired a TSR and reached home. The next morning PW4 woke up and went to Yogeshs house and called him. Yogeshs aunt, who used to reside on the ground floor, stated that Yogesh had not returned home the previous night. PW4 noticed that Yogeshs van was also not parked outside the house. He immediately went to the house of Om Prakash where he found a crowd in the street. He was informed that in the night a boy and a girl had been murdered there. PW4 has proved his statement Ex. PW4/A on the basis of which FIR was registered.

5. Mr. Sumeet Verma, Mr. Joginder Tuli and Ms. Anu Narula, learned counsels for the Appellants, have assailed the testimony of PW4 on the ground that he was not an eye witness. If indeed PW4 was with Yogesh it was not natural for him to have

left Yogesh and run away. There was material improvement in the testimony of PW4 in as much as in the FIR he had not stated that the issue of caste was raised. However, before the trial Court, PW4 stated that during the conversation the other side had raised the issue of caste. Thus the testimony of PW4 could not be relied upon. The testimony of Umesh PW16. Besides PW4, another material prosecution witness is PW16 Umesh Kumar. PW16 deposed before the trial Court that he was residing at C Block, Gali No.3, Indraprastha Colony, Burari, Delhi along with his family and engaged in the business of motor parts. On the intervening night of 13th/14th April 2010, at around 12 midnight, PW16 heard some noise coming from the neighbouring house occupied by Om Prakash and his family. A number of residents from the locality had gathered there and PW16 also reached there. The main door of the house was closed but not locked. PW16 entered the house and saw that the Appellant Sanjeev and Suraj were giving beatings to one boy. Sanjeev pushed PW16 due to which his specs fell down. Appellant Om Prakash stated Yeh Hamara Ghar Ka Mamala Hai, Aap Log Jaayen. As PW16 came out of the house of the Appellants, he found that two ladies, Khushboo and Maya, were sitting outside the house. PW16 clarified that when he entered the house the said two ladies were standing outside and one girl was thrown by Om Prakash on the hand pump. The girl became unconscious. Nobody helped her and she remained lying there. The Appellant Om Prakash again asked PW16 to leave. After some time the cries which were coming from that house subsided and PW16 returned to his house. In the morning PW16 found that the house of Om Prakash was locked from outside. His wife Satyawati (DW8) informed him that all the five persons who were there on the previous night had gone somewhere on motorcycles and the whereabouts of that boy and girl were not known. PW16 found an unclaimed red colour Maruti van parked outside the street on the road. Someone informed the police. When the police was inquiring one person named Rakesh (PW4) met the police officials and informed them about the incident. From PW4 PW16 came to know the name of the boy who was beaten and that he was wearing black coloured clothes. When PW16 entered the house with the police, in the internal room he found the dead bodies of the boy, whom he had seen being beaten by Appellants Sanjeev and Suraj, and of the girl whom he had seen being thrown on the hand pump by the Appellant Om Prakash.

PW16 also stated that in his presence the police lifted the electric wire, one danda in broken condition, one plastic pipe which was about three feet in length, one piece of floor. PW16 also identified his signatures on the seizure memos. Submissions of counsel for the Appellants 7. The testimony of PW16 has been assailed by the Appellants on the ground that he is an introduced witness. Even though PW16 was an eye witness and available on the spot prior to Rakesh PW4 reaching the spot, the FIR was not recorded on his statement but on the statement of PW4 Rakesh. Further, PW16 was not a reliable witness as his wife DW8 has herself stated that PW16 was a drunkard. Moreover in his cross-examination, PW16 admitted that he did not witness the seizure of the blood stained underwear and the keys of the Maruti van though he had signed the seizure memos.

8. Besides challenging the statements of PWs 4 and 16, learned counsel for the Appellants have submitted that the Appellants plea of alibi which has not been duly considered by the learned trial Court. Their conviction was based entirely on the testimonies of PWs 4 and 16 who were not reliable witnesses. The weapons of offence were not recovered. The electric wires, sanitary pipe and danda recovered at the spot were all planted. It is stated that the Appellants Suraj and Om Prakash allegedly got recovered a pair of ropes from Ashram. However, the present case was not one of strangulation of either of the two deceased. Therefore, the said recovery did not relate to the offence committed.

9. As regards the precise role of Appellants Khushboo and Maya, learned counsel appearing for them pointed out that even according to PW16, they were standing outside and did not participate in the alleged offence and thus they could not be convicted with the aid of Section 34 IPC as no act in furtherance of a common intention was done by them. Reliance was placed on the decision in Rakesh v. State of U.P. 2001 SCC CrI.

601. The finding of the learned trial Court that the two ladies were standing on vigil was unfounded as the two ladies did not make any effort to stop PW16 or other persons from entering the house. Submissions of the APP10 Mr. Lovkesh Sawhney, learned Additional Public Prosecutor (APP) for the State, on the other

hand contended that the motive for the crime had been explained by PW4 in the FIR itself wherein it was stated that when 20-25 days prior to the incident Asha expressed her desire to marry Yogesh, she was beaten and Yogesh was threatened to be killed. The Appellant Om Prakash in his statement under Section 313 Cr PC admitted that after the incident Asha was shifted from Gokul Puri to his house at Swaroop Nagar. Mr. Sawhney submitted that there was no material improvement in the testimony of PW4. PW4 had narrated the events with reference to the approximate time of their occurrence. The time of death given in the two post-mortem reports, coincided with the time immediately after PW4 ran away from the Appellant Om Prakash's house and did not meet Yogesh thereafter.

11. Mr. Sawhney submitted that PW16 Umesh was a natural and reliable witness. His version was supported by DW8, his wife. Though DW8 was examined as a defence witness to discredit PW16, she corroborated the version of PW16 that there was a commotion in the house of Om Prakash at night and when PW16 entered the house of Appellant he was given a blow due to which his specs broke. The post-mortem report showed the brutal and barbaric manner in which both Yogesh and Asha were murdered. They were tied with putting electric wires around their arms and were electrocuted. Embedded electrical wires were found in the arms of both the deceased. PWs 14 and 19 also spoke about the commotion at the house of Appellant Om Prakash. PW14 had called the Police by making a call at 100 number. Relying upon the decision in *Ratan Singh v. State of H.P.* (1997) 4 SCC 161 it was submitted by Mr. Sawhney that minor improvements in the testimony of the witnesses do not affect their credibility. Further, the version of eyewitness PW16 was corroborated by PW4 and DD No.7A.

12. Commenting on the role of Maya and Khushboo, Mr. Sawhney submitted that even an illegal omission would attract Section 34 IPC. From the evidence on record it is apparent that Appellant Khushboo and Maya deliberately refrained from saving the deceased and thus there is no illegality in the order of learned Trial Court convicting both of them for offence under Section 302 IPC read with Section 34 IPC. The doctor who conducted postmortem had given an opinion that the injuries were possible with the plastic rod recovered from the spot. The gruesome manner in which the murders were committed was evident from the fact that the

accused tied a screw driver in the salwar of the deceased Asha. Mr. Sawhney submitted that the Appellants failed to discharge of proving their plea of alibi beyond reasonable doubt. The testimony of the defence witnesses speaking about the presence of Appellants Maya, Khushboo and Sanjeev at the sister-in-laws house in relation to her grandsons birthday was wholly unbelievable. The defence witness DW1 Jai Narain could not prove the alibi of Appellants Om Prakash and Suraj. An adverse inference was required to be drawn against the Appellants under Section 106 of the Evidence Act as the two dead bodies were found in their house which was found locked. The key of the house was recovered from Appellant Sanjeev. Last Seen 13. In analyzing the evidence, the Court would first like to deal with the various circumstances as sought to be established by the prosecution. The conduct of PW4 is assailed to be unnatural on the ground that he left his brother-in-law Yogesh at the spot, came back alone and slept without checking whether the deceased Yogesh had returned or not. It is stated that PW4 is a planted witness and was not a witness who had seen the deceased Yogesh and Asha last in the company of the Appellants.

14. A perusal of the testimony of PW4 demonstrates that while Om Prakash and Suraj were abusing Rakesh and Yogesh, they started manhandling them as well. On this, Rakesh and Yogesh ran out of the house. However, the two ran in opposite directions. PW4 ran in the direction where the van was parked and stopped at a distance from the van. However, Yogesh ran in a different direction. Having waited for Yogesh for a considerable time, and when he did not come, PW4 went home after reaching the main road and taking a TSR as he thought that Yogesh would have reached his house from another direction. PW4 witness has given the sequence of events along with the approximate time which would show that PW4 and the deceased Yogesh reached the house of the Appellant Om Prakash at around 12 to 12.30 am and thereafter had a discussion. It is thus apparent that PW4 reached his house a few hours past midnight and obviously went off to sleep. He got up in the morning at around 8 am. PW4 has clarified that he slept till late. On waking up he found that Yogesh had not reached his house. So PW4 went to the house of Om Prakash at Swaroop Nagar. It will be recalled that neither the keys of the van were with PW4 nor did he know driving. Therefore, in order to save himself, PW4 went outside and waited at a distance. There was

nothing unnatural or unbelievable in this conduct of PW4. Rather his version that he was present at night with Yogesh at the house of Om Prakash is reinforced by the fact that on coming to know that Yogesh had not reached home at night and finding that the van was also not there, PW4 immediately rushed to Swaroop Nagar to the house of Om Prakash where he found a crowd and the dead bodies in the house of Om Prakash. Had PW4 not gone to the house of Om Prakash the previous night there was no way it would have occurred to him to go the house of Om Prakash to find out about Yogesh. Nothing has been elicited from PW4 in his cross-examination that would throw any doubt on the veracity of his version. The Court is of the view that evidence of PW4 fully proves beyond reasonable doubt that on the night of the occurrence, the deceased Asha and Yogesh were last seen in the company of the accused till the time PW4 left the spot. Eye witnesses evidence 15. The evidence of last seen is also in the form of the eye witness PW16. He has stated that in the mid night of 13th /14th June 2010, there was noise in the house of Om Prakash and on hearing this many people collected at the spot. PW16 found Maya and Khushboo standing outside. The door was closed but not locked. He went inside and saw Om Prakash hitting Asha and throwing her on the hand pump. He saw Suraj and Sanjeev beating Yogesh. PW16 is a neighbor of Appellant Om Prakash, residing in the vicinity. It is but natural that on hearing the noise in the house of Om Prakash, he was one of the persons who reached Om Prakash's house.

16. Though the defence examined DW8, the wife of PW16, to discredit him she, in fact, corroborated his version. In her testimony DW8 has stated that her husband was a habitual drunkard and on the date of murder he had consumed liquor at about 4 pm. He was kept inside the house. In the night when PW16 heard loud noise coming from the house of Om Prakash, he went outside and entered the house of Om Prakash along with 4-5 other persons, but she did not know the names of those 4-5 persons. Somebody hit PW16 due to which his spectacles broke. Thereafter DW8 took PW16 from the house of Om Prakash, bolted the door and went to sleep. Thus DW8 confirmed the presence of PW16 inside the house of Om Prakash after the noise started coming.

17. The testimony of PW16 is also assailed on the ground that despite the fact he was an alleged eye witness no FIR was registered at his instance. PW14 on whose call to PCR DD No.7B was recorded has stated that in the morning of 14th June, 2010 he was told by PW16 and some other public persons that a quarrel took place at night in the house of Om Prakash wherein a boy and a girl were beaten. So PW14 informed the police by making a call on the 100 number from his mobile No.9582556631. While the police were making inquiries, two witnesses i.e. PW4 Rakesh and PW16 Umesh were available to them. PW16 Umesh was a witness to the beating of the girl and boy at night whereas PW4 Rakesh knew about all the preceding facts. Thus when two witnesses were available to the police, no error can be said to be committed by the police in registering the FIR on the statement of one of them, i.e., Rakesh and recording the statement of Umesh immediately thereafter under Section 161 Cr PC. Further, the purpose of recording FIR is only to set the investigation into motion. The non-recording of the FIR on the statement of Umesh cannot lead to the inference that he was not an eyewitness as his statement under Section 161 Cr PC was recorded on the same date, that is, 14th June, 2010. Further PW16 is also a witness to the seizures done from the spot.

18. PW16 has stated that he saw Om Prakash throwing the girl at the hand pump. During the seizures done at the spot a bunch of hair were seized from the hand pump and as per the FSL report the said bunch of hair matched with the hair of deceased Asha thereby corroborating the version of PW16 that girl Asha was thrown on the hand pump. Hence from the evidence on record the prosecution has proved beyond reasonable doubt that the Appellants Om Prakash, Suraj and Sanjeev were beating both the deceased Yogesh and Asha on the intervening night of 13th/14th June, 2010 when Maya and Khushboo were standing outside. Scene of Occurrence 19. SI PW19 ASI Krishan Kumar has stated that on 14th June, 2010 at about 8.00 AM he received DD No.7B to the effect that IP Colony, Gali No.20, C Block, Kathia Baba Ashram Ke Paas Kal Raat Jhagda Huwa Tha. Makaan Band Hai. Ghar Ke Saamne Ek Gaadi No.DL2 M6133 Laawaris Khadi Hai. He reached at the spot, found a crowd there and was informed that there was quarrel at House No.C-101, Gali No.3, IP Colony. PW19 was also informed that all the residents had gone to some unknown place early morning after putting a lock

on the house. A red colour Maruti van was found parked at the junction of Gali No.3 and Gali No.20. The residents stated that it did not belong to that area. PW19 then called the SHO. On the SHO reaching the spot, PW19 was instructed to enter the house through the roof. When he reached inside the House No.101, in the last room he found two dead bodies, one of a boy and other of a girl lying on the floor. Thereafter, the lock of the house was broken open and the lock was seized. Besides the two dead bodies, the police found some electrical wires lying underneath the bed, one mobile phone near the dead body, one mobile phone on the top of the fridge, and one key ring having two keys was lying near the male dead body. When they came outside Umesh met them and told them about the scuffle on the previous night. In the meantime, Rakesh also came and informed them about the entire incident of the previous night, of how he had come with his brother-in-law Yogesh who had not reached home and thus he had come back again to find out about Yogesh. Rakesh was taken inside; he identified the body of the boy as that of Yogesh and the body of girl as that of Asha. Seizures from the Spot 20. PW14 ACP Pankaj Kumar Singh and PW19 ASI Krishan Kumar have both stated that when they went inside the house they found two dead bodies lying with their faces downwards, heads towards the wall and feet towards bed. On inspection of dead bodies of the boy and the girl they found round burnt marks above the left arm and above the ankle of the left leg. They also found marks from beating on the bodies. At the spot two black coloured and two yellow and red coloured electric wires, with some part of the rubber insulation peeled off from the black wires, were seized. A Nokia mobile phone was also lying near the dead body of Yogesh which was in a switched off condition. It was identified by Rakesh to be that of Yogesh. One key ring with two keys was also found near the dead body of Yogesh which Rakesh identified to be the keys of Maruti van bearing No.DL2 L-6133. One blood soaked underwear was also lying at the spot. One screw driver having a U shape bent on one side with yellow insulation was found entangled with the string of the Salwar of Asha which was also seized. About 8-10 broken pieces of dandas were lying in the gallery, which were also seized. Some plastic sanitary pipes fitted with metallic sanitary fitting were also found lying in the gallery and were also seized. Some hair found entangled in the base of hand pump installed just outside the house was also seized. Medical Evidence 21. The

postmortem of the body of the deceased Yogesh was conducted by PW12 Dr. Sudesh Kumar. As per the postmortem report Ex.PW12/A injuries 1 to 3 were caused by electric current, injury No.4 was caused by a blunt cylindrical weapon and injuries No.5 to 7 were caused by the impact of blunt force. It was opined that electro thermal injuries were sufficient to cause death in the ordinary course of nature. All injuries were consistent with the beatings/assault. The cause of death was opined to be cardiac fibrillation and respiratory failure, as a result of electrocution. All the injuries were ante mortem in nature and the death was homicidal. PW12 also opined that the time since death was 38 hours. The postmortem on the body of Yogesh was conducted on 15th June, 2010 at 4 pm. Thus as per this opinion, Yogesh died around 2 am on 14th June, 2010.

22. PW12 also opined that the injuries 1 and 2 could have been caused by black wire in packet No.2 and was consistent with fastening. Injury 3 could have been caused by the yellow and red electric wire. Injury 4 was possible by the PVC pipe in packet No.3 or a similar such object. Injuries 5, 6 and 7 were possibly caused by the wooden pieces in Packet No.1 or similar such things. He exhibited his subsequent opinion as PW12/B.

23. In his cross-examination PW12 also stated that when a naked wire came in contact with skin and is used for electrocution, the same would turn black and in the present case he found that open ends of the wire which were in touch with the skin were black. During the postmortem he found the wire wrapped on the right arm of the deceased. They were all black wires and one double core wire of red and yellow with exposed ends which were removed from the body before the postmortem.

24. Dr. V.K. Jha PW17 conducted the post-mortem on deceased Asha and exhibited his report as Ex. PW17/A. He found the following injuries on Asha:

1. Lacerated punctured wound over inner aspect of right forearm just below the elbow joint of size 1 CM X1CM, margins were blackened and hard to palpate with dept of wound was 0.5 CM creating a crater of grayish colour. No blood was oozing from the wound (electric burn marks and entry wound of the current).

2. Rail road pattern bruise 6 CM X2CM with two parallel reddish line and intermediate skin was pale, placed over left arm lower outer aspect. Two parallel reddish lines were raised.

3. Lacerated perforated electric burn mark, margin were irregular and everted 1.5 CM X1CM, colour brownish black (exit wound of electric current). The injuries located above outer aspect of left arm, just above the elbow joint.

4. Brownish coloured defused bruise over left thigh and left leg.

5. Brownish coloured diffuse wound over right thigh and right leg.

6. Circular bruise 1 CM in width surrounding the upper part of wrist joint of left side.

7. Semicircular bruise with abrasion on outer aspect of right forearm, just above the writ joint.

8. Circular bruise abrasion encircling the lower end of leg, just above the ankle joint 1 CM in width and similar bruise with abrasion on right lower end of right leg, just above the ankle joint.

9. Both lips were contused at muco-cutaneous junction.

25. PW17opined that the cause of death of Asha was a sudden cardiac arrest and the cessation of respiration due to respiratory muscle paralysis consequent to electric current, passing through the chest. He also opined that Injuries 2, 4 and 5 were caused by a hard blunt object, in particular a straight circular object like a lathi and danda. Injuries 6, 7 and 8 were caused by the fastening of hand and feet with the help of a rope and wire. PW17further opined that the injuries were ante mortem in nature and the time since death was approximately 38 hours. Vide Ex.PW17/B he gave the subsequent opinion that the injury 1 could have been caused by yellow colour electric wire, injuries 2, 4 and 5 could have been caused by wooden piece in packet No.1, PVC pipe in packet No.3 or similar such thing and injuries 6, 7 and 8 could have been caused by black wire in packet No.2 and was consistent with fastening.

26. It is thus evident from the testimony of these witnesses that Yogesh and Asha died due to electrocution and were given blunt injuries before electrocution. The time since death was 38 hours. Thus the death took place at around 2 am on 14th June, 2010. This also corroborates the version of PW4 that the incident happened after he left and the version of PW16 on the night he saw Yogesh and Asha being beaten. Recovery at the instance of the accused 27. PW13 ACP Pankaj Kumar Singh, the investigating officer has stated that he along with Inspector Satender Dhull PW24, SI Suresh PW26 and the complainant Rakesh left for the search of the accused. On the pointing of Rakesh at Swaroop Nagar, Burari Road, Suraj and Om Prakash were arrested. After their arrest they made disclosure statements. On the pointing of both the accused towards the bushes, beneath the Keekar tree, outside the Ashram, a yellow polythene lying was taken out. The polythene contained a rope made of jute measuring 13 meters. The same was seized, however this rope was not shown to the post-mortem doctors and no opinion qua the same has been taken whether any of the injuries was possible by the said rope. Thus, the recovery of rope at the instance of the Appellant Suraj and Om Prakash cannot be used in evidence as the same is not connected with the injuries received by the two deceased. Plea of Alibi of Maya, Khushboo and Sanjeev 28. All the 5 Appellants have pleaded alibi. The plea of alibi of Maya is based on the evidence of DWs 4, 5 and 6 i.e. Shakuntala, Lokesh and Naresh. DW4 Shakuntala has stated that Suraj and Om Prakash are her brothers and Maya and Khushboo their wives. Sanjeev is the son of Om Prakash and her nephew. She celebrated the birthday of her grandson on 13 th June, 2010 when Khushboo, Sanjeev and the children of Khushboo came to her residence on 12th June, 2010 and remained there till 16th June, 2010. She further stated that on 16th June, 2010 at about 12 Noon or 1pm she received a call from Ramwati telling that Asha had died and asked Khushboo and Sanjeev to reach there. According to DW4 Maya had already left DW4