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Parminder Kaur Vs. State

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Court : Delhi

Decided On : Aug-01-2014

Judge : G.P. Mittal

Appellant : Parminder Kaur

Respondent : State

Advocate for Pet/Ap. : Mr. Avninder Singh, Ms. Sumi Anand, Mr. Manish Kaushik, Mr. Dhruv Gupta, Ms. Rajdipa Behura

Judgement :

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

19. h May, 2014 Pronounced on: August 01, 2014 + CRL. A. 544/2011 PARMINDER KAUR Through: ..... Appellant Mr. Avninder Singh with Ms. Sumi Anand, Advocates Versus STATE ..... Respondent Through + Ms. Rajdipa Behura, APP CRL. A. 209/2012 MANDEEP SINGH Through: ..... Appellant Mr. Manish Kaushik with Mr. Dhruv Gupta, Advocates Versus STATE ..... Respondent Through Ms. Rajdipa Behura, APP CORAM: HON'BLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE G.P. MITTAL

JUDGMENT
G.P. MITTAL, J.

1. These appeals are directed against the judgment dated 23.03.2011 and order on sentence dated 31.03.2011 arising out of FIR No.594/ 2007, P.S. Defence Colony (Sessions Case No.03/2010/2008) whereby the appellants were convicted for the offence punishable under Sections 302/201 of the Indian Penal Code, 1860 (IPC for short) read with Section 34 IPC. For the offence punishable under Section 302/34 IPC, they were sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/- each, in default of payment of fine they were sentenced to undergo simple imprisonment for one year each. The appellants were further sentenced to undergo rigorous imprisonment for one year each for the offence punishable under Section 201/34 IPC. The sentences were to run concurrently.

2. Inspector Meera Sharma (PW-21) is the Investigating Officer of the case. She deposed that on 28.10.2007, she was posted as Inspector, Law and Order at Police Station Defence Colony. On the said day, on receipt of a call from District Control Room, she reached C-30, Sawal Nagar, Defence Colony as a murder had taken place there. On reaching the spot, she found that S.I. Rohtash Kumar along with some staff was already present there. Dead body of a Sikh gentleman was lying in the gallery near the stairs on the ground floor. The Investigating Officer also met Laxmi Narayan (PW-1) and Constable Vikram Singh (PW-7), who were the landlord and a tenant respectively on the second floor of premises bearing No.C-30, Sawal Nagar. On inspection of the dead body serious injuries on the right side of the head, right cheek, lips and both the eyes were noticed. There were injuries on the chest of the dead body which appeared to be caused by a sharp edged weapon. The Investigating Officer recorded statement Ex. PW-7/A of Constable Vikram Singh to the effect that the dead body belonged to one Harbhajan Singh, who was a tenant on the first floor in the said building. He also informed the Investigating Officer that he had heard noise of a quarrel from the house of the deceased till quite late in the night. He, however, slept after closing the door. The Investigating Officer made endorsement Ex. PW-21/A on the said statement of Constable Vikram Singh and transmitted it to the Police Station for registration of a case under Section 302 IPC.

3. The Investigating Officer summoned the crime team which inspected the spot. The photographer of the crime team took photographs of the dead body from

different angles. On inspection of the kitchen on the first floor, one empty liquor bottle (which had a label of blue moon vodka) and one empty beer can were seized from the dustbin of the kitchen. Inspector Meera Sharma (PW-21) deposed about seizure of the earth control and blood from near the dead body. A tawa and one broken tooth was found near the dead body. Inspector Meera Sharma found bloodstains on the wooden ply attached to the folding bed lying on the first floor. She also noticed blood spots on the side wall, where the folding bed was lying. She deposed that she had cut the bloodstained wooden ply with the help of a chheni and hammer and bloodstained surface from the wall and kept the same in a plastic jar and sealed the same with the seal of MS.

4. Inspector Meera Sharma further deposed that when she opened the wooden almirah fixed in the room, she found one bloodstained knife. She prepared a sketch of the knife and seized the same. Inspector Meera Sharma interrogated deceaseds wife i.e. the appellant Parminder Kaur and their maidservant Chanda separately. On sustained interrogation, appellant Parminder Kaur made a confessional statement about commission of deceased Harbhajan Singhs murder in connivance with one Mandeep Singh (her co-convict). (The confessional statement is not admissible in evidence as there was no discovery of fact in pursuance thereof). Inspector Meera Sharma testified that Parminder Kaurs nails were having blood stains. The nails were cut with the help of a nail cutter and kept in a plastic jar. She deposed that she also interrogated Chanda (the maidservant) and on finding her complicity in commission of the offence punishable under Section 201/34 IPC, she was also arrested. Inspector Meera Sharma testified that she along with appellant Parminder Kaur and accused Chanda (already acquitted), S.I. Rohtash Kumar and other police officials reached Hotel Hayat Regency and on pointing out by appellant Parminder Kaur, apprehended appellant Mandeep Singh from the taxi stand. Appellant Mandeep Singh was also interrogated and his disclosure-cum-confessional statement Ex. PW-13/H was recorded. In pursuance of the said disclosure statement, appellant Mandeep Singh got recovered his bloodstained shirt from Jhalkari Devi Park. The Investigating Officer also seized the socks worn by appellant Mandeep Singh as bloodstains were also found on the same. The pair of socks were sealed by the Investigating Officer.

5. Laxmi Narain (PW-1), Kumari Manpreet Kaur (PW-2), daughter of deceased Harbhajan Singh and Dr. Adarsh Kumar (PW-12) are other most crucial witnesses examined by the prosecution. Kumari Manpreet Kaur (PW-2) (aged 10-11 years and a student of 6th standard at the time of the incident) testified that she used to call appellant Mandeep Singh as uncle. She deposed that she used to reside in a house in Sawal Nagar along with her mother Parminder Kaur, her deceased father, her younger brother and a maidservant Chanda. She testified that on the day of occurrence near the festival of Karva Chauth, her father, her mother, appellant Mandeep Singh, maid servant Chanda, her younger brother Kulvinder Singh and she were present in the house. Her father, appellant Mandeep Singh and her mother Parminder Kaur were consuming liquor in the night. Her mother sent her and her brother out of the room after taking meal. In the morning, a lady Inspector came to their house and showed her the dead body of her father, which she identified. She deposed that whenever appellant Mandeep Singh used to visit their house, their mother used to send her and her brother to another room. She testified that the relationship between her father and her mother was not good. In cross-examination, she denied the suggestion that she had not seen appellant Mandeep Singh in her house on the day of occurrence.

6. Laxmi Narain (PW-1) is the landlord of house no.C-30, Sawal Nagar. Deceased Harbhajan Singh was a tenant on the first floor thereof. He testified that on 28.10.2007, he woke up at about 05:45 a.m. and went to the stairs leading to the first floor. He noticed some blood at the stairs. He went to the second floor and woke up Vikram Singh (PW7), a constable who was residing as a tenant on the second floor of the house. They noticed a dead body lying wrapped in bedding in the gallery near the stairs on the ground floor. Constable Vikram Singh (PW-7) called the PCR. On checking, the dead body was found to be of Harbhajan Singh who was a tenant in the first floor portion of his house. He testified that appellant Mandeep Singh used to visit the tenanted house. Deceased Harbhajan Singh had told him that he was suspecting illicit relationship between the two appellants but his wife appellant Parminder Kaur used to deny the same. He added that on 27.10.2007 in the evening, appellant Mandeep Singh had come to the house of the deceased. In cross-examination by the learned APP for the State, the witness deposed about seizure of blood, bloodstained earth, earth control, wooden ply,

tawa, etc. from the spot. In crossexamination on behalf of appellant Mandeep Singh, the witness denied the suggestion that the appellant had not visited the portion in occupation of the deceased on 27.10.2007.

7. Dr. Adarsh Kumar (PW-12) had conducted autopsy on the dead body of the deceased. He found 29 injuries on the person of the deceased. He deposed that injuries No.1 to 19 and 21 were caused by a blunt object; injury No.20 was produced by blunt object having blunt linear margins, and injuries No.22 to 29 were caused by sharp cutting object. He opined that injuries No.1 and 2 individually as well as all the injuries collectively were sufficient to cause death in the ordinary course of nature. He testified that the injuries were ante-mortem and fresh in duration. The time since death was estimated as 1 days.

8. On appreciation of evidence, the Trial Court found that the prosecution case against the appellants was fully and firmly established and thus, convicted and sentenced the appellants as stated earlier. Chanda, the maid servant, stands acquitted and no appeal has been filed to challenge the said finding in the judgment.

9. There is no direct evidence of commission of the crime. The prosecution case rests only on circumstantial evidence.

10. It is well settled that where the prosecution case rests purely on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn must, in the first instance be fully established; the circumstances should be of conclusive nature; the circumstances taken together must unerringly point to the guilt of the accused; the circumstances proved on record must be incompatible with the innocence of the accused and form the complete chain of circumstances and it must be proved that in all probabilities, the offence was committed by the accused. (Hanumant Govind Nargundkar & Anr. v. State of Madhya Pradesh, AIR 1952 SC343and Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC116.

11. In order to bring home the appellants guilt, the prosecution relied upon and tried to establish the following circumstances:(1) Matching of the chance print on

vodka bottle with the admitted fingerprints of the appellants; (2) Recoveries of certain articles i.e.:a) Recovery of the dead body in a bedding from the gallery near the stairs of the ground floor of House No.C-30, Sawal Nagar; b) Presence of blood on the walls of the room; c) Presence of blood (B group) on the wooden ply of folding bed; d) Recovery of knife containing blood of B group from the almirah of the room in occupation of the deceased and appellant Parminder Kaur; e) Presence of blood of B group on the nails of appellant Parminder Kaur; f) Presence of blood on the socks seized from appellant Mandeep Singh at the time of his arrest and on the shirt got recovered by him in pursuance of his disclosure statement from Jhalkari Devi Park; g) Certain messages and photographs of the two appellants on the mobile phone of the two appellants to show that they had an intimate relationship; 12. (3) Motive; and (4) Last Seen. We shall deal with the abovementioned circumstances one by one discussing the relevant evidence and the contentions raised by the learned counsels for the parties at the appropriate stage. MATCHING OF CHANCE PRINT ON VODKA BOTTLE WITH THE ADMITTED FINGERPRINTS OF THE APPELLANTS13 Head Constable Raj Kumar (PW-16) deposed that on 28.10.2007, he along with other members of the crime team reached house No.C-30, Sawal Nagar near Defence Colony where a dead body was lying. He deposed that he was able to lift one finger print (Q1) from the vodka bottle lying there vide his report Ex. PW-16/A. During the course of investigation, specimen finger prints S1 of appellant Parminder Kaur and S2 of appellant Mandeep Singh were obtained by the I.O. As per result of the examination,

1. The lower portion of chance print marked Q1 is IDENTICAL with right thumb impression marked S1 on the finger impression slip of Smt. Parminder Kaur @ Rani w/o Lt. Sh. Harbhajan Singh R/o C-30, Sawal Nagar, New Delhi.

2. The upper portion of chance print marked Q1 is IDENTICAL with right thumb impression marked S2 on the finger impression slip of Mandeep Singh S/o Krishan Singh R/o Village Roopar, P.O. Poal, P.S. Noorpurbadi, Distt. Roopar, Punjab.

14. The learned counsel for the appellants have contended that the alleged report of finger print expert dated 15.02.2008 has neither been proved nor put to the

appellants in their statements under Section 313 of the Code of the Criminal Procedure, 1973 (Cr.P.C.). Referring to State of U.P. v. Mohd. Iqram & Anr., (2011) 8 SCC80 the learned counsel have argued that the court cannot place reliance on any incriminating material unless it was put to the accused in his statement under Section 313 Cr.P.C.

15. On the other hand, the learned APP for the State has relied on Section 293 Cr.P.C. and has submitted that no formal proof of the report of Director, Finger Print Bureau is required as it is per se admissible. It is urged that the appellants were very much aware that their specimen finger prints were taken and also copy of the report of finger print expert was duly supplied to the appellants and thus, there was no prejudice caused to the appellants in not putting the report to them in their examination under Section 313 Cr.P.C. The report can very well be relied upon by the Court.

16. Section 293 of the Cr.P.C. reads as under:

293. Reports of certain Government scientific experts. (1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code. (2) The Court may, if it thinks fit, summon and examine any such expert as to the subject- matter of his report. (3) Where any such expert is summoned by a Court and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf. (4) This section applies to the following Government scientific experts, namely:(a) any Chemical Examiner or Assistant Chemical Examiner to Government; (b) the Chief Inspector of- Explosives; (c) the Director of the Finger Print Bureau; (d) the Director, Haffkeine Institute, Bombay; (e) the Director, [Deputy Director or Assistant Director]. of a Central Forensic Science Laboratory or a State Forensic Science Laboratory; (f) the Serologist to the Government. (g) any other Government

scientific Expert specified by notification by the Central Government for this purpose.

17. Thus, as per Section 293 Cr.P.C., no formal proof of the report given by certain experts mentioned in sub-Section (4) is required. The experts other than those mentioned in sub-Section (4), on the other hand, have to appear as a witness in order to prove their report. An option has been given to the experts mentioned in sub-Section (4) if they are summoned as a witness, to either appear themselves or depute any responsible officer working with them to attend the Court if the earlier said expert is unable to attend the Court personally, provided such officer is conversant with the facts of the case and can satisfactorily depose in court on behalf of the expert.

18. In the instant case, the relevant report is dated 15.02.2008. The report under Section 173 Cr.P.C. in the case was presented in the court on 23.01.2008 and the copies of the documents were supplied to the appellants on 25.01.2008. It is nowhere stated or recorded as to when the report dated 15.02.2008 was produced in the Court and if copy thereof was ever supplied to the appellants. An undated application signed by Insp. Meera Sharma (PW-21) is on record. There is no order on the application. The copies of the report are still attached with the application. Assuming that copy of the report dated 15.02.2008 was supplied to the appellants, admittedly the report was never tendered in evidence by the prosecution nor any witness produced by the prosecution made any mention about this report. All the more, the report was never put to the appellants in their examination under Section 313 Cr.P.C. Law with regard to the Courts obligation to put incriminating material to accused in his examination under Section 313 Cr.P.C. was discussed in great detail by the Supreme Court in Paramjeet Singh v. State of Uttarakhand, (2010) 10 SCC439 In paras 21 to 30, the Supreme Court observed as under:

21. An accused can be questioned under Section 313 Cr.P.C. only for the purpose of enabling him personally to explain any circumstance appearing in the evidence against him. No matter how weak or scanty the prosecution evidence is in regard to certain incriminating material, it is the duty of the court to examine the accused and seek his explanation on incriminating material which has surfaced against

him.

22. Section 313 Cr.P.C. is based on the fundamental principle of fairness. The attention of the accused must specifically be brought to inculpatory pieces of evidence to give him an opportunity to offer an explanation if he chooses to do so. Therefore, the court is under a legal obligation to put the incriminating circumstances before the accused and solicit his response. This provision is mandatory in nature and casts an imperative duty on the court and confers a corresponding right on the accused to have an opportunity to offer an explanation for such incriminatory material appearing against him. Circumstances which were not put to the accused in his examination under Section 313 Cr.P.C. cannot be used against him and have to be excluded from consideration. (Vide Sharad Birdhichand [(1984)4 SCC116:

1984. SCC (Cri) 487 : AIR 1984 SC1622 and State of Maharashtra v. Sukhdev Singh [(1992) 3 SCC700:

1992. SCC (Cri) 705].) 23. In S. Harnam Singh v. State (Delhi Admn.) [(1976) 2 SCC819:

1976. SCC (Cri) 324 : AIR 1976 SC2140, this Court held that non-indication of inculpatory material and its relevant facts by the trial court to the accused adds to the vulnerability of the prosecution case. The recording of the statement of the accused under Section 313 Cr.P.C. is not a purposeless exercise.

24. If any appellate court or revisional court comes across the fact that the trial court had not put any question to an accused, even if it is of a vital nature, such an omission alone should not result in the setting aside of the conviction and sentence as an inevitable consequence. An inadequate examination cannot be presumed to have caused prejudice. Every error or omission in compliance with the provisions of Section 313 Cr.P.C., does not necessarily vitiate trial. Such errors fall within the category of curable irregularities and the question as to whether the trial is vitiated, in each case depends upon the degree of error and upon whether prejudice has been or is likely to have been caused to the accused. Efforts should be made to undo or correct the lapse.(Vide Wasim Khan v. State of U.P. [AIR

1956 SC400:

1956. Cri LJ790, Bhoor Singh v. State of Punjab [(1974) 4 SCC754:

1974. SCC (Cri) 664 : AIR 1974 SC1256, Labhchand Dhanpat Singh Jain v. State of Maharashtra [(1975) 3 SCC385:

1975. SCC (Cri) 11 : AIR 1975 SC182, State of Punjab v. Naib Din [(2001) 8 SCC578:

2002. SCC (Cri) 33].and Parsuram Pandey v. State of Bihar[(2004) 13 SCC189:

2005. SCC (Cri) 113]..) 25. In Asraf Ali v. State of Assam [(2008) 16 SCC328: (2010) 4 SCC (Cri) 278]., this Court observed: (SCC p. 334, para 21)

21. Section 313 of the Code casts a duty on the court to put in an enquiry or trial questions to the accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence against him. It follows as a necessary corollary therefrom that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity vitiating trial, if it is shown that the accused was prejudiced.

(emphasis supplied) 26. In Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC793:

1973. SCC (Cri) 1033 : AIR 1973 SC2622, this Court observed as under: (SCC p. 806, para 16)

16. It is trite law, nevertheless fundamental, that the prisoner's attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and failures in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such an omission has occurred it does not ipso facto vitiate the proceedings and prejudice occasioned by such defect must be established by the accused. In the event of evidentiary material not being put to the accused, the court must ordinarily eschew such material from consideration. It is also open to

the appellate court to call upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against him but not put to him and if the accused is unable to offer the appellate court any plausible or reasonable explanation of such circumstances, the court may assume that no acceptable answer exists and that even if the accused had been questioned at the proper time in the trial court he would not have been able to furnish any good ground to get out of the circumstances on which the trial court had relied for his conviction.

(emphasis added) 27. In Ganesh Gogoi v. State of Assam [(2009) 7 SCC404: (2009) 3 SCC (Cri) 421]., this Court, relying upon its earlier decision in Basavaraj R. Patil v. State of Karnataka [(2000) 8 SCC740:

2001. SCC (Cri) 87]., held that the provisions of Section 313 Cr.P.C. are not meant to nail the accused to his disadvantage but are meant for his benefit. The provisions are based on the salutary principles of natural justice and the maxim audi alteram partem has been enshrined in them. Therefore, an examination under Section 313 Cr.P.C. has to be of utmost fairness.

28. In S. K. Maqsood v. State of Maharashtra [(2009) 6 SCC583: (2009) 3 SCC (Cri) 82]. and Ranvir Yadav v. State of Bihar [(2009) 6 SCC595: (2009) 3 SCC (Cri) 92]., this Court held that it is the duty of the trial court to indicate incriminating material to the accused. Section 313 Cr.P.C. is not an empty formality. An improper examination/inadequate questioning under Section 313 Cr.P.C. amounts to a serious lapse on the part of the trial court and is a ground for interference with the conviction.

29. In Suresh Chandra Bahri v. State of Bihar [1995 Supp (1) SCC80:

1995. SCC (Cri) 60]., this Court rejected the submission that as no question had been put to the accused on motive, no motive for the commission of the crime could be attributed to the accused, nor the same could be reckoned as circumstance against him observing that it could not be pointed out as to what in fact was the real prejudice caused to the accused by omission to question the accused on the motive for the crime. No material was placed before the Court to

show as to what and in what manner the prejudice, if any, was caused to the accused. More so, the appellant-accused was aware of the accusation and charge against him.

30. Thus, it is evident from the above that the provisions of Section 313 Cr.P.C. make it obligatory for the court to question the accused on the evidence and circumstances against him so as to offer the accused an opportunity to explain the same. But, it would not be enough for the accused to show that he has not been questioned or examined on a particular circumstance, instead he must show that such non-examination has actually and materially prejudiced him and has resulted in the failure of justice. In other words, in the event of an inadvertent omission on the part of the court to question the accused on any incriminating circumstance cannot ipso facto vitiate the trial unless it is shown that some material prejudice was caused to the accused by the omission of the court.

19. In the instant case, as stated above, report of the finger print expert was not even tendered in evidence. None of the witnesses examined by the prosecution made any mention of the report dated 15.02.2008. The appellants did not question the I.O. or any other witness with respect to the report in question. Thus, it cannot be said that the appellants were not prejudiced by not putting the report dated 15.02.2008 to them in their examination under Section 313 Cr.P.C. In fact, because of non-tendering of the report in evidence, prejudice is writ large and in our opinion, the report dated 15.02.2008 cannot be used against the appellants. RECOVERIES:(a) RECOVERY OF THE DEAD BODY IN A BEDDING20 There is overwhelming evidence in the shape of testimonies of Laxmi Narain (PW-1), Kumari Manpreet Kaur (PW-2), Ct. Vikram Singh (PW-7), Inspector Meera Sharma (PW-21) and various other police officers that dead body of Harbhajan Singh was recovered from the gallery near the stairs on the ground floor of C-30, Sawal Nagar. Inspector Meera Sharma (PW-21) deposed that when she reached the spot, she found the dead body (of Harbhajan Singh) lying in the gallery near the stairs on the ground floor of C-30, Sawal Nagar. Head of the dead body was towards South direction and the legs were towards the North direction and blood was lying near the head. The dead body was wrapped in a gadda and a chaddar. The stomach was tied with plastic rope and legs were tied with a printed chunni.

She inspected the dead body and found the injuries on the right side of the head, right cheek, lips and both the eyes. She noticed injuries on the chest which appeared to have been caused by a sharp edged weapon. The testimonies of these witnesses regarding recovery of the dead body from the gallery (near the stairs) on the ground floor of C-30, Sawal Nagar was not disputed or challenged in cross-examination of these witnesses. It is therefore established that the dead body of Harbhajan Singh was recovered from the gallery of ground floor of house no .C-30, Sawal Nagar, Defence Colony, Delhi. RECOVERIES (B), (C), (D), (E) AND (F):21. Inspector Meera Sharma (PW-21) testified that blood spots were visible at the side wall of the room on the first floor where a folding bed was lying. She deposed that she found bloodstains on the ply of the folding bed. She cut the bloodstained wooden ply with the help of a chheni and hammer, converted it into a pullanda and took the same into possession after sealing it with the seal of MS. She also scratched the blood stains from the wall and kept the same in a plastic jar, prepared the pullanda and sealed it with the seal of MS. She opened the wooden almirah embedded in the room and recovered one knife meant for cutting vegetables. The knife was having blood stains. She measured the knife, prepared its sketch and converted the same into a pullanda and seized it after sealing the same with the seal of MS.

22. PW-21 testified that the nails of appellant Parminder Kaur were having bloodstains. Accordingly, nails were got cut with the help of nail cutter and kept in a plastic jar and sealed with the seal of MS and seized vide memo Ex. PW-1/13.

23. Although, Laxmi Narain (PW-1) was shaky about the seizure of all these articles in his examination-in-chief and he testified that the documents Ex. PW-1/1 to PW-1/13 were signed by him in the Police Station. In cross-examination by the learned APP, he admitted that the above stated articles had been seized from the spot.

24. We are not inclined to disbelieve the recovery of all these articles by the I.O. from the spot simply because PW-1 stated that the seizure memos were signed by him in the Police Station.

25. However, with regard to the blood present on these articles, the FSL report was tendered in evidence only by the I.O. Trial Court record reveals that the exhibit mark (Ex.PW-21/H) was put on the CFSL report instead of FSL report. Therefore, exhibit mark (Ex.PW-21/H) has to be read in respect of FSL report. But the same does not make the report admissible in evidence as the FSL report was prepared by V. Sankaranarayanan, Senior Scientific Assistant (Biology), FSL Delhi. The same was not per se admissible under Section 293 Cr.P.C. as the same was not given by any officer mentioned in Section 293(4) Cr.P.C. The same could have been proved only by examining the expert. For the reasons as stated in para 17 earlier, the FSL report cannot be taken into consideration and hence, the presence of blood of B group on the wall in the room on the first floor, on the ply of the folding bed, on the recovered knife and on nails of appellant Parminder Kaur is not established.

26. For this very reason, we are also not inclined to attach much importance to the recovery of socks and the shirt from appellant Mandeep Singh, which were claimed to be stained with human blood but on which blood group could not be deciphered. (g) CERTAIN MESSAGES AND PHOTOGRAPHS OF THE TWO APPELLANTS ON THE MOBILE PHONE OF THE TWO APPELLANTS TO SHOW THAT THEY HAD AN INTIMATE RELATIONSHIP:26. This circumstance shall be discussed by us later while discussing the circumstance of motive. MOTIVE:27. According to the prosecution, the two appellants had illicit relationship and therefore, they had a motive to eliminate the deceased. Apart from producing the CFSL report dated 29.08.2008 with regard to the downloaded data from the mobile phones alleged to have been seized from the appellants, the prosecution examined Laxmi Narain (PW-1), Kumari Manpreet Kaur (PW-2), Nirmal Singh (PW-3) and Smt. Amarjeet Kaur (PW-9) to prove the illicit relationship between the two appellants.

28. Before adverting to the data downloaded from the mobile phones purported to have been seized from the appellants, we would refer to depositions of Laxmi Narain (PW-1), Kumari Manpreet Kaur (PW-2), Nirmal Singh (PW-3) and Smt. Amarjeet Kaur (PW-9). Apart from deposing about the presence of appellant Mandeep Singh in the house of the deceased on 27.10.2007 evening, PW-1

testified that appellant Mandeep Singh used to visit the house of deceased Harbhajan Singh often. He stated that deceased Harbhajan Singh had informed him that he was suspecting illicit relationship between the two appellants and that his wife used to deny the same on oath. PW-1 was crossexamined at length on behalf of both the appellants, but no suggestion was given to him that deceased Harbhajan Singh had not informed PW-1 about his suspicion of illicit relationship. Similarly, apart from deposing about appellant Mandeep Singhs visit to their house on the day of the occurrence and consumption of liquor by the two appellants and the deceased, PW-2 testified:- Mandeep uncle used to (visit) our house frequently (at our house). When our (sic whenever) Mandeep Uncle used to visit at our house, my mother used to send me and my brother in another room. Relation between my mother and father were not good. They used to quarrel due to Mandeep uncle.

29. Although, PW-2s testimony with regard to appellant Mandeep Singhs visit to the deceaseds house on the day of occurrence was disputed in cross-examination, yet frequent visits of appellant Mandeep Singh and appellant Parminder Kaur sending PW-2 and her brother to another room and the quarrels between the deceased and appellant Parminder Kaur because of appellant Mandeep Singh were not challenged in cross-examination. Otherwise also, we do not find any reason to disbelieve PW-2 who was a girl child of 10-11 years at the time of occurrence and was mature enough to understand the relationship.

30. Nirmal Singh (PW-3), the deceaseds brother and Smt. Amarjeet Kaur (PW-9), the deceaseds sister have also deposed about complaints made by the deceased with regard to illicit relationship between the two appellants, but even if the same is ignored, we see no reason to disbelieve PWs 1 and 2 from whose testimonies it is established that the two appellants had illicit relationship and therefore, had a strong motive to do away with the deceased.

31. As far as downloaded data from the mobile phones allegedly seized from the appellants is concerned, the same in our view has not been satisfactorily proved for several reasons. First of all, three mobile phones (two Nokia and one Indicom) were recovered from the personal search of appellant Parminder Kumar vide

personal search memo Ex. PW-21/B and one Nokia mobile phone was recovered from the personal search of appellant Mandeep Singh vide personal search memo Ex. PW-13/G. Admittedly, these mobile phones were never sealed by the I.O. either at the time when the same were seized by her or when the same were deposited in the malkhana. An application dated 22.01.2008 was moved before a learned Metropolitan Magistrate for sending the three mobile phones to the CFSL for examination. The application was allowed by order dated 22.01.2008. In pursuance thereof, their data was downloaded and a report dated 29.08.2008 was sent to the Court by the CFSL, Hyderabad. There are certain incoming messages on phone number 9958373898 alleged to be belonging to appellant Mandeep Singh which shows that there was an intimate relationship between him and the person from whom the messages were received. The number of the mobile phone from which the messages were received however has not been stated. Investigating officer, Inspector Meera Sharma (PW-21) in the cross-examination had stated that one cell phone was recovered from Mandeep and three cell phones were recovered from Parminder but she did not collect proof of ownership. Thus, in the absence of proper sealing of the mobile phones and its deposit in the malkhana there will be some doubt about the sanctity of the recovery. Apart from these two lacunae, the prosecution has not produced any certificate under Section 65B of the Indian Evidence Act, 1872. In the case of State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC600 it was laid down that printouts of the information stored in the mobile phone would be admissible as secondary evidence under Section 63 and 65 of the Evidence Act even if the conditions of Section 65B are not fulfilled. However, in the instant case, no evidence has been produced that the mobile phones were in perfect condition. No expert witness has been examined to testify that he retrieved the data and the same was true and correct and thus, the printouts placed on record cannot be taken into consideration even as secondary evidence. That apart, as stated above, there is sufficient evidence in the shape of oral testimony of PWs 1 and 2 to establish illicit relationship between the two appellants and hence, it stands established that the appellants had a motive to eliminate the deceased. Non proof of the messages is therefore of no consequence. LAST SEEN32 This is the most crucial circumstance and the decision of the appeal revolves around the same. The prosecution has examined

Laxmi Narain (PW-1) and Kumari Manpreet Kaur (PW-2) to prove this circumstance. PW-1 deposed that on 27.10.2007 in the evening, appellant Mandeep Singh had come to the house of deceased Harbhajan Singh. Harbhajan Singh was also present in the house. He deposed that altercations used to take place between deceased Harbhajan Singh, appellant Mandeep Singh and wife of deceased Harbhajan Singh i.e. appellant Parminder Kaur but on that day he had not heard any altercation as he had gone to sleep. In crossexamination, the witness deposed that he was roaming in the backside gali till about 9:00-9:30 p.m. on 27.10.2007. He used to lock backside door of his house which was used by the tenants for ingress and egress at 11:00 p.m. and used to open the same in the morning at about 6:006:30 a.m. The witness denied the suggestion that appellant Mandeep Singh had not visited the portion in occupation of deceased Harbhajan Singh on 27.10.2007.

33. Similarly, Kumari Manpreet Kaur (PW-2), the deceaseds minor daughter deposed that on the day of occurrence near the festival of Karva Chauth, she along with her father, mother and appellant Mandeep Singh, accused Chanda (since acquitted) and her younger brother Kulvinder was present in house at C-30, Sawal Nagar. Her father, appellant Mandeep Singh and her mother Parminder Kaur had consumed liquor in the night. Appellant Parminder Kaur (her mother) had sent her and her brother and Chanda to another room after taking meal. In the morning, police came to their house and showed her dead body of her father in the stairs. PW-2 was subjected to a very lengthy and searching cross-examination on behalf of the appellants to elicit whether she had been tutored by any relation of the deceased. She stated in cross-examination as under:

..... I came to Delhi by train but I do not know the name of train. We stayed at Gurudwara Sis Ganj, Delhi. My uncle Nirmal Singh told me that we had come to Delhi for evidence. Nobody tell (sic told) me what I have to depose in court today. In Delhi I used to study in Govt. School. I used to go to school by foot. My mother and Chanda Didi used to prepare lunch for us. I had met with police aunty (IO) outside the court in the morning when court was not functioning and before recording statement (12.45 pm) I was with her. IO was talking with me. She told me whatever I have seen I have to depose. IO was asking from me who is my

brother, my grandmother or whether someone harassed me or not. It is incorrect to suggest that my aunt Amarjit Kaur working in Punjab police and my uncle Nirmal Singh have tutored me. My relatives in the village did not talk about my mother in my presence. In Delhi after taking meal we used to sleep but I cannot tell exact time. I do not remember at which time (sic) I used to return from school in Delhi. After returning from the school I used to take meal thereafter, I used to watch TV and then used to go to tuition. I used to watch a serial but I do not remember the name of the serial. I used to come back from tuition in day time but I cannot tell the exact time. After coming back from the tuition I used to take meal and thereafter, I used to watch TV before sleeping. On the night of occurrence, I had not watched TV and I had gone for sleeping after taking meal. On that day, after coming from tuition I had watched a serial, name of the serial I do not remember. It is incorrect to suggest that I am deposing at the instance of IO who had influenced me today outside the court during my stay with her for 2 hours. It is incorrect to suggest that I had not seen Mandeep on the day of occurrence in my house. It is incorrect to suggest that I have deposed name of Mandeep on the asking of my visit. It is incorrect to suggest that I am deposing falsely.

34. It may be seen that although the witness was aged only 10-11 years on the date of incident, but she was mature enough to answer all the questions. She categorically stated that she came to Delhi for evidence with her uncle Nirmal Singh. She stated that nobody asked her to depose in the Court. She gave the details as to how she would go to the school, how she would take lunch and dinner and how she would watch TV serials. She was also categorical that she had a word with the I.O. and that I.O. had told her to depose whatever had been seen by her. Apart from a bald suggestion that appellant Mandeep Singh had not visited the deceaseds house on the day of the occurrence, nothing was elicited which could shake PW-2s testimony. There was no reason for PW-2 to have falsely deposed about the visit of appellant Mandeep Singh to their house and the factum of consumption of liquor by the two appellants and the deceased. This is further fortified from the recovery of the vodka bottle and beer can from the dustbin by the I.O. on the morning of 28.10.2007.

35. Referring to the cross-examination of PW-1, the learned counsel for appellant Mandeep Singh has very strenuously canvassed that he (PW1) admitted that he used to lock the backside door of his house at 11:00 p.m. and would open the same at 6:00/6:30 a.m. He admitted that this was the only way available to the tenants for egress and ingress to the house. He admitted that he had locked the said door on 27.10.2007 also at 11:00 p.m. The learned counsel for appellant Mandeep Singh urges that if testimony of PW-1 is accepted, there was no way for appellant Mandeep Singh to have escaped from the house after committing the crime. The learned counsel refer that the cross- examination clearly reveals that appellant Mandeep Singh was not present in the house on 27.10.2007.

36. We do not agree. PW-1 has deposed about the routine things which he used to do every day, one of which was to lock the rear door. The rear door of the house was being used by the tenants. No question was asked to PW-1 about the front/main entrance. Even if the main entrance was not meant for the tenants, appellant Mandeep Singh could have escaped from the main entrance after commission of the crime. In any case, we are not inclined to discard the credible testimony of PWs 1 and 2 simply on account of PW-1s statement that the rear entrance which was meant for the tenants was locked by him at 11:00 p.m. on 27.10.2007.

37. It is urged by the learned counsel for the appellants that the last seen evidence is a weak type of evidence. In the instant case, time of death was not firmly established. Relying on Ramesh v. State of NCT of Delhi, 2013 (1) JCC50 and State v. Arun, 2013 (4) JCC2492 the learned counsel for appellant Mandeep Singh urges that appellant Mandeep Singh cannot be held to be guilty on the shaky last seen evidence particularly when there is no proximity of time when appellant Mandeep Singh was allegedly last seen in the company of the deceased and the time of deceaseds death.

38. We are not inclined to agree with the submission that circumstance of last seen in the present case is a weak evidence. If proximity of time and place is established and it is shown that the offence could not have been committed by any other person, conviction can be based on the sole circumstance of last seen

evidence as well.

39. Turning to the facts of the instant case, the two appellants and the deceased were together on the first floor of house No.C-30, Sawal Nagar, Defence Colony, Delhi on the night of 27.10.2007. The appellant Parminder Kaur and deceased used to reside on the first floor in the said house. It is established that the two appellants and the deceased were consuming liquor at night when Kumari Manpreet Kaur (PW-2) and her younger brother Kulvinder Singh had been sent to another room by appellant Parminder Kaur.

40. Dead body of Harbhajan Singh was discovered by PW-1 and PW-7 on 28.10.2007 at about 05:45 a.m. Autopsy on the dead body of Harbhajan Singh was conducted by Dr. Adarsh Kumar (PW-12) who prepared the post-mortem report Ex. PW-12/A. As per the post mortem report, the post mortem was started on 29.10.2007 at about 03:30 p.m. and the time since death was given as 1 days. Thus, the approximate time of death was about 3:30 a.m. on 28.10.2007. Admittedly, appellant Parminder Kaur is the wife of the deceased. She was residing with the deceased in house No.C-30, Sawal Nagar and as stated earlier, she was very much present with her husband on the night of 27.10.2007 and the time of death is in close proximity to the time when the deceased was seen alive along with two appellants. Thus, the contention raised on behalf of the appellants that the time of death had not been established is fallacious. The time of death as per oral evidence could be after 11:00 p.m. on 27.10.2007 (when Harbhajan Singh was alive) and before 05:45 a.m. on 28.10.2007 when the dead body was discovered and the time of death as per the post-mortem report Ex. PW-12/A is about 03:30 a.m. on 28.10.2007. Thus, there is close proximity of time when the deceased was seen alive in the company of the two appellants and the time when the deceased was found dead. The appellants were together with the deceased in the same house wherefrom the dead body was recovered.

41. In Amit @ Ammu v. State of Maharashtra, 2003 (8) SCC93 the accused was convicted primarily on the basis of last seen evidence. In Amit @ Ammu the facts were:-

2. On Ex. 28, it has been recorded that on 29-3-2001, PW1 accompanied by Ajay, PW11, had gone to the rear portion of a place known as Gaimukh for grazing she-buffaloes. One of the buffaloes went into a dilapidated building close by. In order to drive out that animal on going inside, he noticed the dead body of a school girl in school uniform lying in supine condition. He informed the police. The two police officials came to the site along with him. The said unidentified girl was seen by him the previous day as well in the forest in the area where he usually goes for grazing of the animals. At that time she was in the company of a boy aged about 20 years. She was carrying a school bag. At that time too, PW11 was with PW1. The description of the boy has also been given. The said boy was having with him a bicycle like that of Ranger type. The boy on being asked gave his name as 'Gandhi' and stated that the name of the accompanying girl is Vidya who was his sister and as her family members were going to come to Devi Temple, he had brought her directly from her school. Both were brought to the road and they went away sitting on the bicycle. The girl seen by PW1 and PW11 was the same whose body had been found. The investigation led to the arrest of the appellant at 11.00 p.m. on 29-3-2001.

42. On the basis of the post mortem examination, the time of death in that case was found to be 03:00-04:00 p.m. on 29.03.2001 which was just about the time when the appellant and the deceased were last seen together by PW-1 and PW-11. No explanation was offered by the Appellant (in that case) in his statement recorded under Section 313 Cr.P.C. His defence was of complete denial. Relying on Mohibur Rahman v. State of Assam, 2002 (6) SCC715 the Supreme Court observed that there may be cases where on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability of the homicide.

43. In Amit @ Ammu (supra), the deceased the accused were seen together on a road whereas in the instant case the dead body has been recovered from that very house where the two appellants were present with the deceased.

44. Similarly, recently in Dharminder Singh @ Vijay Singh v. State, (2013)12 SCC263 the appellants conviction for the offence under Section 302 IPC was upheld mainly on the basis of last seen evidence. In paras 17 and 18 the Supreme Court held as under:

17. Due consideration of the evidence on record makes it abundantly clear that in the present case the prosecution has proved that on 26-8-2000 at about 4.30 p.m. the appellants and two other co-accused were in the van driven by deceased Krishan Kumar and that they had hired the said van to go to Haridwar. On the next morning at about 10.00 a.m. the dead body of Krishan Kumar (subsequently identified by PWs 11 and 12 on the basis of photographs taken before the cremation) was recovered from under a bridge at a place near Haridwar. The appellant-accused were apprehended along with the vehicle at Purnia in Bihar on 29-8-2000. They had failed to give any explanation for their presence in Purnia and also as to what had happened to Krishan Kumar who was driving the vehicle hired by them on 26-8-2000 to go to Haridwar. In view of the very close proximity of the time between the accused and the deceased being seen together (4.30 p.m. of 26-8-2000) and the recovery of the dead body (10 a.m. of 27-8-2000) it was necessary for the accused to offer a reasonable explanation as to what had happened to the deceased Krishan Kumar with whom they had gone to Haridwar in the previous evening. The accused could not have opted to remain silent. They were dutybound to give adequate and reasonable explanation as regards the events that had taken place at Haridwar and the circumstances in which they had parted company with the deceased. In their statement recorded under Section 313 Cr PC the accused while admitting that they were arrested at Purnia in Bihar had given no explanation whatsoever as to what had happened at Haridwar and to Krishan Kumar and under what circumstances they had gone to Bihar without him.

18. Applying the law consistently laid down by this Court including the principles noticed in Vadlakonda Lenin [Vadlakonda Lenin v. State of A.P., (2012) 12 SCC260 to the facts of the present case, we are left with no doubt whatsoever that the circumstances proved by the prosecution, in the absence of any reasonable explanation on the part of the accused, cannot give rise to any other conclusion except that it is the accused alone who had abducted the deceased Krishan

Kumar and had killed him at Haridwar. We, therefore, have to conclude that the conviction of the appellant-accused does not call for any interference.....

45. In Ashwani @ Sonu v. The State (NCT of Delhi), 2013 (137) DRJ10 the appellant was convicted for the murder of his wife and the conviction was upheld mainly on the basis of last seen evidence and the fact that the relations between the husband and the wife were not cordial, the Division Bench analysed the facts and applying the principle of last seen held as under:

15. The accused was lastly seen in the company of deceased on 4th February, 2004 at 6:30 p.m. as he along with deceased had gone to her parents' house after their quarrel who settled their disputes, pacified them and sent them back to the house after advising that they should inform them telephonically in case there is any further quarrel between them. The factum of having last seen the accused with the deceased at 6:30 pm on 4th February, 2004 stands duly proved from the testimony of PW-1 Satish Kapoor and PW-2 Sh. Sanjay Kapoor which fact has nowhere been disputed by the accused. Satish Kapoor, PW-1 being father of the deceased undoubtedly was worried about well being of his daughter, therefore, on next day, i.e., 5th February, 2004 he preferred to visit her house and found the gate locked. Two calls were made by him to accused but no response was received. Again in the evening at 5:00 p.m. he came back to the house of his daughter along with his son PW-2 Sanjay Kapoor and found the iron gate locked. However, the inside wooden gate was slightly ajar. He peeped through it and it seemed to him that somebody was sleeping inside whereupon he knocked the door and shouted but finding no response, he became suspicious and made a call at 100 number whereupon police officials reached and broke the lock of the gate and after entering the house, they found one person lying on the double bed whose body was covered with quilt and on removing the quilt, the dead body was identified to be of Sonia. It cannot be lost sight of that accused and deceased were husband and wife and were residing in the house where the dead body was recovered. It has come on record that they had two daughters. Younger daughter was given in adoption by accused at the time of her birth, however, as regards elder daughter, no evidence has come on record as to where she was residing. Fact remains that it is not disputed by the accused that except for him and

deceased none else was residing in the dwelling house from where the dead body was recovered. That being so, after they returned from the parents' house of the deceased on 4th February, 2004, at 6:20 p.m., in normal course of events, the accused would have returned to his house. If from the parents' house of deceased, the accused did not return home till he was arrested by the police then it was a fact within his special knowledge which he was required to explain. But absolutely no explanation has been given by him as to where he was during this entire period. Rather his own conduct is reflective of his guilty mind inasmuch as the house was found locked from outside, key of which was ultimately recovered at his instance from back side of scooter parked under the staircase of the house. Moreover, when he was arrested, his personal search was conducted vide memo Ex. PW2/B, one chain of golden colour, three rings of golden colour, one pair of ear tops of golden colour were recovered which were presumably of the deceased. Further, it was suggested to PW-13 Inspector Jaipal Singh and PW-14 ACP Krishan Kumar that accused had gone to surrender himself in the police station. Although this suggestion was denied by them but since, such a suggestion was given by the accused in the cross-examination of the witnesses, he is bound by the same and if that is so, then, it is not explained as to how the accused came to know about the murder of his wife and why he himself wanted to surrender in the police station. The failure on the part of accused to furnish any explanation on the aforesaid facts lends support to last seen theory propounded by prosecution. The submission of learned defence counsel that the fact whether the accused returned back to his house or not could have very well been proved by neighbours on investigation being done with due diligence is devoid of any substance because it is common experience that public persons are generally reluctant to join police proceedings. Moreover, experience tells us that in big cities like Delhi where life is otherwise very busy, nobody wants to interfere in the affairs of others. Even otherwise, since it was the matrimonial home of deceased, the neighbours would be least concerned as to whether the accused returned back to the house on the night of 4th February, 2004 or not and if so, at what time and when did he leave the house in the morning of 5th February, 2004. At the cost of repetition, it may be mentioned that these facts were in the special knowledge of the accused which he was required to explain but failed.

16. The other limb of argument that as per post-mortem report, time of death comes at 11:00 a.m., father of deceased visited her house at 10:00 a.m. and knocked the door then, at that time Sonia must be alive, why did she not respond to the calls, meaning thereby that somebody must have come during the period 11:00 a.m. to 5:00 p.m. and committed her murder is again devoid of merit inasmuch as, as per the post-mortem report, Ex. PW-12/A conducted by Dr. V.K. Jha, it started at 1:00 p.m. and as per the opinion of the doctor, time since death was approximately 26 hours. From this, learned counsel for the appellant wants the Court to believe that the death had taken place at about 11:00 a.m. In Pattipati Venkaiah v. State of AP, 1985 SCC (Cri) 464, it was held by Hon'ble Apex Court that medical science is not yet so perfect as to determine the exact time of death nor can the same be determined in a computerised or mathematical fashion so as to be accurate to the last second. Similar view was taken in subsequent judgments reported as Dasari Shiva Prasad Reddy v. Public Prosecutor, High Court of AP (2004) 11 SCC282 RamaReddy Rajesh Khanna Reddy v. State of AP (2006) 10 SCC172 Rakesh v. State of Madhya Pradesh, (2011) 9 SCC698 In view of the same, coupled with the fact that even the doctor in the post-mortem report has given the time since death as approximately

2. hrs., it cannot definitely be said that the death had taken place at 11.00 a.m. and not at 10:00 a.m. when the father of the deceased had come to her house. Even otherwise, the door of the house was locked from outside, key of which was ultimately recovered at the instance of accused. This leads to the only irresistible conclusion that it was the accused only, who, after committing the ghastly crime of murdering his wife left the house after locking the same and even when PW-1 Satish Kapoor made two calls to him, he did not respond.

46. On the basis of the evidence adduced by the prosecution and on the test of close proximity on time and place, we are satisfied that it were the appellants and the appellants alone who had committed the gruesome murder of deceased Harbhajan Singh on the night intervening 27-28.10.2007.

47. We have already held earlier that there was illicit relationship between the two appellants and they had a motive to commit the deceaseds murder which provides

an additional link to the circumstance of last seen.

48. It may also be noticed that there were 29 serious injuries on the person of the deceased which again, could not be the handiwork of appellant Parminder Kaur. Presence of so many serious injuries points to the involvement of an accomplice with Parminder Kaur which on the facts of the case can only be appellant Mandeep Singh. This could not have been done by Parminder Kaur alone.

49. The prosecution case against the appellants was thus, established beyond shadow of all reasonable doubts. The appeals therefore are bound to fail. We accordingly affirm the judgment and order on sentence passed by the Trial Court and dismiss the appeals. (G.P. MITTAL) JUDGE (SANJIV KHANNA) JUDGE AUGUST01 2014 pst/vk

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