

Gajender Vs. State

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Court : Delhi

Decided On : Jul-18-2014

Judge : Sanjiv Khanna

Appellant : Gajender

Respondent : State

Judgement :

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

21. t May, 2014 Date of decision:

18. h July, 2014 + CRIMINAL APPEAL No.474/2011 GAJENDER Through Appellant Mr. K. Singhal, Advocate. versus STATE Through Prosecutor. + Respondents Mr. Rajat Katyal, Additional Public CRIMINAL APPEAL No.901/2011 RAMRATI ALIAS RAMA Appellant Through Mr. Biswajeet Kumar Patra and Ms. Inderjeet Siddhu, Advocates. Versus STATE (NCT OF DELHI) Respondents Through Mr. Rajat Katyal, Additional Public Prosecutor. CORAM: HON'BLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE G.P. MITTAL SANJIV KHANNA, J.: Gajender and Ramrati by the impugned judgment dated 4th August, 2010 stand convicted under Section 302 read with Section 34 and Section 201 read with Section 34 of the Indian Penal Code, 1860 (IPC, for short). Gajender is also convicted under Section 25 of the Arms Act, 1959. The deceased, it is claimed, was one Prem Raj. Appellant Ramrati is widow of late Jai Prakash,

brother of deceased Prem Raj and Gajender is stated to be friend and live in partner of Ramrati.

2. On 21st April, 2008, DD Entry No.13B was recorded at police station Vikas Puri by Head Constable Surat Singh (PW-9) on information being conveyed by wireless operator at about 7.25 a.m. that burning smell was emanating from ground floor of DG-III/111, Vikas Puri. The said DD was marked for inquiry to Head Constable Ram Lal (PW-16), who along with Head Constable Ram Mehar (PW-26) went to the spot.

3. Head Constable Ram Lal (PW-16) and Head Constable Ram Mehar (PW-26) reached the spot and found that fire brigade was already present and had extinguished the fire. A dead body was found burnt at the place in question and accordingly, information was conveyed to the Duty Officer, police station Vikas Puri. Thereupon, Inspector L.C. Yadav (PW-28), SHO police station Vikas Puri with his staff and crime team came to the spot and carried out inspection. Head Constable Ram Lal (PW-16) has deposed that the dead body was kept in the dead body kit and burnt cloth pieces lying beneath the dead body were seized and sealed with the seal of LCY. From beneath the dead body, earth control was lifted with the help of hammer and Channi and was seized and sealed with the seal of LCY. PW-16 has deposed that a white plastic lid, which smelled of petrol/oil, was found lying on a wall four feet in height. The said plastic lid was seized and sealed with the seal of LCY. The dead body was sent to the mortuary at DDU Hospital to be preserved for 72 hours. PW-16 has deposed as to the interrogation of some neighbours by the Investigating Officer, Inspector L.C. Yadav (PW-28), preparation of duplicate keys and opening of flat number DG-III/98. Inside the flat, blood stains were found on an almirah, a brick and the floor of the drawing room. Blood stains were lifted from the almirah with the help of cotton and seized and sealed in a white cloth and pullanda was made with the seal of LCY. Earth control was seized and sealed with the seal of LCY. One stainless steel glass was found on the slab of the kitchen. Crime team took a chance print from the glass and the glass was seized and sealed with the seal of LCY. The aforesaid case properties/evidence were identified by Head Constable Ram Lal (PW-16) in the Court and given the following exhibit numbers; burnt pieces of cloth (Ex.P-3), white coloured plastic

lid/cap (Ex.P-4), earth in powdery shape (Ex.P-5), steel glass (Ex.P-6), one brick piece (Ex.P-7), cotton piece (Ex.P-8), two floor pieces (Ex.P-9) and two other pieces of floor (Ex.P-10). In the cross-examination, PW-16 has deposed that Constable Nand Kishore was sent to bring duplicate key maker (Chabiwala), who had prepared the keys by which, they opened the padlock and the inner lock of the flat in question.

4. Inspector L.C. Yadav (PW-28) was the first Investigating Officer, who had reached the spot after receiving call at 7.40 a.m. from the Duty Officer regarding burning of a dead body at DG-III, ground floor, Vikas Puri, which was subsequently kept in DDU Hospital for preservation. He has deposed about the lifting of samples, exhibits etc. which we have already referred to above. PW-28 has deposed about inquiries made by him from the neighbours/residents of the said block, namely, Ram Kishan Verma (PW-1), Inderjeet Singh (PW-4) and Satish Madan (PW-5). He has deposed as to the photographs of the flat and the dead body marked Ex.PW19/A1 to A28 and the negatives marked Ex.PW19/A29 to A63. These photographs were taken by Constable Rakesh Kumar (PW-19). We shall be referring to the said photographs subsequently as they are relevant. PW-28 has deposed about breaking open of flat number DG-III/98, which had two doors, with padlock on the iron gate and inner lock on the second door. R.K. Verma (PW-1), the neighbour had raised suspicion and stated that for the last 6-7 years, the flat i.e Flat No.D-III/98 had remained locked, but he noticed a padlock on the main door, which was earlier not there. PW-28 requisitioned services of a locksmith to prepare duplicate keys for opening inner lock as well as the padlock. Upon opening the flat, blood stains were noticed on the floor of the drawing room and inside rooms also had blood stains. A blood stained brick was found underneath the iron box and the same was seized. Blood was also lifted from iron almirah and the floor. The aforesaid articles were converted into parcels and sealed with the seal of LCY. Chance prints were lifted from steel glass by the Crime Team and thereafter sealed with the seal of LCY. Seizure memo Ex.PW17/A was prepared. Some loose cloth pieces were also seized from the spot. The aforesaid articles were identified by L.C. Yadav (PW-28) in the Court. PW-28 has deposed that on inquiry, he came to know that the flat belonged to one Satto Devi, who was residing in U.K. and about 5-6 years prior to this incident, a

lady, who was relative of Satto Devi, along with her children used to live in the flat. A boy used to stay with the lady. The said boy was involved in illegal activities and was arrested once. Identity of the said lady and boy was not known to the neighbours. In the letter box of the flat, one paid water bill was found and taken into possession. PW-28 identified the keys, which were prepared by the locksmith as Ex.P-1 and P-2. He deposed that key Ex.P-1 was for opening of the inner lock and the smaller key Ex.P-2 was for opening the padlock.

5. It is clear from the testimony of PW-28 that initially they had not been able to identify the dead body or ascertain details of the culprit. However, they came to know that violence had taken place in flat DGIII/98, first floor, Vikas Puri and after the violence somebody had locked the said flat, which belonged to one Satto Devi, who was residing abroad. But earlier a lady and boy used to live there. It is also apparent that PW-28 had interrogated and questioned the neighbours about the occurrence. We shall be referring to the statements of neighbours subsequently. However, at this stage, we would like to affirm and accept the aforesaid deposition of Inspector L.C. Yadav (PW-28) as the same stands corroborated from the testimony of Head Constable Ram Lal (PW-16) referred to above and also from the statement of Head Constable Mandeep Lamba (PW-17), who was present with PW-28 and Constable Rakesh Kumar (PW-19), the photographer attached to the Crime Team, who had gone inside the flat DG-III/98, Vikas Puri after the locks were opened by the locksmith, who was called by the police. He had taken photographs and has deposed that in the kitchen one steel glass was lying and in one room, a single bed was lying and there was an iron almira and one big box. Underneath the said box, a blood stained brick was found. Blood was on the floor of the room, which it appeared was wiped. PW-19 took 34 photographs, out of which 06 photographs were washed off. Site plan of the spot was prepared by Assistant Draftsman Anil Kumar and was marked Ex.PW25/A.

6. Inspector L.C. Yadav (PW-28) has deposed on how they proceeded and solved the case. After returning to the police station, PW-28 checked police records pertaining to any person with the address DG-III/98, Vikas Puri and noticed that one Gajender Singh s/o Khaital Singh r/o DG-III/98, Vikas Puri in the year 2001 was involved in an Arms Act case. The FIR (Ex. PW1/33A) registered in the said

case was verified and they came to know about another address of Gajender Singh, namely, A-43, Vishwar Park, Uttam Nagar. They went to the said address and met Khaital Singh, father of Gajender Singh. The said Khaital Singh told them that his son Gajender Singh was a vagabond and for the last 7-8 years, he was not residing with them. Gajender Singh was earlier residing at Vikas Puri with one woman and his present whereabouts were not known. Khaital Singh informed them that his wife, who was not present, could be aware about Gajender Singh. His wife, it was stated, would come in the morning. PW-28 re-visited the house of Khaital Singh on 22nd April, 2008 and thereupon learnt that the appellant Gajender Singh was residing at H.No.A297, Nehru Vihar, Timar Pur. There, they met appellants Gajender Singh and Ramrati and interrogated them. Consequent to the interrogation, disclosure statements were made by appellants Gajender Singh and Ramrati. Gajender Singh was arrested vide memo Ex.PW23/A on 22 nd April, 2008. In the meanwhile, Constable Sushila (PW-22) was called to the spot as Ramrati had to be arrested and interrogated. Ramrati was arrested vide memo Ex.PW22/A. Pursuant to the disclosure statement made by Gajender Singh, one button operated knife was seized from underneath a stone in a park near Nehru Vihar i.e. residence of appellant Gajender Singh. Sketch of the knife Ex.PW23/F was prepared and the knife was seized and sealed in a cloth parcel with the seal of LCY. The knife was shown to PW-28 in the Court and given Ex.No.P-19. Appellant Ramrati took out one chain and one ring stated to be belonging to deceased Prem Raj. PW-28 identified the gold chain and ring marked Ex.PW7/C and D, respectively. Appellant Ramrati produced two keys of the flat DGIII/98, Vikas Puri, which were tied with a string. Bigger key was marked Ex.P-11 and smaller key was marked Ex.P-12. The clothes worn by Ramrati and Gajender were found in a washing machine in a room of H.No.A-297, Nehru Vihar. These were produced and shown to PW-28 in the Court. The recovered shirt (Ex.P-13) was worn by the appellant Gajender Singh at the time of incident. PW-28 also identified the salwarshirt (Ex.P-14) stated to have been worn by appellant Ramrati at the time of incident.

7. PW-28 has deposed that thereafter they took the two appellants to flat DG-III/98, Vikas Puri. At that time, neighbours had gathered there and they identified both of them and had stated that the two had come to the flat on 20th April, 2008.

We shall be referring to the depositions of the neighbours in this regard, specially, of Ram Kishan Verma (PW-1) and Satish Madan (PW-5) at a later stage. CRL.A. Nos. 474/2011 & 901/2011 PW-28 has also deposed that the Page 8 of 34 appellants had taken them to Samaj Kalyan Apartments, near Ganda Nala side, high tension wire pole, Vikas Puri and pointed out the place where they had thrown the clothes, watch, scooter key and cloth used for wiping off the blood, in a polythene after the murder. The said articles were seized vide seizure memo Ex.PW23/H and the shirt having large number of brown stains was marked Ex.P16. Two dirty pieces of cloth having brown stains were collectively marked Ex.P17. One torn piece of cloth having brown stains was marked Ex.P18. Wrist watch having brown stains and scooter key with key ring were marked Ex.P19 and Ex.P20, respectively.

8. After reaching the police station, Dharam Pal (PW-6), brother of the deceased was called and he identified the wrist watch, shirt and key of the scooter as belonging to the deceased, but he was not sure about the gold ring and gold chain. The identification memo of the said articles was prepared and marked Ex.PW6/A. Dharam Pal (PW-6) came back again in the morning and identified the dead body as that of his brother Prem Raj. The case property thereupon was deposited in the Malkhana. Shammi (PW-7), son of the deceased, identified that the articles mentioned above belonged to the deceased after they were shown to him and identification memo Ex.PW7/A was prepared. Thereafter, application for post mortem of the dead body Ex.PW28/F and form 25.35 Ex.PW28/F2 were written. Viscera of the deceased were preserved for DNA. After the post mortem, dead body was handed over to the relatives vide memo Ex.PW6/C and the exhibits were deposited in Malkhana. PW-28 has deposed as to mobile phone numbers 9910526689, 9891649078 and 9811574627 belonged to appellants Ramrati, Gajender Singh and the deceased, respectively and that he had collected call records for the period 15th March, 2008 to 22nd April, 2008. The said details were marked Ex.PW31/A and PW20/A. We shall be referring to the said call details subsequently. PW-28 has clearly deposed that after disclosure by the appellants Gajender Singh and Ramrati on 22nd April, 2008, he had sent a Head Constable to Bahadurgarh, Ashok Nagar area to inform relatives of deceased Prem Raj. Head Constable Zile Singh (PW-10) had gone there and returned on

the same day i.e. 22nd April, 2008 with Dharam Pal (PW-6), brother of the deceased and one more relative. On 23rd April, 2008, Shammi (PW-7), son of the deceased had come and identified the clothes, ring, chain, key with key chain and wrist watch of the deceased. Since the clothes were wet at the time of recovery, these were sealed on the next day i.e. on 23rd April, 2008.

9. Learned counsel for the appellants has challenged the prosecution version and has submitted that clothes of the deceased, ring, gold chain, wrist watch and key of the scooter could not have been shown to the witnesses as they were sealed after seizure, which was admittedly made on 22nd April, 2008. Similarly, the two keys Ex.P11 and P12 allegedly seized from appellant Ramrati were sealed after they were seized and, therefore, they could not have been used to open the doors of the flat DG-III/98. The said contentions though attractive at first instance, are devoid of any force and are fallacious. The clothes, key chain, wrist watch, gold chain and ring were not sealed immediately after the recovery and seizure as the police had to carry out further investigation and these articles were required to be shown/identified. They were sealed on 23rd April, 2008, i.e. after the articles had been identified as belonging to the deceased by Dharam Pal (PW-6) and Shammi (PW-7). Similarly, the two keys Ex.P11 and Ex.P12 were not sealed immediately. The appellants were taken to the flat in question for opening the doors with the said keys and thereafter the keys were sealed. This discussion takes care of the arguments of the appellant relying upon the malkhana register marked Ex. PW15/A which specifically records a note dated 23rd April, 2008.

10. At this stage, it would be appropriate to refer to the specific evidence against the two appellants on their involvement and crystallise the same with reference to the testimonies of public witnesses.

11. The first evidence against the appellants relates to identification of the dead body. Till the arrest and detention of the appellants, the burnt dead body had not been identified and the investigating officer and the police did not know whether the dead body was of Prem Raj or some other person. It is only upon disclosure statements marked Ex.PW23/C and Ex.PW23/D made by appellants Gajender Singh and Ramrati, respectively, that the identity of the dead body could be

established. The aforesaid evidence would not be covered under Section 27 of the Evidence Act, though the articles belonging to the deceased referred to above, recovered pursuant to the disclosure statements would be covered under Section 27 of the Evidence Act. However, the statement made by the Investigating Officer PW-28, Inspector L.C. Yadav about the interrogation of the accused and disclosure by them about on the identity of the dead body would be relevant under Section 8 of the Evidence Act. Head Constable Zile Singh (PW-10) has deposed that on 22nd April, 2008 on the direction of the SHO, police station Vikas Puri, he had gone to Ashok Nagar, near Power House, Bahadurgarh to inquire about Prem Raj and had met Dharam Pal, his brother and told him about the recovery of the dead body and brought him to police station Vikas Puri. PW-10 was not cross-examined by the counsel for the appellants. Dharam Pal (PW-6) and Shammi (PW-7) had not only identified the dead body, but also the articles belonging to the deceased, which were recovered after the disclosure statements, from Samaj Kalyan Apartments, near Ganda Nala side, high tension wire pole, Vikas Puri. Dharam Pal (PW-6) has stated that Prem Raj was his younger brother and used to reside at Bahadurgarh, but in a different house. He was in a private job at Mundka and had left for his work on 20 th April, 2008, but did not return. They tried to search for him but could not get any clue and thereafter, they lodged a missing report at police station Nangloi. Later on, police came and had asked them to visit police station Vikas Puri. PW-6 claimed that he along with Jai Singh (PW-8), Shammi (PW-7) and other relatives had gone to police station Vikas Puri on 22 nd April, 2008 and identified the safari suit, wrist watch and key with key chain of scooter and stated that the articles belonged to Prem Raj. However, he was not sure whether the gold chain and gold ring belonged to Prem Raj. He identified the dead body of Prem Raj in the hospital vide memo Ex.PW6/B and the articles vide memo Ex.PW6/A. The articles were shown to him in the Court and the wrist watch, key with key chain and safari suit were marked Ex.PW6/D, Ex.PW6/E and Ex.PW6/F, respectively. He has stated that appellant Ramrati was married to Jai Prakash, who was younger to him but had died. Prem Raj used to see and meet appellant Ramrati. Prem Raj used to take care of her and she also used to visit them. Dharam Pal (PW6) has stated that Prem Raj had informed him that Ramrati was having illicit relationship with one Gajender Singh. He has stated that he had

not met Gajender Singh before the incident. PW-6 was cross-examined and it was claimed that Ramrati had a dispute with them over ancestral property. PW-6 denied the said suggestion, but accepted that he had never been to the house of appellant Ramrati at Uttam Nagar. He deposed that Prem Raj used to visit Ramrati once or twice a month in the said house. Appellant Ramrati used to visit their village even after death of her husband but such visits were few. A missing person report was lodged on 21st April, 2008 at police station Nangloi in the evening and in the said report, details of the clothes worn by Prem Raj were not given. Prem Raj was working in Deep Motors and was last seen on 19th April, 2008. Shammi (PW-7) on the contrary has deposed that on 23rd April, 2008 he along with his uncle Dharam Pal (PW-6) had gone to police station Vikas Puri and had identified the safari suit, wrist watch, key with key chain of scooter, gold ring and gold chain that belonged to his father. He deposed that his father had gone missing on 20th April, 2008 and on 22nd April, 2008, Zile Singh, the police officer had informed them about death of his father. He had received the dead body of his father Prem Raj on 24 th April, 2008 from some hospital and had signed the identification memo Ex.PW7/B, but he had not specifically identified the dead body of his father anywhere. He was cross-examined by Additional Public Prosecutor, but he denied having identified the dead body of his father stating that his Tauji Dharam Pal (PW-6) had seen the dead body. In the cross-examination by the defence counsel, PW-7 again reiterated that he had gone to the police station on 23rd April, 2008 at 9 a.m. for the first time and had remained there for two hours. He had identified the gold chain and gold ring in the police station and prior to that he had seen his father wearing the said gold chain and gold ring. PW-7s maternal uncle Jai Singh and tauji Dharam Pal had accompanied him to the police station on 23rd April, 2008, where they had remained for two hours and returned back to the village at 2 p.m. His father Prem Raj used to leave the village at about 8.30 a.m. and return at about 10-10.30 p.m. He never used to stay overnight in Delhi. PW-7 tried to contact his father on his mobile phone number, but the phone was switched off. He had tried to get in touch with his bua Rani on her phone number 5180305. He reiterated in the cross-examination that the dead body was shown to his tauji and mama ji.

12. There is slight discrepancy in the testimonies of Dharam Pal (PW-6) and Shammi (PW-7) as to whether PW-7 had gone with PW-6 to the police station Vikas Puri on 22nd April, 2008. PW-7 has categorically denied having gone to the police station on 22nd April, 2008. This version of PW7 appears to be correct. PW-6, because of lapse of time or due to some confusion, has deposed that he had gone to the police station along with PW-7 on 22nd April, 2008, a position denied by PW-7 and IO Inspector L.C. Yadav (PW-28). In fact, Jai Singh (PW-8) has stated that he had gone with Dharampal (PW-6) to police station Vikas Puri on 22nd April, 2008, after they were informed about the death of Prem Raj through a Constable. There, the Investigating Officer showed them a blood stained shirt of safari suit, one wrist watch, one key having a red colour key ring, one gold chain and gold ring. Except for the last two articles, other articles were identified by Dharam Pal (PW-6) as belonging to deceased Prem Raj. Jai Singh (PW-8) has stated that on 23rd April, 2008, he along with Dharam Pal (PW6), Shammi (PW-7) and other relatives had again gone to the police station. On the said date, Shammi (PW-7) had identified all the articles including gold chain and gold ring. Identification memo Ex.PW7/A was prepared and signed by Shammi (PW-7).

13. The aforesaid evidence shows and proves that only upon disclosure and recovery of the clothes, key with keychain, wrist watch, gold chain and gold ring that the witnesses Dharam Pal (PW-6) and Shammi (PW-7) were able to identify the articles as belonging to the deceased Prem Raj. Dharam Pal (PW-6) also identified the dead body. The said articles were recovered only upon disclosure statements of the two appellants and became a vital chain to show and prove that the two appellants were involved in the crime resulting in death of Prem Raj.

14. This brings us to the third vital evidence, which implicates the appellants i.e. the testimonies of neighbours Ram Kishan Verma (PW-1), Inderjeet Singh (PW4) and Satish Madan (PW5). PW-1 has deposed that he was a resident of flat No.99, DG-III, Vikas Puri and on 21st April, 2008, he got up at 6 a.m. at his normal time and came out in the balcony. Then, he heard Pawan Kallan, resident of flat No.85 on the ground floor that there was a fire. He initially thought that the electric meter was burning, so he switched off the mains of his flat and again came out in the balcony. Then, the said Pawan Kallan stated that a man was on fire. Thereupon,

he came down and saw a person in flames. People had gathered there and fire brigade officials came at the spot. Residents of the society tried to douse the fire by sprinkling mud and water. Police came and made necessary investigation. His flat as well as others flats were inspected and searched by the police. Flat No.98 had remained locked for several years as no one used to reside in it. He noticed an external lock on the door of the flat for the first time and informed the said fact to the police. Normally, there used to be lock on the inner door. The owner of the said flat was residing in U.K., but she had given the keys of the flat to her sister, who resided in Rohtak. The said sister of the owner had given the keys to her daughter, who along with her two children had resided in the said flat 6-7 years back. PW-1 did not know the name of the lady, who used to reside in the flat along with her children. During that period, one man also used to live and reside with the lady and her children. PW-1 identified the two appellants in the Court as the said lady and the man. PW-1 was cross-examined at length and has deposed that he was residing in the said locality/flat since 14 th August, 1994. He recalled the landlady or owner as Satto Devi and stated that she had earlier resided in the said flat and had married off her son from the said flat. However, the father had never resided but had only visited the flat. He deposed about his conversation with father of Ramrati.

15. Inderjeet Singh (PW-4) has stated that on 21st April, 2008 at about 7- 7.15 a.m., he was informed by the Chowkidar that one body was on fire behind his office located at DG-III/97. The body was on fire in the open space between the rear portion of flat No.97 and flat No.101. People had gathered and fire brigade came at the spot to douse the fire. Police came there and suspected that it was not possible for an outsider to bring the body from outside and put the same on fire in the complex and, therefore, had searched/inspected all flats. One Verma Ji, resident of flat No.99 had told police in the presence of PW-4 that he had noticed a round lock on the door of the flat No.98, which was earlier not there. Locksmith was summoned by the police and the flat was got opened. PW-4s statement was recorded by the police. He deposed that police had searched the aforesaid flat.

16. Satish Madan (PW-5) was also a neighbour residing at DG-III/76, Vikas Puri. He identified the two appellants and stated that they used to reside in DG-III/98 in

year 2001. Appellant Ramrati used to reside with her children and appellant Gajender Singh used to visit, off and on. In 2001, appellant Gajender Singh was caught stealing petrol from scooter and other vehicles. Later on, PW-5 came to know that appellant Gajender Singh was booked in a case of possessing knife. Thereupon, Gajender Singh stopped coming there. Appellant Ramrati and her children also left the flat after 5-6 months. The said flat was owned by one Satto Devi, who was settled in U.K. PW-5 had seen appellant Ramrati visiting the flat 2-3 times as his flat was situated opposite to flat number DG-III/98. PW-5 further deposed that he had last seen appellant Ramrati on 20th April, 2008 at 3-3.30 p.m. when he was sitting in front of his flat. She was accompanied by a fat man. In the evening, appellant Gajender had also come there. Next day, he came to know that a body was on fire in the complex. On 22nd April, 2008, the two appellants were brought to the complex by the police and he identified them. In the cross-examination, PW-5 has stated that he used to visit his house during lunch hours and go back to office at 4.00 p.m. He had met appellant Ramrati on several occasions and in 2001, his scooter which was parked near his house, was stolen. Some other scooters were also stolen from the locality and they suspected involvement of Gajender Singh as he was not working anywhere. In this connection, they had gone to the house of Gajender Singh and had also asked Chowkidar to keep a watch on Gajender Singh. On one occasion, Chowkidar had apprehended Gajender Singh with a can of five litres and when objected to by Chowkidar, the said appellant ran away. Later on, he came to know that Gajender Singh was booked in an Arms Act case. He was not on talking terms with Gajender Singh, but had seen him frequently. PW-5 accepted that his statement was recorded 20th April, 2008 in the evening, but he had not disclosed that the appellant was caught in 2001 while stealing petrol from his scooter and other vehicles. He voluntarily stated that there was no occasion earlier to disclose the said facts at that time. He had accepted that he had not seen Satto Devi, but knew that flat belonged to her. He had last seen appellant Ramrati on 20th April, 2008. PW-5 has stated that on 20th April, 2008, he had left for office at about 5.00 p.m. During that time, he had seen the appellant Gajender Singh entering the flat. Gajender Singh was wearing a pant and a shirt. PW-5 could not tell the colour of the pant and shirt. However, he had not heard any noise or shouts.

17. Sanjay Singh (PW-3) had prepared the duplicate keys and has deposed on the said aspect. He had identified the duplicate keys prepared by him.

18. The FSL report Ex.CX, CY and Ex.PW29/A shows that human blood of group B was found on the shirt of appellant Gajender Singh, lady's shirt of the appellant Ramrati, the shirt of the deceased, piece of cloth etc., found pursuant to the disclosure statements Ex.PW23/C and Ex.PW23/D, thus, confirming the prosecution version and testimonies of witnesses.

19. This brings us to the cell phone records. As per the prosecution version, cell phone number 9910526689 of Bharti Airtel Limited was being used by the appellant Ramrati. Cell phone number 9811574627 of Vodafone was being used by deceased Prem Raj and cell phone number 9891649078 of Idea Cellular Limited was being used by appellant Gajender Singh. The fact that cell phone number 9891649078 belongs to Gajender Singh has been accepted by him in his statement under Section 313 of the Code of Criminal Procedure, 1973 in response to question number 44. However, he professed ignorance whether the cell phone number 9910526689 was of Ramrati. The records (Ex.PW20/A) of cell phone number 9910526689 do reveal calls between appellant Gajender Singh and number 9910526689 on 16th April, 2008. They also reveal calls between number 9910526689 and the telephone number 9811574627 of the deceased on 20th April, 2008 i.e. the date of the occurrence at 1.15, 1.34 and 1.53 p.m. On the question of the mobile phone number of the deceased, prosecution relies upon evidence of Anuj Bhatia (PW-31), Nodal Officer, Vodafone Mobile Services Ltd. He has deposed that as per their records, mobile number 9811574627 was in the name of Prem Raj resident of B-68, Mangal Bazar Road, Mundka, New Delhi. PW-31 has also produced the call records details and the Cell ID Chart for Delhi Circle of Vodafone Network, which were marked Ex.PW31/A and Ex.PW31/B respectively. On the aspect whether cell phone number 9910526689 was being used by appellant Ramrati, the prosecution has relied upon evidence of Deepak (PW-24). The aforesaid number as per R.K. Singh (PW-20), Nodal Officer, Bharti Airtel Ltd. had been issued to Deepak Kumar, r/o G43, Sector-6, GB Nagar, Noida. Earlier it has been issued to Sonu Gupta and then to Asrant, r/o 52 Pratap Nagar, Delhi. The said witness had also proved cell phone records Ex.PW20/A. Deepak

(PW-24) accepted that appellant Ramrati was daughter of his Bua Anaro Devi and she was a widow. He has also accepted that Ramrati used to reside along with her children in their house at B-116, Nehru Vihar, Delhi about 2 years back. He was declared hostile and cross-examined by the Additional Public Prosecutor, but he denied the suggestion that Ramrati used to reside at DGIII/98, Vikas Puri, which belonged to his elder Bua Satto Devi. He claimed that Ramrati used to stitch clothes, but accepted that she was not stitching their clothes. In the cross-examination by the learned counsel for the appellant Gajender Singh, Deepak (PW-24) has accepted that he had never seen appellant Gajender Singh earlier and had seen him for the first time in the Court. There appears to be some gap in the prosecution version on the question of telephone number 9910526689, but in view of the communications between appellant Gajender Singh and cell phone number 9910526689, it is apparent that the said number did belong to appellant Ramrati. Statement of PW28 IO Inspector L.C. Yadav on the said assertion remained un-challenged. The aforesaid fact gets corroborated in view of the repeated calls from mobile phone number 9910526689 to number 011-32544818, which was installed at B-1/116, Second Floor, Nehru Vihar near Dr. Mukherjee Nagar, Delhi. The said telephone was installed on an application moved by appellant Gajender Singh. The said application was proved by Sanjeev Lakra (PW-32) and was marked Ex.PW32/A and the information form was marked Ex.PW32/B. Copy of the driving licence and electricity bill, which were given to procure the connection, were marked Ex.PW32/C and Ex.PW32/D respectively. There are a number of calls between 9910526689 and 32544818 on 20th April, 2008 i.e. the date of occurrence, which shows that Ramrati was not present in her residence at about 1.53 p.m. and then again at 6.20 p.m. and at 9.20 p.m.

20. The prosecution has proved on record copy of the FIR No.449/2001, police station Vikas Puri, Ex.PW33/A as per which Gajender Singh was a resident of DG-III/98, Vikas Puri, but his permanent address was mentioned as RZ-43, Viswas Park, Uttam Nagar, Delhi. However, subsequently he had shifted to B-1/116, Second Floor, Nehru Vihar near Dr. Mukherjee Nagar, Delhi, where the land line number 011-32544818 was installed.

21. The two appellants were taken to DDU hospital for medical examination. Dr. Dhananjay Kumar (PW14), CMO, DDU Hospital has deposed that on 22nd April, 2008, appellant Gajender was brought to the casualty and was examined. Appellant Gajender had partially healed wounds over proximal phalynxs of left finger and proximal inter phalynxeal joint of left little finger. Also, there was swelling over left little finger and partially healed abrasion over middle one third of right leg. His MLC was marked (Ex. PW14/A).

22. The FSL report (Ex. Ex., CX, CY and Ex. PW29/A) corroborates the police version. Human blood of Group B was found on the brick mosaic pieces, shirt of Gajender and ladys shirt of Ramrati. The same tallied with the human blood of group B which was found on the shirt of the deceased and three pieces of cloth which were recovered on the basis of the disclosure statement of the appellants. Human blood was also found on the knife but blood group could not be ascertained due to no reaction.

23. Now we would like to deal with some of the contentions raised on behalf of the appellants. The submission that inquest papers were sent belatedly on 23rd April, 2008 and therefore benefit of doubt must accrue to the appellants is misconceived. As noticed above, in the present case, initially the body in question could not be identified and was directed to be preserved for 72 hours. The articles/belongings of the deceased were identified by Dharam Pal (PW-6) and Shammi (PW-7). Subsequently, Dharam Pal (PW-6) identified the body of the deceased in the mortuary. Jai Singh (PW-8) has deposed that the articles/belongings of deceased Prem Raj were identified by Dharam Pal (PW-6) and by Shammi (PW-7) and the identification memo marked Ex.PW-7/A was signed by him at point B and by Shammi at point A. Our attention was drawn to the charge-sheet and it was submitted that the prosecution had propounded a sedative theory, which is not established. This to our mind is immaterial and does not detract or dent the chain of evidence which has been established and proved on record. Our attention was drawn to the identification memos relating to the dead body which are dated 23 rd April, 2008 and signed by Dharam Pal (PW-6), Shammi (PW-7) and Jai Singh (PW-8). Dharam Pal (PW-6) had stated that he had identified safari suit, wrist watch and key and key chain of the scooter on 22nd April, 2008. As noticed

above, Shami (PW-7), the son of the deceased, was not present on 22nd April, 2008 and Dharam Pal (PW-6) was not able to identify gold ring and gold chain. The body of the deceased was identified by the said witness PW-6 on 23rd April, 2008 and thereafter paper work was completed. The contention on behalf of the appellant Ramrati that her disclosure statement (Ex. PW23/D) was witnessed by SI Umed Singh (PW23) alone, whereas her arrest memo (Ex. PW22/A) was witnessed by SI Umed Singh and Lady Const. Sushila (PW-22) deserves to be rejected as inconsequential. Lady Const. Sushila (PW-22), it is apparent was summoned and directed to come to A-2/97 Nehru Vihar, Timar Pur on 22nd April, 2008. She reached to the spot after taking a TSR, and had identified the appellants Gajender and Ramrati who were present at the spot. She was briefed and thereafter she witnessed arrest memo (Ex. PW22/A) of Ramrati and took personal search of Ramrati vide memo (Ex. PW22/B). She has deposed on the articles which were recovered on personal search of Ramrati and from inside the house, and the fact that the gold chain and ring were recovered from beneath the pillow on the bed. There is a minor deviation in the testimony of Lady Const. Sushila (PW22) viz. other police witnesses on how they proceeded after arresting the two appellants as to whether they first visited the flat, hospital or made recoveries of different articles from Vikas Puri Nala. The said discrepancy on the part of Lady Const. Sushila (PW22) is easily explainable as a memory lapse due to passage of time.

24. The contention of the appellant that cell tower details of mobile service providers Idea and Airtel are not on record, though correct, does not affect or dent the prosecution evidence. It may be stated that cell phone calls records have been proved and the concerned witnesses were not cross-examined about the cell tower details.

25. We also do not find any merit in the contention of the appellants that the identification of articles belonging to the deceased should be disbelieved as no TIP of the articles by Dharam Pal (PW6), Shammi (PW7) and Jai Singh (PW8) was conducted. In the present case, the police were in the process of investigation and verifying/identifying of the deceased and for this purpose they had shown the articles recovered, to the said witnesses during the investigation. The articles were

recovered and the fact that they belonged to the deceased has been deposed to by Dharam Pal (PW6), Shammi (PW7) and Jai Singh (PW8).

26. HC Sita Ram (PW15) was Malkhana Mahorrrar and he has deposed that as long as the case property remained in malkhana, there was no tampering and the seals had remained intact. He was not cross-examined. The so-called discrepancy and the note in the malkhana register (Ex. PW15/A) was not put to the said witness in the cross-examination and no answer was sought. (Paragraph 9 above is also relevant on the said aspect).

27. Appellant Gajender in his supplementary statement under Section 313 Cr.P.C. was asked about and confronted with the evidence in respect of telephone number 32544818 which was installed on his application at Nehru Vihar. In response to Question No.1 in his statement under Section 313 Cr.P.C. recorded on 9th June, 2010, he had stated that he did not remember. He denied that he had ever resided at DG-III/98 Vikas Puri and stated that it was a matter of record that his permanent address was RZ-43, Vikas Puri, Uttam Nagar, Delhi and FIR No.449/01, P.S. Vikas Puri was registered against him on 19th September, 2001.

28. Appellant Ramrati in her statement under Section 313 Cr.P.C. has accepted that she used to reside at DG-III/98 Vikas Puri, Delhi (see reply to Question No.1). She claimed that she did not know Gajender. She also accepted that she had keys of the flat but claimed that she did not visit the said flat or went to the flat on 20th April, 2008. She accepted that there used to be one internal lock of the flat and claimed that she had not put external or outer lock. She has accepted that she was residing in House No.A-297 Nehru Vihar, Timar Pur, Delhi and claimed that she did not know Gajender and she never used to reside in the said flat (see answer to Question No.26). She denied as wrong that she was using mobile No.9910526689 or mobile phone number of Gajender Singh i.e. 9891649078 and call details of deceased Prem Raj of his mobile No.9811574627.

29. In view of the aforesaid discussion, the following factual position emerges: (i) On 21st April, 2008 early morning, a burnt dead body was found in the passage/gallery of the ground floor in front of flat No.DG-III/98. (ii) The fire was doused and investigation was undertaken by Inspector L.C. Yadav (PW-28), SHO

Police Station Vikas Puri. (iii) The neighbours, i.e., Ram Kishan Verma (PW-1), Inderjeet Singh (PW-4) and Satish Madan (PW-5) were interrogated/ questioned and several flats were inspected. (iv) Flat No.DG-III/98 was found to be locked and the investigation revealed that a new padlock had been fixed on the outer door in addition to the earlier lock on the inner door. Locksmith, i.e., Sanjay Singh (PW-3) was called and keys were prepared and flat No.DG-III/98 was entered into. (v) Blood was found at various places, i.e., floor, iron almirah, bricks etc. in the flat and the said evidence/material was collected. (vi) Inspector L.C. Yadav (PW-28) was informed by the neighbours Ram Kishan Verma (PW-1) and Satish Madan (PW-5) that 6-7 years earlier, the said flat was occupied by a lady with her children. One boy who had indulged in petty illegal activities also used to reside in the flat, before all of them shifted. (vii) On examination/verification of police records, Inspector L.C. Yadav (PW-28) came across an FIR registered in the year 2001 on involvement of one Gajender Singh s/o Khaital Singh, resident of DG-III/98, Vikar Puri in Arms Act. Another address of Gajender Singh, namely, A-63, Viswas Park, Uttam Nagar was available in the police records and the same was visited by Inspector L.C. Yadav (PW-28), where he met Khaital Singh, father of Gajender Singh. Gajender Singh, however, was not present there and it was stated that Gajender Singh had shifted two years back and his whereabouts were known to Khaital Singh's wife, who was not present at that time. (viii) On 22nd April, 2008, Inspector L.C. Yadav (PW-28) re-visited the house of Khaital Singh and learnt that Gajender Singh was residing in house No.A-297, Nehru Vihar, Timarpur. (ix) Inspector L.C. Yadav (PW-28) along with the police team visited the said house and interrogated the two appellants, Gajender Singh and Ramrati and thereafter arrested them vide arrest memo Exhibit PW-23/B and 23/A respectively. (x) On the basis of disclosure statement by Gajender Singh (Exhibit PW-23/C), one button operated knife was recovered from a park near Nehru place. (xi) From Ramrati one gold chain and one gold ring belonging to deceased Prem Raj were recovered. She also produced the keys (Exhibits P-11 and P-12) of the flat DG-III/98, Vikas Puri. (xii) Clothes (Exhibits P-13 and

14) worn by the appellants at the time of the offence were found to be in the washing machine and the same were seized and sealed. (xiii) On the basis of disclosure statements (Ex.PW23/C and Ex.PW23/D), clothes, watch, scooter keys

and the cloth used for wiping the blood (Exhibits PW-16 to

20) were recovered, seized and sealed from a location near Samaj Kalyan Apartment near ganda nala side. (xiv) Dharam Pal (PW-6), brother of the deceased and Shammi (PW-7), son of deceased identified the said clothes and belongings/articles of the deceased vide memo Exhibit PW6/A, D, E and Exhibit PW-7/A. Dharam Pal (PW-6) also identified the dead body of the deceased vide memo Exhibit PW-6/B. Jai Singh (PW-8) has affirmed the identification of the belongings/articles by PW-6 and PW-7. (xv) The appellant-Ramrati is the widow of late Jai Prakash, brother of deceased Prem Raj and appellant Gajender Singh is a friend and live-in partner of Ramrati. (xvi) Appellants Ramrati and Gajender Singh were also taken to the flat in question and the same was opened with the help of the keys Exhibits P-11 and P-12 produced/recovered at the behest of appellant-Ramrati. (xvii) The neighbours Ram Kishan Verma (PW1) and Satish Madan (PW5) have supported the prosecution version. Ram Kishan Verma (PW1) identified the two appellants as the persons who resided in the said flat 6-7 years back. Satish Madan (PW5) had similarly deposed and has further elucidated that on 20 th April, 2008, he had seen Ramrati and Gajender in and around the said flat. Ramrati was accompanied by a fat man. (xviii) The aforesaid factual assertions and findings are confirmed and affirmed from the cell phone records, as discussed in paragraph 19 above. (xix) Dr. Dhanajay Kumar (PW14) had deposed that he had examined appellant Gajender and injuries were found on his finger as per MLC marked Ex. PW14/A. (xx) FSL reports marked Exhibit CX, CY and Exhibit PW-29/A opine that human blood of Group B was found on evidence/material collected from premises No.D-III/98 and also on the shirt of Gajender Singh and the lady's shirt of Ramrati. Human blood of Group B, was also found on the shirt of the deceased and cloth recovered pursuant to disclosure statements Exhibit PW23/C and PW23/D.

30. The above facts which are duly established, unerringly show and prove beyond any doubt that the two appellants in furtherance of their common intention had committed the murder of deceased Prem Raj and had then tried to destroy the evidence to screen themselves from legal punishment. Thus, the appellants were rightly convicted for the offence punishable under Sections 302/34 and 201/34

IPC.

31. By impugned order of sentence dated 6 th August, 2010, the appellants have been sentenced to undergo life imprisonment and to pay fine of Rs.10,000/- each for the offence under Section 302/34 IPC. In default of payment of fine, they were to undergo simple imprisonment for six months. For the offence under Section 201/34 IPC, the appellants have been sentenced to rigorous imprisonment for two years and fine of Rs.5,000/- each, in default of which they have to undergo simple imprisonment for three months. For the offence under Section 25 of the Arms Act, Gajender has been sentenced to rigorous imprisonment for one year and pay fine of Rs.5,000/-, in default thereof he has to undergo simple imprisonment for three months. The sentences were to run concurrently and benefit under Section 428 Cr.P.C. has been extended. We do not see any reason to interfere or modify the order of sentence.

32. In view of the aforesaid discussion, we do not find any merit in the present appeals and the same are dismissed. Conviction and sentence of the appellants is upheld.-.sd- (SANJIV KHANNA) JUDGE -sd- (G.P. MITTAL) JUDGE JULY18 2014 NA/kkb/VKR

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