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Dalip Singh vs.state

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Court : Delhi

Decided On : Dec-19-2017

Appellant : Dalip Singh

Respondent : State

Advocate for Pet/Ap. : Ms. Rakhi Dubey

Judgement :

$~ * % + IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on:

11. 08.2017 Judgment Pronounced on:19.12.2017 CRL.APPEAL7332016 DALIP SINGH ..... APPELLANT Through: Ms.Rakhi Dubey, Advocate. versus STATE ..... RESPONDENT Through: Ms Radhika Kolluru, APP for the State along with Inspector C.R.Meena and SI Neeraj Yadav, PS New Ashok Nagar. CORAM: HONBLE JUSTICE G.S.SISTANI HON'BLE MR. JUSTICE VINOD GOEL VINOD GOEL, J.

1. The present Criminal Appeal has been filed impugning the judgment dated 18.05.2013 and order on sentence dated 27.05.2013 passed by the Ld. District and Sessions Judge (East), Karkardooma Courts, Delhi in FIR No.77/2001 (SC No.30/10/08) whereby the appellant was convicted for the offence under Section 302 read with Section 120B of the Indian Penal Code, 1860 (in short IPC) and sentenced to life imprisonment and a fine of Rs.10,000/-. In default of payment of

fine he was sentenced to undergo Simple Imprisonment for six months. The Crl.Appeal No.733/2016 Page 1 of 29 appellant was further convicted for the offence under Section 307 read with Section 120B of the IPC and awarded rigorous imprisonment for a period of 5 years and a fine of Rs.10,000/-. In default of payment of fine he was sentenced to undergo Simple Imprisonment for six months. The appellant was also convicted for the offence punishable under Section 392 read with Section 120B of the IPC and awarded rigorous imprisonment for five years and a fine of Rs.10,000/-. In default of payment of fine he was sentenced to undergo Simple Imprisonment for six months. All the sentences were ordered to run concurrently.

2. Facts leading to the filing of the present appeal are that on 17.03.2001 at about 9:30 AM an information was received vide DD No.12A about two dead bodies lying in a garbage bin, B-2, Mayur Vihar Phase-III. On receipt of the said information, SI Sanjay Gupta along with Ct. Vipin (PW27) and Ct. Bale Ram (PW26) reached the spot where upon inquiry it was revealed that one person had already been removed to LBS Hospital by PCR Van and the dead body of one person was still lying in the garbage bin. Inspector Ashwini Kumar (PW10) along with his staff reached at the spot. Ct. Vipin (PW27) was left at the spot to safeguard the same while SI Sanjay along with Inspector Ashwani Kumar (PW10) reached LBS Hospital and an injured person was found admitted in the hospital vide MLC No.8 and he was declared unfit for statement. The Doctor handed Crl.Appeal No.733/2016 Page 2 of 29 over sealed pulandas containing rope and sweater which were seized vide Seizure Memo Ex.PW18/A. On the basis of the DD entry, rukka Ex.PW18/B was prepared on DD No.12A which is Ex.PW16/A. Duty Officer ASI Gurtej Singh (PW9) recorded FIR No.77/2001 which is Ex.PW16/B.

3. Crime Team was called at the spot. ASI Om Prakash (PW18) took photographs which are Ex.PW12/A-1 to A-7 of which negatives are Ex.PW12/A-8 to A-14. SI Jawahar Singh (PW5) was the in charge of the PCR van that reached the scene of crime after receiving information and on his pointing out, Site Plan Ex.PW23/A was prepared. A blood stained brick, blood sample, blood scattered on the wall and other blood samples were seized from the scene of crime vide Seizure Memo Ex.PW18/C. Dead body of the deceased was shown to public persons for the

purpose of identification but its identity could not be established. Inquest papers Ex.PW23/B were prepared and the dead body was shifted to the Mortuary vide application which is Ex.PW23/C.

4. In the meanwhile, injured was referred to GTB Hospital where he regained consciousness and informed that his name was Munna Lal and provided the telephone number of his brother- in-law Rakesh who was then called in the hospital. The brother- in-law of the injured identified him as Munna Lal (PW1). One Banwari Lal (PW24) telephonically informed that his driver Banwari Lal Vyas (deceased) had gone to Delhi in Jeep No.RJ Crl.Appeal No.733/2016 Page 3 of 29 14 5C1853and had not returned. On 21.03.2001, one Babu Lal along with Satish Vyas and the owner of the vehicle Banwari Lal Punia came to the Police Station and identified the dead body of the deceased Banwari Lal Vyas in the mortuary. The Post-Mortem of the dead body was conducted by PW21 Dr. L.C Gupta who was already examined as PW17 in co-accused Dhirender Singh Tomars case and the Post-Mortem Report prepared by him is Ex.PW17/B.

5. The Post-Mortem Report PW17/B shows the following internal and external injuries to the body of the deceased: i. ii. iii. Abraded bruises 3 x 2 cms at left side forehead. Ligature mark in form of dried up bruise 44 cms x 3-4 cms x mid 1/3rd neck all around horiogental; on dissection underneath tissues found worked by congested; irregular in shape. Skull, brain, meninges and cerebra vessels - both sides temporital muscles found contused; left side frontal sub scalp haemotoma +ve, subarcechenoid haemorrhage present over left side frontal region of brain (in 5 x 1 cm in are); congested. iv. Mouth - NAD v. vi. vii. viii. ix. Trachea and Bronchi - congested mucora with collection of fine froth. Lungs - B/1 congested of oedomatus with peripheral emph charge, Small intestine, large intestines, vermiform appendix mesentery and oancrea - multiple loop formed contused with redish. All the organs - NAD Stomach with contents; small intestine and contents, sample, liver, kidney, spleen, sample of blood with swab Crl.Appeal No.733/2016 Page 4 of 29 nail clipping of b/1 hand fingers scalp hair were collected for toxicological analysis.

6. PW21 testified that he was posted as Specialist (Forensic Medicines) at LBS Hospital on 21.03.2001 when the deceased was brought to the Hospital. He opined the cause of death to be asphyxia resulting from sustained and forceful contruction of neck with the help of ligature material which is sufficient to cause death, homicidal death in the ordinary course of nature. He further opined that time since death was about four days prior to post mortem thereby clearly establishing the date of death being on the date of incident as testified by PW1 i.e. 16/17.03.2001.

7. PW19 Dr. Tapasi Chatterjee prepared MLC of PW1 Munna Lal which is Ex.PW7/A. He described the following injuries on the body of PW1 Munna Lal: i. ii. iii. iv. v. vi. There was strangulation mark i.e. Single mark impression of the rope and at the front of the neck and lateral side with the know at the back. There was lacerated injury on the left side of the occiput measuring 7 cm x 0.5 cm x 0.5 cm. There was lacerated wound on the left side of frontal region measuring 5 cm x 1 cm x 0.5 cm, 4 cm above the left superior arbital margin. There was another lacerated wound of 3 cm x 1 cm x 0.5 cm on the lateral part of right eye. There was lacerated wound of 2 cm x 2 cm x 1 cm on the mideal canthus of right eye. There was abrasion wound of 2 cm x 2 cm on the right maxilla 2 cm below the inferior of orbital region. Crl.Appeal No.733/2016 Page 5 of 29 vii. There was sub conjunctival hemorrhage in the right eye.

8. PW19 Dr. Tapasi Chatterjee opined that the injury no.1 which was a ligature mark on the neck due to strangulation was dangerous to life in general.

9. PW1 Munna Lal was declared fit for statement and his statement was recorded in which he stated that Dheeraj (co- accused) had come to him in Jaipur along with his three associates on 16.03.2001 and had asked for a vehicle along with driver to carry drums from Jaipur to Delhi. One Mahindra Marshal Jeep along with driver Banwari Lal Vyas (deceased) was deputed for this purpose. He further stated that in Delhi, co- accused Dheeraj along with other accused bought food for everyone and everyone had food outside co-accused Dheerajs brother-in-laws house at Kondli. He further stated that two chemical drums were unloaded at co-accused Dheerajs Brother-in-laws house and after having their meal everyone sat in the

Jeep and on the way he became unconscious. He stated that he suspects that the appellant along with his three co- accused had murdered Banwari Lal in order to steal the vehicle.

10. On the basis of this statement, a search was carried out at the house where the drums were dropped off by the accused. One Poonam wife of Sanjay Verma was found at this house and she informed that on the intervening night of 16/17.03.2001, one Chottu and Kala accompanied by others had come to her house Crl.Appeal No.733/2016 Page 6 of 29 to unload two chemical drums. This statement was corroborated by her husband Sanjay Verma who also produced two drums Ex.P-1 and P-2 which were seized vide Seizure Memo Ex.PW4/A.

11. On 22.02.2008 an information was received that the appellant was lodged in Bareily Jail and an application for production of the appellant was moved by SI Pankaj Kumar (PW15) which is Ex.PW15/A. Custody of the appellant was obtained by SI Yogender Kumar (PW8) and the appellant was arrested vide Arrest Memo Ex.PW8/A. Lalit Kumar (PW16), the then Ld. MM conducted the TIP of the appellant vide Ex.PW16/A and issued a certificate Ex.PW16/B regarding the correctness of proceedings. During the TIP of the appellant, PW1 Munna Lal correctly identified the appellant.

12. A supplementary charge sheet was filed against the appellant and charges under Section 120B and 302, 307, 392 read with Section 120B were framed against him.

13. The prosecution examined 27 witnesses to bring home the guilt of the appellant. Statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure, 1973 (in short the Code) in which he pleaded not guilty and claimed trial. The appellant in his statement under Section 313 denied the case of the prosecution without explaining any of the inculpatory circumstance produced against him. He further stated that he had already been shown to PW1 Munna Lal Crl.Appeal No.733/2016 Page 7 of 29 before the TIP proceedings. The appellant was given the opportunity to lead defence evidence but he opted not to do so.

14. Ms. Rakhi Dubey, learned counsel for the appellant argued that the impugned judgment was illegal and not based on a sound appreciation of facts and law and is therefore liable to be set aside.

15. Learned counsel for the appellant argued that the guilt of the appellant could not be established as the presence of the appellant with the co-accused during the course of commission of the offences could not be proved beyond reasonable doubt.

16. She further contended that the Police had failed to recover the vehicle which was allegedly used in the commission of the crime and its whereabouts are not known till date which casts a serious doubt on the prosecution story.

17. She further argued that the prosecution failed to examine the wife of PW1 Munna Lal to whom the he had allegedly informed about his travel along with the deceased and accused from Jaipur to Delhi.

18. She had further argued that the Trial Court overlooked various contradictions and inconsistencies in the testimony of many witnesses which casts a serious doubt on the prosecution story.

19. She further argued that the appellant was arrested on 22.02.2008 after a gap of more than seven years after the incident and his TIP was conducted on 25.03.2008 in which PW1 Munna Lal had failed to identify the appellant according to the statement of Crl.Appeal No.733/2016 Page 8 of 29 the appellant under Section 313 of the Code. She further argued that statement of the appellant under Section 313 of the Code casts a serious doubt as to the involvement of the appellant in the commission of the crime.

20. Per contra, Ms. Radhika Kolluru learned APP had argued that the impugned judgment was based on sound legal principles and correct appreciation of evidence on record and therefore does not warrant interference.

21. She further argued that the testimony of the PW1 Munna Lal who was present with the appellant throughout the entire journey from Jaipur to Delhi is corroborated by the evidence on record. She argued that PW1 Munna Lal was

then brutally assaulted by the appellant and other co-accused and presumed to be dead which clearly establishes the guilt of the appellant beyond reasonable doubt.

22. We have heard the learned counsel for the parties.

23. The appellant seeks to challenge the impugned judgment primarily on two grounds:-

"i. ii. the appellant during The presence of the commission of the crime with the co-accused is under a serious doubt because of the various contradictions and inconsistencies in the testimony of PW1 and also because the prosecution failed to establish chain of events linking the appellant with the crime. The appellant stated in his statement under Section 313 of the Code that he had been shown to PW1 Munna Lal before his TIP was conducted and even Crl.Appeal No.733/2016 Page 9 of 29 during the TIP he was not identified correctly by PW1 Munna Lal who was the most important witness in the case.

24. Coming to the first issue, the presence of the appellant with the deceased and PW1 throughout the journey from Jaipur to Delhi was sought to be established by the prosecution primarily through the testimony of PW1 Munna Lal. PW1 Munna Lal is no doubt the most important witness in the present case and his testimony needs to be analysed in detail and corroborated with other witnesses and evidence to establish the guilt of the appellant.

25. PW1 Munna Lal in his examination in chief dated 19.09.2009 had deposed that on 16.03.2001 while he was working as an employee in Laghoo Udyog Sewa Sansthan (now changed to MSME Development Institute, Govt. Of India), some boys had worked for pest control in the same office. One Dhiraj @ Chotu (absconder) had approached him along with two of his associates to arrange a vehicle for taking chemical drums to Delhi. PW1 deposed that he initially took them to Chandra Travels but since no vehicle could be arranged at his place he then took them to Gangawat Travels where one Kamal who was a resident of his locality was also working. He further deposed that the owner of Gangawat Travels had initially refused to arrange a vehicle but on the insistence of Kamal he agreed to arrange a vehicle for Dhiraj @ Chotu. He further deposed that Crl.Appeal

No.733/2016 Page 10 of 29 Dhiraj, Dalip (appellant) and two other persons chose one Marshal Vehicle bearing registration number RJ-14-5C-1852 and Banwari Lal Vyas (deceased) was chosen to be the driver for the journey.

26. PW1 further deposed that he accompanied the appellant and his accomplices to Delhi on the insistence of Banwari Lal Vyas who said that he needed someone to help him during the journey and since no other person could be found, he agreed to accompany the driver. PW1 deposed that he informed his wife about the journey to Delhi and then the appellant and the co- accused along with the driver and PW1 proceeded to Delhi. He then deposed that Dhiraj purchased liquor and food for everyone from New Delhi Railway Station and then Dhiraj took everyone to his Jijas (brother in law) house where he brought the food he purchased in a tray and served it to the driver Banwari Lal Vyas and himself. He further deposed that two drums out of the four that they were carrying were dropped off at the above mentioned house. He further deposed soon after having food he and Banwari Lal became unconscious and he regained consciousness in GTB Hospital where he realised that he was having injuries all over his body because of which he was in severe pain and that driver Banwari Lal Vyas was found dead in Mayur Vihar, Phase-III.

27. He further deposed that his Titan wrist watch along with some documents and cash were stolen by the appellant and the co- Crl.Appeal No.733/2016 Page 11 of 29 accused. He further deposed that he suspected that the appellant and the co-accused had mixed a stupefying drug along with their food in order to rob the vehicle and other valuable properties.

28. He further deposed that he was called to Tihar Jail on 25.03.2008 to identify the appellant. He had also identified co- accused Dhirender and the two drums which were dropped off by the appellant and the co-accused at the house of Sanjay Verma. He further deposed that the appellant was present in Court that day and he identified the other three accused.

29. PW1 in his cross-examination deposed that he was sitting on the front seat with the driver Banwari Lal Vyas during the journey while the appellant was sitting behind him on the rear seat.

30. The testimony of PW1 Munna Lal finds corroboration from the testimony of PW-24 Banwari Lal who was the owner of the Mahindra Jeep No.RJ145C-1853 and he deposed in his examination in chief that he had deputed the said vehicle to Gangawat Travels. He testified that Banwari Lal Vyas (deceased) was the driver deputed for this vehicle. He further deposed that on 16.03.2001 the said vehicle was hired by someone through PW1 Munna Lal and when the vehicle was not returned till 18.03.2001, he went to PW1 Munna Lals house where he was informed by PW1s wife that something had happened to the vehicle. He deposed that he was then called to Police Station New Ashok Nagar where he was informed that Crl.Appeal No.733/2016 Page 12 of 29 his vehicle was missing and from there he was taken to a Hospital for the identification of the dead body of Banwari Lal Vyas.

31. The testimony of PW1 also finds strength from the testimony of PW-22 Raj Kumar who is the owner of Gangawat Travels. He deposed in his examination in chief that a vehicle bearing registration No.RJ145C-1853 along with driver Banwari Lal Vyas (deceased) was hired by PW1 Munna Lal on 16.03.2001 on the guarantee of one driver Kamal. He further deposed that on 18.03.2001 he came to know that the driver of the said vehicle i.e. Banwari Lal Vyas had been murdered by someone.

32. The MLC of PW1 Munna Lal also corroborates the case of the prosecution. The MLC of PW1 shows that he had received multiple injuries including ligature marks on his neck. PW-19 Dr. Tapas Chatterjee who was posted as the Casualty Medical Officer in LBS Hospital on 17.03.2001 examined PW1 when he was brought to the hospital and opined that there were strangulation marks which were a result of a rope being used for strangulation and this injury was dangerous to life in general.

33. From the testimony of PW1 Munnal Lal, PW24 Banwari Lal and PW22 Raj Kumar, it is clearly established that the appellant along with the co-accused had accompanied PW1 and the deceased to Delhi after which the driver of the vehicle was found dead, PW1 was found seriously injured, the vehicle hired Crl.Appeal No.733/2016 Page 13 of 29 from Jaipur was missing and the appellant along with

his accomplices were found to be absconding.

34. Coming to the second issue, a controversy has been sought to be created regarding the identification of the appellant in the TIP proceedings held on 25.03.2008. This is primarily based on the appellants statement under Section 313 of the Code where he stated that he had already been shown to PW1 and even then he had incorrectly identified him.

35. After going through the record of the TIP proceedings it is found that the Ld. Metropolitan Magistrate in whose presence the TIP proceedings were conducted in Tihar Jail had clearly mentioned that PW1 Munna Lal had correctly identified the appellant. Further, during PW1s examination in chief, he had correctly identified the appellant in the court.

36. In the present case, since there is no eye witness to the actual commission of the crime, the guilt of the appellant is sought to be established primarily through the testimony of PW1 Munna Lal along with circumstantial and medical evidence. The Honble Supreme Court in Lallu Manjhi v. State of Jharkhand, (2003) 2 SCC401while laying down as to when the testimony of a single witness can be relied upon, held as under:

10. The law of evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the testimony of a single witness, the court may Crl.Appeal No.733/2016 Page 14 of 29 (i) wholly reliable, for classify the oral testimony into three categories, namely, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. In the first two categories there may be no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The court has to be circumspect and has to in material particulars by reliable testimony, direct or circumstantial, before the testimony of a single witness. acting upon corroboration look 37. PW1 Munna Lal was present with the appellant and the co- accused throughout the journey from Jaipur to Delhi and was found in a grievously injured condition after being last seen with the appellant and the co-accused. The Honble Supreme Court in State of U.P. v. Naresh, (2011) 4 SCC324while laying down the weightage to be given to the testimony of an injured held as under: 27. The

evidence of an injured witness must be given due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual assailant in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or injuries at the Crl.Appeal No.733/2016 Page 15 of 29 want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of major contradictions and discrepancies therein 38. The prosecution argued that the time gap between the appellant being last seen with the deceased and PW1 Munna Lal and their bodies being found was so proximate that no other conclusion can be possible apart from the conclusion that the appellant and his accomplices murdered the deceased, attempted to murder PW1 and robbed the vehicle and other valuables and fled away.

39. The Honble Supreme Court in State of Rajasthan v. Kashi Ram, (2006) 12 SCC254elaborated the scope of the last seen theory as under: 23. It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categoric in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Crl.Appeal No.733/2016 Page 16 of 29 40. if Section 106 of the Evidence Act. In a case resting on circumstantial evidence the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that

when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence, the court can consider his failure to adduce any explanation, as an additional link which completes the chain. The principle has been succinctly stated in Naina Mohd. The Honble Supreme Court in Rambraksh v. State of Chhattisgarh, (2016) 12 SCC25summed up the law relating to the last seen theory as under: 12. It is trite law that a conviction cannot be recorded against the accused merely on the ground that the accused was last seen with the deceased. In other words, a conviction cannot be based on the only circumstance of last seen together. Normally, last seen theory comes into play where the time gap, between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any person other than the accused being the perpetrator of the crime becomes impossible. To record a conviction, the last seen together itself would not be sufficient and the prosecution has the chain of to complete Crl.Appeal No.733/2016 Page 17 of 29 circumstances to bring home the guilt of the accused. 41. The prosecution has been able to prove the following chain of circumstance in a sequence: i. ii. iii. iv. v. vi. The appellant along with his co-accused had approached PW1 Munna Lal in Jaipur to arrange for a vehicle to transport chemical drums to Delhi. PW1 Munna Lal arranged a vehicle from the owner of Gangawat Travels i.e. PW-22 Raj Kumar for the appellant and his accomplices. The owner of the vehicle was PW-24 Banwari Lal. The deceased Banwari Lal Vyas was the driver of the said vehicle. After they reached Delhi around midnight, PW1 stated that co-accused Dhiraj purchased food and liquor from New Delhi Railway Station and they headed to the house of Sanjay Verma who was referred to as jija ji by co-accused Dhiraj in Kondli. After reaching Sanjay Vermas house after midnight on 17.03.2001, PW1 and the deceased were served food by Dhiraj and other co-accused. PW1 and the deceased became unconscious after eating the food and their bodies were found in a dumpster near B-2, Mayur Vihar, Phase-III, Delhi at around 9:30 AM on 17.03.2001.

42. The chain of circumstance finds support in the MLC of PW1 Munna Lal conducted by PW19 Dr. Tapas Chatterjee who opined that injury no.1 was a ligature mark on the neck which was dangerous to life in general. He further

opined that all injuries were fresh in duration. Crl.Appeal No.733/2016 Page 18 of 29 43. The appellant has offered no explanation to any of the inculpating evidence. He only stated in his statement under Section 313 of the Code that he has been falsely implicated and chose not to lead any defence evidence. The time gap between PW1 and the deceased before he was murdered being seen with the appellant and after they were found in the garbage dump is so proximate that no other inference can be drawn apart from holding the appellant guilty. In view of the law laid down by the Honble Supreme Court in Lallu Manjhis case (supra), the testimony of PW1 finds sufficient corroboration in the testimony of official witnesses as well as the medical and circumstantial evidence on record to hold the appellant guilty. The appellant has failed to explain the inculpating circumstances which would make the Court believe that any other inference can be drawn from the existing circumstance and evidence on record.

44. The appellant was convicted for the offence under Section 302 read with Section 120B of the IPC. The Honble Supreme Court in Baliya v. State of M.P., (2012) 9 SCC696elaborated the ingredients that must be proved in order to convict an accused for the offence under Section 120B as under: 15. The offence of criminal conspiracy is defined in Section 120-A of the Penal Code whereas Section 120-B of the Code provides for punishment for the said offence. The foundation of the offence of criminal conspiracy is an Crl.Appeal No.733/2016 Page 19 of 29 agreement between two or more persons to cooperate for the accomplishment/performance of an illegal act or an act which is not illegal by itself, through illegal means. Such agreement or meeting of minds create the offence of criminal conspiracy and regardless of proof or otherwise of the main offence to commit which the conspiracy may have been hatched, once the unlawful combination of minds is complete, the offence stands committed. More often than not direct evidence of the offence of criminal conspiracy will not be forthcoming and proof of such an offence has to be determined by a process of inference from the established circumstances of a given case. conspiracy of criminal 45. From the discussion above, the meeting of the appellants mind to carry out the offence of murder, attempt to murder and robbery stands clearly established. The appellant along with the co-accused hired a vehicle, laced some food with stupefying drugs and fed the same to PW1 and deceased, murdered the deceased, attempted to

murder PW1 and fled with the vehicle and other valuables. The chain of events has already been established and from this chain itself the offence under Section 120B also stands established beyond all doubts.

46. As far as the conviction of the appellant under Section 392 is concerned, we may profit by referring to the view taken by a co- ordinate bench of this Court while deciding appeal of the co- accused Dhirender Singh Tomar who was convicted under Crl.Appeal No.733/2016 Page 20 of 29 sections 302/307/392/120B in CRL.A.293/2008. The relevant paragraph is reproduced below: 21. The testimony of PW-2 establishes that the appellant, his brother Dheeraj and two more accused were with the deceased and PW-2 when they took food. The DD entries and the testimony of SI Sanjay PW-18 establishes that the dead body of the deceased was recovered from a garbage dump at Mayur Vihar Phase III which is near village Kondli where the accused took meals along with PW-2 and the deceased. This was the place where PW-2 was picked up in an unconscious condition. The theory of last seen evidence clearly comes into play. So proximate is the time when the crime was committed to the place of last seen that any reasonable person would conclude that the appellant and his three co-accused who are proclaimed offenders are the offenders unless the appellant explains when did he part company with the deceased and the injured [AIR 1955 SC801Deonandan Mishra Vs. State of Bihar, (2002) 8 SCC45Bodhraj @ Bodha & Ors. vs. State of Jammu & Kashmir and (2003) 7 SCC37Babu S/o Raveendran vs. Babu S/o Crl.A.No.293/2008 Page 13 of 13 Bahuleyan & Anr., 2003 (8) SCC93Amit @ Ammu Vs. State of Maharashtra and 2005 (3) SCC114State of UP Vs. Satish].. The testimony of PW-2 clearly establishes that he lost consciousness immediately when he ate the food. At that point of time, the appellant was present.

22. The vehicle which was took on hire is missing and has till date not been traced.

47. Since the vehicle, which was taken on hire, has not been recovered and it was last seen in the possession of the appellant Crl.Appeal No.733/2016 Page 21 of 29 and the co-accused, the charge of Robbery under Section 392 of the IPC stands proved. We find no reason to interfere with this finding as the chain of events that

led to the vehicle disappearing establish the criminal conspiracy that the appellant and the co-accused entered into for the purpose of robbing PW1 and the deceased of their valuables and the vehicle that was taken on hire.

48. In view of the facts and circumstances of the case we find no merit in the appeal and the same is dismissed and the sentence imposed on the appellant is upheld.

49. TCR be sent back. ORDER ON COMPENSATION TO THE LEGAL HEIRS OF THE VICTIM The appellant was convicted for the offence under Section 302 50. read with Section 120B of the IPC and sentenced to life imprisonment and a fine of Rs.10, 000/-. In default of payment of fine he was sentenced to undergo Simple Imprisonment for six months. The appellant was further convicted for the offence under Section 307 read with Section 120B of the IPC and awarded life imprisonment and a fine of Rs.10, 000/-. In default of payment of fine he was sentenced to undergo Simple Imprisonment for six months. The appellant was also convicted for the offence punishable under Section 392 read with Section Crl.Appeal No.733/2016 Page 22 of 29 120B of the IPC and awarded rigorous imprisonment for five years and a fine of Rs.10, 000/-. In default of payment of fine he was sentenced to undergo Simple Imprisonment for six months. Even this meagre fine has not been ordered to be paid to the legal heirs of the deceased or to Munna Lal by the Trial Court. In the recent times, the victimology and rehabilitation has taken roots in the criminal administration of justice of our country. The law is also codified in this aspect and Section 357 and 357A of the Code deals with the subject. Furthermore, the codes of law in this country are well guided by the Hon'ble Supreme Court. Considering the mandate, this court proposes to deal with the aspect of granting compensation to the victims.

51. In this case, the deceased Banwari Lal Vyas Pal died due to asphyxwhia as a result of strangulation. The MLC of PW1 Munna Lal (Ex.PW7/A) shows that the he had ligature marks on the neck which were caused due to strangulation. These injuries were dangerous to life according to PW-19 Dr. Tapasi Chatterjee who had examined PW1 when he was brought to the hospital.

52. By a catena of decisions of the Hon'ble Supreme Court in the reported cases of Kawal Pati v. State of U.P, (1995) 3 SCC600 Supreme Court Legal Aid Committee v. State of Bihar, (1991) 3 SCC482 Chairman Railway Board v. Chandrimadas (2000) 2 SCC465 Nilabati Behera v. State of Orissa, (1993) 2 SCC746 Khatri v. State Crl.Appeal No.733/2016 Page 23 of 29 of Bihar, (1981) 1 SCC623and Union Carbide v. Union of India, (1989) 1 SCC674 it is held that victim of a crime or his kith and kin have legitimate expectation that the State will punish the guilty and compensate the victim. 53. To understand the powers and jurisdiction of this court, it would be profitable to advert to section 357A of the Code in order to award compensation or to merely recommend to the District Legal Service Authority, Delhi, the amount of compensation payable to the legal heirs of the deceased or the victim of a crime. Section 357A of the Code reads as under:- 357A. Victim compensation scheme. (1) Every State Government in co-ordination with Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation. (2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1). (3) If the trial Court, at the conclusion of the trial, is satisfied that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the Victim has to be rehabilitated, it may make recommendation for compensation. (4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may Crl.Appeal No.733/2016 Page 24 of 29 for award award adequate make an application to the State or the District Legal Services Authority of compensation. (5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority, shall, after due enquiry compensation by completing the enquiry within two months. (6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a

Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit. 54. This Section 357A of the Code came up for interpretation before the Hon'ble Supreme Court in Ankush Vhivaji Gaikwad v. State of Maharashtra, (2013) 6 SCC770 and the Apex Court has held that under Section 357-A of the Code the court is empowered to direct the State to pay compensation to the victims in such cases where compensation awarded under Section 357 of the Code is inadequate or the case ends in acquittal or discharge. The relevant Para of the judgment reads as under:- 42. The amendments to the Criminal Procedure Code brought about in 2008 focused heavily on the trial, particularly in trials relating to sexual offences. Though the 2008 amendments left Section 357 rights of victims in a criminal Crl.Appeal No.733/2016 Page 25 of 29 due to introduced unchanged, they introduced Section 357A under which the Court is empowered to direct the State to pay compensation to the victim in such cases where the compensation awarded under Section 357 is not adequate for such rehabilitation, or where the case ends in acquittal or discharge and the victim has to be rehabilitated. Under this provision, even if the accused is not tried but the victim needs to be rehabilitated, the victim may request the State or District Legal Services Authority to award him/her compensation. This provision was the recommendations made by the Law Commission of India in its 152nd and 154th Reports in 1994 and 1996 respectively. 62. While the award or refusal or compensation in the particular case may be within the Court's discretion, there exists a mandatory duty on the Court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion. It is also beyond dispute that the occasion to consider the question of award of compensation would logically arise only after the court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order under Section 357 Code of Criminal Procedure would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the court considers it unnecessary to do so. Such an enquiry can Crl.Appeal No.733/2016 Page 26 of 29 precede an order on sentence to

enable the court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/her family. 55. Recently, in Suresh v. State of Haryana (2015) 2 SCC227 the Hon'ble Supreme Court has held that the object and purpose of Section 357A, which was incorporated by amendment Act No.5 of 2009 is to enable the court to direct the State to pay compensation to the victims where the compensation under Section 357 of the Code was not adequate or the case ended in acquittal or discharge. The relevant Paras of the judgment read as under:- 12. It would now be appropriate to deal with the issue. The provision has been incorporated in the Cr. PC vide Act V of 2009 and the amendment duly came into force in view of the Notification dated 31st December, 2009. The object and purpose of the provision is to enable the Court to direct the State to pay compensation to the victim where the compensation under Section 357 was not adequate or where the case ended in acquittal or discharge and the victim was required to be rehabilitated. The provision was incorporated on the recommendation of 154th Report of Law Commission. recognises compensation as one of the methods of protection of victims. The provision has received the attention of this Court in several decisions including Ankush Shivaji of Maharashtra . Gaikwad v. State It Crl.Appeal No.733/2016 Page 27 of 29 14On being satisfied on an application or on its own motion, the Court ought to direct grant of interim compensation, subject to final compensation be determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim. At the stage of final hearing it is obligatory on te part of the Court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much. Award of such compensation can be interim. Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factors as may be found relevant in the facts and circumstances of an individual case.. 56. This view was re-iterated by the Honble Supreme Court in State of M.P. v. Mehtaab, (2015) 5 SCC197 The Court held as under: Apart from the sentence and fine/compensation to be paid by the accused, the court has to award compensation by the State under Section 357-A Cr PC when the accused is not in a position to pay fair compensation as laid down

by this Court in Suresh v. State of Haryana. 57. In view of the judgments of the Apex Court in Ankushs case (supra) and Sureshs case (supra), this court can direct the State Government to pay compensation to the victims and their legal heirs. The Government of NCT of Delhi has notified Delhi Victims Compensation Scheme, 2015. Since the incident is of Crl.Appeal No.733/2016 Page 28 of 29 17.03.2001 and appeal is of the year 2016 and it will take time if the inquiry is conducted by this Court for assessing the quantum of compensation payable to PW1 Munna Lal and the legal heirs of the deceased, therefore, we dispense with the inquiry as to capacity of the appellant to pay the compensation to the legal heirs of the deceased.

58. Let the Delhi State Legal Services Authority to conduct a proper enquiry under Section 357A of the Code for the purpose of paying adequate compensation to the injured Munnna Lal and legal heirs of the deceased Banwari Lal Vyas within two months from the date of receipt of copy of this order. Copy of this order be also sent to Member Secretary, Delhi State Legal Services Authority. (VINOD GOEL) JUDGE (G.S SISTANI) JUDGE DECEMBER19 2017 // Crl.Appeal No.733/2016 Page 29 of 29

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