

**Arun Kumar vs.state**

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**SooperKanoon Citation :** [sooperkanoon.com/1213623](http://sooperkanoon.com/1213623)

**Court :** Delhi

**Decided On :** Mar-19-2018

**Appellant :** Arun Kumar

**Respondent :** State

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision: March 19, 2018 + CRL.A. 695/2016 ARUN KUMAR ..... Appellant Through: Mr.Rajiv Mohan, Mr.Abhimanyu Kampani, Mr.Abhisheik Srivastav, Ms.Priyanka Singh and Mr.M.A. Karthik, Advocates. versus ..... Respondent Through: Ms.Aashaa Tiwari, APP for State with SI Prabhakaran, PS Chhawla. STATE AND + CRL.A. 867/2016 MAHENDER SINGH ..... Appellant Through: Mr.Rajiv Mohan, Mr.Abhimanyu Kampani, Mr.Abhisheik Srivastav, Ms.Priyanka Singh and Mr.M.A. Karthik, Advocates. versus ..... Respondent Through: Ms.Aashaa Tiwari, APP for State with SI Prabhakaran, PS Chhawla. STATE Crl.A. 695/2016 & 867/2016 Page 1 of 42 CORAM: HON'BLE MR. JUSTICE VIPIN SANGHI HON'BLE MR. JUSTICE P.S.TEJI JUDGMENT OF THE COURT1 Since both these appeals have been preferred against a common judgment of conviction and order on sentence, therefore, both these appeals are taken together.

2. The present appeals have been filed by the convicts/ appellants (hereinafter referred to as the appellants), namely, Arun Kumar and Mahender Singh against the judgment dated 26.04.2016 rendered by the learned ASJ Sh. Anil Kumar in Sessions Case No.23/2014 whereby the appellants have been convicted under

### Section 394 and 3

IPC, and against the order on sentence dated 05.05.2016 whereby the appellants have been sentenced to imprisonment for life along with fine of Rs.20,000/- each, and in default of payment of fine, to further undergo six months rigorous imprisonment for the offence punishable under Section 3

IPC; and sentenced to undergo rigorous imprisonment for ten years with fine of Rs.5,000/- each and, in default of payment of fine, to further undergo rigorous imprisonment for three months for the offence punishable under Section 394 IPC.

3. The factual matrix emerging from the record is that on 26.07.2010 around 00:40 a.m., on receipt of a missing report by Rajesh Singh in respect of Naresh Bhatti vide DD No.3A CrI.A. 695/2016 & 867/2016 Page 2 of 42 (Ex.PW25/A), SI Arvind Kumar made efforts to trace the missing person i.e. the deceased. Later in the morning on 26.07.2010, information was received from Insp.Ashok of Police Station Sohna, Haryana that a dead body was found in the above said car near Palwal Road. The complainant Krishan Kumar proceeded to the spot. He identified and received the dead body of his brother Naresh Bhatti. Thereafter, the complainant Krishan Kumar got his statement recorded in the police station at 5.10 p.m. on 26.07.2010. In his statement, Krishan Kumar stated that his elder brother Naresh Bhatti was working as Manager in the shop of his brother-in-law Rajesh Singh in the name and style of Sri Krishna Steel and Cement Store, situated at Plot No.57, U Block, New Roshanpura, Main Gurgaon Najafgarh Road, Delhi. On 25.07.2010 at about 7 p.m., Naresh Bhatti left the shop after closing it for his house, having Rs. 2 lakhs in cash, along with driver Arun who was employed 6-7 days back, in his car make Chevrolet Aveo bearing registration No.DL-2C AJ1338 Since he did not reach home till late night, his brother-in-law Rajesh Singh informed the police about his going missing. Krishan Kumar-younger brother of the deceased raised his suspicion on driver Arun for the crime.

4. On the basis of statement made by the complainant, FIR was registered under Section

IPC on 26.07.2010. The Investigating Officer visited the place from where the dead body of the deceased was found and prepared the site plan at the instance of Insp. Ashok Kumar. Inquest papers of the deceased were obtained CrI.A.

695/2016 & 867/2016 Page 3 of 42 and the cause of death of the deceased was given as due to fire arm injury, leading to spot death. Exhibits were taken from Insp. Ashok Kumar and the same were seized and deposited in malkhana. On 31.07.2010, accused Arun Kumar and Mahender Singh were arrested who disclosed the commission of the offence. They disclosed that due to financial crunch, they committed the robbery and murder of the deceased. They disclosed that they had looted the money, mobile phone, as well as chain of the deceased. After commission of the murder, they had thrown the country made pistol and two live cartridges in the field. Accused Mahender Singh disclosed that he had inserted his sim in the mobile phone of the deceased and made a call to a known person, and then he threw the mobile phone in the bushes near Sardar ka Dhaba at Bhogaon-Bevar Road. It was also disclosed by Mahender Singh that out of the looted booty, accused Mahender Singh got Rs.60,000/- as his share and he deposited a sum of Rs.37,000/- in his bank account on 26.07.2010.

5. The motorcycle bearing No.UP-84C-1308 possessed by the accused was seized. From the search of accused Mahender Singh, one deposit slip of Rs.37,000/- of Bank of India was recovered, which was seized. One mobile phone and sim card was also recovered from him and the same were seized. Both the accused pointed out the place of occurrence. Accused Mahender Singh got recovered the country made pistol, which was seized. Accused Arun Kumar got recovered two live cartridges, which were also seized. One of the cartridges was having misfire sign. Accused Mahender Singh also got recovered mobile phone of the deceased, which was seized. Accused Mahender Singh also got recovered Rs.13,500/- from his house, whereas accused Arun Kumar got recovered looted Rs.45,000/- and broken gold chain of the deceased, which were seized. The bank statement of accused Mahender Singh was obtained. Efforts were made to trace remaining accused Alok Kumar @ Narayan and Kamlesh, but they could not be traced. During investigation, car of the deceased was examined by the FSL expert, who handed over one bullet to the investigating officer-recovered from the rear right side window. Exhibits were seized. During investigation, it was revealed that the real name of the deceased was Hukam Singh. During TIP proceedings, chain of the deceased was identified by the complainant. After completion of investigation, charge sheet was filed under

Section 365/302/397/398/411/34/120B IPC read with Section 25/  
Arms Act.

6. Charge under Section 365/397/3

IPC read with Section 27 of the Arms Act was framed against both the appellants, to which they pleaded not guilty and claimed trial.

7. To prove its case, the prosecution had examined 28 witnesses, namely, ASI Babu Lal (PW1-He was also examined as PW4), HC Sanjay Kumar (PW2), Ct.Hardeep Singh (PW3), Rajesh Kumar (PW3A), Krishan Kumar (PW5), ASI Kamlesh Kumar (PW6), Ct.Harpal Singh (PW7), Ct.Sanjay (PW8), Dr.Aditya Derhagawen (PW9), SI Hukum Chand (PW10), Dr.Vini Rastogi (PW11), HC Bhoj Raj (PW12), Raj Kumar (PW13), Insp.Ashok Crl.A. 695/2016 & 867/2016 Page 5 of 42 Kumar (PW14), Ex. Ct.Jeet Singh (PW15), Vikas Gupta (PW16), HC Jeetendra (PW17), Ct.Hari Narain (PW18), Ct.Dinesh (PW19), Sh.M.N. Vijayan (PW20), Sh.Deepak (PW21), Dr.Rajender Kumar (PW22), Sh.R.K. Singh (PW23), Sh.V.R. Anand (PW24), SI Arvind Kumar (PW25), Sh.Ram Murath (PW26), Insp.Rishi Pal Singh (PW27) and Sh.Parmaditya (PW28).

8. After completion of prosecution evidence, statements of the accused persons under Section 313 Cr.P.C. were recorded in which they claimed their innocence. To prove their defense, the accused persons examined three defense witnesses, namely, Bablu Mishra (DW1), Shailesh (DW2) and Satender Singh (DW3).

9. On appreciation of evidence and material brought on record, the trial court convicted the appellants for the offence punishable under Section 394/3 IPC. Feeling aggrieved by the judgment of conviction and order on sentence, the instant criminal appeals have been preferred by the appellants.

10. We have heard the submissions advanced by the learned counsel for the appellants and the learned APP for the State. We have also gone through the evidence led by the parties and the written submissions made on behalf of the appellant- Mahender Singh.

11. Argument advanced by the counsel for the appellant Arun Kumar is that the present case is based on circumstantial evidence and the prosecution has failed to establish all the circumstances which could lead to conviction of the appellant. It is Crl.A. 695/2016 & 867/2016 Page 6 of 42 submitted that the chain of the deceased and weapon of offence had been planted upon the appellants by the police, just to make out a case. There are several missing links in the story put forth by the prosecution. Since the prosecution has not been able to prove all the circumstances, it should lead to acquittal of the accused.

12. Ld. Counsel has argued that though Arun was employed as driver by the deceased, but he was on leave on the evening of 25.07.2010, as he went to his native place as his brother had met with an accident in Aligarh. It is further submitted that accused Arun remained on leave for three days to attend to his brother, and it was only on 29.07.2010, that the police apprehended him.

13. Argument advanced by the counsel for the appellant- Mahender Singh is that the mobile phone number of Rajesh Kumar (PW3A) was the last dialed number in the mobile phone of the deceased. No identity document was recovered from the deceased, and the car was registered in the name of a friend of Rajesh Kumar (PW3A), which casts doubt about the prosecution story as to how the police informed Rajesh Kumar about the recovery of the dead body of the missing person. It is submitted that there is a serious doubt arising about the seizure of mobile phone of the deceased. It is further submitted that the prosecution has failed to establish that the mobile phone no.9675657490 was in the exclusive use of the accused Mahender Singh. The said mobile number was used only twice on the mobile phone of the deceased on 27.07.2010, which raises doubt that the said calls were only made to implicate the accused Mahender Crl.A. 695/2016 & 867/2016 Page 7 of 42 Singh. Only SIM of mobile no.9675657490 was recovered from the accused Mahender Singh, and not the mobile phone, which raises doubt that the said SIM was planted upon him. It was further submitted that the call detail record Ex.PW20/H of the mobile phone no.9267315354 of the accused Mahender Singh is not authentic. The appellant also questions the certificate under Section 65B of the Evidence Act, i.e. Ex.PW20/I. It is further submitted that the location chart of the mobile phone of the deceased was not brought on record to

intentionally suppress the comparison of the same with the route taken by the accused Mahender Singh. It is argued that the recovery of fire arm at the instance of the accused Mahender Singh is doubtful. It is further argued that the recovery of the bullet from the vehicle was highly belated i.e. on 08.09.2010, which raises a serious doubt about its genuineness. Though the bullet was claimed to have been seized from the car, but the FSL expert was not made witness to the seizure, nor inspection report of the FSL was filed in the Court. It is further argued that the doctors were not examined to establish the fact that the recovered bullet was the one that was capable of causing the injury suffered by the deceased. There is no cogent evidence to link the accused Mahender Singh with the deposit of Rs.37,000/- in his bank account and murder of the deceased. It was further submitted that the accused Mahender Singh is innocent, and has been falsely implicated in the present case as he was having proximity to co-accused Arun. CrI.A. 695/2016 & 867/2016 Page 8 of 42 14. Per contra, learned Additional Public Prosecutor has argued that there is sufficient evidence and material on record to convict the appellants. It is an admitted fact that the appellant Arun was employed as driver with the deceased. From the testimony of PW-16, it is established that accused Arun Kumar was lastly in the company of the deceased. On the day of the incident, the deceased was having cash of Rs.2 lakhs and, while the deceased was on the way to his house, co-accused Mahender Singh sat in the car and then both the accused committed the murder of the deceased with the motive to loot the cash amount of Rs.2 lakhs and his other valuables. It is further submitted that the mobile phone of the deceased was used by the accused Mahender Singh by inserting his SIM in the same, and some calls were made from the same. It is further submitted that the deceased was firstly shot, and then robbed of Rs.2 lakhs, and then the car having the dead body was dumped in a secluded place. The belongings of the deceased have been identified in the TIP proceedings. The call details and location chart of the mobile phones clearly establish the fact that the accused Mahender was in the same location as the accused at the time of commission of the offence. The prosecution has been able to establish all the circumstances and complete the chain to prove the guilt of the appellants.

15. To appreciate the rival contentions of the parties, we have gone through the evidence adduced on record. Naresh Bhatti was the brother-in-law (sala) of

PW3A. PW3A deposed that deceased Naresh Bhati @ Hukum Singh was looking after the entire CrI.A. 695/2016 & 867/2016 Page 9 of 42 work of his shop-Sri Krishna Steel & Cement Store. On 25.07.2010 at about 7-7.30 p.m., deceased made a call to PW3A that he was leaving the shop and going to his house in the car, make Chevrolet Aveo, bearing no.DL-2CAJ-1338 being driven by the driver Arun. He was also having cash of Rs.2 lakhs. Thereafter, his phone was found to be switched off and he did not reach his home. PW3A made a telephone call on 26.07.2010 at 00.40 a.m. on No.100 vide DD No.3A (Ex.PW25/A) of the deceased going missing. In the morning of 26.07.2010, PW3A received an information from the SHO, PS Sohna that the said car was found lying abandoned at Sohna-Palwal road and one dead body was lying in it. PW3A reached the spot, inter alia, with the complainant Krishan Kumar and found that the dead body was already out from the car. He also noticed blood marks at the back seat and other parts of the car. He identified the dead body as that of his brother-in-law Naresh @ Hukum Singh. He identified the accused Arun as a person who was employed in his shop 5-6 days prior to the incident as a driver. He also deposed that after the incident, accused Arun never came to the shop.

16. PW5-Krishan Kumar is the complainant, who had deposed that his deceased brother Naresh Bhati was working as a Manager in the shop-Sri Krishna Steel & Cement Store which belongs to his brother-in-law. On 25.07.2010 at about 7-7.30 p.m., Naresh closed the shop and left for his house in Chevrolet Aveo car bearing no.DL-2CAJ-1338 being driven by driver Arun who was employed in the shop 6-7 days prior to the incident. At the time of CrI.A. 695/2016 & 867/2016 Page 10 of 42 leaving the shop, Naresh was having Rs.2 lakhs cash with him. His brother Naresh did not return to his house by night. On the next day i.e. on 26.07.2010, on receipt of information from Insp.Ashok of Sohna Police, he along with Rajesh Kumar (PW3A) reached the spot and found the dead body of his brother. He further deposed that he raised suspicion on accused Arun. He proved his complaint as Ex.PW5/A. He further deposed that his brother was having Rs.2 lakhs cash, one gold chain, one mobile phone make G-Five, V-808, having mobile phone connection no.9818280075. On 28.07.2010, he handed over the copy of driving licence of accused Arun Kumar to the IO, which was seized vide memo Ex.PW5/B. He also proved the TIP proceedings of gold chain Ex.PW5/C in which he correctly

identified the gold chain as that of his deceased brother vide Ex.P3. He also identified the recovered mobile phone of his deceased brother as Ex.P2.

17. PW13-Raj Kumar deposed that deceased Naresh Bhati was the elder brother of his brother-in-law (jija) who was running a shop in the name of Krishna Steel & Cement Store and accused Arun Kumar was working as a driver with the deceased. Driver Arun used to pickup Naresh Bhati from his house to take him to the shop, and to bring him back from the shop. PW13 further deposed that on 25.07.2010 at about 9-10 p.m., he received information from his sister that mobile phone of Naresh Bhati was switched off, and he had not reached home. His sister also informed him that Naresh Bhati had left the shop in the car being driven by accused Arun. On CrI.A. 695/2016 & 867/2016 Page 11 of 42 the next day i.e. 26.07.2010 at about 11-11.30 a.m., he received a call from his sister that the said car was found near Lakhavas Village, near Sohna-Palwal road. Thereafter, PW13 left for the said place and reached there at about 3 p.m. where he found Rajesh Kumar and Karan Bhati, police officials, and many public persons. He found the said car parked on the side of road and the dead body of Naresh Bhati was lying on the road which had already been taken out from the car. He also deposed that he had seen the injury on the dead body above the right ear, and it appeared like a gunshot injury and part of the brain had come out from the back side of the head. Later on, he came to know that Naresh Bhati was murdered for looting cash.

18. The death of the deceased being a homicidal death has been proved by Dr.Aditya Derhgawen (PW9). He deposed that on 27.07.2010, he along with Dr.Vini Rastogi had conducted the post mortem on the dead body of the deceased Naresh Bhati. On examination, the following ante mortem injuries were found i.e. (1) wound of exit 3 cm behind the left ear pinna of skull; lacerated wound U shaped measuring 2 cm X08 cm; circular hole diameter around 0.8 cm was present on underlying skull bone; metallic probe was entered which went medially came out of the wound on the right side; bluish discoloration around right eye ball extending upto right side of forehead and right cheek, and (2) entry wound i.e. lacerated wound, irregular extending from front of right prima, fragus of right ear cut in middle and lacerated wound extending upward lateral to lateral of right eye; size of wound about 5 cm X6cm; multiple CrI.A. 695/2016 & 867/2016 Page 12 of

42 fracture of right zygomatic bone, right temporal bone, frontal forehead, occipital and parietal bone; brain tissue mutilated and coming out from lacerated wound; edge of the wound was inverted and direction of gunshot is medially downward. The doctor found all the injuries ante-mortem in nature and were sufficient to cause death in due course of time. The cause of death was due to firearm injury. The postmortem report was proved as Ex.PW9/A. After postmortem, the exhibits were sealed and handed over to the police.

19. Similar deposition was made by PW11-Dr.Vini Rastogi as made by PW9-Dr. Dr.Aditya Derhgawen. PW11 had proved the Death Report in Form 25.35 as Ex.PW11/A, site plan as Ex.PW11/B, inspection report of the vehicle as Ex.PW11/C, statement of Rajesh Kumar as Ex.PW11/D, statements of Raj Kumar and Karan Bhati as Ex.PW11/E and Ex.PW11/F respectively, and copy of FIR as Ex.PW11/G.

20. Witness SI Babu Lal (PW1 & PW4) who was posted as Duty Officer at the relevant time, deposed that he had registered the FIR of the instant case. He had proved the copy of FIR as Ex.PW4/A, his endorsement Ex.PW4/B made on the rukka and copy of DD No.22A as Ex.PW4/C.

21. PW2-HC Sanjay Kumar, who was posted as MHC(M) in the Police Station Chhawla at the relevant time, deposed with regard to deposit of several articles connected with the case in the CrI.A. 695/2016 & 867/2016 Page 13 of 42 malkhana, which had been recovered during investigation including the samples for forensic examination.

22. Similarly, PW6-ASI Kamlesh, who was the malkhana incharge of PS Sohna, Gurgaon deposed with regard to deposit of articles and samples in the malkhana at P.S. Sohna, Gurgaon.

23. PW3-Ct.Hardeep Singh deposed that on 22.10.2010, he had taken rough notes and measurement Ex.PW3/A of the spot i.e. Gupta Farm House, Village Lakhavas and on the basis of the same, he prepared the site plan Ex.PW3/B.

24. PW7-Ct.Harpal Singh and PW8-Ct.Sanjay deposed that on 26.07.2010, they were posted at PS Sohna. On that day, an information was received that one car was lying parked at Palwal Road. Ct.Harpal Singh along with Insp.Ashok Kumar and Ct.Sanjay reached the spot and found one car bearing no.DL-2CAJ-1338. One dead body of a male was found inside the car. Crime team and finger print experts were called. The dead body was that of Naresh Bhati and the car was seized vide memo Ex.PW7/A. Seat cover having blood stains and cotton with which blood was lifted from the car were seized vide memo Ex.PW8/A.

25. Finger prints from the car in question, in which the dead body of the deceased was found, were lifted by PW10-SI Hukum Chand vide report Ex.PW10/A. CrI.A. 695/2016 & 867/2016 Page 14 of 42 26. PW12 HC Bhoj Raj deposed that on 28.07.2010, Krishan Kumar had produced the copy of driving license and photographs of accused Arun Kumar which were seized by the IO. On 31.07.2010, he joined the investigation along with Insp.Rishi Pal, SI Arvind Kumar, Ct.Sukhdev, Ct.Jeet Singh and Ct.Arvind and on the basis of information given by the secret informer, accused persons were apprehended. They were arrested vide memos Ex.PW12/A and Ex.PW12/B and their personal searches were conducted vide memos Ex.PW12/C and Ex.PW12/D. Their disclosure statements Ex.PW12/E and Ex.PW12/F were recorded. The motorcycle of the accused persons was seized vide memo Ex.PW12/G. On the pointing out of accused Arun Kumar, two live cartridges were seized vide memo Ex.PW12/H. On the pointing out of accused Mahender Singh, one desi katta was seized from the fields, near Gupta Farm House vide memo Ex.PW12/J.

Both the accused pointed out the place of occurrence vide memos Ex.PW12/K and Ex.PW12/L. They had also pointed out the spot where the car was parked after committing murder vide memos Ex.PW12/M and Ex.PW12/N. He further deposed that on search of accused Mahender Singh, one mobile phone make Micromax having SIM card and another SIM card of mobile connection no.9675657490 were recovered. Accused Mahender disclosed that he had used the said SIM card in the mobile phone of the deceased. The same were seized vide memo Ex.PW12/O. PW12 further deposed that on 02.08.2010, accused Mahender got recovered mobile phone make G-V of the deceased from the

bushes opposite to the Sardar ka Dhaba, Baiwar, Crl.A. 695/2016 & 867/2016 Page 15 of 42 Etah, Mainpuri, U.P. which was seized vide memo Ex.PW12/P. The copy of receipt regarding deposit of looted amount of Rs.37,000/- in the bank account of accused Mahender Singh was seized vide memo Ex.PW12/Q and its original was seized from the bank vide memo Ex.PW12/R. The statement of account Ex.PW12/S of accused Mahender Singh was obtained. Accused Mahender Singh also got recovered Rs.13,500/- from his house being part of the robbed amount which was seized vide memo Ex.PW12/T. The broken gold chain of the deceased was also recovered from the accused Mahender Singh vide Ex.PW12/U. Accused Arun Kumar got recovered Rs.45,000/-, a part of the looted amount from his house which was seized vide memo Ex.PW12/U.

27. PW14-Insp.Ashok Kumar, SHO, PS Sohna deposed that on 26.07.2010, a dead body was found in a car no.DL-2CAJ-1338 lying parked on Palwal Road, ahead of Lakhuvas Village, near Gupta Farm House. On opening the door of the car, one dead body of a male was found inside the car. He found gunshot injury on the head. Crime team and finger print experts were called at the spot. Exhibits were lifted from the spot and the car was seized. One Rajesh Kumar along with his relatives reached the spot and identified the dead body as that of Naresh Bhati. Statements of Rajesh Kumar and Jai Prakash were recorded. Copy of FIR No.124/2010, PS Chhawla was produced and information regarding the recovery of dead body was given to PS Chhawla. PW14 made his endorsement Ex.PW14/A on the statement of Rajesh Kumar. The dead body was sent to hospital. Crl.A. 695/2016 & 867/2016 Page 16 of 42 After the postmortem, exhibits i.e. clothes, wrist watch and one ring of the deceased were seized vide memo Ex.PW14/C. PW15-Ct.Jeet Singh had also deposed about the proceedings which had taken place at the spot.

28. PW17-Ct.Jeetender was the Special Messenger who had delivered the copies of FIR of the instant case to the senior officers of the area. PW18-HC Hari Narain had deposited the exhibits in FSL on 12.10.2010 vide RC No.66/21/10. PW19-Ct.Dinesh deposited the exhibits in FSL vide RC No.71/ on 25.10.2010.

29. PW20-Sh.M.N. Vijayan, Nodal Officer, TATA Teleservice deposed that mobile no.9211124081 was issued in the name of Hukum Singh vide details Ex.PW20/A, customer application form Ex.PW20/C, call details Ex.PW20/D and certificate under Section 65B of the Evidence Act Ex.PW20/E. He further deposed that the mobile no.9267315354 was issued in the name of accused Mahender Singh vide customer application form Ex.PW20/G, call details Ex.PW20/H, certificate under Section 65B of the Evidence Act Ex.PW20/I and cell ID chart Ex.PW20/J.

Witness deposed that as per call records, there was conversation between those two numbers w.e.f. 23.07.2010 to 25.07.2010. The subscriber of the mobile phone no.9267315354 was in touch with mobile no.4461082660 and at that time mobile No.9267315354 was roaming in Delhi from 21:04:41 hours of 25.07.2010 and thereafter the said number was on roaming in Haryana circle. On 26.07.2010 from 06:30:05 hours, the said number was in the area of U.P. West. Crl.A. 695/2016 & 867/2016 Page 17 of 42 30. PW21-Sh.Deepak, Nodal Officer, Vodafone Mobile Services deposed that mobile no.9675657490 was issued in the name of Dharmender vide call details Ex.PW21/A, customer application form Ex.PW21/B, and certificate under Section 65B of the Evidence Act Ex.PW21/C. PW23-Sh.R.K. Singh, Nodal Officer, Bharti Airtel deposed that mobile no.9818280075 was issued in the name of Hukum Singh vide customer application form Ex.PW23/A, call details Ex.PW23/B and certificate under Section 65B of the Evidence Act Ex.PW23/C.

31. PW22-Dr.Rajender Kumar, Dy.Director, FSL Rohini deposed that on 25.10.2010 five sealed parcels were received containing pant, shirt and banyan, blood sample, piece of rexine and cotton wool swab. He had examined the exhibits and proved his biological report as Ex.PW22/A. On serological examination, human blood was detected on pant, shirt, banyan, pieces of rexine and cotton wool swab vide report Ex.PW22/B. He had also deposed that on 28.03.2011, one sealed parcel containing one dirty bullet was received and the said bullet was examined on which blood was detected vide report Ex.PW22/D.

32. To prove the circumstance of the deceased lastly being seen in the company of accused Arun Kumar, the prosecution examined another employee of the shop,

namely, Vikas Gupta (PW16) who had deposed that he was working at Shri Krishna Steel & Cement Store where deceased Naresh Bhati was working as a Manager. He also deposed that accused Arun Kumar was working as Crl.A. 695/2016 & 867/2016 Page 18 of 42 a driver. He specifically deposed that on 25.07.2010, deceased Naresh left the shop in his car with accused Arun at about 7.15 p.m. and when he left with accused Arun, he was carrying cash containing notes of Rs.500/- and Rs.1000/-.

33. Sh.Rajesh Kumar (PW3A) was the owner of the shop wherein deceased was working as a Manager. PW3A deposed that on 25.07.2010 at about 7-7.30 p.m., deceased made a call to him and told that he was leaving from the shop and going to his house in his Chevrolet Aveo car bearing registration no.DL-2CAJ-1338 being driven by accused Arun. At that time, the deceased was carrying cash of Rs.2 lakhs which were the proceeds of the shop, but he did not reach his house. Similarly, Krishan Kumar (PW5), brother of the deceased had deposed that deceased Naresh Bhati was working as a Manager in the shop of his brother-in-law. On 25.07.2010 at about 7-7.30 p.m., his brother Naresh Bhati had left for his house in Chevrolet Aveo car no.DL-2CAJ-1338 being driven by accused Arun Kumar who was employed 6-7 days prior to the incident. While leaving the shop, his brother was having Rs.2 lakhs. His deceased brother did not return to his house in the night and he was informed by Rajesh regarding the deceased going missing.

34. It is further evident from the record that a DD No.3A Ex.PW25/A was lodged with the police to the effect that Naresh Bhati had left the shop with Rs.2 lakhs in the evening of 25.07.2010 at about 7.00 p.m. in car no.DL-2CAJ-1338 along with the driver who was employed few days back and had not reached his home. It Crl.A. 695/2016 & 867/2016 Page 19 of 42 is further apparent from the record that family members of the deceased had also made a call to the police regarding kidnapping of the deceased. Though, the said PCR Form was never proved on record, but at the time of arguments before the trial court, the said PCR Form was called by the trial court in which it was mentioned that Naresh Bhati went missing with vehicle no.DL-2CAJ-1338 made Chevrolet Aveo and cash of Rs.2 lakhs with the driver who was employed 2-3 days back. It was also mentioned therein that

the driver had taken away the deceased.

35. Inspector Ashok Kumar (PW14) who reached the spot of recovery of car-having dead body of the deceased along with the police staff, on receipt of information. PW14 had stated that on 26.07.2010, the car no.DL-2CAJ-1338 was found lying parked on Palwal Road, ahead of Lakhavas Village, near Gupta Farm House, wherein a dead body of a male was found. There was gunshot injury on the head of the deceased. Exhibits were lifted from the spot and the car was seized. One Rajesh Kumar along with his relatives reached the spot and identified the dead body as that of Naresh Bhati.

36. It is an undisputed fact that the accused Arun Kumar was employed as driver by the deceased. PW16 has specifically stated that on the day of incident, he had seen the deceased Naresh Bhati going in the car being driven by accused Arun Kumar. There is nothing to disbelieve the testimony of independent witness PW16 (employee of the shop). So, there is no force in the submission of accused Arun that he was on leave in the evening of 25.07.2010. The CrI.A. 695/2016 & 867/2016 Page 20 of 42 other aspect of the argument advanced by the accused Arun Kumar is that he remained on leave for three days and was apprehended on 29.07.2010 by the police. There is no basis in the said submission for the reason that no documentary or other evidence was brought on record by accused Arun to substantiate his plea of alibi, that from the time of the deceased going missing, till his apprehension by the police, he was not present in Delhi or that he was at his native place to attend to his brother. No credible evidence has been led on record by the accused to show that his brother met with an accident. It is also apparent from the record that the brother of the accused Arun was examined as defense witness DW3-Satender Singh, but he had also not produced any such record that he had sustained any injury at the relevant time. So, the plea of alibi taken by the accused Arun Kumar has not been substantiated on record by any credible evidence. DW-3 is an interested witness and his testimony does not inspire confidence, as it has remained uncorroborated.

37. From the testimony of PW16, it stands duly proved that on 25.07.2010, deceased left the shop along with some cash in the car which was being driven by

driver/accused Arun Kumar. As per testimony of Rajesh Kumar (PW3A), the deceased had informed him on 25.07.2010 that he was leaving the shop in the car being driven by accused Arun along with cash of Rs.2 lakhs as the sale proceeds of the shop. Similarly, brother of the deceased, namely, Krishan Kumar (PW5) had also stated that on the day of his deceased brother going missing, he left the shop in the car being driven by accused Arun Crl.A. 695/2016 & 867/2016 Page 21 of 42 Kumar along with cash of Rs.2 lakhs. It is also apparent from the testimony of police witnesses that when the dead body of the deceased was recovered from the car in question, the money which the deceased was carrying, was not found. Thus, it has been duly established that the deceased was lastly seen in the company of accused Arun Kumar on 25.07.2010 when he left the shop and on the next day, his dead body was recovered. It has also been established that the deceased was murdered with the motive of looting him of the cash and other valuables on his person, which he was carrying, while travelling in the car being driven by accused Arun Kumar, since the cash that he was carrying, and his valuables were missing when the car of the deceased was found with the deceased lying dead in it.

38. Another circumstance brought on record by the prosecution was the absence of accused Arun Kumar from duty after he was lastly seen in the company of the deceased. The accused Arun, from the day of the deceased going missing, did not report for duty. This is a circumstance against the appellant and points to his involvement in the deceased going missing. The defense taken by accused Arun, that he was on leave for three days, has already been found to be unsubstantiated. If, for the sake of arguments, it is presumed that accused Arun was on leave for three days from 25.07.2010, then he would have reported back for duty on 28.07.2010 or on the morning of 29.07.2010, but as per the admission of the accused himself, he was picked up by the police from his native place on 29.07.2010. This fact negates the defense of the Crl.A. 695/2016 & 867/2016 Page 22 of 42 accused that he was on leave from 25.07.2010, and the said false defense is an additional circumstance against the accused.

39. Next circumstance that was brought on record by the prosecution was that the mobile phone of the deceased was used by the accused Mahender Singh, and its

recovery was affected at his instance. Argument advanced by the counsel for the accused Mahender Singh was that the said mobile phone was planted one. It was further submitted that the CDR Ex.PW23/B shows that the mobile phone was not in use by the deceased from 20.07.2010. Further, it was submitted that IMEI number mentioned in the CDR did not match with the seizure memo of phone of the deceased. It was also submitted that only SIM of mobile no.9675657490 was recovered from accused Mahender Singh, and not the mobile phone, which does not rule out the possibility of plantation of evidence. It has been argued that the prosecution has also failed to establish that the said mobile phone was in exclusive use of the accused and that the recovery of mobile phone of the deceased has not been convincingly proved by the prosecution. It is argued that the call detail record of the mobile phone of the accused is not authentic, nor is the certificate issued under Section 65B of the Evidence Act.

40. To appreciate the arguments advanced by the learned counsel for the accused, we have gone through the evidence led before the trial court. As per call details record (CDR) Ex.PW23/B, the mobile phone no.9818280075 was issued in the name of the deceased Naresh Bhati. Prior to 20.07.2010, the said mobile phone Crl.A. 695/2016 & 867/2016 Page 23 of 42 number was used with mobile instrument having IMEI No.359435038103780 and after 20.07.2010, the said mobile number of the deceased was used in mobile phone having IMEI No.359435038001780. It has come on record that the mobile phone make G-V, Black & Silver Colour, Model U-808 of the deceased was seized by the police vide seizure memo Ex.PW12/P, which was recovered at the instance of accused Mahender Singh from Bho Gaon, Baiwar Road, near Dhaba of Sardar, Mainpuri, Uttar Pradesh. The said mobile was found to be a dual SIM mobile phone, having two IMEI numbers, and both the said IMEI numbers were mentioned in the CDR Ex.PW23/B. It may be that the deceased was earlier using his mobile no.9818280075 with one IMEI number up till 20.07.2010, and thereafter SIM card of the said mobile phone was put in another slot of another IMEI number. Since both the IEMI numbers related to the same dual sim mobile instrument, there is no merit in the submission of Ld. counsel for the appellants that the said mobile phone-recovered at the instance of the accused Mahender Singh, was not belonging to the deceased.

41. It was alleged against accused Mahender Singh that he used his mobile phone no.9675657490 in the mobile phone instrument of the deceased after he was kidnapped. PW21- Sh.Deepak, Nodal Officer of Vodafone had proved the documents with regard to ownership of the said mobile number. He had stated that the said mobile phone number was issued in the name of Dharmender, who was the real brother of the accused Mahender CrI.A. 695/2016 & 867/2016 Page 24 of 42 Singh, and this fact is not in dispute. The CDR Ex.PW21/A of mobile phone No.9675657490 shows that the said SIM number was used in the mobile phone instrument having IMEI No.359435038103780 on 27.07.2010 at 12:24 hours and 12:25 hours. It is a proved fact on record that the said IMEI number was of the mobile phone of the deceased Naresh Bhati, and as per the CDR Ex.PW21/A, the said mobile phone instrument of the deceased was used by the accused Mahender Singh on 27.07.2010. Pertinently, the accused Mahender Singh was arrested only on 31.07.2010. Thus, he was in a position to use the mobile instrument of the deceased on 27.07.2010. In our view, there is enough evidence on record to reach to the conclusion that the mobile phone instrument of the deceased was used by the accused Mahender Singh on 27.07.2010, and there is no basis in the submission of the accused that he was falsely implicated, as the prosecution has successfully established this circumstance against the accused. So far as the contention regarding authenticity of the certificate issued under Section 65B of the Evidence Act is concerned, the same is unfound one and has no basis. The said certificate has been duly proved on record in the testimony of PW21.

42. Learned counsel submits that the seizure of the mobile phone of the deceased and the sim cards from the accused Mahender Singh is stated to have been made vide seizure memo Ex.PW-

on 31.07.2010. SI Arvind Kumar (PW-25) is allegedly a witness to the said seizure. SI Arvind Kumar is also the person, who is shown CrI.A. 695/2016 & 867/2016 Page 25 of 42 to have deposited the said seized articles in the malkhana register on 02.08.2010 vide Entry No.507. PW-2 HC Sanjay Kumar also deposed that SI Arvind Kumar deposited the case property in the malkhana on 02.08.2010.

43. The submission of counsel for the appellant Mahender Singh is that PW-25 SI Arvind Kumar had not even joined the investigation on 31.07.2010. He joined the investigation only on 02.08.2010. Thus, there is no question of SI Arvind Kumar being a witness to the seizure memo Ex.PW-12/10.

44. We do not find any merit in the aforesaid submission of the appellant. This is for the reason that the use of the mobile phone instrument of the deceased by the accused Mahender Singh-by inserting his sim card of mobile no.9675657490 in the said instrument and making a call on number 9411499644 stands duly established by the CDR of the mobile phone number of the accused Mahender Singh bearing No.9675657490. Pertinently, the arrest of Mahender Singh and the seizure took place only on 31.07.2010 i.e. after the said user. Moreover, even if it were to be accepted that SI Arvind Kumar joined the investigation only on 02.08.2010 and, undisputedly, the seized articles were deposited by SI Arvind Kumar on 02.08.2010, the seizure of the mobile phone instrument and the sim card of the accused on 31.07.2010 cannot be pushed back before 31.07.2010. This submission of the accused is, therefore, rejected. CrI.A. 695/2016 & 867/2016 Page 26 of 42 45. So far as the proximity of both the accused persons is concerned, PW16 has specifically deposed that on 24.07.2010, he had seen accused Mahender at the shop having a talk with accused Arun Kumar and when he went near them, they kept mum. It is also apparent from the record that both the accused are resident of the same area i.e. District Mainpuri, Uttar Pradesh. Even otherwise, it is admitted case of the accused Mahender Singh, that he has been roped in the present case for having proximity with accused Arun Kumar.

46. It was alleged against accused Mahender Singh that on the day of incident, he was in Delhi and had taken the route for going back through Gurgaon, Sohna, Palwal-from where the dead body of the deceased in the car was recovered. Argument advanced by the learned counsel for the accused Mahender was that the prosecution has failed to produce on record the route chart of the mobile phone of the deceased, to get it compared with the route taken by the accused, to connect them with the alleged offence.

47. The CDR Ex.PW20/B of the mobile phone no.9267315354 of the accused Mahender and the Cell ID chart Ex.PW20/J shows that on the day when the deceased went missing, accused Mahender was in Delhi as his location is showing roaming in the Delhi area. The Cell ID Nos.25748, 26608 and 26721 are of the area of Najafgarh, Delhi where the shop (where the deceased was working as Manager) is located. The CDR clearly shows that the accused Mahender remained in the area of Najafgarh on 25.07.2010 entire day up till 18:29 hours, and then his location shows that of Cell CrI.A. 695/2016 & 867/2016 Page 27 of 42 ID No.2051 & 2049 which are of the area of Village Badshahpur, Gurgaon at 21:04 hours of 25.07.2010. Thereafter he remained in the location of Cell ID Nos.11729 (Sohana, Gurgaon) and 11474 (Railway Road, Palwal) for the remaining day of 25.07.2010. It also came in evidence that the dead body of the deceased was recovered from a car lying parked on the side of road on Palwal Road. This fact clearly proves the circumstance that on the day of incident, accused Mahender was in the vicinity of shop at Najafgarh where the deceased was working as Manager, and at the place of recovery of his dead body.

48. Another circumstance brought on record by the prosecution was that out of the looted amount from the deceased, a sum of Rs.37,000/- was deposited by the accused Mahender Singh in his bank account. This fact has been proved by PW26-Sh.Ram Murath, Manager, Bank of India who had proved the statement of account, of the account of accused Mahender Singh bearing no.770310100030198 for the period 20.09.2008 to 02.08.2010 as Ex.PW26/A. As per statement of account Ex.PW26/A, accused Mahender had deposited a sum of Rs.37,000/- in his account on 26.07.2010 i.e. on the very next day of the deceased going missing, and on the day of recovery of his dead body. Deposit slip of the said amount was proved on record as Ex.PW12/R which was allegedly recovered from the accused at the time of his apprehension and was seized vide memo Ex.PW12/Q. CrI.A. 695/2016 & 867/2016 Page 28 of 42 49. Deposit slip Ex.PW12/R clearly proves that a sum of Rs.37,000/- was deposited in the bank account of accused Mahender Singh on 26.07.2010. The statement of account Ex.PW26/A of accused is not in dispute. Entry dated 26.07.2010 in Ex.PW26/A shows that a sum of Rs.37,000/- was deposited in the account of the accused, which further proves the case of the prosecution that the said amount deposited in

the account of accused Mahender was the part of the robbed amount from the deceased. Pertinently, there is no credible explanation furnished by this accused for this incriminating circumstance.

50. The defence taken by the accused Mahender was that he had come to Delhi to purchase an Alto car. However, the defense witness examined by him i.e. DW-1 Bablu Mishra had stated that he sent accused Mahender to Delhi on 23.07.2010 for purchase of Omni car. There is contradiction in the version given by the accused and his witness DW-1 about the car to be purchased. It is apparent from the bank statement Ex.PW26/A of the accused that he was not having the money to purchase the car as on 25.07.2010, inasmuch as it was only on 26.07.2010, a sum of Rs.37,000/- was deposited in his bank account.

51. It is the case of the prosecution that at the time of apprehension and arrest of the accused Mahender Singh, a sum of Rs.13,500/- was also recovered by him from his house which was seized vide seizure memo Ex.PW13/T (Ex.PW12/T). The accused had not given any satisfactory explanation with regard to possession CrI.A. 695/2016 & 867/2016 Page 29 of 42 of Rs.13,500/- as well as deposit of Rs.37,000/- in his bank account on 26.07.2010, which further establishes the case of the prosecution that both the said amounts were part of the robbed amount from the deceased.

52. Next circumstance brought on record was the recovery of gold chain belonging to the deceased and cash of Rs.45,000/- from the possession of accused Arun Kumar. Ld. Counsel for the accused Arun Kumar has argued that articles deposited in malkhana mentioned at Sl.no.8 in Ex.PW2/G were handed over to SI Arvind Kumar (PW25) regarding which he had made an entry in register no.19 vide Ex.PW2/G. Insp. Rishi Pal Singh (PW27) had deposed that on the next two days i.e. 03.08.2010 and 04.08.2010, they searched for co-accused but they were not found and they came to know that they were absconding. On the night of 04.08.2010, they left the said place and after getting the medical examination of the accused persons at the said place i.e. District Mainpuri, they returned to Delhi. Ld. Counsel for the accused Arun Kumar questions as to how the case property could be deposited on 02.08.2010, when the IO returned from Mainpuri on

04.08.2010. Further submission of learned counsel for the accused Arun Kumar is that the gold chain had been tampered by the police while it was in their possession. Learned counsel submits that the buckle of the gold chain was found to be intact during TIP proceedings. Attention is drawn to Ex.PW5/C which records in para 4 that chains buckle is intact but it is shaped from a side so it appears that it has been shaped by application of CrI.A. 695/2016 & 867/2016 Page 30 of 42 force. Learned counsel further submits that the chain was removed from the maalkhana on 13.10.2010 for the purpose of conducting the TIP. However, the TIP was conducted only on 20.10.2010. Thus, the gold chain remained in the custody of the investigating officer for seven days exposing the same to manipulation. Learned counsel, therefore, submits that the gold chain was tampered with and the same was shown to the complainant Krishan Bhati (PW5).

53. So far as the above contention of the accused is concerned, it is apparent from the record that the gold chain recovered at the instance of accused Arun Kumar from his house was deposited in malkhana on 02.08.2010. It is apparent from the entry made in the malkhana that the said case property was deposited by SI Arvind (PW25). It came in the testimony of PW27 that on the night of 04.08.2010 they left the said place and returned to Delhi. It has come in his testimony that he along with police staff went to Mainpuri, Uttar Pradesh on 01.08.2010. From this statement it cannot be inferred that he did not return to Delhi during the period in between of 01.08.2010 and 04.08.2010. The only thing that has come in the testimony of PW27 is that after completing investigation in Mainpuri on 04.08.2010, he returned to Delhi. Even otherwise, the entry in register no.19 regarding deposit of gold chain has been proved on record and the same is admissible as per Section 91 of the Indian Evidence Act and the same cannot be negated by an oral testimony. CrI.A. 695/2016 & 867/2016 Page 31 of 42 54. As per the testimony of PW12-HC Bhoj Raj, after the arrest of accused Arun Kumar vide arrest memo Ex.PW12/A, his disclosure statement Ex.PW12/E was recorded. As per his disclosure, accused Arun led the police party to his house at Village Dhir Pur, Bailwar, District Mainpuri, U.P. from where he got recovered a sum of Rs.45,000/- lying in a polythene bag in a pot, while disclosing that the said amount was the part of the robbed amount. PW12 also deposed that the said polythene was also containing one gold chain in broken condition belonging to the deceased.

The recovered cash of Rs.45,000/- and gold chain were seized vide memo Ex.PW12/U. The recovered gold chain Ex.P3 was identified by the complainant Krishan Kumar (PW5) in the TIP proceedings Ex.PW5/C as well as during his deposition before the trial court. No dispute with regard to recovery of money of Rs.45,000/- and gold chain of the deceased by the accused Arun Kumar has been raised. Therefore, the prosecution has also duly established the recovery of gold chain and Rs.45,000/- being part of the robbed amount from the deceased at the instance of accused Arun Kumar.

55. We do not find any merit in the submission of learned counsel for the accused that the recovered gold chain had been tampered with. Merely because the buckle of the gold chain was intact, it does not lead to the conclusion that the same was not broken when recovered. Pertinently, during the TIP, the learned MM recorded and exhibited Ex.PW5/C that the same was shaped from a CrI.A. 695/2016 & 867/2016 Page 32 of 42 side, such that, it appears that it was shaped by application of force. This itself shows that the chain was broken when recovered, else, it would not have appeared to have been shaped by application of force. If the chain had not been broken, there would be no occasion for application of force on it and shaping the same from one side. If the broken chain would not have been mended, the links in the chain may have been further broken/ unlocked. This explains the necessity for securing the links by application of force.

56. So far as the submission of learned counsel with regard to the tampering of the case property i.e. the gold chain is concerned, once again, we find no merit in the same. No doubt, the chain was taken out from the maalkhana on 13.10.2010. Since the TIP proceedings were not carried out on the said date, the parcel was sealed with the seal of the court and it was produced before the Court, with the seal of the Court intact, on 20.10.2010 when the TIP was conducted. This, itself, rules out the possibility of the chain having been tampered with between 13.10.2010 and 20.10.2010.

57. Learned counsel for Arun Kumar has further submitted that the accused was a driver of a Santro Car and not of Chevrolet Aveo. This submission has no merit. PW5 in his testimony has explained that on 25.07.2010, in the morning, his brother

i.e. the deceased went in the Chevrolet Aveo car to his work place on his own. The Driver i.e. the appellant Arun Kumar was already present at the work place. The said Car was registered in the name of the father of the friend of the deceased. He further stated that the Crl.A. 695/2016 & 867/2016 Page 33 of 42 deceased used to take the said car to his work place off and on. Even the Santro Car which the deceased took to work sometimes was not registered in his name.

58. Next, it was contended by the learned counsel for the accused Mahender Singh that the car was recovered on 26.07.2010, whereas the weapon was recovered on 31.07.2010 allegedly on the disclosure statement of the accused. It was alleged that a bullet was recovered from the car after 44 days of its seizure. It was submitted that the car was inspected earlier, but no bullet was found by the police in the car, and it was only recovered by the FSL expert on 08.09.2010 which raises doubt about the recovery of said bullet and the possibility of plantation cannot be ruled out. At the time of seizure of the car, it was inspected but neither any hole in the door was found nor any lead was recovered at that time. It was further submitted that neither the said FSL expert has been cited as a witness, nor his inspection report had been produced on record which casts a serious doubt about the case of the prosecution.

59. Learned counsel for the appellant submits that the handmade pistol was planted upon the accused Mahender Singh. In this regard, reference is made to the inquest report/death report (Ex.PW11/A) prepared on 26.07.2010 at 11.00 a.m. which records the injury as a deep wound (gehera gaddha) in the upper part of the right ear from which the flesh had come out. It also records that on the other side on the right anterior part, there is a wound from which blood was oozing. The submission is that in the said death report, it Crl.A. 695/2016 & 867/2016 Page 34 of 42 was not found that the deceased had suffered a gunshot injury. The submission is that this clearly shows that the theory with regard to use of a gun/pistol as the weapon of offence was subsequently created and the pistol was planted upon the accused.

60. Reliance placed by learned counsel on Ex.PW11/A (i.e. the death report) is misplaced. The said death report is not a post- mortem report and was not

prepared after medical examination of the dead body. It was prepared only upon the superficial examination and observation of the dead body by a non-medical person, who has no expertise in the matter of conducting post-mortems. The post-mortem report (Ex.PW9/A) of the deceased was conducted on the following day i.e. 27.07.2010 which records the cause of death as due to fire arm injury leading to spot death. Thus, no support can be drawn by the accused from the death report Ex.PW11/A.

61. The recovery of a country made pistol was made at the instance of accused Mahender Singh from the field, near Gupta Farm House on Sohna-Palwal Road i.e. near the place of recovery of dead body of the deceased. The same was seized vide memo Ex.PW12/J on 31.07.2010. In our view, the said recovery cannot be called in question merely because it was effected from the field. The country made pistol was hidden in open field and, thus, the ratio of the decision of the Supreme Court in State of Himachal Pradesh Vs. Jeet Singh, AIR 1999 SC1293 was clearly attracted in the facts of the present case. CrI.A. 695/2016 & 867/2016 Page 35 of 42 62. PW15-Ct.Jeet Singh deposed that on 08.09.2010, Insp. Rishi Pal Singh had called the FSL experts and a team of FSL experts came to the police station and inspected the Chevrolet car No.DL- 2CAJ-1338 and recovered one bullet from rear right side window of the car. The recovered bullet and a piece of seat cover were seized vide seizure memo Ex.PW15/A. IO (PW27) corroborated the testimony of PW15 to the effect that inspection of the car was made by the FSL experts and a bullet was recovered from rear right side window of the car, and seizure of bullet and car seat cover was made vide memo Ex.PW15/A. The recovered pistol and cartridges were examined in FSL and the expert report had been proved as Ex.PW24/A. The FSL report Ex.PW24/A shows that the pistol was in working order as test fire was conducted from it and that the recovered bullet was live one and was of the same bore as that of the pistol. There is no cross-examination of PW15 and PW27 with regard to recovery of bullet from the car. No dispute was raised by the appellants during the examination of prosecution witnesses, or at the time of making their statements under Section 313 Cr.P.C. with regard to recovery of bullet from the car. So far the testimony of PW15 and PW27 are concerned, they have stated that at the time of seizure of the car, they did not find the bullet and it was only by the inspection by the ballistic

experts, one bullet was recovered.

63. Apparently, the bullet was recovered from the car of the deceased which was seized vide memo Ex.PW15/A along with a piece of seat cover. The recovery of the bullet was from the car Crl.A. 695/2016 & 867/2016 Page 36 of 42 window. The place from which it was recovered itself shows that it remained hidden and for that reason was not visible to the I.O. when the vehicle was examined by him or even the other police officers who examined the vehicle. The I.O. is not a forensic expert. It was the job of the forensic expert to carry out a detailed and minute investigation of the vehicle. This explains the said recovery of the bullet by the FSL expert after about 44 days. There is no doubt about the recovery of country made pistol, bullet and car seat cover as the same has duly been established from the testimony of PW12, PW15, PW25 and PW27. This is an additional corroboration to the facts of the present case. The contentions of the appellants that the bullet was a planted one, and non-examination of the FSL expert are thus, unfounded one and without any basis. Pertinently, this is only one of the circumstances, and is corroborative in nature. Even in its absence, the prosecution has been able to gather ample evidence to establish the other incriminating circumstances to establish the guilt of the appellants.

64. So far the contention of the appellants that there was no way of informing the relatives of the deceased about the recovery of dead body is concerned, it has come in the statement Ex.PW11/D of the witness Rajesh Kumar (PW3A), that he reached the spot of recovery of dead body in the car on the information being given by the Haryana Police. It is immaterial as to how the police informed the relatives of the deceased about the recovery of dead body inasmuch, as, it does not affect in any way the case of the prosecution Crl.A. 695/2016 & 867/2016 Page 37 of 42 against the appellants when it has been convincingly proved that they had committed the murder of the deceased after committing robbery of cash and other valuables from him.

65. The further submission of the appellant Arun Kumar is that in DD No.3A (Ex.PW25/A), the name of the driver i.e. Arun Kumar was not disclosed. The same was only subsequently added in the FIR. This shows false implication of the

accused. We do not find merit in the submission of the appellant Arun Kumar. It has come on record that the appellant Arun Kumar had been engaged only a few days prior to the date of incident. Consequently, his name may not have been known to PW Rajesh Kumar (PW3) on whose information, DD No.3A was registered. However, the said DD clearly recorded the name of the missing person as Naresh Bhati; the car in which he had gone at about 7 p.m. from the shop with Rs. 2 lakhs in cash; the fact that he had gone with the Driver who had been employed

days earlier. Doubt was also raised on the driver that the driver may have run away with the vehicle. Thus, there is no merit in this submission of the appellant Arun Kumar.

66. During the course of oral arguments, learned counsel for the appellants did not place reliance on any judgment in support of any of his propositions. However, learned counsel for the appellants submitted his written submissions, wherein he has sought to place reliance on several decisions. CrI.A. 695/2016 & 867/2016 Page 38 of 42 67. Sharad Birdhi Chand Sarda Vs. State of Maharashtra, (1984) 4 SCC116 is relied upon to submit that where the prosecution fails to prove all the links in the chain completely, the accused cannot be convicted in a case based on circumstantial evidence. In our view, this decision does not advance the case of the appellant since the entire chain of circumstances is complete in the facts of the present case.

68. Though learned counsel for the appellants has sought to place reliance on Anvar P.V. Vs. P.K. Basheer, (2014) 10 SCC473 to submit that the certificate under Section 65B of the Evidence Act (Ex. PW-20/I) fails to meet the requirements of law, he does not specifically point out as to what is the deficiency in the said certificate. Thus, the said decision has no bearing in the facts of the present case.

69. Reliance has also been placed by learned counsel for the appellants on Tomaso Bruno Vs. State of U.P., (2015) 7 SCC178 to submit that the failure of the prosecution to bring on record the location chart of the mobile phone of the deceased should lead to adverse inference being drawn under Section 114

Illustration (g) of the Evidence Act to the effect that production of the said piece of evidence would have defeated the case of the prosecution. In our view, the prosecution has been able to establish the commission of the offence in question by the appellants/ accused beyond all reasonable doubt on the basis of other circumstantial evidence taken note of hereinabove and thus, the failure of the prosecution in not CrI.A. 695/2016 & 867/2016 Page 39 of 42 leading in evidence the location chart of the mobile phone of the deceased, loses its significance. The location chart of the mobile phone instrument of the accused Mahender Singh has been brought on record which shows that he was present near the location of the factory premises from where the deceased started his last journey. The said location chart also shows the route taken by the appellant Mahender Singh, and his presence at the place from where the car and the dead-body of the deceased were found. In the face of other circumstantial evidence brought on record, in our view, the failure of the prosecution in bringing on record the location charge qua the mobile phone of the deceased, cannot be said to be fatal. The said decision can also not be relied upon in respect of the submission of the appellants that Dr. Aditya Derhgawen (PW-9) or Dr. Vinny Rastogi (PW-11) have not been examined for the same reasons, namely, the establishment of circumstances which complete the chain and connect the accused to the crime. Thus, Tomaso Bruno (supra) has no relevance to the facts of the present case. Since the recoveries have been connected to the appellants, as well as the crime, reliance placed on Mani Vs. State of Tamil Nadu, (2009) 17 SCC273 appears to be misplaced.

70. Learned counsel for the appellants have also placed reliance on several decisions in support of the submission that there was no motive established, and motive is essential to be established in a case of circumstantial evidence. We cannot accept the submission of learned counsel since it has been duly established that CrI.A. 695/2016 & 867/2016 Page 40 of 42 the motive was to rob the deceased of the Rupees Two Lakhs that he was carrying, apart from his valuables. Pertinently, a part of the looted amount as well as the valuables of the deceased have been duly recovered from the two accused.

71. Sujit Biswas Vs. State of Assam, (2013) 12 SCC406 has no application in the facts of the present cases, since it is not simply a case of grave suspicion but of

proof. The decisions rendered in Hardevi Malkani Vs. State, AIR1969 All 423, Mohideen Abdul Kadir Vs. Emperor, (1904) ILR27Mad 238, Basant Kumar Ghatak Vs. Queen Empress, (1903) ILR26Cal 49, and Basava R. Patil & Others Vs. State of Karnataka & Others, (2000) 8 SCC740 are also of no relevance in the facts & circumstances of the present appellants.

72. In view of the above discussion, we are of the view that the prosecution has successfully established the entire chain of circumstances to bring its case within the four corners. The circumstances proved on record are that the deceased was seen lastly in the company of accused Arun Kumar; motive to commit the murder of deceased was robbery of money and other valuables from him; absence of accused Arun Kumar from the duty as driver after the date of commission of the offence; finding of accused Mahender in the vicinity of the deceased and at the place of recovery of dead body of the deceased; deposit of Rs.37,000/- being part of robbed money in the bank account of accused Mahender; recovery of Rs.13,500/- from accused Mahender from his house which was part Crl.A. 695/2016 & 867/2016 Page 41 of 42 of the robbed amount; recovery of mobile phone instrument of the deceased at the instance of accused Mahender; use of the mobile phone instrument of the deceased by the accused Mahender before his arrest; recovery of Rs.45,000/- from accused Arun Kumar from his house along with gold chain of the deceased; recovery of country made pistol made at the instance of accused Mahender Singh from near the place of recovery of dead body of the deceased; recovery of a bullet from the car in question; the connection of the pistol with the bullet fired and with the recovered bullet and; proximity of both the accused. The prosecution has successfully established that the appellants have committed the offence punishable under Section 394 and 302 read with Section 34 IPC. Thus, there is no merit in the present appeals. The judgment of conviction and order on sentence passed against the appellants are accordingly upheld.

73. The instant appeals are hereby dismissed. VIPIN SANGHI, J P.S. TEJI, J MARCH19 2018 Crl.A. 695/2016 & 867/2016 Page 42 of 42