

Rajesh Chaudhary vs.state

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Court : Delhi

Decided On : Oct-22-2018

Appellant : Rajesh Chaudhary

Respondent : State

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI \$~ * % + CRL. A. 535/2015 1. MAHESH CHAUDHARY Judgment reserved on:

30. 07.2018 Judgment delivered on:

22. 10.2018Appellant Through: Mr. Rajesh Kumar, Ms. Santwana Agarwal, Mr. Honey Khanna and Mr. Ravi Rai, Advocates. STATERespondent Through: Ms.Kusum Dhalla, APP for State with versus Ms.Priti, Advocate. Mr. Siddharth Aggarwal, Mr. Faraz Maqbool and Ms. Rupali Saumel, Advocates for complainant. + CRL. A. 774/2015 2. RAJESH CHAUDHARYAppellant Through: Ms. Rakhi Dubey, Advocate. STATERespondent Through: Ms.Kusum Dhalla, APP for State with versus Ms.Priti, Advocate Mr. Siddharth Aggarwal, Mr. Faraz Maqbool and Ms. Rupali Saumel, Advocates for complainant. CRL.As. 5

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Page 1 of 46 CORAM: HON'BLE MR. JUSTICE VIPIN SANGHI HON'BLE MR. JUSTICE I.S.MEHTA JUDGEMENT2210.2018 I.S.Mehta, J.

1. The Appellant Mahesh Chaudhary and Rajesh Chaudhary have preferred two separate appeal i.e. (Crl. A. 535/2015 & Crl. A. 774/2015) under Section 374 Read with Section 482 Cr.P.C., against a common judgment and order on sentence dated 29.11.2014 and 02.12.2014 respectively by which both the Appellants have been convicted under Section 120B IPC, 394/120B IPC and 3

IPC. For the offence under Section 3

IPC, they have been sentenced to undergo rigorous imprisonment for life and fine of Rs. 40,000/- each and in default of payment of fine further undergo simple imprisonment for six months; for the offence under Section 394 read with Section 120B IPC, rigorous imprisonment of five years and fine of Rs. 10,000/- each and in default of payment of fine to further undergo two months simple imprisonment; for the offence under Section 120B IPC, rigorous imprisonment for five years and a fine of Rs. 10, 000/- each and in default of payment of fine further undergo simple imprisonment for two months. All substantive sentences were directed to run concurrently.

2. Brief facts stated are that on 02.05.2011 on receiving a DD No.56B Ex.PW5/A S.I. Sombir alongwith Constable Kirori Mal reached the spot i.e.

Upper Ground Floor East Patel Nagar, Delhi - where, in one of the CRL.As. 5 & 7

Page 2 of 46 rooms of aforesaid house, they found blood on the bed and lock of the almirah were broken and door of the almirah were open. In the meanwhile S.I. Sombir received another DD, DD No.57B Ex.PW5/B wherein it was stated that the injured Om Prakash Sharma has been admitted in Sir Ganga Ram Hospital. On this, S.I. Sombir reached the hospital leaving behind Constable Kirori Mal to guard the spot. On reaching at the Ganga Raam Hospital, SI Sombir found the injured Om Prakash Sharma was declared brought dead vide MLC100011 Ex. PW13/A and he sent the dead body to DDU Hospital for post-mortem. Thereafter, he came back at the spot where he met Inspector Rajesh Kumar (who was instructed by Inspector Ravinder Singh). The crime team and FSL team were called. Statement of Smt. Poonam Mehta W/o Sh. Sameer Mehta Ex. PW14A was recorded by S.I. Sombir Singh. Poonam Mehta (PW-14) stated that she resides alongwith her family members at house No.1-B/25 ground floor, Old Rajinder Nagar. She is a housewife; she received a telephonic call at about 7:15 p.m. from her father Om

Prakash Sharma S/o Late Sh. Sukh Ram Das from his landline No.25889704 and said call got disconnected on "hello" response. The deceased father Om Prakash Sharma again made a call and asked about her well being and during that call the deceased asked her to remain on hold, as someone was at the door. While she was holding the call, she heard noise from the side of her father. Thereafter, suddenly the call got disconnected. She immediately thereafter made a telephonic call on her fathers mobile No.9868357658 and said call went unanswered despite ringing. She again made a call on the landline but no response came, despite it ringing. She made a call to her brother Kamal Jaitly on his mobile No.9868257241 which did not connect. She made a call to her niece Ambika on her mobile No.9868141529, who informed that they have CRL.As. 5

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Page 3 of 46 come out of the tuition centre. When she enquired about the whereabouts of the house servant, she replied that the house servant chotu (Lakhan) is with them. Assuming that her father may have fallen and is alone at home, she rushed to the home of her father in her car. On reaching the house, there was no light and outer iron grill gate was open. The inner wooden door was locked. On informing this to her brother Kamal Jaitley, he advised her to go to the carpenter Anees who was working nearby and who would open the wooden door. She brought the carpenter, who climbed the balcony, took out the iron grill window, entered inside and opened the wooden door and told her that something is wrong. As she entered into her fathers room, she saw her father was lying half on bed with his legs touching the floor and he was bleeding from his neck and there was blood on his chest and mouth. Thereafter she, with the help of Anees, picked him up from the bed, moved him to her car, and took him to Sir Ganga Ram Hospital and got him admitted, where he was declared brought dead by the doctor on duty vide Ex.PW-13/A. Thereafter she came back to her fathers house. On checking, from the almirah of her father- a sum of Rs. 25,000 in Rs. 100 denomination notes; and from the almirah of her sister in law- one ladies hand bag of black colour containing Rs. 2.50 lakhs to Rs.3 lakhs in denomination of Rs.1000 and Rs. 500 notes- were found missing. Jewellery comprising of four gold chain, 2 gold rings with embedded diamonds and 4 pairs of earring/tops with embedded diamonds - which were kept in brown colour purse and two laptops of HP and Dell and a laser

camera were also found missing. Wooden almirah of her sister in law and father, which was locked, were found broken. She suspected the hand of some known person in the commission of murder and robbery. CRL.As. 5

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Page 4 of 46 3. During the investigation, at the spot I.O. Inspector Ravinder Singh PW37 found blood stained bed sheets and one set of kurta pyjama which were seized vide Ex.PW19/A and the blood lying on the floor was seized in a small plastic container Ex.PW19/C. The broken locks in six parts was taken into possession vide Ex.PW-19/B. The rough site plan of the spot Ex.PW37/B was prepared at the instance of complainant Smt. Poonam Mehta.

4. Kamal Jaitley (PW19) came back to his residence and noticed that the wooden almirah in the deceaseds room was lying open with the lock broken, and there was blood on floor and on bed. He also noticed that his wife's almirah was also lying open in their bedroom. On instructions of PW19, PW23 made a call to PCR from his mobile and PW19 sent the information that somebody has done maar - peet with his father and stolen things from his house and that his father has been taken to the hospital. The said information was recorded by W/Ct. Promila PW1 (who proved PCR form Ex.PW1/A). Thereafter, PW19 along with his nephew Kunal (PW23) left for the hospital.

5. Sh. Kamal Jaitly, PW19 S/o the deceased Om Prakash Sharma stated in his statement that one Rajesh Chaudhary was working with them as driver for last ten years who was on leave due to burn injuries on his person. During investigation it was revealed that Rajesh Chaudhary sold his jhuggi in Sri Niwas Puri and had gone to some other place, and was constructing a new house at Vasant Pur village, Faridabad and his wife Rinku was at her parental house. Rajesh Chaudhary alongwith his brother in law Mahesh Chaudhary were found missing from their respective houses.

6. SI. Sombir got post-mortem of the deceased conducted from Deen Dayal Upadhyay hospital vide Ex.PW9/A and also took possession of blood samples of the deceased Om Prakash Sharma and after the post mortem dead CRL.As. 5

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Page 5 of 46 body of the deceased was handed over to the family. Subsequently a scale site plan Ex.PW15/A was prepared.

7. Chotu@Lakhan (JCL) was the domestic servant in the house of the deceased. When both the accused were not available at their respective houses, their Mobile No.9650668042, 9650668051 (Rajesh) and 9871590376 (Mahesh) were put on surveillance by Inspector Ravinder Singh. During investigation it was revealed that Lakhan (JCL) was using No.8860235416 which was provided by Accused Rajesh Chaudhary to him. By tracking their phone numbers police came to know that Accused Rajesh and Mahesh were travelling towards village District Madhubani. They were followed by Insp. Rajesh Kumar who apprehended them at Leela Krishan Bhawan Hotel, Darbhanga and arrested them at P.S. University vide Arrest Memo Ex.PW34/C (Rajesh) and Ex.PW34/D (Mahesh) and aforesaid mobile numbers of Accused Rajesh and Mahesh were recovered vide seizure memo Ex.PW38/C and Ex.PW38/D respectively. Thereafter, they made their disclosure statement Ex.PW38/A (Rajesh) and Ex.PW38/B (Mahesh). Transit remand of both accused were taken from the court of CJM Darbhanga, Bihar and they were brought to Delhi.

8. Both the accused persons on basis of their further disclosure statement Ex.PW30/A (Mahesh) and Ex.PW30/B (Rajesh) lead the police party to the house of accused Mahesh i.e., A-block, Roshan Nagar, Ganpati Colony, Faridabad, Haryana and got recovered cash Rs. 2,80,300/- vide seizure Memo Ex.PW19/C. Further Accused Rajesh got recovered 1 Gold Ginni from, in- between the old bricks on the terrace at the house of his in laws vide seizure memo Ex.PW19/D. Both the accused further got recovered blood stained shirts which they were wearing at the time of committing the crime vide seizure CRL.As. 5

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Page 6 of 46 memo Ex.PW19/E. Accused Mahesh further got recovered two Laptops and one Laser camera with black bag Vide Ex. PW- 19/F from (PW21) Satish S/o Pal Singh R/o S-53/20, Private Colony, Sri Niwas Puri, New Delhi which was given to him by accused Mahesh on 02.05.2011. Accused Mahesh Chaudhary got recovered a broken knife Ex.PW19/G near Sri Niwas Puri bus stand, Delhi and accused Rajesh Chaudhary got recovered one ladies bag

containing blood stained rope vide Ex.PW-19/J.

9. The accused Lakhan (JCL) too during the investigation made disclosure statement and got recovered 2 gold chains, 3 gold and diamond rings vide Ex.PW37/F and his mobile with No.8860235416 was recovered vide seizure memo Ex.PW37/G.

10. After completion of the investigation, Chargesheet under Section 302/394/397/411/34/120B IPC was filed and Lakhan (JCL) was sent to Juvenile Justice Board, Kingsway Camp, Delhi with a separate Chargesheet.

11. Argument on charge was heard and charges under Section 120B IPC, 394/397/120B IPC, and 3 IPC were framed against both the Appellant/accused on 25.04.2012.

12. The prosecution in order to prove its case has examined 39 witnesses; WCt. Promila, (PW1), WCt. Ruchi (PW2), Sh. Pankaj Kumar, Clerk, SBI (PW3), HC Randhir Singh, concerned Duty Officer (PW4), HC Anil Kumar (PW5), HC Tara Chand (PW6), SI Dhan Singh (PW7), ASI M.S. Bhist (PW8), Dr. B.N. Mishra, DDU Hospital (PW9), Sh. Israr Babu (PW10), Sh. Rakesh Soni (PW11), Sh. Vishal Gaurav (PW12), Dr. Aathira Pankajakshan (PW13), Ms. Poonam Mehta (PW14), SI Mahesh Kumar (PW15), Sh. Mohit Kumar (PW16), HC Gyan Prakash, MHC (M) (PW17), Sh. J.K Mehta, Branch CRL.As. 5

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Page 7 of 46 Manager, State Bank of Patiala (PW18), Sh. Kamal Kishor Jaitely (PW19), Smt. Savina Jaitley (PW20), Sh. Satish (PW21), Ms. Ambika Jaitley (PW22), Sh. Kunal Jaitley (PW23), Sh. Mannan Ali Saha (PW24), Sh. Anees, Carpenter (PW25), Ct. Ram Niwas (PW26), Rajesh Kumar Aggarwal (PW27), Ct. Kirori Mal (PW28), Ct. Yogesh (PW29), HC Mahender Singh (PW30), SI Ashok Kumar (PW31), SI Yaqub Khan (PW31), Ct. Kamla Parsad (PW32), Ct. Satya Prakash (PW33), SI Vivek Singh (PW34), Inspector Guru Dev Singh (PW35), SI Sombir (PW36), Inspector Ravinder Singh (PW37), Inspector Rajesh Kumar (PW38). Thereafter, the statements of both Appellant/accused were recorded under Section 313 Cr.P.C., on 20.11.2014 and 21.11.2014.

13. After conclusion of arguments, the Trial Court vide judgment dated 29.11.2014 and impugned order on sentence dated 02.12.2014 convicted both the Appellant under Section 120B IPC, 394/120B IPC and 3 IPC.

14. The Learned counsel of the Appellant-1 has submitted that the present case is based on circumstantial evidence, as there is no eye witness in the present case. He further submitted that statement of Poonam Mehta (PW14) requires corroboration, as it suffers from inconsistencies and unnatural behaviour on her part. Smt. Poonam Mehta in her statement nowhere stated that she had called the neighbours for help after the incident. There is no corroboration of the presence of carpenter Anees (PW25) at the said house. The recovery of the blood stained kurta and pyjama allegedly recovered from the said room suffers from want of explanation, as it is not explained who changed the blood stained kurta and pyjama before taking deceased to Sir Ganga Ram Hospital.

15. Learned counsels for Mahesh Chaudhary has further pointed out that finger prints were lifted by the crime team, the finger print report is not led in CRL.As. 5 & 7

Page 8 of 46 evidence. Had the said report been produced, it would have pointed to the innocence of the accused.

16. Learned counsel has further submitted that despite receiving CDR (call detail record) from 01.05.2011 to 06.05.2011 only CDRs till 03.05.2011 have been led in the evidence. The non-filing of CDR from 04.05.2011 to 06.05.2011 creates serious doubts with regard to the involvement of the appellants in the commission of the crime . Had the said CDR been produced in its entirety, it would have pointed to the innocence of the accused.

17. Learned counsel has further submitted that the only evidence against Mahesh is the recovery of stolen articles at his instance, and his being arrested from Darbhanga. The seizure memo prepared at Darbhanga, Bihar raises serious doubts, as a separate seizure memo of mobile belonging to Mahesh Chaudhary (A-1) has been prepared, which is not even signed by SI Ashok Kumar (PW31) who is the local police of that area, and he formed part of the police party effecting

the recovery.

18. Learned counsel has further submitted that discovery and recovery of knife vide seizure memo Ex.PW-19/G cannot be relied upon, as knife is without handle; the blood found on the knife did not match that of the victim; no site plan was prepared showing the place of recovery, recovery was made without any public witnesses, and; no information to the local police was given. Learned counsel further submits that even in the impugned judgment, the recovery of the knife has been doubted. So far as the recovery of two laptops and one laser camera vide Ex.PW-19/F-at the instance of A-1 Mahesh Chaudhary is concerned, same creates doubt as the bag in which the laptops and laser camera were handed over has not been produced before the Court. Learned counsel further submits that the recovery of a black bag and rope from CRL.As. 5

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Page 9 of 46 Awana Market has also not been believed by the Trial Court.

19. Learned counsel has further submitted that the prosecution failed to bring on record evidence pertaining to the motive behind the commission of crime. Learned counsel further submits that prosecution has failed to prove the common intention of the accused under section 34 IPC. He submits that no evidence has been led to establish the charge. Learned counsel has relied on the following judgments: i. State of U.P. v. Babu Ram [(2000) 4 SCC515 ii. Mahmood v. State of U.P. [(1976) 1 SCC542 iii. Shankarlal Gyarsilal Dixit v. State of Maharashtra [(1981) 2 SCC35 iv. Tanviben Pankaj Kumar Divetia V. State of Gujrat [(1997) 7 SCC156 v. Sudama Pandey And Ors. V. State of Bihar [(2002) 1 SCC679 vi. Gagan Kanojia And Anr. V. State of Punjab [(2006) 13 SCC516 vii. Anjan Kumar Sarma And Ors. V. State of Assam [(2017) 14 SCC359]. viii. Deepak Chadha V. State [2012 (1) JCC540 ix. Lallan Rai and Others V. State of Bihar [(2003) 1 SCC268 x. Pandurang, Tukia And Bhillia V. State of Hyderabad [AIR 1955 SC216 xi. Nagraj V. State Rep. By Inspector of Police [2015 (4) SCC739 20. Learned counsel submits that the prosecutions case suffers from inconsistencies and the statements of Poonam Mehta (PW14) and Kamal Jaitly (PW19) are not trustworthy, as both of them are closely related to the victim. There is insufficient evidence to establish that it is only the accused-and no one CRL.As. 5

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Page 10 of 46 else, who have committed the offence.

21. Learned counsel Rakhi Dubey appearing for the Appellant-2 has submitted that the Court below failed to appreciate the principle that weakness of defence cannot be a ground for conviction. The prosecution has to stand on its own legs. Learned counsel has further submitted that the investigation agency has not investigated the case properly. Rather, they have colluded with Poonam Mehta (PW14) and Kamal Jaitly (PW19), and have given a different colour to the case.

22. Learned counsel further submits that the alleged recoveries are on the basis of joint disclosure statement and the recoveries as shown are no recoveries in the eyes of law. She submits that the accused were apprehended in Bihar. However PW-34 SI Vivek Singh, who was present there is silent on the aspect of disclosure statement in his testimony. She further submits that PW-31, SI Ashok Kumar too says that the statements of the accused were not recorded in front of him. There is also inconsistency in the testimonies of the police officials with respect to who made the disclosure statement first. As per PW-30, it was accused Mahesh who disclosed first, but as per PW-37, it was accused Rajesh who made the first disclosure.

23. Learned counsel has further submitted that Appellants had not absconded and the Appellants have been falsely implicated in the present case. She further submits that the accused Rajesh has given an explanation in his statement under section 313 Cr PC, wherein he has stated that PW-20, Smt. Savina Jaitly called him on 02.05.2011 at 11:30 AM as he was to go out of station in connection with her work.

24. Per contra, the learned APP has submitted that Lakahn (JCL) was a servant with Kamal Jaitley (PW19) at House No.

UGF East Patel Nagar, CRL.As. 5

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Page 11 of 46 Delhi. Similarly, Rajesh Chaudhary (A-2) was also working there for about 10 years as driver. However, he was on leave on the pretext of burn injuries received on his person. Factually, he was constructing his house in Faridabad and

was living with his brother in law Mahesh Chaudhary (A-1) at his house in Sri Niwas Puri.

25. Learned APP has further pointed out that Lakhan (JCL) was having the access to the knowledge where cash, jewellery and other valuables are kept.

26. It is argued that since A-2 was constructing his house, he was badly in need of money and (JCL) Lakhan too was also in need of money. The said problem, was discussed by both A-2 and Lakhan (JCL) who shared the information regarding where cash, jewellery and other valuables are kept at the house No.

UGF, East Patel Nagar, Delhi. A-2, A-1 and Lakhan (JCL) hatched a conspiracy of committing robbery and murder of deceased Om Prakash Sharma as he was a senior citizen of 86 Years. He usually remained alone as Kamal Jaitly (PW19) and Savina Jaitly (PW20) were engaged in their respective businesses, children too had their tuition after school. Accused persons plotted the idea of committing the crime when the deceased is alone, with the help of Lakhan (JCL). On 02.05.2011 i.e., the date of the incident, Lakhan (JCL) requested Savina Jaitley that he want to accompany children to their tuition classes on the pretext that Pranav is down with fever, and thus got the permission to accompany the children. Lakhan (JCL) then gave this information to A-2 that he is leaving with the children and the deceased Om Prakash Sharma is alone at home so that their plan could be executed.

27. It is further submitted that A-2 and A-1 on receiving the information, reached to the said house of Kamal Jaitley where deceased was alone. The accused A-2 and A-1 tied the neck of deceased with rope Ex.P.10 which was CRL.As. 5

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Page 12 of 46 kept by Lakhan (JCL) in the said house as per the plan discussed with A-2, and gave a cut with the knife Ex.P.11 on the neck of the deceased and took away Rs. 3.25 lakh, several jewellery items, two Laptops and a Laser camera. After commission of the crime, A-2 and A-1 kept the share of Lakhan (JCL) in his almirah in the balcony of the same house and intimated the same to him over phone call. Later A-1 called Satish (PW21) and handed over to him the laptops and laser camera. A-2 and A-1 after keeping sufficient money at Delhi went to Madhubani, Bihar (their native place) but they could not succeed to reach

Madhubani as they were tracked by the police and subsequently got arrested at Darbhanga, Bihar on 05.05.2011 itself and were brought back to Delhi.

28. The Law relating to appreciation of circumstantial evidence is well settled. The Supreme Court on various occasions has laid down the factors to be taken into account in the cases involving circumstantial evidence. The Supreme Court, in *Gagan Kanojia v. State of Punjab* (2006) 13 SCC516 entails : 1) There must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

2) Circumstantial evidence can be reasonably made the basis of an accused person's conviction if it is of such character that it is wholly inconsistent with the innocence of the accused and is consistent only with his guilt.

3) There should be no missing links but it is not that every one of the links must appear on the surface of the evidence, since some of these links may only be inferred from the proven facts.

4) On the availability of two inferences, the one in favour of the accused must be accepted.

5) It cannot be said that prosecution must meet any and every CRL.As. 5 & 7

Page 13 of 46 hypothesis put forward by the accused however far-fetched and fanciful it might be. Nor does it mean that prosecution evidence must be rejected on the slightest doubt because the law permits rejection if the doubt is reasonable and not otherwise. 29. Also, The Supreme Court in *Anjan Kumar Sarma v. State of Assam* (2017) 14 SCC359 entails the following factors : (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established; (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty; (3) the circumstances should be of a conclusive

nature and tendency; (4) they should exclude every possible hypothesis except the one to be proved; and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. (See Sharad Birdhichand Sarda v. State of Maharashtra [Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC116:

1984. SCC (Cri) 487]. , SCC p. 185, para 153; M.G. Agarwal v. State of Maharashtra [M.G. Agarwalv. State of Maharashtra, AIR 1963 SC200: (1963) 1 Cri LJ235 , AIR SC para 18.) Analysis of Mobile Numbers and Call Details Rajesh Chaudhary (A-2) - 9650668042, 9650668051 The prosecution has examined Sh. Vishal Gaurav (PW12) (Nodal Officer, Bharti Airtel Limited) to prove mobile numbers 9650668042 and 9650668051 were issued in the name of Rajesh Chaudhary. PW12 proves the application CRL.As. 5

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Page 14 of 46 form Ex.PW12/A dated 22.07.2010 and Ex.PW12/B also dated 22.07.2010. The documents produced before the court have not been cross examined. Further A- 2 during his statement under Section 313 Cr.P.C. has admitted the same. Therefore, on the date of the incident A-2 was having the aforesaid mobile numbers. Mahesh Chaudhary (A-1) - 9871590376 The prosecution has examined Sh. Vishal Gaurav (PW12) (Nodal Officer, Bharti Airtel Limited) who has proved the customer application form Ex.PW12/C of said mobile number in the name of one Mannan Ali Saha. But Mannan Ali Saha (PW24) has denied that he is in possession and in use of the aforesaid mobile number. The accused has not cross examined this witness on this point. The aforesaid mobile number got recovered from the personal search of A-1 on 05.05.2011 with a phone having IMEI No.354305/04/86093

and Mobile No.bearing 9871590376 vide personal search memo Ex.PW34/F which was not denied by the accused in his statement under Section 313 Cr.P.C. He failed to explain the manner in which he came into the possession of the aforesaid mobile number. The CDR Ex.PW12/F corroborates usage of the aforesaid mobile number by A-1. Therefore the accused A-1 was having the said mobile on the date of the incident. Lakhan (JCL) - 8860235416 The prosecution

examined Israr Babu (PW10) (Nodal Officer, Vodafone Mobile Services) to prove the customer application form. The said customer application form of mobile number 8860235416 is Ex.PW10/A showing the customer name as Rajesh Chaudhary issued on 28.09.2010. The accused has not cross examined this witness on this point. The said mobile number has been CRL.As. 5

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Page 15 of 46 recovered from Co-Accused Lakhan (JCL) vide seizure memo Ex.PW37/G and was in use of Lakhan (JCL). Kamal Jaitly-9868357658 The prosecution examined Sh. Rakesh Soni (PW11) (Junior Telecom Officer, MTNL) to prove the customer application form. The said customer application form of mobile number 9868357658 is Ex.PW11/A showing the customer name as Kamal Kishore issued on 08.12.2005. Poonam Mehta-9868113416 & 9999284673 The prosecution examined Sh. Rakesh Soni (PW11) (Junior Telecom Officer, MTNL) who proved the customer application of Poonam Mehta (PW14) Ex.PW11/C. Also, prosecution examined Sh. Israr Babu (PW10) (Junior Telecom Officer, MTNL) who proved the customer application of Poonam Mehta (PW14) Ex.PW10/B. Call Details Record (CDR) 30. The prosecution has examined Sh. Vishal Gaurav (PW12) (Nodal Officer, Bharti Airtel Limited) to prove the call details of A-2 Rajesh Chaudhary having mobile No.9650668042 and 9650668051 and also A-1 Mahesh Chaudhary having mobile No.9871590376 for the period from 01.05.2011 to 06.05.2011. The call details are Ex.PW12/D, Ex.PW12/E and Ex.PW12/F respectively. The certified copy of location chart is Ex.PW12/G and certificate under Section 65B of Indian Evidence Act is Ex.PW12/H. The said call details have not been disputed by both the accused persons during cross-examination.

31. The prosecution has further examined Sh. Israr Babu (PW10) (Nodal CRL.As. 5

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Page 16 of 46 Officer, Vodafone Mobile Services) to prove the CDR of mobile No.8860235416 which belongs to Rajesh (A-2) and mobile No.9999284673 which belongs to Poonam Mehta (PW14) which is Ex.PW10/C and Ex.PW10/D respectively. Both the accused persons have not cross examined PW10 pertaining to correctness of its details having been conversed. Important Calls on 02.05.2011
1. 09:46 am: Rajesh (at Faridabad) called Mahesh (at Loni, Ghaziabad) and spoke

to him for 41 secs.

2. 10:03 am: Rajesh (at Faridabad) called Mahesh (at Indrapuram/Ghazipur) and spoke to him for 66 secs.

3. 10:16 am: Rajesh (at Faridabad) called Mahesh (at Ghazipur) and spoke to him for 48 secs.

4. 10:37 am: Rajesh (at Faridabad) called Mahesh (at Ghazipur) and spoke to him for 30 secs.

5. 10:52 am: Lakhan (4432) called Rajesh (at Faridabad) and spoke to him for 29 secs.

6. 10:53 am: Rajesh (at Faridabad) called Mahesh (at East Vinod Nagar/Mayur Vihar) and spoke to him for 31 secs.

7. 10:53 am: Rajesh (at Faridabad) called Lakhan (4432) and spoke to him for 44 secs.

8. 11:01 am: Rajesh (at Faridabad) called Lakhan (4432) and spoke to him for 28 secs.

9. 11:19 am: Rajesh (at Faridabad) called Mahesh (at Nehru Nagar/Ashram) and spoke to him for 50 secs.

10. 11:52 am: Rajesh (at Faridabad) called Mahesh (at Ashram) and spoke to him for 18 secs.

11. 11:57 am: Lakhan (4433) called Rajesh (at Badarpur/Faridabad) called and spoke to him for 532 secs. CRL.As. 5

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Page 17 of 46 12. 12:06 pm: Rajesh (at Faridabad/Badarpur) called Mahesh (at Friends Colony/Mathura Road) and spoke to him for 39 secs.

13. 12:09 pm: Rajesh (at Badarpur) called Mahesh (at Friends Colony) and spoke to him for 60 secs.

14. 12:12 pm: Rajesh (at Badarpur/Sarita Vihar) called Lakhan (at 4432) and spoke to him for 226 secs.
15. 12:16 pm: Rajesh (at Okhla-Phase I) called Mahesh (at Friends Colony) and spoke to him for 29 secs.
16. 12:19 pm: Rajesh (at Apollo Hospital, Jasola) called Mahesh (at Mathura Road) and spoke to him for 49 secs.
17. 12:26 pm: Rajesh (at Mohan Cooperative) called Mahesh (at Mathura Road) and spoke to him for 78 secs.
18. 12:30 pm: Rajesh (at Apollo Hospital) called Lakhan (4432) and spoke to him for 29 secs.
19. 12:31 pm: Rajesh (at Apollo Hospital) called Mahesh (at Ishwar Nagar, Mathura) and spoke to him for 201 secs.
20. 12:42 pm: Rajesh (at Apollo Hospital) called Mahesh (at Okhla Estate/Sukhdev Vihar) and spoke to him for 64 secs.
21. 12:44 pm: Rajesh (at Okhla Phase II) called Mahesh (at Okhla Estate/Sukhdev Vihar) and spoke to him for 27 secs.
22. 12:45 pm: Rajesh (at Okhla Phase II) called Mahesh (at Okhla Estate) and spoke to him for 40 secs.
23. 12:51 pm: Rajesh (at Nehru Place) called Mahesh (at Sukhdev Vihar/Okhla Estate) and spoke to him for 26 secs.
24. 12:53 pm: Rajesh (at GK1) called Mahesh (at Okhla Estate) and spoke to him for 39 secs.
25. 01:09 pm: Rajesh (at C-Sec) called Mahesh (at East Kalkaji) and spoke to him for 24 secs.
26. 01:26 pm: Rajesh (at CP) called Mahesh (at East Kalkaji) and spoke to him for 21 secs.

27. 01:28 pm: Rajesh (at Mandir Marg/Jhandewalan Extn.) called Lakhan (at 4432) and spoke to him for 52 secs. CRL.As. 5
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28. 01:38 pm: Lakhan (4432) called Rajesh (at West Patel Nagar) and spoke to him for 52 secs.
29. 01:41 pm: Lakhan (4432) called Rajesh (at West Patel Nagar) and spoke to him for 09 secs.
30. 01:46 pm: Rajesh (at East Patel Nagar) called Mahesh (at Paharganj / Panchkuian Road) and spoke to him for 28 secs.
31. 01:47 pm: Rajesh (at East Patel Nagar) called Lakhan (at 4432) and spoke to him for 168 secs.
32. 01:57 pm: Rajesh (at Rajendra Place) called Mahesh (at West Patel Nagar) and spoke to him for 14 secs.
33. 02:27 pm: Rajesh (at East Patel Nagar) called Mahesh (at East Patel Nagar) and spoke to him for 9 secs.
34. 02:42 pm: Rajesh (at East Patel Nagar) called Lakhan (at 4433) and spoke to him for 284 secs.
35. 02:47 pm: Rajesh (at East Patel Nagar) called Lakhan (at 4433) and spoke to him for 14 secs.
36. 03:29 pm: Savina (PW20) calls Lakhan.
37. 03:33 pm: Rajesh (at Rajendra Place/East Patel Nagar) called Lakhan (at 4432) and spoke to him for 367 secs.
38. 03:59 pm: Rajesh (at East Patel Nagar) called Lakhan (at 4432) and spoke to him for 34 secs.
39. 04:04 pm: Rajesh (at East Patel Nagar) called Lakhan (at 4432) and spoke to him for 09 secs.

40. 04:04 pm: Mahesh (at East Patel Nagar) called Lakhan (at 4432) and spoke to him for 08 secs.
41. 04:05 pm: Rajesh (at East Patel Nagar) called Mahesh (at East Patel Nagar) and spoke to him for 24 secs.
42. 04:12 pm: Rajesh (at East Patel Nagar) called Lakhan (at 4432) and spoke to him for 33 secs
43. 04:14 pm: Mahesh (at East Patel Nagar) called Lakhan (at 4432) and spoke to him for 3 secs.
44. 04:15 pm: Rajesh (at East Patel Nagar) called Mahesh (at East Patel Nagar) and spoke to him for 11 secs. CRL.As. 5
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45. 04:23 pm: Rajesh (at East Patel Nagar) called Lakhan (at 2332) and spoke to him for 99 secs.
46. 04:31 pm: Mahesh (at East Patel Nagar) called Rajesh (at East Patel Nagar) and spoke to him for 20 secs.
47. 05:05 pm: Rajesh (at East Patel Nagar) called Lakhan (at 4712) and spoke to him for 449 secs.
48. 05:14 pm: Lakhan (at 4712) called Mahesh (at East Patel Nagar) and spoke to him for 50 secs.
49. 05:15 pm: Lakhan (at 4712) called Mahesh (at East Patel Nagar) and spoke to him for 75 secs.
50. 05:19 pm: Rajesh (at East Patel Nagar) called Lakhan (at 4712) and spoke to him for 62 secs.
51. 06:02 pm: Lakhan (at 4712) called Rajesh (at East Patel Nagar) and spoke to him for 37 secs.
52. 06:03 pm: Rajesh (at East Patel Nagar) called Lakhan (at 4712) and spoke to him for 115 secs.

53. 06:10 pm: Lakhan (at 4712) called Mahesh (at East Patel Nagar) and spoke to him for 50 secs.
54. 06:11 pm: Lakhan (at 4712) called Mahesh (at East Patel Nagar) and spoke to him for 34 secs.
55. 06:35 pm: Rajesh (at East Patel Nagar) called Lakhan (at 4712) and spoke to him for 228 secs.
56. 06:49 pm: Rajesh (at East Patel Nagar) called Lakhan (at 4712) and spoke to him for 54 secs.
57. 06:53 pm: Lakhan (at 4712) called Mahesh (at East Patel Nagar) and spoke to him for 59 secs.
58. 07:11 pm: Lakhan (at 4383) called Rajesh (at East Patel Nagar) and spoke to him for 6 secs.
59. 07:11 pm: Rajesh (at East Patel Nagar) called Lakhan (at 1063) and spoke to him for 39 secs.
60. 07:22 pm: Rajesh (at East Patel Nagar) called Lakhan (at 3943) and spoke to him for 54 secs. CRL.As. 5
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- Page 20 of 46 61. 07:36 pm: call recorded on Rajesh's number which shows his movement to West Patel Nagar/ Old Rajinder Nagar.
62. 07:51 pm: a call on Lakhan's phone which shows his home location (4432).
63. Mahesh's call shows his movement to Pandara Road, Ashram, Ishwar Nagar, Okhla Estate, Kalakaji, Okhla-Phase 3, Sri Niwas Puri. On the way, at 08:30 Pm Mahesh speaks to Satish (PW21) on his number 9013053131.
64. Mahesh and Rajesh speak to each other at 10:25 pm for 42 Secs, at 10:42 pm for 79 secs, at 10:44 pm for 26 secs, at 01:32 am(on 03.05.2011) for 14 secs.

32. On analysis of call detail record of 8860235416 (Lakhan) and 9650668042 (Rajesh) indicates that they were in constant communication with each other so frequently that it is not possible that both numbers were solely being used by one person. This establishes that both numbers were used by two different persons and not by one person. Thus, even though these numbers were obtained in the name of Rajesh (A2), it is established that the first of these numbers was being used by the JCL Lakhan. This theory is strengthened with recovery of mobile No.8860235416 from JCL Lakhan on 07.05.2011 at Delhi, whereas A-2 was already arrested in the present case at Dharbanga, Bihar on 05.05.2011 vide arrest memo Ex.PW34C. He did not have the phone with the sim card of mobile No.8860235416. The aforesaid theory is further strengthened by statement of Kamal Kishore Jaitly (PW19), who stated that Lakhan (JCL) told him earlier that he was using the phone number provided by Rajesh. PW19 was not cross examined on this aspect, Further, A-2 failed to discharge the onus under Section 106 of the Indian Evidence Act as he did not explain how the sim card in his name was found CRL.As. 5

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Page 21 of 46 with and was being used by the JCL Lakhan.

33. The further analysis of call detail record shows that the mobile No.9871590376, which was in use by Mahesh Chaudhary (A1) was in frequent contact with A-2. The frequency of calls between the two demonstrates that the two persons were well known to each other. Pertinently, the said mobile got recovered with IMEI No.354305/04/86093

from Mahesh (A-1) vide personal search memo Ex.PW34/F dated 05.05.2011. Mahesh A1 is the brother-in-law of the accused Rajesh A2 as the sister of Mahesh A1 is married to Rajesh A2.

34. Poonam Mehta (PW14) is the daughter of the deceased Om Prakash Sharma. She used used to live in Old Rajinder Nagar. On 02.05.2011 at about 7:15 PM deceased Om Prakash and his daughter were talking on the phone when a visitor came to the deceaseds house. The deceased kept the phone on hold. While PW14 was holding the call she heard some noise from the other side. Then, suddenly, the call got disconnected. When she again tried to call the deceased he

did not pick up the phone. The statement of PW14 to this effect is corroborated with the call details as reproduced below. Calling No. Called No. Start time Call duration 01125889704 9868113416 07:01:56 PM (landline Number of (Poonam Mehta) deceased) 01125889704 9868113416 07:02:48 PM 06 seconds (Landline Number of (Poonam Mehta) deceased) CRL.As. 5 & 7

Page 22 of 46 35. Ambika (PW22) and her brother Pranav Jaitly (Grand children of deceased) used to reside with deceased Om Prakash Sharma. On 02.05.2011 they went to attend tuition class in Alaknanda apartment. The JCL Lakhan was the domestic help of the family. On 02.05.2011, Lakhan (JCL) had called PW- 20 Savina Jaitley (mother of Ambika/Pranav) twice or thrice, expressing his desire to accompany the children.

36. The statement of Ambika Jaitly was clarified by Savina Jaitly (PW20) during her cross examination, that she received a phone call from Lakhan when he requested to accompany her kids in the car while they were to go for tuition. She denied his request as her father in law would be alone. Again, Lakhan (JCL) called her and insisted for the permission to accompany the kids at the time they were to go for tuition, on the pretext that her younger son was down with fever. She has further denied sending the children with Lakhan of her own free will.

37. The factum of Lakhan (JCL) accompanying the children has not been disputed. In fact, a suggestion was put on behalf of the accused to Savina Jaitly (PW20), which was as follows: It is wrong to suggest that I sent Lakhan in the company of my kids at the time they were to go to tuition of my own and without any insistence by Lakhan. 38. Poonam Mehta (PW14) tried to call Kamal Jaitly but did not get through. She finally spoke to her niece Ambika (PW22), who told her that the deceased was alone at residence since the children and Lakhan were all out. This is corroborated with CDR Ex.PW10/D reproduced hereunder: CRL.As. 5 & 7

Page 23 of 46 Calling No.9999284673 (PW14) 9999284673 (PW14) 9999284673 (PW14) Called No.9868141529 (PW22) Start time 07:12:00 PM Call duration 100 seconds 9868141529 07:33:58 PM 23 seconds (PW22) 9868257244 07:45:04 PM 30 seconds (PW22) 39. Realising that the deceased was alone, after the call

with the deceased disconnected and she could not talk to him, PW14 went to the deceaseds house and reached at about 7:40 PM. She found the iron grill gate open but the wooden door closed. There was no response from the deceased. Accordingly, Poonam Mehta (PW14) took the help of carpenter Anees (PW25) (who was working at an under construction building of Kamal Jaitly), who entered the house from the balcony and opened the main door to let PW14 in.

40. Thereafter, upon entering the house, PW14 and PW25 found the deceased lying half on the bed with his legs touching the floor. He was bleeding from his mouth and neck area. The wooden almirah in his room was lying open. With the help of PW25, PW14 took him to Sir Ganga Ram Hospital in her car. Statement of PW14 is corroborated with statement of PW25.

41. At Sir Ganga Ram Hospital, Dr. Aathira (PW13) attended to the deceased Om Prakash Sharma and upon examination declared that he was brought dead. Subsequently MLC Ex.PW13/A got prepared.

42. At this stage, we may also examine the movement of the accused on the basis of the location chart of their mobile phones, as aforesaid. CRL.As. 5 & 7

Page 24 of 46 Time period 9:46 AM To 12:06 PM 12:09 PM To 1:41 PM 1:46 PM To 4:05 PM 4:12 PM To 6:53 PM 7:11 PM To 7:51 PM He was in Faridabad at his house and recieved a call from Savina Jaitly (PW20) at around 11:30 AM. He was moving around Ghaziabad Ghazipur, Faridabad, Mayur Vihar, Ashram then to Freinds Colony/Mathura Road. Place, He moved from Badarpur, , Sarita Vihar, Okhla Phase I, II, Jasola, Okhkla Phase GK-I, Nehru Connaught Place, Jhandewala to West Patel Nagar. He reached East Patel Nagar and was waiting for Mahesh and in nearby roaming Rajendra place. He moved from Mathura Road, Okhla Estate, East Kalkaji, Paharganj/ Panchkuian Road. He reached West Patel Nagar and subsequently to East Patel Nagar where Rajesh was already present. Both meet at about 4:15 PM as they both did not called each other since 4:15 PM and were in the same location as per their location. Both were constantly in touch with Lakhan during this period. Both did not call each other but both were in the same location. Approximate time of muder of deceased was between 7:15 PM to

7:40 PM Both were in contact with Lakhan. A call recorded on Rajesh's number shows his movement towards West Patel Nagar/Old Rajinder Nagar. He was in East Patel Nagar at House of deceased with Om Prakash Sharma (deceased). He worked as servant in the house. He stayed at East Patel Nagar at House of deceased, where he worked as servant. talked that requested the house of He was at alongwith Om deceased Prakash Sharma (deceased) and he to Savina Jaitley (PW20) at 3:29 PM and he accompanies children to the tution, on pretext that her son Pranav Jaitly has fever, to isolate the deceased. He was in the company of children who left the house to attend their tution classes and was reaching Alaknanda Apartments. He started moving towards the house with children at around 7:00 PM and talked to Rajesh at 7:11 PM and a call recorded on his mobile shows his location at the deceased's house at 7:51 PM. The deceased was already taken to Hospital by Poonam Mehta (PW-14). He stays at the house till his last recorded call at 7:56 PM. Later at about 10:51 PM till Midnight his location is at place designated with location Number 8291. LOCATION CHART Rajesh (A-2) Mahesh (A-1) Lakhan (JCL) 7:51 PM To 10:44 PM Mahesh's calls shows his movement to Pandara Road, Ashram, Ishwar Nagar, Okhla Estate, Kalkaji, Okhla Phase III, Sri Niwas Puri(where he Lived). At 8:30 PM Mahesh talks to Satish (PW21) on his number 9013053131. Supposedly, at the Okhla railway station, to keep the laptop and laser camera with him. Rajesh and Mahesh talk to each other a couple of time at 10:25 PM and at 10:44 PM. CRL.As.

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Page 25 of 46 43. Analysis of the CDR of Rajesh Ex.PW12/D and Ex.PW12/E, CDR of Mahesh Ex.PW12/F, CDR of Lakhan Ex.PW10/C, their respective location charts, CDR of Poonam Mehta Ex.PW10/D, Ex.PW11/D and CDR of Kamal Jaitly Ex.PW11/B indicates that Rajesh (A-2) on 02.05.2011 at about 09:46 AM was at Faridabad, Mahesh (A-1) was at Ghaziabad and Lakhan (JCL) was in East Patel Nagar in the house of the deceased. After frequent exchange of calls between Rajesh (A-2), Mahesh (A-1) and Lakhan (JCL), both Accused persons started to move towards East Patel Nagar where the house of the deceased is located. Pertinently, Rajesh and Mahesh reached East Patel Nagar at about 2:27 PM and they remained there till about 7:36 PM. It is not out of place to mention here that

Lakhan (JCL) left the house alongwith the children of Savina Jaitly at about 4:23 PM on the pretext that Pranav Jaitly (son of PW-20) is down with fever, to isolate the deceased Om Prakash Sharma at the house No.

UGF, East Patel Nagar, New Delhi after giving the information to A-2 of leaving the house at about 4:12 PM.

44. Poonam Mehta (PW14) received a call from her deceased father at around 7:00 PM and learnt from him that someone was at the door of the house. The deceased put the phone on hold and Poonam Mehta (PW14) heard some noises and the phone got disconnected and on suspicion she made a call to Ambika Jaitly (PW22) who gave her the information that deceased is alone at home as Chotu @ Lakhan (JCL) was with them, she reaches the house of the deceased which was locked from inside. She got that house opened with the help of Anees (PW25) and took injured deceased to Sir Ganga Ram Hospital where he was declared brought dead vide MLC No.1000/011 Ex.PW13/A.

45. The version given by the prosecution is consistent and is corroborated CRL.As. 5

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Page 26 of 46 with CDR of Rajesh Ex.PW12/D and Ex.PW12/E, CDR of Mahesh Ex.PW12/F, CDR of Lakhan Ex.PW10/C, CDR of Poonam Mehta (PW14) Ex.PW10/D, Ex.PW11/D and CDR of Kamal Jaitly (PW19) Ex.PW11/B. The accused persons A-2 and A-1 were found present in the area of East Patel Nagar where the house of the deceased is located and they were in touch with Lakhan (JCL) throughout the day and changing their location. The accused succeeded in isolating the deceased Om Prakash Sharma in his house after around 4:23 PM onwards.

46. The statement of Poonam Mehta (PW14) and Kamal Jaitly (PW19), daughter and son of the deceased are consistent with the circumstances and it also matches with the timeline as provided by the CDR.

47. The submission regarding the blood stained Kurta Pyjama (Ex.PW19/A) is a red herring. It is in the evidence that Poonam Mehta (PW14) took her father to the hospital with the help of Anees (PW25). These prosecution witnesses did not claim

that the Kurta Pyjama of the deceased was changed. It was not even suggested to them that the same was changed by PW14 and/ or PW25. It has come in evidence that the body of the deceased was partly on the bed and partly on the floor. He was bleeding. It is not out of the ordinary to keep clothes which may have been washed, or which might be kept for washing on the bed. Thus, there is no basis to assume that the clothes of the deceased were changed, or that the kurta pyjama Ex. PW19/A were the ones worn by the deceased at the time when he was attacked. Even otherwise, it does not stand to reason and common course of human conduct that the daughter PW14 would waste time in changing the clothes of her severely injured and bleeding father, and not rush him to the hospital at the earliest.

48. When Poonam Mehta (PW14) reached the house of her CRL.As. 5
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Page 27 of 46 deceased father and noticed his condition, her immediate thought would have been to save her father, rather than to collect or give the information from the neighbours. It is because of this reason that she with the help of PW25 took her father to Sir Ganga Ram Hospital. Her conduct is natural and consistent. So far non filing of CDR from date of 04.05.2011 to 06.05.2011 is concerned, no adverse inference can be drawn against the prosecution, as it was open to the defence to file the same if it favoured the accused persons. The incident was of 02.05.2011. Therefore, the CDR of 02.05.2011 was the most relevant. The same has been led in evidence. Time of the incident on the basis of the CDRs comes to between 7:15 PM to 7:40 PM, when the presence of A-2 and A-1 at East Patel Nagar is established. This circumstance connects the accused person with crime. They have not explained the reason for their presence in the area at the relevant area. Absconding 49. The date of the incident is 02.05.2011. Inspector Ravinder Singh (PW37) reached to the spot and searched for the accused persons but they were not traceable. During the investigation Mahesh (A-1) was in touch with Rajesh (A-2). Both of them were absconding from their respective houses. The reason for them leaving their residence and the city is not explained by these accused and their abscondance is an incriminating circumstance. Tracking of their mobile phones established that they were going towards Madhubani, Bihar. Also, Mahesh (A-1) before leaving for Madhubani, Bihar made a call from his number

9871590376 to his friend Satish (PW21). Tracking the mobile numbers of the accused resulted in the arrest by Insp. Rajesh Kumar (PW38) of both the accused A-1 and A-2 in P.S. University, Darbhanga, Bihar. Consequently, CRL.As. 5 & 7

Page 28 of 46 police party recovered Mobile phone having IMEI No.354305/04/86093

using phone No.9871590376 from A-1 on his personal search vide personal search memo Ex.PW34/F. Moreover, both the accused persons have not denied that both of them were not apprehended at Leela Krishan Bhawan Hotel and were arrested at P.S. University, Darbhanga, Bihar. Pertinently, even in their native region, they were not found to be living in their village homes, but in a hotel. There is no explanation for this conduct, and the only reason appears to be to evade arrest by the police.

50. The abscondance of both the accused persons from Delhi to Darbhanga, Bihar immediately after the incident of robbery and murder goes against both accused persons. Arrest 51. After the registration of FIR vide FIR No.

Ex.PW4/B, I.O. Inspector Ravinder Singh (PW37) searched for suspected accused persons but they were not traceable at their respective houses. During the investigation it transpired that Mahesh Chaudhary (A-1) was in the company of Rajesh Chaudhary (A-2). A-1 and A-2 were moving towards Madhubani, Bihar. Inspector Ravinder Singh instructed Inspector Rajesh Kumar (PW38) to constitute a raiding party. Consequentially, Inspector Rajesh Kumar constituted SI Vivek Singh (PW34), HC Sanjiv Kumar and himself as raiding party members and started chasing Acccued persons and remained in constant touch with (PW37). Inspector Rajesh Kumar (PW38) received the location of the suspects at Darbhanga Bus Terminal and contacted the concerned local P.S. and took help of SI Ashok (PW31) and other staff and started searching for the accused persons in guest houses and Hotel near Dharbanga bus stop. When they CRL.As. 5

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Page 29 of 46 reached Leela Krishan Bhawan Hotel, photographs of both suspects were shown to the manager of the guest house who told them that both are present in room No.106 of his guest house, since 04.05.2011. On checking the guest house register, their entry was found at No.606 in the hotel register

Ex.PW27/B, where accused had made their entry under the name Ramesh Kumar Chaudhary S/o Ram Kumar. Thus, the accused concealed their true identity and no explanation for this conduct is forthcoming. This is another circumstance to connect the accused A1 and A2 with the crime. On basis of the aforesaid information, they entered the said room where they found the suspects present in the room and hence they were apprehended there and later arrested at P.S. University, Darbhanga, Bihar vide Arrest Memo Ex.PW34/C (A-2) and Ex.PW34/D (A-1) and vide personal search memo Ex.PW34/E (A-2) and Ex.PW34F (A-1). PW27 Rajesh Kumar Aggarwal, who was running the hotel has completely supported the case of the prosecution in this regard and the fact that the accused had checked into the hotel and were arrested from there. He is a completely independent witness and there is no reason to doubt this statement.

52. Thus, the prosecution has able to prove that both the accused person were arrested from Darbhanga, Bihar on 05.05.2011 and brought back to Delhi. Later, Co-accused Lakhani (JCL) was also apprehended and his version was recorded Ex.PW37/E. Recovery

1) Recovery of cash The contention of the learned counsel for the Appellants that joint disclosure is no disclosure in the eyes of law and, therefore, there is no recovery within the meaning of Section 27 of Indian Evidence Act has no force.

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Page 30 of 46 In the instant case, it is established that both the accused persons were together before the crime, and they were in the same areas (as per the location chart of their mobile phones) at the time of commission of the crime, which was the area where the crime was committed. Even thereafter, the location chart shows that they were together after the commission of crime too, while absconding from their house. On tracking their respective mobile phones, they were moving towards Madhubani together, and before reaching their destination they were apprehended by the police on the way simultaneously from the same location. Therefore, they both had exclusive knowledge. The law on joint disclosure is settled in relevant paragraph of the Supreme Court In State (NCT of Delhi) v. Navjot Sandhu (2005) 11 SCC600 which is reproduced here under:-

""145. Before parting with the discussion on the subject of confessions under Section 27, we may briefly refer to the legal position as regards joint disclosures. This point assumes relevance in the context of such disclosures made by the first two accused viz. Afzal and Shaukat. The admissibility of information said to have been furnished by both of them leading to the discovery of the hideouts of the deceased terrorists and the recovery of a laptop computer, a mobile phone and cash of Rs. 10 lacs from the truck in which they were found at Srinagar is in issue. Learned senior counsel Mr. Shanti Bhushan and Mr. Sushil Kumar appearing for the accused contend, as was contended before the disclosure and pointing out attributed to both cannot fall within the ken of Section 27, whereas it is the contention of Mr. Gopal Subramaniam that there is no taboo information as against incriminating the informants/accused. Some of the High Courts have taken the admission of such against the High Court, that evidence both CRL.As. 5 & 7

Page 31 of 46 to be more accurate, the view that the wording "a person" excludes the applicability of the Section to more than one person. But, that is too narrow a view to be taken. Joint disclosures simultaneous disclosures, per se, are not inadmissible under Section 27. A person accused need not necessarily be a single person, but it could be plurality of accused. It seems to us that the real reason for not acting upon the joint disclosures by taking resort to Section 27 is the inherent difficulty in placing reliance on such information supposed to have emerged from the mouths of two or more accused at a time. In fact, joint or simultaneous disclosure is a myth, because two or more accused persons would not have uttered informatory words in a chorus. At best, one person would have made the statement orally and the other person would have stated so substantially in similar terms a few seconds or minutes later, or the second person would have given unequivocal nod to what has been said by the first person. Or, two persons in custody may separately and simultaneously and both of them may furnish similar information leading to the discovery of fact. Or, in rare cases, both the accused may reduce the information into writing and hand over the written notes to the police officer at the same time. We do not think that such disclosures by two or more persons in police custody go out of the purview of Section 27 altogether. If information is given one after the other without any break almost simultaneously,

and if such information is followed up by pointing out the material thing by both of them, we find no good reason to eschew such evidence from the regime of Section 27. "(emphasis supplied) be interrogated Both the Accused Mahesh Chaudhary (A-1) and Rajesh Chaudhary (A-2) simultaneously and jointly took the police party and Kamal Kishore Jaitly CRL.As. 5

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Page 32 of 46 (PW19) son of the deceased Om Prakash Sharma to the house of Rajesh Chaudhary's father in law, where he was residing temporarily while he was carrying out the construction of his house. The accused Rajesh Chaudhary led and picked up a key which was kept over the almirah in said room and handed over the same to Mahesh who opened the almirah and took out a plastic bag and the bag was opened and currency notes amounting to Rs. 2,80,300 were taken out. The said currency notes were sealed vide seizure memo Ex.PW19/C. Admittedly the house situated in A-block Ganpati Colony, Roshan Nagar, Faridabad, Haryana is the house of the father in law of Rajesh (A-2). It has come on record that at the time of commission of the offence, A-2 was putting up at that very house. Further, as per Inspector Ravinder Singh (PW37) and Kamal Jaitly (PW19) who visited that house upon the disclosure statement of accused being made, have deposed that A-2 took a key from over the Almirah and handed over the same to A-1 who then opened the Almirah and handed over a plastic bag which had currency notes amounting to Rs. 2,80,300 which belonged to (PW19) Kamal Kishore Jaitly. Moreover the accused have not claimed the amount of Rs. 2,80,300/- in their statements recorded under Section 313 Cr.P.C. Therefore, the alleged recovery amounting to Rs. 2,80,300/- at the instance of the two accused goes against them since they have not explained the source of that large amount.

2) Recovery of blood stained shirts The accused Mahesh (A-1) and Rajesh (A-2) in their disclosure statements Ex.PW30/A and Ex.PW30/B disclosed about their shirts and in pursuance to their disclosure statement both accused person led the police party and Kamal Jaitly (PW19) to the field near the house of A-1 i.e. A-block Ganpati Colony, CRL.As. 5

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Page 33 of 46 Roshan Nagar, Faridabad, Haryana and got recovered one polythene containing 2 blood stained shirts, one white colored shirt with stripes

and other ferozi colored, on the polythene the phrase "Thank you, Have a nice day."

was printed. Both the shirts were sealed vide seizure memo Ex.PW19/E and the blood stained shirts are Ex.P.12 and Ex.P.13 which were deposited in Malkhana vide Malkhana Register Ex.PW17/A and the same were sent to FSL, Rohini. FSL report is Ex.PX and Ex.PY. The blood Gauze piece of deceased Om Prakash Sharma was having 'B Group' human blood and the shirts Ex.P.12 and Ex.P.13 too were found to be having 'B Group' human blood on it. This too is an incriminating circumstance and connects both accused persons to the crime. The place where their shirts were hid was known only to them and it was within their special knowledge. There is no explanation offered by the accused regarding the said disclosure, except that they are falsely implicated and the recovery is planted. PW19 is an independent witness. He had no reason to falsely implicate the accused. Merely, because he is the son of the deceased, it does not follow that he would falsely implicate the accused. In fact, he would be interested in seeing that the real culprits are brought to justice and he would not be interested in getting innocent persons falsely implicated. 3)Recovery of weapon of offence A-1 and A-2 further made disclosure pertaining to the weapon of offence i.e. knife and rope on 08.05.2011 Ex.PW37/D and Ex.PW37/C respectively. They further disclosed that they have kept stolen jewellery as part of booty to Lakhan (JCL) in almirah lying in balcony at house of the complainant. (JCL) in pursuance to his disclosure statement dated 08.05.2011 got recovered a gold chain, two gold rings from the said almirah. Further, they have thrown away the CRL.As. 5

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Page 34 of 46 stolen ladies bag containing rope near the pond near Awana Market which was used in strangulating the deceased Om Prakash Sharma and was kept in the house by (JCL) Lakhan. The knife was recovered vide Ex. PW-19/G from Srinivaspuri bus stand. The knife was blood stained. Merely because the blood group of the blood on the knife could not be detected, neither the recovery, nor the identity of the knife can be doubted. Pertinently, there is no report to say that the blood group of the blood found on the knife was different from the blood group of the deceased. The absence of the handle on the discovered knife also does not raise any doubt. Pertinently, the death of the deceased was not on account of a

fatal knife blow. It was on account of strangulation. If the police had to plant a knife, they would have planted a full knife and not just the blade without the handle. This, in fact, supports the genuineness of the recovery. In pursuance to disclosure statements both the accused A-1 and A-2 led the police party comprising of Inspector Gurdev Singh (PW35), Ct. Kamla Prasad (PW32), Ct. Satya Prakash (PW-33) alongwith the complainant Kamal Jaitly (PW19) to the pond near Awana market, Faridabad and both the accused took them to the ditch from where a black ladies bag bearing KDM Ex.P.9 containing blood stained synthetic rope of about 1.5 metres Ex.P.10 which was discovered and recovered and same was seized vide seizure memo Ex.PW19/J.

The recovered articles were deposited in Malkhana MHC(M) vide Ex.PW17/A and the same were sent to FSL, Rohini. FSL Report is Ex.PX and Ex.PY, the blood stained rope was found to have human blood of 'B Group' which also corroborates with the statement of Dr. B.N. Mishra (PW9). These recoveries are also pointers to the commission of offence by the accused only.

4) Recovery of Laptops and camera. CRL.As. 5 & 7

Page 35 of 46 Accused Mahesh Chaudhary (A-1) and Rajesh Chaudhary (A-2) were arrested by the team of Inspector Rajesh Kumar (PW38) in Darbhanga, Bihar on 05.05.2011 where they made disclosure statement Ex.PW38/B and Ex.PW38/A respectively. In pursuance to this disclosure, they were brought back to Delhi and Accused Mahesh (A-1) identified Satish Kumar (PW21) on 07.05.2011 and got recovered two laptops and a laser camera vide Ex. PW-19/F from Satish Kumar's Clinic and same has been identified by Kamal Kishore Jaitly (PW19). As per CDR Ex.PW12/F, Mahesh moved towards Pandara Road, Ashram, Ishwar Nagar, Okhla Estate, Kalakaji, Okhla-Phase 3, Sri Niwas Puri. On the way, at 08:13 PM Mahesh speaks to Satish (PW21) on his number 9013053131, CDR of Mahesh confirms the same which is reproduced as under: Calling No.Called No.Start time Call duration 117 Seconds 9871590376 (A-1) 9013053131(PW21) 20:13:11 PM901303131 (PW21) 9871590376 (A-1) 20:20:02 PM21Seconds 9013053131 (PW21) 9871590376 (A-1) 9871590376 (A-1) 20:26:17 PM901303131 (PW21) 20:45:59 PM6Seconds 108 Seconds 9013053131 (PW21) 9871590376 (A-1)

20:51:43 PM0Seconds 9013053131 (PW21) 9871590376 (A-1) 20:52:09 PM20Seconds The factum of a call being made by Mahesh (A-1) to Satish (PW21) is corroborated with statement of PW21 who has stated that on 02.05.2011 between 7:00 PM to 8:00 PM, Accused Mahesh called Satish twice on his phone and asked him to reach Okhla railway station, on both occasions he refused to come, but on asking third time he agreed and reached Okhla railway station where A-1 handed over a bag containing two laptops and a laser camera. The same was seized vide seizure memo Ex.PW19/F. Handing over of the laptops and laser camera has not been disputed by the A-1 too, as is evident from his cross examination of PW-21. The same is CRL.As. 5

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Page 36 of 46 reproduced as under: It is wrong to suggest that after Mahesh handed over the laptops to me, I operated the same and tampered with the same or that then police picked me up. There is no evidence adduced by any of the accused persons to substantiate any allegation of tampering. The recovery of two laptops Ex.P.1 and Ex.P.2 and a laser camera Ex.P.3 at the instance of Mahesh Chaudhary (A-1) stands proved. PW-21 is an independent witness. He knew the accused A-1. Their mobile conversation has been duly proved on the day of the incident after the incident had taken place. The sequence in which the events appear to have unfolded - as established by the CDRs of A-1 and PW-21 clearly establishes the case of the prosecution with regard to the involvement of the accused A-1. Medical Evidence.

53. The deceased was admitted to the Sir Ganga Ram Hospital at about 8:13 PM vide MLC No.1000/011 where he was declared brought dead by Dr. Aathira Pankajakshan (PW13) vide MLC Ex.PW13/A with the following injuries on his person :

1. C-shaped stab wound at the root of neck anteriorly 1.5 inches in length irregular margins,
- 2) Lacerated injuries on the root of neck,
- 3) Bluish discoloured linear markings at root of neck encircling the neck above the lacerations,

4) Bluish discoloration on right side of neck, bleedings from both ears and from wound at root of neck.

54. The post mortem was conducted at DDU Hospital by Dr. B. N. Mishra (PW9) on 3.05.2011 at 2:15 PM and its report is Ex.PW9/A and he found the following external and internal injuries as under : CRL.As. 5

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1) Ligature mark present all around the neck at the level of thyroid cartilage with horizontally placement. The total length of the ligature mark measured 38 cm in circumference and 2 cm

5 cm in width with variable degree of pressure marks with abraded bruised at base of ligature mark and marginal area. The anterior aspect of ligature mark presented with diffused in pattern and abraded bruised with having the width of 2.5 cm

5 cm. The inferior border of the ligature mark bears deep grooving pressure mark which continues towards the lateral and posterior aspect of the neck with width of 1cm. On the bilateral and posterior aspect of the neck presented pressure mark with grooving markedly with uniform and continuous in pattern having the width of 1.5 cm. The anterior aspects of pressure mark have reddish brown colour while rest of part having blackish brown in colour. On dissection of the ligature mark the underneath tissue seen bruised and ecchymosed. On further exploration of the area (neck part) multiple bruising and extravasations of blood revealed on the soft tissue of neck sternohyoid sternomastoid and fascia etc. The laryngeal and tracheal mucosa seen highly congested. The right cornua of the hyoid bone and right lamellae of the thyroid cartilage found fractured alongwith collection of dark red clotted blood adjacent of fractured site.

2) Three apartly placed incised wounds of variable size from 2cm x muscle deep to 1.5 cm x 0.5 cm x skin deep present on the basal part of the neck above the sternum having sharp and regular margins with minimal amount of dark red clotted blood present in and around it On internal examination, it was found that sub-scalp was congested with petechials; congested engorged blood vessels of meninges

and brain with numerous petechiae seen on the surface of the brain; the hyoid bone, thyroid cartilage fractured alongwith multiple bruising and haemorrhagic spots into the soft tissue of neck as mentioned in external injury no.1; Tracheal mucosa highly congested and covered CRL.As. 5

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Page 38 of 46 by bloody froth; Blood tinged froth present in tracheal lumen and both lungs congested and suffused on cut section exudating bloody froth. The cause of death as per Ex.PW9/A is as under:-

"55.

1. TIME SINCE DEATH: Approx. 18hours prior to post- mortem examination.
2. The cause of the death is due to asphyxia caused by ligature strangulation by using rope like ligature.
3. All injuries are ante mortem in nature and same of duration.
4. The external injury No.1 was sufficient to cause death in ordinary course of nature.
5. Manner of death is Homicide. Time since death is approximately 18 hours, which connects the date and time of the incident. False Plea 56. The plea taken by the defence that both the accused A-1 and A-2 are falsely implicated by Savina Jaitly (PW20), Kamal Jaitly (PW19) and Poonam Mehta (PW14) does not seem to be correct for the reasons discussed above. They are not interested witnesses. Their interest lies in bringing the killer of their father to justice and not in falsely implicating innocent person, while the real culprits get away with their crime. The plea of A-2 that he reached East Patel Nagar on asking of PW20 to collect the laptop for getting them repaired also does not seem to be correct, since this was not suggested to PW-20 in her cross examination. Further, the plea that after collecting the laptop they both reached Nehru Place for the service of laptop and they found that the shops were closed, then A-2 requested A-1 to hand over the same to one Satish (PW21), friend of A-1 is not supported by the statement of PW-21. PW-21 CRL.As. 5

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Page 39 of 46 stated that: On 02.05.2011, at about 7-8 pm, Mahesh Chaudhary accused called me twice on phone and asked me to reach Okhla Railway Station. Both the times I refused. But when he asked me for the third time, I reached Okhla Railway Station, where Mahesh Chaudhary accused were present. He handed over to me a bag. It contained two laptops and a camera like instrument. By handing over the bag containing these items to me, Mahesh Chaudhary accused told me that these belong to his friend and that he, Mahesh Chaudhary, would come the next day and collected the same from him. So, I brought the bag containing these items to my house. (emphasis supplied) The pleas taken by the accused do not appear to be correct for the following reasons: i. A-1 and A-2 did not examine any defence witness in the support of their defence. ii. A-1 and A-2 avoided examining themselves under Section 315 Cr.P.C., as witness. iii. Plea of A-1 and A-2 is not supported with the statement of PW21 who is a material witness, as he has specifically stated that A-1 told him that Laptop belongs to his friend and that A-2 will collect it on the next day only. iv. There is no cogent reason appearing on the record to suggest the false implication against the A-1. Pertinently, A-2 was driver of the complainant for 10 years. v. There was no financial gain to be derived by PW20 and PW19 as the money and jewellery already belonged to them, and there is absolutely no material evidence to even remotely suggest that they CRL.As. 5

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Page 40 of 46 would stage manage a robbery and murder of their own father. vi. The complainant PW-14, daughter of the deceased did not raise any suspicion on the accused and suspicion arose, firstly, on A-2 and, upon investigation the role of A-1 and the JCL became clear. This shows that the version of the prosecution is natural and consistent. Motive 57. As per the prosecution version, motive behind the murder of Om Prakash Sharma is a conspiracy hatched by A-2 with the help of (JCL) Lakhan and A-1 to meet the financial needs for construction of the house by A-2 in Faridabad. Also, money was required by (JCL) Lakhan for his domestic purposes.

58. PW19 has specifically stated in his statement that A-2 was on leave on the ground that he had suffered burn injuries and he had to get his house constructed

which is not disputed. Moreover, Accused A-2 has not cross examined PW19 on this point. Therefore, it remained un-rebutted.

59. The amount of Rs. 2,80,300 too was recovered from the house situated in A-Block, Ganpati colony, Roshan Nagar, Faridabad, Haryana., and not from Darbhanga, Bihar at the time of arrest, which shows that A-2 required money at Faridabad for his house construction. Thus, motive for commission of the offence is established. In any event, failure to prove motive by prosecution ipso facto is not fatal to the prosecution case. The reference could be drawn from Supreme Court judgment in *Amitava Banerjee v. State of West Bengal* (2011) 12 SCC554

"41. Motive for the commission of an offence no doubt CRL.As. 5

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Page 41 of 46 importance the offence assumes greater in cases resting on circumstantial evidence than those in which direct evidence regarding commission of is available. And yet failure to prove motive in cases resting on circumstantial evidence is not fatal by itself. All that the absence of motive for the commission of the offence results in is that the court shall have to be more careful and circumspect in scrutinizing the evidence to ensure that suspicion does not take the place of proof while finding the accused guilty.

42. Absence of motive in a case depending entirely on circumstantial evidence is a factor that shall no doubt weigh in favour of the accused, but what the Courts need to remember is that motive is a matter which is primarily known to the accused and which the prosecution may at times find difficult to explain or establish by substantive evidence.

43. Human nature being what it is, it is often difficult to fathom the real motivation behind the commission of a crime. And yet experience about human nature, human conduct and the frailties of human mind has shown that inducements to crime have veered around to what Wills has in his book "Circumstantial Evidence" said:

"The common inducements to crime are the desires revenging some real or fancied wrong; of getting rid of a rival or an obnoxious connection; of escaping

from the pressure of pecuniary or other obligation or burden; of obtaining or other coveted object; of preserving reputation, either that of general character or the conventional reputation of profession or sex; or of gratifying some other selfish or malignant passion."

plunder Conclusion 60. As discussed above, the facts emerging on record is crystal clear that CRL.As. 5

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Page 42 of 46 the accused persons succeeded in their design to isolate deceased Om Prakash Sharma aged 86 years in his own house i.e. House No.

UGF, East Patel Nagar, New Delhi on 02.05.2011, 4:30 PM onwards, in pursuance to their conspiracy. The CDR Ex.PW10/C, Ex.PW10/D, Ex.PW11/B, Ex.PW11/D, Ex.PW12/D, Ex.PW12/E and Ex.PW12/F indicates that A-1 and A-2 were together on 02.05.05.2011 before the incident and were in the same vicinity of the house, from about 2:27 PM to about 7:36 PM. After the incident A-1 met Satish (PW21) and handed over two laptops Ex.P.1 and Ex.P.2 and a laser camera Ex.P.3 thereafter they absconded. On tracking, they were found to be together and going to their native place Madhubani, Bihar and were arrested at Darbhanga, Bihar on 05.05.2011 vide arrest memo Ex.PW34/C and Ex.PW34/D which resulted into their joint disclosure of A-1 and A-2 Ex.PW38/A and Ex.PW38/B which led to the recovery of two blood stained shirts Ex.P.12 and Ex.P.13 which they were wearing at the time of committing the crime and weapon of offence i.e. blood stained rope Ex.P.10, knife Ex.P.11, and cash of Rs.2,80,300/- and jewellery items.

61. The blood seized at the spot and blood gauze seized at the time of post mortem of the deceased Om Prakash Sharma was sent to FSL, Rohini and found to have human blood B Group alongwith two blood stained shirts which were worn by A-1 and A-2 at the time of committing murder of the deceased Om Prakash Sharma. The blood found on two shirts Ex.P.12 and Ex.P.13 and weapon of offence i.e. rope was also found to have human blood of B Group. The blood of B group of the deceased has not been disputed, whereas A-1 and A-2 have not claimed that they also have the same blood group i.e. B Group. The recovery of the weapon of offence i.e. rope Ex.P.10, two blood stained shirts worn by A-1 and

A-2 at the time of incident and their CRL.As. 5

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Page 43 of 46 presence in the vicinity of the house indicates to the guilt of crime by A-1, A-2 and their accomplice - and no one else, pursuant to the hatched conspiracy. The prosecution version also strengthens with recovery of robbed amount of Rs. 2,80,300 which A-1 and A-2 have not claimed. Recovery of two laptops and a laser camera from Satish (PW21) also corroborates with the CDR Ex.PW12/F which strengthens the prosecution case.

62. The chain of the events that have been established connect to each other so consistently, and the abscondance of the accused and recoveries lead to the only conclusion of guilt of the accused. In *Bodh Raj v. State of Jammu and Kashmir* (2002) 8 SCC45 the Supreme Court observed: 9. Before analysing factual aspects it may be stated that for a crime to be proved it is not necessary that the crime must be seen to have been committed and must, in all circumstances be proved by direct ocular evidence by examining before the court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principle fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, that is, the evidentiary facts. To put it differently, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed Reliance placed on the aforesaid decisions by the appellants, in our 63. view is of no avail. *Babu Ram* (supra) is of no relevance considering the fact that, firstly, the motive for commission of the crime is established i.e., to commit robbery and make financial gain. In any event, failure to prove the CRL.As. 5

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Page 44 of 46 motive is not fatal in every case, as held in *Amitava Banerjee* (supra).

64. While arriving at our conclusion, we have applied the principles laid down in *Mahmood* (supra). Since the evidence in the present case is clear and cogent and excludes every other hypothesis and points only to the guilt of the accused,

reliance placed on Shankarlal Gyarsilal Dixit (supra) is misplaced. For the same reason, reliance placed on Tanviben Pankaj Kumar Divetia (supra) is also misplaced, since, the present is not a case based on mere conjectures or suspicion, and there is clear, cogent and clinching evidence to establish the involvement of the appellants in the commission of the crime. For the same reasons, reliance placed on Sudama Pandey (supra); Gagan Kanojia (supra) and Anjan Kumar Sarma (supra) is of no avail.

65. Reliance placed on Deepak Chadha (supra) is misplaced for the reason that the case of the prosecution is not premised merely on the recoveries. There is other cogent and clinching evidence available in the form of the CDRs of the accused, PW21 etc. There is also sufficient forensic evidence to establish the involvement of the accused in the commission of the crime as discussed above. The common intention of the accused A1 and A2 has been clearly established in the facts of the present case since they are related; they were living together; they were in the same area where the offence was committed at the same time; they were arrested simultaneously at the same place; they made a common disclosure statement, and; they got some of the recoveries affected simultaneously.

66. Reliance placed on Lallan Rai (supra) & Pandurang Tukia (supra) is misplaced. In their statement recorded under Section 313 Cr.P.C., the accused failed to explain the incriminating circumstance found against them. Thus, reliance placed on Nagraj (supra) by the appellants is of no avail. On the CRL.As. 5 & 7

Page 45 of 46 contrary, they have failed to avail of the opportunity granted to them to explain the incriminating circumstance, which clearly points to their guilt.

67. Thus, we find no infirmity with the impugned judgment dated 29.11.2014 and order on sentence dated 02.12.2014 passed by the learned Additional Session Judge, and the same is upheld. We find no merit in the appeal of A-1 and A-2.

68. Therefore, both the appeals are dismissed and all the pending applications are disposed of. One copy of this judgment be placed on Crl. A. 774/2015 Rajesh Chaudhary v. State 69. LCR file be sent back forthwith along with a copy of this judgment. No order as to costs. I.S.MEHTA (JUDGE) OCTOBER22 2018

(JUDGE) VIPIN SANGHI CRL.As. 5

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