

Ranjeet vs.state

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Court : Delhi

Decided On : May-31-2019

Appellant : Ranjeet

Respondent : State

Advocate for Pet/Ap. : Mr. Hemant Singh, Mr. Singh

Judgement :

\$~R-4 * + IN THE HIGH COURT OF DELHI AT NEW DELHI CRL. A. 411/2018 & Crl. M (Bail) 70/2019 % Judgment reserved on:15th May, 2019 Judgment Pronounced on:

31. t May, 2019 RANJEET Through: Mr. Hemant Singh, AdvocateAppellant Versus STATE Through: Ms. Aashaa Tiwari, APP for State Respondent CORAM: HON'BLE MR. JUSTICE MANMOHAN HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL SANGITA DHINGRA SEHGAL, J.

1. The present appeal has been filed under Section 374(2) of the Code of Criminal Procedure, (hereinafter referred to as Cr.P.C.), against the judgment dated 21.02.2018 and order on sentence dated 26.02.2018 passed by the learned Additional Sessions Judge-02, North Rohini Courts, Delhi in Sessions Case No.58133/2016 in FIR No.302/2012 registered for the offence punishable under Section 302 of the Indian Penal Code (hereinafter referred as IPC) at PS Alipur, whereby the appellant was convicted and sentenced to undergo rigorous

imprisonment for life and further sentenced to pay a fine of Rs.7000/- for the offence punishable under Section 302 IPC and in default of payment of fine to undergo further simple imprisonment for a period of five months. CRL.A. 411/2018 Page 1 of 38

2. Brief facts of the case, as noticed by the learned trial court, are as under: (i) On the basis of DD No.14A regarding information of murder, SI Manoj Kumar along with Ct.Wazir Chand went to the spot i.e., H. No.A-102, Ganga Ram Colony, Tikri Khurd, Delhi. In the meantime, IO/SHO Inspector Sunil Kumar along with Ct.Vinod and Ct.Naveen also reached at the spot where he found SI Manoj Kumar along with Ct.Wazir and accused Ranjeet present there. Accused Ranjeet opened the door/lock of the aforesaid house from the keys which were in his possession. Blood was found scattered in the house and accused Ranjeet had shown the dead body of one Ram Awadh in the said house. There were sharp injury marks on the neck, face and ear on the body of the deceased. On the right hand of the deceased, there was a tattoo mark Ram Awadh Kiran. On the basis of the DD entry, IO prepared a tehrir and got the FIR registered through Ct. Wazir. (ii) Crime team was called at the spot. During investigations, Kiran Bharti, wife and Sikandar, nephew of deceased Ram Awadh also arrived at the spot, who also identified the body of the deceased. Crime team officials inspected the spot and took photographs of the spot. Accused was interrogated and arrested in this case and his disclosure statement was recorded. The earth control and dry blood of deceased Ram Awadh were lifted from the spot and were converted into a pullanda and sealed. IO prepared the site plan and sent the body of deceased to BJRM Hospital Mortuary. (iii) Accused Ranjeet Kumar lead the police party to Nangloi and Kirari Phatak, Camp No.2, Jungle inside the bushes, from where he got recovered a bag of red and black colour and same was containing a pant, a vest, darati and a knife used in the offence. The said articles were converted in a pullanda and sealed by the IO. 3. After completion of investigation, a charge sheet was filed and charge for the offence punishable under Section 302 of the IPC was framed CRL.A. 411/2018 Page 2 of 38 against the appellant, to which he pleaded not guilty and claimed trial.

4. To bring home the guilt of the appellant the prosecution has examined 17 witnesses in all. Statement of the appellant was recorded under Section 313 of Cr.P.C wherein he claimed innocence and stated that he has been falsely

implicated in the present case. In continuation of earlier statement of the appellant, a supplementary statement of appellant under Section 313 Cr.P.C was also recorded to which he again pleaded not guilty and claimed trial. The appellant chose not to lead any evidence in his defence.

5. After hearing counsel for both the sides and on appreciation of entire evidence available on record, the learned Trial Court convicted the appellant for the charged offence.

6. Mr. Hemant Singh, learned counsel for the appellant, opened his submissions by contending that the impugned judgment dated 26.02.2018 is based on conjectures and surmises and the same is against the facts and settled proposition of law and that the learned trial court has ignored and omitted the material evidences and has disregarded the cogent evidence in favour of the appellant.

7. Mr. Singh learned counsel for the appellant has further contended that the learned trial court has wrongly relied on the disclosure statement of the appellant which led to recovery of a dead body as well as the weapon of offence used for the commission of the crime; that the trial court erred in observing that the accused and PW-2 (Smt. Kiran Bharti) were having extra marital relations which led the appellant to commit the crime; that the case of the prosecution is based on circumstantial evidence, however, there are various gaps in the case of the prosecution as (a) the body of CRL.A. 411/2018 Page 3 of 38 the deceased was recovered from A-102, Ganga Ram Colony, Tikri Khurd, Delhi -36, where the appellant was not residing, (b) that the wife of the deceased was not even aware of the address of the accused, (c) the fact that the accused was not present at the spot of incident is supported by electronic evidence, (d) that the weapon of offence is a planted evidence in order to falsely implicate the appellant as the knife and the darauti (sickle) recovered are easily available in the market, (e) that the trial court has wrongly relied upon the CDR data of phone of PW-2 (Smt. Kiran Bharti); that the alleged confessional statement and disclosure statement by the appellant is inadmissible under Section 25 of the Indian Evidence Act; that the investigation conducted by the prosecution is a defective one as no independent witnesses were joined at the time of recovery and the benefit of doubt shall go to the

appellant.

8. Learned counsel for the appellant further contended that the Trial court has rightly given a finding that the last seen witness i.e. PW-1 (Sikandar) was a planted witness which goes on to prove that the other incriminating evidence such as disclosure statement of the accused is fabricated by the Investigating Officer in order to falsely implicate the appellant in the present case. Learned counsel for the appellant further added that the trial court erred in observing that the accused and PW-2 (Smt. Kiran Bharti) were having extra marital relations which led the appellant to commit the alleged offence. In support of his contention, learned counsel for the appellant relied upon the cases of Aghnoo Nagesia vs. State of Bihar reported in AIR 1966 SC119 Mr. Shaitan Singh Vs Talevar passed by Division Bench of Rajasthan High Court bearing CrI. Jail Appeal No.833/2008 decided on 27.02.2015, Navaneethakrishnan Vs CRL.A. 411/2018 Page 4 of 38 The State reported in AIR 2018 SC2027 9. On the other hand, Ms. Aashaa Tiwari, learned APP for the State, strongly refuted the submissions made by the learned counsel for the appellant and submitted that the impugned judgment is based on proper appreciation of facts and evidence and no interference in the impugned judgment is called for by this Court; that the statement of the prosecution witnesses and medical/scientific evidence are corroborative in nature and the prosecution has been able to prove its case beyond reasonable doubt.

10. She further added that the appellant went to the police station and confessed his crime to the Duty Officer on the basis of which Rukka (DD No.14A dated 10.09.2012) was prepared which is (Ex.PW4/A), wherein he stated that he could get the dead body of the deceased Ram Avadh recovered and the same was recovered from his house bearing No.A-102, Ganga Ram Colony, Tikri Khurd, Delhi -36; that the said statement of the accused is admissible only to the point of disclosure of the identity, address and details of the maker of the FIR as per Section 8 of the Indian Evidence Act and the disclosure pursuant to the confessional statement is also admissible under Section 27 of the Indian Evidence Act, 1872.

11. The second limb of arguments put forth by the learned APP for the State is that on the basis of the disclosure statement of the appellant, the recovery of weapon of offence as well as the blood stained clothes were made; that the medical evidence confirms the fact that the injuries sustained by the deceased were caused by the weapon which was recovered at the instance of the appellant; that according to the FSL report the blood stains found on the clothes of the accused matched with CRL.A. 411/2018 Page 5 of 38 the blood group of the deceased; that there is no discrepancy in the testimonies of PW-1 (Sikandar) and PW-2 (Smt. Kiran Bharti), which establish the factum of the alleged crime and the testimony of PW-2 (Smt. Kiran Bharti) finds further corroboration with the CDR records exhibited as PW17/D; that the non-joining of independent witnesses at the time of recovery is not always necessary.

12. Learned counsel for the State further contended that the evidence produced on record as well as the circumstances proved by the prosecution, formed a complete chain pointing unequivocally towards the guilt of the accused. Based on these submissions, counsel for the State urged that this Court may not interfere with the well reasoned judgment passed by the learned Sessions Judge. In support of her contentions she relied on the cases of Aghnoo Nagesia vs. State of Bihar (supra) (para 15,18 and 20), Rakesh Kumar Jha Vs State of Delhi reported in 2012 IX AD (Delhi) 338, Faddi Vs State of M.P. reported in AIR 1964 SC1850

13. We have heard the learned counsel for the parties and have also perused the material placed on record including the record of the trial court. ADMISSIBILITY OF RECOVERIES EFFECTED PURSUANT TO THE DISCLOSURE/CONFESSIONAL STATEMENT OF THE ACCUSED¹⁴ Learned counsel for the appellant vehemently argued that the recoveries pursuant to the disclosure statement of the accused are not admissible under Section 25 of the Evidence Act. In this context, from a perusal of the record it transpires that the state machinery was set in motion pursuant to DD No.14-A (Ex. PW-4/A) and DD No.15-A (Ex.PW-4/C). CRL.A. 411/2018 Page 6 of 38 PW-15 (Inspector, Sunil Kumar) deposed that the recoveries were effected in his presence at the instance of the accused person. PW-15 (Inspector, Sunil Kumar) during his examination-in-chief deposed that Accused Ranjeet opened the door/lock of the aforesaid house from the keys which was in his possession. Blood was found scattered in the

house. After the interrogation the accused Ranjeet was arrested vide (Ex.PW-1/A) and PW-15 (Inspector, Sunil Kumar) alongwith other police party was led to Nangloi and Kirari Phatak, Camp No.2 Jungle inside the bushes by the accused. PW-15 (Inspector, Sunil Kumar) further deposed that Public witness Sikander was present with us at the that time. Accused Ranjeet Kumar thereafter got recovered a bag of red and black colour from the aforesaid place and the same was containing a pant, a vest and Darati and knife used in the offence. PW-14 (SI Manoj Kumar) corroborated the testimony of PW-15 (Inspector, Sunil Kumar) in relation to recovery of body of the deceased and bag of red and black colour wherein the weapon of offence was recovered. PW-14 (SI Manoj Kumar) deposed that He led the police party alongwith Sikandar and Kiran Bharti to the above stated spot and recovered a bag of red and black colour. Same was containing a pant, a vest and darati and knife used in the houses. PW-1 (Sikandar) and PW-2 (Smt. Kiran Bharti) further corroborated the testimony of PW-15 (Inspector, Sunil Kumar) and PW-14 (SI Manoj Kumar). Relevant portion of the confessional statement (Ex. PW-4/A) is reproduced as under: Samay 12.30 Baje Din Majkoora Thana No.2 Ranjeet s/o Sh. Surat Mehto R/o A-102, Ganga Ram Colony, Tikri Khurd, Delhi, Ne Bahazir Thana Akar Batlaya Ki Usne CRL.A. 411/2018 Page 7 of 38 Apne Ghar Par Apne Ek Jaankaar Ram Awadh r/o Gautam Budh Colony Haiderpur, Delhi Ka murder Kar Diya Hai Aur Uski Dead Body Uske Ghar Par Rakhi Hai Jo Hasb Amad Ittila Darj Roznamcha Darj Ki Gai Aur Nakal Rapat Alak Karke Baraye Munasib Karwahi SI Manoj Sahab Ko Dee Gai Jo Man Ct. Wazir No.1126/OD Khana Mauka Ke Hue Jo Uprokt DD Number Ki Babat Janab SHO/Alipur Sahab Ko Bhi Batlaya Gaya. 15. Thus on confessional statement (Ex. PW-4/A), pointing out memo (Ex. PW-1/E), recovery of the dead body as well as the weapon of the crime was effected. However, according to Section 25 of the Indian Evidence Act 1860, no credence can be placed upon the confession made by the accused which reads as under:

25. Confession to police officer not to be proved No confession made to a police officer shall be proved as against a person accused of any offence. However, section 27 of the Indian Evidence Act is in the nature of a proviso or an exception which partially lifts the prohibition imposed by Section 25 and reads as under: Section 27 of the Indian Evidence Act:

27. How much of information received from accused may be proved.--Provided that, when any fact is discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. CRL.A. 411/2018 Page 8 of 38 16. In the light of Section 27 of the Indian Evidence Act, 1872 whatever information is given by the accused in consequence of which a fact is discovered only that would be admissible in the evidence, regardless of the fact that such information amounts to confession or not. The basic idea embedded under Section 27 of the Evidence Act is the doctrine of confirmation by the subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from an accused, such a discovery is true and admissible. The information might be confessional or non-inculpatory in nature, but if it results in discovery of a fact it becomes reliable information.

17. Further, the Division Bench of this court in Rakesh Kumar Jha vs. State of NCT of Delhi (2013) 1 DLT (Cri) 79 has extensively dealt with the admissibility of the confession made by the accused to the police. Relevant portion is reproduced as hereunder: 5. Before we proceed further, we need to decide to what extent confession made by the appellant, recorded under DD Entry No.11A, or the alleged extra judicial confession to Srinivas Kumar (PW-20) is admissible. On record, appellants case is that he made no extra judicial confession to PW-20, over the telephone. However, statement of PW-20 needs to be deliberated upon only if we hold that Sections 25 and 26 of the Evidence Act do not prohibit or bar admission of the alleged extra judicial confession. xxxxx xxxxxxxxxx xxxxx 7. In Aghnoo Nagesia v. State of Bihar AIR 1966 SC119 the accused had himself gone to the police station and lodged a report, which was in the form of a confession. The principal question which arose was whether the said CRL.A. 411/2018 Page 9 of 38 statement, or any portion thereof, was admissible in evidence. The Supreme Court reproduced the entire First Information Report and divided it into 18 parts. Sections 24 to 30 of the Evidence Act were elucidated upon and explained. The term confession was interpreted to mean a statement made by an accused suggesting that he had committed the crime. Confession is an admission made by

the person who admits the offence or substantially all the facts which constitute the offence. It is a statement made by a person suggesting that he has committed a crime. Whether a statement which is partly self-exculpatory amounts to a confession or not, is a question which need be examined in the present appeal. It was observed that although a confession may consist of several parts, and some parts may not relate to actual commission of offence, but some may relate the cooperation, the opportunity, the provocation, the weapon used, the intention, concealment of the weapon and the subsequent conduct of the accused. Elucidating upon the scope and whether the bar of Sections 25 and 26 of the Evidence Act will apply to such statements, it was held as under:-

"the motive, to

"15. If proof of the confession is excluded by any provision of law such as s. 24, s. 25 and s. 26 of the Evidence Act, the entire confessional statement in all its parts including the admissions of minor incriminating facts must also be excluded, unless proof of it is permitted by some other section such as s. 27 of the Evidence Act. Little substance and content would be left in Sections 24, 25 and 26 if proof of admissions of incriminating facts in a confessional statement is permitted. xxxxx xxxxxxxx xxxxxx in Sections 24 to 30 refers 18. A little reflection will show that the expression "confession" the confessional statement as a whole including not only the admissions of the offence but also all other admissions of incriminating facts related to the to CRL.A. 411/2018 Page 10 of 38 offence. Section 27 partially lifts the ban imposed by Sections 24, 25 and 26 in respect of so much of the information whether it amounts to a confession or not, as relates distinctly to the fact discovered in consequence of the information, if the other conditions of the section are satisfied. Section 27 distinctly contemplates that information leading to a discovery may be a part of the confession of the accused and thus, fall within the purview of Sections 24, 25 and 26. Section 27 thus that a confessional statement admitting the offence may contain additional information as part of the confession. Again, s. 30 permits the Court to take into consideration against a co-accused a confession of another accused affecting not only him but the other co-accused. Section 30 thus shows that matters affecting other persons may form part of the confession. shows xxxxx 8. Accordingly, the statement recorded in the First

Information Report was admissible, in respect of the identity of the accused as the maker of the same i.e. his name, address and other details and the fact that he had come to the police station to make the report, which was recorded and read over to him. The other portions of the statement recorded in the First Information Report were not admissible, save and except the portions which come within the purview of Section 27 of the Evidence Act. Therefore, the other portions had to be excluded. xxxxxx xxxxxxxx xxxxxxxx 13. In Bheru Singh v. State of Rajasthan (1994) 2 SCC467 there are some observations which purport that the motive recorded in the self-implicating First Information Report are admissible and not hit by Section 25 of the Evidence Act, as they do not amount to confession of committing any crime. However, as clarified by a Division Bench of this Court in Mukesh v. State Crl. Appeal No.615/2008 decided on 4.5.2010, in Aghnoo Nagesia case CRL.A. 411/2018 Page 11 of 38 (supra) three Judges of the Supreme Court have firmly held that confession not only includes admission of the offence but also other admissions of incriminating facts relating to the offence. Motive, therefore, has to be excluded.

14. Read in this manner, we have to completely ignore and discard the extra judicial confession allegedly made to PW-20 on telephone, on 14th May, 2006 at 1.15 -1.20 P.M., i.e. after the appellant had gone to Police Station, Lajpat Nagar and DD entry No.11A (Ex. PW1/A) was recorded at 1.00 P.M. The alleged extra judicial confession to PW-20 is hit by Section 26 of the Evidence Act. DD entry No.11-A (Ex. PW1/A) is admissible to the limited extent that it discloses identity of the appellant, address and details of the maker of the First Information Report. This portion is admissible under Section 8 of the Evidence Act. Other portions of DD entry 11A have to be excluded, except the portion(s) which comes under the purview of Section 27 of the Evidence Act. This portion, noticed below, will consist of appellants statement that dead body of Suman Rai was lying in flat No.E-20, First Floor, Gautam Nagar, New Delhi, and the knife used and blood stained clothes of the accused were lying in the same flat.

15. Head Constable Raghubir Prasad(PW-1) was the duty officer at the Police Station, Lajpat Nagar and had first interaction with the accused, at Police Station, Lajpat Nagar, where he had recorded his confessional statement, vide DD entry

No.11A(Ex. PW1/A). The DD entry reads as:

"I reside at 50 E, First Floor, Gautam Nagar, New Delhi in the Flat of Smt. Suman Roy and loved her. I came to know about her illicit relations with some other persons, on which some hot arguments took place between us. As a result whereof I became furious and today at about 8:00 oclock in the morning I finished her by giving knife blows. I had kept the blood stained knife and clothes at the locale CRL.A. 411/2018 Page 12 of 38 itself. I have locked the flat and the key of the flat is in my possession. I have come here at Lajpat Nagar Police Station to inform you, because I knew about the Lajpat Nagar Police Station only. (The underlined portion of the DD entry is admissible) 18. In view of the above, Section 27 of the Indian Evidence Act, 1872 is applicable, if confessional statement leads to discovery of some new facts. It is further not in dispute that a fact discovered on an information supplied by the accused in his disclosure statement is a relevant fact and that is admissible in evidence if something new is discovered or recovered from the accused which was not within the knowledge of the police before recording the disclosure statement of the accused (Ref-Kamal Kishore Vs. State (Delhi Administration), (1997) 2 Crimes 169 (Del). In the present case, the confessional statement made by the accused (Ex. PW-4/A) is inadmissible as per Section 25 of the Indian Evidence Act, 1872, however, there is nothing on record to disbelieve the testimony of PW-15 (Inspector, Sunil Kumar), PW-14 (SI Manoj Kumar), PW-1 (Sikandar) and PW-2 (Smt. Kiran Bharti) in whose presence the recovery of dead body of the deceased and weapon of offence were recovered on the basis of disclosure (Ex. PW-1/C) made by the accused which is admissible under Section 27 of the Indian Evidence Act. The testimonies of the prosecution witnesses in relation to recoveries are consistent and trustworthy and corroborative, as such the ground raised by learned counsel for the appellant in relation to inadmissibility of the recoveries at the instance of the accused person holds no ground. CRL.A. 411/2018 Page 13 of 38 MEDICAL AND SCIENTIFIC EVIDENCE¹⁹ Having discussed the admissibility of recoveries made under Section 27 of the Indian Evidence Act, 1872, we deem it appropriate to examine the medical and scientific evidence adduced by the prosecution. Dr.V.K. Jha, Medical Officer, BRJM Hospital, Jahangirpuri, Delhi conducted the post-mortem on the body of the deceased (Ex. PW-11/A) and during his examination-in-chief he

deposed as under:-

"Opinion Cause of death as hemorrhagic shock as a result of cut throat injury inflicted by other party. All injuries were antemortem in nature and Injury No.6 was sufficient to cause death in ordinary course of nature. Injury No.1, 4 and 5 have been inflicted are defence wound and time since death was approximately 26 hours. 20. Dr. K.L. Sharma, SR. CMO, Subzi Mandi Mortuary, Delhi during his examination-in-chief also revealed the External and Internal Injuries suffered by the deceased. The examining Doctor further conducted the internal examination of the body of the deceased and revealed as under:-

"External Injuries 1. Incised wound on (L) wrist 2cm x 1cm x muscle deep 2. Incised wound on lateral angle of (L) eye 1.5cm x 1cm 3. Incised wound on (L) parietal region 12cm x 1cm x subscalp 4. Incised wound on middle phalanges of middle Right hand of size 2cm x 2cm x muscle deep.

5. Incised wound on web space between middle finger and ring finger right hand of size 2cmX1cmXmuscle deep.

6. Multiple incised wound about ten in numbers on left CRL.A. 411/2018 Page 14 of 38 side of neck. The biggest one is 10cmX2cmXvessel deep. On dissection, it has cut skin, muscles and vessels. Blood and blood clot present. Internal examination On internal examination brain matter was soften, stomach was empty. 21. Blood samples lifted from the spot and clothes of the deceased as well as accused, including pant, shirt, baniyan and underwear were sealed by the Investigation Officer, PW-15 (Inspector, Sunil Kumar), which fact was confirmed from the testimonies of PW-14 (SI Manoj Kumar), PW-1 (Sikandar) and PW-2 (Smt. Kiran Bharti). PW-15 (Inspector, Sunil Kumar) also proved the FSL report as (EX.-PW-15/C) and (Ex.PW-15/D). As per scientific analysis report (EX.-PW-15/C) Blood was detected on exhibits (1a, 1b, 1c, 1d), (3a, 3b, 3c) and 5. Relevant portion of (Ex.-PW-15/C) and (Ex.PW-15/D) reads as under:-

“(Ex.-PW-15/C) DESCRIPTION OF ARTICLES CONTAINED IN PARCEL Parcel

One sealed cloth parcel described as envelope at S.No.1 sealed with the seal of FMT BJRM HOSPITAL DELHI containing exhibits 1a, 1b, 1c & 1d, described as envelope containing gauze in the forwarding letter. Exhibit 1a : One pants having brown stains. Exhibit 1b : One shirt having brown stains. Exhibit 1c : One baniyan having brown stains. Exhibit 1d : One underwear having brown stains. Parcel

One sealed cloth parcel sealed with the seal of SKS containing exhibits 3a, 3b & 3c. Exhibit 3a : One pants (Jeans) having brown stains. CRL.A. 411/2018 Page 15 of 38 Exhibit 3b : One baniyan having brown stains. Exhibit 3c : One bag having brown stains. Parcel

One sealed cloth parcel sealed with the seal of SKS containing exhibits 4a & 4b. Exhibit 4a : One sickle made up of wooden handle and metallic blade having rusty stains described as Fatal sickle. Exhibit 4b : One knife made up of wooden handle and metallic blade described as Domestic knife. Parcel

One sealed cloth parcel sealed with the seal of SKS containing exhibit 5 kept in a plastic container. Exhibit

Cemented material having darker stains described as Dry blood with floor. Parcel

One sealed cloth parcel sealed with the seal of SKS containing exhibit 6 kept in a plastic container. Exhibit

Cemented material described as Earth Control. RESULT OF ANALYSIS1 Blood was detected on exhibits (1a, 1b, 1c, 1d), (3a, 3b, 3c) and 5.

2. Blood could not be detected on exhibits 4a, 4b and 6 3. Report of serological analysis in original is attached herewith. (Ex.PW-15/D) BIOLOGY DIVISION The result of the serological analysis reads as: Exhibits Species of Origin ABO Grouping/ Remarks 1a Pants 1b Shirt 1c Baniyan 1d Underwear 3a Pants (Jeans) Human Human Human Human Human B group No reaction B group B group B group CRL.A. 411/2018 Page 16 of 38 3b Baniyan 3c Bag 5 Blood stained cemented material 6 material (control) Cemented Human Human Human B group No reaction B group No reaction --- 22. Perusal of the post-mortem of the deceased (Ex. PW-11/A) shows that the injuries caused on the person of the

deceased were inflicted with sharp edged weapon. The post-mortem report further suggests that the death has been caused due to injury no.6 as deposed by PW-11 (Dr. V. K. Jha) in his statement (Note:-Injury no.7 mentioned in the postmortem report Ex. PW-11/A)) Multiple incised wound about ten in numbers on left side of neck. The biggest one is 10cmX2cmXvessel deep. On dissection, it has cut skin, muscles and vessels. Blood and blood clot present. The examining Doctor, PW-11 (Dr. V. K. Jha), clearly opined that the Cause of death as haemorrhagic shock as a result of cut throat injury inflicted by other party. The post-mortem report (Ex. PW-11/A) supports the case of the prosecution and is in consonance with the disclosure statement (Ex. PW-1/C) made by the accused person which was duly corroborated by the testimony of PW-15 (Inspector, Sunil Kumar), PW-14 (SI Manoj Kumar), PW-1 (Sikandar) and PW-2 (Smt. Kiran Bharti).

23. Moreover, the FSL report (Ex.-PW-15/C) and (Ex.PW-15/D) clearly depicts that the blood group B found on the clothes of the accused matched with the blood group of the deceased. The post-mortem (Ex. PW-11/A) report directly points towards the fact that the injuries inflicted on the deceased were caused by the same knife that was CRL.A. 411/2018 Page 17 of 38 recovered at the instance of the accused and points out towards the guilt of the accused person in the commission of the crime for the offence punishable under Section 302 of the Indian Penal Code.

24. Upon perusal of the post-mortem report (Ex. PW-11/A) and scientific report (Ex.-PW-15/C) and (Ex.PW-15/D) it can be safely inferred that there is no inconsistency between disclosure statement (Ex. PW-1/C) made by the accused person and medical evidence/scientific evidence (Ex.-PW-15/C) and (Ex.PW-15/D) which point towards the guilt of the accused. LAST SEEN WITNESS²⁵ Learned counsel for the appellant contended that the Trial court has rightly given a finding that the last seen witness i.e. PW-1 (Sikandar) was a planted witness which goes on to prove that the other incriminating evidence such as disclosure statement of the accused is fabricated by the Investigating Officer in order to falsely implicate the appellant in the present case. In this context, it is relevant to observe the findings given by the trial court, which reads as under: 19. Taking the testimonies of PW1 and PW2 as a whole after the same has been tested on the anvil of cross

examination, the probative force of the testimonies of PW1 and PW2 with regard to the last seen evidence is heavily dented, as it is hard to imagine that PW1 was on Friday i.e. on 09.09.2012 at 11:15 am, whereas he used to leave for work by 9:00 am and used to return by 7:00 - 7:30 pm. He also admitted that prior to the incident, he had never heard from any neighbourer that the accused used to come CRL.A. 411/2018 Page 18 of 38 their jhuggi to meet his mami or not. He also admitted that his mama had never went to see house or a plot prior to the incident. Even PW2 stated that she did not take it seriously when deceased talked about the plot. However, she was told by PW1 that he had gone to purchase the plot. From the testimony of PW1, it is apparent that no other neighbourer had seen the accused hovering around the house of the deceased on the date of the incident or prior thereto. Further, the presence of PW1 at around 11:15 am on 09.09.2012 appears to be doubtful, as no reason has been given by him why he had not gone to work on that day and remained at his house. If that was so, then some other person must have also seen deceased going with accused on 09.09.2012. The PW1 also made material improvements in his testimony for instance that he gave Rs. 10,000/in cash to deceased for purchasing the plot, which was confronted with his previous statement made to the police. If that was so, then the PW1 would have definitely asked accused and the deceased the place where they were going to see the plot and the locality thereof. In these circumstances, it appears that PW1 was not the last seen witness and was introduced by the prosecution to strengthen its case. Therefore, this circumstance (c) is not proved and it is held against the prosecution and in favour of the accused. CRL.A. 411/2018 Page 19 of 38 26. From the perusal of the impugned judgment, we do not find any infirmity in the reasoning given by the learned trial court that PW-1 (Sikandar) was not the last seen witness and was introduced by the prosecution. PW-1 (Sikandar) failed to give any cogent explanation as to why he had not gone to work on the date of incident. Moreover, the witness further failed to give any explanation in relation to improvements made by him in his examination-in-chief. However, as discussed above, in the preceding paragraph, where the admissibility of recoveries pursuant to disclosure statements of the accused is dealt, we do not find any force in the argument raised by learned counsel for the appellant that since PW-1 (Sikandar) the last seen witness has been introduced by the Investigating Officer, the

recoveries effected pursuant to the disclosure are also planted by the prosecution. MOTIVE27 Learned counsel for the appellant contended that the trial court erred in observing that the accused and PW-2 (Smt. Kiran Bharti) were having extra marital relations which led the appellant to commit the alleged offence. In this context, it is relevant to peruse the testimony of PW-2 (Smt. Kiran Bharti) in order to ascertain whether there was any relation between the accused and PW-2 (Smt. Kiran Bharti), to commit the alleged offence. PW-2 (Smt. Kiran Bharti) deposed as under:-

"I have been working in Max Hospital on the post of General Duty Assistant (GDA) in the year 2011 and worked there for about one year and left the job on 10.9.11 when the incident had taken place. Accused Ranjit Singh CRL.A. 411/2018 Page 20 of 38 was also working in Max hospital as GDA. We both have joined the hospital at Shalimar branch when it was opened. Accused was harassing me and teasing me for the last six months when I left the hospital. Accused talk to me absurdly like that he loves me and stated that he cannot live without me. I have understood him many times that my age is 28 yrs. And I have two issues and I am older than you but he does not understand and did not give any heed to my words. When accused could not mend his ways and when he crossed his limits of indecent behaviour, I narrated all about bad behaviour of accused to my nephew Sikander and requested him to understand accused Ranjit. I also requested not to inform to my husband Ram Avadh otherwise unnecessary a quarrel may rise. But because of scarcity of time, my nephew could not talk to accused Ranjit. I also changed my shift due to harassment given to me by Ranjit from morning to night shift. Incidentally on 9.9.12, I went for my duty at about 8 am to the hospital and returned to my house at about 4 pm. I have also to do night shift on that day. I asked to Sikandar after his arrival to the house at about 4.30 pm about my husband. He told me that my husband had gone with Ranjit for looking a house as my husband intended to purchase a house. My husband also talked to me in this respect a few days before but I had not taken it seriously as we do not have enough money. In the evening of 9.9.12, CRL.A. 411/2018 Page 21 of 38 I had gone to hospital for attending night shift at about 8 pm and I was leaving my house I made call to accused and asked him about my husband but accused talks rudely (oot-patang bola) and stated that he had revealed the relation between me and

him to my husband and he totally blanked his mind on this issue and sent my husband to our house. I have made a call from my mobile no.8130504202 but I do not remember the mobile number of accused. I was remained tensed in the hospital and early in the morning, I came back to my house from hospital in between 7.30 to 8 am. Till that time, my husband had not returned to the house. I made calls to almost all my relatives but the whereabouts of my husband were not found anywhere. I along with my nephew after confirming the address of accused, we went to Ganga Ram Colony, Tikri Khurd. We saw that a large number of police gathered there and in between dead body of my husband lying in pool of blood. I felt astonished and I suspected my husband was murdered by Ranjeet because of his inclination of one sided love with me. 28. During the cross-examination, PW-2 (Smt. Kiran Bharti) deposed as under: Accused was not known to me prior to the joining in the Max hospital. I cannot tell whether accused joined the said hospital before my joining or after my joining. I do not remember the date or time when accused stated that he loves me. Vol. he first time stated to me these words when I was on the way to my home and he was following me. I do not remember the date and month but it was in the evening after morning shift when I was going to my home he stated to me that he cannot live without me. I cannot tell the exact date when I told about the behaviour of accused to Sikander but it was about 10-15 days before the death of my husband. On 1.9.12 I had told to change my shift to the incharge but same was not completely changed. It is wrong to suggest that I had not requested to the incharge for change of my shift duty from day to night. It is wrong to suggest that I had not told to my nephew about the bad behaviour of accused towards me. It is wrong to suggest that accused had not used absurd words to me. It is wrong to suggest that I had not joined the Max hospital at Shalimar Bagh. It is wrong to suggest that accused Ranjit was not working in Max hospital. It is wrong to suggest that accused was not harassing me or teasing me for the last six months when I left the hospital. My jhuggi is situated in the middle of the lane where I was residing. There were 15 jhuggies before and 15 jhuggies after my jhuggi. Same is the situation of my front lane. It is correct that they all known to us and I also know them. 1-2 persons of my locality/neighbourhood had seen the accused Ranjit and my husband gone together on the day CRL.A. 411/2018 Page 22 of 38

of incident but they do not

know accused Ranjit. I cannot tell the names of those persons who had seen my husband and Ranjit together. I do not know whether police had inquired from the said persons or not. It is wrong to suggest that 1-2 persons had seen the accused with my husband on the day of incident. It is wrong to suggest that Sikandar had not told me that my husband had gone with the accused for looking a house. It is wrong to suggest that my husband had not talked to me about this fact few days before. It is further wrong to suggest that in the evening of 9.9.11 I had not gone to attend the night shift to the hospital or that I made not call to accused about my husband. It is further wrong to suggest that I had not made call from my mobile to accused. It is correct that mobile number 8130504202 is not in my name. It is wrong to suggest that I had not made call to my all relatives about the whereabouts of my husband. I reached at Ganga Ram Colony at about 2.3 pm and remained there till dark but I cannot tell the exact time. Many public persons were there but they are at some distance from the spot. The Ganga Ram Colony is a residential colony and peoples were residing there. I do not know whether police has prepared any documents at the spot. It is correct that I do not remember the mobile number of accused Ranjit. It is wrong to suggest that I had not suspected that accused had committed the murder of my husband. It is further wrong CRL.A. 411/2018 Page 24 of 38 to suggest that some other person is involved in the murder of my husband. My statement was recorded at the spot in the evening by the police but I cannot tell the exact time. I do not remember how I came back to my house as I was in semi conscious condition after seeing the dead body of my husband and Sikander might be accompanied me. It is wrong to suggest that Sikander had committed the murder of my husband. It is wrong to suggest that deceased was murdered somewhere else and the dead body was planted thereafter at the house of accused to falsely implicate him in this case. It is wrong to suggest that I am deposing falsely. 29. PW-17 (Chander Shekhar) Nodal Officer, Bharti Airtel Limited, 224, Okhla Phase-II, New Delhi proved the call detail records of mobile phone No.8130504202 which was used by PW-2 (Smt. Kiran Bharti). The witness in his examination-in-chief deposed as under:-

"I have brought the summoned record pertaining to mobile No.8130504202, which was also supplied through e-mail on request received from ACP office, sub-Division, Ali Pur, Delhi on 07.12.2012. The said request is Ex.PW17/A. The said

call record is already exhibited as Ex.PW14/K. I have brought the record pertaining to the aforesaid mobile number. As per customer application form, the mobile No.8130504202 was in the name of CRL.A. 411/2018 Page 25 of 38 Sh.Shikander S/o Sh.Jagar Dev, R/o 58/236, Gali Sewak Clinic, Haiderpur Village, Delhi. The customer supplied Election Identity Card duly attested and signed by the customer. The customer application form is Ex.PW17/B which is duly attested by me at point A, B and C (original seen and returned). The Election Identity Card is Ex.PW17/C, which is duly attested by me at point A. I also took out the call detail record of the aforesaid mobile number dated 01.09.2012 to 10.09.2012 and brought the same, which is Ex.PW17/D (consisting of 6 pages) all bears my signatures at point A. I have brought the Certificate under Section 65B of Indian Evidence Act, bearing my signatures at point A. The same is Ex.PW17/E. All the call details Ex.PW17/D were generated from the computer which is lawfully under my control and possession, derived from the computer and its password is protected under my control. I generated the details of the calls already Ex. PW17/D. The information/CDR Ex.PW17/D is computer generated and computer is in function in ordinary course of business and there is no chance of tampering and manipulation in it. I have also brought the cell ID chart, same is Ex.PW17/F, which bears my signature at point A. 30. From a perusal of the above testimonies, it is evident that the accused was known to PW-2 (Smt. Kiran Bharti) wife of the deceased prior to CRL.A. 411/2018 Page 26 of 38 the date of the incident. The deposition of PW-2 (Smt. Kiran Bharti) before the Court proves that accused and PW-2 were working in the same Hospital and the accused was constantly making efforts to build relationship with PW-2 (Smt. Kiran Bharti). PW-2 (Smt. Kiran Bharti) during her examination-in-chief further revealed that on 09.09.2012 i.e. the date of incident her husband (the deceased) was in the company of the accused and deposed that In the evening of 9.9.12, I had gone to hospital for attending night shift at about 8 pm and I was leaving my house I made call to accused and asked him about my husband but accused talks rudely (oot-patang bola) and stated that he had revealed the relation between me and him to my husband and he totally blanked his mind on this issue and sent my husband to our house. I have made a call from my mobile no.8130504202 but I do not remember the mobile number of accused. The examination-in-chief of the wife of the deceased further revealed

that she suspected that my husband was murdered by Ranjeet because of his inclination of one sided love with me..

31. The Airtel Prepaid Enrolment Form, the Call data records and the Cell ID chart of mobile phone No.8130504202, used by the PW-2 (Smt. Kiran Bharti), (Ex.PW-17/B), (Ex. PW-17/D) and (Ex. PW.17/F) proved by PW-17 (Chander Shekhar) Nodal Officer, Bharti Airtel Limited, 224, Okhla Phase-II, New Delhi shows that calls were exchanged between the accused (phone No.8750320556) and wife of the deceased PW-2 (Smt. Kiran Bharti) (phone No.8130504202). There is no denial of the fact that the phone No.8750320556 was used by the accused as the testimony of PW-2 (Smt. Kiran Bharti) reveals CRL.A. 411/2018 Page 27 of 38 that the phone No.8750320556 was used by the accused, further (Ex. PW-1/B) personal search memo of the accused at the time of arrest shows that mobile phone No.8750320556, was found in the possession of the accused at the time of his arrest. The call data record (Ex. PW.17/D) reveals that the accused and PW-2 (Smt. Kiran Bharti) were in touch with each other prior to the date of the incident. The call data record corroborates the version of the PW-2 (Smt. Kiran Bharti) wherein she claimed that she called the accused in the evening of the date of the alleged incident i.e. 09.09.2012 to know the whereabouts of her husband whereby the accused stated that he had revealed the relation between me and him to my husband. The testimony of the PW-2 (Smt. Kiran Bharti) further finds support from the Cell ID Chart (Ex. PW.17/F) which shows the location of the accused and PW-2 (Smt. Kiran Bharti) at their respective places.

32. The testimonies of PW-2 (Smt. Kiran Bharti) revealed that she was not acceding to the one side inclination of love shown by the accused towards her which led to the commission of the alleged offence. Hence, the motive for committing the crime by the accused person stood established. DEFECTIVE INVESTIGATION³³ The counsel for the appellant further argued that the investigation conducted by the police is defective and full of lacunas, as the investigating officer failed to get the CDRs of the phone of the appellant; that the prosecution failed to join any independent witness at the time of alleged recoveries at the instance of the accused person PW-1 (Sikandar) who had joined as a witness during the recovery is not CRL.A. 411/2018 Page 28 of 38 a reliable

witness and his testimony is dented; the investigation officer failed to seize the lock and key of the house where the alleged incident is said to have taken place. As far as joining of independent witness is concerned, it is relevant to refer to the dicta of the Apex Court in *Gian Chand & Ors vs State Of Haryana* cited in AIR 2013 SC3395 wherein it has been held that mere non-joining of an independent witness where the evidence of the prosecution witnesses may be found to be cogent, convincing, creditworthy and reliable, cannot cast doubt on the version forwarded by the prosecution, if there seems to be no reason on record to falsely implicate the appellants. In the present case, as discussed above, the recoveries effected by the prosecution at the instance of the accused person is held to be credible and the testimonies of prosecution witnesses are trustworthy and consistent and as such the non-joining of independent witness does not result in the acquittal of the accused in the present case.

34. In relation to non- seizure of lock and key of the house where the alleged incident is said to have taken place and non-production of Call data records of the mobile phone of the accused is concerned, the Apex Court in the case of *Gajoo v. State of Uttarakhand* reported in 2012 (9) SCC532 in relation to scope of benefit accrued to the accused in case of defective investigation is concerned, it was held as under:-

"19. Now, we turn to the last submission on behalf of the accused that no serologist report was obtained in relation to the Daranti, Ext. 2 and blood stained pyjama, Ext. Ka 5, and therefore, the prosecution case should fail. This argument does not impress us at all. No doubt both these exhibits were not sent to the laboratory for obtaining serologist report, but the absence thereof per se would not CRL.A. 411/2018 Page 29 of 38 give any advantage to the accused. This is merely a defect in investigation. A defective investigation, unless affects the very root of the prosecution case and is prejudicial to the accused, should not be an aspect of material consideration by the court. PW5 has duly proved the recovery of Daranti, Ext. 2 and the blood stained pyjama, Ext. Ka 5 and has duly stood the test of cross-examination in court. Both these articles were recovered by the investigating officer Brahma Singh, PW6 and the recoveries have been duly established before the court. The recoveries having been proved and the case of

the prosecution being duly supported by two eye-witnesses, PW2 and PW3 and two witnesses, PW4 and PW5 who were present immediately after the occurrence, have proved the case of the prosecution beyond any reasonable doubt.

20. In regard to the defective investigation, this Court in the case of Dayal Singh and Ors. v. State of Uttaranchal 2012 (7) Scale 165 while dealing with the cases of omissions and commissions by the investigating officer, and duty of the Court in such cases held as under:

22. Now, we may advert to the duty of the Court in such cases. In the case of Sathi Prasad v. The State of U.P. (1972) 3 SCC613 this Court stated that it is well settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the Court to see if the evidence given in Court should be relied upon and such lapses ignored. Noticing the possibility of investigation being designedly defective, this Court in the case of Dhanaj Singh @ Shera and Ors. v. State of Punjab (2004) 3 SCC654 held, "in the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing CRL.A. 411/2018 Page 30 of 38 in conformity with into the hands of the investigating officer if the investigation is designedly defective.

23. Dealing with the cases of omission and commission, the Court in the case of Paras Yadav v. State of Bihar AIR 1999 SC644 enunciated the principle, the previous judgments, that if the lapse or omission is committed by the investigating agency, negligently or otherwise, the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts, otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party. In the case of Zahira Habibullah Sheikh and Anr. v. State of Gujarat and Ors. (2006) 3 SCC374 the Court noticed the importance of the role of witnesses in a criminal trial. The importance and primacy of the quality of trial process can be observed from the words of Bentham, who states that witnesses are the eyes and ears of justice. The Court issued a caution that in such situations, there is a greater responsibility of

the court on the one hand and on the other the courts must seriously deal with persons who are involved in creating designed investigation. The Court held that legislative measures to emphasize prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which the presentation of evidence in proceedings before the Courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair, as noted above, to the needs of the society. On the contrary, efforts should be to ensure fair illegitimately affect CRL.A. 411/2018 Page 31 of 38 trial where the accused and the prosecution both get a fair deal. Public interest in proper administration of justice must be given as much importance if not more, as the interest of the individual accused. The courts have a vital role to play. (Emphasis supplied) 24. With the passage of time, the law also developed and the dictum of the Court emphasized that in a criminal case, the fate of proceedings cannot always be left entirely in the hands of the parties. Crime is a public wrong, in breach and violation of public rights and duties, which affects the community as a whole and is harmful to the society in general.

25. Reiterating the above principle, this Court in the case of National Human Rights Commission v. State of Gujarat (2009) 6 SCC767 held as under: The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interest of society is not to be treated completely with disdain and as persona non grata. The courts have always been considered to have an overriding duty to maintain public confidence the administration of justice--often referred to as the duty to vindicate and uphold the 'majesty of the law'. Due administration of justice has always been viewed as a continuous process, not confined the particular case, protecting its ability to function as a court of law in the future as in the case before it. If a criminal court is to be to determination of in CRL.A. 411/2018 Page 32 of 38 justice with an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer fairness and impartiality

both to the parties and to the community courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators. The it serves. the 26. In the case of State of Karnataka v. K. Yarappa Reddy 2000 SCC (CrL.) 61, this Court occasioned to consider similar question of defective investigation as to whether any manipulation in the station house diary by the Investigating Officer could be put against the prosecution case. This Court, in Paragraph 19, held as follows:

19. But can the above finding (that the station house diary is not genuine) have any inevitable bearing on the other evidence in this case?. If the other evidence, on scrutiny, is found credible and acceptable, should the Court be influenced by the machinations demonstrated by the Investigating Officer in conducting investigation or in preparing the records so unscrupulously?. It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the Court in CRL.A. 411/2018 Page 33 of 38 the case cannot be allowed to depend solely on the probity of investigation. It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinised independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the investigation officers. Criminal Justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case. the action taken by 27. In Ram Bali v. State of Uttar Pradesh (2004) 10 SCC598 the judgment in Karnel Singh v. State of M.P. (1995) 5 SCC518 was reiterated and this Court had observed that 'in case of defective investigation the court has to be circumspect while evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigation officer if the investigation is designedly defective'.

28. Where our criminal justice system provides safeguards of fair trial and innocent till proven guilty to an accused, there it also contemplates that a criminal trial is meant for doing justice to all, the accused, the society and a fair chance to prove to the prosecution. Then alone can law and order be maintained. The Courts do not merely discharge the function to ensure that no innocent man is punished, CRL.A. 411/2018 Page 34 of 38 but also that a guilty man does not escape. Both are public duties of the judge. During the course of the trial, the learned Presiding Judge is expected to work objectively and in a correct perspective. Where the prosecution attempts to misdirect the trial on the basis of a perfunctory or designedly defective investigation, there the Court is to be deeply cautious and ensure that despite such an attempt, the determinative process is not sub- served. For truly attaining this object of a 'fair trial', the Court should leave no stone unturned to do justice and protect the interest of the society as well.

29. This brings us to an ancillary issue as to how the Court would appreciate the evidence in such cases. The possibility of some variations in the exhibits, medical and ocular evidence cannot be ruled out. But it is not that every minor variation or inconsistency would tilt the balance of justice in favour the accused. of course, where contradictions and variations are of a serious nature, which apparently or impliedly are destructive of the substantive case sought to be proved by the prosecution, they may provide an advantage to the accused. The Courts, normally, look at expert evidence with a greater sense of acceptability, but it is equally true that the courts are not absolutely guided by the report of the experts, especially if such reports are perfunctory, unsustainable and are the result of a deliberate attempt to misdirect the prosecution. In Kamaljit Singh v. State of Punjab 2004 Cri.LJ28 the Court, while dealing with discrepancies between ocular and medical evidence, held, "It is trite law that minor variations between medical evidence and ocular evidence do not take away the primacy of the latter. Unless medical evidence in its term goes so far as to completely rule out all possibilities whatsoever of CRL.A. 411/2018 Page 35 of 38 injuries taking place in the manner stated by the eyewitnesses, the testimony of the eyewitnesses cannot be thrown out."

35. As a general principle, it can be stated that error, illegality or defect in investigation cannot have any impact unless miscarriage of justice is brought about or serious prejudice is caused to the appellant. If the prosecution case is established by the evidence adduced, any failure or omission on the part of the Investigating Officer cannot render the case of the prosecution doubtful. If direct evidence is credible, failure, defect or negligence in investigation cannot adversely affect the prosecution case, though the court should be circumspect in evaluating the evidence. Hence, the plea of the counsel for the appellant is not one which goes to the root of the prosecution. CONCLUSION³⁶ In cases where the direct evidence is scarce, the burden of proving the case of prosecution is bestowed upon motive and circumstantial evidence. It is the chain of events that acquires prime importance in such cases. 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 principal 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 CRL.A. 411/2018 Page 36 of 38 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 [See: Bodhraj v. State of J & K (2002) 8 SCC45. In the case at hand, the evidence adduced by the prosecution as discussed above, clearly proves the chain of events connecting the accused to the guilt of the commission of the offence. The evidence brought on record by the prosecution, is convincing, and prove the guilt of the accused beyond reasonable doubt.

37. The confession of the appellant to the police, the relevance and admissibility of which has been discussed before coupled with the fact that the recovery of the dead body and the murder weapon at the instance of the accused person has been established by the prosecution. Further, the medical and scientific evidence also strengthens the case of the prosecution and directly point towards the guilt of the appellant. Hence, the prosecution has succeeded in proving its case against

the appellant beyond all reasonable doubts.

38. Taking the entire case in its totality, we do not find any merit in this appeal requiring our interference. Resultantly, the appeal fails and is dismissed as such.

39. Trial court record be sent back.

40. Copy of the order be sent to the Jail Superintendent, Tihar Jail. Crl. M (Bail) 701/2019 (Suspension of Sentence) 41. In view of the order passed above in the main appeal, the present application for suspension of sentence of the appellant is rendered infructuous. CRL.A. 411/2018 Page 37 of 38 42. Application stands disposed of. MAY31 2019 afa SANGITA DHINGRA SEHGAL, J.

MANMOHAN, J.

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