

Vijay Kumar @ Babloo vs.state

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Court : Delhi

Decided On : Sep-30-2019

Appellant : Vijay Kumar @ Babloo

Respondent : State

Advocate for Pet/Ap. : Ms. Saahila Lamba

Judgement :

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

24. h September, 2019 Judgment pronounced on:

30. September, 2019 CRL.A. 257/2015 VIJAY KUMAR @ BABLOO Appellant Through: Mr. Mr.M.L.Yadav, Advocate versus Through: Ms.Radhika Kolluru, APP for the Respondent State alongwith Insp.R.K.Maan and SI Dinesh, PS Ashok Vihar STATE + CRL.A. 285/2015 ANOOP KUMAR Appellant Through: Mr.Sumeet Verma and Mr.Aman Chaudhary, Advocates, Advocates + STATE versus Through: Ms.Radhika Kolluru, APP for the Respondent State alongwith Insp.R.K.Maan and SI Dinesh, PS Ashok Vihar CRL.A. 649/2015 SANGEETA Appellant STATE Through: Ms. Saahila Lamba, Advocate versus Through: Ms.Radhika Kolluru, APP for the Respondent State alongwith Insp.R.K.Maan and SI Dinesh, PS Ashok Vihar CORAM: HON'BLE MR. JUSTICE G.S.SISTANI HON'BLE MR. JUSTICE CHANDER SHEKHAR CrI.A.257/2015 etc. Page 1 of 32

G.S.SISTANI, J.

1. All the three appeals arise out of a common judgment dated 30.09.2014 passed by the learned Additional Sessions Judge, Delhi, in Sessions Case No.26/2013, arising out of FIR No.317/10, registered under Section 302 of the Indian Penal Code (hereinafter referred to as IPC) at the Police Station Ashok Vihar. Arguments have been addressed in all the three appeals together and the same are being disposed of by a common judgment.

2. All the three appeals have been filed under Section 374 of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C.) assailing judgment dated 30.09.2014 whereby all the appellants have been held guilty under Section 302 read with Section 34 of IPC and Section 394 read with Section 34 of IPC. Challenge is also made to the order on sentence dated 22.11.2014 whereby all the appellants have been sentenced to imprisonment for life with a fine of Rs. 5,000/- each, in the default of payment of fine to further undergo simple imprisonment for a period of six months under Section 302 read with Section 34 of IPC. The appellants were also sentenced to rigorous imprisonment for a period of five years along with a fine of Rs.3,000/- each, in the default, to further undergo simple imprisonment for a period of three months under Section 394 read with Section 34 of IPC. Additionally, the appellants Anoop Kumar and Vijay Kumar @ Babloo were also held guilty under Section 397 of IPC and sentenced to rigorous imprisonment for a period of eight years. All the sentences were ordered to run concurrently. Crl.A.257/2015 etc. Page 2 of 32

3. Before the rival submissions of learned counsels for the parties can be considered, we deem it appropriate to outline the case of the prosecution which reads as under: 1. On receipt of DD No.18A dt. 19.11.2010 at 02.15 pm, IO / Inspector Pratap Singh along with staff reached at H. No.1(cid:173)197, Ashok Vihar, Phase(cid:173)I, Delhi where Sh. Vijender Gupta told that the house belonged to them and his father was living there. At the ground floor, main gate was closed and a lock along with keys was hanging there. After entering the house, it was found that Sh. Ram Avtar Gupta was lying dead on the floor of drawing(cid:173)cum(cid:173)bedroom. There were injuries on his neck and blood around his body. In the other rooms, almirahs were open, articles were disturbed and house was ransacked. Some burnt documents were found in the

backside portion of the house. Sh. Vijender Gupta gave his statement that he along with his family and brother were residing at C(cid:173)6, Bhagwan Dass Nagar, Punjabi Bagh, Delhi(cid:173)26 and doing the work of share trading. On 19(cid:173)11(cid:173)2010 at about 12.45 pm, his younger brother Surender Gupta telephonically informed him that he had been informed over phone by the police persons of PS Mahendra Park that their car make Swift bearing No.DL7CD(cid:173)8474 of silver colour was found abandoned. This car used to be with his father Sh. Ram Avtar Gupta at I(cid:173)197, Phase(cid:173)I, Ashok Vihar. He tried to contact his father but in vain and thereafter he along with his brother came at I(cid:173)197, Phase(cid:173)I, Ashok Vihar. He remained there and his younger brother Surender went to Mahendra Park to see the car. He saw the main gate of ground floor closed where his father was living and latch was fixed but the lock with its key was hanging there. He called the police at number 100. After arrival of police, the door was opened and he found his father lying on the floor in the bedroom in a pool of blood and he was dead. There was cut marks on the neck of dead body. The articles were scattered in the rooms and almirahs were opened. Some papers were burnt in the backside of house. Two mobiles phones of his father having No.9958541964 and 9350742499 were found missing.

4. On the basis of the statement made by the elder son of the deceased Vijender Gupta who was examined as PW3, rukka was sent on CrI.A.257/2015 etc. Page 3 of 32 19.11.2010 at 3.50 PM and a case under Section 302 of IPC was registered at Police Station Ashok Vihar on the same day at 4.05 PM.

5. On 15.03.2011, Charge under Section 397 was framed against the appellants Anoop Kumar and Vijay Kumar. A separate charge under Section 392 read with Section 34 and Section 302 read with Section 34 of IPC was also framed against all the appellants, to which they pleaded not guilty and claimed to be tried.

6. To bring home the guilt of the appellants, the prosecution examined as many as 32 witnesses in all. The statement of the appellants was recorded under Section 313 of Cr.P.C. whereby they denied all the incriminating material against them. No evidence was led by the appellants in their defence. Common arguments made on behalf of all the appellants:

7. Learned counsels submit that all the appellants have been falsely implicated in the present case. The case of the prosecution is based on the circumstantial evidence and all the circumstances relied upon by the prosecution including recoveries, matching of the chance prints found on the liquor bottle, a glass found at the house of the deceased and rear view mirror of the swift car are planted. The last seen evidence of PW9 Shiv Kumar Verma (neighbour of the deceased) relied upon by the prosecution is not trustworthy who had deposed that on 18.11.2010, at about 8.30 PM, he had seen all the appellants standing at the house of the deceased. The counsel contended that the medical opinion with regard to the time of death runs contrary to the evidence of PW9. As per the post mortem report, the time of death was opined between 11.30 PM-12.30 AM on 18/19.11.2010. In this background, the counsels contended that there is a considerable gap of about 3-4 hours from the time PW9 saw the appellants outside the house of the deceased and thus the evidence of this witness could not be relied. Submissions made on behalf of the appellant Anoop Kumar:

8. Learned counsel appearing on behalf of the appellant Anoop Kumar submits that the conduct of PW3 Vijender Gupta and PW27 Surender Gupta, being the sons of the deceased is highly suspicious and is against the basic human conduct. There is no explanation as to why PW3 and PW27 chose to stay outside the house of their father and not enter the house to look for him especially when the house was simply latched and the lock alongwith the keys was hanging there. It was further surprising that PW27 left the place of incident without knowing the whereabouts of his father and it was PW3 who chose to stay outside and did not bother to enter the house of the deceased but called at number 100 and chose to wait for half an hour. The counsel drew our attention to DD No.32 which was recorded by PCR officials on the day of incident at about 1.52 PM as also DD No.18A which was recorded at the Police Station. A reading of the same would show that PW3 had informed the Police officials that his father who used to stay alone in the house, was not present in the house and the lock of the house was also found broken. The statement of PW3 is further challenged on two grounds; firstly he had given a false statement to the Police that the lock was broken whereas the lock was lying in an open condition along with the keys. Secondly, As to how PW3 came to know that his father was not present in the house if he had

not even entered the house. CrI.A.257/2015 etc. Page 5 of 32 9. The counsel for the appellant Anoop has laboured hard to show that the testimony of PW27 Surender Gupta runs contrary to the testimony of PW5 SI Ritesh. Attention has been drawn to the cross- examination of PW5 SI Ritesh whereby it was stated by him that he had called Surender Gupta (PW27/the younger son of the deceased) for the identification of the abandoned car which belonged to the deceased. To which, PW27 showed his inability to reach by informing that some incident had taken place in his family.

10. The counsel contended that neither PW9 Shiv Kumar nor PW10 Rajiv (driver of the deceased) could depose regarding the appellant Sangeeta working as a maid at the house of the deceased during the incident. The said fact was even denied by the appellant Sangeeta in her statement under Section 313 of Cr.P.C.

11. It is also contended by the counsel for the appellant Anoop that the prosecution has failed to establish that the documents were found burnt at the back portion of the courtyard of the house of the deceased and there is no explanation as to why the appellants burned the documents if their intention was to rob the deceased.

12. The counsel also submits that as per the case of the prosecution, there were two knives which were allegedly used in the commission of the instant case. Out of the two knives, one kitchen knife with the green handle was seized from the spot while the other knife with orange handle was recovered at the instance of the appellant Vijay from an open area. The counsel submits that it is highly improbable that the appellants would leave one knife at the spot and hide the other knife. The counsel also submits that as per the forensic results, both the knives contained blood but no grouping was done. CrI.A.257/2015 etc. Page 6 of 32 13. Learned counsel also submitted that the finger prints found on the liquor bottle and the drinking glass found at the house of the deceased and also on the rear view mirror of the swift car which belonged to the deceased is planted.

14. Lastly, it was contended that the case on hand was solved on the basis of a small telephone diary of the deceased which was handed over by PW3 to the Police on 20.11.2010. The importance of the diary lies in the fact that it contained

the telephone number of one Usha who had allegedly given the most important lead to the Police about the telephone call received by her from a PCO at Wazirpur village. The counsel submitted that Usha, being the most vital witness in the chain of prosecution was not examined. The counsel also submitted that the prosecution has not proved that the handwriting in the said diary was of the deceased. Submissions made on behalf of the appellant Vijay Kumar @ Babloo:

15. Mr. Yadav, learned counsel appearing on behalf of the appellant contended that all the recoveries made by the prosecution are prior to the arrest of the appellant Vijay Kumar. The counsel further contended that the appellant Vijay was arrested after the arrest of the other two appellants and all the recoveries imputed upon the appellant are planted and nothing was recovered at his instance.

16. The counsel for the appellant submits that the alleged recovery of the weapon of offence i.e. knife from a public open place would be a sufficient ground to doubt the entire case of the prosecution against the appellant Vijay Kumar @ Babloo. The attention of this court has been drawn to Ex.PW26/J, as per which the recovery of the said knife was made from an open place i.e. near the wall of Samudayik CrI.A.257/2015 etc. Page 7 of 32 Bhawan. The counsel further submits that no finger prints were detected on the said knife and as per the serological results, human blood was found on the said knife but no grouping was possible. In this background, it was prayed that there is no evidence which could connect the appellant Vijay with the crime. Submissions made on behalf of the appellant Sangeeta:

17. Ms. Saahila Lamba, learned counsel for the appellant Sangeeta, while adopting the arguments of the counsel for the other appellants challenged the testimony of PW9 Shiv Kumar who had deposed that on 18.11.2010, at about 8.30 PM, he saw one lady alongwith two persons standing outside the house of the deceased. The said lady entered the house of the deceased while the other two persons moved ahead on the same road. The testimony of PW9 was challenged on the ground as to why he had not complained the incident on 19.11.2010 and it was only on 20.11.2010, the statement of PW9 was recorded.

18. Learned counsel for the appellant drew our attention to the statement made by the appellant Sangeeta under Section 313 of Cr.P.C. whereby it was stated that she was not working as a maid servant but her mother was working as a maid at the house of the deceased and she had accompanied her mother once, when she was of the age of

years old. The relevant questions 11 and 94 read as under: Q.11: It is further in evidence against you that PW10 identified in TIP you as the maid servant working at the house of Ram Avtar Gupta. What you have to say?. Ans: It is incorrect. In fact, I was shown myself in the PS before PW10 and the said witness was instructed by the police to identify me in jail. It is further stated that I was not working as a maid servant. Before 2 or 3 years back, my mother was Crl.A.257/2015 etc. Page 8 of 32 working as maid servant and once I accompanied with my mother when I was a child of

years old. xxx xxx Q. 94: Do you have anything else to say?. Ans: I am innocent. I and Anoop Kumar had just got married before 2 and prior to the incident. It was a love marriage. We were living a happy married life but unfortunately we were falsely implicated in this case. Police had taken us to the spot where dead body was lying and police asked me and my husband to put some tumbler (glass) and bottle on the table and as we were already beaten badly by the Police, we put the tumbler and bottle on the table. 19. The counsel pointed out that as per the evidence of PW12 Sambhaji Patil (the owner of jewellery shop), he failed to identify the appellants and had only identified the mangalsutra sold by him. Thus, in the absence of the identification, the appellants could not be connected with the recoveries.

20. Per contra, Ms. Radhika Kolluru, learned counsel for the State submits that the State has been able to prove its case beyond any shadow of doubt. She submits that as far as the conviction of the appellant Anoop is concerned, the results of the finger prints lifted from the articles including drinking glass and liquor bottle alongwith the keys of the Swift car which were recovered at the instance of the appellant Anoop clearly connects the appellant Anoop with the crime. The said keys were duly identified by PW10 Rajiv, being the driver of the deceased, in the TIP proceedings. The said TIP proceedings were conducted by the learned Civil Judge who was examined as PW19 by the prosecution.

21. The counsel for the State further submits that the recoveries made at the instance of the appellant Sangeeta duly connects her with the CrI.A.257/2015 etc. Page 9 of 32 crime. The appellant Sangeeta was also identified by PW10 Rajeev in the Trial Court as the maid who used to cook food for the deceased at the time of the incident. Besides the Court identification, the appellant Sangeeta was also identified in the TIP proceedings.

22. It was urged by the counsel for the State that as far as the appellant Vijay @ Babloo is concerned, it is evident from Ex.PW26/H that one mobile of the deceased alongwith other articles were recovered at his instance.

23. To answer the argument raised by the counsel for the appellants regarding the documents found burnt at the courtyard of the house of the deceased, it was submitted by the counsel for the State that there is no explanation available on record regarding the same and no benefit could be derived by the appellants on this ground as even the deceased might have burnt them.

24. We have heard learned counsels for all the parties and considered their rival submissions, carefully examined the testimonies of the witnesses on record and the impugned judgment rendered by the Trial Court. The Trial Court has convicted all the appellants on the basis of the following incriminating circumstances appearing against them: (i) On the fateful night, all the appellants were seen standing outside the house of the deceased by PW9 Shiv Kumar who was the neighbour of the deceased; (ii) The recoveries of the stolen property were made at the instance of the appellants; (iii) Motive for the offences of robbery and murder stands proved; (iv) Absence of any explanation by the appellants in their statement under Section 313 of Cr.P.C. CrI.A.257/2015 etc. Page 10 of 32 25. We deem it appropriate to deal with the circumstances under separate heads: LAST SEEN THEORY²⁶ One of the primary incriminating circumstance found by the Trial Court appearing against the appellants was that they were seen outside the house of the deceased. It will be useful to examine the testimony of PW9 Shiv Kumar (neighbour of the deceased) who was examined as a last seen witness.

27. At the outset, it would be useful to discuss the testimony of PW9 Shiv Kumar who deposed in his examination-in-chief that the deceased Ram Avtar Gupta used

to reside in his neighbourhood i.e. at the ground floor of I(cid:173)197, Phase(cid:173)I, Ashok Vihar, Delhi for the last about 2(cid:173)2 years but he was known to him for the last more than 20 years. PW9 was on visiting terms with the deceased and used to meet him in the evening. On 18th day of November or December 2010, at about 7:30 PM, when PW9 was present at the house of the deceased, it was informed by the deceased that his maid was about to come and thereupon PW9 left the house of the deceased. On the same day, at about 8:30 PM, when PW9 came outside his residence to close the gate of his house, he saw one lady alongwith two persons standing outside the house of the deceased. The said lady went inside the house of the deceased and the persons who accompanied her moved ahead on the same road. Thereafter, PW9 came inside his house and went to sleep. It was further deposed by PW9 that on the next day, in the afternoon, he came to know about the murder of the deceased Ram Avtar Gupta. Thereafter, on the next day, police came to his locality and made interrogation and recorded his statement. On CrI.A.257/2015 etc. Page 11 of 32 01.12.2010, PW9 was called at the Tihar Jail where he identified the two accused persons, out of which one was a lady. On 03.12.2010, PW9 identified one more accused at the Rohini Jail. PW9 further deposed that one lady and two male persons whom he saw in front of the house of the deceased Ram Avtar Gupta house on 18.11.2010 and later on identified at Tihar Jail and Rohini jail were present in court and pointed out towards the appellants Anoop, Vijay Kumar and Sangeeta. All the TIP proceedings were proved by him as Ex.PW19/A, Ex.PW19/C and Ex.PW19/X.

28. In his cross-examination, PW9 stated that he was residing at I(cid:173)189, Ashok Vihar, Phase(cid:173)I, Delhi for the last about 30(cid:173)35 years and his house was situated in front of the house of the deceased Ram Avtar Gupta. It was further stated by PW9 that no official came to his residence on 19.11.2010 to make inquiries. PW9 did not inform the sons of the deceased or any other person that he had seen two male persons and a lady outside the house of the deceased. To clarify his deposition regarding the period of stay of the deceased, it was stated by PW9 that the deceased was residing at I-197, Ashok Vihar for the last 20 years but in the meantime, he had shifted to Punjabi Bagh alongwith his children, however, the deceased had returned to the aforesaid address at I-197 and started

living there alone for the last about 2-2 years before the incident. PW9 further stated that he was on visiting terms with the deceased. The deceased often used to go to visit foreign countries. It was admitted by PW9 that sometimes the maid of the deceased used to come at the residence of the deceased in his presence and saw her entering the house. It was further admitted that the said maid used to cook food for the deceased. On 18.11.2010, at about 7.00 PM, he had visited the house of the CrI.A.257/2015 etc. Page 12 of 32 deceased but the said maid did not arrive at the house of the deceased in his presence. PW9 stayed with the deceased for about 10-15 minutes on the day of incident. It was clarified by PW9 that during the time of 10-15 minutes, the deceased attended two calls, out of which, one was made by a Chit fund Company and another call was attended by him, while he was in other room. After the second call was attended by the deceased, the deceased told PW9 to go to his house as someone had to come at his house. PW9 further stated that on 19.11.2010, he did not disclose this fact to anybody as he was not well and took rest. PW9 further stated that on 20.11.2010, at about 2.00-2.30 PM, the police officials reached his home and his statement was recorded by PW32 Pratap Singh (the then SHO, PS Ashok Vihar) including his arrival at home on 19.11.2010 at about 2.00-2.30 PM and the factum of his ill health.

29. The criminal machinery was set into motion by the elder son of the deceased by making a call at number 100. He was examined as PW3 Vijender Gupta and was the complainant in the instant case. He deposed in his examination-in-chief that he along with his family used to reside at C(cid:173)6, Bhagwan Das Nagar, East Punjabi Bagh, Delhi. PW3 was also residing alongwith the family members of his younger brother Surender Gupta (PW27). On 19.11.2010, at about 12:45 PM, he received a phone call of his younger brother (PW27) who told him that he had received a phone call of some police official from PS Mahendra Park informing that their car bearing No.DL7CD(cid:173)8474 Maruti Swift having silver colour which was being used by their father Ram Avtar Gupta was found lying abandoned. PW3 immediately tried to contact his father but the phone could not be connected. PW3 along with his younger brother (PW27) reached CrI.A.257/2015 etc. Page 13 of 32 at I(cid:173)197, Phase(cid:173)I, Ashok Vihar from where his younger brother (PW27) went to Mahendra Park to see the car of

his father. PW3 observed that the main gate of House No.1(cid:173)197 was bolted from outside and the lock was found hanging on the bolt in an open condition along with the keys. PW3 called at number 100 and thereupon the police arrived at the spot. PW3 along with the police officials entered the house of the deceased and saw that his father was lying dead on the floor of the bedroom in a pool of blood having cut marks on his neck. The household articles were found lying in a haphazard manner. All the almirahs were found lying open. In the backside courtyard, some ashes of burnt papers were found lying. Both the mobile phones of his father bearing No.9958541964 and 9350742499 were missing. The statement of PW3 was recorded by the police officials which was proved by him as Ex.PW3/A which led to the registration of FIR in the present case. PW3 further stated that his father was having interest in horse racing and was under the habit of drinking liquor. The deceased used to keep two maid servants, one for cleaning the house and one for cooking food but he used to change them frequently. PW3 also deposed that some documents, foreign currency and one more mobile phone of his father bearing No.9278032437 were found missing. It was further deposed by PW3 that one blood stained vegetable cutting knife was found lying on the sofa, blood stained piece of sofa cover, two towels having blood stains (out of which one was found lying near the head of his father and the other found near the legs of his father), leather sleepers of his father, blood sample with the help of cotton wool and blood stained floor and plain floor were seized by the police vide seizure memo Ex.PW3/B. PW3 further deposed that two CrI.A.257/2015 etc. Page 14 of 32 glass tumblers were found lying on the glass table along with a liquor bottle of Peter Scot which was found lying on the bed and from which some liquor had already been consumed. Besides this, four steel plates, three bowls and one glass tumbler were found lying on the small sofa along with one carton/cover of Peter Scot bottle. All the said articles were seized by the police vide seizure memo Ex.PW3/C. PW3 further deposed that one iron khunti was also found lying in a room situated at the rear side and the lock and key from the main door were also seized vide seizure memo Ex.PW3/D. The ashes of burnt papers from the back courtyard were kept in two cartons and two separate pullandas were prepared and taken into police custody vide seizure memo Ex.PW3/E. The Investigating Officer prepared the site plan at the instance of PW3. On 20.11.2010, PW3 handed over a

telephone diary/pocket diary of his father to the police in which he used to record the telephone numbers which was seized by the police vide seizure memo Ex.PW3/F.

30. In his cross-examination, it was stated by PW3 that his father used to keep two maids, one for cleaning the house and the other for cooking food. One driver namely Rajeev (PW10) was also employed by his father and was in service at the time of the incident. PW3 further stated that he used to visit his father once in one or two months, but prior to the incident, he was visiting the deceased regularly for the last 10(cid:173)15 days. PW3 stated that his father used to keep a small diary having all the telephone number but it was not handed over to the police on 19.11.2010. It was further stated by PW3 that his statement was recorded on 19.11.2010, at around 2.30 or 3.00 PM. The exhibits were lifted after the Crime Team left the spot and it was done in his CrI.A.257/2015 etc. Page 15 of 32 presence. PW3 again said that his statement was recorded after the exhibits were lifted.

31. The younger son of the deceased was examined as PW27 Surender Gupta who deposed in his examination-in-chief that his father Ram Avtar Gupta was residing at I(cid:173)197, Phase(cid:173)1, Ashok Vihar for the last 2 and years from the incident. On 19.11.2010, at about 12 noon, PW27 received a telephone call from Police Station Mahindra Park informing that their car bearing No.DL7CD(cid:173)8474 having silver colour was found abandoned near Mandi. PW27 passed this information to his elder brother Vijender Gupta (PW3) and tried the mobile phones of his father who was having three mobile phones at the time of incident. There was no response on all the three mobile phones. Thereafter, PW27 along with his brother reached at I(cid:173)197, Phase(cid:173)1, Ashok Vihar. After reaching the spot, PW27 left to Adarsh Nagar Mandi after leaving his brother at the spot and went to see the said car. On his return to the house of his father at Ashok Vihar, PW27 came to know that his father was killed. All the articles were found scattered and almirahs were found broken. All the three mobile phones of his father were found missing. His father had gone to Sri Lanka and Nepal and was having foreign currency with him. The foreign currency and Indian currency were also found missing from the house of the deceased. PW27 further deposed

that his father used to take services of maids for the preparation of food as also for cleaning the house but he used to change them within one or two months, if not satisfied with their services. The dead body of the deceased was blood stained. One vegetable knife stained with blood was found lying on the sofa. One towel was also found lying under the head of his father while another towel was found lying near the Crl.A.257/2015 etc. Page 16 of 32 dead body. The blood stained leather chappal was also found lying near the spot. Two drinking glasses having some liquor and one bottle of Peter Scot were found lying on the bed. Some steel plates and katories were found lying on the sofa and one cover of bottle of Peter Scot and a drinking glass were also found lying in front of sofa. The Investigating Officer lifted all the articles from the spot and sealed under the seal of PSD. Blood samples were also lifted by the Investigating Officer from the spot with the help of cotton. All the articles were taken into possession vide memo Ex.PW3/B. PW27 further deposed that one lock was found hanging on the main gate alongwith two keys and were also taken into possession. One iron kunthi was present at the back of the room. All the articles were taken into possession vide seizure memo Ex.PW3/D. Two drinking glasses from the table, one bottle of Peter Scot, four steel plates and three steel katories and one drinking glass from the small sofa and a packaging cover of Peter Scot were seized vide seizure memo Ex.PW3/C. Some burnt documents were found lying at the open space behind the room. PW27 also identified the case properties i.e. knife Ex.P2; piece of blood stained sheet Ex.P3; the towels Ex.P4 and P5; sleeper Ex.P6; blood stained cotton Ex.P7; blood stained marble pieces Ex.P8; lock Ex. P9; keys Ex.P10; iron khunti Ex.P11; two glasses Ex.P12 & P13; liquor bottle Ex.P14; one glass tumbler, four steel plates and three steel bowls Ex. P15 and cartons Ex. P16.

32. It is noteworthy to mention that on 19.11.2010, at about 12 noon, PW27 Surender Gupta, received information from Police Station Mahindra Park informing that their Swift car bearing No.DL7D- 8474 was found abandoned near Mandi. In this background, it would be necessary to examine the testimony of PW10 Rajiv in detail who Crl.A.257/2015 etc. Page 17 of 32 was working as a driver with the deceased Ram Avtar Gupta. PW10 deposed in his examination-in-chief that for the last about 1 to 2 years prior to the death of the deceased, he used to drive a silver colour Swift car bearing No.DL7CD(cid:173)8474. On 18.11.2010, at about

6(cid:173)6:30 PM, he parked the said car outside the residence of the deceased and kept the keys of the car on the table, near TV, in the drawing room and left for his home. On 19.11.2010, PW10 came to know about the murder of the deceased through one of his friends namely Hans Jain and reached the spot but the said car was not found where he had parked it nor the keys of the said car was found lying there on the said table. The statement of PW10 was recorded by the Police officials on 19.11.2010. After about 9(cid:173)10 days of the murder of the deceased, PW10 was called at Tihar jail where he identified one maid servant of the deceased. In the mid January, 2011, PW10 identified the keys of the Swift car of the deceased at the Rohini Courts. PW10 had duly identified the appellant Sangeeta in the Trial court as the maid servant who was working at the house of the deceased who used to cook food for the deceased. PW10 also correctly identified the keys of the Swift car in the Trial Court. MEDICAL EVIDENCE:

33. PW16 Dr. K. Goel, who was posted as CMO, Aruna Asaf Ali Govt. Hospital conducted post-mortem examination on the body of the deceased. PW16 deposed in his examination-in-chief that on 20.11.2010, at 11.30 AM, the dead body of Ram Avtar Gupta was sent by PW32 Insp. Pratap Singh, PS Ashok Vihar. His detailed report was proved by him as Ex.PW16/A wherein the following injuries were recorded: CrI.A.257/2015 etc. Page 18 of 32 On external examination, following injuries were found on the body:

1. Incised wound 4 x 1 cm over left front of neck at the level of about 1 cm above the upper level of apple of adam, medial end of the wound was about 2 cm left to the mid line. Lateral end of the wound was having about 3 cm long abraded tail;
2. Incised wound 3.5 x 0.75 cm placed over left front of neck about 1 cm below injury No.1 and its medial end was about 1 cm away from the mid line and lateral end having about 2 cm long tail;
3. Incised wound 2 x 0.5 cm placed over apple of adam full skin deep only;
4. Incised wound 2 x 0.5 cm placed over right side of base of neck front just right to mid line, muscle deep only and small tailing at medial end;

5. Scratch abrasions - 2 cm long over upper left front of neck, 6 cm long over mid line and left front of neck at lower side, 6 cm long vertical over left side of umbilical quadrant. INTERNAL EXAMINATION: On exploration of neck, injury No.1 and 2 cut the underline tissues cleanly and left sided blood vessels of front of neck including external carotid artery and jugular vein transversely with blood clots. Rest of the neck structures were intact.

34. PW16 opined that all the injuries were ante-mortem in nature and were caused by sharp edged cutting weapon and the cause of death was opined as hemorrhagic shock consequent upon injury to the neck vessels. Injuries No.1 and 2 were opined as sufficient to cause death in the ordinary course of nature individually or collectively. Time since death was opined as 35-36 hours from the post-mortem examination. Crl.A.257/2015 etc. Page 19 of 32

35. On 18.01.2011, subsequent opinion was sought from PW16 with regard to the weapon of offence by SHO, PS Ashok Vihar. Two packets containing two kitchen knives having orange and green handles were produced before PW16. The sketches were prepared which was proved as Ex.PW16/B. It was opined by PW16 that the injuries mentioned in the Post Mortem report (Ex.PW16/A) were possible by either of these knives or similar to such type of other weapons and proved his opinion as Ex.PW16/C. The said knives were duly identified by PW16 in the Trial Court.

36. It has emerged from the Post Mortem report that the death of Ram Avtar Gupta took place between 11:30 PM-12:30 AM on 18/19.11.2010 which is duly corroborated by the testimony of PW9 Shiv Kumar who had seen all the appellants standing outside the house of the deceased at about 8.30 PM on the fateful night. On a conjoint reading of the medical evidence alongwith the testimony of PW9 Shiv Kumar, we find the version of PW9 as trustworthy. FSL RESULTS:

37. PW29 SI Gynanender Singh who was posted as Finger Print Expert at Finger Prints Bureau, Kamla Market on 19.11.2010 deposed in his examination-in-chief that on that day, he received a copy of scene of crime, examination report along with lifted chance prints which were marked as Q1 to Q4 (glass, liquor bottle). PW29 also received photographs of the chance prints which were marked as Q1

to Q4 and Q1 & Q2 (rear view mirror of the Swift car) along with their negatives which were developed by North West District Crime Investigation Team. PW29 also received a letter dated 05.01.2011 from SHO PS Ashok Vihar with the specimen finger prints of the CrI.A.257/2015 etc. Page 20 of 32 appellants Vijay Kumar, Sangeeta and Anoop. PW29 examined the chance prints which were lifted from House No.1/197, Phase(cid:173)1, Ashok Vihar, Delhi and prepared his detailed report which was proved by him as Ex.PW29/A. He also prepared description report of the identical point which was proved by him as Ex. PW29/B. It was also deposed by PW29 SI Gyanender Singh that the photographs of the identical chance prints marked as Q1 and enlarged photograph of specimen left thumb impression of the appellant Anoop Kumar which was marked as S4 were affixed on Ex.PW29/C and photograph of the chance print marked as Q1 was at point X and photograph of the specimen marked as S4 was at point Y on Ex.PW29/C. PW29 also proved the specimen finger impressions slip as Ex.PW29/D. The relevant part of Ex.PW29/A reads as under: (A) Result of Chance prints developed from H. No.1/19 Phase-I Ashok Vihar N.D.

1. Chance print marked Q1 is identical with specimen left index finger impression marked S1 on the specimen finger impression slip of Anup s/o Ram Avtar Singh (Accused).
2. Chance print marked Q3 is identical with specimen Right Index Finger impression marked S2 on the specimen finger impression slip of Anup s/o Ram Avtar Singh (accused).
3. Chance print marked Q4 is identical with specimen right little finger impression marked S3 on the specimen impression slip of Anup s/o Ram Avtar Singh (Accused).
4. Chance print marked Q2 is partial and smudged and does not disclose sufficient number of ridges details in their relative positions for search/comparison. (B) Result of Examination of Chance Prints developed from car No DL7C-D-8474, Swift, silver colour: comparison for hence, UNFIT CrI.A.257/2015 etc. Page 21 of 32 impression, Marked S4 on 1. Chance print marked Q1 is IDENTICAL with specimen left thumb the specimen finger impression slip of Anup s/o Ramavtar

Singh (Accused).

2. Chance print marked Q2 is NOT IDENTICAL with specimen finger print impression of the persons mentioned at para 1 (c). 38. Reading of the above makes it abundantly clear that the chance prints of the appellant Anoop were duly matched and there was no reasonable or plausible explanation rendered by him in this regard.

39. We may note that as per the FSL report which was proved by PW32 ACP Pratap Singh as Ex.PW32/A-1, blood was detected on Exhibit B i.e. one knife with plastic handle and metallic blade having brownish stains; Exhibit 2 i.e. piece of rexine sheets having darker stains; Exhibit 3 i.e. one towel having brown stains; Exhibit 4 i.e. one towel having brown stains; Exhibit 5 i.e. one chappal having darker stains; Exhibit 6 i.e. cotton wool swab having brown stains; Exhibit 7 i.e. pieces of marble stones having brownish stains; Exhibit 8 i.e. brown gauze cloth piece described as 'blood in gauze piece'; Exhibit 9a i.e. one shirt having brown stains; Exhibit 9b i.e. one baniyan having brown stains; Exhibit 9c i.e. one pyjama having brown stains; Exhibit 9d i.e. one underwear having brown stains; Exhibit 10 i.e. dark brown foul smelling liquid described as 'blood' and Exhibit A i.e. one knife with metallic blade having brownish stains. We may also note that as per the serological report Ex.32/H, O Group was detected on all the aforesaid exhibits except Ex.B, Ex. 2, Ex.5, Ex.9c, Ex.9d, Ex.10 and Ex.A. It is true that there has been no matching of the blood group. However, that would not make a difference in the facts of the present case. The accused has not offered any explanation how the human blood was found on the CrI.A.257/2015 etc. Page 22 of 32 clothes and the knife. The cumulative reading and apposite appreciation of the aforesaid evidence shows that there is no substantial reason to disbelieve the use of the said knife in the commission of the instant case. It is also apt to note that PW16 Dr. K. Goel opined that the injuries mentioned in the Post Mortem report (Ex.PW16/A) were possible by either of these knives or by any other similar type of weapons. RECOVERIES:

40. The next vital circumstance relied by the prosecution to prove their case is the recovery of the articles including the recovery of keys of the car which belonged to

the deceased. It is the case of the prosecution that the key of the Swift car which belonged to the deceased was recovered at the instance of the appellant Anoop Kumar.

41. With regard to the contention raised by the counsel for the appellant Vijay Kumar @ Babloo that the alleged recovery of the weapon of offence i.e. knife from a public place would be a sufficient ground to doubt the entire case of the prosecution against the appellant Vijay Kumar.

42. To deal with this submission, it would be necessary to discuss the view taken by the Supreme Court of India in the case of State of Himachal Pradesh v. Jeet Singh, reported at (1999) 4 SCC370 wherein the Apex Court discussed the scope of Section 27 of the Evidence Act on the recovery of the weapon of offence at the instance of the accused. The relevant para 26 reads as under: 26. There is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is open or accessible to others. It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others, it would vitiate the evidence under Section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others. For example, if the article is buried in the main roadside or if it is concealed beneath dry leaves lying on public places or kept hidden in a public office, the article would remain out of the visibility of others in normal circumstances. Until such article its hidden state would remain unhampered. The person who hid it alone knows where it is until he discloses that fact to any other person. Hence, the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible to others. If it is not, then it is immaterial that the concealed place is accessible to others. is disinterred, 43. Reading of the arrest memos of all the appellants would show that all (Emphasis Supplied) three of them were arrested on 24.11.2010, after 4:30 PM. We may note that on the same day, the keys of the Swift car which belonged to the deceased was recovered at the instance of the appellant Anoop Kumar lying near a Peepal tree located at the backside of Chicken Market, Wazir Pur, near the wall of Samudayik Bhawan. The memo of pointing out and seizure memo of keys was

prepared and has been proved as Ex.PW26/K. We may also note that one of the knives used in the offence was recovered at the instance of the appellant Vijay Kumar @ Babloo from the same place i.e. backside of Chicken Market, Wazir Pur, near the wall of Samudayik Bhawan. The recovery memo was prepared and was proved by PW26 SI Haroon as Ex.PW26/J.

44. Coming to the case on hand, we find the recovery of keys of the car No.DL(cid:173)7CD(cid:173)8474 and the recovery of knife from an open place to be unreliable which was recovered from backside of Chicken Crl.A.257/2015 etc. Page 24 of 32 Market, Wazir Pur, near the wall of Samudayik Bhawan. Although, there was no delay in effecting the recoveries so made as all the appellants were arrested on 24.11.2010, after 4:30 PM and the recovery of keys and the knife was made on the same day. RECOVERIES AT THE INSTANCE OF THE APPELLANT VIJAY KUMAR @ BABLOO:

45. Ex.PW26/H dated 24.11.2010 shows that 5 foreign currency notes, Rs. 1820, one black colour pant, one cream-light blue colour full sleeves shirt alongwith one silver mobile phone of make NOKIA were recovered from the black office bag found in his possession. RECOVERIES AT THE INSTANCE OF THE APPELLANT SANGEETA:

46. Reading of Ex.PW22/D dated 24.11.2010 shows that Rs.510 was recovered from the purse carried by the appellant Sangeeta. RECOVERIES AT THE INSTANCE OF THE APPELLANTS ANOOP AND SANGEETA:

47. Reading of Ex.PW22/F dated 24.11.2010 shows that the appellants Anoop and Sangeeta had jointly purchased one mangalsutra, one DVD and one TV. It was further stated by them they had purchased all these articles from their share of Rs. 16,000/- received by them after commission of murder and robbery on 18.11.2010. In this regard, learned counsel for the appellant Sangeeta argued that in the absence of identification of the appellants by PW12 Sambhaji Patil (owner of jewellery shop), it will not connect the recovery of mangalsutra with the appellants. In this background, we deem it Crl.A.257/2015 etc. Page 25 of 32 proper to discuss the evidence of PW12 Sambhaji Patil who had deposed that he was running a jewellery shop under the name and style of Subham Jewellers at

WP(cid:173)304, Wazirpur village. In November 2010 on a Friday, a couple came to his shop and asked for a mangalsutra for a sum of Rs. 7,000/(cid:173). PW12 asked them to come day after tomorrow. On Sunday, two male persons and a lady came to his shop and he handed over one mangalsutra to them. PW12 further deposed that he could not identify those persons but could identify the mangalsutra, if shown to him. His statement was recorded by the Police officials on 24.11.2010. PW12 identified the said mangalsutra in the Trial Court as Ex.P12/1.

48. During cross(cid:173)examination, it was denied by PW12 that he did not tell the Police officials as to how many persons had come to his shop and placed the order and how many of them had come to collect it, however, on confrontation with Ex.PW12/D1, the said statement was not recorded therein. PW12 further stated that as far as he remember, they gave Rs.5,000/(cid:173) as advance. It was voluntarily stated that the entire payment was made by currency notes in the denomination of Rs. 1,000/(cid:173). The receipt was issued to them. PW12 stated that he did not keep any record with him of the sales made as after he had given the slip to them, there was no need to keep the record. PW12 stated that the weight of gold in the said Mangalsutra was about 3 gms. It was admitted by PW12 that this type of Mangalsutra was easily available in the market. PW12 voluntarily stated that he prepared the said Mangalsutra.

49. It is the case of the prosecution that the appellants had purchased one T.V. and a DVD from the looted money. To determine the same, it would be necessary to discuss the testimony of the owner of Crl.A.257/2015 etc. Page 26 of 32 electronics shop who was examined as PW13 Niyamat Ali who deposed in his examination-in-chief that he was running a shop under the name and style of Vishal Electronics at WP(cid:173)302, Wazirpur village. PW13 brought the original bill book in the Trial Court, as per which on 21.11.2010, he sold a T.V. and a DVD vide bill No.526. The photocopy of the same was taken on record and was proved as Ex.PW13/A. PW13 categorically deposed that he could not identify the person to whom he had sold the said articles. PW13 identified the said TV and DVD as Ex.P1

and Ex. P1

respectively in the Trial Court. The relevant part of his testimony reads as under: Court Question: How many persons came to purchase the TV and DVD?. Ans. Two/three persons were there. 50. There is no doubt that motive assumes great significance in a case based on circumstantial evidence. Its existence is a decisive factor to connect the appellants with the crime. A careful perusal of the evidence of PW12 would show that two males and a lady came to his shop and he handed over the abovesaid mangalsutra to them which was duly identified by him in the Trial Court as the same mangalsutra which was sold by him in the month of November, 2010. The reading of the testimony of PW13 would also show that on 21.11.2010, he sold abovesaid TV and a DVD vide bill No.526 (Ex.PW13/A) to two/three persons which were duly identified by him in the Trial Court as the same which was sold by him. RECOVERIES AT THE INSTANCE OF THE APPELLANT ANOOP KUMAR CrI.A.257/2015 etc. Page 27 of 32 51. It is evident from the Ex.PW26/D dated 24.11.2010 that 40 foreign currency notes alongwith one black mobile phone of make Reliance LG and one black-brown mobile phone of make TATA INDICOM, which were kept in one polythene bag lying on the shelf of the rented accommodation were recovered at the instance of the appellant Anoop Kumar.

52. In the case of State of Maharashtra v. Damu reported at (2000) 6 SCC269 while dealing with the fundamental facet of Section 27 of the Evidence Act, the Court observed that the basic idea embedded in the said provision is the doctrine of confession by subsequent events, which is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. It further stated that the information might be confessional or non-inculpatory in nature, but if it results in discovery of a fact it becomes a reliable information and, therefore, the legislature permitted such information to be used as evidence by restricting the admissible portion to the minimum.

53. Although, it is very surprising that arrest of all the appellants were made on 24.11.2010, after 4:30 PM and on the same day all the recoveries were effected by the investigating agency. It is also true that none of the recovery memo bears any time of the recovery so made. In view of the judgment discussed in foregoing

para, if an accused person gives a statement that relates to the discovery of a fact in consequence of information received from him is admissible. Thus, the recovery made at the instance of the all the appellants has been rightly accepted by the learned Trial Court. Crl.A.257/2015 etc. Page 28 of 32 54. The counsel for the appellant Anoop argued that one of the most vital witnesses namely Usha who gave the most important lead to the Police about the telephone call received by her from a PCO at Wazirpur village was not examined by the prosecution. To answer this argument, we may profit with the view taken by the Honble Supreme Court in the case of Raja vs. State of Haryana reported at (2015) 11 SCC43 whereby it was observed that non-examination of a material witness is not a mathematical formula for discarding the weight of the testimony available on record, if the same is natural, trustworthy and convincing. [Also see State of H.P. vs. Gian Chand reported at (2001) 6 SCC71 Thus, we are of the view that no adverse inference should be drawn because of non-examination of the witness namely Usha who, as has been submitted by the counsel for the appellant Anoop is a material witness. The counsel also submitted that the prosecution has not proved that the handwriting in the said diary was of the deceased. In our view, nothing turns on it, in the presence of other evidence which cogently proves the guilt of the appellants.

55. It is true that the case on hand is based on circumstantial evidence. Thus, every circumstance linking the chain of the guilt of the accused persons has to be proved in order to establish the guilt of the appellants. Reading of the testimony of PW9 Shiv Kumar shows that on 18th day of November or December 2010, at about 7:30 pm, when he was present at the house of the deceased. The deceased received a phone call and he moved towards the gallery and after attending the said call, he came back to PW9 and told that his maid servant was about to come and thereafter, PW9 came out of the house. On the same day, at about 8:30 PM, when PW9 came outside Crl.A.257/2015 etc. Page 29 of 32 his residence to close the gate of his house, he saw one lady and two persons standing outside the house of the deceased. The said lady went inside the house of the deceased and other persons moved ahead on the same road. Thereafter, PW9 came inside his house and went to sleep. A careful reading of the evidence of PW9 shows that on the fateful day the appellant Sangeeta entered the house of the deceased at about

8.30 PM. The presence of other appellants Anoop and Vijay in the vicinity of the house of the deceased shows their involvement in the death of the deceased. In this background, we found the testimony of PW9 Shiv Kumar as trustworthy who had identified all the appellants in the TIP proceedings conducted on 01.12.2010 and 03.12.2010. We see absolutely no reason whatsoever as to why PW9 would foist the case on all the appellants if really the appellant Sangeeta was not working as a maid on the day of incident in the flat of the deceased. It is beyond dispute that the deceased was brutally killed and consequently most of the valuable articles were found missing. We also do not find force in the submission of the counsel for the appellants that the medical opinion regarding time of death runs contrary to the evidence of PW9.

56. The other circumstances including the recoveries would go to show that the appellant Sangeeta along with the appellants Anoop and Vijay committed the murder of the deceased person for gain and absconded carrying away the stolen property including cash and foreign currency. The recovery of the foreign currency at the instance of the appellants is another link in the chain which has to be examined in view of the evidence of PW3 Vijender Gupta and PW27 Surender Gupta. It has emerged in the cross-examination of PW3 that his deceased father earlier visited foreign country and since then, CrI.A.257/2015 etc. Page 30 of 32 he was keeping the dollars. This evidence is further corroborated from the evidence of PW27 who had deposed that his deceased father had gone to Sri Lanka and Nepal and he was having foreign currency with him. The foreign currency as well as the Indian currency were found missing from the house. Taking into consideration of all the circumstances, we are of the view that the recovery of foreign currency at the instance of the appellant is a highly incriminating material. There is no explanation tendered by the appellants in their statement under Section 313 of Cr.P.C. regarding the recovery of 40 foreign currency notes (6 Malysian, 10 Sri Lankan, 12 Nepalese and 12 American currency) at the instance of the appellant Anoop. 5 foreign currency notes (2 American, 1 Sri Lankan and 2 UAE currencies) were recovered from the appellant Vijay. Thus, we are of the view that by no stretch of imagination the foreign currency seized could be the property of the appellants.

57. Thus, a conjoint reading of the testimonies discussed above, recoveries made at the instance of the appellants, the medical evidence alongwith FSL results placed on record, it stands established that all the appellants in furtherance of their common intention were involved in the commission of murder of the deceased.

58. Taking into consideration the law as laid down by the Apex Court and circumstances of the present case, we are of the view that the learned Trial Court has rightly appreciated the evidence on record. The prosecution has successfully proved the charges levelled against all the three appellants. For the reasons stated above, we find no infirmity in the judgment passed by the learned Trial Court and we see no reason to interfere with the same. The conviction of all the Crl.A.257/2015 etc. Page 31 of 32 appellants under Sections 302 read with Section 34 of IPC and under Section 394 of IPC read with Section 34 of IPC is upheld. Also, the conviction of the appellant Anoop Kumar and Vijay Kumar @ Babloo under Section 397 of IPC is upheld.

59. All the three appeals therefore fail and are dismissed. Trial Court record be sent back along with a copy of this judgment.

60. Copy of this judgment be also sent to the Superintendent-Central Jail, Tihar for updating the jail record. G. S. SISTANI, J.

CHANDER SHEKHAR, J.

SEPTEMBER30, 2019// Crl.A.257/2015 etc. Page 32 of 32

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