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Prem Pal Vs. State

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Court : Delhi

Decided On : Dec-03-2014

Judge : Pradeep Nandrajog

Appellant : Prem Pal

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment Reserved on : November 18, 2014 Judgment Pronounced on : December 03, 2014 + CRL.A.456/2014 ANIL KUMAR Represented by: .....Appellant Ms.Nandita Rao, Advocate versus STATE Represented by: .....Respondent Ms.Aashaa Tiwari, APP Insp.Satish Kumar Sharma and Insp.N.S.Chauhan CRL.A.199/2014 PREM PAL Represented by: .....Appellant Mr.Neeraj Bhardwaj, Advocate versus STATE Represented by: .....Respondent Ms.Aashaa Tiwari, APP Insp.Satish Kumar Sharma and Insp.N.S.Chauhan CRL.A.393/2014 ANJU @ SONIA @ BABY Represented by: .....Appellant Mr.Joginder Tuli, Advocate with Mr.Tarun Nanda, Mr.Ashu Kumar Sharma and Ms.Pooja Arora, Advocates versus STATE Represented by: .....Respondent Ms.Aashaa Tiwari, APP Insp.Satish Kumar Sharma and Insp.N.S.Chauhan CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS.JUSTICE MUKTA GUPTA PRADEEP NANDRAJOG, J.

1. Process of criminal law was set into motion when at around 7:45 PM on February 08, 2007, DD No.52B, Ex.PW-26/A, was recorded at Police Station M.S. Park, Shahdara noting therein that one Rajesh Jain, resident of house bearing Municipal C-499, Gali No.5, Ashok Nagar, Delhi came to the police station and made a statement to the effect that on February 07, 2007 at about 5:00 PM his wife Renu Jain (hereinafter referred to as the Deceased) along with a girl named Anju had gone from the beauty parlour run by her i.e. Renu Jain at Gali No.9, Ashok Nagar, Delhi to someplace to apply Mehendi and has not returned to her residence since then and that he has looked for his wife everywhere but could not find her.

2. The aforesaid DD entry was entrusted for investigation to SI U.Bala Shankaram PW-27, who flashed wireless message and made inquiries from family members and neighbours of the deceased but found no clue.

3. On February 11, 2007 (second) statement of Rajesh Jain was recorded at PS M.S.Park, Shahdara, wherein he stated that he was residing at House No.C-499, Gali No.5, Ashok Nagar, Delhi with his wife Renu and his children Aanchal Jain (daughter) aged 11 years and Aakash Jain (son) aged 7 years. Since 2006 his wife was running a beauty parlour from a shop at premises No.D-307, Gali No.9, Ashok Nagar, Delhi, where since February 03, 2007 a girl named Anju Sharma aged about 28 years, whose address was not known to him, had been working. On February 07, 2007 his wife had left the beauty parlour with Anju at around 5:00 PM and since then she was missing. When she left, his wife was wearing a brown coloured suit, a grey sweater, a white shawl, four rings, one pair of earrings, two gold chains, four bangles and a pair of black slippers. He had lodged a missing person complaint on February 08, 2007. His wife was carrying with her a mobile phone of Nokia make having number 9811484599.

4. On the basis of afore-noted statement of Rajesh Jain, on February 11, 2007 itself HC Shankar Lal PW-20, registered FIR No.69/2007, Ex.PW-20/A, under Section 365 IPC.

5. On the same day SI Ravinder Singh PW-28, took over the investigation of the case.

6. SI Ravinder Singh recorded the statement of Aanchal Jain PW-14, daughter of the deceased, under Section 161 Cr.P.C. wherein she stated that she saw her mother leave the beauty parlour with Anju at 5:00 PM on February 07, 2007 and before leaving Anju had made a call to somebody from a STD booth situated in front of the beauty parlour.

7. Since the needle of suspicion was pointing towards Anju, it is apparent that the investigating officer would try to locate her. As deposed to by SI Ravinder Singh he found out that Anju was residing at House No.C-3/99, Nand Nagri, Delhi which he visited on February 13, 2007 but found the premises locked. He found out the address of Anjus mother Kailasho Devi whom he contacted only to learn from Kailasho Devi that Anju was married to Anil and were blessed with a daughter. SI Ravinder Singh took a photograph of Anju with her husband and daughter from Kailasho Devi on the back of which mobile number 9999453703 was written. Therefore SI Ravinder Singh obtained the call records Ex.PW-23/F and Ex.PW-23/G of the mobile numbers 9999453703 and 9811484599 respectively, the former pertaining to the mobile number written at the back of the photograph handed over by Kailasho Devi to SI Ravinder Singh and the latter being the mobile number disclosed by Rajesh Jain as being that of his wife Anju.

8. Since the mobile number 9999453703 was found to be in the name of one Salauddin PW-3, he was contacted by SI Ravinder Singh who told him that Anil (husband of Anju) was his employee and he had given the SIM card of the said number to Anil.

9. SI Ravinder Singh analyzed the call details Ex.PW-28/A and Ex.PW-28/B (also exhibited as Ex.PW-23/F and Ex.PW-23/G) of mobile numbers 9999453703 and 9811484599 which showed that on February 07, 2007 at about 5:22 PM one incoming call was received from a STD booth on the mobile number 9999453703; three outgoing calls were made from mobile number 9811484599 on the mobile number 9999453703 between 6:45 PM to 7:00 PM on February 07, 2007; mobile number 9999453703 was being used in phone having IEMI No.355335900441959 between February 01, 2007 to February 07, 2007 and mobile number 9811484599 was being used in phone having IEMI No.35146640599218 between February 01,

2007 to February 07, 2007.

10. On February 22, 2007 Inspector Virender Singh PW-29, took over the investigation of the case. On the same day a police team comprising of Inspector Virender Singh Punia PW-29, SI Ravinder Singh PW-28, Ct.Sheoveer PW-16, Ct.Ravipal Singh PW-22 and W/Ct.Yogita PW-15, arrested accused Anju and Anil near Crime against Women Cell, B-Block, Nand Nagri, Delhi.

11. On being interrogated by Inspector Virender Singh Punia in the presence of SI Ravinder Singh Ct.Sheoveer and Ct.Ravipal Singh, Anju and Anil made disclosure statements Ex.PW-15/1 and Ex.PW-22/DA wherein they stated that they had murdered the deceased and looted the ornaments worn by the deceased and that Prem Pal was also involved with them in the commission of the crime. Being told the residence of Prem Pal, Inspector Virender Singh Punia and other police officers with him arrested Prem Pal from his house in Nand Nagri and recorded his disclosure statement Ex.PW-16/3.

12. When aforesaid events were taking place at Delhi, unknown to the Delhi Police officials, on February 08, 2007 i.e. the day next after deceased went missing, the dead body of a female was found at 11:50 AM by passerbys within the jurisdiction of PS Loni District Ghaziabad, UP, who informed the local police and as deposed to at the trial in the instant case SI Hari Prakash Vats PW-30 of PS Loni, the dead body of the female was seized and since it remained unidentified, after taking a photograph of the dead body, post-mortem was conducted by Dr.P.K.Singh on February 10, 2007 and internal organs preserved for viscera examination. The body was cremated as unclaimed.

13. Inspector Virender Singh Punia contacted police officers in Ghaziabad because the disclosure statement made by the accused was to the effect that the dead body was thrown somewhere either on this side of the border in Delhi or the opposite side of the border in Loni. He was informed by SI Hari Prakash that in the morning of February 08, 2007 the dead body of a female had been recovered. Inspector Virender Singh took along Rajesh Jain who with reference to the photograph Ex.PX of the dead body identified it to be that of his wife. Inspector Virender Singh Punia collected the photographs of the dead body, the personal

apparels on the dead body which were handed over to the UP Police after the post-mortem, the viscera as also the post-mortem report Ex.PW-31/A from his counterpart SI Hari Prakash Vats.

14. The post-mortem report Ex.PW-31/A of the deceased records that the post-mortem was conducted at about 3:30 PM on February 10, 2007; the wounds found on the face and neck of the deceased were not true wounds but caused when the dead body was eaten by the animals and that the death had taken place 2 days prior to when the post-mortem was conducted.

15. On February 23, 2007 Anju led Inspector Virender Singh Punia PW-29, SI Ravinder Singh PW-28 and W/Ct.Yogita PW-15, to her house bearing Municipal No.173, Gali No.5, Mandoli Extension and got recovered a gold chain and ring from a box lying in her house and the same were seized vide memo Ex.PW-15/5.

16. On February 25, 2007 Inspector Satish Kumar PW-32, took over the investigation of the case. On the same day Anil led Inspector Satish Kumar PW-32 and Inspector Virender Singh Punia to his native village Ghanjera, U.P. and got recovered a mobile phone of make Nokia, model No.2300 and IEMI No.35535900441959 from his uncle Bhoop Ram PW4 which was seized vide memo Ex.PW-4/1. Thereafter Anil got recovered a mobile phone of make Nokia, model No.3610 and IEMI No.35146640599218 from one Narender Sahu Gangwar @ Nanhe PW-9 which was seized vide memo Ex.PW-5/1.

17. Inspector Satish Kumar recorded the statement Mark A1 of Narender Sahu Gangwar @ Nanhe PW-9 wherein he stated that he had purchased the mobile phone of make Nokia, model No.3610 and IEMI No.35146640599218 from Anil for a sum of `1,200/-. In addition thereto, Narender Sahu Gangwar @ Nanhe PW-9, also handed over a receipt Ex.PW-32/B stated to have been given to him i.e. Narender Sahu Gangwar @ Nanhe by Anil when he had purchased the said phone.

18. Thereafter Anil and Prem Pal led Inspector Satish Kumar and Inspector Virender Singh Punia to a jewellery shop owned by Avnesh Kumar PW-11, in Saraffa Bazaar, District Badaun, U.P. and got recovered two gold bangles and a

gold ring from the said shop which were seized vide memo Ex.PW-11/1.

19. On February 27, 2007 Prem Pal led Inspector Satish Kumar Inspector Virender Singh Punia and Ct. Bharat Pal to his house in Nand Nagri and got recovered a pant, shirt, vest and underwear from there which were seized vide memo Ex.PW-18/A.

20. Thereafter Anil led Inspector Satish Kumar Inspector Virender Singh Punia and HC Pratap Singh to his house in Nand Nagri and got recovered a pant, shirt and underwear from there which were seized vide memo Ex.PW-21/A.

21. On February 28, 2007 Anil and Prem Pal were taken to GTB Hospital for their medical examination. Prem Pal pointed towards a TSR bearing registration No.DL-1RH-1033 parked at Gate No.7 of GTB Hospital and said that said TSR was used by the accused in the commission of the crime. Inspector Satish Kumar was told by the driver of the TSR Dharminder PW-10 that on February 07, 2007 at around 7:45 PM Prem Pal had told him that his sister-in-law was not well and requested him to drop him at Krishna Vihar and that another gentleman and a lady (accused Anil and Anju) had also travelled in the TSR with him. Meaning thereby he had seen the three accused in the company of another lady : the deceased.

22. On March 30, 2007 G.N. Pandey PW-6, Metropolitan Magistrate, recorded the statement Ex.PW-6/1 under Section 164 Cr.P.C. wherein he stated that on February 07, 2007 he had parked his hired TSR near Gate No.7 of GTB Hospital. On said day, Prem Pal came there and told him that his sister-in-law is not well and that he should drop him at his house. On two prior occasions he had seen Prem Pal with an auto at the auto stand. He does not know Prem Pal. He dropped Prem Pal at Krishna Vihar Phase-II and charged fare of `50/- from him. He does not know about anything else.

23. On March 30, 2007 Dharminders statement Ex.PW-6/1 under Section 164 Cr.P.C. was recorded by Sh.G.N.Pandey the Metropolitan Magistrate PW-6 as per which he only said that Prem Pal had told him that his sister-in-law was not well and he should drop him at his house and he dropped Prem Pal at Krishna Vihar Phase II and charged a fare in sum of `50/- i.e. the statement Ex.PW-6/1 was in

substantial variation with what he statedly told Inspector Satish Kumar.

24. On April 10, 2007 Test Identification Parade of the gold ornaments recovered at the instance of the accused persons viz. two rings, two bangles and one gold chain were conducted at which Rajesh Jain identified the gold ornaments as those of his wife as per the report Ex.PW-6/A.

25. The articles seized in the present case were sent to FSL, Delhi for chemical/serological examination. Vide FSL report Ex.PW-32/F it was opined that no common poison was detected in the viscera of the deceased. Vide FSL report Ex.PW-32/G it was opined that neither human blood nor semen was detected on the clothes recovered at the instance of accused Anil and Prem Pal. The FSL report Ex.PW-32/F was shown to Dr.P.K.Singh PW-31, who had conducted post-mortem of the deceased, for his opinion regarding the death of the deceased. Vide his report Ex.PW-31/B, Dr.P.K.Singh opined that the cause of death of the deceased was asphyxia.

26. Needless to state, the accused persons were sent for trial. Charges were framed against the accused for having committed offences punishable under Sections 328, 364, 365, 392, 302 and 201 IPC read with Section 34 IPC. Additionally, charge was framed against Prem Pal for having committed an offence punishable under Section 376 IPC, and for which we may only highlight that there was no material before the learned Trial Judge to frame said charge against Prem Pal because the only material in support of the charge was Prem Pals disclosure statement that he had raped Renu before she was murdered; a disclosure statement which is clearly inadmissible in evidence.

27. At the trial, the prosecution examined 32 witnesses. We need not note in detail the testimonies of the witnesses associated with the investigation of the case for they have deposed on the lines, of factual narratives, noted by us in the foregoing paragraphs, but would be highlighting such testimonies or other evidence which needs to be brought for evaluating the creditworthiness of the evidence led at the trial.

28. Rajesh Jain PW-2, the husband of the deceased, deposed that on February 07, 2007 when he returned from his workplace his daughter Aanchal Jain informed him that the deceased had gone with accused Anju to a house bearing Municipal No.28A, West Jyoti Nagar, Delhi for the purposes of applying Mehendi. He visited said house but the deceased was not present there. He tried to contact the deceased on a mobile phone but could not do so because the phone was switched off. (Pertinently, Rajesh Jain did not state the mobile number of his wife while deposing.) He identified the gold ornaments recovered at the instance of the accused persons viz. two rings, two bangles and one chain as belonging to the deceased. He also identified the mobile phone of make Nokia, model No.3610 and No.35146640599218, recovered at the instance of accused Anil as belonging to the deceased.

29. Salauddin PW-3 did not support the case of the prosecution, only deposing that Anil was his employee and turning hostile from what was recorded in his statement by the police that he had given the SIM card of mobile number 9999453703 to Anil.

30. Bhoop Ram PW-4, deposed that Anil is his nephew and on February 10, 2007 he had come to his native place and handed over to him a mobile phone of make Nokia, model No.3610. On February 26, 2007 the said mobile phone was seized from him by the police officials.

31. Narender Sahu Gangwar @ Nanhe PW-9, deposed that on February 26, 2007 the police had made enquiries from him regarding a mobile phone purchased by him from Bareilly. Mobile phone of make Nokia, model No.3610 (allegedly recovered at the instance of accused Anil) was purchased by him from a boy named Bhupender who was not known to him. On being cross-examined by the prosecutor, he denied that said mobile phone was purchased by him from accused Anil.

32. Dharminder PW-10, deposed that on February 07, 2007 at about 7:30/07:45 PM he was standing at Gate No.7 of GTB Hospital with his TSR bearing No.DL-1RH-0733 when Prem Pal came to him alone and told him that his sister-in-law is not well and that he should drop him at Krishna Vihar, Phase-II. He dropped

accused Prem Pal at Krishna Vihar, Phase-II and charged `50/- as fare from him. Nothing else happened in his presence. On being cross-examined by the prosecutor, he said that on February 07, 2007 he was standing with his TSR at Gate No.7 of GTB Hospital when accused Prem Pal came there and asked him to accompany him to the front side of GTB Hospital. On accompanying accused Prem Pal to the front side of GTB Hospital he saw accused Anju and Anil along with a lady who was vomiting standing there. Accused Prem Pal told him that the lady who was vomiting is his sister-in-law; she is not well and he should drop them at Krishna Vihar, Phase-II. He dropped said four persons to an area surrounded by factories in Krishna Vihar, Phase-II. Confronted during cross examination by the accused with respect to his statement Ex.PW-6/1 recorded under Section 164 Cr.P.C. he simply said that his statement Ex.PW-6/1 was recorded before the Metropolitan Magistrate but could not render any explanation regarding the discrepancies therein vis--vis his statement made in Court.

33. Avnesh Kumar PW-11, deposed that he is the owner of a jewellery shop in District Badaun, U.P. In the month of February, 2007 one Anil and Prem Pal came to his shop and sold two gold bangles and one gold ring (allegedly recovered at instance of accused Anil and Prem Pal) to him but he did not identify accused Anil and Prem Pal as the two persons who had come to his shop to sell gold jewellery to him. On being crossexamined by the public prosecutor, he said that the accused Anil and Prem Pal are not the same persons from whom he had purchased two gold bangles and the gold ring.

34. Naresh Kumar PW-12, deposed that he is the owner of the house bearing Municipal No.5/173, Mandoli Extension. He had let out one room in his house to accused Anju and Anil two-three days prior to February 23, 2007.

35. Aanchal Jain PW-14, daughter of the deceased, deposed that the deceased was running a beauty parlour under the name of Akash Beauty Parlour at Gali No.9, Ashok Nagar, Delhi. Accused Anju has been learning the work of beautician from the deceased since January 28, 2007. On February 07, 2007 at about 5:00 PM accused Anju came to the beauty parlour of her mother and told her that at a marriage function Mehandi had to be applied and therefore her mother and Anju

left, but before that Anju made a call from a nearby STD Booth to somebody informing that she was bringing someone. Her mother and Anju thereafter left and her mother was wearing four gold rings, three gold chains, two pairs of earrings and one nose pin. Crl.A.No.199/2014 & conn.matters When shown the Page 12 of 28 jewellery items seized by the investigating officers, she denied that the two gold bangles (got recovered by Anil and Prem Pal) and a ring (got recovered by Anju) was that of her mother, but identified the other gold ring (got recovered by Anil and Prem Pal) and the gold chain (got recovered by Anju) were those of her mother. In respect of the bangles she said that the design of the bangles of her mother was different. She identified a mobile phone of Nokia make having IMEI No.3514664599218 : Model No.3610 as that of her mother (which was got recovered at instance of Anil).

36. Anuj Bhatia PW-23, Nodal Officer, Vodafone Essar Mobile Services Ltd., deposed that the registered consumer of mobile number 9811484599 was one Yogesh Dabas, son of Mange Ram Dabas as per their record and the registered consumer of mobile number 9999453703 was one Arif, son of Abdul Khaliq. He deposed that call record details Ex.PW-23/G and Ex.PW-23/F pertaining to the two mobile numbers respectively was issued by his company.

37. SI Ravinder Singh PW-28, deposed regarding the role played by him in the investigation of the present case as noted by us in the preceding paragraphs. Being relevant, we note following portion of the examination-in-chief of the witness:

On 14.2.2007, I again went to the house of her mother. Her mother namely Kailasho Devi met me at her residence. I asked Kailasho Devi to provide the address of Anju and Anil, but she could not provide any address. She further told me that Anju and her husband are not traceable since last 7 to 8 days leaving behind her infant daughter with her. She provided me one group photograph of Anju and her husband and their child. On the back of the photograph one mobile number of Anil was written 9999453703. The photograph is lying on the police file. Photograph is taken on the judicial file at the request of the Ld. Prosecutor. (Ld. Defence Counsel Mr. Gaurav Vashishth submits that he has no objection if the

photograph is taken on judicial file). The photograph is Ex.PX.

(Emphasis Supplied) 38. However, due to an inadvertent error the photograph handed over by the mother of accused Anju was not taken out from the police file and exhibited as Ex.PX. Instead, what was exhibited as Ex.PX was the photograph of the dead body of the deceased taken by the officials of PS Loni before cremating the body of the deceased. During the course of arguments of the present appeal(s), we had seen the police file. The photograph of accused Anju and Anil handed over by the mother of accused Anju to SI Ravinder Singh is (still) lying in the police file.

39. In their statements under Section 313 Cr.P.C. the accused denied everything and pleaded false implication. We note that in response to the question whether accused Anju was learning the work of beautician from the deceased since January 28, 2007, whereas accused Anil stated that accused Anju was learning the work of beautician but he does not know the place from where she was learning the said work accused Anju flatly denied that she was learning the work of beautician from the deceased.

40. Accused persons did not lead any defence in support of their evidence.

41. Vide impugned judgment dated November 22, 2013 it has been held by the learned Trial Judge that following facts are proved by the evidence led by the prosecution:

71. The following facts stand proved by the above narrated prosecution evidence: (a) That the prosecutrix was a beautician as deposed by PW2, PW14 and admitted by accused Anju. (b) That accused Anju was learning the art of beautician from the prosecutrix as deposed by PW-14, daughter of the deceased prosecutrix. (c) That the prosecutrix had accompanied with accused Anju on the basis of misrepresentation that she had to apply Mehendi at House No.28A, West Jyoti Nagar, Delhi, as deposed by PW-2. (d) That accused Anju made a telephonic call from the STD Booth situated in front of the shop of the deceased to her husband and she informed her husband that she was bringing the deceased with her as corroborated by CDR Ex.PW28/A at point A and B. (e) That accused Anju

made the prosecutrix to eat something poisonous or obnoxious substance which may be Alloo Ki Tikki which was mixed with poisonous substance as may be inferred from the testimony of TSR driver PW10 as he saw her vomiting. (f) That accused Anju made telephonic call to her Husband accused Anil from the mobile phone of the deceased on reaching GTB Hospital as proved by CDR Ex.PW28/A at point B. This has further proved that the deceased was with accused Anju. (g) That accused Anil and Prem Pal arrived at the GTB Hospital as corroborated by TSR driver PW10. PW10 even stated that he knew accused Prem Pal by face prior to the date of the incident. (h) That the deceased was last seen in the company of Anju by daughter of the deceased in the evening of 07.02.2007 and thereafter the deceased was seen in the company of all the accused firstly at GTB Hospital and then at the place of murder of the deceased by TSR driver PW10. (i) That accused Prem Pal hired a TSR No.DL1RH1033driven by PW10 from gate no.7 of the GTB Hospital and TSR driver took all of them including the deceased from the GTB Hospital. (j) That accused Anil, Prem Pal, Anju and the deceased prosecutrix by that TSR travelled and PW-10 dropped all of them in the area of Krishna Vihar Phase II, surrounded by factories arrived at the GTB Hospital, i.e. the place of recovery of dead body. (k) That dead body of a lady having similar description as that of the deceased prosecutrix as recovered by the police of PS Loni on 08.02.2007 as deposed by PW30. (l) That a panchnama of dead body of a lady and articles found on her dead body was prepared and the articles were preserved in Malkhana of PS Loni as deposed by PW30. (m) That the accused persons led the police party to the place from where a dead body of a lady having similar descriptions as that of the deceased was recovered by the police of PS Loni and at their instance Pointing Out Memo was prepared as deposed by PW28. (n) That PW2 husband of the deceased prosecutrix identified belongings of the deceased prosecutrix which were preserved by the police of PS Loni. (o) That a Mobile Nokia phone Ex.P2 which was being used by the deceased prosecutrix soon before her death was recovered from PW9 and SIM of telephone No.9756914171 was got activated by him. (p) That on 22.02.2007 accused Anju and Anil were arrested. They were interrogated and they made their disclosure statements on 23.02.2007. (q) That on 23.02.2007 accused Anju led the police party to her rented house No.173 and got recovered broken yellow coloured chain

and one yellow coloured ring Ex.P-12 and Ex.P-13 which belonged to the deceased. (r) That two gold bangles Ex.P3 and one gold ring Ex.P4 which were sold to PW11 by one Prem Pal and Anil got recovered from PW11 by these two accused persons. (t) That in a TIP of case property, Husband of the deceased prosecutrix, PW2, correctly identified belongings of the deceased prosecurix.

42. It has been held by the learned Trial Judge that afore-noted nineteen circumstances proved by the prosecution lead to the following irresistible conclusions:(i) Accused persons hatched a criminal conspiracy to abduct the deceased in order to murder the deceased and rob the mobile phone and gold ornaments possessed/worn by the deceased. (ii) Accused persons abducted the deceased with an intention to secretly and wrongfully confining her and murdering her. (iii) Accused persons robbed the mobile phone and gold ornaments possessed/worn by the deceased. (iv) Accused persons murdered the deceased. (v) Accused persons caused hurt to the deceased by means of poison etc.

43. In view thereof, the learned Trial Judge has convicted the accused of having committed offences punishable under Sections 328, 364, 365, 392, 302 and 120-B IPC. However, the learned Trial Judge has acquitted the accused of having committed offence punishable under Section 201 IPC on the reasoning that no evidence has emerged on record wherefrom it could be concluded that the accused persons has caused destruction of evidence. Likewise, the learned Trial Judge has acquitted accused Prem Pal of having committed offence punishable under Section 376 IPC on the reasoning that no evidence has emerged on record wherefrom it could be concluded that the accused Prem Pal had raped the deceased before she was murdered.

44. Vide order dated November 30, 2013 the learend Trial Judge has awarded following sentence to the accused:Offence committed by Sentence awarded by Default sentence the accused persons the Ld. Trial Judge awarded by the Ld. Trial Judge Sections 364 and 120- Rigorous Simple imprisonment B IPC. imprisonment for ten for two years. years and fine in sum of `10,000/-. Sections 365 and 120- Rigorous Simple imprisonment B IPC. imprisonment for five for one year. years and fine in sum of `5,000/-. Sections 392 and 120- Rigorous Simple imprisonment

B IPC imprisonment for for one year and six seven years and fine in months. sum of `7,000/-. Sections 328 and 120- Rigorous Simple imprisonment B IPC. imprisonment for five for one year and six years and fine in sum months. of `5,000/-. Sections 302 and 120- Life imprisonment and Simple imprisonment B IPC. fine in sum of for three years. `20,000/-. All the sentences awarded to the accused persons were directed to run concurrently.

45. Aggrieved by the conviction and the sentence the accused have filed the above captioned appeals. Case against accused Anju 46. From the afore-noted conspectus of facts, it is evident that the prosecution sought to prove the guilt of accused Anju through following three circumstances:(i) The deceased was last seen alive in the company of accused Anju. (Sought to be proved through the testimony of Aanchal Jain PW-14, daughter of the deceased and Dharminder PW-10.) (ii) Abscondence of accused Anju after the deceased had gone missing. (iii) Recovery of gold chain and gold ring belonging to the deceased from tenanted premises of accused Anju at the instance of accused Anju.

47. The deceased was running a beauty parlour under the name Aakash Beauty Parlour. (Be it noted here that said fact has been admitted by accused Anju in his statement under Section 313 Cr.P.C.). This admission shows that Anju knew the deceased as also the occupation of the deceased.

48. Aanchal Jain PW-14, daughter of the deceased, deposed that accused Anju was learning the job of beautician from the deceased since January 28, 2007. (The FIR Ex.PW-20/A records that the husband of the deceased had stated that accused Anju was working in the beauty parlour of his wife i.e. the deceased) and that on February 07, 2007 at around 5:00 PM her mother and Anju left the beauty parlour. Aanchal Jains testimony has not been shaken during cross-examination and we simply need to highlight that in the very first statement pursuant whereto the missing person complaint was registered Aanchals father Rajesh Jain had disclosed said facts to the police officer on duty who recorded the same in DD No.52B.

49. Thus, it stands established from the conjunctive reading of testimonies of Aanchal Jain PW-14, wife of the deceased, and SI Hari Prakash Vats PW-30, that

the deceased left from her beauty parlour with accused Anju at about 5:00 PM on February 07, 2007 and her dead body was recovered few hours thereafter. As regards the testimony of Dharminder PW-10 we find that the learned Trial Judge has wrongly accepted his testimony and facts disclosed in Court overlooking what he had said to the Metropolitan Magistrate when his statement Ex.PW-6/1 was recorded under Section 164 Cr.P.C. and when cross-examined by the accused with respect to the discrepancies in the two statements, he gave no convincing answer. Further, incriminating facts qua Anju were elicited by the public prosecutor on cross examination which were contrary to his statement under Section 164 Cr.P.C.

50. In her statement under Section 313 Cr.P.C. accused Anju has not offered any explanation as to how and when she parted company with the deceased after they left together from the beauty parlour of the deceased. The dead body of the deceased was seen by passersby at 11:50 AM on February 08, 2007 and had been defaced by animals. It is apparent that Renu had been killed in the late evening or early night of February 07, 2007.

51. A Division Bench of this Court, of which one of us, namely Pradeep Nandrajog, J.

was a member of, had an occasion to deal with the law of what is commonly known as last seen evidence and taking note of as many as sixteen authoritative pronouncements of the Supreme Court being (2002) 6 SCC715Mohibur Rehman Vs. State of Assam, 2000 (8) SCC382State of West Bengal Vs. Mir Mohmmad Omar, AIR 1955 SC801Deonandan Mishra Vs. State of Bihar, 1993 SCC (Crl.) 520 Anant Bhujangrao Vs. State of Maharashtra, (2002) 8 SCC45Bodhraj Vs. State of Jammu & Kashmir, (2003) 7 SCC37Babu S/o Raveendran Vs. Babu S/o Bahuleya & Anr., 2003 (8) SCC93Amit Vs. State of Maharashtra, (2005) 3 SCC114State of U.P. Vs. Satish, AIR 2006 SC1708 Deepak Chanderkant Pail Vs. State of Maharashtra, AIR 2006 SC1712 State of UP Vs. Deshraj, 2006 (3) SCALE452Ramreddy Rajeshkhanna Reddy & Anr. Vs. State of Andhra Pradesh, 2006 (12) SCALE321Vikramjit Singh @ Vicky Vs. State of Punjab, 2007 (3) SCALE740State of Goa Vs. Sanjay Thakran & Anr., 2008 (9)

SCALE319Venkatesan Vs. State of Tamil Nadu, 2009 (8) SCALE743State of Uttar Pradesh Vs. Shyam Bihari & Anr., summarized the law, in para 103 of the decision in Crl. A. No.362/2001 decided on August 10, 2009 Arvind @ Chottu Vs. State as under:

103. We may summarize the legal position as under:(i) Last-seen is a specie of circumstantial evidence and the principles of law applicable to circumstantial evidence are fully applicable while deciding the guilt or otherwise of an accused where the last-seen theory is to be applied. (ii) It is not necessary that in each and every case corroboration by further evidence is required. (iii) The single circumstance of last-seen, if of a kind, where a rational is persuaded to reach an irresistible conclusion that either the accused should explain, how and in what circumstances the deceased suffered death, it would be permissible to sustain a conviction on the solitary circumstance of last-seen. (iv) Proximity of time between the deceased being last seen in the company of the accused and the death of the deceased is important and if the time gap is so small that the possibility of a third person being the offender is reasonably ruled out, on the solitary circumstance of last seen, a conviction can be sustained. (v) Proximity of place i.e. the place where the deceased and the accused were last seen alive with the place where the dead body of the deceased was found is an important circumstance and even where the proximity of time of the deceased being last seen with the accused and the dead body being found is broken, depending upon the attendant circumstances, it would be permissible to sustain a conviction on said evidence. (vi) Circumstances relating to the time and place have to be kept in mind and play a very important role in evaluation of the weightage to be given to the circumstance of proximity of time and proximity of place while applying the last-seen theory. (vii) The relationship of the accused and the deceased, the place where they were last seen together and the time when they were last seen together are also important circumstances to be kept in mind while applying the last seen theory. For example, the relationship is that of husband and wife and the place of the crime is the matrimonial house and the time the husband and wife were last seen was the early hours of the night would require said three factors to be kept in mind while applying last-seen theory. The above circumstances are illustrative and not exhaustive. A the foundation of the last-seen theory, principles of probability and

cause and connection, wherefrom a reasonable and logical mind would unhesitatingly point the finger of guilt at the accused, whenever attracted, would make applicable the theory of last-seen evidence and standing alone would be sufficient to sustain a conviction.

52. Jewellery got recovered pursuant to Anjus disclosure statement and stated to be of the deceased was firstly successfully identified at the TIP by the husband of the deceased who also identified the same in Court. Deceaseds daughter identified part recovered jewellery as that of her mother but not the full. It has to be kept in mind that Aanchal was aged 11 years when her mother died and the adolescent mind may not be in a position to identify all the jewellery, which a husband may do.

53. The testimony of SI Ravinder Singh establishes that Anju and Anil were absconding, having left their daughter with Anjus mother.

54. The trinity i.e. Anju last leaving in the company of the deceased at 5:00 PM on February 07, 2007 (the deceased having died somewhere late evening or early night the same day), Anju absconding and jewellery recovered by her belonging to the deceased is sufficient circumstantial evidence wherefrom Anjus guilt can be inferred and innocence ruled out. Case against Accused Anil 55. From the afore-noted conspectus of facts, it is evident that the prosecution sought to prove the guilt of accused Anil (husband of accused Anju) through following five circumstances:(i) The deceased was last seen alive in the company of accused Anil. (Sought to be proved through the testimony Dharminder PW-10.) (ii) Three incoming calls were received on mobile number 9999453703 of accused Anil from mobile number 9811484599 of the deceased after the deceased had left from her beauty parlour with the accused Anju on February 07, 2007. (iii) Mobile phone of the deceased was recovered at the instance of accused Anil. (iv) Absconsion of accused Anil after the deceased went missing. (v) Pointing out of the place where two gold bangles and ring worn by the deceased at the time when she had gone missing were sold by accused Prem Pal.

56. We have already discussed above while considering the evidence against Anju that Dharminder PW-10 is not a reliable witness and thus the evidence of last seen

against Anil fails.

57. The next circumstance that deceased was carrying with her mobile number 9811484599 and mobile number 9999453703 was that of Anil and that the call record details Ex.PW-23/F and Ex.PW-23/G establish calls being made from Anjus mobile to that of Anil, has not been proved by the prosecution for the reason the registered consumer of the mobile number 9999453703, as per the testimony of Anuj Bhatia is one Arif, who has not been examined by the prosecution and the attempt by the prosecution to prove Sallauddin gave the SIM card of said number to Anil has fallen flat because Sallauddin deposed not having given the SIM card of the said number to Anil. To which we may add that since Sallauddin was admittedly not the owner of the SIM card, the question of he giving the same to Anil does not arise. Regarding the mobile phone instrument having IMEI No.35146640599218, which the husband and daughter of the deceased apparently identified as that of the deceased, we find that the phone was recovered from Narender Sahu PW-9, who denied that he purchased the same from Anil. We note that Bhoop Ram PW-4, the uncle of Anil has deposed that mobile phone having IMEI No.35146640599218 was handed over to him by the accused Anil. But the case of the prosecution is that the mobile phone with IMEI No.35146640599218 was recovered from Narender Sahu. It is apparent that Bhoop Ram from whom (mysteriously) another mobile phone was recovered also said that he had given the mobile phone in question to the investigating officer. Now, the case of the prosecution is that the deceased was carrying with him only one mobile phone number i.e. one mobile instrument and not two. There is utter confusion. Thus, the second and third circumstance sought to be proved have not been proved by the prosecution and the learned Trial Judge has overlooked the evidence which we have noted.

58. The evidence of absconsion which we have discussed regarding Anju would be the same as regards Anil and thus we have the first incriminating evidence of he absconding with his wife.

59. We have already held that the recovery of the jewellery items of the deceased have been held to be proved and as regards Anil we find that the recovery of the

jewellery attributable to Anil is also attributable to coaccused Prem Pal and the same would be the two gold bangles and one gold ring handed over by Avnesh Kumar to the investigating officer with the statement that Anil and Prem Pal sold the same to him. But we find that while appearing in Court Avnesh Kumar clearly said that the accused Anil and Prem Pal were not the two persons who disclosed their names as Anil and Prem Pal and sold the jewellery to him. Thus, the critical linkage of Anil and Prem Pal selling the jewellery to Avnesh Kumar is missing, but we have one important relevant fact proved, being that the bangles and a ring of the deceased was recovered from the shop of Avnesh Kumar, which was pointed out jointly by Anil and Prem Pal, and this evidence of pointing out the shop wherefrom some stolen jewellery of the deceased was recovered would be relevant and admissible evidence of conduct.

60. Section 8 of the Evidence Act makes conduct of a person a relevant fact for the proof of any fact in issue. Evidence relating to the conduct of an accused person, which is deposed to by a police officer is admissible as conduct under Section 8 of the Evidence Act. (See the decision of the Supreme Court reported as AIR 1979 SC400Prakash Chand Vs. State). Therefore, the conduct of accused Anil leading the police to the place where the two gold bangles and gold ring were sold is admissible under Section 8 of Evidence Act.

61. That accused Anil and Prem Pal jointly pointed out the shop, from the owner whereof jewellery of the deceased was recovered, in the instant case would be an evidence of conduct, incriminating value whereof would be higher vis--vis the incriminating value of a conduct simplicitor for the reason circumstances enwombing a fact may sometimes give an aggravating weight to the fact. Being a woman, it would be near impossible for Anju to entice the deceased, kill her and remove the jewellery and throw the dead body. She would need some help. That Anju and her husband were found absconding is a circumstance which enwombs the fact that Anil could disclose the shop from where jewellery of the deceased could be recovered.

62. Thus, against Anil the trinity of circumstances being (i) he absconding with his wife, (ii) he with co-accused Prem Pal leading the investigating officer to the shop

of Avnesh Kumar from where two gold bangles and a gold ring of the deceased were recovered by the investigating officer : being handed over by Avnesh Kumar, and (iii) the near impossibility of the deceased being killed by Anju acting by herself and requiring the help of a third person are sufficient circumstantial evidence which point to the guilt of Anil and rule out his innocence. Case against Prem Pal 63. In view of the discussion above regarding case against Anil, last seen evidence regarding Prem Pal failing and there being no evidence of absconsion against him, the only evidence against Prem Pal is of his conduct of leading the investigating officer with co-accused Anil to the shop of Avnesh wherefrom two gold bangles and a gold ring of the deceased were recovered. This solitary evidence of his conduct under Section 8, would incriminate him regarding weight of said evidence lesser than Anil and in view of the fact that this is the sole incriminating evidence against him, Prem Pal would be entitled to the benefit of doubt because said evidence does not unerringly point to his guilt and rule out the innocence, in that, the chain of circumstances is not complete against him of being involved in the crime.

64. Thus, whereas Anil and Anju have rightly been convicted by the learned Trial Judge for the offences they were charged of, Prem Pal has been wrongly convicted and thus Prem Pal would be entitled to be acquitted.

65. But we need to speak a word about the sentence imposed.

66. For default in payment of fine the accused have been sentenced to undergo simple imprisonment for 2 years, 1 year, 1 year and 6 months, 1 year and 6 months and 3 years, which we find is excessive. The same needs to be corrected.

67. Crl.A.No.199/2014 filed by Prem Pal is allowed. He is acquitted of the charges against him and the order on sentence dated November 30, 2013 is set aside qua him. He shall be set free forthwith if not required in any other case.

68. Crl.A.No.456/2014 and Crl.A.No.393/2014 filed by Anil Kumar and Anju are disposed of maintaining their conviction as also the order on sentence regarding imprisonment to be suffered by the two as also the fine imposed but with the modification that in default of payment of the respective sum as fine for the 5

substantive offences for which they have been convicted, they shall undergo simple imprisonment for one month for each default in payment of fine.

69. TCR be returned.

70. Four copies of the present decision be supplied to the Superintendent Central Jail Tihar; three to be supplied to the appellants and one for the jail record. (PRADEEP NANDRAJOG) JUDGE (MUKTA GUPTA) JUDGE DECEMBER03 2014 mamta

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