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Khalid Vs. State

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Court : Delhi

Decided On : May-14-2015

Judge : Ashutoshkumar

Appellant : Khalid

Respondent : State

Advocate for Def. : Ms. Aasha Tiwari

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.A.730/2012 Reserved on:

10. 04.2015 Date of decision:

14. 5.2015 % KHALID Through: ..... Appellant Mr.Rajender Chabbra and Mr.Mrutunjay Tayade, Advocates versus STATE Through: ..... Respondent Ms. Aasha Tiwari, APP. CORAM: HON'BLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE ASHUTOSH KUMAR ASHUTOSH KUMAR, J.

1. Appellant Khalid stands convicted by judgment dated 02.03.2012 passed by the Additional Sessions Judge II (North) Delhi in sessions case No.62/2011 (FIR No.423/2008 P.S. Timarpur) for the offence under section 302/201/392 with the aid of section 34 of the Indian Penal Code, 1960 ('IPC' for short). By the order of sentence dated 06.03.2012, the appellant has been directed to suffer

imprisonment for life, fine of Rs. 5000/- and in default of payment of fine, undergo simple imprisonment of 2 months for the offence under section 302/34 of the IPC. He has been sentenced to simple imprisonment for 5 years, fine of Rs.5000/- and in default of payment of fine to undergo simple imprisonment for 2 months for offence under Section 201 of the Indian Penal Code. Additionally, the appellant has been directed to suffer simple imprisonment for 7 years and a fine of Rs. 5000/- and in default of payment of fine, to undergo simple imprisonment for two months for the offence under Section 392 of the Indian Penal Code. The sentences have been ordered to run concurrently.

2. It is relevant here to mention that the appellant was made accused along with S (name withheld), a juvenile, Pappu and Raja @ Rakesh, who have been declared proclaimed offenders. Only the appellant was tried for the offence.

3. The prosecution relies upon circumstantial evidence to connect the appellant with the crime as there was no eye witness to the occurrence.

4. The circumstances relied against the appellant are that he was last seen with the deceased; the dead bodies of Tej Ram Saini and Hans Raj (the two deceased persons) were recovered at the instance of the appellant; the truck bearing registration number HR55B7572(which the accused person had robbed) was recovered on the disclosure of the appellant; the knife, the weapon of offence was recovered at the instance of the appellant and the homicidal death of the aforesaid two persons.

5. The principal issue before us is to ascertain whether the evidence on record and proved is complete in all respects without any latent wedges for holding the appellant guilty of murder of the aforesaid Tej Ram Saini and Hans Raj.

6. To trace the brief facts it is necessary to set out as to what happened in sequence.

7. On 26.8.2008 at about 12-12:30 PM, Head Constable Kirpal Singh (PW.7), whilst on patrolling duty, noticed foul smell emanating from somewhere nearby. On inspecting, he found two dead bodies, wrapped in quilts lying amongst bushes

nearby at Majnu Ka Tila, opposite metro yard near DDA park. He forwarded this information to Head Constable Rakesh Kumar (PW.6) who was posted as a duty constable at P.S. Timarpur. PW.6 recorded the said information vide DD No.17A (Exhibit PW.6/B) at 12:45 PM. The said DD entry was marked to SI Sahab Singh (PW.13) who reached the spot. Inspector K.S. Rawat PW.23, (IO) also reached the spot along with Constable Anil Kumar (PW.11) and other police officials.

8. After reaching the spot, the quilts were removed from the dead bodies. It was found that the dead bodies were of two adult males. Rukka (Exhibit PW23/A) was prepared by the IO and was sent through PW.7 for recording the FIR. Thereafter, FIR bearing No.423/2008 was registered under Sections 302/201 IPC.

9. Upon examining, words of "Tej Ram Singh" was found tattooed on the right arm of one of the deceased. The shirt that the deceased was wearing had the label of Kotputli (a place in Rajasthan). These clues and evidence as noticed below were the starting points and became crucial material which has helped the police trace and solve the case.

10. The mobile crime team was requisitioned. A report was prepared by the crime team (exhibit PW.12/A). Blood stained earth, earth control and hair of the deceased persons were lifted. From where the second dead body was lying, dry blood from footpath was lifted. The above items were seized vide seizure memo exhibit PW.13/A. Blood stained quilts, trousers, shirt, gamcha and a piece of dhoti were also lifted from the spot and seized vide seizure memo exhibit PW.13/B. One nylon rope was also seized (exhibit PW.13/C). As the dead bodies could not be identified, they were, sent to Subzi Mandi Mortuary through constable Anil Kumar, PW.11.

11. On 27.08.2008, police officials including PW.23 (Inspector K.S. Rawat), PW.13 (SI Sahab Singh) went to Kotputli, Rajasthan, for investigation as also for ascertaining the identity of the deceased. IO had taken photographs of the deceased persons who were later identified by the relatives to be of Tej Ram Saini and Hans Raj. One Ram Vilas (PW.5) and Sushil Vilas (PW.8) having a transport business, had also come to Kotputli police station and identified the deceased Tej Ram Saini and Hans Raj as the driver and helper respectively of the truck bearing

registration No.HR55B7572 The Statements of the aforesaid witnesses namely Ram Vilas (PW-5) and Sushil Vilas (PW-8) support and affirm the prosecution case on this aspect. Having identified the dead bodies, on the basis of further clues, investigation returned to Delhi to identify and nab the culprits. Before we dwell on the said aspect, we would like to affirm the identifies further and refer to the medical opinion on the cause of death.

12. On 28.08.2008, the relatives of the deceased persons came to Delhi and identified the dead bodies. Dead body of Tej Ram Saini was identified by Hanuman, younger brother (PW.3) and Nav Ratan, a cousin (PW.4). The dead body of Hans Raj was identified by Mohan Lal, Uncle (PW.1) and Munna Lal, Uncle (PW.2).

13. Thereafter, the investigating officer made an application for conducting the post mortem of the deceased persons. After the post mortem was conducted the clothes, viscera, blood etc. were seized in packets and were sent to the malkhana. The dead bodies were thereafter handed over to the relatives for performing the last rites. On the same day the police officials went to Sonia Vihar where the godown of C.P Sharma (PW.9), consignee was located. Statements of Pramod Pandey (PW.24) and C.P. Sharma (PW.9) were recorded. We shall be referring to their statements later.

14. PW.22, Dr. Vijay Dhankar, conducted the post mortem on the body of Tej Ram Saini and found the following injuries: i. Crl.A No.730/2012 Incised wound 2x0.5cm present over left side of front ii. iii. iv. v. vi. vii. viii. ix. x. xi. xii. xiii. xiv. xv.

15. Incised wound 2x0.5cm present over right side of front root of neck. Stab wound 1x0.5 cm present over right lateral portion of lower part of neck. Stab wound 4x1.5 cm present over back of root of neck on the right side. Stab wound 3x1 cm present over back of root of neck on the right side below injury number 4. Stab wound 3x1 cm present over back of root of neck on the right side lateral to injury no.5 Stab wound 3x0.8 cm present over right side of upper part of back of chest. stab wound 3x1 cm present over right side of upper part of back of chest below and lateral to injury no.7 Stab wound 3x1 cm present over right side of upper part of back of chest below and lateral to injury no.8 Stab wound 4x1.5 cm

present over right side of upper part of back of chest lateral to injury no.9 Stab wound 2x1 cm present over right side of upper part of back of chest below injury no.9 Stab wound 2x0.6 cm present over right side of upper part of back of chest below injury no.11 Stab wound 1.5x1.5 cm present over right side of upper part of back of chest below injury no.12 Abrasion 13x8 cm present over back of right arm Multiple abrasion in a area of 6x3 cm over the right side of back if abdomen In the opinion of PW.22, the death was due to hemorrhage and shock consequent upon penetrating injury to the neck and chest. All the injuries were found to be ante mortem and the nature of injuries No.1 to 13 were such that they could have been caused by one side sharp edged weapon. Injuries Nos. 14 - 15 were found to have been caused by blunt force. PW.22 opined that the injury No.1 independently as well as injuries nos. 2 to 13 cumulatively were sufficient to cause death in the ordinary course of nature. The time fixed for death was about 3 to 4 days.

16. On the same day, PW.22 conducted the post mortem of Hans Raj and found the following injuries: i. An abraded ligature mark was present over the front and sides of neck, 9 cm below the chin in the midline and 6cm from the left and right angles of jaw on either side. The mark was 2-3 cm in width and 16 cm long. Total circumference of neck was 42 cm. The mark was interrupted and horizontally placed at the level of thyroid cartilage. ii. Abrasion 18x6 cm was present over outer aspect of left hand. On internal examination effusion of blood was present over left parietal region of the head. Left Zygomatic arch was fractured. Effusion of blood was present beneath the ligature mark. left lamina of the thyroid cartilage showed outwards fracture with effusion of blood. With respect to the injuries on the person of Hans Raj, it was opined that he died due to asphyxia because of ligature strangulation. Timing of death of Hans Raj also was opined as about 3 to 4 days prior to the post mortem report.

17. From the deposition of PW.22 it is further revealed that on 7.10.2008, he had received a request for examining the weapon of offence and opine regarding the injuries found on the dead bodies. A blood stained steel knife was received by him and he prepared the sketch of the same. After examining the knife, PW.22 opined that injuries nos. 1 to 13 on the body of Tej Ram could have been caused by the knife which he had examined. A Blood stained nylon rope was also sent to him for

examination and report about the injuries on the person of Hans Raj. After examining the rope, PW.22 opined that the ligature strangulation on the body of the deceased Hans Raj could have been caused by the rope.

18. Thus it is apparent that Tej Ram and Hans Raj died a homicidal death. Tej Ram Saini was killed by means of a knife, whereas deceased Hans Raj was throttled to death.

19. As has been noted earlier there is no eye witness to the occurrence and the prosecution has rested its case on the testimonies of PW. 24 (Pramod Pandey), PW.9 (C.P. Sharma), PW.5 (Ram Vilas), PW.8 (Sushil Vilas), PW.10 (Pradeep Kumar), PW.17 (Prashant Sharma) and PW. 15 (Ram Karan), to establish that the appellant was last seen with the deceased persons.

20. PW. 24 Pramod Pandey stated before the Court that he was looking after Jai Mata Enterprises godown. On 24.08.2008, a truck loaded with stone powder arrived at the godown along with its driver and helper/cleaner. He deposed that as labour was not available it being Janamastmi, it was not possible to unload the consignment. PW. 24 came back to the godown at about 5 PM when he found the driver and cleaner present at the godown. After about half an hour two workers namely Raja (proclaimed offender) and S (juvenile) came there. PW. 24 told them to unload the consignment. They suggested that more workers were needed and could be arranged from the nearby godowns. At about 8 PM Raja and Sanjeev, referred to above came back with two labourers namely Khalid (the appellant) and one Pappu, who were known to PW.24. PW.24 thereafter went to attend Janamastmi celebrations and returned at 12 midnight. At that time the driver and the cleaner were present. On enquiry, he was made to understand that they would leave after unloading the consignment or in the morning. Thereafter, PW.24 went to his house located nearby. At about 4:30 AM in the next morning, i.e. on dated 25.08.2008, PW.24 claims that he had only seen Sanjeev at the godown. The consignment had been unloaded and the truck driver and the cleaner were not there. The material was sold by one Prashant (PW.17) and the consignment had to come from Neem Ka Thana, Rajasthan.

21. C.P. Sharma, (PW.9), owner of the godown, has deposed that Pramod Pandey (PW.

24) was looking after his godown on the relevant day. In the intervening night of 23rd and 24th August, 2008, a truck loaded with mineral powder had come from Neem Ka Thana, Rajasthan at his godown. He had telephonically informed PW. 24 to get the material unloaded with the help of workers. He was informed by PW.24 that only two workers were available and that he had asked Raja @ Rakesh to arrange for some more persons for unloading the consignment. Next morning, when he reached the godown, the driver, cleaner, truck or the workers were not present.

22. Prashant Sharma, (PW.

17) affirmed having placed an order for consignment of Feldspar powder to be delivered at his godown from the supplier namely Pradeep Kumar (PW.10) of Neem Ka Thana, Rajasthan. This consignment was transported by the truck in question of M/s. Singhal Transport, Kotputli with registration number HR55B7572. PW.17 was telephonically informed by the consignee that the truck had arrived at the godown but the consignment could not be unloaded at that time because of non-availability of the labour/loaders.

23. Similarly, Ram Vilas (PW.5) and Sushil Vilas (PW.8), father and son, have deposed that they were in transport business which was looked after by the son PW.8. The vehicle in question which was sent with the consignment to Jai Mata godown was registered in the name of PW.5. The aforesaid witnesses have testified that they had employed Tej Ram Saini as the driver and Hans Raj as helper in the said truck and that they had been working with them for about two years. It was further stated by both the witnesses that on 22.8.2008 the said truck was loaded with consignment from Neem Ka Thana, Rajasthan for the delivery to be made at Sonia Vihar, Shahdara, Delhi. Since the vehicle belonged to PW.5, the driver Tej Ram Saini (one of the deceased persons) on reaching Delhi on 24.8.2008 in the morning had called him on telephone at about 8 AM and apprised him that because of non-availability of labour at the godown, it was not possible to unload the consignment and the same would be done only when the labour would

be arranged. Thereafter nothing was heard from the driver and the cleaner. On 27.8.2008, PW.5 received a call from the police station Kotputli where he reached along with 3-4 of his relatives and met the police officials from PS Timarpur, Delhi. The later part of his deposition would be referred to by us later when we deal with the recovery of the truck in question.

24. Pradeep Kumar (PW.10) confirmed that Prashant Sharma (PW.17) had asked for the mineral powder.

25. From the deposition of the aforementioned witnesses, it is apparent that the truck of which the deceased persons were the driver and the helper/cleaner, was brought to the godown of PW.9 and the consignment was unloaded at night. The testimonies of PW.24, read in conjunction with that of PWs. 5, 8, 9, 10, 15, 17 make it very obvious that the appellant Khalid was at the godown along with others to unload the consignment and thereafter the deceased persons as well as the appellant were not seen.

26. Learned counsel appearing for the appellant urged that the evidence with respect to the appellant being last seen with the deceased could not be treated as material as there was a large time gap between the appellants having been seen with the deceased persons and the approximate time of death. It was argued that the deceased persons were last seen with the appellant on 24.8.2008 at about 12 in the midnight whereas the post mortem of the dead bodies, which was conducted on 28.8.2008 at 11 to 11:30 PM, set the time of death as 3-4 days prior to the post mortem.

27. Such a contention does not have any force as the dead bodies were kept in Subzi mandi mortuary for nobody came forward from 24.8.2008 till 28.8.2008 for their identification. Subsequently the bodies were identified. The other contention of the appellant that in the absence of any documentation with respect to the employment of PW.24 at the godown, he cannot be believed and be treated as a reliable witness with respect to his having last seen the appellant with the deceased, also has no force. It is a matter of common knowledge that under a private employment such formalities are not adhered to and executed and it would be too much for PW.24 to have produced any document suggesting that he was

under the employment of PW.9, the owner of the godown. Oral depositions on these aspects should be accepted.

28. Thus there is no reason to disbelieve or doubt the aforesaid witnesses with respect to the vehicle having come to the godown of PW.9 and the appellant was seen with the deceased persons, the driver and the cleaner of the truck. The appellant Khalid along with others (who, it is alleged, are also involved), had unloaded the consignment. Thereafter, the truck, the driver and cleaner went missing. Two unidentified dead bodies were recovered on 26.8.2008 and on 27.8.2008 identified it to be of Tej Ram Saini and Hans Raj.

29. We have noticed that the recovery of the dead bodies was fortuitous. On 26.8.2008, PW.7, on sensing a foul smell, found dead bodies wrapped in quilts. As has been narrated earlier police officials reached the spot and some clues with respect to the identity of one of the deceased persons could be collected. The truck could not be recovered and was untraceable. The appellant Khalid was absconding.

30. On 29.8.2008, Head Constable Rakesh Kumar, (PW.6) while on duty along with PW. 23 (Inspector K.S. Rawat) and PW. 13 (SI Sahab Singh), received secret information as to the whereabouts of the appellant. The appellant Khalid was apprehended by the police party and he was taken to the Jai Mata Godown, Sonia Vihar.

31. On the question of recovery of the truck, we would begin with the statement of the police officers. Head Constable Rakesh Kumar (PW-6) has deposed that the appellant-Khalid was arrested on 29th August, 2008 and disclosure statement Exhibit PW-13/F, which was signed by PW-6 at point B was recorded. He proved the arrest memo Exhibit PW-13/G-1. On 1st September, 2008, appellant-Khalid was produced in court and police remand was taken. The truck owner Ram Vilas (PW-5) had joined them in Tis Hazari Courts and thereafter the appellant-Khalid took them to an isolated place in Faridabad where truck No.HR55B7572was found parked and seized vide seizure memo Exhibit PW-5/B, which was signed by PW-6 at point C. In his cross-examination, PW-6 deposed that the appellant-Khalid was arrested on 29th August, 2008 between 7 to 8 P.M. The appellantKhalid was

produced in the court on 30th August, 2008 sometime during afternoon and was sent to judicial custody. Police remand was taken on 1st September, 2008. Further, they had gone in a private vehicle to Faridabad and the police team comprised of Inspector K.S. Rawat (PW-23) and SI Sahab Singh (PW-13) and the truck owner. No intimation was given to the local police about the visit to Faridabad. The truck was found in an isolated place ahead of Faridabad chowk. It was parked on a kachcha on the left of the main road. Inspector K.S. Rawat (PW-23) had physically checked the truck and had informed that he had seen blood stained clothes lying at the top. However, PW6 did not remember whether the said clothes were seized. The truck was towed to the Police Station Timarpur by using a crane.

32. SI Sahab Singh (PW-13) has deposed that on 26th August, 2008, two unidentified dead bodies were found and that on 27th August, 2008, he along with other police officers had gone to Kotputli, Rajasthan, with the photographs of the deceased, who were identified as Tej Ram Singh and Hansraj. One Ram Niwas, owner of the truck confirmed that they were working in his truck No.HR55B7572as driver and helper, respectively. On 28th August, 2008, he again joined investigation and had taken the relatives of Tej Ram Singh and Hansraj to the mortuary where the bodies were identified by them and post-mortem was conducted. The bodies were thereafter handed over to the relatives. On 29th August, 2008, the appellant-Khalid was apprehended and arrested vide arrest memo Exhibit PW-13/G-1, which was signed by PW-13 at point A. Khalid made a disclosure statement regarding the fact that the truck was abandoned at a distance of two kilometres in the right side of Faridabad chowk. The appellant- Khalid was produced before Metropolitan Magistrate on 30th August, 2008 and has been remanded to judicial custody. The application for police remand had remained pending. On 31 st August, 2008, police custody of appellant-Khalid was taken for three days but on the said date the appellant did not cooperate. On 1 st September, 2008, the appellant-Khalid was taken from the police lock up. Ram Niwas, the truck owner joined the investigation and the truck was found abandoned at a distance of about two kilometres from Faridabad chowk. The truck HR55B7572was identified by the owner and was taken into possession vide memo Exhibit PW-25/C. The truck was brought to the police station Timarpur driven by a

private driver. PW13 clarified that on 27th August, 2008 from Kotputli they had not made any telephone call at No.100, Control Room, Wireless Telegraph, National Crime Record Bureau, State Crime Record Bureau, Central Record Bureau and State Transport Authority about the vehicle in question. He denied the suggestion that they, i.e. the police, were aware about the whereabouts of the truck in question after they had come to know about the registration number and the recovery of the truck is deliberately attributed at the instance of appellant-Khalid.

33. Inspector K.S. Rawat, the Investigating Officer, who has deposed as PW-23, has encapsulated the visit to Kotputli on 27 th August, 2008 and how they were able to identify the dead bodies. Thereafter, on 8th August, 2008, inquest proceedings, post-mortem was conducted and the dead bodies handed over to the relatives. On the said date, they had also gone to Sonia Vihar where the truck was unloaded and inquiries were made from Pramod Pandey (PW-24) and C.P. Sharma (PW-9). On 29th August, 2008, appellant-Khalid was arrested and had made a disclosure statement Exhibit PW-13/F, which was signed by PW-23 at point C. He also proved the arrest memo Exhibit PW-13/G-1, which records the time of arrest as 7.30 P.M. The appellant-Khalid was sent to judicial custody till 1st September, 2008. However, on 1st September, 2008, police custody remand was taken for three days and the appellant was interrogated when he made a further disclosure statement Exhibit PW-5/D. Thereupon, the police team proceeded to Palwal-Faridabad road and the truck HR55B7572was found by the side of the road ahead of Faridabad chowk. The same was seized vide seizure memo Exhibit PW-15/C. In his crossexamination, PW-23 has deposed in some detail what had transpired at Kotputli on 27th August, 2008 and that on 29th August, 2008 they kept on looking for the accused, including those, who have not been arrested. On 30th August, 2008, they had produced appellant-Khalid in the court. Khalid was sent to judicial custody. On 1st September, 2008 at about 4 to 4.30 P.M. the court granted police custody of the appellant-Khalid, and thereupon the appellant-Khalid was interrogated before being taken to Faridabad in a private car. The truck owner Ram Vilas had met them at 10 P.M. The recovery memo was prepared at Faridabad. The truck was in a running condition and they had engaged a private driver to bring the truck to Delhi. The keys of the truck were in the truck itself and he volunteered that duplicate keys were with the owner.

34. We have examined the trial court records and we find that the appellant-Khalid was sent to judicial custody on 30th August, 2008 and police remand of three days was taken on 1st September, 2008. This supports the prosecution version and the testimonies of Head Constable Rakesh Kumar (PW-6), SI Sahab Singh (PW-13), and Inspector K.S. Rawat (PW-23) that the truck in question was recovered from Faridabad on 1st September, 2008. This fact is also duly supported and affirmed by the seizure memo Exhibit PW- 5/B, which records the date of recovery as 1st September, 2008. The testimonies also explain the reason why recovery and seizure of the truck was delayed though the appellant was arrested on 29 th September, 2008. At this stage, we would like to deal with the testimony of Ram Vilas (PW-5), the owner of the truck.

35. Ram Vilas (PW-5) in his deposition recorded on 20th May, 2010 has stated that they were called to Police Station Kotputli on 26 th August, 2008 and officers from Police Station Timarpur were present and he was shown photographs. They came to Delhi on 26 th August, 2008 and reached at about 11 P.M. On the way to Delhi, they were informed that one of the offenders had been apprehended. They met the police team near Ashram Chowk, Delhi and the offender was with the police team. Thereafter, they went to Faridabad and found one truck, which was identified by him. The truck was released to PW-5 on superdari after about fifteen days vide Exhibit PW-5/A. He was cross-examined by the Public Prosecutor. In his cross-examination, PW-5 accepted that he had visited the Police Station at Kotputli on 27th August, 2008 and photographs of the deceased person were shown to him for identification by the police from Police Station Timarpur. He had earlier given the date 26th August, 2008 due to some confusion. He had kept on coming to Delhi and, therefore, he did not remember if he had joined the investigation on 1 st September, 2008. He had joined investigation on a few occasions. He could not remember whether the truck was in fact recovered on 1 st September, 2008, since he did not remember the date. He, however, accepted as correct that his statement was recorded by the police on recovery of the truck and he identified the seizure memo marked Exhibit PW-5/B, which was signed by him at point A, and the date mentioned thereon is 1st September, 2008. Towards the end of his cross-examination by the public prosecutor, it is apparent that PW-5 again got confused, as he had deposed that after 26th August, 2008, he had

stayed in Delhi as he was associated with the investigation. When again confronted, PW5 reiterated in his cross-examination by the Public Prosecutor that the date 26th August, 2008 was given by him due to confusion and lapse of time and the correct date was 1st September, 2008. In his crossexamination, PW-5 accepted that appellant-Khalid had pointed out the place of recovery of the truck and a pointing out memo of the spot was prepared and signed by him at point C and was marked Exhibit PW.5/C. After recovery of the truck, his statement was recorded by the IO on 1st September, 2008. In his cross-examination by the counsel for the accused, PW-5 asserted that he had visited Police Station Kotputli on 27th August, 2008 with some friends and had met police officers from Police Station Timarpur. He was shown photographs of Tej Ram Singh and Hansraj, and not photographs of his truck. He accepted as correct that he had come to Delhi with the police officers and had reached Police Station Timarpur on same day. However, he saw the offender, who had been caught by the police. On 30th August, 2008 and he had returned to Kotputli with the dead bodies. He came back to Delhi in the morning of 1 st September, 2008. He had come to Delhi with a driver on 1st September, 2008 and was taken to Faridabad, where they reached the spot ahead of Faridabad chowk and the truck was found at the instance of the appellant-Khalid. Someone had driven the truck back to the Police Station, but the said person was not his driver. However, he claimed that no documentation was done by the police in his presence at the spot.

36. What is clear to us from the testimony of Ram Vilas (PW-5) that the said witness got confused about the dates, apparently because of passage of time and also because of the fact that he came to Delhi on several occasions. He did depose that the truck in question was recovered on 1st September, 2008. The possibility of the recovery of the truck before the said date does not appear to be probable as the appellant-Khalid was sent to judicial custody on 30th August, 2008 after he was arrested at 7.30 P.M. on 29th August, 2008. Police remand was taken only on 1st September, 2008. The prosecution version is supported by the testimonies of Ct. Rakesh Kumar (PW-6), SI Sahab Singh (PW-13) and Inspector K.S. Rawat (PW-23). They had not located the truck before the recovery was made. There is no ground or reason whatsoever to hold to the contrary. In case the stolen vehicle had been recovered or found by any police team, it would have

been flashed and uploaded on the police network. Faridabad police, had they taken the truck in their custody, would have necessarily made and recorded entries in the police diary. Intimation or inquiries would have been made from the State Transport Authority. The photographs of the truck do show blood stains. A close examination of the truck by a police officer would have resulted in alarm and impelled immediate further investigation. There is no indication or evidence to that effect. The police officers who have deposed in the court could not have concealed or withheld, the fact that the truck in question had already been recovered and seized. In these circumstances, we accept that the truck was recovered and seized on 1st September, 2008. We also find that after the truck was seized, it was photographed and was thereafter sent to FSL for further examination. The truck was examined by Sh. V. Shankaranarayanan (PW.21) and Sh. Yogesh. PW.21 in his report, which is exhibit PW21/A, has stated that blood was detected on the rooftop of the drivers cabin, truck cover, rope and towel. The said blood stains were lifted and sent for chemical examination. However no conclusive blood grouping could be recovered from the aforementioned samples. The biological report is exhibit PW26/A and serological report exhibit PW26/B.

37. Section 27 of the Indian Evidence Act, 1872 is in the nature of partial removal of ban placed on the reception of confessional statement under section 25 of the Evidence Act. It lays down that where any fact is deposed to as discovered in consequence of information received from a person accused of an offence, in the custody of a police officer, so much of the information, whether it amounts to confession or not, as relates distinctly to the fact thereby discovered, may be proved. We have noticed that the truck was parked at a lonely/desolate place and in presence of PW.5, the same was recovered at the instance of the appellant.

38. The other incriminating evidence sought to be relied upon against the appellant as one of the perpetrators of the crime, is the recovery of knife, the weapon of assault, used by the appellant.

39. The knife was recovered at the instance of the appellant on 3.9.2008. The appellant took the police officials at a place near Chandi Ram Amhara towards ISBT, and on his pointing out a knife was recovered. PW.6, PW.20 and PW.23

have testified with respect to recovery of knife. The recovery has been challenged on the ground that no public witness at the time of recovery joined the investigation, despite the place of recovery being a crowded one and that the recovery memo discloses the knife to be blood smeared, whereas FSL report (Exhibit PW26/A) is to the contrary and it says that no blood could be detected on the knife.

40. The recovery of knife, in our opinion, does not inspire confidence as it has not been recovered from an abandoned area; rather the place of recovery is an open space and in the absence of any other link namely blood (human) over such knife, the knife being an ordinary object of general utility, such recovery cannot be linked with the crime.

41. The law with respect to recovery of weapon is very well settled. Mere non recovery of a weapon of assault does not ipso facto lead to the failure of the prosecution case. In Lakshmi vs. State of U.P. (2002) 7 SCC198 it has been held that it is not an inflexible rule that the weapon of assault must be recovered. The Supreme Court did not accept, as a general and broad proposition of law, that in case of non - recovery of the weapon of assault, the whole prosecution case gets torpedoed. The Supreme Court has held as under:

17. Undoubtedly, the identification of the body, cause of death and recovery of weapon with which injury may have been inflicted on the deceased are some of the important factors to be established by the prosecution in an ordinary given case to bring home the charge of offence under Section 302 IPC. This, however, is not an inflexible rule. It cannot be held as a general and broad proposition of law that where these aspects are not established, it would be fatal to the case of the persecution and in all cases and eventualities, it ought to result in the acquittal of those who may be charged with the offence of murder. It would depend on the facts and circumstances of each case. A charge of murder may stand established against an accused even in absence of identification of body and cause of the death.

42. Thus from the testimonies of the witnesses, three facts come to fore. The appellant was last seen with the above named two deceased persons; the

appellant was present along with the deceased persons till late in the night when he was spotted by the other witnesses; that he had motive to do away with the life of the deceased persons viz. to rob, sell and misappropriate the proceeds of the truck and the recovery of the truck at the instance of the appellant. The dead bodies were found near the godown of PW.9 and the truck was found at a secluded place near Faridabad. It does not stand to reason that the deceased, while on their way back, were waylaid by others, killed and the vehicle was taken away. The recovery of the truck at the instance of the appellant affords guarantee that the appellant had personal knowledge of the fact that the truck was parked at a desolate place, and that part of the confession which led to the recovery of the truck is true and untainted.

43. Thus, the evidence of appellant having been last seen with the deceased persons, the recovery of the truck, the improbability of the deceased having been waylaid by others on their way back, abscondence of the other accomplices of the appellant, and arrest of the appellant on the information provided by secret informer, do forge a chain which is absolutely complete. There is no reason for us to doubt that the disclosure leading to the recovery of the truck, was not voluntary.

44. Once the evidence of the appellant having been last seen with the deceased and the recovery of the truck is found to be true and proved, the appellant loses his right to be set free.

45. We do not find any fault with the judgment of conviction of the court below. The appeal is therefore dismissed.

46. TCR be returned forthwith. (ASHUTOSH KUMAR) Judge (SANJIV KHANNA) Judge MAY14 2015 ab

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