

Chander Pal Vs. State

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Court : Delhi

Decided On : Sep-07-1998

Reported in : 1998VIAD(Delhi)177; 1999CriLJ135; 75(1998)DLT461; 1998(47)DRJ495; ILR1998Delhi748

Judge : Devinder Gupta and; N.G. Nandi, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302 and 313; [Evidence Act, 1872](#) - Sections 27; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 100

Appeal No. : Crl.A. No.137 of 1994, Crl.A. No.206 of 1994

Appellant : Chander Pal ;kishan Lal

Respondent : State;state

Advocate for Def. : Mr. Anil Soni, Adv.

Advocate for Pet/Ap. : Ms. Meena Chaudhry; Sharma, Advocate-amices-curia

Judgement :

ORDER

N.G. Nandi, J.

1. Find of a dead body with injuries on the front of the neck, later on identified to be that of Nand Kishore son of Bhagwan Dass resident of B-9/5, Indira Vikas

Colony, Mukerjee Nagar, Delhi, from abandoned well situated in the field of Mohan Singh, in Karkardooma required the registration of F.I.R. under Section 154 of the Code of Criminal Procedure (Hereinafter referred to as 'the Code') for the offence under Section 302 IPC leading to the filing of charge sheet against two persons, namely, Chander Pal son of Janki Prashad, Kishan Lal son of Shanker Lal (appellants); whereas Brij Bhan was tried by the Juvenile Court and Om Prakash shown in Column No.2 of the chargesheet as a proclaimed offender, resulting into the conviction and sentence to undergo rigorous imprisonment for life and also to pay a fine of Rs.1,000/- and in default to under go further rigorous imprisonment for a period of six months under Section 302 read with Section 34 IPC by the learned Additional Sessions Judge, Karkardooma Courts, Shahdara, Delhi necessitated the filing of the present appeals under Section 374(2) of the Code by both the convicts/appellants.

2. The prosecution case, shortly stated, is that Prem Chand, who cultivated the land of Mohan Singh in Bahuwali - Karkardooma area on 'Batai' at about 3.30 A.M on 26.1.1990 when in order to watch the field was passing through the abandoned well in the middle of the field, noticed some blood on the boundary of the well. He peeped into the well and saw the dead body of a person and informed the police whereupon D.D. No.9A dated 26.1.1990 was recorded in Police Station Anand Vihar; that police reached the spot and took out from the well the dead body of an unknown person with a white sleeved Baniyan and a Chintz designed underwear. Injuries were noticed on the front of the neck and the head of the dead body caused by a sharp weapon. The dead body could not be identified at that time; a rukka was sent to the police station for registration of the case under Section 302 IPC whereupon formal FIR was registered and the usual investigation commenced; that wireless message was flashed to all the police stations in Delhi and adjoining States for getting the dead body identified and CRO and PRO were also asked to get published the news of said dead body in the news paper; that the dead body was handed over to Sewa Samiti for cremation; that on 2.2.1990, Mahesh Kumar lodged a missing report for his brother Nand Kishore in Mukherjee Nagar Police Station; that on 3.2.1990 Jugal Kishore and Mahesh Kumar came to the police station and the photograph of the dead body shown was identified by them to be that of the dead body of their brother Nand Kishore; that Nand Kishore

son of Bhagwan Dass working as building contractor was a bachelor and residing with his brothers Mahesh Kumar and Jugal Kishore at B-9/5, Indira Vikas Colony, Mukerjee Nagar, Delhi; that Chandra Pal was working as a labourer with him; that Nand Kishore left the house at about 4/5 P.M. on 25.1.1990; that PW.6 Ram Kishan last saw Nand Kishore at about 5/5.30 P.M. at the rehri of Chandra Pal in Karkardooma along with Chander Pal, Kishan Lal, Brij Bhan and Om Prakash and that the dead body of Nand Kishore was found from the abandoned well in Karkardooma in the early hours of 26.1.1990.

3. It may be noted at the out set that there is no direct evidence adduced by the prosecution to connect the accused with the crime. The dead body of deceased Nand Kishore was found from an abandoned well in the fields of Bahuwali at Karkardooma with blood noticed on the boundary of the well at about 3.30 A.M. on 26.1.1990. According to the evidence of P.W.1 and P.W.4 deceased Nand Kishore had left the house at about 4/5 P.M. on 25.1.1990; that they searched Nand Kishore and on 2.2.1990 they went to Police Station Mukerjee Nagar and lodged a missing report about Nand Kishore; that thereafter they learnt from the news paper report that a dead body was found from a well in the area of P.S. Anand Vihar whereupon both the brothers (P.W.1 and P.W.4) of deceased Nand Kishore came to P.S. Mukerjee Nagar where they were directed to contact P.S. Anand Vihar to identify the dead body. At Anand Vihar Police Station, they were shown the photograph of dead bodh and they identified the photograph to be that of the dead body of their brother Nand Kishore.

4. It is settled position of law that in a case of circumstantial evidence all the circumstances from which the conclusion of the guilt is to be drawn should be fully and cogently established. All the facts so established should be consistent only with the hypothesis of the guilt of the accused. The proved circumstances should be of conclusive nature and definite tendency, unerringly pointing towards the guilt of the accused. They should be such as to exclude every hypothesis consistent with the innocence of the accused.

5. One of the circumstances relied on by the prosecution is that deceased was last seen at the Rehri of accused Chander Pal at about 5/5.30 P.M. on 25.1.1990 and

at that time deceased Nand Kishore, accused Chander Pal, Kishan Lal, Brij Bhan and Om Prakash were seen together at the said Rehri. In this regard, PW-6 Ram Kishan deposed in his evidence that he is an employee in D.D.A; that he knew Nand Kishore as he used to take house building contracts from other contractors; that accused Chander Pal was staying in Jhuggi near the house of the witness; that Chander Pal had shifted to Karkardooma; that on 25.1.1990 the witness had gone to Karkardooma at about 5/5.30 P.M. to check the work of the contractors at the site where he saw Nand Kishore standing at the Rehri of Chander Pal. Kishan Lal and Brij Bhan, Chander Pal and Nand Kishore were present at that time. The witness inquired from Nand Kishore as to why he had come there and he told that he had come to recover his money from Chander Pal; that on 2.2.1990 Mahesh Kumar, the brother of deceased Nand Kishore came to the witness and inquired about Nand Kishore; that the witness told him that he had seen him last time on 25.1.1990 at about 5.30 P.M. at the Rehri of Chander Pal in Karkardooma along with the above said persons. In the cross-examination, he has been confronted with his previous statement and contradicted to suggest that he had not gone to check the contract work at the site in Karkardooma on 25.1.1990. In the cross-examination, it has been further deposed that he does not remember the name of the contractor whose contract work he had gone to inspect; that he had not entered in any diary the site which he visited on that day nor did he enter in any register in the office about the site visited by him on that day. It is stated that he had boarded the bus from Karkardooma for Mori Gate at about 5.45 P.M.; that he does not know where Nand Kishore had gone from the Rehri of Chander Pal on that day. It is denied that on 29.1.90 he had told about the news in news paper about the recovery of dead body to Jugal Kishore and Mahesh Kumar. It is denied that on 2.2.1990 both the accused were arrested by the police and that police had recorded his statement on 2.2.1990. It is further stated that he had gone to inspect the site towards Anand Vihar; that a pump house was there in a park in Anand Vihar.

It is sought to be suggested from the evidence of this witness that he had seen Nand Kishore last at the Rehri of Chander Pal on 25.1.1990 at about 5/5.30 P.M. and at that time Chander Pal, Kishan Lal and Brij Bhan were also present with Nand Kishore; that on 2.2.1990 P.W.1, Mahesh Kumar, brother of Deceased Nand

Kishore came to the witness and inquired about Nand Kishore and the witness told him that he had seen Nand Kishore last time on 25.1.1990 at about 5.30 P.M. at the Rehri of Chander Pal in Karkardooma along with Kishan Lal, Chander Pal and Brij Bhan. According to the witness on 25.1.1990 he had gone to Karkardooma at about 5/5.30 P.M. to check the work of the contractor at the site. The cross-examination of this witness discloses that the witness is not able to give the name of the contractor, the exact location which he had visited that day, nor the specification about the work site nor any note made anywhere about he having visited the work site in Karkardooma around 5/5.30 P.M. on 25.1.1990. P.W.1 does not depose in examination-in-chief of his evidence that on 2.2.1990 he inquired from P.W.6 about Nand Kishore and was told by him that he had seen Nand Kishore last time on 25.1.1990 at about 5.30 P.M. at the Rehri of Chander Pal in Karkardooma along with the persons deposed by P.W.6. P.W.1 has deposed in the cross-examination that Ram Kishan (P.W.6) had told them about his brother Nand Kishore in the evening of 2.2.1990. It is suggested from the evidence of P.W.1 that on 3.2.1990 and 5.2.1990 his statement was recorded by the police.

6. P.W.4 Jugal Kishore deposed in his evidence that Nand Kishore left the house on 25.1.1990 at 4 P.M.; that on 2.2.1990 he and P.W.1 went to P.S. Mukerjee Nagar and lodged a missing report about Nand Kishore; that they came to know from newspaper that a dead body was found from a well in the area of P.S.Anand Vihar; that on 3.2.1990 P.W.1 visited P.S. Mukerjee Nagar. In the cross-examination the witness has been shown the photostat certified copy of his statement recorded in the Juvenile Court in the trial against co-accused Brij Bhan. The witness has admitted that he had stated in his previous deposition that his brother Nand Kishore and Sri Niwas had gone to Subzi Mandi, Burf Khana to purchase vegetables. It is further deposed in the examination that Ram Kishan met the witness (us) in the evening of 2.2.1990; that Mahesh (P.W.1) was also present in the evening when Nand Kishore left the house on 25.1.1990; that Sri Niwas was also present in the house and he had gone with Nand Kishore; that Mahesh was not present in the house when Nand Kishore had gone from the house on 25.1.1990 at 4 P.M.; It may be seen that the witness has been making contradictory statements, in one breath saying that Mahesh was also present on

25.1.1990 when Nand Kishore left the house and the witness at the same time telling that Mahesh was not present in the house when Nand Kishore had gone from house with Sri Niwas on 25.1.1990; that on 3.2.1990 the witness did not tell the police what Ram Kishan had told them on 2.2.1990; that Ram Kishan had met them on the way on 2.2.1990 when he told them about the accused and his brother. This would suggest that P.W.6 either did not last see deceased Nand Kishore at the Rehri of Chander Pal at about 5/5.30 P.M. on 25.1.1990 as deposed by him or that he may have seen last Nand Kishore at the Rehri of Nand Kishore, as deposed by him but did not tell P.W.1 about the same. As far as the evidence of P.W.4 is concerned, it has been emphatically stated by him that P.W.6 did tell them about Nand Kishore and the accused on 2.2.1990. It is surprising that though P.W.4 was told by P.W.6 about the accused and his brother Nand Kishore on 2.2.1990, P.W.4 did not tell about the accused and his brother as told by P.W.6, to the police on 3.2.1990. If P.W.6 had seen Nand Kishore at the Rehri of Chander Pal together with Kishan Lal at about 5/5.30 P.M. on 25.1.1990 and if the same thing was told to P.W.4 by P.W.6 on 2.2.1990 as admitted by P.W.4, then why should P.W.4 not tell the same on 3.2.1990 to the police expressing suspicion on Chander Pal and Kishan Lal. From this the inference could be that either P.W.6 did not see Nand Kishore at the rehri of Chander Pal together with Kishan Lal in the evening of 25.1.1990 or that he did not tell P.W.4 about the accused and his brother. P.W.4 has in no unmistakable terms stated P.W.6 having met him on 2.2.1990 and told him about the accused and Nand Kishore. If that be so, then P.W.1 and/or P.W.4 would not have failed to tell the police on 3.2.1990 at least when they were shown the photograph of a dead body which they identified to be that of their missing brother Nand Kishore. It is suggested from the cross-examination of P.W.1 that P.W.6 told him about his brother Nand Kishore in the evening of 2.2.1990. P.W.1 also deposed that they had not lodged the report in P.S.Mukerjee Nagar after making inquiry from P.W.6. The first reaction of a brother would be to lodge report with the police immediately on getting information about his brother who is said to be missing since last about eight days. It is surprising that though P.W.6 admittedly told P.W.1 about Nand Kishore in the evening of 2.2.1990 it does not occur to P.W.1 to lodge report or tell the police about what was told to him in the evening of 2.2.1990 by P.W.6 at least on

3.2.1990. This conduct of P.W.1 does not sound normal, appreciating the evidence of P.W.6 about his visit to Karkardooma area where he deposes to have seen Nand Kishore at the Rehri of Chander Pal along with Kishan Lal P.W.1 and 4 not stating to the police in their statements on 3.2.1990 and 5.2.1990 a word about P.W.6 having told them about Nand Kishore having been seen at the Rehri of Chander Pal at about 5.30 P.M. on 25.1.1990. P.W.6 does not say that he had so told P.W.4 but what he says is that he had told P.W.1 about Nand Kishore and the accused. Thus, what P.W.6 says is not corroborated by P.W.1 in his examination-in-chief. P.W.6 is not able to give the exact location of the site or the name of the contractor, whose work site he visited on 25.1.1990 nor any note made anywhere about P.W.6 having inspected the work site in Karkardooma area. The evidence of P.W.6 with regard to he having visited the work site for inspection in the Karkardooma area and he having seen deceased Nand Kishore at the Rehri of Chander Pal and having told the same to P.Ws.1 and 4 is not consistent with the conduct of P.Ws. 1 and 4 of not telling the police on 3.2.1990 and 5.2.1990 about P.W.6 having told them that deceased was seen at the Rehri of Chander Pal at about 5/5.30 P.M. on 25.1.1990. Had P.W.6 told P.W.1 and/or 4 about he having seen Nand Kishore at the Rehri of Chander Pal at 5/5.30 P.M. on 25.1.1990, P.W.1 and/or 4 would not miss to tell the police on 3.2.1990 and/or 5.2.1990 when their statements were recorded, as disclosed from the evidence and, therefore, considering the evidence of P.Ws. 1,4 and 6 with regard to Nand Kishore having been last seen Nand Kishore at 5/5.30 P.M. at the Rehri of Chander Pal in Karkardooma on 25.1.1990 by P.W.6 does not inspire confidence so as to conclusively hold that P.W.6 did see Nand Kishore at the Rehri of Chander Pal at about 5 P.M. on 25.1.1990.

7. It may be appreciated that according to P.W.4 Nand Kishore left the house at about 4 P.M. on 25.1.1990 along with Sri Nivas to purchase vegetables from Subzi Mandi Burf Khana. In missing report Ex.PW-20/A lodged on 2.2.1990 after about eight days of the missing of Nand Kishore, there is absolutely no mention that Nand Kishore had gone with Sri Nivas to purchase vegetables in Subzi Mandi - Burf Khana. There does not seem any ostensible reason for P.W.1 not to state in the missing report that Nand Kishore had left the house along with Sri Nivas because P.W.4 is supposed/expected to have told PW.1 that on 25.1.1990, Nand

Kishore left the house in company of Sri Nivas. A clue could have been provided to the police in the direction of searching Nand Kishore and inquiries could have been made from Sri Nivas about Nand Kishore having left the house in his company on 25.1.1990 and further inquiries regarding the missing/non-returning of Nand Kishore. It is really curious as to why the name of Sri Nivas was not disclosed in the missing report Ex.PW-20/A or on 3.2.1990 at least when the photograph of the dead body was identified to be that of Nand Kishore by P.Ws. 1 and 4 in P.S. Anand Vihar.

In the case of *Indradeo Mishra etc. v. State of Madhya Pradesh* JT1996 (11) S.C. 661 the Supreme Court, considering the fact that the deceased going along with the accused, regardless of whether he would keep or kill her (deceased) and the witnesses stated that thereafter accused Indradeo Mishra and Laxami Bai (deceased) went along the road towards the jungle side which leads to the Banwari site and the other accused persons also thereafter went towards the jungle side; held that this evidence was not sufficient to prove the circumstance of last seen together, holding the accused entitled to the benefit of doubt and the consequent acquittal. In the instant case even assuming what P.W.6 says to be true about he having seen Nand Kishore at the Rehri of Chander Pal together with accused Kishan Lal and others at 5/5.30 P.M. on 25.1.1990, that by itself can not be regarded conclusive so as to establish the complicity of the accused in the offence of murder of Nand Kishore.

8. Another circumstance relied on by the prosecution is the recovery of piece of muffler Ex.P-8 and clothes of the deceased Ex.P-3 and 4. Relying on the decision in the case of *Meghaji Godadji Thakore and another Vs . The State of Gujarat* : (1992)2GLR1347 it has been submitted by Mrs.Meena Chaudhry Sharma, learned Advocate for the appellants that the discovery of the clothes Ex.P-3 and P-4 of the deceased and the piece of muffler Ex.P-8 on the basis of the joint statement by the two accused persons is not legal and admissible. In the case of *Bhagat Bahadur versus State AND Kul Bahadur v. State* reported in 1996 (1) AD 59 it has been observed by the Division Bench of this Court that the alleged disclosure statement of the two appellants that 'the blood stained clothes belong to them are clearly not admissible in evidence under Section 27 of the Evidence Act in view of the settled

position of law'.

P.W.1 stated in his evidence that accused persons led the police party to the fields and produced a pant and bushirt and a piece of muffler after taking out the same after digging the earth from a pit; that the pant and shirt are Ex.P-3 and P-4 and muffler is Ex.P-8. P.W.4 Jugal Kishore stated in his evidence that accused Chander Pal and Kishan Lal, present in court, removed some earth from a place in the fields near a wall and took out one shirt and one pant and one piece of muffler; that both the accused removed the earth on a place on the grounds in the fields and got recovered these three articles; that vide Memo Ex.PW-4/D signed by him and P.W.1, piece of muffler was recovered at the instance of accused Chander Pal and Kishan Lal. It is stated that this muffler belongs to Chander Pal. It is further deposed that vide memo Ex.PW-4/G, shirt and pant of deceased Nand Kishore were recovered at the disclosure of accused Chander Pal and Kishan Lal.

Perusal of Ex.PW-4/D suggests that accused Chander Pal son of Janki Prashad and accused Kishan Lal son of Shanker Lal who were under police custody voluntarily going ahead produced, after taking out a piece of woolen muffler of white, red, black and yellow strips. It is suggested from Ex.PW-4/D, the recovery memo of piece of muffler, that both the accused persons, who were under police custody, voluntarily went ahead and took out a piece of woolen muffler of white, red, black and yellow strips from a pit by the side of the wall near the field and produced before the witnesses of recovery. The recovery memo clearly suggests that both the accused jointly took out the piece of muffler from a pit by the side of a wall near a field and produced the same. Thus, it is a joint recovery of a piece of muffler from both the accused.

Perusal of Ex.PW-4/G suggests that Chander Pal son of Janki Prashad and accused Kishan Lal son of Shanker Lal under police custody, voluntarily went ahead and after removing the earth from a pit by their own hands, took out and produced the clothes i.e. pant and bushirt of white colour stated to be that of deceased Nand Kishore. It is clearly suggested that both the accused persons voluntarily went ahead, removed the earth from a pit by their own hands took out and produced the clothes. There is no manner of doubt that Ex.PW-4/G clearly

indicates that both the accused together reached the place, removed the earth from the pit jointly by their own hands and both took out and produced the clothes. It is as clear as anything from memos Ex.PW-4/D and Ex.PW-4/G that the recovery of piece of muffler and the clothes are nothing but by both the accused jointly and from this it can not be said as to which of the accused produced which article and, therefore, the recoveries of muffler and clothes vide either of these memos cannot be regarded legal and admissible in law, as contemplated under Section 27 of the Indian Evidence Act.

It may also be appreciated that as far as the joint recovery of muffler vide memo Ex.PW-4/D is concerned, it has no basis inasmuch as the recovery of muffler Ex.P-8 vide recovery memo Ex.PW-4/D is not preceded by any discovery statement of the accused persons either singly or jointly. It need hardly be said that recovery of a Mudda Mal property stated to have been produced by the accused person must be first shown to have voluntarily disclosed/express willingness to point out and produce the incriminating article and for that a statement by the accused person stating that he had concealed or kept an article at a particular place and that he wants/desires to produce the same willingly. It is only thereafter that the accused leads the I.O. and the attesting witnesses to the place where he has stated to have kept and/or concealed the incriminating article and thereafter the article taken out and produced by the accused in presence of the witnesses and that is how the recovery of the incriminating article is to be affected so as to be legal and admissible in law. Thus, the recovery must have the basis of a disclosure statement voluntarily made by the accused person desirous of producing the article kept/concealed by him from certain place. In the instant case the basis, namely, a voluntary disclosure statement of Chander Pal stating that he has kept a muffler(Ex.P-8) at a particular place and that he desires to/is willing to produce the same is non-existent. So on that score also the recovery of the muffler Ex.P-8 can not be said to be legal and valid besides other infirmities from which it suffers.

For the reasons aforesaid the circumstance of recovery of piece of muffler and the clothes can not be taken into consideration.

9. Another circumstance relied on by the prosecution in order to bring the guilt home to the accused is the recovery of silver ring with letter 'N' engraved thereon Ex.P-5 and the recovery of wrist watch of 'Time Star' make Ex.P-6.

10. P.W.1 deposed in his evidence that on 5.2.1990 police apprehended accused Chander Pal from Karkardooma chowk. He was wearing the silver ring in his finger which belonged to Nand Kishore because the word 'N' was engraved on the said ring and the said ring used to be worn by his brother. P.W.4 stated in his evidence that ring Ex.P-5 belonged to his brother Nand Kishore.

As far as the recovery of wrist watch Ex.P-6 is concerned, it has been deposed by P.W.1 that accused Kishan Lal was also apprehended from the chowk by the police and he made a disclosure statement that he can get recovered the wrist watch from his house belonging to Nand Kishore; thereafter accused Kishan Lal went to his village house in Karkari and got recovered wrist watch from a bag lying in his house; that after seeing the wrist watch the witness stated that it belonged to his brother Nand Kishore. P.W.4 in his evidence, after seeing the wrist watch stated that the same belonged to his deceased brother.

Accused Chander Pal in his statement recorded under Section 313 of the Code has denied the recovery of ring Ex.P-5 with letter 'N' engraved there on and identified to be that of deceased Nand Kishore, from his finger. Accused Kishan Lal in his statement recorded under Section 313 of the Code has denied he having volunteered to get produce the wrist watch and that he produced from his village house the wrist watch Ex.P-6, identified to be that of deceased Nand Kishore. P.W.1 in his cross-examination has stated that he had not told the police that his brother was wearing the ring and the wrist watch.

Missing report dated 2.2.1990 lodged with P.S. Mukerjee Nagar by P.W.1 is at Ex.PW-20/A, which was recorded as D.D. No.4A. Perusal of the same suggests that P.W.1 stated therein that 'he along with his family reside at the address given therein; that on 25.1.1990 his brother Nand Kishore son of Bhagwan Sahai, aged 30 years, whitish complexion, height 5'7' had left the house at about 4 P.M. to meet someone at Raja Garden clad in white pant, white shirt of striped design and wearing black sandals, is lame from his right leg and having stitch on his right

buttock. He has not returned till date. He may be searched out. We do not have any doubt on anyone'. It is pertinent to note that the details like whitish complexion, height 5'7', lame by right leg and having a mark of stitch on his right buttock, which would not be visible outwardly have been mentioned in the missing report together with the clothes put on, namely, white pant and white shirt of striped design and also black sandals. Even the detail not visible outwardly could be mentioned with the defect of lame by right leg but it does not occur to P.W.1 to state silver ring with 'N' engraved thereon and the wrist watch, if worn by Nand Kishore when he left the house at about 4 P.M. on 25.1.1990. On the contrary, P.W.1 has in clear terms stated that he did not tell the police about the wrist watch and the ring which his brother Nand Kishore was wearing. It is understandable that in order to identify a person missing colour of complexion, approximate height, the description of the clothes put on would be necessary. So also the defect in the leg and a mark of stitch on the right buttock for the certainty of the person. The silver Ring with 'N' engraved thereon and a wrist watch of a particular make can certainly provide further and better clues for finding/ identifying a missing person. P.W.1, as disclosed from the evidence is a medical man by profession running a clinic. It is only when that ring Ex.P-5 and wrist watch Ex.P-6 are seen by P.W.1 and 4, they identified the same to be that of their deceased brother as belonging to him. Even in the examination-in-chief, P.W.1 does not state that when Nand Kishore left the house in the afternoon of 25.1.1990 he was wearing silver ring with 'N' engraved thereon and a wrist watch. It is pertinent to note that according to P.W.1 when Chander Pal was arrested in Karkardooma chowk, he was wearing ring Ex.P-5 which had letter 'N' engraved thereon identified to be that of deceased Nand Kishore. It is highly improbable that accused Chander Pal, after liquidating Nand Kishore would wear the ring of deceased Nand Kishore, so as to proclaim that he is wearing the ring belonging to deceased Nand Kishore and invite troubles for himself.

11. As far as the recovery of wrist watch Ex.P-6 at the instance of accused Kishan Lal is concerned, P.W.4 states in his evidence that Kishan Lal was arrested in the chowk of Karkardooma and he volunteered to produce the wrist watch and thereafter he led the witness and the police party to his village house and got produced wrist watch of 'Time Star' make with broken stainless steel chain.

Ex.PW-18/G is the memo dated 5.2.1990 containing disclosure statement of Kishan Lal who volunteered to point out a wrist watch belonging to Nand Kishore which he had concealed. The seizure memo Ex.PW-18/H suggests accused Kishan Lal having taken out wrist watch of Time Star make in his house at Karkardooma after taking out the same from a cloth bag containing children's clothes. The disclosure memo Ex.PW.18/G and seizure memo Ex.PW.18/H are attested by S.I. and A.S.I. respectively of P.S.Anand Vihar. P.W.1 in his cross-examination has stated that the police had not called any public person at the time of recovery of ring, watch or clothes of the deceased or at any time although the public witnesses were present. It is pertinent to note that it is not the say of P.W.1 that public witnesses were not available at the time of disclosure statement Ex.PW-18/G, the recovery memo Ex.PW-18/H or the recovery of ring Ex.P-5 vide memo Ex.PW-18/E and personal search of accused Chander Pal vide Memo Ex.PW-18/D. On the contrary P.W.1 has in no mistakable terms stated that public witnesses were not called though they were present. We see no reason why the public witnesses should not have been joined as attesting witnesses to Ex.PW-18/D, E, G and H when they were present/available at the relevant time. It need hardly be said that public witnesses, if available, joining as attesting witnesses to the disclosure statement as well as recovery of the Mudda Mal articles the same would lend assurance to the say of the prosecution. Not joining the public witnesses as attesting witnesses to Ex.PW-18/D, E, G and H would smack of malafide and make the prosecution version more doubtful.

In the case of Harish Chander @ Billa v. State 1995 (2) C.C. Cases 503 (HC) it has been held by the Division Bench of this Court that 'the discovery under Section 27 of the Indian Evidence Act in presence of subordinate police officers when the Investigating Officer is taking his subordinate constable as a witness for the incriminating discovery then the same become very doubtful'. It may be seen that in the instant case attesting witnesses to Ex.PW-18/E, seizure memo of Ex.P-5 are S.I.Devi Dyal and A.S.I. Bhola Dutt, both of P.S. Anand Vihar. The attesting witnesses to disclosure memo Ex.PW-18/G of accused Kishan Lal is attested by same S.I. and A.S.I. respectively of P.S. Anand Vihar. The seizure memo Ex.PW-18/H for wrist watch Ex.P-6 is again attested by the same attesting witnesses, namely S.I. Devi Dyal and A.S.I. Bhola Dutt of P.S. Anand Vihar. As pointed out

above, P.W.1, in his evidence, has in unmistakable terms stated that public witnesses were very much present at the time of the recovery of the said Mudda Mal articles. It need hardly be said that in order to lend assurance that the investigation has been proceeding in fair and honest manner, it will be necessary for the Investigating Officer to take independent witnesses, if available, to the discovery/recovery under Section 27 of the Indian Evidence Act and not taking independent witnesses, though available, and taking highly interested persons and police officials as witnesses to the discovery/recovery, would render the discovery/recovery at least not free from doubt. The object underlying sub-Section (4) of Section 100 of the Code is to ensure an honest and genuine search/discovery and to prevent trickery by 'planting' the things to be 'found' at searches. 'Respectable' occurring in sub-Section (4) of Section 100 of the Code means in substance impartial and independent persons not connected with official dom or police whose evidence may be relied upon. 1998 (2) AD 42 - State v. Ramesh) Non-joining independent witnesses to recoveries from places though such witnesses were available, would be nothing short of violation of sub-Section (4) of Section 100 of the Code and such recoveries can not have any semblance of connecting the accused with the crime and proving the guilt.

12. It may also be appreciated that silver ring with 'N' engraved thereon and the wrist watch of 'Time Star' make are of common pattern. Such rings and wrist watches of 'Time Star' make would be easily available in the market. Moreover, simply because accused Chander Pal is stated to have worn silver ring with 'N' engraved thereon without making any mention in personal search memo Ex.PW-18/D that Chander Pal at the time of arrest was wearing silver ring with 'N' engraved thereon and accused Kishan Lal is stated to have produced the wrist watch of 'Time Star' make assuming the same to be true, can not be regarded as belonging to deceased Nand Kishore, especially in absence of the statement to this effect by P.W.1 to the police, as pointed out above and not mentioning the fact of Nand Kishore wearing wrist watch and silver ring with 'N' engraved thereon in Ex.PW-20/A and also for the reason that Ex.P-5 and wrist watch Ex.P-6 do not bear any distinguishing feature or mark so as to make the say of P.Ws. 1 and 4 in this regard acceptable being reliable and trustworthy. In our opinion no importance could be given to such disclosure and the subsequent recovery of Ex.P-3, P-4, P-

8, P-5 and P-6.

13. It may be appreciated that Nand Kishore left the house at about 4 P.M. on 25.1.90. His dead body was found at about 3.30 A.M. in the early morning of 26.1.1990 from an abandoned well in the field. Both the accused were arrested on 5.2.1990. Their personal searches were also taken on 5.2.1990 as disclosed from the evidence on record. The recovery of silver ring Ex.P-5 vide Memo Ex.PW-18/E, the disclosure statement by accused Kishan Lal Ex.PW-18/G, the seizure memo of wrist watch of Time Star make Ex.P-6 vide Ex.PW-18/H are all of 5.2.1990. Thus, the time gap between the time and date of occurrence, the arrest of both the accused and recovery of ring Ex.P-5 and wrist watch Ex.P-6 stated to have been worn by the deceased when he left the house has its own significance and such disclosures/recoveries can not conclusively prove participation of the accused in the crime. We are not inclined to attach any importance to the disclosure statements Ex.PW-18/G and the seizure memo Ex.PW-18/E, also for the reason that neither in the missing report Ex.PW-20/A nor in the statements under Section 161 of the Code the prosecution witnesses have stated to the effect that deceased had worn silver ring Ex.P-5 with 'N' engraved thereon and a wrist watch of 'Time Star' make Ex.P-6 when he left the house in the afternoon of 25.1.1990 and that he was ordinarily wearing wrist watch of Time Star make and also for the reason that neither the disclosure statement nor the seizure memos Ex.PW-18/G, Ex.PW-18/H, Ex.PW-4/D and Ex.PW-4/G respectively are attested by public witnesses though very much present at the relevant time, as observed above and only taking police officers and highly interested witnesses, P.Ws. 1 and 4 as attesting witnesses thereto. In our view following the principle laid down in the case of Harish Chander @ Billa v. State (supra) and State v. Ramesh (supra) Exhibits.PW-4/D, PW-4/G, PW-18/E, PW-18/G and PW-18/H cannot be relied upon.

14. According to the prosecution the motive for committing murder of Nand Kishore by Chander Pal and Kishan Lal is that deceased Nand Kishore had advanced money to Chander Pal and he was seeking recovery of the same from Chander Pal and that Nand Kishore had also illicit relations with the wife of Chander Pal. Kishan Lal is stated to be the brother-in-law of Chander Pal.

The prosecution has examined P.W.5 Anil alias Neelu who deposed that he knew Nand Kishore as well as accused Chander Pal; that wife of Chander Pal used to visit Nand Kishore but the witness does not know why she was visiting the house of Nand Kishore. It may be appreciated that the witness does not say anything about any illicit relations between deceased Nand Kishore and the wife of accused Chander Pal. All what he says is that wife of Chander Pal also used to visit the house of Nand Kishore but the witness does not know why she used to visit the house of Nand Kishore. It is pertinent to note that not a word about alleged illicit relationship of deceased Nand Kishore with the wife of accused Chander Pal has been stated by the witness.

P.W.6 Ram Kishan has stated in his evidence that he knew deceased Nand Kishore and accused Chander Pal; that Nand Kishore was having illicit relations with the wife of Chander Pal; that they were on visiting terms with each other. In the cross-examination, it has been deposed by the witness that he had only heard about illicit relations between Nand Kishore and wife of Chander Pal. It need hardly be said that it can not be said that deceased Nand Kishore was having illicit relations with the wife of accused Chander Pal only on the basis of what P.W.6 has stated to have heard about. Except P.W.5 and 6, as pointed out above, there is no other evidence with regard to the illicit relationship between Nand Kishore and the wife of accused Chander Pal. In our opinion, the evidence on record in this regard can not be said to be in any manner sufficient satisfactory, reliable or trustworthy so as to hold illicit relationship between Nand Kishore and wife of accused Chander Pal as the motive for committing the murder of Nand Kishore by the accused persons.

15. It is also the say of the prosecution that deceased Nand Kishore had advanced money to Chander Pal and that Nand Kishore was seeking recovery of the same from Chander Pal. P.W.5 in this regard has stated in his evidence that Nand Kishore continued to visit the house of Chander Pal even after Chander Pal had shifted to Karkardooma; that Nand Kishore used to tell the witness that he used to visit the house of Chander Pal as he had to take some money from him. It is pertinent to note that the witness does not say in his examination-in-chief as to what was the amount stated to have been advanced by Nand Kishore to Chander

Pal and the recovery of the same by Nand Kishore. In the cross-examination it has been deposed that the witness does not know the date when Nand Kishore had visited the house of Chander Pal. The witness also does not know when the amount was advanced by Nand Kishore to Chander Pal. It has been stated that Nand Kishore had given Rs.5,000/- to Chander Pal in presence of the witness; that no document was written about the said transaction and that Chander Pal had returned Rs.1500/- to Nand Kishore; that there had never been any quarrel between Nand Kishore and Chander Pal about the said transaction of money. P.W.6 has stated in his evidence that Nand Kishore had given a sum of Rs.3500/- or Rs.4000/- to Chander Pal as a loan and that Chander Pal had not returned that amount to Nand Kishore.

P.W.4, in his evidence, has stated that his deceased brother Nand Kishore had given Rs.5500/- to accused Chander Pal on his demand for making a Rehri. P.W.1 in his evidence has not stated a word about his brother Nand Kishore having lent any amount to Chander Pal.

16. Thus, it will be seen from the above that P.W.5 in his examination-in-chief does not specify the figure. In cross-examination he states that Nand Kishore had lent Rs.5000/- to Chander Pal out of which Rs.1500/- had been returned by Chander Pal. P.W.6 states that Rs.3500/- or Rs.4000/- were lent by Nand Kishore to Chander Pal. He does not speak of any part payment by Chander Pal. According to P.W.4 Rs.5500/- were lent by Nand Kishore to Chander Pal whereas P.W.1 does not say anything in this regard. The amount differs from witness to witness. One telling about the part payment of Rs.1500/-, others not deposing about any part payment and at the same time evidence discloses that Nand Kishore was visiting the house of Chander Pal for recovery of the amount lent to Chander Pal and that he was not returning the amount to Nand Kishore, yet there was no quarrel between them for non-return of the money by Chander Pal. If Nand Kishore had lent money to Chander Pal and P.W.6 told P.W.1 and/or 4 about Nand Kishore having gone to the Rehri of Chander Pal at about 5/5.30 P.M. on 25.1.1990 for the recovery of his money and P.W.6 having told the same thing to P.W.1 and/or 4 then in that case in missing report Ex.P.W.20/A on 3.2.1990 and in the statements of P.Ws. 1 and 4 recorded on 3.2.1990 and 5.2.1990, as

disclosed from the evidence, atleast a doubt could have been expressed on Chander Pal. All this would go to show that the evidence with regard to the motive either of money having been lent by Nand Kishore to Chander Pal and Nand Kishore having gone to the Rehri of Chander Pal for the recovery of amount and the illicit relations of Nand Kishore with the wife of Chander Pal can not be said to be satisfactory and trustworthy. The state of evidence in this regard, as pointed out above, would suggest that the same can not be regarded sufficient or satisfactory so as to hold motive proved as sought to be suggested by the prosecution for committing the murder of Nand Kishore and, therefore, we do not think that there was motive to commit the murder of Nand Kishore by Chander Pal and Kishan Lal.

17. Since in our view the prosecution has not been able to establish the circumstances to the hilt so as to bring the guilt home to the accused circumstance of last seen together and motive for committing the crime not proved by satisfactory and reliable evidence and Exhibits PW-4/D, PW-4/G, PW-18/E, PW-18/G and PW-18/H having been found not legal, reliable and trustworthy as contemplated by Section 27 of the Indian Evidence Act, no finding of guilt could have been justifiably recorded by the trial Court, looking to the state of evidence as discussed above. As the prosecution, in our opinion, has not been able to establish the chain of circumstances so complete so as to reach a conclusion of the guilt of the accused by cogent evidence ruling out every other possibility consistent with the innocence of the accused persons unerringly pointing to the complicity of the accused in the crime the appellants will be entitled to the benefit of doubt and consequent acquittal.

18. In the result, Criminal Appeal No.137/94 and Criminal Appeal No.206/94 are allowed and the conviction recorded and the sentence imposed by the trial court are set aside. Appellant Chander Pal son of Janki Prashad and appellant Kishan Lal son of Shanker Lal are acquitted in F.I.R. No.5/90 registered at P.S. Anand Vihar, Delhi.

Appellant Chander Pal son of Janki Prashad and appellant Kishan Lal son of Shanker Lal be set at liberty forthwith, if not required in connection with any other case.

