

Dilbagh Singh Vs. State

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Court : Delhi

Decided On : Aug-01-1995

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Judge : P.K. Bahri and; J.B. Goel, JJ.

Acts : Criminal Law - Sections 161; [Code of Criminal Procedure \(CrPC\) , 1973](#); [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal Nos. 100, 124 and 125 of 1989

Appellant : Dilbagh Singh

Respondent : State

Advocate for Pet/Ap. : Neelam Grover,; L.K. Upadhayay and; Mukta Gupta, Advs

Judgement :

P.K. Bahri, J,

(1) Dilbagh Singh, Manak Chand and Pooran Kumar- appellants have been convicted of offences punishable under Section 120B read with Section 302 of the Indian Penal Code, Section 302 read with Section 120B of the Indian Penal Code for murder of a truck driver Phool Chand and under Section 392 read with Section 120B of the Indian Penal Code for committing robbery of truck bearing No.MRL-666 and Manak Chand appellant has been also convicted in addition of an offence

punishable under Section 25 of the Arms Act vide judgment dated June 12, 1989, of an Additional Sessions Judge, New Delhi. Vide order of the even date the appellants have been sentenced to undergo each imprisonment for life and to pay each a fine of Rs.2,000.00 and in default of payment of fine to undergo further rigorous imprisonment of six months for the offence of murder and to undergo each rigorous imprisonment for ten years and also to pay a fine of Rs.2,000.00 each and in default of payment of fine to undergo further rigorous imprisonment for six months for offence of robbery. The appellant Manak Chand has been also sentenced to undergo imprisonment for two years and also to pay a fine of Rs.500.00 and in default to undergo further rigorous imprisonment for five month under Section 25 of the Arms Act. The substantive sentences have been directed to run concurrently and from the fine if realised, half the amount of the fine was directed to be paid to legal heirs of deceased Phool Chand.

(2) The case of the prosecution, in brief, is that Public Witness 17, Amit Batra, his brother and father were having a partnership business of Rashtra Cooperative Freight Carriers of which office was located at premises bearing No-10850, Nabi Qarim, Jhandewalan, Paharganj and another office was located at Kanpur. The trucks of this partnership ply on Delhi-Kanpur route as well. Phool Chand-driver since deceased had been engaged by the said firm for plying the truck No.MRL 666 on the said route and he had been working with the said firm for about six years prior to the occurrence. Tirath Raj Pal Public Witness 14 was employed as a cleaner by the said firm for working on the said truck and he was employed only seven or eight months prior to the occurrence.

(3) The case of the prosecution proceeds that on September 2, 1985, the truck was engaged for bringing goods (Colgate tooth-paste) from Kanpur and the said goods were unloaded at the Colgate Agency near Dcm New Delhi and thereafter a message was given on telephone to the office that truck had been unloaded and instructions came that the truck be taken to wholesale vegetable market known as Mandi Azadpur and if possible, any other customer be approached for carrying goods from that place to Kanpur. The truck was stated to have been brought by the driver as well as cleaner to Azadpur Mandi at about 4 P.M. There exists a Mehta Agency at the said Azadpur Market and some negotiations took place for

taking apples in that truck to Kanpur at the hire charges of Rs.1400.00 . At about 4.30 Pm Dilbag Singh and Manak Chand are stated to have come on a two-wheeler scooter at that place and they enquired whether the truck could be hired for taking household goods and they also informed that the household goods were to be loaded from 13, Tughlak Road, for being taken to Kanpur and Rs.1500.00 were offered as hire charges for the truck. Cleaner Tirath Raj Pal then had a word with Amit Batra on telephone and got his permission for carrying out this job and Dilbagh Singh is stated to have also talked on telephone with Amit Batra in this respect.

(4) On getting the clearance from Amit Batra, it is alleged that Dilbagh Singh moved ahead on his two wheeler scooter whereas Manak Chand sat in the truck Along with the driver and the truck was brought to Masjid Moth. On driver and cleaner asking them to lead the truck to the house from where the goods, were to be loaded, Manak Chand informed that the house was located in an area where the truck could not enter before 10 PM. Phool Chand-driver and the said two appellants then took tea in a nearby tea shop whereas cleaner stayed back in the truck and after about half an hour at about 8.15 Pm the three appellants came together and suggested that the driver and the cleaner and they themselves could take their meals at the residence of Dilbagh Singh as food had been got prepared and the loading of truck would take 2-3 hours and thus, there would be no time left in between to take the food. Phool Chand driver went with the appellants whereas Tirath Raj Pal remained hack in the truck and at about 11 Pm they came back and cleaner remarked that much lime had been already wasted and it was about 11 Pm but Phool Chand driver asked Tirath Raj Pal that he should also take his meals and thereafter they would go for loading the truck as the whole night was available for that purpose.

(5) Tirath Raj Pal noticed at that time that Phool Chand had not only taken meals but had also taken liquor. Thereafter Pooran-appellant took Tirath Raj Pal to the same house of Dilbagh Singh where Tirath Raj Pal took meals and although he was offered liquor but he declined to take the same. Pooran appellant had come downstairs and informed Tirath Raj Pal. that he would be waiting for him. Tirath Raj Pal after taking meals came downstairs but found that Pooran was not there.

He came to the place where he had left the truck parked and he found neither the appellants nor Phool Chand nor the truck were there. Tirath Raj Pal returned to the house of Dilbagh and informed the lady of the house about aforesaid facts and he asked the lady to give him some place for sleeping and he was required to sleep near the two children. At about 1 A.M. the appellants came and woke him up and asked him to go to the truck and Tirath Raj Pal came downstairs and went to the place where truck was parked. The appellants also followed him and he found that Phool Chand was not there in the truck and on his query Manak Chand informed that they had left Phool Chand back at the house from where goods were to be loaded and owner of the house whose goods were to be loaded had mentioned that as he was watching a video film, so he goods would be loaded later on and Phool Chand was also left behind to watch the video and they had come back to take Tirath Raj Pal to the said place.

(6) Tirath Raj Pal is stated to have seen a knife lying in the dashboard and also a part of the rope visible from below the seat of the driver and also noticed the chappals of Phool Chand lying in the truck. At that time the appellants were conversing amongst themselves while standing outside the truck. On his query about the knife, rope and the chappals, Manak Chand told him not to worry and he would be taken to the same place where they had earlier taken the driver. Tirath Raj Pal asked them to then proceed to the said place but Manak Chand disclosed that he could not drive the truck and Dilbagh Singh who only knew driving was not in a fit condition to drive the truck as he was under the influence of liquor and so he proposed that they should rest for about 2-3 hours and thereafter when Dilbagh Singh would come out of the influence of liquor they would go to the said house for loading the goods and there after Dilbagh Singh and Pooran climbed up in the truck while Tirath Raj Pal and Manak Chand climbed on the front seat of (he truck for sleeping.

(7) Tirath Raj Pal became somewhat suspicious and he slipped out of the truck and ran away and he enquired from a guard at the gate of a factory about the location of any police station but the guard of that factory could not give any direction for going to the police station. Thereafter Tirath Raj Pal spent a few hours before dawn near a school. In the morning he came to the place where he had left

the truck parked with the appellants but he did not find the truck and the appellants there at that place. He took a lift in the passing by truck and came to the office of the company where he met one official of the company Sh.Sriram and narrated the facts to him who then talked with Amit Batra on telephone and Amit Batra came to the office. He accompanied Amit Batra and another driver to the place where the truck was parked in the night and he also had shown the house of Dilbagh Singh which was bearing municipal No.56, Masjid Moth. In another lane which was at some distance from the place where the truck was parked in the night, they found the truck and the truck was brought back to Motia Khan area. It is alleged that Amit talked with Kanpur office in order to find the where about of driver but no intimation was received till evening and thereafter Amit Batra is stated to have been advised by his father to lodge the report with the police and he came to Police Post Gulmohar Park at 9.40 Pm on September 3, 1985 and lodged the report which was recorded at Seriall No.25 in Daily Diary, copy of which is Ex.PW5/A.

(8) In this report it was not mentioned as to who had hired the truck and the only fact mentioned was that truck was hired for loading goods from 13,Tughlak Road, but the goods have not been loaded from that place and thereafter the search was made for the truck in Masjid Moth area and the truck was found but Phool Chand-driver was not found and a request was made to the police to trace out Phool Chand. At the time this daily diary report was recorded Amit Batra was accompanied by the cleaner Tirath Raj Pal. It appears that no action had been taken on this report for 3-4 days. It is on September 7, 1985, that Sub Inspector R.S.Dhillon, the Investigating Officer of this case (Public Witness 23), had sent a wireless message to all Police Stations all over India giving the physical particulars of Phool Chand-driver so that he could be traced.

(9) On September 3, 1985, at about 7.15 Am an information was received at Police Post Mahipal Pur falling within the jurisdiction of Police Station Mahrauli to the effect that a person was lying unconscious near Centeur Hotel, Gurgaon Road, on a road near Hotmix Plant of Bharat Construction Company. This information was recorded at Seriall No.30 in Daily Diary at 7.50 PM. Si Hashmat Khan Public Witness 15 Along with Si Shobhan Singh Public Witness 16 had come Along with constable Balraj to the said spot and found the dead body of an unknown person

aged about 25-30 years and half of the body was on the road and half was on the patri. Blood was oozing out from the nose and there were injuries present on the body which indicated that body had been run over by a truck. They had also noted a ligature mark around the neck. Thinking that it was a case of vehicle accident and despite that there was prominent ligature mark around the neck, Si Hashmat had sent a rukka on the basis of which the Fir No.329 of 1985 was registered under Section 279 and 304A of the Indian Penal Code at Police Station Mehrauli. Photographs of the dead body were taken and other formalities were completed and dead body was sent for post-mortem with the request that dead body be preserved for 72 hours so that in the meanwhile efforts could be made to get the dead body identified.

(10) It appears that dead body remained unidentified and a post-mortem was conducted on the dead body by Dr.Chander Kant Public Witness 2Q on September 6, 1985. The postmortem report prepared by the doctor depicted that the cause of death was not injury received in any vehicle accident but was due to asphyxia as a result of strangulation. The doctor in his wisdom also took photographs of the dead body. The dead body was got cremated through Sewa Samiti as it remained unidentified by that time.

(11) Surprisingly Hashmat Khan has not shown any promptness about this case as he did not even bother to collect the post-mortem report on 6th or till the investigation of that case remained with him. It appears that he took the post-mortem report from technician of Dr.Chander Kant only on 11th September 1985. According to Asi Hashmat Khan, the messages have been flashed to all the Police Stations with regard to the discovery of unidentified dead body in order to see that someone may come forward to identify the dead body but without any success. Ultimately it turned out that it was the dead body of Phool Chand-driver and his relations identified the dead body from the photographs.

(12) It is the case of the prosecution that on September 10, 1985, Amit Batra lodged a written complaint which was entered at Daily Diary No.122-B in which he disclosed that since seven days had elapsed from the date he lodged the report regarding missing of his driver Phool Chand but no trace of driver has been found

despite contact being made at his native place and that he apprehended that Phool Chand, the truck driver, had been abducted by the persons who had hired the truck from Azadpur Mandi on September 2, 1985, at about 3 Pm and that from the enquiries made by him, he had learnt that Dilbagh Singh r/o 56, Masjid Moth, was the person who had hired the truck for loading thr household goods from 13, Tughlak Road, which were to be taken to Kanpur and he got this apprehension only when he visited the said place and was informed by the inmates of the said place that they had not asked for hiring any truck for taking the household goods to Kanpur. He also mentioned that although the truck had been found on September 3, 1985, itself parked at Masjid Moth but whereabouts of Phool Chand could not be located and it appears to be a case of abduction by said Dilbagh Singh and his two associates and he had learnt this fact from the cleaner of the truck named Tirath Raj Pal and so he wanted the case to be registered and driver to be traced after investigation.

(13) Immediately this complaint was marked to Si Dhillon who got the case registered under Section 365 of the Indian Penal Code and thereafter he went in search of Dilbagh Singh and came to arrest Dilbagh Singh on the pointing out of a secret informant when he was standing behind Machhali Market Yusuf Sarai and he was interrogated and he made a disclosure that he could point out the place where the dead body of the driver was thrown and he also disclosed the names of his two companions, namely, Manak Chand and Pooran and disclosed that the rope had been taken by Manak Chand. Manak Chand was arrested on September 17, 1985 and his personal search yielded the recovery of button operated knife and a case under Section 25 of the Arms Act was registered at Police Station defense Colony vide Fir No.601/85. Manak Chand was interrogated and he made a disclosure statement that he had concealed the rope in the bushes near Gautam Nagar huts and he could get the same recovered and thereafter he led the police and got recovered the rope EX.PI which was taken into possession vide memo Ex.PW3/L. The rope was not converted into sealed parcel and apparently it did not show any presence of blood or any other incriminating material.

(14) Dhillon met Asi Hashmat on that very day and came to know about the dead body being recovered on the said date and then Si Hashmat collected the post-

mortem report on September 11, 1985 where Dhillon collected the coloured photographs from the doctor on September 12, 1985 vide memo Ex.PW20/B. Public Witness 1 Dhirender Kumar, Phool Chand's sister's son, resident of village Partap Patti Varanasi District U.P. and Public Witness 2 Lal Chand, the real brother of Phool Chand resident of Village Gulla Nala, Ahirana Varanasi on learning that Phool Chand had been murdered, came to Delhi on September 13, 1985. They were shown the photographs of Public Witness 1/A to E of the dead body of Phool Chand and they identified the said dead 'body from the said photographs. Public Witness 2 Lal Chand was also shown the photographs Exs.PW1/F and PW1/H which were the photographs taken by the police of the said body and he identified his brother Phool Chand from the said photographs as well. Asi Hashmat then closed the investigation in the accident case whereas Si Dhillon converted the Fir of his Police Station from Section 365 to Section 365 and Section 302 read with Section 34 of the Indian Penal Code. It was only on September 17, 1985 that Tirath Raj Pal came to Delhi from Kanpur and his statement was recorded by the police in which the detailed facts noticed above by us were given.

(15) It is not disputed before us that Phool Chand-driver of the truck had been murdered by strangulation and his dead body was recovered as alleged by the prosecution. It is also not disputed that death of Phool Chand had taken place due to asphyxia on account of strangulation. Dr.Chander Kant had opined that strangulation could have been possible with the rope EX.P1. EX.P1 was sent to Cfsi and the report came that some traces of blood could be detected on it but the quantity was too small to further analysis whether it was human blood and if so, of what group. The conviction of the appellants is mainly based on the testimony of Tirath Raj Pal and corroborated by recovery of the rope EX.P1 at the instance of appellant Manak Chand. There is no direct evidence with regard to the murder of Phool Chand.

(16) The prosecution has relied wholly on circumstantial evidence for bringing home the offence to the appellants. It is settled law that in a case based on circumstantial evidence the prosecution has to prove all the incriminating circumstances beyond any shadow of reasonable doubt and the circumstances so

proved should complete the chain of events linking the accused with the commission of the crime. There should not be left any chinks in such a chain and no circumstance should be of a nature which could lead to any inference of innocence of the accused. All circumstances so alleged and proved must show the involvement of the accused in the crime.

(17) Circumstances relied upon by the prosecution to bring home the offences to the appellant are as follows: 1. Phool Chand since deceased was employed as driver in the firm of PW17 Amit Batra and was plying truck NO.MRL 666 on Delhi-Kanpur route and Tirath Raj Pal Public Witness 14 was employed as cleaner on the said truck. 2. On December 2, 1985, Phool Chand-driver was reported missing after the truck was hired for taking the goods to Kanpur and truck was found intact in the evening on the next day by Amit Batra in the area of Masjid Moth. 3. Phool Chand-driver was murdered during the intervening night of September 2-3, 1985 and his death had occurred due to strangulation possible by a rope and his dead body was recovered on the morning of September 3, 1985, lying on the road side showing it to be an accident case falsely. 4. Dilbagh. Singh and Maifak Chand, appellant, had met Phool Chand-driver as well as Public Witness 14 Tirath Raj Pal on September 2, 1985, in the afternoon while they had come on a two- wheeler scooter and had engaged the truck for carrying the goods to Kanpur and appellant Pooran was met when the truck was taken to Masjid Moth area. 5. On the pretext that the house from where the goods were to be loaded was located in an area where the entry of the trucks was banned before 10 Pm, Phool Chand and the appellants took food at the house of Dilbagh Singh- appellant and also consumed liquor. 6. Thereafter Tirath Raj Pal also on persuasion took food at the house of Dilbagh appellant and in the meanwhile, the appellants disappeared with the truck Along with Phool Chand-driver. 7. Tirath Raj Pal slept at the house of Dilbagh Singh and at about 1 Am in the night three appellants came and awaken him and required him to go downstairs where the truck was pretext and on the pretext that truck cannot be now driven by Dilbagh who was in intoxicated condition, they decided to sleep in the nick for 2-3 hours before taking the truck to the place to The person whose goods were to be carried where PhoolChand had been left. 8. Tirath Raj Pal suspecting some outplay slipped away from the truck when the appellants were sleeping in the truck and could not go to any police station despite

searching for the police station and reached the office of Amit Batra in the early morning and met Srirama, an official of the firm, narrated the facts to him and Amit Batra came and they searched for the truck and Phool Chand and found the truck intact and Phool Chand was found missing. 9, Report of missing of Phool Chand was lodged at the Police Post and on September 10, 1985, a written complaint was lodged when whereabouts of Phool Chand could not be traced and suspicion was thrown on Dilbagh Singh and his companions of having abducted Phool Chand. 10. All the three appellants were arrested and on disclosure statement of Manak, rope EX.PI was discovered which on examination by Cfsi was found to contain some traces of blood and the doctor who performed the post-mortem opinion that strangulation was possible with the said rope. 11. The motive for killing Phool Chand was to take away the truck and sell the same for getting unlawful gain.

(18) It is evident if all the aforesaid pieces of circumstantial evidence are proved beyond any reasonable doubts they would definitely establish an unbroken chain which would lead to an irresistible conclusion that the appellants had perpetrated this ghastly crime and those circumstances do not give any hypothesis of innocence of the appellants. It is not disputed before us that circumstances at Serial No. 1 to 3 have been proved by the prosecution beyond any reasonable doubts. Other circumstances are mainly sought to be proved from testimony of Public Witness Tirath Raj Pal and Public Witness Amit Batra. Circumstances of recovery of rope are sought to be proved from the statements of Investigating Officer and his companion constable. So, we have to examine the evidence of the prosecution in totality in order to determine whether all or any of these circumstances have been proved beyond shadow of reasonable doubt or not. For proving most material circumstances in this case the prosecution is heavily relying on the testimony of PW14 Tirath Raj Pal, cleaner of the truck.

(19) Before discussing the evidence of the star witness Tirath Raj Pal we must mention at this stage itself that Smt. Mohender Kumar Dwi wife of Dilbagh Singh had on September 9, 1985, given an application EX.DW1/A to the Metropolitan Magistrate of the area in which it was mentioned that Dilbagh Singh had not come back to the house after being lifted by the police since September 2, 1985 and his

whereabouts be traced. The Magistrate had directed the SHO of the Police Station concerned to make the report and this application had come to Si Dhillon and he reported that . on September 10, 1985. Dilbagh Singh had been arrested. He did not controvert the facts mentioned in the application in his report that Dilbagh Singh had not been lifted as alleged in the application earlier. It is not understood that as no case had been registered against Dilbagh Singh prior to September 10, 1985, why Mohender Kaur would give application to the Metropolitan Magistrate on September 9, 1985, in case the facts mentioned by her in the application were not correct. There could be no earthly reason for giving application on September 9, 1985, in case Dilbagh Singh was not in police custody on that date at least.

(20) It is significant to mention at this stage that Amit Batra was not knowing the facts personally and according to him, he had been told names of three appellants by Tirath Raj Pal on September 3, 1985, itself as the persons who had hired the truck and had taken away Phool Chand-driver. Still in the first Daily Diary report no such names were mentioned but on September 10, 1985, a detailed written complaint was made but the names of two other companions of Dilbagh were not mentioned. It is also not understood that if Amit Batra could wait for seven days before lodging a written complaint expressing his apprehension that Phool Chand-driver had been kidnapped by the persons who had hired the truck, why he had not called the cleaner Tirath Raj Pal from Kanpur so that Tirath Raj Pal could give a complete statement to the police in which he could bring out the facts. Tirath Raj Pal was the only person who was aware of the facts but for reasons unknown he was kept away from the police till September 17, 1985, In fact there had taken place no development which could prompt Amit Batra to lodge a written complaint on September 10, 1985 even before calling Tirath Raj Pal to Delhi. If Amit was feeling so eager to lodge any written complaint to police for getting the case registered, it was all the more reasonable that he should have called Tirath Raj Pal to Delhi so that complete facts could be known from Tirath Raj Pal for recording in the complaint. Amit Batra in court admitted that he had even forgotten the name of Dilbagh and he had given telephone call to Kanpur to his brother and his brother had found the name of Dilbagh and also address of Dilbagh from Tirath Raj Pal and that is why he came to mention the same in the written complaint. He does not say that he has made any query from his brother on telephone in order to find out

the names of other two associates of Dilbagh Singh. According to Tirath Raj Pal, he was available in Kanpur throughout till September 17, 1985 and no one had asked him the names of the persons who had hired the truck. If that is so, it is not understood how the name of Dilbagh Singh came to be mentioned in the written complaint by Amit Batra.

(21) It is significant to further mention that both PW1 & PW2, close relations of Phool Chand, state that they had come to know about the murder of Phool Chand before they left their villages and PW1 stated that a driver of Amit Batra had come to his village on September 11, 1985, to inform about the murder of Phool Chand. Amit Batra had also categorically stated that he had come to know about the murder of Phool Chand even prior to giving the complaint on September 10, 1985 and he had intimated this fact to his Kanpur office so that relations of Phool Chand could be informed and called to Delhi.

(22) PW2 also categorically admitted in cross- examination that within 5-6 days of murder of Phool Chand, driver of Amit Batra had come to him and informed that Phool Chand had been murdered. If that is so, then it was obvious that not only Amit Batra had come to know but even the police must have been aware before September 10, 1985, that the dead body which had been recovered on September 3, 1985, was the dead body of Phool Chand. In fact, it is Si Dhillon who, according to, Amit Batra, had told him that Phool Chand had been murdered and his dead body had been recovered and this fact he was informed prior to his giving written complaint on September 10, 1985. It is, thus, clear that police was not investigating the matter in any fair manner. They were keeping the murder of Phool Chand concealed. It is only when Dilbagh's wife gave a complaint on September 9, 1985, that it forced the Investigating Officer to come up with the arrest of Dilbagh. He could do so only if a case could be registered. That is why it became necessary for Amit Batra to give the written complaint on September 10, 1985. It is too much to believe that Hashmat would not bother to find out the result of the post-mortem with regard to the dead body which remained unidentified during his investigation. According to him, Dhillon met him on September 10, 1985 and it was confirmed at that time that it was the dead body of Phool Chand which was found on September 3, 1985.. The in charge of Police Post Inspector

Shobhan Singh PW16 also was negligent in performance of his official duties because he has deposed that he suspected that it was a murder case on the very first day when the dead body was lying on the road side still he did not care to see that the post-mortem report of that dead body is promptly taken and cause of death known from that postmortem report so that investigation could be taken up with some seriousness in such a murder case.

(23) It is also not understood when the reports had been flashed on September 3, 1985, itself regarding the recovery of the unidentified dead body and missing of driver Phool Chand then why the police could not establish the link in the said two reports although recorded at different police posts.

(24) The fact, however, remains that it was a case where the murder of Phool Chand-driver came into light prior to written complaint being given by Amit Batra on September 10, 1985. If that is so, we have every reason to doubt the correctness of the case of the prosecution with regard to involvement of these three appellants in the commission of this ghastly crime.

(25) Dilbagh Singh in our view had been lifted by the police prior to September 10, 1985. The other two appellants have been also arrested even before the police verified the facts from the only eye witness who was available to the Investigating Agency and he was Tirath Raj Pal. Dhillon stated that he had asked Amit Batra to call Tirath Raj Pal to Delhi soon after the written complaint was given by Amit but he had not recorded this fact in the case diary as admitted by him. Even Amit Batra does not say that he had been asked to call Tirath Raj Pal to Delhi at any time by the police. After all the whereabouts of Tirath Raj Pal had not become unknown to Amit Batra or to the police. No Explanation whatsoever has been given by the Investigating Officer for this laxity in recording the statement of Tirath Raj Pal. The first anxiety of Investigating Officer ought to have been to record the statement of all the material witnesses at the earliest opportunity. He had not taken any such steps. After he had arrested all the three appellants, he had left no choice with Tirath Raj Pal except to toe the line of the police. Tirath Raj Pal is only a young illiterate person employed by Amit Batra and obviously he could not give any other version except what he had been asked to give by Amit Batra and the

police after he was brought to Delhi on September 17 1985. The Investigating Officer had already completed the investigation in the manner he had already arrested the three appellants and made the necessary recovery of the rope and recording of statement of Tirath Raj Pal was for him a mere formality.

(26) We have gone through the statement of Tirath Raj Pal and we find that many facts he had given for the first time in court which do not find mention in his recorded statement under Section 161 of the Code of Criminal Procedure. So, it is evident that this witness has no regard for the truth and he could easily toe the line which may be placed before him by his employer or the police. We do not find Tirath Raj Pal as wholly reliable witness. It is not possible to believe that the appellants were the persons who hired the truck and had taken away Phool Chand on that night. It is also strange that according to the prosecution the motive of the appellants was to rob the truck and take that truck away for disposing it of for getting unlawful gains but still the truck was left behind by the appellants and they allowed Tirath Raj Pal to also easily escape from the truck and they parked the truck at a little distance and then allegedly disappeared from the scene. It is not understood if the appellants' motive was to rob the truck and in the process to kill the driver of the truck as well as cleaner of the truck, why would they take away Phool Chand and kill him and then come back with the truck to the same spot and then go to sleep in the truck without taking any steps to do away with the cleaner of the truck if they wanted that no witness should remain alive to give evidence against them. It is also not possible to agree with the prosecution that the appellants who had conspired to commit robbery of the truck would bring the victims of the robbery to the house of Dilbagh Singh and serve meals to the victims before killing one of the victims and leaving behind the other victim in the house of one of the appellants. The story appears to be too fantastic to be given any credence.

(27) The appellants admittedly were not known to either Amit Batra or to Tirath Raj Pal earlier. Tirath Raj Pal did not know the names of the appellants earlier. He had come to know the names of the appellants, according to him, when appellants were conversing amongst themselves. In case the investigation was to be considered to be fair it would have been proper for the Investigating Officer to

have, after arrest of the appellants, taken steps to get them identified from Tirath Raj Pal in some test identification parade. The Investigating Officer had not even bothered to take that step. Tirath Raj Pal had seen these three appellants, according to him, only in between 3 P.M. to 1 A.M. and in between the appellants have been coming and going and so it was necessary that some test identification parade ought to have been resorted to fix the identity of the appellants as the persons who hired the truck.

(28) The learned counsel for the State has contended that initially no foul play was suspected by Amit Batra and thus, as the truck had been found intact he must have assumed that Phool Chand-driver had gone away for some private work and he did not care to mention the names of the persons who hired the truck although PW14 was with him when he lodged The report of missing of Phool Chand. It is not possible to accept this contention because if the names of the appellants were known and if the testimony of Tirath Raj Pal is true then there was a lot of suspicion which could have prompted any person with some commonsense that there was every possibility of foul play having occurred and there was no reason for keeping back the names of the appellants if they were known at that time from the police. At any rate, Amit Batra would have taken precaution to atleast note down the names of the appellants and address of Dilhagh if it was known to him. No such steps have been taken by the all important witnesses Amil Batra and Tirath Raj Pal. She has also contended that even if it is not proved that the motive was to rob the truck even then the eye- witness Tirath Raj Pal could not be disbelieved.

(29) The learned counsel forgets that in a case purely based on circumstantial evidence if the motive which is set out by the prosecution is not proved beyond shadow of reasonable doubt the other incriminating circumstantial evidence may lose its importance and it may lead the court to draw an inference that perhaps the appellants were not involved in this crime. But in the present case, as discussed above, a very reasonable doubt has arisen with regard to motive for which the offence was committed because the truck was left intact by the culprits although it was slated to be their motive to have taken away the truck. There was no impediment in the way of the culprits to have taken away the truck after they had

committed the murder to Phool Chand.

(30) She has also contended that there has been no motive of Tirath Rajpal and of Amit Batra of falsely implicating the appellants. It is true Amit Batra and Tirath Raj Pal are not shown to be having any animus against the appellants but that itself is not sufficient to lead us to conclude that Tirath Raj Pal is a truthful witness as far as identity of the persons who had committed the crime is concerned.

(31) In the case cited by the learned counsel for the State, Abdul Razaq Vs Nanhey & Others, : 1984 CriLJ185 , there were eye-witnesses who had witnessed the murder and it was held that if witness has no motive for falsely implicating the accused, there is no reason to disbelieve them when they are not interested witnesses. This judgment is distinguishable on facts. Referring to our judgment in Naresh Kumar Vs State 1995 1 Ad (Del) 524, the learned counsel for the State argued that mere fact that police had not been fair in its investigation should not lead the court to disbelieve the testimony of Tirath Raj Pal. This judgment is based on its own facts. In the present case not only the investigation of the police is tainted but we find that Tirath Raj Pal has only toed the line of the police after the appellants had been arrested. Counsel for the state also argued that mere fact that statement of Tirath Raj Pal was recorded he elatedly is of no consequence because the version implicating Dilbagh had already been disclosed to the police by Amit Batra on September 10, 1985, in a written complaint. We do not agree. We have already given the reasons for disbelieving PW14 Tirath Raj Pal as far as his testimony with regard to the identity of the appellants as the culprits is concerned.

(32) The Supreme Court in Shankarlal Gyarasial Dixit Vs State of Maharashtra : 1981 CriLJ325 , while dealing with such a point observed as follows: 'Our judgment will raise a legitimate query: If the appellant was not present in his house at the material time, why then did so many people conspire to involve him falsely? The answer to such questions is not always easy to give in criminal cases. Different motives operate on the minds of different persons in the making of unfounded accusations. Besides, human nature is too willing, when faced with brutal crimes, to spin stories out of strong suspicions. In the instant case, the dead

body of a tender girl, raped and throttled, was found in the appellant's house and, instinctively, everyone drew the inference that the appellant must have committed the crime. No one would pause to consider why the appellant would throw the dead body in his own house, why would he continue to sleep a few feet away from it and whether his house was not easily accessible to all and sundry, as shown by the resourceful Shrinarayan Sharma. No one would even care to consider why the appellant's name was not mentioned to the police until quite late. These are questions for the Court to consider.'

(33) In view of the above discussion, we conclude that the appellants in the present case deserve to be given benefit of doubt in view of the serious lapses occurring in the evidence led by the prosecution.

(34) As far as recovery of the rope at the instance of Manak Chand is concerned, we do not attach any importance to the same because the Investigating Officer had not bothered even to seal that rope before depositing it in the Malkhana. In case the rope was not having any incriminating material on it. there was no occasion for the Investigating Officer to send that rope for examination by the experts of the CFSL.

(35) In view of the above discussion, we hold that the Additional Sessions Judge was not right in bringing home the offences to the appellants on the shaky evidence led by the prosecution in the trial. At least, the appellants deserve to be given the benefit of doubt.

(36) We are informed that a separate trial took place in which Manak Chand was convicted and sentenced for recovery of knife from him. He could not have been tried for the same offence again.

(37) We allow all the three appeals and set aside the convictions and sentences of the appellants and acquit them of the charges. The appellants who are in custody be set free in case they are not required to be detained in any other case.