

Yunus Vs. State

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Court : Delhi

Decided On : Oct-12-2011

Judge : Manmohan Singh, J.

Acts : Indian Penal Code (IPC) - Sections 302, 365, 201, 120B, 34; Code of Criminal Procedure (CrPC) - Section 313

Appeal No. : CRL.A. 357/2009; CRL.A. 421/2009

Appellant : Yunus

Respondent : State

Advocate for Def. : Mr Sanjay Lao, Adv.

Advocate for Pet/Ap. : Mr K.B. Andley; Mr M.L. Yadav, Adv.

Judgement :

1. These two appeals are directed against impugned judgment dated 08.04.2009 and subsequent order on sentence date 20.04.2009 delivered by Additional Sessions Judge, North East District, Delhi in case No. 50/2006, FIR No. 191/2002, P.S. Vivek Vihar, whereby the appellants Sapna Talwar and Satyajeeet were convicted under Section 302 IPC and were sentenced to rigorous imprisonment for life, they were also convicted under Section 365 IPC and were sentenced to undergo simple imprisonment for five years and pay a fine of Rs. 1000/- in default of which to undergo simple imprisonment for three months. Further, appellants

Sapna Talwar and Satyajeet were also convicted under Section 201 IPC and were to undergo simple imprisonment for two years and pay a fine of Rs. 500/- in default of which to undergo simple imprisonment for one and a half months. Appellant Yunus was only convicted for an offence under Section 120 B IPC. In addition, Sapna Talwar and Satyajeet have also been sentenced under Section 120 B IPC and all three of them were to undergo rigorous imprisonment for life for offence under the abovementioned provision.

2. All the aforesaid sentences were to run concurrently and all the three were given benefit of Section 428.

3. The facts as per the prosecution's case are that on 13.07.2002 one Laxman Dass informed the police that his younger brother Vijay Kumar (hereinafter referred to as the deceased) was missing, he said that 12.07.2002 at about 1:00 pm, his brother was to meet one person from Haridwar in the Meridian Hotel, Delhi but that meeting was not held and since then his brother was missing. During the investigation police interrogated Yunus the appellant herein, who stated that appellants Sapna and Satya Jeet had departed to Lucknow. The police contacted the Lucknow Railway police and both the accused persons were arrested at the Lucknow Police Station by the local Railway police at Lucknow.

4. Thereafter, on 22.07.2002, both the accused persons were brought to Delhi by the Delhi Police officials. They made disclosure statements. Thereafter, it was discovered that the appellant Sapna was an employee of the deceased and had got the job on the recommendation of Satyajeet. It is alleged that the deceased used to sexually exploit appellant Sapna. Therefore, to take revenge, Sapna married Satyajeet with an understanding that both of them would kill the deceased Vijay Kumar, therefore, both of appellants hatched a conspiracy and were joined by their co-accused Yunus, a friend of Satyajeet in their plan. It is alleged that appellant Yunus gave the other appellants his mobile phone to be used with other SIM card and also provided them with a country made pistol (katta) which was used by them to kill the deceased.

5. As per the prosecution story, on 12.07.2002 accused Sapna enticed the deceased to come to meet her near the C.B.S.E. building at about 6:30 pm where

they kept having fun for some time. Thereafter, both the accused persons, Satyajeet and Sapna accompanied the deceased in his car to Ghaziabad border where they purchased liquor and all of them started having it. Then Sapna administered sleeping pills in the liquor of the deceased and when he became unconscious they went to Dadri through Bulandshahar highway and on reaching a small canal, they tied him, then took him out and repeatedly hit him on his head with their country made pistol and then strangulated him to death with a string. They threw his body in that same canal with the help of one unknown passerby and left for Haridwar. For the next few days the accused persons kept fleeing from one place to another and during this time they were duly assisted and supported by the accused Yunus who at last after giving a sum of Rs. 1000/- made them board the train to Lucknow.

6. On being arrested by the police, the accused Sapna and Satyajeet made their disclosure statements, Ex.PW 20/A and Ex.Pw 20/B respectively, pursuant to that on 23.07.2002 the police took them to the spot and they pointed out the place vide memo Ex. PW 4/B. A site plan Ex. PW 4/C was also prepared of the place where they had thrown the body of the deceased. The said place was under the jurisdiction of Jarchha Police, whose officials had already recovered the dead body of the deceased on 16.07.2002, its panchnama Ex. PW 26/A was prepared and the body was sent for postmortem examination which was conducted on 17.07.2002.

7. As per the postmortem report of PW-1 Dr. P.C. Aggarwal, death was due to coma as a result of ante mortem injuries 3-4 days prior to the date of postmortem examination.

8. Thereafter, a chargesheet under sections 365/364/302/201/ 120-B/34 IPC read with section 25 of the Arms Act against all the three accused persons was filed.

9. The learned ASJ after examining the testimonies of 48 witnesses held the three accused, namely Sapna Talwar, Satyajeet @ Lovely and Yunus guilty of hatching a conspiracy to cause death of the deceased, and has delivered the impugned judgment on 08.04.2009 and subsequent order on sentence dated 20.04.2009. The details of the offences are mentioned in para No.1 of this judgment.

10. Being aggrieved by the said judgment of conviction and order on sentence, the appellants filed the present appeal, inter-alia, on the grounds which can be summarized as follows:

11. In Criminal Appeal No.357/2009 filed by the appellants, namely, Sapna Talwar, Satyajeet @ Lovely, the following are the main grounds for appeal which have been raised:- (i) The case of the prosecution is based upon circumstantial evidence, but the chain is not complete.

(ii) The trial Court has considered the alleged disclosure statements of the appellants as their legal confessions, which is against the basic concept of criminal jurisprudence.

(iii) Admittedly, there was nothing to recover in pursuance of the disclosure statements of the appellants, therefore, the so-called disclosure statements of the appellants became inadmissible in law.

(iv) Since the dead body of the deceased Vijay Kumar was not seen by any of his relatives and was cremated in their absence and the identity of the dead body was established by clothes found on the dead body, therefore, the possibility of Vijay Kumar's clothes being planted cannot be ruled out. (v) The medical evidence like post-mortem etc. pertaining to the deceased has not been fully proved.

(vi) There is no clear evidence on record to prove the motive on the part of any of the appellants for committing the said crime and there is also no evidence to show as to how the appellant Yunus is connected with the other two appellants and as to why he helped them in running away from justice.

12. In Criminal Appeal No.421 of 2009 filed by the appellant Yunus, the following are the main grounds:-

(a) No public witness was joined at any point of time, like at the time of recovery or at the time of the arrest of the appellants or subsequent thereof, though the members of the public were, admittedly, present at that time. (b) The impugned order is totally based on inadmissible evidence.

(c) There is no legal evidence on record to hold that the appellant Yunus is responsible for the offence punishable under Section 120B IPC.

(d) The appellant Yunus had denied the suggestion for providing the country-made pistol to the other two accused, as there was no reason to do so. Admittedly, as per the report of the ballistics expert, the said pistol was not in a working condition. Therefore, it makes no sense to hold that the present appellant provided the weapon of offence. (e) The disclosure statements of accused Sapna Talwar, Satyajeet @ Lovely being inadmissible in law cannot be considered, unless independent corroboration is provided by the prosecution.

(f) The mobile phone alleged to have been provided by the present appellant also has no concern with the crime, as the same has not been proved to have been used by the co-accused.

13. The statements of all the three accused persons were recorded under Section 313 Cr.P.C. All of them stated that they were innocent.

14. Two defence witnesses were examined, namely, DW-1 Mohd. Mehmood son of Salim Mohd., and DW-2 Rashid son of Abdul Wahid, on behalf of the accused Yunus in support of his defence.

15. The prosecution in order to prove the charges against the appellant examined following 48 witnesses :

PW -1 Dr. P.C. Aggarwal : He conducted autopsy on the dead body of deceased Vijay Bajaj on 17.07.2002. PW -2 Gurpreet (hostile): Mobile shop owner to whom the accused allegedly sold the mobile phone of the deceased.

PW -3 Laxman Dass Bajaj : He is the complainant, brother of the deceased.

PW -4 Vishal Rajpal : Deceased was his uncle. PW -5 Momim : He is allegedly known to the accused Satyajeet and on 16.07.02 latter requests him that his family members had ousted him and his wife Sapna. He allowed both to stay on the night of 16.07.2002. PW -6 Ashok Rana : He is the friend of Vijay Bajaj and on 12.07.02 in the afternoon he allegedly saw a girl (Sapna) who sat in the car of Vijay Bajaj at

petrol pump, Dilshad Garden.

PW -7 Sushil Sharma : Deceased was his class fellow. He allegedly saw the girl with deceased at 1.00 to 1.30 pm on 12.07.2002.

PW -8 Ms. Vineeta Bajaj : She is the wife of deceased Vijay Bajaj.

PW -9 Shahid (hostile): Accused Yunus allegedly made request to him to make arrangement of a room for stay of Sapna and Satyajeet on 15.07.2002.

PW -10 Gyan Singh : On 17.07.02 accused Satyajeet and Sapna allegedly stayed in his lodge.

PW -11 Anil Kumar (Manager) : On 14.07.02 Accused Satyajeet and Sapna allegedly stayed in his hotel Pelican, D-1, Patel Nagar-II, Ghaziabad.

PW -12 Manoj Kumar : In his presence Vishal and Ramesh allegedly identified the clothes of the deceased in PS Jarcha.

PW -13 Ramesh Chand : He is a cousin of the deceased.

PW -14 Ramesh Kumar : He is an employee in the company of the deceased .

PW -15 Vikrant Arora : He is the friend of deceased Vijay Bajaj and allegedly received the telephone call from the deceased at about 7.00 p.m. on 12.07.2002.

PW -16 Sanjeev Kumar : Deceased was his maternal uncle.

PW -17 R.K. Singh, Nodal Officer, Bharti Airtel. PW -18 Ct. Satpal Tyagi : He handed over zero FIR, statement of complainant and copy of DD No.29 A to the duty officer of PS Vivek Vihar.

PW-19 Shiv Ram Giri : He is the owner of Shiv Chhaya Guest House, Haridwar where accused Satyajeet and Sapna allegedly stayed in the name of Surender Singh and Paramjeet Kaur on 13.07.02 and left the same on 14.07.02 at 7.00 am.

PW-20 HC Yogender Singh : On 21.07.02 he alongwith IO SI Yasbeer Singh, SI Anand Swaroop, Lady HC Chammo Khan went to Lucknow Jail for investigation of this case.

PW-21 Ct. Preetam Singh : On 21.07.02 he joined the investigation and went to Hindon Mortuary, Ghaziabad alongwith IO SI Yasbeer Tyagi.

PW -22 HC Satyaver Singh : In the intervening night of 13 and 14, July 2002 he was posted as duty officer in PS Vivek Vihar and received the copy of zero FIR registered in PS Mansarowar Park through SI Anwar.

PW -23 Ct. Pushpa Singh : On 19.07.02 She was posted in PS GRP Char Bagh, Lucknow where she along with SI R.B. Singh and Ct. Neeru Shukla searched the accused persons at Charbagh railway station. PW -24 Ct. Neeru Shukla ...Do...

PW -25 Ct. Krishan Bihari Chaubey ...do...

PW -26 SI Ranjeet Prasad Diwakar ...do...

PW -27 SI Brijpal Singh PS Khanpur, District Bullandshahar, UP : On 16.07.02 he was posted in PS Jharcha and complainant Raj Kumar came to his PS and gave a written information about dead body of an unknown person lying near a drain at Veerpura. He prepared a panchnama Ex.PW-27/A and seized the shirt and shoes of the deceased and also seized the dead body in a cloth pullanda and got the dead body photographed. PW -28 SI Yashbir Singh : On 14.07.02 he took up the investigation of this case and on 23.07.02 the investigation of this case was transferred from him. PW -29 Kallu (hostile): He is the father of accused Yunus.

PW -30 Sri Bhagwan Singh : He is the owner of parking slot at Har ki Paudi, Haridwar where the accused allegedly parked their vehicle i.e. Maruti Zen against a slip.

PW -31 SI Mahesh Kumar : Draftsman

PW -32 Mohd Islam : He was the compounder in Haq Medical Centre from where accused Sapna Talwar allegedly got the tablets of Diazepam.

PW -33 Tara Singh (hostile): He is the owner of medical store situated at S-2, Anupam Apartment, Shop No.4, Vrindavan Garden, Sahibabad. On 25.07.02 accused Sapna allegedly purchased 10 tablets of Diazepam and one injection (calmpose) and one syringe. PW -34 SI Dharampal Singh : On 19.07.02 he was

posted in PS GRP, Charbagh, Lucknow and searched for the accused persons there.

PW -35 Raj Kumar : On 16.07.02 he intimated in PS Jharcha about the dead body lying in the drain near an exhaust water pipe.

PW -36 Ashok : On 16.07.02 on the direction of police he brought out the dead body from the drain and signed the panchnama Ex.PW26/A.

PW-37 HC Gurnam Singh : On 24.09.02 he deposited the six sealed pullandas to MHCm.

PW -38 Akhtar : On 16.07.02 he signed the panchnama of dead body Ex.PW-26/A.

PW -39 SI Rishi Ram : On 19.07.02 he was posted as Head Moharrir in PS Kotwali, Haridwar. On that day SI N.P. Singh deposited one Maruti Zen car with him. On 24.07.02 IO came to him with the accused persons and seized the said car vide seizure memo Ex.PW28/C. PW-40 SI R.B. Singh : He was the (thana prabhari) PS GRP, Char Bagh, Lucknow. He arrested the accused Sapna and Satyajeet there and seized one wrist watch, one sim card and cash Rs.6200/-.

PW-41 Ct. Jai Prakash : On 16.07.02 he was posted in PS Jharcha and at about 1-1.30 pm one Raj Kumar came to him and informed about one dead body lying in a culvert near village Veerpura.

PW -42 HC Chammo Khan : On 21.07.02 he alongwith SI Yashbir Singh, HC Yogender, SI Anand Swaroop went to GRP railway station, Lucknow and arrested both accused persons who were already in the Lucknow Jail. PW-43 HC Hira Lal MHC(M), who deposed that on 21.07.2002 he made several entries with regard to depositing of pullandahs and the Maruti Car in the Malkhana.

PW-44 SI Anwar Khan : In the intervening night of 12th and 13th July, 2002 one Mr. V.K. Bajaj gave information that his brother Vijay was missing. DD 29A was recorded in this regard and handed over to him for investigation.

PW -45 ACP Ram Niwas : On 23.07.2002 investigation of this case was handed over to him.

PW -46 Retired HC Chattar Singh : On 16.07.2002 he was posted in PS Jharcha and one Ram Kumar gave him information about a dead body lying in a drain near Village Veerpura. He was also witness to the identification of wearing clothes of the deceased by the relatives.

PW-47 SI Raja Ram Singh Yadav : He was the

Moharrir in PS GRP, Charbagh, Lucknow.

PW-48 Ct. Om Pal Singh : On 16.07.02 he was posted in PS Jharcha and an information was received in said PS that one dead body was lying in a drain. Thereafter, he along with HC Brijpal, Ct. Jai Prakash went to that place. The dead body was taken out and got photographed.

16. Since there is no eye-witness to the murder, the case revolves around the circumstantial evidence of last seen and the recovery of the material as per the story of the prosecution.

17. The sequence of events date-wise as per the case of the prosecution are as under:-

(a) PW-18 Const. Satpal Tyagi who was posted in Police Station MS Park, registered the Zero FIR and also recorded the statement of the complainant, i.e. PW-3 the elder brother of the deceased. DD No.29A was also registered. (b) In his statement recorded before the Court, PW-3 deposed that on 12.07.2002 his younger brother Vijay Bajaj had gone to market for business. He was also supposed to accompany him, but he could not accompany him as he had to attend the Kirya of the mother of his friend. His brother had gone to collect money from 5-6 persons. The last person was Manoj Jain of Shivalik Pharmaceuticals, Haridwar who was to meet his brother at Hotel Maridian, Delhi. At about 5.15 p.m. his brother rang up and informed that Manoj had not come to the hotel. During the night, the other brothers came to know that the deceased Vijay Bajaj had not returned. He lodged the report Ex.PW3/A and his statement was recorded by the

police during the evening time of 13.07.2002. His apprehension was that his brother had been kidnapped. PW-6 Ashok Rana deposed that he is running the business under the name and style of Rana Tours and Travels at Balbir Nagar, Shahdara. He knew Sushil Sharma who is residing near to his house. He was on friendly terms with Vijay Bajaj. He knew Vijay Bajaj for the last about 7-8 years prior to his death. On 12.07.2002 in the afternoon, while he was going to UP Border and on the way at the petrol pump, Dilshad Garden, he saw Vijay Bajaj had made one girl to sit in his car and then he left. Sushil Sharma PW-7 made a statement that he knew Vijay Bajaj being his class-fellow. On 12.07.2002 at about 1.30/2.00 p.m. he and Ashok were on the motor-cycle and following the car of Vijay Bajaj who gave lift in his car to a girl at Dilshad Garden near Petrol Pump and then they left. PW-15 Vikrant Arora who is the friend of the deceased Vijay Bajaj since college days, deposed that on 12.07.2002 at about 7.00 p.m. he received a telephone call from the mobile phone of the deceased Vijay Bajaj who requested him for his car stating that his (Vijay Bajaj) car had broken up being heated up and he was present at Vivek Vihar itself. At this, he told Vijay Bajaj to go to his house and pick up his car. However, on his return, he found that the deceased did not come to his house to pick up his car. PW-14 Ramesh Kumar Sharma who is the last seen witness before the death of the deceased as per the case of the prosecution has deposed that he has been working as an Accountant for the last about 8-9 years with Sheetal Bottle Glass Company. On 12.07.2002 at about 8.00/8.15 p.m. when the bus by which he was travelling, was stopped at the red light of Surya Nagar, he was standing on the footrest of the bus, he noticed that vehicle of the deceased Vijay Bajaj was also standing on the red light of Surya Nagar. Vijay Bajaj was having his Zen Maruti Car bearing No.DL-3C-N-1042. In that car, Vijay was sitting on the driver seat and on the back seat, one lady was sitting and near the driver seat one boy was also sitting in that car. He asked from Vijay as to whether he was going to his house, then he replied that he was going to somewhere else.

(c) PW-30 Sri Bhagwan Singh who was managing Pantdeep Parking Slot situated at Har ki Paudi at Haridwar, has deposed that on 13.07.2002 at about 7.00 a.m., a Maruti Zen blue colour Car came to in that parking slot and it was parked there against a slip issued by him. However, nobody came there to claim the said

vehicle back for 5-6 days. One man and a lady had parked the said car there. After about 15 days, the police came to him for investigation and both the above said persons who had parked that vehicle were also with the police. The police recorded his statement after interrogation. PW-19 Shivram Giri who is the owner of the Guest House at Haridwar deposed that on 13.07.2002 one Surender Singh son of Amarjeet Singh came to his Guest House along with his wife Paramjeet Kaur and stayed there upto 14.07.2002. They left at 7.00 a.m. on 14.07.2002. PW-11 Anil Kumar deposed that he was the Manager of Hotel Pelican. On 14.07.2002 one Rahul along with one lady had come to his hotel and stayed there. They disclosed their address as D-603, Ashok Nagar, Delhi. They were allotted room No.106. They left the hotel on 15.07.2002 at about 8.00 a.m. PW-5 Momim deposed that on 16.07.2002 at about 10 p.m. accused Satyajeet disclosed to me that his family members had ousted him and his wife after beating them and they be allowed to stay at his house. Although, initially he refused him, but, at their persistent request, both were allowed by him to stay in the house on 16.07.2002. They left in the morning. PW.10 Gyan Singh who is running a lodge situated at Railway Road, Choti Bajaria, Ghaziabad, has deposed that on 17.07.2002 at about 11.00 p.m. one boy and one girl came to his lodge. The boy had disclosed his name as Surender Singh.

(d) PW-27 SI Brijpal Singh deposed that on 16.07.2002 he was posted at P.S. Jarchar, District Gautam Budh Nagar. The complainant Raj Kumar came to the police station and gave a written information about the dead body of an unknown person lying near a drain (nala) at Veerpura. He along with the other police officials reached the spot. He prepared a Panchnama Ex.PW27/A. He seized the shirt and shoes of the deceased vide seizure memo Ex.PW27/B signed by him at point 'A'. Photographs of the dead body were taken which are Ex.PW27/C and Ex.PW27/D. The dead body was sent to dead house for postmortem through Const. Jai Parkash.

(e) The postmortem was conducted on 17.07.2002 and the cremation of the deceased was done on 19.07.2002 by the police. The eye-witnesses of the dead body at the spot were examined as PW-35, PW-36 and PW-41.

(f) PW-28 SI Yashbir Singh deposed that after having received the details of mobile phones contacted through the mobile phone of the deceased, the details are Ex.PW17/A to Ex.PW17/D, he came to know about accused Yunus. The said accused Yunus was interrogated by him on 19.07.2002 at his house. Accused Satyajeet and Sapna were known to have left Delhi on that very night. He informed all these facts to DCP East Sh. Arvind Deep who contacted DCP GRP Railways. The latter gave information about arrest of both the accused, Sapna and Satyajeet.

(g) PW-23 Const. Pushpa Singh, PW-24 Const. Neeru Shukla, PW-25 Const. Krishan Bihari Chaubey, PW-26 SI Ranjeet Prasad Diwakar, PW-34 SI Dharampal Singh and PW-40 SI R.B.Singh deposed that both the accused Sapna Talwar and Satyajeet @ Lovely were lodged in the police lock-up after apprehending them from the Chahar Bagh Railway Station, Lucknow.

(h) PW-31 SI Mahesh Kumar prepared a scaled site plan Ex.PW31/A. PW-39 SI Rishi Ram deposed that on 19.07.2002 the Car was deposited and entry in register No.19 at Serial No.88 was made being copy thereof as Ex.PW39/A.

(i) PW-44 HC Chhamo Khan posted at LG House, Delhi deposed that on 21.07.2002 he was posted in P.S. Vivek Vihar. On that day, he along with other police officials took the custody of the accused Sapna and Satyajeet from Lucknow jail after taking permission from the Court. The disclosure statement was made by the accused Satyajeet @ Lovely and Sapna before PW-20 HC Yogender Singh being Ex.PW20/A (of accused Satyajeet) and Ex.PW20/B (of accused Sapna). They were arrested through arrest memos prepared by the I.O. being Ex.PW20/C (of accused Satyajeet) and Ex.PW20/D (of accused Sapna). Both of them were brought in Delhi on 22.07.2002 and produced in the Court of ACMM, Karkardooma Courts and were remanded by the Court in eight days police custody. (j) On 23.07.2002 investigation of this case was taken by PW- 45 ACP Ram Niwas Vashisht and he interrogated both the accused, namely Sapna Talwar and Satyajeet @ Lovely. According to him, they led the police to a place near Dadri, UP and pointing out memo in this regard is Ex.PW4/A signed by him at point 'C'. He prepared the site plan Ex.PW4/C.

(k) The accused again took the investigator and his team to another place near a canal which was at a distance of about 2-2½ km from that place. Pointing out memo in this respect is Ex.PW4/B. He prepared the site plan of that spot which is Ex.PW4/D. Thereafter, they went to police station Jharcha. He inspected the record of the Malkhana Moharrar. One Vishal and another Kishan met them there in the police station. They identified the deceased from his photo, shoes and wearing clothes. The clothes of the deceased were sealed and were opened before them for the purpose of identification and later on those were sealed again.

(l) On 24.07.2002, both the accused Sapna Talwar and Satyajeet @ Lovely led them to Haridwar at Har Ki Paudi. PW-45 received the Car Maruti Zen on superdari from the concerned SHO and thereafter, accused took them to a parking lot near Har Ki Paudi and pointed out a place. Pointing out memo Ex.PW28/B was prepared. The said accused then led them to a hotel Shivchhaya at Haridwar and pointed out the same. The Owner/Manager of the said hotel identified both the accused and handed over the photocopy of relevant entry in his guest register which is Ex.PW19/A. PW-45 prepared memo about seizing of the said Car which is Ex.PW28/C.

(m) On the way to Delhi, he received the information about co- accused Yunus about his presence in his house in Delhi. The accused took the team to the house of Yunus who was interrogated by PW-45. He made the disclosure statement Ex.PW21/A and brought out one country-made pistol .315 Bore and five cartridges two of which were live, after bringing the same from an almirah in his house. He seized the same. Sketech of these weapons were prepared by him which are Ex.PW4/J (of the country-made pistol) and Ex.PW4/K (cartridges). He filled up the CFSL form and the case property was deposited in the Malkhana. All the three accused were lodged in lockup. On 25.07.2002 Yunus was produced in the Court from where he was remanded in judicial custody.

(n) Thereafter, the accused Sapna Talwar and Satyajeet @ Lovely took them to Anupam Apartment, Vranda Garden and point out a chemists shop.

(o) On 26.07.2002 both the accused were again interrogated by him. They led the police party to shop No.S4, BS Complex, GT Road, Ghaziabad. Accused

Satyajeet pointed out that shop. One Gurpreet met there who had purchased the mobile phone of the deceased and he identified both the accused.

(p) On 27.07.2002 and 28.07.2002 after interrogation both the accused took the police to Hotel Pelican, Ghaziabad where the Manager Anil Kumar produced the photocopy of the guest register which is Ex.PW4/L and its seizure memo is Ex.PW4/M. His statement was also recorded in this regard. (q) Thereafter, both the accused led the police party to shop No.1 in the name of R.K.Batteries where one Shahid met them. He identified both the accused and his statement was recorded.

(r) On 28.07.2002 accused Sapna had handed over her wearing top (shirt) which was seized vide seizure memo Ex.PW4/O signed by PW-45 at point 'C'.

(s) On the same day, he picked up blood from the back door of the car from its inside by scrapping the same with blade. The seizure memo in this regard is Ex.PW4/P. After completion of the investigation, he prepared the challan of this case. The result from the FSL was received which is Ex.PW45/B.

Medical Evidence

18. Let us now consider the medical evidence. The dead body of the deceased, when sent for postmortem examination by the Jarcha police was examined by PW-1 Dr. P.C. Aggarwal. During the course of postmortem examination, this witness found:- (i) A lacerated wound of 4 cm x 2 cm bone deep on the back side of the head, 10 cm behind left ear.

(ii) Occipital bone was found fractured.

(iii) A defused traumatic swelling 10 cm x 6 cm in area on the right side head just above ear was also found and the bone was also fractured from this point.

On internal examination this doctor found:-

(iv) The brain was liquefied and a blood clot was present. (v) Death was due to coma as a result of ante mortem injuries 3-4 days prior to the date of autopsy. And this autopsy was conducted on 17.07.02.

19. So, as per medical evidence, the death of Vijay Bajaj was due to coma as a result of antemortem injury. FSL REPORT

20. The FSL report Ex.PW45/B dated 21.02.2003 on the Parcel 5 and Parcel 6 reads as under:

"Parcel No.5: One country made pistol .315" bore marked exhibit 'F1'.

Parcel No.6: One 8 mm/.315" cartridge marked exhibit 'A1' and four improvised cartridges marked exhibits 'A2 to A5'."

21. Similarly, another FSL report dated 29.01.2003 was received. As far as exhibit '3' gauze cloth piece, the species of original is 'Human', but no reaction/remark is shown for ABO Group. The description of the articles contained in the parcel is given along with the result of analysis. The same reads as under: DESCRIPTION OF ARTICLES CONTAINED IN PARCEL

Parcel '1' : One sealed cloth parcel sealed with the seal of "D.Singh U.P.P." containing exhibits '1a' and '1b'. Exhibit '1a' : One dirty shirt

Exhibit '1b' : One pair of shoes

Parcel '2' : One sealed cloth parcel sealed with the seal of "D. Singh U.P.P." containing exhibits '2a' and '2b'. Exhibit '2a' : One dirty foul smelling pants with belt. Exhibit '2b' : One dirty foul smelling underwear Parcel '3' : One sealed cloth parcel sealed with the seal of "RNV" containing exhibit '3', kept in a plastic container.

Exhibit '3' : Gauze cloth piece having brown stains described as "blood lifted car"

Parcel '4' : One sealed cloth parcel sealed with the seal of "RNV" containing exhibit '4'.

Exhibit '4' : One shirt described as "TOP" Parcel '5' : One sealed cloth parcel sealed with the seal of "RNV" said to contain 'Desi Katta' sent in original to Ballistics Division

Parcel '6' : One sealed cloth parcel sealed with the seal of "RNV" containing exhibit '6'

Exhibit '6' : Five bullets

RESULT OF ANALYSIS

1. Blood was detected on exhibit '3'

2. Blood could not be detected on exhibits '1a', '1b', '2a', '2b', '4' and '6'.

3. Report of serological analysis, in original, is attached herewith.

22. As per impugned judgment, the prosecution has proved following circumstances against the accused persons : (i) They were seen together with the deceased at the night of 12.07.2002. In the morning both the accused persons parked the vehicle of the deceased with blood stains of the deceased on it in a parking lot at Haridwar and stayed in a hotel under fictitious identity.

(ii) Their disclosures led to the discovery of dead body of deceased Vijay and it was found to have the same injuries as were disclosed by the accused persons to have been inflicted on his head.

(iii) The dead body was found at the same place where the accused disclosed to have thrown it in the jurisdiction of PS Jarcha. (iv) With the help of the wearing apparels and other articles the dead body was a uniquely and unambiguously identified as that of the deceased Vijay Bajaj, particularly consequent to the identification by PW-4 Vishal Rajpal.

(v) In the ensuing morning the accused Sapna and Satyajeet were found present in the town of Haridwar with the car of the deceased Vijay Bajaj in which they were seen accompanying the deceased just prior to the incident.

(vi) This car was found to be having blood on its rear right door. The possession of the car of the deceased Vijay and that too with the presence of blood stains, found from the constructive possession of the accused Satyajeet and Sapna, transmit a burden on the accused persons to show the circumstances in which that car and

those blood stains on the door of the car appeared. But that burden was never discharged by the accused persons.

(vii) Accused persons Sapna and Satyajeet have been shown by the prosecution to be running from one place to the other after causing death of the deceased Vijay Bajaj. And that too under varying fictitious identities. U/s 10 Evidence Act this is a relevant fact and the accused persons could never discharge the burden so cast upon them to show the necessity of assuming fictitious identities and being in a state of restless running from here to there after the death of accused Vijay Bajaj was caused.

(viii) Prior to this, the prosecution was able to prove that Sapna was making efforts of collecting Diazepam sleeping pills. It was shown that such pills were procured also. Some of such pills were found from the possession of Sapna and Satyajeet at Lucknow which were seized by that police vide document Ex.PW 23/A. Here the accused Sapna was found in possession of 'Calmpose' pills which are used to induce sleep. 'Calmpose' is the brand name of the same generic chemical known as Diazepam. Prosecution had shown that they were used to impair the deceased Vijay Bajaj.

(ix) Both the accused persons were duly sheltered and assisted by the third accused Yunus during their hightailing from one point to the other. It showed the extent of robust association between all these three accused persons.

(x) Subsequently also the accused persons Sapna and Satyajeet were arrested as per the information provided by the third accused Yunus. Right from the time when Yunus provided Katta to the accused Sapna and Satyajeet for causing death of Vijay Bajaj, Yunus remained in their contact until they both left for Lucknow. This proved the scope, extent and liability of the complicity of accused Yunus in the commission of this offence.

(xi) The accused persons took the phone of the deceased Vijay Bajaj and sold it for Rs.3300/- at the shop of PW 2 Gurpreet Singh.

(xii) The disclosure statements of the accused persons Satyajeet and Sapna were recorded at two places. Initially at Lucknow in a document Ex.PW-23/A on 19.07.02 and thereafter in Delhi in documents Ex.PW-20/A & B on 21.07.02.

23. The case of the prosecution against the appellants was based on circumstantial evidence. It is settled law that in the case of circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person.

24. It has been held in many decided cases that when a case of the prosecution is based on circumstantial evidence, such evidence must satisfy three tests. Firstly, the circumstances from which an inference of guilt is to be drawn, are to be cogently and firmly established. Secondly, those circumstances should be of a definite tendency of unerringly pointing towards the guilt of the accused. Thirdly, the circumstances, taken cumulatively, should form a chain so complete that there is no escaping the conclusion that within all human probability the crime was committed by the accused and none else. In other words the circumstances should be incapable of explanation on any reasonable hypothesis save that of the accused's guilt. (See Hanumanth Govind Nargundkar & Anr. v. State of M.P., AIR 1952 SC 343; Chandmal and Anr. v. State of Rajasthan, AIR 1976 SC 917 and Sharad Birdi Chand Sarda v. State of Maharashtra, (1984) 4 SCC 116).

25. It is a well established legal principle that in a case based on circumstantial evidence where an accused offers a false explanation in his statement under Section 313 Cr.P.C. in respect of an established fact, the said false denial could supply a missing link in the chain of circumstances appearing against him. The well known rules governing circumstantial evidence are that :- (a) the circumstances from which the inference of guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances; (b) the circumstances should be of a determinative tendency unerringly pointing towards the guilt of the accused; and (c) the circumstances, taken collectively, are incapable of leading to any conclusion, on a reasonable hypothesis, other than

that of the guilt of the accused.

26. No doubt, the courts have also added two riders to the aforesaid principle namely, (i) there should be no missing links but it is not that every one of the links must appear on the surface of the evidence, since some of these links can only be inferred from the proved facts and (ii) it cannot be said that the prosecution must meet each and every hypothesis put forward by the accused however far- fetched and fanciful it may be.

LAST SEEN EVIDENCE

27. As per the testimony of PW-14 Ramesh Kumar Sharma, the "last seen" witness, on 12.07.2002 at about 8:00/8:15 p.m., his bus, plying on route No.333, stopped at red light of Surya Nagar. At that point of time Vijay Bajaj was in his Zen Maruti Car bearing No.DL-3C-N-1042. He was sitting on the driver seat. One lady was sitting near the driver seat. One boy was also sitting in that car. He asked Vijay as to whether he was going to his house, and then he replied that he was going somewhere else. Thereafter, he caught the bus and left the place. He correctly identified the boy and girl, who were seen by him in the car with Vijay, in Court as Sapna and Satyajeet. His statement was also recorded by the police as PW- 14/DA on 14.07.2002.

28. Prior to this, PW-6 Ashok Rana had also seen deceased Vijay with the accused Sapna on 12.07.2002 at the Petrol Pump, Dilshad Garden as he was on his motorcycle. Another witness PW-7 Sushil Sharma, friend of deceased, in his testimony deposed that at about 1:30/2:00 p.m. when he and one Ashok Rana were on the motorcycle, they saw the deceased along with one girl at Dilshad Garden near Petrol Pump. Similarly, PW-15 deposed that on 12.07.2002 at about 7:00 p.m., he received a telephone call from the mobile phone of the deceased who asked him to give his car as his car had broken.

29. PW-8 Vineeta Bajaj, the wife of the deceased, also deposed that on 12.07.2002, she was in touch with her husband whole day on his mobile phone and at about 8:30 p.m. she contacted her husband on his mobile phone No. 9810015012 and he told her that he is coming back in 15 minutes. PW-17 R.K.

Singh, Nodal Officer, Bharti Airtell, produced the prints out/call details of mobile phone of the deceased and others. The said details show that the last call received by the deceased was at 20:59:23 on 12.07.2002 and there was no response on that number of the deceased on 13.07.2002 onward.

In view of above, it is clear that PW-14 Ramesh Kumar Sharma had seen the deceased alive at about 8:15 p.m. and the prosecution was able to prove the same in evidence.

30. PW-32 Mohd. Islam deposed in court that accused Sapna took a delivery of five Diazepam tablets from his shop and the said medicine was procured by her without a valid prescription of Doctor. PW-34 SI Dharampal Singh, posted in Police Station GRP Shajahanpur, U.P., deposed that Sapna and Satyajeet were taken into custody on the basis of interrogation and on being searched one SIM card was recovered.

31. PW-30 Sri Bhagwan Singh who was managing Pantdeep Parking Slot situated at Har ki Paudi at Haridwar, has deposed that on 13.07.2002 at about 7.00 a.m., a Maruti Zen blue colour Car came into that parking slot and it was parked there against a slip issued by him. However, nobody came there to claim the said vehicle for 5-6 days. One man and a lady had parked the said car there. After about 15 days, the police came to him for investigation and both the above said persons who had parked that vehicle were also with the police. The police recorded his statement after interrogation.

32. PW-19 Shivram Giri, PW-11 Anil Kumar, PW-9 Shahid, PW-5 Momin and PW-10 Gyan Singh are the persons who provided the accommodation to Sapna Talwar and Satyajeet @ Lovely during 13.07.2002 to 18.07.2002. Their testimonies and details are mentioned as under:

13.07.2002 - PW-19 Shivram Giri

PW-19 Shivram Giri deposed that he along with his son was running a guest house in the name of Shive Chhaya Guest House situated at Upper Road, Haridwar, Uttranchal and on 13.07.2002 one Surender Singh, s/o Amarjeet Singh,

along with his wife Paramjeet Kaur came to their guest house. An entry in this regard was made in the register at serial No.4045 and they stayed in their guest house upto 14.07.2002 and they left the same at 7:00 a.m. He also deposed that some officials of U.P. police came to him on 24.07.2002 and he identified and pointed out towards Sapna and Satyajeet, who were present in court, as having accompanied the said police officials. 14.07.2002 - PW-11 Anil Kumar

PW-11 Anil Kumar deposed that on 14.07.2002 one Rahul along with one lady came to their hotel and stayed there. During that period, he was working as Manager in Hotel Pelican, D-1, Patel Nagar-II, Ghaziabad. They made an entry in guest register at about 11:50 p.m. and room No.106 was allotted to them. They disclosed their address as D-603, Ashok Nagar, Delhi, and left the hotel on 15.07.2002 at about 8:00 a.m. He further deposed that when the police had brought boy and girl in the hotel on 28.07.2002, he came to know about their names as Satyajeet and Sapna. In cross- examination, he admitted that there was no initial/signatures on the cutting/overwriting. He clarified that it happened due to change of the room.

15.07.2002 - PW-9 Shahid

PW-9 Shahid was declared as hostile who gave the testimony that he does not know anything about this case. He also denied the suggestion of the prosecution and denied the fact that before the police on 15.07.2002 he offered to keep Satyajeet and Sapna in a room behind his shop. As per the prosecution case, Yunus, who was running a shop near his shop, came to his shop with one boy and lady and asked him to provide the accommodation. His statement was also recorded by the police as Mark PW-9/A wherein he confirmed that on 15.07.2002 at about 9:00 p.m. Yunus, who was running a shop near his shop, brought one boy and girl with a request to allow them to stay with him for night only. On their persistent requests, he allowed them to stay for the night and they left on 16.07.2002 at 7:00 a.m.

16.07.2002 - PW-5 Momin

PW-5 Momin deposed that he has a shop of Raju Electronics. He knew Satyajeet @ Lovely for the last 4-5 years. On 16.07.2002 at about 10:00 p.m., accused Satyajeet along with Sapna came to his house at 387, Ashok Vatika, Loni Road Pasonda, U.P. Satyajeet disclosed to him that his family members and ousted him and they be allowed to stay in his house. At the first instance, he was reluctant. However, on their persistent requests, he allowed them to stay in the house of Iddu, his maternal uncle's son at Morta village. They stayed there only for one night and left in the morning. He also correctly identified Satyajeet and Sapna who were present in the court. It is pertinent to mention here that despite opportunity being being granted to the appellants, there was no cross-examination on their behalf.

17.07.2002 - PW-10 Gyan Singh

PW-10 Gyan Singh deposed that he is running a lodge situated at Railway Road, Choti Bajaria, Ghaziabad. On 17.07.2002 at about 11:00 p.m., one boy and one girl came to his lodge. The boy had disclosed his name in the register as Surender Singh, resident of B-44, Ajanta Apartment, Lucknow. He identified both of them in court.

18.07.2002 - PW-9 Shahid

As per the case of the prosecution, till 14.07.2002 the family members/relatives of the deceased had not expressed their doubt upon anyone as culprit. As per the family members, there was one telephone bearing No.9810695421 which was known to be belonging to accused Sapna from which calls were made on that phone of Airtel. On verification from Airtel about the ownership of phone of Sapna, PW-28 came to know about the address of Sapna. It was of Nand Nagri. The mother of the accused, namely, Geeta Talwar, met PW-28 on that day. Sister of the accused, namely, Jyoti and brother, namely, Ahsok @ Sonu, were also present in the house at that time. He had visited the house on 14.07.2002 at about 5:00/5:30 p.m. He also made an entry about his departure in the Police Station. Through these call details, he came to know about accused Yunus. He was interrogated by him 19.07.2002 at his house. On interrogation, he came to know that accused Satyajeet and Sapna already left Delhi on that very night. He

informed all these facts to DCP East Sh. Arvind Deep who contacted DCP GRP Railways, Lucknow and latter gave information about the arrest of the said accused Sapna and Satyajeet.

33. PW-26 SI Ranjeet Prasad Diwakar deposed that on 19.07.2002, he was posted in GRP Charbagh. At about 8:00-8:30 a.m. SI R.B. Singh met him in the Police Station and told about an information from Delhi about two accused, one boy and one girl, who had absconded from Delhi. He had also disclosed their names as Satyajeet @ Lovely and Sapna Talwar. He along with other team members went to Railway Station Charbagh in search of said accused. At Platform No.1 near parcel godown, they saw one boy and one girl sitting behind bags of parcels. When they inquired from them about their whereabouts, accused Satyajeet told his name as Vinod and Sapna told her name as Shalu. They asked them to show their railway tickets. As the boy was bringing out his railway ticket from his pocket, some documents fell down on the ground. One of these was a driving licence in the name of Satyajeet. This raised doubt about his identity. On further interrogation, both admitted their names as Satyajeet and Sapna Talwar. On being searched, accused Sapna was found having one grey coloured bag containing Rs.6200/-, one SIM card Airtel, one wrist watch Titan, one vial of some injection and one train ticket. The boy was found having one wrist watch Titan and driving licence in the name of Satyajeet. All these documents were seized vide document Ex.PW23/A. On the vial a chit was affixed which bore the inscription "Calmpose" on it and the train ticket was dated 18.07.2002 from Ghaziabad Junction to Lucknow. The identity card contained photo of Satyajeet. Ex.PW- 23/A arrest memo-cum-disclosure statement was prepared at the time of arrest. The police also recorded the statements of PW-23 Constable Pushpa Singh as Ex.PW23/DA, PW-24 Constable Neeru Shukla as Ex.PW24/DA, PW-25 Constable Krishan Bihari Choubey as Ex.PW25/DA and PW-26 Ranjeet Prasad Diwakar as Ex.PW- 26/DA.

34. After the arrest of Sapna and Satyajeet on 19.07.2002 at lunch, they were lodged in jail. PW-28 SI Yashbir Singh applied for permission in the court of MM, Karkardooma Court, Delhi, to bring the said accused persons to Delhi. The copy of application is Ex.PW- 28/A. Both the accused were brought to Delhi by him and

were produced before the court in Delhi and both were remanded to police custody for eight days.

In the disclosure statements recorded on 21.07.2002, they informed that they could get the dead body of deceased Vijay recovered from a small canal. On the basis of the disclosure statements Ex.PW-20/A (Satyajeet) and Ex.PW-20/B (Sapna), they were arrested on the same day. The arrest memos are Ex.PW-20/C (Satyajeet) and Ex.PW-20/D (Sapna).

35. The prosecution proved that prior to their arrest on 16.07.2002, the dead body was recovered within the jurisdiction of Police Station Jarcha. The clothes of the dead body were also identified by the family members, particularly PW-4 Vishal Rajpal. Before the arrival of Delhi Police at Police Station Jarcha, a dead body had already been recovered by Jarcha police on the above mentioned place and a Panchnama Ex.PW-26/A was prepared and the dead body was sent for postmortem examination. PW-27 SI Brij Pal Singh seized the shirt and shoes of the deceased vide Ex.PW-27/B, photographs Ex.PW-27/C and Ex.PW-27/D were also taken. Thereafter, the dead body was cremated by the Jarcha Police on 19.07.2002.

36. Mr Andley, the learned Senior Counsel appearing on behalf of the appellants Sapna Talwar and Satyajeet, has argued that the findings of the trial court are not sustainable, inter alia, on two grounds, namely, that the learned trial judge who delivered the judgment considered the alleged disclosure statements of the appellants as their confessions which is against the law and secondly, nothing was recovered in pursuance to the disclosure statements. Thus, the disclosure statements are not admissible in law. We must mention here that no doubt while delivering the impugned judgment, the learned trial judge at various places has referred to disclosure statements as confessional statements, which is not permissible. And, it is settled law that only that part of a disclosure statement made by an accused to a police officer is admissible which leads to a discovery of a fact. In the present case, although the dead body had already been found when the disclosure statements were recorded, we must not lose sight of the fact that the dead body was found by UP Police and that fact was not in the knowledge of

Delhi Police which came to know about the same only when the disclosure statements of the accused were recorded. We do not agree with the submissions of the learned Senior Counsel for the appellants that there was no discovery of facts in this matter. This will be apparent from what is mentioned below.

37. After disclosure statements made by the accused Sapna Talwar and Satyajeet @ Lovely before Delhi Police on 21.07.2002, the accused persons thereafter led PW-45 ACP Ramniwas Vashisht and his team to a place near Dadri, U.P. on 23.07.2002 and pointed out a place where site plan was prepared and also took them to another place near a Canal which was at a distance of about 2-2½ kilometers from that place. Pointing out memo in this respect is Ex.PW4/B and site plan was also prepared at the spot which is Ex.PW-4/D.

38. Thereafter, they went to Police Station Jarcha and inspected the record of Malkhana Moharrir. One Vishal and another Kishan met them there in the Police Station and they identified the deceased from his photo, shoes and wearing clothes. The clothes of the deceased were sealed and were opened before them for the purpose of identification and they were again sealed.

39. On 24.07.2002, both the accused led them to Haridwar at Har Ki Podi and from local Police Station a car Maruti Zen was received from the SHO and both pointed out the place of which pointing out memo is Ex.PW-28/B was prepared. The accused thereafter led the team to Hotel Shiv Chhaya and pointed out the same. The hotel manager handed over photocopy of relevant entry in the guest register which is Ex.PW-19/A. His statement was also recorded. The seizure memo of the car Ex.PW-28/C was also prepared and while returning to Delhi, both accused took them to the house of Yunus at 1743, Gali No.1, Islam Nagar, Ghaziabad, who was present in his house.

40. On the basis of the disclosure statement Ex.PW-21/A, Yunus allegedly brought out a country-made pistol .315 bore and five cartridges, two of which were live, from an almirah and the said material was seized. The sketches of these weapons were prepared as Ex.PW-4/J (country-made pistol) and Ex.PW-4/K (cartridges). Seizure memo in this regard is Ex.PW-4/G. All these articles were kept in pullandah and sealed by seal of RNV.

41. On 25.07.2002, both the accused then took the team to Subzi Mandi, Chander Nagar. Accused Satyajeet pointed out one shop of Chander Bhan. Thereafter, they led the team to Haq Clinic number 7A, Dilshad Garden, Delhi, where the statement of Islam was recorded.

42. On 26.07.2002, both the accused led the team to shop No.S4, BS Complex, GT Road, Ghaziabad. Accused Satyajeet pointed out that shop. One Gurpreet met them there who identified both the accused and statement of Gurpreet was also recorded.

43. On 28.07.2002, they led the team to Hotel Pelican, Ghaziabad and pointed out the same. The Manager-cum- Receptionist Anil Kumar met them there. He identified both the accused as the same who stayed there in the name of Rahul and his wife. The photocopy of the guest register produced by the manager is Ex.PW-4/L. The seizure memo in this regard is Ex.PW-4/M. Thereafter, both the accused led the team to Krishna lodge, Railway Road, Ghazibad, where Mr Gyan Prasad Yadav, Manager of the said lodge, met them. He identified both the accused as the same persons who stayed there in the name of Surender Singh and his wife.

44. During the course of investigation, when the vehicle parked at Haridwar was examined, it was found to have blood stains on the rear right door which was lifted vide seizure memo Ex.PW-4/P and subsequently, this was confirmed to be human blood by the FSL report.

45. It is pertinent to mention here that for the period from 13.07.2002 to 18.07.2002, there was no explanation on behalf of the appellants Sapna Talwar and Satyajeet @ Lovely that why they were moving from one place to another.

46. From the aforesaid incriminating material and circumstances, it is clearly established by the prosecution that the murder of Vijay Bajaj was committed by Sapna Talwar and Satyajeet @ Lovely.

47. We concur with the view taken by the learned trial judge that PW-14 is the 'last seen' witness who had last seen Vijay Bajaj alive in the company of the accused

Sapna Talwar and Satyajeet @ Lovely.

48. The prosecution has also been able to establish that accused Sapna Talwar and Satyajeet @ Lovely committed the offence under Section 201 IPC because they had caused the death of the deceased and after having the knowledge of the said fact, they caused disappearance of evidence after offence of murder by throwing the dead body in the water. The offence under Section 365 IPC is, however, not established.

49. In view of the testimonies of the witnesses, it is clear that the prosecution has been able to establish on record beyond reasonable doubt that both the accused Sapna Talwar and Satyajeet @ Lovely have committed the offences under Section 302 r/w 120B and 201 IPC.

CASE AGAINST YUNUS IN CRL. APPEAL NO.421/2009

50. The case of prosecution against Yunus was that in order to kill the deceased Vijay Kumar, the accused Sapna and Satyajeet hatched a conspiracy. They joined Satyajeet's friend Yunus in their plan and received his mobile phone which could be used with other SIM card of Sapna. They also received a country-made pistol/katta and some cartridges also from Yunus. PW-18 SI Yashbir Singh from the call details came to know about accused Yunus and he was interrogated on 19.07.2002 at his house.

51. As per the case of prosecution, on 24.07.2002, both accused Satyajeet and Sapna led the police to Haridwar for the purpose of recovery of the articles. When PW-45 and his team along with accused Satyajeet and Sapna were returning from Haridwar to Delhi and they crossed Ghaziabad, PW-45 ACP Ramniwas Vashisht received secret information about co-accused Yunus that he was present in his house. Both accused Satyajeet and Sapna took the team to the house of Yunus who was present in his house and after interrogation, he made a disclosure statement Ex.PW-21/A.

52. The accused Yunus allegedly brought out one country- made pistol .315 bore and five cartridges, two of which were live, from an almirah in his house.

Thereafter, he was arrested on 24.07.2002 and he was charged with Sections 25, 54 and 59 of Arms Act and Section 120 B IPC.

53. The trial court, after discussing various provisions of the Arms Act, came to the finding that the charges against the accused persons stand not proved. However, Yunus was held guilty of having conspired with Satyajeet and Sapna. The relevant details given by the trial court are as under:

(i) A mobile phone was recovered from the possession of accused Yunus. Its IMEI number was 449652426331480 and it was seized vide Ex. No.PW-4/H. It was this mobile phone which Yunus provided to accused Satyajeet and Sapna and in which Sapna used her SIM card of number 9810695421. PW-17 R.K. Singh

appeared in the court and produced documents Ex.PW- 17/A to Ex.PW-17/B. In these documents Ex.PW-17/A and Ex.PW-17B are the specific documents to this effect.

(ii) Accused Satyajeet and Sapna disclosed that Yunus was in contact with them. And that Yunus provided them money which was seized at Lucknow vide document Ex.PW23/A and he also provided them the railway ticket for Lucknow.

(iii) Yunus made a disclosure statement Ex.PW-21/A before the police that he had arranged a ticket for the accused Satyajeet and Sapna and had helped them in boarding a train to Lucknow. When the police worked upon this information, the accused Sapna and Styajeet were arrested by the railway police at Lucknow. According to the trial court this showed that the information furnished by the accused Yunus was correct.

These purported circumstances seen together, in the view of the trial court, clearly established that the accused Yunus was in contact with Sapna and Satyajeet and that he was assisting them; he was providing all the material and instrumental help to them; he provided a telephone and on its disruption a second one also. He also provided them a Katta.

54. The case of Yunus before the trial court was that no public witness was joined at the time of recovery or at the time of arrest of Yunus. His case is that in fact, he

was lifted from his house and he was illegally confined in Police Station from 19.07.2002 till 24.07.2002 and on 19.07.2002, no public witness was allowed to become witness at the time of recovery, if any, and no public witness was there at the time of recovery.

55. The statement of PW-29, father of the Yunus, was also recorded in the intervening night of 18.07.2002 and 19.07.2002 at about 3.00 a.m. The father of the Yunus was examined as a prosecution witness and was declared as a hostile. He deposed that in the intervening night of 18.07.2002 and 19.07.2002, when he was sleeping in his house, 12-13 persons entered his house from the side of roof. All of them took away Yunus, his son, who was sleeping at the roof of their house. He followed them. On his asking, they did not disclose their identities but stated that they were taking away Yunus to Delhi. He stated that the Police did not record his statement in the case and on 20.07.2002, when he went to the Police Station Vivek Vihar, the police took his signatures on six blank papers and he identified his signatures on documents Ex.PW4/G and PW4/H at point C. He was cross examined by the Special Public Prosecutor for the State and he denied all the suggestions made by him before the court.

56. The defence witnesses DW-1 Mohd. Mehmood and DW-2 Rashid were examined by the appellant Yunus. They deposed that they are neighbours of the family of Mohd. Yunus and in the intervening night of 18.07.2002 and 19.07.2002 at about 2:30-3:00 a.m., they saw police officials on the gate and they overpowered Yunus and took him down to the street. The neighbours also gathered there. The police officials informed that they were taking Yunus to Delhi for some inquiry.

57. The learned trial judge in his impugned judgment acquitted him of charges under the Arms Act against him as the same stood not proved. However, he was held guilty of offence punishable under Section 120 B read with Section 34 IPC and was awarded imprisonment for life for the said offence.

58. In nutshell, the case of prosecution against the Yunus is that he provided the katta and five cartridges to the main accused, particularly, Satyajeet, who is his friend and also alleged to have provided a mobile phone to Sapna. As per the

story of prosecution, Sapna used the said mobile after putting in her own SIM card and he provided money to the accused as per Ex.PW-23/A.

59. After having gone through the testimonies of all the witnesses and the documents on record, we do not agree with the finding of the learned trial judge that any case against the Yunus under Section 120 B IPC is made out as the prosecution has not established its case under this provision against Yunus. Our findings are as under:

a. Yunus denied the suggestion for providing country- made pistol to the other two accused persons. As per the FSL report, the said pistol was not in working condition. Therefore, it creates doubt in our mind. It makes no sense to hold that Yunus provided the weapon of offence.

b. There is no clear evidence to prove the motive on the part of the Yunus, how Yunus is connected with the other two appellants, namely, Sapna and Satyajeet and why he would help them.

c. In so far as evidence of PW-2 Gurpreet Singh, owner of mobile shop, is concerned, he is a hostile witness and he did not recognize him and has not supported the prosecution case against Yunus.

d. PW-4 Vishal Rajpal, a relative of deceased, has not deposed anything against Yunus.

e. PW-29, his father, who was produced as prosecution witness, confirmed the case of Yunus that he was lifted from the house on 19.07.2002. He was also declared hostile witness.

f. PW-28 SI Yashbir Singh, who came to the house of Yunus for interrogation on 19.07.2002, had not stated anything against Yunus with regard to arrest, search, seizure or recovery of any article in his chief. At the time of interrogation on 19.07.2002, despite availability of members of public, no public witness was involved. g. As per call details between 03.07.2002 to 17.07.2002, Ex.PW-17/A to Ex.PW-17/D, there is no evidence of any call from alleged mobile phone of Yunus bearing No. 9810810882 to the mobile phone No. 9810015012 of the deceased or

the alleged mobile phone No. 9810695421 of Sapna Talwar.

h. Admittedly, PW-28 SI Yashbir Singh deposed to have interrogated Yunus in the night of 19.07.2002 at his house, but, there is nothing available on record in this regard about the statement of Yunus or any other witness. PW-28 SI Yashbir Singh deposed that he interrogated Yunus on 19.07.2002 on the basis of the call details from the office of Airtel on 14.07.2002. PW-17 R.K. Singh of Airtel deposed that the police had collected the call details Ex.PW-17/A to Ex.PW-17/D on 23.07.2002, then how on the basis of call details Yunus was interrogated on 19.07.2002, i.e., prior to receipt of call details on 23.07.2002.

i. PW-45 ACP Ramniwas Vashisht deposed in cross- examination that he did not remember the date when SI Yashbir collected call details. He did not remember the number of telephone of which call details were taken. j. PW-28 SI Yashbir Singh in his testimony stated that one Mujib had given mobile phone to accused Yunus but said Mujib was not produced as a witness nor his statement was recorded.

k. No expert's opinion or doctor's opinion, who conducted the postmortem, was obtained regarding the use of alleged katta to commit the said offence.

l. PW-45 ACP Ramniwas Vashisht stated that they had parked their vehicle at a distance of 100 yards before the house of accused Yunus while PW-21 stated that they had parked their vehicle at a distance of 500-600 yards in north side from the house of the accused Yunus. m. PW-4 Vishal Rajpal in his cross-examination deposed that they reached there, the doors of the house of Yunus were open while PW-45 ACP Ramniwas Vashisht stated that the main gate was closed when they went there. The doors were opened by Yunus from inside.

n. PW-45 ACP Ramniwas Vashisht stated that three or four persons had entered inside the house and rest of them remained outside. PW-21 Constable Pritam Singh stated that they all entered into the house of the accused. o. PW-21 Constable Pritam Singh deposed in his cross- examination that there was one almirah of wood having size 2`x5` in that room whereas PW-45 ACP Ramniwas Vashisht stated in his cross-examination that the almirah was affixed in the rear

wall of the room which was made of steel being of average size.

p. PW-21 Constable Pritam Singh stated in his cross- examination that seizure memos were in the handwriting of SI Yashbir Tyagi while PW-4 Vishal Rajpal stated that seizure memo, sketch of country-made pistol and cartridges, personal search memo of accused Yunus, site plan and arrest memo were made by PW-45 ACP Ramniwas Vashisht.

60. We find it difficult to believe that Yunus would have kept the katta and cartridges with him if the same were returned by Satyajeet and Sapna on their return to Delhi on 18.07.2002 after committing the murder of deceased Vijay Bajaj, particularly, when he was allegedly in close contact with the accused as per the case of the prosecution and in all circumstances, was aware about the progress of the investigation. Therefore, it would be highly unnatural on the part of Yunus to have retained a weapon in his house after having knowledge.

61. There is no direct or indirect evidence on record to connect the accused Yunus with the alleged offence. The prosecution version in this case is doubtful as the prosecution did not join any independent witness as attesting witness to the alleged disclosure statement as well as recovery. The disclosure statement without any discovery of fact is also meaningless. Non-joining of public witness as attesting witness smacks of malafide and makes prosecution version more doubtful. The prosecution is not able to establish chain of circumstances so complete to connect the accused Yunus with the alleged offence.

62. For all these reasons, we are of the clear view that the prosecution has not been able to bring home its case against Yunus as there are many missing links and chain is far from complete. The prosecution was failed to prove any case against him under Section 120 B IPC. Therefore, we cannot hold him to be guilty merely on the basis of suspicions raised by the prosecution.

63. The impugned judgment and order of sentence against Yunus are set aside and he is acquitted of all charges in this case. His appeal is allowed and he be set at liberty forthwith.

64. The appeal filed by appellants Sapna Talwar and Satyajeet @ Lovely is dismissed except to the extent that they stand acquitted of the charge under Section 365 IPC.

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