

Samunder Vs. State

Samunder Vs. State

SooperKanoon Citation : sooperkanoon.com/922503

Court : Delhi

Decided On : Oct-21-2011

Judge : Manmohan Singh, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 374(2), 161, 313; Indian Penal Code (IPC) - Sections 302, 201, 34

Appeal No. : CRL. A.747 of 2010; CRL. A.748 of 2010; CRL. A.766 of 2010

Appellant : Samunder

Respondent : State

Judgement :

1. These three appeals have been filed by the appellants, namely, Riken @ Diken, Deepak and Samunder under Section 374(2) of the Code of Criminal Procedure against the common judgment dated 19.02.2010 and the order on sentence dated 25.02.2010 by which the Additional Sessions Judge (West), Tis Hazari Courts, Delhi in S.C. No.111/1/08 convicted them under sections 302/201/34 IPC and sentenced them to rigorous imprisonment for life and to pay a fine of Rs.5000/- and in default, to undergo simple imprisonment for six months.

2. The main charge framed against all the three accused on 23.3.2005 was that all of them on 6.6.2004 at KM Pole No.7/29 Up railway track, near Railway Crossing, Gate No.5 Ram Pura, Delhi within the jurisdiction of PS Railway Sarai Rohilla with common intention to commit the murder of Ramesh, with intent to cause his death,

committed the offence punishable under Section 302 with read with Section 34 of IPC.

3. The case of the prosecution (i) That on 07.06.2004 a telephonic message was received from Sub-Station Shakur Basti, that a dead body of a male person is lying on the railway track, and the said information was endorsed vide DD No. 6 dated 07.06.2004. On receipt of this information, PW-14 ASI Sarabjeet Singh of GRP P.S. Sarai Rohilla, along with other police officials reached at Pole No. 7/29 near Rampura platform No. 5, where the dead body of a male person was found;

(ii) That the age of the deceased was about 30 to 35 years, height 5.6", wheatish complexion, and face was round. There were injuries on the head above the right ear, multiple injuries on head, right shoulder was broken and there were black spots around the neck. The other Senior Police officials also reached the spot. Blood stained stones and earth control stones from around the head and feet of the dead body were collected and deposited in malkhana after sealing with the seal of SS and were taken into possession vide memo EX-PW14/B.

(iii) That the deceased was wearing light blue shirt, white vest, light chocolate colour pant on which the mark of "Prince Tailors, Singh Market Maner" was affixed. There were clay and blood stains on the shirt of the deceased due to rain.

(iv) That the police recorded the statements of Badri, Abdul Hussain, Jugal Kumar Rai and Jitender Rai. Passersby were also interrogated, but, the identity of the body could not be established on that day neither the reason of death could be established. The dead body was kept in P.P. Kishan Ganj for identification and later on shifted to Subzi Mandi Mortuary.

(v) That the SSP, Patna, Bihar and SHO P.S. Maner were contacted through wireless and other authorities were also contacted through PCR, for the identification of the dead body.

(vi) That thereafter, on 11.06.2004, the brother of the deceased, PW-8 Jitender Rai came to the P.S. Sarai Rohilla along with his cousin Dinesh and his younger brother Tarkeshwar, where PW-14 ASI Sarabjeet Singh showed him a photograph

of the deceased which he identified and said that the dead body was of his brother Ramesh Rai.

(vii) That the Police took them to the mortuary Sabzi Mandi and showed them the dead body, and they all identified the dead body to be of Ramesh Rai.

(viii) That Police recorded their statements. PW-8 Jitender Rai, told the police that they have enmity with Deepak, Riken @ Diken and their uncle Samunder and Shailesh and that he has full confidence that Deepak, Riken @ Diken and their uncle Samunder have killed his brother to take revenge. He told the police that on several occasions they have had quarrels with the said persons in their village and about 2 years ago, a quarrel had taken place between his deceased brother Ramesh and accused Deepak at Rohini and Deepak had caused a brick injury on the nose of the deceased, on which a case was registered against Deepak at P.S. Rohini and he was even arrested in this case. Thereafter, his brother went to their native village on the occasion of Holi, and later on he came to know that his brother was badly beaten even in the village by the accused persons. The Panchayat was called and the Panchayat imposed a fine of Rs. 1000/- on accused Deepak as he had pleaded guilty. Thereafter the deceased and all the accused persons came back to Delhi and the accused persons told him that they had felt such disrespect in the village and now they will not spare Ramesh (deceased) and stated "Gaon mey CRL. A. 747/2010, CRL. A. 748/2010, CRL. A.766/2010 Page 5 of 44 hamari bahut Behti ho gai hey or ab hamney kafan bandh liya hey or ab hum Ramesh ko chodengay nahi".

4. On 11.06.2004, Dr. K. Goel (PW-2) conducted the postmortem on the body of the deceased. The cause of death was asphyxia consequent upon ligature strangulation.

5. On 12.06.2004, the case was handed over to PW-27 Insp. Om Prakash Sharma who prepared the ruqqa and got the case registered vide FIR No. 36/2004 (EX-PW1/A). He went to the place of occurrence and prepared the site plan. Then he went to the dairy where the cousin of the deceased namely Dinesh was working and examined him under section 161 Cr. PC. During the examination Dinesh raised suspicion of the involvement of all the three accused persons. Thereafter,

they went to Naharpur in search of the accused persons and apprehended accused Deepak from the dairy of Nahar Singh. On being interrogated, Deepak made a disclosure statement. Thereafter, they went to Britania Chowk, Ring Road in search of other accused persons and arrested Samunder and Riken.

6. The accused persons made disclosure statements and led the police party to H. No. WZ14, Golden Park, Punjabi Bagh, the owner of the said house, namely PW-7 Ranjit Singh, was also called there and from there blood smeared soil, earth control along with other material like blood smeared brick, which had some hair stuck to it were recovered, all these items were sealed and with the seal of OPS and seized vide memo Ex-PW7/B. Insp. Om Prakash Sharma (PW-27) prepared the site plan of that place Ex-PW27/C.

7. On pointing out of the accused Riken, a blood smeared rope and piece of blood stained floor and other earth control were recovered from the way which goes to the railway track. Then the accused persons led the police party to a horse shed/tabela and got one red coloured T-shirt and a shirt recovered, and the same were also seized. Insp. Om Prakash Sharma (PW-27) prepared the site plan of each place.

8. After the committal proceedings were completed, charges were framed against the accused persons under section 302/201/34 IPC. The accused persons pleaded not guilty and preferred to contest the case.

9. In order to prove its case, the prosecution examined 27 witnesses out of which nine were public witnesses and they were PW-3 Dinesh, PW-4 Lalit Kumar, PW-5 Smt. Shashi Sharma, PW-7 Ranjeet Singh, PW-8 Jitender Rai, PW-9 Vinod Rai, PW-12 Shivaji Rai, PW-15 Kailash Singh and PW-16 Jitender Kumar.

10. In the statements under Section 313 Cr.P.C. all the three appellants denied the allegations against them. They stated that they are innocent and that they had been falsely implicated.

11. After examining the evidence on record and considering the arguments of the parties, the learned ASJ in his judgment held that there was positive evidence

against the accused persons which brought the inference that the proposed accused are the only perpetrators of the crime and that they committed the murder of Ramesh Rai with the ulterior motive to take revenge. Thus, he convicted all the three accused persons for the offence punishable under section 302/201/34 IPC.

12. The appellants, being aggrieved by the said judgment and order on sentence, have filed the present appeals.

13. Learned counsel for the appellants have raised common grounds of appeal, some of the relevant ones are as follows: I. The Learned Trial Court has erred in not appreciating that the dead body was identified from a label/sticker of a Tailor affixed on the pant. Thereafter the address of his house was traced. However, no evidence which could give clue of the name or the address of the deceased or the said tailor has been examined. II. The Learned Trial Court has erred in not appreciating that admittedly the deceased had gone to have the dinner in the company of some 'Shambhu' who was not implicated or produced as a witness. III. The independent public witnesses have not supported the case of the prosecution. IV. The Learned Trial Court has erred in not appreciating that the possibility of the deceased having met with an accident cannot be ruled out as the deceased was admittedly drunk and the weather was bad and he was apparently trying to jump the railway track. V. There are material contradictions on all important aspects- arrest of the accused, recovery etc. The inconsistencies, discrepancies and contradiction in their statements make the prosecution case highly improbable. VI The alleged CD relied upon by the prosecution is not admissible in Law.

14. 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 case of the prosecution.

15. The prosecution in order to prove its case relied upon the testimonies of following witnesses who deposed as follows: Rukka & FIR

a) PW1 HC Savita deposed that she was the Duty Officer on 12.6.2004 at P.S. Sarai Rohilla and got registered the FIR at Sr. No.36 for the offence u/s 302/201 IPC. Copy of the same is Ex.PW1/A. She made endorsement about the

registration of the case on the rukka vide Ex.PW1/B. She also brought the original DD register No.12/B regarding registration of the case. Medical and Scientific Evidence

b) PW2 Dr. K. Goel conducted the post mortem on the body of Ramesh S/o Mala Rai on 11.6.2004 and as per his report Ex. PW-2/A the cause of death was asphyxia consequent upon ligature strangulation. Injuries No.1 to 5 were ante mortem. Injuries No.1 to 4 were caused by blunt force impact. Ligature marks i.e. injury No.5 was caused by some hard flexible material. Injury No.6 was postmortem in nature and was consistent with pressure over wrist to fasten them. Ligature pressure over neck was sufficient to cause death in ordinary course of nature. Mode of death was homicide. Time of death was about four and a half days. In his cross, PW2 stated that a ligature mark present around the neck was caused as ligature injury by some ligature material. Blunt force injury means the injury caused by such weapon of surface which is having no sharp edges. Injury number 5 mentioned in Ex.PW2/A was caused by some hard flexible material, which means a material like rope, some electric wire and other soft material. The skull bones were intact but there was one lacerated wound on the right temporal region. This was caused by blunt force impact. Semi digested food could not be described. Alcohol like smell was coming from the stomach. Death was not possible by poisoning. Public Witnesses

c) PW8 Jitender Rai identified the dead body of deceased from photographs showed on 9.6.2004 when he came to Delhi from Ambala. Thereafter on 11.6.2004 he alongwith his cousin Dinesh and younger brother Tarkeshwar identified the deceased at Subzi Mandi Mortuary and also told the police that Deepak, Riken @ Dikan and their uncle Samunder and Shailesh had enmity with the deceased.

d) PW 3 Dinesh Rai also deposed regarding the enmity of the accused Deepak as he had earlier attacked deceased Ramesh Rai at the village and Delhi. Both hailed from the same village in Bihar. Panchayat had earlier fined Rs.1,000/- on Deepak. The case was registered at PS Rohini Sector-8 on the complaint of Ramesh Rai deceased. He identified the deceased Ramesh initially from his pant thereafter at

Subzi Mandi Mortuary. He suspected the hands of all the three accused persons in the murder of Ramesh as they earlier threatened Ramesh to kill him since Deepak was made to pay a fine by the Panchayat.

e) PW9 Vinod Rai in fact corroborated the version of PW3 Dinesh Rai and PW8 Jitender Rai by deposing that on 17.3.2002 a panchayat was held in village Jivrakhan Tola in the matter of Deepak, Samunder, Riken and deceased Ramesh as they all working in Delhi and quarrel took place between deceased Ramesh on one side and Deepak, Samunder and Riken from other side at Delhi. Thereafter, they went back to the village Jivrakha Tola. A Panchayat was held at the house of Mukhia Kailash Singh and he headed the said Panchayat as Panch. Other members of the Panch, besides him, were Shivji Rai, Kalshwar Singh, Loknath Rai and Ramesh Rai. On 19.7.2004, one SI of Delhi Police along with two officials reached their village and they were called to the PS Maner. He told the facts of the Panchayat stated above and handed over the Panch Faisla to the police officer which was seized vide memo Ex.PW9/A. The Panch Faisla Ex.PW9/B bears his name at point A.

f) PW 12 Shivji Rai who was also a member of the Panchayat made a deposition similar to that of PW 9 Vinod Rai and identified his thumb impression on Ex.PW9/B. PW 15 Kailash Singh being the Pradhan of the village also headed the Panchayat as Panch on 17.3.2002 wherein he decided the issue of quarrel between deceased Ramesh Rai and Deepak by imposing fine of Rs.1000/- on Deepak and Rs.51/- on deceased Ramesh Rai. The Panch Faisla was reduced in writing and handed over to police vide Ex.PW9/B, which bears his signatures at point C.

g) PW-7 is an independent witness, who owned house No.WZ 14, Golden Park, Rampura, Delhi. He deposed that he had not given any room on rent to Shambhu but, he had given his Milk Dairy to Shambhu on contract basis. He stated that on 12.06.2004, he was called by the police at Golden Park where all the accused were present and he identified them in Court. He stated that he was asked by the police to open the lock and he opened the shutter of the room. In his presence, police had lifted the blood from near the water tank, blood stained plaster and

earth control from the spot and took them into possession by making a recovery memo Ex.PW7/A which bore signature at point A. One blood stained piece of floor and earth control were also lifted from near the wall of water meter vide memo Ex.PW7/B which also bore his signature at point B. Thereafter, the accused took the entire team near the Railway Track from where the blood stained earth and blood were lifted and one rope was also taken into possession and seized vide memo Ex.PW-7/C. One blood stained shirt and one T-shirt were also recovered at the instance of the accused persons from a Chhappar. The earth control was also lifted from near the TV Tower Polls vide memo Ex.PW-7/E. Last Seen

h) PW 5 Smt. Shashi Sharma is the wife of PW 4 Lalit Kumar and also deposed that on 6.6.2004 at about 8-8.30 pm Ramesh, had told her that he was going to Rampura to attend a party. Thereafter, Ramesh never returned to the house and on 12.6.2004 she came to know that Ramesh had died. No person of the name of Samunder, had come to their house in the afternoon to meet Ramesh on 6.6.2004, though before Police while recording her statement under Section 161 Cr.P.C., she stated that on 06.06.2004 in the afternoon, Samunder had come to their house to meet Ramesh.

i) PW 4 Lalit Kumar @ Bindu Pehalwan deposed that the deceased Ramesh Rai was working at his dairy about 2-3 years prior to his death on 6.6.2004 he had told his wife that he was going to take meal at some place. Thereafter, the deceased did not return to his work. Later on he came to know that the boy had died. He was declared hostile by Public Prosecutor and in cross examination of APP he denied that deceased Ramesh might have gone to the house of Shambhu for attending the party or on the next day, he came to know that Ramesh has been murdered and his dead body has been found near the Ram Pura Railway crossing. Testimonies of other witnesses

j) PW 10 Ct. Sunder Lal deposed that he alongwith Inderjeet Singh reached at the spot at Golden Park, Rampura, Delhi where all the three accused were with police officials and accused persons pointed out the place of incident. At the instance of IO Insp. Om Prakash he took eight photographs of the place of incident. He also proved the negatives of the photographs vide Ex.PW10A1 to A8 and print

photographs vide Ex. PW10/A9 to PW10/A16.

k) PW12 D.S. Meena, Station Superintendent, Railway Station, Shakur Basti had deposed that on 7.6.2004 the passenger train, Delhi Firozpur 341 which used to go from Old Delhi Railway Station to Firoz Pur via Shakur Basti Railway Station. On that day at about 7.25 am the driver of the said train informed him that a dead body is lying near railway crossing Rampur. 7/29 km of up track. He informed to HC Rajmal (In Charge of P.P. Kishan Ganj) GRP at about 7.30 am.

l) PW 13 Ct. Daya Ram deposed that he joined the investigation alongwith Insp. Om Prakash, ASI Sarabjeet Singh, HC Hawa Singh and Ct. Ranbir Singh and they visited to pole No.KM 7/29, near Rampura Railway crossing where at the instance of ASI Sarbjeet, Insp. Om Parkash prepared a site plan and thereafter they went to the diary of Bindu Pehlwan. Where Ms. Shashi Sharma wife of Bindu Pehlwan @ Lalit Kumar met there, both were interrogated regarding the case and their statements were recorded. Thereafter at the instance of accused Deepak they reached Chowk Britania Ring Road where two persons were standing at the Ring Road towards JJ Colony, Shakur Pur, they were pointed out by the accused Deepak towards Samunder and Riken @ Dikan. Accused Samunder was arrested vide memo Ex.PW13/D and accused Riken was arrested vide memo Ex.PW 13/E. The personal search of accused Riken was conducted vide memo PW13/F and of accused Samunder vide Ex.PW13/G. They were also interrogated by the IO and their disclosure statements were recorded vide Ex.PW13/H and J. Thereafter they all went to WZ-14 Golden park, Rampura, Delhi. The landlord of that house Ranjit Singh Khari was also present over there and he has also joined the investigation. Photographer Ct. Sunder Lal and Videographer HC Inderjeet were called at the spot on the direction of Investigating Officer Insp. Om Prakash Sharma. All the three accused persons pointed out the place of incident and pointing out memo was prepared on their instance vide Ex.PW13/K. On the direction of the IO the photography and videography of the place of incident was done. From the spot IO lifted blood stained soil and earth control sample and same were sealed with the seal of OPS in the pullanda and taken into custody vide memo Ex.PW7/A. At the instance of Deepak, one brick having blood stains as well as piece of the earth and earth control sample were lifted and sealed in pullanda with the seal of OPS

and seized vide memo Ex.PW7/B. All the three accused took the police party to the railway track near a narrow path called 'Pagdandi' and accused persons disclosed that they kept a dead body there for a while. So, IO lifted the blood smeared soil and seized vide memo Ex.PW7/A. When they went forward by 15 paces by the side of the railway track there was a kiker tree at the spot, accused Riken pointed out one rassi/rope which was hanging on the said tree and same was seized vide memo Ex.PW7/B. The accused persons then took them to the place where they allegedly threw the dead body near a pole KM7/29. The pointing out memo was prepared by the IO and same is Ex.PW13/L. Thereafter, they against came behind the house WZ-14, Golden Park, Rampura, Delhi and accused Samunder and Deepak handed over one polythene bag containing one dirty shirt and a red colour T-Shirt having blood stains after taking out the same from Mezzanine/parchati from the 'pashuo ka Tabela' (the place where the animal used to be kept) and the same were sealed in pullanda with the seal of OPS and taken into possession vide memo Ex.PW13/M. The pointing out memo was prepared where the dead body was kept for a while and the same is Ex.PW13/N and pointing out memo of kiker wala tree is vide Ex.PW13/P. The seal after use was given to Choudhary Ranjit Singh Khari and they all came back to Police Station. The deposition of PW13 Ct. Daya Ram had been corroborated by PW14 ASI Sarabjit Singh, PW 20 Ct. Sukhram, PW 24 HC Hawa Singh, PW 25 Ct. Ranbir Singh and PW 27 Insp. O.P. Sharma in the deposition of and all of them have also proved the documents prepared during the course of investigation.

m) PW-14 ASI Sarabjit Singh deposed that on 07.06.2004, he received DD No.6 which is Ex.PW-14/A and he along with Head Constable Hawa Singh, Constable Sukh Ram went to the spot, i.e., Pole KM 7/29, where he found that on the railway track one dead body of male lying between the railway track. He inspected the dead boy and got it photographed. He found that there was an injury near the left ear of the dead body and there was some ligature mark on the neck of the dead body of black colour. Due to rain in the night, the said ligature mark was not visible properly. He inspected the clothes of the dead body and there was sticker affixed on brown coloured pant in the name and style of Prince Tailor, Singh Market, Muner. He also lifted the blood smeared stones and earth control stone from the spot and took them into custody sealing the same vide Ex. PW-14/B. He also

seized the hair from the brown coloured underwear make Amul Gold at the instance of crime team which is Ex.PW14/C. Thereafter, Head Constable Hawa Singh was sent to Muner, Bihar, with the pant of the deceased for the identification of the dead body. Head Constable Hawa Singh came to Delhi on 10.06.2004 and he made his rival entry. Thereafter, the brother of the deceased was called and they dead body was identified. He also recorded the statement. He also recorded the statements of Badri, Abdul Hassan, Jugal Kumar Rai and Jitender Rai. The same are Ex.PW-14/E, Ex.PW-14/F, Ex.PW-14/G and Ex.PW-14/H. He conducted the inquest proceedings in respect of dead body and prepared the form No.25.35, the same is Ex.PW-14/J. Brief facts are Ex.PW-14/K and identification statement is Ex.PW-14/L. The dead body was handed over to brother Jitender Rai and its last rites vide receipt Ex.PW14/M. He made an application for getting post mortem to the Medical Superintendent, Aruna Asaf Ali Hospital. The application is Ex.PW-14/N. All the memos bore his signatures. At his instance, Inspector Om Prakash prepared the site plan of the place of incident, i.e., railway track.

n) PW 17 Ct. Jaivir Singh is the Special Messenger who delivered a copy of the FIR to Ld. Ilaka Magistrate and Senior Officers.

o) PW 18 Inspector Davinder Singh proved the scaled site plan of both the sites vide Ex. PW18/A.

p) PW 19 SI Ajay Kumar, stated that on receiving the information he reached the railway track near railway crossing Rampura and found one dead body on the railway track having multiple injuries. He prepared his report and one copy was handed over to the IO Insp. Om Prakash Sharma.

q) PW21 HC Devender Kumar being MHC (M) deposed that on 7.6.2004 ASI Sarabjit Singh deposited two sealed parcels containing hair, earth control and blood stained stones and soil and he made entry in register No.19 of Malkhana at Sl. No.272 vide Ex. PW21/A. On 10.6.2004 HC Hawa Singh deposited one pullanda containing one pant of deceased in the Malkhana and made the entry at Sl. No.273 the copy of same vide Ex.PW21/B. PW 21 further deposed that on 11.6.2004 ASI Sarabjit again deposited one sealed parcel with the seal of hospital alongwith sample seal belonging to the deceased alongwith visra box and he

made entry at Sl. No.274 and the copy of same Ex.PW21/C. On 12.6.2004 Insp. Om Prakash deposited five sealed parcels in the Malkhana alongwith personal search of the accused persons. He made the entry in this respect at Sl. No.275 and photocopy of the same is Ex.PW21/D. The case property were sent to FSL Rohini on 14.7.2004 and the remaining one pullanda sent on 19.7.2004 vide RC No.49/21 and 55/21 respectively. The RC register and photocopy of the road certificate No.49/21 is Ex.PW21/E containing four pages.

r) PW 22 HC Rajmal Singh was posted as Daily Diary writer at P.P. Kishanganj and he deposed that on 7.6.2004 at about 7.30 am, D.S. Meena informed that the driver of train No.341 Passenger, Delhi to Ferozpur informed about the dead body lying at Pole KM7/29 and the information was recorded vide DD No.6 and the copy of the said DD was entrusted to ASI Sarabjeet Singh who alongwith HC Hawa Singh and Ct. Sukhram went to the spot. On 10.6.2004 when he was doing the duty of DD writer at the said PP. Investigating Officer seized one pant of the deceased against the seizure memo Ex.PW22/A. The said pullanda was later on deposited in the Malkhana and copy of DD entry vide Ex.PW14/D.

s) PW 23 Ct. Gangabir Singh deposed that on 12.6.2004 at about 3 pm Duty Officer WHC Savita handed over to him the copy of FIR No.36/04 alongwith the tehrir which he handed over to the Addl. SHO O.P. Sharma of P.S. Sarai Rohilla at about 3.30 pm at railway track near KM pole No.7/29 Rampura phatak where Insp. O.P. Sharma was already present alongwith ASI Sarabjit Singh, HC Hawa Singh, Ct. Ranbir and Ct. Daya Ram.

t) PW 26 Ct. Vijay Singh proved the copy of the FIR No.32/02 P.S. Rohini dated 17.1.2002 u/s 341/323/34 IPC on the instruction of MHC(R) vide copy of FIR Ex.PW26/A.

u) PW-27 Inspector Om Prakash Sharma almost corroborated the statements of PW-7 and PW-13. He deposed that after going through the documents, he made his endorsement on D.D. No.6 which is Ex.PW-27/A. He prepared the ruqqa and got the case registered vide FIR Ex.PW-1/A. He also prepared the site plan of the place Ex.PW-27/B. He stated that the deceased was working at Shakur Basti with Lalit @ Bindu Pahalwan, PW-4, who was running a dairy. At the dairy of Lalit @

Bindu Pahlwan, he and his wife Smt. Shashi Sharma were present. They were examined under Section 161 Cr.P.C. He also prepared the site plan of that place which is Ex.PW-27/C. The site of the place near Kikar tree is Ex.PW-27/D. He reiterated in his statement that all the accused led the police party including public persons to a stable behind house No.14, Golden Park, Rampura, Delhi, by saying that the clothes were hidden by them at that place. Thereafter, the accused Samunder took out one torn shirt having blood stains on both the shoulders on front and back sides. Accused Deepak took out one T- shirt from the place of underneath a plastic cover above the grass roof. These were seized vide memo Ex.PW-7/D. On 24.07.2004, he sent 18 sealed parcels to FSL, Rohini, through constable Ranbir vide RC Ex.PW-21/E. On that day, 17 parcels were deposited and one parcel was returned back which was sent on 19.07.2004 to FSL, Rohini vide RC Ex.PW-27/F through Constable Ranbir. The parcel was the viscera box. The results of FSL were received which are Ex.PW27/G, Ex.PW27/H, Ex.PW27/I and Ex.PW27/J.

16. Ms. Anu Narula, the learned counsel appearing on behalf of the accused, has made the submissions that there are various material contradictions on important aspects regarding the recovery of the articles. The said inconsistencies, discrepancies and contradictions made in statements of the witnesses make the prosecution case highly improbable. The details of the same are given as under:

a) As per the prosecution case, the rope was used in strangulating the deceased and the same was recovered at the instance of the accused persons which was also used for committing the murder but not rope was shown to PW-2 Dr. K. Goel nor was his opinion sought by the Investigating Officer.

b) PW-3 Dinesh Rai in his examination-in-chief stated that on 10.06.2004 police had shown him one blood stained pant and he identified the pant as having belonged to deceased Ramesh, his cousin. He suspected the hands of all the three accused persons as they earlier threatened the deceased to kill him. He did not give the date, month or year when such threat was extended or did not state as to whether any complaint was lodged against the alleged threat. He did not sign the Panchayat's Faisla, rather his conduct shows that he was interested in giving

the deposition in rage and to take revenge by implicating the accused.

c) PW-4 Lalit Kumar @ Bindu Pehalwan did not support the case of the prosecution and denied that Ramesh had told his wife Shashi that he was going to Rampura to attend a party and he would do the work on the next date. Therefore, chain of the prosecution was totally broken.

d) PW-6 Head Constable Inderjeet Singh stated that on 12.06.2004, he along with Constable Sunder Lal, photographer, had gone to Golden Park, Rampura, Delhi. Investigating Officer was also present there. But during his cross-examination, he admitted that the video clip did not show witness Ranjeet Singh bringing a hammer, the polythene envelope and chair or charpai nor he stated anything against the accused persons. The chair and the charpai were not sealed in his presence.

e) PW-13 Constable Daya Ram did not support the case of the prosecution, as in his cross-examination, he stated that he could not say if there was a constructed room and signed all the four papers prepared by the Investigating Officer.

f) Shambhu was not cited as a witness so as to prove that the deceased attended the party and other accused persons were also present there. The accused Samunder and Riken were not named anywhere either in the Panchayat Faisla or to the alleged conspiracy to kill the deceased Ramesh. There was no threat whatsoever from the accused Samunder and Riken @ Diken nor any of the witnesses stated except the disclosure statements of accused persons. In nutshell, she argued that in the entire evidence produced by the prosecution, there is no specific allegation against the accused Samunder nor is there any allegation against him that what specific threat was ever extended to the deceased by him and in whose presence and when.

17. Ms. Richa Kapoor, the learned counsel appearing on behalf of the State, has argued that the prosecution has examined all the material witnesses who had completed the chain of evidence in all respects. She stated that the public witnesses Dinesh Rai, Jitender Rai, Shivaji Rai and Kailash Singh have proved that there was a strong enmity between the accused persons and the deceased

and the accused persons had a grudge against the deceased Ramesh. Not only that, earlier also they assaulted the deceased in January 2002 at Naharpur, Sector 7, Rohini, in village at the occasion of Holi. As the fine was imposed upon the accused Deepak by the Panchayat which was organized by the village head Kailash Singh, PW-15, therefore, the accused felt disrespect in the village and according to the statement of PW-8 Jitender Rai, they tied the 'kaffan' on their heads to take the revenge from the deceased Ramesh. Ms Richa Kapoor had also argued that all the accused persons had pointed out places of incidents, place of recovery and the place from where the dead body was recovered as well as the incriminating material including the rope which was used for strangulating the deceased and the same was recovered at the instance of the accused persons for committing the murder. Although during the course of arguments, she admitted that the rope was not shown to PW-2 Dr. K. Goel nor was his opinion sought. She argued that apart from the deposition of public witnesses, there is medical and scientific evidence which proves the guilt of the accused persons who had the motive to commit the murder of the deceased. Therefore, no interference in the impugned judgment is called for and all the three appeals are liable to be dismissed.

18. It is settled law 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. vs. State of M.P., AIR 1952 SC 343; Chandmal and Anr. vs. State of Rajasthan, AIR 1976 SC 917, and Sharad Birdi Chand Sarda vs. State of Maharashtra, (1984) 4 SCC 116)

19. The accused can be convicted on circumstantial evidence, provided the links in the chain of circumstances connects the accused with the crime beyond

reasonable doubt, as per the decision in case titled as Vijay Kumar Arora vs. State, (2010) 2 SCC 353 (para 16.5).

20. As far as the hostile witness is concerned, no doubt, in the present case, PW-4 Bindu Pahalwan @ Lalit Kumar was declared hostile by the prosecution, as he resiled from his earlier statement to the police that prior to his death on 11.06.2004 the deceased had told his wife that he was going to take his dinner in Rampura. However, as observed in State Vs. Ram Prasad Mishra & Anr.:

"The evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but can be subjected to close scrutiny and the portion of the evidence which is consistent with the case of the prosecution or defence may be accepted." Similarly, in Sheikh Zakir vs. State of Bihar, AIR 1983 SC 911, the Supreme Court held that: "It is not quite strange that some witnesses do turn hostile but that by itself would not prevent a Court from finding an accused guilty if there is otherwise acceptable evidence in support of the conviction."

In Himanshu alias Chintu vs. State (NCT of Delhi), (2011) 2 SCC 36, the Supreme Court held that the dependable part of the evidence of a hostile witness can be relied on. So, in view of the settled law, the Court can rely upon the dependable part of the evidence. PW-5 Smt. Shashi Sharma is the wife of PW-4 who deposed that on 06.06.2004 at about 8-8.30 p.m. the deceased had told her that he was going to Rampura to attend a party. The said part of the statement can be considered by this Court. 21. As per post mortem report Ex.PW-2/A, the result of external injuries and internal examination on the body of deceased were as under:
"EXTERNAL

INJURIES

- (i) Lacerated wound 2cmX1.5cm over upper part of left cheek about 3cm below the lateral end of left eye.
- (ii) Lacerated wound 1.25X0.5cm over right angle of mandible.
- (iii) Lacerated wound 3.5X0.5cm over right temporal region.

(iv) Few pressure abrasions seen over right anterior axillary fold.

(v) Ligature Mark. There were dark brownish coloured slightly depressed ligature pressure abrasion marks two in numbers running horizontally all around the neck completely on and below the apple of Adam. Both the marks were apart each other varying in distance 0.25 to 1.75 cm at places. The width of each mark was allowed 0.75 to 09 cm. The skin above and below the marks was darker in colour.

(vi) There were oblique semi circular slightly depressed marks over outer aspects of both wrists, about 0.75 cm wide showing no vital reaction on cut sections. (postmortem injuries).

INTERNAL EXAMINATION

There was faint sub-scalp bruising over right temporal region around injury No.3. Early changes of decomposition present in scalp tissues. Skull bones were intact Brain matter was softened due to decomposition. On reflection of skin of neck there was subcutaneous and platysmal bruising was seen underneath the ligature marks and surrounding tissues. Deeper neck muscles were also bruised with effusion of blood in neck-layers. Signs of decomposition also seen in soft tissues of neck. There were fracture - subluxation of left greater cornua of hyoid bone and left superior horn of thyroid cartilage with massive bruising around. Epiglottis larynx were bruised. Signs of decomposition were seen in tracheal mucosa. There was serosanguinous discharge seen in trachea. All chest and abdominal viscera were intact with signs of decomposition. Stomach contained semi digested food with slight alcohol like smell.

22. In view of the testimony of PW-2 and report Ex.PW2/A, it is clear that the cause of death was asphyxia consequent upon ligature strangulation. Injuries No.1 to 5 were ante mortem. Injuries No.1 to 4 were caused by blunt force impact. Ligature marks i.e. injury No.5 was caused by some hard flexible material. Injuries No.6 was postmortem in nature and was consistent with pressure over wrist to fasten them. Ligature pressure over neck was sufficient to cause death in ordinary course of nature. Mode of death was homicide. Time of death was about four and half days. The result of FSL was received and are Ex.PW27/G,H,I and J. The

sealed parcel remained in the custody of MHC(M). PW21 HC Devender Kumar testified that the parcel remained in his custody and in intact condition without any tempering by any one before and after receiving from the FSL Rohini and parcel sent through Ct. Ranbir PW25 and case property remained intact during the transit. The FSL report revealed the human blood on blood stained pieces of stone, piece of brick, blood stained cement material, piece of jute rope, shirt. The pants, shirt blood stained pieces of stone and teeth are of blood group 'B' as examined by Biological Department of Forensic Science Lab. The Physics department of FSL opined that on chemical examination of stomach and piece of small intestine and unidentified tissues they tested positive for the presence of ethyl alcohol.

23. The details of description of articles contained in parcels and results of analysis are given as under:

DESCRIPTION OF ARTICLES CONTAINED IN PARCELS

"Parcel '1' : One sealed cloth parcel sealed with the seal of 'SS' containing exhibit '1', marked as 'A'. Exhibit '1' : Piece of stones having brown stains. Parcel '2' : One sealed cloth parcel sealed with the seal of 'SS' containing exhibit '2' marked as 'A-I'. Exhibit '2' : Pieces of stone described as 'Earth control stone'. Parcel '3' : One sealed cloth parcel sealed with the seal of 'SS' containing exhibit '3', marked as 'B'. Exhibit '3' : Piece of stones having brown stains. Parcel '4' : One sealed cloth parcel sealed with the seal of 'SS' containing exhibit '4', marked as 'B-1'. Exhibit '4': Pieces of stone described as 'Earth control stone'. Parcel '5' : One sealed cloth parcel sealed with the seal of 'SS' containing exhibit '5', marked as 'C'. Exhibit '5': Few strands of hair. Parcel '6' : One sealed cloth parcel sealed with the seal of 'OPS' containing exhibit '6', marked as 'D'. Exhibit '6': One pants having brown stains along with Mud. Parcel '7' : One sealed cloth parcel sealed with the seal of 'OPS' containing exhibit '7', marked as '1'. Exhibit '7': A piece of brick having brown stains along with few strands of hair. Parcel '8' : One sealed cloth parcel sealed with the seal of 'OPS' containing exhibit '8', marked as '2'. Exhibit '8': Cemented material having brown stains described as Blood stained floor and plaster pieces. Parcel '9' : One sealed cloth parcel sealed with the seal of

'OPS' containing exhibit '9', marked as '3'. Exhibit '9': Cemented material having brown stains described as 'Earth control sample of floor and plaster. Parcel '10': One sealed cloth parcel sealed with the seal of 'OPS' containing exhibit '10', marked as '4'. Exhibit '10': Earthy material. Parcel '11' : One sealed cloth parcel sealed with the seal of 'OPS' containing exhibit '11', marked as '4A'. Exhibit '11' : Earthy material. Parcel '12' : One sealed cloth parcel sealed with the seal of 'OPS' said to contain exhibit '12', marked as '4B', sent in original to Physics Division of this Laboratory for examination. Parcel '13': One sealed cloth parcel sealed with the seal of 'OPS' containing exhibit '13', marked as '5'. Exhibit '13': A piece of jute rope. Parcel '14' : One sealed cloth parcel sealed with the seal of 'OPS' containing exhibit '14', marked as '6'. CRL. A. 747/2010, CRL. A. 748/2010, CRL. A.766/2010 Page 29 of 44 Exhibit '14': One T-shirt. Parcel '15' : One sealed cloth parcel sealed with the seal of 'OPS' containing exhibit '15', marked as '7'. Exhibit '15' : One T-shirt having brown stains. Parcel '16' : One sealed glass bottle sealed with the seal of 'KLS AAA HOSPITAL SUBZI MANDI MORTUARY DELHI' containing exhibit '16', marked as '8'. Exhibit '16' : Two pieces of teeth having brown stains. Parcel '17' : One sealed polythene bag parcel sealed sealed with the seal of 'KLS AAA HOSPITAL SUBZI MANDI MORTUARY DELHI' containing exhibit '17a', '17b', '17c' and '17d'. Exhibit '17a': One damp foul smelling shawl having darker stains. Exhibit '17b': One damp foul smelling shirt having darker stains. Exhibit '17c': One damp foul smelling banian having darker stains. Exhibit '17d': One damp foul smelling underwear having darker stains. RESULTS OF ANALYSIS 1. Blood was detected on exhibits '1', '3', '6', '7', '8', '13', '15', '16', '17a', '17b', '17c' & '17d'. 2. Blood could not be detected on exhibits '2', '4', '9', '10', '11', & '14'.

3. Semen could not be detected on exhibit '5'.

4. On the basis morphological and microscopical characteristics the hair found in exhibits '5' & '7' were found to be human in origin. However no further opinion is offered from this Laboratory.

5. Regarding query No '16' based on Physical and morphological characteristics the teeth found in exhibit '16', were found to be human (i.e. incisor and canine teeth). 24. As per the report of the portion of exhibits were examined by using

various serological techniques, the analysed results of which are given as under:

Exhibits	Species	of ABO Origin	Group/Remarks	Blood stained	Human	No Reaction															
'1'	Blood stained pieces of stone	'2'	Pieces of stone	No Reaction	---	(Control)															
'3'	Blood stained pieces	Human 'B' Group	of stone	'4'	Pieces of stone	No Reaction															
---	(Control)	'6'	Pants	Human 'B' Group	'7'	Piece of brick	Human	No Reaction													
'8'	Blood stained	Human	No Reaction	cemented material	'9'	Cemented material	No Reaction	---	(Control)												
'10'	Earthy material	No Reaction	---	'11'	Earthy material	No Reaction	---	'13'	Piece of jute rope	Human	No Reaction										
'15'	Shirt	Human 'B' Group	'16'	Teeth	Human 'B' Group	'17a'	Shawl	No Reaction	---	'17b'	Shirt	No Reaction	---	'17c'	Baniyan	No Reaction	---	'17d'	Underwear	No Reaction	---

25.

A) Blood Group of the deceased As per the seizure memo Ex.PW22/A, the pant of the deceased and as per memo Ex.PW27/E, two teeth of the deceased in glass bottle, and also one damp foul smelling shawl, shirt, baniyan and underwear having darker stains as exhibits 17a to 17d were sent to FSL for examination. As per the FSL report, the teeth were of human origin having "B" blood group. Similarly, the pant of the deceased contains the blood stains of the same group "B". As per the FSL report, the blood was detected from exhibits 17a to 17d, i.e. shawl, shirt, baniyan and underwear of the deceased.

B) Blood Group found in shirt etc. PW-7 Ranjeet Singh who is an independent/public witness had deposed that the accused had got recovered one blood stained shirt and one T-shirt from a Chhappar and they were taken into possession vide memo Ex.PW7/D which bears his signatures at point A. PW-13 also corroborated the testimony of PW-7 by stating that the accused Samunder and Deepak handed over one polythene bag containing one dirty shirt and red colour T-shirt having blood stains to the place after taking out the same from Maizezine/Parchati from the Pashuo ka tabela (the place where the animal are used to be kept). The same were taken into possession vide memo Ex.PW13/M which bears his signatures. As per the disclosure statement, the shirt was belonging to Samunder and the T-shirt to Deepak. PW-14 has made the similar statement before the Court that the accused persons took them to tabela (the place used to keep the animals) and from where one red T-shirt and one shirt

were got recovered by the accused Deepak and Samunder and the same were sealed with the seal of OPS and taken into possession. The shirt was Ex.PC belonging to Samunder and the T-shirt was of Deepak and the same is Ex.PD. PW-27 also corroborated the statements of PW-7, PW-13 & PW-14, by deposing that all the accused persons led the police party including the public persons to a stable behind house No.14, Golden Park, Ram Pura, Delhi, by saying that the clothes were hidden by them at that place. The pointing out memo Ex.PW13/M was prepared. Thereafter, the accused Samunder took out one torn shirt having blood stains on both the shoulders on front and back. Accused Deepak took out one T-shirt from the place underneath a plastic cover and the same was seized vide memo Ex.PW7/D. The site plan was also prepared. However, in the statement recorded under Section 313 Cr.P.C. the accused persons denied the said recovery. As per the FSL report, the shirt submitted as exhibit-15 contained human blood of "B" group which matches the blood group of the deceased. The said shirt which was recovered on the basis of disclosure statement, was belonging to Samunder.

C) Blood-stained pieces of stone PW-7 deposed that in his presence, the police had lifted blood from near the water tank, blood stained plaster, earth control from the spot and took them into possession by making a recovery memo CRL. A. 747/2010, CRL. A. 748/2010, CRL. A.766/2010 Page 33 of 44 vide memo Ex.PW7/A which bears his signatures at point-A. One blood stained piece of floor, earth control were also lifted from near the wall of water meter vide memo Ex.PW7/B which also bears his signatures at point-A. Thereafter, the accused had taken them near the railway track from where the blood-stained earth and blood were also lifted and one rope was taken into possession and seized vide memo Ex.PW7/C which also bears his signatures at point-A. PW-13 reiterated the statement of PW-7 and deposed that from the spot the I.O. lifted blood-stained soil and earth control sample and the same were sealed with the seal of OPS in pullanda and taken into possession vide memo Ex.PW7/A which bears his signatures at point-B. At the instance of accused Deepak, one brick having blood stains as well as having some hairs passed on it along with blood stained as well as piece of the earth and earth control sample were lifted and sealed in pullanda with the seal of OPS and seized vide memo Ex.PW7/B which bears his signatures

at point-B. Thereafter, all the three accused took the police party to the railway track near small way called pagdandi and they disclosed that they kept a dead body there for a while. So, the I.O. lifted the blood smeared soil and taken into custody vide memo Ex.PW7/A. After going forward only upto 15 paces by the side of railway track, there was a 'keeker' tree. Accused Riken pointed out one rassi/rope which was hanging on the said tree. The same was taken into possession vide memo Ex.PW7/B. PW-14 has also corroborated the statements of PW-7 & PW-13. PW-27 deposed that at the instance of the accused persons, one blood-stained brick on which some hairs were stick, was recovered from the place in between water motor and the wall of the room. The brick was sealed with the seal of OPS and was seized vide memo Ex.PW7/B. He also lifted blood samples, blood-stained earth and earth control nearby the place where brick was lying and the same was seized vide memo Ex.PW7/B. He also prepared the site plan of that place, Ex.PW27/C. Thereafter, the accused persons led the police party via a pagdandi after travelling about 200 meters, they pointed a place near high tension tower by stating that they rest the body at this place while shifting the body from House No.14 to railway track. The pointing out memo Ex.PW13/N was prepared. At that place, blood was found lying on the ground. He lifted blood-stained soil and earth control and sealed them in separate parcel with the seal of OPS and were seized vide memo Ex.PW7/A. The parcels were given serial Nos.4 & 4A. Thereafter, the police team proceeded towards railway track. On the way, accused Riken pointed towards keeker tree where he had thrown the rope. He prepared the pointing out memo Ex.PW13/E. Accused Riken produced one rope having blood stains after taking it from keeker tree where it was entangled. The rope was measured as 7.5 feet and was sealed in a parcel with the seal of OPS and was seized vide memo Ex.PW7/C. It was also deposed that public witness PW-7 Ranjeet Singh was also with them. Thereafter, all the accused led the police party to railway track near kilometer pole No.7/29 and pointed the place on the railway track where the body was thrown by them. The pointing out memo Ex.PW13/L was prepared. The site of the place near keeker tree is Ex.PW27/D. As per the FSL report, the blood-stained pieces of stone contained the human blood of "B" group. The blood was also detected as per the analysis of the result on the pieces of stone having brown stains, a piece of brick having brown stains along with few

strands of hair and cemented material having brown stains described as blood-stained floor and plaster pieces and a piece of jute rope. In some of the exhibits, no reaction was shown as per the report of the FSL. PW-14 in his testimony has also stated that due to rain in the night, some of the ligature marks could not be visible properly. He also stated that he inspected the cloth of the dead body and there was sticker affixed on brown coloured pant in the name and style of Prince Tailor, Singh Market, Muner. Thereafter, Head Constable Hawa Singh was sent to Muner, Bihar, with the pant of the deceased for the identification of the dead body. Head Constable Hawa Singh came to Delhi on 10.06.2004 and he made his rival entry. Thereafter, the brother of the deceased was called and they dead body was identified.

26. Further, the detail and result of examination of physical characteristics of the articles contained in ten parcels received by the Forensic Science Laboratory through Biology Division and sent to Additional SHO are given as under:

"DESCRIPTION OF ARTICLES CONTAINED IN THE PARCELS Parcel No.1: One sealed envelope sealed with the seal of "VSN FSL DELHI" containing Exhibit-1. Exhibit- 1 : Stone pieces having dark brown stains described as "Blood Stained Stones". Parcel No.2 : One sealed envelope sealed with the seal of "VSN FSL DELHI" containing Exhibit-2. Exhibit- 2 : Stone pieces described as "Earth Control Stones". Parcel No.3 : One sealed envelope sealed with the seal of "VSN FSL DELHI" containing Exhibit-3. Exhibit- 3 : Stone pieces having dark brown stains described as "Blood Stained Stones". Parcel No.4 : One sealed envelope sealed with the seal of "VSN FSL DELHI" containing Exhibit-4. Exhibit- 4 : Stone pieces described as "Earth Control Stones". Parcel No.5 : One sealed envelope sealed with the seal of "VSN FSL DELHI" containing Exhibit-6. Exhibit- 4 : One pant having dark brown stains with soil adhering to it. Parcel No.8 : One sealed envelope sealed with the seal of "VSN FSL DELHI" containing Exhibit-8. Exhibit- 8 : Cemented material described as "Blood Stained Floor and plaster pieces". Parcel No.9 : One sealed envelope sealed with the seal of "VSN FSL DELHI" containing Exhibit-9. Exhibit- 9 : Cemented material described as "Earth control floor and plaster pieces". Parcel No.10: One sealed envelope sealed with the seal of "VSN FSL DELHI" containing Exhibit-10. Exhibit- 10 : Soil described as "Blood stained

Soil". Parcel No.11: One sealed envelope sealed with the seal of "VSN FSL DELHI" containing Exhibit-11. Exhibit- 11 : Soil described as "Earth Control Soil". Parcel No.12: One sealed cloth parcel sealed with the seal of "OPS" containing Exhibit-12. Exhibit- 12 : Soil described as "Earth Control muddy Soil Sample".

RESULTS OF EXAMINATION

1. Exhibit-1 and Exhibit-2, were found to be possessing similar physical characteristics.
2. Exhibit-3 and Exhibit-4, were found to be possessing similar physical characteristics.
3. Soil adhering to Exhibit-6 and soil Exhibit-12, were found to be possessing similar physical characteristics.
4. Exhibit-8 and Exhibit-9, were found to be possessing similar physical characteristics.
5. Exhibit-10 and Exhibit-11, were found to be possessing similar physical characteristics."

It is clear from examination of the results that Exhibits 1-4 and 6-12 were found to be possessing similar physical characteristics.

27. 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.

28. 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.

29. 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.

30. Admittedly, there are certain contradictions on the aspect of the arrest of the accused and recovery as well as the discrepancies and inconsistencies in the statements of the prosecution witnesses. It is also true that Shambhu was not produced as a witness who, according to the prosecution, hosted the dinner on the fateful day, i.e. 06.06.2007 where the deceased are alleged to have gone. However, it is settled law that such discrepancies do creep in when a witness deposes in a natural manner and if those do not go to the root of the prosecution story, then the same may not be given undue importance. The conviction of the accused can be passed even on the testimony of a solitary witness when the evidence is found otherwise reliable. In the present case, PW-7 is a public witness. Secondly as per the FSL report the same group of blood was found in the shirt of accused Samunder. The other recovery which was made on the basis of disclosure statements of the accused in the presence of PW-7, PW-13, PW-14 & PW-27 is a reliable evidence which has been produced by the prosecution. They do not admit the submission of the accused that there was no independent witness who has supported the case of the prosecution. It is immaterial if the CD relied upon by the prosecution is not proved, but at the same time, the prosecution was able to prove the recovery made by the accused in their disclosure statements. The explanation given by the appellants/accused is totally false and frivolous that

the fact of the deceased having met with an accident cannot be ruled out, or he was apparently trying to jump a railway track. The doctor who conducted the post mortem examination has clearly opined that the deceased was also strangulated. This clearly rules out the theory of accidental death. The evidence proved by the prosecution is totally different to the explanation given by the accused.

31. In the present case, in order to prove the enmity, the prosecution proved the 'Panchayat Faisla' Ex.PW-9/B and copy of the FIR No.32/2002, Police Station Rohini. The public witnesses had also deposed in this regard and also proved the said documents. Although the learned counsel for the accused made the statement at the bar that the case has been closed due to non-prosecution. The deceased Ramesh Rai was working at dairy of Lalit @ Bindu Pahalwan, PW-4/. At about 8/8:30 p.m., he left the dairy of Bindu Pahalwan and never returned to the house. This fact was confirmed by PW-5 Smt Shashi, wife of PW-4. It appears, therefore, that PW-5 was the last seen evidence of the deceased Ramesh Rai. PW-8 proved the enmity of the Deepak with deceased Ramesh Rai since 2002. The statement of the PW-8 was corroborated in the testimony of PW-3 Dinesh Rai, PW-9 Vinod Rai, PW-15 Kailash Singh and PW-12 Shivji Rai. The dead body of the deceased was lying at railway track near Rampura and the same was identified by sticker of Prince Tailor affixed on the brown coloured pant of Singh Market, Muner. PW-24 Head Constable Hawa Singh went to the village and met the relatives of the deceased who deposed with respect to the identification of the dead body. The accused persons made their disclosure statements before the police and led the police official to the room at WZ-14, Golden Park, where the alleged crime was committed and accused persons also led the police party and PW-7 Ranjeet Singh to the Paireri at HT Tower where the dead body was kept for a while. The rope was hanging on the kiker tree. They also led the police party to the railway track where the dead body was lying. Accused got recovered one blood stained shirt and one T-shirt from the 'pashuo ka tabela' which were seized.

32. On the disclosure statement, rope, blood stained stone, earth controlled soil, blood stained shirt and T-shirt were recovered and examined in the FSL. The report of the FSL clearly showed that the deceased had human group B blood which was established from his teeth as well as from pant.

33. The accused Samunder is the real uncle of the accused Deepak and Riken @ Diken who are the real brothers. From the evidence provided by the prosecution, it is clear that the accused in pre-planned manner committed the murder of Ramesh Rai. The evidence of the prosecution is trustworthy with respect of the proof of motive as it has been proved on record that all accused persons had earlier also assaulted the deceased on the occasion of Holi in village. PW-7 Ranjeet Singh, an independent witness, stated that at the instance of accused persons, blood stained shirt, T-shirt, blood stained brick affixed with hair, rope etc. were recovered. The recovery of the said articles connects the accused persons with the crime and proved the guilt beyond all reasonable doubt. There is a clear evidence of PW-5 that the deceased left his dairy and went to attend the party on 06.06.2004. Thereafter, the accused did not come back. There is a positive evidence against Samunder as on his disclosure statement, blood stained shirt was recovered which contained human group B blood as per the FSL report.

34. Post-mortem report shows that the way the deceased was assaulted, it was not the work of single person because of the fact that the dead body was removed from one place to another place many times.

35. Under these circumstances, the accused have committed the murder of deceased Ramesh Rai with ulterior motive to take the revenge. In our opinion, the trial Judge has given very cogent reasons for convicting the appellants. Therefore, the prosecution has been able to prove the guilt of the accused persons beyond reasonable doubt and all the circumstances have been proved. There is overwhelming circumstantial evidence to show that the accused committed the crime. We find no force in these appeals.

36. Therefore, the appeals are dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com