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Sandeep Kumar Sahu Vs. the State

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Court : Delhi

Decided On : Jan-16-2013

Judge : Sanjiv Khanna

Appellant : Sandeep Kumar Sahu

Respondent : The State

Judgement :
* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRIMINAL APPEAL NO. 25/2011 % Reserved on: Date of Decision:

9. h October

16. h January, 2013 SANDEEP KUMAR SAHU ..... Appellant Through Mr. Sunil K. Mittal, Ms. Deepti Gupta, Mr. Kshitij Mittal, Mr. Saurabh Balwani and Mr. Anshul Mittal, Advocate. Versus THE STATE ..... Respondent Through Mr. Sanjay Lao, APP for the State. CRIMINAL APPEAL NO. 243/2011 KAUSHAL @ BABLOO ..... Appellant Through Mr. Rajesh Tyagi, Advocate. Versus THE STATE ..... Respondent Through Mr. Sanjay Lao, APP for the State. CORAM: HON'BLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE S.P.GARG SANJIV KHANNA, J: Sandeep Kumar Sahu and Kaushal @ Babloo impugn their conviction, under Section 302, 397 and 506-II of the Indian Penal Code, 1860 (IPC) and the sentences imposed upon them. They have been sentenced to life imprisonment and fine of Rs.1,000/-, in default of which they are to undergo simple imprisonment for one month, for the offence under Section 302 IPC, rigorous

imprisonment for seven years and fine of Rs.1,000/- and in default to undergo simple imprisonment for one month under Section 397 IPC, and rigorous imprisonment for three years and a fine of Rs.500/- ,in default to undergo simple imprisonment for 15 days under Section 506-II IPC. The prosecution case is that Sandeep and Kaushal contrived and committed murder of Raj Sahu and injured Radha, the housemaid, for the purpose of robbery, on 14th June, 2000 in House No. 6, Shankar Vihar, Vikas Marg, Delhi.

2. It remains undisputed that Raj Sahu had a homicidal death. Post Mortem Report (Ex. PW15/A) and statement of Dr. Sarvesh Tandon (PW-15) conclude that the deceased suffered, as many as, 13 injuries or wounds on her body. This has also been established in the Death Report (Ex. PW28/B) which was proved by Inspector Niranjan Singh (PW-28). Radha, maid in the same household, suffered injuries, as proved by her Medical Report (Ex. PW24/A) which is the MLC conducted on 14th June, 2000 at 2.50 P.M. It shows, in her X-Ray, that she suffered, as many as, eight wounds and had fractured parietal bone and third metacarpal of the left hand. CRL.A. Nos. 25/2011 & 243/2011 Dr. S. Mehra (PW-24), Page 2 of 40 Specialist Radiology, RML Hospital, who had examined 13 year old Radha, proved this and opined that the head injury was possible if a person had fallen from a height, head down. MLC (Ex.PW-24/A) delineate various incise wounds inflicted on Radha. In view of the injuries suffered by Raj Sahu, who was present in the same house at the same time, and evidence discussed below, it is difficult to sustain that the injuries on Radha were accidental and not deliberate. Radha, according to the prosecution, had died and, therefore, could not be produced as a witness. Radhas death has been disputed by the appellants and the said aspect has been addressed subsequently.

3. Manoj Sahu (PW-2), Monika (PW-5), Janaki (PW-30) and Ram Kumar (PW-1) have substantiated that the house was robbed and various articles, including jewellery, were missing. The police officers Inspt. Niranjan Singh (PW

28) and others confirm that the belongings were scattered around, when they reached the crime spot.

4. The core issue, in the present case, is whether the two appellants had committed the said murder, injuries on Radha and the robbery? 5. Appellant Sandeep Sahu is the son of the deceased Raj Sahus widowed sister and Kaushal is an alleged accomplice, who joined Sandeep Sahu, on 14th June, 2000, to commit the said offences.

6. In order to appreciate the prosecution version and the submissions made by the two appellants, it would be first appropriate to briefly note the statements made by Manoj Sahu (PW-2), Monika (PW-5), Janki (PW-30), Ram Kumar (PW-1) and Inspector Niranjan Singh (PW-28), the Investigating Officer. Ram Kumar (PW-1) is the husband of the deceased and has averred that on 14th June, 2000 he was at his place of work at Noida with his younger son Sanjeev Kumar. His other son Manoj Kumar (PW-2) had returned to the house at Vikas Marg, at about 12.30 noon, to take his wife to a private doctor as she was pregnant. At about 1.30 P.M., PW-1 received a telephone call from Manoj (PW2) requiring him to return home immediately. Soon thereafter, Monika (PW-5) his daughter-in-law asked him to come back quickly because his wife had been murdered. He rushed back with his son Sanjeev and saw his wife lying dead on the bed. She was severely injured and her head was crushed. There were blood stains on the wall. Radha, the maid servant was bleeding profusely and lying in the drawing room. They thought Radha was dead but the SHO, who reached the spot within 2-3 minutes of their arrival, noticed some life in her and moved her to the hospital. His wife Raj Rani, the deceased was also taken to the hospital but declared as brought dead. The almirahs were open and articles were scattered. He was in a state of shock and could not minutely observe what was missing. Finger prints and other incriminating material/evidence were lifted and photographs were taken. At about 8.00 P.M., Monika her daughter-in-law verified and made a list of missing items which included gold chain, one top and bangles worn by the deceased. Some silver items like key chain, artificial jewellery, tikka and mangal sutra were also missing. Rs.25,000/- in cash, which was kept after the jagran, had been stolen. Three-four days after the occurrence, appellant-Kaushal had pointed out the place at Yamuna Pusta where he had concealed his clothes. These clothes consisting of one pant, shirt and shoes were taken into possession. Thereafter, the appellant Kaushal took them to Bapa Nagar, Karol Bagh from where a pistol was recovered. He

identified the stolen items which were recovered subsequently and were made subject matter of Test Identification Proceedings (TIP, for short). He identified the gold bangles, gold chain, mangal sutra, silver coins, tikka, artificial jewellery, silver key chain, pajeb and other miscellaneous items. Some currency notes were also recovered. He identified the recovered jewellery which was also produced in the court. He also identified one helmet (Exhibit P-25) and stated that the said helmet was of appellant-Sandeep. He identified Sandeep, who was present in the court. In the cross-examination, he accepted that he only knew Sandeep and had seen Kaushal for the first time. Earlier Kaushal was shown to him in muffled face and then he saw his face in the court. His wife used to always wear mangal sutra, chain and bangles which were missing. The helmet of Sandeep was identified by his brother Deepak and his son Sanjeev and was taken into possession next day, i.e., on 15th June, 2000 in the morning around 9.00 A.M. In the cross-examination, he accepted the position that when he reached back home he doubted Jankis involvement. Janki had been working in their house for about 1 years but her sister Radha had joined only 15-20 days prior to the occurrence. Janki was taken to the police station for interrogation. There, Janki for the first time had revealed Sandeeps involvement and had stated that Sandeep was accompanied by another person. As far as he remembered, Janki remained in the police station through the night. He had told the police that Janki should be interrogated as he had suspected her involvement in the occurrence. He could not recollect when Janki returned from the police station but stated that Janki had told them about Sandeeps involvement with another person. Sandeep was like his own son but he had no intent of taking him in his own business. He used to frequently visit their house and even used to spend the night there. Sandeep had sufficient knowledge about their business and financial position and used to visit their factory. Normally they used to keep about Rs.20,000-40,000/- at the home. The house in question had entrance from the front and back, but the back entrance was always kept locked. He denied that his son had illicit relations with Janki.

7. Manoj Sahu (PW-2) has deposed on identical lines and has also averred that they had initially suspected Janki. PW-2 has averred that he came back from the work at about 12.15 P.M. and, thereafter, had taken his wife to a doctor. He returned back at about 1.30 P.M. and rang the bell as he could not open the main

door with his key. Janki opened the door after some time. She was crying and had stated that Bibiji, i.e., mother of Manoj Sahu and Bahan, i.e., Radha had been killed. When he entered the house with his wife he saw that the back door of the house, which normally remained shut, was open. On the first floor he saw Radha smeared with blood in the drawing room. In the bed room his mother was lying. She too was smeared with blood. He informed his father and also made a call at No.

100. SHO, on his arrival, noticed some life in Radha and she was taken to the hospital in an ambulance. Incriminating evidence/material, i.e., open bottle, knife, hammer etc. were seized and sealed. He noticed that the gold chain worn by his mother was missing but he being in shock did not notice about other ornaments on her body. On the basis of his statement Exhibit PW-2/A, FIR was registered. After they came back from cremation, Janki had disclosed and claimed that Sandeep and his friend were involved. In the cross-examination, PW-2 had stated as under:I had enquired from Janki as to who had killed my mother and her sister. I simply asked her as to what had happened. Again said I did not ask her the name of the assailant and again said I asked her the name she said nothing as far as I remember and I rushed in. After looking at the bodies of mother and her sister I had enquired from Janki as to who had killed them but she said that she does not know. We had told the police that we were suspecting Janki. I do not remember whether particularly I had told the police or my father had told the police about this fact. I had sent my wife to the house of a neighbour. She was sent to the neighbours house after arrival of my father. May be my father possibly saw my wife on his arrival but I am not sure. My wife was earlier sitting in Snow White Showroom which is in the neighbourhood. I do not remember whether any other member of our family was also sitting in that showroom. Janki had also gone to the showroom later on.

8. PW-2 averred that after they came back from the cremation Janki was interrogated in the house by the police and then they came to know that appellant Sandeep Sahu and his associates were involved. Janki had told them that she was given threats and because of fear she had not disclosed Sandeep Sahus name earlier. He further deposed that Sandeep was like his younger brother and

used to visit them frequently. However, after the incident Sandeep did not visit the house. So they became suspicious about his involvement. Sandeeps brother Deepak and his mother had come to the house and had pointed out towards the helmet lying in the hall on the ground floor. Next day on 15th June, 2000, he along with the police and Janki, went to search Sandeep in a police jeep. Sandeep was found standing in the corner of his gali and was apprehended. On his personal search Rs.2,000/- were found in his pocket. He was interrogated and on the basis of his disclosure statement one pant and shirt of black colour, which Sandeep was wearing at the time of the incident, was seized from parchatti of his house. Rs.3,500/- or Rs.4,000/- were also seized from the pillow. Sandeep had disclosed that his two associates Sitaram and Kaushal were involved. Janki had also given the name of Kaushal but Kaushal had never visited their house before and he did not know him. In further cross-examination he accepted that Sandeep used to come in their house every second or third day till two months prior to the occurrence. On being questioned, Sandeep had then stated that he was then busy due to some business matters. However, he had not given any financial help to Sandeep because Sandeeps mother was a working lady. As Sandeep was considered to be a member of the family, they had told him if he required any help, it would be made available. The entry to the house was only from the front side and the rear gate of the house was locked. PW-2 pointed out that the grill of the boundary wall on the back side was found to be broken and was seized. He identified the said broken grill which was marked Exhibit P-12. The list of missing articles was prepared at about 8.00-9.00 P.M. on 14th June, 2000 by his father Ram Kumar (PW-1) and his wife Monika (PW-5). On the date of occurrence, Janki was taken to the police station and he saw Janki next day in the afternoon after they came back from cremation. He accepted that the first doubt of the entire family was on Janki and to his knowledge he had not named or expressed any suspicion on any third person or Sandeep initially. The maid servants were not residing in the house and used to come at 9.00 A.M. and go back at 6.00-7.00 P.M. Police had taken away Janki on the first day and he saw her, thereafter, on the second day and at that time Janki had informed them about involvement of Sandeep. Both Radha and Janki, 2-3 months after the occurrence, had left work and gone to the native place Nepal. He denied that he had any relations with

Radha or Janki or he had strained relations with his mother.

9. Monika (PW-5) wife of PW-2 had averred that she was taken to medical check up by her husband at about 12.15 P.M. on 14 th June, 2000. She was taken to Nirman Vihar for medical check-up by her husband. At that time her mother-in-law, the deceased Raj Rani, maid servant Radha and her sister Janki were present in the house. They returned at 1.30 P.M. but her husband was not able to open the door with his key. He rang the bell and after about 15-20 minutes the maid servant Janki opened the door. She was crying and was perplexed. Janki told them that her mother-in-law and her sister had been killed. They went inside the house and saw the back door of the house open. They went upstairs and saw Radha lying in injured condition with blood in the drawing room. In the bed room her mother-in-law was lying, smeared with blood. She noticed that gold bangles and gold chain were missing. Household things were lying scattered. A knife and hammer was lying near the bed. She was taken to a nearby show room and made to sit there. Janki was also with her in the show room. In the cross-examination she accepted the position that she did not make any enquiries from Janki as to who had murdered her mother-inlaw and how the incident happened. She had not seen her husband also making enquiries from Janki about the occurrence. She denied knowledge that her husband was having illicit relations with Janki. She averred that her family was very cordial with Sandeep, who was like her younger brother. She denied that Sandeep had bad habits. There were family discussions as Sandeep wanted to go to America for studies.

10. Janki (PW-30) was produced as a witness towards the end of the trial. Her statement in chief was recorded on 14th October, 2009 and she was cross-examined on the same day and on 15th October, 2009. On the date of her examination in chief her age was recorded as 21 years. On the basis of the said age, she would be about 12/13 years old on the date of the occurrence. She admitted that she had worked 9 years back at Shankar Vihar in the house of Ram Kumar Sahu for about 6-7 months. On the said date about 12 noon she had gone to the roof to wash clothes and at about 1.30 P.M. came down the stairs. She saw the appellant Sandeep in the room of Raj Rani. Sandeep was changing clothes. She enquired what Sandeep was doing there as Sandeep used to come to the

house, being a nephew of Raj Rani. She identified the other appellant Kaushal, as he was present in the court, as the second person who was present with Sandeep. Raj Rani was lying on the floor soaked in blood. Sandeep asked Kaushal to finish her and they were going to kill her when the door bell rang. Sandeep asked Kaushal to tie her hands and legs and throw her in the street. Janki was pushed and thrown on the floor by Kaushal. She was threatened that she will be killed if she disclosed anything to anyone. The two appellants ran away from the back door of the house. When Kaushal left the house he had a polythene bag with him in which there was some stuff. She opened the main door and Manoj and his wife came in. Her younger sister Radha who used to work as a domestic help in the same house was found lying unconscious, bleeding, in the room below the room where Raj Rani was lying. On seeing this, Janki (PW-30) claims she became unconscious. Later, after she disclosed about Sandeep, he was arrested on identification made by her at Ram Nagar. At that time Manoj (PW-2) was with her along with the police officers. Rs.1,900/- in cash was recovered on personal search of Sandeep. In the cross-examination she accepted that Sandeep used to regularly come to the house and she would serve him with tea and snacks. She came to know that PW-2 and PW-4 had rung the bell when she opened the door. The keys of the house used to remain with Raj Rani. She further deposed, in the cross-examination, that she had seen nothing but the appellants changing their clothes. She volunteered that she did not know whether there was anything like knife in their hands. In her presence nothing was put in the polythene bag. After opening the door she told Manoj (PW-2) and (PW-4) about the incident as witnessed by her verbatim. The back door was normally bolted and locked. She denied that the police had made inquiries from her on the fateful day but subsequently averred that she did not remember anything what happened after the incident and who had come and inquired from her, as she was disturbed. She denied that she had illicit relations with Manoj and the appellant Sandeep was aware of this. In cross-examination, by the counsel for Kaushal, she accepted the position that Kaushal did not come to their house and she had seen him for the first time on the day of the incident. She came to know about the name Kaushal as Sandeep had called him by his name and asked him to kill her. PW-30 has stated that she regained consciousness next day at about 2.00-3.00 P.M. She has further

averred that she did not remember if she had told the entire incident to PW-2 and PW-4 after opening the door, as she was scared. She admitted that Radha had gone to Nepal and she died there after about 10 days because of injuries sustained by her in the incident. In the cross-examination she admitted that she had come to the court after one Pratap had come to Nepal from Delhi and had asked her to depose. She was told that R.K. Sahu wanted her to depose in the court. After the incident Radha had stayed in the house of PW-1 till they left for Nepal but after coming to Nepal they never contacted PW-1 or his family members.

11. At this stage, we deem it appropriate to dwell into and examine the contention of the appellants. It is pointed out by the appellants that there is a contradiction between what PW-2 has stated in his examination-in-chief and the cross-examination, viz., the statement made by Janki when she opened the door at 1.30 P.M. CRL.A. Nos. 25/2011 & 243/2011 It has been Page 14 of 40 highlighted that Sandeep Sahu and Kaushal were not named by PW-2 in his initial statement Exhibit PW-2/A (rukka) which formed the basis of the FIR. It is contended that statement of Janki (PW-30) was recorded by the police under Section 161 Cr.P.C. only on the next day, i.e., 15th June, 2000. She was the prime suspect and, therefore, her statement that she was an eye witness or had seen Sandeep and Kaushal in the house has to be elided and dis-believed.

12. Statement by PW-2, Rukka (Exhibit PW-2/A) was recorded by the Investigating Officer at about 5.00 P.M. on 14th June, 2000. English translation of the relevant portion of the said statement reads as under:At about 1.30 P.M. I returned home but could not open the main door with my key. I pressed the door bell. Janki opened the door shouting and stated that her sister and Bibiji (Raj Sahu) had been killed. Manoj Sahu PW-2 noticed that the back door on the ground floor was open and on the first floor in the drawing room Radha sister of Janki was lying drenched in blood. In the bed room her mother was lying on the bed again smeared in blood. Broken glass were lying all over. Manoj Sahu made a telephone call on number 100 and the PCR van took his mother to Anand Hospital. Radha was taken in an ambulance to hospital. It was learnt that Manojs mother had died. Gold chain which used to be worn by Manoj Sahus mother was missing. Household articles

were lying scattered all over but Manoj Sahu was not fully aware and had knowledge about household articles and the details of the missing articles will be made available later on. Manoj Sahus mother and household articles/assets have been stolen and Jankis sister Radha had suffered injuries.

13. The aforesaid statement does not specifically refer to Sandeep or Kaushal or to Jankis statement, when she opened the door, that Sandeep and Kaushal were the culprits. Manoj (PW-2) in the said statement did not claim that Janki had given names of Sandeep or Kaushal when she opened the door. PW-2s claim, in the examination in chief, that Janki had named the appellants when she opened the door but this as noticed is not factually correct. However this cannot be a ground to reject and discard his entire testimony as unworthy of credence and devoid of truth. PW-2, on the said aspect, contradicted himself in the cross examination. We have also quoted the statement of PW-2, in his cross-examination, in which PW-2 has not averred that Janki after opening the door had named Sandeep or Kaushal. Similarly, Janki (PW-30) in her cross-examination has averred that when she opened the door she was perplexed and shaken and did not name Sandeep or Kaushal as the culprits. The aforesaid position appears to be correct, in view of the fact that Ram Kumar (PW-1) and Manoj Sahu (PW-2) have categorically stated that they suspected and believed that Janki was behind or was involved in the said crime. The fact that Janki had remained quiet and did not name the third person and their involvement fortifies the said belief and suspicion. PW-1 and 2 have also averred and stated that Janki (PW-30) was thoroughly interrogated and questioned by the police on 14 th and 15th. This is correct and gets confirmed from the statement of Inspector Niranjan Singh (PW-28). The statement made by Janki (PW-30) that she became unconscious and regained consciousness on the next day, i.e., 15th June, 2000 at 2.00-3.00 P.M. is not correct. Unconsciousness for the said long period is implausible and contrary to the statements of PW-1, PW-2 and PW-28. Possibly Janki (PW-30) did not want to state that she was a prime suspect and interrogated and kept in police detention. This contradiction by PW-30 does not merit rejection of her entire testimony. Thus we disbelieve this part of PW-30 statement but do not find any reason to discard or ignore the material and relevant averments made by her. Her statement in the trial Court was recorded more than nine years after the occurrence on 14th October, 2009. Minor

discrepancies do not doubt or dent her entire statement. PW-30 may not have recalled when and what time police officers had made inquiries for the first time from her. For the same reasons, the contentions that PW30 in the cross-examination had stated that it was winter season when the occurrence had taken place and she and her sister had taken employment together, cast doubt on veracity of the deposition of PW30, is without merit. Her averment, that it was winter, does not carry any weight as the occurrence had taken on 14th June, 2000, and her presence cannot be doubted. We accept the testimony of PW1, PW2 and PW5, who have categorically deposed that Radha was taken in employment and she started working 15-20 days before the occurrence. PW30, in her examination-in-chief had stated that she had worked for 6-7 months as a maid in the house of Ram Kumar Sahu. PW30 in her examination in chief had stated that she had seen Sandeep changing his shirt but had not attributed any such act to Kaushal. However, in the cross-examination, she had claimed that she had seen both of them changing their clothes/shirts. This ambiguity in the statement of PW-30 again does not create any dent or doubt about her core testimony that both Sandeep and Kaushal were there and had threatened her and ran away from the back door.

14. Before we examine other contentions of the appellants, it will be appropriate to refer to the statement of the Investigating Officer. Inspector Niranjan Singh (PW-28) has stated that DD No. 9A was marked to him for investigation and when he visited the spot of occurrence, i.e., House No. 6, Shanker Vihar, Vikas Marg, Delhi, he saw that blood in the drawing room and in the bed room. Blood stain was there on the curtains, walls etc. He has further averred that no witness was present when he reached the spot on the first occasion. Radha had been taken to RML Hospital and there she was declared unfit for statement. He reached Anand Hospital and came to know that Raj Rani Sahu was declared brought dead. He went back and then spoke to Manoj Kumar Sahu and recorded his statement (Exhibit PW2/A). We do not think there was extra ordinary delay in recording the said statement at 5.00 P.M. As noticed above, Monika (PW-4) was pregnant and she was shifted from the spot to a nearby show room. First and foremost duty of the police officers was to try and provide medical aid and treatment to the injured, i.e., Raj Rani and Radha. They both were taken to the hospital in the PCR van and

in the ambulance. The Investigating Officer followed them and had gone to RML Hospital, where Radha was admitted, and then returned to the spot. Thereafter he collected evidence/material including the broken iron grill, on the ground floor at the back side boundary wall (seized vide Exhibit PW-2/O). PW-28 had thereafter interrogated Monika (PW-4) and Janki (PW-30). The dead body of Raj Sahu was then sent to the mortuary at Subzi Mandi. He again went to RML Hospital to record statement of Radha and, after permission was granted by the doctor, her statement was recorded. PW-28 has stated that on 15th June, 2000 at 9 A.M. duty officer had informed him that he had received a telephone message from Ram Kumar Sahu that a helmet was found on the ground floor of the house and the said helmet did not belong to him. Thereafter he went to the spot in question, i.e., the house, and reached Subzi Mandi mortuary where post mortem was conducted and the dead body was handed over to PW-1 and PW-2. The family members of the deceased were busy in making arrangement for performing last rites of Raj Sahu. Between 12.45 to 2.45 P.M. PW28 interrogated Janki the maid servant in the house of Ram Kumar Sahu (PW-1). PW-28 has averred that then Janki disclosed that she had seen Sandeep and his associate Kaushal committing murder. Manoj Kumar Sahu also made enquiries. Thereupon, PW-28 along with Manoj Sahu and Janki went to Chander Nagar area and accused Sandeep was identified by Janki and Manoj Sahu. On his personal search Rs.1,900/- was found in his nicker and was seized. He was interrogated. Thereafter, Janki was asked to leave the place and allowed to meet her injured sister Radha. On the basis of disclosure made by Sandeep, the police team searched the room on the ground floor of his house and, from the miyani, Sandeep took out the pant and shirt which he was wearing at the time of offence. Sandeep was also taken for medical examination and MLC marked Exhibit PW-28/A was recorded. Two wheeler scooter bearing registration No. DEU 173.belonging to Nand Kishore Sahu, maternal grandfather (nana of Sandeep) was seized. CRL.A. Nos. 25/2011 & 243/2011 Search was made to find and interrogate Page 20 of 40 Kaushal and Sitaram but without success. Sitaram was ultimately arrested on 18th June, 2000 near Karol Bagh and was interrogated. He disclosed the address and location of Kaushal, his cousin. Kaushal could not be located at his residential house. Police remand of Sitaram was allowed and on 19th June, 2000 they went to village

Bazakhurampur@Purva and, in the intervening night of 20th/21st June, 2000 appellant Kaushal was arrested from his house in the said village vide memo Exhibit PW-8/B. His disclosure statement (Exhibit PW19/C) was recorded. Appellant Kaushal produced his uncles bag from his room which contained pant, shirt, towel, etc. Kaushal disclosed that the looted property was lying in the house of his uncle Baijnath, in village Rasoolpur. On the basis of disclosure, they reached village Rasoolpur in the early morning of 21st June, 2000 and, from the chapper of the house, appellant Kaushal produced a bag containing jewellery made of gold, silver, etc. Rs.6,490/- were also seized vide seizure memo Exhibit PW-13/E. The said jewellery items in question were 14 in number and collectively marked Exhibit PW-28/P-3. Rs.6,490/- were also included and marked Exhibit PW-28/P-3. In his cross-examination PW-28 had stated as under:I had come to know after recording statement of the complainant that he is not the eye-witness but the complainant had told that when he reached to the house in question Ms. Janki, the maidservant had opened the door and she was crying that somebody had killed Mrs. Raj Sahu. The complainant entered into the house and saw that one maidservant Kumari Radha is in injured condition and his mother Mrs. Raj Sahu is also badly injured therefore he made call to PCR. The complainant had told me that he had tried to know from both the injured persons as to who and how injuries have been received to them but the injured persons were not able to tell the same. I had not recorded the same in the statement of complainant Sh. Manoj Sahu. After that I had made enquiries for about 40-45 minutes from other family members and Ms. Janki, the maidservant also but none told me about any person who has seen the incident. He had further stated:I had enquired from Ms. Janki as to why she has not gone with her injured sister in the hospital. She was perplexed and was not able to give her statement on that day. She was not aware in which hospital her sister was taken. She could not have taken her sister to hospital because she was not well known with the area. On 14.06.2000, I had made inquiries from Janki but did not record her statement. Vol. It was recorded by 15.06.2000. On 14.06.2000, Janki did not disclose the name of any of the culprits as she was nervous. Janki did not disclosed that murder was committed in her presence and that she was witness to murder. Janki had told me on 14.06.2000, that at about 12.00pm she was working on 2nd floor of the house. Janki had told

me on 14th that after washing of the clothes as she came down to the bedroom of the deceased she witnessed that Biwi ji was killed on 14th and her sister namely Radha was also injured and was lying unconscious. I had inquired from Janki as to the identity of the culprits who had committed the murder. Janki told me that she did not see as to who has committed the murder on 14.06.2000. Janki was nervous and she was not in a position to answer my queries. Nothing else was disclosed by Janki at that time about the incident. Neither Ram Kumar Sahu nor Manoj Sahu expressed any suspicion about the identity of the murderers on 14.06.2000. Janki did not disclose me if she had also sustained injuries in the incident nor she was injured at that time. .I had recorded the 1st statement of Janki at Chander Nagar where she had led the police party to identify the culprit Sandeep Kr. Sahu on 15.06.2000. I had gone to the house of Manoj Sahu to make inquiries in this case where Janki had met me and she was thoroughly interrogated upon which she disclosed the identity of culprits.

15. PW-28 had stated that there was no evidence of forced entry to the house. This statement was made in the cross-examination and it is not the case of any party that there was forced trespass into the house. Thus it transpires from the statement of PW-28 that PW-30, in the initial stage on 14th June, 2000, had remained quiet and did not implicate anyone. However, we do not agree that the appellants are entitled to acquittal for the said reason. The delay in recording her statement and her naming the appellants has been explained and should be accepted for several reasons elucidated hereafter.

16. PW-30 is a truthful, credible and honest witness. She had been working as a domestic help at Sahu residence. Her presence, in the house, at the said time is natural and normal and has been proved from the statements of Ram Kumar (PW1), Manoj Sahu (PW-2) and Monika (PW-5). She has very transparently stated the actual occurrence as what she had seen. She had not seen Sandeep Sahu and Kaushal actually killing or giving injuries to Radha or the deceased Raj Rani. When she came down from the terrace, she saw Sandeep Sahu and Kaushal. Sandeep Sahu was changing his shirt. She saw that Raj Rani was lying injured and smeared in blood. The door bell rang and PW30 some how was saved. She was warned and threatened by the appellants before they escaped. Subsequently,

when interrogated, she gave the names of the perpetrators, including the name of accomplish of Sandeep as Kaushal which she came to know because Sandeep had addressed the second person as Kaushal.

17. PW-30 was a small girl, at that time, aged between 12-14 years. Apprehension, trepidation and timorousness felt by her in the said situation can be easily understood and should be accepted. She had seen the horrific incident in which her sister Radha was injured and her employer Raj Rani was murdered, in a brutal manner. She was shaken up, nervous and gripped by fear as she was treated as a prime suspect by the employers, who were well off, rich and powerful. She was a villager from Nepal who had moved to the big city of Delhi, only 5-6 months back, and had taken employment in the house. The prime culprit was a close relative of the employers and was treated by them as a family member. He was young, city bread, aggressive and worldly wise. Her word and allegations against the appellant Sandeep Sahu possibly would not have merited approval and acceptance. She was threatened by the culprits/perpetrators and was being blamed and suspected by the employers, who would have displayed their angst and anger. Her silence, fright and hopelessness, keeping in view her social and economic background, her tender age of 12-14 years and other factors should be respected and given due cognizance. The possibility that she would be an easy target and could be framed for murder despite her innocence must have troubled her. The difficulty in naming a family member as the perpetrator concerned and that she would be disbelieved, was a real possibility to her. We cannot discount the threats which had been given by the appellants Sandeep and Kaushal. Injuries caused to Raj Rani and Radha were in her knowledge. It was only after thorough interrogation that she spoke out but it appears that neither the Investigating Officer nor the deceaseds family were initially ready and willing to accept the said statement. PW-30 was taken to the house of Sandeep, who was found in the gali, and he was interrogated. Money was found, after personal search of the appellant, and only then PW-30 was permitted to see her sister. The fact that she and her sister Radha left Delhi and India and went back to the village in Nepal, in spite of the fact that her sister Radha was still under treatment and subsequently died, shows the trauma and the loss they suffered.

18. One cannot be oblivious to the fact that Radha was Jankis sister, who was brutally injured on 14th June, 2000. Radha had suffered a fracture on parietal bone of the skull as per the MLC (Exhibit PW24/A) and X-Ray plates (Exhibit PW-24/ B1 to B4). Dr. S. Mehra (PW-24), Specialist Radiology, RML Hospitals statement is clear and categorical. PW-30 has averred that Radha died after about 10 days in Nepal. Though no death certificate of Radha was produced yet there is no reason to not accept the statement of PW-30, viz. death of Radha.

19. The contention of the appellants that Janki (PW-30) who had appeared as a witness was not Janki who had worked in the house is an argument of desperation and should be outrightly rejected. No such suggestion was put to PW-30 in her cross-examination. PW-30 in her statement in the court says that she was Janki who had seen the incident and not a person impersonating Janki.

20. Sandeep was arrested on 15th June, 2000 and thereafter was medically examined. His MLC Exhibit PW-28/A recorded in SDN Hospital, Shahdara shows that on his right palm there were injuries. There were also abrasions on his body. These are specifically indicated and mentioned in the said MLC. As per PW-30 Janki, Sandeep Sahu had escaped from the back door climbing over the back wall and after removing the sharp iron grill. Sandeep Sahu in his statement under Section 313 Cr.P.C. had not explained or stated how the said injuries on his palm and abrasions were caused. He admitted that he was taken for MLC but claimed there were no bruises and the MLC was manipulated. The said claim has to be rejected as not correct. Doctor recording the MLC Ex.PW-28 had no reason to make the drawing of the hand indicating the abrasions.

21. We will now deal with the judgments referred to and relied upon by the appellants. In State of Orissa Vs. Brahmananda Nanda AIR 197.SC 2488.the acquittal of the accused in the first appeal by the High Court was confirmed by the Supreme Court noticing that the name of the accused was not mentioned by the material witness for a day and a half. The explanation given for the said delay by the prosecution was without merit and not satisfactory. However, in the present case, we have noticed that the delay has been reasonably and satisfactorily explained.

22. In Maruti Ram Nayak versus State of Maharashtra, (2003) 10 SCC 670.the Supreme Court disbelieved the testimony of PW-3. Discrepancies in the statement of the said witness recorded by the police were noticed, as at the first instance he had not named or stated that the two accused had attacked the deceased. For this there was no explanation. There was also unwarranted delay on the part of the Investigating Officer in recording his statement. In these circumstances, evidence of the PW-3 was held to be insufficient to prove the offences against the accused without there being any material corroboration from other independent acceptable source.

23. In Jagjit Singh Vs. State of Punjab, AIR 200.SC 913.the Supreme Court accepted the contention of the accused that there was no explanation why there was delay of 3 days in recording of statement under Section 161 Cr.P.C., when the Investigating Officer knew that the statement of the said witness had already been recorded by the doctor earlier. The said witness was a girl of 7 years and there was possibility she might have been tutored. The Supreme Court rejected the contention that PW-6 was in shock and was not in a position to make a statement. The PW-6 had given explanation that the accused earlier was known. This was disbelieved observing that there was no evidence that PW-6 had ever seen the accused and in her earlier statement she had not named the father of the accused. Another factor noticed by the Supreme Court was that motive to commit the heinous offence against the relative was not established.

24. Similarly, in Chander Shekhar @ Shekhar Vs. State of NCT of Delhi, 2011 [3] JCC 2053.a Division Bench of the High Court did not accept the testimony of a witness for various reasons including that the witness herself was the prime suspect. The said witness had, however, claimed that she was not at the place of occurrence as she had gone to see a movie. The investigating officer had not conducted any investigation on the said aspect and in the absence of corroboration, her statement was held to be debatable. In the said decision, on the question of last seen, it was noticed that there was time gap as per the post mortem and when the accused was last seen with the deceased.

25. In Abdul Sattar vs. State 2009 (4) JCC 3179.statement of two alleged eye-witnesses were recorded after substantial delay. This it was held was abnormal. PW13 therein, brother of the deceased, one of the alleged eye-witnesses, made a statement implicating the accused on the next day. This was disbelieved as PW13 had stated that he had after seeing the occurrence gone to his house but fell unconscious in front of his mother and two sisters. He regained consciousness after about half an hour and again went to the spot, but did not see any family member there. It was observed that family members would not have left PW13 unattended in case he had become unconscious.

26. In Shankar & Anr. Vs. State (NCT of Delhi) 2010 (3) JCC 2067.the accused was acquitted giving benefit of doubt in view of unnatural conduct of the so-called eye-witnesses, who did not raise any alarm or take the deceased to the Doctor or report the matter to the police or neighbours though they were close relatives i.e. the mother and wife of the deceased. In these circumstances, it was held that their testimony did not aspire confidence on which implicit reliance could be placed.

27. We do not agree that the decision of the Division Bench of this Court in Crl. Appeal No. 84/2001 titled Ravinder Rathi vs. State of Delhi decided on 13th April, 2012, is applicable. In the said decision, it was noticed that there were omissions in the investigation which had created doubt about the role of the accused. There was no corroboration to the statement and the statement of the eye-witness was recorded after considerable delay and explanation given for the unwarranted delay was unacceptable. The said judgment quotes from Maruti Rama Naik (supra). In Pintoo vs. State 2010 (2) JCC 1286.the contention that the witness was petrified and scared, was rejected as he had claimed that he had chased the accused but did not report the matter to the police who were available merely at the distance of 500 mtrs.

28. In Vijay Kumar & Anr. Vs. State, 60 (1995) DLT 26.(DB), a Division Bench of this court came to the conclusion that a false eyewitness had been introduced. In the said case, there were repeated and significant lapses on the part of the prosuection/investigation which had dented the core case. Various contradictions have also been pointed out.

29. In Durga Prasad vs. State 2009(4) JCC 2533.delay of six days in recording of the statement when the witness belonged to the same locality and had met the police on the same day, was one of the factors taken into consideration by the court to disbelieve the witness. It was held that the unwarranted and unexplained delay in recording the statement of purported witness made the evidence unreliable. We have in the present case examined the reasons and the cause for the delay in recording the statement of PW-30 and held that the delay has been satisfactorily explained. Delay in examination of witnesses when satisfactorily and cogently explained and understandable is not fatal when otherwise the testimony of witnesses is credible and trustworthy. [see Prithvi (minor) Vs. Mam Raj & Ors, (2004) 13 SCC 279].

30. Reliance placed on the statement of Nand Kishore Sahu (PW-4), grandfather of Sandeep Sahu to the effect that Sandeep Sahu was arrested at about 3 A.M. in the intervening night of 14 and 15th June, 2000, does not aspire confidence. PW-4 was admittedly the Nana of Sandeep Sahu and was close to him. He has deposed that Sandeep Sahu had come and slept in his house on 14 th June, 2000 at about 10.00-10.30 P.M. They had already locked the doors when Sandeep Sahu rang the bell and was permitted to come in. At that time, Sandeep Sahu appeared puzzled/perplexed. PW-4 also agrees that Sandeep Sahu did not go to the house of Ram Kumar (PW-1) in spite of the fact that his Mausi-Aunty was killed/murdered. Neither did he take dinner. This by itself is rather strange and corroborates the case of the prosecution against Sandeep Sahu. This conduct was unnatural and not normal. Sandeep Sahu, PW-4 claimed that he did not want to go to the Sahu house immediately and had requested Nand Kishore Sahu (PW-4) to let him sleep there and had stated he would go next day there with him. We reject the contention that Sandeep Sahu was arrested on the same night and feel that the said averment by PW-4 was because of his emotional attachment to Sandeep Sahu. The said fact has not been borne out from any record and is contrary to the arrest memo and statements of witnesses PW-2, PW-30 and PW-28.

31. Regarding seizure of scooter bearing number DEU 1733.again PW-4 has tried to protect Sandeep Sahu. He accepts that on 14 th June, 2000 at about 8.00-8.15 A.M., Sandeep Sahu had come to his house for taking his scooter. PW-4 states

that on 16th June, 2000, he came to know that that Sandeep Sahu had returned the scooter at 1.30 P.M. on 14th June, 2000 to a boy. The name of the boy was not indicated and the said statement itself is hearsay and is contradicted by the statement made by Jaipal (PW-6), who was working in the shop of Nand Kishore Sahu. PW-6 has deposed that on 14th June, 2000 at about 8.00 A.M., Sandeep Sahu had come and taken the scooter of Nand Kishore Sahu. He returned the scooter on the same day at about 2.00 P.M. At that time, Sandeep Sahu was perplexed and after delivering the key, he left the place. Sandeep Sahu was not carrying helmet with him at that time.

32. On the basis of Sandeeps interrogation and clues given, the police went to the house of Kaushal but it was locked. Neighbours informed that Kaushal had not come to the house since previous day. After Sita Ram, cousin of Kaushal, was apprehended, the police along with Sita Ram went to Kaushals village. On 20 th June, 2000, they reached P.S. Karari, Allahabad, U.P and from there they were taken to village Bazakhurampur @ Purva, at 2.45 A.M. on the night intervening of 20th and 21st June, 2000. Kaushal was caught sleeping, in front of his house and was identified by Sita Ram. His disclosure statement (Ex. PW19/C and 13/D) was recorded and, thereafter, he took the police team to village Rasoolpur where his uncle Phoopha Baijnaths house was situated. A polythene bag was recovered, from a corner of chhappar, which had jewellery and Rs.6490/-, and was seized vide Ex. PW3/E. Accused Kaushal was produced in the court of Chief Judicial Magistrate, Allahabad, and transit remand was obtained, after moving an application (Ex. PW28/G). Accused Kaushal was directed to cover his face and then was taken from lock up, P.S. PreetVihar to Yamuna Pushta where he took out one shirt, pant and one pair of shoes which he was wearing, at the time of committing the offence. Insp. Niranjan Singh (PW-28) had moved an application for TIP proceedings of Kaushal, which was marked to the Metropolitan Magistrate Kawaljeet Arora, who conducted the proceedings on 27th June, 2000. Metropolitan Magistrate D.K. Sharma (PW-31) had conducted TIP of the case property.

33. According to Janaki (PW-30), Sandeep had addressed the second person, with him, as Kaushal. On that basis, Kaushal was implicated, otherwise, PW-30,

PW-2, PW-5 or other family members were not aware of Kaushal.

34. Accused Kaushals involvement is further established on two grounds: first, fourteen jewellery items were recovered from him, on 17th June, 2000 at his instance from village at from his uncles house in Village Rasoolpur, U.P. after the disclosure statement; second, Kaushal was identified by PW-30 in the court. Kaushal had refused to participate in test identification proceedings. Identity, particulars and details of Kaushal came to the knowledge of police, on interrogation of the appellant Sandeep Sahu, and, to this limited extent involvement of Sandeep Sahu is corroborated under Section 8 of the Evidence Act.

35. Recoveries, made from Kaushal, further corroborate PW-30s statement and are substantial in question, consisting of 14 articles, that too found from a remote village in Allahabad. As is clear, accused Kaushal was found first in his house, at village Purva, and then, on the basis of his disclosure statement, recoveries, including jewellery, were made from the house of Bajinath. The aforesaid position is established from the statement of Constable Ramesh Kumar (PW-29) and Insp. Niranjan Singh (PW-28). No doubt Suraj Pal (PW-16) and Ram Het (PW-17), the private witnesses to the recovery of jewellery, have turned partly hostile but statement of PW-16, that the police had come to the house of Baijnath, is relevant and important. PW-16 and PW-17 had admitted their signatures in Ex. PW3/E but stated that it was a blank page, at the time of signature. Both of them signed in Hindi. Ram Lal Choudhary (PW-8), resident of village Purva, Distt. Kaushambi U.P., has stated that he knew the appellant Kaushal and Delhi Police had come to their village, to interrogate Kaushal, but he was not aware of other facts. He admitted that he had signed some documents. When he was cross-examined, by Additional Public Prosecutor, he admitted that Sita Ram was present when the police visited the village and, at his instance, appellant Kaushal was arrested. Kaushal was his uncles son and his relative. He admitted his signatures on the recovery memo of bag Ex. PW8/A.

36. The position that PW16/17 have not supported recovery of jewellery etc is inconsequential in view of the contemporaneous records, i.e., Ex. PW28/G. In

these circumstances, the evidence of Investigating Officer can be accepted and need not be rejected on the ground that the seizure witnesses had not supported the prosecution version (see Antar Singh vs. State of Rajasthan, (2004)10SCC657; 2004 Cri LJ 138.and Modan Singh vs. State of Rajasthan 1978 Crl LJ 1531.37. PW29, Constable Ramesh Kumar, Civil Police, U.P., was posted at Police Station Kaushambhi, U.P. was not a witness to the disclosure statements Ex. 19/C/13/D, made by Kaushal. Thus, the contention that he has not uttered anything about the disclosure made by Kaushal is irrelevant and meaningless. He is a witness to the recoveries made. After the disclosure was made and recoveries were effected at Village Kaushambi, PW28 Inspector Niranjan Singh had moved an application before the Chief Metropolitan Magistrate, Allahabad, Ex. PW28/G. The application specifically mentioned that recoveries of the looted articles had been made and Kaushal was to be taken to Delhi. The factum of recovery of the looted articles and the arrest of Kaushal was also mentioned in the order passed by the Chief Metropolitan Magistrate, dated 26.1.2000, also marked Ex. PW28/G.

38. We do not doubt the TIP proceedings and the identification made by PW1, of the jewellery. Identification does not become debatable merely because PW1 did not produce proof of ownership or in the TIP proceedings description or identification marks of the jewellery had not been elaborated and stated. Substantial jewellery, in number and quantity was recovered. Jewellery found to be missing from the body and the almirah was found to be broken. The factum that seizure memo Ex. PW28/P-3 refers and states that some of the items were artificial, reflect the observation of the officer making the seizure but does not dent the recovery.

39. The revolver was recovered. Its relevance to the crime was not explained and adverted to by the witnesses. However, this does not mean that these testimonies of the witnesses or the prosecution version should be disbelieved. Similarly, the house may be having a CCTV, but it has not been alleged that there was a recording facility. The location of the CCTV camera was also not alleged or stated. Chance finger prints were lifted but they could not be connected to the appellants. We cannot forget that the chance finger prints were lifted from the house, where there was substantial foot falls and large family was in occupation. Even the

appellant Sandeep was a frequent visitor to the house. In Ashok Kumar vs. State (Govt. of NCT of Delhi) 2007 (93) DRJ 46.(DB), several factors had resulted in acquittal. Important eye-witnesses were not even questioned by the Investigating Officer, and the manner of entry in the house remained unexplained. It cannot be said that mere failure of the Investigating Officer to get the lifted finger prints compared by itself had resulted in acquittal.

40. The FSL report states hair found in the hand of the deceased were of human origin but were not similar with the sample hairs taken from the two appellants in most of their morphological and microscopical characteristics. This, however, is not a ground to disbelieve the clinching evidence in form of the ocular statements, recovery, etc. In Modis Medical Jurisprudence and Toxicology, 23 rd Edition, under the sub-heading Hair and Fibres it has been observed that macroscopic and microscopic examinations are unpredictable as the original qualities of hairs often get affected by the loss or gain due to contact with atmosphere, cleansing agents, cosmetics and even food intake. Thus, their forensic importance for individualization becomes unreliable to be relied upon in crime cases (see page 526). Further careful collection of the specimens of questioned and controlled hair is a very important pre-requisite for comparative examinations. Controlled samples to be meaningful for comparison must be full hair with root and tip intact and also be a representative of the body part/s concerned. Unless adequate number of hair are obtained as questioned hairs, and sophisticated and very highly sensitive methods like neutron activation analysis is made such comparisons would generally be scientifically unconvincing and unsuitable as per Modi (see pages 527-528). Therefore, on the basis of the said FSL report, we are not inclined to disbelieve the ocular testimony of PW30 and the other material which corroborates the said testimony.

41. We do not think that decision in Ram Kishore vs. State, 41 (1990) DLT 86.is applicable. It is again a case of circumstantial evidence and the court on the basis of the evidence did not feel that the complete chain of evidence proved or was sufficient to come to the conclusion that the accused was guilty or excluded reasonable hypothesis consistent with his innocence. In the facts of the present case, considering and analyzing the evidence we hold that the prosecution has

been able to establish and prove beyond doubt that the two appellants are the perpetrators of the crime.

42. The appeals are accordingly dismissed. Conviction and sentences awarded are upheld and maintained. -sd(SANJIV KHANNA) JUDGE -sd(S. P. GARG) JUDGE JANUARY 16 2013 VKR/kkb

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