(2014) 07 DEL CK 0225

Delhi High Court

Case No: Criminal Appeal Nos. 480 and 783/2010

Ashok Kumar		APPELLANT
	Vs	
State		RESPONDENT

Date of Decision: July 14, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Evidence Act, 1872 - Section 106, 8
- Penal Code, 1860 (IPC) - Section 302, 34, 392, 411

Citation: (2014) 3 JCC 1869

Hon'ble Judges: V.P. Vaish, J; P.K. Bhasin, J

Bench: Division Bench

Advocate: S.B. Dandapani and V.P. Singh Charak, Advocate for the Appellant; Sanjay Lao, APP for the State and S.I. Birender Singh, Advocate for the Respondent

Final Decision: Dismissed

Judgement

V.P. Vaish, J.

The appellants have assailed judgment dated 20.02.2010 passed by learned Additional District and Sessions Judge, New Delhi (02), Patiala House Courts, New Delhi in case FIR No. 284/04, PS C.R. Park whereby the appellants were convicted for the offences under Sections 302/392/411/34 IPC and order on sentence dated 25.02.2010 whereby they were sentenced to undergo rigorous imprisonment for life with a fine of Rs. 2,000/- each and in case of default of payment of fine, to further undergo simple imprisonment for a period of three months under Sections 302/34 IPC and to undergo rigorous imprisonment for five years and to pay fine of Rs. 2,000/- each, in default of payment of fine, to further undergo simple imprisonment for a period of three months u/s 392 IPC. Both the substantive sentences were ordered to run concurrently.

2. Briefly stated, the case of prosecution is that one Kajormal who was working as a Guard/Chowkidar with Mr. Gautam Mitra, Advocate at premises No. S-183, GK-II, Second Floor, New Delhi was allegedly murdered by the appellant, Chander Shekhar Yadav @ Shekhar, who was working as peon with Mr. Gautam Mitra and his accomplice Ashok Kumar on 15.10.2004. The motive of killing was that on 12.10.2004, deceased informed Chander Shekhar Yadav that a lot of money belonging to their employer was lying in the house. On 15.10.2004, he along with Ashok Kumar armed with a knife went to House No. S-183, GK-II, Second Floor and asked Kajormal to hand over the keys. Kajormal started making noise. Upon this, he was stabbed by Ashok Kumar on pelvic region, who fell down. The keys were taken out of his pocket and the appellant, Ashok Kumar cut the neck of Kajormal, who died. The money was taken away by them. On 29.10.2004, both the appellants were arrested and stolen amount was recovered. After completion of investigation, charge-sheet for the offences under Sections 302/392/411/34 IPC was filed. After recording prosecution evidence, statement of the appellants u/s 313 Cr. P.C. were recorded. The appellants examined Avadh Bihari Yadav (DW-1) and Dev Kala Devi (DW-2) as defence witnesses. After considering the submissions made by counsel for the appellants and the statements of prosecution witnesses as well as defence evidence, trial Court convicted both the appellants vide impugned order dated 20.02.2010 and sentenced vide order dated 25.02.2010.

3. Feeling aggrieved by the said judgment dated 20.02.2010 and order on sentence dated 25.02.2010, the appellants have preferred the present appeal.

4. Learned counsel for the appellants contended that there is a contradiction as to who gave the information of the incident to the police, Nishit Khanna (PW-1) or K. Sukumaran (PW-7). As per Nishit Khanna (PW-1), the police reached at the spot at 4.30 p.m. or 5.00 p.m. whereas Constable Man Singh (PW-12) joined the investigation at about 5.00 p.m. At the place of incident, landline phone was available, but no call was made by the complainant from the said phone. He reached the police station and lodged a complaint, this creates a doubt as to why he did not use the available phone.

5. The counsel for the appellants also submitted that there is a major contradiction about the presence of K. Sukumaran (PW-7) at the spot. As per testimony of Nishit Khanna (PW-1) he had seen K. Sukumaran (PW-7) at the spot, before the incident, coming out of the house. So, it is highly impossible that he had not seen the dead body of Kajormal inside the house. The Investigating Officer had made no effort to investigate that K. Sukumaran (PW-7) as an accused despite the fact that his behavior was highly abnormal. As per K. Sukumaran (PW-7), police recorded the statement of one Sardarji and Bhatia, but their statements are not on police record. The Investigating Agency never made the labourers, Om Prakash and Ram Prakash prosecution witnesses, despite their having witnessed the discovery of the dead body.

6. Learned counsel for the appellants further contended that the whole case of the prosecution survives around the alleged recovery of Rs. 25,75,500/- from appellant Chander Shekhar and Rs. 8,83,600/- from Ashok Kumar and the trial Court had erroneously held that since the amount is huge, this point towards guilt of the accused/appellants. Whereas, K. Sukumaran (PW-7) was the real perpetrator of the crime and he could have easily appeased the police officials to falsely implicate the appellants in the crime. Man Singh (PW-6) has identified the appellants in the Court, however, his testimony shows that he had admitted that he has extremely poor eyesight and perhaps could not have seen the appellants in the company of the deceased. The appellants were arrested after 13 days of the incident. However, the weapon that was recovered from the spot on 15.10.2004 was not at the instance of the appellants. Also it did not have any finger impression to link the appellants with the crime. The recovery of the money from the possession of the appellants is doubtful. The presence of the SHO at the spot is also doubtful.

7. The counsel for the appellants also submitted that the manner of arrest of the appellants is also doubtful. As per SI Arun Kumar Verma (PW-19), he arrested the appellants from the bus stop without any photograph. No witness was examined at the spot despite the area being thickly populated. No exact place has been told from where the appellants were arrested. No TIP was conducted. The case property was not sealed at the spot.

8. It was lastly contended by counsel for the appellants that Khurshid Ahmed (PW-9) has not supported the case of prosecution despite the cross-examination conducted by learned APP for the State. The entire case of prosecution is based on circumstantial evidence and the chain of events are incomplete.

9. Per contra, learned APP for the State urged that minor contradictions cannot be taken into consideration unless and until such contradictions are grave in nature. Non-compliance of certain investigative formalities can at best be a case of faulty investigation and it would not be just to acquit the appellants on that basis. Learned APP for the State submitted that the TIP was not required and otherwise also, it is not at all a substantive piece of evidence. It was further contended that the recovery of huge amount of approximately Rs. 35 lakhs has been recovered in pursuance to the disclosure statement of the appellants. The planting of such a huge amount, cannot be believed by any stretch of imagination. Non-lifting of finger prints cannot be of any advantage to the appellants.

10. Learned APP for the State also submitted that non-joining of public witness at the time of recovery is not fatal to the prosecution case. The Investigating Officer had made his best efforts to join the public witnesses at the time of recovery. Man Singh (PW-6) is a poor and an uneducated person. His testimony cannot be disbelieved as he is an uninterested and independent person.

11. We have bestowed our thoughtful consideration to the submissions made by learned counsel for the appellants and learned APP for the State and carefully perused the material placed on record.

12. The case of prosecution is purely based on circumstantial evidence and there is no eye-witness to the alleged incident and in the present case, there is no direct evidence of the crime. The prosecution case hinges on circumstantial evidence. It is an accepted principle of law that even in cases where no direct evidence is available in the shape of eye-witness etc., a conviction can be based on circumstantial evidence alone. However, it is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of the guilt is to be drawn, should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. The circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis except the one propose to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must show that within all human probability, the act must have been done by the accused. The law regarding circumstantial evidence is no longer res integra and five golden principles enunciated by the Hon''ble Supreme Court of India in Sharad Birdhichand Sarda Vs. State of Maharashtra, , clearly lays down law in this regard. The Hon''ble Supreme Court held:-
153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra, where the observations were made: [SCC para 19, p. 807: SCC (Cri.) p. 1047]

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ''may be'' and ''must be'' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

13. Thus, in the light of the authoritative pronouncement of the Hon''ble Supreme Court over task whilst down to examine the various circumstances pointed out by the prosecution and to see whether the chain of circumstances so complete as to prove the guilt of the appellants beyond doubt. We shall deal with these circumstances one by one.

Recovery from at the behest of the appellants

14. SI Arun Kumar Verma (PW-19) has stated that on 29.10.2004, he along with Inspector Vimal Kumar, SI Raj Kumar, ASI Ajay Tyagi and two other constables had gone to Jaitpur extension, Badarpur in search of the appellants, Chander Shekhar and Ashok Kumar in their houses, but they could not be found. When they reached G Block, Jaitpur Extension, two boys i.e. the appellants were trying to run away on seeing them. They apprehended and interrogated them. The appellants told them their names as Chander Shekhar and Ashok Kumar. They were arrested vide arrest memo Ex. PW19/C and Ex. PW19/D respectively and their personal search was conducted vide memo Ex. PW19/E and Ex. PW19/F respectively. The appellant, Chander Shekhar was holding blue-green coloured handbag which contained two shirts of cream and sky blue colour and currency notes totaling to Rs. 25,75,500/-. The bags and the shirts were taken into possession vide seizure memo Ex. PW19/G and currency notes vide memo Ex. PW19/H. The appellant, Ashok Kumar, was holding a blue coloured suit case make Godrej. On checking, it was found to contain a shirt, shirt piece and a pant piece along with currency notes of Rs. 8,83,600/- which were seized vide memo Ex. PW19/K and Ex. PW19/L respectively. Thereafter, both the appellants were brought to the police station and were interrogated and they made their disclosure statements were recorded as Ex. PW19/M and Ex. PW19/N respectively. Both the appellants pointed out the place of occurrence. On 02.11.2004, he along with Inspector Vimal Kumar, SI Raj Kumar and two other constables went to the house of the appellants. Blood stained clothes of both the appellants were recovered from their respective houses at their instance and they stated that they were wearing those clothes on the date of incident. Blood stained clothes of both the appellants were converted into separate parcels with the help of white cloth and sealed with the seal of AV and were taken into possession vide seizure memo Ex. PW19/Q and Ex. PW19/R respectively. In his cross-examination, he has stated that on 29.10.2004, they had asked the residents of nearby houses and passerby to join the investigation, but none joined them. The Investigating Officer did not give them any written notice for not joining the investigation as they were not willing to tell their names and addresses as they expressed their difficulty to join them. He has further stated that on 02.11.2004, no public witness could be joined as they were not willing to become the witnesses. Though several persons had

collected from the neighbourhood, but no one agreed to become the witness and the Investigating Officer did not go to the neighbouring houses to join them as witness. The same stand was taken by Inspector Vimal Kumar (PW-20) who reiterated the same averments in his testimony and during his cross-examination.

15. A perusal of the testimony of these two witnesses shows that the seizure and arrest of the appellants was a sudden event. At that time, there could have been no chances of joining the independent witnesses. Otherwise also, both SI Arun Kumar Verma (PW-19) and Inspector Vimal Kumar (PW-20) have stated in their cross-examination that they made efforts to join independent witnesses on both the dates i.e. 29.10.2004 and 02.11.2004. However, none of the witnesses were ready to join the investigation. Under these circumstances, the conduct of the Investigating Officer could not be said to be blemished in any manner. It is a matter of common experience that independent witnesses, shun joining, a search or seizure with a view to avoid wrath and its displeasure of the accused, as also the complications, which may arise later on, on account of their appearance in the Court, from time to time, for their evidence. It has also become the general tendency of the people to criticize the Police and the Courts, for their failures, but when an occasion arises, to seek their assistance, at the time of search or seizure of a contraband, or detection of crime, they show their disinterest. The mere fact that no independent witness could be joined, on account of the aforesaid reasons, in itself, could not be said to be sufficient to disbelieve and distrust the evidence of the prosecution witnesses.

16. It has been contended on behalf of the appellants that the appellants are falsely implicated in the present case by the Investigating Officer as well as K. Sukumaran (PW-7) and the recovered amount was falsely planted on them. This argument does not find favour with us. The appellants have neither produced any evidence nor have shown any reason for such an apprehension and in the failure of any reason to support their beliefs, in our opinion, such an argument is grossly baseless allegation.

17. As we have observed above that the evidence of search or seizure made by the police will not be vitiated solely for the reason that the same was not supported by any independent witness. So also it is a settled law that the statement of investigating authorities cannot be sunned merely because they are police officials. In State, Govt. of NCT of Delhi vs. Sunil & Anr., 2007(1) Scale 692, the Hon''ble Supreme Court has observed as under:-

Hence it is a fallacious impression that when recovery is effected pursuant to any statement made by the accused the document prepared by the Investigating Officer contemporaneous with such recovery must necessarily be attested by independent witnesses. Of course, if any such statement leads to recovery of any article it is open to the Investigating Officer to take the signature of any person present at that time, on the document prepared for such recovery. But if no witness was present or if no person had agreed to affix his signature on the document, it is difficult to lay down,

as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The court has to consider the evidence of the Investigating Officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth.

18. The civilized people are generally insensitive when a crime is committed, even in their presence and they withdraw both from the victim''s side and from the side of vigilante. They keep themselves away from the Courts unless it is inevitable. In these circumstances, merely non-joining of the independent witness, when the evidence of prosecution witness is cogent and no reason is shown on their part to falsely implicate the appellants, no doubt is cast on the prosecution case.

Recovery from the scene of crime

19. K. Sukumaran (PW-7) has stated in his testimony that after he and Khanna saw Kajormal lying in a pool of blood in toilet, they went to police and informed about the murder. The police came to the spot and inspected the scene of occurrence. He also stated that he could identify railway ticket booking forms along with railway tickets which he had given to the accused, Chander Shekhar which were exhibited as Ex. PW7/A to C. The railway reservation tickets which had been given for cancellation to accused Chander Shekhar were exhibited as Ex. PW7/D to 7/E and these documents were found lying on a dining table which was in the drawing room near the kitchen.

20. Nishit Khanna (PW-1) has also stated in his testimony that from a table which was kept next to the kitchen wall, two railway tickets and three other papers of reservation and cancellation were seized vide memo Ex. PW1/L and driving licence and other one PAN card and some other papers were seized vide memo Ex. PW1/M.

21. To the same effect, SI Arun Kumar Verma (PW-19) has stated that a table was lying near the kitchen in the drawing room of the flat having two railway tickets and three railway reservation cancellation forms. Those tickets and forms were taken into possession vide memo Ex. PW1/L. On the same table, driving licence, PAN card and some visiting cards of Chander Shekhar and three other visiting cards were also lying, which were seized vide memo Ex. PW1/M. The same stand was reiterated by Inspector Vimal Kumar (PW-20).

22. The appellant, Chander Shekhar has failed to give any explanation of the aforesaid documents and also failed to explain as to how his driving licence and PAN card were found lying at the place of incident. Section 106 of the Indian Evidence Act, 1872 places the onus of proving the fact especially within the knowledge of any person, the burden of proving that fact is upon that person. As we have observed that the appellant, Chander Shekhar has neither denied nor provided any explanation about the receipt of such documents at the place of incident. Their presence at the place of incident cannot be denied.

23. The presence of the appellants at the crime scene is also verified from the statement of Man Singh (PW-6) who has stated that he was working as a cobbler for last about 12 years on the footpath in front of S-183, GK-II, New Delhi. On 15.10.2004 at about 8.30 a.m., when he was sweeping the place of his work, he saw Kajormal coming with a milk packet in his hand and two boys were also with him. He further stated that he neither know the name of the said two boys nor could he identified them. However, in his cross-examination by learned APP for the State, he has identified accused Chander Shekhar as the same boy who was with Kajormal on that day along with one more boy and had taken tea at the shop of Khurshid Ahmad (PW-9). However, he has failed to identify Ashok Kumar who was with Chander Shekhar on that day along with the deceased. In his cross-examination, on behalf of the appellants, he has denied that he had identified the accused, Chander Shekhar at the instance of APP for the State and stated that he had seen the accused once in the Court and secondly in Greater Kailash, Delhi.

24. Learned counsel for the appellants contended that the testimony of Man Singh (PW-6) is not worthy of credit as he could not tell the exact date as to when he had lastly seen the appellant. However, in our opinion, his evidence cannot be completely wiped out just because the witness is unable to remember the exact date and time or the exact sequence of happening of events. Man Singh (PW-6) is a poor man and is indulged in his daily pursuit and earning for his basic sustenance and engrossment. His non recalling of the exact time and date of happening of event cannot be taken against him.

Motive

25. It is a settled law that in case of circumstantial evidence, motive assumes great significance and importance, for the reason that the absence of motive would put the court on its guard and cause it to scrutinize each piece of evidence very closely in order to ensure that suspicion, emotion or conjecture do not take the place of proof. However, the evidence regarding the existence of motive which operates in the mind of an assassin is very often and not within the reach of others. The said motive may not even be known to the victim of the crime. The motive may be known to the assassin and no one else may know what gave birth to such evil thought in the mind of the assassin. In a case of circumstantial evidence, the evidence indicating the guilt of the accused becomes untrustworthy and unreliable, because most often it is only the perpetrator of the crime alone, who has knowledge of the circumstances that prompted him to adopt a certain course of action, leading to the commission of the crime. Therefore, if the evidence on record suggest sufficient/necessary motive to commit a crime, it may be conceived that the accused has committed the same. A similar view was taken by the Hon''ble Supreme Court in Munish Mubar Vs. State of Haryana, .

26. In the instant case, K. Sukumaran (PW-7) has stated that on 12.10.2004, one Suresh Marwah gave Rs. 40 lakhs to him stating that Mr. Gautam Mitra had sent this

money for him. Accordingly, he took that amount and telephoned to Mr. Gautam Mitra and asked him as to what has to be done with the said money. Gautam Mitra told him that he should give that amount to Kajormal (deceased), to keep it in safe custody. He along with Chander Shekhar went to S-183, GK-II in his car and handed over the amount of Rs. 40 lakhs to Kajormal. Kajormal with the help of Chander Shekhar (appellant) kept that amount of Rs. 40 lakhs in the room upstairs on terrace. He also stated that on the date of incident when he searched for the said amount, it was not found and the door of that room where money was kept was found open. Later on, SI Arun Kumar Verma (PW-19) and Inspector Vimal Kumar (PW-20) got recovered a sum of Rs. 25,75,500/- and Rs. 8,83,600/- from the appellants on 29.10.2004. The same clearly establishes the motive of the said crime was to rob Rs. 40 lakhs kept at S-183, GK-II in the process of which, the deceased was killed. The appellant Chander Shekhar knew that the amount of Rs. 40 lakhs was kept by Kajormal (deceased) on the terrace.

Conduct of the appellants

27. K. Sukumaran (PW-7) has stated that on 13.10.2004, he gave Rs. 3000/- to get cancelled two tickets and to get booked two fresh tickets to go to Kerala. Chander Shekhar left for Hazrat Nizamuddin Railway Station, but did not turn up. Later on, the said documents were recovered from the scene of crime. SI Arun Kumar Verma (PW-19) stated that on 29.10.2004, he along with Inspector Vimal Kumar, SI Raj Kumar, ASI Ajay Tyagi and two other constables had gone to Jaitpur Extension in search of the appellants in their houses, but they could not be found. When they reached G Block, Jaitpur, they saw two boys i.e. the appellants who started running away on seeing them. The same stand was reiterated by Inspector Vimal Kumar (PW-20). The conduct of the appellants, thus, is relevant u/s 8 of the Indian Evidence Act, 1872 which has a bearing on the fact that the money robbed was in their possession at that time, which was later recovered. The appellant, Chander Shekhar never resumed his office and was apprehended only on 29.10.2004. The conduct of a person concerned in a crime would become relevant if his conduct is related with the incident. To record a conduct to be relevant, it must be closely connected with the incident concerned. If the Court considers some conduct to be relevant, then the conduct must help the Court in arriving at a conclusion in the controversy. However, a conduct too become relevant u/s 8 of the Act, need not become simultaneous or spontaneous, that is to say, with that very incident. It may become subsequent or previous to the main fact in issue.

28. The Apex Court in Shyamal Ghosh Vs. State of West Bengal, , has observed:-

60. As we are discussing the conduct of the prosecution witnesses, it is important for the Court to notice the conduct of the accused also. The accused persons were absconding immediately after the date of the occurrence and could not be arrested despite various raids by the police authorities. The investigating officer had to go to different places i.e. Sodhpur and Delhi to arrest the accused persons. It is true that

merely being away from his residence having an apprehension of being apprehended by the police is not a very unnatural conduct of an accused, so as to be looked upon as absconding per se where the court would draw an adverse inference. Paramjeet Singh @ Pamma Vs. State of Uttarakhand, is the judgment relied upon by the learned counsel appearing for the appellant. But we cannot overlook the fact that the present case is not a case where the accused were innocent and had a reasonable excuse for being away from their normal place of residence. In fact, they had left the village and were not available for days together. Absconding in such a manner and for such a long period is a relevant consideration.

61. Even if we assume that absconding by itself may not be a positive circumstance consistent only with the hypothesis of guilt of the accused because it is not unknown that even innocent persons may run away for fear of being falsely involved in criminal cases, but in the present case, in view of the circumstances which we have discussed in this judgment and which have been established by the prosecution, it is clear that absconding of the accused not only goes with the hypothesis of guilt of the accused but also points a definite finger towards them.

Defects in investigation

29. Learned counsel for the appellants, at various stages of investigation, are also not material in our opinion so as to affect the prosecution case. The appellants cannot take advantage of faulty investigation, if the guilt is made out from the other circumstances and statement of the witnesses as a whole.

30. It is settled law that for certain defects in investigation, the accused cannot be acquitted. In Hema Vs. State, thr. Inspector of Police, Madras, , the view taken by in C. Muniappan and Others Vs. State of Tamil Nadu, was reiterated. The Hon''ble Supreme Court of India observed as under:-

55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation.

31. In the case of defective investigation, the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect. Otherwise, it would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.

Other circumstances

32. The post mortem of the deceased was carried out by Dr. M.G. Jayan, Senior Resident (PW-15). He exhibited his report as Ex. PW15/A. In his report, he has observed the following injuries:-

1. Incised wound over anterior aspect of neck just below the larynx with clean reddened edges adherent with blood of size 10 x 6 cm (Right end measuring 8 cm from Right masdoid and left end measuring 7 cm left masdoid) exposing S/C tissue, muscles jugular v severed trachea, right common carotid A associated with tailing on left side.

2. Another horizontally superficial placed incised wound involving subcutaneous tissue of size 2 x 1 cm, 2 cm vertically above the left end of the first wound with clean reddened edges.

3. Two horizontally placed stab wounds on right buttock (being 2 cm apart) of sizes 2.5 x 1 cm with clean reddened edges and acute angles and of depth 4.5 cm with s/c tissue and muscles being divided superior and medially.

33. A perusal of the post mortem report dated 23.12.2004 clearly shows that the cause of death was due to injury No. 1 caused by sharp edged weapon which was opined as sufficient in the ordinary course of nature to cause death.

34. A perusal of CFSL report dated 30.03.2005, which is Ex. PW21/A and CFSL report (Biology Division) dated 30.03.2005, which is Ex. PW21/B further showed that blood group i.e. ''B'' group of the deceased was found on ''Ex.1'' jeans pant and ''Ex.5'' yellowish blood stained gauze, recovered from the scene of crime, matched with the clothes recovered at the behest of the appellants, that is ''Ex.6a'' banian, ''Ex.9a'' T-shirt, ''Ex.9b'' jeans pant and ''Ex.10b'' pant, indicating that the appellants were present and had committed the crime of robbery, in the process of which the deceased was murdered. The said samples recovered from both the appellants, their conduct and running away on seeing the police and the statement of Man Singh (PW-6) are sufficient enough to establish the commission of offence and that the said offences were committed with a common intention by the two appellants.

35. In view of aforesaid gamut of facts and circumstances of the case, we do not find any merit in the present appeals. We uphold the judgment dated 20.02.2012 and order on sentence dated 25.02.2010 passed by learned Additional District and Sessions Judge, New Delhi (02), Patiala House Courts, New Delhi.

36. Accordingly, both the appeals are dismissed. Trial Court record be sent back immediately.