Reserved

A.F.R.

CRIMINAL APPEAL NO. 7757 OF 2009

Manish …..... Appellant

Vs.

State of U.P. …..... Respondent

CONNECTED WITH

CRIMINAL APPEAL NO. 7825 OF 2009

Mahesh Chandra and another ..... Appellants

Vs.

State of U.P. …..... Respondent

CONNECTED WITH

CRIMINAL APPEAL NO. 7398 OF 2009

Devendra and another ..... Appellants

Vs.

State of U.P. …..... Respondent

CONNECTED WITH

CRIMINAL APPEAL NO. 7895 OF 2009

Sandeep and others ..... Appellants

Vs.

State of U.P. …..... Respondent

Hon'ble Sheo Kumar Singh, J.

Hon'ble Vinod Prasad, J.

(Delivered by Hon'ble Vinod Prasad J.)

In this cluster of four appeals, in all eight appellants Devendra A-1, Murad Ali A-2, Manish A-3,Mahesh Chandra A-4, Kali Ram A-5, Sandeep A-6,Pradeep A-7,and Mahendra A-8, have challenged the judgment of their conviction and order of sentence dated 23.11.2009 passed by Additional Sessions Judge, Court No. 9, Ghaziabad in S.T. No. 284 of 2007, State Vs. Sandeep and others, relating to P.S. Garhmukteshwar, District Ghaziabad. By the impugned judgment, learned trial Judge has convicted all the appellants herein for offences u/Ss 120-B, 302/149, 364, 201 I.P.C. and has sentenced them to life imprisonment with Rs. 10,000/- fine and in

default of payment of fine to serve one year additional imprisonment for each of the two offences u/Ss 120B and 302/149 I.P.C., seven years RI with Rs. 5,000/- fine under section 364 I.P.C., the default sentence being six months additional imprisonment, four years RI with Rs. 2,000/- fine, the default sentence being three months additional imprisonment under section 201 I.P.C. with further direction that all the aforesaid sentences of each of the appellants shall run concurrently.

Precursor of the incident stated concisely, as was slated in the written / chik FIR Exts. Ka-1 and Ka-2 and later on divulged during the Sessions Trial by the fact witnesses Smt. Saroj P.W. 1, Rajiv Kumar P.W. 2, Harvir Singh P.W. 3, Mohd.Dilshad P.W.8 are that the informant Smt. Saroj wife of Brij Kishore P.W.1 is originally resident of village Bachhlauta, her native village, but later on she came to reside in village Keshopur Sathla district Bulandshahar. She had two sons Rajiv Kumar P.W. 2 and Sanjai and a daughter Smt. Seema (deceased) who was married to the appellant Sandeep A-6 S/o appellant Mahendra A-8 and brother of appellant Pradeep A-7. Informant's house in village Bachhlauta was trespassed/ illegally grabbed by Lallu, Dhanattar and Pradeep. An eviction suit was filed by the informant to reclaim possession of her aforesaid house, which was pending in Hapur Court, district Ghaziabad. On family front, marital relationships between the spouses Sandeep A-6 and deceased Seema ran riot so much so that husband A-6 had filed a divorce suit against Seema. Seema at her end firstly filed an application u/s 156(3) Cr.P.C. being application No. 25 of 2004 (paper No. 85 Ga) and later on also lodged criminal case No. 25 of 2004, Seema vs. Sandeep, u/s 498-A I.P.C. and ¾ D.P. Act, in the Court of A.C.J.M., Hapur(Paper No. 86 Ga, 87 Ga and 88 Ga).

In this hostile backdrop it is alleged that on 5.4.2006, informant Smt. Saroj accompanied with deceased and her son Rajiv Kumar P.W.2 had gone to Hapur court to attend civil litigation regarding Bachhlauta house. Outside court campus they spotted a white Ambassador Car DDQ 902 and two motor cycles parked close by. A-3,A-6,A-7&A-8 were sitting inside the car having a dialogue with outside standing accused appellants A-1,A-2,A-4 and A-5. In the court premises informant met appellant husband Sandeep A-6, along with Lallu and Amit, who told her to settle the dispute.

Informant therefore permitted deceased Seema to accompany A-6 to have compromise talks. During this period PW2 went away to a chemist shop to purchase some medicines. Seema went away to have such a conversation and P.W.1 remained in the Court veranda waiting for her return. Seema however did not return after a long gap of time on which,PW1&2 vainly searched for her and they both then went to the police station where they met only a gate keeper as other police personnel were on duty in *Chaiti Adhey festival.* P.W. 1 and P.W.2 then returned to their village Keshopur Sathla and again unsuccessfully searched for Seema. Their efforts to contact her on her mobile phone No. 9411230893, in the evening, was also in vain although P.W.2 over heard on phone sound of a moving car and a person saying to pull up the window and car door and shut the mouth of Seema. Same day at again 8 p.m. PW 1&2 went again to the police station but at that time also only gate keeper was present and no police personnel met them but they had given a written report at the police station regarding missing of Seema. Following day when informant and PW2 had gone to the police station they found police personnel reading a NEWS paper, who informed them that a woman corpse has been discovered in Hiranpur jungle. On contacting police of Garhmukteshwar on phone by the police of P.S. Hapur, it was informed that the cadaver of the woman was already dispatched to the District Head Quarter at Ghaziabad. Informant, accompanied with her husband and son came to Ghaziabad mortuary where they identified recovered corpse to be of that of their daughter Seema. Postmortem on her cadaver was conducted and thereafter the body was cremated by the informant and her relatives. Subsequent to all this that a typed report Ext. Ka-1 was got prepared by the informant Smt. Saroj P.W.1 and carrying it informant came to P.S. Garhmukteshwar where she lodged her report on 7.4.2006 at 8.30 P.M. as crime no. 115 of 2006, under sections 364, 302, 201, 120-B I.P.C.

HCP Padam Singh P.W. 4 registered the crime by preparing chik FIR Ext. Ka-2 and GD No. 43. Ext. Ka-3.

S.I. Satendra Singh P.W. 6 of P.S. Garhmukteshwar along with constable Neel Dhwaj and Veersen had come to the government tube well where the dead body of the deceased was lying and after appointing

inquest witnesses had conducted inquest on the cadaver of the deceased on 5.4.2006 between 7.30 to 10 P.M. vide Ext. Ka-5. Other relevant papers of Police Form No. 13, photo lash, letter to CMO, seal mohar, report to SSI were also prepared simultaneously, which all are exhibits Ka-6 to Ka-10. Deceased corpse along with the inquest memo and above to referred documents were handed over to the aforesaid constables Neel Dhwaj and Veersen to be carried to the mortuary for autopsy purposes.

Investigation into the crime initially was conducted by in-charge Inspector K.N. Singh of P.S. Garhmukteshwar. After transfer of investigation to P.S. Hapur, SSI R.K. Singh conducted further investigation and from him, Ajit Singh Chaman, in-charge Inspector Garhmukteshwar P.W. 7 took over the investigation on 11.6.2006. He noted down the call details of the deceased Mobile No. 9411230893. He dispatched the reminder for getting the results of viscera report, which was dispatched on 1.7.2006. On 11.8.2006, viscera report was received to P.W. 7, who copied the same into the GD. On 26.8.2006, P.W. 7 recorded the interrogatory statements of the informant Smt. Saroj P.W.1, Rajiv Kumar P.W.2 and Harvir Singh P.W.3. Subsequent thereto, on 27.8.2006, P.W.7 arrested appellants Mahesh Chandra A-4, ManishA-3, Kali RamA-5 and Pradeep A-6 and from their possession, car having registration No. DDQ 902 and from possession of appellant ManishA-3, a sim card No. 9412549268 was recovered. From the possession of appellant Mahesh Chandra A-4,a Nokia mobile phone 1110 of grey colour having sim card no. 9719794788 and mobile having IMEI no.356636001910406 were recovered. Arrested accused were brought to P.S. Garhmukteshwar, and their statements were recorded. On 30.8.2006, accused Devendra A-1 was arrested and from his possession motorcycle no. U.P. 12D-2585 was recovered. Accused Murad Ali A-2 was arrested on 7.9.2006 and his statement was note in the case diary.P.W.7on the basis of call details concluded that the mobile recovered belonged to A-4 and from the aforesaid mobile other accused, in conspiracy with each other, had called Seema (deceased) at Chandi temple and from there she was abducted and later on done to death in Hiranpur jungle and her cadaver was disposed off. On 3.10.2006 autopsy Dr. K.N. Tiwari was interrogated and his statement was recorded.

On 4.10.2006, P.W.7 Investigating Officer applied for issuance of NBWs and 82/83Cr.P.C.processes against accused SandeepA-6 and MahendraA-8.SandeepA-6 later on surrendered in court and his statement was recorded and at his disclosure statement, Mohd. Dilshad P.W.8 to whom Sandeep A-6 is alleged to have sold the mobile phone of the deceased was interrogated. Wrapping up the investigation, ultimately charge sheet no.240 of 2006 was submitted by P.W.7 on 24.11.2006 vide Exhibit Ka-10 against all the appellants. P.W.7 has also proved spot inspection map Exhibit Ka-11 prepared by his predecessor investigating officer K.N. Singh.

Autopsy on the cadaver of the deceased was performed by Dr. K.N.Tiwari P.W.5 on 6.4.2006 at 2 P.M. vide Exhibit Ka-4. In the estimation of the doctor, deceased was 38 years of age and half to one and half day had lapsed since she was murdered. Deceased had an average built body and rigor mortis was present all over her cadaver. Her eyes were congested and closed and no sign of decomposition was found on her dead body. Blood stained froth was coming out from nostrils and her nails were cyanosed. However no ante mortem injury was detected by the doctor on the dead body. In his opinion, doctor has categorically stated that "cause of death could not be ascertained Viscera preserved". In viscera stomach and its contents, pieces of intestine, spleen, one kidney, pieces of liver, preservative were preserved. Deceased right and left lungs, brain, pancreas, spleen and kidneys were congested. 100 ml of semi digested food was present in her esophagus whose walls were also congested.

Viscera report dated 15 July2006, however indicated that no poison was found in the parts of the body sent for examination.

On the strength of submitted charge sheet accused were summoned and since disclosed offences were exclusively triable by Sessions Court, learned C.J.M. Committed the case to the Court of Session where it was registered as S.T. No.284 of 2007, State vs. Sandeep and others, before Sessions Judge, Ghaziabad on 8.3.2007. Aforesaid Sessions Trial was transferred to Additional Sessions Judge Court no.9.

Learned trial Judge charged the appellants with offences under sections 120B, 364, 302/149 and 201 IPC on 3.7.2007. All the appellants,

after being read over and explained the charges, abjured them and claimed to be tried and consequently Sessions trial procedure was resorted to establish their guilt.

In the trial prosecution rested it's case on oral testimonies of eight witnesses including those of informant Smt. Saroj PW1,Rajiv KumarPW2,Harvir Singh PW3 and Mohd. Dilshad PW8 as fact witnesses. Formal witnesses are HCP Padam Singh PW4, Dr. K.N.Tiwari PW5, S.I. Satendra Singh PW6, and I.O. Ajit Singh Chaman PW7. It also relied upon documentary evidences of phone call details and other exhibits.

Since, P.W.1 and P.W.2, both are witnesses of the same facts therefore, we take stock of their evidences cumulatively. Both of them besides divulging facts already slated herein above further testified that four and half months after the incident that A-4 had come to them at about noon and stayed with them about half an hour during which he had disclosed other appellants to be real perpetrators of the crime, which fact can be get verified by hearing accused conversation at Sardar Hotel, Nanpur, where all the accused were to collect. However PW1 admitted that such a disclosed information was never conveyed by her to any other person including co villagers but to check the truth of said disclosure she (informant) had send both her sons to the said hotel, who both after reaching at the said hotel covered their faces and lied down in an adjacent hut. After sometimes on three motorcycle all the appellants arrived at the hotel and started *inter se conversations* about the payment of money and amidst that talks that the accused appellants had divulged their involvement into the murder of the deceased, which conversations were overheard by the sons who both relayed it to the informant. Both the witnesses confirmed that civil suit was contested with Lallu and Dhanattar. PW1 further admitted that the incident had occurred on 5th whereas dead body was discovered on 6th but the F.I.R. Exhibit Ka-1 was lodged on 7th April arraigning only four persons as culprits, who were Pradeep A-7, Lallu, Dhanattar and Amit. Both the witnesses, PW1&2 were confronted with various omissions and contradictions occurring in FIR and their interrogatory statements u/s 161 Cr.P.C. to which, they both had failed to offer any explanation. PW1 further deposed that she was interrogated by

the I.O. four months after the incident. Informant further stated that while searching Seema she had inquired from the shopkeepers near the court, who had informed her that a lady was talking with a man and thereafter, had gone with him. Both the witnesses, while maintaining that the deceased Seema was taken away on the pretext having a compromise talks and was done to death. P.W. 1 also deposed that when deceased had gone with the accused then PW2 was not present as he had gone to a chemist shop to purchase medicine. Ten minutes after seems had left that PW1/ informant had inquired about her(Seema) but she was not traceable. PW1 & 2 further stated that they had tried in vain to contact the deceased on her mobile in the evening. Informant however was unable to disclose the persons who had accompanied her to lodge the report and name of the typist and the time of lodging of the F.I.R. She was suggested that to save the persons of Bachhlauta that she had falsely implicated the appellants and had testified a mendacious story and that she had never gone to the court nor Mahesh(A-4) had approached her nor had informed her regarding the murder. She was also suggested that no statement of her was recorded by the I.O. and she had no knowledge about the incident and her statements are false.

Rajiv Kumar P.W.2, attour the testimonies of the informant PW1, further deposed that on the incident date they had started from their house at 8 A.M. and had arrived in Hapur court at 10 A.M. Regarding compromise, Amit, Lallu and Sandeep had call them. P.W.2 further admitted that he had not informed the I.O. regarding the appellants presence outside the court gate, their names and regarding the ambassador car. He admitted that when the deceased was taken away, he was not present at the spot as he had gone to purchase medicines. PW2 further testified that on the disclosure statement of Mahesh Chandra (A-4), he along with his brother had gone to Sardar Hotel on 25.8.2006 at 7 P.M., reaching there in 2-2 ½ hours at a distance of 10 kilometers. From Garh, the said hotel is 10/15 kilometers. He had admitted that while going to Sardar hotel, police station Garh will fall in the way and from Garh Bus station, police station is only half a kilometer. They had lied down in an adjacent hut covering their faces to hear accused conversations. He also

admitted that the accused persons were in a tin shed and he and his brother were in the hut adjacent to the shed. 20 or 30 other people were present at the hotel. He admitted that after hearing accused conversations at the hotel he had not informed the police/I.O. but had informed only to his mother. On three motorcycles accused had arrived and amidst their talks they had divulged the entire episode. He further deposed that he and his brother had lied for two or three hours and in between this period neither the owner nor any employee of the hotel made any inquiries from them. He was unable to disclose the area of the hut in which he was lying as well as time when accused had left the hotel. He was suggested that he had never gone to the Sardar Hotel and he was stating a myth. PW2 has admitted matrimonial litigation between Seem and A-6 to A-8 and also confirmed civil litigation with Lallu, Dhanattar, Pradeep and Amit. He clarified that Pradeep, with whom the civil litigation is pending is a different person than the appellant Pradeep A-7. According to him for compromise Lallu, Amit and Sandeep had approached his mother. P.W.2, however, showed lack of knowledge about lodging of FIR by his mother PW1 and he candidly stated that I.O. had not interrogated him. Significant omissions regarding parking of ambassador car outside the court precinct and other facts have been put to him but P.W.2 could not offer any viable explanation for the same. He further admitted hearing of conversations on phone, but that fact too was not told to the I.O. under section 161 Cr.P.C. He was suggested that he had never gone to the hotel nor had heard any conversation and at the tutoring of the counsel, he was deposing falsely. P.W.2 was unable to detail the place where they had searched for Seema. He further admitted that Hapur police station is 70/80 paces away from the court and at the police station, on 5.4.2006, except gatekeeper they had not met any police personnel and to the gate keeper they had not informed about the elopement of Seema. PW2 also admitted that even to their counsel also they had not informed regarding missing of Seema, which happening had occurred prior to mid noon. PW2 also deposed that on the incident date they had arrived their village at 5 or 6 P.M. and thereafter along with his mother and brother they had again returned to the police station at 8 P.M. but at that time also they had not met any

police personnel. He made a significant statement that on the incident date, when they had gone to police station at 8 P.M. they had given a written report regarding the incident which was handed over by his mother. His brother Sanjay was with him at that time. He also admitted that a divorce suit has been filed by Sandeep A-6 against his sister along with an earlier case and subsequent thereto, that Seema had lodged the case of dowry harassment. He was suggested that he was deposing falsely and the accused appellants have been arraigned as culprits after due consultation and deliberations. Concerning Mahesh, P.W.2 had further evidenced that he did not know him from before and Mahesh himself had introduced himself to him. Regarding accused Manish A-3, Devendra A-1, Kali Ram A-5 this witness has stated that he did not know them since before and it was Mahesh A-4, who had informed him about them. P.W.2further evidenced that he had not informed the episode concerning Mahesh A-4 and his confession to the police nor he had informed it to the Village Pradhan or respectable persons of his locality.

Coming to the evidence of P.W.3 Harvir Singh, it is discernible that he had stated that at 2-1/2 P.M. while he was heading towards market, then near Chandi temple, he had seen Seema along with Sandeep A-6, Devendra A-1, Murad Ali A-2 and Kali Ram A-5 in an ambassador car proceeding towards Garh. He had further deposed that after some time he had seen Pradeep A-7 and Mahesh Chandra A-4 also going towards the same direction on a motorcycle. He further stated that the police had interrogated him after four and a half months of the incident. In his cross-examination, he admitted that he had been a witness for the informant P.W.1 in a Hapur case. PW3 also stated that he had a conversation with the informant P.W.1 in village Sadhala at her house ten days prior to his interrogation by the police u/s 161 Cr.P.C. and at that time informant was all alone. P.W.3 further testified that in between the incident and giving statement to the police he could not know about the incident nor could come to know the names of the accused. He was suggested that he was giving a false statement and he was a perjurer. He was also suggested that he had never seen the deceased in the company of the appellants. He also deposed that he came to know regarding murder of the deceased after

four months and regarding last seen evidence he had divulged it only to the informant and to nobody else in the village. He also stated that he had not shown the place where he had last seen Seema along with the accused to the I.O. nor the I.O. had asked him to show that spot. He also admitted that he had not informed the last seen evidence even to his family members. He was also suggested that being a pet witness of the informant that he was stating a mendacious version.

Formal witnesses have stated those very facts, which have already been registered herein above and therefore, we eschew repetition, except the statement of the I.O. Ajeet Singh Chaman P.W.7 concerning the sim card and the mobile. According to the I.O. he had collected the call details of mobile of the deceased and had tallied it with the Sim Card of accused Mahesh Chandra A-4 having Sim Card No.9719794788. According to the call details, from the mobile Sim of the deceased a call was given at the Sim Card of accused A-4. From the mobile of Mahesh Chandra A-4 conversations were also made regularly with Manish A-3 on his mobile. The call details are material Exhibit-2 and 3. Regarding selling of mobile phone, I.O./PW7 had informed that the deceased mobile phone was sold by Sandeep A-6 to Dilshad P.W.8. It was also deposed by P.W.7 that prior to him two other I.Os. had investigated the case and informant was interrogated by the first I.O. This witness has proved the omissions and contradictions appeared in the testimonies of the fact witnesses and has made a categorical statement that during investigation it was not brought to his knowledge that on the incident date any *chatti arraha* festival was organized in Garh. I.O. further made a statement that neither informant nor any other witness had informed him regarding organization of said festival and absence of police constables at the police station because of the aforesaid reason and therefore the FIR could not be lodged on the incident date. He further confirmed that the informant had told him that because of the greed of the house accused had murdered her daughter and therefore, they should be punished severely. I.O. affirmed interrogatory statements under Section 161 Cr.P.C. of the informant wherein she had stated that Pradeep, Lallu and Dhanattar because of the house dispute had murdered the deceased and to conceal her cadaver had

thrown it in village Garh. Incident spot was not shown by the informant to the I.O. P.W. 7 further affirmed statements of many shopkeepers but we eschew penning down those depositions as the same are wholly irrelevant. Regarding call details from the mobile I.O. has stated that he had not verified the ownership of the mobile phone alleged to be that of the deceased. I.O. has also admitted that from appellants A-6 to A-8 no recovery has been made relating to crime. He had further admitted that he had not prepared the site plan of the hotel nor he had investigated the enmity with Bachhlauta villagers. He was suggested that he had not prepared any site plan of last seen place because no such fact had ever occurred. I.O. had not interrogated any person of the mobile company department. He further stated that accused A-4 is a resident of village Sangal, Manish A-3 resided in Shahjahanpur, Murad Ali A-2, Kali Ram A-5 and Devendra A-1 were residents of village Saulda. I.O. had no clue about the distance in between these villages. I.O. had admitted that in the FIR Kali Ram A-5, Manish A-3, Mahesh Chandra A-4, Devendra A-1, Murad Ali A-2were not named and his predecessor investigators had also not collected any evidence against these persons. P.W.7 was suggested that on insufficient evidences he had charge-sheeted the appellants.

Turning towards the evidence of Mohammad Dilshad P.W.8, he was declared hostile and was cross-examined and he made a categorical statement that the calls made by him from the Sim Card and mobile set were due to repairing purposes. He has denied his 161 Cr.P.C. statement and had refuted prosecution allegation that Sandeep A-6 had sold him the mobile belonging to the deceased.

In their examinations under Section 313 Cr.P.C. all the accused pleaded a common defence of their false implication. Sandeep A-6, Pradeep A-7 and Mahendra A-8 stated that they have been falsely implicated because deceased had left A-6 due to his poverty. From the nuptial knot they had a son. Therefore, informant due to hostile psyche had arraigned them as accused and the witnesses had deposed a mendacious story.

As stated in the opening paragraph of this judgment, learned trial Judge believed the prosecution case and therefore, convicted the

appellants of the framed charges under Section 120B, 302/149, 364 and 201-A IPC and have sentenced them accordingly vide impugned judgment and order dated 23.11.2009, which decision has now been called in question in the instant appeal.

On the above factual matrix that we have heard Sri P.N. Mishra, Sri V.P. Srivastava, learned senior counsels for the appellants, Sri H.P. Singh, learned counsel for the informant and Sri Sangam Lal Kesharwani, learned AGA for the State, for and against this appeal.

Assailing the impugned judgment, both the learned senior counsel strenuously urged that it is a case of no evidence. The entire evidences singularly and cumulatively indicates and establishes only motive to commit the crime and nothing thereafter. None of the fact witnesses, informant PW1, her son PW2 and P.W. 3, who is the witness of last seen, are trustworthy and reliable witnesses nor their testimonies are convincing and confidence inspiring. Descripencies are galore in oral evidences with vital loopholes and, therefore, cannot be relied upon. Both the mother and the son P.W. 1&P.W.2, have contradicted each other on most pivotal aspects about the incident signifying untrustworthiness of their depositions. There is absolutely no evidence on record that anybody had seen the deceased going with the appellants from the court premises or from it's vicinity. No oral and documentary evidences were filed by the prosecution to establish that on the date of the incident any date was fixed in the civil suit, which was pending between the informant and Lallu, Dhanattar and Pradeep concerning her house in village Bachhlauta. Evidence of Investigating Officer unerringly depicts that the explanation offered for delayed lodging of FIR and informing the police is mendacious and a fib. No festival was going on and, therefore, statement of both P.W. 1 and P.W. 2 that they had not met with any police personnel at the police station on the incident date is absolutely false. Deceased was never forced by any of the appellants to accompany him and/or they and, therefore, charge of abduction and / or kidnapping is not established at all. No force was applied nor any threat was hurled and consequently conviction u/s 364 I.P.C. is illegal and unsustainable. It was at the instance of her mother that Seema accompanied Sandeep A-6 to have a compromise talk. This

circumstance in no way is incriminating and culpable. It is further submitted that the allegation that on the mobile phone, P.W. 2 had heard regarding pulling the window pains and the door of the car is all false and afterthought. Mobile phone of the deceased in fact was never recovered and the entire story has been fabricated by the police. It is next urged that the evidence of P.W. 3 is absolutely false and his entire testimony vetted searching only leaves an impression that he is a planted and a tutored witness and he had never seen the deceased in the company of the accused. No physical injury was found on the cadaver of the deceased to indicate that she was physically assaulted and was done to death. Viscera report also does not indicate administering of poison to her and, therefore, cause of deceased death lies in a realm of uncertainty and consequently it cannot be concluded even for a moment that deceased was murdered. When autopsy doctor P.W. 5 was examined at the first instance on 3.4.2008, he was unambiguous that cause of deceased death was unknown and to pinpoint and ascertain it that her viscera was preserved. Six months thereafter prosecution has recalled the postmortem doctor to get it elicited from him that the deceased had died because of vasovagal shock (all of a sudden death) but even that fact do not anoint guilt of any of the appellant conclusively and convincingly. Further more doctor was uncertain on the point as he opined that due to vasovagal shock, death may or may not occur and hence there is absence of reliable evidence that the deceased met homicidal death at the hands of the appellants. Regarding mobile phone calls, it neither proved the charge of murder nor are relevant and the time factor between call details and the incident, leaves no manner of doubt that the entire prosecution story is cooked up and fabricated. It is next urged that the learned trial Judge completely ignored significant evidences crumbling prosecution edifice and has concentrated only on truncated version to convict the appellants and, therefore, the impugned judgment should not be sustained and the appeals filed by the appellants be allowed and they be acquitted of all the charges and be set at liberty.

Learned AGA to the contrary submitted that the circumstances brought on the record by the prosecution indicate that the deceased was

taken away from the Court campus in an ambassador car and subsequently was murdered and her corpse was disposed off. Since, it is not a case of an eye witness account, prosecution has successfully brought on record the motive, last seen evidence against the appellants and, therefore, the charge of murder has been established beyond any shadow of reasonable doubt and appellants' appeal sans merit and deserves to be dismissed.

We have pondered over rival submissions and have gone through the entire oral and documentary evidences exists on the record carefully and searchingly. It is a case based on circumstantial evidence regarding which there are innumerable judicial pronouncements crystallizing law succinctly and lucidly and the trite law which now has emerged is that in cases based on circumstantial evidence, each ring of circumstance woven together must present a complete chain and it must be a pointer only to the guilt of the accused without admitting any other hypothesis or exception. Unless these two facets are established, in a case rested on circumstantial evidence, guilt of the accused cannot be taken to be established. It is impossible to register each of those precedent cases but for the sake of convenience, it will be appropriate to take stock of some of those judicial pronouncements and we herein below refer some of them countenancing above slated expounded law:-

In **Paramjeet Singh versus State of Uttarakhand:AIR 2011 SC 200** it has been held by the apex court as under:-

"14. Though a conviction may be based solely on circumstantial evidence, this is something that the court must bear in mind while deciding a case involving the commission of a serious offence in a gruesome manner. In Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622, this Court observed that it is well settled that the prosecution's case must stand or fall on its own legs and cannot derive any strength from the weakness of the defence put up by the accused. However, a false defence may be called into aid only to lend assurance to the court where various links in the chain of circumstantial evidence are in themselves complete. This Court also discussed the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone and held as under :

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

(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."

In **Ramesh Bhai and Anr. v. State of Rajasthan:AIR 2009 SC(Suppl) 1482** it has been held as under:-

"5. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person.(See Hukam Singh v. State of Rajasthan (AIR 1977 SC 1063); Eradu and Ors. v. State of Hyderabad (AIR 1956 SC 316); Earabhadrappa v. State of Karnataka (AIR 1983 SC 446); State of U.P. v. Sukhbasi and Ors. (AIR 1985 SC 1224); Balwinder Singh v. State of Punjab (AIR 1987 SC 350); Ashok Kumar Chatterjee v. State of M.P. (AIR 1989 SC 1890). The circumstances from which an inference as to the 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. In Bhagat Ram v. State of Punjab (AIR 1954 SC 621), it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.
6. We may also make a reference to a decision of this Court in C. Chenga Reddy and Ors. v. State of A.P. (1996) 10 SCC 193, wherein it has been observed thus :
"In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence....".
7. In Padala Veera Reddy v. State of A.P. and Ors. (AIR 1990 SC 79), it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests :
"(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
(3) the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of

the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.
8. In State of U.P. v. Ashok Kumar Srivastava, (1992 Crl.LJ 1104), it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.
9. Sir Alfred Wills in his admirable book "Wills' Circumstantial Evidence" (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence: "(1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt connected with the factum probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt, (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted".
10. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touchstone of law relating to circumstantial evidence laid down by this Court as far back as in 1952.
11. In Hanumant Govind Nargundkar and Anr. v. State of Madhya Pradesh, (AIR 1952 SC 343), wherein it was observed thus-
: "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be 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. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed 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 be such as to show that within all human probability the act must have been done by the accused."
12. A reference may be made to a later decision in Sharad Birdhichand Sarda v. State of Maharashtra, (AIR 1984 SC 1622). Therein, while dealing with circumstantial evidence, it has been held that onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are :
(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established;
(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."

When facts of present appeal are vetted in consonance with above parameters of law and facts are analyzed it becomes evident that so far as motive is concerned appellants A-6 to A-8 namely Sandeep, Pradeep and Mahendra could have a motive to annihilate the deceased but simultaneously informant and her son also could have motive to falsely implicate the appellants as well because of matrimonial dispute. Motive being a double edged weapon and for both the factions it existed , therefore in our view nothing much turns on that. However we are of the opinion that without any immediate reason it was not such a compelling reason for the appellants to pick up the deceased from the court premises and do away with her. Husband A-6 had already filed a divorce suit against her, which was pending adjudication therefore it is not appealing, albeit not impossible, for the family to involve themselves in such a crime. Since from the facts of the present appeal, motive appears to very weak that we have looked for corroboration from other circumstances and sources to judge the guilt of the appellants. In that endeavour, after vetting through the evidences what transpires and emerges is that none of the fact witnesses are wholly reliable nor their testimonies are convincing and creditworthy. Ab initio, it is established that FIR, Ext. Ka-1 is a typed FIR which was lodged after discovery and performance of last rights of the deceased. Thus it is not an FIR which was lodged in haste and therefore glaring omissions and contradiction occurring in it will have significant effect on the veracity and genuineness of the prosecution story. Summating oral evidence of the informant PW1 she had stated that while going to the Court, she had spotted a parked ambassador car with four people sitting inside it and rest of the four accused standing outside where two motorcycles were parked and conversations between them were going on but then all these facts neither finds place in the FIR Ext. Ka-1 nor were

stated to the I.O. by the informant and thus are significant embellishments on which no reliance can be placed. All this are nascent versions stated for the first time during the trial. Further PW1 has not evidenced that she had seen the deceased in the company of all the appellants to consider last seen evidence as an incriminating circumstance against all the appellants. What is of importance is that although P.W.1 has deposed that along with Sandeep A-6 two other accused Lallu and Amit were also present when the deceased had gone to have a compromise conversations with them but on her instructions during investigation I.O. did not find any evidence against Lallu and Amit nor had charge sheeted them nor they have been prosecuted. Additionally, there is dearth of evidence that deceased boarded inside any car much less to say the ambassador car alleged to have been parked near the court. From inside court precinct there is total absence any evidence regarding movement of the deceased nor the informant and her son had seen the deceased in the company of the appellants so much so that it's prosecution own version that when deceased went with some persons to have settlement talks PW2 was not present and he had gone to a chemist shop to purchase medicine and hence on this feeble and unconvincing last seen evidence there remains a single testimony only of PW1. Coupled with above uncoming fact what is totally missing in the prosecution evidence is as to whether any date was fixed in the civil suit on the incident date or not? No convincing documentary evidence worth in name was brought on record by the prosecution. An innocuous natural and neutral circumstance of being present outside the court compound having a dialog amidst each other is not an incriminating circumstance at all unless it is attached with some other culpable circumstance. Further accompanying a single accused who was the husband to have a compromise talks is neither incriminating nor culpable.

Coming to last seen evidence divulged by P.W.3, we have no hesitation in rejecting his testimonies in it's entirety for the reasons that admittedly the said evidence was disclosed four and half months after the incident by PW3 who was wholly a chance witness. Attour, in between the incident and passing of four and half months, Harbir Singh P.W.3 had not

divulged the last seen story to anybody not even to his family members or to the police. He was interrogated by the I.O. only after a gap of aforementioned long period and, therefore, it will be hazardous and dicey to place reliance on such an evidence. P.W.3 seems to be a partisan witness as he has been a witness for the informant in an earlier case as well. Moreover according to PW3 he had informed the informant about last seen evidence ten days prior to his interrogation by the police, then why he kept this evidence close to his chest for such a long period of ten days. Even if we accept the testimony of P.W.3 for the sake of argument then in absence of any viable explanation for not informing the police for all these ten days makes this witness wholly unreliable and got up. No explanation has been offered by the prosecution for concealing the last seen evidence from the police for these another ten days. P.W.3 further evidenced that informant had met him alone at her house and prior to it he was unbeknown about the murder of the deceased is an explanation which is only to be discarded rather than accepted. This witness had not gone away to anywhere and had remained at his house all along and therefore it cannot be believed that he did not come to know about the murder of the deceased for all these four and half months. All these statements seems to be totally mendacious and feigned. It is P.W. 3's categorical statement that prior to informing the informant he had not informed the police regarding last seen evidence which also is a damaging circumstance against acceptance of his evidence. He had not shown to the I.O. the place where he had spotted Seema in the car along with appellants. He had not informed even his family members regarding the aforesaid fact. This witness has been rightly suggested that he had not seen the deceased in the company of the appellants and whatever he had evidenced is all a myth. Vetting through his entire evidence closely, we find him to be a wholly unreliable witness and, therefore, in our opinion, there is no evidence of last seen against the appellants in the present appeal.

Turning towards the conversations overheard on mobile phone, there is contradiction in the statements of P.W. 1 and P.W. 2 both. Firstly, it is not known whose voice has been heard by P.W.2 as he could not identify it and secondly there is no evidence that the deceased ever boarded inside any

car. Moreover, overheard voices on mobile phone is in the nature of hearsay evidence and therefore without any other circumstance establishing that fact the said evidence does not countenance case of the prosecution and are wholly insufficient to establish the guilt and charge of murder against the appellants.

Coming to another circumstance regarding the confessional statements made by Mahesh Chandra A-4, the said evidence, according to prosecution case itself was surfaced after four and half months of the incident. This period is too long for us to place any reliance on such an extra judicial confessional statement that to which is exculpatory and without any immediate reason. The statement of a co-accused cannot be read against another co-accused and, therefore, the disclosure statements by Mahesh A-4 to the informant is wholly inadmissible and no reliance can be placed on such an evidence. We do not mean to say that approver's evidence can in no circumstances be relied upon but what we impress upon is that disclosure statement by A-4 does not lead to any inference about guilt of the appellants as no description about the manner and mode of murder disclosed by A-4 was brought on record by the prosecution. His too general statements without specific revelations that the appellants had perpetrated the incident is wholly insufficient to hold guilt of a murder charge proved to the hilt. Prosecution had not endeavoured to bring on record the exact revelation about the conversations between informant and A-4 and hence in our view prosecution does not gain any benefit of his evidence. Further confession by A-4 seems to be motivated for ulterior motives and seems to have been given because of his greed for money on which no reliance can be placed. Why A-4 kept silent for so long is sufficient to discard his so called confessional disclosure. It has been held in **Kailash versus State of U.P.: AIR 1994 SC 470** :-

"*4. It can be seen that the second circumstance, namely, the extra-judicial confession is the main circumstance on which the prosecution case hinges P.W. 10 speaks about the extra-judicial confession. He belongs to village Gugauli Khurd within the limits of the same police station. The village of the accused is situated at about one mile from there. He deposed that 18 to 20 days after the murder the accused came to him at about 5.30 p.m. and he was looking depressed and sad and he stated that he had committed a blunder that he had murdered the deceased and after*

that he had gone to his brother in Punjab and that P.W. 10 is a man of influence in the area and that he should save him. On that very night the Investigating Officer came to him and enquired and he informed him what has happened. This is all the evidence about the so-called extra-judicial confession. In the cross-examination P.W. 10 admitted that a case under S. 307 was instituted against him in the same Police Station and 8 or 10 months back the case was thrown out because it was a false case and final report in that case was also filed by the police.

5. We have carefully gone through the evidence of P.W. 10. We find that the same does not inspire confidence. It is also stated by this witness that the accused, might have opposed his brother in the elections. Be that as it may, we do not find any reason as to why the accused after 20 days should go to P.W. 10 who himself is an accused in another case and make a confession. The suggestion made by the defence that P.W. 10 was deposing at the instance of police is not without force. This circumstance is of doubtful nature and if this circumstance is not to be taken into consideration. Then on the basis of other circumstances even if they are accepted, the case against the accused does not stand established. In the case of circumstantial evidence all the circumstances should be established by independent evidence and they should form a complete chain bringing home the guilt to the accused without giving room to any other hypothesis. In this case we find many missing links."

In **State of Rajasthan versus Chhotey Lal: (2011)14 SCC 303** it has been laid down as under:-

"***7.*** *Furthermore, the High Court also noticed that the extra-judicial confession, alleged to have been made by the accused to PW 3, was neither reliable nor worthy of credence. There was no occasion or attendant circumstances for the accused to make the extra-judicial confession to the witnesses. The FIR itself was lodged after a period of two days from the date of knowledge. The recovery of dead body after a considerable delay at the disclosure statement of the accused would lose its significance and evidentiary value inasmuch as in Ext. P-42 (the paper pasted on the temple wall), it was stated that the dead body was lying in a well. Thus, this was a fact commonly known."*

Further in **Sk Yusuf versus State of West Bengal: AIR 2011 SC 2283** it has been held :-

"**28.** Both Nurul Islam (PW 11) and Ali Hossain (PW 13) are chance witnesses as they alleged to be in Shyamsundar Bazar on that date for marketing and none of them had regular business in that bazaar. The Court while dealing with a circumstance of extra-judicial confession must keep in mind that it is a very weak type of evidence and requires appreciation with great caution. Extra-judicial confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witness must be clear, unambiguous and clearly convey that the accused is the perpetrator of the crime. The "extra-judicial confession

can be accepted and can be the basis of a conviction if it passes the test of credibility".

So far as hearing of inter se accused conversation by P.W.2 and his brother is concerned, the said evidence is hearsay and is inadmissible. Moreover, it is too gibberish and weird and seems to be wholly absurd and puerile to accept that after commission of the murder all the accused will conglomerate at Sardar Hotel in the evening only to confess entire murder episode committed by them in such a loud voice so as to be audible to the persons lying in a nearby hut. No details of conversations or what transpired during conversation in exact words has been brought on the record and hence such an evidence can only be bracketed as hearsay evidence and nothing more. Such type of evidence is wholly inconsistent with the natural human conduct and it will be imprudent to place any reliance on such a version. Statement of P.W.2 regarding the aforesaid fact therefore is untrustworthy and we hereby discard it in it's entirety.

Post mortem report does not establishes conclusively that deceased was subjected to murder by physical violence although, her internal organs were found congested but the cause of her death could not be ascertained. Drawing presumption against the accused to establish a serious charge of murder to the hilt is not desirable and sanctified in law. Vasovagal attack also called neurocardiogenic syncope does not conclusively establishes homicidal death. It is a malaise_mediated by the vagus nerve. When it leads to syncope or "fainting", it is called a vasovagal syncope, which is the most common type of fainting. Vasovagal syncope more commonly affects young adults. There are different syncope syndromes which all fall under the umbrella of vasovagal syncope. The common element among these conditions is the central mechanism leading to loss of consciousness. The differences among them are in the factors that trigger this mechanism. Episodes of vasovagal response are typically recurrent, and usually occur when the predisposed person is exposed to a specific trigger. Prior to losing consciousness, the individual frequently experiences early signs of symptoms such as lightheadedness, nausea, the feeling of being extremely hot or cold (accompanied by sweating), ringing in the ears (tinnitus), an uncomfortable feeling in the heart, fuzzy thoughts, confusion, a slight

inability to speak/form words (sometimes combined with mild stuttering), weakness and visual disturbances such as lights seeming too bright, fuzzy or tunnel vision, black cloud-like spots in vision, and a feeling of nervousness can occur as well. The symptoms last for a few seconds before the loss of consciousness (if it is lost), which typically happens when the person is sitting up or standing. When sufferers pass out, they fall down (unless this is impeded) and, when in this position, effective blood flow to the brain is immediately restored, allowing the person to regain consciousness; if the person does not fall into a fully flat, supine position, and the head remains elevated above the trunk, a seizure may result from the blood's inability to return quickly to the brain. Fainting occurs with the loss of oxygen to the brain. Vasovagal syncope occurs in response to a trigger, with a corresponding malfunction in the parts of the nervous system that regulate heart rate and blood pressure. When heart rate slows, blood pressure drops, and the resulting lack of blood to the brain causes fainting and confusion. Typical triggers for vasovagal episodes include prolonged standing or upright sitting, standing up very quickly, stress directly related to trauma, Stresses, P.O.T.S.(Postural Orthostatic Tachycardia Syndrome), any painful or unpleasant stimuli, Trauma (such as hitting one's funny bone), Venipuncture, High pressure on or around the chest area after heavy exercise, severe menstrual cramps, arousal or stimulants, e.g. sex, tickling or adrenaline, sudden onset of extreme emotions, lack of sleep, dehydration, hunger, exposed to high temperatures, random onsets due to nerve malfunctions, pressing upon certain places on the throat, sinuses, and eyes, use of certain drugs that affect blood pressure, such as cocaine, alcohol, marijuana, inhalants and opiates, violent coughing, serotonin level, swallowing, Low blood sugar etc. and consequently it cannot be said with any amount of certainty that the deceased died of homicidal death by violence and hence we conclude that the deceased was not done to death by the appellants as vasovagal shock is not definite and conducive proof of homicidal death by violence. Conclusion otherwise drawn by the learned trial Judge, therefore cannot be upheld and has to rectified.

Mobile phone story as was detailed by the I.O. already stated herein

above does not establishes the charge of murder and, therefore, in our opinion, it has been rightly argued by the appellants' counsel that it is a case of no evidence.

The case of the defence is that to save the culprits of the house dispute namely, Lallu, Dhanattar and Pradeep, who all were initially named as suspected culprits in the FIR, that appellants have been falsely implicated is not without substance. There are many uncertain and unsatisfactory aspects of the prosecution case, which compels us to take a view different from that of the learned trial Judge and they are firstly, that in the F.I.R. only four accused Pradeep, Lallu, Dhanattar and Amit were named and not the appellant and complicity of those accused were found to be false. F.I.R. was lodged after the discovery of the corpse of the deceased and performing her last rites. It is a typed F.I.R. and, therefore, it cannot be argued that the F.I.R. was lodged with promptness. In our view, if the informant had no suspicious on the present appellant at the time of lodging of her FIR and subsequently for ulterior motives that she changed her stand then no reliance can be placed on her version otherwise there was no difficulty for her to name the appellants as the suspected culprits and perpetrators of the crime in her F.I.R., which was lodged on the third day of the incident and following day of the discovery of the cadaver of the deceased. The second unsatisfactory aspects is that there is contradiction between the evidences of P.W.1 and P.W.2 concerning each pivotal facts about the incident and glaring omissions occurring in the statements of the witnesses. At page 11 of the impugned judgment, learned trial Judge himself has recorded that informant had not informed the I.O. that Sandeep A-6 wanted to have compromise talk with the deceased. On the contrary, informant had stated to the I.O. that because of the lust for house that her daughter has been taken away by Lallu, Sandeep (not the present appellant A-6), Dhanattar on the pretext of a compromise talk and thereafter they had murdered the deceased and had disposed off her corpse. The evidence of P.W.2 regarding hearing of conversation of the accused at Sardar hotel has been contradicted by Surendra Singh D.W.1 examined by the appellants. Learned trial Judge completely ignored that the testimony of P.W.2 concerning his over hearing conversations between

the accused *inter se* is a hearsay evidence, inadmissible in evidence and, therefore, cannot be relied upon and to the contrary he has held that on the basis of retracted extra judicial confession participation of the accused in the crime is established, which opinion is contrary to the too well settled legal proposition. Learned trial Judge has further relied upon the evidence of Harbir Singh P.W.3 regarding last seen evidence. It has already been discussed that the said evidence surfaced four and half months after the incident embalmed with greed for money without divulging it to anybody at any earlier point of time and, therefore, it is difficult to place any reliance on such a version. We therefore find the opinion by the learned trial Judge at page 12 of the impugned judgment wholly unacceptable and, therefore, we take a contrary view and to PW3 Harbir Singh anoint the character of his being a got up witness. Learned trial Judge has further committed an error in relying upon mobile phone conversation and selling of the mobile phone to P.W.8. Firstly, Dilshad P.W.8 had turned hostile and had not supported the prosecution version and secondly he had completely denied his interrogatory statement under section 161 Cr.P.C. From his deposition, the charge of murder is not establish. It is indubitable in law that suspicion howsoever grave cannot take the place of proof. Learned trial Judge has wrongly relied upon 161 Cr.P.C. statement of P.W.8 to hold appellants guilty. Previous statement of witness can be used only for the purposes of contradiction when the maker of the statement enters into the witness box and for no other purpose and, therefore, the reasons mentioned at internal page 20 of the impugned judgment by the learned trial Judge are contrary to the well settled principles of criminal law. Without disclosing actual revelations and conversations merely connecting two mobile numbers is no evidence of murder and therefore, opinion by the learned trial Judge that the mobile phone calls establishes guilt of the accused is wrong and uncalled for and hence cannot be countenanced. Learned trial Judge has further held that since there is no evidence of natural death of the deceased, therefore, crime is proved, as has been recorded at internal page 21 of the impugned judgment, is too preposterous a preposition to be affirmed. Prosecution has to prove its charge beyond all reasonable doubt and guilt of the accused has to be

established to the hilt and once the prosecution has miserably failed to conclusively established the manner and cause of the deceased death, no charge under Section 302 IPC can be said to be established against the accused. Learned trial Judge not only fell in error but has committed glaring mistakes in holding otherwise.

Wrapping up our discussion, for the reasons slated herein above, we are of the opinion that the prosecution has miserably failed to establish guilt of the accused and all the connected appeals by all the appellants deserves to be allowed.

Resultantly Criminal Appeal No.7398 of 2009, Devendra and another Vs. State of U.P., Criminal Appeal No.7757 of 2009, Manish Vs. State of U.P., Criminal Appeal No. 7825 of 2009, Mahesh Chandra and another Vs. State of U.P. and Criminal Appeal No.7895 of 2009 Sandeep and others Vs. State of U.P. all are allowed. Conviction of all the eight appellants Devendra A-1, Murad Ali A-2, Manish A-3, Mahesh Chandra A-4, Kali Ram A-5, Sandeep A-6, Pradeep A-7 and Mahendra A-8 through impugned judgment and order dated 23.11.2009 recorded by Additional Sessions Judge, court no.9, Ghaziabad in S.T. No.284 of 2007, State Vs. Sandeep and others, relating to police station Garhmukteshwar, District Ghaziabad, is hereby set aside and all the aforesaid appellants are acquitted of all the charges framed against them.

Appellants Devendra A-1, Murad Ali A-2, Kali Ram A-5, Sandeep A-6, Pradeep A-7, Mahendra A-8 are on bail. They need not surrender, their personal and surety bonds are hereby discharged. Appellants Manish A-3 and Mahesh Chandra A-4 are in jail. They are directed to be released from jail forthwith unless they are wanted in any other case.

Let a copy of this judgment be certified to the learned trial Judge for follow up action at his end.

Dt.29.1.2014
Arvind/Tamang/-