

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on 31.10.2011

+ **CRL.A. No. 614/2010**

**RAJESH REKWAR** ... Appellant

versus

**STATE (NCT OF DELHI)** ... Respondent

**Advocates who appeared in this case:**

For the Appellant : Mr Rupinder Pal Singh

For the Respondent/State : Ms Richa Kapur

**AND**

+ **CRL.A. 711/2010**

**MOTI @ MOHIT** ... Appellant

versus

**STATE (NCT OF DELHI)** ... Respondent

**Advocates who appeared in this case:**

For the Appellant : Mr Haneef Mohd.

For the Respondent/State : Ms Richa Kapur

**CORAM:**

**HON'BLE MR. JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR. JUSTICE MANMOHAN SINGH**

1. Whether Reporters of local papers may be allowed to see the judgment ? YES

2. To be referred to the Reporter or not ? YES

3. Whether the judgment should be reported in Digest ? YES

**BADAR DURREZ AHMED**

1. These two appeals on behalf of the appellants Rajesh Rekwar and Moti @ Mohit are directed against the judgment dated 26.02.2010 delivered by the learned Additional Sessions Judge, South-East-02, New Delhi in Sessions Case No.53/2008 arising out of FIR No.428/2004 registered at police station Defence Colony under Sections 302/380/201/411/34 IPC. By virtue of the impugned judgment, the appellants Rajesh Rekwar and Moti @ Mohit were found guilty of having committed the offence punishable under Section 302 read with Section 34 IPC as also for the offence punishable under Section 380 IPC read with Section 34 IPC. The appeals are also directed against the order on sentence passed by the learned Additional Sessions Judge on 02.03.2010, whereby both the appellants Rajesh Rekwar and Moti @ Mohit were sentenced to imprisonment for life in respect of the offence under Section 302/34 IPC and were also sentenced to pay a fine of Rs 2000/- each. Insofar as the offence under Section 380/34 IPC is concerned, the appellants were sentenced to rigorous imprisonment for three years and were further directed to pay a fine of Rs 1,000/- each. In default of payment of fine, they were to undergo simple imprisonment for one month. The sentences were directed to run concurrently and the benefit of Section 428 CrPC was given to both the appellants.

**The Charges**

2. The charge against the appellants, as framed by the learned Additional Sessions Judge on 03.05.2006, was that on the intervening night of 13/14-08-2004 at time unknown at House No.24, Annexe Building, First Floor, Anand

Lok, Delhi, the appellants, in furtherance of their common intention, committed the murder of Pushkin and Kuldeep and, thereby they committed an offence under Sections 302/34 IPC. The second charge against the appellants was that on the said date, time and place, they had committed theft of a car bearing Registration No.DL3C Y-8012 (Opel Corsa), one HP Laptop, one instant camera, one Philips DVD Player, one Nokia mobile phone having No.9810545330, one Seiko wrist watch, one portable CD Player with speakers, one leather bag, one handcuff, some clothes, cash, CDs, Credit Cards of ICICI, UTI, Standard Chartered Bank and other articles belonging to Pushkin son of Shri Anil Chandra and thereby they had committed an offence under Section 380/34 IPC.

3. As pointed out above, both the charges against the appellants were found to have been established and, therefore, the learned Additional Sessions Judge convicted and sentenced them accordingly.

4. It may be pertinent to mention at this stage itself that two other persons, namely, Paramvir @ Munna and Jai Kishore were also tried alongwith the present appellants. However, the said Paramvir @ Munna and Jai Kishore were charged under Section 411 IPC. They were acquitted by the learned Additional Sessions Judge. Thus, the present appeals are only concerned with the remaining convicts, namely, Rajesh Rekwar and Moti @ Mohit.

### **Background facts and Prosecution Case**

5. The facts of the case, as indicated in the impugned judgment, are that on 14.08.2004 an information was received at police station Defence Colony regarding the commission of the offence of murder in the first floor of the Annexe portion of 24, Anand Lok, New Delhi. The information was noted in

the Daily Diary Register vide D.D. No.7-A and was assigned to the Additional SHO (Inspector Ranbir Singh), who, alongwith Sub-Inspector Shiv Charan and Constable Veer Bhan, reached the spot. There, in the drawing room, they found the dead body of a man of about 25 years of age wearing a white vest (*baniyan*) and red shorts. They noticed that there were deep injuries on the dead body on the throat, chest and both wrists, which appeared to have been caused by a sharp edged weapon. Inspector (Ranbir Singh) searched the house and found another dead body of a naked man in the bathroom attached to the bedroom. Both the hands of the dead body were tied at the back and both his legs were tied with a pant. There were injuries on the neck, chest and stomach which appeared to have been caused by a sharp edged weapon and they found blood spread around the dead body. Inspector Ranbir Singh also found two blood stained knives, one of which was broken, lying near the dead body in the drawing room.

6. It is the case of the prosecution that Inspector Ranbir Singh recorded the statement of the complainant PW-5 (Anil Kumar Chandra), who stated that he was residing in the ground floor of House No.24, Anand Lok, New Delhi alongwith his wife. The first and second floors of the said house were occupied by the tenants. PW-5 (Anil Kumar Chandra) also stated that his elder son Pushkin Chandra was residing in the first floor of the Annexe of the building. According to the prosecution, A.N. Chandra stated that around 11.00 a.m. in the morning, on 14.08.2004, his domestic servant, PW-1 (Hare Ram), as usual, went to clean the room of Pushkin and when he opened the door, he found the dead body of an unknown person lying in the drawing room. He rushed back and informed A.N. Chandra and thereafter he, alongwith his wife and Hare Ram, went to the Annexe and saw the dead body of an unknown person. It is further stated that they immediately went to the police station to

inform the police and came back to the spot alongwith the police officials. The complainant A.N. Chandra identified the dead body which was lying in the bathroom as that of his son Pushkin Chandra. He, however, could not identify the dead body lying in the drawing room. The statement of Anil K. Chandra is Exhibit PW-5/A. After recording the said statement, Inspector Ranbir Singh sent the *ruqqa* (Exhibit PW-14/1) to the police station and recommended the registration of an FIR under Section 302 IPC. Thereafter, the FIR (Exhibit PW-6/A) was registered and the investigation was assigned to Inspector Ranbir Singh. The crime team as well as the finger print expert were called at the spot who conducted their proceedings. As per the prosecution, the finger print expert picked up chance prints from the two glasses lying at the spot and marked them as Q1, Q2, Q3 and Q4. One chance print was also lifted from a beer bottle lying at the spot and the same was marked as Q5.

7. Thereafter, PW-14 (Inspector Ranbir Singh) seized the said two glasses and the beer bottle vide seizure memo Exhibit PW-7/A. He also made seizures of several other articles, that is, cigarette butt, beer glasses, blood samples of the dead body lying in the drawing room and that of Pushkin Chandra lying in the bathroom, pair of sport shoes, one blood stained knife (Exhibit R-3) and another similar knife with a broken blade which was again blood stained (Exhibit R-4) and two pieces of blade of a knife, which were also blood stained vide memo (Exhibit PW-7/7). The Investigating Officer also seized other articles lying at the scene of crime. The dead bodies were sent for *post mortem* examination. The *post mortem* report in respect of the dead body lying in the drawing room is exhibit PW-4/B. As per the said report, the cause of death has been indicated as haemorrhagic shock due to cumulative effect of ante mortem injuries. The report further indicates that injury numbers 14, 15, 17, 19 and 22 were individually sufficient to cause death in the ordinary course of nature and

that all the ante mortem injuries were caused by a sharp edged weapon. We may point out, at this stage, that the dead body lying in the drawing room was subsequently identified as that of Kuldeep. The identification was done by his father Ranbir Singh and his brother Sudheer Kumar later in the course of investigation by virtue of identification memos (Exhibits PW-14/6 and 14/7 respectively).

8. The *post mortem* report in respect of the dead body of Pushkin Chandra is Exhibit PW-4/A, in which the cause of death has been indicated as haemorrhagic shock due to ante mortem injuries Nos.2 to 11, except injury No.6, which were sufficient to cause death in the ordinary course of nature individually as well as collectively. The report also indicated that all the injuries, except injury No.6, were caused by a sharp edged weapon.

9. In the course of investigation, PW-14 (Inspector Ranbir Singh) found that certain articles belonging to the deceased Pushkin Chandra were missing from his place of residence. It was found that Pushkin Chandra's car bearing registration No. DL-3CY-8012, make-Opel Corsa, was missing. Pushkin Chandra's credit card, laptop computer, mobile phones were also missing, as indicated by Pushkin Chandra's father PW-5 (Anil Kumar Chandra). The Investigating Officer thereafter obtained the statement of accounts of the credit cards of Pushkin Chandra in respect of ICICI Bank, Standard Chartered Bank and UTI Bank. From the said statements, it was found that the credit card of ICICI Bank in respect of Account No.4477460118500000, pertaining to Pushkin Chandra had been operated on 14.08.2004 and that two transactions of Rs 15,000/- each had taken place from the ATM booths at Rajinder Nagar and Hotel Tripti at Karol Bagh. It is further the case of the prosecution that the Investigating Officer PW-14 (Inspector Ranbir Singh) obtained the black and

white photographs and the CD which contained the photographs of the persons who had transacted at the ATM booths. It is the case of the prosecution that since no clue had been received till that time with regard to the identity of the accused persons, Inspector Ranbir Singh circulated the photographs in the area of police station Rajinder Nagar and Karol Bagh, and, in particular, to the beat staff of that area. It is further alleged on the part of the prosecution that Constable Charat Lal and Constable Gorakh Nath of police station Rajinder Nagar had shown the photographs to one Jai Lal who was residing at 4, Janaki Devi Memorial College, Rajinder Nagar and who identified some of the photographs as that of Rajesh Rekwar. We may point out, at this stage, that the said Jai Lal has not been produced as a prosecution witness, but the defence had produced him as DW-1. He has not supported the prosecution version. However, as has been noticed by the learned Additional Sessions Judge, DW-1 does not seem to be a truthful witness.

10. It was found that Rajesh Rekwar was a resident of Balia, police station Malhera, District Chhatarpur, M.P. and consequently PW-18 (Inspector H.C. Verma) visited the native place of the appellant Rajesh Rekwar and on identification by his father Sant Ram, the appellant Rajesh Rekwar was allegedly apprehended and arrested in this case vide Memo Exhibit PW-10/C and his alleged disclosure statement was recorded vide Exhibit PW-10/A. The appellant Rajesh Rekwar was allegedly found in possession of certain articles belonging to the deceased Pushkin Chandra. Those articles include a Philips DVD Player (Exhibit P-7), one portable CD Player (Exhibit P-8), one blue cap (Exhibit R-1), 10 coins of USA [Exhibit R-2 (Collectively)], one dark blue pair of jeans, one half sleeve T-shirt with Reebok written in white on the left side of the chest portion (Exhibit R-3). All these articles were seized by PW-18

(Inspector H.C. Verma) vide seizure memo (Exhibit 10/B). As per the prosecution, the appellant Rajesh Rekwar also got the following recovered:-

- a) One car key (Exhibit P-15);
- b) One key of the flat of Pushkin Chandra (Exhibit P-16).

11. These were seized vide memo (Exhibit PW-7/13) on 30.08.2004 from House No.B-26/1, Old Rajinder Nagar, New Delhi. As per the prosecution, PW-14 (Inspector Ranbir Singh) went to 24, Anand Lok, New Delhi to verify that the key (Exhibit P-16) was that of the flat of Pushkin. Similarly, the key (Exhibit P-15) was also checked by visiting the police station where the car bearing registration No.DL-3CY-8012 was parked and the said car was started with the help of the said key, which, according to the prosecution, confirmed that the key (Exhibit P-15) was of the car belonging to Pushkin. We must point out that the car had been found earlier, having been abandoned. A T-shirt (Exhibit P-17) was also recovered from the appellant Rajesh Rekwar and was seized vide memo (Exhibit PW-7/14). The prosecution alleges that the shirt (Exhibit P-17) was the very shirt worn by the person seen withdrawing money from the ATM in the photographs provided by the ICICI Bank.

12. The appellant Moti @ Mohit was also apprehended in the course of investigation from Rupedia, Indo-Nepal Border (U.P.) and from his possession, PW-18 (Inspector H.C. Verma) allegedly recovered five CDs [Exhibit J-2 (collectively)], 25 coins [Exhibit J-1 (collectively)], one Seiko wrist watch (Exhibit P-2), shorts and shirt [Exhibit P-4 (collectively)]. Blood stained Levis Jeans (Exhibit J-3) and a shirt (Exhibit J-4). These articles were seized vide memo Exhibit 12/A dated 04.09.2004. Apart from these articles, a laptop computer was also recovered from the possession of the appellant Moti @ Mohit and the same was seized vide memo Exhibit PW-12/B.

13. As per the prosecution, the Investigating Officer had moved the application for Test Identification Parade (TIP) proceedings in respect of the appellant Rajesh Rekwar and Moti @ Mohit on 29.08.2004 and 06.09.2004 respectively, but they refused to join the same.

14. The articles, which were seized during investigation, were sent to the Forensic Science Laboratory for examination and the reports are (Exhibit PW-18/A) dated 19.05.2006 and (Exhibit PW-18/B) dated 28.11.2006. We may also point out that as per the prosecution, the Investigating Officer (Inspector Ranbir Singh) sent the *post mortem* reports of deceased Pushkin Chandra and that of Kuldeep Singh, alongwith the alleged weapons of offence, that is, the two knives, one of which was broken, to the Department of Forensic Medicines, AIIMS Hospital to obtain a subsequent opinion regarding the injuries on the dead bodies. The subsequent opinion is Exhibit PW-18/C.

15. After completion of investigation, the charge sheet was filed and after committal of the case to the Sessions Court, the charges were framed against the appellants, as already mentioned above. The appellants pleaded not guilty and claimed trial. The prosecution, in all, examined 18 witnesses. Thereafter, the statements of the appellants under Section 313 CrPC were recorded. One defence witness DW-1 (Jai Lal), as mentioned above, was also examined. After considering the arguments advanced on behalf of the prosecution as well as on behalf of the accused, and after considering the evidence on record, the learned Additional Sessions Judge, as already indicated in the beginning of this judgment, convicted the appellants under Sections 302/34 IPC and 380/34 IPC. They were sentenced, as already mentioned above.

### **Submissions on behalf of Moti @ Mohit**

16. The learned counsel appearing on behalf of the appellant Moti @ Mohit, submitted that the case of the prosecution is based on the alleged circumstantial evidence. The most important elements of the evidence being the testimonies of PW-1 (Hare Ram) and PW-3 (Christopher Jacob), who are the alleged “last seen” witnesses. Another circumstance, which has been read against the appellant Moti @ Mohit is that of the alleged recoveries made at his instance on 04.09.2004. The alleged recoveries included the recovery of the laptop, a bag, five CDs, 25 coins, Seiko wrist watch, shorts etc. The other circumstance, which has been held against the appellant Moti @ Mohit, was his refusal to participate in the TIP proceedings.

17. The learned counsel submitted that insofar as the testimony of PW-1 (Hare Ram) is concerned, the time gap between his having seen the appellants and the time of death of Pushkin Chandra and Kuldeep is too large and, therefore, cannot be regarded as evidence falling in the category of “last seen” evidence. It was further contended that the testimony of PW-3 (Christopher Jacob) does not inspire any confidence inasmuch as he is alleged to have seen the appellant in the company of Pushkin Chandra and Kuldeep at about 12.30 a.m. on 14.08.2004 at a party at Sawant Nagar, when he himself was not an invitee. It was also contended on behalf of the appellant Moti @ Mohit that the recoveries are clearly not believable. According to the learned counsel, the evidence of PW-18 (Inspector H.C. Verma) indicates that he returned from Ropedia, District Bahraich, Uttar Pradesh on 05.09.2004 and it is then that the case property was deposited in the *Malkhana*. The learned counsel submitted that this is belied by the fact that the *Malkhana* register (Exhibit PW-17/3) shows the HP Laptop already deposited in the *Malkhana* on 04.09.2004. It was also contended that PW-17 (Head Constable Ram Avtar) stated that it was on

04.09.2004 that Inspector H.C. Verma had handed over to him the exhibits of the case alongwith the seizure memo and the same were deposited in the *Malkhana*. He also contended that there were other articles in the *Malkhana* for which no recovery memo was prepared by any of the police officials. Thus, according to the learned counsel, the recoveries, insofar as the appellant Moti @ Mohit is concerned, are clearly not believable and cannot be regarded as a circumstance against the said appellant. With regard to the adverse inference, as regards the refusal to participate in the TIP proceedings, the learned counsel submitted that the refusal on the part of the appellant Moti @ Mohit was justified inasmuch as he was under the impression and belief that his photographs might have been taken and might have been shown to the witnesses. Consequently, the learned counsel appearing on behalf of Moti @ Mohit submitted that there was no clinching evidence against the said appellant and, therefore, he was entitled to be acquitted.

**Submissions on behalf of Rajesh Rekwar**

18. The learned counsel appearing for Rajesh Rekwar submitted that the circumstances taken against the said appellant, apart from the so-called “last seen” evidence of PW-1 (Hare Ram) and PW-3 (Christopher Jacob), were the alleged matching of chance print Q3 with the left thumb impression of Rajesh Rekwar (S1); the adverse inference drawn from the refusal to participate in the TIP proceedings; the matching of the blood group of deceased Kuldeep with the blood stains found on the pants of Rajesh Rekwar; the alleged recoveries from Rajesh Rekwar of the articles allegedly belonging to Pushkin Chandra and the alleged recovery of T-shirt (Exhibit P-17) which was allegedly the very same T-shirt worn by the person who operated the ATM machine on 14.08.2004.

19. The learned counsel, insofar as the testimonies of PW-1 (Hare Ram) and PW-3 (Christopher Jacob) are concerned, reiterated the contentions of the learned counsel who appeared on behalf of Moti @ Mohit. As regards the matching of chance print Q3 with the specimen left thumb impression S1 of Rajesh Rekwar, the learned counsel took the plea that the specimen finger prints of Rajesh Rekwar were taken in violation of the provisions of Section 73 of the Indian Evidence Act, 1872 inasmuch as no orders of the Magistrate were taken prior to the taking of the specimen finger prints of the appellant Rajesh Rekwar. Consequently, it was submitted that there was serious doubt with regard to the finger prints having been manipulated.

20. The learned counsel submitted that insofar as the recoveries allegedly made at the instance of the appellant Rajesh Rekwar from his village Balia are concerned, the same were alleged to have been made on 28.08.2004 and were allegedly deposited in the *Malkhana* on 29.08.2004, but, the *Malakhana* Register (Exhibit PW-17/E), shows that the said articles were already deposited in the *Malkhana* on 28.08.2004. Thus, according to the learned counsel, this fact clearly belies the alleged recoveries at the instance of the appellant Rajesh Rekwar.

21. Insofar as the refusal to participate in the TIP proceedings is concerned, the learned counsel appearing on behalf of the appellant Rajesh Rekwar submitted that it was not unnatural or unreasonable on the part of the appellant to have refused to participate in the said TIP proceedings. He submitted that this was a highlighted case. There was a great deal of media attention and that there was apprehension that the police may have shown the photographs of the appellants to the witnesses. As regards the matching of the blood group of Kuldeep with the blood group of the blood stains found on the pants of Rajesh

Rekwar, the learned counsel submitted that the same was also manipulated and was false evidence created by the prosecution.

22. It was, therefore, contended by the learned counsel appearing on behalf of the appellant Rajesh Rekwar that the circumstances allegedly taken against the said appellant were not firmly established and, in any event, did not form a complete chain. He, therefore, submitted that the impugned judgment was liable to be set aside and the appellant was entitled to an order of acquittal.

### **Submissions on behalf of the State**

23. Ms Richa Kapur, appearing on behalf of the State, submitted that all the circumstances have been clearly established by cogent evidence on record. She submitted that insofar as the appellant Moti @ Mohit is concerned, the testimonies of PW-1 (Hare Ram) and PW-3 (Christopher Jacob) have not been shaken, although they were subjected to lengthy cross-examination. She submitted that though there are differences in the dates with regard to when the recovered articles were deposited in the *Malkhana*, they are only minor errors and cannot belie the factum of the recovery itself which has been testified by various witnesses. She also submitted that there existed no reasonable basis or ground for refusal on the part of the appellant Moti @ Mohit to participate in the TIP proceedings. She submitted that the testimonies of PW-1 (Hare Ram) and PW-3 (Christopher Jacob) clearly indicated that the appellant Moti @ Mohit worked in tandem with the co-convict Rajesh Rekwar.

24. Insofar as the appellant Rajesh Rekwar is concerned, Ms Richa Kapur submitted that there was clinching evidence against him. She submitted that there was evidence of withdrawal of money at the two ATM booths by use of Pushkin's ICICI bank credit card. The T-shirt worn by the person at the ATM booth was identical to the T-shirt (Exhibit P-17) recovered from Rajesh

Rekwar. The said T-shirt was not of a design or type which was commonly available. It had unique features. She further pointed out that the chance print Q3 lifted from a glass tumbler at the scene of crime, had clearly matched with the specimen left thumb impression (S1) of the appellant Rajesh Rekwar and there was no answer or explanation for this. She further submitted that while there may have been some reasonable debate with regard to the date of deposit of certain articles in the *Malkhana*, there was no such controversy insofar as the recovery of the T-shirt (Exhibit P-17) vide memo PW-7/14 dated 30.08.2004 is concerned. The said T-shirt was recovered from the appellant Rajesh Rekwar's house in Delhi.

25. She further submitted that the learned Additional Sessions Judge has correctly drawn an adverse inference on account of the appellant Rajesh Rekwar having refused to participate in the TIP proceedings. She submitted that there is no indication that PW-1 (Hare Ram) and PW-3 (Christopher Jacob) had seen the said appellant in the police station. On the contrary, she has drawn our attention to Exhibit PW-14/11, which is the record of the TIP proceedings, wherein the said appellant has stated – “*Main shinakht parade mein hissa nahin lena chahta kyonki Kajal jo party mein Sawant Nagar mein hamein mile thi usne aaj thana Defence Colony mein mujhe dekha hai.*” (I do not want to participate in the identification parade because Kajal whom we had met at the party at Sawant Nagar, has seen me today in police station Defence Colony). According to Ms Richa Kapur, the reason for not participating in the TIP proceedings is not that the said appellant was shown to PW-1 (Hare Ram) and PW-3 (Christopher Jacob) in the police station, but that he had been shown to one Kajal whom he had met at the party at Sawant Nagar. Ms Kapur further submits that this is also an admission on the part of the appellant Rajesh

Rekwar that he had, indeed, attended the party at Sawant Nagar regarding which PW-3 (Christopher Jacob) had testified.

26. She also submitted that insofar as PW-5 (Anil Kumar Chandra) is concerned, he has clearly identified all the articles belonging to his son, the deceased Pushkin Chandra. Some of the articles were recovered from the appellant Rajesh Rekwar. Ms Richa Kapur further submitted that the pants belonging to Rajesh Rekwar had blood stains of blood group 'B'. This was the same blood group as that of the deceased Kuldeep. She submitted that Rajesh Rekwar's blood group was 'O'. Therefore, it could not be said that the blood found on the pants belonging to Rajesh Rekwar was his own blood. She submitted that this was a clear indication that the blood stains on the pants of Rajesh Rekwar were those of the deceased Kuldeep. With regard to the admissibility of the specimen finger prints, Ms Richa Kapur submitted that Section 4 of the Identification of Prisoners Act, 1920 clearly permits the police officers to take measurements, which, as per Section 2(a) of the said Act, included the taking of finger impressions. She submitted that such specimen finger prints were taken in the course of investigation to which Section 73 of the Indian Evidence Act, 1872 did not apply inasmuch as, the said Section 73 would apply only to proceedings pending before the court. Thus, according to her, there was no legal infirmity in the taking of the finger prints in the course of investigation and with regard to the admissibility of the same.

27. Ms Richa Kapur, therefore, submitted that the prosecution has clearly established each of the circumstances, which it had proposed to establish, and the circumstances taken together, formed a complete chain. She submitted that there were no missing links and thus, no interference with the impugned

judgment and / or order on sentence was called for. She requested that the appeals be dismissed.

### **Discussion**

28. After considering the arguments advanced by the counsel for the parties and on going through the entire evidence on record, we find that the fate of these appeals hinges on – first of all, the testimonies of PW-1 (Hare Ram) and PW-3 (Christopher Jacob) insofar as they had allegedly seen the appellants in the company of the deceased shortly before their murders; secondly, the recoveries allegedly made at the instance of the appellants; thirdly, the issue of the appellants refusing to participate in the TIP proceedings; fourthly, the chance print Q3 matching with the specimen left thumb impression (S1) of Rajesh Rekwar; fifthly, the alleged recovery of the T-shirt (Exhibit P-17) at the instance of Rajesh Rekwar and the fact that this T-shirt (Exhibit P-17) was also worn by the person at the ATM on 14.08.2004; and lastly, the blood stains of blood group B (which is the blood group of deceased Kuldeep) being found on Rajesh Rekwar's pants.

29. It is not in dispute that Pushkin Chandra and Kuldeep @ Vishal were found dead in the First Floor Annexe of House No.24, Anand Lok, New Delhi. It is also not in dispute that the deaths of both these persons were homicidal and that the same were caused by sharp edged weapons. The subsequent opinion (Exhibit PW-18/C) indicates that the knives found at the scene of crime could have caused the fatal injuries found on the bodies of Pushkin Chandra and Kuldeep @ Vishal. It is also not in doubt and has been clearly found to have been established by the learned Additional Sessions Judge that the articles belonging to Pushkin Chandra, which were allegedly recovered from the appellants, have been correctly identified by Pushkin Chandra's father PW-5

(Anil Kumar Chandra). The dispute is not so much with regard to the identification of the articles, but with regard to the factum of the recovery itself. In this backdrop, it would not be necessary for us to go into the details of the injuries found on the dead bodies and the manner of infliction of the said injuries nor would it be necessary for us to go into the details with regard to the identification of the said articles at the instance of PW-5 (Anil Kumar Chandra). It has been established by the prosecution that Pushkin Chandra and Kuldeep @ Vishal were the victims of a gruesome double murder and that the murder took place sometime between 1.00 a.m. and 2.30 a.m. on 14.08.2004. At the same time, various articles belonging to Pushkin Chandra were removed from his flat. It is also established in evidence that the dead bodies were discovered by PW-1 (Hare Ram) at about 11.00 a.m. on 14.08.2004.

**Testimonies of PW-1 (Hare Ram) and PW-3 (Christopher Jacob)**

30. Let us, first of all, examine the testimonies of PW-1 (Hare Ram) and PW-3 (Christopher Jacob). PW-1 (Hare Ram) stated in his examination-in-chief that he was working with Anil Kumar Chandra as a domestic servant. On 14.08.2004 at 11.00 a.m., he had gone to the room of Pushkin Chandra, who is the son of Anil Kumar Chandra. He opened the gate and then opened the next door and he found that all the articles in the room were scattered. He noticed that one boy was lying there and after seeing the dead body, he became “perplexed” and informed his employer Anil Kumar Chandra. He stated that the said Anil Kumar Chandra went to the police station and the police arrived at the spot. He further stated that the police inspected the site and, at that time, he came to know that Pushkin was also found dead. He stated that he had told the police that he had seen both the appellants, namely, Rajesh and Moti with Pushkin on 13.08.2004 between 6.30 - 7.00 p.m. He further stated that on 13.08.2004, both Rajesh and Moti had arrived at House No.24, Anand Lok

alongwith Pushkin in the car at that time. He also stated that he had told these facts to the police officials. It may also be pointed out that PW-1 (Hare Ram) correctly identified both the accused persons in court.

31. This part of the testimony that PW-1 (Hare Ram) had seen both Rajesh and Moti alongwith Pushkin at the said house at about 6.30 to 7.00 p.m. on 13.08.2004 has not been shaken in the course of his cross-examination.

32. PW-3 (Christopher Jacob) stated that he was familiar with Pushkin as also Kuldeep @ Vishal. He stated that on the intervening night of 13.08.2004 and 14.08.2004, he had seen Pushkin and Vishal alongwith Moti and Rajesh Rekwar (the present appellants) at about 12.30 a.m., that is, in the early hours of 14.08.2004. He further stated that he had seen them both alongwith Moti and Rajesh Rekwar in a party at Sawant Nagar. He, however, did not recollect the house number. He further stated that Pushkin and Vishal arrived at the party at 12.00 midnight and had left at about 12.30 a.m. alongwith the appellants. He stated that he could identify Moti and Rajesh Rekwar and he did so in court. In the course of his cross-examination, he revealed that he did not know the address where the party was going on, but that he went to the party on the request of a girl friend by the name of Kajal. He also revealed that prior to 14.08.2004, he did not know the names of Moti and Rajesh Rekwar and that they were introduced to him for the first time by Pushkin at 12.00 midnight in the night intervening 13/14 August 2004. He admitted that Pushkin and he used to see blue films at Pushkin's house and that he was a bisexual. He also stated that he had spent the night at Kajal's house.

33. From the testimonies of PW-1 (Hare Ram) and PW-3 (Christopher Jacob), this much is established that PW-1 (Hare Ram) saw the present appellants in the company of Pushkin at Pushkin's house between 6.30 and

7.00 p.m. on 13.08.2004 and that PW-3 (Christopher Jacob) had also seen the two appellants Rajesh Rekwar and Moti @ Mohit in the company of Pushkin Chandra and Kuldeep @ Vishal at about midnight in the night intervening 13.08.2004 and 14.08.2004 at a party at Sawant Nagar. It has also been established that PW-3 (Christopher Jacob) saw that the appellants left the said party at about 12.30 a.m. alongwith Pushkin and Kuldeep @ Vishal.

34. The learned counsel for the appellants contended that insofar as PW-1 (Hare Ram) is concerned, his testimony with regard to him having seen the appellants in the company of the deceased Pushkin and Kuldeep @ Vishal is of no consequence, because, even if it is assumed that he has testified truthfully, subsequent to that, as per the case of the prosecution, PW-3 (Christopher Jacob) saw the four of them in the party between 12.00 midnight and 12.30 a.m. Thus, according to the learned counsel for the appellants, the testimony of PW-1 (Hare Ram) cannot be placed in the category of "last seen" evidence. Furthermore, they submitted that, in any event, the time gap between the time of death and when PW-1 (Hare Ram) saw the appellants in the company of Pushkin, was between six to seven and half hours as the time of death has been opined to be between 1.00 a.m. and 2.30 a.m. on 14.08.2004. They submitted that the time gap was so large that there could be many intervening circumstances and, in any event, if the testimony of PW-3 (Christopher Jacob) is to be believed, it is clear that there were intervening circumstances in the sense that the four of them had gone to the party at Sawant Nagr where they met others present in the party.

35. It was also contended on behalf of the appellants that insofar as PW-3 (Christopher Jacob) is concerned, he has only stated that he saw Pushkin Chandra and Kuldeep @ Vishal in the company of the present appellants when

they arrived at 12.00 midnight and left at 12.30 a.m. on 14.08.2004 and that there is no evidence of anybody having seen the four of them entering Pushkin's house after 12.30 a.m. and prior to the murders.

36. Therefore, according to the learned counsel for the appellants, the testimonies of PW-1 (Hare Ram) and PW-3 (Christopher Jacob) do not establish the complicity of the appellants.

37. We must note that the testimonies of PW-1 (Hare Ram) and PW-3 (Christopher Jacob) are evidence in respect of one of the many circumstances which are to be considered for the purposes of arriving at a finding of guilt. We do not agree with the submissions made by the learned counsel for the appellants that the testimony of PW-1 (Hare Ram) is completely meaningless inasmuch as, subsequent to his having seen the appellants in the company of the deceased, PW-3 (Christopher Jacob) had also seen them several hours later. Going by the testimonies of PW-1 (Hare Ram) and PW-3 (Christopher Jacob) in conjunction, we are of the view that the prosecution has been able to establish that the appellants and the deceased Pushkin Chandra and Kuldeep @ Vishal were in the company of each other from at least 6.30 p.m. – 7.00 p.m. on 13.08.2004 till 12.30 a.m. on 14.08.2004 when, PW-3 (Christopher Jacob) saw them leaving the party at Sawant Nagar. The time of death has been fixed between 1.00 a.m. and 2.30 a.m. on 14.08.2004. Although, insofar as PW-1 Hare Ram's testimony is concerned, the time gap is about six 6 to 7.30 hours, but, when the same is considered in conjunction with the testimony of PW-3 (Christopher Jacob), it becomes apparent that the appellants and Pushkin Chandra and Kuldeep @ Vishal were together throughout this period, that is, from 6.30 - 7.00 p.m. on 13.08.2040 till 12.30 a.m. on 14.08.2004. Shortly, thereafter, between 1.00 a.m. and 2.30 a.m. on 14.08.2004, Pushkin Chandra

and Kuldeep @ Vishal were brutally murdered in the First Floor Annexe of House No.24, Anand Lok which was the residence of Pushkin Chandra. Therefore, we cannot sideline or push aside the testimonies of either PW-1 (Hare Ram) or PW-3 (Christopher Jacob).

38. As pointed out above, the learned counsel for the appellants had sought to challenge the credibility of PW-3 (Christopher Jacob) by questioning him with regard to the exact address at which the party was held and whether he was an invitee in the party or not. According to us, that would not make any difference. This is so because, the testimony of PW-3 (Christopher Jacob) has not been shaken in its material particulars and, that is, that he knew both Pushkin Chandra and Kuldeep @ Vishal prior to the incident and that he had seen them alive with the appellants at 12.00 midnight and leaving with them at 12.30 a.m. on 14.08.2004. The fact that PW-3 (Christopher Jacob) was not an invitee in the party, but had gone alongwith Kajal, who was an invitee, does not, in any way, disturb the credibility of PW-3 (Christopher Jacob) as a witness to the fact that he had seen the present appellants in the company of Pushkin Chandra and Kuldeep @ Vishal. The fact that the said Kajal has not been produced as a witness by the prosecution would also not dent this testimony.

**Recoveries at the instance of the appellants of the articles belonging to Pushkin Chandra**

39. We have already noted above that the learned counsel for the appellants had contended that there are discrepancies between the depositions of the recovery witnesses and the dates on which the allegedly recovered articles were deposited in the *Malkhana*. We are of the view that the learned counsel for the appellants have raised a legitimate concern about the discrepancies with regard

to the dates. Insofar as the recoveries allegedly made from Moti @ Mohit are concerned, while the testimony of PW-18 (Inspector H.C. Verma) reveals that he returned to Delhi on 05.09.2004 and thereafter the case property was deposited in the *Malkhana*, the *Malkhana* register (Exhibit PW-17/3) shows the articles, including the HP Laptop already deposited in the *Malkhana* on 04.09.2004.

40. Similarly, in the case of Rajesh Rekwar also, we find that the articles seized as per seizure memo (Exhibit PW-10/B) on 28.08.2004 at Ballia, M.P. are already shown to have been deposited in the *Malkhana* Register (Exhibit PW-17/E) on 28.08.2004. The testimony of the recovery witnesses is to the contrary and, that is, that the recovered articles, as per Seizure Memo (Exhibit PW-10/B), were deposited in the *Malkhana* on 29.08.2004. The question which arises in both the cases is – As to how the articles sought to be recovered were already entered in the *Malkhana* Register prior to the alleged date of recovery? The learned counsel for the State submitted that the fault lay in the making of the entries in the *Malkhana* register and that there was enough evidence of the recoveries having actually been made as alleged by the prosecution. She also submitted that the recoveries were established by the seizure memos which have been proved.

41. Although we find that the recovery witnesses have supported the prosecution case with regard to the recoveries of the articles belonging to Pushkin Chandra at the instance of the appellants, the discrepancies in the entries in the *Malkhana* register does create an element of doubt.

42. However, we find that insofar as the recovery of the T-shirt (Exhibit P-17) by virtue of the seizure memo (Exhibit PW-7/14) is concerned, there is no such problem. The said T-shirt was recovered from the appellant Rajesh

Rekwar from his house in Delhi on 30.08.2004 and the same was subsequently deposited in the *Malkhana*. Thus, the prosecution has been able to prove the recovery of the T-shirt (Exhibit P-17). This is a very important circumstance, as will become clear hereinbelow.

### **Refusal of TIP**

43. As noted above, both the appellants Rajesh Rekwar and Moti @ Mohit had refused to participate in the TIP proceedings. As per Exhibit PW-14/19, the reason given for refusal of participation by the appellant Moti @ Mohit was that his photograph might have been taken and the same might have been shown to the witnesses. We do not find that there is any evidence that his photograph had been taken or that it had been shown to the witnesses and, in our view, this was just a lame excuse. Insofar as the appellant Rajesh Rekwar is concerned, it is evident from Exhibit PW-14/11 that he did not want to participate in the TIP proceedings, because, according to him, Kajal, who was in the party at Sawant Nagar, had seen him in the police station- Defence Colony. We notice that it is not the case that Rajesh Rekwar had been shown to PW-1 (Hare Ram) and PW-3 (Christopher Jacob) or that his photograph had been shown to them. The case is that he had seen Kajal, who was present in the police station- Defence Colony on that date and, therefore, he did not want to participate in the TIP proceedings. It is also evident from Exhibit PW-14/11 that Rajesh Rekwar has virtually admitted that he was present in the party at Sawant Nagar and that he had met Kajal there. Consequently, we agree with the submission made by the learned counsel for the State that an adverse inference will have to be drawn against the appellants with regard to their refusal to participate in the TIP proceedings.

**Chance Print Q3 matching with specimen left thumb impression S1 of Rajesh Rekwar**

44. PW-11 Sub-Inspector P.K. Bawa (Finger Print Expert, Finger Print Bureau Malvia Nagar) deposed that on 14.08.2004, she was posted at the said Finger Print Bureau and that, as per the direction of the Director, Finger Print Bureau, she, alongwith the police photographer, Constable G. Ganeshan, reached 24, Anand Lok for examination of the scene of crime. She inspected the site carefully and thoroughly. She stated that Inspector Ranbir Singh was also present at the spot. She stated that she lifted 5 chance prints from different articles and that her detailed report in this regard was Exhibit 11/A, which contained her signatures at point 'A'. It is pertinent to note that PW-11 (Sub-Inspector P.K. Bawa) has not been cross-examined on behalf of any of the accused, although opportunity had been given. Thus, her testimony with regard to the lifting of five chance prints and with regard to the fact that her report was Exhibit PW-11/A is unchallenged. Exhibit PW-11/A discloses that the examination was conducted between 2.30 p.m. to 4.30 p.m. on 14.08.2004 at the First Floor Annexe, 24, Anand Lok, New Delhi. Three chance prints Q1 to Q3 were lifted from one glass tumbler. One chance print Q4 was lifted from another glass tumbler and one chance print Q5 was lifted from a beer bottle (glass). The report of the Finger Print Bureau dated 23.11.2004 (Exhibit PW-9/A) clearly indicates, *inter alia*, that the Finger Print Bureau received the chance prints marked Q1 to Q5 from Ms P.K. Bawa, F.P. Expert of FPB Delhi. The report further indicates that the questionnaire was, *inter alia*, whether the chance prints marked Q1 to Q5 developed by Ms P.K. Bawa FP Expert of FPB Delhi on 14.08.2004 are identical with any of the finger / palm prints of the persons mentioned in Annexure A or not? The result of the examination, as discussed in the said report (Exhibit PW-9) is that chance print marked Q3 was found to be identical with the left thumb impression marked S-1 on the finger

print slip of Rajesh son of Sant Ram (accused). The report also indicated that the duly marked enlarged photographs of identical prints marked Q3 (developed on 14.08.2004) and S-1 alongwith description of the points of identity were enclosed with the report in support of the opinion.

45. From the above, it is clear that chance print Q3 lifted from one of the glass tumblers at the scene of crime matched with the specimen left thumb impression S-1 of the appellant Rajesh Rekwar.

46. The learned counsel for the appellants had raised suspicions with regard to the said chance prints and stated that the same were planted. However, we find from the evidence on record that this is merely a bald allegation. The chance prints were clearly lifted on 14.08.2004, as evidenced by the report (Exhibit PW-11/A) of the same date which has not been challenged by the defence. The same were sent to the Finger Print Bureau on 23.08.2004. Rajesh Rekwar was arrested later, that is, on 28.08.2004. His specimen finger prints were taken on 24.09.2004 and were sent on the same day. The report of the Finger Print Bureau (Exhibit PW-9/A) is dated 23.11.2004. This sequence of events clearly shows that there was no opportunity of any manipulation.

47. This leaves us to consider the objection raised by the learned counsel for the appellant Rajesh Rekwar that the specimen finger print S-1 was not admissible in evidence because no order of the Magistrate had been obtained prior to the taking of the specimen finger impressions and, therefore, Section 73 of the Indian Evidence Act had been violated. We do not agree with this contention. The learned counsel for the State has correctly referred to Section 4 of the Identification of Prisoners Act, 1920, which permits a police officer to take measurements, which includes, by virtue of Section 2(a) of the said Act, finger impressions. Section 73 of the Indian Evidence Act, 1872 comes into

play when there are proceedings pending before a court and would not be applicable when the matter is under investigation. Therefore, in our view, there is no legal impediment to the taking of the specimen finger impression S-1 and its comparison with the chance print Q3.

48. It is, therefore, clear that the appellant Rajesh Rekwar's finger impression has been found in one of the glass tumblers taken from the scene of crime. This establishes his presence at the scene of crime.

**Recovery of T-shirt (Exhibit P-17) and its being found identical with the T-shirt appearing in the photograph taken at the ATM**

49. PW-9 (S. Krishan Murthi, Chief Manager, ICICI Bank Limited) testified that on 24.08.2004, he was posted as Chief Manager at the Regional Office of the ICICI Bank Limited at NBCC Place, Pragati Vihar, Lodi Road, New Delhi. He stated that on 23.08.2004, the police officials had reached his office and asked for details of the ATM withdrawals in connection with the credit card which was in the name of Pushkin Chandra. He stated that on 25.08.2004, he handed over the statement of the credit card and also handed over a Samson Digital 48X CD which contained images taken by the camera installed at the ATM at Hotel Tripti, Karol Bagh. The statement with regard to the aforesaid credit card is Exhibit PW-8/B and the photocopies of photographs of a person withdrawing amounts from the banks are Exhibit PW-8/C and Exhibit PW-8/D. The witness testified that an amount of Rs 30,000/- was withdrawn in two installments of Rs 15,000/- each from the said account on 14.08.2004 and the relevant entries are to be found at point 'X' at page 5 of Exhibit PW-8/B. The first transaction was carried out at about 10.20 a.m. at the ATM situated at Hotel Tripti, Karol Bagh and the second amount of Rs 15,000/- was withdrawn

from the Old Rajinder Nagar ATM at about 10.33 a.m. Although, in cross-examination, this witness has stated that he cannot identify the person by looking at the said photographs, it is clear that the T-shirt worn by the petitioner in the said photographs exactly matched the T-shirt (Exhibit P-17), which was recovered from the appellant Rajesh Rekwar, as already mentioned above. In order to ascertain the likeness of the T-shirt in the photograph and Exhibit P-17, we had also required the same to be produced before us. The said Exhibit P-17 as also the CD was produced from the *Malkhana* for our perusal. We examined the T-shirt (Exhibit P-17) and compared it with the T-shirt appearing in the said photographs, as also in the colour photographs available on the CD and we found the same to be identical. It is, therefore, clear that the prosecution has been able to establish that Exhibit P-17 which was recovered from the possession of the appellant Rajesh Rekwar from his house in Delhi on 30.08.2004 was identical to the T-shirt worn by the person shown in the photographs taken at the ATM at Hotel Tripti, Karol Bagh. It is also clear from the statement of the credit card account that on 14.08.2004, two withdrawals of Rs 15,000/- each were made from the above mentioned two ATM machines. We must recollect that by then Pushkin Chandra was already dead as the time of his death was between 1.00 a.m. and 2.30 a.m. on 14.08.2004. From this, it can be easily inferred that the person who was involved in the murders of Pushkin Chandra and Kuldeep @ Vishal, was also the person who made the said withdrawals of Rs 15,000/- each. Thus, although the face of the person is not visible in the photographs taken at the ATM, the T-shirt worn by him is clearly identifiable and it matches exactly with Exhibit P-17, which has been recovered at the instance of the appellant Rajesh Rekwar.

**The blood stains on the pants of Rajesh Rekwar matched the blood group of the deceased Kuldeep**

50. Exhibit PW-18/A is the Forensic Science Laboratory Report dated 19.05.2006 with regard to various articles. Exhibit E-6a (one *banian* having brown stains) was said to belong to the deceased Kuldeep. Exhibit E-17b [pants (jeans) having brown stains] was that of the appellant Rajesh Rekwar. Exhibit E-20 (Gauze cloth piece having brown stains) was the blood sample of the appellant Rajesh Rekwar. The result of analysis, as per Exhibit PW-18/A indicated that the blood was detected, *inter alia*, on exhibits E-6a, E-17b and E-20. The report of the Serological analysis was attached with the said report (Exhibit PW-18/A). The Serological Report indicated that Exhibit E-6a (*banian*) had blood stains of human origin of blood group 'B'. Exhibit 17-B (pants) also had human blood stains of blood group 'B'. Exhibit E-20 (Gauze cloth piece), on the other hand, had human blood stains of blood group 'O'. From the above, it is clear that the deceased Kuldeep's blood group was 'B' and that of the appellant Rajesh Rekwar was 'O'. It is also clear that Rajesh Rakwar's pants (Exhibit E-17b) also had blood stains of blood group 'B' which was the same blood group as that of the deceased Kuldeep. This is also a very strong piece of incriminating evidence against the appellant Rajesh Rekwar.

**Conclusion**

51. It is clear that the prosecution has been able to establish that both the appellants were definitely with the deceased Pushkin and Kuldeep @ Vishal from 6.30-7.00 pm on 13.08.2004 till 12:30 a.m. on 14.08.2004 when PW-3 (Christopher Jacob) saw them leave the party at Sawant Nagar, together. Since the time of death of Pushkin and Kuldeep @ Vishal has been fixed at 1:00 a.m. to 2:30 am on 14.08.2004, their being seen together is so proximate as to rule out the possibility of any third person intervening. The use of the ICICI Bank

credit card of Pushkin and the two withdrawals of Rs 15,000/- each at two different ATMs after Pushkin was already dead also establishes the fact that not only were the deceased murdered but that the credit card had also been stolen. The person operating the ATM at Hotel Tripti, Karol Bagh was wearing a T-shirt which was found to be identical with the T-shirt (Exhibit P-17) recovered from Rajesh Rekwar. Chance print Q3 lifted from a glass tumbler found in Pushkin's residence was found to be identical to Rajesh Rekwar's specimen left-thumb impression (S1). Both the appellants avoided participation in Test Identification Parade on false pretexts. And, the blood group 'B' of the blood stains on Rajesh Rekwar's pants matched with the blood group of Kuldeep @ Vishal. All these circumstances taken together clearly establish the complicity of both the appellants.

52. Another important aspect is that of injuries found on the appellant Rajesh Rekwar. The MLC (Exhibit PW-4/C) in respect of Rajesh Rekwar was proved by PW-4 Dr Sanjeev Lalwani of AIIMS, New Delhi. As per the said MLC (Exhibit PW-4/C) dated 29.08.2004, Rajesh Rekwar, *inter alia*, had a healed wound with partially peeled off scab on dorsum of left hand near base of left thumb with red base of size 2.5 cm x 1 cm. The duration was said to be consistent with that of history. The said MLC indicates that the history of sustaining the injury in the night of 13/14.08.2004 by knife on the left hand dorsal aspect near base of the thumb was narrated by the person examined (i.e., Rajesh Rekwar). Since the appellant Rajesh Rekwar was taken for his medical examination in police custody, we are discounting the statement in the said MLC to the extent it mentions the manner in which the injury on the left hand was sustained. The only thing of relevance is that as per the MLC (Exhibit PW-4/C), the injury could have been sustained around 13<sup>th</sup> or 14<sup>th</sup> of August, 2004. It is also relevant to note that the factum of the said injury is not

questioned by Rajesh Rekwar. In fact, in answer to question No.26, in the course of his statement under Section 313, CrPC, he does not deny that he was medically examined on 29.08.2004 and that his MLC was prepared and his blood sample was collected and the same was seized vide Memo Exhibit PW-14/9. His answer was that he “received injuries while playing cricket”. PW-4 (Dr Sanjeev Lalwani), when cross-examined, however, stated that he could not tell the exact time and date on which the injuries were sustained by Rajesh Rekwar as the injuries were ‘healed and old’. He denied the suggestion that the injuries were two to four months old. He also denied the suggestion that Rajesh Rekwar had not told him the history of his (Rajesh Rekwar) sustaining the injury in the night of 13/14.08.2004.

53. It is, therefore, clear that Rajesh Rekwar had the aforesaid injury on his left hand and that the injury could have been sustained around the time of the incident, i.e., 13/14.08.2004. The answer given by the appellant Rajesh Rekwar that he received the injuries while playing cricket does not impress us. The fact of the injuries on the person of Rajesh is not, by itself, suggestive of his complicity in the crime but it does lend support to the other circumstances established by the prosecution.

54. In the case of Moti @ Mohit also, there is a similar MLC (Exhibit PW-4/F) dated 05.09.2004. As per the said MLC, which has been proved by PW-4 (Dr Sanjeev Lalwani), Moti @ Mohit had a healed incised wound of size 6 cm 0.5 cm on the right thigh middle one-third anteriolateral aspect. The said MLC (Exhibit PW-4/F) further indicates that Moti @ Mohit had himself stated to the doctor that he had sustained the injury about 20-22 days back. The opinion of the doctor as recorded in the said MLC and as testified by him (PW4) in court was that the duration of the injury was consistent with the history and that the

injury had been caused by a sharp-edged weapon. It is also important to note that the testimony of PW-4 (Dr Sanjeev Lalwani) with regard to Moti @ Mohit's injury has gone unchallenged. Thus, as in the case of Rajesh Rekwar, so also in the case of Moti @ Mohit, there is evidence that the latter received the injury caused by a sharp-edged weapon around the date of the murders of Pushkin and Kuldeep @ Vishal. This also lends support to the prosecution case inasmuch as it suggests that there was struggle in which the assailants could have received injuries. Of course, this by itself is not sufficient to establish the complicity of both Moti @ Mohit and Rajesh Rekwar but, it certainly lends support to the other circumstances which have clearly been established by the prosecution.

55. From the above discussion, it is apparent that the prosecution has been able to prove beyond reasonable doubt that the appellants had committed the murders of Pushkin Chandra and Kuldeep @ Vishal. The circumstances taken together form a complete chain and point only in the direction of guilt of the two appellants. The appellant Rajesh Rekwar is on interim bail which was granted to him on account of his medical condition. He be taken into custody to serve out the rest of his sentence. The appellant Moti @ Mohit is already in custody.

The appeals are dismissed.

**BADAR DURREZ AHMED, J**

**MANMOHAN SINGH, J**

**October 31, 2011**

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