

(2016) 07 RAJ CK 0072

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 905 of 2007 and Criminal Appeal No. 149 of 2013

Salman Khan and Anr.

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 25-07-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Evidence Act, 1872 — Section 3, 33
Wild Life (Protection) Act, 1972 — Section 51

Citation : (2016) 3 CriLR 1493 : (2016) 3 Crimes 213 : (2016) 3 RajCriC 1128 : (2016) 4 WLC 351 : (2016) 3 WLN 116

Hon'ble Judges : Nirmaljit Kaur, J.

Bench : Single Bench

Advocate : Mr. Mahesh Bora, Sr. Advocate assisted by Mr. Nishant Bora, Mr. Hastimal Saraswat, Mr. Atul Dobhal and Mr. Arpit Mehta, Advocates, for the Appellant; Mr. K.L. Thaknr, Additional Advocate General assisted by Mr. Mahipal Bishnoi & Mr. K.L. Vishnoi, Asstt. C

Final Decision : Dismissed

Judgement

Nirmaljit Kaur, J.—The criminal revision petition under Section 397 read with Section 401 of the Cr.P.C. is preferred by petitioner-Salman Khan against the judgment dated 24.08.2007 passed by Sessions Judge, Jodhpur in Criminal Appeal No. 50/2006, whereby, the appeal of the petitioner was dismissed and the order of conviction and sentence passed by the Chief Judicial Magistrate, Jodhpur vide judgment dated 10.04.2006 in Criminal Case No. 206/1999 was affirmed. The Chief Judicial Magistrate convicted and sentenced the petitioner for the offence under Section 51 of the Wild Life (Protection) Act to undergo 5 years" simple imprisonment along with fine of Rs. 25,000/- and in default of payment of fine to further undergo 3 months simple imprisonment.

2. The State has filed appeal under Section 378(iii) & (i) of the Cr.P.C. against the same judgment dated 24.08.2007 passed by Sessions Judge, Jodhpur in

Criminal Appeal No. 72/2006, vide which, he has set aside the judgment dated 10.04.2006 passed by the Chief Judicial Magistrate convicting and sentencing the respondent-Gordhan Singh for offence under Section 51 read with Section 52 of the Wild Life (Protection) Act in Criminal Case No. 206/1999 and thereby acquitting Gordhan Singh of the alleged offence.

3. At the first instance, it is necessary to look into the circumstances which led to the registration of the FIR in the present case. On 02.10.1998, an FIR No. 93(26) of 1998 came to be registered with the Forest Department, Jodhpur for the incident of hunting of a black buck, which had taken place on intervening night of 01.10.1998 and 02.10.1998. During the investigation of this FIR, one Harish Dulani informed the Forest Department that deers were also hunted down by some persons just a few days ago on 26.09.1998 and 28.09.1998. On the basis of the said information, Lalit Kumar Bora (PW-34), the then Wild Life Conservator, Jodhpur sent a written complaint to the Additional Superintendent of Police, Jodhpur bringing to the notice that as per the statement of Harish Dulani recorded on 02.10.1998, Salman Khan along with others had indulged in illegal hunting of deers on 26.09.1998 and on 28.09.1998 in the vicinity of village Mathania about 7 kilometers away from Ghoda Farm. On the basis of the said complaint sent by Lalit Kumar Bora (PW-34), two more FIRs came to be registered: (i) FIR No. 162/1998 dated 11.10.1998 at P.S. Mathania, Jodhpur for hunting of a deer on 26.09.1998 (Criminal Case No. 207/1999) and (ii) 163/1998 dated 11.10.1998 at P.S. Mathania, Jodhpur for killing another deer on 28.09.1998 (Criminal Case No. 206/1999). For the incident of hunting which took place on 26.09.1998 and pertains to FIR No. 162/1998, Salman Khan was convicted for the offence under Section 51 of the Wild Life Protection Act to undergo one year's simple imprisonment. He preferred an appeal before the Sessions Judge, Jodhpur, which was transferred to the High Court and was heard by this Court as S.B. Criminal Appeal No. 53/2012. By a separate order and judgment of even date, the said appeal of Salman Khan stands allowed and he is acquitted of the offence.

4. In the second case i.e. Criminal Case No. 206/1999 which pertains to FIR No. 163/1998, Salman Khan was convicted for five years for the alleged hunting on 28.09.1998. The appeal preferred against the said conviction, too, has been dismissed by the Sessions Court vide judgment dated 24.08.2007. The present revision petition is against the said order of conviction and dismissal of the appeal by the Sessions Court. It would not be out of place to mention that the trial of the third case i.e. Criminal Case No. 66/2011 which pertains to FIR No. 93(26) of 1998 registered with the Forest Department on 02.10.1998 for hunting on intervening night of 01.10.1998 and 02.10.1998 is still pending.

5. Along with the written complaint sent by Lalit Kumar Bora (PW-34), a copy of the statement of Harish Dulani recorded under Section 164 of the Cr.P.C. (Exh.-P/94A) was also forwarded. As per the statement of Harish Dulani under Section 164 of the Cr.P.C., in the night of 28.09.1998 itself, Salman Khan, Dinesh and

Dushyant reached the residence of Tutu Banna and from there, they took Pratap Singh, Om Singh and one half bald person with them in the gypsy and at that time, it was Salman Khan who was driving the vehicle. From there, they went to Ghoda Farma at Mathania and on suggestion of Pratap Singh, the pipe of the hood of vehicle was removed and all of them picked up one man from the Ghoda Farm whom he said that he could recognise from face. He went on to say that after travelling 5-7 kilometers from farmhouse, Salman shot at a deer and after getting down from the vehicle, he cut off the throat of the deer with a knife with the help of search light being shown by Pratap Ji. There were two guns in the vehicle. Out of which, one was ordinary and other was with a telescope. Pratap Ji and Om Ji lifted the killed deer and loaded it in the gypsy. Thereafter, they drove to the Ghoda Farm where Om Ji cut the deer into pieces and packed it into a sack. The man who was picked up from the Ghoda Farm was dropped there and all of them returned to Jodhpur. The killed deer was taken by Om ji. It was about 2-3 O'clock in the night. Thereafter, Salman Khan, Dinesh and Dushyant went to the palace. Om Ji and Pratap Ji were dropped at the Golf Course and the bald person was also dropped along with (hem, whereas, Harish Dulani himself went his house. On the basis of the complaint by Lalit Kumar Bora accompanied with the said statement of Harish Dulani, an FIR was registered under Sections 147, 148,149 of the IPC and Sections 9, 39, 51, 52 of the Wild Life (Protection) Act as well as under Section 27 of tire Arms Act against Salman Khan, Dushyant, Om Ji, Pratap Ji, Tulaji Angre, Gordhan Singh and Dinesh Gawre. After investigation, charge-sheet was filed against accused Salman Khan, Dushyant Singh, Pratap Singh, Om Singh, Tulaji Angre and Gordhan Singh in the Court of Judicial Magistrate, First Class, Osian, District Jodhpur under Sections 143, 144, 149 of the IPC; Sections 9, 39, 51, 52 of the Wild Life (Protection) Act and Section 27 of the Arms Act read with Section 201 of the IPC. The investigation against other accused-Dinesh Gawre is supposed to be still pending.

6. The prosecution in order to prove the above charges levelled against the accused examined PW-1 to PW-38 as oral evidence and produced Exh.P/1 to Exh.P/105 and also exhibited Articles 2 to 8. The statement of the petitioner under Section 313 of the Cr.P.C. was recorded. The petitioner pleaded that he was involved in a false case and produced documents Ex.D/1 to D/7 in defence as documentary evidence.

7. The Chief Judicial Magistrate after hearing the final arguments of the case acquitted the petitioner-Salman Khan for the offence under Sections 143, 144, 148 and 201 read with Section 149 of the IPC and Section 27 of the Arms Act but convicted him of the offence under Section 51 of the Wild Life (Protection) Act and sentenced him to undergo simple imprisonment of 5 years along with fine of Rs. 25,000/-; and in default of payment of fine to further undergo 3 months simple imprisonment, made judgment dated 10.04.2006. Accused Gordhan Singh S/o Madho Singh was convicted for the offence under Section 51 read with Section 52 of the Wild Life (Protection) Act to undergo one year simple imprisonment and imposed a fine of Rs. 5000/-; in default of payment of fine to

further undergo 3 months simple imprisonment. However, the remaining four accused i.e. Dushyant Singh, Om Singh, Tulaji Angre and Pratap Singh were acquitted of all the offences giving benefit of doubt. The appeals were filed by both accused Salman Khan and Gordhan Singh before the Sessions Judge against the conviction and sentence awarded to them by Chief Judicial Magistrate. No appeal is filed by the State against the acquittal of other the accused. The Session Judge while dismissing the appeal of Salman Khan upheld the conviction and sentence under Section 51 of the Wild Life (Protection) Act passed by the trial Court. However, the appeal of Gordhan Singh was allowed and he was acquitted of the offence under Section 51 read with Section 52 of the Wild Life (Protection) Act. Hence, the revision is filed by Salman against the order of conviction and sentence awarded to him; and the State, too, has filed an appeal against the judgment and order dated 24.08.2007 passed by Sessions Judge, Jodhpur to the extent vide which, he has acquitted Gordhan Singh for the alleged offence.

8. As in S.B. Criminal Appeal No. 53/2012, in this case too Mr. Mahesh Bora, learned Senior Advocate for the accused-petitioner Salman Khan submitted that no deer was hunted on the said date and the petitioner was involved in a desperate attempt to pacify the public who were raising an outcry which was an outcome of a rumour that spread due to a carcass of a deer found from a pit on 02.10.1998. The carcass was badly mauled, probably torn by dogs. Instead of investigating the same, as many as three cases were registered on the basis of a statement driven from one Harish Dulani while he was in custody.

9. Before I embark on a discussion of the arguments raised before me, I must in view of the personalities involved preface the discussion by drawing attention to the principles of judicial understanding which we all know but are often overlooked. The Bangalore Principles of Judicial Verdict, 2002 stipulates that "A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law free of any extraneous influences, pressures, threats or interference, direct or indirect from any quarter or for any reason." These principles ensure the undesirable truth that a Court must adopt and as President Roosevelt, the 26th President of the United States put it that, "while no man is above the law, no man is below it either and the status of any man should neither stand to benefit him or harm him in any manner". A dispassionate measurement of law and facts is accordingly called for in all cases.

10. Learned counsel for the parties were heard at length. The written submissions were also submitted by them. They referred to the various oral as well as documentary evidence on record. Mr. K.L. Thakur, learned Additional Advocate General also read out the relevant part of the judgments of both the courts below to support the case of the prosecution. This Court, accordingly, proceeds to deal with each argument and objection raised by the respective counsels.

11. At the first instance, it was contended by the learned Additional Advocate General that the Court should not interfere with the concurrent finding of the courts below. This argument was also raised by the learned counsel for the State at the time of admission of the revision petition, and the learned Single Judge at that point of time while admitting the revision held that the revision petition involves questions of law and requires determination; more particularly on the point of applicability of Section 33 of the Evidence Act.

12. The whole case of the State rests on the statement of the eyewitness Harish Dulani (PW-1).

Section 33 of the Evidence Act read as under:-

"33. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.

- Evidence given by a witness in a judicial proceeding, or before any person authorised by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable:

Provided - that the proceeding was between the same parties or their representatives in interest; that the adverse party in the first proceeding had the right and opportunity to cross-examine; that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation. - A criminal trial or inquiry shall be deemed to be a proceeding between tire prosecutor and the accused within the meaning of this Section."

13. Thus, as per Section 33 of the Evidence Act, the statement can be read only in case the witness is examined and accused is allowed to cross-examine unless the witness cannot be examined on account of: (a) when the witness is dead or cannot be found, (b) he is incapable of giving evidence, (c) he is kept out of the way by the adverse party and (d) if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable.

14. The statement of the alleged eyewitness Harish Dulani under Section 164 of the Cr.P.C. was recorded while he was in custody. This Court has already held while deciding S.B. Criminal Appeal No. 53/2012 (Salman Khan v. State of Rajasthan) vide judgment of even date that Harish Dulani was kept in the illegal custody of the Forest Department after the alleged hunting incident was reported and he continued to remain in the confinement till his statement was recorded both by the Forest Department and by the learned Magistrate under Section 164 of the Cr.P.C. In the present case, PW-5 Arun Kumar Yadav, the owner of the

gypsy had deposed in his cross-examination (as per the English translation of the said statement) that:

The forest officials had sent for Harish and they kept him in custody, then he said kept him for interrogation. When Harish did not return home, his father came to inquire about the whereabouts of Harish. The father of Harish had told me that Harish has not returned home since two days. Then I had told him that he is with the forest department. It is true that when I reached the Forest Office, he was present there. Thereafter, the father of Harish came to me again two-three times and whenever he asked me about Harish, I told him that he is with the Forest Department.

15. Even, Gordhan Singh (PW-8), who was Assistant Conservator in Forest Department, in his evidence before the trial Court stated that Harish Dulani (PW-1) was seen by him at the Coal Depot on 07.10.1998 and that he (Gordhan Singh) was required to keep a watch on driver Harish Dulani during the said period, which goes to show that the statement of PW-1 under Section 164 of the Cr.P.C. was recorded while he was in custody. Hence, such a statement cannot be said to be free from threat or coercion. In any case, Harish Dulani when examined as PW-1 damaged his own statement under Section 164 of the Cr.P.C.

16. The said witness Harish Dulani (PW-1) who was cited as the eyewitness of the alleged incident, was produced by the prosecution for the first time on 24.01.2002 before the trial Court for the purpose of recording his statement, on which date, his examination-in-chief was recorded and the witness was cross-examined by Shri Jagdev Singh, counsel for the co-accused. Thereafter, Harish Dulani disappeared and never appeared again. In short, he was never made available to the accused-petitioner for cross-examination. Learned counsel for the petitioner, accordingly, contended that the evidence of Harish Dulani (PW-1) cannot be used against the petitioner under Section 33 of the Evidence Act. Thus, the issue whether the statement of Harish Dulani can be read in evidence or not depends on the question as to whether the learned counsel for Salman Khan was granted an opportunity to cross-examine this witness or not?

17. Learned counsel for the State vehemently relied on the finding of the trial Court to argue that on 24.01.2002, the witness PW-1 Harish Dulani was cross-examined on behalf of the accused Pratap Singh, Tulaji Angre, Om Singh and Gordhan Singh. However, on the request of the counsel for the accused, the further cross-examination of the said witness was deferred and the matter was posted to 20.03.2002 for his cross-examination, and the witness was also bound to remain present before the Court on the date. It was contended that on 24.01.2002 itself, the witness Harish Dulani moved an application before the trial Court stating that since a fairly long time, one Girwar Vyas was personally threatening him to give statement in favour of Salman Khan or else his entire family will be killed by criminals and mafia groups. On the next date of hearing i.e. 20.03.2002, Harish Dulani came present before the learned trial Court and remained there upto 3:00 p.m. but he was not cross-examined. Learned

Additional Advocate General further argued that the counsel representing the accused-petitioner did not come present to cross-examine the said witness upto 3:00 p.m. No request to cross-examine the said witness was made on behalf of the accused-petitioner nor it was stated that the counsel representing the accused-petitioner was ready to cross-examine the witness and nor the said request was declined/turned down by the learned trial Court and therefore, it cannot be said that the accused-petitioner did not get an opportunity to cross-examine him.

18. After hearing both the counsels, this Court has found that the facts as evident from the record are totally contrary. As per record, Shri Jagdev Singh, learned counsel for the co-accused Tulaji Angre examined Harish Dulani (PW-1) on 24.01.2002. In between, Shri Jagdev Singh, counsel for the co-accused took adjournment. The order recorded by the learned Magistrate himself on the said date, midway during the cross-examination of Harish Dulani by Shri Jagdev Singh, counsel for the co-accused, reads as under:-

"vfHkHkk"kd vfHk;qDrx.k ds vpkud vko";d dk;Z ds vk tkus ls xokg ls ftjg ugha gks ldh gSA xokg dks vkxkeh frfFk gsrq ikcan fd;k x;k "

19. Thus, the cross-examination remained incomplete from the side of coaccused Tulaji Angre and the witness Harish Dulani was bound down for the next date. On the next date of hearing i.e. 20.03.2002, the witness PW-1 Harish Dulani left the Court without any information. Therefore, a notice under Section 350 of the Cr.P.C. was issued to him on 20.03.2002 itself. The notice under Section 350 of the Cr.P.C. issued to Harish Dulani reads:-

"20-03-02

"vfHk;qDrx.k rpykth vkaxsz] izrkiflag o xksj/kuflag e; vf/k0 mi0A "ks"k vfHk;qDrx.k tfj;s vf/k0 mi0

xokg Jh gjh"k nqykuh] fcuk U;k;ky; vuqefr ds U;k;ky; NksM+dj pyk x;k gS ftldks u/s 350 Cr.C.P. dk uksfVI tkjh fd;k tkos rFkk iqu% tfj;s BW 500/- ds ryc gksA vk;ank okLrs lk{; fnukad 21-03-2002 eqdjZjk is"k gksA"

20. From the above, It is evident that even the counsel for the accused Tulaji Angre and others could not complete their cross-examination leave alone granting an opportunity to cross-examination by the counsel for Salman Khan. In view of the above, it is not understood as to how the trial Court came to the conclusion that learned counsel for Salman Khan did not cross-examine the witness Harish Dulani in spite of the opportunity. The argument that Harish Dulani was present on the next date upto 3:00 p.m. but he was not cross-examined, too, does not help the prosecution. Admittedly, a notice under Section 350 of the Cr.P.C. was issued to Harish Dulani for leaving the Court without any information on 20.03.2002. The notice speaks for itself. The finding recorded by the trial Court and the argument on behalf of the State that Harish Dulani was available upto 3:00 p.m. and was not cross-examined cannot be sustained

inasmuch as no counsel can cross-examine till as such time the case is called out. There is nothing to show that the case was called out even once since morning. For a moment, even if it is accepted that the case was called out and the counsel was not present, there was nothing to stop the Court from recording to the said effect in its order-sheet of the day and closing the evidence. Neither this fact is mentioned, nor is it mentioned that cross-examination by counsel of Salman Khan is "Nil" nor the fact that evidence was closed. The subsequent orders summoning the witness PW-1 in itself is proof of the fact that the counsel of Salman Khan, if not of the other co-accused, were still to cross-examine him. Thereafter, PW-1 Harish Dulani failed to appear before the trial Court on the subsequent dates despite being summoned by the trial Court through summons and bailable warrants. Therefore, after examination of the record, this Court is forced to note that the finding of the courts below with respect to opportunity granted to the counsel of Salman Khan to cross-examine PW-1 Harish Dulani is both pervert and contrary to the record.

21. Further, the argument of the learned Additional Advocate General that PW-1 Harish Dulani was summoned on 21.07.2001 and thereafter, through bailable warrants on 22.03.2002, 17.04.2002, 31.05.2002, 15.11.2002, 12.12.2002, 08.01.2003, 11.02.2003, 24.03.2003, 29.05.2003, 04.08.2003, 19.11.2003, 05.01.2004, 04.12.2004, 07.04.2005, 05.01.2005, 01.03.2005, 10.05.2005 and 05.10.2005 shows that the prosecution in no manner showed any lapse and they tried their best to produce him and that it satisfies the conditions laid down in Section 33 of the Evidence Act for admissibility of the said statement is not a correct assessment. To conclude that the prosecution had made every possible effort for calling and producing PW-1 appears to be erroneous and is falsified in view of the following facts; (a) accused-Salman Khan had submitted an application under Section 311 of the Cr.P.C. for calling the witness Harish Dulani on 07.04.2006; (b) along with the said application, the petitioner had attached the documents to show the whereabouts of Harish Dulani; (c) a photocopy of registry of property sold by Harish Dulani was attached, (d) the interview was given by Harish Dulani and broadcasted by Zee News on 05.04/2006, (e) Harish Dulani was represented by an advocate. He filed an application through his counsel on 29.05.2002 for exemption from personal appearance on account of death of his father. As such, there was no occasion for the investigating agency to say that PW-1 could not be traced or his whereabouts were not known.

22. The argument that Harish Dulani did not appear because of the threat perception, too, is also totally misconceived and false on the face of it. From the address given in the title of the case before the trial Court, all the co-accused, namely, Dushyant Singh, Om Singh and Tulaji Angre are local residents except Pratap Singh and Salman Khan who are outsiders and belong to Mumbai. Surprisingly, this witness turned hostile qua all the other co-accused, namely, Dushyant, Om Ji, Tulaji Angre and Pratap Ji. He exonerated all of them in his statement except the present petitioner Salman Khan. Still, tire threat is stated to be at the behest of Salman Khan. The conduct of Harish Dulani exonerating

the co-accused in his statement except Salman Khan shows a threat perception, if at all, on behalf of someone else. Taking into account that all the other co-accused have been exonerated by this witness except Salman Khan, one is left wondering as to the actual source of threat or was it the strength of local influence which led Harish Dulani to drop all local residents except Salman Khan who was not from here. In these circumstances, this Court has no hesitation in concluding that the prosecution either failed or intentionally kept Harish Dulani away from the Court after the recording of his examination-in-chief, lest the defence succeeds in driving the truth out of their only eyewitness. Otherwise also, it is hard to believe that a person from outside the State and who can be recognised by one and all will venture out in the middle of the night without security and without the company of local friends who would have been only too ready to play host to the film actor. Surprisingly, there is not a whisper of any such person. So much so, the petitioner seems to be surrounded by only the driver, cook, employees of farm-house etc. and some of whom were also arrayed as accused. Interestingly, even these people were either dropped by the alleged eyewitness Harish Dulani who turned hostile qua all of them or he refused to identify some of them in spite of the fact that they were local residents.

23. It is clear that Harish Dulani was very much around the place and his whereabouts were known. No effort worth the name was made by the prosecution to get his presence. Thus, there is nothing to show that the petitioner was in any way instrumental in keeping Harish Dulani out of the way.

24. Section 33 of the Evidence Act provides a right to the accused to cross-examine a witness. Cross-examination is an acid test for testing the truthfulness of the statement made by a witness after his examination-in-chief. The main object of cross-examination is to (a) destroy and or weaken the evidentiary value of the witness, (b) to show that a witness is unworthy of belief.

25. The Apex Court in the case of Jayendra Vishnu Thakur v. State of Maharashtra, reported in (2009) 7 SCC 104, held that the adverse party has a right and opportunity to cross-examine the witness and that it is not only a right but opportunity which must be granted.

26. Similar view was held by the Supreme Court in the case of State of Orissa v. Prasanna Kumar Mohanty, reported in (2009) 7 SCC 412. In the said case, the witness was present in the Court on two occasions but subsequently, he did not turn up for three years and as such, his cross-examination could not be conducted. The Apex Court held in no uncertain terms that his evidence cannot be read under Section 33 of the Evidence Act, which is fully applicable in the facts of the present case. The relevant part of the said judgment reads :-

"The Criminal trial or inquiry shall be deemed to be a proceeding in terms of the explanation appended to Section 33 between the prosecutor and the accused. However, in this case, despite the fact that two opportunities were granted to the defence for cross examining the said investigating officer but he was, as noticed

hereinbefore, was recalled for cross examination. Furthermore, since 2003 to 2006 he did not make himself available for his cross examination. In that view of the matter, we are of the opinion that Section 33 of the Evidence Act is not applicable to the facts of the present case."

27. In the present case, the prosecution tried to build their case by saying that an application under Section 33 of the Evidence Act was dismissed uptill the Apex Court and thus, the statement of Harish Dulani can be read in evidence. However, the said fact is also found to be incorrect. The application in fact was disposed of by the trial Court. It was challenged before the High Court in S.B.Criminal Misc. Petition No. 1 358/2005. While dismissing the said application vide order dated 19.01.2006, the Court held:

"By the order impugned, the trial Court has not finally concluded as to whether the statement of witness PW-1 Harish Dulani would be read in evidence against the present petitioner. On the contrary, the trial Court has left it open to raise all these objections at the time of final arguments of the case and a liberty was granted to the petitioner to raise such objections at the time of hearing of the case finally."

28. Thus, the issue whether statement of Harish Dulani (PW-1) can be read in evidence or not, had yet not been decided and was left open to be decided at the time of final decision.

29. All the above facts show that the accused moved every possible application before the trial Court to ensure that Harish Dulani was produced for cross-examination but Harish Dulani was or himself kept away for obvious reasons. The weapon of cross-examination is a powerful weapon, by which, the defence can separate true from false and can pierce through the evidence given by the witness in his examination-in-chief. As such, the statement of Harish Dulani (PW-1) in the absence of the cross-examination by the counsel for the accused-petitioner cannot be read against the petitioner. The courts below seem to have committed serious illegality while relying on the said statement of Harish Dulani.

30. There is another reason why the statement of PW-1 deserves to be ignored. It is apparent on the face of it that Harish Dulani is not a reliable witness. Besides, the various contradictions in his statement, it is pertinent to note that the police had charge-sheeted 6 accused persons vis., the accused-petitioner Salman Khan, Dushyant Singh, Om Singh, Gordhan Singh, Tulaji Angre and Pratap Singh. PW-1 in his statement recorded under Section 164 of the Cr.P.C. implicated each and every one of the said accused persons. However, in his evidence recorded before the trial Court, he resiled from his statement recorded under Section 164 of the Cr.P.C. and solely sought to implicate the accused-petitioner for the commission of the alleged incident. Further, in his statement recorded under Section 164 of the Cr.P.C., Harish Dulani (PW-1) stated that a half bald man accompanied them to Ghoda Farm. He further stated that he can identify the half bald man. In his second statement (Titamba Bayan) recorded on

04.12.1998, under Section 161 of the Cr.P.C., Harish Dulani (PW-1) alleged that the half bald man was Tulaji Angre, whereas, in his evidence recorded before the trial Court, Harish Dulani failed to identify Tulaji Angre despite the fact that Tulaji Angre was present in the trial Court on 24.01.2002, which can be seen from the order-sheet of the trial Court drawn on that day. In his statement recorded under Section 164 of the Cr.P.C. it was alleged that one person accompanied them from Ghoda Farm and was dropped back to Ghoda Farma after the incident. He did not mention the name of that person but suddenly, in his supplementary statement recorded under Section 161 of the Cr.P.C. on 11.10.1998, he informed that the person who accompanied them from Ghoda Farm was Gordhan Singh. However, in his evidence recorded before the trial Court, the said witness did not identify Gordhan Singh, and stated that the said accused is not present in the Court. Whereas, the order-sheet of the trial Court drawn on that day reveals that Gordhan Singh was present in the Court. Further, Harish Dulani has deposed before the trial Court that he did not name Dushyant Singh and Pratap Singh in his statement recorded before the Magistrate under Section 164 of the Cr.P.C., whereas, his statement recorded under Section 164 of the Cr.P.C. specifically contains the names of Dushyant Singh and Pratap Singh. Thus, it is doubtful as to whether PW-1 was an eyewitness at all. He could not even identify the place of incident. In fact, the trial Court itself observed in its order dated 10.04.2006 that PW-1 is not a reliable witness and has given false evidence and went on to even issue a notice under Section 344 of the Cr.P.C. to PW-1. Notice under Section 344 of the Cr.P.C. is issued in pursuance to a finding recorded by the Court to the effect that witness has intentionally given false evidence. The very issuance of the notice shows that the Court was convinced that the witness has intentionally given a false statement. To rely on a statement of a witness whose statement is found to be false is highly unsafe. The evidence must be free of any suspicion. Thus, the statement of Harish Dulani cannot be made the basis for convicting the petitioner.

31. In view of the above, the case of the prosecution rests solely on circumstantial evidence.

1. Whether Gypsy RJ-19 1C 2201 was the gypsy that was used in the alleged hunting of 28.09.1998: The story that the gypsy was deputed with the film unit along with Harish Dulani rests totally on the testimony of the owner of the gypsy, Arun Kumar Yadav (PW-5). Admittedly, there is no documentary evidence to prove that the alleged gypsy used in the crime was hired. In fact, PW-5 states that he had purchased the gypsy for his personal use and not for running it on rent. It is further stated by him that after purchasing gypsy, he had never given it on rent. This evidence with respect to recovery of gypsy is discussed further in the judgment as well.

32. The incident in the present case is stated to be of 28.09.1998 and another hunting is stated to be of 26.09.1998. It is admitted by this witness PW-5 that when he sat in the vehicle on 29.09.1998 in the night, there was no blood stains

or smell in the vehicle. Then, it is not understood as to how the blood stains and the smell of blood on 2nd could be related to the incident of 28.09.1998. Besides, Harish Dulani (PW-1), the prosecution produced three witnesses, namely, Pukhraj (PW-2), Kanwraram (PW-3) and Ruparam (PW-4). All these witnesses were staying around the place of incident. None of the witness supported the prosecution case and they were declared hostile. It is already held that the statement of Harish Dulani (PW-1) cannot be read in evidence. As such, there is no eyewitness in the present case to prove the use of the gypsy on 28.09.1998.

2. The prosecution collected blood from the spot in pursuance to the statement of co-accused Gordhan Singh recorded under Section 27 of the Evidence Act as well as from the spot where the deer was allegedly skinned; and secondly, the prosecution collected the moulds of the tyres of the gypsy and the moulds from the place of incident:

33. The prosecution produced Exh.P/1 dated 11.10.1998, which is the memo of site plan at Ghoda Farm where the deer was allegedly skinned and chopped. Exh.P/2 is the memo of verification dated 11.10.1998 with respect to the recovery of blood stained and control soil. Exh.P/9 dated 12.10.1998 is the recovery memo of deer's hair and tail. Exh.P/10 is the site plan of the place where the deer's skin was allegedly thrown. Exh.P/11 dated 12.10.1998 is the inspection memo of place of incident. Exh.P/12 dated 12.10.1998 is the recovery memo of blood stained soil and deer's hair from the place of incident. It was submitted by learned Additional Advocate General that the verification of the place where the skin was thrown and the place where the skin was removed as well as the place where the hunting took place is proved and established from the statements of PW-7 Ramkishan, PW-35 Ashok Patni and PW-1 Harish Dulani. Moreover, the said recovery was made in pursuance to the information given by accused-Gordhan Singh under Section 27 of the Evidence Act vide Exh.P/95.

34. Whereas, a perusal of these documents show that the same were signed not only by Ramkishan (PW-7) and Ashok Patni (PW-35) but also by one Phoosa Ram. PW-7 Ramkishan was declared hostile by the prosecution and the said Phoosa Ram was neither examined nor produced by the prosecution. The third witness Ashok Patni (PW-35) is tire Investigating Officer himself.

35. It was further contended that the animal which was hunted by the accused was "chinkara" is fortified from the FSL report Exh.P/82 dated 20.01.1999, which shows that after the serological examination, the blood found on Exh.P/1 was of deer (chinkara). Thereafter, the samples were forwarded to the Physics Division for necessary examination and its report Exh.P/89 further proves that the blood stained soil and the controlled soil match with each other. One of the circumstances relied on by the trial Court was also the presence of tyre marks of the gypsy at the place where the alleged hunting took place. As per the prosecution, the tyre moulds were obtained on two occasions i.e. on 13.10.1998 from the place where the alleged hunting took place and on 14.10.1998 from the

Coal Depot where the gypsy was allegedly kept by the Forest Department. Two moulds were allegedly obtained from the place of incident and four moulds of the tyre were obtained from the Coal Depot. Exhibit-P/13 is the memo of mould of tyres of Gypsy No.RJ-19 1C 2201 collected on 14.10.1998. In order to prove its case, the prosecution produced PVV-8 Gordhan Singh, PW-9 Sagarram Vishnoi, PW-26 Boraj Singh and PW-27 Vijay Dan. Exh.P/73 is the information entered in the daily diary of taking the tyre moulds from the place of incident on 13.10.1998. It is contended that PW-26 Boraj Singh and PW-36 Prabhu Singh have proved in their statements that they had gone to the place of incident for collecting tyre moulds. Further, Exh.P/83A is the report regarding the spot examination of the gypsy in question, which proves that all the four tyres and stepny of said gypsy were of MRF brand. Learned counsel for the the State also relied on Exh.P/90 dated 31.05.1999, which is FSL report regarding tyres moulds of the gypsy in question. As per Exh.P/90, the tyre thread impressions in the mould Exh.A-1 is similar to the tyre thread impressions in the moulds Exh.D-1, E-1 and F-1 in respect of the thread design and dimension in general. However, moulds B-1 and C-1 were not suitable for comparison.

On the other hand, the learned counsel for the accused-petitioner while meeting the arguments with regard to the recovery of tyre moulds from the alleged tyre marks present at the place of incident and of the gypsy submitted that:

(a) The place where the alleged incident had taken place are situated in a hilly area and the surface of the same is hard for retaining any sort of tyre marks.

(b) In case, the purported tyre moulds were obtained by the prosecution on 13.10.1998, the prosecution has failed to provide any evidence to show that the tyre marks purportedly present on the said date at the place of the alleged incident were due to the movement of the said gypsy only. It is the prosecution case that the alleged incident took place in the night of 28.09.1998 and keeping in mind that the soil at the said place of alleged incident was sandy, as stated in Exh.P/11 and by Prabhu Singh (PW-36), as such, by no stretch of imagination could the alleged tyre marks of the said gypsy have remained intact on the place of the alleged incident for over two weeks.

(c) It is specifically mentioned in Exh.P/77A i.e. the inspection report of the FSL, Jodhpur that the scene of crime was already disturbed on 13.10.1998.

(d) No documents except the extract of the daily dairy dated 13.10.1998 of 7:30 a.m. and 8:30 a.m. (Exh.P/72 & Exh.73) have been produced by the prosecution to prove that the said tyre moulds were obtained by the investigating agency from the place of the alleged incident on 13.10.1998.

After hearing the counsels and going through the evidence on record with respect to the tyre moulds taken from the place of occurrence, suffice it to say that no memo at all was prepared with respect to its recovery. Only an information Exh.P/73 was entered in the daily diary. In these circumstances, reliance on the statements of PW-26 Boraj Singh and PW-36 Prakash Singh that

they were present to take the mould highly prejudices the accused. The accused-petitioner has no means to confront these witnesses vis-a-vis the memo. Even otherwise, these moulds were taken after 12 days from the date of occurrence. Besides, the prosecution witness Pukhraj (PW-2) admitted in his cross-examination that the place was the military" area and military vehicles used that road.

36. As per the prosecution itself, tyre moulds of the gypsy were obtained by the prosecution while it was standing in the open at the Coal Depot. Four moulds of the tyre of the gypsy were collected in the presence of witnesses Gordhan Singh (PW-8), Sagarram Vishnoi (PW-9), Bohraj Singh (PW-26) and Vijay Dan (PW-27), and were marked as C, D, E and F. However, serious discrepancies are found in the testimony of the said witnesses. PW-8 Gordhan Singh stated that keys of the said gypsy were with Lalit Kumar Bora (PW-34), whereas, Sagarram Vishnoi (PW-9) stated that keys of the said gypsy were with Gordhan Singh. There are variations in the statements of the witnesses with respect to the manner in which the tyre moulds were obtained. Sagarram Vishnoi (PW-9) states that gypsy was locked at the time and Gordhan Singh had its key and when the moulds were taken, Gordhan Singh had given the key but in spite of the same, the vehicle was not driven by sitting inside but it was pushed to and fro. In case, key had been obtained, it is not understood as to why the moulds were not taken after driving the gypsy, which would give more accurate moulds. Gordhan Singh (PW-8) stated that Bohraj Singh was sitting at the steering wheel in order to move the gypsy, whereas, PW-26 Bohraj Singh and PW-27 Vijay Dan stated that no one sat at the driver seat while taking the moulds. There are discrepancies even with respect to the surface of the land where the tyre moulds were obtained. Surprisingly, the moulds were obtained on 13.10.1998 and 14.10.1998 but were sent for FSL as late as on 01.12.1998 after almost one and half month. All these discrepancies cast serious doubt on the evidence of moulds and whether the same were obtained in the manner as alleged.

37. However, even if all these discrepancies and obvious lapses in the evidence are ignored, it is still a question as to whether the conviction can be upheld on the basis of the recovery of some blood and tyre moulds alone. The question is as to whether the recovery of deer's blood and tyre moulds were sufficient to conclude that the same was with respect to the alleged hunting on 28.09.1998. The following facts give rise to serious doubt:-

(i) As already submitted above, the documents with respect to site plan at Ghora Farm (Exh.P/1), verification with respect to the recovery of blood stained & control soil (Exh.P/2), recovery memo of deer's hair and tail (Exh.P/9), site plan of spot where the deer was allegedly skinned (Exh.P/10), inspection memo of place of incident (Exh.P/11), recovery of blood stained soil & deer's hair from the place of incident (Exh.P/12) were signed by Ramkishan (PW-7) and Ashok Patni (PW-35) as well as by Phoosa Ram. Whereas, PW-7 Ramkishan was declared hostile by the prosecution, the said Phoosa Ram was neither examined nor

produced by the prosecution. The third witness Ashok Patni (PW-35) is the Investigating Officer himself.

(ii) As per the prosecution case, on 11.10.1998, PW-1 Harish Dulani showed to the investigating agency the place at Ghoda Farm where the deer was allegedly skinned. Exh.P/1 i.e. the site plan and Exh.P/2 i.e. the memo of demarcation and memo of seizure of blood and control soil as prepared in packets marked as "A" & "B". However, the Investigating Officer Ashok Patni (PW-35) has, in his evidence recorded before the trial Court, deposed that PW-1 did not know the place of the alleged hunting and that PW-1 could not reach there and nor the place of the alleged hunting was got identified from PW-1. As per PW-35 Ashok Patni: "I had not inspected the spot on the identification of Harish Dulani, because Harish did not know the spot, and he could not reach there. I had not visited the spot with Harish." Surprisingly, Harish Dulani could not show the place where the deer was skinned out nor the place of hunting in spite of the fact that he was the driver of the gypsy and he is alleged to be with Salman Khan through out.

(iii) As per the prosecution witness, Harish Dulani (PW-1), the person who accompanied the hunting party from Ghoda Farm was Gordhan Singh but PW-1 did not identify Gordhan Singh who was present in the Court. It was specifically stated by him that Gordhan Singh is not present even though he was present in the Court and on the basis of this evidence, Gordhan Singh stood acquitted by the appellate Court.

(iv) Surprisingly, the FSL report dated 17.11.1998 (Exh.D/6) was not produced by the prosecution but by the defence, which is with respect to the hair and tail collected from the place of alleged incident and from Ghoda Farm. The prosecution failed to exhibit and produce the FSL report 17.11.1998 (Exh.D/6). The said report does not state that the hair and tail sent for examination pertains to a "deer". On the contrary, the said report states that no definite opinion could be drawn as to which animal the said hair and tail belonged to, and that no opinion could be given after comparing both the samples with each other.

(v) The incident in question is stated to be of 28.09.1998. Gordhan Singh was arrested on 12.10.1998. On this date, his statement was recorded and on 12.10.1998 itself, the place of incident was identified. There is no evidence to suggest that no other vehicle passes by that site or that only one vehicle being driven by Salman alone had passed since then and that the said area/place was never used. Pukhraj is PW-2. He is stated to be working on the farm of one Ratnaram Mamli. As per this witness, he saw one vehicle on the said date but he did not see anything in the vehicle. He was declared hostile. Further, in his cross-examination, he admitted that there is military tower in the area and the military personnel used to come at night.

(vi) There was no mention as to where the carcass after hunting the same was taken and what happened to it. No investigation qua this was done. The

prosecution is totally vague on this part. As per the prosecution story, the deer was skinned on the farm house but no skin was found. Only tail was found and even the said tail was not found to be of a deer (Exh.D/6).

(vii) As per information of Gordhan Singh under Section 27 of the Evidence Act (Exh.P/96), the deer was skinned and chopped by Dana Ram. Surprisingly, Dana Ram was not made an accused but was produced as witness. He was examined as PW-37. Even if it is assumed that he was let off as he was only an employee of the Ghoda Farm, the owner of the farm is not even a witness, leave alone being an accused. Still further, knife etc. used for chopping and skinning the deer at Ghoda Farm was not recovered. There is no mention of the owner of the Ghoda Farm, whoever it may be, whose name has not even been disclosed in the entire evidence and is not forthcoming.

38. As per the prosecution, the place of incident and place of skinning the deer was identified by Gordhan Singh, who is the co-accused, in pursuance to his statement under Section 27 of the Evidence Act and the same cannot be ignored. It is an admitted case that the eyewitness Harish Dulani did not know Gordhan Singh. In his statement recorded under Section 164 of the Cr.P.C., (Exh.3/A), he did not name Gordhan Singh and simply stated that one man was picked up from Ghoda Farm to show the way. He only named three persons, namely, Salman Khan, Dinesh Gawre and Dushyant Singh. Thereafter, suddenly on 11.10.1998, a supplementary statement of Harish Dulani was recorded, which is Exh.P/4, in which, he specifically named Gordhan Singh. Thus, it is evident that the statement was created by the police. The name of Gordhan Singh was introduced by the police subsequently to Harish Dulani and that is why Gordhan Singh could not be identified by Harish Dulani who said that Gordhan Singh was not present in the Court even though he was duly present. Hence, it would be highly incorrect to rely on the statement under Section 27 of the Evidence Act of a co-accused who is not named by the alleged eyewitness while recording his statement under Section 164 of the Cr.P.C. but names him in the supplementary statement after almost 10 days and ultimately does not even identify him in the Court.

39. Surprisingly, Salman Khan was never made to identify nor taken to the place of incident in spite of the fact that he was also taken on police remand. In such a situation, the said recovery can be used, if at all, subject to other evidence against the person giving the information under Section 27 of the Evidence Act i.e. the person (accused) who has led the investigating officer to the said recovery and the same cannot be used against any other person or co-accused. The Division Bench of the Bombay High Court in the case of Nabi Mohd. Chand Hussain v. State of Maharashtra, reported in 1980 Cr.LD 860, while dealing with Section 27 of the Indian Evidence Act as to whether the same can be used with regard to co-accused, clarified in para 24 of the judgment that:

"24. The inbuilt limitation for its use against the maker in the provisions of Section 27 appears as available because of its setting after the provisions of

sections 24, 25 and 26, and particularly the latter two sections and that goes to show that though in the text of Section 27 the words "against such person" available in both sections 25 and 26 are not the part of the enacting text, by its very nature the same should be fairly read to be the part thereof. This is particularly so because the character of Section 27 is to carve out an exception to the general rule available in sections 25 and 26 and also to cut down to some extent the general provisions of Section 24 operative upon the proof of confessions. If it be the exception to the general rule, which has clear reference to the person accused and "against" when the rule of evidence is being enacted, it follows that the exception has to be read as one enacted with regard to such evidence that is admissible as against such person and no other. So read and together, it is implicit in these provisions that what is permitted to be proved having the information received from the accused pursuant to which discovery is made, is intended to be proved against such accused and not against non-informant co-accused.

25. We are aware that in the body of text of Section 27 the words "so much of such information, whether it amounts to confessions or not" have been enacted. The phraseology so employed merely shows that such information so given may amount to confession, in that it may be an admission of an incriminating nature or it may be merely an information without implications or involvement of criminal character. On the principles evident herein, such incriminating information could effectively be used only against the maker, as admissible evidence having assurance of its trust coming forth from the facts discovered pursuant thereto. With regard to co-accused, nothing of the kind is available and it would not be safe to use such information involving the co-accused, though such a statement may contain incriminating information with regard to the maker thereof. In fact, such an information even if proved would not strictly be evidence against the non-maker, for the maker is not a witness nor can be subjected to cross-examination. We must hasten to add that this all relates to informatory statement and not to "the facts" so discovered. Like any other fact being available and established as proved, its use would depend on the other evidence that may connect co-accused with such fact though they may not be linked with it by reason of the information that led to its discovery. Against the maker both the information and the fact discovered would be available for drawing inferences while against others the other evidence will have to be produced to connect them with such a fact."

40. No doubt, while dealing with the same, a word of "caution" was added. The use of statement under Section 27 qua other accused would also depend on the other evidence that may connect the co-accused with such facts. However, as noticed above, the evidence is both insufficient and weak in the present case.

41. The evidence in Criminal Case No. 207/1999 arising out of FIR No. 162/1998, P.S. Mathania (S.B. Criminal Appeal No. 53/2012 titled as "Salman Khan v. State of Rajasthan") with respect to recovery of hair and pellets from gypsy; the

evidence with respect to the recovery of gypsy; the evidence with respect to the recovery of weapons from the room of Salman Khan, weapons produced by Uday Raghwan as well as weapons recovered from Saif Ali Khan; the FSL report of the recovered weapons; the evidence of prosecution witness Satyainani Tiwari is identical and common, and exhibited in the present case as well. For convenience, it is clarified as under :-

Documentary/oral evidence exhibited in Criminal Case No. 207/1999 arising out of FIR No. 162/1998, P.S. Mathania (S.B. Criminal Appeal No. 53/2012)

Documentary/oral evidence exhibited in Criminal Case No. 206/1999 arising out of FIR No. 163/1998, P.S. Mathania (present Revision Petition)

Documentary evidence:

Ex.-P/5A Recovery of gypsy dated 7.10.98

Ex.P/14A

Ex.-P/6A Weapons produced by Uday dated 15.10.98 Raghwan

Ex.P.19A

Ex.-P/7A Recovery of weapons from dated 10.10.98 the room of Salman Khan

Ex.P/21 A

Ex.-P/8A Seizure memo of air rifle dated 12.10.98 from Saif Ali Khan

Ex.P/93

Ex.-P/9A Recovery of hair and pellets dated 12.10.98 from gypsy

Ex.P/20A

Ex.-P/IIA Spot examination(gpsy was dated 12.10.98 searched again.

Ex.P/83

Ex.-P/12A Gypsy was send for FSL dated 24.10.98

Ex.P/88

Ex.-P/18A FSL report dated 22.2.99

Ex.P/86

Ex.-P/45 Information regarding knife dated 15.10.98 by Salman u/s 27

Ex.P/98

Ex.-D/3 Search conducted in the room on 10.10.1998

Ex.D/4

Oral evidence:

Appeared in the present case as

PW-2 Lalit Kumar Bora

PW-34

PW-5 Sumnesh Limba

PW-12

PW-7 Arun Kumar Yadav

PW-5

PW-9 Shivchand Bohra

PW-14

PW-12 Mahendraraj Vyas

PW-17

PW-14 Satyamani Tiwari

PW-6

PW-15 Rajendra Singh

PW-30

PW-16 Om Prakash

PW-15

PW-17 Angad Lal

PW-16

PW-24 Gordhan Singh

PW-8

PW-25 Kailash Giri

PW-22

PW-28 Boraj Singh

PW-26

PW-29 Ashok Patni

PW-35

42. Accordingly, the discussion and the finding with respect to the aforesaid evidence recorded while deciding Criminal Appeal No. 53/2012 by an order and judgment of even date is being adopted in the following paras of this judgment as under:

1. Whether the evidence with respect to the recovery of blood stains from gypsy on 07.10.1998 be co-related to the incident of 28.09.1998: The prosecution alleged that gypsy was searched on 07.10.1998. It was during the search conducted on 07.10.1998 that certain blood like stains underneath the matting in the back portion of tire gypsy were noticed, whereas, PW-5 Arun Kumar Yadav deposed that the gypsy came to his shop on 29.09.1998 and he took the same to his house. It is admitted by him in his testimony that he saw the gypsy on 29.09.1998 but there were no blood stains or smell. However, when he saw the gypsy on 02.10.1998, there were blood drops on the back seat and it smelled blood. He got the gypsy washed in his presence on 04.10.1998 but the smell still did not go. In case, the gypsy had been used on 26th and again on 28th and two killed-dears had been loaded in it, it is not understood as to how the owner did not see the blood stain, hair or smelled blood when he saw the gypsy on 29.09.1998. On the said date, he did not suspect anything. Therefore, how can the blood which is allegedly noticed by the owner on 02.10.1998 and hair which were recovered on 10.09.1998 could be related to the hunting of 28th and in between, tire gypsy is stated to have been used again for hunting in the intervening night of 1st and 2nd as well. Another witness Satyamani Tinwari has been examined by the prosecution as PW-6. It was stated by him that he travelled in the gypsy with Salman Khan on 29.09.1998. He is a Police Officer. He, too, has made no reference to either any blood stain or any smell of blood in his testimony. The prosecution has failed to establish that the blood stain was of the alleged hunted deer of 28.10.1998.

2. The evidence with respect to recovery of hair and pellets from gypsy on 12.10.1998: The gypsy was seized on 07.10.1998 and on the said date, no pellet or hair was recovered. Only blood stains are stated to have been noticed, which were just few spots and that too inside of the matting. Even on 12th, the gypsy was inspected again vide Exh.P/83. It is also evident from Exh.-P/83 that it was a detailed examination so much so that even, the white paint on the gypsy was found missing and blackening was found in the inner part of bonnet of gypsy but surprisingly, no hair or blood or pellets were noticed on that day. Thereafter, the hair and the pellets are stated to have been recovered on 12.10.1998, for which, the recovery memo Exh.P/20A was prepared. One is left wondering as to how hair and pellets which were recovered on 12.10.1998 could not be found on 07.10.1998 although the gypsy was examined so minutely that even tiny spots of blood like were noticed on the plastic of matting of the back seat. In Exh.P/83, there is no mention that any pellets or hair were noticed and in Exh.P/20A, there is no mention that white paint on gypsy was missing and blackening was found in the inner part of bonnet of gypsy although both inspection are of same date. In any case, it is an admitted position that when the gypsy was examined on 07.10.1998. no pellet or hair was found. Thus, how come they were found on 12.10.1998.

43. The evidentiary value of the recovery of the alleged blood stain, alleged hair and alleged pellets has been questioned. As per the evidence, tire gypsy was in

the possession of Arun Kumar Yadav (PW-5) from 02.10.1998 to 07.10.1998. He got the gypsy washed on 04.10.1998 and also got the seats of the gypsy cleaned thoroughly. He did not see any pellets. Thereafter, as per Exh.P/14A, the gypsy was searched again on 07.10.1998. No pellets were found even on 07.10.1998. However, only blood stains were noticed. The blood stains, if so found and got picked up by the Investigating Officer, PW-34-Lalit Kumar Bora, on 07.10.1998, then the matting or the piece of the matting along with the blood stain should have either been cut or removed and sent for FSL on the same day. Instead, tire entire gypsy was sent for FSL examination as late as on 24.10.1998, which is evident from Exh.P/88 and as affirmed by Kailash Giri (PW-22) i.e. after almost 17 days. It is alleged that during this period, the gypsy was kept at Coal Depot but no such documentary evidence i.e. either in the form of malkhana register or otherwise has been produced to prove the proper custody of gypsy from 07.10.1998 to 24.10.1998 before it was sent for FSL. Even, as per the Investigating Officer, Lalit Kumar Bora (PW-34), the gypsy was not sealed and at one time he says that it was under supervision of two Forest Guards and then says that it was parked in the garage. The said two Forest Guards are Angad Lal (PW-16) and Gordhan Singh (PW-8). Angad Lal simply states that they had taken gypsy to Coal Depot where it was kept in a garage, whereas, Gordhan Singh specifically states that gypsy was parked in the open area at Coal Depot and that it remained in open place till it was sent to FSL. Thus, the prosecution has not been able to prove that the said gypsy was kept in safe custody and there was no chance of its access to any one. PW-22 Kailash Giri has been examined to show that he had taken the gypsy for FSL on 23.10.1998 but the office was shut and hence, the gypsy was deposited on 24.10.1998. He simply says that he kept it in Coal Depot and was in his possession. There is nothing to say that it was guarded or kept under lock and key on the said night. The gypsy lying unattended and unsealed is a serious infirmity strengthening the view" that the chances of the pellets having been planted cannot be ruled out, especially when they were not found in the gypsy on 07.10.1998 when it was thoroughly examined by the Investigating Officer, PW-34 Lalit Kumar Bora on 07.10.1998 hut were mysteriously found on 12.10.1998.

44. In the case of Ramesh Babulal Doslii v. State of Gujarat, reported in (1996)9 SCC 225, the Apex Court acquitted the accused as the prosecution had relied on the recovery of bloodstained clothes and other articles recovered from the flat of the appellant on September 9, whereas, no incriminating evidence was found on September 4 and 5 on an earlier search.

45. Similarly, in the case of Prem Singh v. State of Haryana (Criminal Appeal No. 925 of 2009), decided on 02.09.2013, the Apex Court held the recovery of weapons to be highly doubtful as no recovery was made from the spot on 21.09.1994; yet, on 22.01.1994 & 23.01.1994 the two fire arms were recovered in spite of the fact that they were not hidden, and no linkage could be established between bullets recovered from the dead body and fire arms recovered from the accused.

3. The evidence with respect to recovery of gypsy: Tire date and time when the gypsy was recovered is doubtful. The prosecution placed reliance on the testimony of Lalit Kumar Bora (PW-34), Angad Lal (PW-16) and Gordhan Singh (PW-8) to state that Lalit Kumar Bora had gone along with Angad Lal, Forester and Gordhan Singh, Forest Guard, to the house of Arun Kumar Yadav and recovered the gypsy vide Exh. P/14A. The recovery memo of gypsy Exh.P/14A does not carry the signature of driver i.e Harish Dulani. The other witnesses are Forest Guards. Thus, no independent witness has supported the recovery of gypsy on 07.10.1998. PW-2 Lalit Kumar Bora says that Harish Dulani had signed the recovery memo but his signatures are not there. Thus, it is not clear as to when the gypsy was recovered because if tire same was recovered on 07.10.1998, then how the blood stains were not collected and sent for FSL till 24.10.1998. Finally, instead of just sending a piece of matting where the blood spot was found or the mat itself for the FSL, the entire gypsy was sent on 24.10.1998.

46. It is admitted by Lalit Kumar Bora (PW-34) that the investigation was initially with the Deputy Conservator Forest, M.S. Sonal, and it was subsequently transferred to him by M.S. Sonal on 07.10.1998. He was an important witness who investigated the case before it was handed over to Lalit Kumar Bora on 07.10.1998. M.S. Sonal authorised Lalit Kumar Bora to investigate the case. Surprisingly, M.S. Sonal, the first Investigating Officer, was never produced as witness because in case, he had been produced, he may have disclosed that he had recovered the gypsy on 02.10.1998 itself and had found no incriminating evidence at that time.

4. The evidence with respect to recovery of weapons from the room of Salman Khan vide Exh.P/21A and vide Exh.P/19A from Uday Raghwan: Exh.P/21A is the seizure memo of camera & reel, air gun (1HP350 National Air Rifle .22 CALIBRE), telescope and pellets on 10.10.1998 from the room of Salman Khan; Exh.P/93 is seizure memo of Air rifle from Saif Ali Khan by the Forest Department; and Exh.P/20A is the seizure memo of pellets and hairs from gypsy on 12.10.1998. A perusal of all these documents show that they pertain to the recovery of FIR No. 93(26) dated 02.10.1998.

47. The prosecution tried to prove the documents Exh.P/21A by producing Rajendra Singh as PW-30 and Mahendraraj Vyas as PW-17 as independent witnesses by stating that Rajendra Singh admitted his signature on Exh.P/21A and he has also proved that Salman Khan was staying in room No.508 of Ummed Bhawan Palace, whereas, the fact is that Rajendra Singh (PW-30) turned hostile and in his cross-examination by tire Public Prosecutor, he stated that his signatures were obtained while he was in his office and nor he had read the memo before signing. The Investigating Officer, PW-34 Lalit Kumar Bora, has admitted that said witness Mahendraraj Vyas (PW-17) is his friend. It is the prosecution case that the alleged search and recovery from the gypsy took place at Coal Depot, Rai-ka-Baag at 9.25 a.m on 12.10.1998 and the search and

recovery from room No.508 of Ummed Bhawan Palace also took place on the same day at 4:00 p.m. using the same witness. It is too much of a co-incidence that Mahendraraj Vyas (PW-17) was present at both places unless he was favourite witness. The said document is stated to be also witnessed by Soheli Khan, M.S. Sonal and Shrawan Kumar but Soheli Khan has not been produced; the first Investigating Officer, M.S. Sonal, too, has not been produced for the reasons best known to them, whereas, Shrawan Kumar has since died.

48. The prosecution has heavily relied on the signatures of Salman Khan on Exh.P/21A to contend that the said recovery memo having been signed by Salman Khan is sufficient proof of the recovery. However, the following facts have emerged which does not leave a good taste in the mouth:-

(i) Exh.D/4 is a document, which shows that a search was conducted in the room of Salman Khan at Ummed Bhawan Palace on 10.10.1998 but no weapon was recovered. This document was concealed by the prosecution.

(ii) A search was conducted in the room of Salman Khan at Ummed Bhawan Palace on 10.10.1998 but no weapon was recovered. The search was conducted once again on 12.10.1998. This time, as per Exh.P/21A, Camera & reel, pellets as well as an Air gun 1 HP35D National Air Rifle 22 calibre along with the cover and telescope were recovered. When nothing was recovered on 10.10.1998, it is not clear as to why the room was searched again on 12.10.1998. It is admitted by Lalit Kumar Bora (PW-34), the Investigating Officer of the Forest Department that there was neither any statement under Section 27 of the Evidence Act nor any information to say that the weapons were lying in the room, in pursuance to which the room was searched again on 12th. It is also not clear as to why the accused would keep the arms lying around openly in the room on 12.10.1998 when he knows that the search etc. is going on. It is obvious that the recovery is not genuine. Moreover, PW-34 Lalit Kumar Bora, the Assistant Conservator of Forest, who was investigating the case No. 93(26) dated 02.10.1998, admits that the name of recovery witness as marked "I" to "J" i.e. Rajendra Singh, Security Officer of Ummed Bhawan Palace was added later on after the statement had been prepared.

(iii) Besides, the recovery as per Exh.P/21A from the room of Salman Khan, recovery memo Exh.P/19A has been produced showing the recovery of one 32 bore Revolver S&W made in USA No. 7011 and one 22 Rifle No. 2118 empty. The said weapons were allegedly brought by Uday Raghwan from Mumbai to Jodhpur on the asking of Salman Khan and presented before the Investigating Officer on 15.10.1998. The prosecution has tried to prove the said document by producing PW-14 Shivchand Bohra, PW-15 Om Prakash Joshi, who stated that one Uday Raghwan known to Salman Khan produced one rifle, one revolver and licence of weapon in their presence and that Uday Raghwan has produced the said weapons on the asking of Salman Khan. The license of the weapon was in the name of Salman Khan and he, too, has stated that the said weapons belong to him. Apart from that, Exh.P/19A was prepared in the presence of Salman Khan

and Uday Raghwan and both of them have admitted the same in their own handwriting. A perusal of Exh.P/19A shows that Salman Khan has written in his own handwriting as under :-

"I, Salman Khan, have only sent my 32 bore revolver to Mumbai and a air gun and on the request of the Forest Department I got them back plus my 22 rifle which was never brought to Jodhpur by requesting my friend Uday Raghwan to get it here."

Uday Kumar Raghwan, too, has written in his own handwriting that:-

"I, Uday Kumar Raghwan, am not aware of whether any weapon was send to Bombay from Jodhpur. I have only brought what was given to me in Bombay at Salman's Residence which Salman had asked me to get to Jodhpur on 15.10.1998."

49. Thus, the weapons were brought from Mumbai on 15.10.1998 as per the written note by Uday Raghwan and Salman Khan on Exh.P/19A in their own handwriting. However, there is no evidence that they were ever sent from Jodhpur to Mumbai except the hand-note written by Salman Khan on which the prosecution is placing heavy reliance. Either this note is to be accepted fully or rejected fully. It cannot be partly accepted or partly rejected. As per the written note, Salman Khan had brought with him 32 bore Revolver and air gun from Mumbai, which he sent back. It is known fact that an air gun cannot be used for hunting a deer and nor there is any evidence of using 32 bore Revolver. That leaves us with 22 rifle (firearm) but there is no evidence that it was brought to Jodhpur. As per the aforesaid written note, 22 rifle was never brought to Jodhpur prior to the incident. The prosecution has relied on the written note of Salman Khan in his own hand writing. If it is to be relied, then as per his statement, 22 rifle (firearm) was brought on the request of Forest Department after the incident. It was never at Jodhpur on the date of the incident.

50. In order to show that rifle (.22 bore No.2118) [firearm] was present at Jodhpur during the alleged incident, the prosecution has produced Satyamani Tiwari as PW-6. Satyamani Tinwari (PW-6) is the traffic Inspector, who was orally deputed by the Superintendent of Police to maintain the law and order during shooting of the film. As per his statement, Salman Khan told him on 29.09.1998 that his revolver was missing from his room. He accompanied with Dinesh Gavre, who was Salman Khan's Assistant along with the Manager of the Ummed Bhawan Palace, Sarkar Singh and Security Officer Rajendra Singh searched the room of Salman Khan. It is stated that one of the employees of Palace, namely, Berisal Singh was also with him. He found 22 rifle assembled with a telescope in the room as well as an Air gun which was also found assembled with telescope; and the revolver wrapped up in bed-sheet was found in the shelf of the bathroom, whereas, the entire statement of Satyamani Tiwari is surrounded with suspicion as evident from the following:-

(a) Satyamni Tiwari was informed about the missing of weapon at Luni Fort

where they were staying overnight. Instead of looking for the weapon in Luni Fort, it is not understood as to why he rushed to Ummed Bhawan Palace to search it.

(b) He found the weapon in the room without much effort. In case, the rifle and the air gun were lying in the room, it is not understood as to why only the revolver was wrapped in a big bed-sheet and kept in closet in the bathroom, especially when there is no allegation that it was used. It is highly improbable. There is no reason for Salman Khan to lie or state so on 29.09.1998 that he had lost the weapon because from 29.09.1998 to till 02.10.1998, there was no allegation or any enquiry or investigation or complaint or even a whisper about any hunting. Obviously, the witness has been planted only to show that the rifle, air gun and the pistol were very much in Jodhpur prior to the hunting of the deer.

(c) No rojnamacha was produced to show that Satyman Tiwari was put on duty with the film unit. As per his cross-examination, he knew that the validity date of the licence had expired but in spite of the same, he did not get any FIR registered.

(d) How could the Inspector giving security to Salman Khan search the room without his permission. Even if it is believed that he took the liberty to check the room because Salman Khan's Assistant was present but none of the witnesses, namely, Dinesh Gawre (Salman Khan's Assistant), Sarkar Singh (Manager of Ummed Bhawan Palace) and Balesar Singh (an employee of the Palace), who allegedly accompanied Satyamani Tiwari to the room, was produced as witness, whereas, Rajendra Singh is not questioned on this point.

51. Even, the trial Court in its para 65 of the judgment acquitted Salman Khan of the offence under Section 27 of the Arms Act on the ground that the prosecution has not been able to prove that accused Salman Khan used either .32 revolver or the rifle (firearm) for illegal hunting on that day without license. The translation of tire relevant part of para 65 of the judgment as supplied by learned counsel for the accused, reads as under:-

"65. Now as far as there is question of committing of offence punishable under Section 27 of the Arms Act by the accused Salman Kha, the prosecution had to prove in this regard that the accused Salman Khan at that time and on that day used the firearms without licence for hunting chinkara. No witness of prosecution has clearly stated that the accused Salman Khan had killed the Chinkara by firearms. It is true that the witness Harish Dulani P.W.1 has stated of hunting by gun with binoculars, but admittedly the accused had also available one airgun with binoculars. The Investigating Officer Ashok Panti P.W.-35 himself has in his evidence not expressed even a word that any fact came in the investigation regarding use of firearm in illegal hunting and in cross-examination also admitted that in my investigation it could not be ascertained that with which weapon was fired and it also didn't become clear that hunting was made with the airgun or any other weapon. Besides this no pellet or other material has been recovered

regarding any firearm. So without any strong evidence this presumption cannot be drawn that the accused Salman Khan had from the firearm of his possession and ownership hunted any chinkara. Hence, the case of prosecution regarding the charge of firearm cannot be deemed to have been proved beyond doubt."

No appeal has been filed by the State against the above finding of the trial Court but in spite of the same, in order to ascertain the truth, this Court has proceeded to re-examine the evidence as to which weapon was used for killing the deer, if any.

52. Following articles are stated to have been recovered in the present case:-
Exh.P/19A [weapons produced by Uday Ragvanas brought from Mumbai]

1. Revolver one - S&W .32 bore made in USA No.87011
2. Rifle one - .22 bore No. 2118 empty.

There is no evidence that either of the two were used. No corresponding bullet or cartridge was recovered. This leaves us with die air rifle/gun .22 (not a firearm), which was recovered vide Exh.P/21 A.

Exh.P/21A [recovery from the room of Salman Khan]

1. Camera-one Pentax K1000 empty made Japan
2. Reel Kodak-No. 125047 CB-36
3. Air Gun along with cover -1 HP 350 National Air

RIFLE .22 calibre No. 26180

Gun Telescope-One Wide Angle 4 X 32 Coted Image Made In Japan

4

Air rifle pellets-

1 packet full

Marks Manshot

1 packet loose 76 item.

Cong Range double Head.

Exh.P/20A [recovery from the gypsy]

1. Pallet

8 mm

item one}

The length of the pellet has been mentioned, instead of the dimension.

2. Pallets

5 mm

item five}

3. Hair

6-7 pieces

Exh.P/93 is the seizure memo of .22 air rifle produced by Saif Ali Khan.

53. As per Exh.P/86, packet "A" is the weapon recovered from Saif Ali Khan. Packet "B" is the weapon recovered from Salman Khan. Packet "C" is the pellets recovered from gypsy and packet "D" relates to the recovery of pellets from the room of Salman Khan. Para (5) & (6) of the FSL report reads as under:-

"(5) Three hundred sixty nine .22 Air gun lead pellets and one hundred six .22 steel Air gun pellets from packet A, C and D can be used in submitted .22 Air rifles (W/1 & W/2). However, five .177 lead Air gun pellets from packet "C" could not be used in .22 Air rifles (W/1 & W/2).

(6) Fifty Eight .22 lead and thirty six .22 steel Air gun pellets were test fired in the laboratory."

54. As per the FSL report, three hundred sixty nine .22 air gun lead pellets and one hundred six .22 steel air gun pellets from packet A, C and D can be used in both .22 air rifles i.e. W/1 and W/2 (both are not firearm). Therefore, it has not been established as to which one of the two air rifles, which are not firearm, were used i.e. whether the one belonging to Salman Khan or the one belonging to Saif Ali Khan.

55. As per Exh.P/21 A, the recovery is 1 HP35D National Air Rifle .22 calibre. It is admitted that the said air rifle is not a firearm. Reliance was placed by the learned counsel for accused on literature downloaded from the Air Rifle Hunting Basics (<http://thebestairrifle.com>) to say that .177 or .22 calibre is used for hunting small game like birds, rabbits, squirrels, hares, woodchucks etc. For killing wild pigs and even deer, normally air rifle like .45 and .50 calibre is used. The question has also been raised whether the pellets recovered can be used to kill an animal as big as deer, for which again, the following table has been provided:-

".50 PCP: Large game (deer), target shooting

.45 PCP : Large game (deer), target shooting

9mm PCP : medium game(coyotes), target shooting

.25 PCP: medium game (wild cats), target shooting

.22 PCP: medium game(racoons), large birds, target

.177 PCP: medium game(ground hogs), large birds, target

- .25 Spring-Action: Small game (squirrels), medium birds, target
- .22 Spring-Action: small game (squirrels), medium birds, target
- .177 Spring-Action: small birds, target shooting, plinking
- .177 CO2 & PCP Competition: small birds, target, plinking"

56. It shows that .177 or .22 Air gun lead pellets can only kill small game like bird, squirrels, rabbit etc., whereas, for a little large game like a deer at least .45 PCP and .50 PCP is required. In the present case, the pellets recovered from the gypsy are only .177 and .22. The recovery from the gypsy is of single head pellet, but from the room of Salman Khan, double head pellets were recovered. Hence, there is nothing to show that how the alleged hunting, if any taken place, can be attributed to Salman Khan. As per the FSL report, .177 pellets which were recovered from the gypsy cannot be used in the .22 air rifle. If they cannot be used in the air rifle .22, how were they present in gypsy and whom did they belong? No doubt, one solitary single-headed .22 pellet was recovered from the gypsy but while the arguments were being heard in S.B. Criminal Revision Petition No. 905/2007 (Salman Khan v. State of Rajasthan), the pellets recovered from the room of Salman Khan as well as from the gypsy and Saif Ali Khan were produced on the asking of the Court. On scrutiny, the alarming feature that came to the notice of this Court was that none of the pellets recovered either from the room of Salman Khan or that of Saif Ali Khan matched with ones recovered from the gypsy. Therefore, who did the pellets recovered in the gypsy belong to? In any case, the prosecution has not been able to prove that they belonged to Salman Khan. In the document Exh.P/21A, the length of pellets has been mentioned instead of dimension. Even if, for the sake of argument, it is accepted that the rifle (air gun) recovered from the room vide Exh.P/21A was used by Salman Khan, none of the pellets recovered can be used for killing a deer although it can kill a small game like rabbit, squirrel, bird, etc.

57. The prosecution also admits that they did not know and nor could make out as to which weapon was used by the accused. PW-34 Lalit Kumar Bora has stated in no uncertain terms that he could not arrive at the conclusion that the deer was hunted by an air rifle or any other firearm. Similarly, PW-35 Ashok Patni, the third Investigating Officer of the Rank of Additional Superintendent of Police, too, has admitted that he cannot make out which weapon was used for killing the deer. PW-26 Boraj Singh, S.II.O. who filed challan, too, admitted that he could not conclude as to which weapon was used. Hence, it is not understood as to how the Magistrate came to the conclusion that air gun was used in killing a deer especially in view of the discussion above. The prosecution has tried hard to convince this Court that fatal injuries can also be caused with an air gun. However, those are freak incidents where the aim is from close quarter by putting weapon so close that it is almost touching the skin. Learned counsel for the State referred to the literature of Air weapon fatalities as authored by C.M. Milroy, J.C. Clark, N. Carter, G. Ruttly, N. Rooney to substantiate that even an air

gun injury can be fatal. However, the said study of five cases of fatal air gun injury as identified by Department of Forensic Pathology and Histopathology, are the cases of firing at contact range to commit suicide; one person shot himself in the head, the other in the chest i.e. after the air gun was placed on the skin itself.

58. The Investigating Officer, Lalit Kumar Bora (PW-34) admitted that he could not arrive at any conclusion with respect to the weapon, whether the hunting was by air rifle or by igneous weapons, and further admitted that it is true that in this case neither the FSL nor medical report nor postmortem is available to match the use of weapon with the injury or to state that any such weapon has been used. Thus, the prosecution has totally failed to prove the use of either fire arm or even the air gun as recovered from accused-Salman in the alleged killing of the deer.

59. The prosecution exhibited documents Exh.P/18A which is recovery memo of knife and Exh.P/98 which is the statement of Salman Khan under Section 27 of the Evidence Act with respect to recovery of knife in FIR No. 162/1998. However, the Court below did not take the same into consideration as the knife was not recovered in the present case. The carcass of the deer was never recovered in this case and hence, there is no medical evidence that the said deer was killed by knife or the said knife was used as suggested. There is no evidence to establish the said theory. It is necessary to match the recovered weapon with the injuries, which is totally missing herein.

60. The argument of the learned counsel for the prosecution that the petitioner involved in this case was involved in another case or two and therefore, he is sure to be involved cannot be taken note of by this Court. In this case, as indeed an accused in every case can be held guilty only by cogent admissible evidence which points to his guilt or innocence. The background and antecedents are not a relevant factor and these facts assume significance only after the finding of guilt is arrived at on the basis of the evidence and that too only when the length of sentence has to be determined. In the detailed discussions above, this Court has already held that the statement of the eyewitness Harish Dulani cannot be read against the petitioner. He did not make himself available to cross-examine by the counsel of Salman Khan. The findings recorded by the trial Court that Harish Dulani was not examined by the counsel of the petitioner in spite of being present is not only pervert as held above but contrary to the record. Proceedings under Section 344 of the Cr.P.C. were initiated against Harish Dulani for making the false statement. The circumstantial evidence collected is both inadequate and weak. The recovery of blood stains and tyre moulds which is surrounded with suspicion was collected after 12 days of the incident from the place which is frequented by other vehicles and known for being used by military vehicles can hardly be called an incriminating circumstance. In the absence of any recovery of the carcass, absence of postmortem and absence of medical evidence as to the cause of death, there is no proof with respect to the kind of weapon, if any, used for killing, whether it was killed by a weapon at all or simply hunted and killed by

some other carnivorous animal. Besides, as in the earlier Appeal No. 53/2012 (Salman Khan v. State of Rajasthan) decided by this Court, in the present case also, the evidence collected is highly doubtful and suspicious. No pellets were found when the gypsy was searched on 07.10.1998 but they were suddenly found on 12.10.1998. No weapons were found when the room was searched on 10.10.1998 but surprisingly were recovered from the same room on 12.10.1998 while lying around openly. The pellets recovered from the gypsy do not match with the ones recovered from either the room of Salman Khan or Saif Ali Khan, and in any case, the recovered pellets are used only for hunting small animals like a rabbit or a bird. Under these circumstances, it would be highly unsafe to place reliance on such kind of evidence which is surrounded with suspicion and doubt. Even the prosecution has admitted that they were not able to establish the weapon used for alleged hunting, leading to the acquittal of the petitioner Salman Khan of the offence under Section 27 of the Arms Act by the Court below.

61. In view of the above, the revision petition filed by the petitioner-Salman Khan is allowed. The judgment and order dated 10.04.2006 passed by Chief Judicial Magistrate, Jodhpur in Criminal Case No. 206/1999 to the extent vide which, the petitioner was convicted and sentenced for the offence under Section 51 of the Wild Life (Protection) Act as well as the judgment dated 24.08.2007 passed by Sessions Judge Jodhpur in Criminal Appeal No. 50/2006 to the said extent of conviction of Salman Khan is set aside. The conviction and sentence awarded to the petitioner are also set aside. He is acquitted of the charges levelled against him.

62. For the same reasons as recorded above, the appeal filed by the State against Gordhan Singh i.e. S.B. Criminal Appeal No. 149/2013 is also dismissed.