

(2007) 08 DEL CK 0252

In the Delhi High Court

Case No : Criminal Appeal No's. 64 of 2007, Criminal Revision Petition No. 99 of 2007 and Criminal M. No's. 1864-1865 of 2007

Shibu Soren

APPELLANT

Vs

C.B.I.
 Priyambada Devi and Others Vs C.B.I. and Others

RESPONDENT

Date of Decision : 22-08-2007

Acts Referred:

Constitution of India, 1950 — Article 105(2)
Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 173(8)
Penal Code, 1860 (IPC) — Section 120B, 201, 302, 364, 365

Citation : (2007) 97 DRJ 629 : (2008) 1 ILR Delhi 625

Hon'ble Judges : R.S. Sodhi, J;H.R. Malhotra, J

Bench : Division Bench

Advocate : R.K. Anand, D.C. Mathur and S.S. Gandhi, Sanjeev Kumar and S.K. Santoshi, in Criminal Appeal No. 64 of 2007, D.C. Mathur and S.S. Gandhi, Sanjeev Kumar and S.K. Santoshi, in Criminal Appeal No. 158 of 2007, K. Sunil, in Criminal Revision Petition No. 99 of 2007 and Criminal M. Nos. 1864-1865 of 200, for the Appellant; Siddharth Luthra, Satyanarayan Vashisht, Rajni Gupta and A.K. Singh, in Criminal Appeal Nos. 64 and 158 of 2007, Siddharth Luthra and Satyanarayan Vashisht, Rajni Gupta and A.K. Singh for CBI/Respondent No. 1, D.C. Mathur and S.S. Gandhi, Sanjeev Kumar and S.K. Santoshi for Respondent Nos. 2 to 6 in Criminal Revision Petition No. 99 of 2007 and Criminal M. Nos. 1864-1865 of 2007, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Sodhi, J.—Criminal Appeal Nos. 64 of 2007, 158 of 2007 and Criminal Revision No. 99 of 2007 seek to challenge judgment and order of Additional Sessions Judge, Tis Hazari Courts, Delhi, in Sessions Case No. 3 of 2006, arising out of F.I.R. being R.C. No. 5 (S)/96-SIU-(XI)/CBI/New Delhi, whereby learned judge vide his judgment dated 28.11.2006, while acquitting Sunil Khaware and Ashish Thakur, has convicted the appellants, namely, Shibu Soren, for an offence u/s 120B read with Section 364/302 IPC; Nand Kishore Mehta @ Nandu u/s 120B

read with Section 364/302 IPC and for substantive offence u/s 302/201 IPC; Shalendra Bhattacharya u/s 120B read with Section 364/302 IPC and for substantive offence u/s 201 IPC; Ajay Kumar Mehta @ Dilip u/s 120B read with Section 364/302 IPC and for substantive offence u/s 201 IPC and Pashupati Nath Mehta @ Posho u/s 120B read with Section 364/302 IPC and for substantive offence u/s 201 IPC. Further, vide his order dated 5.12.2006 has sentenced Shibu Soren to life imprisonment with fine of Rs.5 lacs and in default of payment of fine, further Rigorous Imprisonment for one year u/s 120B read with Section 364/302 IPC. Out of the fine, the entire amount was to be paid as compensation to the family of the deceased in proportions mentioned therein. Nand Kishore Mehta @ Nandu was awarded sentence of imprisonment for life besides fine of Rs. 10,000/- and in default, shall undergo Rigorous Imprisonment for one year u/s 120B read with Section 364/302 IPC. He was further sentenced to imprisonment for life with fine of Rs. 10,000/- and in default of payment, shall undergo Rigorous Imprisonment for one year for substantive offence u/s 302 IPC as also Rigorous Imprisonment for three years and fine of Rs. 5,000/- and in default, further Rigorous Imprisonment for six months for substantive offence u/s 201 IPC. Shalendra Bhattacharya was awarded sentence of imprisonment for life besides fine of Rs.10,000/- and in default, shall undergo Rigorous Imprisonment for one year u/s 120B read with Section 364/302 IPC. He was further sentenced to undergo Rigorous Imprisonment for three years and fine of Rs.5,000/- and in default, further Rigorous Imprisonment for six months for substantive offence u/s 201 IPC. Ajay Kumar Mehta @ Dilip was awarded sentence of imprisonment for life besides fine of Rs.10,000/- and in default, shall undergo Rigorous Imprisonment for one year u/s 120B read with Section 364/302 IPC. He was further sentenced to undergo Rigorous Imprisonment for three years and fine of Rs.5,000/- and in default, further Rigorous Imprisonment for six months for substantive offence u/s 201 IPC. Pashupati Nath Mehta @ Posho was awarded sentence of imprisonment for life besides fine of Rs.10,000/- and in default, shall undergo Rigorous Imprisonment for one year u/s 120B read with Section 364/302 IPC. He was further sentenced to undergo Rigorous Imprisonment for three years and fine of Rs.5,000/- and in default, further Rigorous Imprisonment for six months for substantive offence u/s 201 IPC. All sentences were directed to run concurrently.

2. Brief facts of the case as have been noted by learned Additional Sessions Judge in his judgment under challenge are as follows:

Seven accused persons, namely, (1) Shibu Soren, (2) Sunil Khaware, (3) Ashish Thakur, (4) Nand Kishore Mehta @ Nandu, (5) Shalendra Bhattacharya, (6) Ajay Kumar Mehta @ Dilip and (7) Pashupati Nath Mehta @ Posho have been chargesheeted by C.B.I. for facing trial in a case bearing RC No. 5(S)-96/SIU/XI, New Delhi for offence punishable 364/302/201/120B I.P.C. on the basic accusation of having hatching criminal conspiracy by all the accused being masterminded by accused Shibu Soren for abduction and murder of Sh. Shashi Nath Jha, P.A. of accused Shibu Soren and in pursuance of said conspiracy,

abducting said Sh. Shashi Nath Jha by accused Sunil Khaware and Ashish Thakur on 22.5.94 at about 11.00 p.m. near Dhaula Kuan and thereafter committing murder of said Sh. Shashi Nath Jha by striking heavy iron rod on his head by accused Nand Kishore Mehta @ Nandu inside his house in village Tikra Toli, Distt. Ranchi, at about midnight in the last week of May, 1994 and thereafter removing dead body of said Sh. Shashi Nath Jha by accused Nand Kishore Mehta @ Nandu, Ajay Kumar Mehta @ Dilip, Pashupati Nath Mehta @ Posho, Shalendra Bhattacharya besides one lady and two other unknown persons and concealing the dead body of said Sh. Shashi Nath Jha by burying it near brick klin of accused Nand Kishore Mehta @ Nandu and subsequently removing the said dead body and burying it at jungle in Piska Bagan, Piska Nagri, Distt. Ranchi from where the remains dead body was ultimately exhumed on 13.8.98 by the CBI team in the presence of independent witnesses and Executive Magistrate.

The precise case of the prosecution as found reflected from the case record is as given below:

Shashi Nath Jha (deceased) being working as P.A./P.S. to accused Shibu Soren, the then M.P. from Bihar was handling the confidential and secret matter and was having full knowledge of financial transactions of accused Shibu Soren. That on 26.7.93 "No Confidence Motion" was tabled in Lok Sabha against the minority Congress (I) Government led by Sh. P.V. Narsimha Rao and it is alleged that in order to defeat the said "No Confidence Motion", support of four J.M.M. M.P.s including Shibu Soren was mobilised by giving them illegal gratification of huge amount and a separate chargesheet relating to said case bearing RC No. 5A/(96)/ACU/VIII was filed by C.B.I. before the Special Judge, Delhi. It is further alleged that said Sh. Shashi Nath Jha (deceased) being full aware of illegal gratification as received by accused Shibu Soren, had been demanding a substantial share out of the said amount from Shibu Soren, who was evading to part with. It is also alleged that said Sh. Shashi Nath Jha was apprehensive of safety to his life from Shibu Soren prior to 3-4 months of the incident as Sh. Shashi Nath Jha had disclosed about this aspect to his mother Smt. Priyambda Devi (PW-20) and to Sh. Sushil Kumar (PW-36).

It is further alleged that on 22.5.1994 at about 11:00 p.m. Sh. Shashi Nath Jha visited the tea shop at Sh. Balli Karan Pandey (PW-3) at Dhaula Kuan near petrol pump and purchased cigarette. In the meanwhile, a white ambassador car stopped opposite said shop and two persons, came out of the said car and insisted for purchasing cigarette and Bali Karan Pandey refused to oblige as he had closed the shop but on the request of Sh. Shashi Nath Jha being known to Bali Karan Pandey, he gave cigarette to them. Said two persons being known to Shashi Nath Jha talked with Sh. Shashi Nath Jha and after sometime suddenly they pushed Sh. Shashi Nath Jha inside the car and said car sped away from the spot.

As said Sh. Shashi Nath Jha was found missing, missing report of Sh. Shashi Nath Jha was got lodged by his brother Sh. Amar Nath Jha (PW-19) on dt.

24.5.1994 at police post North Avenue vide D.D. No. 19, copy of which is Ex. PW 45/B but said Sh. Shashi Nath Jha was not found traceable. Thereafter, on the basis of written complaint dt. 02.6.1994 of Sh. Amar Nath Jha (PW-19), which is Ex. PW-19/A, F.I.R. bearing No. 168/94, U/S 365 IPC was registered on 02.6.1994 at P.S. Parliament Street, New Delhi and copy of said FIR is Ex. PW-43/A. As the local police was clueless in its investigation, in pursuance of orders dt. 14.2.1996 as passed by Hon''ble High Court of Delhi in Crl. Writ No. 390/95 as filed by Smt. Priyambda Devi (PW-20), mother of the deceased, investigation of that case transferred to Crime Branch. But, even the Crime Branch also could not get any positive result, said mother of deceased filed another Crl. Writ registered as Cr. (Writ) No. 620/96 praying for transfer of investigation by an independent agency. Thereafter, in pursuance of the order dated 10.10.1996 as passed by Hon''ble High Court of Delhi in criminal writ petition No. 620/96, the investigation of this case was transferred to C.B.I. and fresh F.I.R. bearing RC No. 5 (S)-96/SIU/SI was registered by C.B.I. on dt. 16.10.96, copy of which is Ex. PW-45/A. Hon''ble High Court of Delhi also monitored the investigation by C.B.I. in this case.

It is further alleged that Sh. Shashi Nath Jha (deceased) after being abducted from Delhi was taken to the village Tikra Toli, District Ranchi and he was seen there in the company of leaders of Jharkhand Mukti Morcha (J.M.M.) Party including Nand Kishore Mehta, Shalendra Bhattacharya, Ajay Kumar Mehta and Pashupati Nath Mehta in the last week of May, 1994, on the day of football tournament in the village. Said Sh. Shashi Nath Jha was thereafter taken to the house of Nand Kishore Mehta, where liquor and meat were served at the party. On the said night, Charu Oraon (PW-4) also attended the said party at the house of accused Nand Kishore Mehta and after taking liquor he had fallen asleep and at about midnight on hearing the scream of "BACHAO BACHAO", he woke up and saw Sh. Shashi Nath Jha lying on the ground and Nand Kishore Mehta hitting him with a heavy iron rod on his head. Thereafter, Sh. Shashi Nath Jha started bleeding from his head and became unconscious. Then, Sh. Charu Oraon (PW-4) being terrified left the house of Nand Kishore Mehta @ Nandu with the help of accused Pashupati Nath Mehta @ Posho. It is further alleged that Sh. Sudershan Soni (PW-6), neighbour of accused Nand Kishore Mehta, also woke up on hearing scream in the said midnight and came out of his house and saw that body of Shashi Nath Jha being removed from the house of accused Nand Kishore Mehta by accused Nand Kishore Mehta @ Nandu, Ajay Kumar Mehta @ Dilip, Pashupati Nath Mehta, and placing the body of Shashi Nath Jha in an Ambassador Car, waiting outside. Shalendra Bhattacharya along with one lady also came out from the house of Nand Kishore Mehta and sat in said car, which left the spot being followed by accused Nand Kishore Mehta and Pashupati Nath Mehta on a motorcycle towards Ranchi Road. It is further alleged that on the next morning some villagers had noticed half buried human body near a pond in the village near brick klin of accused Nand Kishore Mehta @ Nandu, being snatched by dogs and when Dr. Gautam Sharma (PW-5) enquired about it from accused Nandu, he

advised him to keep quiet and mind his own business. It is further alleged that thereafter body of Sh. Shashi Nath Jha was shifted from the aforesaid place to a nearby safer place and buried at Piska Bagan, Piska Nagri (Distt. Ranchi) where from remains of dead body was exhumed by the C.B.I. team on 13.8.1998 in the presence of Sh. Ravinder Nath Panda, Executive Magistrate (PW-35), Ex-mukhia of village Sh. Jag Niwas Mehto (PW-12), Dr. Sushil Kumar Shukla (PW-30), Sh. U.K. Goshwami, D.S.P., C.B.I. (PW-46) and Inspector V.K. Pandey (PW-45) vide Recovery Memo (Panchnama) Ex. PW 30/A. Postmortem of the said recovered remains of skeleton was got conducted on the same day at Ranchi Medical Hospital through Dr. Ajit Kumar Chaudhary (PW-17) vide Post Mortem Report Ex. PW 17/A and as per said report age, sex and injury over the skull and time of death found matched with that of Sh. Shashi Nath Jha. The recovered "Skull" and other articles were sent to Andhra Pradesh Forensic Science Laboratory, Hyderabad and on the basis of the superimposition test with the enlarged photograph of Sh. Shashi Nath Jha vide report Ex. PW 16/A, it was opined that the said skull could be of the individual as per photograph mark item 11 (photograph of Sh. Shashi Nath Jha) and the injuries on that skull, were ante mortem and must have been caused at the time of death.

It is further alleged that on 2.6.1994 when Amar Nath Jha (PW-19), brother of the deceased along with his mother Smt. Priyambda Devi (PW-20) and Kumari Kavita (PW-24) and Kumari Preeti (PW-25), daughters of said Sh. Shashi Nath Jha met accused Shibu Soren at his residence, accused Shibu Soren is alleged to have stated that Sh. Shashi Nath Jha has already died and said Shibu Soren also offered to get admitted both the daughters of Sh. Shashi Nath Jha in Day Boarding School and to bear their expenses. It is further alleged that when family members of Sh. Shashi Nath Jha requested accused Shibu Soren to get hand over the investigation of the case to C.B.I. and to give media publicity, Shibu Soren was found evading to do so. It is further alleged that during investigation it revealed that accused Sunil Khaware and Ashish Thakur, are the persons, who abducted Sh. Shashi Nath Jha from Dhaula Kuan on 22.5.1994. Efforts were made for their interrogation and thereafter Sunil Khaware was arrested on 29.11.1997 and Ashish Thakur surrendered in the court on 23.1.1998. Accused Sunil Khaware and Ashish Thakur declined to participate in the T.I.P. on the ground that they have been already shown to the witness. During the course of investigation, other accused persons were arrested and interrogated, statement of the relevant witnesses were recorded, necessary steps towards investigation were carried out by the I.O. and after the conclusion of the investigation, chargesheet against aforesaid seven accused was filed by the C.B.I. before the court of Ld. C.M.M., Delhi on 10.11.1998.

3. Central Bureau of Investigation (C.B.I.) in order to establish its case examined as many as 46 witnesses. Of these PW-1, Lekhraj, who does not support the prosecution, was allegedly witness to the T.I.P. of the accused Sunil Khaware at C.B.I. Office, New Delhi on 10.12.1997. PW-2, Anil Kumar Pancholi, also does not support the prosecution and is an alleged witness to T.I.P. of accused Sunil

Khaware at C.B.I. Office, New Delhi on 10.12.1997. PW- 3, Bali Karan Pandey; PW-4, Charu Oraon; PW-5, Dr. Gautam Sharma and PW-6, Sudershan Soni are the material witnesses who have been pressed into service to establish the case of the prosecution on the facts of conspiracy, abduction and murder of Shashi Nath Jha. PW-7 is Subodh Krishan Prasad, Sub- Inspector, who took photographs of the exhumed body from Piska Bagan, Piska Nagri. PW-8, Jumman Ali, is the owner of the plot where football match was held and which was attended by Shashi Nath Jha along with other leaders of the Jharkhand Party. PW-9, Mohd. Mumtaz Ahmed Khan, deposes to the allocation of party ticket of Nand Kishore Mehta for the Assembly Election from Hatia Constituency by the J.M.M. Party, Executive Committee, headed by Shibu Soren. PW-10, Vijay Raje, Junior Engineer, C.P.W.D. from Ranchi, prepared the site plan of the house of Nand Kishore Mehta @ Nandu as also of the place of recovery of the skeleton on the pointing of Charu Oraon, PW-4 and V.K. Pandey, PW-45. PW- 11, Shamim Akhtar, deposes to have seen one dark complexion lady Tara Devi with Shalendra Bhattacharya traveling in a white Ambassador Car in May, 1994 in the village. PW-12, Jagniwas Mehto, is a witness of exhumed human skeleton from Piska Bagan, Piska Nagri on 13.8.1998. PW-13, Dr. S.K. Lahiri, Senior Scientific Officer, C.F.S.L., Lodhi Road, deposes to the Polygraph Test conducted and the report prepared. PW-14, Ram Dev Gop and PW-15, Kumari Kamla, are the formal witnesses. PW-16, Dr. T.S.N. Murthy, Joint Director, F.S.L., Hyderabad, conducted the superimposition test on the skull of the exhumed skeleton and prepared his report Exhibit PW-16/A with the opinion that the skull could belong to Shashi Nath Jha, the individual in the photograph. PW-17, Dr. Ajit Chaudhary from Department of Forensic Medicine, Rajendra Medical College, Ranchi, deposes to the postmortem conducted on the skeleton on 13.8.1998 and proves his report Exhibit PW 17/A. The report indicates the sex, age, injury and the time of death. PW-18, Vijay Nath Jha, younger brother of Shashi Nath Jha, deposes to an offer made to him of Rs.3-4 lacs to withdraw the complaint through Bhaskar on behalf of Shibu Soren. PW-19, Amar Nath Jha, is the elder brother of Shashi Nath Jha. He deposes to the complaint filed by him which was recorded as D.D. No. 19 dated 24.5.1994 at P.P. North Avenue, Delhi, Exhibit PW 45/B as also another complaint dated 2.6.1994 Exhibit PW 19/A which form the basis of the F.I.R. Exhibit PW 43/A, registered at Police Station Parliament Street, New Delhi. PW-20, Priyambda Devi, who is the mother of Shashi Nath Jha, deposes to the effect that Shashi Nath Jha apprehended danger from Shibu Soren 3 or 4 months prior to the incident. PW-21, Dhani Ram, who is a taxi driver, deposes to having dropped Shashi Nath Jha at Dhaula Kuan bus stand on 22.5.1994 at about 9:15 p.m. PW-22, Pawan Kumar Sharma, deposes to his friendship with Shashi Nath Jha and to the fact of Shashi Nath Jha being P.A. to Shibu Soren. PW-23, Satbir Ahmed, deposes to having seen Shashi Nath Jha on the evening of 22.5.1994. PW-24, Kumari Kavita, daughter of Shashi Nath Jha, deposes to the effect that on 2.6.1994, Shibu Soren stated to her sister Preeti and grandmother that Shashi Nath Jha was dead as also reluctance of Shibu Soren for investigation to the C.B.I. as also the help sought to be rendered by Shibu Soren to the child of

Shashi Nath Jha. PW-25, Kumari Preeti's statement is on the same lines as of PW-24, Kumari Kavita. PW-26, Shashi Kumar Tripathi, deposes to have seen Shashi Nath Jha with Sushil Kumar. PW-27, S.I. Sukhi Ram, made an endorsement Exhibit PW 27/A on the complaint of Amar Nath Jha, PW-19, and got the F.I.R. registered at Police Station Parliament Street on 2.6.1994. PW-28, Viney Kumar Gupta, learned Metropolitan Magistrate, recorded the statement u/s 164 of Code of Criminal Procedure of Charu Oraon, (PW-4), Priyambda Devi (PW-20), Kumari Kavita (PW-24) and Kumari Preeti (PW-25). PW-29, Asha, deposes about the visit of Shashi Nath Jha to their office on 20.5.1994. PW-30, Dr. Sushil Kumar Shukla, Medical Officer from Sadar Hospital, Ranchi, is a Panch witness to the recovery memo Exhibit PW 30/A in respect of the skeleton exhumed from Piska Bagan on 13.8.1998. PW-32, G.R. Bhashkar, Retired Principal, Hyderabad, examined the skull and proved his report Exhibit PW 16/A. He also proved Clarificatory Report Exhibit PW 32/A. PW-33, Dr. K.C. Gandhi, Director Andhra Pradesh State, Forensic Science Laboratory, Hyderabad, deposes that the test conducted by T.S.N. Murthy (PW-16) were under his supervision and his report Exhibit PW 16/A. PW-35, Ravinder Nath Pandey, A.D.M., witnesses the recovery of skeleton from Piska Bagan on 13.8.1998. PW-36, Sushil Kumar, is a Chartered Accountant, who deposes to the deposit of Rs.30 lacs on 31.7.1993 at Punjab National Bank, Nauroji Nagar Branch, New Delhi by Shibu Soren. He also deposes to the events in the third week of January, 1994 where Shashi Nath Jha expressed his apprehension of danger to his life from Shibu Soren. PW-37, Dr. B.P. Sinha, deposes to be the owner of the plot from where human skeleton was recovered on 13.8.1998. PW-38, Mukti Tirthi, deposes to the visit of Shashi Nath Jha to his office on 20.5.1994. PW-39, Inspector R.L. Yadav, was an associated Investigating Officer as also witness to the search of residence of Sunil Khaware on 29.11.1997. PW-40, Ramesh Prasad Sahu, deposes that Nand Kishore Mehta is a member of the Jharkhand Mukti Morcha Party and Shibu Soren is its leader as also to the visit of Shibu Soren and his party members to the house of Nand Kishore Mehta. PW-41, Vijay Mahto, is the neighbour of Nand Kishore Mehta, who deposes to the same effect as deposed by Ramesh Prasad Sahu, PW-40. PW-42, S.I. Satyapal Singh, deposited the case property at F.S.L., Hyderabad, vide Exhibit PW 33/A and that the case property, while in his custody, remained intact. PW-43, S.I. Inderwati, recorded the F.I.R. No. 168 of 1994, u/s 365 IPC, Police Station Parliament Street on 2.6.1994. PW- 44, Hemant Soren, son of Shibu Soren, deposes to his relations with Shashi Nath Jha. PW-45, Vinod Kumar Pandey, is the Investigating Officer while PW-46, U.K. Goshwami, D.S.P., C.B.I., New Delhi, deposes to have assisted Vinod Kumar Pandey (PW-45), Investigating Officer.

4. The trial court on evaluation of evidence and material before it formulated 41 circumstances and thereby came to the conclusion that the prosecution had been successful in bringing home the guilt of the accused. The circumstances formulated are as under:

1) Deceased Sh. Shashi Nath Jha was working as P.A./P.S. to accused Shibu

Soren, M.P., at his residential office at 17-Gurudwara, Rakab Ganj Road, New Delhi, during the relevant period.

2) Accused Nand Kishore Mehta @ Nandu is a member of Jharkhand Mukti Morcha (J.M.M.) Party, and accused Shibu Soren is the main leader of said party and accused Shibu Soren and his party members used to visit the house of accused Nand Kishore Mehta @ Nandu.

3) Accused Shalendra Bhattacharya is also the leader of J.M.M. Party and said Shalendra Bhattacharya along with one dark complexioned lady, namely, Tara Devi, who is also a leader of J.M.M. Party used to travel in white ambassador car and were seen in the village in May, 1994.

4) Accused Shalendra Bhattacharya along with dark complexioned lady was found sitting in Ambassador car parked near the house of accused Nand Kishore Mehta in the evening in the last week of May, 1994, on the day when Sh. Shashi Nath Jha was seen along with accused Nand Kishore Mehta @ Nandu and others going towards the house of accused Nandu Mehta at village Tikra Toli.

5) On that evening when Sh. Charu Oraon (PW-4) entered in the house of accused Nand Kishore Mehta @ Nandu to attend the drink party, he had seen one white car parked in the courtyard in the house of accused Nand Kishore Mehta @ Nandu.

6) The accused Pashupati Nath Mehta @ Posho is the cousin brother of accused Nand Kishore Mehta @ Nandu.

7) Accused Ajay Kumar Mehta @ Dilip is real brother of accused Nand Kishore Mehta @ Nandu.

8) Four MPs of J.M.M. Party including accused Shibu Soren are stated to have received huge amount as bribe for voting against "No Confidence Motion" voted in Lok Sabha on dt. 28.7.93 in favor of minority Congress-I Government led by Sh. P.V. Narsimha Rao, for which separate chargesheet in respect of that case bearing RC No. 5(A)/96/ACU/VIII was filed by CBI in the court of Special Judge, Delhi against accused Shibu Soren and others. Against the order on charge dt. 6.5.1997 as passed by Ld. Special Judge, matter was challenged before Hon'ble High Court of Delhi, and order on charge of Special Judge was upheld vide judgment dt. 12.9.1997 by Hon'ble High Court of Delhi as reported in P.V. Narsimha Rao Vs. Central Bureau of Investigation, , it was observed as under:

7. The "No Confidence Motion" was lost on the 28th. The four J.M.M. MPs and seven MPs of Ram Lakhan Singh Yadav group voted against the Motion. And, on the 29th and the 30th the J.M.M. MPs received a part of the promised booty. For the rest arrangements were being made in Bangalore.

The aforesaid judgment of Hon'ble High Court was challenged before Hon'ble Supreme Court of India and matter was decided vide judgment dt. 17.4.1998 as reported in P.V. Narsimha Rao Vs. State (CBI/SPE), and in concluding part of

judgment at Para 181, it was observed as under:

181. We now set down the effect upon the accused of our findings.

We have held that the alleged bribe takers who voted upon the no confidence motion, that is Suraj Mandal, Shibu Soren, Simon Marandi, Shalendra Mehto, Ram Lakhan Singh Yadav, Ramsharan Yadav, Roshan Lal, Anadi Charan Das, Abhay Pratap Singh and Haji Gulam Mohammed (accused No. 3, 4, 5, 6, 16, 17, 18, 19, 20 and 21) are entitled to the immunity conferred by Article 105(2)

9) Accused Shibu Soren got deposited Rs.30 Lacs in P.N.B., Nauroji Nagar Branch, New Delhi on dt. 31.7.1993.

10) Sh. Shashi Nath Jha (deceased) had been demanding Rs.15 Lacs from accused Shibu Soren.

10) The business firm M/s Simex International was floated and financed through accused Shibu Soren in which there were four partners, namely, Sh. Shashi Nath Jha (deceased), Sh. Sushil Kumar (PW-36), Smt. Rupri Devi and Sh. Hemant Soren (wife and son of accused Shibu Soren respectively). But on 22.4.1994 Sh. Shashi Nath Jha was outstand from the said firm.

11) Prior to 3-4 months of the incident Sh. Shashi Nath Jha was apprehensive of his personal safety from accused Shibu Soren.

12) Accused Shibu Soren was out of Delhi during the relevant period i.e. from 22.5.1994 to 31.5.1994.

13) Sh. Shashi Nath Jha (deceased) was found missing from the evening of 22.5.1994.

14) At about 11.00 p.m. in May, 1994 Sh. Shashi Nath Jha was seen being abducted by two persons while pushing him into a white Ambassador Car at Dhaura Kuan near tea shop of Sh. Bali Karan Pandey (PW-3).

15) Sh. Shashi Nath Jha (deceased) was seen in the company of accused Nand Kishore Mehta, Pashupati Nath Mehta, Shalendra Bhattacharya in the village Tikra Toli, District Ranchi, in the evening of last week of May, 1994.

16) Sh. Shashi Nath Jha (deceased) was found having taking meat and drink in the company of accused Pashupati Nath Mehta, Nand Kishore Mehta @ Nandu, Charu Oraon (PW-4) on the said night in the house of accused Nand Kishore Mehta @ Nandu.

17) in the said midnight, inside the house of accused Nand Kishore Mehta @ Nandu on hearing scream BACHAO BACHAO, Sh. Charu Oraon (PW-4) woke up and noticed accused Nandu Mehta striking a thick iron rod twice on the head of Sh. Shashi Nath Jha and it started profuse bleeding from his head.

18) In the said midnight on hearing scream BACHAO BACHAO Sh. Sudershan Soni (PW-6), neighbour of accused Nand Kishore Mehta, came out of his house

and noticed accused Nand Kishore Mehta @ Nandu, Pashupati Nath Mehta, Dilip Mehta taking out body of Sh. Shashi Nath Jha from the house of Nand Kishore Mehta @ Nandu and placing it on the rear seat of the waiting ambassador car in which, accused Shalendra Bhattacharya and one lady, who came out of the house of Nandu Mehta, sat in the car along with two other persons and thereafter said car left the spot being followed by accused Pashupati Nath Mehta and Nandu Mehta on a motorcycle.

19) Two-three days after the said incident it was heard in the said village that dogs were snatching a partly buried human body near brick klin of Nand Kishore Mehta.

20) When Dr. Gautam Sharma (PW-5) met accused Nand Kishore Mehta @ Nandu that evening in the village and asked him about lying of said dead body near his brick klin, Nand Kishore Mehta responded him to the effect he should mind his own business as he has no concern on the said aspect.

21) After about one week of said incident, Sh. Charu Oraon (PW-4) when asked accused Pashupati Nath Mehta as to why said person was killed, to which accused Pashupati Nath Mehta justified the killing by responding that, said person was outsider, Harami and womaniser.

22) On 2.6.1994, accused Shibu Soren has suggested complainant Amar Nath Jha (PW-19), brother of deceased not to mention the name of anyone in the police complaint as suspect for kidnapping of his brother and Hemant Soren, S/o Shibu Soren has threatened him by stating that , AAP KISI KA BHI NAAM LENGE TO HUM SE BURA KOI NAHI HOGA.

23) On 2.6.1994, accused Shibu Soren stated in his house in the presence of Smt. Priyambda Devi (PW-20), Km. Kavita (PW-24), Km. Preeti (PW-25) to the effect that Shashi Nath Jha had already died.

24) On 2.6.1994, accused Shibu Soren had offered to get admitted daughters of Shashi Nath Jha in the Day Boarding School and to bear the expenses in this regard, which was declined by Smt. Priyambda Devi (PW-20).

25) On 2.6.1994, accused Shibu Soren challenged mother and daughters of Shashi Nath Jha that even if they will search for Shashi Nath Jha, they can do so in Delhi only, not beyond that of.

26) The behavior of accused Shibu Soren with the family members of deceased Shashi Nath Jha after his disappearance was found not normal.

27) Accused Shibu Soren is stated to have been avoiding the issue for tracing out Shashi Nath Jha whenever contacted by relative of deceased Shashi Nath Jha.

28) Accused Shibu Soren is stated to have extended threat to Sh. Vijay Nath Jha, brother of deceased (PW-18) once and in C.B.I. Office for withdrawing the complaint. 29) When Smt. Priyambda Devi (PW-20) requested accused Shibu Soren to handover the case to C.B.I., the accused Shibu Soren is stated to have

evaded the said request by stating that , MAIN KHUD CBI HUN.

30) Accused Shibu Soren is stated to have asked Sh. Vijay Nath Jha (PW- 18), who is brother of deceased, to withdraw the case and to take Rs.3-4 lacs, through one Bhaskar and as Sh. Vijay Nath Jha (PW-18) declined he was threatened by accused Shibu Soren.

31) On 5/7th July, 1995 Sh. Amar Nath Jha (PW-19) stated to have been advised by Sh. Pawan Kumar, who was P.A. to Sh. Siman Marandi, M.P., who met them earlier at residence of Shibu Soren, that they were unnecessary making efforts for tracing Shashi Nath Jha and they should withdraw their case.

32) Sh. Amar Nath Jha (PW-19), who is brother of deceased is stated to have been threatened by Hemant Soren and Durga Soren, both sons of accused Shibu Soren.

33) In the month of October/November, 1994 Sh. Sushil Kumar (PW-36) asked accused Shibu Soren regarding whereabouts of Shashi Nath Jha, upon which Suraj Mandal accompanied with accused Shibu Soren stated to the effect that Shashi Nath Jha had already died.

34) The Executive Committee of J.M.M. Party being headed by accused Shibu Soren allotted party ticket concerning Hatia Constituency in Assembly Elections in the year 1995 to the accused Nand Kishore Mehta, Member of J.M.M. Party, thereby, declining the claim for said ticket of senior party members, namely, Mohd. Mumtaz Ahmed Khan, who joined J.M.M. Party in 1981, Sunil Fakira, who had joined J.M.M. Party in 1985-86.

35) That on 13.8.1998 in the presence of independent Panch witness Sh. Jagniwas Mehto, ex-mukhia of village (PW-12), Dr. Sushil Kumar Shukla (PW-30), Sh. Ravinder Nath Pandey, A.D.M. (PW-35) and S.I. Subodh Krishan Prasad, Photographer (PW-7) one human skeleton remains besides some articles were exhumed from Piska Bagan in the village Piska Nagri by C.B.I. Team vide Panchnama (recovery memo) Ex. PW-30/A.

36) From the Panchnama (recovery memo) Ex. PW 30/A, it is reflected that besides remains of human skeleton, some articles i.e. one orange colour cloth piece, one Metal Kara, one jean's pant Brand sticker, etc., were also recovered. The deceased Shashi Nath Jha on the day of incident was stated to be wearing a Kara and jean's pant as Sh. Charu Oraon (PW-4), who is an eye-witness and had seen the deceased closely in the drink party inside the house of accused Nand Kishore Mehta @ Nandu deposed as under:

I do remember it at the time of occurrence said Mr. Jha was wearing a Kara. He was wearing a jean's pant, it was probably of maroon colour.

Sh. Gautam Sharma (PW-5), who had seen the deceased in the company of some other accused going towards the house of accused Nand Kishore Mehta on that evening, deposed as under:

When I saw Shashi Nath Jha with Khashi (goat) he was wearing a pant and shirt.

It indicate that the recovered articles could be connected with deceased Sh. Shashi Nath Jha.

37) That on 13.8.1998 the recovered skeleton remains were examined by Dr. Ajit Kumar Chaudhary, Tutor, Department of Forensic Medicine, Rajinder Medical College, Ranchi, (PW-17) and he proved his postmortem report dt. 13.8.1998 as Ex. PW-17/A and as per said report his opinion regarding sex, age, injury over the skull and time of death matched with that of deceased Shashi Nath Jha.

38) Sh. T.S.N. Murthy, Joint Director, F.S.L., Hyderabad (PW-16) conducted superimposition test on the said recovered skull and prepared his report Ex. PW-16/A and he opined that said skull item No. -1 matched with that of the photograph Mark-11 (photograph of Sh. Shashi Nath Jha).

39) Dr. G.R. Bhaskar, Professor of Forensic Medicine, Hyderabad (PW-32) examined the recovered skull and gave the opinion regarding causation of injury as per his observation from Point A to B of report Ex. PW-16/A, indicating:

(a) Fracture on the left frontal region of the skull.

(b) The fracture is enter-mortem in nature.

(c) There is no evidence of any repair or healing of the fracture and indicates that the person must have received the fracture at the time of his death.

Said Dr. G.R. Bhaskar (PW-32) also proved his clarificatory report dt. 23.2.1999 Ex. PW-32/A indicating:

The possibility of a heavy Metal rod causing the injury cannot be ruled out.

The said report from Point-A to B of Ex. PW 16/A and Ex. PW 32/A corroborate the deposition of eye-witness Sh. Charu Oraon (PW-4) that he had noticed in the midnight of last week of May, 1994 that Nandu Mehta striking twice a thick iron rod on the head of Jhaji inside the house of Nand Kishore Mehta.

40) Sh. Vijay Nath Jha (PW-18), younger brother of Sh. Shashi Nath Jha deposed that Sh. Dinesh Bhatt, A.C.P., Delhi Police told to his mother that it was a political case and political pressure were being exerted on police and hence advised his mother to make efforts to get the investigation transferred to C.B.I. Smt. Priyambda Devi (PW-20), mother of deceased filed a petition before Hon"ble High Court of Delhi and on her petition Hon"ble High Court ordered for the transfer of the investigation to the C.B.I. In pursuance of order dt. 10.10.1996 of Hon"ble High Court of Delhi F.I.R. No. RC/5/96/SIU/XI was registered by C.B.I. on 16.10.1996 vide copy of F.I.R. Ex. PW-45/A.

41) Shashi Nath Jha was found abducted at about 11.00 p.m. in May, 1994 from Dhaula kuan in front of shop of Bali Karan pandey (PW-3) in a white ambassador car as seen by PW-3 Sh. Bali Karan Pandey.

In the last week of May, 1994, in the evening at about 6/6.30 p.m. at Village Tikra Toli (Distt. Ranchi) Dr. Gautam Sharma (PW-5) saw Shashi Nath Jha (deceased) in the company of accused Nand Kishore Mehta, Pashupati Nath Mehta and others along with a goat going towards house of Nand Kishore Mehta. Said PW-5 further noticed on that evening, one white ambassador car parked near house of accused Nand Kishore Mehta and accused Shalendra Bhattacharya along with one dark complexioned lady was found sitting in rear seat of that car.

On that evening at about 7/8 p.m. when Sh. Charu Oraon (PW-4) went inside the house of accused Nand Kishore Mehta to attend drink party, he saw one white Ambassador car parked in the courtyard near well inside house of Nand Kishore Mehta.

On that evening Sh. Sudershan Soni (PW-6) had also seen white Ambassador car parked near house of Nand Kishore Mehta. On the said midnight, after hearing scream BACHAO BACHAO when said PW-6 came out of his house he saw accused Nand Kishore Mehta, accused Pashupati Nath Mehta, accused Dilip Mehta removing body of Shashi Nath Jha from the house of Nand Kishore Mehta and placing it at rear seat of Ambassador car, parked in front of house of Nand Kishore Mehta. Accused Shalendra Bhattacharya along with one lady came out from house of Nand Kishore Mehta and sat inside said car, which left from the spot, being followed by accused Pashupati Nathi Mehta and Nand Kishore Mehta on a motorcycle.

Thus, it seems that white Ambassador car was used for abduction of Shashi Nath Jha from Delhi as well as for disposal of body of Shashi Nath Jha at village Tikra Toli.

5. Learned Senior counsel for the appellants, Mr. R.K. Anand and Mr. Dinesh Mathur, have contended that as per the charge framed, the prosecution is required to establish a conspiracy between the accused persons for the purposes of carrying out an illegal act, namely, abduction of Shashi Nath Jha from Delhi and thereafter his murder at Village Tikra Toli in Bihar. They contend that there is nothing on record to show as to when, where and how the so-called conspiracy was hatched. There is no material placed on record by the prosecution to warrant a finding that the accused persons shared a common intention or there was a meeting of minds to do away with Shashi Nath Jha. In the absence of any material, the trial court's finding to the effect that conspiracy stands proved is fanciful and based on conjunctures. Mr. Mathur also contends that the factum of death of Shashi Nath Jha has not been proved. The skeleton exhumed on 13.8.1998 is not proved to be that of Shashi Nath Jha. He further contends that the so-called eye-witnesses have been conveniently planted by the investigating agency to complete their case which is based on the so-called "source information". Counsel further contends that the withholding of the so-called "source information" by the prosecution is fatal to the prosecution's case besides gravely prejudicing the defense of the accused. Learned Counsel sums up his case by submitting that the proven circumstances taken together do not form a

chain that leads to an inference that the accused persons are guilty of the offence charged. The trial court's judgment is unsustainable.

6. Learned Counsel for the C.B.I. submits that the case against the accused is fully established by the 41 circumstances set out in paragraph 10 of the judgment under challenge and that each circumstance in itself stands proved and taken jointly leads to the inevitable conclusion that the prosecution has been able to prove its case beyond doubt. He relies upon the testimony of PW-4, Charu Oraon, who according to counsel, is an eye-witness and has witnessed the attack by Nand Kishore Mehta on Shashi Nath Jha. The presence of the witness at the house of Nand Kishore Mehta is established and this witness has given graphic picture of what occurred in May, 1994. The testimony of PW-4 is corroborated by PW-6, Sudershan Soni, who saw Shashi Nath Jha being carried out of the house of Nand Kishore Mehta at midnight after he heard the cries of BACHAO BACHAO. PW-6, Sudershan Soni, has identified the accused persons who, according to PW-4, Charu Oraon, were present at the party attended by Shashi Nath Jha at the residence of Nand Kishore Mehta. PW-6, Sudershan Soni, has also stated that Shashi Nath Jha was then removed in a white Ambassador car by the accused persons and the car sped towards Ranchi. This witness finds support from PW-5, Dr. Gautam Sharma, who saw Shashi Nath Jha in the company of accused persons in the evening sometime during last week of May, 1994 proceeding towards the house of Nand Kishore Mehta with a goat after quarreling with the villagers. It is this witness who testifies to a half buried body being eaten by the dogs and also the speculation as to who was dead. The witness also deposes to the wearing apparels of Shashi Nath Jha when he proceeded towards the house of Nand Kishore Mehta. Minor discrepancies between witnesses, according to counsel, are not material enough to discard their testimony. He also contends that conspiracy in this case has been established through the testimony of PW-19, PW- 20, PW-24, PW-25 and PW-36. He contends that the motive for the crime was the demand made by Shashi Nath Jha of money which Shibu Soren had taken as bribe to caste his vote in favor of the Congress Party at the relevant time. Since Shashi Nath Jha was becoming inconvenient, Shibu Soren along with his co- accused, namely, Sunil Khaware, Ashish Thakur, Nand Kishore Mehta @ Nandu, Shalendra Bhattacharya, Ajay Kumar Mehta @ Dilip and Pashupati Nath Mehta @ Posho conspired to abduct Shashi Nath Jha from Delhi, take him to Piska Nagri at Ranchi and kill him as also to dispose of his body and destroy evidence. In furtherance of this conspiracy, counsel submits Shashi Nath Jha was abducted from Delhi on 22.5.1994 which abduction is deposed to by Bali Karan Pandey (PW- 3), an employee at a tea shop in Dhaula Kuan who saw Shashi Nath Jha being pushed into a waiting white Ambassador car. Shashi Nath Jha was missing ever since. According to counsel, on 24.5.1994, a missing report vide D.D. No. 19 was lodged by Amar Nath Jha (PW-19). He contends that further to the conspiracy, Shibu Soren conveniently was not in Delhi and when contacted by PW-20, Priyambda Devi, mother of the deceased, on 26.5.1994 at Bokaro over the phone

assured her that he would return to Delhi with Shashi Nath Jha, however, on 2.6.1994, when Shibu Soren was confronted by PW-24, Kumari Kavita, PW-25, Kumari Preeti along with PW-20, Priyambda Devi, Shibu Soren told them that Shashi Nath Jha was dead. He even tried to bribe the witnesses by offering to take care of them and lodge the children in boarding school. Counsel further contends that Shibu Soren obstructed the case being investigated as also threatened the relatives of the deceased so that they do not name the suspects as also placed obstacles in the case being transferred for investigation to the C.B.I. According to the counsel, there is evidence on record to show that Shashi Nath Jha apprehended danger to his life from Shibu Soren which is deposed to by PW-36, Sushil Kumar, as also PW-20, Priyambda Devi, mother of the deceased. He contends that there is evidence on record to show that Shibu Soren deposited Rs.30 lacs at Punjab National Bank, Nauroji Nagar Branch, New Delhi and that Shashi Nath Jha demanded Rs.15 lacs from Shibu Soren. The fact is deposed to by PW-36, Sushil Kumar. There is also evidence on record to show that special favors were bestowed upon the accused persons by rejecting the winning candidates for the J.M.M. Party ticket and giving the same to Nand Kishore Mehta, a losing candidate. Pursuant to the conspiracy hatched, there is evidence to show that Shashi Nath Jha was taken to Piska Nagri where he was seen by PW-4, 5 and 6 and finally killed by Nand Kishore Mehta at midnight in May, 1994. The body was carried from the house of Nand Kishore Mehta and buried at a place close to the brick klin of Nand Kishore Mehta. This body was then discovered two days later when the dogs were desecrating it and Therefore, it was re-buried deeper in the forest. The remains were exhumed on 13.8.1998 by the Investigating Officer who came to know of its possession through a secret source developed by him. The skeleton so exhumed was put to various tests. In one test to which the skull was put was superimposition test. This gave positive results that the skull belonged to Shashi Nath Jha. The DNA tests conducted at the instance of the court are not authentic since the samples were contaminated. Even otherwise, the law does not require presence of the dead body to establish murder provided the prosecution is able to establish its case by other cogent evidence. In the present case, the nature of the injuries on the skull corroborate the testimony of PW-4, who saw Nand Kishore Mehta striking a blow on the head of Shashi Nath Jha on the fateful night in May, 1994. Counsel submits that the delay of four years in carrying out the investigation is not fatal in the present case since the witnesses have clearly deposed what they saw and put to memory clearly and distinctly leaving no doubt that the witnesses are deposing truthfully and establishing the fact for which they have been cited. The prosecution's case has been discussed elaborately by the trial court and its conclusion cannot be faulted with.

7. We have heard elaborate arguments in this case and have gone through the voluminous record meticulously. The trial court has broadly divided the prosecution's case into three parts, (1) Conspiracy amongst the accused persons to abduct and murder Shashi Nath Jha; (2) Abduction of deceased Shashi Nath

Jha and (3) Murder and disposal of body of Shashi Nath Jha.

8. Before advertng to the conspiracy part of the prosecution, it would be appropriate to deal with the motive for the crime. It is the prosecution's case that Shibu Soren, being leader of J.M.M. Party, accepted bribe from Mr. P.V. Narsimha Rao, Prime Minister and leader of the Congress Party to vote in the Parliament in favor of the Treasury. Shashi Nath Jha, who was the Private Secretary of Shibu Soren, demanded his cuts from this bribe which drew the displeasure of Shibu Soren and, Therefore, Shibu Soren and the other accused persons hatched a conspiracy to murder Shashi Nath Jha.

9. Analyzing the material placed before us, we find that in order to establish receipt of bribe by Shibu Soren, the prosecution has pressed into service an order of the Supreme Court reported in 1998 CLJ 2930; P.V. Narsimha Rao v. State (C.B.I.) which reads as under:

181. We now set down the effect upon the accused of our findings.

We have held that the alleged bribe takers who voted upon the no-confidence motion, that is Suraj Mandal, Shibu Soren, Simon Marandi, Shalendra Mehto, Ram Lakhan Singh Yadav, Ramsharan Yadav, Roshan Lal, Anadi Charan Das, Abhay Pratap Singh and Haji Gulam Mohammed (accused No. 3, 4, 5, 6, 16, 17, 18, 19, 20 and 21) are entitled to the immunity conferred by Article 105(2).

10. From a bare reading of the observations of the Supreme Court above, it is clear that the Supreme Court has not returned a finding that Shibu Soren is guilty of having accepted bribe. On the contrary, the Supreme Court put a ban to any prosecution by virtue of an immunity conferred upon him under Article 105(2) of the Constitution of India. Surely, this is not evidence to establish the fact that Shibu Soren took a bribe, as has been inferred by the trial court.

11. The other material sought to be relied upon by the prosecution is the fact that Shibu Soren deposited Rs.30 lacs in the Punjab National Bank, Narouji Branch, New Delhi. There is nothing on record to show that this 30 lacs of rupees deposited by Shibu Soren with the aid of PW-36 is dirty money. There is material to show that PW-36, Sushil Kumar, convinced Shashi Nath Jha to seek a loan from Shibu Soren which loan, in fact, was given by way of using overdraft facilities to the extent of Rs.3.8 lacs. From this amount, firm M/s. Simex International was floated. Shashi Nath Jha, Sushil Kumar, Rubi Devi, wife of Shibu Soren; and Hemant Kumar, son of Shibu Soren were partners. In April, 1994, Shashi Nath Jha was removed as a partner of the firm. But there is nothing on record to show that Shashi Nath Jha fell into disgrace over any particular act of his which caused annoyance to Shibu Soren. A pure business dealing is sought to be blown out of proportion without any corroborative material. There is no evidence that Shashi Nath Jha made any other demand from Shibu Soren. The testimony of PW-36, Sushil Kumar, to the effect that he was told by Ram Iqbal Singh, Advocate, that Shashi Nath Jha had demanded Rs.15 lacs, is inadmissible and cannot be used as material for the purposes of arriving

at a conclusion that Shashi Nath Jha demanded money. Ram Iqbal Singh has not been examined. There is no evidence on record that Shashi Nath Jha threatened to expose Shibu Soren, blackmailed him or held such secrets as would lead Shibu Soren to eliminate Shashi Nath Jha. There is no other material on record to show that there was any motive for Shibu Soren to have desired to cause any harm to Shashi Nath Jha. There is no evidence to show that Shibu Soren showed any displeasure towards Shashi Nath Jha. There has never been an altercation, neither any argument nor has Shashi Nath Jha ever been reprimanded nor an expression of dissatisfaction towards Shashi Nath Jha brought on record which could lead to an inference that Shibu Soren entertained a motive to have Shashi Nath Jha eliminated. We, Therefore, find no material on record to suggest motive on the part of Shibu Soren or any of the accused persons to murder Shashi Nath Jha.

12. Coming to the conspiracy aspect, we find, as has also been admitted before us, that there is no evidence to show as to when and where the conspiracy was hatched. There is also no evidence on record as to where and when any of the conspirators met to hatch this conspiracy. There is also nothing on record to show that Shibu Soren met any of the accused persons at any time prior to the alleged murder of Shashi Nath Jha. There is nothing on record to show that there was any communication or attempt to communicate between the accused persons for the purposes of furthering the objects of the conspiracy or even to hatch the alleged conspiracy. There is nothing on record to show that there was meeting of mind or a tacit understanding arrived at between the accused persons to eliminate Shashi Nath Jha. Mere belonging to a political party cannot prove a conspiracy.

13. The aspect which is sought to be highlighted by the prosecution in order to establish conspiracy, is the conduct of Shibu Soren on being told that Shashi Nath Jha has gone missing. The first is the telephone call made by mother of the deceased, Priyambda Devi (PW-20) to Shibu Soren at Bokaro on 26.5.1994 to enquire about the whereabouts of Shashi Nath Jha to which he is alleged to have said that Shashi Nath Jha would come back with him. On 1.6.1994 after coming to Delhi, Shibu Soren is alleged to have gone to the house of the family of Shashi Nath Jha. There he allegedly took the brother of Shashi Nath Jha, Amar Nath Jha (PW-19) to the police post. On 2.6.1994, Amar Nath Jha (PW- 19) visited the house of Shibu Soren, who has suggested that PW-19 should give a written complaint stating that his brother has been kidnapped or someone has arranged his kidnapping. Shibu Soren, however, advised him not to mention names. This complaint is Exhibit PW 19/A. On the same day, father and mother of Shashi Nath Jha, Priyambda Devi (PW-20) along with Preeti (PW-25) and Kavita (PW-24), daughters of Shashi Nath Jha, contacted Shibu Soren and were not satisfied with his reply. The prosecution wants us to believe that Shibu Soren told Preeti (PW-25) that "Tumhara papa to upar chale gaye" and on being rebuked, Shibu Soren said "Aayenge to mere kaam layak to nahi aayenge" and infer from this that Shibu Soren knew that Shashi Nath Jha had already been eliminated.

However, on being confronted with the statement of PW-20, Priyambda Devi, u/s 161 of Code of Criminal Procedure, these words are not there. Secondly, Preeti's statement was recorded after the statement of PW-20 was recorded u/s 164 of Code of Criminal Procedure where these words are mentioned. The possibility of tutoring Preeti cannot be ruled out. Preeti was a child of five years and is not expected to remember the exact words which were spoken when she testified in court on 13.8.2001 having then attained the age of 12 years. There is also material on record to show that Shibu Soren offered financial assistance to the family of Shashi Nath Jha which was turned down and that Shibu Soren did not assist in having the investigation transferred to C.B.I. From this conduct of Shibu Soren we are called upon to return a finding that there was a conspiracy between all the accused persons to murder Shashi Nath Jha. We find this material, even if taken to be factually correct, is not sufficient to impute conspiracy to murder. Snippets from here and there disjointed, cannot be read to infer a sinister design. Conspiracy would have ended with the alleged murder of Shashi Nath Jha, the subsequent events can be taken into consideration to infer a conspiracy if there is evidence of a tacit understanding having arrived at prior to the conspiracy having ended. In the present case, there is no evidence of meeting of minds prior to the conspiracy and the subsequent conduct of Shibu Soren of showing concern for the family of Shashi Nath Jha, in no way, points to the guilt of Shibu Soren. A great deal has been made out from the so-called apprehensions of the deceased that he would suffer harm at the hands of Shibu Soren. From the deposition of PW-36, Sushil Kumar, the apprehension is based on Shashi Nath Jha having gone to meet Shibu Soren under the influence of liquor. But there is nothing on record to show that at that meeting Shibu Soren showed any displeasure or reprimanded Shashi Nath Jha. Deposition of PW-20, Priyambda Devi, to the effect that Shashi Nath Jha was apprehensive of his life from Shibu Soren is a bald statement without reasons as to why and on what account did he fear Shibu Soren who, otherwise, is stated to have a soft corner for Shashi Nath Jha, who was his Private Secretary and had given a loan to his partnership concern and had also come to the aid of the family. We, Therefore, are not inclined to give more weightage to this apprehension than it really deserves. The allegation of bribe or pressurization are not corroborated. It is on record that the family of Shashi Nath Jha suspected PW-36, Sushil Kumar, and at no point of time pointed a finger towards Shibu Soren. The advice of not naming PW-36 can hardly be taken as an indication of conspiracy.

14. The prosecution has sought to prove that pursuant to an understanding between the accused persons and in furtherance thereto Shashi Nath Jha was kidnapped from Delhi on 22.5.1994 by Sunil Khaware and Ashish Thakur from Dhaula Kuan. This aspect of the matter need not detain us further since Sunil Khaware and Ashish Thakur have been acquitted by the trial court which has held that there is no evidence on record to show that Sunil Khaware and Ashish Thakur are guilty of having kidnapped Shashi Nath Jha from Dhaula Kuan on 22.5.1994. To contend that there was a third person in the same car is neither

here nor there since with the acquittal of Sunil Khaware and Ashish Thakur, the very substratum of the abduction theory has been shattered. Furthermore, there is evidence on record that Shashi Nath Jha was sighted at Tikra Toli in the last week of May, 1994 and early week of June, 1994. Here, he was participating as a V.I.P. in some sort of a tournament. For this, we may refer to PW-5, Dr. Gautam Sharm, PW-6, Sudarshan Soni and PW-8, Jumman Ali. Consequently, the case of the prosecution that Shashi Nath Jha was abducted from Delhi on 22.5.1994 stands disproved. The prosecution's case of conspiracy hatched between the accused persons for abduction from Delhi on 22.5.1994 fails.

15. Coming to the case of alleged murder and disposal of body of Shashi Nath Jha, the prosecution has sought to prove this part of the case with the aid of PW-4, Charu Oraon, who, according to the prosecution, is an eye- witness to the assault on Shashi Nath Jha; PW-5, Dr. Gautam Sharma, is the Homeopathic doctor at Tikra Toli, who testifies to Shashi Nath Jha as also the accused persons quarreling over a goat and thereafter proceeding with a goat to the house of Nand Kishore Mehta; and PW-6, Sudarshan Soni, who lives across the road from the house of Nand Kishore Mehta. He deposes to have woken up on hearing cries of "Bachao Bachao" and noticed the accused persons carrying Shashi Nath Jha and making him sit in the rear seat of a white Ambassador car and speeding towards Ranchi. From the evidence of these three witnesses, the prosecution seeks to establish its case regarding the murder of Shashi Nath Jha.

16. Examining the statement of PW-4, Charu Oraon, we find PW-4, whose statement was recorded on 13.5.1999, deposing that in the year 1994, he resided at Village and Post Office Lal Gutwa, Itki Road, District Ranchi. He knew Pashupati Nath Mehta, who runs a hotel at Tikra Toli, Piska Nagri, at a distance of about one or two kilometers from his village. He regularly used to visit his hotel for the last 13-14 years. Sometime, payment for the food consumed was made by cash and sometime it was taken on credit. About 4 or 4 years back, he visited the hotel of Pashupati Nath Mehta around 6 p.m. when Pashupati Nath Mehta was present. He had his food there and also took liquor. Pashupati Nath Mehta, who was also known as Posho, informed this witness that there was a party at the residence of Nandu Mehta and that the witness was also to accompany him. On the same evening, the witness along with Pashupati Nath Mehta went to the residence of Nand Kishore Mehta @ Nandu Mehta, who was the cousin of Pashupati Nath Mehta. They reached the house of Nandu Mehta at about 7 or 8 p.m. and noticed that one white car was parked in the courtyard near the well. On entry, the witness found four persons present who were eating and drinking. The witness sat on a bench in the same room. Nandu Mehta was addressing a person "Jhaji phir sarab mangaye". He saw that person who was being addressed as Jhaji for the first time. The said Jhaji was having meat and drinks. The witness also had a drink at the place of Nandu Mehta but thereafter, overcome by sleep, tried to sleep on the bench, not succeeding there, he went to sleep on the floor. At midnight, he heard cry "Bachao" and noticed Nandu Mehta holding a thick iron rod and striking twice on the head of the fat man with a rod.

The said fat man was the person addressed as Jhaji. He also saw one other short stature person placing his foot on the neck of Jhaji. Jhaji was bleeding from his head. On seeing this, the witness got nervous and wanted to run out. Pashupati Nath Mehta opened the door to enable this witness to escape. Thereafter, the witness went to the residence of his sister at Kolambi Mor, took a bicycle from there and went to his residence. He identified Nandu Mehta as the person who struck Jhaji on the head. He also identified Posho Mehta. The witness goes on to state that two or three days later, he heard in the village, that dogs were tearing at a dead body near the brick klin of Nandu Mehta. The village talk continued for 2 or 4 days. Six or seven days later, the witness asked Posho as to why the said person had been killed. Posho replied that he was an outsider, harami and a womanizer and Therefore, the witness should not worry. The witness further goes on to state that in the year 1998, accused Nandu was arrested. Thereafter, the witness told PW-5, Dr. Gautam Sharma, that the body must be of Mr. Jha. He pointed out the house and place of assault to Sh. Pandey of C.B.I. The site plan was prepared at his pointing out.

17. In cross-examination, this witness admits that he did not tell anyone about the aforesaid incident before meeting Dr. Gautam. He stated that he had narrated to the C.B.I. Officer about his meeting Dr. Gautam and telling him that the dead body was that of Mr. Jha. However, when confronted with statement, Exhibit PW 4/D, it was found that the same was not recorded therein. The witness thereafter has fumbled in cross-examination on the time when he had narrated such an incident to Dr. Gautam Sharma. He also states that he took the bicycle from his sister's house without informing any member of the family of his sister. The cycle was left in the varandha and was not locked. On the following day, on his brother-in-law enquiring as to why he had taken the cycle, he told his brother-in-law that he was under the influence of liquor and categorically stated that he did not inform the incident to his brother-in-law which he had witnessed at the house of Nandu Mehta. He even admits that in spite of coming to know that a dead body had been found near brick klin of Nandu Mehta, he did not tell anybody in the village about the said occurrence which took place in the house of Nandu Mehta. C.B.I. officials met him for the first time four years after the occurrence at Ranchi in C.B.I. Office. He was taken there by Dr. Gautam Sharma. As regards his antecedents, he claims he is not a thief but has been falsely implicated in two or three theft cases. He admits that when he met C.B.I. officials for the first time at Ranchi, some theft cases were pending against him and there were some cases of "loot paat" pending against him. The cases have been pending since 10-12 years. He attends courts during trial of those cases. He denied having become friend of Posho since they both used to indulge in anti-social activities. However, when confronted with statement, Exhibit PW 4/DA, it was found so recorded. He admits that it was his first visit to the house of Nandu Mehta and that Nandu Mehta was a leader of J.M.M. Party. He admits that he did not notice any other person except those stated in his examination-in-chief in the adjoining rooms. He did not see any male person in the adjoining room. When he

came out of the room, he did not see any person near the house of Nandu Mehta. There was no residential house near the house of Nandu Mehta. There was a police post at a distance of one kilometer, police officials were available at the said post. He did not visit the police post or police station to report the incident. He maintains two wives and two houses. He did not tell about this incident either to his mother or his wives. He did not visit the place where the dogs were gnashing at the dead body. He admits he was known as Jhinga Oraon in his village and criminal cases were pending in that name as well. He does not remember that he was a proclaimed offender by a Ranchi Court in case F.I.R. No. 18 of 1988 at the time when the C.B.I. officials met him. However, counsel has pointed to a warrant stating this witness to be a proclaimed offender. He denies about the rape of Victoria and the murder of Aleem in which he was an alleged party. He also denies as having buried the body in the farmhouse of B.P. Sinha. He denies the suggestion that the body which was half buried was of Aleem which was later removed and buried in Piska Bagan from where it was subsequently recovered. He denies the suggestion that at the relevant time, he was hiding from the police as he had been declared a proclaimed offender and that he used to move around in the night only. He also denied that he had been deposing falsely.

18. An analysis of the deposition of this witness establishes that an incident had taken place 4 or 4 years ago from 13.5.1999 in which Nand Kishore Mehta and a person called Jhaji along with two others were drinking and eating and that Nand Kishore Mehta struck two blows on the head of Jhaji in the midnight. This witness had not seen Shashi Nath Jha nor does he identify the person who was hit by Nand Kishore Mehta as Shashi Nath Jha. He does not identify the person called Jhaji as Shashi Nath Jha nor does he identify the two others having meals and drinks to be any of the accused persons. This witness cannot be said to be an eye-witness to the assault on Shashi Nath Jha. In any event, this witness is not seen by any other person, neither coming to nor leaving the house of Nand Kishore Mehta. He is also not seen accompanying Posho Mehta at any time anywhere nor is he seen by anybody having meals at the hotel of Posho Mehta at any time. Further, on his own showing he has not narrated the incident to any other person let alone the police. The testimony of this witness as an eye-witness to the alleged murder of Shashi Nath Jha is, to say the least, not acceptable. This is, of course, without taking into consideration the antecedents of the witness who knew fully well the implications of an assault and the value of its being reported to the police. This witness cannot be said to be a layman or a rustic villager not aware of the niceties of law. The statement is not corroborated by his brother-in-law nor is the presence of this witness in Tikra Toli corroborated by any evidence. The timing given by the witness is too vague to be relied upon. Further, the very theory of conspiracy to murder gets defeated if the accused are said to have created a witness of murder against themselves.

19. PW-5, Dr. Gautam Sharma, deposes that in May, 1994, he was residing at Tikra Toli, Village Piska Nagri, Police Station Rathu Nagri, District Ranchi. He has

been practicing Homeopathic medicines for the last 25 years. He knew Shibu Soren, Suraj Mandal, Nand Kishore Mehta and Pashupati Nath Mehta. He also knew Shashi Nath Jha and that he was a Personal Assistant of Shibu Soren. He met Shashi Nath Jha once or twice at Ranchi. This witness goes on to depose that in the last week of May, 1994, it had rained on that date and around 6 or 6:30 p.m. while he was present in his clinic, he heard the noise from the road at a distance of 20 yards from his house and saw Shashi Nath Jha, Nand Kishore Mehta, Pashupati Nath Mehta, Virender Mehta and Jagat Pal Mehta and 50 other persons discussing a goat. The leaders demanded the goat from the villagers while the villagers were protesting that they had been awarded the same as reward for winning a tournament and the same could not be returned. Jagat Pal Mehta brought a goat from his residence and gave it to Shashi Nath Jha whereafter, they all left with the goat towards the residence of Nand Kishore Mehta. The witness goes on to narrate that he went to the petrol pump to refuel his scooter and noticed a white Ambassador car near the house of Nand Kishore Mehta. In the car, he noticed Shalendra Bhattacharya and a dark complexioned lady sitting on the rear seat. The bonnet of the car was lifted. At that time, he saw Shashi Nath Jha, Nand Kishore Mehta and others passing through the petrol pump along with goat towards the house of Nand Kishore Mehta. He further deposes that on the following morning when he was at his clinic, two or three ladies came there and informed him that one dead body was buried near the brick klin of Nand Kishore Mehta which was being eaten by dogs. This was confirmed by Nand Kishore Mehta half an hour later saying Doctor saheb ek laash ka halla ho raha hai. Guess kariye kiski laash ho sakti hai. The witness advised Nand Kishore Mehta to inform the police to which Nand Kishore Mehta replied "Acha dekhte hain". The witness categorically states, till evening the dead body could not be identified and that the witness had not gone to see the dead body. From the village rumor mill, it emerged that the body was of a male but ladies chappal and bangles were lying near the body. The witness was intrigued and enquired "Kya mamla hai, dead body mard ki hai, par uske najdeek ladies chappal aur churian mili hai". On this Nand Kishore Mehta advised the witness "Aap ko kaya matlab, aap bahri admi hain, kamana hai kamao". In cross-examination, he admits that he has faced a criminal trial in which he was acquitted. He also admits that a private complaint of cheating a handicapped lady, Rukmani Devi, was filed which was later compromised. He does not remember that Ajay Mehta was cited as a witness against him in the aforesaid complaint. He was specifically put a question whether he had stated to the police the utterances of Nand Kishore Mehta to the effect "Guess kariye kiski laash ho sakti hai" and thereafter confronted with statement Exhibit PW 5/A, where it was not so recorded. He admits that he did not state in his statement u/s 161 of Code of Criminal Procedure that he had asked Nand Kishore Mehta as to "Kya mamla hai, dead body mard ki hai, par uske najdeek ladies chappal aur churian mili hai". He admits that he did not meet Nand Kishore Mehta between 5 or 6 p.m. on that evening. He does not remember the name of the ladies who told that the dead body was lying buried in the talaab which was being snatched by

dogs. He admits that he did not tell the police about the dead body till 1998. He deposes that he has been the Chairman of Khadi Gram Udyog, Ranchi for three years but denies that he was member thereof during the Chairmanship of Nand Kishore Mehta. He denies having misappropriated money and for that reason Nand Kishore Mehta had removed him from membership. He admits that he had stated that accounts should be properly audited and if after that any misappropriation was found then he would return the amount. He admits knowing PW-4, Charu Oraon, for the last ten years but could not term him as sharif or badmash. He admits that Charu Oraon had met him on several occasions after the aforesaid incident but Charu Oraon had not told him anything about his having witnessed the incident. He admits having taken Charu Oraon to C.B.I. Office, Ranchi, after the alleged dead body of Shashi Nath Jha was recovered and accused persons were arrested. He admits he was present when the body from Piska Bagan was being exhumed. The President of Nagri Panchayat, Sh. Jagniwas Mehto, was also there. Pashupati Nath Mehta was not there. Nand Kishore Mehta, Ajay Mehta, Shalendra Bhattacharya were in custody of the police at the time video recording was being done. He states that he had taken Charu Oraon, PW-4, to the C.B.I. Office 15 or 20 days after the dead body from Piska Bagan had been recovered and accused persons arrested. He deposes that he met Inspector Pandey in a chance meeting in the year 1998 and told him about the dead body found buried near the talaab which was being eaten by dogs. He denies that Inspector Pandey stayed at his residence in the year 1997. He admits that dead body was recovered from the farmhouse of B.P. Sinha in Piska Bagan. He admits having made a report to the police that effort was being made to implicate him for the murder of Aleem. He admits having lodged a complaint with the police because he came across the statement of Suraj Mandal and Ramesh Mehta, brother of Nand Kishore Mehta, where it was stated that recovered dead body was of Aleem, who had been murdered in 1994 and buried there by this witness and his son-in-law, Rajesh Pandey, and others. He was not aware of a representation made to the Director, C.B.I. by a large number of villagers that the dead body was of Aleem and that this witness was responsible for the murder. He admits that he was not questioned on the murder of Aleem. He denies that he had taken the police to the spot since he knew the location of the dead body of Aleem. The witness goes on to depose that Shashi Nath Jha had slightly discoloured teeth due to eating paan. He did not notice any broken teeth in his mouth nor does he remember that Shashi Nath Jha had a silver tooth. However, when he saw Shashi Nath Jha with goat, Jha was wearing a trouser and a shirt. He denied that since he is inimical to the family of Nand Kishore Mehta, he has got him falsely implicated. He also denied that Director, C.B.I. Sh. Mishra, was his relative.

20. Analyzing the statement of this witness, i.e., PW-5, Dr. Gautam Sharma, if believed, it stands proved that in the last week of May, 1994, there was a tournament held and it had rained. Discussion was going on opposite his clinic between Shashi Nath Jha, Nand Kishore Mehta, Pashupati Nath Mehta, Virender

Mehta and Jagatpal Mehta and 50 other persons regarding who gets the goat. The discussion ended with Jagatpal Mehta bringing a goat from his residence and giving it to Shashi Nath Jha, who left along with the goat towards the residence of Nand Kishore Mehta accompanied with the accused persons. This witness also proves having seen white Ambassador car parked near the house of Nand Kishore Mehta and saw Shalendra Bhattacharya and a dark complexioned lady sitting on the rear seat. It is also proved that Shashi Nath Jha was known to this witness. This incident, opposite the house of this witness, is reported to be around 6:30 p.m. It is also proved from the statement of this witness that the next morning when he was present in his clinic, two or three ladies came and informed him that one dead body is buried near talaab which is being eaten by dogs. This body was not identified till the evening or any time thereafter. It is also proved that the witness did not inform anyone regarding the discovery of the dead body till the C.B.I. officials met him. It is also proved that PW-4, Charu Oraon, was taken to the C.B.I. Office after the body was recovered and the accused arrested. It is also proved that this witness was accused of having murdered Aleem, whose body, the villagers claim, had been exhumed by the C.B.I. and that this witness made a complaint against Suraj Mandal, Ramesh Mehta and Nand Kishore Mehta for trying to implicate him in the murder of Aleem. It is also in evidence that this witness was not interrogated in respect of the murder of Aleem. It is also in evidence that teeth of Shashi Nath Jha were discoloured and that he had no broken teeth but was wearing a shirt and trouser when last seen by this witness.

21. The result would be that Pashupati Nath Mehta was along with Shashi Nath Jha at 6:30 p.m. on that evening and had gone along with Shashi Nath Jha to the house of Nandu Mehta, the claim of PW-4, Charu Oraon, that Pashupati Nath Mehta was present at the restaurant at more or less the same time when PW-4 had his meals there and thereafter accompanied Pashupati Nath Mehta to the party of Nand Kishore Mehta cannot be reconciled. Obviously, PW-4, was narrating a different incident than was being narrated by PW-5. The number of persons present along with Shashi Nath Jha accompanied him to the house of Nand Kishore Mehta are far more than those identified by PW-4. This too indicates that PW-4 had either not witnessed any incident or was narrating a different incident. What also emerges from the testimony of PW-5 is that the body which the dogs were gnashing at was not of Shashi Nath Jha. Since, Shashi Nath Jha was frequent visitor and a well-known personality in the region which fact is deposed to by PW-6, the credibility of the evidence of this witness runs into rough waters on his admitting that he was being accused of murder of Aleem, whose body, the villagers claim, had been exhumed by the C.B.I., upon accusations being made at the instance of relatives of Nand Kishore Mehta. It is only hereafter that this witness emerges before the C.B.I. to make available to them PW-4, Charu Oraon, and also himself to try and fix an incident in which Shashi Nath Jha was last seen and also assaulted. The testimony cannot be accepted without corroboration. PW-4, in no way, corroborates the statement of

PW-5. Further, PW-8, a prosecution witness, deposes that the football tournament was held in June, 1994 and no tournament was held in May, 1994, so, the question of people gathering in front of his clinic does not arise.

22. Coming now to the statement of PW-6, Sudarshan Soni, he states that he has been living in Piska Nagri since birth. He knew Shashi Nath Jha as he used to visit Netaji, i.e., Nand Kishore Mehta, who is also known as Nandu. House of Nand Kishore Mehta was situated in front of his house across the road in Piska Nagri, District Ranchi. The witness goes on to depose that sometime in May, 1994, there was a party at the residence of Nand Kishore Mehta as some leaders of J.M.M. Party were to come. In the village, he saw Shailendra Bhattacharya as also Shashi Nath Jha and other persons in May, 1994. He saw them while they were coming on foot from the side of Piska Nagri along with other villagers and Nandu. They were carrying a goat and going towards the house of Nandu. He also saw a white Ambassador car at the petrol pump with its bonnet lifted. At around 12:00 or 1:00 a.m. on that night, he heard someone shouting "Bachao Bachao" emerging from the house of Nand Kishore Mehta. He immediately opened the door and noticed Nand Kishore Mehta, Pashupati Nath Mehta and Dilip Mehta carrying Shashi Nath Jha from the house of Nand Kishore Mehta with the help of two other persons and made him to sit in the rear seat of the said Ambassador car parked outside his house. A lady and Shalendra Bhattacharya also came out of the house and sat along with other two unknown persons in the car and thereafter, the car sped towards Ranchi followed by Pashupati Nath Mehta and Nand Kishore Mehta on motorcycle who went towards the railway crossing. When he heard the noise of "Bachao Bachao", he also heard Nandu saying "Bahut netagiri karta hai, kisi ka nahin sunta". Thereafter, he heard Shalendra Bhattacharya saying "Chalo jaldi karo deri mat karo".

23. In cross-examination, the witness states that he is not aware that the liquor was being served at the party but there was noise emerging from the house since 8 p.m. The witness admits not being on visiting terms with Nand Kishore Mehta since over four years but was known to Dr. Gautam Sharma (PW-5) and gets himself treated as and when required. He admits that his statement was recorded by the C.B.I. four years after the said incident. He admits that prior to his statement being recorded by the C.B.I., he had not mentioned about this incident to anyone. He admits that he lived in his house along with his family consisting of his wife, parents, brother and children. He did not tell about this incident either to his parents, brother, wife or children and there was no specific reason for disclosing those facts to his family members. He admits that within a week of the said incident, he did not hear about some dead body being found in the area. He admits that a number of Ambassador cars visit petrol pump to take petrol and the drivers left the bonnets to cool the engine. He admits that on 31.1.1998, F.I.R. was lodged against him and his brother, Gopal Soni, and that Nand Kishore Mehta was cited as a witness in the said F.I.R. He claims that the land adjacent to the petrol pump belongs to his ancestors. He denied that Nand Kishore Mehta had purchased the said land from the third party and dispute

between them regarding ownership of the property was pending between him and Nand Kishore Mehta. He, however, admits that Nand Kishore Mehta was in possession of this land which, he claims, belonged to his ancestors. He denies having deposed falsely on account of enmity with the family of Nand Kishore Mehta. He admits having heard rumors in the village regarding the murder of Aleem but he has not heard the name of Victoria. He admits having seen Jhaji prior to the said incident and he used to visit Netaji Nand Kishore Mehta and Shalendra Bhattacharya.

24. While analyzing the evidence of this witness, who deposes to a party being held in May, 1994, which was organized since leaders of the J.M.M. Party were visiting Nand Kishore Mehta, it is also proved that he saw Shashi Nath Jha, Shalendra Bhattacharya and a large number of persons coming on foot from the side of Piska Nagri along with a goat and moving towards the house of Nandu. He also saw a white Ambassador car near the petrol pump. This witness categorically sees Shalendra Bhattacharya along with Shashi Nath Jha in the village moving towards the house of Nandu. He does not see him sitting in the car nor does he see a dark complexioned lady in the car. This witness does not claim that prior to the party, there was a tournament in session or that it had rained. However, on hearing cries "Bachao Bachao", at around 1:00 a.m., he came out of his house and saw Nand Kishore Mehta, Pashupati Nath Mehta, Dilip Mehta and two other person carrying Shashi Nath Jha from the house of Nand Kishore Mehta and making him sit at the rear seat of the car. He also sees one lady and Shalendra Bhattacharya coming out of the house of Nandu and sitting in the car along with two other persons and speeding away to Ranchi. The incident narrated by PW-5 is not supported by PW-4, Charu Oraon. According to PW-4, Jhaji was bleeding profusely but no such blood was seen by this witness on Shashi Nath Jha. This witness sees Dilip Mehta, a lady and Shalendra Bhattacharya coming out of the house while PW-4 deposes to the contrary. This also gives indication that the incident mentioned by this witness is also different to that being deposed by either PW-4, Charu Oraon, or PW-5, Dr. Gautam Sharma. The only thing common between all the witnesses is the fact that none of them disclose anything strange or incriminating seen by them to any other person for over four years. There is also no Explanation as to why and how the C.B.I. approached this witness except at the instance of PW-5, whose inimical relations with the appellant Nand Kishore Mehta stands admitted. Testimony of this witness cannot be said to corroborate the testimony of any other witness since this witness does not depose to this incident having occurred in the last week of May, 1994 nor does this witness talk about a body being recovered and ravished by dogs after the incident, which was the talk of the town, according to PW-5, Dr. Gautam Sharma. The presence of this witness at his house on that day is not corroborated. PW-4, Charu Oraon, does not see PW-5 nor does PW-5 see PW-4 leaving the house.

25. Another witness which the prosecution had put into the stand is PW-8, Jumman Ali. He states that he had been residing in Village Jajpur since 1955-56

and that there is a football ground in his land and that his house is situated in the same plot of land. He had given the said ground to one Sukh Shanti Club for playing football. Sh. Veeru Oreon is the manager of the said club. Football tournaments were conducted there in which "Khasi Bakra" (goat) is given as price to the winning team. The witness deposes that in June, 1994, a football tournament was held in the aforesaid football ground. Organizers of the said match Veeru Oreon, Suresh Oreon and Ramesh Babu were present there. Some leader of the Jharkhand Party also attended the said tournament. The said leaders of Jharkhand Party were being addressed as Mandal Ji and Jha Ji. No local leaders of the area were present at the said tournament. The winning team was awarded "Khasi bakra" (goat) and a shield. This witness was cross-examined by the Special Public Prosecutor for the C.B.I. who admitted that during the said tournament, Nand Kishore Mehta, present in the court, was making announcement. The tournament continued for 2-3 days and Nand Kishore Mehta made announcement on the first day and not thereafter. He admitted that he identified the photograph of Shashi Nath Jha as the person who was being addressed to as Jha Ji after seeing it in newspaper along with the news that he was missing. He admits about a body being preyed by dogs. He denies having seen Shalendra Bhattacharya at the tournament. On analysis of this witness, what emerges is that Shashi Nath Jha was present at a football tournament along with Nand Kishore Mehta in June, 1994. This is also prosecution's case. In other words, the earlier witness PW-4, who deposes to an assault on a person called Jha, was not Shashi Nath Jha. The reference via PW-6 to Shashi Nath Jha being removed from the house of Nand Kishore Mehta could be the result of Shashi Nath Jha being drunk but certainly not hurt. The presence of Shashi Nath Jha in the last week of May, 1994, witnessed by PW-6, does not, in any way, indicate that he was murdered and his body buried which was later being eaten by dogs. It is on record that the body found at the pond was not identified.

26. As regards the recovery of body, the case of the prosecution is that in the last week of May, 1994, Shashi Nath Jha was murdered and his body buried near a pond close to the brick klin belonging to Nand Kishore Mehta. This body, after being desecrated by dogs, was re-buried in Piska Bagan which was exhumed by the C.B.I. on 13.8.1998. To substantiate this part of the case, the C.B.I. has sought to use the evidence of PW-6, Sudarshan Soni, who deposes to the body being exhumed and video recorded on 13.8.1998. Soon after the body was exhumed, the local public sent representation signed by 100's of villagers Exhibit PW 13/A claiming that the skeleton recovered was of one Aleem of Village Kuli, Police Station Itki, District Ranchi. The skeleton exhumed had a kara on the wrist, a broad belt together with jeans and shoes. The skeleton also had a silver tooth. The family of Shashi Nath Jha refused to accept this as the skeleton of Shashi Nath Jha for reasons stated by PW-18, Vijay Nath Jha, brother of Shashi Nath Jha, who deposes as under:

We were suspicious about the identity of the aforesaid skeleton and skull because

of description given by CBI to the effect that a Kara was recovered with the skeleton and there was silver teeth in the aforesaid skull. Since Shashi Nath Jha had no silver teeth, we suspected that the skeleton and skull did not belong to him and as such we did not apply to authorities for taking the aforesaid skull and skeleton for performing the last rites of Shashi Nath Jha.

27. To same effect is the statement of PW-19, Amar Nath Jha, who states as under:

We were suspicious about the identity of said skeleton because we were told that skull had a silver teeth a Kara was also with the skeleton.

After the recovery of skeleton I had stated before the press that I suspect that my brother Shashi Nath Jha is still alive. I said so because the description of articles recovered along with the skeleton and the silver teeth did not tally with the description of Shashi Nath Jha or his clothes.

28. PW-20, Priyambda Devi, mother of Shashi Nath Jha, states as under:

My son, Shashi Nath Jha was wearing kurta and payjama, when I last saw. He was not wearing any "Kara" in his right or left hand. (Vol. He never wore any "Kara"). I was asked by the Police whether my son used to wear "Kara" or had a silver teeth and I had told the police that he never wore any "Kara" nor had any silver tooth, though his teeth were stained on account of consumption of paan. After 3 or 4 days of the recovery of the skeleton, I was informed that the skeleton had kara and one silver tooth. My son Shashi Nath Jha did not wear jeans or broad belt on it. The police had not shown me any articles for identification. The police did not tell me that the skeleton was that of my son Shashi Nath Jha or that we should perform last rites. I do not remember whether in the Writ Petition filed on my behalf, my lawyer had mentioned therein that when the CBI informed me about the articles found on the skeleton, such as remnants of jeans and the belt and further told me that there was "kara" lying in the place wherefrom skeleton was exhumed and further that there was a silver tooth in the denture of the skeleton. I told the police that the skeleton was not that of my son.

29. Another witness, Praveen Kumar Oraon, PW-31, in his examination-in-chief states as under:

On 16.08.98, I have participated in meeting organized by the villagers of the village Piska Nagri. I was specifically asked by the persons namely Bande Uraon, Uttam Mehta and Daniyal. At about 1 p.m. on 16.08.98, I reached the village Piska Nagri. All the three above referred persons were also present in the meeting besides other villagers. Different persons expressed their opinion with regard to the recovery of one human skeleton from the village Piska Nagri by the CBI. One person by name Habibullah contended that human skeleton may be of his deceased brother because he was also wearing the same "Kara" recovered from the grave.... It was crystal clear in the meeting that skeleton recovered from

Piska Nagri was that of Aleen of Kuli Village as was being said by the villagers attending that meeting. It was demanded by us that there should be proper investigation keeping in view the sentiments of the villagers and no innocent person should be implicated in the matter. I did not receive any written reply from the Director, CBI to our representation Ex. PW-31/A. After we wrote that representation, CBI official had taken me to the house of Aleem. Besides me, Darshan Soni of Piska Nagri Village and one Lalit Murmu of Ratub had also gone to the house of Aleem with CBI officials.

30. On this point, PW-45, V.K. Pandey, the Investigating Officer, states as under:

There was no claim made to me or any person by the name of Habibullah of the skeleton which had been received. I had met parents of Aleem later on, after the filing of the charge sheet. I do not recollect if I had met parents of Aleem after the D.N.A. Report had been received. Articles i.e. "Kara, pairs of shoes, clothes and the buckle of belt" which were recovered along with the skeleton had not been shown to the parents of Aleem. All these exhibits had been sealed and they could not be opened till they were opened in the court.

31. On medical examination conducted on the skull of the exhumed skeleton by PW-17, Dr. Ajit Kumar Chaudhary, his opinion is as under:

I have opined that the inquiry on skull could have been caused by heavy sharp edge weapon. It could be a "farsa, sword, axe". Said injury could not have been caused with a turn steel rod (saria).

32. PW-16, Dr. T.S.N. Murthi, who conducted the superimposition test, in his cross-examination states as under:

I am aware that Dr. K.S. Narain Reddy was the Principal of Osmania Medical College, Hyderabad. He is well known authority on Forensic Medicine.

I have read following paragraphs at page 69 of Chapter IV relating to identification in the book, "The Essentials of Forensic Medicine and Toxicology". Dr. K.S. Narayan Reddy, M.D.D.C.P., F.A.M.S., F.I.M.S.A, F.I.A.M.S., Professor of Forensic Medicine, M.R. Medical College Gulbarga-585105 (Retired Principal) Osmania Medical College, Hyderabad, Seventeenth Edition, 1998.

This test is of a near negative value because it can definitely be stated that the skull and the photographs are not those of the same person. If they tally, it can only be stated that the skull could be that of the person in the photograph because of the possibility that another skull of that size and contour may tally with the photograph. I agree with the aforesaid scientific view of Dr. K.S. Narayan Reddy.

33. PW-33, Dr. K.P.C. Gandhi, who participated in the superimposition test on the skull, in cross-examination admitted as under:

I know Dr. K.S. Narayan Reddy, who was Principal of Osmania Medical College, Hyderabad. Dr. Narayan Reddy, is one of the authority on Forensic Medicines. He

has written a book on Forensic Medicine.

I know Dr. T.S.N. Murti, who was working as Jt. Director, Forensic Science Lab, Police Department read hills.

Q. The opinion given by Dr. K.S. Narayan Reddy in his book "The Essential of Forensic and Toxicology, 17th Edition" is "This test of a more negative value because it can definitely be stated that the skull and the photograph are not those of the same person. If they tally, it can only be stated that the skull could be that of the person in the photograph, because of the possibility the another skull of this size and contour may tally with the photograph". What have you to say

A. I agree with the remarks made by Dr. K.S. Narayan Reddy in his book. I further add here that in many cases opined by Dr. K.S. Narayan Reddy, as Professor and Principal of Osmania Medical College, wherein he gave super imposition opinion and evidence, one of the famous case of Dr. Capt. Nagarjun in which the court has relied upon the super imposition test positively linking the skull with the photograph along with other circumstantial evidence gave conviction to Capt. Nagarjun.

In case of presence of diacetylmorphine in a particular substance the record should be given as "substance is heroin".

The reports as a convention for all the physical tests and biological tests are given as belonging to a particular substance/origin.

Even Dr. K.S. Naryan Redy is of the view that opinions in case of super imposition test, the report in case of matching of skull with the photograph should be given that the skull produced for examination could have been belonging to the person whose photograph is sent for matching.

In case of D.N.A. Finger Printing our laboratory give report either in positive or in negative form as the case may be.

Q. Can you give any specific reason for giving any definite opinion either way in case of D.N.A. Finger Printing and or in case of super imposition test

A. In case of D.N. Printing besides the essential and significant date of population available and tested, the Labs all over the World give specific opinion whether a particular sample matches with the control sample or not.

34. From the analysis of the above, it appears doubtful that the skeleton exhumed was that of Shashi Nath Jha since neither the family supports any of the wearing apparels found upon the skeleton as those belonging to Shashi Nath Jha nor does the postmortem conducted by PW-17, Dr. Ajit Kumar Chaudhary, supports the prosecution's story of Shashi Nath Jha having been killed with two iron rod blows on his head by Nand Kishore Mehta as deposed to by PW-4, Charu Oraon, nor the superimposition tests which only goes up to establishing that the skull could have belonged to the person whose photograph is sent for matching.

It is not a positive but a negative test. Further to the above is the results of the DNA Finger Printing Tests got conducted at the instance of the trial court which, in its report dated 11.6.2001, suggested, in no uncertain terms, that the skeleton in question was not that of Shashi Nath Jha. For further assurance, C.B.I. got the DNA Finger Printing Test done from another laboratory exercising its power u/s 173(8) of Code of Criminal Procedure. Even this report from CCMB, Hyderabad, does not support the prosecution's case. With this material on record, we have no hesitation in holding that the skeleton exhumed on 13.8.1998 by the C.B.I. purporting to be that of Shashi Nath Jha has not been proved to be that of Shashi Nath Jha. There is no evidence on record to show that the body of Shashi Nath Jha had initially been buried near the brick klin and thereafter transferred to the farmhouse of B.P. Sinha. There is no evidence to show as to who led the C.B.I. to the skeleton exhumed on 13.8.1998.

35. Having given our careful consideration and re-evaluating the entire material on record carefully and at great length, we find that the prosecution has not been able to establish the existence of a conspiracy between Shibu Soren, Sunil Khaware, Ashish Thakur, Nand Kishore Mehta @ Nandu, Shalendra Bhattacharya, Ajay Kumar Mehta @ Dilip and Pashupati Nath Mehta @ Posho, to abduct Shashi Nath Jha from Delhi, take him to Piska Nagri and murder him there. Prosecution has not been able to establish the motive to the crime, namely, Shashi Nath Jha seeking his share of the bribe money allegedly received by Shibu Soren. The prosecution further has not been able to establish that Nand Kishore Mehta assaulted Shashi Nath Jha, causing him injuries on his head which resulted in his death. Prosecution has also not been able to establish that there was a separate conspiracy to murder Shashi Nath Jha between Shibu Soren, Nand Kishore Mehta @ Nandu, Shalendra Bhattacharya, Ajay Kumar Mehta @ Dilip and Pashupati Nath Mehta @ Posho or that any of the accused persons buried the dead body of Shashi Nath Jha near the brick klin of Nand Kishore Mehta and subsequently, moved it to B.P. Sinha's farmhouse and/or that the skeleton exhumed on 13.8.1998 was that of Shashi Nath Jha.

36. With the above findings, we hold that the prosecution has miserably failed in bringing home the charge against the accused persons. The trial court's analysis of the evidence is far from convincing and its judgment under challenge dated 28.11.2006 and order on sentence dated 5.12.2006, not sustainable. They are set aside and the appellants herein are acquitted of all the charges framed. Criminal Appeal Nos.64 of 2007 and 158 of 2007 stand allowed. The appellants, who are in jail, shall be set at liberty forthwith unless wanted in any other case.

37. As regards Criminal Revision Petition No. 99 of 2007, the only submission made before us is regarding the skeleton. It is contended that if the court holds the same to be of Shashi Nath Jha, the family would give it the last rites. Having already held that the prosecution has failed to establish the skeleton exhumed on 13.8.1998 to be that of Shashi Nath Jha, the submission made before us is neither here nor there. Criminal Revision Petition No. 99 of 2007 is dismissed.