

(2009) 05 DEL CK 0043
In the Delhi High Court
Case No : Criminal A. No. 456 of 2008

S.J. Chaudhary

APPELLANT

Vs

CBI

RESPONDENT

Date of Decision : 15-05-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Evidence Act, 1872 — Section 8
Evidence Federal Rules — Rule 104, 702
Explosive Substances Act, 1908 — Section 3, 4

Citation : (2009) 159 DLT 673 : (2009) 6 ILR Delhi 133 : (2010) 6 RCR(Criminal) 3099

Hon'ble Judges : Pradeep Nandrajog, J;Aruna Suresh, J

Bench : Division Bench

Advocate : Ram Jethmalani, Arunabh Chaudhary, Abhishek Singh, Ankur Chawla, Sarvesh Singh, Abhinav Lohia, Rajdeep Banerjee, Joyeeta Banerjee, Saurabh Gupta, P.R. Mala and Lataa Krishnamurti and K.T.S. Tulsi and Karan Singh, Abhyuday Rathore and Neha Gupta, for the Appellant; P.P. Malhotra, ASJ and V.S. Shukla, SPP and Chetan Chawla, Gaurav Sharma, Pratap Singh Panwar and Shanker Chhabra, for the Respondent

Judgement

Pradeep Nandrajog, J.—In a nutshell, case of the prosecution is, that having lost in his endeavour to win back his wife Rani Chaudhary, decree for divorce in whose favour attained finality when Petition For Special Leave to Appeal filed by the appellant before the Supreme Court was dismissed on 24.8.1982, the appellant made up his mind to murder Kishan Sikand, with whom Rani Chaudhary was residing and had decided to get married to. Being an ex-serviceman; having knowledge of ammunition, the appellant procured the raw ingredients to manufacture a bobby trap bomb, and using parts of a hand-grenade, managed to manufacture a bobby trap bomb, which was converted into a parcel, and on 25.9.1982, at around 7.30 - 7.45 PM, the appellant left the parcel containing the bomb at the staircase leading to the first floor of 98, Sunder Nagar, New Delhi, in the rear portion whereof the deceased Kishan

Sikand was residing along with Rani Chaudhary. The bomb reached the deceased on 2.10.1982 and since the parcel containing the bomb was addressed to the deceased, he opened the same and while so doing, triggered of the contraption, resulting in an explosion. The shrapnel's inside the bomb pierced the body of the deceased who died at the spot due to the resultant injuries.

2. The FIR was registered on the day of the incident itself on 2.10.1982. Rani Chaudhary was at Sanawar (H.P.) on the day of the incident and returned to Delhi the next day. Her statement u/s 161 Cr.P.C. was recorded on 3.10.1982. She informed the police therein about her turbulent marriage with the appellant and the divorce. She informed the police that the appellant had been extending threats to her to compel her to return to him and that had even been threatening Kishan Sikand. Apart from other persons whose statements were recorded during investigation, the statement of one Suresh Gopal, a close friend of the deceased and Rani Chaudhary was recorded on 5.10.1982. Needless to state, the appellant was a suspect from the very beginning but nothing incriminating against him could be gathered by the police in spite of the fact that the investigation was handed over to the Crime Branch of Delhi Police. On 19.3.1983 investigation of the case was entrusted to CBI.

3. On the day of the crime, after police received information thereof, from the room on the first floor of 98, Sunder Nagar where the deceased died a huge quantity of debris was lifted and as noted in the seizure memo Ex.PW-69/C was converted into 9 packets. It was noted in the seizure memo that torn and burnt pieces of paper were a part of the debris lifted. Three days later i.e. on 4.10.1982, some more material was lifted from the room and converted into 4 packets. Unfortunately, the seizure memo pertaining to the material lifted on 4.10.1982 was not made a part of the charge-sheet and could not be proved at the trial.

4. The thirteen packets were sent to the Central Forensic Science Laboratory on 7.10.1982 for a forensic analysis, which as per Ex.PW-62/F commenced on 12.10.1982. Needless to state, the first and the foremost thing required was to segregate the debris and thereafter subject the constituents thereof to a forensic analysis as also to try and put together the burnt pieces of paper, as if a jigsaw is being solved, for the reason, the said pieces of paper may have contained a valuable information. It may be noted that according to Rani Chaudhary and Suresh Gopal they had seen the sender's address on a slip of paper stuck to the parcel as also had seen the name and address of the recipient on a slip of paper stuck to the parcel.

5. According to the prosecution, from the remnants i.e. the debris, on being segregated and reconstructed, Dr. G.R. Prasad (PW-62) could reconstruct two slips recording as under:

----- Slip 1 Slip 2
PA ...OST From: Shiri Krishan ... Delhi Met...e, 98, Sunde...agar 290, Hauz

6. The typescript of the two slips, as per the prosecution, was got typed by the appellant from an institute imparting typing training at Lajpat Nagar belonging to Shri N.D. Sethi PW-27 where the appellant had visited and got typed, on an envelope, the name of the addressee and the name of the sender. As per opinion of S.K. Gupta PW-75, an examiner of questioned documents, the transcript of the two slips matched the sample transcript S-7, obtained from one out of the thirteen typewriters kept at the typing institute of Shri N.D.Sethi. As per the prosecution, it was able to track the typewriter used for typing the name and address of the addressee and the name and address of the sender pursuant to the disclosure statement Ex.PW-28/A made by the appellant.

7. Seventy five witnesses were examined by the prosecution. Apart from the police witnesses, the doctor who conducted the post-mortem of the deceased and the forensic experts who had analyzed the debris and the typescript on the two slips, witnesses were examined to prove the motive; to prove that the appellant was seen coming out of the house of the deceased at around 7.30 - 7.45 PM on 25.9.1982; that the appellant had got typed the name and address of the sender as well as the addressee on paper which was pasted on the parcel in question; that the appellant was an ex-army man; that the bobby trap bomb was created by using hand-grenades of Pakistani origin; that the conduct of the appellant after 25.9.1982 was suspicious and suggestive of his being the author of the crime.

8. We propose to briefly note the deposition of the witnesses, other than formal witnesses, before analyzing the impugned decision dated 28.4.2008, under which the appellant has been convicted for the offence of murdering Kishan Sikand and for the offences punishable u/s 3 & 4 of the Explosive Substance Act 1908.

9. Rani Chaudhary PW-1 deposed that she was earlier married to Sqn. Leader Pritam Singh and out of said wedlock two daughters, Mini and Maitri were born. On death of her husband on 31.3.1971 she married the appellant S.J. Chaudhary. Out of said wedlock one daughter named Sonal was born on 24.8.1972. Her matrimonial life was turbulent as the appellant treated her with cruelty. She lodged a report Ex.PW-1/B with the army authorities in February - March 1979. The appellant confined her in the house on 5.8.1979 and she had to jump out of the house. While so doing, she sprained her ankle and had to be treated by a homeopath as per prescription Ex.PW-1/D. On 1.9.1979 she sued for divorce in the Court of an Additional District Judge, Delhi by filing a petition Ex.PW-1/E. On 6.12.1979 an ex-parte divorce was granted by the Court in her favour. She knew deceased Krishan Sikand since 1969 - 71 and over a period of time they grew fond of each other. On 12.9.1980 Krishan Sikand proposed marriage to her which she accepted. That on 20th September, 1980 her birthday was celebrated by Krishan Sikand at a restaurant in "Oberoi Intercontinental" and Krishan Sikand had ordered a birthday cake on which her name was put as "Rani Sikand". After dinner, as they went to the parking where their car was

parked, she saw appellant sitting in a car in the parking area and the appellant trailed their car. On the way, she lost track of the car of the appellant, but saw the same parked outside her residence, at which, on the suggestion of Krishan Sikand, she decided to spend the night at the house of Krishan Sikand i.e. 98, Sunder Nagar. Appellant met her in her house the next day and she informed him that she and Krishan Sikand were planning to marry. On 23.9.1980 she met the appellant at the shop of M/s. Bhagwan Dass Khanna and the appellant enquired from her whether a ring which she was getting repaired from said shop was gifted to her by Krishan Sikand. Since the appellant had been trailing her, Krishan Sikand expressed concern about her safety and requested her to stay with him at his house and that she agreed. The appellant continued to keep a watch on her movements and in July 1981 met her at Chungwa Restaurant and told her that he would kill her and himself. She received a telephone call on 31.7.1981 from the appellant requesting her to meet him. She refused, but at his persistence agreed to meet him. At the meeting, the appellant requested that she should leave Krishan Sikand. She refused to do so. The appellant used to constantly ring her, virtually compelling her to leave the house of Krishan Sikand as the appellant would threaten that unless he did so, he would kill Krishan Sikand. That on 15.9.1981, Krishan Sikand told her that the appellant had threatened to kill him and his father, unless she left his house. The appellant met her once again at Chungwa Restaurant on 24.9.1981 and reiterated his resolve to kill Krishan Sikand, unless she left his company. On 6.10.1981 she rang up the mother of the appellant and informed her of the conversations she had with the appellant. That the appellant had made a complaint to the police regarding her stay at 98, Sunder Nagar and in response, on 14.10.1981, the police came to said house and made inquiries from her; she informed them that she was staying with Krishan Sikand with her own free will as her marriage with the appellant had been dissolved. On 25.9.1982 Suresh Gopal, his wife Sushma Gopal visited Krishan Sikand and herself at 7.30 PM at 98 Sunder Nagar. Around 9:00 PM all of them headed towards Pandara Road Market for dinner. While descending from the first floor of 98 Sunder Nagar, Krishan Sikand and Suresh Gopal were a little ahead of her and Sushma Gopal. Krishan saw a brownish coloured parcel ad-measuring 5" x 3" x 2" lying on the second lower most landing of the stairs. Krishan picked it up and proceeded towards the car. Krishan's address on the parcel was written on a white patch of paper, which was pasted on it. On 2.10.1982, she left to attend Founder's Day Function of her children's school at Sanawar. Krishan Sikand could not accompany her due to some important matter. On 2.10.1982, at around 9:15 PM, at Sanawar School she received telephonic information that there was an emergency and she must return to Delhi. She took the Kalka Mail and reached Delhi the next morning, and at the station, Anil Sikand and his wife; the elder brother and sister-in-law of Krishan Sikand, informed her that Krishan was no more. That the tape Ex.PW-1/P2 contained her voice and the voice of the mother of the appellant. That the tape Ex.PW-1/P1 contained her voice and the voice of the appellant. That the letters Ex.PW-1/FF to Ex.PW-1/GG were written to her by the appellant. That envelopes

Ex.PW-1/001 to Ex.PW-1/14 were received by her from the appellant in which various letters were posted by the appellant to her.

10. Dr. H. Lal PW-33 a medical officer deposed that the prescription Ex.PW-1/D was written by him, but he could not identify the patient.

11. Sudhir Khanna PW-10 deposed that somewhere in July or August 1981, both Krishan Sikand and Rani Chaudhary had told him that the appellant was threatening Rani to leave the house of Krishan Sikand, on which he had suggested them to report the matter to the police as well as to tape the threats of the appellant, for which he gave them a Sony make walkman tape recorder.

12. Kailash Nath Dwivedi PW-11 deposed that in 1981 I.J.S. Chatwal had visited him in the month of September with his wife and daughter. His daughter Rani was mentally upset as she wanted to re-marry but her ex-husband was threatening her on that score, for which he suggested some puja.

13. H.D. Sikand PW-19, father of the deceased Krishan Sikand deposed that in mid September 1981, the appellant had telephoned him at his office and told him that if Krishan Sikand fails to throw Rani Chaudhary out of his house, the appellant would cripple him i.e. Krishan Sikand and break his bones.

14. Smt. Davinder Singh PW-32 (mother-in-law of Rani from her previous marriage to Pritam Singh) deposed that somewhere in 1975-76, Rani Chaudhary requested her to permit her and her two daughters to stay with her as she was facing problems with the appellant who was maltreating her. After a year, she came back again and made a similar request at which she kept her in her house for six months. The appellant came to her house and requested her to advise Rani Chaudhary to live with him. On 31.7.1979 she and Rani went to see off Rani's daughters at the railway station, where the appellant was also present. While returning from the railway station, the appellant followed them to their house. The appellant kept knocking the door and wanted to get inside the house and insisted that he would take Rani with him. She informed the police, upon which the police came and spoke to the appellant and went away, but the appellant remained there and left in the morning. She had to lodge a complaint Ex.PW-31/A with the police.

15. Shri M.M. Thapar PW-37 (brother-in-law of Krishan Sikand) deposed that he knew the appellant since his school days and knew Rani after her marriage with the appellant. After a few years of their marriage, differences arose between them, which could not be resolved even though he tried to reconcile them. Rani Chaudhary used to complain about her being un-happy on account of maltreatment and that she wanted to separate from the appellant. The appellant and Rani used to argue in his presence and quarrel with each other. On one occasion, the appellant even slapped Rani in his presence.

16. Neelu Moolchandani PW-39 deposed that he knew Krishan Sikand and Ashok Sikand as they were in the same school and that he met Rani Chaudhary in

1980. On a couple of occasions Krishan Sikand had mentioned to him about threats received from the appellant to compel Krishan Sikand to throw out Rani from his house.

17. Brig. Ashok Nath Luthra PW-42 (family friend of Rani Chaudhary) deposed that Rani Chaudhary had introduced him to Krishan Sikand. Thereafter, they started visiting each other's house. Rani had once mentioned to him that her relations with the appellant were strained and that she planned to marry Krishan Sikand. Rani had also told him that the appellant did not like her staying with Krishan Sikand and wanted her to leave his house and that the appellant had been harassing Krishan Sikand to compel him to leave Rani.

18. Shri Gajbir Singh PW-44 deposed that he knew Krishan Sikand since 1970 as he had been participating with him in the Himalayan Car Rally. He knew Rani Chaudhary since 1979 whom he met for the first time at 98 Sunder Nagar. Around Diwali 1981, Krishan Sikand told him that he was receiving telephone calls from the appellant insisting upon him to turn Rani Chaudhary out of his house, otherwise the appellant would kill Krishan Sikand.

19. Insp. Om Sagar PW-48 deposed that complaint Ex.PW-1/MM was assigned to him for necessary inquiry vide endorsement Ex.PW-48/A. He contacted complainant S.J. Chaudhary who had come to the police station on 1.10.1981. On 13.10.1981 he came to him in afternoon and informed that Smt. Rani Chaudhary was present at 98, Sunder Nagar with Krishan Sikand. He went to the said place. On his enquiry they gave explanation Ex.PW-1/KK. He submitted his inquiry report Ex.PW-48/B.

20. It is apparent that aforementioned witnesses were cited to establish motive on the part of the appellant. Motive being to avenge the loss of his wife to the deceased. Through the testimony of aforementioned witnesses, obviously, the prosecution intended to prove that the appellant was having an obsession with Rani and was desiring her company at all cost.

21. We need not note the cross examination of the various aforementioned witnesses, save and except the cross examination of Rani PW-1, who was confronted with her statement recorded by the police u/s 161 Cr.P.C. in which she stated that she had seen the parcel with address thereupon written in hand and that when Krishan picked up the parcel she warned him to leave it, lest it might be containing a bomb and that on return from the dinner she was anxious to know where had the parcel been kept by Krishan. We may note that at portions marked "B" to "B", "F" to "F", "J" to "J" and "K" to "K" aforesaid statements find mention in Rani's statement recorded u/s 161 Cr.P.C.

22. Shri Anil Sikand PW-13, brother of the deceased, deposed that on 27.9.1982 he had gone to Nalldhera Golf Course (in Shimla, Himachal Pradesh) with Bili, Shri H.S. Nath and another person whose name he does not remember. He saw the appellant there in a golf hut, with one Jagat Ram, a caddy master. The next day he again saw the appellant who sought his permission to join him and his

friends for a game, which he initially declined, but at the persistence of the appellant made him join the game and while playing, the appellant enquired about the well being of Krishan Sikand.

23. Birender Singh PW-43 deposed that he had gone to Naldhera Golf Club to practice for the annual match due to be held on 2.10.1982. Besides himself, his cousin Harinder Singh Nath and Anil Sikand and a fourth person were present. He found the appellant practicing there and exchanged greetings with him. The appellant enquired if he could play with them, which offer was accepted. During the play, appellant enquired about Krishan Sikand being fine.

24. Dalip Suri PW-60, deposed that in September 1982 he was posted in the office of Himachal Tourism. That on 22.9.1982, booking of a log hut was made in the name of Col. S.J. Chaudhary for the period 26.9.1982 to 29.9.1982, in tourist bungalow Naldhera Complex. He was allotted hut No. 6 vide permit No. Ex.PW-60/A.

25. From the evidence of the aforementioned witnesses, the prosecution intended to establish the inquisitive conduct of the appellant in enquiring about the well being of Krishan Sikand, when the appellant had met Anil Sikand and Birender Singh at the Golf Course at Naldhera Himachal Pradesh on 27.9.1982.

26. Shri Suresh Gopal PW-3 deposed that he knew the deceased and Rani Chaudhary and he and his wife had been visiting them at 98 Sunder Nagar, when Rani Chaudhary was staying with Krishan Sikand. On 25.9.1982, he and his wife visited Krishan Sikand. At that time he had seen a mechanic working on the car of Krishan Sikand. While going up, he did not notice any parcel lying on the stairs. He and his wife stayed in Krishan Sikand's apartment for about an hour and a half and then the four i.e. Krishan Sikand, Rani Chaudhary, his wife Sushma Gopal and himself went out for dinner at about 9.00 PM. While going down the first floor apartment of Krishan Sikand, Krishan Sikand was leading them, followed by him and thereafter by his wife and Rani. On the second last landing of the steps, Krishan Sikand saw a parcel of brownish colour with a white paper slip marked "A1" pasted on it on which name and address of Krishan Sikand was typed. The parcel was 5" x 3" x 3" in size. While going towards the car, Krishan opened the mesh door of the electric meter and placed the parcel there, in a window sill, parallel to the driveway near the entrance door.

27. Vijay Ram PW-5 deposed that he was living in the servant quarters of 98 Sunder Nagar since 1968-69. He was working part-time for Mr. Kock who was living in the front portion of the first floor of 98 Sunder Nagar. Deceased Krishan Sikand was living in the remaining portion of the first floor. The main staircase was used by both families for going to the first floor. Letters were left by the postman near the stairs on the first or the second landing, and he used to pick up the letters and deliver, those belonging to Mr. Kock to him, and those belonging to Krishan Sikand to him. On 2.10.1982, he was going to Sunder Nagar Market to fetch a crate of soda water bottles for Mr. Kock and when he

reached near the meters on the landing of the staircase, he noted a brown colour parcel lying inside the iron jali door of the meter enclosure. The said parcel had a paper pasted on it on which address of Krishan Sikand was written. At that time a party was going on in the house of Ashok Sikand, the elder brother of Krishan Sikand who was residing on the front side of the ground floor. He gave that parcel to Shyam Lal and directed him to deliver it to deceased Krishan Sikand. But, Shyam Lal expressed his inability, due to his preoccupation with the party. Thereupon, he went upstairs to the kitchen of Krishan Sikand and delivered the parcel to him, informing that the said parcel was found lying in the window sill of the enclosure of the meters. After about half an hour he returned from Sunder Nagar Market and heard an explosion when he was near the first landing of the stairs to the servant quarter. When he reached the room of Krishan Sikand where the explosion had taken place, he found him lying on the floor, bleeding in the drawing room.

28. Shyam Lal PW-6 deposed that he was working as a sweeper in 98 Sunder Nagar with Sikand for the last 12 years. He was working with them even for the period between 25.9.1982 - 2.10.1982. On 2.10.1982 he was going towards the front side park through the driveway, when Vijay PW-5 an employee of Kock met him, where the car was parked. He told him that he had found a parcel in the window sill near the meter and he wanted the same to be delivered to Krishan Sikand, to whom it was addressed. The parcel was about 5" in length. He expressed his inability to do so and told Vijay Ram to deliver it himself. After about half an hour, he heard an explosion on the first floor occupied by Krishan Sikand. He along with other persons went upstairs where they found Krishan Sikand lying injured and bleeding on the floor near the dining table.

29. Mohd. Shafi PW-7, a mechanic in Sikand Motors for the last 30 years, deposed that on 25.9.1982 he had been requisitioned by Krishan Sikand and he had gone to examine and repair car No. DEB -1957 at 98 Sunder Nagar at about 5.30 PM. Krishan Sikand came in that very car at about 6.00 PM from outside, gave him the keys and went upstairs. At about 7.30 PM he saw Gopal PW-3 and his wife go upstairs. Thereafter he took the car for a trial run up to the zoo and when he was coming back via Sunder Nagar Market he saw the appellant coming out of the gate of 98 Sunder Nagar and proceed towards Sunder Nagar Market. This was after 15 - 20 minutes of his having left for a trial run of the car. He parked the car near the stairs wherein he met Jaglal Shikari who told him that he had been summoned by Krishan Sikand for shikar and delivery of clothes. Thereafter he went upstairs and delivered the key of the car to Krishan Sikand and informed him of the arrival of Jaglal.

30. Relevant would it be to note that the undisputed position is that Mohd. Shafi's statement u/s 161 Cr.P.C. was recorded on 16.7.1983 i.e. after over nine months of the date of occurrence of the offence, which took place on 2.10.1982.

31. Sanjay Sikand PW-8 son of the deceased deposed that on 2.10.1982 his father expired due to an explosion which took place at about 5.30 PM. At that

time he was attending a birthday party of his cousin being celebrated at the ground floor. Fifteen minutes before the explosion Sanjay Sikand with his friend Manu Aggarwal had taken some sandwiches and patties for his father when he noticed a parcel lying on the sideboard of the room which is opposite the pantry room. The parcel was brownish in colour and had a white thread double folded and was 5" x 3" x 3" in size.

32. Krishan Lal PW-20 deposed that he was employed in the Delhi Golf Club since 1976 as a starter and knew the appellant who was a member of the club. As a starter his job was to maintain records of players as and when a game commenced together with the particulars of the caddy at the first tee. Entry encircled in red in the register Ex.PW-20/A was in his hand and was dated 25.9.1982 and that it recorded that the appellant had played golf in the company of three players from 1.36 PM to 5.22 PM.

33. Relevant would it be to note that in cross-examination, the witness admitted that a full game of golf requires 7 1/2 Km to be walked and that the players take a bath and refreshments after playing the game. That the appellant used to leave the club normally around 7.45 PM. On 25.9.1982, he had requested the appellant for a lift in the evening as he lived at Bhogal which was on the way to Friends Colony and in the car, requested the appellant to give him a bottle of rum to entertain guests. The appellant took him to his residence in Friends Colony and gave him a bottle of rum. On being re-examined by the learned Special Prosecutor, the witness stated that he had no record of leaving with the appellant at 7.45 PM on 25.9.1982 and that his deposition to said effect was based on memory.

34. With reference to the testimony of aforementioned witnesses, the prosecution sought to establish that Mohd. Shafi had seen the appellant coming out of the gate of 98 Sunder Nagar on 25.9.1982 at around 7:45 PM and that 15 minutes prior thereto, at around 7:30 PM Suresh Gopal and his wife had come to 98 Sunder Nagar and while going up the steps to the first floor they did not see any parcel on the steps and that at around 9:00 PM when they i.e. Suresh Gopal and his wife along with the deceased and Rani were leaving the house, a parcel was found at the staircase which was picked up by Krishan Sikand and kept at the sill of a wire mesh enclosure containing the electricity meters at the landing of the staircase and that the parcel remained forgotten at the same place till it was noticed by Vijay Ram on 2.10.1982, who requested Shyam Lal to deliver the same to Krishan Sikand and on the refusal of Shyam Lal to do so, Vijay Ram himself delivered the parcel to Krishan Sikand and that the parcel exploded at around 5:30 PM when a birthday party was being celebrated at the ground floor of the house. It is apparent that the prosecution was attempting to prove that the appellant had left the parcel at the staircase of the house of the deceased on 25.9.1982.

35. N.D.Sethi PW-27 deposed that he has been running Janta Commercial College since 1951. He had 13 English typewriters in his establishment since

1982. Five typewriters were for learners and the remaining for speed shooters. On 5.8.1983 CBI accompanied by the appellant had come to his institute at about 6.00 PM to 7.00 PM and took specimen typing from the machines of which Ex.PW-27/A was one type specimen. The typed specimens were seized vide seizure memo Ex.PW-28/B. That around 22nd or 23rd September 1982 a person had come with a handwritten address and an envelope and had requested to type the address on the envelope. He referred the person to a beginner student to do the needful. That he could not identify the person who had come. 8 files containing sheets typed in the year 1982 were seized vide seizure memo Ex.PW-27/E on 9.9.1983. A machine Ex.P-21 was seized vide seizure memo Ex.PW-27/B and that the address on Ex.A-1 was got typed on the machine Ex.P-21.

36. Shri V.K. Tyagi PW-28 deposed that some CBI officers had requested him and one Mr. Mehrotra to come to their office. In his presence the appellant made a disclosure statement Ex.PW-28/A which was reduced in writing and signed by him and Mr. Mehrotra as also three CBI officers. The appellant disclosed that he had got typed the address of the addressee and the sender at a typing institute in Lajpat Nagar. Thereafter, the appellant led the CBI officers to Janta Commercial College and pointed out a typewriter on which the same were typed. Thereafter, specimen of typescripts were obtained from the machines at Janta Commercial College.

37. From the testimony of PW-27 and PW-28, the prosecution sought to prove that pursuant to the disclosure statement made by the appellant, CBI officers came to know for the first time that the addresses of the sender and the addressee on the parcel bomb were got typed by the appellant at Janta Commercial College. (We shall be shortly noting the testimony of the typescript expert and his report pertaining to the sample typescript Ex.PW-27/A and the typescript on the reconstructed slips of paper recovered from the debris of the parcel bomb, containing the address of the sender and the addressee).

38. Dr. G.R. Prasad PW-62 deposed that he had been working as ballistic expert with CFSL and on 7.10.1982 he received 13 sealed parcels from Inspector - II, Crime Branch, Delhi; out of which parcel No. 3 was a cloth envelope sealed with three seals of VM and it contained stained brown paper pieces with remnants of address thereon. He reconstructed, to the extent possible, two addresses by pasting together the remnants of the paper as recorded in his report dated 20.10.1982 Ex.PW-62/G.

39. We note that the reconstructed papers as per report Ex.PW-62/G, are as noted hereinabove in para 5.

40. Shri V.K. Khanna PW-59, Senior Scientific Officer-cum-Assistant Chemical Examiner, CFSL deposed that certain questioned and standard documents were sent for examination and comparison by S.P., CBI, New Delhi vide letter Ex.PW-59/A. These documents were retained in the documents" division on

25.10.1983 and the receipt was given by the case assistant CFSL. The questioned writings which were sent for examination were marked Q-1 to Q-79. The specimen writings were marked S-767 to S-784 and admitted writings were marked A-1 to A-55. The questioned writings were examined and compared with the standard writing with the help of scientific aids.

41. SK Gupta PW-75, Director, Dept. of Science and Technology, deposed that on 6.8.1983 he received a letter from S.P./ CIU (P) addressed to Director CFSL along with this letter, typed documents marked S-1 to S-14 of various type writers were received. The questioned document Q-1, Ex.PW-62/O, on which his opinion was sought had already been received in finger print division of the Laboratory. That the documents marked by him as S-1 to S-14 are Ex. PW-71/ A-1 to A-14. S-7 is Ex.PW-27/A. He gave his report that the questioned document Q-1 i.e. Ex.PW-62/O was got typed on the same typewriting machine on which the sample typescript S-7, exhibited as Ex.PW-27/A, was got typed.

42. Briefly noted, the report is based on identifying certain sheets in the 8 files which were seized vide seizure memo Ex.PW-27/E, as relatable to the same typewriter to which the questioned typescript could be related to and additionally the fact that the questioned typescript was found relatable to the same typewriter on which the sample typescript S-7 was got typed.

43. Thus, through the testimony of PW-59, PW-64 and PW-75, the prosecution sought to establish that the addresses on the parcel containing the bomb were typed at the instance of the appellant from the machine Ex.P-21 belonging to Janta Commercial College owned by PW-27.

44. Maj. R.R. Gupta PW-45, deposed that since 10.6.1983 he was the Control Officer with Central Ammunition Depot of Government of India and that a record of ammunition was maintained of captured ammunition. That 82420 hand grenades of Pakistani origin were received between March 1972 to June 1972 of which 168 hand grenades had POF 1958 markings. That these hand grenades were issued to various units and some were destroyed during tests.

45. Arun Kumar Kalsi PW-50 deposed that he has been working in the ammunition factory since 1979 as Works Manager. Detonator sets of N-36 hand-grenades four seconds are also manufactured in his factory. He stated that on 2.7.1983 CBI approached him and asked him to accompany them to enable them to have a look at the fragments of grenades and cap chambers. He noted that the cap chambers were broken into pieces. One piece contained the mark "KF" and the other portion contained the month and year of manufacture. He noted the month and the year marked as "3-64". That the detonator sets were not available in the market and could not be manufactured by anybody else. After perusing the inspection notes and the records of the said detonator relating to March 1964, the report Ex.PW-50/A was prepared by him.

46. Shri Vinayak PW-61, Principal Foreman, C.I.A. deposed that he is trained in inspection of armaments and forensic ballistics in respect of grenade and its

fragments including grenades of Pakistan origin captured by the Indian Army. That he had examined the remnants of the exploded hand-grenade and his opinion is Ex.PW-61/A, as per which he had opined that the fragments sent to him were of hand grenade number M-36 and the base plug was of Pakistan origin.

47. Through the testimony of PW-45, PW-50 and PW-61, the prosecution sought to prove that the bobby trap bomb, used as the explosive device which was the cause of the death of Krishan Sikand was created by the use of hand grenades manufactured in Pakistan and that some hand grenades which were captured by the Indian Army were distributed in the various units of the Indian Army.

48. We need not note the testimony of the various police officers associated with the investigation as no submissions were advanced by learned Counsel for the parties with reference to the investigation carried out. We also need not note the testimony of the doctor who conducted the post-mortem of the deceased, for the reason, it is not in dispute that the deceased died when shrapnel's from an explosive device pierced his body causing excessive internal bleeding.

49. The defence produced eight witnesses.

50. Shri Rattan Sehgal DW-1, a retired IPS officer deposed that he knew the appellant S.J. Chaudhary for over last 32 years as he was a family friend. That on 25.9.1982, Sh. Vinod Gupta, a common friend, had hosted a party and that he met the accused in the party at No. 4, Friends Colony at about 8.30 or 9 PM.

51. Shri A.K. Nehra DW-2 deposed that on 25.9.1982 at about 7.30 PM he had visited the house of the appellant but the appellant was not present there. He was informed by Ms. Kishori that the appellant was on his way back from the Golf Club. He waited at the house of the appellant till about 8:00 PM when appellant arrived accompanied by a short and fat fellow, wearing glasses, to whom the appellant handed a bottle of rum. Thereafter, they stayed at the residence of the appellant till 8.30 PM and he dropped the appellant at a party at No. 4 Friends Colony.

52. Lt. General R.M. Vohra DW-3, deposed that in the year 1971, the appellant was holding the rank of a Major in the army and fought the 1971 war under his command. That only officers of the Engineering Corps were trained in the manufacture of ammunition and that at the time when he was in command, the appellant had not undergone any such specialized training. That the appellant was a soldier attached to the Hudson Horse Regiment, a part of the armoured corp.

53. Col. Rajender Kumar DW-4, a retired Army Officer deposed that he was commissioned in the Indian Army Ordnance Core. That the shelf life of an ignitor set is only eight years, after which it may malfunction or hang fire or may not fire at all.

54. Retd. Brig. S.K. Grover DW-5, deposed that Ex.DW-4/A was written by the Ordnance Director, Army Head Quarters with regard to the shelf life of hand

grenade and ignitor set on the request of appellant.

55. Retd. Col. A.S. Sundram DW-6, deposed that when in service, he was dealing with bobby traps, mines and demolition. That he commanded the bomb disposal unit in Delhi from 1982 to 1987 and had deposed in a number of cases pertaining to bomb explosion, the last one being Rajiv Gandhi assassination case. That he was familiar with improvised explosive devices and was also familiar with the functioning of hand grenades and could explain as to how a hand grenade functions. That he had brought a chart describing the components of a hand grenade which is about the size of 4 inches from top to bottom and 2 to 2 1/2 inches in diameter. For being operated, a hand grenade is held in the hand along with its lever. The safety pin is removed to free the lever, which is held down by the finger. Once the grenade is released from the hand the lever flies away and the striker of the hand grenade comes down and hits the percussion cap which triggers the explosion.

56. Shri Darshan Dayal Goel DW-7, claiming to be an expert in examination of questioned documents, deposed that he had compared the questioned type script Q-1, Ex.PW-62/O, with the specimen type script S-7, Ex.PW-27/A, and other specimen typescripts which were seized from Janta Commercial College. That according to him, the differences mentioned by him in the questioned document Q-1 and sample typescript S-7 are not reasonably accounted for. Further the partially burnt and mutilated condition of document marked Q-1, does not provide sufficient data for basing a definite and irrefutable opinion that the questioned typescript marked Q-1 and the sample typescript marked S-7 have been typed on the same typewriter. That the report Ex.DW-7/A was authored by him.

57. Dr. B.R. Sharma DW-8, deposed that the CFSL Report Ex.PW-64/A and Ex.PW-64/B submitted by Dr. S.R. Singh were based on an improper scientific analysis because proper instruments were not used to examine the various components qua which and upon which, the reports were given.

58. Though the learned Trial Judge has noted the testimony of all the witnesses who deposed facts that the appellant had a motive to kill the deceased; namely PW-1, PW-10, PW-11, PW-19, PW-32, PW-37, PW-39, PW-42, PW-44 and PW-48, but reliance has been placed only upon the testimony of PW-1 and PW-19. With reference to the testimony of Rani Chaudhary PW-1 and H.D.Sikand PW-19, the learned Trial Judge has held as under:

I have no reason to disbelieve the witnesses about the threats given to Ms. Rani Chaudhary and deceased Kishan Sikand. It is submitted by counsel for accused that Ms. Rani has deposed about the threats to save her skin. She was a clever lady and wanted to grab the property of deceased Kishan Sikand since she has already obtained a will in her favour by influencing the deceased. I find no merit in this argument. The deposition of Rani Chaudary about the threats is corroborated by the deposition of H.D. Sikand, father of deceased, against whose

testimony nothing has been stated during the course of arguments. Believing the deposition of Ms. Rani Chaudhary, H.D. Sikand and other witnesses, I find that accused had motive to kill not only Ms. Rani Chaudhary but also deceased Kishan Sikand so that they don't live together against the wishes of the accused .

59. With reference to the testimony of Major R.R. Gupta PW-45, Dr. G.R. Prasad PW-62 and Dr. B. Moitra, PW-63 the learned Trial Judge has held as under:

The fact that accused S.J.Chaudhary was Lieutenant Colonel in Indian Army has not been disputed. PW-45 Major R.R. Gupta of Central Ammunition Depot has deposed that in the year 1972, captured ammunition including M-36 hand grenade (4 seconds), 1958 of POF marking were received in their Depot. These hand grenades were issued to various units between 1972 to 1982. This evidence has not been questioned by the accused.

The necessary inference that can be drawn from this fact is that the accused S.J. Chaudhary being a military officer could lay his hands on M-36 hand grenade "MK1 POF 1958". It is significant to observe here that this is the same make of hand grenade which has been found to be used for the explosion which caused death of Kishan Sikand. It is not denied by accused that he was in service and even after his arrest on 5.8.83, he was produced in the court in the custody of army.

Learned Counsel for accused submitted that such hand grenades are available in clandestine market and this fact has been admitted by the witnesses produced by the prosecution.

I cannot believe the version of the witness that hand grenade of Pakistan origin captured by Indian Army is available in clandestine market.

x x x x

However, accused being a military officer had knowledge about hand grenade and its working. Packing of hand grenade in a shuttle cock box of that size after removing the safety pin shows his expertise.

60. Discussing the issue pertaining to the sender's and addressee's address on the parcel bomb i.e. the two addresses reconstructed as per Ex.PW-62/O, noting the opinion of Sh. S.K. Gupta PW-75 and Sh. Darshan Dayal Goel DW-7, but without any detailed analysis of the two reports and without even discussing the issues which were projected in relation to expert testimony on typescripts, the learned Trial Judge has opined as under:

Since there were contradictory reports about similarities and dissimilarities in the typed address, I have perused, checked and compared the original and photocopy of the typed address with the respective reports. I find, reasons given by PW-75 Shri S.K. Gupta are more sound than reasons given by DW-7 Shri Darshan Dayal Goel, a private expert who otherwise is an interested witness. Dissimilarities could also be on account of natural wear and tear and on account

of way and manner of typing.

61. Whether it stood established that the parcel bomb was left at the second lower most landing of the staircase leading to the first floor of 98 Sunder Nagar, on 25.9.1982; with reference to the testimony of Rani PW-1, Suresh Gopal PW-3, Mohd. Shafi, PW-7 and Krishan Lal PW-20, the learned Trial Judge has held that the testimony of PW-20 established that the appellant had played golf at Delhi Golf Club till 5:22 PM and that the Golf Club was at a distance of about 100 yards from the house. The learned Trial Judge has referred to the testimony of PW-1, PW-3 and PW-7 to return a finding that cumulatively read, their testimony established that the appellant was seen at 98 Sunder Nagar between 7:30 PM and 8:00 PM and that the parcel bomb was placed at the staircase between said time.

62. Giving no reasons as to why the testimony of DW-2 Major A.K. Nehra inspired no confidence and without discussing the testimony of the other defence witnesses who deposed that the appellant was in his house at New Friends Colony by 8:00 PM, while ignoring the testimony of PW-20 that the appellant remained in the club till around 7:45 PM, the learned Trial Judge has held as under:

I find that PW-20 Kishan Lal has deposed that generally accused used to leave the club at about 7:45 PM. He has not stated that accused was inside the club till 7:45 PM on 25.9.82. PW-20, in his cross examination, has deposed that he took lift from accused S.J.Chaudhary to get one bottle of rum. If his statement is perused, he has not deposed this fact in his examination in chief. There is no mention of this fact in his statement u/s 161 Cr.P.C. In his cross examination, he has not explained as to how he remembered the date. There is no statement about the presence of accused from 5:22 PM to 7:45 PM on 25.9.82 in the Golf Club by PW-20 Shri Kishan Lal or anyone else. The version of PW-20 Shri Kishan Lal as deposed in his cross examination and of DW-2 Major A.K. Nehra cannot be accepted. If what is stated by PW-20 Shri Kishan Lal was correct, he ought to have deposed the same in his examination in chief that he left with accused in connection with bottle of rum on 25.9.82. He should have explained in his examination in chief rather than deposing in the cross examination. This indicates that he wants to help the accused. Hence, silence of PW-20 Kishan Lal at the time of examination in chief and the version of PW-20 Kishan Lal, in the cross examination, leads me to hold that no reliance can be placed on this part of his evidence. Similarly, the deposition of DW-2 Major A.K. Nehra also cannot be given any weight.

63. The fact that the statement of Mohd. Shafi PW-7 u/s 161 Cr.P.C. was recorded as late as on 16.7.1983 (the date of offence being 2.10.1982), the defence argument that the witness was planted has been negated as under:

I find that accused S.J.Chaudhary has been noticed by PW-7 Mohd. Shafi coming out of the gate of 98, Sunder Nagar on 25.9.82. His statement u/s 161 Cr.P.C.

was recorded on 16.7.83. The investigation of the present case was entrusted to CBI on 19.3.83. None of the investigating officers of CBI had hostility towards the accused. It is only after CBI officials made enquiries from PW-7 Mohd. Shafi that he explained whatever he recollected. This accounts for alleged delay in recording his statement.

64. Under what circumstances the parcel reached the hands of the deceased on 2.10.1982, the learned Trial Judge has relied upon the testimony of Vijay Ram PW-5 who claimed to have seen the parcel bomb on the ledge behind a wire mesh housing the electricity meters of the house and having handed over the same to the deceased in the evening of 2.10.1982.

65. With reference to the testimony of Anil Sikand PW-13 and Birender Singh PW-43, the two persons who had met the appellant at the Golf Club at Naldhera, Shimla on 27.9.1982, the learned Trial Judge has held as under:

Why such an enquiry was made by accused from Anil Sikand particularly when he was not happy with Smt. Rani Chaudhary living with deceased Kishan Sikand. The accused has not denied that he made a specific query to Anil Sikand as to when he last spoke to deceased Kishan Sikand. This admitted circumstance indicates that the accused wanted to enquire as to how his actions have not shown results yet. It also indicates mens-rea of accused to kill Smt. Rani Chaudhary or deceased Kishan Sikand or both. A person who is exchanging pleasantries in normal course is not expected to inquire in the manner in which the enquiry was made by accused S.J.Chaudhary from Anil Sikand.

66. It seriously not being disputed that the deceased died due to a bomb explosion and that the splinters recovered from his body at the time of post-mortem were similar to the splinters gathered from the spot, the learned Trial Judge has concluded as under:

1. On 2.10.82, at about 5:30 PM an explosion took place on the first floor of 98, Sunder Nagar and Kishan Sikand died in that explosion.

2. In the post-mortem, the cause of death has been opined as shock and haemorrhage as a result of injuries caused to heart, lungs, kidney and brain which are ante mortem in nature and caused by an explosive device, likely from a grenade and necessarily fatal.

3. The death of deceased Kishan Sikand was caused due to explosion of hand grenade of "M 36 MKI POF 1958" and the hand grenade is of Pakistan origin. The base plug recovered from the spot on 3.10.82 bears the marking "No. 36-M-MK.1-3-POF-1958".

4. Smt. Rani Chaudhary, wife of accused was, residing at 98 Sunder Nagar with deceased Kishan Sikand despite the threats by the accused not to stay with him. Hence, accused S.J. Chaudhary had the motive for commission of this offence.

5. Accused S.J.Chaudhary was Lieutenant Colonel in Indian Army. Ammunitions

including M-36 hand grenades (4 seconds) of Pakistan origin of POF marking were captured during the war of 1971. It was received in Central Ammunition Depot in 1972 by PW-45 Major R.R. Gupta. These hand grenades were distributed to various units between 1972 to 1982.

6. Accused S.J.Chaudhary was in Army at the time of occurrence of the incident and could easily lay hands on Hand Grenade No. "M 36 MKI POF 1958". It is not possible for a lay man to procure a hand grenade of Pakistan origin from clandestine market.

7. On 25.9.82, accused S.J.Chaudhary played golf in Delhi Golf Club till 5:22 PM at Delhi Golf Club, which is 100 yards away from 98, Sunder Nagar, place of occurrence. Accused was in close proximity to place of occurrence of incident on 25.9.82.

8. On 25.9.82, accused was seen coming out of gate of 98 Sunder Nagar at about 7:30 PM by PW-7 Mohd. Shafi, the car mechanic who had come there to repair the car of deceased Kishan Sikand.

9. On 25.9.82, deceased Kishan Sinad accompanied by Ms. Rani, Shri Suresh Gopal and his wife Mrs. Sushma Gopal, while coming down from the first floor of 98, Sunder Nagar, noticed a parcel lying on the second landing of the staircase at about 9 PM. The parcel was addressed to deceased Kishan Sikand. He kept it in the window sill near the meter jalli. Ms. Rani, Shri Suresh Gopal and Smt. Sushma Gopal notices the brown colored parcel wherein the address of deceased Kishan Sikand, 98, Sunder Nagar was typed on a white paper slip pasted on the parcel and the sender's name was of some metal industry. They saw deceased Kishan Sikand keeping the parcel in the window sill near the meter jalli.

10. Accused S.J.Chaudhary was seen at 98, Sunder Nagar on the same day on which the parcel was seen for the first time at the second landing of the staircase by the deceased Kishan Sikand, Smt. Rani Chaudhary and Shri Suresh Gopal on 25.9.82.

11. Accused S.J.Chaudhary had personal grudge against the deceased since the deceased was living with his wife and had no reason to visit the house of deceased Kishan Sikand. Therefore it can be said with reasonable definiteness that the accused had come to 98, Sunder Nagar to keep the parcel which had been addressed to deceased Kishan Sikand.

12. It has also been established that the accused got the address of the deceased Kishan Sikand typed on a white paper from Janta Commercial College, Lajpat Nagat to paste the same on the parcel.

13. Accused S.J.Chaudhary went to Naldhera on 26.9.82 on the next day, after the parcel was placed and seen at 98, Sunder Nagar.

14. In the golf club at Naldhera, on 28.9.82 accused S.J.Chaudhary had a talk with Shri Anil Sikand, brother of deceased Kishan Sikand. The specific query

made by accused to Anil Sikand as to how was the deceased and when he spoke to him last conclusively establishes the mens-rea of the accused and that the accused was anxious to know about results of his action.

15. On 2.10.82, at about 5 PM, PW-5 Vijay Ram, servant of Mr. Kock, tenant in front portion of first floor of 98, Sunder Nagar, noticed the brown coloured parcel lying in the window sill near the meter jalli. Since it was addressed to deceased Kishan Sikand. PW-5 Vijay Ram handed over the said parcel to deceased Kishan Sikand.

16. On 2.10.82 at about 5:15 PM, PW Sanjay Sikand, son of deceased Kishan Sikand went upstairs on the first floor to give patties and sandwiches to his father Kishan Sikand and inquired about the brown coloured parcel lying on the side table.

17. The description of the parcel given by Smt. Rani Chaudhary, Shri Suresh Gopal who had seen the same on 25.9.82 and the description of the parcel given by Vijay Ram and Sanjay Sikand who saw it on 2.10.82, is the same.

18. The death of Kishan Sikand was caused after he opened the parcel which had been handed over to him by PW-5 Vijay Ram.

19. It has been established that the parcel which was handed over by Vijay Ram to deceased Kishan Sikand contained a shuttle cock box and the moment the hand grenade was taken out it blasted because of the pressure release system. The safety pin of the grenade was missing and it has been established that the hand grenade could have been packed only by a person who had thorough knowledge about ammunitions and in particular about hand grenades.

20. It has therefore been conclusively established that the parcel that was placed by the accused at the second landing the staircase at 98, Sunder Nagar on 25.9.82 was the same parcel which kept lying in the window sill near the meter jalli and was handed over to deceased Kishan Sikand on 2.10.82 by PW-5 Vijay Ram and the same parcel contained the hand grenade which exploded and caused death of deceased Kishan Sikand.

67. The decision of the learned Trial Judge may be summarized as under:

A. The appellant desired the return of Rani Choudhary and since the deceased was a stumbling block in the way of the appellant, the appellant had a motive to commit the crime i.e. to remove the deceased from the appellant's path.

B. The conduct of the appellant of enquiring on 27.9.1982 from Anil Sikand and Birender Singh the well being of the deceased was an indication of his inquisitive mind to know the result of his action (of delivering the parcel bomb to the deceased on 25.9.1982), the inquisitive mind being a guilty mind desirous of knowing the consequences of the act motivated by the guilty mind.

C. The military background of the appellant from which a presumption could be raised about his knowledge of ammunition. The fact that the parcel bomb had

remnants of a base plug bearing marking "No. 36-M-NK.1-3-POF-1958" and that hand grenades of "M 36 MK1 POF 1958" were seized by the Indian Army and distributed to various units of the army in India in the year 1972, justified an inference to be drawn that the appellant could have accessed hand grenades captured by the Indian Army and that the same were used to manufacture the parcel bomb.

D. That the appellant was in Delhi on 25.9.1982 and had played golf at the Delhi Golf Club till around 5:30 PM; the golf club being about being 100 yards away from 98 Sunder Nagar; the appellant was seen leaving the house at around 7:45 PM and prior thereto when Suresh Gopal entered the house, he saw no parcel bomb and when he i.e. Suresh Gopal along with his wife, the deceased and Rani left the house at around 9:00 PM, the parcel bomb was seen on the steps leading to the first floor of the house. Thus, it was the appellant who delivered the parcel bomb on 25.9.1982. Linking the further evidence to the events of 2.10.1982, the finding returned is that the testimony of Vijay Ram PW-5 established that the parcel bomb remained unattended at the ledge behind the wire mesh at the staircase on the ground floor till 2.10.1982, when it was noticed, per chance, by Vijay Ram who handed over the same to the deceased.

E. The address of the sender and the addressee on the parcel bomb was got typed from Janta Commercial College and said fact came to the knowledge of the police pursuant to the disclosure statement of the appellant; the proof of the addresses being got typed from Janta Commercial College was the opinion of S.K. Gupta PW-75.

68. It is no doubt true that from the testimony of Rani Choudhary PW-1, Sudhir Khanna PW-10, Kailash Nath Dwivedi PW-11, H.D. Sikand PW-19, Smt. Davinder Singh PW-32, Shri M.M. Thapar PW-37, Neelu Moolchandani PW-39, Brig. Ashok Nath Luthra PW-42, Shri Gajbir Singh PW-44 and Insp. Om Sagar PW-48, an inference can be drawn that the appellant had a strong desire, bordering on an obsession, to have Rani Choudhary back with him in his house as his wife and since Rani Choudhary, who had obtained a divorce from the appellant, was contemplating a matrimonial bond with the deceased, the appellant had a motive to kill the deceased. But, three letters dated 20.10.1980, 16.11.1980 and 3.3.1982 being Ex.PW-1/FF, Ex.PW-1/GG and Ex.PW-1/NN, written by the appellant to Rani Choudhary, throw light on something else. The three letters read as under:

Ex.PW-1/FF

22 Oct 80

Dearest Rani

Having tried, in vain, to obtain an opportunity of speaking with you, I am resorting to this letter as I do not want a lack of communication between us to be a cause for my not being able to convey, properly, my feelings to you. You can

tear this letter up right now - in case you feel it is a waste of your time - or dwell upon its contents and arrive at a considered decision, if you see any sense in it.

I have known you long enough to know what you value in life. I also know the extent to which you will rebel if something is forced upon you - hence this honest and final suggestion I make for your consideration.

Notwithstanding all that has happened up till today, let us forgive and forget each other's mistakes. If for no other reason then at least for the sake of those who we have brought into this world.

My suggestion is briefly as under:

1. We give our marriage one last chance in the manner prescribed hereafter.

(a) We live together

(b) I will bear all expenses, and liabilities of running a home

(c) I will NOT interfere with your way of living, your lifestyle, your choice of friends, your choice of leisure and entertainment or any other thing that you may be accustomed to and will agree to abide by any other conditions that you may wish to stipulate.

(d) I will reduce to a legal document, if so desired by you, so as to make the above conditions binding.

(e) If after ONE year of our living together, you are not happy or satisfied to continue, I will arrange a divorce on conditions mutually agreeable to us both.

2. In case the above makes sense then we can discuss with each other, in the presence of your friends/relatives or any one else, if necessary, the exact modalities involved.

Rani I love you very much and I would be failing if I did not draw your attention to the fact that NO sacrifice is too great for those who we have brought into this world. To scar them with complexes resultant of a broken home is neither justifiable nor sensible - particularly as both of us have the basic intelligence and capacity to be able to concede to one another's point of view.

I am offering you a blank cheque and you have no need to forgo anything nor alter radically your way of life as my proposal involves an honest attempt - and that too for only ONE year. After all one year will rob neither you nor me of anything of value - yet it may provide our children a multitude of blessing and benefits of a home.

I do hope, Rani, you will give this letter of mine the consideration it deserves and will let me know your decision in due course.

I love you.

Yours

Jiti

x x x x x

Ex.PW-1/GG

16/11/80

Dearest Rani,

It is always difficult to put words to paper - yet I keep trying.

I am back in Bangalore - couldn't see you before leaving. Hope you had a nice shoot and were not too tired at the end of it. How does your back take it" I am sure the only way to build it back to its original strength would be to exercise it in just this manner - actually driving out into the country and let it take a bit of a bashing.

Back to the subject - Rani must we fight each other & to what end?

I learnt from Mani and Nita of your visit to Thapar House (a couple of weeks ago) - it left me very sad to think of you having to face the "hostile environment" that you so keenly seem to want to adopt. Why? And to what purpose? Just look around you and see what riches you already have.

Two lovely girls from "Peter Papa" and an adorable one from "Jiti Papa". Mimi - the lovely one who is having her periods on time (4th")

It warmed my heart to tears to know that life is actually progressing around us - and we seem to be moving backwards. Shortly she (Mimi) will have the normal problems of an adolescent (sp!) - and who does she turn to - Mama no doubt - but there is always a need to "talk" to an understanding "Papa" Who will that be now that "Peter Papa" is not with us. Surely "Jiti Papa" could have done? Then in next to no time it will be Mytri - exactly the same processes - evolution does not stand still for marital problems to be resolved. Then what? What gain if you or I win our personal battle against each other if we were to lose the Campaign? And that is a certainty - this litigation will only prove the age old adage - settling out of court is always better than trying it within.

What is there to settle for? I see you, Rani, as a woman in a period in life that you have not been able to deny yourself - the grand sweeping passion ,(illicit or otherwise) the last flush of your youth, the final careless autumn that precedes middle age - the desire to prolong what you feel you have missed out on - attention, adulation and pursuit by millions of eligible"s and to take it all before accepting the ultimate inevitable role of a family figure-head - a mother - ! doling out love, affection and guidance to those you have brought into the world. Well what"s wrong with that & who am I to deny you all that? - Take it all Rani - live your life to let no regrets remain but do return to your anchor before you destroy it - the anchor is none other than the home & family that you already have. M, M & S with J hanging around - hovering - in the background. In many

ways even I will have to be grateful to Krishan for having kept you involved enough to prevent you making a spectacle of yourself - In giving you a zest for appreciating things that I failed to - like shooting, running a home and invoking an arousal of that motherly instinct that no woman can be or do without. For that alone you owe it to him to see that you do not let him down too suddenly - he has already been hurt badly once. But what has to be done, has to be done and you have to make that decision your own self. You have to weigh your family against the untold unhappiness that could be brought about by your continuing to live with him. You do not, surely, want him to be isolated or alienated from his own Kin, as that would inevitably be, should you choose to stick to him. The choice therefore really is to let him find someone more readily mergeable with his family and for you to salvage what little you have already - rather than start everything afresh jeopardizing the happiness of both his kin and ours. Let us review what the essentials are and take what God has given us with gratitude and thanks.

Should you choose to return to your own family - both you & I stand to lose a little face in society - but not too much that cannot be erased.

The other alternative defies my powers to foresee what all it could entail.

It is not easy for me to put this to pen but better that I do so than risk a stone being left unturned.

Whatever I love you or not is now totally immaterial - the point is do you and I love enough, those that we have, and do we have it within us to sacrifice for them, our individual loves?

Deliberate and only then act. Try to keep at least this letter to yourself. I continue to love you as before.

Yours,

Jiti

P.S. Please acknowledge

- I would hate to have this go astray.

x x x x x

Ex.PW-1/NN

3/3/82

Bangalore

Dearest Rani,

Congratulations! You should win!!

Your lawyer sounded more convincing than mine. For whatever wrongs I might

have done to you - advertently or inadvertently - have been paid for (fully) by me thro the humiliation I suffered walking to and fro "up the aisle" of the Supreme Court to which you were a witness. We are now Quits!! I wish you well as I love you - as you fully well know. Neither you nor I can control the destiny set for us - be happy & most of all - be at peace with your mind.

My "cross" shall be that I'll love you more and more as the time goes by - I pray that GOD gives me the strength to bear it.

Love, Goodbye

Jiti

69. Each letter brings out, not only the poet in the appellant, but a desire to have Rani Choudhary back in the house; not for himself, but for the sake of the three daughters, two born to Rani Choudhary from her previous marriage and the third born to Rani Choudhary and the appellant. The letters bring out that the appellant had reconciled to the fact that his finances could not feed the luxurious life style to which Rani Choudhary had got accustomed to. The appellant had reconciled to Rani Choudhary continuing a relationship, plutonic as well as physical, with her friends. They bring out the desire of the appellant to have Rani Choudhary returning to the house, not as a wife, but as a mother; for the sake of the well being and future of the three daughters who were budding flowers and required the emotional support of a mother.

70. Unfortunately, the learned Trial Judge has totally eschewed a reference to the afore noted three letters, the last of which was written when arguments were concluded before the Supreme Court in the proceedings which had emanated out of the petition seeking divorce filed by Rani Choudhary. It shows that the appellant had understood the mood of the Bench and had congratulated Rani Choudhary for having a better counsel than him. The letter shows that the appellant had reconciled to the inevitable will of God.

71. Thus, there is scope for an argument that inasmuch as there is evidence wherefrom a motive can be attributed to the appellant; there is an equal scope for an argument that there is evidence on record wherefrom said motive gets negated.

72. But, for the purposes of our decision we proceed on the basis that the appellant had a motive to kill the deceased and that the prosecution has successfully established the motive.

73. It is no doubt true that conduct of an accused is relevant and admissible evidence u/s 8 of the Evidence Act.

74. With reference to the testimony of Anil Sikand PW-13 and Birender Singh PW-43, the learned Trial Judge has held that by the fact that the appellant enquired from them on 28.9.1982, the well being of the deceased, is a circumstance which indicates that the accused wanted to enquire as to how his

actions have not shown results yet. The learned Trial Judge has further held that the same also indicates mens rea to kill the deceased or Rani Chaudhary or both.

75. We find a process of convoluted reasoning adopted by the learned Trial Judge while drawing inferences against the appellant on the testimony of PW-13 and PW-43. As per the testimony of the said witnesses the appellant was more than an acquaintance; he was a friend. He desired to play a game of golf with them, to which they agreed. Anil Sikand is the brother of Kishan Sikand. By extending the usual courtesy expected from a friend by a friend i.e. of asking the well-being of the family, we find no scope to infer the desire of a guilty mind to know as to why the acts motivated by the guilty mind have not achieved the desired result.

76. In a somewhat similar circumstance, in the decision reported as State (N.C.T. of Delhi) Vs. Navjot Sandhu @ Afsan Guru, , where a few days after the attack by terrorist on the Parliament of India, accused S.A.R. Gilani's brother-in-law had inquisitively asked S.A.R. Gilani over the telephone as to how were things in Delhi, to which S.A.R. Gilani had responded that things were looking fine, the inference drawn by the Trial Judge that S.A.R. Gilani was telling his brother that his grand design was achieving its end; an inference negated by a Division Bench of this Court as a perverse inference, was affirmed by the Supreme Court to be a perverse inference.

77. Logic guides us that to justify an inference being drawn from a fact, the same has to be the only inference possible, negating any other inference which may be drawn. From the mere fact of the appellant enquiring about the health and well being of the deceased from Anil Sikand and Birender Singh on 28.9.1982, no logical person can say that the only inference possible is the desire of the appellant to know as to why his acts have not borne the requisite consequences.

78. It has to be noted that the deceased was no ordinary person. He was the son of a reputed business family in Delhi. His death, that too a violent death was bound to attract media coverage, a fact which actually took place on 3.10.1982 i.e. media coverage of the death of Kishan Sikand. The appellant was thus not expected to rely upon information given to him by PW-13 and PW-43, for the reason he would have received the necessary information through the media. Be that as it may, de-hors this line of reasoning, which may be speculative (we concede), we hold, for the reasons given in para 75 to 77 above, that the inference of a guilty mind drawn by the learned Trial Judge with reference to conduct of the appellant is contrary to logic and the principles of law on which inferences are required to be drawn. Said incriminating circumstance has thus to be removed while listing the incriminating evidence and circumstances against the appellant.

79. The evidence on record does establish that the remnants of a base plug bearing marking "No. 36-M-NK.1-3-POF-1958" were recovered from the debris at the spot by SI Vishnu Madan PW-69 who had reached the first floor of the

house where the explosion took place on 2.10.1982. The evidence on record also establishes that in the year 1972 hand grenades seized by the Indian Army of Pakistan origin of the make "M 36 MK1 POF 1958" were distributed to various army units in India. The evidence on record also establishes that the appellant was a soldier attached to Hudson Horse Regiment, a part of the armoured corp of the Indian Army.

80. But, from said four facts, is it possible to draw the inference that the only conclusion possible is that the appellant had accessed hand grenades captured by the Indian Army and had knowledge to fabricate the bobby trap bomb by using the ill gotten hand grenades accessed by him.

81. We have already held above that the theory of logic guides us that to draw an inference from facts, the inference drawn should be the only one possible and if there are more than one inferences which can be drawn from a given set of facts, it would be impermissible to draw only one inference.

82. There is no evidence that any hand grenade of Pakistan make which was handed over to the various units of the Indian Army was stolen or was missing. Unless said fact was proved, we see no scope to draw any inference of somebody misusing any such hand grenade. Thus, the very foundation on which the inference has been drawn by the learned Trial Judge is knocked out.

83. Besides, merely because the appellant was an ex army man, is no ground to draw an adverse inference that he had knowledge of ammunition to manufacture or assemble the bobby trap bomb. There is a difference in having knowledge of use of ammunition and knowledge of manufacture of ammunition. The evidence on record is that the appellant was attached to a regiment which was a part of the armoured corp of the Indian Army. The armoured corp does not sit in the ordinance factory. It is stationed either at the garrison or at the forward posting. Its members are taught the use of arms and ammunition. They are not imparted the knowledge of manufacturing ammunition. DW-6 an expert at bomb disposal, having commanded the bomb disposal unit in Delhi from 1982 to 1987, has deposed with respect to the complexities of a hand grenade. Indeed, his testimony brings out the complexities of the knowledge required to be imbibed before a person can dismantle a live hand grenade and use its components to create a bobby trap bomb.

84. It is unfortunate that the learned Trial Judge has not even bothered to look into the testimony of DW-6.

85. We are noting that the learned Trial Judges are short circuiting defence witnesses, holding that they are interested witnesses. Indeed, in the instant case, the learned Trial Judge has trivialized most of the defence witnesses by inserting a line qua them that they are interested witnesses. Defence witnesses are entitled to be treated at par with the witnesses of the prosecution and their evidence has to be discussed and analyzed on the same process of reasoning which is adopted to discuss and analyze the testimony of the witnesses of the

prosecution.

86. The learned Trial Judge has held that explosive devices were not freely available in the market, as was projected to by the defence.

87. The year of the offence is 1982. It was the peak of terrorism in the State of Punjab and the State of Jammu & Kashmir. Ammunition to manufacture bombs is obviously not available in the open market. It has to be procured from the underworld. Indeed, in the year 1982 explosive devices were being freely used by terrorists not only in the State of Punjab, the State of Jammu & Kashmir, but all over India. Delhi had witnessed a series of transistor bomb blasts in the year 1982. The learned Trial Judge could not have ignored said historical facts.

88. Since there is no evidence to show that the appellant was imparted knowledge or had acquired knowledge in the making of ammunition and that there is no evidence that any hand grenade of Pakistani origin distributed in the year 1972 to the various regiments of the Indian Army was stolen, we hold that the inference drawn by the learned Trial Judge with reference to the army background of the appellant, as the author/manufacturer of the parcel bomb is incorrect. We hold that said incriminating circumstance against the appellant has to be excluded.

89. Did the appellant leave the parcel bomb at the steps of 98 Sunder Nagar on 25.9.1982" With reference to the testimony of Suresh Gopal PW-3, Rani Choudhary PW-1, Mohd. Shafi PW-7 and Kishan Lal PW-20, the learned Trial Judge has held that the said fact stood established.

90. Briefly put, the reasoning of the learned Trial Judge is that the testimony of Suresh Gopal PW-3 establishes that he and his wife reached the house at around 7:30 PM and saw Mohd. Shafi PW-7 repair the car of the deceased and when Suresh Gopal and his wife went upstairs to reach the first floor of the house where the deceased resided they did not see any packet. Mohd. Shafi drove the car which he was repairing for a test drive and returned after a few minutes and saw the appellant leave the house of the deceased. Thereafter, as deposed to by Suresh Gopal and Rani Chaudhary, when the said two witnesses along with the wife of Suresh Gopal and the deceased descended from the first floor to go out for dinner at Pandara Road Market, at around 9:00 PM, the parcel (containing the bomb) was noticed.

91. The most crucial witness for the prosecution as also the defence, is obviously Mohd. Shafi PW-7.

92. We propose to discuss the creditworthiness of Mohd. Shafi before discussing the creditworthiness of the testimony of Rani Choudhary and Suresh Gopal on said issue.

93. At the outset it assumes some significance that Mohd. Shafi's statement u/s 161 Cr.P.C. was recorded on 16.7.1983 i.e. after nearly nine and a half months of the incident. It is also of some significance that Mohd. Shafi is an employee of

Sikand Motors, the family concern of the deceased and his father and brothers. It is also significant to note that in the statement of Suresh Gopal recorded on 5.10.1983 u/s 161 Cr.P.C. he has not stated that when he came to the house of the deceased on 25.9.1983, he had seen Mohd. Shafi. We note that when cross-examined, Suresh Gopal stated: I did tell to both crime branch about my seeing a mechanic working on the car on 25th Sept. (confronted with Ex.PW-3/DC and DD where it is not so mentioned). Now, one of the two situation has to exist. Either Suresh Gopal did not inform the police and hence it was not recorded in his statement by the police that he had seen a mechanic, or he had said so. If Suresh Gopal did not state so, it is apparent that he was made to improve upon his statement to afford a good ground to justify the introduction of Mohd. Shafi, who otherwise would appear to be a planted witness. Alternatively, if Suresh Gopal had told the police of having seen a mechanic working upon the car of the deceased, we see no scope for the police not questioning the mechanic who was seen by Suresh Gopal.

94. Under both circumstances, we feel, it to be our duty, to now carefully analyze the testimony of Mohd. Shafi.

95. We quote from his testimony:

...It was about 7:30 PM when I was about to set the bonnet of the car after having repaired it. I saw Gopal and his wife come there and go upstairs. I knew them prior thereto. Thereafter to have a trial run I took that car out up to zoo and was coming back via the Sunder Nagar Market when I saw one Jiti near the gate of 98 Sunder Nagar coming out of the said 98, Sunder Nagar and going towards the Sunder Nagar Market. It was after 15 - 20 minutes of my going for a trial run of the car. Said Jiti is the accused person in the Court. I have never seen the accused at 98 Sunder Nagar, prior thereto. I knew the accused prior thereto. I parked the car at the same place near the stairs. Thereafter Juglal, Shikari of Dharu Hara (Haryana) came there whom I had known for quite some time. He had told me that he had been summoned by Kishan Sikand for shikar and for delivery of clothes. Thereafter, I went and delivered the key of the car to Kishan Sikand and informed him of the arrival of Juglal who told me that Juglal be handed over a blue coloured pant given to me by Kishan Sikand and he told that shikar program would take effect a fortnight hence of which he would be informed and I then came back informed Juglal delivered the pant and then both of us came.

96. Going by the testimony of Mohd.Shafi, it is apparent that after he had seen the appellant leave 98 Sunder Nagar and after he parked the car outside the gate, after the trial run, he went upstairs to deliver the key of the car to Kishan Sikand. If any parcel had been left on the staircase by the appellant, it had to be before Mohd.Shafi went upstairs. Mohd.Shafi has not deposed of having seen any parcel on the staircase. As per the prosecution the size of the parcel was 5" x 3" x 3", a size which could not have gone unnoticed by Mohd.Shafi. Further, Mohd.Shafi has categorically deposed that he knew the deceased prior thereto

i.e. prior to 25.9.1982. The only capacity in which Mohd.Shafi could have known the appellant would be that he was the ex-husband of Rani Sikand, who was living with his Master i.e. Kishan Sikand. Being an employee of Kishan Sikand, we find it strange that Mohd.Shafi did not voluntarily inform the police of having seen the appellant coming out of the house of the deceased. The manner in which the crime was committed would have raised the eyebrows of many and especially those who were associated with the deceased. As layman, their instincts would search for the suspect. Natural human conduct of Mohd.Shafi would be to suspect the involvement of the appellant and report the presence of the appellant at the house of the deceased on 25.9.1982. The conduct of Mohd.Shafi in not doing so is another factor which has weighed with us while considering the evidentiary worth of the testimony of Mohd. Shafi.

97. Let us dovetail the testimony of Rani Chaudhary into the testimony of Mohd. Shafi. She claims to have seen a parcel at the second step at the ground floor. She disclaimed four statements attributable to her as recorded in her statement u/s 161 Cr.P.C. on 3.10.1982. The four statements are: A. The parcel found had an address written by hand thereon. B. When Krishan picked up the parcel I warned him lest it might be containing a bomb. C. After return from dinner I was anxious to know where said parcel had been kept by Krishan. D. I did not know where the parcel had been put by Krishan.

98. The learned Trial Judge has accepted Rani Chaudhary's statement in Court that aforesaid four statements were not made by her.

99. It has to be noted that after the initial investigation was conducted on 2.10.1982 by SI Vishnu Madan PW-69, the investigation on the following day i.e. 3.10.1982 was taken over by Insp. R.P. Kochar, In charge of the Crime Branch, who deposed that on 3.10.1982 he recorded the statement of Rani Chaudhary. We note that Insp. R.P. Kochar has not stated that he incorrectly recorded the statement of Rani Chaudhary.

100. It was not the murder of an ordinary man. A socialite and a scion of a rich industrialist family was the victim. The family clout or otherwise the pressure on the police, to solve the crime is evidenced by the fact that the very next day of the crime i.e. on 3.10.1982 the investigation was handed over to the special cell i.e. the Crime Branch Cell dealing with homicidal death of Delhi Police. The pressure on Insp. R.P. Kochar to crack the case and his reputation being at stake would make him all the more cautious, ruling out the possibility of Insp. R.P. Kochar incorrectly recording the statement of Rani Chaudhary.

101. There is obviously something more than meets the eye in the testimonies of PW-1, PW-3 and PW-7, who have obviously spoken to corroborate each other, but in a manner, and especially with reference to their statements u/s 161 Cr.P.C., which suggests that PW-3 has made improvements so that the presence of PW-7 is corroborated. PW-1 has disclaimed her statements which are uncomfortable to the prosecution as they demolish the theory of the parcel lying unattended for 7

days behind the wire mesh on the ground floor where the electricity meters were housed. Indeed, the four statements of Rani Chaudhary in her statement u/s 161 Cr.P.C. establish her anxiety qua the parcel. It shows her concern for the parcel even when everybody returned after the dinner. It is not possible that everybody forgot about the parcel for 7 days. That apart, Vijay Ram PW-5 has deposed that the letters meant for Mr. Kock and the deceased who were residing on the first floor of the house used to be left at the staircase by the postman and he used to distribute the same i.e. those addressed to Mr. Kock used to be handed over to him and those addressed to the deceased used to be handed over to him. This shows that the residents of the first floor had a habit to keep a look out for letters delivered by the postman, and addressed to them. Keeping in view said habit it becomes all the more improbable that a parcel of the size 5" x 3" x 3" would remain unnoticed for 7 days.

102. Kishan Lal PW-20 has been partially believed by the learned Trial Judge. His testimony that the appellant had played golf at the Delhi Golf Club from 1:36 PM to 5:22 PM on 25.9.1982 has been accepted by the learned Trial Judge; and for good reason, inasmuch as the entry in the register Ex.PW-20/A so recorded. From the fact that 98 Sunder Nagar is at a distance of 100 meters from the Delhi Golf Club, the learned Trial Judge has opined that the testimony of PW-20 establishes the presence of the appellant near Sunder Nagar in the evening of 25.9.1982. The testimony of Kishan Lal that all those who play a full game of golf, covering 7 1/2 kms, usually freshen up by taking a bath and some refreshment at the club and that the appellant did so has been disbelieved by the learned Trial Judge as also his further testimony that on 25.9.1982 he had gone to the house of the appellant from the club; they had left at 7:30 PM and he had taken a bottle of rum from the appellant at New Friends Colony. The reasoning given by the learned Trial Judge is that the witness has introduced said facts during cross examination and that they do not find mentioned in his statement u/s 161 Cr.P.C.

103. The scope of cross examination by an accused is fairly wide. In examination in chief, a witness answers only those questions which are put to him by the prosecutor. If the prosecutor chooses to selectively examine a witness, it does not mean that the accused has to restrict the cross examination within the bounds of the examination in chief.

104. The test of an ordinary prudent person and how an ordinary prudent person carries out his affairs has been evolved by Courts to probablize the contemporaneous events, in respect whereof evidence is brought before a Court, through the testimony of witnesses. Indeed, the test of an ordinary prudent person is based on a rational and a logic, being that, a presumption arises that ordinary course of events are followed by ordinary human beings. Thus, that a man took breakfast in the morning would be accepted by the Court without any proof, inasmuch as ordinary human conduct is to take breakfast in the morning.

105. The month of September, in the city of Delhi, is a hot month. Summers

close in Delhi by mid October and autumn commences by that time of the month. The documentary record i.e. Ex.PW-20/A shows that the appellant and his friends had played golf from 1:36 PM to 5:22 PM i.e. for nearly 4 hours. They walked a distance of 7 1/2 kms. Without any further proof, on basis of ordinary human conduct, we find substance in the testimony of PW-20 that like all other members and as on all other days, after playing the game of golf, the appellant refreshed himself by taking a bath at the club followed by some refreshments.

106. But, that would still leave scope for an argument that still, the possibility of the appellant being at 98 Sunder Nagar at around 7:45 PM cannot be ruled out. We concede this position.

107. It takes us back to the testimony of PW-1, PW-3 and PW-7.

108. For our reasons noted hereinabove, while discussing certain features of the testimony of said 3 witnesses, and keeping in mind the principle of law that at a criminal trial, wherever two views are possible or a doubt arises, the benefit of the view favourable to the accused and benefit of doubt to the accused has to be given; it cannot be ignored that there is every possibility of Mohd.Shafi being introduced as a witness and through his mouth padding up the case of the prosecution cannot be ruled out. Further, finding it destructive of their theory of the parcel bomb being delivered on 25.9.1982, Rani disowning her statements recorded u/s 161 Cr.P.C. by the police cannot be ruled out. As regards PW-3, his improving upon his statement u/s 161 Cr.P.C. to corroborate the presence of Mohd.Shafi is also suggestive of the attempt made by the prosecution to make the 3 witnesses speak in tandem.

109. A question would arise, why would the prosecution do so? Indeed, this question would arise in all such cases where a Court finds that the evidence has been padded up. The answer to this question is difficult to be answered because there are hundreds and hundreds of reason why human beings tell lies. But, in the instant case, we may venture an answer which is reasonable and probable.

110. The accused had met Anil Sikand, the brother of the deceased, at Naldhera Golf Club in Shimla on the 27th and 28th of September, 1982. Anil Sikand would have told said fact to Rani Chaudhary and even the police personnel. The appellant had a booking for a log hut at the Golf Club in Shimla till the 29th September, 1982. Nobody knew his whereabouts after 30th September, 1982, the day he would have left the Golf Club at Shimla by afternoon. (Check out time is 12:00 noon the day after the night of the booking). It would have been fatal for the prosecution to have floated a theory that the parcel bomb was delivered by the appellant on 2nd October, 1982, for if he was not in Delhi on said day, the plea of alibi would possibly have been established with lethal precision. Thus, the prosecution, possibly centering on 25.9.1982 as the relevant date is explainable because on said date, evidenced by Ex.PW-20/A, there was unimpeachable evidence to show the appellant's presence in Delhi. If we now view Rani's statement u/s 161 Cr.P.C., it makes perfect sense for her to have told the police

that the parcel was suspected by her to be containing a bomb and it was at her insistence that the deceased left the parcel at the sill behind the wire mesh housing the electricity meters. But unfortunately for her, the said statement, though in harmony with her statement, demolishes the case of the prosecution that the parcel remained unattended as an innocent object. Her statement u/s 161 Cr.P.C. would be in conformity with human conduct. If a man, going out for dinner, finds a parcel of dimension 5" x 3" x 3", the normal conduct would be to pick up the parcel and either go back to the living apartment and keep it inside or carry it along and place it in the car in which the onward movement of the man and his friends took place, unless stopped by somebody from doing so.

111. It is not an insignificant fact that, as deposed to by Sanjay Sikand PW-8, the son of the deceased, a birthday party of Veeraj Sikand, the nephew of the deceased, was being held at the ground floor on 2.10.1982. At the party friends and guests would be invited. So is the presumption. There is a greater likelihood of the parcel in question being transported to the premises on said date, for the reason, many a times, those, who for some reason or the other cannot attend a birthday party, do send a present through a carrier. The party was a perfect occasion for somebody to sneak in the parcel.

112. The testimony of PW-20 and the register Ex.PW-20/A are good evidence to prove that from 1:36 PM to 5:22 PM on 25.9.1982, the appellant was playing golf with his friends at the Delhi Golf Club. Is this the normal activity of a human being who is carrying a bomb with him with a mission to plant the bomb at a place where the victim is targeted? A scheming and a plotting mind i.e. an evil mind would be looking for an opportunity to give effect to the ill conceived desire. Even hardened criminals would be strategizing and planning the execution of their intent at a point of time, immediately preceding the act committed by the body. The conduct of the appellant in being merry with his friends in playing a game of golf for nearly 4 hours on 25.9.1982 is an indication that the mind was neither scheming, nor plotting, nor designing. No strategies were being plotted in the mind. In the midst of nature, at the golf course, the mind was free of the worldly affairs except the pleasure of the game of golf.

113. Regretfully, the learned Trial Judge has made no attempt to give a 360° look to the evidence of the relevant witnesses who have deposed facts pertaining to the delivery of the parcel bomb by the appellant on 25.9.1982. For our reasons noted hereinabove, we are of the opinion that if not more, the appellant is entitled to a benefit of doubt, for if not wholly untrustworthy, the testimony of the witnesses on said aspect is not free from doubt and is not of a kind which inspires full confidence. We thus hold that the conclusion arrived at by the learned Trial Judge that the evidence conclusively establishes that the appellant had left the parcel containing the bomb on 25.9.1982 is not justified in the facts and circumstances of the instant case. We may add that we are ignoring the testimony of the defence witnesses who have deposed that the appellant had attended a party at 4, Friends Colony at 9:00 PM and prior thereto was in his

house at around 8:00 PM.

114. We reach the last and the most crucial stage of the evidence. The evidence pertaining to Ex.PW-62/O i.e. the recreated slips, in a damaged condition, painstakingly pasted together from the remnants of the explosion by G.R. Prasad PW-62. The same, as recreated, are as under:

----- Slip 1 Slip 2
PA ...OST From: Shiri Krishan ... Delhi Met...e, 98, Sunde...agar 290, Hauz
Qu....i Delhi....0006 -----

115. PW-75 has deposed that his report Ex.PW-75/C is correct and that as per him the typewriter used for typing the sample typescript S-7 is the typewriter on which Ex.PW-62/O has been got typed. On the contrary DW-7 Darshan Dayal Goel has opined that in view of the inadequacy of the sample to be tested, no conclusive opinion can be given. He has referred to various dissimilarities noted by him.

116. Unfortunately for us, the learned Trial Judge has just not discussed the law on the subject pertaining to the appreciation of evidence of a witness who opines on a subject of science. The learned Trial Judge has not noted the intrinsic merits and demerits of the report of the two experts. In a cryptic manner, the learned Trial Judge has returned a finding: Since there were contradictory reports about similarities and dissimilarities in the typed address, I have perused, checked and compared the original and photocopy of the typed address with the respective reports. I find, reasons given by PW-75 Shri S.K. Gupta are more sound than reasons given by DW-7 Shri Darshan Dayal Goel, a private expert who otherwise is an interested witness. Dissimilarities could also be on account of natural wear and tear and on account of way and manner of typing.

117. At the outset, we see no reason for the learned Trial Judge to record a perfunctory finding that DW-7, a private expert is an interested witness. What is the interest of DW-7, has not been brought out. We have noted hereinabove in para 85 that defence witnesses are entitled to the same respect and consideration as the witnesses of the prosecution and that there is no presumption that the defence witnesses tell lies. The credibility of every witness and the evidentiary worth of the testimony of a witness has to be evaluated on the recognized principles of evaluation of evidence, be it the witnesses of the prosecution or the defence.

118. Thus, we carry out the task of evaluating the creditworthiness of the testimony of PW-75 and DW-7. We shall be critically looking at the testimony of PW-75, but before that, we need to note the law on the subject, pertaining to the testimony of a person who claims to be an expert on an issue of scientific or technical knowledge.

119. In *Frye v. United States* 54 App. D.C. 46 (1923) the Court of Appeals for the District of Columbia described the device concerning the admissibility of evidence

of an expert, on a subject of science, technology or special knowledge, in the following words:

Just when a scientific principle or discovery crosses the line between the experimental and demonstrable stages is difficult to define. Somewhere in this twilight zone the evidential force of the principle must be recognized, and while courts will go a long way in admitting expert testimony deduced from a well-recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained general acceptance in the particular field in which it belongs.

120. Since its formulation, in the year 1923, the "general acceptance" test (in the legal field known as the Frye's test) has been much debated and the scholarship on its scope and application is legion.

121. But various known texts, on the issue of admissibility of expert evidence, such as "P. Gianelli & E. Imwinkelried: SCIENTIFIC EVIDENCE"; "J. Weinstein & M. Berger: WEINSTEIN's EVIDENCE" and "Scientific Evidence by Lacey" agree, that at a trial, while admitting expert evidence on a matter of science, technology or specialized knowledge, it has to be ensured that the testimony of the expert is not only relevant but additionally is also reliable.

122. Since evidentiary reliability is based on scientific validity, the standard under which the test of reliability of the evidence is: Whether the principles on which the testimony is based has general acceptance in the field to which it (the opinion of the expert) belongs and that the expert has based his opinion keeping into account the said principles.

123. Thus, an expert opinion based on a methodology, which diverges significantly from the procedures accepted by recognized authorities in the field would not be evidentially reliable.

124. Pertaining to evidentiary reliability of an expert opinion, the Frye's test has three fundamental components:

(a) It has to be satisfactorily shown that the expert evidence/opinion relates to a scientific, technical or other specialized knowledge and that the theory or technique applicable to the science, technology or specialized field is based on a methodology, hypothesis or tests which has/have been subjected to peer review and publication i.e. there exists standards controlling the techniques" operation and the same are generally accepted and additionally that it has been accepted that the relationship of the technique to methods has been established to be reliable keeping into account known or potential rate of error.

(b) The author of the opinion qualifies to be called an expert; by knowledge, skill, experience, training or education. It has to be kept in mind that the level of expertise may not affect the admissibility of evidence of the expert but certainly affects the weight to be accorded to the opinion of the expert.

(c) The proffered experts' testimony must reveal that the methodology, hypothesis or techniques applicable and the theory behind the principles applicable have been applied by the expert and that the expert is mindful of the known or potential rate of error in the derivative of the technique or methodology to the subject thereof.

125. Indeed, an expert evidence can be both powerful and at the same time quite misleading because of the difficulty in evaluating it.

126. Though, in many countries, by way of legislative enactments, rules have been enacted governing the admissibility and relevance of expert testimony, but the basic principles laid down in Frye's test continue to apply because of the inherent strength of logic in the principles enunciated in Frye's test.

127. How the Frye's test continues to be preserved in such jurisdictions where legislative enactments exist codifying the rules on the subject can best be illustrated with reference to the decision of the US Supreme Court in the decision reported as *William Dallbert v. Merrell Dow Pharmaceuticals Inc.* (1993) 123 L. Ed. 2d 469. The Federal Rules of Evidence were the subject matter of consideration in said decision on the issue of admissibility and relevance of expert testimony on matters of science, technology and specialized knowledge.

128. Rule 702 of the Federal Rules of Evidence, governing expert testimony, reads as under:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

129. Noting that the words "general acceptance in the particular field in which it belongs", an integral part of Frye's test, do not find mention, express or implied, in the rule, the US Supreme Court opined that the language of Rule 702 places no restriction of general acceptance in the field to which the opinion of the expert belongs and therefore all scientific testimony or evidence is admissible. But, the Court immediately cautioned that issue of reliability of scientific testimony has to be duly considered. To quote from the decision:

The primary locus of this obligation is Rule 702, which clearly contemplates some degree of regulation of the subjects and the theories about which an expert may testify. "If scientific, technical or other specialized knowledge will assist the trier of facts to understand the evidence or to determine a fact in issue" an expert "may testify thereto." The subject of an expert's testimony must be scientific knowledge. The adjective "scientific" implies a grounding in the methods and procedures of science. Similarly the word "knowledge" connotes more than subjective belief or unsupported speculation. The term applies to any body of known facts or to any body of ideas inferred from such facts or accepted as truths on good grounds.... In order to qualify as "scientific knowledge", an

inference or assertion must be derived by the scientific method. Proposed testimony must be supported by appropriate validation - i.e., "good grounds" based on what is known. In short, the requirement that an expert's testimony pertaining to scientific knowledge establishes a standard of evidentiary reliability.

130. With reference to the words "will assist the trier of fact to understand the evidence or to determine a fact in issue", the words which find mention in Rule 702, it was opined:

This entails a preliminary assessment of whether the reasoning or methodology underlining the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue.... Ordinarily, a key question to be answered in determining whether a theory or technique is scientific knowledge that will assist the trier of fact will be whether it can be tested.... Another pertinent consideration is whether the theory or technique has been subjected to peer review and publication.... The fact of publication (or lack thereof) in a peer-reviewed journal thus will be a relevant, though not dispositive, consideration in assessing the scientific validity of a particular technique or methodology on which an opinion is premised.

131. It is apparent to every logical mind that the key to determine whether a theory or technique is scientific knowledge which will assist the trier of fact is whether the theory or technique can be and has been tested. Thus, while summarizing the impact of the legislation on Frye's test, the Court concluded as under: "To summarize: "general acceptance" is not a necessary precondition to the admissibility of scientific evidence under the Federal Rules of Evidence, but the Rules of Evidence do assign to the Trial Judge the task of ensuring that an experts" testimony both rests on a reliable foundation and is relevant to the task at hand. Pertinent evidence based on scientifically valid principles will satisfy those demands."

132. Since trier of a fact i.e. a Judge or a Jury is not expected to be an expert, the relevance of publication in a peer-reviewed journal was highlighted by the US Supreme Court. Not only that, the US Supreme Court cautioned that with reference to standard text, known rate of errors must be kept in mind while deciding the evidentiary value of an expert opinion. To quote: "Additionally, in the case of a particular scientific technique, the court ordinarily should consider the known or potential rate of error, see, e.g., United States v. Smith 869 F2d 348, 354 CA7 1989 (surveying studies of the error rate of spectrographic voice identification technique), and the existence and maintenance of standards controlling the technique's operation. See United States v. Williams 583 F2d 1194, 1198 CA2 1978 (noting professional organization's standard governing spectrographic analysis), cert denied, 439 US 1117, 59 L Ed 2d 77, 99 S Ct 1025 (1979)."

133. The science relating to typescripts is of recent origin. In the year 1952, in the decision reported as Hanumant Vs. The State of Madhya Pradesh, the

Supreme Court held that an opinion of an expert on a typescript was inadmissible in evidence. But, with the advancement of technology, it became acceptable that certain parameters could be identified, if not absolute, on a probability to identify features of a typing machine. The reason is that typewriters are manufactured in industrialized countries by many makers who have made individual approaches to the problem of producing a reliable and effective machine. Despite its simplicity of operation, a typewriter is a fairly complicated machine having a complicated mechanism of operation, for it is assembled from approximately two thousand parts which require something like twenty thousand different operations to produce the result i.e. the typescript. Not only are typewriters assembled from many components, but their action is the resultant of a number of interlocking adjustments which have to be made before the machine can be taken into service. Further, when a typist is typing at a rate of sixty words a minute, he or she motivates about two hundred working parts a second, so that the creation of a line of transcript is the end product of many motions.

134. Once a machine is put into use, it suffers wear and tear which has an increasing effect on the work it produces.

135. Those who had a concern with a typewriter started realizing that if typescripts from machines of different manufacturers is compared, certain differences in the design of the typeface will be apparent, because few manufacturers have identical views on what is the most pleasing and serviceable design for type characters.

136. This means that in most cases it is possible to identify the make of the machine for a particular specimen of typescript by taking into consideration the design of the type. Thus, the science pertaining to a typescript has a high level of accuracy if it has to be determined as to which particular brand of typewriter has been used to type the script. For this, the experts in the field, have, as noted by Wilson R. Harrison in the book "Suspect Documents: Their Scientific Examination", created a databank of different manufacturers of typewriters as also the characteristics of the design of the letters introduced by them over the years.

137. Wilson R. Harrison has a post-graduate degree as also a master's degree in Forensic Sciences and for twenty four years served with Forensic Science Laboratories before retiring as the Director, Home Office, Forensic Science Laboratory, Llanishen Cardiff. Since January 1938 he served as the Director of the Laboratory till he wrote the book "Suspected Documents" in the year 1958. He is considered to be an authority on suspect documents including typescripts. Pertaining to the ease with which the science of typescript can be used to identify the particular make of a machine, at page 242 of the book (Fourth Indian Reprint 2008), the learned Author opines:

If typescript from machines of different manufacturers is compared, certain

differences in the design of the typefaces will be apparent, because few manufacturers have identical views on what is the most pleasing and serviceable design for type-written characters. This means that in some cases, at least, it will be possible to identify the make of the machine used for a particular specimen of typescript by taking into consideration the design of the type.

138. As noted above, once put to use, a typing machine suffers wear and tear which has an increasing effect on the work it produces. The effect has been penned by the learned Author, Wilson R. Harrison, at pages 245, 246 and 247 as under:

If an examination is carried out on specimens of typescript from well-worn machines, it will be observed that in some of the specimens every example of certain letters or figures will be found to be defective. Portions of the character will be found to be missing altogether, or there will be obvious distortion of the outline.... Typescript derived from a machine in poor condition will be found to print very unevenly, the depth of the impression being variable over the surface of the character. This defect will be the more apparent when the touch has been light and the ribbon well used. Some characters will be found to be more heavily imprinted at the bottom, the top being hardly visible, whilst with others the reverse is the case.... When the line of type is inspected as a whole, it will become apparent that not all of the imperfections in the typescript are associated with the manner in which the outlines of the character are reproduced. One of the most obvious defects is the occurrence of errors in the lateral spacing of the typescript along the line. These "errors in horizontal alignment," as they are termed, are mostly noticeable because any crowding of the characters is associated with neighbouring gaps which throw the overcrowding into relief.

139. But, the learned Author hastens to caution at page 248 as under:

Finally, it must not be assumed that all variation in alignment characteristics is due to wear and loose bearings, for lack of rhythm on the part of the typist may be responsible, more especially for variation in horizontal alignment characteristics.

140. Thus, it is apparent that to be treated as characteristic of a typewriter, alignment variations require a careful scrutiny to check whether the same are a result of lack of rhythm on the part of the typist or attributable as a characteristic to the machine. To put it differently, a clever person can prepare a sample typescript by cleverly timing the rhythm so as to recreate alignment variations and give an appearance that the same are characteristic of a typewriter. Thus, in relation to variations in alignment, expert opinion must show that the expert has kept in mind, whether the alignment variation is attributable to the machine or to the typist.

141. Analyzing the determination of characteristics of the letters of a typewriter, to a further scrutiny, at page 250, the learned Author opines that the characteristics (noted in para 20 above) have to be further analyzed in great

detail so that some estimation may be made of their value. While so doing, the learned author has prefaced the further discussion by drawing the attention to five limitations in the process of further analysis, one of them being; to quote (the last line of the third para at page 251):

This limitation also applies when but a small amount of transcript is in question.

142. The reason for the limitation afore-noted is given by the learned author at page 261; to quote:

When a typeface is imperfect, a corresponding defect must occur in every printed character made while it is in this condition. As already pointed out, defects in the outline of the printed character are occasioned by factors other than faulty typeface. Many of these factors, such as faulty ribbon, are temporary, whilst others, such as those due to a pitted platened, are sporadic in their influence on the outline of the printed characters. The test of consistency must be applied before any defect in outline can be attributed to a faulty typeface.... The test of consistency cannot be applied when only a limited amount of transcript is in question, for few, if any, other specimens of the characters with defective outlines may be available for comparison.

143. As per the learned Author (see page 256), characters such as "o", "O", "e" and "u" are of little diagnostic value and the search must begin with letters such as "a", "g", "t" and "r" which are chosen because of the wide variation in design which is encountered in different makes of machines pertaining to said letters.

144. It is apparent even to a layman who has seen a typewriter in operation, if the typeface is struck at an angle, distortion of the outline of letters is the fallout. The learned Author says (at page 258):

Flattening of the outline on a typeface is generally caused by a blow which falls normally on to its surface; if the typeface is struck at an angle, distortion of the outline rather than flattening is likely to be the consequence. The portions of the typeface liable to become damaged in this way are the serifs, which may be bent, and the curved outlines of the ovals of such letters as "g", "a" and "d" become unsymmetrical.

145. But, the learned Author immediately cautions at page 258 itself:

When a serif is seen to be either bent, or twisted, there can be no doubt that the typeface is faulty, but when the serif is not reproduced in the printed character, it cannot likely be assumed that this is due to the outline of the typeface being defective.

146. Thus, it is apparent that mere absence of a serif i.e. it not being reproduced in the printed character is no ground by itself to assume the same to be a distinctive characteristic of the machine. As per the learned author, at page 259:

This means that it is unsafe to regard a typeface as being characterized by a defective serif, unless the stroke from which the serif is missing is seen to have

been deeply printed without any trace of the serif being apparent. Missing serifs are far more common than other defects such as gaps in the outline, and consequently are of less evidentiary value in characterizing the work of a typewriter.

147. Thus, apart from the little diagnostic value of the letters "o", "O", "e" and "u", missing serifs have little evidentiary value while determining the peculiar characteristics of a typewriter.

148. Since quality of a ribbon, the force with which a typist punches the keys of a typewriter and the quality of paper; all affect the quality of the print, the learned author opines that three copies of the specimen text should be prepared with a light, medium and a heavy touch respectively and at least one specimen should be prepared on same or similar paper. Otherwise, the imperfect impressions which occur due to the quality of the paper as also imperfect impressions which occur due to the touch on the key may be attributed to the machine.

149. The learned author further notes that lateral, vertical and slope misalignments are often noted in typescripts. A lateral misalignment means that two letters are squeezed with a resultant and a noticeable gap between the said two letters and the next. Vertical misalignment means that letters are printed above or below the line of type. Slope misalignment means that letters are printed with a slant i.e. appear with a slope.

150. But, the learned Author cautions that such defects have to be appreciated in light of the possible reasons thereof, all of which do not necessarily relate to the machine and hence to its identity.

151. Non-rhythmic operation of a machine is a likely cause of errors in horizontal alignment. At page 263, the learned author opines:

Some authorities go so far as to declare that errors in horizontal alignment are practically useless for identifying the work of a machine, but in the experience of the author this is not the case, and to neglect the presence of any consistent errors in this regard is to disregard evidence which may prove of the greatest value, especially when small amounts of typescripts are in question.

152. It is apparent that pertaining to errors in horizontal alignment, the experts are not in agreement on their evidentiary worth. The learned author, based on experience, feels to the contrary. We may hasten to add that the learned author has not given any reasons for the note of disagreement and has preferred to rest his opinion on his experience.

153. As per the learned author, errors in vertical alignment pertaining to capital letters have not to be put at par with errors in vertical alignment pertaining to small letters. As per the learned author vertical misalignments pertaining to capital letters are usually occasioned due to the typist failing to sufficiently depress the shift key, required to be punched, to print the capital letters or due

to the typist striking the key of the next letter to be printed before the carriage on the type basket has had time to resume its normal position. Hence, vertical misalignments or error in vertical alignment pertaining to capital letters has minimal evidentiary value.

154. Discussing error in slope alignment, the learned Author, at page 265, cautions:

This error in alignment must not be confused with the deliberate slope of a degree or so, given to such characters as "t" and "f" to correct the optical illusion which would make these characters appear to slope if they were adjusted to be perfectly upright.

155. Pertaining to errors in slope alignment as being distinctive of a characteristic, explaining the cause thereof i.e. the reason behind, the learned Author writes:

Obvious and consistent defects in slope are caused by the twisting of the type bars, which causes them to depart from their correct alignment and consequently to print a character with an incorrect slope. Slope misalignment due to this defect is outside the control of the typist, so that constant errors of this description enable the work of the machine to be characterized.

156. It is thus apparent that there is unanimity amongst the authors that subject to certain letters which are given a deliberate slope such as "t" and "f" (to correct the optical illusion) a consistent defect in slope alignment can be attributed as a peculiar characteristic of a machine. Vertical misalignments of capital letters are of not much use while attributing a peculiar characteristic to a machine. Pertaining to horizontal misalignments, there is no unanimity of opinion amongst the various authors as to their evidentiary value. But, based on his experience the learned author feels that horizontal misalignments have good evidentiary value and need to be taken into account especially when a limited quantity of typescript is available.

157. At pages 265 to 267, the learned author discusses faults in typescripts pertaining to double impressions, irregular margins, letter and line spacing. Pertaining to double impressions, the learned author opines that the fault is comparatively rare and the presence of a double impression is an identifying feature of some importance. The theory behind a double impression is that if a key is sharply struck in a normal manner, the momentum of the heavy typeface will cause the thin steel type-bar to bend when its motion is arrested, so that the typeface follows on to deliver a single sharp blow to the ribbon which has been thrust between it and the paper. If a machine is defective, the vibration of the type bar would result in a second fainter blow being struck. Since the extremes of motion of the carriage of a typewriter are controlled by margin stops which get thrown out of action by pressure on the appropriate release keys, sometimes carriages tend to rebound from the stop which controls the left hand margin. When the motion of the carriage is stopped by the right hand stop, the keys are

locked to prevent further characters being printed. With a defective machine this may not happen, so that the lines of type will exhibit a number of superimposed letters at the extreme right. This betrays the typewriter by revealing its identity. Letter and line spacing, as per the learned author are the result of the numbers of the letters to an inch. For example, in the most popular style known as pica, ten letters get printed in one inch space. In the style known as elite, twelve letters get printed in an inch. Letter spacing is governed by the escapement, which in turn governs the movement of the carriage. When the escapement is faulty, crowding and irregularity of the type becomes evident. These are also characteristics attributable to a worn out machine and hence can identify and relate a particular print to a machine.

158. The concluding remarks by the learned author are important. They summarize the pitfalls i.e. inherent limitation of the science of typescript. At page 275 the learned author writes:

When the comparison of two specimens of typescript has been completed, the examiner must sum up the evidence in order to form his conclusion as to whether both were typed on the same machine or not. His task is almost invariably complicated by the fact that typewriters are subject to variation; it is extremely unlikely, that any two specimens of typescript, even when derived from the same machine at the same time, are ever perfect replicas, and when an interval elapses and the effects of wear, misuse and repair have to be taken into account, they may differ superficially in many respects. Any information which might be forthcoming concerning the interval which has elapsed between the typing of the two specimens, which is the older, the amount of use the machine receives, and any repairs which may have been effected, will be of considerable assistance, so that efforts should be made to provide enlightenment on these points.

The examiner finds his greatest difficulty when he has to assess the significance of consistent differences in the two specimens of typescript. Some he may safely attribute to the condition of the ribbon, the state of the platen and the nature of the surface of the paper. Other he may dismiss as being due to the way in which the machine was operated, but when this has been done, there will often remain some dissimilarities for which there is no easily demonstrable explanation.

If the two specimens of typescript have little in common in the way of outstanding characteristics such as broken and defective typefaces, gross errors in alignment or obviously defective impressions, it may be that these slight differences indicate that two different machines of the same model and not a single machine are concerned.

159. To summarize, the text suggests that where the dispute relates to an issue whether interpolations have been made on a typescript after it was typed and a different typewriter has been used, it is easy to answer the same because of the ease with which differences can be spotted. Similarly, where the issue is,

whether with the use of the same typewriter additions and interpolations have been made after the document was drawn up and executed, it becomes easy for an expert to detect the same because of the spacing of the words typed later on because it is very difficult to so adjust the paper on the same typewriter so that the space between the two lines is the same. Similarly, the margins also let the cat out of the bag. Further, where the dispute pertains to the make, the brand and the year of manufacturer of the typewriter; with reference to the databank created by accredited agencies pertaining to the features of typewriters manufactured by different companies and features introduced from year to year in different models, it is easy to determine the make of the typewriter used for typing the script. But, where the dispute pertains to the issue whether the disputed typescript is the result of the use of a particular typewriter, the question is beset with problems and even for an expert is not easy to be answered. Further, for resolution of this dispute, one has not to jump to easy conclusions and the opinion has to be with reference to the various cross checks and balances noted herein above, keeping into account the minimal evidentiary value of certain features and greater evidentiary value of some.

160. A rule of caution to be observed by the expert has been brought out by Elbridge W. Stein, an examiner of documents in Philadelphia, and an internationally renowned expert on typescripts has written an article title "Type writing as Evidence" which summarizes the various steps which a typescript expert must follow to arrive at a conclusion with reference to the opinion sought pertaining to a typescript. He writes, inter alia, as follows:

An enlarged photograph correctly designed and accurately made of a document or of the particular part in dispute may alone end a law suit. A photograph may present facts to a jury more effectively than any verbal testimony. As was said in a recent decision, "But no statement the witness could have made would have made the impression created by the pictorial presentation of his criticisms and conclusion. Accurate enlarged photographs make a permanent record of physical facts as seen through the microscope and have a distinct advantage for court use, as they show an entire letter or signature in permanently enlarged form, while the microscope shows only a small part of it to one observer. A jurymen without experience in the use of a microscope usually has difficulty in seeing and understanding what it discloses, but an enlarged photograph may be as easy for him to see and understand as newspaper print. With modern highly corrected lenses, color sensitive plates, proper contrast light filters and specially constructed cameras, it is possible to make scientifically accurate photographs. Colored obscuring stamps or defacing marks on a document may be made invisible in a photograph; and faint writing or writing in blue, yellow or green ink may be made more legible. Finally, and perhaps most important of all, photographs permit of a side-by-side arrangement of genuine and disputed writings in such a way as to make comparison easy which would be impossible with the original writings.

161. As noted above, in India, till the year 1952 expert opinion pertaining to a typescript was held to be inadmissible in evidence and the position continued to be the same till the year 1996, when in the decision reported as S.J. Choudhry v. CBI it was held that keeping in view the advancement in science and technology world over, it was accepted that the study of transcript was a science and hence evidence of an expert pertaining to a typescript was admissible in evidence. But, no decision probably exists (in any case, none was cited before us), where a court of record in India had considered the evidentiary value of the testimony of an expert pertaining to a typescript. Even decisions abroad show very few case law on the subject. We shall discuss the same soon after, but would note at the outset that the decisions show that where the fact in issue was whether two typewriters were used to create the transcript in dispute, the question was answered with ease with reference to the testimony of the expert witnesses. But, whenever the question was to the identity of a typewriter, considerable difficulty was encountered. Only one reported decision has been noticed by us where said issue was considered and in said decision certain guidelines for appreciation of evidence of the expert by the jury were set out. The decision shows that probably, even the so called experts in the field are not aware of the norms developed in the field pertaining to a typescript and in particular when the question relates to the identity of a particular typewriter as the source of the transcript.

162. During argument of the appeal, Sh. K.T.S. Tulsi, learned senior counsel cited:

A. 36 ALR 4th 598

B. 1952 OK 104 In Re Cravens" Estate. Cravens et al. V. Cravens.

C. 209 NYS 88 The People of the State of New York, Respondent v. Henry H. Werblow, Appellant.

D. 1999 ORE 571 State v. Swank.

E. 498 PA 267 In Re Estate of Paul Ciaffoni.

F. 214 NY 75 The People of the State of New York, Respondent v. Edwin H. Risley, Appellant.

163. Sh. Ram Jethmalani learned senior counsel for the appellant cited 83 F. Supp. 2d 515 United States v. Van Wyk.

164. Whereas Sh. K.T.S. Tulsi urged that the decisions cited by him establish that the science of typescripts has attained perfection of the highest order reaching the level of 100% accuracy and that a good expert can with 100% accuracy determine the source of a typescript; Sh. Ram Jethmalani urged to the contrary and submitted that in certain fields the science pertaining to analysis of typescripts, at best, would probabalize the likely source of the origin of a typescript and it is impossible to identify the source with 100% accuracy. Thus,

Sh.Ram Jethmalani, learned senior counsel for the appellant urged that the rule of prudence requiring corroboration to the identity of the typewriter used to generate the typescript should be followed.

165. Analyzing the decisions cited by learned senior counsel, it would be relevant to note that the first decision cited by Sh. K.T.S. Tulsi did not relate to the question of identity of the typewriter with reference to the disputed document but related to the authorship thereof and the Court was discussing the attributes of a typewriter relating to typing technique and the linguistics with reference where to the expert had testified to show the authorship of the document in dispute. It was noted that stylistic similarities, such as use of colon, punctuation mark etc. can bring out the personal traits of the author of the document i.e. the typist, and with reference to the writings of the author, i.e. expressions used, it was possible to identify the author of the document.

166. The decision on said aspect of the matter hardly relates to the issue at hand for the reason even without a typewriter being used, even if the document was scribed in any other manner, such kind of styles could be detected by any linguistic expert to identify the authorship of the document.

167. The second facet of dispute noted in the said decision pertained to whether it was possible to determine whether certain pages of a document were replaced. It was opined that where the question is whether the document is the result of a typescript emerging from one or two typewriters, it is possible to answer the same for the reason it is difficult to use a second typewriter, while changing a page or two of a document, and have identical margins, besides, it is easy to note extensive dissimilarities when two typewriters are used.

168. The second decision i.e. in Cravens' Estate's case also related to two typewriters being used; the second being used after erasing parts of a typescript and retyping thereon. In the decision in Henry H. Werblow's case the question again related to use of two typewriters. The same is the position in Swank's case.

169. The decision in Paul Ciaffoni's case, once again pertained to the issue of authorship of the will with reference to issues of stylistic deviations.

170. The decision in Edwin H. Risley's case, makes an interesting reading, and relates to the identity of the typewriter being the source of the document in dispute. By a split verdict, 2:1, the Court of appeals set aside the verdict of the jury and remanded the matter to the jury for fresh adjudication.

171. It was alleged against Edwin H. Risley that he had used an Underwood machine in his office to make interpolations in a document. He denied having done so. Two experts were cited by The People of the State of New York to prove that he had done so. One was a typescript expert and the other a professor of Mathematics having expertise in the theory of probability. The evidence of the typescript expert, as noted in the decision was as under:

There was a sharp conflict at the trial on the important question of fact whether

the words claimed to have been forged were written upon the defendant's typewriter. The People's case in that respect depends almost wholly on expert evidence, offered to show that certain alleged defects in the defendant's typewriter corresponded with defects in the typewritten words; and that evidence, so far as it was visualized for the jury, consisted of exhibits prepared by the People's expert. Of the thirteen similar defects testified to by him, two were variable and concededly may be eliminated, one was the slant of the letter "t," which the People's witnesses admitted was a common occurrence, and ten were due to alleged defects in the type. The People's expert witnesses who examined the type of the defendant's machine with a microscope were able to name five defects, which their testimony on cross-examination tended to show were common on used machines. Those defects existed in three letters most generally used. The photographs, ten diameters enlarged, are claimed to show five other defects, consisting of the letter "s" being heavy in the upper and lighter in the lower parts, the letter "a" being heavy in the lower and lighter in the upper parts, and an almost imperceptible swerve in one of the down strokes of the letter "m".

172. The professor of Mathematics; Prof. Snyder, deposed that the probability of the combination of said defects occurring in another typewriter was once in 400,00,00,000 (Four Hundred Crores).

173. The Court discussed the issue as under:

Even assuming that the alleged eleven defects, variable as they were in extent and character in the disputed writing and the standards, had some resemblance to defects in the defendant's typewriter, the likelihood of similar defects in type recurring in another typewriter would depend on the dies from which they were made, on the process of manufacture, on the greater likelihood of particular parts, such as serifs, being broken by use, on the material composing the type, on the way in which the machine had been used, and doubtless on many other things which do not now occur to me; and yet the problem was sought to be determined by a so-called law of mathematical probability regardless of actual experience, physical facts or the element of human agency, and on the assumption manifestly false that a given thing was as liable to happen as not to happen. Upon selected data, which may or may not have been the ones involved in the problem, it was computed that the same slant of the letter "t" would occur once in 256 times, like computation were made as to each of the alleged defects and by compounding the results it was computed that all would occur in combination once in 4,000,000,000 times. Thus the happening of a past even was sought to be established not by witnesses of the fact, not by proof of the circumstances surrounding it or the causes contributing to it, but by an abstract doctrine of chances, which was put before the jury as a demonstration to a mathematical certainty.

174. The aforesaid decision brings out the extreme importance of confirming the expert testimony within proper limits in a case admitting of such opportunity to

err. It is important to note that the likelihood of a similar defect in a type recurring in another typewriter not only depends on the manner in which a typewriter is used and with passage of time deteriorates but also depends on the dies from which the characters are produced; the process of manufacture; the material composing the type; the likelihood of particular parts such as serifs being broken, etc. The decision also guides us that where an expert has eschewed a consideration of said factors, the report would be a poor report. The decision also brings out that where the issue is the identification of a particular machine as the source of a typescript, the answer to the question is beset with many problems.

175. The decision in Van Wyk's case cited by Sh. Ram Jethmalani is a decision of recent origin rendered by the Third Circuit Court in the year 2000. The question related to the identity of a typewriter as the source of a transcript. The expert Mr. Fitzgerald had testified under Rule 104 of the Federal Rules of Evidence. The methodology applied by Fitzgerald for his opinion, as noted in the decision is as under:

Fitzgerald testified to the specific methodology he uses in determining authorship. First, he normally separates and catalogs the writings either chronologically or by victim. In this case, because there were handwritten and typewritten writings, he divided them into four categories: Known Typings ("KT"), Known Writings ("KW"), Questioned Typings ("QT"), and Questioned Writings ("QW"). Then he read the twenty-two letters to obtain a sense for the "feel" of the writings. Third, he color coded the issues contained in the writings into four categories: (1) punctuation and spelling; (2) threat; (3) interesting phrases; and (4) correct or incorrect "trip" phrases such as use of "there" or "their", use of "to", "two," or "too," and "your," or "you're." Next, Fitzgerald created a chart and determined whether a particular word, abbreviation, or phrase was used correctly or was an idiosyncrasy. His results were reviewed by two other law enforcement officers. No sources outside the FBI have reviewed his reports.

176. Commenting upon the expert opinion the Court observed:

Although Fitzgerald employed a particular methodology that may be subject to testing, neither Fitzgerald nor the Government has been able to identify a known rate of error, establish what amount of sample is necessary for an expert to be able to reach a conclusion as to probability of authorship, or pinpoint any meaningful peer review. Additionally, as defendant argues, there is no universally recognized standard for certifying an individual as an expert in Forensic Stylistics.

Various judicial decisions regarding handwriting analysis, while not identical to text analysis, are instructive because handwriting analysis seems to suffer similar weaknesses in scientific reliability, namely the following: no known error rate, no professional or academic degrees in the field, no meaningful peer review, and no agreement as to how many exemplars are required to establish the probability of authorship.

177. The decision in Van Wyk's case pertains to the expert testimony to the authorship of a document i.e. in the field of Forensic Stylistics, but guides us the pitfalls of the science with reference to identification of a criteria to determine, inter alia known rate of errors; lack of text accepted by the experts in the field on the question of adequacy of a sample; no criteria published by any accredited agency to determine as to who could possibly hold himself out to be an expert because professional or academic degrees in the field are not awarded.

178. Perusing the testimony of S.K. Gupta PW-75, as deposed to in his examination in chief, he has a Masters degree in Chemistry from Calcutta University. As admitted by him in his cross examination his only training in the mechanism of a typewriter is, to quote: "I had received three days" training in Godrage Typewriter manufacture at Bombay.... The training of three days at Bombay done by me was at the manufacturing plant relating to assembly of the typewriters. I did not work with any other company manufacturing typewriters to study the characteristics of the typewriters from the stand point of classification." When questioned as to in how many cases he has opined with reference to typescripts he stated that besides the instant case he has given his opinion in two other cases but his opinions were not considered by the Courts in said two cases because in one case he was discharged without being examined and in the other case the Court did not take into account his opinion because of the then existing law which did not make admissible expert evidence pertaining to typescripts. Though PW-75 claimed to have authored articles on the subject of typescripts, but failed to disclose particulars of any articles published by him.

179. It is apparent that PW-75 fails to satisfy the second of the three fundamental components of Frye's test namely the requirement of the author of the opinion qualifying to be called an expert, by knowledge, skill, experience, training or education. Admittedly, PW-75 has no formal education in the science of typescripts, in respect whereof we find a big problem because no university is awarding degrees or diplomas in the field of typescripts. Further, in India, we have no accreditation agency where one can register oneself an expert on a typescript. The witness has led no evidence of any special knowledge gained by him except for a three days" stint with Godrage, a company which manufactures typewriters. Analyzing three typescripts (including the one in question) is to meager an experience.

180. As noted in para 141 above, as per Wilson R. Harrison, there are five limitations in the analysis of a typescript, one of the five being: "this limitation also applies when but a small amount of transcript is in question". It would be interesting to note that PW-75 when cross examined on 28.1.1997 admitted that Wilson R. Harrison is a leading authority on typescripts.

181. Whereas the defence expert i.e. Sh. Darshan Dayal Goel has been candid in deposing: "I am of the opinion that it is not possible to express definite and irrefutable opinion that the questioned typescript mark Q-1 and the sample typescript S-7 have been typed on one and the same type machine." PW-75 has

not been candid on the subject. As per Wilson R. Harrison, and as noted in para 148 above, since the force with which a typist punches the keys of a typewriter, the quality of a ribbon and the quality of paper, all affect the quality of the print; a good expert, to rule out unforeseen errors occurring due to said three attributes, should obtain three sample typescripts, one each with a light, medium and heavy touch respectively and at least one specimen should be prepared on same or similar paper. If not so done, according to the learned author: "Otherwise, the imperfect impressions which occur due to the quality of the paper as also imperfect impressions which occur due to the touch on the key may be attributed to the machine." PW-75 has thrown to the winds the said rule of caution. The further problem in the instant case has emerged in the admission of PW-75, who on being cross examined on 21.3.1977 admitted: "It is correct that the questioned document does not contain clear impressions due to mutilation".

182. Thus, we have a three-fold problem. The first is the inadequacy of the typescripts. The second is that the questioned document does not contain clear impression due to it being mutilated. The third is that PW-75 has not taken three prints of the specimen text, one each, with a light, medium and a heavy touch, nor has he obtained a sample on the same or similar paper. In our opinion, said three factors are by themselves sufficient justification to not base a conclusive opinion on the issue with reference to expert testimony. In fact the admission by PW-75 that the questioned document does not contain clear impressions due to mutilation is a very important facet to be taken notice of, for the reason the whole analysis of a typescript when the issue is to the identity of a typewriter as the source of the transcript, is heavily dependent upon the identification of features in the letters of the keys when punched and commonsense tells us that where a document is mutilated and the impressions are not clear due to said reason, it would be most unsafe, unless corroborated by other evidence, to base the decision on the testimony of the expert. Missing serifs, slopping letters, broken type faces etc. are the keys to locate the individual characteristic acquired by a machine over a period of time i.e. the result of wear and tear. To identify the same with a degree of certainty, the blurring of the impressions due to a questioned paper being mutilated resulting in clarity of the imprints being blurred would certainly impede the certainty of the said features. Lastly, we find another problem in the manner in which PW-75 have attempted to analyze the questioned typescript. We find from the record that he has simply obtained a photograph of the questioned document on the same scale as it exists, without enlarging the same. The decision in Edwin H. Risley's case (supra) shows that the experts abroad enlarge the photographs by ten diameters. It is obvious that a safe analysis can be done with enlarged photographs for the reason the distinctive characteristics of the keys of a typewriter have to be determined with reference to the typescript and clarity is brought about by enlargement. PW-75, was cross examined on the issue of enlargement of photographs on 17.3.1997. He stated: I agree with Osborn observation on the role of enlarged photography

as a period message that is relevant during those periods. (Vol. but in modern days examinations are made direct from original documents with microscope etc.). I prepared notes at the time of examination. (Vol. after making the final notes I destroyed the loose notes.... My report in this case Ex.PW-75/C is based on those notes prepared by me). We note that the next question put to the witness was as to why did he destroy his notes, when he knew that he would be examined in Court. He responded that this was his usual practice. The third component of the Frye's test is that the proffered experts' testimony must reveal that the methodology, hypothesis or techniques applicable and the theory behind the principles applicable have been applied by the expert and that the expert is mindful of the known or potential rate of error in the derivative of the technique or methodology to the subject thereof; a test which appears to have been not successfully passed by PW-75. It is not out of place to record here that when PW-75 was cross examined with reference to the nuances of his techniques applied to which he responded that he had destroyed his notes. It is apparent that a crucial piece of evidence i.e. the notes and observations of the expert were not available before the Court and the enlarged photographs, being not taken, it would be virtually impossible for the Court to check the veracity of the report, unless the Court calls for a microscope and sits down as an expert to carry out the exercise of analyzing the typescript.

183. We note that in his cross examination on 21.3.1977 PW-75 admitted the following:

(i) It is correct that the letters "r" and "i" in the word Krishan in Q-1 (Ex.PW-62/O) are not touching each other. It is also correct that the combination of the letters "r" and "i" in the word Krishan in specimen writings S-7 Ex.PW-27/A are touching each other.

(ii) It is correct that the letter "h" in the word Krishan in Q-1 Ex.PW-62/A is complete and without any break. It is correct that the letter "h" similarly placed in word Krishan in S-7 Ex.PW-27/A is not complete.

(iii) It is correct that the base of letter "u" in word Sunder in S-7 Ex.PW-27/A is higher than the base of letter "S" in the word Sunder. It is correct that it is not so in Q-1 Ex.PW-62/O in the word Sunder.

(iv) It is correct that the difference of two tangents of "9" and "8" in "S-7" encircled "X" in Ex.PW-27/A is more than Q-1.

(v) There is a difference between the circular formation of the lower loop of letter "g" in "agar" in Q-1 Ex.PW-62/O and in S-7 Ex.PW-27/A. It is more elongated in Q-1 than in S-7.

(vi) It is correct that the gap between the letters "n" "d" in the word "Sunder" in Q-1 is lesser than the gap between the two letters in S-7 at portion Z and Z-1.

(vii) It is incorrect that the right part of the lower serif in "p" in S-7 is missing. Volunteered : It is present to some extent.

(viii) It is correct that the serif of lower curve in the letter "S" in "OST" in Q-1 is raised upwards. (ix) It is correct that there is smudging of ink in the body of letter "A" in the top line in Q-1. Similar smudging of ink to that extent is not there in S-7. (x) It is correct that there is a regular gap between the letters "o" and "m" in the word "From" in Q-1, whereas the combination of the letters "o" and "m" in the word "From" in S-7 at portion A in S-7 are touching each other at point A.

(xi) It is correct that the gap in the curve of letter "p" in Q-1 in the top line is smaller than similar letter "p" in S-7.

(xii) It is also correct that the space inside the oval of "O" in S-7 is bigger than the similar letter "O" in Q-1.

(xiii) It is correct that the lower base of "F" in the word "From" in S-7 is lower than the base of the letter "r".

184. In his report Ex.PW-75/C, Shri S.K. Gupta PW-75 has opined:

However, I have observed three differences between Q-1 and S-7 which are described below:

(i) The upper serif of h is clear in Q1 whereas it is missing in S7.

(ii) The i dotting of the letter small i is almost touching its body in Q1 whereas it is separate in S7. The right serif at the base of the letter small i in Q-1 is shorter than the left side serif but in S7 it is clear and almost equal on both sides.

(iii) The lower loop of the letter "g" differs in its shape between Q1 and S7.

185. Thereafter, Shri S.K. Gupta has proceeded to explain the reasons for the said differences and as to why the same do not reveal dissimilarities. It is relevant that inasmuch as similarities are relevant to prove the identity, existence of dissimilarities displaces the proof of identity. This is simple logic.

186. Having admitted thirteen dissimilarities during cross-examination, ignoring by us twelve other dissimilarities which were put to the witness, which he denied, no attempt has been made by S.K. Gupta to explain the said thirteen dissimilarities, which he admitted, as being consistent with the proof of identity of the machine in question being the source of the disputed typescript as also the source of the sample typescript.

187. A Judge is not expected to be an expert and therefore we do not take upon ourselves the mantle of being an expert. But, it is our duty to test the credibility and the evidentiary worth of a report of an expert with reference to internationally accepted text to satisfy the judicial conscious that the caution required to be observed; the cross checks to be carried out; the pitfalls to be avoided and the possibility of the known rate of error occurring have been kept in view by the expert.

188. Cumulatively seen, for the reasons noted herein above in paras 182 to 186,

we hold that it would be unsafe to return a finding on the identity of the typewriter with reference to the testimony of PW-75, unless we find corroboration by other independent evidence.

189. Do we have any?

190. N.D. Sethi PW-27 is the witness whose testimony needs to be considered. He has deposed that around 22nd or 23rd September 1982 some person had come with a manuscript address and an envelope and had requested to type it and he referred him to a student who was a beginner to do the needful and he did the same. He admitted that he had not read the manuscript nor could he identify the person concerned.

191. From the aforesaid inchoate testimony of PW-27, it cannot be inferred that the appellant was the person who had gone to his typing school on 22nd or 23rd September 1982 with a request to type the sender's and addressee's address on Ex.PW-62/O. Any person could have gone on said dates and got anything typed.

192. The witness is clear and very categorical that the person who came got the sender's and the addressee's name typed on an envelope. In the instant case the address of the addressee and the sender is on slips of paper pasted on a sheet of paper used as a wrapper to wrap the parcel bomb.

193. It is relevant to note that CBI officers had first contacted N.D.Sethi, as deposed to by him, on 5.8.1983 i.e. after nearly ten months of 22nd or 23rd September 1982. It is difficult to believe that a trivial customer who got performed a trivial act at the typing school i.e. got typed, on a single sheet or two sheets, the address of the addressee and the address of the sender, for which work not a farthing was paid, would be within the contemplation of N.D.Sethi. There is every probability and possibility that N.D.Sethi has gone along with the CBI under compulsion and with a heavy heart, evidenced by the fact that he has spoken the bare minimum and inchoate facts, probably to satisfy CBI officers, and at the same time live with his conscience.

194. To conclude, the only admissible evidence which remains against the appellant is that of motive. That too, by ignoring the three letters of the appellant, contents whereof have been noted in para 68 above and our analysis of what emerges from the said three letters as discussed in para 69 above. But, motive, being presumptive evidence is weak evidence and by itself cannot form a chain of circumstances so complete that the only inference possible is the guilt of the accused; ruling out his innocence.

195. It is unfortunate that a crime is going unpunished, but we cannot hang any person for the crime unless our judicial conscience is satisfied that the evidence on record conclusively establishes the guilt of the person charged for the offence and brought before us. Our decisions have to be based on legally admissible evidence, properly brought before us and analyzed on the known principles of

law.

196. The appeal is allowed. Impugned judgment and order dated 28.4.2008 is set aside. The appellant is acquitted of the charge of having murdered Kishan Sikand as also of the charge u/s 3 and 4 of the Explosive Substance Act 1908.

197. The appellant is directed to be set free, unless otherwise required in any other case.