

(2000) 03 DEL CK 0035

In the Delhi High Court

Case No : Criminal R. No. 596 of 2000, Criminal R. No. 619 of 2000, Criminal R. No. 46 of 2001, Criminal R. No. 47 of 2001

State

APPELLANT

Vs

Siddarth Vashisth and Manu Sharma and Others and Raja
Chopra v. State and Amar Deep Singh Gill v. State and Vikas
Yadav v. State

RESPONDENT

Date of Decision : 13-03-2000

Acts Referred:

Citation : (2001) 3 AD 829 : (2001) CriLJ 2404 : (2001) 90 DLT 548

Hon'ble Judges : Ramesh Chandra Chopra, J

Bench : Single Bench

Advocate : Mukta Gupta, Sanjiv Sachdeva, Mr. Harish Ghai, Ms. Priya Mehra, Mr. K.N. Balgopal, Mr. I.U. Khan, Mr. Vineet Malhotra, Pt. R.K. Naseem, Mr. R.S. Cheema, Mr. Sidharth Luthra, Ms. Smriti Sinha, Mr. Pramod Dubey, Mr. Rajiv K. Garg and Mr. M.S. Butalia, Mr. S.K. Saxena, S.P.P., Mr. Rajender Singh, for the Appellant;

Judgement

R.C.Chopra, J.—This order shall dispose of Crl.Revision Petitions Nos.596/2000, 619/2000, 46/2001 and 47/2001, which are directed against order dated 23.11.2000 passed by learned Additional Sessions Judge in case FIR No.287/99 registered with P.S. Mehrauli, commonly known as "Jessica Lal Murder Case".

2. In Crl.R.596/2000, the State prays to set aside the discharge of accused No.1 Manu Sharma, accused No.2 Vikas Yadav, accused No.3 Amardeep Singh Gill, accused No.4 Alok Khanna and accused No.5 Amit Jhingan u/s 120-B read with Section 302 IPC as well as the discharge of A-2 to A-5 for offence u/s 302/34 IPC. A further prayer is to set aside the discharge of accused A-4, A-5 and A-6 Shyam Sunder Sharma, who have not been charged for commission of any of the offences. Crl.R.47/2001 has been filed by accused No.2 Vikas Yadav with a prayer to discharge him of the offences under Sections 201, 120-B and 34 IPC. Revision petition No.46/2001 has been filed by (SIC) & Tony Gill with a prayer to discharge him of the offences under Sections 201 and 120-B IPC. Revision

petition No.619/2000 has been filed by accused No.12 Raja Chopra with a prayer to discharge him for the offence u/s 212 IPC.

3. I have heard learned counsel for the parties and perused the records.

4. The facts, leading to filing of the above revision petitions, briefly stated, are that on the intervening night of 29th and 30th April, 1999, a party was going on at Tamarind Court Cafe, Qutub Colonnade, Mehrauli, New Delhi in which drinks were being served on payment basis. According to the prosecution, accused Manu Sharma, Vikas Yadav, Amardeep Singh Gill @ Tony Gill, Alok Khanna and Amit Jhingan (hereinafter referred to as A-1 to A-5 respectively) also reached this Cafe at about 11.30 p.m. At about 2.00 a.m., A-1 asked a waiter to give him two drinks and on his refusal, he asked Malini Ramani, daughter of the owner of the Cafe to get him a drink, but she also declined. On his insistence, she remarked that he could not have a sip of drink even if he paid Rs.1,000/- on which A-1 remarked that he could pay Rs.1,000/- for a sip of her. It is alleged that thereafter A-1 asked Jessica Lal, deceased, to give him two drinks, but she also refused upon which A-1 took out a pistol from his pocket and fired one shot towards the roof and the second shot towards the deceased, which hit near her left eye. She fell down and later succumbed to her injury. On account of this firing, there was commotion (Hafra Tafri) amongst the guests present in the Cafe and most of them started running away. According to the prosecution, at this juncture A-1, the main accused, who had fired the shots, was escorted out of the restaurant by his co-accused A-2 to A-5. After coming out of the Cafe, A-1 walked away on foot whereas the remaining accused slipped away in a vehicle.

5. It is alleged that A-2, A-3 and A-4 reached the house of A-3 where A-1 also came later. There was exchange of telephone calls including some with A-5. The prosecution story is that before coming to Cafe also, there was exchange of telephone calls between them, which suggests that they had gone to the Cafe after hatching a conspiracy to murder deceased Jessica Lal.

6. Prosecution alleges that after the incident A-1 to A-4 re-assembled at the house of A-3 where they hatched a conspiracy to remove the Tata Safari belonging to A-1 from the place of occurrence. In furtherance of this conspiracy, A-2 and A-3 again went to the spot in the vehicle of A-4 and forcibly removed black Tata Safari of A-1 from there inspire of resistance by P.W.54 Shravan Kumar. It is alleged that while the accused were taking away Tata Safari of A-1 from the place of occurrence, P.W.54 Shravan Kumar gave a danda blow on account of which one glass pane of vehicle got broken.

7. It is also alleged that before coming to the house of A-3 after the incident, A-1 had concealed his pistol near the place of incident and later on in furtherance of a conspiracy, A-1 and A-2 went to the said place and managed to retrieve the weapon of offence from there. This weapon of offence, according to the prosecution, was later handed over by A-1 to accused R.K.Sudan (hereinafter referred to as "A-10"), who is turn handed it over to A-6, Shyam Sunder

Sharma. The prosecution alleges that A-6 succeeded in causing disappearance of this weapon of offence. He is also alleged to have helped and supported A-10 R.K.Sudan to escape from Delhi A-7 Harvinder Chopra, A-8 Vikas Gill @ Ruby Gill and A-9 Yog Raj Singh had allegedly harboured A-1 knowing of having reason to believe that he was wanted in connection with the offence. Accused No.12 Raja Chopra is stated to have provided his car to A-1 for escaping from Delhi and reaching Chandigarh. The prosecution filed a challan u/s 173 Cr.P.C. against the aforesaid accused for the commission of offences under Sections 302/201/212, read with Section (SIC) IPC, Section 27 of the Arms Act as well as Sections 302/34 IPC.

8. Learned Additional Sessions Judge vide impugned order held that A-1 should be charged u/s 37 IPC (SIC) and Section 27 of the Arms Act. A-1 to A-8 were ordered to be charged u/s 120-B read with Section 201 IPC for conspiracy and removal of the Tata Safari of A-1 from the place of incident. A-1, A-2 and A-11 were ordered to be charged u/s 201 (SIC) with Section 34 IPC on the allegations that the glass pane of Tata Safari was replaced after he incident. A-7, A-8, A-9 and A-12 were ordered to be charged separately u/s 212 IPC for harbouring Act A-1. Learned Additional Sessions Judge did not accept the prosecution request for charging A-1 to A-5 u/s 120-B IPC for commission of an offence u/s 302-IPC for murder of the deceased Jessica Lal. Section 34 IPC was also held to be not applicable against them for commission of the offence u/s 302 IPC. A-4 Alok Khanna and A-5 Anil Jhingan were discharged of all the offences. A-6 Shyam Sunder Sharma was also discharged of all the offences alleged against him.

9. Mr.S.K.Saxena, learned Special Public Prosecutor, arguing for the State in Crl.R.596/2000 has strenuously urged this Court to order framing of charge u/s 120-B IPC for commission of an offence u/s 302 IPC against A-1 to A-5. He has assailed the view taken by learned trial Court that there were no grounds for framing of charge u/s 120-B IPC in as much as even if the evidence was to go (SIC), these accused could not be convicted u/s 120-B IPC in relation to the murder of Jessica Lal. According to learned counsel for the State, this approach of learned trial Court was manifestly erroneous for the reason that at the stage of framing of the charge, the Court is not required to (SIC) and appreciate the prosecution evidence on record to find out as to whether the evidence was sufficient or not for convicting an accused, if the evidence was to go (SIC). According to him, law as it stands in view of various pronouncements of the Apex Court, is that a charge against an accused can be (SIC) suspicion to connect him with (SIC) According to him, at the stage of charge a probable defense of an accused cannot be looked into and the facts and circumstances brought on record by prosecution have to be considered in their totality and not in isolation. If on the basis of some material, two views are possible, then the view favorable to the prosecution has to be taken at this stage. In support of his submissions, he relies upon judgments of the Apex Court in State of Maharashtra, Etc. Etc. Vs. Som Nath Thapa, Etc. Etc., and Stree Atyachar Virodhi Parishad Vs. Dilip Nathumal Chordia and Another, .

10 Mr.Saxena submits that for proving an offence of conspiracy-direct evidence is seldom available to the prosecution as dark deeds are done in darkness. He argues that existence of criminal conspiracy can be inferred from the circumstances, events and conduct of the accused prior to the offence, at the time of commission of the offence and subsequent to the commission of the offence. To argue that there existed a conspiracy between the aforesaid five accused for committing murder of Jessica Lal, he relies upon the judgments in Hardeo Singh Vs. State of Bihar and Another, ; Ajay Agarwal Vs. Union of India & Others AIR 1993 SC 1637 and Kehar Singh and Others Vs. State (Delhi Administration), .

11. Learned counsel, in support of his submissions for framing of charge of conspiracy against A-1 to A-5, points out that the prosecution has placed on record enough material to show that the accused persons had not at the residence of A-3 before going to the restaurant, there was exchange of phone calls between them, A-1 was carrying a loaded pistol with him and recovery of empty shells and a live cartridge from Tata Safari of A-1 shows that the pistol was loaded on way to the restaurant in the presence of other accused. According to him, all these circumstances prior to reaching the venue of the incident suggest very strongly that there might have been a conspiracy between A-1 to A-5 commit murder of Jessica Lal otherwise they had no reason to go there when one of them was armed with a pistol. He further submits that presence of all the five accused at the spot is prima facie established and it is also established by statements of some witnesses that the deceased not a stranger to them. He has read the statement of Shyan Munshi to show that A-3 Tony Gill was seen talking to the deceased sometime prior to the incident. He argues that had the refusal to serve drinks been the real cause of murder, then A-1 should have killed either the waiter, who had denied him a drink or Malini Ramani, who had not only denied a drink, but had exchanged unpleasant words also with A-1. It is submitted that in the absence of a conspiracy and a firm resolve to kill Jessica Lal, A-1 had no reason to fire a second shot aiming towards her. Absence of any effort by A-2 to A-5 to prevent A-1 from firing a second shot at Jessica Lal and thereafter omission to provide her help clearly suggest that they had come prepared to murder her. After the incident, all of them escorted A-1 out of the restaurant, which circumstance is also indicative of their plan to commit murder and then escape. His further contention is that even if it is not believed that the conspiracy was hatched at the residence of A-3 Tony Gill, a possibility is there that the conspiracy was hatched at Tamarind Cafe itself where A-1 to A-5 were present for sufficient time before killing the deceased Jessica Lal.

12. Learned counsel for the State submits that even after commission of murder, the accused persons continued to collaborate and cooperate with each other in the matter of retrieval of the vehicle of A-1 from the spot, retrieval of the weapon of offence from the place where he was (SIC) by A-1, refixing of a window pane in the vehicle of A-1, meeting at the residence of A-3 Tony Gill, exchange of telephone calls between them and escape of A-1 from Delhi.

According to him if A-2 to A-5 had not been co-conspirators of A-1, they would have (SIC) associated themselves from A-1 at least after the shooting incident and as such, their exists (SIC) suspicion that they all were in conspiracy to commit the murder of deceased Jessica Lal.

13. Mr.S.K.Saxena presses for invoking Section 34 IPC also against A-2 to A-5 for the commission of the offence u/s 302 IPC on the ground that there was some time gap between the first shot fired by A-1 towards the roof and the second shot fired towards the deceased, but none of his co-accused tried to prevent A-1 from firing the second shot towards the deceased Jessica Lal, which resulted in her death. Their omission to prevent A-1 from firing the second shot, according to learned counsel, is suggestive of their common intention. After shooting of the deceased by A-1, the remaining four accused A-2 to A-5 did nothing to help the deceased by way of removing her to the hospital or calling the police and instead were more concerned to escort A-1 out of the restaurant safely. It is submitted that these facts and circumstances strongly suggest that if not conspiracy, they at least shared a common intention to kill Jessica Lal and as such Section 34 ought to have been invoked against them.

14. Learned Special Public Prosecutor contends that the charges u/s 212 IPC also ought to have been framed against A-2, A-3, A-4 and A-5 in as much as inspire of their knowledge of commission of the offence by A-1, they escorted him out of the restaurant.

15. Learned counsel for the State has urged that trial Court has seriously erred in discharging A-6 Shyam Sunder Sharma for the offence u/s 201 IPC. He submits that A-6 Shyam Sunder Sharma was primarily responsible for the disappearance of the weapon of offence used by A-1 rendering him liable u/s 201 IPC. According to the prosecution case, A-1 had handed over the pistol to accused R.K.Sudan, who in turn had passed it on to A-6, who was the real uncle of A-1. Inspire of best efforts, the Investigating Agency could not trace out this weapon and as such, material evidence has been made to disappear. Referring to statement of P.W. A.K.Dutt and the transcript of the taped telephonic conversation between P.W. A.K.Dutt and accused R.K.Sudan, it is submitted that there were sufficient grounds for charging A-6 u/s 201 IPC. He submits that disclosure statement of A-1 led the Investigating Agency to discover the fact that the pistol was handed over by A-1 to accused R.K.Sudan and the transcript of the taped conversation shows that the weapon was passed on to A-6 by accused R.K.Sudan. The statement of A.K.Dutt recorded u/s 161 Cr.P.C. shows that A-6 was very anxious to ensure that accused R.K.Sudan moves out of India at the earliest because had R.K.Sudan been arrested by the police, he would have disclosed to them that the weapon of offence had been passed on to A-6. The telephonic conversation between R.K.Sudan and P.W. A.K.Dutt, learned counsel argues, was an extra judicial confession of R.K.Sudan and as such, admissible in evidence.

16. Learned counsel for the accused besides arguing individual cases against the

accused separately, have with one voice opposed and challenged the submissions of learned counsel for the State for framing a charge u/s 120-B read with Section 302 IPC or u/s 302 read with Section 34 IPC against A-1 to A-5. Learned counsel argue that such serious charge cannot be and must not be framed against the accused unless the prosecution has sufficient material in support of the allegations. They submit that framing of a charge is not an empty formality in as much as an unwarranted and groundless charge, even if likely to fail, results in extreme harassment and hardship to an accused.

17. It is submitted that request of the prosecution for framing a charge u/s 120-B read with Section 302 IPC against A-1 to A-5 for murder of deceased Jessica Lal is absolutely unwarranted, baseless and without any material on record. It is argued that though motive is not essential to be brought on record for establishing the commission of an offence, but in a case of conspiracy, motive is very material for the reason that it provides basis to the accused persons for entering into a conspiracy. It is argued that in the present case, the prosecution has no material to show that A-1 to A-5 had any enmity or ill will for planning murder of deceased Jessica Lal. According to learned counsel for the accused, the mere fact that prior to going to Tamarind Cafe, accused were together or that they were present at the Cafe or after the incident they escaped from the place of occurrence together, were not sufficient to draw an inference of criminal conspiracy. It is submitted that had the accused persons been in conspiracy to commit murder of Jessica Lal, they would not have waited for hours together at the Cafe before firing upon her. Moreover had the murder been preplanned and in furtherance of any conspiracy, the accused would not have allowed themselves to be seen by so many witnesses for such a long time and then shot at the deceased in full view of so many. Had there been a conspiracy, the accused, in normal course, would have ambushed her at a time and place where they could have found her alone and would have made every effort to conceal their identity.

18. It is also argued that the telephonic conversations prior to the incident do not suggest any conspiracy as the accused might have been contacting each other for reaching the Cafe for having drinks and fun. In the absence of transcript of telephonic talks, no inference can be drawn that these telephonic calls were for hatching a conspiracy to murder the deceased. Their going to Cafe together and presence there are also not an incriminating circumstances. The fact that A-1 was carrying a weapon is also not a circumstance warranting any inference that the accused had gone to the Cafe to commit any murder. It was a licensed weapon and as such, A-1 had every right to keep it with him for his own protection.

19. The argument of the State that at the time of the incident, none of the accused tried to prevent A-1 from firing at the deceased nor gave any help to her and they all escaped from the place of incident together, is also not enough to draw any inference of conspiracy. Learned counsel for the accused submit that evidence on record shows that there was no time gap between the first and

second shot so as to enable A-2 to A-5 to prevent A-1 from firing the second shot towards deceased Jessica Lal. Like all others present at the spot, A-2 to A-5 also were taken aback and stunned. Since so many started running from the spot after the firing incident, A-2 to A-5 also escaped from there, which also is not incriminating circumstance to suggest any conspiracy. It is argued that A-2 to A-5 had not escorted A-1 out of the restaurant and had merely escaped from there along with him. Had they been escorting A-1 out of the restaurant, they would not have left the spot in their cars leaving A-1 to manage his own self because the evidence of the prosecution itself shows that A-1 came back from the spot on foot.

20. It is also submitted that the first shot was fired by A-1 towards roof, which also shows that there was no conspiracy at all to commit murder of deceased Jessica Lal. Had there been any conspiracy, even the first shot would have been fired towards her.

21. It is contended that even Section 34 IPC is not attracted against A-2 to A-5. According to site plan, A-3, A-4 and A-5 were standing towards other side of the counter where the deceased Jessica Lal was itself that these three accused were standing in the same direction in which fire was shot by A-1 and as such, there was every chance that one of them could be hit by the said shot. It is submitted that the firing by A-1 was sudden and on account of such a trivial incident that A-2 to A-5 had no time or opportunity to prevent the firing.

22. It is also argued that the prosecution has not been able to show any abnormal conduct on the part of the accused persons either before the incident, at the time of the incident or after the incident so as to suggest existence of a criminal conspiracy or common intention for murder of deceased Jessica Lal. The firing according to the prosecution evidence itself was quite sudden. Statement of P.W.42 Shiv Dass recorded u/s 161 Cr.P.C. categorically says "EK DUM US I ADKE NE PISTOL NIKALI", which negatives the existence of a common intention. It is also submitted that there was no untoward incident between the time of arrival of A-1 to A-5 at the Cafe and up to the firing incident and the prosecution has no witness to say that during this period, accused were sitting together or deliberating or behaving in a manner indicative of their plan to commit murder.

23. Mr. Rajinder Singh, Senior Advocate appearing for accused No.1 Siddharth Vasisht has relied upon the judgments in State of Maharashtra, Etc. Etc. Vs. Som Nath Thapa, Etc. Etc., and Niranjana Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others, and argued that there does not exist any material on record to establish, suggest or infer a criminal conspiracy between A-1 to A-5. According to him, Section 10 of the Evidence Act can be invoked only when there are reasonable grounds to believe that two or more persons have entered into a conspiracy to commit an offence.

24. Mr. K.N. Raigopal, Advocate on behalf of A-2 Vikas Yadav has forcefully contested the prayer of learned counsel for the State for framing a charge u/s

302 read with Section 120-B IPC or Section 302 read with Section 34 IPC or Section 212 IPC against A-2 and has prayed that the charge, as framed against A-2 u/s 201 IPC, Section 120-B IPC and Section 31 IPC, be set aside and A-2 be discharged. According to him, no charge whatsoever could be framed against A-2 for the reason that the statements of the prosecution witnesses against him cannot be relied upon in as much as he was not put to any Test Identification Parade. It is argued that P.W.66 Dinesh Kumar, watchman at the residence of A-3 and P.W.54 Sharvan Kumar be held that A-2 from before and as such, it cannot be held that A-2 was present at the house of A-3 after the incident or had taken any part in retrieval of Tata Safari of A-1 from the place of the incident. It is submitted that mere removal of Tata Safari of A-1 from the place of the incident does not fulfill the ingredients of Section 201 IPC as removal of the Vehicle from one place to another did not tantamount to disappearance, as referred to in Section 201 IPC. Reliance is placed on a judgment in *Batapa Bada Seth Vs. The State* 1987 (1) Crimes 365. It is submitted that there is no evidence on record as to when and by whom the glass pane of the Tata Safari of A-1 was changed. There was no evidence with the prosecution to render him liable u/s 212 IPC eve. It is thus prayed that the accused Vikas Yadav be discharged of all the offences.

25. Mr. Rajinder Singh Cheema, Advocate appearing on behalf of A-6 Shyam Sunder has pleaded that there is no illegality or infirmity attached to the impugned order by which A-6 has been discharged of all the offences. He submits that there are absolutely no grounds for framing of a charge against A-6 u/s 201 IPC. According to him, prosecution has miserably failed to place on record any evidence that after the incident, A-1 and A-6 were in touch or that A-6 had done anything so as to render him liable u/s 201 IPC. Statement of P.W. A.K. Dutt that A-6 wanted to deliver some money to A-10 R.K.Sudan so that he may go back to U.S.A., is not at all an incriminating circumstance as the prosecution has not collected any evidence to show that A-10 R.K. Sudan was keen to go back to U.S.A. but his mother was not sick. Learned counsel also assails taped conversation between P.W. A.K.Dutt and A-10 on the ground that firstly it is hit by Section 24 of the Evidence Act and secondly, it does not convey that A-10 had handed over the weapon of offence to A-6. He also submits that the prayer of the State of charge A-6. He also submits that the prayer of the State to charge A-6 of all the offences is baseless. The argument of learned counsel for the State that Section 212 IPC is attracted against A-6 on the ground that he helped A-10 to escape from India, is not covered by Section 212 IPC as there is nothing on record to show that A-6 knew that A-10 was wanted for any offence. He also submits that there is no evidence with the prosecution to show that A-1 had handed over the weapon of offence to A-10.

26. Arguing on behalf of A-3 Amardeep Singh Gill and A-4 Alok Khanna, Mr. I.U. Khan, Advocate has fully supported the arguments on behalf of the other accused that in the present case, there is not even an iota of evidence with the prosecution to show that there was any conspiracy between A-1 to A-5 for commission of an offence u/s 302 IPC nor there is any evidence to suggest that

they shared any common intention for her murder. Learned counsel arguing in CrI.R.46/2001 on behalf of A-3 has prayed that he be discharged of the offences u/s 201 and 120-B IPC. According to him, A-4 had no telephonic talks with A-1 either prior to the occurrence or after the occurrence and as such, he had played no role at all and was not liable to be charged for any offence. There is no evidence against him u/s 212 IPC even and the removal of vehicle of A-1 from the spot did not attract Section 201 IPC as it did not amount to causing disappearance of the evidence. He also submits that the allegation of escorting A-1 out of the Cafe by A-2 to A-5 was not at all an incriminating piece of evidence as like many others, the accused were also moving out of the Cafe after the firing incident. It is submitted that mere fact that A-4 had given his car to A-3 for taking A-2 to the spot, does not link him with any offence u/s 201 IPC read with Section 120-B IPC because there is nothing with the prosecution to show that A-4 had given his car to A-3 knowing that the purpose of the visit was to remove the car of A-1 from the spot. Learned counsel submits that the contention of learned counsel for the State that A-1 had loaded his pistol in his Tata Safari in the presence of other co-accused, is based on conjectures only. He has relied upon the judgments in (1) Century Spinning and Manufacturing Co. Ltd. and Others Vs. State of Maharashtra, , (2) State of Karnataka Vs. L. Muniswamy and Others, , (3) Union of India (UOI) Vs. Prafulla Kumar Samal and Another, , (4) Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others, , (5) Niranjan Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others, , (6) L.K. Advani & Others Vs. Central Bureau of Investigation (1997) 7 JCC 294 , (7) Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, . He submits that at the stage of framing of charge, prosecution evidence is not to be taken as a gospel truth and judicial mind has to be applied as framing of a charge affects the personal liberty of an accused. He argues that ends of justice are higher than the ends of law and the Courts must evaluate the material on record before framing charge. Learned counsel has also relied upon judgments in Vijayan @ Rajan Vs. State of Kerala, , Saju Vs. State of Kerala, Air 2001 (January) SC 175, Om Prakash etc. Vs. The State of Haryana & Another 1979 Cri. L.J. SC 857 and P.K. Narayanan Vs. State of Kerala 1994 (3) SC 850 to contend that existence of a criminal conspiracy cannot be inferred on the basis of suspicions, surmises or conjectures. For arguing that no offence u/s 201 read with Section 120-B IPC is made out against A-3 and A-4, he relies upon the judgments in Jogta Kikla Vs. The State, and Jit Singh and Others Vs. The State, .

27. Mr. R.K. Naseem, Advocate appearing for accused No.5 Amit Jhingan has opposed the prayer of the State for framing charges u/s 302 read with Section 120-B and Section 34 IPC and charges under Sections 212 and 201 read with Section 120-B IPC against the accused on the ground that A-5 had not gone to the Cafe in question with the other accused and had reached there separately. After the incident even, he had not left the spot along with the other co-accused. The only allegation against him is that at the time of firing, he was standing near

the deceased along with A-3 and A-4 and at about 4.00 a.m. on the asking of A-3 on telephone, he had gone to the house of A-3 in his gypsy and thereafter he had taken A-1 and A-2 to the Cottage Emporium for retrieval of the weapon of offence. The prosecution case is that after retrieval of the weapon of offence, he had dropped A-1 and A-2 back at the house of A-3. Learned counsel for A-5 submits that there is no evidence whatsoever on record that A-5 knew A-1 prior to the incident and his mere presence in the party on that day does not suggest that he was in any conspiracy with A-1 to A-4 for commission of the offence of murder. He also argues that except disclosure statements, which cannot be read in evidence, there is nothing with prosecution to prove the visit of A-1 and A-2 to Handloom Emporium for retrieval of pistol.

28. Relying upon a rough note alleged to be in the handwriting of SI Sunil Kumar, it is argued by learned counsel for A-5 that Special Public Prosecutor had been guiding the investigations and on his behest, supplementary statements of some p.w.s. were recorded. He submits that when such padding was being done by the Investigators, the statements u/s 161 Cr.P.C. cannot be taken as gospel truth. According to him, pistol of A-1 was already with the Investigators much before arrest of A-1 and as such, the entire prosecution case in regard to disappearance of the weapon of offence and the conspiracy in respect of retrieval thereof is a crude fabrication. Referring to the site plan placed on record, learned counsel has argued that the story regarding its concealment near Cottage Emporium is preposterous on the face of it as A-1 could not have dared to pass in from of Tomarind Cafe after the incident merely with a view to conceal his pistol near Cottage Emporium.

29. Mr. R.K. Garg, Advocate appearing on behalf of accused No.12 Raja Chopra has prayed for allowing his CrI.R.619/2001 and discharging A-12 for the offence u/s 212 IPC. It is submitted that A-12 has been charged u/s 212 IPC on the ground that he had sent his car from Chandigarh to help A-1 to escape from Delhi, but a certificate issued by the Transport Department shows that this car had already been sold by A-12 to M/s. Piccadly Agro of which A-1 was also a Director. Therefore, in the absence of some other evidence, it cannot be inferred that A-12 had sent this car to Delhi for taking A-1 to some other place. It is also submitted that the prosecution has not placed on record any evidence whatsoever to show that A-12 knew anything about the involvement of A-1 in this offence and as such, had any knowledge of A-1 in this offence and as such, had any knowledge or reason to believe that he was an offender. Learned counsel has relied upon a judgment in Sanjeev Kumar Vs. State of Himachal Pradesh, .

30. Before advertng to the question raised in the revision petitions for and against framing of charges under different provisions, it has to be clearly kept in view that a revisional Court must not interfere with the findings of a Trial Court on the ground of sufficiency or otherwise of the material on record so as to substitute its own opinion unless some patent perversity or glaring illegality is brought to the notice of the Court. The views expressed by their lordships of the

Supreme Court of India in *Stree Atyachar Virodhi Parishad Vs. Dilip Nathumal Chordia and Another*, are the words of caution for the revisional Courts.

31. If upon consideration of the material on record, documents and surrounding facts and circumstances of the case the Trial Judge considers that there are no sufficient grounds for proceeding against an accused he is under duty to order his discharge u/s 227 of the Code of Criminal Procedure. However, if upon the consideration of the material on record the Judge is of the opinion that there are grounds for presuming that the accused has committed the offence, he is under a legal obligation U/S 228 of the Code of Criminal Procedure to frame a charge against him and put him on trial. The law as to under what circumstances the Courts should pass an order u/s 228 of the Code for framing a charge and on what ground a discharge should be ordered u/s 227 of the code has been the subject matter of deep deliberations by the High Courts as well as Apex Court in a number of cases. Leading judgments on the question are in *Century Spinning and Manufacturing Co. Ltd. and Others Vs. State of Maharashtra*, *Malkhan Singh and Another Vs. State of U.P.*, *State of Bihar Vs. Ramesh Singh*, *Union of India (UOI) Vs. Prafulla Kumar Samal and Another*, *Rambilas Singh and Others Vs. State of Bihar*, *Niranjan Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others*, *Stree Atyachar Virodhi Parishad Vs. Dilip Nathumal Chordia and Another*, *State of Maharashtra, Etc. Etc. Vs. Som Nath Thapa, Etc. Etc.*, *Satish Mehra Vs. Delhi Administration and Another*, and *Sumitra Banik Vs. State of West Bengal*, .

32. The Apex Court has categorically laid down the law that the Courts at the stage of framing of charge even have to apply their judicial mind to the material placed on record with a view to find out as to whether there are grounds or not for presuming that the accused has committed the offence but at this stage neither the guilt of the accused has to be determined nor any elaborate enquiry is to be undertaken by delving deep into various aspects of the case. Probable defense of an accused is not to be looked into at this stage and if the scales between the accused having committed the offence or not committed the offence are evenly balanced the charge should be framed as at this stage the facts have to be taken at their face value only.

33. The Apex Court in *Niranjan Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others*, referred to a judgment *Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others*, and quoted para-18 thereof which reads as under:-

"The standard of test, proof and judgment which is to be applied finally before finding, the accused guilty or otherwise, is not exactly to be applied at the stage of Section 227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion founded upon material before the Magistrate which leads him to form a presumptive opinion as to the existence of the factual ingredients Constituting the offence alleged may justify the framing of charge against the accused in respect of the commission of that offence."

34. The Court thereafter went on to make further observations as under :-

"From the above discussion, it seems well settled that at the Sections 227-228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from taken at their face value disclose the existence of all the ingredients Constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth, even if it is opposed to common sense or the broad probabilities of the case."

35. In Satish Mehra Vs. Delhi Administration and Another, , their lordships guided the subordinate Courts in the following words:

"But when the Judge is fairly certain that there is no prospect of the case ending in conviction the valuable time of the Court should not be wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date. We are mindful that most of the Sessions Courts in India are under heavy pressure of work-load. If the Sessions Judge is almost certain that the trial would only be an exercise in futility or a sheer waste of time it is advisable to truncate or snip the proceedings at the stage of Section 227 of the Code itself."

36. In Som Nath Thapa's case reported in 1996 Cri. L.J. page 2448, the Apex court again considered the question of framing of charge u/s 228 of the Code of Criminal Procedure and laid down the legal position in following words:-

"The aforesaid shows that if on the basis of materials on record, a Court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into; the material brought on record by the prosecution has to be accepted as true at that stage."

37. This Court, Therefore, has to appreciate the submissions made by learned counsel for the parties keeping in view firstly the scope of its powers u/s 397 of the Code of Criminal Procedure and secondly the principles governing the framing of charge u/s 228 of the Code as set out by the Apex Court in the judgments referred to above.

38. Coming to the prayer of the State in revision petition No.596/2000 for framing charges u/s 120B read with Section 302 IPC against A-1 to A-5 and u/s 302 read with Section 34 IPC against accused A-2 to A-5, it is found that the prosecution case as laid before the Court is that these five young men after exchange of various phone calls landed at Tamarind Court Cafe at about 11.30

PM where a party was going on and drinks even were being served on payment basis. Some of the leading models of Delhi including deceased Jessica Lal were working as bar-tenders. The accused A-1 to A-5 remained there for a period of about 2/1-2 hours during which nothing objectionable happened. At about 2.00 AM when the party was coming to a close, A-1 first asked a waiter to get him drinks and on his refusal asked Malini Ramani, the daughter of the owner Beena Ramani but she also declined to oblige him. There was exchange of some unpleasant words even between the two and thereafter A-1 allegedly asked the deceased Jessica Lal to provide him two drinks. On her refusal he took out a pistol from his pocket and first fired a shot towards the roof and the second shot towards her which struck above her left eye and caused her fatal injury. The prosecution case is that on account of this firing there was complete commotion in the party and people started running. A-1 to A-05 also escaped from the spot. It is alleged that A-1 was being escorted out of the cafe by his other co-accused. It is also alleged that after leaving the Cafe, they again re-assembled at the house of A-3 and then planned retrieval of the Black Tata Safari of A-1 from the spot as well as the pistol which A-1 had allegedly concealed near Handloom Emporium.

39. The prosecution prays for charging A1 to A-5 u/s 120B for the offence of murder of deceased Jessica Lal and A-2 to A-5 u/s 302 read with Section 34 IPC also on the basis of following facts and circumstances placed on record:-

- (a) Meeting between the accused at the house of A-3 before reaching the place of incident;
- (b) Exchange of telephone calls before reaching cafe;.
- (c) Carrying of a pistol to the spot by A-1;
- (d) Loading of the pistol by a-1 on his way to the place of incident;
- (e) Circumstances suggesting that they knew the deceased prior to the incident;
- (f) Failure of A-2 to A-5 to stop or prevent A-1 from firing the second shot towards the deceased;
- (g) Escorting out of A-1 by his co-accused A-2 to A-5;
- (h) Their escape from the spot together without doing anything to help the deceased, inform the police or to suggest that they had disassociated themselves from A-1 ;
- (i) Meeting again at the house of A-3 and planning to retrieve the Tat Safari of A-1 from the spot;
- (j) Exchange of telephonic calls after the incident;
- (k) Retrieval of the weapon used in the offence and
- (l) Harboursing A-1 and helping him to escape from Delhi.

40. Learned Additional Sessions Judge for the reasons given in para 22 of the impugned order declined to charge A-1 to A-5 u/s 120B of Section 302 or Sections 302/34 IPC.

41. There is no doubt about the legal proposition that for proving a criminal conspiracy prosecution is seldom in a position to place before the Courts any direct evidence. conspiracies are hatched in secrecy and as such are usually proved by circumstantial evidence alone. However, the law is well settled that for establishing a criminal conspiracy the prosecution must place on record some connecting link or connecting evidence of meeting of the minds of the conspirators for achieving a particular object. Motive may not be important for proving a criminal offence where ocular evidence is available, but in the case of a conspiracy, motive provides the basis for joining of hands by the conspirators. The facts relevant for inferring a conspiracy and kind of evidence required to be placed before the Courts were discussed in detail by Their lordships of the Supreme Court in the judgments reported in Hardeo Singh Vs. State of Bihar and Another, , Rajesh Govind Jagesha Vs. State of Maharashtra, , State through Superintendent of Police, CBI/SIT Vs. Nalini and Others, and Kehar Singh and Others Vs. State (Delhi Administration), . The ingredients of Section 34 IPC were discussed in Rajesh Govind Jagesha Vs. State of Maharashtra, .

42. In the light of the principles governing the framing of a charge u/s 228 of the Code of Criminal Procedure and the evidence required for proving the offence u/s 120B IPC and common intention u/s 34 IPC, this Court is of the considered view that the prosecution has not at all succeeded in placing on record any material on the basis of which the Court can come to a conclusion that there are grounds to presume that A-1 to A-5 had entered into a conspiracy. There is nothing on record to entertain a suspicion even that the murder of deceased Jessica Lal was in pursuance of any criminal conspiracy or in furtherance of any common intention between A-1 to A-5. The scales weighing the material on record are not evenly balanced but are clearly tilted in favor of the accused for the reason that for entertaining a suspicion even the Court must have some material on record. Baseless suspicion, imaginary inferences and groundless conjectures are to be discarded by a discerning judicial eye.

43. The reasons for the above conclusions are that the accused A-1 to A-5 are not shown to be having any ill will, motive or reason for the murder of deceased Jessica Lal. Their meeting and telephonic talks before reaching Tamarind Court cafe, where the incident took place are not shown to be for hatching a conspiracy. The circumstances suggest that they were only planning an evening for fun and frolic. The carrying of a loaded pistol by A-1 to the spot is also not suggestive of any criminal design because it was a licensed pistol and he had every right to keep it on his person for his own defense. Even if his co-accused knew that he was carrying a loaded pistol, although there is no cogent evidence on this point, they had no reasons to panic or doubt his intentions because it was not an unlawful arm. There is no ground to presume that pistol was loaded on

way to Cafe in the presence of A-2 to A-5. A-1 to A-5 reached the place of incident at about 11.30 PM whereas the firing took place at about 2.00 AM. There is nothing with the prosecution to show that during these 2 and a 1/2 hours the conduct of the accused in any way suggested a plan to kill Jessica Lal. Rather the prosecution story itself shows that the firing took place suddenly on account of refusal of drinks to A-1. Had the accused been in conspiracy to murder Jessica Lal, they would not have remained at the spot for about two and a half hrs. before killing her so as to expose themselves to the eye of persons present in the party. Moreover had there been any conspiracy A-1 would not have fired inside the restaurant and in the presence of hundreds of people inviting abundant ocular evidence against him and his co-accused. He could have waited for the time and opportunity when she could be found alone either going out of the Cafe or on her way to her house so that the offence could be committed in secrecy. Therefore, the case as laid is suggestive of absence of conspiracy and not existence of a criminal conspiracy.

44. The subsequent conduct of the accused persons in escaping together or thereafter meeting at the house of A-3 to plan retrieval of the car or the weapon of offence or the harbouring of A-1 is also not suggestive of any conspiracy to murder. Support to A-1 after the incident may render the accused liable for different offences but not at all for conspiracy u/s 120B IPC read with Section 302 IPC.

45. The prosecution evidence as placed on record does not suggest the sharing of common intention even as required u/s 34 IPC for the murder of deceased Jessica Lal. A perusal of the statements of the eye witnesses, site plan and other material on record clearly suggests that the firing was sudden. There is nothing on record to suggest that between first and second shot there was enough time gap so as to enable A-2 to A-5 to prevent or over-power A-1 from firing a second shot. A-2 to A-5 could not have even anticipated that a second shot would be fired towards deceased Jessica Lal. In the statement of PW 42 Shiv Dass recorded u/s 161 Cr. P.C. it has clearly come that A-1 had at once taken out his pistol and fired. One factor which goes very much against the charge u/s 34 IPC is the statements of the witnesses as well as the site plan of the place of incident, which show that at the time of firing A-1 was towards one side of the bar and his co-accused A-2 to A-5 were towards the other side and there was a counter in between. A-3, A-4 and A-5 were standing near the deceased. It shows that the bullet fired by A-1 was in the direction of not only deceased Jessica Lal but his friends A-3, A-4 and A-5 also who were standing near her. Had there been any common intention between A-1 and his co-accused present at the spot, he could not have fired in the direction where his friends were also standing in as much as the bullet could have hit any one of them. Since it is shown that A-1 was on the other side of the counter and his other co-accused were on the other side thereof, there was no chance for them to prevent A-1 from firing a second shot towards deceased Jessica Lal. There is no act of commission or omission attributable to A-2 to A-5 to invoke Section 34 IPC against them.

46. The Court is, Therefore, of the considered view that the facts, material and circumstances placed on record by the prosecution do not at all suggest that the firing was as a result of any criminal conspiracy between A-1 to A-5 or they shared any common intention attracting Section 34 of the IPC. Even if A-3 knew Jessica Lal from before and was found talking to her some time between 11.30 p.m. to 2.00 a.m. it is not at all a circumstance for presuming any conspiracy or common intention to kill her because nothing has come on record that any of the accused had any motive or ill will for killing her. The Trial Court, Therefore, had rightly taken the view that no charge u/s 120B read with Section 302 IPC or Section 302 read with Section 34 IPC could be framed against A-1 to A-5.

47. The State is highly aggrieved by the discharge of accused No.6 Shyam Sunder and prays for framing of charges u/s 201/212 IPC against him.

48. According to learned counsel for the State, the learned Trial Judge has failed to appreciate the material on record which strongly suggests that the weapon of offence i.e. pistol of A-1 was handed over by A-1 to A-10 R.K. Sudan (P.O.), who in turn handed over the same to accused No.6 Shyam Sunder, uncle of A-1. It is submitted that in view of the fact that the weapon of offence could not be recovered at all by the prosecution charges u/s 201 IPC and u/s 212 IPC for helping A-10 R.K. Sudan for moving out of India inspire of knowledge or reason to believe that he was wanted for an offence are required to be framed against A-6. Learned counsel for the State has argued that the disclosure statement made by A-1 led to the "discovery of the fact" that after the incident the weapon used in the offence was handed over by A-1 to A-10 R.K. Sudan. The statement of PW Ashok Kumar Dutt and the tape recorded conversation between A.K. Dutt and accused R.K. Sudan raise strong suspicion against A-6 that the weapon of offence was handed over to him by A-10 R.K. Sudan and thereafter A-6 gave him some money and arranged that he left India without any delay. It is submitted that if A-10 had fallen into the hands of the police, he would have disclosed that he had handed over the weapon to A-6 and then it would have been possible for the police to effect the recovery thereof. He submits that weapon of offence was very material in this case as it was a licensed weapon and if bullets fired at the spot could be linked to this weapon it would have been a clinching piece of incriminating evidence against A-1, which the prosecution has been deprived of on account of non-recovery of the weapon.

49. Shri Rajinder Singh Cheema, learned counsel for A-6 has controverted the submissions made by learned counsel for the State and has opposed the prayer for framing any charge against A-6 on the ground that in the absence of the recovery of the weapon of offence the disclosure statement of A-1 cannot be considered. It is pointed out that the financial assistance given by A-6 to A-10 for going back to USA, even if believed, does not show that A-6 knew the involvement of A-10 in any offence. It is also argued that taped conversation between PW A.K. Dutt and A-10 is hit by Section 24 of the Evidence Act. He submits that prosecution has not placed on record anything to show that the

mother of A-10 was not sick and it was for that reason only that A-6 had given him financial help for going back to USA immediately.

50. After considering the disclosure statement of A-1, the statement u/s 161 Cr. P.C. of PW A.K. Dutt and the transcript of the telephonic conversation between A.K. Dutt and A-10 R.K. Sudan, I am of the considered view that there are good and sufficient grounds for holding that a strong suspicion exists against A-6 for charging him u/s 201 IPC as well as 212 IPC. The disclosure statement of A-1 might not have led to the recovery of the weapon of offence, but it certainly led to the discovery of the fact that the weapon of the offence had come into the hands of R.K. Sudan, which is corroborated by the taped telephonic talk between A.K. Dutt and A-10. This taped telephonic conversation suggests at least prima facie that A-6 knew as to where the weapon of offence had gone. A-10 who had left India could not possibly take it out of India and as such the only person in whose contact he was before leaving Indian was A-6 with whom he spent some time at Manali also after receiving the weapon from A-1 at Delhi. The over-anxiety demonstrated by A-6 to see that A-10 goes out of Indian and the financial support given by him are suggestive of his apprehension that in case A-10 gets arrested by the police he may disclose the whereabouts of the weapon of offence and the role played by A-6 in the whole transaction. The telephonic talk between PW A.K. Dutt and accused No. 10 R.S. Sudan does not appear to be hit by Section 24 of the Evidence Act in as much as inducement even if any was not proceeding from a person in authority. A-10 did not know even that this telephonic call was being recorded by the police. Therefore, I am of the considered view that there are good and sufficient grounds for framing a charge u/s 201 IPC against A-6. He also ought to have been charged u/s 212 IPC for the reason that the material on record clearly suggests that he had helped A-10 R.K. Sudan to move out of India knowing that he was also likely to be arrested in this case in as much as he had helped A-1 regarding disappearance of weapon of offence which was a material piece of evidence for the prosecution.

51. The prayer of the State that A-2 to A-5 should have been charged u/s 212 of the IPC for harbouring A-1 as they had escorted him out of the restaurant cannot be accepted. The statements of the witnesses recorded by the prosecution do not at all suggest that A-2 to A-5 had given any assistance or help to A-1 for escaping from the place of incident. The statements of PW Bina Ramani and some other witnesses merely show that after the shooting incident, when there was utter commotion in the restaurant, A-1 as well as A-2 to A-5 simply headed towards the exit gate and thereafter left the spot. Some of the witnesses have even used the term, " khisak gaye" which does not at all suggest that A-1 was harboured in terms of Section 52(a) of the IPC. Moreover, the prosecution case itself is that after the shooting incident A-1 was left alone outside the Cafe whereas his other co-accused moved away in their own vehicles. A-1 had to come to the house of A-3 on foot leaving his own vehicle at the spot. This circumstance negatives the prosecution allegation that A-1 was harboured by A-2 to A-5 in the matter of escaping from the spot. Thus the learned Trial Judge was

justified in not framing a charge against A-2 to A-5 u/s 212 of the IPC.

52. Learned counsel for the State has further contended that A-4 also ought to have been charged u/s 120B read with Section 201 IPC on account of his role in the retrieval of the Tata Safari of A-1 from the spot. The prosecution evidence strongly suggests that a conspiracy for the removal of Tata Safari from the spot was hatched at the residence of A-3 where A-4 had also come. It is true that A-4 did not accompany A-2 and A-3 to the spot for the removal of Tata Safari but the prosecution evidence shows that he had provided his own Tata Seira to them for the purpose. In view of the fact that A-4 had seen A-1 shooting at the spot, had reached the house of A-3 after the incident and thereafter had given his vehicle also to A-2 and A-3 for the removal of Tata Safari of A-1 from the place of incident raises a strong suspicion against him that he was also a party to the conspiracy and as such he ought to have been charged u/s 120B read with Section 201 IPC. The submissions of learned counsel for the accused that there are no grounds at all for charge u/s 201 read with Section 120B of the IPC are primarily based upon legal argument that mere removal of the Tata Safari of A-1 from the place of incident to some other place did not attract Section 201 IPC. It is argued that 201 of the IPC is attracted only when a person knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of an offence to disappear with the intention of screening offender from legal punishment. It is contended that "removal" does not amount to "disappear" as referred to in Section 201 of IPC. According to him, mere removal of the vehicle from one place to another did not make the vehicle disappear and as such no charge ought to have been framed in this regard.

53. Learned counsel for the accused has relied upon judgment of Orissa High Court reported in *Batapa Bada Seth Vs. The State* 1987 (1) Crimes 365 in which the removal of dead body from one place to another was held to be not covered under the provisions of 201 of IPC. In the said case their lordships observed in para (4) that the removal was to give the case a colour of suicide. Therefore a view was taken that this act did not amount to causing disappearance of the evidence attracting Section 201 of the Code. The judgment in *Chander Giani Vs. The State*, clearly shows that causing disappearance as referred to in Section 201 of the IPC does not mean destruction of the evidence, but the removal of the evidence from one place to another also with a view to take it away from the eye of police. In a judgment of Himachal Pradesh High Court reported in *Harbans Lal Vs. The State*, a clear view was taken that disappearance of the evidence will be caused if the evidence ceased to be visible or traceable. Therefore in the present case when accused A-1 to A-4 in furtherance of their conspiracy removed the Tata Safari of A-1 from the place of incident and placed it some where else they prima facie committed an offence u/s 120B read with Section 201 IPC for the reason that they caused a material piece of evidence to disappear from the eyes of the investigators. It cannot be disputed that this Tata Safari was a material piece of evidence for the prosecution in as much as its recovery from the spot would have made it easier for the police to trace out and then link A-1 with the

offence. Thus a charge in (SIC) against A-1 to A-4 in this behalf.

54. The plea of the prosecution that A-1 to A-5 ought to have been charged u/s 120B read with Section 201 of the IPC for removal and disappearance of the weapon of offence is not sustainable for the simple reason that except the disclosure statement of the accused prosecution has no evidence whatsoever to show that after the incident and in furtherance of a conspiracy A-1, A-2 and A-5 had gone to the spot near Cottage Emporium, Mehrauli and retrieved the weapon of offence. Disclosure statements made by the accused are not admissible in evidence in the absence of any recovery. The prosecution has no other evidence to show that they had gone there for retrieving the weapon of offence. Hence the prayer for framing charge u/s 201 read with Section 120B IPC against them in this regard cannot be sustained.

55. A-12 Raja Chopra has filed a revision petition to assail the framing of charge against him u/s 212 of the IPC on the allegations that he had provided his car to A-1 for helping him in escaping from Delhi to Chandigarh. The contention of learned counsel for A-12 that much before the incident the car in question had been transferred by him to the company cannot be sustained for the reason that the document showing transfer was neither placed before the Investigating Officers nor before the Learned Judge at the time of consideration of the charge. In my view this Court while exercising revisional jurisdiction must not admit further evidence which was not the basis of the view taken by the learned Trial Judge.

56. Learned counsel for A-12 in support of his CrI. Revision petition relies upon a judgment Sanjeev Kumar Vs. State of Himachal Pradesh, in which his Lordship Hon"ble Mr. Justice J.B. Pattanaik speaking on behalf of Bench had held that for attracting Section 212 of the IPC, it is necessary to establish commission of offence, harbouring, or concealing the person known or believed to be the offender and such concealment must be with the intention of screening him from legal punishment. The view taken by his Lordships succinctly propounds the legal position, but in the said case Their Lordships had come to the conclusion that no offence was made out against the accused u/s 212 of the IPC on the ground that the evidence against him was wholly insufficient. However, in the case in hand the trial is still to be held and at the stage of framing a charge the Court has to see as to whether there exist grounds or not for raising a strong suspicion against A-12 in regard to the commission of an offence u/s 212 of the IPC. The evidence required for conviction is not to be insisted upon at this stage. As observed herein before since A-12 was very close to A-1 being the Director in a company in which A-1 was also a Director, it can be reasonably inferred that the car of A-12 was sent to A-1 for picking him up from Delhi and A-12 knew or had reason to believe that A-12 was involved in an offence and the Car was sent to screen him from legal punishment. The commission of offence as defined in Section 52(a) of the Act was by providing a Car and the knowledge or reason to believe that A-1 was the offender. Thus the charge framed against A-12 u/s 212

IPC calls for no interference as prima facie the car was in the name of A-12 who is one of the Directors of the company in which A-1 was also a Director and the car was specially sent from Chandigarh to Delhi to facilitate the escape of A-1 from Delhi.

57. Learned counsel for accused No.A-1 to A-5 have argued that in the absence of test identification proceedings in this case which go to the root of the matter, the statements of the so called eye witnesses to the incident who did not know the accused from before cannot be relied upon and the photo identification is meaningless. In my view the refusal of A-1, A-3, A-4 and A-5 to join test identification proceedings prima facie calls for an adverse interference against them. It would be for the Trial Judge only to consider and adjudicate as to whether in the absence of test identification proceedings the statements of the prosecution witnesses can be relied upon or not. The absence of TIP in respect of A-2 Vikas Yadav was under peculiar circumstances in as much as she had obtained anticipatory bail from a Court at Manipur and thereafter the matter went up to the Supreme Court of India. Ultimately he surrendered before the Court concerned at Delhi. The reasons and circumstances on account of which the Investigating Agency did not apply for his test identification parade shall be revealed and considered in the course of trial only and as such at this stage the prosecution case against him cannot be rejected.

58. In the course of arguments Sh. R.K. Naseem, Advocate appearing on behalf of A-5 moved a petition before this Court with a prayer to put in a sealed cover a document purported to be in the hand writing of SI Sunil Kumar. According to Mr. R.K. Naseem this document clearly suggests that the investigations were being guided and supervised by Special Public Prosecutor for the State and padding was being done on his instructions. This document has already been ordered to be placed in a sealed cover. However, no benefit can be given to any of the accused on the basis of this document at this stage. It would be for the Trial Court only to consider the relevance and importance of this document. It is to be mentioned here itself that learned Special PP for the State has forcefully contended that this document was never a part of judicial record and has been surreptitiously placed on record at the behest of the accused persons. He points out that other pages of the judicial file were numbered in red ink at initial stage but there is no numbering with red ink on this document which shows that it has been placed on record after the earlier p(SIC)ing of the file in red ink. Suffice to say that all these matters should be left to be considered by the Trial Court only.

59. In view of the foregoing discussions, the Revision Petitions stand disposed of and it is held that the charges in the present case shall be as under:-

(a) The prayer of the State for charging A-1 to A-5 u/s 120-B for an offence u/s 302 IPC and A-2 to A-5 u/s 302 read with Section 34 IPC for murder of Jessica Lal is declined.

(b) Accused No.1 Sidharth Vashisht @ Manu Sharma was charged by the Trial

Court u/s 302 IPC for the murder of deceased Jesicca Lal, 201 read with Section 120B IPC for conspiracy for removal of his vehicle from the spot, Section 27 of the Arms Act and Section 201 read with Section 34 IPC for the replacement of the glass pane of Tata Safari. The State had prayed that he should be charged u/s 120B read with Section 302 IPC also as there was a conspiracy to commit the murder of deceased Jesicca Lal.

In view of the reasons given in this order there are no grounds for framing a charge u/s 120B read with Section 302 IPC against accused A-1. There are also no grounds for framing a charge u/s 201/34 IPC against him in respect of the replacement of the glass pane. Therefore the charge u/s 201/34 IPC against him stands quashed. It is true that accused No.1 had not preferred any revision petition against the framing of a charge against him u/s 201/ 34 IPC regarding replacement of glass pane of his vehicle but while exercising revisional jurisdiction, this Court has ample powers to remove a legal infirmity found on record.

(c) Accused No.2 Vikas Yadav was charged by the Trial Court u/s 201 read with Section 120B IPC in respect of the conspiracy and removal of the vehicle of A-1 from the spot and 201 read with Section 34 IPC regarding replacement of the glass pane of the vehicle of A-1. The State had urged before this Court for framing charges against him u/s 302 read with Section 120B IPC and Section 302 read with Section 34 IPC for the murder of deceased Jesicca Lal and also u/s 212 IPC for harbouring A-1 out of the Cafe after the incident. This accused had filed Crl. Revision petition No.47/2001 praying for his discharge for all the offences. In view of the reasons mentioned in this order, the prayer of the State, for framing additional charges against him as stated above is declined. The Crl. Revision Petition filed by the petitioner challenging the framing of the charge u/s 201 read with Section 34 in regard to the replacement of glass pan of the vehicle of A-1 is allowed and he is discharged for the commission of the said offence.

(d) Accused No.3 Amarjit Singh @ Tony Gill was charged by the Trial Court u/s 201 read with Section 120B IPC in regard to conspiracy and removal of the vehicle of A-1 from the place of incident. The State had prayed for framing charges u/s 302 read with Section 120B, 302 read with Section 34 IPC against him for the murder of deceased Jesicca Lal and also u/s 212 of the IPC for harbouring A-1 out of the Cafe. This petitioner had filed Crl. Revision petition No.46/2001 challenging the framing of the charge u/s 201/120B IPC against him.

In view of the reasons mentioned in this order, the prayer of the state for framing additional charges against him is declined. The prayer of the petitioner for discharging him for the offence u/s 201 read with Section 120B IPC is also declined. His Crl. Revision Petition stands dismissed.

(e) Accused No.4 Alok Khanna was discharged by Trial Court of all the offences. The State in its Crl. revision petition No.596/2000 has challenged the (SIC) order passed by the learned Trial Judge and has prayed for framing charges against

him u/s 302 read with Section 120B IPC and Section 302 read with Section 34 IPC for the murder of Jesicca Lal. The State also prays that he be charged for offences u/s 201 read with Section 120B IPC for the conspiracy and removal of the Tata Safari Car of A-1 from the spot. It is also prayed that he be charged u/s 212 IPC also for harbouring A-1 by way of escorting him out of cafe after the incident.

In view of the reasons mentioned in this order, the prayer of the State of the State for charging A-4 u/s 212 of the IPC is declined. However, the revision petition filled by the State is allowed to the extent that A-4 shall be charged u/s 201 read with Section 120B IPC for conspiracy and removal of the Car of A-1 from the place of incident.

(f) Learned Trial Judge had discharged accused No.5 Amit Jingen of all the offences. The state in its revision petition had prayed for framing of the charges against him u/s 302/120B, 302/34 IPC, 201/120B IPC retrieval of the pistol of A-1 and 212 IPC for escorting A-1 out of the cafe after the firing incident. In view of the reasons already recorded no charge is made out against A-5. His discharge by Trial Court is upheld.

(g) Accused No.6 Shyam Sunder was discharged for all the offences by the learned Trial Judge. The State in its revision petition has prayed for charging him u/s 201 read with Section 120B for conspiracy and disappearance of the weapon of offence. It is also prayed that he be charged u/s 212 of the IPC also for harbouring A-10 R.K.Sudan by way of assisting him to escape from India.

In view of the reasons mentioned in this order, the Crl.revision petition filed by the State qua him is allowed and he is ordered to be charged u/s 201 IPC and 212 IPC.

(h) No controversy has been raised in regard to accused No.7 H.S. Chopra, accused No.8 Vikas Gill and accused No.9 Yograj Singh who were charged by the Trial Court u/s 212 of the IPC for harbouring accused No.1 after the offence and before his arrest by the police.

(i) Accused No.12 Raja Chopra was charged u/s 212 of the IPC for harbouring accused No.1. He filed a Crl. revision petition 619/2000 challenging the framing of the charge against him u/s 212 of the IPC. For the reasons given in this order, this Court finds no force in his revision petition and upholds the orders of the learned Trial Judge charging him u/s 212 of the IPC.

60. Accordingly the Crl. Revision petition No.596/2000 filed by the State and Crl. Rev. petition No.47/2001 filed by accused no.2 Vikas Yadav are partly allowed. Revision petitions No. 46/2001 filed by Amardeep sing Gill and 619/2000 by Raja Chopra are dismissed.

61. Nothing stated herein shall be taken as an expression of opinion on the merits of the case pending before the Trial Court.

62. Trial Court records be sent back forthwith so that the trial proceeds further in accordance with law.