

(2017) 02 AHC CK 0026

In the Allahabad High Court

Case No : Criminal (CAPITAL) Appeal No. 5298 of 2015 With Reference No. 11 of 2015

Vinod

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 17-02-2017

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, Section 157, Section 173
Penal Code, 1860 (IPC) — Section 302, Section 34
Police Act, 1861 — Section 46

Citation : (2017) 2 AILLJ 706

Hon'ble Judges : Bala Krishna Narayana and Shashi Kant, JJ.

Bench : Division Bench

Advocate : Vijay Praksah and Satish Trivedi, Advocate, for the Appellant; G.A, for the Respondent; Vijay Praksah, Advocate, for the Appellant; G.A, for the Respondent; Vijay Praksah, Advocate, for the Appellant; G.A, for the Respondent

Final Decision : Disposed Off

Judgement

Shashi Kant, J.—Aforesaid Criminal Capital Appeal Nos. 5298 of 2015, 5299 of 2015 and 5300 of 2015 have been preferred by accused/appellants Vinod and Dwarika, Chandradeo Yadav and Pawan respectively, against judgment and order dated 28.10.2015, passed by Additional Sessions Judge / Special Judge (SC/ST Act), Ghaziabad in Session Trial No. 906 of 2004 (State v. Vinod and Another), Session Trial No. 221 of 2005 (State v. Chandradev Yadav and Session Trial No. 1683 of 2004 (State v. Pawan) arising out of Case Crime No. 115 of 2004, under Sections 302/34 and 201 of Indian Penal Code, 1860 (in short "I.P.C."), Police Station - Sahibabad, District - Ghaziabad, whereby appellants have been convicted and sentenced by capital sentence and fine of Rs.1,00,000/- each, under Section 302/34 I.P.C., five years rigorous imprisonment and fine of Rs.10,000/- under Section 201 I.P.C. and in case of default in depositing the fine additional imprisonment of five years.

2. Criminal Reference No. 11 of 2015 which has been referred to this Court by

the Trial Court under Section 366(1) Cr.P.C. for approval of death sentence awarded to the accused-appellants is also being decided along with aforesaid criminal capital appeals.

3. Brief facts relating to above appeals/reference as transpire from record are as under :

3.1 Informant PW-1 Vikas Bajaj submitted the written report (Exhibit "Ka-1") on 11.02.2004 to the Police Station - Sahibabad, District - Ghaziabad stating therein that three dead bodies wrapped in the separate bed sheets were lying on a heap of garbage at Ramlila Ground, Shalimar Garden Extension - I. He prayed for necessary action in the matter after lodging of the report.

3.2 On the basis of above written report (Exhibit "Ka- 1"), a First Information Report (Exhibit "Ka-5") (in short "FIR") was registered against unknown persons as Case Crime No. 115 of 2004, under Sections 302/34 and 201 I.P.C. at Police Station - Sahibabad, District - Ghaziabad on 11.02.2004 at 14.05 A.M.

3.3 Entry with regard to registration of above case has been made in the General Diary (in short "G.D.") on 11.02.2004 at 14.05 A.M. as Entry No. 37 at 14.05 A.M. A carbon copy of which is Exhibit "Ka-6.

3.4 Investigation of the case was taken over by Station House Officer/Inspector G.P. Yadav (PW-10). He rushed to spot along with Police personnel, prepared site plan and recovery memos of various items taken into custody from the spot. After getting prepared the inquest memos and other necessary papers under his instructions by S.S.I. Mahendra Singh Bhadauriya (PW- 11), the dead bodies were sent for postmortem and statements of the complainant and other witnesses were recorded. The accused Vinod and Dwarika were arrested on 17.02.2004 and on their pointing out, three severed heads which belonged to the dead bodies were recovered. After preparation of recovery memos of heads, inquest reports and other necessary letters, recovered heads were sent for postmortem. He inspected the House No. S-4-725 Shalimar Garden Extension-I (hereinafter referred to as "the Flat") and blood stained plaster from the walls and blood stained belt were collected. He also took custody of photo album, Kisan Vikas Patra, insurance and registration papers of vehicle no. JS 12A - 3766 and prepared their recovery memos, established identity of dead bodies by recording statements of witnesses Chokidar Tilak Mehto and Jugul Mehto (father of deceased Hari Yadav @ Hariya), and after completing necessary formalities submitted charge sheets against the accused-appellants Vinod, Dwarika, Pawan and Chandra Deo.

3.5 On the basis of above charge sheets, cognizance of the offence was taken by the Trial Court against accused appellants Vinod and Dwarika, Pawan and Chandra Deo on 02.06.2004, 16.11.2004 and 18.01.2005 respectively. In due course cases of accused-appellants were committed to the Court of Session for their trial.

3.6 Charges were framed against accusedappellants on 27.07.2005 under Sections 302/34 & 201 I.P.C. They denied the charges framed against them and claimed for trial.

3.7 To prove its case, prosecution has examined informant PW-1 Vikas Bajaj, PW-2 Chotan, PW-3 Anees, PW-4 Mukesh Sharma, PW-5 Rakesh Kalra, PW-6 Babloo Tyagi, PW-7 Dr. A. Mishra, PW-8 Constable Manohar Lal, PW-9 Dr. Ramesh Kumar, PW-10 Inspector G.P. Yadav (Investigating Officer), PW-11 Inspector Mahendra Singh Bhadauriya and PW-12 Harishanker Singh.

3.8 Apart from above following documentary and material evidence are also produced by the prosecution in support of its case :

DOCUMENTARY EVIDENCE

Details of document

Exhibit Number

Written Report

Exhibit "Ka-1"

Postmortem reports of dead bodies

Exhibit "Ka-2, 3 and 4"

First Information Report

Exhibit "Ka-5"

Carbon copy of General Diary about registration of the case

Exhibit "Ka-6"

Postmortem reports of heads

Exhibit "Ka-7, 8 and 9"

Site Plan of the place where

Exhibit "Ka-10"

dead bodies were recovered Site Plan of the place of occurrence

Exhibit "Ka-11"

Recovery memo of printed bed sheets

Exhibit "Ka-12"

Recovery memo of mattress and quilt cover

Exhibit "Ka-13"

Blood stained page of diary

Exhibit "Ka-14"

Site plan of the place from where heads were recovered

Exhibit "Ka-15"

Recovery memo of heads

Exhibit "Ka-16"

Recovery memo of blood stained and plain soil recovered from Flat No. S-4-725

Exhibit "Ka-17"

Recovery memo of Registration Certificate of vehicle and Kisan Vikas Patras

Exhibit "Ka-18"

Statement of Tilak Mehto

Exhibit "Ka-19"

Statement of Chando Yadav

Exhibit "Ka-20"

Statement of Sudhir Kumar

Exhibit "Ka-21"

Statement of Ashok Kumar

Exhibit "Ka-22"

Statement of Shyam Sunder

Exhibit "Ka-23"

Charge sheet against accused-appellant Vinod and Dwarika

Exhibit "Ka-24"

Charge sheet against accused-appellant Pawan

Exhibit "Ka-25"

Charge sheet against accused-appellant Chandra Deo

Exhibit "Ka-26"

Postmortem reports of trunks (dead bodies)

Exhibit "Ka-27, 28 & 29"

Sample of seal

Exhibit "Ka-30"

Letter of S.P.O.

Exhibit "Ka-31 & 32"

Challan Lash

Exhibit "Ka-33"

Letter of C.M.O.

Exhibit "Ka-34"

Challan Lash

Exhibit "Ka-35"

Photo Lash

Exhibit "Ka-36"

Sample of Seal

Exhibit "Ka-37"

Challan Lash

Exhibit "Ka-38 & 39"

Letter to C.M.O.

Exhibit "Ka-40"

Photo Lash

Exhibit "Ka-41"

Sample of seal

Exhibit "Ka-42"

Challan Lash

Exhibit "Ka-43"

Letter to C.M.O.

Exhibit "Ka-44"

Photo Lash

Exhibit "Ka-45"

Inquest reports of deceased Hari Yadav @ Hariya, Keshav and Kaliya and other related forms and letters to C.M.O., Photo Lash , Challan Lash etc.

Exhibit "Ka-46 to 63"

MATERIAL EVIDENCE

Details of material collected Material

Exhibit Number

Blood stained page of diary Material

Exhibit "Ka-1"

Various photographs collected from the photo album Material

Exhibit "Ka-2 to 20"

Registration Certificate and Insurance of vehicle No. JS 12A-3766 Material

Exhibit "Ka-21 & 22"

Bank Pass Book of Sunita Devi Material

Exhibit "Ka-23"

Kisan Vikas Patra in the name of Basanti Devi (each of Rs.10,000/-, total Rs.50,000/-) Material

Exhibit "Ka-24"

Kisan Vikas Patra in the name of Sunita Devi (each of Rs.10,000/-, total Rs.50,000/-) Material

Exhibit "Ka-25"

Kisan Vikas Patra in the name of Kaliya Devi (each of Rs.10,000/-, total Rs.50,000/-) Material

Exhibit "Ka-26"

Kisan Vikas Patra in the name of Shanti Devi (each of Rs.10,000/-, total Rs.50,000/-) Material

Exhibit "Ka-27"

Photographs of recovered heads Material

Exhibit "Ka-28 to 30"

3.9 The accused-appellants denied the prosecution case, evidence produced against them in their statements recorded under Section 313 Cr.P.C. and claimed themselves to be innocent. However, they did not produce any evidence in their defence.

3.10 After hearing rival arguments of the counsel for the parties and evaluation of evidence available on record, the Trial Court found that prosecution has successfully proved its case against the accused-appellants and passed the judgment and order impugned.

3.11 Being aggrieved by the judgment and order impugned the aforesaid Criminal Appeals/Capital Cases have been filed by the respective accused/appellants.

3.12 As a consequence of passing of the judgment and order impugned, Reference No. 11 of 2015 has been sent by the Trial Court for confirmation of death sentence of the accused-appellants.

4. Heard Sri Satish Trivedi, learned Senior Counsel assisted by Sri Vijay Prakash, Sri Sheshadri Trivedi and Sri Ajay Kumar Pandey, learned counsel for the appellants and Sri Akhilesh Singh, learned Government Advocate (hereinafter referred to as "the G.A.") assisted by Sri Sageer Ahmad, Sri J.K. Upadhyay, Km. Meena, learned A.G.A.s and Sri Irfan Chaudhary, Brief Holder for the State of U.P.

5. Learned counsel for appellants urged that:

5.1 Investigating Officer did not took effective steps for proper identification of mutilated dead bodies and allegedly recovered severed heads.

5.2 There was no specific mark or other things related to identification from which mutilated dead bodies could be recognised and the prosecution did not get identified the dead bodies along with severed heads by the witnesses.

5.3 The prosecution case that the flat in question belong to accused-appellant Pawan is not proved by any documentary evidence i.e. by a sale deed.

5.4 Investigating Officer also did not send blood stained samples of blood stained and plain plaster, blood stained belt, taken from the Flat, and other recovered blood stained items for chemical examination to Forensic Science Laboratory and no reports regarding chemical examination of above items are available on the record.

5.5 The alleged recoveries of various items during the course of investigation are highly doubtful in the circumstances in which they have been shown to have been recovered and specially in the light of the fact that they were not supported by any independent/public witness.

5.6 The weapon of assault was not recovered by the Investigating Officer to prove the allegation of murder of Keshav S/o Rewati Mahato, Smt. Kalia W/o Rewati Mahato and Hari Yadav @ Hariya S/o Jugal Yadav by the accusedappellants.

5.7 The Investigation of the case has been conducted in highly careless manner and the charge sheets have been filed by the Investigating Officer PW-10 Inspector G.P. Yadav, without collecting sufficient evidence in support thereof.

5.8 Charge for murder of Beeru has been wrongly framed because during investigation no evidence in respect to murder of Beeru was collected, as such, above charge is wrong, illegal and contrary to the provisions of Section 227 and 228 of Cr.P.C.

5.9 While convicting the accused-appellants under Sections 302/34 and 201 I.P.C. the learned Court below has failed to consider that alleged discovery and recovery of the three severed heads from the drain (nalla) is not in accordance

with the provisions of Section 27 of the Evidence Act.

5.10 The learned Court below has failed to consider that prosecution has not produced the best evidence to prove its case and deliberately withheld the material witnesses namely Smt. Guddi, Smt. Sunita Devi, Kanti Devi, Tilak Mehto, Chandra Mehto, Sudhir Kumar, Ashok Kumar, Shyam Sunder etc. to prove the guilt of the accusedappellants, for which presumption under Section 114(g) of Indian Evidence Act was desired to be drawn against the prosecution.

5.11 The Court below also failed to take notice of the settled law that the prosecution case must stand on its own legs and cannot derive any strength from the weaknesses of the defence case.

5.12 The case of the prosecution is based on circumstantial evidence and chain of circumstances proved by the prosecution is not complete and the prosecution has miserably failed to establish the fact that only accused-appellants and no one else except them could have committed the offence.

5.13 The prosecution has miserably failed to prove its case beyond reasonable doubt.

5.14 The Trial Court has failed to properly analyse and weigh the evidence in their right perspective and has committed serious factual and legal error while passing the judgment and order impugned.

5.15 The Trial Court has convicted the accused-appellants on the basis of conjectures and surmises.

5.16 Conviction of accused-appellants under Sections 302/34 and 201 I.P.C. is against the weight of evidence available on record and the same is bad in law.

5.17 Imposition of sentence of capital punishment on the accused-appellants is also excessive and highly undesirable.

5.18 The entire prosecution case is vitiated on account of non compliance of the provisions of Section 313 Cr.P.C. as the questions put before the accused-appellants by the learned Court below are not in compliance of Section 313 Cr.P.C. which has caused prejudice to the accused-appellants.

6. Learned G.A. appearing on behalf of State of U.P. urged that :

6.1 The mutilated dead bodies were recovered on the information given by one Vikas Bajaj and their severed heads were recovered on the pointing out of accused-appellants Vinod and Dwarika from drain ("Nala"). The mutilated dead bodies and severed heads have been identified by the witnesses. There is very strong motive for the accused-appellants who are closely connected with each other, to commit murder of the deceased persons.

6.2 It is established by the evidence of prosecution that accused Pawan was owner of the Flat in question as is evident from Paper No. 22-C (photocopy of sale deed dated 27.08.2003), apart from that there is unchallenged testimony of

PW-5 Rakesh Kalra on the point of selling of Flat No. S- 4/725 to the accused-appellant Pawan and as no cross examination of the witness was done on that point, therefore, despite being hostile his above evidence may be read in evidence holding it reliable.

6.3 The deceased persons were living in the Flat and with intention to get the Flat vacated the appellants have brutally murdered the deceased Smt. Kaliya, Hari Yadav and Keshav, by beheading them and with intention to conceal the evidence against them, had dumped the mutilated dead bodies at Ramleela Maidan, Shalimar Garden Extension-I and had hidden the severed heads in the drain (Nala) which were recovered on the pointing out of accused-appellants Vinod and Dwarika.

6.4 For the purpose of recovery under Section 27 of the Indian Evidence Act, expression "custody" does not mean formal custody rather it includes any kind of surveillance, restriction or restraint by the Police. Even if, accused were not formally arrested at the time when accused gave information, the accused was for all practical purpose in the custody of Police.

6.5 Recovery on the pointing out of two accused-appellants and from open place on the basis of information supplied by them is good and could not be discarded.

6.6 Blood stains were found on the walls of room of the Flat in question and during search one blood stained bat was also recovered along with Photo Album, Kisan Vikas Patra etc. as is evident from the recovery memo (Exhibit "Ka- 17 and 18).

6.7 Learned G.A. also urged that there may be some defect in the investigation but that will not affect the merit and prospectus of the prosecution case as Hon'ble Apex Court has held in number of cases that accused could not be acquitted only on the basis of defective investigation.

6.8 Seeking permission for cross examination of his own witness by the party after declaring them hostile does not mean that whole evidence of that witness is undone or wiped out from the record. Relevant part of evidence of such witness may not only be read in evidence but also can be relied for establishing a particular fact or seeking corroboration of the particular fact.

6.9 Prosecution is not under obligation to produce each and every witness. If accused side considers their presence necessary they may apply before the Court concerned to summon them as Court witness or produce them as defence witness, but that has not been done by the defence, therefore, they cannot blame the prosecution for not producing them.

6.10 Accused-appellants are guilty of committing brutal and gruesome murder of three persons including a lady by beheading them and for the purpose of concealing their identity throwing their severed heads in a drain (nala) and dumping the mutilated dead bodies on a heap of garbage.

6.11 In view of above the Trial Court has rightly convicted and sentenced the accused/appellants and punished them with capital sentence.

6.12 Judgment and order impugned is based on proper appreciation of evidence available on record and cogent reasons have been given for passing the same along with discussion of the relevant case laws. As such the judgment and order impugned is a just and legal one, requires no interference by this Court.

7. In support of their various contentions learned counsel for the parties have placed reliance on various decisions of Hon''ble Apex Court and this Court which will be discussed hereinafter at appropriate place.

8. We have carefully considered the rival arguments raised by learned counsel for the parties and perused the record, on the basis of which following questions arise for our consideration :

(I) Whether investigation of case is defective?

(II) Whether charge framed against the accused-appellants for murder of "Beeru" is wrong and illegal, being framed without any evidence on the record in support thereof?

(III) Whether prosecution has not produced the "best evidence" to prove its case and deliberately withheld the material witnesses without any justification?

(IV) Whether accused-appellants could not get proper opportunity to explain the evidence relied upon by the Trial Court against them, in their respective statements recorded under Section 313 Cr.P.C. due to non putting proper questions before them and consequently prejudiced by the same?

(V) Whether Trial Court has mis-read the evidence and passed the impugned judgment and order without appreciating the evidence available on the record in its right perspective, which is not sustainable in the eyes of law?

9. Before entering into merits of the case, we find it desirable to discuss the case laws relied by learned counsel for the parties, which are as follows :

10. Case Law relied upon by learned counsel for the appellants.

10.1. On the point of "two views possible", Hon''ble Apex Court in Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116 held as under :-

"218. In view of the fact that this is a case of circumstantial evidence and further in view of the fact that two views are possible on the evidence on record, one pointing to the guilt of the accused and the other his innocence, the accused is entitled to have the benefit of one which is favourable to him. In that view of the matter I agree with my learned Brothers that the guilt of the accused has not been proved beyond all reasonable doubt."

10.2. Hon''ble Apex Court in Padala Veera Reddy v. State of A.P., 1989 Supp (2) SCC 706 and Anter Singh v. State of Rajasthan, (2004) 10 SCC 657, has

considered the scope of Section 27 of the Indian Evidence Act.

10.3. In Padala Veera Reddy (supra) the Court held as follows :

"18. No doubt, this murder is diabolical in conception and cruel in execution but the real and pivotal issue is whether the totality of the circumstances unerringly establish that all the accused or any of them are the real culprits. The circumstances indicated by the learned Counsel undoubtedly create a suspicion against the accused. But would these circumstances be sufficient to hold that the Respondents 2 to 4 (Accused 1 to 3) had committed this heinous crime. In our view, they are not.

19. There are series of decisions holding that no one can be convicted on the basis of mere suspicion, however strong it may be. ?....."

10.4. In Anter Singh (supra) the Court in paragraph no. 16 has summed up various requirements of Section 27 of the Indian Evidence Act as follows :

"16. ?.....

(1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with the question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.

(2) The fact must have been discovered.

(3) The discovery must have been in consequence of some information received from the accused and not by the accused's own act.

(4) The person giving the information must be accused of any offence.

(5) He must be in the custody of a police officer.

(6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible."

10.5. Considered the object of examination of an accused under Section 313 Cr.P.C. in detail, Hon"ble Apex Court in Latu Mahto v. State of Bihar, (2008) 8 SCC 395 held as follows :-

"18. What is the object of examination of an accused under Section 313 of the Code? The section itself declares the object in explicit language that it is "for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him". In *Jai Dev v. State of Punjab* [AIR 1963 SC 612] , Gajendragadkar, J. (as he then was) speaking for a three-Judge Bench has focused on the ultimate test in determining whether the provision has been

fairly complied with. He observed thus: (AIR p. 620, para 21)

"21. ? The ultimate test in determining whether or not the accused has been fairly examined under Section 342 would be to inquire whether, having regard to all the questions put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity."

19. Thus it is well settled that the provision is mainly intended to benefit the accused and as its corollary to benefit the court in reaching the final conclusion."

11. Case Law relied upon by the prosecution:

11.1. On the point of "non cross examination of witnesses on a particular point" Hon"ble Apex Court in Gangabhavani v. Rayapati Venkat Reddy, (2013) 15 SCC 298 held as under :

"21. This Court in Laxmibai v. Bhagwantbuva [(2013) 4 SCC 97 : (2013) 2 SCC (Civ) 480 : AIR 2013 SC 1204] examined the effect of non-cross-examination of witness on a particular fact/circumstance and held as under: (SCC p. 114, para 40)

"40. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross examine a witness as regards information tendered in evidence by him during his initial examination-in-chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses."

(emphasis supplied)

(See also Rohtash Kumar v. State of Haryana [(2013) 14 SCC 434] and Gian Chand v. State of Haryana [(2013) 14 SCC 420] .)

22. Thus, it becomes crystal clear that the defence cannot rely on nor can the

court base its finding on a particular fact or issue on which the witness has not made any statement in his examination-in-chief and the defence has not cross-examined him on the said aspect of the matter."

11.2. In *Dharam Deo Yadav v. State of U.P.*, (2014) 5 SCC 509; *Mohd. Arif v. State (NCT of Delhi)*, (2011) 13 SCC 621; *Ghanshyam Das v. State of Assam*, (2005) 13 SCC 387; *Indrajeet Mallah v. State of U.P.*; *State of H.P. v. Jeet Singh*, (1999) 4 SCC 370; *State Govt. of NCT of Delhi v. Sunil*, (2001) 1 SCC 652 and *Ningappa Yallappa Hosamani v. State of Karnataka*, (2009) 14 SCC 582 Hon"ble Apex Court has considered the scope of custody, scope of Section 27 and recovery in consequence of disclosures made by accused persons while in custody before the Police Officers.

11.3. In *Dharam Deo Yadav* (supra), the Court held as under :

"22. The expression "custody" which appears in Section 27 does not mean formal custody, which includes any kind of surveillance, restriction or restraint by the police. Even if the accused was not formally arrested at the time when the accused gave the information, the accused was, for all practical purposes, in the custody of the police. This Court in *State of A.P. v. Gangula Satya Murthy* [(1997) 1 SCC 272 : 1997 SCC (Cri) 325] held that if the accused is within the ken of surveillance of the police during which his movements are restricted, then it can be regarded as custodial surveillance. Consequently, so much of information given by the accused in "custody", in consequence of which a fact is discovered, is admissible in evidence, whether such information amounts to a confession or not. Reference may al In the present case, the fact discovered by the police with the help of (1) the disclosure statements and (2) the recovery of incriminating articles on the strength of such statements is that it was the accused who concealed those articles at the hidden places. It is immaterial that such statement of the accused is inculpatory because Section 27 of the Evidence Act renders even such inculpatory statements given to a police officer admissible in evidence by employing the words "whether it amounts to confession or not".so be made to the judgment of this Court in *A.N. Venkatesh v. State of Karnataka* [(2005) 7 SCC 714 : 2005 SCC (Cri) 1938] . In *Sandeep v. State of U.P.* [(2012) 6 SCC 107 : (2012) 3 SCC (Cri) 18] , this Court held that: (SCC pp. 128-29, para 52)"

11.4. In *Mohd. Arif* (supra) the Court held as under :

"167. It is indeed true that for normally proving any such information and attributing the same to the accused the said accused must be in the custody of the prosecution and then when he discloses or offers to disclose any information, his statement is recorded by the investigating agency for lending credibility to the factum of disclosure as also exactitude. In pursuance of such information, the investigating agency proceeds and obtains the material facts and thereafter executes a panchnama to that effect. We have already referred to this question in the earlier part of our judgment that it was indeed a very tense situation

requiring extreme diligence on the part of the investigating agency whereby the investigating agency could not afford to waste a single minute and was required to act immediately on the receipt of the information from the appellant. This was all the more necessary because the investigating agency was dealing with an extremely dangerous terrorist causing serious danger to the safety of the society. We do not see anything wrong in this approach on the part of the investigating agency. The only question is whether the investigating agency discovered something in pursuance of the information given by the accused. The events which followed do show that it is only in pursuance of, and as a result of the information given by the accused that the investigating agency zeroed in on the given address only to find a dreaded terrorist like Abu Shamal holed up in that address with huge ammunition and firearms. If that was so, then the question is as to whether we can reject this discovery evidence merely because, as per the claim of defence, a formal statement was not recorded and further merely because a formal arrest was not made of the accused.

169. Now of the society. We do not see anything wrong in this approach on the part of the investigating agency coming to the second argument of failure to record the information, it must be held that it is not always necessary. What is really important is the credibility of the evidence of the investigating agency about getting information/statement regarding the information from the accused. If the evidence of the investigating officer is found to be credible then even in the absence of a recorded statement, the evidence can be accepted and it could be held that it was the accused who provided the information on the basis of which a subsequent discovery was made. The question is that of credibility and not the formality of recording the statement. The essence of the proof of a discovery under Section 27 of the Evidence Act is only that it should be credibly proved that the discovery made was a relevant and material discovery which proceeded in pursuance of the information supplied by the accused in the custody. How the prosecution proved it, is to be judged by the court but if the court finds the fact of such information having been given by the accused in custody is credible and acceptable even in the absence of the recorded statement and in pursuance of that information some material discovery has been effected then the aspect of discovery will not suffer from any vice and can be acted upon.

170. Immediately after the apprehension of the appellant he spilled the information. In pursuance of that information the investigating agency acted with expediency and speed which in the circumstances then prevailing was extremely necessary nay compulsory. Any investigating agency in such sensational matter was expected not to waste its time in writing down the panchnama and memorandum. Instead they had to be on a damage control mode. They had a duty to safeguard the interests of the society also. Therefore, if the investigating agency acted immediately without wasting its time in writing memoranda of the information given by the accused, no fault could be found. Ultimately, this timely and quick action yielded results and indeed a dreaded terrorist was found holed up in the address supplied by the appellant-accused with sizeable ammunition

and firearms. We do not, therefore, find anything wrong with the discovery even if it is assumed that the information was not "recorded" and hold that immediately after his apprehension, the accused did give the information which was known to him alone in pursuance of which a very material discovery was made.

172. The Court in Suresh Chandra Bahri case [1995 Supp (1) SCC 80 : 1995 SCC (Cri) 60] then stated in para 71 that the two essential requirements of application of Section 27 of the Evidence Act are that (1) the person giving information was accused of any offence; and (2) he must also be in police custody. The Court then went on to hold that: (SCC p. 119)

"71. ? The provisions of Section 27 of the Evidence Act are based on the view that if the fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information is true and consequently the said information can safely be allowed to be given in evidence because if such an information is further fortified and confirmed by the discovery of articles or the instrument of crime and which leads to the belief that the information about the confession made as to the articles of crime cannot be false."

This is precisely what has happened in the present case. Indeed, the appellant was accused of an offence and he was also in the police custody. We have already explained the ramifications of the term "being in custody".

179. Insofar as third discovery was concerned, it was of the hand grenades, which the appellant discovered on 1- 1-2001. The learned counsel did not even attempt to say that there was anything unnatural with this recovery except that the appellant was all through in the custody and could have been treated roughly for effecting this discovery of the grenades. There is nothing to support this version. Thus, the discovery statements attributed to the appellant and the material discovered in pursuance thereof would fully show the truth that the appellant was involved in the whole affair."

11.5. In Ghanashyam Das (supra) the Court in paragraph no. 5 held as under :-

"5. Another incriminating circumstance which corroborates the case of the prosecution is that the appellant led the IO PW 12 to Kharbhanga riverside and pointed out the place where he had thrown away the khukri. According to the evidence of PW 12 the IO and PW 6, the khukri was recovered from the river with the help of a diver. Though both the courts have eschewed this circumstance from consideration on the ground that no information was recorded by PW 12 the IO so as to attract Section 27 of the Evidence Act, we are of the view that the evidence of PW 12 and PW 6 to the effect that the accused led them to the spot and pointed out the place where the khukri was thrown, which fact stands confirmed by its recovery, can be looked into to throw light on the conduct of the accused under Section 8 of the Evidence Act vide H.P. Admn. v. Om Prakash [(1972) 1 SCC 249 : 1972 SCC (Cri) 88] ."

11.6. In *Indrajeet Mallah* (supra) the Court held as follows :

"35. ?..... No doubt, in the present case, the police has committed a lapse in not recording in their precise words the separate statements of the two accused prior to the recovery and it is only mentioned in the evidence on record that both the accused jointly confessed that they had committed the murders of the two children by stabbing them with knives and had hidden the dead bodies in the rubbish dump after kidnapping them for a ransom of Rs. 3 lakhs and they could get the bodies recovered. However, even if the confessional statement of the accused prior to the recovery is excluded, but the conduct of the accused in getting the bodies recovered is clearly admissible under Section 8 and other provision of the Evidence Act."

11.7. In *State of H.P. v. Jeet Singh* (supra) the Court held as under :

"26. There is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is "open or accessible to others". It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others, it would vitiate the evidence under Section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others. For example, if the article is buried in the main roadside or if it is concealed beneath dry leaves lying on public places or kept hidden in a public office, the article would remain out of the visibility of others in normal circumstances. Until such article is disinterred, its hidden state would remain unhampered. The person who hid it alone knows where it is until he discloses that fact to any other person. Hence, the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible to others. If it is not, then it is immaterial that the concealed place is accessible to others.

27. It is now well settled that the discovery of fact referred to in Section 27 of the Evidence Act is not the object recovered but the fact embraces the place from which the object is recovered and the knowledge of the accused as to it (*Pulukuri Kottaya* [*Pulukuri Kottaya v. Emperor*]). The said ratio has received unreserved approval of this Court in successive decisions. (*Jaffar Hussain Dastagir v. State of Maharashtra*, *K. Chinnaswamy Reddy v. State of A.P.*, *Earabhadrapa v. State of Karnataka*, *Shamshul Kanwar v. State of U.P.* , *State of Rajasthan v. Bhup Singh*

28. In the present case, the fact discovered by the police with the help of (1) the disclosure statements and (2) the recovery of incriminating articles on the strength of such statements is that it was the accused who concealed those articles at the hidden places. It is immaterial that such statement of the accused is inculpatory because Section 27 of the Evidence Act renders even such inculpatory statements given to a police officer admissible in evidence by employing the words "whether it amounts to confession or not".

11.8. In *State, Govt. of NCT of Delhi v. Sunil* (supra) the Court held as under :

"17. The circumstance relating to the recovery of the bloodstained knickers is a formidable one. But the Division Bench did not attach any importance to it solely on the ground that the seizure memo was not attested by any independent witness. Here the circumstance is that when A-2 Ramesh was interrogated by PW 17 Investigating Officer he said: "Her underwear is in my house and I can point out the place where it is." Pursuant to the said information the police recovered the knicker from the house of A-2 Ramesh. It was identified by PW 10 Sharda as her child's knicker. When the knicker was subjected to chemical test it was revealed that the undercloth of the child was stained with blood of O group (same is the blood group of Anuradha). The said statement of A-2 Ramesh would fall within the purview of Section 27 of the Evidence Act as the fact discovered was that the knicker of the deceased was in the house of A-2 Ramesh. The presumption which can be drawn therefrom is that it was A-2 who removed the knicker and kept it in his house. A-2 had no explanation to offer about that circumstance.

18. Recovery of the knicker is evidenced by the seizure memo Ext. PW 10/G. It was signed by PW 10 Sharda besides its author PW 17 Investigating Officer. The Division Bench of the High Court declined to place any weight on the said circumstance purely on the ground that no other independent witness had signed the memo but it was signed only by "highly interested persons". The observation of the Division Bench in that regard is extracted below:

"It need hardly be said that in order to lend assurance that the investigation has been proceeding in a fair and honest manner, it would be necessary for the investigating officer to take independent witnesses to the discovery under Section 27 of the Indian Evidence Act; and without taking independent witnesses and taking highly interested persons and the police officers as the witnesses to the discovery would render the discovery, at least, not free from doubt."

19. In this context we may point out that there is no requirement either under Section 27 of the Evidence Act or under Section 161 of the Code of Criminal Procedure, to obtain signature of independent witnesses on the record in which statement of an accused is written. The legal obligation to call independent and respectable inhabitants of the locality to attend and witness the exercise made by the police is cast on the police officer when searches are made under Chapter VII of the Code. Section 100(5) of the Code requires that such search shall be made in their presence and a list of all things seized in the course of such search and of the places in which they are respectively found, shall be prepared by such officer or other person "and signed by such witnesses". It must be remembered that a search is made to find out a thing or document about which the searching officer has no prior idea as to where the thing or document is kept. He prowls for it either on reasonable suspicion or on some guesswork that it could possibly be ferreted out in such prowling. It is a stark reality that during searches the team which conducts the search would have to meddle with lots of other articles and

documents also and in such process many such articles or documents are likely to be displaced or even strewn helter-skelter. The legislative idea in insisting on such searches to be made in the presence of two independent inhabitants of the locality is to ensure the safety of all such articles meddled with and to protect the rights of the persons entitled thereto. But recovery of an object pursuant to the information supplied by an accused in custody is different from the searching endeavour envisaged in Chapter VII of the Code. This Court has indicated the difference between the two processes in the *Transport Commr., A.P., Hyderabad v. S. Sardar Ali* [(1983) 4 SCC 245 : 1983 SCC (Cri) 827 : AIR 1983 SC 1225] . Following observations of Chinnappa Reddy, J. can be used to support the said legal proposition: (SCC p. 254, para 8)

"Section 100 of the Criminal Procedure Code to which reference was made by the counsel deals with searches and not seizures. In the very nature of things when property is seized and not recovered during a search, it is not possible to comply with the provisions of sub-sections (4) and (5) of Section 100 of the Criminal Procedure Code. In the case of a seizure under the Motor Vehicles Act, there is no provision for preparing a list of the things seized in the course of the seizure for the obvious reason that all those things are seized not separately but as part of the vehicle itself."

22. In this case, the mere absence of independent witness when PW 17 recorded the statement of A-2 Ramesh and the knickers were recovered pursuant to the said statement, is not a sufficient ground to discard the evidence under Section 27 of the Evidence Act."

11.9. In *Ningappa Yallappa Hosamani* (supra) the Court observed as under :

"22. The time at which this incident is stated to have happened is at about 11 p.m. on 30-1-2005 and later the same persons were seen near the canal with both the motorcycles. Therefore the story of gunny bag containing the jaggery block is not believable. As held by the courts below it must have contained the dead body of Namadev. Taking into consideration this factor, we find that the prosecution has conclusively proved that Accused 1, 2, 6 and 7 had disposed of the dead body of Namadev by putting it in a gunny bag and burying it at a place near the canal, which was detected in furtherance of the voluntary information furnished by Accused 1 and 2.

23. It is also proved that the motorcycle of Namadev was drowned in the river by the accused, which was later recovered in furtherance of the voluntary information furnished by Accused 6. As regards Accused 1 and 2, since the dead body of Namadev was recovered in furtherance of the voluntary information furnished by them, the natural presumption, in the absence of explanation by them is that it was those two persons, who had murdered Namadev and had buried the dead body."

11.10. On the point of "defective investigation" Hon"ble Supreme Court in *State of Karnataka v. Suvarnamma*, (2015) 1 SCC 323 observed as under :

"11. It is also well settled that though the investigating agency is expected to be fair and efficient, any lapse on its part cannot per se be a ground to throw out the prosecution case when there is overwhelming evidence to prove the offence.

.....

18. As a result of the above discussion, it is clearly established that:

(i) Death of the deceased was within 7 years of marriage and she was subjected to harassment for dowry soon before her death. The death was in circumstances other than natural, and not accidental.

(ii) Mere lapse of investigating agency could not be enough to throw out overwhelming evidence clearly establishing the case of the prosecution.

(iii) False plea of the accused that they had no knowledge of burn injuries having been caused to the deceased was an additional circumstance against them.

In view of the above, the view taken by the High Court is clearly unsustainable."

11.11. The Hon"ble Apex Court has discussed the issue of "testimony of hostile witnesses" in Selvaraj v. State, (2015) 2 SCC 662 and Gudu Ram v. State of H.P., (2013) 11 SCC 546.

11.12. The Court in Selvaraj (supra) held thus :

"19. It is settled principle of law that benefit of reasonable doubt is required to be given to the accused only if the reasonable doubt emerges out from the evidence on record. Merely for the reason that the witnesses have turned hostile in their cross-examination, the testimony in examination-in-chief cannot be outright discarded provided the same (statement in examination-in-chief supporting prosecution) is corroborated from the other evidence on record. In other words, if the court finds from the two different statements made by the same accused, only one of the two is believable, and what has been stated in the cross-examination is false, even if the witnesses have turned hostile, the conviction can be recorded believing the testimony given by such witnesses in the examination-in-chief. However, such evidence is required to be examined with great caution."

11.13. Hon"ble Court in Gudu Ram (supra) in paragraph no. 19 observed as under :

"19. The law on the treatment of the evidence of a hostile witness is that the evidence of such a witness need not be completely rejected only because he has turned hostile. The court must, however, be circumspect in accepting his testimony and, to the extent possible, look for its corroboration."

12. For proper appreciation of evidence of prosecution witnesses of fact, it is desirable to reproduce them and accordingly are reproduced herein below :

12.1. Informant PW-1 VIKAS BAJAJ deposed as under :-

"fnukad 11-02-2004 dks eSa ch&191 ,&2 xhrk ,ikVZeSUV "kkyhekj xkMZu esa jgrk FkKA ml fnu "kkyhekj xkMZu ,DIVsU"ku&1 ds jkeyhyk eSnku esa 3 yk"kyx&2 diM+ksa esa ca/kh gqbZ dwM+s ds <+sj esa iM+h FkHA ;s yk"ksa ckgj ls ykdj Mkyh gqbZ ekywe gksrh Fkha bldh fyf[kr lwpuk eSus Fkkus esa nh FkHA og fyf[kr fjiksVZ esjs lkeus gSA esjs gkFk dh fy[kh o nLr[kr gSA bl ij izn"kZ d&1 Mkyk x;kA"

"On 11.02.2004, I resided at B-191 A-2, Geeta Apartment, Shaalimar Garden. On that day, three bodies wrapped in separate cloths were lying in a heap of garbage in Ramlila Maidan of Shaalimar Extension - 1. These bodies appeared to have been brought from outside and dropped there. I had given its written information at the police station. The written report is before me. It is in my writing and under my signature. It is marked as "Ex.-Ka-1"."

(English Translation by the Court)

12.2. PW-2 CHOTAN deposed as under :

"eS f?klkbZ dk dke djrk gwaA IyKV ua0 725 "kkyhekj xkMZu ,DIVsUlu izFke esa eSaus f?klkbZ dk dke fd;k FkKA eq>s ugh irk fd bl IyKV esa fdrus vkneh jgrs FksA "kkyhekj xkMZu ds jkeyhyk eSnku@ikdZ esa ,d efgyk o nks iq:"kksa ds "ko feys FksA mudks eSaus f?klkbZ ds nkSjku IyKV ua0 725 "kkyhekj xkMZu ,DIVsUlu izFke esa QW~ySV ua0 5] 4 esa ns[kk FkKA e`rd rhuksa ftl edku esa jgrs Fks eSaus ml idku esa gkftj vnkyr rhuksa eqyfteksu dks vkrs&tkrs ns[kk Fkk ijUrq eSa buds uke ugha tkurKA bu rhuksa eqyfteku esa ls eq>ls fdlh us dqN ugh dgkA tks rhu "ko feys Fks mudh gR;k fdlus dh eq>s ugha ekyweA iou us eq>s dHkh ;g ugha crk;k Fkk fd fouksn vkSj }kfjdk esjs HkkbZ gS u ;s crk;k fd ;s esjs fj"rsnkj gSaA"

bl Lrj ij xokg dks ADGC dh izkFkZuk ij i{kznksgh ?kksf"kr fd;k x;k rFkk xokg ls ftjg dh vuqefr nh xbZA

eq>s ugh irk fd ftl edku esa rhukas e`rd jgrs Fks og iou dk gS ;k ugh ;s ckr lgh gS fd ?kVuk ds ckn QW~ySV cUn iM+k FkKA njksxk th us eq>ls dksbZ iwNrKN ugh dh FkHA eSaus njksxk th dks ;g c;ku ugh fn;k Fkk fd iou ,d fnu eq>ls dg jgk Fkk fd edku esjs uke ls gS jg jgs gSa nwljs] bUgs fBdkus yxkus ds ckn gh [kkyh gksxkA eSa gkftj vnkyr eqyfteku esa ls iou dkSu gS dks ugh tkurk gwWaA ;g dguk xyr gS fd gkftj vnkyr eqyfteku us gh mu rhuksa e`rdksa dh gR;k dh gksA ;g dguk xyr gS fd eSa rhuksa e`rdks ds Hkh uke tkurk gwa vkSj ;s Hkh dguk xyr gS fd eSa eqyfteku ls fey x;k gwa vkSj vkt lp ckr ugha crk jgk gwaA"

"Chhotan, S/o Shri Bassi, Aged 40 years, Profession Grinding, R/o 20, Pappu Colony, PS Sahibabad, Ghaziabad stated on oath:

That I do the grinding. I had performed grinding work at plot no. 725, Shalimar Garden Extension-I. I do not know how many persons resided in that plot. The dead bodies of one lady and two men were found at Ramleela Maidan in Shalimar Garden. During the grinding work, I had seen them at flat no. 5/4 of plot no. 725 situated in Shalimar Garden Extension-I. I had seen the accused persons, who

are present in the court, visiting the house in which all the three deceased resided but I do not know their names. None of these three accused persons said anything to me. I don't know who had murdered those three persons whose dead bodies were found. Pawan has never told me that Vinod and Dwarika were his brothers nor has he told me that they were his relatives.

At this stage, the witness was, on an application moved by the AGDC, declared hostile and permission was granted for cross-examination of the witness.

I do not know whether or not the house belonged to Pawan in which all the three deceased resided. It is correct that after the incident, the flat remained locked. The Sub-inspector did not interrogate me. I had not stated to the Sub-inspector, "One day ago, Pawan was saying to me that this house was in his name but others were occupying the same. The same shall be unoccupied only after murdering them." I don't know who is Pawan among the accused persons present in the court. It is wrong to say that all those three deceased were murdered only by the accused persons who are present in the court. It is wrong to say that I also know the names of all the three deceased. It is also wrong to suggest that I have reached a settlement with the accused persons and am not disclosing the truth today.

(English Translation by the Court)

12.3. PW-3 Anees deposed as under :

eSa jksMh cnjiqj cspus dk dke djrk gwaA iou uke ds eqyfte dks eSa tkurk gawA ;s esjs ikl nqdku ij vkrs tkrs jgrs gSaA iou ds lkFk pkj vkneh vkrs FksA iou o fouksn dks uke ls tkurk gwa vkSj ckdh dks "kdy ls tkurk gwWaA eS gkftj vnkyr eqyfteksa dks tkurk gwWA iou o fouksn gSa rFkk rhls dk uke ugh tkurkA iou dk edku "kkyhekj XkkMZu esa gS eSa mlds lkFk dHkh mlds edku ij ugh x;kA "kkyhekj xkMZu esa eSaus rhu yk" ns[kh muesa ,d yk" vkSjr dh Fkh rFkk nks iq:"kksa dh FkhA rhuksa e`rd dkSu Fks ;s eSa ugha tkurkA os rhuksa dgk jgrs eSa ;g Hkh ugh tkurkA iou us esjs lkeus ;g dgk Fkk fd IyKV esjs gSa muls fuiVuk iMsxkA ?kVuk ls ,d fnu igys iou] fouksn o buds nks lkFkh eq>s jkr dks 10-30 cts feys Fks vkSj ;s dgk Fkk fd eq>s IyKV ij dCtk ysuk gS vkSj ml flyflys esa rhuksa dks [kRe djuk gSA

bl Lrj ij xokg dks ADGC dh izkFkZuk ij i{knzksgh ?kksf"kr fd;k x;kA rFkk xokg ls ftjg dh vuqefr nh xbZA

ADGC ;s dguk xyr gS fd eq>s ;g tkudkjH gks fd iou eqyfte dk edku "kkyhekj xkMZu esa IyKV ua0 725 QW~ySV u0 5@4 gks vkSj vkt eSa tku cw>dj lgh ckr ugh crk jgk gwaA ;g dguk xyr gS fd eSa dHkh&2 iou ds ml edku ij tkrk Fkk vkSj ml edku esa tks ykx jgrs Fks mUgh dh yk" feyh gksA ;g dguk xyr gS fd eSa vkt lgh ckr blfy;s u crk jgk gwWa fd eSa eqfyteku ls fey x;k gwaA

xokg us Lo;a dgk fd gkftj vnkyr O;fDr vkt ls djhc 1&1@2 o"kZ igys dqN cnek"kksa dks ysdj vk;k Fkk vkSj ;g /kedh fn;k Fkk fd vxj xokgh nksxs rks tku ls ekj nsaxsA xokg us ;g Hkh dgk fd bl O;fDr dk eSa uke ugh tkurkA vnkyr ds

iwNus ij ml O;fDr us viuk uke Hkhe ;kno vius firk dk cnu ;kno crk;k vkSj viuk
iwjk irk xyh u0 7 igkMxat crk;kA vkSj ;s Hkh crk;k fd eSa >kj[kM esa jgrk
gwWaA esjk iwjk irk xkao ls:ok ftyk fxjMhg >kj[kaM gS eSaus bl ?kVuk dh
fjiksVZ djkbZ Fkh vkSj ftlesa ;s idMs+ x;s Fks rFkk budh tekur gqbZ FkhA

eSaus Fkkus esa ;g fjiksVZ fy[kkbZ Fkh fd ;s tksx eq>s ekjus vk;s gSa esjs ikl og
fjiksVZ ugha gS esjh fjiksVZ ij iqfyl us eqdnek dk;e fd;k ;k ugh ;g iqfyl crk;sxhA
tks fjiksVZ eSaus buds f[kykQ fy[kkbZ Fkh og eSa ykdj ns nwWaxkA

eSaus tks jksMh cnjiqj cspus dk dke crk;k gS eSaus mldh fdlh ls btktr ugh ys
j[kh gSA esjk NksVk lk dkjksckj gS eq>s esjh nqdku dk uEcj Hkh irk ugh gS xyh
ua0 2 gS bu yksxkas us eq>ls dHkh jksMh cnjiqj ugha [kjhnkA ftu yksxksa us
eq>ls jksMh cnjiqj [kjhnk eSa mudks ugh tkurk gwaA eq>s ugh irk fd ;s eqyfteku
fdlh vkijkf/kd ekeys es fyIr gS ;k ughaA

;s dguk xyr gS fd eSa iqfyl ds dgus ij ;s vkt c;ku ns jgk gw ;s dguk Hkh xyr gS fd
eSa eqyfteku dks u tkurk gwa ;s Hkh dguk xyr gS fd eSaus >wB cksyk gSA ftl
QW~ySV ds ckjs esa iou eq>ls crkrk Fkk ml QW~ySV dks eSus ugha ns[kk gS
iou eq>ls ;g crk jgk Fkk fd ml QW~ySV esa 3 yksx dCtk fd;s gq, jg jgs gS mu
rhuksa dks gVkuk gSA

for accused

iou us tc ;s ckr eq>ls dgh rks ml le; dksbZ ugh FkkA ;s ckr vkt ls djhc 2 lky igys
jkr ds 10-30 cts "kkyhekj es dgh FkhA ;s ckr 80 QqV jksM ij dgh FkhA "kkyhekj
xkMZu esa pkSd ij dgh FkhA eq>s ugh irk fd ogkaW fdl fdlds edku gSA ogkWa
gekjk iMksl gSA ge ?kwers jgrs gS ml le; eaS iIiw dkyksuh esa jgrk gwaA
200&250 xt nwj gS tgkaW ;g ckr dgh FkhA ftl le; iou us eq>ls ;g ckr dgh Fkh
mlds lkFk gkftj vnkyr 3 vkSj vfHk;qDr Hkh ekStwn FksA gkftj vnkyr vfHk;qDrksa
esa ls ,d dh vksj b"kkjk djds dgk fd ;s fouksn gS vkSj nwljk iou gSA

dksVZ vkoljos"ku%& ftl O;fDr dk uke fouksn crk;k mldk uke iou gS ftl O;fDr dk
uke iou crk;k mldk uke fouksn gSA

;g dguk xyr gS fd eSaus eqyfteku ls :0 10]000@& xokgh u nsus ds ekWaxs gks
vkSj muds euk djus ij eSaus ;g xokgh nh gksA"

"Stated on oath: I do the business of selling Rodi Badarpur. I know the accused
called Pawan and with other names. They visit my shop. Four persons would
come with Pawan. I know Pawan and Vinod by their names while I recognize
others by their faces. I know the accused present in the court. The two of them
are Pawan and Vinod but I do not know the name of the third one. Pawan's
house is in Shalimar Garden. I never visited his house. I saw three dead bodies,
one of them being female and two others being male. I do not know who three
deceased were and where they lived. Pawan had said before me: "The plots are
mine and they will have to be eliminated. One day prior to the occurrence,
Pawan, Vinod and their two companions met me at 10.30 pm and stated: "I want
to take possession of the plot and for this purpose I have to eliminate all the
three".

At this stage, on the request of ADGC, the witness was declared hostile and permission to cross the witness was granted.

ADGC

It is wrong to say that I might have been in the know of the accused Pawan's house at Shalimar Garden being Plot no 725, Flat no 5/4 and today I am deliberately not telling the truth. It is wrong to say that I would sometimes visit Pawan's house and the dead bodies recovered might have been of those who resided in that house. It is wrong to say that I am not telling the truth being in collusion with the accused persons.

The witness has himself stated that the person present in court, accompanied with some miscreants, had around 1 - 1 ? years back come to him and threatened saying that if he dared to give testimony, he would be killed. The witness has also stated that he does not know the name of this person. On being asked by the court the person identified himself as Bhim Yadav s/o Badan Yadav and told his full address to be Gali No 7, Paharganj. He also stated that he resided in Jharkhand and his full address was village Seruwa, district Giridih, Jharkhand. I had registered a report of this occurrence following which these people were arrested and later released on bail.

I had registered a report that these people had come to kill me. I do not have the said report. Whether a case was registered upon my report or not, can be told only by the police. I will present the report which was scribed by me against them.

I have stated to be into the business of selling Rodi Badarpur in respect of which I have not obtained permission from anybody. I do not know the number of my shop but it is in Gali no 2. These people never purchased Rodi Badarpur from me. I do not know the persons who purchased Rodi Badarpur. I do not know whether or not these accused persons are involved in any criminal case.

It is wrong to say that I am giving testimony on being tutored by police. It is also wrong to say that I do not know the accused persons. It is also wrong to say that I have told a lie. I have not seen the flat which had been spoken of by Pawan. He was saying, " Three persons have been residing in that flat by way of illegal possession and these persons are to be removed".

For accused

When Pawan stated this thing to me, none was present. It had been stated around 2 years ago at 10.30 pm in Shalimar, on the 80 feet road and at the intersection of Shalimar Garden. I do not know whose houses are there. That place is in our neighbourhood and we hang out over there. At present I stay at Pappu Colony. The place where these things had been stated is around 200-250 yards away. That time Pawan had told me these things. Three other accused present in court accompanied him. Pointing out towards the accused he identified one as Vinod and the other as Pawan.

Court observation:

The person which was identified as Vinod is Pawan while the other identified as Pawan is Vinod.

It is wrong to say that I might have made a demand of Rs 10,000/- for not giving testimony and on being refused I might have given this testimony."

(English Translation by the Court)

12.4. PW-4 Mukesh Sharma deposed as under :

gekjh fcfYaMx 725 ds fdlh QW~ySV esa ls njksxkth us nhokjksa ij ls [kwu ds / kCcs fy;s Fks rFkk ,d csYV ftl ij [kwu yxk Fkk dCts esa fy;s Fks ekSds ij lhy eksgj fd;k Fkka QnZ ekSds ij rS;kj dh FkhA xokg us QnZ ij nLr[kr "kuk[r fd;sA eq>s ugha irk fd ftu O;fDr;ksa o efgyk dk "ko ikdZ esa rFkk flj ukys esa feys Fks os yksx gekjh fcfYMx es jgrs Fks ;k ughaA bl Lrj ij xokg dks ADGC dh izkFkZuk ij i{knzksgh ?kksf"kr fd;k x;k rFkk xokg ls ftjg dh vuqefr nh xbZA

ADGC

eq>sa tkudkj ugha gS fd tks "ko ikdZ es o flj ukys esa feys Fks os e`rd esjh gh fcfYMx ftlesa eSa jgrk gwa mlh QW~ySV esa jgus okyksa ds Fks ;k ughA ;s dguk xyr gS fd esjk eqfyteku ls QSlyk gks x;k gks vkSj blhfy;s lgh ckr ugh crk jgk gaWwA 5@4 QW~ySV dh esjs lkeus iqfyl us ryk"kh ugha yh FkhA xokg us QnZ ij vius nLr[kr "kuk[r fd;sA QksVks ,Yce iqfyl us esjs lkeus cjen ugh fd;s FksA iqfyl okyks us esjs lkeus xqM~Mh ds uke dh xkM+h dk bU";ksjsUI oxSjg Hkh cjen ugh fd;s FksA fxjMhg xzkeh.k dh iklcqd lquhrk nsoh dh o Jherh clUrh nsoh ds KVP o Jherh lquhrk nsoh ds KVP o Jherh dkfy;k nsoh ds KVP o Jherh dkUrh nsoh ds uke ls KVP iqfyl us esjs lkeus cjen fd;sA esjs ls iqfyl us flQZ nLr[kr dj;k;s FksA iqfyl us esjs nLr[kr ftl fnu dj;k;s Fks mlh fnu esjs c;ku fy;s Fks mlh fnu eSaus cksy fn;k Fkk fd eq>s dksbZ tkudkj gS xokg dk c;ku 161 Cr.P.C. i< dj lquk;k x;k rks mlus dgk fd eSaus ,slk c;ku ugha fn;kA irk ugha dSls fy[k fy;kA ;g dguk xyr gS fd eSa eqfyteku ls feydj o muds Mj dh otg ls lgh c;ku ugh ns jgk gwaA

To Court eSa cPpksa dh lkbZfdy cukus dh QSDV~h dk ekfyd gwaA esjs QW~ySV dk uEcj 725 LIG-1 gS ;g ,DIVsu"ku ou "kyhejk xkMZu esa gSA ?kVuk okyk QW~ySV 5/4 IInd QW~yksj ij gSA esjk lcls uhps QW~ySV gS mlds mij Ist QW~yksj gS rFkk IInd QW~yksj esa ?kVuk okyk QW~ySV gSA eSa vius bl QW~ySV esa 3 lky ls jg jgk gwaWA blds igys eSa "kgknjk fnYyh esa jgrk FkkaA esjk QW~ySV two room dk gSA ?kVuk okyk QW~ySV ,d :e dk gS eSa ftl QW~ySV esa jgrk gwa dkyksuh gS dkWyksuh esa dksbZ esEcj ugha gS ml fcfYaMx esa ftrus yksx jgrs gS eSa lcdks tkurk gawWA esjs vius QW~ySV esa vkus ds yxHkx ,d ekg ckn gh ;g ?kVuk gks xbZ FkhA QW~ySV dkyjk fcfYMj ls fy;k Fkka fcfYMj dk uke jkds"k dkyjk gSA"

"Mukesh Sharma, S/o Shri Hukum Chand Sharma, Aged 32 years, Profession Business, R/o 725/UG-1, Shalimar Extension, Sahibabad, PS Sahibabad, District Ghaziabad stated on oath:

That the Sub-inspector had collected samples of blood-stains from a flat located in our building no. 725 and the bat which was stained with blood was taken into custody and sealed at the spot. The memo was prepared at the spot and signature of the witness was taken on it. I do not know whether or not the men and lady, whose dead bodies were found in the park and heads in the nallah, resided in our building.

At this stage, the witness was, on an application moved by the AGDC, declared hostile and permission was granted for cross-examination of the witness.

ADGC

I have no knowledge as to whether or not the dead bodies found in the park and heads found in the nullah were of the deceased who resided at a flat in the building I reside in. It is wrong to say that I have reached a settlement with the accused persons and for this reason I am not disclosing the truth. The police did not search the flat no. 5/4 in my presence. The witness identified his signature on the memo. The police did not recover photo album in my presence. The police did not recover even the insurance etc. of Guddi's vehicle in my presence. Sunita Devi's passbook of Giridih Gumin, KVP of Smt. Basanti Devi, KVP of Smt. Sunita Devi, KVP of Smt. Kaaliya Devi and KVP of Smt. Kanti Devi were recovered by the police in my presence. The police obtained just my signature. The police recorded my statement on the same day my signature was obtained. On the same day, I had told them that I had no knowledge. The statement of the witness recorded u/s 161 Cr.P.C. was read over to him, to which he said, "I did not give such a statement. I do not know how it was written. It is wrong to say that I am, in collusion with the accused persons, not disclosing the truth for being afraid of them."

To Court

I am owner of a factory manufacturing children's bicycles. My flat no. is 725/UG-1. This extension-I is in Shalimar Garden. The flat bearing no. 5/4 in which the incident had occurred is situated on the second floor. My flat is on the lowest floor. First floor is above my flat and the flat in which the incident had occurred is situated at the second floor. I have been residing in my flat for 3 years. Prior to this, I resided at Shahdara, Delhi. My flat consists of two rooms. The flat in which the incident had occurred consists of one room. The flat in which I reside is in a colony. There is no member in the colony. I know all the persons who reside in the building. This incident had occurred just one month after my arrival at the flat. I had purchased the flat from Kalra Builder. Builder's name was Rakesh Kalra."

(English Translation by the Court)

12.5. PW-5 Rakesh Kalra deposed as under :

eSa fcYMj dk dk;Z djrk gwaWA esjh QeZ dk uke jktu fcYMIZ ,M izeksVIZ gSA eSaus IyKV ua0 725 QW~ySV ua0 S-4 "kkyhekj xkMZu ,DI&1 lk0 ckn iou dks

fnukad 27-08-2003 dks cspk Fkka ftldh dher ;kn ugh gS fdrus esa cspk Fkka

jkeyhyk eSnku esa eSaus rhu yk"ksa iMh ns[kh FkhaA mudk gqfy;k fduls feyrk Fkk /;ku ugh gSA ;s yk"ksa jkeyhyk xzkmUM esa iM+h Fkha

ADGC dh izkFkZuk ij xokg dks i{kznksgh ?kksf"kr fd;k x;k ftjg dh vuqefr pkgh vuqefr nh xbZA

ADGC eSa iou ds vykok fdlh vU; vkneh dks ugha tkurk gaWw eSa ugh crk ldrk gwaW fd tks yk"ksa feyh Fkh og yk"ks QW~ySV esa jgus okyksa dh Fkh ;k ughaA ;g dguk xyr gS fd QW~ySV dh dher lq[knso us nh Fkh vkSj lq[knso us gh QW~ySV iou ds uke ls [kjhnk Fkk eSa lq[knso dks ugh tkurk o igpkurk gaWwA ;g dguk xyr gS fd tks yk"ks eSaus ns[kh Fkh og iou ds QW~ySV esa jgus okyks dh Fkh rFkk os iou ds fj"rsnkj gksaA

iou us esjs ls QW~ySV ua0 725 dks cspus dks dgk Fkk eksckby 9810194095 ij ckrS dh Fkha ;g dguk xyr gS fd tc iou us QW~ySV cspus dks dgk Fkk rc mldh vkokt ?kcjkbZ gksA eq>s ;kn ugha fd iou us QW~ySV cspus ds fy;s dc Qksu fd;k Fkka

eq>s ugha irk fd dc gR;k gqbZ Fkh o dc Qksu gqvk Fkka eSaus njksxk th dks ;g c;ku ugh fn;k Fkk fd eq>s "kd gS fd iou us gh ;g gR;k dh gksA iou gkftj vnkyr gS xokg us igpkuk og >kj[k.M dk jgus okyk gS eq>s ugh irk fd ftu yk"ksa dks eSaus ns[kk Fkk og >kj[k.M ds jgus okys Fks ;k ughaA ?kVuk ds lECU/k esa njksxkth us esjs ls iwNrkn dh Fkha

;g dguk xyr gS fd eSa eqyfteksa ds Mj ds dkj.k ls lgh xokgh ugh ns jgk gwaWA ;g dguk xyr gS fd eSa eqyfteksa ls fey x;k gwaW vkSj lgh ckr ugh crk jgk gwaWA

` By accused

eSaus yk"ksa dks flQZ ns[kk Fkk fdldh Fkh ;s eq>s ugha irk gSA fti QW~ySV dks eSaus iou dks cspk Fkk dkSu jgrk Fkk eq>s ugh irk gSA iou us fdi Qksu ls esjs iki Qksu fd;k Fkk eq>s ugh irk gSA

dksVZ }kjk dzkl %&

;g QW~ySV u0 725 eSaus fnukad 27-08-2003 dks cspk Fkk fQj dgk S-4 QW~ySV cspk Fkka QW~ySV dk dCtk eSaus iou dks 2&4 fnu ckn ns fn;k Fkk dCtk nsrs le; iou vdsyk gh QW~ySV esa x;k Fkk vkSj dksbZ ugha x;k Fkka dCtk ns nsus ds ckn eSa dHkh ns[kus ugh x;k fd ml QW~ySV esa dkSu&2 yksx jg jgs gaSA ml QW~ySV esa eSaus cjkcj iou ds vykok vU; fdldh dks jgrs ugha ns[kk Fkka

eSa tc Hkh ogkaW tkrk Fkk o iou eq>ls feyrk jgrk Fkk blfy, eSa dg jgk gwaW fd iou gh QW~ySV esa jgrk Fkka ml QW~ySV esa eSaus fdldh vkSj dks jgrs ugh ns[kk Fkka tc eSa 2&4 ckj ogkWa x;k Fkk rc iou us eq>ls QW~ySV cspus ds ckjs esa dksbZ ckr ugha dh Fkha ml QW~ySV esa iou vdsyk gh jgrk Fkk mldk ifjokj ugha jgrk Fkka

iou dk Qksu ?kVuk ls igys x;k Fkka eSaus iou ls ;g ugh iwaWNk fd QW~ySV D;ks

cspuk pkgrs gks vkSj uk gh iou us eq>s crk;k FkkA eq>s vkt rd ugh ekywe gqvk fd iou QW~ySV D;ksa cspuk pkgrk FkkA eSa fo"okl iwoZd dgrk gaWw dh ftu yksxksa dh e`R;q gqbZ Fkh og ml QW~ySV esa ugha jgrs FksA vxj iqfyl rQ~rh"k esa ;g ckrs vk jgh gks fd ;s yksx mlh QW~ySV esa jgrs Fks rks ;g ckr xyr gSA ;s yksx ftudh yk"ks feyh gS rks ;g ckr xyr gSA"

"Shri Rakesh Kalra S/o Chaman Lal Kalra, Age: 44 years, Occupation: Builder, R/o 329 B/J 81C, Dilshad Garden, PS Seemapuri, Delhi-95, stated on oath:

I am a builder. My firm is Rajan Builders and Promoters. I had sold Plot No. 725, Flat No. 5-4 Shalimar Garden Ext-1, Sa. Baad, to Pawan on 27.08.03; but the price at which I sold it, I don't remember.

I had seen three bodies lying on the Ramlila ground. I cannot recall whom their descriptions matched with. These bodies were lying on the Ramlila ground.

On the request of ADGC, the witness was declared hostile. The permission for cross examination was sought. The permission was granted.

ADGC

I don't know any other person except Pawan. I cannot say whether the bodies which were found, were of the inhabitants of the flat or not. It is wrong to say that the price of the flat was paid by Sukhdev and it was Sukhdev, who had purchased the flat in the name of Pawan. I don't know and recognise Sukhdev. It is wrong to say that the bodies, which I had seen, belonged to the inhabitants of the flat and they might have been relatives of Pawan.

Pawan had told me about selling the flat No. 725. He had talked with me on the Mobile No. 9810194085. It is wrong to say that there was an element of fear in the voice of Pawan when he talked with me. I cannot recall when Pawan had made a phone call to me over selling his flat.

I don't know when murders were committed and phone call was made. I did not give this statement to the Inspector that I doubt Pawan to have committed murders. Pawan is present in the court. The witness identified that he (Pawan) was a resident of Jharkhand. I do not know whether the bodies of the persons I have seen, were the residents of Jharkhand or not. In relation to the occurrence, I was enquired.

It is wrong to say that I am not giving truthful testimony because of being afraid of accused persons. It is wrong to say that I have colluded with the accused persons and I am not telling the truth.

By accused

I had only seen the bodies. I don't know whose bodies those were. I don't know who was living in the flat I had sold to Pawan. I don't know what phone Pawan had used.

Cross by the court: -

"This flat No. 725 I had sold on 27.08.03. Later he said that he had sold 5-4 flats. The possession of the flat I had handed over to Pawan after 2-4 days. At the time of taking possession of the flat, Pawan had gone alone. After handing over the possession, I never went there to see as to who were the persons living there. I had never seen any one other than Pawan living regularly over there.

Whenever I went there, I would meet Pawan. This is the reason why I am saying that Pawan lived in the flat. I had not seen any other person living there. Whenever I went there 2-4 times, Pawan never talked about selling the flat. He used to live alone in that flat. His family did not live there.

Pawan had made a phone call before the occurrence. I did not ask why he wanted to sell the flat, nor did Pawan tell me in that regard. I do not know as yet why Pawan wanted to sell his flat. I say confidently that the persons who died did not live in the flat. If it is coming out in the investigation that these persons who died used to live in the flat, then it is wrong".

(English Translation by the Court)

12.6. PW-6 Babloo Tyagi deposed as under :

"fnukad 11-02-2004 dks eSa jke yhyk eSnku ugh x;k Fkka iapk;r ukeksa dks pkSdh esa Hkjk x;k Fkka iapk;r ukeksa ij gLrk{kj xokg us f"ukuk[r fd;sA

ADGC dh izkFkZuk ij xokg dks i{kznksgh ?ksf"kr fd;k x;k ftjg dh vuqefr pkgh vuqefr nh xbZA

By ADGC - eq>s ugha irk fd jkeyhyk eSnku es ,d efgyk o 2 iq:"kksa ds "ko feys FksA ;g dguk xyr gS fd iapk;r ukek ekSds ij Hkjk x;k x;k gksA eSaus njksxk th dks c;ku fn;s FksA ;g dguk xyr gS fd eSa eqyfteksa ls fey x;k gWWa o Mj ds dkj.k ls lgh ugha crk jgk gWWaA"

I had not gone to the Ramlila ground on 11.02.2004. I had gone to chowki for the panchayatnama. The witness identified his signature on the panchayatnama.

On the request of ADGC the witness was declared hostile. The permission for the cross-examination was granted.

I don't know that the bodies of a woman and two men were found on the Ramlila ground. It is wrong to say that panchayat nama were filled on the spot. I gave statement to Darogaji. It is wrong to say that I have colluded with accused persons and due to fear not telling the truth."

(English Translation by the Court)

13. Now we will take into consideration evidence of formal witnesses of prosecution which is as under :

13.1. PW-7 Dr. A.K. Mishra has deposed that on 12.02.2004 he was posted on postmortem duty in District Hospital Ghaziabad. On that day at about 5.15 P.M. He examined dead body of an unknown woman aged about 50 years. Right and

left ribs of chest of dead body were broken. Fractures were simple. Length of dead body was 1 to 7 cm and width was 21 cm., approx. 150gm semi digested food was found in the stomach of dead body. Ovary was empty. On the same day at 4.50 P.M. he conducted postmortem on dead body of a male aged about 35 years. Approx. 250gm semi digested food was found in the stomach of dead body. At 5.00 P.M. on the same day he also conducted postmortem on the dead body of another unknown male aged about 25 years. Body was of strongly built person. Approx. 200gm semi digested food was found in the stomach of dead body. On all the three dead bodies "Rigor Mortis" was over, heads of the deceaseds were separated from the joint of throat and chest and were not available. All the three dead bodies were one and half day old. Death was caused due to separation of head from the bodies. It could not be said that above murders were committed in unconscious condition of deceaseds or not.

Witness has proved postmortem reports prepared by him as Exhibit "Ka-2", Exhibit "Ka-3" and Exhibit "Ka-4" respectively.

In his cross examination he has stated that after postmortem dead bodies were handed over to the Police. entry of returning of dead bodies to the Police is made in the register kept in the postmortem house, in that register Constable number and their signatures were obtained. Doctor is not involved in this job and these all things are being done in the supervision of pharmacists and dead bodies were returned in the sealed condition. After postmortem and thereafter till sealing of the dead bodies no relative of deceased persons came there. In the external examination of dead bodies of female, no proof was found about sexual assault. At the time of postmortem dead bodies were not de-composed. All postmortems were done in fifteen minutes interval. It is not possible to tell that the trio deceased were murdered simultaneously or not.

(Emphasis added by us)

13.2. PW-8 Constable 619 Manohar Lal has deposed that on 11.02.2004 he was posted as clerk in Police Station - Sahibabad. On that date he registered Case Crime No. 115/04 under Section 302/201 I.P.C., on the basis of the written report submitted by PW-1 Vikas Bajaj at 14.05 hours and made entry regarding registration of the case in G.D. Rapat No. 37. Carbon copy of which was available before him. The report of S.S.P. Office regarding weeding out of original G.D. and carbon copy of aforesaid G.D. Rapat were proved by the witness as Exhibit "Ka-6" and Exhibit "Ka-5" respectively.

In cross examination, he has stated that original G.D. is weeded out after five years. The person who lodged the first information report is not related to the incident and he has merely given information to the Police. After preparing chik FIR he had obtained signatures of the informant.

13.3. PW-9 Dr. Ramesh Kumar deposed that on 19.02.2004 he was on postmortem duty. On that day he conducted postmortem on three heads, among them one was of Smt. Kaliya. Deceased was aged about 45 years and found a

Rotten wound 12cm X 11cm. Head of another deceased was of Hari Yadav S/o Jagan Yadav aged about 27 years and found a Rotten wound 12cm X 13cm and the third head was of Keshav S/o Rewati Mehto aged about 32 years and found a Rotten wound 11cm X 13cm.

In respect to all the three heads the witness opined that death was possible before 8-10 days. Hairs of heads were uprooted, tongues were placed between the teeth, eyes were propped out. No spinal cord was available in skulls base. From below the heads were cut through out, brains were liquidized, spinal cords were also cut throughout. He found that death of deceaseds were caused due to above referred injuries found on the respective heads. Duration of death was told 8-10 days with six hours variation on both sides. He has proved postmortem reports of the above heads as Exhibit "Ka-7", Exhibit "Ka-8" and Exhibit "Ka- 9", respectively.

In cross examination, he has stated that he could not tell that due to being rotten the faces were capable of identification or not, despite decomposition it could be known that face is of man or woman. At the time of postmortem names of deceased were written by the Police personnel. Death could have been taken place before 8-10 days of postmortem. From death till postmortem heads were not kept in preservative due to their decomposition.

(Emphasis added by us)

13.4. PW-10 Inspector G.P. Yadav Investigating Officer of the case deposed that on 11.02.2004 he was posted as Station House Officer at Police Station - Sahibabad. On that day informant Vikas Bajaj submitted written report at the Police Station stating therein that three dead bodies were lying in the Ramleela Maidan at Shalimar Garden Extension-I. On the information he rushed to the spot along with police personnel, after getting prepared inquest reports and other necessary papers in his supervision, by S.S.I. Mahendra Singh Bhadauriya (PW-11), sent the dead bodies for postmortem. He made spot inspection, took into possession blood stained mattress, quilt cover, blood stained printed bed sheet, another printed bed sheet, white coloured plastic mattress, one blood stained plastic sheet (momiya) and blood stained rope of "munj", blood stained page of diary and prepared their recovery memos as well as the site plan. He made efforts to know whereabouts of deceased. The witness further deposed that he sent S.S.O. Mahendra Singh Bhadauriya (PW-11) to the homes of deceaseds. On 17.02.2004, he arrested accused Vinod and Dwarika and on their pointing out recovered three heads from a drain (nala). Prepared site plan of the place where heads were recovered, recovery memos of heads and necessary papers were prepared and recovered heads were also sent for postmortem.

He also searched House No. S-4 Plot No. 725 and took samples of blood stained and plain "plaster" from the walls, took into possession a photo album containing photos of deceased Hari, Kaliya, Sukhdev and other family members, recovered insurance and registration papers of vehicle No. JS 12A-3766 registered in the

name of Guddi W/o Sukhdev, pass book of Girdih Gramin Bank in the name of Sunita Devi. Recovered separate sets of Kisan Vikas Patra amounting to Rs.50,000/- each in the names of Smt. Basanti Devi W/o Chandu Yadav, Smt. Sunita Devi W/o Amrit Pratap, Kaliya Devi W/o Rewati, Smt. Kanti Devi W/o Dinesh Yadav and prepared their recovery memos. He also recorded statements of informant/complainant Vikas Bajaj, Mahesh S/o Mata Prasad R/o Ghirwa, Police Station - Girdih, present address Akash Ganga Courier (illegible), Chandra Dev @ Chandi S/o Jugat Lal Yadav. Along with Mahesh and Chandra Dev @ Chandi he came to Ghaziabad, who after looking the dead bodies told that probably those dead bodies were of Hari Yadav S/o Jugal, Keshav Prasad S/o Rewati and Smt. Kalika W/o Rewati R/o Ghirwa (illegible). He further recorded statement of Chottan S/o Wasi Khan R/o B-243, IInd Floor, Shalimar Garden, Anees S/o Bandu R/o Pappu Colony, P.S. - Sahibabad, District - Ghaziabad and builder Rakesh Kalra. He recorded statements of Tilak Mahto and Chandra Mehto and also statements of witness of inquest reports as well as statements of Mukesh Sharma and Babloo Tyagi.

The witness also deposed that he copied statement of Sudhir Kumar, Ashok Kumar, Shyam Sunder and others in the case diary. He also copied inquest reports, postmortem reports. After completion of investigation filed separate charge sheets against accused-appellants Pawan, Chandra Deo, Vinod and Dwarika. A separate charge sheet was also filed against Arvind Raut and Shyam Sunder in their absence. He proved the aforesaid charge sheets as Exhibit "Ka-24, 25 & 26".

He stated in his cross examination that from October 2003 to May 2005 he remained posted at Police Station - Sahibabad. He took over investigation of the case on 11.02.2004. Statement of informant PW-1 was recorded right after the registration of FIR. Informant PW-1 was not eye witness of the incident. Statement of Chottan PW-2 was recorded on 12.02.2004 at his residence. PW-2 told names of all the three accused Pawan, Vinod and Dwarika in his statement. Statement of witness Anees PW-3 was also recorded on the same day. He also named all the above three accused. Pawan was the owner of House No. S-4 725. Head less dead bodies were found in the park, and subsequently heads were found in drain (nala). When dead bodies were found in the park, people knowing them told that probably the dead bodies were of Keshav, Smt. Kalia and Hari Yadav @ Hariya. After recovery of heads true identity of deceased persons was established. Blood stained and plain soil, photo album, pass book and Kisan Vikas Patra were taken into possession from house no. S-4 725 in which murders were committed. He has denied suggestion to the effect that none was witness of these recoveries. Public was made witness of recovered articles. It is wrong to say that recovery memos were made in the Police Station. When they went to House No. S-4-725 it was locked. The house was searched after breaking the lock, no permission was taken for breaking the lock, this house was at fourth floor. Statements were recorded of Shivram, Dinesh, Satendra etc. who were living in surrounding houses. The witness denied the suggestions put to him that

deceased were not correctly identified and he submitted false charge sheets on the basis of insufficient evidence.

13.5. PW-11 Inspector Mahendra Singh Bhadauriya Deposed that on 11.02.2004 he was posted as S.S.I. at Police Station - Sahibabad. On that date Case Crime No. 115/04 under Sections 302, 201 I.P.C. - State v. Unknown for murder of unknown deceased was registered. Investigation of which was taken over by Inspector G.P. Yadav (PW-10). He also went with PW-10 on the place of occurrence and under his instructions prepared inquest memos of one woman and two men. He also prepared sample of seal, letters to C.M.O., S.P.O., R.I., Challan Lash, Photo Lash and proved the above documents as Exhibit "Ka- 27" to Exhibit "Ka-45". After sealing the dead bodies he sent them for postmortem through Constable Sohan Pal and Om Pal along with necessary documents. On 13.02.2004 under instructions of superior officers he went to Village Gawan of District Girdih, Jharkhand along with photographs of dead bodies of trio deceaseds. There he showed the photographs of trio dead bodies to the witnesses Tilak Mehto and Chandi Yadav. They identified the woman as Kaliya Devi and men as Keshav and Hari Yadav. Journalist Ashok Kumar and Sudhir Kumar of Dainik Hindustan also identified one photo of dead body as Kesho Yadav. Written reports of both the Journalists were submitted to Investigating Officer of the case. Chowkidar of the Village - Gaura/Gawan Shyam Sunder Tuli also identified trio dead bodies. His statement was written by him. He proved both the written reports as Exhibit "Ka-21" and Exhibit "Ka-22" and the statement of Chowkidar as Exhibit "Ka-23".

Heads of the trio deceaseds were found separately, which were also sent for postmortem along with necessary documents. Sample seal, letter to C.M.O., Photo Lash, Challan Lash etc. of the recovered heads were prepared by Chowki Incharge S.I. Hari Shanker. He proved the above documents as Exhibit "Ka-46 to Ka-63".

In his cross examination he deposed that he prepared inquest reports of dead bodies in which two were of male and one was of female. The dead bodies could not be recognised by looking at them. Till the time of sealing the dead bodies they were not identified by any one. Inquest reports of heads were not prepared by him rather those were prepared by S.I. Hari Shanker Yadav. Trio heads were found after 6-7 days of the incident. Dead bodies were found on the same day. They were not decomposed. He did not see the heads. Hari Shanker is alive but has been retired.

(Emphasis added by us)

13.6. PW-12 Sub Inspector Hari Shanker Singh Deposed that on 17.02.2004 he was posted at Police Station - Sahibabad. Under instructions of the then Station House Officer he prepared inquest reports on 18.02.2004 of heads of deceased Hari Yadav S/o Jugal Yadav, Smt. Kaliya and Kesav before the witnesses and sent after sealing them in the cloth for postmortem through Constable 292 Surendra

and Constable 284 Vipin. Same day heads of deceased Keshav S/o Rewati Mahto cut from throat . Same day head of Smt. Kaliya W/o Rewati Mahto R/o Village Taran, Police Station - Garwa District - Girdih, Jharkhand and prepared letter to C.M.O., Photo Lash, Challan Lash, inquest reports and other papers which are in his hand writing which were already marked as Exhibit "Ka-46 to Exhibit "Ka-63". He has prepared inquest reports. He was not Investigating Officer of the case and prepared them under the instructions of Station House Officer, Inspector G.P. Yadav. I.O. was on duty on that date and busy in the investigation of the case. Trio heads were found in the drain and capable of identification. He has written in the inquest reports that heads were some swollen and rotten. He denied suggestions given to him by the defence to the effect that trio heads were in rotten condition and not capable of identification and he was giving false evidence.

Answer to Question No. I

14. Now a days, almost in all the criminal cases defective Investigation is a common feature.

15. Hon"ble Apex Court has observed in State of West Bengal v. Meer Mohd. Umar and Others - (2000) 8 SCC 382). as under :

"41.in our perception it is almost impossible to come across a single case wherein the investigation was conducted completely flawless or absolutely full proof."

16. There are two types of defective investigations. Defects of one category come in the natural course and are not fatal for the prosecution while other type of defects of investigation are result of cautious approach to arrive at a particular conclusion or to provide benefit to any particular party and that comes under the category of serious and dangerous defect and proves to be fatal for the prosecution. This approach of Investigating Officers is having a very growing tendency now a days and are damaging our Justice delivery system eating into like termites and making it hollow.

17. In view of the importance of free, fair and impartial investigation, before dwelling into the manner of investigation of this case, we would like to take into consideration definition of investigation, relevant provisions, various factors of investigation and its requirements along with relevant case law etc.

18. The term "Investigation" has been defined in Clause (h) of Section 2 of Cr.P.C. which reads thus :

"2.(h) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a "police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf ;"

19. Relevant Sections of Cr.P.C. dealing with the "Investigation" are referred herein in the following chart :

Sl.No.

Particulars

Section(s) of Cr.P.C.

1

When Police made arrest without warrant

51

2

Procedure of arrest and duties of Officer making arrest

41(b)

3

Rights of arrested persons to meet Advocate of his choice during interrogation

41(d)

4

Arrested persons refusal to give name and residence

42

5

Arrest by private person and procedure for such arrest

43

6

Arrest how made

46

7

Search of place entered by person sought to be arrested

47

8

No unnecessary restrain

49

9

Person arrested to be informed grounds of arrest and of right to bail

50

10

Obligations of person making arrest to inform about the arrest etc to a nominated person

50(a)

11

Search of arrested person

51

12

Power to seize offensive weapons

52

13

Examination of accused by medical practitioner

53

14

Examination of persons accused of rape by medical practitioner

53(a)

15

Examination of arrested person by medical officer

54

16

Identification of persons arrested

54(a)

17

Health and safety of person arrested

55(a)

18

Person arrested to be taken before the Magistrate or officer incharge of Police Station

56

19

Persons arrested not to be detained more than 24 hours

57

20

Discharge of person apprehended

59

21

Power of escape to pursue and retake

60

22

Arrest to be made strictly in accordance to the Code (Cr.P.C.)

60(a)

23

When search warrant may be issued

93

24

Search of place suspected to be containing stolen property/forged documents etc.

94

25

Search for persons wrongfully confined

97

26

Power to compel restoration of kidnapped females

98

27

Directions etc. of search warrants

99

28

Person incharge of closed place to allow search

100

29

Disposal of things found in search beyond jurisdiction

101

30

Arrest to prevent commission of cognisable offence

151

31

Procedure for investigation

157

32

Power to hold investigation or preliminary enquiry

159

33

Police Officers power to require attendance of witnesses

160

34

Examination of witness by Police

161

35

Statement to Police not to be signed

162

36

No inducement to be confer

163

37

Recording of confessions and statements

164

38

Medical examination of the victim of rape

164(a)

39

Search by Police Officer

165

40

Procedure when investigation could not be completed in 24 hours

167

41

Release of accused when evidence is deficient

169

42

Accused to be sent to Magistrate when evidence is sufficient

170

43

Complainant and witnesses not to be required to accompany Police officer and not to be subject to restrain

171

44

Diary of proceedings in investigation

172

45

Report of Police officer on completion of investigation

173

46

Police to enquire and report of suicide etc.

174

47

Power to summon persons

175

20. Keeping of General Diary by Office Incharge of Police Station and necessary instructions in this regard have been given in Section 44 of the Police Act, 1961, which reads thus :

"44. Police officers to keep diary.- It shall be the duty of every officer-in-charge

of a police-station to keep a general diary in such form as shall, from time to time, be prescribed by the State Government and to record therein all complaints and charges preferred, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been examined.

The Magistrate of the district shall be at liberty to call for and inspect such diary."

21. In respect of "Investigation" important provisions are made in various rules of Chapter XI and XII of Uttar Pradesh Police Regulations (hereinafter referred to as "the Regulations"). The relevant Rules of the Regulations in respect of "Investigation" are being referred in the Chart below :

Sl.No.

Particulars

Rule of the Regulations

Chapter XI

1

I.O. is not to regard himself as a mere clerk for the recording of statements

107

2

Preparation of case diary in accordance with Section 172 Cr.P.C.

108

3

Variations in the statements of complainant from the FIR and subsequent supplementary statements, if any, should be recorded. Statement if recorded must be recorded separately. Statement of accused persons must be recorded in full. When investigation is closed for the day, time and place at which it is closed must be noted

109

4

State of proceeding at which I.O. arrests the suspected persons(s) under Section 44 Cr.P.C.

110

5

Manner of conducting search

111

6

Manner of preparing site plan

114

7

Manner of recording dying declaration of seriously injured person

115

8

Identification of suspects

116

9

Identification of property recovered from the suspects

117

10

Recording of confessional statement under Section 164 Cr.P.C.

119 & 120

11

Police custody

121

12

Completion of investigation as soon as possible

122

13

Noting particulars about previous conviction of an accused in column no. 7 of the charge-sheet

123

Chapter XII

14

Manner of taking finger impressions

135

15

Various steps taken by the I.O. to assist medical officers in making examination of dead bodies and injured persons in case of suspected poisoning, hanging or strangulation

136

16

When a Police Officer sends a person for medical examination he should clearly explain object of such examination

140

17

Substance or articles connected with the offence, which may be treated as evidence during trial, should be sent by the I.O. to the Public Prosecutor with an envelope, which must show name of Police Constable who has brought the sealed cover

142

22. The Rules 107, 111 and 135, are being quoted herein below :

Rule 107 :

"107. An investigating officer is not to regard himself as a mere clerk for the recording of statements. It is his duty to observe and to infer. In every case he must use his own expert observations of the scene of the offence and of the general circumstances to check the evidence of witnesses and in cases in which the culprits are unknown to determine the direction in which he shall look for them. He must study the methods of local offenders who are known to the police with a view to recognizing their handiwork and he must be on his guard against accepting the suspicions of witness and complainants when they conflict with obvious inferences from facts. He must remember that it is his duty to find out the truth and not merely to obtain convictions. He must not prematurely commit himself to any view of the facts for or against any person and though he need not go out of his way to hunt up evidence for the defence in a case in which he has satisfactory grounds for believing that an accused person is guilty, he must always give accused persons an opportunity of producing defence evidence before him and must consider such evidence carefully if produced. Burglary investigations should be conducted in accordance with the special orders on the subject."

Rule 111 :

"111. A police officer about to conduct a search under the Code of Criminal Procedure or any other law must, before entering the place to be searched satisfy the owner, or occupier of the premises, if present, and the witnesses

called under Section 103 [now Section 100(4) to (8)] of the Code of Criminal Procedure that neither he nor any other member of the search party including the informer if present, has anything incriminating concealed about his persons. No informer should be allowed to enter a place which is to be searched unless it is impossible to dispense with his assistance. ?....."

Rule 135 :

"135. The finger impression of all unidentified corpses should be taken on search slip forms and sent to the Finger Print Bureau for search. Similarly, where death is known or suspected to be due to the commission of a cognisable offence, and where there is any possibility that finger impressions if subsequently found on the scene of the crime may become material to the investigation of the finger impressions of an identified corpse should be taken on a search slip in order that they may be compared with any finger impressions found at the scene of the crime before time is wasted in using the latter as a basis of search for the culprit.

Ordinarily there is not much difficulty in taking impression from the fingers of a corpse, but sometimes the skin of the fingers is contracted and wrinkled that decipherable prints cannot be obtained. In such cases the medical officer holding the post-mortem should be asked to remove the skin from the fingers. He should place each piece in a separate sealed envelope, making on the outside the finger to which it belongs. These envelope should then be sent to the Finger Print Bureau for opinion.

The finger prints of corpse should invariably be taken under the supervision of an officer not below the rank of sub-inspector. Prints of all fingers must be taken, and the supervising officer will certify by his signature on the search slip that the impressions have been correctly taken in his presence. The supervising officer will note in the remarks column of the search slip the condition of the body, whether in all advanced stage of decomposition or otherwise."

23. In *H.N. Rishbud and Another v. State of Delhi* [AIR 1955 SC 196], Hon"ble Apex Court has considered the scope and meaning of investigation and held in paragraph no. 7 as follows :

"7. ?..... Thus, under the Code investigation consists generally of the following steps: (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of charge sheet under Section 173."

24. The decision of H.N. Rishbud (supra) case has also been followed by Three Judges Bench of Hon"ble Apex Court in the case of The State of Madhya Pradesh v. Mubarak Ali [AIR 1959 SC 707] and in State of Uttar Pradesh v. Bhagwant Kishore Joshi [AIR 1964 SC 221]

25. In Subhash and Anr. v. State of U.P. [AIR 1976 SC 1924], while referring various laches and slackness on the part of the I.O. during investigation, three Judges Bench of Hon"ble Supreme Court observed in paragraph No. 8, as under :

"8. First as to the manner in which S.I. Sharma conducted investigation into the case. The offence took place at about 9.00 a.m. on June 9 and though the District Hospital at Farrukhabad was just 10 miles away, the dead body was not received at the hospital for nearly 24 hours after the incident had taken place. The excuse offered by the prosecution that cart man was not willing to take the body at night is utterly flimsy because the Investigating Officer could have easily made some alternate arrangement for dispatching the dead body for postmortem examination expeditiously. With the dead body lying at the scene of offence for nearly 12 hours and thereafter at the police station for another 8 or 9 hours. It was easy enough for the witnesses to mould their statements so as to accord with the nature of injuries. The investigating officer did not make any note at all in the General Diary as to which witnesses were examined by him on the date of the occurrence which was obligatory upon him to do under paragraph 44 of the U.P. Police Act. The time when the investigation was commenced and the time when it was concluded are not mentioned in the case diary. The time when the Investigating Officer reached the village and the time when he returned to the police station are also not noted in the case diary. S.I. Sharma stated in his evidence that several important facts concerning the investigation were being stated by him in his evidence for memory. He reached the scene of offence at about 2-30 p.m. but it was not until about 6 p.m. that he inspected the site. The dead body was not removed from the scene of offence till about 9 p.m. and even that is open to grave doubt because the Investigating Officer has admitted in his evidence that he was unable to say as to when the dead body was taken away from the spot and whether it was taken directly to the hospital or was detained somewhere on the way. He was unable to say whether it was right or wrong that the dead body remained in the village till about 4 O" clock on the morning of the 10th. Forty or fifty persons had gathered at the scene of offence when the Investigating Officer arrived but the record of the case does not show that the statement of any of those persons was ever recorded. In fact even the statement of Kusuma Devi was recorded late at night for which the reason is stated to be that her elder sister Pushpa Devi died of shock on the evening of the 9th after hearing of her father"s murder. It may be that Pushpa Devi died on the 9th, but apart from the cause of her death, the statement of Kusuma Devi need not have been held up so long. We are doubtful if the Investigating Officer at all knew on the 9th that Pushpa Devi had died. He has admitted that his knowledge in that behalf was derived from hearsay reports. The appellant Subhash had surrendered before the Additional District Magistrate, Farrukhabad on the

afternoon of the 9th itself while the other appellant Shyam Narain was arrested at Fatehgarh at about 2.40 p.m. The Investigating Officer did not even know of these significant developments, though they had taken place just a few miles away from the scene of investigation. He says that he learnt of the surrender and the arrest of the appellants on the evening of the 12th. Mangali Prasad has been examined by the prosecution as an eye-witness and his name is mentioned in the F.I.R. as one of the four persons who arrived at the scene of offence even before the appellants had run away. His statement was recorded 11 days later on June 20. The F.I.R. mentions expressly that the appellants caught hold of the legs of the deceased and started dragging him. The Investigating Officer has not stated in the Panchanama of the scene of offence whether the ground was soft or hard or sandy which had great relevance on the allegation that the deceased was dragged over a certain distance. Finally, it is surprising that the Investigating Officer did not think it worthwhile to pay a visit to the field where the deceased is alleged to have gone with his children for eating Kharbuzas. Indeed, he stated that he was not in a position to say if there were Kharbuzas at all in the field, when the occurrence took place."

26. Division Bench of this Court while dealing with a case of defective investigation described duties of investigating officer in *Paras Ram v. State of U.P.* [2004 (2) JIC 797 (All)] has held as follows:

"9. ?.....The investigations are not conducted simpliciter to work out a case by hook or crook. It is the duty of the Investigating Officer to proceed into the investigation with all sincerity and honesty....."

27. The Delhi High Court in *CRL.A. 1213/2013 - Sunil Kumar v. State* (decided on 06.01.2015), has discussed the issue of "defective investigation" in detail, and placing reliance on the decisions of Apex Court passed in *Hema v. State* [(2013) 10 SCC 192]; *C. Muniappan and Ors. v. State of Tamil Nadu* [2010 (9) SCC 567]; *Dayal Singh and Ors. v. State of Uttranchal* [2012 (8) SCC 263]; *Gajoo v. State of Uttrakhand* [2012 (9) SCC 532]; *Paras Yadav v. State of Bihar*; *Sarwan Singh Rattan Singh v. State of Punjab* [AIR 1957 SC 637]; *Kali Ram v. State of Himanchal Pradesh* [AIR 1973 SC 2773]; *Mousam Singh Roy and Ors. v. State of West Bengal* [(2003) 12 SCC 377], which have already been discussed in preceding paragraphs, has held:

"47. In view of the aforesaid decisions, although it is true that defective investigation by itself cannot be made a ground for acquittal of the accused but in view of such defective investigation, the court has to be circumspect in evaluating the evidence. ?....."

28. Recently Hon"ble Apex Court in respect of duties of Investigating Officer in *Mahavir Singh v. State of Madhya Pradesh* [(2016) 10 SCC 220] said as under :

"26. Here in the instant case, no doubt, an innocent man has lost his life at the hands of another man, and looking at the way in which the investigation was handled, we are sure to observe that it was carried out in a lackluster manner.

The approach of the Investigating Officer in recording the statements of witnesses, collecting the evidence and preparation of site map has remained unmindful. The Investigating Officer, dealing with a murder case, is expected to be diligent, truthful and fair in his approach and his performance should always be in conformity with the police manual and a default or breach of duty may prove fatal to the prosecution's case....."

29. It is settled law that only defective investigation could not be a sole ground to reject the prosecution case, if it stands proved on the basis of direct evidence available on record. But what will be the fate of cases where no reliable direct evidence is available on record, in such cases informant and victim(s) are bound to be adversely effected and hit by the defects of investigation. Hon"ble Apex Court in catena of judgments has given its observations in respect of defective investigation, some of such decisions are quoted herein below :

30. In *Dhanaj Singh @ Shera and Others v. State of Punjab* [AIR 2004 SC 1920], the Apex Court while placing reliance on the case of *Karnel Singh v. The State of M.P.* [1995 SC (5) 518], has observed as under :

"In cases of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the Investigating Officer if the investigation is designedly defective."

31. In *Abu Thakir & Ors. v. State* [AIR 2010 SC 2119], the Court observed thus :

"..... This Court in *State of Karnataka v. K. Yarappa Reddy* held that "even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinized independently of the impact of it. Otherwise the criminal trial will plummet to the level of the Investigating Officer ruling the roost. ?Criminal justice should not be made a casualty for the wrongs committed by the Investigating Officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is rue, the Court is free to act on it albeit the Investigating Officer's suspicious role in the case"....."

32. The Apex Court in *Prakash v. State of Karnataka* [2014 (85) SCC 981 (Supreme Court)], held as under :

"71. All that we need say is that the investigation in the case was very cursory and it appears to us that the Investigating Officer had made up his mind that Prakash had murdered Gangamma and the investigation was directed at proving this conclusion rather the other way around with the investigation leading to a conclusion that Prakash had murdered Gangamma."

33. The Apex Court in *Ajay Kumar Singh v. Flag Officer Commanding-In-Chief and Others* [(2016) 9 SCC 179], observed as under :

"20. ?..... The evidence adduced by the prosecution must be scrutinised independently of such lapses either in the investigation or by the prosecution or

otherwise, the result of the criminal trial would depend upon the level of investigation or the conduct of the prosecution. Criminal trials should not be made casualty for such lapses in the investigation or prosecution."

34. In large number of cases the prosecution witnesses are not relied upon by the Courts on the ground of contradictions in their testimonies or their late examination. For the instance, the I.O. had intentionally and deliberately recorded such facts in the statement of witness which has not been stated by the witness to him and on being confronted by the defence, the witness replies that he has not stated particular fact to the I.O. and could not explain that how I.O. has recorded the particular fact in his statement. It will be a contradiction under the provisions of Section 162 Cr.P.C. and Section 145 of the Indian Evidence Act, and the testimony and credibility of the witness will be effected adversely. While actually the witness has not disclosed the particular fact to the I.O. which has been intentionally or wrongly described in his statement. In this situation the witness concerned cannot do any thing and is a helpless person. Same is also the position about late recording of statement of the witnesses by the I.O.

35. So many times the informant and the witnesses actually state the facts to the I.O. recorded in their respective statements under Section 161 Cr.P.C., but due to fear, coercion, pressure, subsequent developments and settlement between the parties, etc. they turn hostile and state that they have not given such statement to the I.O. or that I.O. has not recorded his statement or rescind any particular part of their statement recorded under Section 161 Cr.P.C., in such circumstances, I.O. is unable to prove that the statement recorded under Section 161 Cr.P.C. of the above witness is correct and true version of his statement, if he has not got the statement of the witness recorded under Section 164 Cr.P.C. before the Magistrate. All such type of cases often result in acquittal of the accused persons and guilty persons of ghasty and brutal offences could not be brought to justice.

36. We are also noticing that in most of the cases the I.O.'s are not so serious or attentive to collect all important pieces of evidence like hair, nails, clothes, pellets, empty/live cartridges, finger prints etc. available on the spot. This problem also requires immediate attention, because once such evidence is lost or eliminated, it could not be collected later on and it will be eliminated for ever. This unmindful approach of I.O.'s not collecting all important evidence available on the spot(s) also causes a very serious problem to our justice dispensing system and requires immediate attention and remedial measures.

37. No effective measures have been taken by the Government to curb the above evils till the day, while they require immediate attention and urgent remedial measures are desired to be taken in this regard.

38. Now we will examine the manner of investigation of this case in the light of above definition of investigation, relevant provisions and various decisions referred above.

39. PW-6 Babloo Tyagi the public witness of the inquest memos of dead bodies, has deposed that on 11.02.2004 he did not go to Ram Leela Maidan. The inquest memos were prepared in the Police Chowki (outpost), admitting his signatures on the inquest memos (Exhibit "Ka-27, 28 & 29"). He was declared hostile, and in his cross examination by the Public Prosecutor, he expressed his unawareness to the fact that in the Ram Leela Maidan the dead bodies of one female and two males were found and denied suggestion to the effect that inquest memos were prepared on the spot.

40. Above evidence of PW-6 creates serious doubt on the preparation of inquest memos of dead bodies by the Investigating Officer on the spot.

41. I.O. of the case, PW-10 has deposed that on the same day i.e. 11.02.2004, he tried to know the whereabouts of the deceased persons but could not get success. Despite this he did not resort to the measures required to be taken in Rule 135 and 135-A of the Regulations, which provide taking of finger prints of the corpus and to make arrangements for the widest possible publicity to the fact of discovery with a view to its identification as also to the tracing out of the deceased's relations, friends or acquaintances to whom it can be made over for disposal. In rural areas such publicity is provided by beat of drum and in urban areas with the help of the local press, broadcasting station, if any, and voluntary organisations like the Sewa Samiti.

42. It is also not clear from the evidence available on record that after the postmortem dead bodies and heads were handed over to whom and how their funeral took place.

43. PW-2 Chottan is witness of the fact that deceased persons were residents of the Flat concerned and accused persons were frequenting there, while PW-3 Anees is the witness of the fact that one day before the incident, accused-appellant Pawan in presence of other accused-appellants had told him that he is owner of the Flat concerned which was occupied by the deceased persons and to get the Flat vacated, he has to finish all of them.

44. Above witnesses PW-2 and PW-3 are neither named in the FIR nor by any witness and nor they were required by the I.O., rather as per Case Diary (in short "C.D.") Paper No. 2 dated 12.02.2004 they themselves came to the Police Station, told the I.O. that they wanted to make some disclosure about the case and on this their statements were recorded under Section 161 Cr.P.C.

45. In the facts and circumstances of the case, PW-2 and PW-3 appear to be got up witnesses of the Police and probably have been introduced due to heavy pressure on the Police to work out the case at the earliest, in view of serious nature of the crime. Our this view is also fortified from the fact that as per C.D. Paper No. 7, dated 17.02.2004, both the above witnesses are also made witness of the recovery of severed heads but neither above witnesses nor I.O. or any other Police witness has said a single word in this regard in their statements.

46. I.O. has deposed in his cross examination that he had recorded statement of PW-2 at his residence, but this fact is belied by C.D. Paper No. 2, dated 12.02.2004, in which it is recorded that PW-2 and PW-3 came to the Police Station, expressed their desire to make some disclosure about the case and in these circumstances their statements were recorded by the I.O. at the Police Station.

47. After arrest of accused-appellants Vinod and Dwarika, allegedly severed heads of the deceased persons were recovered on their pointing out from the "Nala" (Drain), but according to C.D. Paper No. 7, dated 17.02.2004, the above recovered heads were not sealed on the spot, on the same day, on the ground of non availability of light, as is required under Rule 132 of the Regulations, by making necessary arrangement of light.

48. The names of Police Constables who were assigned duty to protect the recovered heads were not disclosed in Paper No. 7 of the Case Diary. They have also not been interrogated and examined by the prosecution.

49. As per evidence of PW-12, heads were found floating in the drain, but in the site plan no flowing water has been shown in the "Nala" (drain) and no explanation whatsoever has come forward by the I.O. for the heads remaining intact at the same place where accused persons had thrown/hidden those without any protection/hindrance for so many days.

50. Though, in C.D. Paper No. 7 dated 17.02.2004, it is mentioned that the Flat concerned was opened with the key available with the accused-appellants Vinod and Dwarika, in the presence of PW-4 Mukesh Sharma and one Manmohan Honda, but contrary to that PW-10, I.O. of the case has admitted in his cross examination that the Flat concerned was locked and he had inspected the same and effected recovery of various incriminating articles from there, after breaking the lock of the Flat without any permission of concerned Magistrate/Superior authorities for breaking the lock.

51. It is also not clear from the evidence and material available on record that the lock of flat concerned was broken before whom.

52. At the time of alleged search, the accused-appellants Vinod and Dwarika (who are brothers of accused-appellant Pawan) were in the Police custody and they could easily be taken to the flat concerned and inspection of the flat and recoveries of various articles could have been made in their presence, but I.O. did not opt to do so.

53. The Police team and the witnesses had not searched each other to ensure that no one had any incriminating article with him.

54. It appears that during the search of the Flat concerned, provisions of Sections 100(4)(5)(6), 102(3), 165 Cr.P.C. and Rule 111 of the Regulations, were not complied properly by the I.O.

55. Smt. Sunita, Guddi and Kanti Devi who's Kisan Vikas Patra, Registration and Insurance papers of vehicle etc. were recovered from the Flat concerned, were neither interrogated by the I.O. nor examined by the prosecution to disclose the fact that how above items related to them, reached to the Flat concerned. Apart from that in case they were examined, they could have thrown light about the persons living there, their relation with them and as such they would have been helpful to establish identity of the deceased persons.

56. PW-4 Mukesh Sharma, has stated in his evidence that the Police had taken samples of blood stains from the walls of any flat and one blood stained belt in his possession and had prepared the recovery memo. Admitting his signatures on the recovery memos, after being declared hostile, in his cross examination by the Public Prosecutor, he replied that neither the Police had searched the flat concerned in his presence nor recovered Photo Album, Insurance papers etc in the name of Guddi, Pass Book of Girdih Gramin Bank in the name of Sunita Devi and Kisan Vikas Patra in the name of Smt. Sunita Devi, Smt. Basanti Devi, Smt. Kaliya Devi and Smt. Kanti Devi before him. The Police had obtained only his signatures on the recovery memos. He has also denied his statement recorded under Section 161 Cr.P.C.

57. According to prosecution case accused-appellant Pawan is owner of the Flat concerned which was occupied by the deceased persons and with intention to get the Flat vacant, the accused-appellants have committed murder of the deceased persons and after that threw the head less dead bodies at Ram Leela Ground and with intention to conceal the evidence severed heads of the deceased persons were thrown in the "Nala" (Drain), but according to paper no. 22-C, photostat copy of Sale Deed dated 27.08.2003 (hereinafter referred to as "the Sale Deed") of the Flat No. S-4/725, Shalimar Garden Extension-I, one Pooran Prasad Yadav had purchased it from one Smt. Sunita Arora, proprietor of M/s Rajan Builders and Promoters and PW-5 Rakesh Kalra is witness of the aforesaid Sale Deed, as such accused-appellant Pawan was not owner of the Flat concerned.

58. Though in C.D. Paper No. 7, dated 17.02.2004, it is mentioned that accused/appellants Vinod and Dwarika had told the name of accused-appellant Pawan as "Pawan @ Pooran", but those statements are not substantial piece of evidence. Otherwise also, they could not be read in evidence against the accused-appellant Pawan, being statements of co-accused. Except to above there is no evidence that accused-appellant Pawan is also known as "Pooran". Except the I.O., no prosecution witness has stated in his evidence that accused-appellant Pawan is "Pooran". Even charge sheet (Exhibit "Ka-25") of accused-appellant Pawan is filed in the name of "Pawan" and not in the name of "Pawan @ Pooran", he was also not been asked any question in this respect in his statement recorded under Section 313 Cr.P.C. In the light of above facts We find that the conclusion of the I.O. that accused-appellant Pawan was owner of the Flat concerned is contrary to the aforesaid sale deed of the Flat concerned.

59. Evidence of PW-2, PW-3 and PW-5 to the effect that accused-appellant

Pawan was owner of the Flat concerned is also false and not reliable being contrary to the aforesaid sale deed of the Flat concerned.

60. There is no evidence on record to show that if accused-appellant Pawan was not owner of the Flat concerned then what interest Pawan and his brothers accused-appellants Vinod and Dwarika had to commit murders of deceased persons who were allegedly living in that Flat.

61. Even no question has been asked from the accused appellant Pawan under Section 313 Cr.P.C. about his ownership of the Flat concerned or that he is also known as "Pooran Prasad Yadav".

62. It is also not clarified by PW-10 during investigation that how accused-appellant Chandradeo Yadav is connected with the other accused-appellants, what persuaded him to get himself involved in the alleged gruesome and brutal murder of deceased persons along with other accused appellants.

63. I.O. has not taken care to get the various recovered items connected with the crime by means of their chemical examination by Forensic Science Laboratory.

64. I.O. also did not make sincere efforts to determine the place of incident by sending the blood stained plaster to Forensic Science Laboratory and obtain finger prints and their examination done by the Finger Print Expert to ensure presence of deceased persons and accused persons in the flat concerned.

65. Despite arrest of accused-appellants Vinod and Dwarika and alleged recovery of severed heads of the deceased persons on their pointing out, the I.O. has not made any effort to recover the "weapon(s)" used in the crime.

66. Though, PW-10 has himself admitted in his evidence that "ikdZ esa MsM ckMh feyus ij ifjfprksa us vUnkts ls crk;k Fkk fd yk"Qyk Qyk dh gSA flj feyus ij lgh ifgpk gks xbZ Fkh ogh ykx gSA" but, there is no evidence on record that severed heads were shown to whom and no witness examined by the prosecution has stated in his evidence that he has seen the photographs of dead bodies and severed heads and on the basis of that identified the dead persons as Smt. Kaliya, Hariya @ Hari Yadav and Keshav.

67. Admittedly, one dead body was wrongly identified as Hariya @ Hari Yadav because admittedly he was alive after the incident and was in Girdih Jail in connection with some criminal case.

68. As observed by Hon"ble Apex Court in Prakash v. State of Karnataka (supra), that Investigating Officer of that case has made up his mind that Prakash had murdered Gangamma and the investigation was directed at proving this conclusion rather the other way around with the investigation leading to a conclusion that Prakash had murdered Gangamma. It appears that in this case also the Investigating Officer had also made up his mind that accused-appellants were involved in the murder of trio deceased and he had directed the investigation to prove his aforesaid conclusion right, that accused-appellants

Pawan, Vinod, Dwarika and Chandradev had committed murder of the deceased persons rather the other way around.

69. On the basis of above discussion we have no hesitation to hold that investigation of this case is not in conformity with the relevant provisions of Cr.P.C. and Police Regulations. The accused persons have been seriously prejudiced by that in defending themselves properly and effectively. In the facts and circumstances of the case, prosecution could not be absolved from its liability by merely saying that there are minor defects in the investigation for which it could not be blamed and held responsible.

70. Accordingly Question no. I is answered in affirmative.

Answer to Question No. II

71. Learned counsel for the appellants urged that charge framed in respect of murder of "Beeru" is not substantiated by the evidence collected during investigation, as such, charge framed against accused/appellants is defective and illegal.

72. Countering the above argument learned Government Advocate has submitted that it is clear from the report dated 12.05.2005, submitted by PW-10 Investigating Officer of the case, that evidence of murder of "Beeru" was collected during investigation and it was also in the knowledge of the Trial Court. One dead body was wrongly identified by the witnesses as of Hari Yadav @ Hariya which was corrected in the light of evidence collected during investigation about murder of "Beeru". As such there is no irregularity or illegality in framing of charge against the accused-appellants for murder of "Beeru".

73. Now We will examine the rival arguments of learned counsel for the parties in the light of legal provisions in respect of framing of charges and evidence available on record.

74. Sections 227 and 228 of Cr.P.C. are related to discharge and framing of charge by the Court of Session and read thus :

Discharge.

"227. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

Framing of charge.

"228. (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which -

(a) is not exclusively triable by the Court of Session, he may, frame a charge

against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report ;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

75. It is clear from the perusal of evidence of Investigating Officer of the case PW-10 Inspector G.P. Yadav, S.S.I., PW- 11 S.S.I. Mahendra Singh Bhadauriya and PW-12 S.I. Hari Shanker Yadav that after collecting evidence charge sheet was filed against accused appellants for murder of Smt. Kaliya, Hari Yadav @ Hariya and Keshav, but charge has been framed against the accused-appellants for committing murder of Kaliya, Beeru and Keshav.

76. During pendency of the Trial, accused-appellant Vinod moved Second Bail Application No. 138 of 2005 -Vinod v. State under Sections 302, 201 I.P.C., Police Station - Shahibabad, District - Ghaziabad, decided by the Court of Additional Sessions Judge, Court No. 2, Ghaziabad vide order dated 19.05.2005. Paragraph no. 2 of the above bail application is reproduced herein below:

"2- That alleged deceased Hari Yadav has not been killed but is in Distt. Jail Girideh. He had surrendered before the court of Shri A. Kumar Jain, Girdih on 16/03/05."

77. Relevant portion of the parawise reply dated 12.05.2005, submitted by PW-10, to the above mentioned second bail application it was also stated that :

"2- dFku IR; gSA gjh ugh ejk gS ;g igpkuus okyksa us igpkuus esa xyrrh dh Fkh rhlyk e`rd ch: S/o ekSth egrks gSA foospuk ds nkSjku gh ;g ckr vk xbZ gSA"

78. But claim of I.O. that fact of 3rd murdered person was deceased "Beeru" came to his knowledge during investigation, is neither supported by his evidence nor by the evidence of other Police witnesses i.e. PW-11 and PW-12.

79. In the above quoted paragraph of parawise reply dated 12.05.2005, no details have been given that how above mistake of identification came to the light and who had identified the dead body of Beeru, even there is no reference of any particulars of concerned Case Diary whereby the fact in respect of murder of third deceased Beeru came to the knowledge of the Investigating Officer PW-10.

80. Notice of this fact may also be taken here that due to incomplete case diary, an opportunity was given to the learned G.A. for providing remaining part of case

diary by this Court vide order dated 02.12.2016. In respect whereof, an affidavit of compliance dated 08.12.2016, sworn by Sri Dharendra Upadhyaya, Sub Inspector, Police Station - Sahibabad, District - Ghaziabad had been filed stating in paragraph no. 6 of the affidavit, as under :

"6. That it is further submitted that case diary from 16.05.2004 to 10.12.2004 is concerned which has been required by this Hon"ble Court, the same is not available before the learned Trial Judge, nor at the Police Station, therefore the deponent is regretting for inconvenience which have been caused to this Hon"ble Court and tendering the unconditional apology for the same."

81. Learned G.A. also could not demonstrate before us any oral or documentary evidence regarding murder of Beeru.

82. In Hardeep Singh v. State of Punjab [2014 (85) ACC 313], Hon"ble Apex Court while examining the meaning of the word "evidence", observed in paragraph 55, 56 and 57 of the judgment as under :

"55. ?.... According to section 3 of the Evidence Act, "evidence" means and includes :

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;

(2) all documents including electronic records produced for the inspection of the Court, such statements are called documentary evidence;

56. According to Tomlin's Law Dictionary, Evidence is "the means from which an inference may logically be drawn as to the existence of a fact. It consists of proof by testimony of witnesses, on oath; or by writing or records." Bentham defines "evidence" as "any matter of fact, the effect, tendency or design of which presented to mind, is to produce in the mind a persuasion concerning the existence of some other matter of fact- a persuasion either affirmative or disaffirmative of its existence. of the two facts so connected, the latter may be distinguished as the principal fact, and the former as the evidentiary fact." According to Wigmore on Evidence, evidence represents "any knowable fact or group of facts, not a legal or a logical principle, considered with a view to its being offered before a legal Tribunal for the purpose of producing a persuasion, positive or negative, on the part of the Tribunal, not of law, or of logic, on which the determination of the Tribunal is to be asked."

57. The provisions and the above mentioned definitions clearly suggest that it is an exhaustive definition. Wherever the words "means and include" are used, it is an indication of the fact that the definition "is a hard and fast definition", and no other meaning can be assigned to the expression that is put down in the definition. It indicates an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expression....."

83. Hon"ble Apex Court in *Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijja and Others* [AIR 1990 SC 1962], has held as under :

"7. ?..... 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 therefrom 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."

84. In *The Assistant Director, Enforcement Directorate, Govt. of India, Madras v. Khader Sulaiman etc.* [2003 CRL. J. 3468 (Mad.)], the Court held as under :

"10.2 ?.....even though at the stage of framing the charges the Court is not expected to go deep into probative value of the materials on record, the Court is obliged to see whether there is prima facie evidence in support of the charge levelled against the accused. While framing charges, there is no need to maintain the same standard to be adopted by the Court in scrutinizing the evidence at the time of trial, but all due diligence should be taken even at the stage of framing the charge as to whether the charges framed is supported with prima facie and sufficient material evidence. Therefore, the Court should satisfy itself that the charge levelled against the accused is supported with prima facie and sufficient material evidence before issuing process to the accused and committing him for trial with respect to the charge framed. ?....."

85. Hon"ble Apex Court in *Sajjan Kumar v. Central Bureau of Investigation* [(2010) 9 SCC 368], held as under

"Exercise of jurisdiction under Sections 227 and 228 Cr.P.C.

21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weight the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the

pros and cons of the matter and weight the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. 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.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

86. There is no evidence on record to demonstrate that one deceased amongst three murdered persons was "Beeru". There is further nothing on record indicating his complete address, his identification, relation or connection with the other murdered persons, accused-appellants and motive for his murder.

87. In view of above, it is evident that charge framed against accused-appellants in respect of murder of "Beeru" is not supported by any oral or documentary evidence available on record. As such charge framed against accused-appellants in respect of murder of Beeru is wrong and illegal being not supported by any evidence and contrary to the decision of Apex Court in Hardeep Singh, Niranjan Singh Karam Singh Punjabi, The Assistant Director, Enforcement Directorate, Govt. of India, Madras and Sajjan Kumar (supra).

88. Accordingly, Question No. II is answered in affirmative.

Answer to Question No. III

89. In this regard learned counsel for accused-appellants urged that from the perusal of Charge Sheets (Exhibit "Ka- 24, 25 and 26"), it is evident that Sanjay Goyel, Ashok Kumar, Kuldeep Sahi, Deepak Mahashay, Mahesh Yadav, Chandra Dev @ Chandi and Manmohan Hoda were named as witnesses in the charge sheets and some other persons in connection to whom certain documentary evidence such as Registration and insurance Certificate, Kisan Vikas Patra etc

were recovered from the Flat i.e. Guddi, Sunita Devi and Kanti Devi who were also kith and kin of alleged deceased persons, but none of them were examined by the prosecution. Even Tilak Mahto, Chandi Yadav, Sudhir Kumar, Ashok Kumar and Shyam Sunder whose statements were recorded under Section 161 Cr.P.C. (Exhibit "Ka-21 to Exhibit "Ka-24") by PW-11, have also not been examined by the prosecution, while their evidence was material for the purpose of identification of the accused persons, determining the place of occurrence and various recoveries made by the I.O., but without assigning any reason they have been withheld by the prosecution. As such prosecution has failed to produce the best evidence to prove its case.

90. In reply to the above arguments learned G.A. Has submitted that prosecution is not under obligation to examine each and every witness, who is named in the charge sheet or desired by the defence. It is for the prosecution to decide that who is the necessary witness to be examined by it for proving its case. In case defence feels presence of any witness is necessary, it may apply for summoning that particular witness as Court witness or may examine that witness as its own witness, but the defence did not choose to do so and is wrongly blaming the prosecution for not examining all the witnesses, named in the charge sheets, the witnesses who made their statements before the PW-11 S.S.I. Mahendra Singh Bhadauriya during investigation and the persons whose registration and insurance of vehicle, kisan vikas parta etc. were taken into possession by the I.O. from the Flat concerned. As such arguments of learned counsel for accused-appellants have no merit and are liable to be rejected.

91. It is true that prosecution is not duty bound to produce each and every witness who are named in the charge sheet, but it is equally true that prosecution is expected to produce the best evidence to prove its case.

92. Section 114(g) of Indian Evidence Act, reads thus :

"114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

?.....

(g) That evidence which could be and is not produced, be unfavourable to the person who withholds it;

?....."

93. In Ramesh and Others v. The State [2004 All. L.J. 847], the Court held thus :

"20. Before we proceed to the operative part of the judgment we would also like to give three other reasons as to why we are not inclined to accept the prosecution case.

Firstly, we have seen that right from the F.I.R. the prosecution case is that co-

villagers Kallu and Bhelu saw the incident. It is pertinent to mention that neither of them were examined by the prosecution and the reason furnished by it for their non-examination which is contained in the examination in chief of Idris (PW-2), that on account of fear they and Abid were not prepared to depose against the appellants is untenable because Abid was examined by it as PW 10. In this connection, we would like to advert to the decision of the Apex Court case of AIR 1971 SC 1586 (State of U.P. v. Jaggo alias Jagdish) wherein in paragraph 16 the Supreme Court has laid down that a mere averment by the prosecution in the form of an application that a witness has been won over is not sufficient and the said witness should be examined in Court.

In our view, the failure of the prosecution to examine Kallu and Bhelu is another nail in the coffin of the prosecution. In this connection we would also like to advert to the provisions contained in Section 114(g) of the Indian Evidence Act, which are to the effect that if evidence which could have been produced is not produced, the presumption would be that it would have gone against the party which withholds it. In our view, it would be reasonable to draw the said inference in this case. ?....."

94. Hon'ble Apex Court in *Mussauddin Ahmed v. State of Assam* [(2009) 14 SCC 541], has held as under :

"11. It is the duty of the party to lead the best evidence in its possession which could throw light on the issue in controversy and in case such material evidence is withheld, the court may draw adverse inference under Section 114 Illustration (g) of the Evidence Act, 1872 notwithstanding that the onus of proof did not lie on such party and it was not called upon to produce the said evidence (vide *Gopal Krishnaji Ketkar v. Mohd. Haji Latif* - 1 AIR 1968 SC 1413)"

95. It is clear from the evidence lead by the prosecution that its all the witnesses of fact produced by it except to PW- 1/Informant of the case, have not supported the prosecution case and they have been declared hostile. Admittedly PW-1 is not eye witness of the case. No doubt that by mere declaration of any witness hostile his evidence could not be undone/wiped out from the record and relevant and reliable portion of his evidence has to be taken into consideration. But the prosecution could not escape from its liability to produce his best evidence before the Court to prove its case.

96. Witnesses Sanjay Goyel, Ashok Kumar, Kuldeep Sahi, Deepak Mahashay, Mahesh Yadav, Chandra Dev @ Chandi and Manmohan Hoda named in the charge sheet; Tilak Mahto and Chandi Yadav whose statements were recorded by PW-11 at Jharkhand and Guddi, Sunita Devi and Kanti Devi who were kith and kin of alleged deceased persons, who were not examined before the Court, could be helpful for the Trial Court to come to a reasonable conclusion for fixing place of occurrence, identification of deceased persons and recoveries, as such non examination of those witnesses could not be taken lightly because this is not the case of prosecution that those witnesses were not available or won over by the

defence. Therefore, under Section 114(g) of Indian Evidence Act presumption must be drawn against the prosecution, to the effect that if those would have been examined they would have given such evidence which may have supported the prosecution case. Therefore, it is held that prosecution has withheld some very important witnesses without any sufficient reason or justification.

97. Accordingly, Question No. III is answered in affirmative.

Answer to Question No. IV

98. Learned counsel for the appellants has urged that the entire prosecution case is vitiated on account of non compliance of the provisions of Section 313 Cr.P.C. as the questions put before the accused-appellants by the learned Court below do not conform to the requirements of Section 313 Cr.P.C. which has caused prejudice to the accused appellants.

99. Per contra, learned G.A. has urged that accused appellants are given sufficient opportunity to explain evidence and circumstances relied against them and there is sufficient compliance of Section 313 Cr.P.C.

100. Section 313 Cr.P.C. reads thus :

Power to examine the accused.

"313. (1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court -

(a) may at any stage, without previously warning the accused, put such questions to him as the Court considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case :

Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2) No oath shall be administered to the accused when he is examined under sub-section (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit

filing of written statement by the accused as sufficient compliance of this section."

101. In *Jai Dev v. State of Punjab* [AIR 1963 SC 612], the Court held thus :

"21. ?... The ultimate test in determining whether or not the accused has been fairly examined under Section 342 would be to enquire whether having regard to all the questions put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity."

102. In *Bakhshish Singh Dhaliwal v. State of Punjab* [AIR 1967 SC 752], a three-Judge Bench of Apex Court held that :

"33. ?.. It was not at all necessary that each separate piece of evidence in support of a circumstance should be put to the accused and he should be questioned in respect of it under that section ?..."

103. In *Shivaji Sahabrao Bobade v. State of Maharashtra* [(1973) 2 SCC 793], a three-Judge Bench of the Apex Court while considering the fallout of omission to put to the accused a question on vital circumstance appearing against him in the prosecution evidence, widening the sweep of the provision concerning examination of the accused after closing prosecution evidence made the following observation

"16. ?. It is trite law, nevertheless fundamental, that the prisoner's attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and failures in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such a omission has occurred it does not ipso facto vitiate the proceedings and prejudice occasioned by such defect must be established by the accused, the court must ordinarily eschew such material from consideration. It is also open to the appellate court to call upon the counsel for the accused to show what explanation that accused has as regards the circumstances established against him but not put to him and if the accused is unable to offer the appellate court any plausible or reasonable explanation of such circumstances, the court may assume that no acceptable answer exists and that even if the accused had been questioned at the proper time in the trial court he would not have been able to furnish any good ground to get out of the circumstances on which the trial court had relied for its conviction."

104. In *State (Delhi Admn.) v. Dharampal* [(2001) 10 SCC 372], Hon"ble Court held as under :

"13. Thus it is to be seen that where an omission, to bring the attention of the accused to an inculpatory material has occurred, that does not ipso facto vitiate the proceedings. The accused must show that failure of justice was occasioned by such omission. Further, in the event of an inculpatory material not having been put to the accused, the appellate court can always made good that lapse by

calling upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against the accused but not put to him."

105. Hon"ble Apex Court in *State of Punjab v. Swaran Singh* [(2005) 6 SCC 101], while dealing with the questions put forth to accused while recording statements() under Section 313 Cr.P.C., in paragraph no. 10, observed as under :

" 10. The questioning of the accused is done to enable him to give an opportunity to explain any circumstances which have come out in the evidence against him. It may be noticed that the entire evidence is recorded in his presence and he is given full opportunity to cross-examine each and every witness examined on the prosecution side. He is given copies of all documents which are sought to be relied on by the prosecution. Apart from all these, as part of fair trial the accused is given opportunity to give his explanation regarding the evidence adduced by the prosecution. However, it is not necessary that the entire prosecution evidence need be put to him and answers elicited from the accused. If there were circumstances in the evidence which are adverse to the accused and his explanation would help the court in evaluating the evidence properly, the court should bring the same to the notice of the accused to enable him to give any explanation or answers for such adverse circumstance in the evidence. Generally, composite questions shall not be asked to the accused bundling so many facts together. Questions must be such that any reasonable persons in the position of the accused may be in a position to give rational explanation to the questions as had been asked. There shall not be failure of justice on account of an unfair trial."

(Emphasis laid by us)

106. In *Prakash v. State of Karnataka* [2014 (85) ACC 981 (Supreme Court)], the Court observed as under :

"63. It is one thing to say that no prejudice was caused to Prakash by not affording him an opportunity to explain the serological report. It is quite another thing to put the report to his learned Counsel in appeal and give him (the learned Counsel) an opportunity to explain the report of the serologist. The course adopted by the High Court is clearly impermissible. The law on the subject was laid down several decades ago by the Constitution Bench in *Tara Singh v. State* [1951 SCR 729] and is to the effect that an accused must be given a chance to offer an explanation if the evidence is to be used against him and the conviction is intended to be based upon it. It follows that if the accused is not given an opportunity to explain the circumstances against him in the testimony of the witnesses, then those circumstances cannot be used against him, whether they prejudice him or not. This is what the Constitution Bench said :

"It is important therefore that an accused should be properly examined under section 342 and, as their Lordships of the Privy Council indicated in *Dwarkanath v. Emperor* [AIR 1933 PC 124], if a point in the evidence is considered important against the accused and the conviction is intended to be based upon it, then it is

right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it if he so desires. This is an important and salutary provision and I cannot permit it to be slurred over. I regret to find that in many cases scant attention is paid to it, particularly in Sessions Courts. But whether the matter arises in the Sessions Court or in that of the Committing Magistrate, it is important that the provisions of section 342 should be fairly and faithfully observed."

64. This was more clearly spelt out in *Ajay Singh v. State of Maharashtra* [(2007) 12 SCC 341] when this Court held :

"A conviction based on the accused's failure to explain what he was never asked to explain is bad in law."

107. For ready reference, We are reproducing herein below statement and additional statement of accused-appellant Pawan, recorded by the Trial Court under Section 313 Cr.P.C. :

i`PNk vfHkdFku vfHk;qDr vUrxZr /kkjk 313 n.M izfdz;k lafgrk

uke& iou dqekj

iq= Jh& c<<+u egrks vk;q&39 o"kZ

O;olk;& etnwjh

fuoklh& xzke "ksjok fM0 fxjMhg

Fkkuk& xkoka

ftyk & >kj[k.M izns"k

vfHk;qDr dh vk;q ds IEcU/k esa vuqeku& 40 o"kZ

iz"u 01- vfHk;kstu i{k ds dFkkukd ds vuqlkj fnukad 10-02-2004 dks le; jkf= vne rgjhj LFkku jkeyhyk eSnku "kkyhekj xkMZu ,DIVsU"ku Fkkuk lkfgckckn] xkft;kckn esa vkius lg vfHk;qDr ds lkFk feydj lkekU; vk"k; dh iwfrZ ds vxzlj.k esa dkfy;k] ds"ko rFkk ch: dh xyk dkVdj mudh gR;k dj nh rFkk lk{; dks foyksfir djus ds vk"k; ls muds "ko dks dwMs+ ds <+sj ij Qsad fn;k vkSj xnZu dks ukys esa Qsad nhA bl IEcU/k esa vkidks D;k dguk gS\\

mRrj& xyr gSA

iz"u 02- vfHk;kstu lk{kh la[;k 01 fodkl }kkj vkjuh lk{; esa rgjhj izn"kZ&d&1 dks fl) fd;k x;k gS] bl IEcU/k esa vkidks D;k dguk gS\\

mRrj& xyr gSA

iz"u 03- vkius vfHk;kstu lk{kh la[;k 02 Jh ds c;ku lqus] bl IEcU/k esa vkidks D;k dguk gS\\

mRrj& xyr gSA

iz"u 04- vkus vfHk;kstu lk{kh la[;k 3 vuhl ds c;ku lqsa vkidks bl IEcU/k esa D;k dguk gS\\

mRrj& xyr gSA

iz"u 05- vkus vfHk;kstu lk{kh la[;k 04 eqds"k "kekZ ds c;ku lqsa bl IEcU/k esa vkidks D;k dguk gS\\

iz"u 06- vkus vfHk;kstu lk{kh la[;k 05 jkds"k dkyjk ds c;ku lqsa bl IEcU/k esa vkidks D;k dguk gS\\

mRrj& xyr gSA

iz"u 07- vkus vfHk;stu lk{kh la[;k 06 cCyw R;kxh ds c;ku lqsa bl IEcU/k esa vkidks D;k dguk gS\\

mRrj& xyr gSA

iz"u 08- vfHk;kstu lk{kh la[;k 07 Mk0 vk"qqrks"k feJk us fpfdRldh; fjiksVksZ dks izn"kZ d&2] izn"kZ d&3 ,oa izn"kZ d&4 ds :i esa lkfcr fd;k gSA bl IEcU/k esa vkidks D;k dguk gS\\

mRrj& xyr gSA

iz"u 09- vkus vfHk;stu lk{kh la[;k 08 euksgj yky ds c;ku lqsa bl IEcU/k esa vkidks D;k dguk gS\\

mRrj& xyr gSA

iz"u 10- vfHk;kstu lk{kh la[;k 09 Mk0 jes"k dqekj us iksLVekVZe fjiksVZ izn"kZ d&7] izn"kZ d&8 ,oa izn"kZ d&9 dks lkfcr fd;k gSA bl IEcU/k esa vkidks D;k dguk gS\\

mRrj& xyr gSA

iz"u 11- vfHk;kstu lk{kh la[;k&10 fujh{kd th0ih0 ;kno us iqfyl izi=ksa dks izn"kZ d&10 rk izn"kZ d&26 ds :i esa rFkk oLrq izn"kksZa dks lkfcr fd;k gSA bl IEcU/k esa vkidks D;k dguk gS\\

mRrj& xyr gSA

iz"u 12- vfHk;kstu i{k }kjk vkids fo:) gR;k rFkk lk{; ds foyksiu dk eqdnek ntZ dj;k gS\\ bl IEcU/k esa vkidks D;k dguk gS\\

mRrj& xyr gSA

iz"u 13- D;k vkidks izfrj{kk lk{; nsuh gS\\

mRrj& th gkWaa

iz"u 14- D;k dqN vkSj dguk gS\\

mRrj& eSa funksZ"k gwWaa

lqudj rLnhd fd;kA

izekf.kr fd;k tkrk gS fd vfHk;qDr dh ijh{kk esjh mifLFkfr esa dh x;h vkSj eSaus
mls lquk rFkk vfHkys[k esa vfHk;qDr }kjk fd;s x;s dFku dk iw.kZ vkSj lgh o.kZu
gSA

vij ftyk ,oa l= U;k;k/kh"k]

dksVZ la[;k&7] xkft;kcknA

fnukad%& 2&12&2013"

English Version

Examination/statement of the accused u/s 313 Cr.P.C.

Name: Pawan Kumar

Son of: Badhdhan Mahto

Age: 39 years

Profession: Labour work

Resident of: Village Sherwa, Post Girdih

Police Station: Gawan District: Jharkhand

The age of the accused as guessed: 40 years

Question 1: As per the prosecution story, on the night of 10.02.2004, you, in collusion with the co-accused in furtherance of common intention, murdered Kaliya, Keshav and Beeru by slitting their necks at Ram Leela Ground, Shalimar Garden Extension under P.S. Sahibabad, Ghaziabad and threw their dead bodies on the garbage dump and their necks in the nullah in order to destroy evidence. What have you to say in this respect?

Answer: It is wrong.

Question 2: PW-1 Vikas has during evidence proved the complaint (Ext. Ka-1) submitted by him. What have you to say in this respect?

Answer: It is wrong.

Question 3: You have heard the statement of PW-2 Shri. What have you to say in this respect?

Answer: It is wrong.

Question 4: You have heard the statement of PW-3 Anees. What have you to say in this respect?

Answer: It is wrong.

Question 5: You have heard the statement of PW-4 Mukesh Sharma. What have you to say in this respect?

Question 6: You have heard the statement of PW-5 Rakesh Kalra. What have you to say in this respect?

Answer: It is wrong.

Question 7: You have heard the statement of PW-6 Bablu Tyagi. What have you to say in this respect?

Answer: It is wrong.

Question 8: PW-7 Dr. Ashutosh Mishra has proved the medical reports being Ext. Ka-2, Ext. Ka-3 and Ext. Ka-4. What have you to say in this respect?

Answer: It is wrong.

Question 9: You have heard the statement of PW-8 Manohar Lal. What have you to say in this respect?

Answer: It is wrong.

Question 10: PW-9 Dr. Ramesh Kumar has proved the post mortem report being Ext. Ka-7, Ext. Ka-8 and Ext. Ka-9. What have you to say in this respect?

Answer: It is wrong. Question 11: PW-10 Inspector G.P. Yadav has proved the documents filed by the police being Ext. Ka-10 to Ext. Ka-28 and the object exhibits. What have you to say in this respect?

Answer: It is wrong.

Question 12: A case has been registered against you by the prosecution for murder and destroying evidence. What have you to say in this respect?

Answer: It is wrong.

Question 13: Have you to submit evidence in your defence?

Answer: Yes.

Question 14: Have you to say anything else?

Answer: I am innocent.

Heard & Verified.

It is certified that the accused was examined in my presence. I heard him and the statement, as on the record, given by the accused has been completely and correctly recorded.

Additional District & Sessions Judge,

Court No. 7, Ghaziabad.

Dated: 02.12.2013

i`PNk vfHkdFku vfHk;qDr vUrxZr /kkjk 313 n.M izfdz;k lafgrk

uke& iou dqekj

iq= Jh& c<<+u egrks

vk;q&39 o"kZ

O;olk;& etnwjh

fuoklh& xzke "ksjok fM0 fxjMhg

Fkkuk& xkoka

ftyk & >kj[k.M izns"k

vfHk;qDr dh vk;q ds IEcU/k esa vuqeku& 40 o"kZ

iz"u 01- vfHk;kstu i{k ds dFkkukd ds vuqlkj fnukad 10-02-2004 dks le; jkf= vne rgjhj LFkku jkeyhyk eSnku "kkyhekj xkMZu ,DIVsU"ku Fkkuk lkfgckckn] xkft;kckn esa vkus lg vfHk;qDr ds lkFk feydj lkekU; vk"k; dh iwfrZ ds vxzlj.k esa dkfy;k] ds"ko rFkk ch: dh xyk dkVdj mudh gR;k dj nh rFkk lk{; dks foyksfir djus ds vk"k; ls muds "ko dks dwMs+ ds <+sj ij Qsad fn;k vkSj xnZu dks ukys esa Qsad nhA bl IEcU/k esa vkidks D;k dguk gS\\

mRrj& xyr gSA

iz"u 02- vfHk;kstu lk{kh la[;k 11 fujh{k d egsUnz flag HknkSfj;k ds c;ku lqusa ftlus vfHk;kstu izi=ksa dks izn"kZ d&27 rk 45 ds :i esa lkfcr fd;kA bl IEcU/k esa vkidks D;k dguk gS\\

mRrj& xyr c;ku fn;k gSA

iz"u 03- vfHk;kstu lk{kh la[;k 12 Isokfuo`Rr fujh{k d gjh"kadj flag ds c;ku lqus] ftlus iapk;rukek ,oa layXu izi=ksa dks izn"kZ d&46 rk 67 ds :i esa lkfcr fd;k gSA bl IEcU/k esa vkidks D;k dguk gS\\

mRrj& xyr c;ku fn;k gSA

iz"u 04- vfHk;kstu i{k }kjk vkids fo:) gR;k rFkk lk{; ds foyksiu dk eqdnek ntZ dj;k;k gS\\ bl IEcU/k esa vkidks D;k dguk gS\\

mRrj& xyr gSA

iz"u 05- D;k vkidks izfrj{kk lk{; nsuh gS\\

mRrj& th ughaA

iz"u 06- D;k dqN vkSj dguk gS\\

mRrj& eSa funksZ"k gwWA

lqudj rLnhd fd;kA

izekf.kr fd;k tkrk gS fd vfHk;qDr dh ijh{kk esjh mifLFkfr esa dh x;h vkSj eSaus mls lquk rFkk vfHkys[k esa vfHk;qDr }kjk fd;s x;s dFku dk iw.kZ vkSj lgh o.kZu gSA

vij ftyk ,oa l= U;k;k/kh"k

fo"ks"k U;k;k/kh"k ,l0lh0@,l0Vh0 ,DV]

xkft;kcknA

fnukad%& 01-09-2015"

English Version

Additional examination/statement of the accused Under Section 313 Cr.P.C.

Name: Pawan Kumar

Son of: Badhdhan Mahto

Age: 39 years

Profession: Labour work Resident of: Village Sherwa, Post Girdih

Police Station: Gawan

District: Jharkhand

The age of the accused as guessed: 40 years

Question 1: As per the prosecution story, on the night of 10.02.2004, you in collusion with the co-accused in furtherance of common intention, murdered Kaliya, Keshav and Beeru by slitting their necks at Ram Leela Ground, Shalimar Garden Extension under P.S. Sahibabad, Ghaziabad and threw their dead bodies on the garbage dump and their necks in the nullah in order to destroy the evidence. What have you to say in this respect?

Answer: It is wrong.

Question 2: You have heard the statement of PW-11 Inspector Mahendra Singh Bhadoria, who has proved the documents filed by the prosecution being Ext. Ka-27 to 45. What have you to say in this respect?

Answer: He has given a wrong statement.

Question 3: You have heard the statement of PW-12 Inspector (retired) Hari Shankar Singh, who has proved the panchayatnama and enclosed documents being Ext. Ka-46 to 67. What have you to say in this respect?

Answer: He has given a false statement.

Question 4: A case has been registered against you by the prosecution for murder and destroying evidence. What have you to say in this respect?

Answer: It is wrong.

Question 5: Have you to submit evidence in your defence?

Answer: Yes.

Question 6: Have you to say anything else?

Answer: I am innocent.

Heard & Verified.

It is certified that the accused was examined in my presence. I heard him and the statement, as on the record, given by the accused has been completely and correctly recorded.

Additional District & Sessions Judge,

Special Judge (SC/ST Act),

Ghaziabad.

Dated: 01.09.2015"

(English Translation by the Court)

108. It is clear from the perusal of statements and additional statements of accused/appellants recorded under Section 313 Cr.P.C. that in most of the questions only name and number of the concerned prosecution witness have been mentioned but reference/substance of his evidence has not found place. Likewise, in most of the questions only Exhibit Numbers of documents have been mentioned without describing the subject they relate or their substance.

109. For the aforesaid discussion, We are of the considered view that statements and additional statements of accused-appellants recorded under Section 313 Cr.P.C. are not in conformity with above referred decisions of Hon''ble Apex Court rendered in *Jai Dev, Bakhshish Singh Dhaliwal, Shivaji Sahabrao Bobade, State (Delhi Admn.) v. Dharampal, State of Punjab v. Swaran Singh and Prakash (supra)* and there is no proper compliance of Section 313 Cr.P.C. for recording statements of accused persons for the purpose to explain the evidence and circumstances relied upon by the prosecution against them. In absence of necessary details of evidence, facts and circumstances brought on record by the prosecution against them the accused appellants could not properly explain and reply them and become handicapped in properly defending themselves.

110. In view of discussion made above, Question No. IV is answered in affirmative. Answer to Question No. V

111. To find out answer of aforesaid question we have to take into consideration the evidence available on record, conclusions of Trial Court for holding completion of chain of circumstances and their justification.

112. The relevant portion of impugned judgment and order giving observations and findings of Trial Court is reproduced herein below :

izLrqr ekeys esa ;g lkfcr gS fd ftl iz"uxr Q~ySV la[;k 725 Q~ySV la[;k ,l&4 "kkyhekj xkMZu ,DIVsU"ku&1 lkfgckckn esa rhuksa e`rdksa dh gR;k gqbZ gS] og

Q~ySV vfHk;qDr iou us fnukad 27-08-2003 dks jkds" k dkyjk ls dz; fd;k Fkk rFkk mlesa rhuksa e`rdx.k jgrs Fks] ftls os [kkyh ugha dj jgs Fks rFkk ih0MCyw0&2 NksVu us Li"V :i ls dgk gS fd rhuksa eqfYTEku dks mlus mDr edku esa vkrs tkrs ns[kk Fkka ih0MCyw0 3 vuhl us dFku fd;k gS fd ?kVuk ds ,d fnu iwoZ iou] fouksn rFkk buds nks vU; lkFkh mls jkr dks 10%30 cts feys Fks rFkk ;g dgk Fkk fd mls IyKV ij dCtk ysuk gS rFkk bl flyflys esa rhuksa dks [kRe djuk gSA vr% e`rdx.k dh gR;k ds Bhd iwoZ vfUre ckj vfHk;qDrx.k dks ftl Q~ySV esa e`rdx.k dh gR;k dh x;h gS] esa tkrs gq, bl lk{kh us ns[kk gSA vr% bl xokg ds i{knzksgh gksus ds vk/kkj ij vfHk;kstu dsl lansgizn izrhr ugha gksrk gS ,oa vfHk;qDr.k dk rdZ Lohdkj fd;s tkus ;ksX; ugha gSA

vfHk;qDrx.k ds fo}ku vf/koDrk dk rdZ gS fd vfHk;qDrx.k ds ikl ls dksbZ cjkenxh ugha gqbZ gS rFkk bl vk/kkj ij vfHk;kstu dsl dh iqf"V ugha gksrh gS rFkk vfHk;kstu dh dfM;ka ,d nwljs ls ugha feyrhA vr% vfHk;qDrx.k lansg dk ykHk ikus ds vf/kdkjh gSaA mYys[kuh; gS fd bl ekeys esa foospd vfHk;kstu lk{kh 10 fujh{kd Jh th0ih0 ;kno }kjk fnukad 17-10-2004 dks vfHk;qDrx.k fouksn rFkk }kfjdk dks gR;k ds yxHkx lkr fnu i"pkr~ fxjQ~rkj fd;k x;k rFkk mudh fu"kkunsg ij ukys ls rhuksa e`rdksa ds flj cjken gq, tcfd muds "ko fnukad 11-10-2014 dks le; 14%05 cts "kkyhekj xkMZu ,DIVsu"ku&izFke jkeyhyk eSnku esa vyx&2 diM+ksa esa ca/ks dwMs+ ds <+sj esa ik;s x;sA vr% vfHk;qDrx.k ds ladsr ij mDr "koksa ds flj ukys ls cjken fd;s x;s gSaA bl izdkj vfHk;kstu dfM;ka ,d nwljs ls feyrh gSA

fujh{kd Jh th0ih0 ;kno }kjk QnZ [kkuk ryk"kh IyKV la[;k 724 Q~ySV la[;k ,l&4 "kkyhekj xkMZu ,DIVsU"ku&1] lkfgckckn] xkft;kckn izn"kZ d&17 rS;kj dh x;h] ftlds vuqlkj Q~ySV ds dejs dh nhokjksa ij [kwu ds /kCcs ik;s x;s] ftUgsa vyx&2 fMCcksa esa lknk o [kwu vkywnk dCts esa fy;k x;k rFkk ,d csYV ftlesa [kwu yxk gS] vyx ls ysdj loZs eksdj fd;k x;k rFkk uewuk eksdj rS;kj fd;kA

QnZ [kkuk ryk"kh izn"kZ d&18 ds voyksdu ls Li"V gS fd vfHk;qDrx.k fouksn] }kfjdk o xokgku ds le{k Q~ySV dk dekj [kqyokdj ryk"kh ds nkSjku ,d QksVks ,Yce ftlesa ewrd gjh] dfy;k rFkk lq[knso ds QksVks o muds ifjokj ds QksVks lHkh fyQkQs esa j[ks x;sA xkM+h la[;k ts0,l0 12,&3766 dk jftLV~s"ku tks xqM~Mh ds uke dk gS] tks lq[knso dh iRuh crkrs gSa ,oa chekA cSad dh iklcqd lquhrk nsoh ds uke dh] Jherh clUrh nsoh ds uke ls fdiku fodkl i= la[;k ts0 vks0lh0Mh0 00 ts 824 yxk;r 828 lHkh 10]000@& ds dqy 50]000@&] Jherh lquhrk nsoh ds uke ls fdiku fodkl i= 10]000@& :i;s gS dqy 50]000@& ds uEcj ts0 vks0lh0Mh0 00 ts0 834 ls 738 rd] Jherh dfy;k nsoh ds uke ls fodkl i= 10]000@& ds ikap dqy 50]000@& uEcj ts0vks0lh0Mh0 00ts 839 yxk;r 843 rd Jherh dkfUr nsoh ds uke ls feyk fodkl i= 10]000@& ds ikap dqy 50]000 uEcj ts0vks0lh0Mh0 00ts 829 yxk;r 833 rd cjken gq,A

vr% mijksDr vfHkys[kksa ls e`rdx.k dh IyKV la[;k 725 Q~ySV la[;k&,l&4] "kkyhekj xkMZu ,DIVsU"ku&1] lkfgckckn] xkft;kckn esa jgus dh vfHk;kstu dsl dh iqf"V gksrh gS ,oa vfHk;kstu dsl dh dfM+;ka ,d nwljs ls feyrh gSa rFkk vfHk;qDrx.k dk rdZ ekus tkus ;ksX; ugha gSA

izLrqr ekeys esa IyKV la[;k 725 Q~ySV la[;k ,l&4 "kkyhekj xkMZu ,DIVsU"ku&1 lkfgckckn] xkft;kckn jkds"k dkyjk us vfHk;qDr iou dks cspk tkuk crk;k x;k gSA mDr dejs esa rhuksa e`rdx.k dk jguk Hkh ik;k x;k gSA ih0MCyw0&2 NksVu us vius c;ku esa dFku fd;k gS fd rhuksa e`rd fti edku esa jgrs Fks] mlus ml edku esa gkftj vnkyr rhuksa eqfYteku dks vkrs tkrs ns[kk FkkA ih0MCyw0&3 vuhl us vius c;ku esa dFku fd;k gS fd ?kVuk ls ,d fnu igys iou] fouksn o buds nks lkFkh mls jkr dks 10%30 cts Fks rFkk ;s dgk Fkk fd mls IyKV ij dCtk ysuk gS rFkk ml flyflys esa rhuksa dks [kRe djuk gS rFkk mlds nwljs fnu rhuksa e`rdx.k Jherh dfy;k] gjh ;kno rFkk ds"ko ds "ko "kkyhekj xkMZu ,DIVsU"ku&izFke jkeyhyk eSnku esa vyx&2 diM+ksa esa ca/ks dwM+s ds <+sj esa fnukad 11-02-2004 ik;s x;s rFkk fnukad 17-02-2004 dks vfHk;qDrx.k fouksn rFkk }kfjdk ds tqeZ laLohd`fr ds ckn rhuksa e`rdksa ds flj ukys ls cjken fd;s x;sA vfHk;kstu vfHkys[k fof/kr;k lkfcr gksrs gSaA vfHk;kstu dh dfM;ka ,d nwljs ls tqM+rh gSaA

mijksDr leLr fo"ys"k.k leLr fo"ys"k.k ds vk/kkj ij ;g fu"d"kZ fudyrk gS fd vfHk;kstu i{k vfHk;qDrx.k ds fo:) yxk;s x;s vkjksiksa dks ;qfDr;qDr lansg ls ijs lkfcr djus esa dke;kc jgk gSA QyLo:i vfHk;qDrx.k dks /kkjk 302@34 201 Hkk0na0la0 ds vUrxZr nks"kfl) fd;k tkuk mfpr gSA"

English Version

"In the present matter, it is established that the Flat No. 725/S-4 situated at Shalimar Garden Extension-I, Sahibabad in which all the three deceased were murdered was on 27.08.2003 purchased from Rakesh Kalra by the accused Pawan. All the three deceased would reside therein and were not vacating the same. PW-2 Chhotan has clearly stated to have seen all the three accused persons frequenting the said house. PW-3 Anees has stated that one day prior to the incident, Pawan, Vinod and a duo of their colleagues had met him that night on 10:30 pm and they had told him that they were to take possession over the plot and that all the three of them were to be killed on this count. Hence, this witness right before the murder of the deceased has last seen the accused persons visiting the flat in which the deceased were murdered. Hence, the prosecution case does not appear to be doubtful on the basis of this witness having turned hostile, and this plea of the accused persons is not acceptable.

The Ld. Counsel for the accused persons has argued that no recovery has been made from them and the prosecution case is not proved on this account, and the chain of events as stated by the prosecution is not properly formed. Hence, the accused persons deserve to get benefit of doubt.

It is pertinent to mention here that the accused persons Vinod and Dwarika were arrested on 17.10.2004 by PW-10 Inspector Mr. J.P. Yadav nearly seven days after the incident; and on being indicated by them, the heads of all the three deceased were recovered from the nullah whereas their dead bodies fastened in separate clothes were found on 11.10.2015 at 14:05 hours in the garbage dump at Ram Leela Ground situated in Shalimar Garden Extension-I. Hence, on the indications by the accused persons, the heads of the aforesaid dead bodies were

recovered from the nullah. In this way, the chain of events as stated by the prosecution is properly formed.

Ext. Ka-18 being the memo of physical search of Flat No. 725/S-4 situated at Shalimar Garden Extension- I, Sahibabad, Ghaziabad was prepared by Inspector Mr. J.P. Yadav, as per which blood-stains were found to be on the walls of the flat, plain and blood-stained earths thereof were taken into custody; and one belt smeared with blood was sealed separately and specimen seal was prepared.

From the perusal of Ext. Ka-18 being the memo of physical search, it is clear that in presence of the accused persons Vinod and Dwarika and the witnesses, the room of the flat was got opened and during its physical search, a photo album was found having photographs of the deceased Hari, Kaliya and Sukhdev and those of their families, which were then kept in an envelope. During the search, the following things were found : the registration of vehicle bearing no. JS12-A3766, which is in the name of Guddi, who is said to be the wife of Sukhdev; insurance and bank passbook in the name of Sunita Devi; Kisan Vikas Patra bearing nos. OSD00J824 to 828 of Rs. 10,000/- each, totalling to Rs. 50,000/- in the name of Smt. Basanti Devi; Kisan Vikas Patra bearing nos. OSD00J834 to 838 of Rs. 10,000/- each, totalling to Rs. 50,000/- in the name of Smt. Sunita Devi; Kisan Vikas Patra bearing nos. OSD00J839 to 843 of Rs. 10,000/- each, totalling to Rs. 50,000/- in the name of Smt. Kaliya Devi; and Kisan Vikas Patra bearing nos. OSD00J829 to 833 of Rs. 10,000/- each, totalling to Rs. 50,000/- in the name of Smt. Kanti Devi.

Hence, the aforesaid documents go to prove the prosecution's stand that the deceased persons were residing in Flat No. 725/S-4 situated at Shalimar Garden Extension-I, Sahibabad, Ghaziabad. In this way, the chain of events as stated by the prosecution is properly formed and in this way, the plea taken by the accused persons does not deserve to be accepted.

In the present case, the Flat No. 725/S-4 situated at Shalimar Garden Extension-I, Sahibabad, Ghaziabad is said to have been sold to the accused Pawan by Rakesh Kalra. All the three deceased were also found residing in the said room. PW-2 Chhotan has in his statement stated that he had seen all the three accused persons, who are present in the court, frequenting the house wherein the trio of the deceased used to reside. PW-3 Anees has in his statement stated that one day prior to the incident, Pawan, Vinod and two of their colleagues had met him at 10:30 pm and told that they were to take possession over the plot and that they were to kill all the three deceased on this account. The following day the dead bodies Smt. Kaliya, Hari Yadav and Keshav, fastened in separate clothes, were found on 11.10.2015 in the garbage dump at Ram Leela Ground situated in Shalimar Garden Extension-I, and after confession of crime by the accused persons Vinod and Dwarika on 17.02.2004, the heads of all the three deceased were recovered from the nullah. The records produced by the prosecution are legally proved. In this way, the chain of events as stated by the prosecution is properly formed.

On the basis of all the aforesaid analysis, it is concluded that the prosecution has been successful in proving beyond reasonable doubt the charges levelled against the accused persons. Accordingly, it will be justifiable to convict the accused persons u/s 302/34, 201 of IPC."

(English Translation by the Court)

113. It is clear from the perusal of above referred passages of the impugned judgment and order that following facts, circumstances and evidence have been relied upon by the Trial Court to reach conclusion about completion of chain of circumstances and to accept the case of prosecution proved beyond reasonable doubt:

(I) The Flat No. 725/S-4 situated at Shalimar Garden Extension-I, Sahibabad, Ghaziabad is said to have been sold to the accused-appellant Pawan by PW-5 Rakesh Kalra.

(II) PW-2 Chottan has in his statement stated that he had seen all the three accused-appellants, who were present in the Court, frequenting the house wherein the trio of the deceased used to reside.

(III) PW-3 Anees has stated in his statement that one day prior to the incident, accused-appellants Pawan, Vinod and two of their accomplices met him at 10.30 P.M. and told that they were to take possession over the plot and they were to kill all the three deceased on this account.

(IV) The following day the dead bodies of Smt. Kaliya, Hari Yadav and Keshav, fastened in separate clothes were found on 11.10.2004 in the garbage dump at Ram Leela Ground situated in Shalimar Garden Extension-I.

(V) After confession of crime by the accused-appellants Vinod and Dwarika on 17.02.2004, the heads of all the three deceased were recovered from the "Nala" (drain).

(VI) The records produced by the prosecution are legally proved.

(VII) The Chain of events as stated by the prosecution is properly formed.

114. Admittedly this is a case of circumstantial evidence. No one has seen the accused-appellants committing murder of the deceased persons even no one has seen deceased persons before their death in the company of accused persons. Along with other issues, identity of the deceased persons, motive for committing the offence, place of occurrence and participation of the accused-appellants in the alleged crime are under serious challenge by means of above Criminal (Capital) appeals.

115. The Hon'ble Apex Court while considering the principles how the circumstances be considered and weighed, in *Birdichand Sarda v. State of Maharashtra* [(1984) 4 SCC 116], has observed in paragraph no. 153 and 154 as under :

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade and Anr. v. State of Maharashtra, (1973) 2 SCC 793 where the observations were made :

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between "may be" and "must be" is long and divides vague conjectures from sure conclusions.

(2) the facts so established should be consistent only with the hypotheses of the guilt of the accused, that is to say, they should not be explainable on any other hypotheses except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypotheses except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These give golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

116. Apex Court in Anadda Poojary v. State of Karnataka [2014 Law Suit (SC) 846] in paragraph nos. 20 and 21 has discussed the issue of circumstantial evidence as under :

"20. There is one more very crucial and critical circumstance which needs to be highlighted at this stage. Death took place on 1st March, 2006; UBR was registered only on 4th March, 2006 and postmortem conducted on 5th March, 2006. On the basis, FIR was registered on 7th March, 2006 wherein it was stated that the "murder was committed by unknown persons". It shows that till that time, the appellant was not the suspect at all. Why and under what circumstances he came under cloud and roped in as an accused person, would be dealt with us a little later at an appropriate stage. For now, we revert back to the postmortem report. PW-1 is the doctor who conducted the postmortem and gave his report (Ex.P-1) in which he has stated that after the postmortem examination, he gave the "tentative" cause of death as "cerebral and pulmonary oedema secondary to smothering". This opinion of his, which is only "tentative",

is based on his examination of the body whereby he observed certain external injuries. In his cross examination, he categorically admitted that the type of contusion found on the body could be caused if that portion came in contact with rough and hard surface. He also admitted in the cross-examination that presence of alcohol was found in the dead body. Therefore, possibility cannot be ruled out that after consuming the alcohol, Dorathi might have fallen and hit herself on a rough and hard surface. This vital portion of the testimony of the doctor is not even adverted to and conveniently omitted from the discussion. It would be also relevant to point out at this stage even PW-2 namely Dr. Chandrashekhar under whose regular treatment the deceased was, had stated that the deceased had come to his hospital for treatment on 05.11.2005, 08.11.2005 and 25.11.2005. He also categorically mentioned that at that time, she was treated for hypertension and depression. He also mentioned that she was an alcoholic and he had advised her to quit drinking. Even this part of testimony of PW-2 is overlooked by the courts below.

21. In the aforesaid scenario, it cannot be said with certainty as to whether Dorathi died of smothering or being a heart patient, the actual cause of death was cardiac arrest. In such circumstances, when there was a possibility of both the caused of death, in the absence of clear certainty about the cause, we are of the opinion that High Court committed an error in not giving benefit of doubt to the accused person."

117. Hon"ble Apex Court in Nizam and Ors. v. State of Rajasthan [AIR 2015 SC 3430], has observed in paragraph no. 19 as under :

"19. In case of circumstantial evidence, court has to examine the entire evidence in its entirety and ensure that the only inference that can be drawn from the evidence is the guilt of the accused. In the case at hand, neither the weapon of murder nor the money allegedly looted by the appellants or any other material was recovered from the possession of the appellants. There are many apparent lapses in the investigation and missing links:-(i) Non-recovery of stolen money; (ii) The weapon from which abrasions were caused; (iii) False case lodged by PW-2 alleging that he was being robbed by some other miscreants; (iv) Non-identification of the dead body and (v) Non-explanation as to how the deceased reached Maniya village and injuries on his internal organ (penis). Thus we find many loopholes in the case of the prosecution. For establishing the guilt on the basis of the circumstantial evidence, the circumstances must be firmly established and the chain of circumstances must be completed from the facts. The chain of circumstantial evidence cannot be said to be concluded in any manner sought to be urged by the prosecution. "

118. Hon"ble Apex Court in the case of Jose @ Pappachan v. The Sub-Inspector of Police, Koyilandy & Another [2016 SCC Pm:ome SC 1073], in paragraph nos. 57, 58, 59, 60 & 61, has observed as under :

"57. The facts as obtained in the present case present a jigsaw puzzle in which

several frames are missing to permit an unreserved opinion of the complicity of the appellant.

58. The inalienable interface of presumption of innocence and the burden of proof in a criminal case on the prosecution has been succinctly expounded in the following passage from the treatise *The Law of Evidence*, 5th Edn. by Ian Dennis at p. 445:

"The presumption of innocence states that a person is presumed to be innocent until proven guilty. In one sense this simply restates in different language the rule that the burden of proof in a criminal case is on the prosecution to prove the defendant's guilt. As explained above, the burden of proof rule has a number of functions, one of which is to provide a rule of decision for the fact finder in a situation of uncertainty. Another function is to allocate the risk of misdecision in criminal trials. Because the outcome of wrongful conviction is regarded as a significantly worse harm than wrongful conviction is regarded as a significantly worse harm than wrongful acquittal the rule is constructed so as to minimise the risk of the former. The burden of overcoming a presumption that the defendant is innocent therefore requires the state to prove the defendant's guilt. "

(emphasis supplied)

59. The above quote thus seemingly concedes a preference to wrongful acquittal compared to the risk of wrongful conviction. Such is the abiding jurisprudential concern to eschew even the remotest possibility of unmerited conviction.

60. This applies with full force particularly in fact situations where the charge is sought to be established by circumstantial evidence. These enunciations are so well entrenched that we do not wish to burden the present narration by referring to the decisions of this Court in this regard.

61. Addressing this aspect, however, is the following extract also from the same treatise *The Law of Evidence*, 5th Edn. by Ian Dennis at p. 483:

"Where the case against the accused depends wholly or partly on inferences from circumstantial evidence, factfinders cannot logically convict unless they are sure that inferences of guilt are the only ones that can reasonably be drawn. If they think that there are possible innocent explanations for circumstantial evidence that are not "merely fanciful", it must follow that there is a reasonable doubt about the guilt. There is no rule, however, that judges must direct juries in terms not to convict unless they are sure that the evidence bears no other explanation than guilt. It is sufficient to direct simply that the burden on the prosecution is to satisfy the jury beyond reasonable doubt, or so that they are sure.

The very high standard of proof required in criminal cases minimises the risk of a wrongful conviction. It means that someone whom, on the evidence, the factfinder believes is "probably" guilty, or "likely" to be guilty will be acquitted, since these judgements of probability necessarily admit that the factfinder is not "sure". It is generally accepted that some at least of these acquittals will be of

persons who are in fact guilty of the offences charged, and who would be convicted if the standard of proof were the lower civil standard of the balance of probabilities. Such acquittals are the price paid for the safeguard provided by the "beyond reasonable doubt" standard against wrongful conviction. "

(emphasis supplied)"

119. Among the witnesses examined by the prosecution informant PW-1 Vikas Bajaj, PW-2 Chotan, PW-3 Anees, PW-4 Mukesh Sharma, PW-5 Rakesh Kalra and PW-6 Bablu Tyagi are witnesses of facts while other witnesses of the prosecution PW-7 Dr. A. Mishra, PW-8 Contable Manohar Lal, PW-9 Dr. Ramesh Kumar, PW-10 Inspector G.P. Yadav (Investigating Officer), PW-11 Inspector Mahendra Singh Sisodiya, PW-12 Harishanker Singh are formal witnesses. Apart from above oral evidence prosecution has also produced documentary evidence (Exhibit "Ka-1 to Ka--63") and material evidence (Exhibit "1 to 30) as referred above.

120. Now in the above factual and legal background we will examine various findings of the Trial Court in the light of evidence available on record.

Ownership of the Flat concerned.

121. The Trial Court has recorded finding about ownership of flat concerned on the basis of evidence of PW-5 Rakesh Kalra who claimed to sell the Flat concerned to the accused-appellant Pawan and gave possession of the same to him.

122. Learned G.A. urged that PW-5 Rakesh Kalra has given specific evidence in his examination-in-chief for selling the Flat and delivering possession to the accused Pawan, but he has not been cross examined by the accused side on this point, as such this part of evidence of the witness is unrebutted and be treated true. Apart from that he has also referred to photo copy of Sale Deed dated 27.08.2003 (Paper No. 22-C) to prove the fact that "Flat" was owned by accused Pawan.

123. The above arguments of G.A. are vehemently opposed by learned counsel for the accused-appellants.

124. It is true that PW-5 has not been cross examined on behalf of the accused-appellant Pawan on the point that the "Flat" was sold by him and possession of same was given to accused Pawan. But photocopy of sale deed, reveals that the Flat was sold by means of above referred sale deed to one Pooran Prasad Yadav on 27.08.2003 by Smt. Savita Arora as proprietor of M/s Rajan Builders and Promoters, and PW-5 is witness of the above referred sale deed. It is clear from this that the Flat (S-4/725, Shalimar Garden Extension-I) was never sold by PW-5 or his firm M/s Rajan Builders and Promoters to accused-appellant Pawan, rather, it was sold to one Pooran Prasad Yadav.

125. Photo copy of sale deed dated 27.08.2003 (Paper No. 22-C) is though not duly proved, but, since it is produced and relied upon by the prosecution itself,

therefore, it may be read in the evidence, to examine the prosecution case.

126. We may refer here Section 91 of the Indian Evidence Act, which reads as under :-

"Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.

91. When the terms of a contract, or of a grant of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1- When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2 - Wills admitted to probate in India may be proved by the probate.

Explanation 1 : This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2 : Where there are more originals than one, one original only need be proved.

Explanation 3 : The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact."

127. Though as per C.D. Paper No. 7 Dated 17.02.2004, the accused-appellants Vinod and Dwarika in their statements have referred accused-appellant Pawan as "Pawan @ Pooran", but those statements are not substantial piece of evidence. Otherwise also, they could not be read in evidence against accused-appellant Pawan being statements of co-accused.

128. As such there is no evidence on record to show that accused-appellant Pawan is also known as "Pooran". Including the I.O. no other prosecution witness has stated in his evidence that accused-appellant Pawan is "Pooran". Even charge-sheet No. 215A (Exhibit "Ka-25")) of accused-appellant Pawan is filed in the name of "Pawan" and not in the name of "Pawan @ Pooran".

129. In view of the above, We find that the conclusion of the I.O. that accused-appellant Pawan was owner of the Flat concerned is contrary to the aforesaid sale deed of the Flat concerned and evidence of PW-2, PW-3 and PW-5 to the effect that accused-appellant Pawan is owner of the Flat concerned is also wrong and not reliable being contrary to the above referred sale deed.

130. Accused-appellant Pawan was also not asked any question to the effect that he was owner of the Flat concerned in his statement recorded under Section 313 Cr.P.C.

131. On the basis of aforesaid We are of the view that prosecution could not prove by evidence adduced by it that accused-appellant Pawan was the owner of the Flat concerned. Residence of deceased persons.

132. The Trial Court has recorded finding to the effect that deceased persons were residing in the flat concerned. In this regard PW-2 Chottan has stated in his evidence that he saw the deceased persons living in the flat concerned while he was doing grinding of marble work there.

133. For the purpose of deciding place of residence of deceased persons Trial Court has also taken into consideration recoveries effected by PW-10 Investigating Officer from the flat concerned. It is noteworthy here that PW-10 himself has stated in his evidence that he found the flat locked and without obtaining any permission from the appropriate authority he had himself broke open the lock and entered in the flat concerned and effected the alleged recoveries of blood stained and plain cement plaster, blood stained belt, photo album, kisan vikas patras, registration certificate of vehicle, insurance papers etc. Material Exhibit No. 21 to Material Exhibit No. 27, referred above.

134. Admittedly the alleged owner of the flat concerned accused Pawan or any of his relative/representative were not present there and the members of Police party had not searched each other before the search of the Flat, to ascertain that none of them had any incriminating article, which could have been planted in the Flat and described as item recovered from the Flat concerned. This act of I.O. is in contravention of Rule 111 of the Regulations.

135. It is also noteworthy here that no mattress, quilt, bed sheet, cooking items, furniture etc. were found in the flat concerned which are necessary items for residence of any person anywhere. All the items allegedly recovered from the flat concerned are in the nature which may be kept/planted very easily there by any one and specially when owner/occupant/his relative/representative of the flat were not present there at the time of alleged recoveries.

136. I.O. has also not tried to collect the documentary evidence like ration cards, driving licenses, photo identity cards, electricity/telephone bills etc. to prove that the deceased persons were resident of the Flat concerned.

137. PW-4 Mukesh Sharma who was examined by the prosecution as public witness of the aforesaid recoveries, in his statement recorded before the Trial Court, had clearly denied that any blood stained plaster was scratched from any room of his building erected on Plot No. 725 or blood stained "belt" was recovered by the I.O., in his presence. In his cross examination he has further deposed that Police had not searched the Flat concerned namely Flat No. S-4 in his presence, rather had obtained his signatures on the recovery memos.

138. It is clear from the above statement of PW-4, who is public witness of the alleged search of the Flat concerned that this witness has not verified in his evidence that Police has taken search of the Flat concerned in his presence and Police has taken into its possession the items allegedly recovered from the Flat concerned. As such recoveries from the Flat concerned are not corroborated by the evidence of public witness.

139. Accordingly, on the basis of material and evidence available on record we find that findings recorded by the Trial Court regarding residence of deceased persons in the flat concerned is not based on the evidence available on record and same is erroneous.

Recovery of dead bodies

140. Though, the fact of recovery of three dead bodies fastened in separate clothes dumped on the garbage at Ram Leela Ground situated in Shalimar Garden Extension-I, by the Police on the information of informant/PW-1, which were subsequently identified of Smt. Kaliya, Hari @ Hariya Yadav (Beeru?) and Keshav is not disputed, PW-6 Babloo Tyagi the public witness of above recoveries though admitted his signatures on the inquest memos, but has stated in his evidence that he had not gone to the Ram Leela Ground on 11.02.2004, rather he went on that date to the Police Chowki for panchayatnama (inquest reports). In his cross examination he has denied suggestions of the prosecution that inquest memos were filled on the spot.

141. Above evidence of PW-6 creates serious doubt about preparation of inquest memos of the dead bodies at the spot.

Recovery of severed heads

142. According to the prosecution case, the severed heads were recovered from the "Nala" (drain) on the pointing out of accused-appellants Vinod and Dwarika on 17.02.2004.

143. It is evident from C.D. Paper No. 07, dated 17.02.2004 of Case Diary that allegedly recovered heads were not sealed on the spot at the time of their recovery in absence of arrangement of light and due to darkness. Those were sealed on the next day i.e. 18.02.2004. It is stated in aforesaid C.D. Paper that Police Constables were assigned the duty to look after the heads, but no Constable among them came forward to give evidence that during that period between recovery and their sealing they remained intact and no tampering was done with those.

144. As per evidence of PW-12 S.I. Harishanker Singh "[kksifM+;ka rhuksa ukys esa rSjrh gqbZ feyh Fkh] rhuksa [kksifM+;ka igpkuus esa vk jgh FkhA" from which it can safely be inferred that water was flowing in the said "Nala" (drain), but the prosecution has not given any explanation that without being tied up or any restraint, how above heads remained at same place for a long period of 07 days in the flowing water of "Nala" (Drain).

145. It is noteworthy here that according to aforesaid C.D. Paper PW-2 and PW-3 are also witnesses of inquest report of the heads (Exhibit "Ka-46, Ka-47 and Ka-48") but they have not disclosed this fact in their evidence. Even I.O. and other witnesses of inquest memos of heads have not disclosed this fact before the Court in their evidence.

146. As such the recovery of severed heads on the pointing out of accused-appellants Vinod and Dwarika is not corroborated by the evidence of any public witness.

147. In view of above discussion we are of the view that recovery of severed heads on the pointing out of accused-appellants Vinod and Dwarika is doubtful.

Identity of dead bodies.

148. At the initial stage of this case, deceased persons were identified as Smt. Kaliya, Hari Yadav @ Hariya and Keshav, and charge-sheets (Exhibit "Ka-24 to Ka-26") are also filed for their murder and concealment of evidence, but as per report of PW-10 dated 12.05.2005, referred above, deceased Hari Yadav @ Hariya had been wrongly identified as murdered person while actual murdered person was "Beeru" S/o Mauji Mehto.

149. So far as deceased "Beeru" is concerned, there is no material on record to clarify that how and when the fact of murder of "Beeru" came to the knowledge of PW-10. Relevant C.D. Paper has not been brought on record. There is also no oral or documentary evidence on record about residence of "Beeru", his relation with the other murdered persons as well as accused persons, reasons for his murder and names and addresses of the witnesses who have identified him.

150. So far as identification of other two deceased as Smt. Kaliya and Keshav is concerned that is also not based on any cogent and credible evidence available on record.

151. According to C.D. Paper No. 1 dated 11.02.2004 of Case Diary deceased persons could not be identified on that date and the sealed dead bodies were handed over to constables Sompal and Ompal for their postmortem.

152. As per evidence of PW-11 dead bodies were not identified by any one on 11.02.2004, till they were sealed. He has stated in his evidence that "-----tc rd eSaus bu rhuksa "koksa dks lhy fd;k rc rd ekSds ij ekStwn dksbZ Hkh O;fDr ,slk ugha Fkk ftlus rhuksa "koksa dh "kuk[r fd;k gksA-----"

153. As per evidence of PW-7 Dr. A. Mishra, no one came to identify the dead bodies till their sealing. Relevant portion of his evidence is quoted herein below :

" ;g lgh gS iksLVekVZe fd;s tkus ds ckn ,oa lhy fd;s tkus rd budk dksbZ IEcU/kh "kuk[r djus ugha vk;k FkkA"

154. In the light of the facts of C.D. Paper No. 1 dated 11.02.2004 and evidence of PW-11 about non identification of dead bodies on 11.02.2004 coupled with

evidence of PW- 7 for non presence of any body at the mortuary from the beginning of Postmortem till the sealing of dead bodies, it is highly doubtful that PW-2 Chottan would have seen the dead bodies, because if he was present and had seen those he should had told this fact at the same time to the I.O. or other Police personnel or mention this fact in his statement but he had not done so.

155. PW-2 has identified the deceased persons as resident of the Flat concerned.

156. It is noteworthy here that PW-2 is neither kith or kin of the deceased persons nor their relative. It is also not clear from his evidence that before how much time from the incident he had last seen the deceased persons and in absence of any specific mark on the dead bodies or other belongings like their clothes etc., on what basis he has identified the deceased persons as residents of the Flat concerned.

157. He has neither disclosed the names of deceased persons nor of accused persons in his evidence and has been declared hostile for not supporting the prosecution case, despite his cross examination by the Public Prosecutor nothing useful has come in his evidence which may be helpful to prove the prosecution case.

158. Tilak Mehto. Chandi Yadav, Sudhir Kumar, Ashok Kumar, Shyam Sunder who had identified the deceased by their names and whose statements under Section 161 Cr.P.C. were recorded by PW-11 and proved by PW-10 (Exhibit "Ka-19 to Exhibit "Ka-23"), were not examined by the prosecution. As such their evidence could not be read in the evidence to establish identification of the dead bodies, due to non availability of opportunity to the accused-appellants to cross examine them.

159. We have already seen and noted that PW-2 Chottan has stated that deceased persons were residing in the Flat concerned. He is neither named in the FIR nor by the witnesses and also not been produced by the prosecution as witness during the trial. It appears that he had not seen the dead bodies and he was probably introduced by the I.O. to establish identity of deceased persons. PW-5 specifically denied the fact of deceased persons were living in the Flat, as such evidence of PW-5 is contrary to the evidence of PW- 2. The witness of inquest memos of the dead bodies PW-6 Babloo Tyagi has not said any thing regarding identification of the dead bodies. Recovery of severed heads is also doubtful, as none of the prosecution witness has given specific evidence in respect of seeing heads or their photographs. No kith or kin or relative of the deceased persons were examined by the prosecution to ascertain their identity.

160. No efforts were made by the I.O. for getting the dead bodies identified by taking their finger prints or DNA samples and getting them examined by the experts.

161. I.O. has also not tried to collect documentary evidence like ration cards, driving licenses, photo identity cards, electricity/telephone bills etc. to establish

the identity of the deceased persons.

162. As such prosecution by the evidence produced by it could not establish the identity of the deceased persons beyond doubt and failed to prove that the dead bodies of one female and two males found at Ramleela Maidan on 11.02.2004, were of Smt. Kaliya, Hariya @ Hari Yadav (Beeru?) and Keshav.

Motive for committing murders

163. PW-3 Anees has stated in his testimony that one day before the incident accused-appellant Pawan, Vinod and their two companions met him and accused-appellant Pawan told him in the presence of other accused-appellants that though Flat concerned is in his name but it was occupied by others and to get vacant possession of the Flat he has to kill all the deceased persons.

164. Admittedly, PW-3 is not relative of accused-appellants or deceased persons. There is nothing on record to show such intimacy of PW-3 with the accused persons or deceased persons so that accused persons may have taken him into confidence and told him in advance about their evil designs for committing murder of deceased persons. He was simpliciter seller of Rodi Badarpur. He has admitted in his evidence that accused persons have not purchased rodi badarpur from him and he does not recognize all the persons who purchase Rodi Badarpur from him. He was also not aware of the names of the deceased persons.

165. In these facts and circumstances we find that there was no occasion for the accused Pawan to discuss his plan for committing murder of deceased persons with PW-3, as such evidence of PW-3 in this regard is not reliable.

166. Apart from above, it is clear from the evidence of this witness that he claimed that he knew Pawan and Vinod by name and other accused by face, but at the time of his evidence in the court he wrongly identified the accused Vinod as Pawan and Pawan as Vinod.

167. In the examination in chief and cross examination PW- 3, has stated that at the time of alleged conversation two other persons were present with Pawan and Vinod but in his cross examination he has taken contrary stand by saying that when Pawan told the above intention, none was present there. It is also not clear from the evidence of aforesaid witness that who were occupants of the flat of Pawan and whom he wanted to finish for taking possession of the flat. He has also wrongly identified accused-appellants Vinod and Pawan in the Court.

168. In absence of the particulars regarding the persons who were occupying the flat of Pawan and whom Pawan wanted to finish for taking over possession of the flat, it cannot be inferred that occupants of the Flat concerned were the persons whose dead bodies were found in the Ram Leela Maidan, Shalimar Garden Extension - I.

169. So far as threatening of the witness PW-3 by Bheem Yadav is concerned it is not clear from the record that how and in what circumstances he threatened the

witness so as to refrain him from deposing against him, because there is nothing on record to show that he is either a close associate or relative of accused persons or in any way related to them. In these circumstances alleged threatening by Bheem Yadav of the witness is also of no consequence.

170. As stated earlier, prosecution could not prove that accused-appellants Pawan was owner of the Flat concerned; deceased persons were living there, dead bodies were not properly identified and there is no explanation for participation of accused-appellant Chandradev in the crime. In these circumstances, We find that prosecution could not prove motive for committing murders of the deceased persons by the accused-appellants.

Place of incident

171. The Trial Court has also recorded finding to the effect that deceased persons were murdered in the Flat concerned, on the basis of blood stained and plain samples of cement plaster taken from one room of the flat concerned, but admittedly same was not sent for chemical examination to prove that blood found on the sample was blood of deceased persons.

172. PW-4 Mukesh Sharma, witness of recovery of blood stained cement plaster etc. from the Flat concerned has not stated in his evidence that above samples were collected from the Flat concerned rather, he has stated in his evidence that items in question were recovered from a flat erected on Plot No. 725. He has also expressed his unawareness to the fact that deceased persons were residents of same building in which he resides.

173. As stated earlier there is no eye witness who has seen the accused persons committing murder of the deceased persons in the Flat concerned or in their company in the Flat concerned.

174. PW-7 Dr. A.K. Mishra could not opine that the deceased persons were murdered in unconscious state or not.

175. Heads of the deceased persons were separated from the torso which is a very painful act for any alive person having sense and this is quite natural that in such a situation deceased person would have certainly raised loud cries and would have struggled to save/free themselves from the clutches of the culprits, but there is no evidence on record to show that deceased persons had done so. Otherwise also, in the above situation shrieks and cries of deceased persons would have certainly attracted attention of other residents of the building and specially residents of near by flats towards the unusual activities of the Flat, but no resident of other flats of the building had given evidence to this effect to the I.O. and I.O. has also not collected any evidence to the effect that deceased persons were murdered in the Flat concerned itself.

176. It is also noteworthy here that no question has been asked from the accused-appellants in their statements recorded under Section 313 Cr.P.C. regarding place of incident i.e. murder of deceased persons took place in the

"Flat" concerned.

177. As such We find that prosecution could not prove that deceased persons were murdered in the Flat concerned and the Flat concerned is the place of occurrence.

178. In the light of discussion made above, Question no. V is answered in affirmative.

179. Now We will examine the various circumstances relied by the Trial Court for reaching to the conclusion that "chain of circumstances" of this case, based on circumstantial evidence, is complete and prosecution has successfully proved its case against the accused-appellants beyond reasonable doubt, in the aforesaid factual and legal background coupled with Our findings recorded in respect of various Questions framed by us for adjudication of these appeals.

180. The circumstances relied by the Trial Court are referred in paragraph no. 113 of this judgment as circumstance no. I to VII.

180.1. Ist circumstance is about selling of the Flat concerned (725/S-4, Shalimar Garden Extension-I, Sahibabad, Ghaziabad) to accused-appellant Pawan by PW-5 Rakesh Kalra.

180.2. IInd circumstance is based on the evidence of PW-2 Chottan regarding witnessing the three accusedappellants (present in the Court on the day when evidence of PW-2 was recorded), frequenting the house which was used by the trio deceased as their residence.

180.3. IIIrd circumstance is based on the evidence of PW-3 Anees regarding disclosure by accused-appellant Pawan to PW-3, one day prior to the incident at 10.30 P.M. in the presence of accused-appellant Vinod and his two other accomplices that they were to take possession over the plot (the Flat concerned) and they were to kill all the three deceased on that account.

180.4. Vth circumstance is regarding recovery of severed heads of the three deceased persons from the "nala" (drain) on 17.02.2004 on the pointing out of the accused appellants Vinod and Dwarika.

180.5. VIIth circumstance is about proper formation of chain of events as stated by the prosecution.

181. It is clear that circumstance no. IInd and IIIrd are mainly based on the evidence of PW-2 and PW-3.

182. At this juncture We would like to mention at the cost of repeatence that PW-2 and PW-3 do not appear to be genuine witnesses as they were neither named in the FIR nor by any witness, nor they were required by the I.O., rather, they themselves reached to the Police Station and told the I.O. that they wanted to disclose something about the case, on which their statements under Section 161 Cr.P.C. were recorded. According to C.D. Paper No. 7 dated 17.02.2004 they

are also witnesses of inquest memos of the severed heads, but they have not disclosed this fact in their evidence. Even I.O. and other witnesses of inquest memos of severed heads have not disclosed this fact before the Court in their evidence. In these circumstances, this fortifies our view that they are got up witnesses and being introduced by the Police probably due to intense public pressure in view of serious nature of the crime, to work out the case at the earliest.

183. All the above circumstances relied by the Trial Court are not based on proper appreciation of evidence available on record, rather, result of misconception and misreading of evidence as such findings recorded by the Trial Court in this regard appear to be based on surmises and conjectures. Apart from that they are also contrary to our findings recorded in respect of various Questions framed by us for adjudication of these appeals and as such they are wrong, erroneous and could not be relied in furtherance of the case of the prosecution.

184. While deciding Sessions Trial Nos. 906 of 2004, 1683 of 2004 and 221 of 2005, the Trial Court has also lost sight of some other important aspects of the matter, which are as under:

(A) Serious defects of designed investigation, which are fatal and crucial in the facts and circumstances of the case as no direct evidence is available and this case is based on the circumstantial evidence.

(B) Non recovery of weapon used in the crime despite arrest of accused-appellants Vinod and Dwarika and their confession.

(C) No public witness has supported preparation of inquest memos of the dead bodies on the spot, recovery of severed heads of the trio deceased on the pointing out of accused-appellants Vinod and Dwarika, and alleged recoveries made from the Flat concerned.

(D) No efforts have been made by the I.O. to connect the various recovered items with the crime, by their chemical examination from the Forensic Science Laboratory.

(E) The prosecution could not prove the motive for committing murder of deceased persons against the accused-appellants.

(F) Improper identification of the deceased persons and withholding the best evidence by non producing material witnesses as referred earlier in this judgment.

185. The Hon^{ble} Apex Court has observed in Nizam and Others (supra), that in the cases based on circumstantial evidence the Court has to examine the entire evidence in its entirety and ensure that only inference that can be drawn from the evidence is the guilt of the accused, but in the case at hand circumstances claimed by the prosecution and relied by the Trial Court are not so

interconnected, conclusive and complete which may be capable to rule out all reasonable ground consistent with the innocence of the accused-appellants and making definite indication that in all human probabilities the act must have been done by the accused-appellants.

186. As a result, aforesaid Criminal (Capital) Appeals succeed and are allowed. The impugned judgment dated 20.10.2015 and the order dated 28.10.2015, passed by Additional Sessions Judge/Special Judge (SC/ST Act), Ghaziabad are set aside and in view of the findings recorded herein above, Reference No. 11 of 2015 stands rejected. The appellants Vinod, Dwarika, Pawan and Chandradeo who are in jail, stand acquitted of the charges under Sections 302/34 and 201 of I.P.C. framed against them. They shall be released forthwith, if not wanted in any other case.

187. However, keeping in view the provisions of Section 437-A Cr.P.C., the appellants Vinod, Dwarika, Pawan and Chandradeo are directed to forthwith furnish personal bonds in the sum of Rs. One Lac and two reliable sureties each in the like amount before the Trial Court (which shall be effective for a period of six months) to the effect that in the event of filing of Special Leave Petition against the instant judgment or for grant of leave, the appellants on receipt of notice thereof shall appear before the Hon"ble Supreme Court.

188. Before parting with the case we would like to express Our deep concern and sorrow that the culprits of such a ghasty and brutal murder of three persons including one woman by brutally beheading them have gone scott free due to non availability of cogent, credible and reliable evidence as well as defective investigation and ill mannered prosecution of this case.

189. It will also be appropriate to take notice of some important facts here about coming across a large number of cases in which complete justice between the parties could not be done due to defective investigation of the cases. Effecting a large number of cases by defective investigation is an indication of the fact that Investigating Officers of the cases are either not properly performing their duties and responsibilities sincerely or present provisions relating to the investigation are not effective or not properly enforced and there is no proper monitoring machinery to look after that all concerned provisions relating to fair and proper investigation of the criminal cases be adhered and enforced effectively.

190. In most of the cases defects of investigation appear in the shape of late arrival of I.O. on the spot which causes disappearance of important evidence, improper preparation of site plan(s), inquest memos etc., in the inquest memos and other Police papers important details such as case crime number/signatures of I.O. etc. are not found, late recording of statements of the informant, victims and witnesses of the case and without furnishing any explanation/justification for late recording of the statements of the witnesses, non collection of important evidence relating to the case from the place of occurrence like blood stained and plain soil, cartridges (live and empty), blood stained weapon, hair, skin, clothes

and finger prints etc. and if in some cases such items are being collected, they were not sent for their chemical/ballistic/DNA/Forensic examination which gives undue advantage to the accused persons, in most of the cases no effort is made for recording dying declaration of the seriously injured persons by the Magistrate, late medical examination of injured persons, late identification parades or conducting no identification parade at all, improper preservation and non preservation of recovered items in the Courts, tainted/designed investigation with intention to provide benefit to a party/person concerned, non compliance of various legal provisions, Rules and Regulations pertaining to "investigation" etc.

191. Above referred defects are some common defects of investigation and are illustrative only and not exhaustive. We cannot sit silent and observe the situation as mute and helpless spectators.

192. In view of the above, as our humble contribution, in order to make investigation of Criminal cases more effective, reliable and flawless We are passing following directions:

(I) All the Investigating Officers shall endeavour/make their best efforts to record the statements of informant, victim/injured and other important witnesses of fact, of the case as far as possible at the earliest and If it is not possible to do so within 24 hours from the registration of First Information Report, they shall furnish separate explanation for late recording of the statement of each witness along with statement of the witness concerned.

(II) With a view to curtail delay in recording the statements of informant/victim and witnesses, to curb the growing tendency of the witnesses to disown their earlier statements recorded under Section 161 Cr.P.C. and turning hostile and to ensure their reliability, the Investigating Officer and State Government shall without fail inform the informant and all the witnesses that they may submit their evidence by e-mail/speed post or registered post on affidavit, sworn before the Oath Commissioner or Public Notary. If such affidavits are filed by the informant and the witnesses, same will be received, taken into consideration and needful will be done in respect of those by the I.O. In such cases, I.O. will also be at liberty to make further queries with the informant/witnesses if need arises to do so.

(III) Copies of statements recorded under Section 161 Cr.P.C. shall be simultaneously provided by the Investigating Officer to the first informant and witnesses with intimation that if they have any objection in respect of their statement or any discrepancy is found in the same, it shall be brought to the notice of the I.O. at the earliest, preferably within a week along with supporting evidence. An endorsement to this effect shall also be made by the I.O. in the case diary.

(IV) The above directions (I), (II) and (III) will also apply in respect of recording statements of accused and defence witnesses.

(V) All the Investigating Officers will collect each and every material and piece of evidence available at the place of incident and at the earliest and if not done so within 24 hours, they will furnish their explanation to that effect.

(VI) I.O. will prepare site plan of each and every place connected with the crime showing all the necessary details thereof like distance of witness/injured/aggressor etc.

(VII) As directed by Hon"ble Apex Court in Prakash v. State of Karnataka (supra), the prosecution must lay stress on scientific collection and analysis of evidence, particularly since there are enough methods of arriving at clear conclusions based on evidence gathered. In view of above, all relevant material and evidence collected from the site, shall be sent for Hand Writing Expert, Ballistic Expert, Forensic Science Laboratory, Finger Print Expert, D.N.A. Expert etc. as the case may be, by the I.O. for obtaining expert opinion/report in respect to such articles collected from the place of incident.

(VIII) Where ever it is possible and necessary the I.O. will collect "Call Details Record" (C.D.R.) of Mobile Phones/Land Line phones of the victim/witnesses/accused as the case may be, footage of C.C.TV cameras available on the spot/near by locations and put phone numbers/mobile numbers of suspected persons likely to be involved in the offence concerned on surveillance, without any undue delay.

(IX) In all cases I.O. will adhere strict compliance of various provisions of Cr.P.C., Police Act and the Regulations related to the "investigation".

(X) Superior Police Authorities shall develop effective monitoring system to ensure strict compliance of relevant rules, provisions and above directions by the Investigating Officers during investigation. In the cases of wilful and intentional violation of the aforesaid by the Investigating Officer concerned same shall be cured at the earliest and appropriate action may be taken against the erring Investigating Officer.

(XI) The State Government shall ensure vide publicity of these directions by its publication in the news papers, electronic media and display on notice boards at the offices of superior Police Officers.

(XII) A copy of this order shall be sent to Chief Secretary and Secretary (Home), Government of Uttar Pradesh for compliance of this order. They will submit their compliance report on affidavit within 3 months from the date of receipt of this order, to this Court.

(XIII) The Registrar General of this Court is directed to send a copy of this order to the Chairmen of all the District Legal Services Authority and the State Legal Services Authority for vide publicity of above directions. 193. Above directions will remain in force till the State Government frames/amends relevant rules/provisions in pursuance of above directions.