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CRL.A. 340/2001

VIDYA SAGAR ANAND

.....Appellant

Through: Mr. U.U. Lalit, Sr. Advocate with
Mr. Bharat Dubey, Mr. K.K. Tyagi,
Mr. Nitin Sangra, Ms. Pranchi
Bajpai, Mr. Sidhesh Kotwal,
Ms. Jesal Wahi and Mr. Mehul,
Advocates.

Versus

.....Respondent

Through: Ms. Richa Kapoor, APP

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.

1. On 5.1.1990 at 12.02 PM information was received in Local Police Station Mandir Marg through Const.Usman Ali PW-2 that firing had taken place at Citizen Guest House. The said information was conveyed to the Addl. SHO as also to SI Satpal Yadav; it was reduced into writing vide D.D.No.10A Ex.PW-16/A recorded by SI

Bans Bahadur PW-16. Ex.PW-16/A was marked to SI S.P.Yadav PW-17 who along with Inspector Dalbir Singh reached the spot. ASI Lajja Ram PW-1 and Const.Usman Ali PW-2 were already present there. Vidya Sagar the owner of the guest house had been apprehended. PW-1 was holding a revolver in his hand which he had snatched from the hand of the appellant Vidya Sagar. The injured Mohinder Singh was lying unconscious in a pool of blood and was breathing heavily but was not yet dead. On the direction of PW-17, PW-1 removed the injured to Ram Manohar Lohia (RML) hospital. The injured was medically examined at 12.15 PM vide MLC Ex.PW-18/A by Dr.Sanjeev Aggarwal PW-18. Patient was declared brought dead.

2. PW-17 and PW-2 also followed PW-1 and the injured to the hospital. Statement of PW-1 Ex.PW-1/A was recorded by PW-17. As per this statement PW-1 along with PW-2 was on 'bandobast' duty and were proceeding towards Raja Bazar; at about 12.00 Noon when they reached in front of Citizen Guest House they heard sounds of a bullet being fired; PW-1 saw that Vidya Sagar owner of the guest house was attacking a person whose name later on was revealed as Mohinder Singh; PW-1 and PW-2 apprehended Vidya Sagar and the .32" bore revolver held by him in his right hand bearing no.618450 was seized from him; up to this time appellant had already fired three bullets on the injured who was lying on the

floor; H.C. Amar Singh PW-4 also reached the spot; PW-1 directed PW-2 to inform the SHO in the Police Station who reached the spot; on the direction of ASI Satpal Yadav the injured was removed to the hospital.

3. This statement was endorsed by PW-17 vide endorsement Ex.PW-17/A and the rukka was sent at 2.05 PM through PW-2 for the registration of the FIR. The FIR was registered by PW-16 under Section 302 IPC. The revolver which had been seized by PW-1 and handed over to PW-17; the chamber of which contained three empty cartridges and one live cartridge was taken into possession vide memo Ex.PW-1/B. The duty constable at the RML hospital Const.Rajesh PW-10 was handed over 13 articles by the duty doctor which included a revolver and the keys of a maruti vehicle which had been recovered from the deceased. The said articles were taken into possession by PW-17 vide memo Ex.PW-1/C. The dead body was sent to the mortuary.

4. Returning to the spot, PW-17 summoned the crime team. 14 photographs of the scene of crime Ex.PW-8/A-1 to A-14, negatives of which are Ex.PW-1/B-1 to B-14 were taken by H.C. Man Mohan Singh PW-8. The rough site plan Ex.PW-17/B was prepared at the pointing out of PW-2. A blood smeared bullet was lifted from the spot vide memo Ex.PW-2/E; a blood smeared button was also lifted from the spot vide memo Ex.PW-2/D; blood stained earth and earth control

were lifted vide memo Ex.PW-1/D. These exhibits were deposited in the Malkhana with Mohorar Malkhana H.C. Manohar Singh PW-14 on the same day.

5. The accused who had already been apprehended was arrested; his personal search Ex.PW-2/F was conducted; it was found to contain the licence of the revolver issued in his name. On the same day i.e. on 5.1.1990, the accused got an empty cartridge recovered, from the almirah of his house at Ranjit Nagar, which was taken into possession vide memo Ex.PW-1/F. Accused made two disclosure statements, first disclosure statement Ex.PW-1/E is dated 6.1.1990 and the second disclosure Ex.PW-17/Z is dated 7.1.1990. In the first disclosure statement he disclosed that he could get certain property papers of Sita Ram Bazar recovered; which were taken into possession vide memo Ex.PW-17/D. In the second disclosure statement, the role of co-accused Ashok Kumar surfaced as per which Ashok Kumar had battered the head of the deceased with a hammer whereas the present appellant had pumped the bullet injuries on his person. No recovery had been effected pursuant to this disclosure statement.

6. Statement of Const. Usman Ali PW-2 also reported to be an eye-witness was recorded and he being the pillion rider of the scooter which was driven by PW-1, corroborated the eye-witness account of PW-1.

7. The driver Khemchand PW-3 of the maruti vehicle No.DNC-1734 i.e. the car of the deceased, had also witnessed this scene of occurrence and was the first person to inform the family members of the deceased.

8. H.C. Amar Singh PW-4 who had been posted in the Police Picket 50 yards away from the place of incident had also reached the spot on hearing the bullet sounds and saw the accused already apprehended by PW-1 and PW-2 with a revolver in his hand.

9. On 6.1.1990 the post-mortem on the deceased was conducted by Dr.Sanjay Dass PW-15 who vide his report Ex.PW-15/A had noted eight injuries on the person of the deceased:-

“1.Circular wound 0.6 cm in diameter with abraded margins on the centre of the dorsum of left hand. There is tattooing by unburnt powdered particles around it spreading 5 cm in diameter (wound of entry).

2. Regular margined oval wound 0.8 cm.x0.9 cm on the centre the centre of palm of left hand corresponding to external injury no.1 (would of exit).

3. Laceration 1.2 cm x 0.3 cm x slim deep (longitudinally placed) 1 cm distal to external injury no.2.

4. Compound fracture of middle phalanx of left middle finger with laceration around it.

5. Circular wound 0.6 cm in diameter with abrasion collar on right side of neck 4 cm above clavical and 0.5 cm posterior to the sterno cleido mastord muscle (wound of entry).

6. Irregular margined wound 2.5 cm x 2 cm on midline of neck 2cm above the thyroid cartilage(wound of exit).
7. Lacerated wound 6cm x 0.5 cm x scalp deep(coronally placed) on centre of right parietal region.
8. Lacerated wound 6 cm x 0.5 cm x scalp deep (coronally placed) on right parietal eminence.

10. The dead body was identified by Kulvinder PW-5 brother of the deceased vide memo Ex.PW-1/C.

11. On 12.1.1990 ASI Abdul Kaleem PW-7 collected the post-mortem report and the clothes of the deceased and deposited them in Malkhana on the same day.

12. The site plan to scale Ex.PW-11/A was prepared on 15.2.1990 by Inspector Devender Singh.

13. On 16.1.1990 the exhibits of the case were sent through PW-7 to the CFSL. The ballistic examiner Mr.B.Moitra vide his report Ex.PA dated 27.3.1990 opined on parcel nos.1 to 4 and parcel no.9 to 10. Parcel no.1 was the .32" bore revolver bearing no. 618450 of the accused; parcel no.2 contained three .32" cartridges marked C-1 to C-3 and another .32" cartridge C-4; C1 to C3 were the cartridges which had been recovered from the chamber of the revolver of the accused. Parcel no.3 contained one .32" cartridge mark C-5 which had been got recovered by the accused pursuant to his disclosure statement; .32" damaged lead bullet mark BC-1 retrieved from the spot had also been examined; Parcel no.10

contained five .32" cartridges mark C-6 to C-10 which had been found in the chamber of the revolver of the deceased.

14. Ex.PA opined that the revolver of the accused mark W-1 was in a working order; the three .32" cartridge cases Ex.C-1 to C-3 and the .32" cartridge case C-5 as also the bullet BC-1 which had been retrieved from the spot had been fired from the said revolver in question i.e. the revolver of the accused.

15. Vide report Ex.PB dated 27.3.1990 the CFSL had examined a blood stained button in parcel no.5 which had been retrieved from the spot; this was compared with another grey colour stone piece which had been retrieved from the shirt of the deceased and the scientific examination of the same revealed that they were both similar to each other in physical character and the density distribution of particles establishing that the blood stained button which had been retrieved from the spot was the missing second button of the shirt of the deceased.

16. Serological examination of the exhibits vide report Ex.PD dated 28.3.1990 of C.M.Patel revealed that blood group 'O' was detected on the clothes of the deceased which was also his blood group.

17. The various DD entries regarding the entry and arrival of various police officers at the Police Station Mandir Marg had been

exhibited by Bans Bahadur PW-16 in his testimony and we shall revert back to them in the later part of the judgment.

18. This is the sum total of the evidence both oral and documentary which has been collected by the prosecution.

19. The Trial Judge vide his impugned judgment had convicted the appellant for the offence under Section 302 of the IPC for having committed the murder of Mahinder Singh as also for the additional offence under Section 27 of the Arms Act for having illegally used the weapon of offence i.e. his .32" bore Webley Scott revolver which had caused the death of the deceased. While returning the finding of guilt, the Trial Judge had relied upon the versions of the eye-witnesses i.e. SI Lajja Ram PW-1, Const.Usman Ali PW-2, Khem Chand PW-3 and H.C. Amar Singh PW-4. This evidence coupled with the medical report i.e. the post-mortem evidencing bullet injuries on the person of the deceased which corroborated the ocular version of the eye-witnesses, advanced by the report of the ballistic expert that the bullet retrieved from the spot was the bullet which had been fired from the fire arm of the accused were the cumulative factors which had led to the conviction of the accused.

20. On behalf of the appellant, arguments have been addressed at length.

I. It is submitted that the presence of the eye-witnesses at the spot is suspect and it has not been proved that they have witnessed

the incident as deposed to by them; in this regard the trial Judge has not appreciated their versions in the correct perspective. Learned senior defence counsel has assailed the presence of all the aforenoted eye-witnesses namely ASI Lajja Ram PW-1, Const.Usman PW-2, Khem Chand PW-3 and Const.Amar Singh PW-4.

A. Qua the presence of PW-1, it has been submitted.

(i) That as per the version of prosecution, PW-1 was the person who had removed the injured to the hospital and he being an eye-witness there is no explanation as to why in the 'alleged history' recorded in the MLC there is no mention or detail of the incident; the name of the deceased Mohinder Singh has also been added later on. The explanation furnished by PW-1 in his cross-examination that at that time when the MLC and death summary were prepared he had gone to make a telephone call, on the face of it appears to be false as it is a strange co-incidence that on both these occasions he had gone to make a telephone call; when otherwise he should have been in attendance as it was an urgent duty; he having brought a near dead person to the hospital. Attention has been drawn to the cross-examination of Dr.Sanjeev Aggarwal PW-18 who has prepared the MLC wherein he had admitted that no

history of the injuries of the deceased had been given to him; in his cross-examination he had been confronted with his earlier statement which he had given to the police wherein he had enquired from PW-1 as to how the bullet injury had been found on the dead body to which PW-1 had replied that he had no knowledge about it. In these circumstances, it becomes clear that the PW-1 was not an eye-witness; he having no knowledge about the incident.

ii. Presence of PW-1 and PW-2 has not been shown in the site plan Ex.PW-17/B obviously for the reason that they were not present at the spot,

iii. Photographs had admittedly been taken at the spot but the photographs have neither depicted the presence of the accused nor of PW-1 and this was for the reason that neither of them i.e. neither the accused nor PW-1 were present at the spot.

iv. Ex.PW-18/A has recorded that PW-1 had taken the deceased to the hospital and this fact is not disputed but the aforementioned discrepancies as pointed out clearly show that PW-1 has been planted as an eye-witness later on and he had not witnessed the incident.

B- Qua the presence of PW-2, it has been submitted :-

i. In his entire examination-in-chief he has not whispered a word that he had witnessed the incident; he has only deposed that when he along with PW-1 had heard the bullet sound they had reached the Citizen Guest House where in the verandah they saw a man lying there in a pool of blood and the accused was also standing there; in this version he had not stated that he had seen the incident; it is submitted that it was only when he had been permitted to be cross-examined by the Public Prosecutor that he had stated that he had seen the firing incident.

ii. As per the prosecution version, the first D.D. i.e. D.D. No.10A Ex. PW-16/A was recorded on the telephonic message which had been transmitted by PW-2 but the perusal of this document shows that there is no mention of any detail of the incident and had PW-2 been an eye-witness, his natural narration would have been to disclose the name of the assailant, the name of the deceased as also the spot of occurrence but none of these details have been mentioned in Ex.PW-16/A. Attention has been drawn to his cross-examination wherein he had admitted that in this telephonic

conversation he had not revealed that he made the telephonic call from the reception of the guest house or that the person who had fired had been apprehended or that ASI Lajja Ram was present at the spot or about the religion of the victim. Attention has also been drawn to his version wherein PW-2 has stated that he did not see the bullet being fired but on hearing the bullet sound they had run towards the place of occurrence, obviously for the reason that he had not witnessed the incident.

iii. Statement of this witness had not been recorded even up to the time when he had remained in the hospital for which again there is no explanation as up to that time the injured had been administered first aid and if PW-2 was an eye-witness he would have in the natural course disclosed the same to the Investigating Officer who was also present in the hospital.

iv. Admittedly, MLC of the deceased Mohinder was prepared in his presence but no detail of the incident had been mentioned in the MLC, again throwing suspicion on the presence of the PW-2 at the spot.

C- Qua the presence of PW-3, it is submitted:-

i. If PW-3 was the driver of the deceased there is little answer with the prosecution as to how the car keys have been recovered from the person of the deceased i.e. from his pant pocket and not from PW-3.

ii. Conduct of PW-3 is highly unnatural; as per his version after witnessing the incident he did not inform the police but he straight away went to the house of the deceased where he met his mother who on hearing the news became unconscious but admittedly he did not take her to the hospital; neither did he bring any doctor to the house to provide first aid to her; he returned back to the spot at 4.30 PM and in this entire intervening period from about 12.00 Noon i.e. the time of occurrence up to 4.30 PM he was sitting tight with no action or reaction on his part.

iii. As per his version he had informed about the incident to the family of the deceased at 12.30 PM and the mother, 'mausi' and Paramjeet Singh younger brother of the deceased had reached the spot but they had not gone to the hospital. PW-1 had also admitted that none of the family members of the deceased had come to the hospital up to the time when he stayed there which was up to about 3.00PM which again throws

doubt on the veracity of the version of PW-3 as if the family members of the deceased had learnt about his death at 12.30 PM it is not possible to believe that none of them would have gone to the hospital to find out about his fate.

iv. The role of co-accused Ashok who is admittedly a proclaimed offender has for the first time surfaced in the cross-examination of PW-3 and none of the preceding eye-witnesses i.e. PW-1 and PW-2 have mentioned about his presence.

v. The deceased was also a proclaimed offender, he was a B.C.(bad character) of the area; admittedly he had suffered death at the hands of some person but who is that person has not been established by the prosecution.

D- Qua the role of H.C. Amar Singh PW-4 it has been submitted:-

i. He has claimed himself to an eye-witness yet he is not so and this is clear from his version on oath; he has admitted that when he reached the spot Vidya Sagar had disclosed the name of the deceased as Mohinder Singh meaning thereby that at the spot itself PW-4 knew about the identity of the deceased. He had

admittedly remained at the spot till 7.00PM. As per his version Usman Ali PW-2 had also remained at the spot for 45 minutes before going to the hospital and he i.e. PW-2 had narrated the incident to SI S.P. Yadav and his statement was recorded but no such statement is on the record for which there is no explanation.

ii. Admittedly, PW-4 was holding a wireless set; as per his statement he had handed over two wireless sets in the Police Station on his arrival back in the Police Station; there is no explanation as to why if he had a wireless set with him, no information was transmitted by him to the senior officers about the incident which throws doubt on his presence at the spot.

II. Attention has been drawn to MLC Ex.PW-18/A, admission and discharge record Ex.PW-18/DS, the Death Report Form Ex.PW-1/DB as also the entry page of the Mortuary Register of the hospital Ex.PW-18/DA wherein the name of the deceased was not known right up to 5.10 PM i.e. the time when the dead body had been taken to the mortuary and the deceased continued to remain unidentified upto that time which is contrary to the ocular testimony of the witnesses who have deposed otherwise. Attention has also been drawn to DD no.46B Ex.PW-16/DD showing the departure of SI Ishwar Singh at 3.15 PM for the RML hospital and his arrival entry

i.e. DD no.52B Ex.PW-16/DE showing his arrival in the police station at 5.25 PM after depositing the dead body in the mortuary at 5.10 PM. It is submitted that SI Ishwar Singh had specifically been deputed to deposit the dead body of Mahinder Singh in the mortuary for which purpose he had left at 3.15 PM and even when the dead body had been deposited in the mortuary at 5.10 PM, his identity was still unknown which throws clouds of suspicion on the investigation. Kulvinder PW-5 the brother of the deceased had as per his version gone to the hospital in the afternoon; he had reached there at 4.30 PM and remained there upto 5.30 PM; he had met the doctor in the emergency ward; even up to that time there is no explanation as to why the identity of the deceased remained a secret.

III. H.C. Man Mohan PW-8 was the photographer who had gone to the Citizen Guest House vide his vide his departure entry Ex.PW-8/DA which shows that he had left the Police Station at 11.55 AM. It is submitted that the first information of the incident had been recorded in DD No.10A at 12.02 PM and PW-8 leaving the Police Station to photograph the scene of crime at 11.55 AM shows that the offence had been committed prior in time to 11.55 AM thus throwing doubt on the veracity of the rukka.

IV. SI S.P. Yadav PW-17 had taken the accused to the Police Station at 7.05 PM meaning thereby that the accused had remained

at the spot till that time; PW-4 has also corroborated this version; attention has been drawn to the further testimony of PW-17 who has stated that at 4.30 PM, at the spot he had interrogated the accused in the presence of ASI Lajja Ram and wherein the accused had disclosed that he could get recovered an empty cartridge which was subsequently recovered from the almirah in his house; he led the police party there and got the recovery effected; it is submitted that if at 4.30 PM the accused had gone with the police party for the recovery how PW-4 had found the accused present at the spot up to 7.00 PM is not reconciled; the DD entry Ex.PW-16/DA recorded at 7.05 PM evidenced that the accused had been brought to the police station at that time; at 8.30 PM he was taken out of the lock up and interrogated; thereafter at 10.20 PM he had again been put back in the lock up; even presuming that the accused had been taken for the recovery after he had been taken to the police station there is no departure entry from the police station to the said effect; alleged recovery of the cartridge from his house on 5.1.1990 is clearly false. This recovery was also effected without any disclosure statement of the accused and cannot be a piece of evidence under Section 27 of the Evidence Act. Arrest memo of the accused has also not been proved.

V. Qua the testimony of SI Bans Bahadur PW-16, learned defence counsel pointed out the various DD entries proved by him. DD

no.10-A Ex.PW-16/A recorded at 12.02 PM on the commission of an offence in Citizen Guest House has not been disputed by the defence. Attention has been drawn to the second DD recorded at 2.15 PM which evidenced that the rukka had been dispatched through PW-2 for the registration of the FIR; it is submitted that FIR is ante-timed. Version of the prosecution is that the special report had been taken by Const. Mahesh PW-12 at 3 PM vide motorcycle bearing no. DDW 6044; his departure entry is recorded in DD no.12 Ex.PW-16/C-4; his arrival entry at 5.15 AM on the following morning i.e. 6.1.1990 vide the same vehicle is evident from Ex.PW-12/DC; attention has also been drawn to an entry made at 1.55 PM D.D.No.39B Ex.PW-16/DC which shows that on 5.1.1990 at 1.55 PM Const.Rajinder had taken this vehicle i.e. DDW 6044; another entry Ex.PW-12/DA mentions that at 7.00 PM on the same day Const.Sanjeev had taken this motorcycle for fuelling; in this context attention had been drawn to the testimony of Const.Mahesh PW-12 who had stated that he had delivered the special report to the Ilaka Magistrate at 10.00 PM and even at 7.00 PM the motorcycle was in his possession. It is submitted that if the motorcycle had been taken by Const.Rajinder at 1.55 PM to go to Ashok Vihar how the same vehicle was taken by PW-12 at 3.00 PM is not explained; further this vehicle as per the version of PW-12 was with him right up to 5.15 AM of the following morning but Ex.PW-12/DA shows that

Const.Sanjeev had taken it for fueling at 7 PM; all these controversies have remained unexplained clearly evidencing that there has been a manipulation in the investigation.

VI. Attention has been drawn to the version of Mahesh Chand PW-6 who has been set up by the prosecution to establish the motive of the crime i.e the exchange of money dealing between the deceased and the accused and the deceased having gone to the guest house of the accused on 5.1.1990 to take his money back; it is submitted that the transaction out of which this money dispute has allegedly arisen related to the property at Sita Ram Bazar and these property papers which had been seized vide memo Ex.PW-17/D nowhere show the interest of the deceased Mohinder Singh in the said property which again throws doubt on the veracity of the version of this witness.

VII. The ballistic report suffers from severe infallibility and the conclusion arrived at by the scientific expert without any reasons or a logical basis for the same has no value or force; attention has been drawn to the ballistic report which had been tendered in evidence and proved as Ex.PA; it is argued that this document is bereft of any reasons or details in the absence of which no reliance can be placed upon it. Mandate of Section 293 (2) of the Cr.P.C. postulates that the court may also summon the witness for clarity on a particular proposition which provision had not been resorted

to; prosecution has failed to discharge the onus and this report cannot be accepted; it is liable to be discarded. Learned defence counsel has placed reliance upon a judgment of the Hon'ble Apex Court report as Madan Gopal Kakkad vs. Naval Dubey & Anr. 1992 3 SCC 204 as also another judgment reported as State of Haryana vs. Bhagirath & Ors. (1999) 5 SCC 96 to support his submission that the evidence of an expert is only of an advisory character given on the basis of the symptoms found on the examination; the expert witness is expected to put before the court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by explaining the terms of science so that the court although not an expert may form its own judgment on those materials after giving due regard to the expert's opinion; it is argued that the opinion of an expert will always remain an opinion only and it is for the court to finally decide whether it is to be accepted as a relevant piece of evidence or not. In the instant case the prosecution has failed to discharge this burden of proof. This court is not obliged to accept this expert opinion.

VIII. The entire bundle of evidence which has been collected by the prosecution is fabricated and not only have all the DD entries been made subsequently to suit the convenience of the Investigating Officer, but the other contemporaneous record which

includes the documents prepared at the hospital also show that right upto 5.10 PM the accused continued to remain unidentified which is not corroborated by the ocular testimonies of the witnesses, thus, casting grave shadows on the version of the prosecution; the accused had been picked up from his house at 7.00 PM and falsely implicated in the present case; this has also been his defence even in his statement under Section 313 Cr.P.C.; he was never present at the spot. In the alternate it is submitted that there is no doubt that a crime has been committed and the deceased had died at the Citizen Guest House but who had committed this crime has not been proved by the prosecution.

21. We have perused the record, appreciated the evidence and heard the submissions and counter submissions made by the respective parties.

22. The first document DD No.10A Ex.PW-16/A was recorded at 12.02 PM in the local Police Station Mandir Marg pursuant to the information that a firing had taken place at Citizen Guest House and one person had been injured, this information having been relayed by Const. Usman Ali PW-2. It was this document which had set this investigation into motion. Ex.PW-16/A establishes that PW-2 was present at Citizen Guest House at 12.02 PM i.e. just about the time the incident took place. Assuming that PW-2 did not witness the actual firing, but establishes his being at the place of the incident

within seconds of the firing and in this context he and ASI Lajja Ram then having apprehended the accused at the spot and having disarmed him and recovered a revolver from his hand assumes significance.

23. At 12.15 PM, the MLC of the injured recorded as 'unknown' was prepared at Ram Manohar Lohia Hospital; this document is Ex.PW-18/A and is in the handwriting of Dr.Sanjeev Aggrawal PW-18. Ex.PW-18/A shows that injured had been brought with bullet wounds, two of which were on the neck, one over the dorsum of the left hand, blunt wounds on the parietal region as also over the left middle finger. Injured had been brought to the hospital by ASI Lajja Ram PW-1 and had been declared brought dead. Vide this document, it has been established that at 12.15 PM PW-1 had brought an injured who had received bullet injuries to the hospital.

24. PW-18 has on oath deposed that he had in the column of the name of the patient written 'unknown' as the identity of the victim was not known to him at that time; this information was later on received by him and the name of Mohinder Singh was added. As per PW-18 on 5.1.1990 his duty in the causality was between 9.00AM to 2.00PM; the MLC was prepared by him at 12.15 PM and till that time he did not know the name of the patient. He had also prepared the Admission and Discharge Record Ex.PW-18/DB at 1.40 PM and was signed by him at point A; up to this time also the

column of the name of the victim records as 'unknown'; thereafter the name of Mohinder Singh along with his parentage was added in Ex.PW-18/A. Another contemporaneous document which is the entry in the mortuary register Ex.PW-18/DA shows that the dead body had been kept in the mortuary along with one big hospital sheet; time recorded therein is 5.10 PM; the name of the victim was recorded as 'unknown'.

25. These documents i.e. the MLC Ex.PW-18/A, the admission and discharge record Ex.PW-18/DB and the entry in the mortuary register Ex.PW-18/DA were prepared one after another. Ex.PW-18/A and Ex.PW-18/DB had been prepared by PW-18 up to 1.40 PM; up to this time PW-18 was not aware of the name of the deceased; the entry in the mortuary register Ex.PW-18/DA is admittedly not in his handwriting. It is obvious that the entries in Ex.PW-18/DA at 5.10 PM were made on the basis of the earlier record which was available with the hospital i.e. Ex.PW-18/DB and the entry in the mortuary register had only copied these earlier details which had not upto that time recorded the name of the victim. PW-18 had added the name of Mohinder Singh in the MLC only in his handwriting and this was obviously prior in time to 2.00PM as duty hours of PW-18 were only upto 2.00 PM on that day. SI Satpal Yadav PW-17 the Investigating Officer has also in his cross-examination admitted that the name of Mohinder Singh had been

informed to him by Inspector Dalbir Singh at the spot as Mohinder Singh was a known B.C. of the area; the MLC of the victim had already been prepared by the Doctor when he i.e. PW-17 reached the hospital; he had then told the Doctor the name of the deceased Mohinder Singh resident of Subzi Mandi and the Doctor had then written his name in the MLC. Identity of the victim was thus known by 2.00PM.

26. The third document relating to the investigation is the statement of ASI Lajja Ram Ex. PW-1/A which was recorded by SI Satpal Yadav PW-17 in the hospital which had formed the basis of the rukka. This statement was recorded before 2.05 PM as the endorsement made on this statement had formed the basis of the rukka which had been dispatched at 2.05PM. In Ex. PW-1/A PW-1 has detailed the entire incident i.e. that the accused Vidya Sagar Anand who was known to PW-1 had fired bullet injuries on Mohinder Singh who had fallen on the ground; the accused Vidya Sagar Anand had been apprehended at the place of occurrence by PW-1 and PW-2; Vidya Sagar Anand was holding a revolver in his hand; the number of the revolver 618450 under a .32 cover had been noted therein; the presence of H.C. Amar Singh PW-4 and Const. Usman PW-2 also finds mention in this document. On the receipt of this rukka DD No.11 was recorded at 2.15 PM pursuant to which the FIR PW-16/A was registered thereon.

27. Ex.PW-1/B is the seizure memo of the revolver 618450; it had a .32" cover, its chamber contained three fired cartridges and one live cartridge; this document has been attested by PW-1 and PW-2 and Inspector Dalbir Singh. Ex.PW-1/B had been prepared in the hospital as is the version of PW-17.

28. Ex.PW-1/C is the seizure memo of the articles which had been seized by PW-17 at the hospital. They had been handed over to PW-17 by Const.Rajesh PW-10 the Duty Constable at the RML Hospital who had received them from the duty doctor; PW-10 has attested this document at the hospital; the name of the victim Mohinder Singh clearly find mentions here. Ex.PW-1/C recites that a revolver as also the keys of a maruti vehicle had been recovered from the person of the deceased.

29. These aforementioned documents had been prepared in the hospital on 5.1.1990. From this documentary evidence, it is clear that by 2.00-2.15 PM when the FIR of the case was registered the identity of the deceased Mohinder Singh was well established; not only does his name find mention in the statement Ex.PW-1/A, the rukka Ex.PW-17/A, the FIR Ex.PW-16/A, the seizure memo Ex.PW-1/C of the articles recovered from the deceased in the hospital but also in the MLC Ex.PW-18/A. The doctor was on duty up to 2.00PM and he had himself added the name of Mohinder Singh in the same green ink before that time. The entry in the mortuary

register Ex.PW-18/DA and the Death Report Form Ex.PW-1/DS were not in the handwriting of PW-18. The details in these documents had been copied from the earlier available record i.e. the Admission and Discharge Record Ex.PW-18/DB which did not contain the name of the patient; PW-18 had added the name of Mohinder Singh in the MLC only. PW-10 has also categorically recited that he had signed EX.PW-1/C containing the name of the victim in the hospital. It is established that by 2.15 PM victim had been identified as Mohinder Singh. Hospital record is even otherwise an independent record and it is also not the case of the defence that it has been manipulated. D.D.No.46B Ex.PW-16/DD proved in the testimony of PW-16 shows that at 3.15PM SI Ishwar Singh had gone to the RML Hospital with arms and ammunition. DD No.52B Ex.PW-16/DE evidences that at 5.25 PM Ishwar Singh had returned back to the Police Station after depositing the dead body. These DDs have been explained in the version of PW-1 wherein he has stated that SI Ishwar Singh must have been deputed for duty in another case and he must gone to the RML Hospital in connection with some other case. SI Ishwar Singh was admittedly not a part of this investigative team; it cannot thus be said that he had gone to the RML Hospital at 3.15 PM to deposit the dead body of Mohinder Singh.

30. Submission of learned defence counsel on this count that victim continued to remain unidentified up to 5.10PM is thus wrong and falsified.

31. Thereafter the subsequent documents were prepared at the spot. PW-1 has stated that he had returned back to the spot by about 3.00 PM so is also the version of PW-2 who has stated that he remained in the hospital up to 3.00 PM and then returned back to the spot.

32. The photographer H.C. Man Mohan PW-8 had already reached. PW-8 has deposed that he had taken 14 photographs of the scene of occurrence and photograph Ex.PW-8/A-12 is the photograph of the blood smeared bullet lying at the spot. PW-8 had left the Police Station at 11.55 AM vide DD Ex.PW-8/DA and returned back vide DD entry Ex.PW-8/DB at 4.10 PM. Perusal of Ex.PW-8/DA shows that PW-8 had left the Police Station for the preservation of law and order at Mandir Marg and not specifically to the spot of occurrence. It is obvious that in the course of his 'bandobast' duty at Mandir Marg he had been summoned to photograph the scene of occurrence; this explains his departure entry at 11.55 AM which was prior in time to the occurrence.

33. At the spot the personal search of the accused was taken vide memo Ex.PW-2/F; a licence of the revolver issued in his name as also visiting cards of Sagar Enterprises Pvt. Ltd. were recovered.

This document has been attested by PW-2, PW-4 and Inspector Dalbir Singh and has been corroborated on oath by PW-2 and PW-4. The licence of this revolver matched the number of the revolver which had been seized vide seizure memo Ex.PW-1/B in the hospital.

34. H.C. Amar Singh PW-4 was also present at the spot when the police party returned back from the hospital. He was the Constable who had been posted at the police picket at Mandir Marg which was about 50 yards away from the scene of crime i.e. from the Citizen Guest House. PW-4 has deposed that he had heard bullet sounds and on reaching the spot he saw ASI Lajja Ram and Const.Usman Ali holding the accused Vidya Sagar and one person was lying on the ground; blood was oozing out from his head and neck; he had reached the spot forthwith i.e. at about 12.00 Noon and remained there up to 7.00PM. PW-4 had deposed that the injured was removed to the hospital by PW-1 and after about half an hour PW-17 and PW-2 also went to the hospital and returned back to the spot at about 3.30 PM. In his presence a blood smeared lead piece of a bullet was seized vide memo Ex.PW-2/E duly attested by this witness. A blood smeared button was also lifted from the spot vide memo Ex.PW-2/D. Statement of this witness was recorded between 3.30 PM to 4.00 PM on the same day. PW-4 has further deposed that till the time he remained at the spot accused Vidya Sagar also

remained there. He admitted that he had handed over two wireless sets on his arrival back in the Police Station and he did not inform any person about the incident on wireless. This was obviously for the reason that the police force had already reached the spot. Version of this witness is clear and cogent; he was the duty officer posted in the nearby police picket; a distance of about 50 yards which has been depicted in the site plan Ex.PW-11/A i.e. within hearing range of the bullet sounds which had emanated from the Citizen Guest House. He had witnessed the transaction soon after it was over and had seen the accused apprehended red handed by PW-1 and PW-2; his testimony is a relevant fact under the provisions of Section 6 of the Evidence Act forming part of the same transaction.

35. The first witness to this incident was ASI Lajja Ram PW-1 who had given his statement in the hospital Ex.PW-1/A which had formed the basis of the rukka. The testimony of PW-1 as given in Ex.PW-1/A has been reiterated on oath in Court. He had deposed that he along with Const.Usman Ali were going on a two wheeler scooter and when they reached near the gate of the Guest House they heard sound of gunshots. On stopping scooter near the entrance of the gate of the Guest House PW-1 saw Vidya Sagar Anand proprietor of the house firing at the deceased from his revolver; Vidya Sagar Anand was known to him; he immediately went inside and snatched

the revolver from the hands of the accused but by that time he had already fired three shots. H.C. Amar Singh PW-4 on duty at the Police Booth situated a little away from the entrance gate of the guest house also reached there. PW-1 directed PW-2 to telephone the police and within the next five to six minutes SI S.P.Yadav PW-17, Inspector Dalbir Singh also reached the spot. PW-1 handed over the revolver which he had seized from the hands of the accused to PW-17. PW-1 on the direction of PW-17 removed the injured to the hospital. This witness has been subjected to a lengthy cross-examination; he has deposed that he had returned back from the hospital at 3.00PM; he was in-charge of Division-I, the Police Station Mandir Marg is about 1 Km. away from the Guest House; PW-2 was on reserve duty but because of the demonstration at Raja Bazar by the employees of the DTC which demonstration was to pass through Transport Bhawan, services of Usman Ali PW-2 had also been deployed. PW-1 has categorically stated that he had instructed PW-2 to give telephonic call to the Police Station about the occurrence but he had not instructed him to mention the name of the culprit or to give any further details about the question. He had found the deceased lying on the ground on his stomach with his face towards the sky; he had handed over the revolver to PW-17 at about 12.08 PM i.e. obviously before he had left for the hospital; in his presence at the spot at that time no memo was prepared as he was

in a hurry to take the deceased to the hospital. He had deposed that when the MLC and the death summary report was prepared he had gone to make a telephone call; this is the answer to the query as to why the name of the deceased and the alleged history did not find mention for the first time when the MLC was prepared. He denied the suggestion that he had been introduced later on and had not witnessed to the incident.

36. Const.Usman Ali PW-2 is the second eye-witness to this incident. He was the pillion rider of PW-1 when they heard a gunshot emanating from the Guest House; on reaching there they saw one man lying on the verandah of the Guest House and the accused was standing there; he was apprehended by PW-1; time was around 12 Noon; he had seen Vidya Sagar Anand firing at the injured who was lying on the floor with his face towards the ground. In his presence PW-1 had handed over the revolver of the accused to PW-17. He has further stated "I did not see the bullet being fired. On hearing the bullet sound we had run towards the place of occurrence." This sentence has been highlighted by the learned defence counsel to substantiate his argument that PW-2 had not witnessed incident. While appreciating the testimony of a witness it has to be read in its entirety and no stray sentences can be picked up here and there to substantiate an inchoate submission which is obvious for the reason that PW-2 while recording this version was

making reference to the first bullet sound which they had heard and which had brought them to the scene of crime. PW-2 had admittedly not given the details of the occurrence in his telephonic conversation to the local Police Station which had been penned down in DD No.10A; it was an emergency call; the place of occurrence had been disclosed, the name of the person giving the information i.e. the name of PW-2 had also been disclosed and what was urgently required now was that police force should be sent to the spot; PW-2 had also not been instructed by his senior to give any further information; these were clearly the factors which had weighed in the mind of PW-2 when he gave this telephonic call. PW-2 has admitted that he had accompanied the SHO to the hospital; he was on reserve duty on the relevant day and he cannot say if the rules mandate that a person on reserve duty is required to make any arrival or departure entries in the local Police Station. Testimony of this witness is also clear and cohesive.

37. Even assuming that ASI Lajja Ram and Const.Usman Ali have not seen the actual firing which was over within seconds, but their testimony establishes that within seconds of the firing, they reached the spot and apprehended the appellant at the spot and disarmed him.

38. The next eye-witness Khem Chand, the driver of the deceased has been examined as PW-3. As per his version, on 5.1.1990 at

about 10.45 AM he had gone to the house of the deceased and accompanied him in his maruti car DNC-1734 to the Citizen Guest House at Gole Market. They reached there at 12.00 Noon. The car was driven by the deceased. The deceased after parking the car kept the keys inside his pocket and asked PW-3 to remain outside. PW-3 has deposed that the deceased had hardly taken three to four paces when PW-3 heard a bullet shot and he saw the accused Vidya Sagar firing at Mohinder Singh who was hit; Vidya Sagar was known to him as he had met him on earlier occasions when he had gone with Mohinder Singh to take money from him; he saw two police officers coming towards the guest house but before they had entered he had come out. On hearing the gunshots he took a three-wheeler scooter and went straight to the house of the deceased to inform his relatives. He returned back to the spot of occurrence at about 4.00/4.30PM where he met PW-17 and Inspector Dalbir Singh. In his cross-examination, he has stated that he reached the house of the deceased at about 12.30PM and on hearing the news about the death of her son his aged mother became unconscious. He then went to inform the 'mausi' and the brother of the accused who were living in Shahdara and thereafter he took the mother and 'mausi' of the deceased accompanied by his brother Paramjit to the spot of occurrence; on reaching there he was informed that Mohinder Singh had already been removed to the hospital; the mother and 'mausi'

did not go to the hospital; he then went back to drop the mother and the 'mausi' of the deceased which was around 7.00 PM in the evening.

39. Reading of this version of PW-3 does not in any manner establish the arguments of the learned defence counsel that the conduct of the PW-3 is unnatural or unbecoming of an employee. PW-3 was well aware that his employer was an absconder and in fact it has come in his version that during the eight year period when the deceased was absconding he was working as a labourer and he thereafter rejoined the services of the Mohinder Singh. PW-3 also knew that there was a money dispute between the deceased and the accused; he had witnessed the accused firing on the deceased with a gun; at that time he had also seen two police officers come to the spot of occurrence; he being a loyal employee his natural reaction was to rush and inform the family members of the deceased; he reached the house of the deceased at 12.30 PM which was at Ranjit Nagar; thereafter he went to inform the mausi and younger brother of the deceased at Shahadara and then returned back to the spot with them at 4.30 PM; his statement was recorded there itself at the spot on 5.1.1990; he then made efforts to drop back the family members of the deceased at their houses and by that time it has become almost dark i.e. about 7.00 PM.

Conduct of PW-3 is not only natural but also becoming of an old acquaintance.

40. Kulvinder Singh PW-5 brother of the deceased has also deposed that on 5.1.1990, the driver of the deceased Khem Chand had accompanied his brother Mohinder Singh in their maruti car to Citizen Guest House at Gole Market. This version has also fortified the presence of PW-3 at the spot. The maruti car DNC 1734 was also recovered from the spot and seized vide memo Ex.PW-2/B.

41. Ex.PW-11/A is the site plan to scale; point D is the position where PW-1 ASI Lajja Ram PW-1 along with Const.Usman Ali PW-2 on their two-wheeler scooter had witnessed the shooting inside the Citizen Guest House and from which point PW-1 had gone inside the Guest House. Point A is the place where the car of the deceased bearing no. DNC-1734 was parked when he had gone inside leaving PW-3 behind, this being the point from where PW-3 had witnessed the incident. Point B is the place from where the accused had fired at the injured which is at a distance of about 1.95 meters i.e. about six feet from where PW-3 was standing. Police Booth has also been shown in the site plan which as per oral version of PW-17 was at a distance of 50 yards from the place where the injured was found which has been depicted at point C i.e. within the hearing range of PW-4. Site plan has clearly demarcated the positioning of the eye-witnesses PW-1 and PW-2. The positioning of PW-3 who had also

witnessed the incident is about 1.95 meters away from where the deceased was attacked. PW-4 was well within hearing range from his Police Booth at the time when the gunshots were fired.

42. The eye-witness accounts i.e. the versions of PW-1, PW-2, PW-3 as also the version of PW-4 who had reached the spot within the next few minutes of the occurrence, all inspire confidence. Their version is to the effect that after hearing the first bullet sound when they reached the spot PW-1, PW-2 witnessed two other bullet shots being fired upon the deceased by the accused; PW-3 had witnessed the entire occurrence from a distance of about six feet i.e. 1.95 meters; PW-4 was also within hearing range. It is also relevant to note that the versions of all the aforementioned witnesses PW-1, PW-2, PW-3 and PW-4 were recorded by Investigating Officer on 05.1.1990 i.e. at the spot itself.

43. These ocular versions are fully corroborated by the medical record. Post-mortem of the deceased was conducted on 6.1.1990. As per the post-mortem report Ex.PW-15/A, there were eight external injuries. Injuries no.1,2,3, and 4 were on the left hand and palm of the deceased; injuries no.2 and 3 being corresponding entry and exit wounds. All these four injuries relate to a single bullet shot. Injuries no.5 and 6 were corresponding entry and exit wounds of the neck and clavicle region which are answered by a second bullet shot. Injury no.7 and injury no.8 are lacerated wounds on the

right parietal region and the scalp and obviously by a blunt force for which there is no direct evidence but could be probablised by the butt of the revolver; there could have been a preceding scuffle; the accused having attacked the deceased on his head with his revolver and thereafter having fired the first shot on his neck; PW-1 on reaching the spot had noted that the dead body was lying on the floor with the face upwards; at that time the injured had received one bullet wound; there upon PW-1 witnessed two other gunshots having been fired upon the injured; the second bullet had caused injuries no.1,2,3 and 4. Both the bullet wounds were entry and exit wounds; only one lead bullet had been retrieved from the spot. The other projectiles with their force might have spilled over; the revolver of the accused also evidenced three cartridges fired from its chamber.

44. The scientific evidence has been established from the report of ballistic expert Ex.PA which had been tendered in evidence under Section 293 Cr. P.C. Both the revolvers i.e..32" bore revolver of the accused as also the revolver recovered from the deceased has been sent to the ballistic expert along with the three spent cartridges which had been found in the chamber of the revolver of the accused, the lead bullet which had been retrieved from the spot as also the spent cartridge which the accused had got recovered from his house, five live cartridges found in the revolver of the deceased

had also been sent for examination to the ballistic expert. Mr.B.Moitra, Senior Scientific Officer, CFSL, had opined that the three cartridge cases in parcel no.2 i.e. the cartridges found in the chamber of the revolver of the accused and the bullet BC-1 which was retrieved from the spot had been fired from the revolver of the accused which was in a working order.

45. This report Ex.PA is the final nail in the coffin of the accused. It positively and conclusively establishes that it was the revolver of the accused which had been snatched from his hand at the spot which had fired the bullet shots leading to the death of Mohinder Singh and one of the blood soaked bullets BC1 had been retrieved from the spot itself.

46. The mandate of Section 293 of the Cr.P.C. is that the report of a certain category of government scientific experts, description of which has been given in sub-clause 4 is per se admissible; no further formal proof is required. This is postulated in Section 294 of the Cr.P.C. In State of A.P. Vs. Gangula Satya Murthy AIR 1997 SC 1588, Supreme Court has held that when the report of a chemical examiner is available on record in a criminal trial such a report can be used by the Court in evidence. In Shatrughan Vs. State of M.P. 1993 Cr LJ 120(MP), it has been held that not only the opinion of the chemical examiner but also all that is stated in the report becomes admissible without a formal proof. The accused is, no doubt,

entitled to question and challenge this evidence; for this purpose onus is upon him to summon the chemical examiner and where he does not take steps to do so; it cannot be said that this report cannot be admitted in evidence. This has been held in Dasu v State 1985 Cr L J 1993(Bom). In the instant case this report had been proved in the court on 20.1.2000. There was ample opportunity with the accused to summon the chemical examiner to cross-examine him on the details or the reasons of his conclusion but he having failed to do so and not having taken such steps, he cannot now assail this report. The judgments relied upon by the learned defence counsel thus does not come to his aid.

47. In the alternate even accepting the arguments of the learned defence counsel and ignoring this piece of scientific evidence i.e. the report of ballistic expert yet the other evidence collected by the prosecution has been sufficient to establish the guilt of the accused.

48. Qua the arguments on the DD entries and the special report which had been taken by Const.Mahesh Chand PW-12 to the senior officers, PW-12 has deposed that on 5.1.1990 at 3.00PM he had proceeded from Police Station Mandir Marg to the residence of Mr. O.P. Gupta, M.M., to deliver the special report. He had gone by motorcycle No.DDW-6044 and had made his departure entry at 3.00 PM recorded in DD No.12 Ex.PW-16/C-4. His arrival entry Ex.PW-12/DC in the Police Station is at 5.15 AM on 06.1.1990. The

departure entry at 1.55 PM in DD No.39B Ex.PW-16/DC shows that Const.Rajinder had taken this vehicle i.e. DDW-6044 to Ashok Vihar at 1.55 PM; this can be answered that Const.Rajinder had gone to run an errand and had returned back well in time enabling PW-12 to use this vehicle at 3.00 PM. Ex.PW-12/DA the departure entry of Const.Sanjeev for going for fueling of this vehicle to Parliament Street at 7.00 PM is not discrepant the version of PW-12 and has been explained in the version of PW-12 himself. PW-12 has deposed that his motor cycle had developed a snag and he had parked it at the Police Station at about 7.00 PM and thereafter he had travelled by bus to the residence of the Special Magistrate who was residing at Gulabi Bagh and whose address he had taken from police station Mandir Marg and this had taken considerable time. This answers the query as to why this special report was received by the Special Magistrate at 10.00 PM. Const.Sanjeev had taken out this vehicle for fueling at 7.00 PM; entry in the register about the time must have been made by looking at the watch which is unlikely in the case of a deposition made orally. PW-12 had deposed in that count he had re-deposited the vehicle in the Police Station at 7.30 PM as it had developed a snag; this time difference of half an hour between 7.00PM to 7.30 PM can be explained by the reason that apart from the fact that PW-12 had most probably not looked at the time in the watch when he had parked this vehicle in the Police

Station, even otherwise being the month of January and winter time it becomes dark soon after 6.30 PM and whether it is 7.00 PM or 7.30 PM, both hours which are dark with the sun having set; the difference of half an hour here or there is of no consequence.

49. The motive of the crime has surfaced in the version of PW-6 Mahesh a neighbour of the deceased who was well known to both the accused and the deceased. He has deposed that he knows both the parties since the last several years; in 1978 an old building situated at Sita Ram Bazar had been purchased by the accused Vidya Sagar and Mohinder Singh jointly in which Mohinder Singh had a one-quarter share; in his presence Mohinder Singh had paid Rs.2,00,000/- to the accused. He has deposed that money dealing between the accused and deceased were on and this has also been corroborated by PW-3, the driver of the deceased. PW-6 has further deposed that Vidya Sagar had promised to pay Rs.30,00,000/- to the deceased through Kishan Lal by 31.3.1990; a sum of Rs.5,00,000/- had been collected by PW-6 from Kishan Lal and was paid to Mohinder Singh but the deceased had told him that the accused was dilly-dallying on the balance payment; on 5.1.1990 he came to know that the deceased had died. The relevant papers of Sita Ram Bazar property seized by the Investigating Officer vide memo Ex.PW-17/D show that the property papers have been registered in the names of A.R. Wig, Onkar Nath and P.K. Aggarwal.

50. PW-9 Ramesh was an employee of Citizen Guest House and he had served there for the last five years; he has not supported the version of prosecution. Yet from his testimony it has come on record that A.R.Wig used to frequent the Guest House and used to check the accounts of the Guest House. This witness has neither positively asserted nor denied that A.R. Wig and Onkar Nath were the brothers of Vidya Sagar and the other partners of the Guest House; Onkar Nath was also the person in whose name the provisional licence of the Guest House was issued and this was established in the version of DW-1. DW-1 had also proved Ex.DW-1/PX, a no objection certificate on the letter head of Sagar Enterprises whose visiting cards had been recovered in the personal search Ex.PW-2/F of the accused. PW-1 in his cross-examination has admitted that he used to go for weekly/fortnightly checks to the Guest House when he had met the accused.

51. Record has positively established that A.R. Wig and Onkar Nath apart from the accused also had some interest in the Guest House. There was also a money transaction and a subsequent dispute between the accused and the deceased; PW-5 the brother of the deceased had also stated that on the fateful day his deceased brother had gone to the Guest House to meet the accused to take back his money. To a large extent the motive also stands established.

52. The recovery of the cartridge got effected by the accused from his house at Ranjit Nagar and seized vide memo Ex. PW-1/F is liable to be discarded as admittedly this recovery had been effected on 05.1.1990, up to which time no disclosure statement of the accused had been recorded. There are two disclosure statements of the accused Ex.PW-1/E and Ex.PW-17/Z both of which have been recorded subsequently i.e. on 06.1.1990 and 07.1.1990.

53. The revolver of the accused was a licensed weapon and as per ASI Virender Pal Singh PW-13 the licence of revolver had been renewed up to 27.5.2009; he had however used it in contravention of Section 5 of the Arms Act.

54. The defence of alibi projected by the accused is patently false. His bald averment that when the occurrence took place he was not present has little meaning when the prosecution has specifically established the presence of the accused at the scene of occurrence through the aforementioned reliable and cogent evidence. It was then incumbent upon the accused to have led positive evidence to establish his defence of alibi which he has failed to do.

55. At this stage it would also be relevant to point out that initial investigation of this case had been earmarked to Police Station Mandir Marg but on the complaint made by the relatives of the victim namely Kulvinder Singh PW-5 and his friend Mahesh Chand PW-6 the investigation was transferred to the Special Staff on

12.1.1990. Inspector Suraj Mal PW-20 had deposed to the said effect; he had recorded the statements of PW-5 and PW-6 on 12.1.1990 as the complaint of PW-5 and PW-6 was that inspite of their repeatedly going to the local Police Station their statements were not being recorded and it was in this scenario that the investigation came to be transferred from the local Police Station to the Special Staff. This explains the deliberate lapses made by the first investigating agency.

56. In Karnel Singh Vs. State of M.P. AIR 1995 SC 2472, the Supreme Court has held that in cases of a defective investigation, the Court has to be circumspect in evaluating the evidence and such a defective investigation does given anxious moments but to give a benefit to the accused solely on the account of this defect would tantamount to playing into the hands of the Investigating Officer and especially if the investigation is designedly defective; it would be adding insult to injury.

57. Minor inconsistencies and discrepancies on trivial matters not touching the core of the case, a hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by Investigating Officer, not going to the root of the matter does not permit the rejection of the evidence as a whole.

This has been held by Supreme Court in Anter Singh Vs. State of Rajasthan AIR 2004 SC 2865.

58. All these factors clearly establish that it was the accused who had committed the crime i.e. the murder of the deceased Mohinder Singh: the cumulative evidence which has been gathered i.e. the testimony of the eye-witnesses PW-1, PW-2 and PW-3; PW-4 having reached the spot immediately thereafter coupled with the medical evidence i.e. the MLC and the post-mortem report which is corroborative of the ocular versions, further fortified by the scientific evidence which is the ballistic report clearly point fingers of guilt towards the accused; he has no escape route. The conviction of the accused calls for no interference. In our view the appeal is without merit; it is dismissed. Bail bond and surety bond of the accused are cancelled; he shall surrender forthwith to suffer the remaining sentence.

(INDERMEET KAUR)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

24th September, 2009
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