

STATE OF NCT OF DELHI Respondent
Through: Mr.Pawan Sharma, APP.

+ **CRL.A. 604/2008**

SANT RAM Appellant
Through: Ms.Anu Narula, Advocate.
versus

STATE Respondent
Through: Mr.Pawan Sharma, APP.

+ **CRL.A. 639/2008**

RAMESH @ BOBBY @ RAJESH @ AJAY
@ RAJU Appellant
Through: Ms.Anu Narula, Advocate.
versus

STATE Respondent
Through: Mr.Pawan Sharma, APP.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

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

PRADEEP NANDRAJOG, J.

1. The above captioned appeals arise out of the impugned judgment dated 15.02.2008 and the order on sentence dated

18.02.2008 passed by the learned Additional Sessions Judge in Sessions Case No.14/1999 arising out of FIR No.188/1999 registered at Police Station Mehrauli. By virtue of the impugned judgment, appellants Surinder Mishra, Tejinder Viridi @ Dolly, Romesh Sharma and Hem Chand @ Nani, Sant Ram and Ramesh @ Bobby @ Rajesh @ Ajay @ Raju have been convicted for the offence punishable under Section 120-B IPC read with Section 302 IPC. Additionally, appellants Hem Chand @ Nani, Sant Ram and Ramesh @ Bobby @ Rajesh @ Ajay @ Raju have been convicted for the offence punishable under Section 302 IPC read with Section 34 IPC. With respect to the offence punishable under Section 120-B IPC read with Section 302 IPC, appellants Surinder Mishra and Tejinder Viridi have been sentenced to undergo imprisonment for life and pay a fine in sum of Rs.5,000/-, in default to undergo SI for three months; whereas Romesh Sharma has been sentenced to undergo imprisonment for life and pay a fine in sum of Rs.50,000/-, in default to undergo SI for six months. With respect to the offence punishable under Section 302 IPC read with Section 34 IPC, appellants Hem Chand @ Nani, Sant Ram and Ramesh @ Bobby @ Rajesh @ Ajay @ Raju have been sentenced to undergo imprisonment for life and pay a fine in sum of Rs.1,000/-, in default to undergo SI for one month. The learned trial court did not award any sentence to the

appellants Hem Chand @ Nani, Sant Ram and Ramesh @ Bobby @ Rajesh @ Ajay @ Raju for the offence punishable under Section 120-B IPC read with Section 302 IPC on the ground that they have been already sentenced for major offence punishable under Section 302 IPC read with Section 34 IPC.

2. The case set up by the prosecution against the appellants is that in the afternoon of 20.03.1999 Inspector Jagdish Meena PW-36, along with some other police officials was patrolling in the area around Chattarpur Mandir when at around 2.00 P.M. Ram Achal Tiwari PW-16, met Inspector Jagdish Meena and informed him that a lady has been murdered at Jai Mata Di farmhouse situated near Chattarpur Mandir. Inspector Jagdish Meena immediately made a telephone call to police station Mehrauli and gave the aforesaid information to SI Sunil Lamba PW-6, who recorded DD No.12A, Ex.PW-6/4.

3. Simultaneously, Inspector Jagdish Meena PW-36, transmitted the aforesaid information to SI J.S.Joon PW-35 and Const. Garib Chand PW-20. Thereafter Inspector Jagdish Meena along with Ram Achal Tiwari PW-16, proceeded to Jai Mata Di farmhouse where he saw that a lady named Kunjum (hereinafter referred to as the "Deceased") was lying dead on

the ground. Inspector Jagdish Meena noticed that the shirt worn by Ram Achal Tiwari was stained with blood and therefore, he seized the same vide memo Ex.PW-16/1. On inspecting the spot, Inspector Jagdish Meena found a slip of paper on which the telephone number 7166786 was written.

4. On receiving the information about the incident in question, SI J.S. Joon PW-35, Const. Garib Chand PW-20 and HC Satish Chand PW-22 reached the spot. Inspector Jagdish Meena PW-36, handed over the slip of the paper found at the spot to SI J.S.Joon PW-35, upon which he and HC Satish Chand PW-22, proceeded to make inquiries in respect of the telephone number written on the said slip.

5. In the meantime, a telephone call was received in the police control room in connection with the incident in question pursuant to which Lady Constable Milyani PW-29, made an entry in the PCR form Ex.PW-29/1 at 2.53 P.M. on 20.03.1999, to the effect that a telephonic information was received from a lady named Rani having telephone number 6425714 informing that a man named Romesh Sharma has murdered a girl at Jai Mata Di farmhouse. HC Joseph PW-3, recorded the information contained in the PCR form Ex.PW-29/1 in the log book PW-3/1.

6. Inspector Jagdish Meena PW-36, recorded the statement Ex.PW-6/1 of Ram Achal Tiwari PW-16, and made an

endorsement Ex.PW-6/1A thereon, and at around 03.00 P.M. on 20.03.1999 forwarded the same through Const. Garib Chand PW-20, to the police station for the purposes of registration of an FIR. Const. Garib Chand took the endorsement Ex.PW-6/1A to SI Sunil Lamba PW-6, who recorded the FIR No.188/99 Ex.PW-6/2 at 03.20 P.M. on 20.03.1999. SI Sunil Lamba contemporaneously prepared DD entry no.14A Ex.PW-6/5, recording the timing of the registration of the FIR Ex.PW-6/2. Thereafter at around 04.35 P.M. SI Sunil Lamba handed over a copy of the FIR Ex.PW-6/2 to Const. Khushi Ram PW-26, for the purposes of delivery of the FIR to the Area Magistrate and senior police officers. SI Sunil Lamba prepared DD entry no.15A Ex.PW-6/6, recoding the timing of the delivery of the FIR to the Area Magistrate and senior police officers.

7. In his statement Ex.PW-6/1, Ram Achal Tiwari PW-16, stated that he works as a caretaker at Jai Mata Di farmhouse since last two years and that he resides in the said farmhouse. The said farmhouse is owned by Romesh Sharma who is lodged in prison since last few months and that Surinder Mishra who is the nephew of Romesh Sharma takes care of the farmhouse in the absence of Romesh Sharma. Today, at around 08.00 A.M. Surinder Mishra came to the farmhouse and

met his associates Nani, Ramesh @ Rajesh, Rakesh and Pramod. The aforesaid persons were employed by Surinder Mishra to work at the farmhouse since last about 1 ½ months. After about 20 minutes Surinder Mishra told him that Kunjum madam would come to the farmhouse today so he should clean the temple and help the deceased in performing puja. Thereafter Surinder Mishra left from there. At about 11.30 A.M. two girls named Dolly and Sonu along with one Pandit Chavidas who resides at Lodhi colony came to the farmhouse in a car and told him that he should open and clean the temple; that a puja will be performed at the temple; that they are going to the market to purchase the things required for performing the puja and that they would return in a short while. The said girls had come with Surinder Mishra to the farmhouse on various occasions. Thereafter at about 12.00 P.M. when he returned to the farmhouse after purchasing ration he saw that Kunjum Madam had come there in her Toyota car bearing No.DL-3C-B-9399 and that she was standing near her car. Kunjum told him that the tyre of her car was punctured and that he should bring a mechanic upon which he brought a mechanic from a shop situated outside the farmhouse. After inspecting the car the mechanic left the farmhouse to bring some tools. At that very moment, Kunjum Madam told him that he should take the keys of kothi from her

and open the same, upon which, accompanied by Kunjum he went towards the kothi and opened the door of the kothi. He and Kunjum went inside the kothi and Kunjum saw the puja room after which they started going upstairs from the basement of the kothi. At around 12.30 P.M. Kunjum reached the main gate of the kothi and he was climbing the stairs when suddenly the four boys who used to reside in the farmhouse; namely, Nani, Ramesh @ Rajesh, Rakesh and Pramod @ Prahalad @ Bobby entered the kothi. Nani and Rakesh were having knives in their hands whereas Pramod and Ramesh were having bottle and revolver respectively in their hands. On entering the kothi the aforesaid persons told Kunjum that 'how dare did she enter the kothi'. Ramesh and Rakesh pushed Kunjum, upon which she fell down on the floor. Thereafter Nani gave knife blows on the neck, chest and forehead of Kunjum and Ramesh hit the bottle on the chest of Kunjum. Pramod showed him the revolver and threatened him by saying that he should not come upstairs otherwise they would shoot him. After having murdered Kunjum the aforesaid four boys took the black colored handbag and mobile phone of Kunjum and fled from the kothi. Having witnessed the incident he got scared and came out of the kothi. After telling the other security guards present in the farmhouse about the incident he went out of the farmhouse to give a telephone call to the

police. When he could not contact the police over telephone he ran to Chattarpur temple where he informed Inspector Jagdish Meena about the incident. When the aforesaid four boys were inflicting knife blows on the person of Kunjum the shirt worn by him got stained with blood of Kunjum. He removed the said shirt and the same was seized by the police. The aforesaid four boys had murdered Kunjum and that they had fled from the spot after taking the black colored bag and mobile phone of Kunjum.

8. Inspector Jagdish Meena PW-36, commenced the spot investigation after the registration of the FIR Ex.PW-6/2. He noticed that the ground where the deceased was lying dead was stained with blood and that a slipper was lying near the body of the deceased. He lifted blood sample from the ground as recorded in the memo Ex.PW-20/2. He also seized the aforesaid slipper vide memo Ex.PW-20/1. Thereafter he prepared rough site plan Ex.PW-36/1 of the spot.

9. Thereafter the crime team reached the spot. SI Mohar Singh PW-14, Finger Print Expert, inspected the spot. However no chance prints could be detected therein. Const.Brijbir Singh PW-2, Photographer, took 7 photos Ex.PW-2/1 to Ex.PW-2/7 of the spot; negatives whereof are Ex.PW-2/8 to Ex.PW-2/14.

10. In the meantime, a telephone call was received at the police control room in connection with the incident in question pursuant to which Lady Constable Milyani PW-29, made an entry in the PCR form Ex.PW-29/1 at 2.53 P.M. on 20.03.1999, to the effect that a telephonic information was received from a lady named Rani having telephone number 6425714 informing that a man named Romesh Sharma has murdered a girl at Jai Mata Di farmhouse.

11. SI J.S.Joon PW-35 and HC Satish Chand PW-22, made enquiries with respect to telephone number 7166786 and came to know that said number is installed at house bearing municipal No.21/24, Mangol Puri, New Delhi. The aforesaid police officers went to the said house where they met one boy named Asal who told them that a man named Rakesh used to live at the said house and that presently he is residing at B-16, Staff Quarters, Fire Station, Moti Nagar. Thereafter the said police officers went to the address provided by Asal but they could not find Rakesh there.

12. On the same day i.e. 20.03.1999 Inspector Jagdish Meena PW-36, recorded the statements of Sunil Kumar PW-15, Hari Chand PW-17, Pandit Deepak Sharma PW-18 and Dilbag Singh PW-19, under Section 161 Cr.P.C.

13. In his statement Ex.PW-15/DA, Sunil Kumar stated that he is employed as a security guard at Jai Mata Di farmhouse. Apart from the guards, seven persons namely Nani, Rakesh, Ramesh @ Bobby, Sant Ram, Balle, Babu and Guddu reside in the said farmhouse. The gardener and the other security guards had told him that the aforesaid seven persons were employed by Surinder Mishra. Whenever Surinder Mishra visited the farmhouse he used to talk to said seven persons in a closed room. Surinder Mishra came to the farmhouse in the evening of 19.10.2003 and consumed liquor with the aforesaid persons till late in the night. In the morning of 20.10.2003 at about 8.00 A.M. Surinder Mishra came to the farmhouse, talked to Nani and his associates for about ten minutes and thereafter left from there in a car. Thereafter at around 11.30 A.M. two madams and one priest came at the farmhouse and left from there after telling Tiwari (Ram Achal Tiwari) about the performance of a puja at the farmhouse. The aforesaid three persons did not return to the farmhouse. Thirty minutes thereafter the deceased came there in a car, one tyre of which was punctured. Madam asked Tiwari to call a mechanic pursuant to which Tiwari brought a mechanic to the farmhouse. Thereafter Tiwari and the deceased went inside the kothi pursuant to which Nani, Rakesh, Ramesh and Sant Ram also went inside the kothi. After about ten minutes the

aforesaid four persons came out of the kothi and left from the farmhouse along with their three associates who were standing at the gate of the farmhouse. Sometime thereafter, Tiwari who was in a perplexed condition came out and informed him and other security guards that the aforesaid seven persons have murdered the deceased with knives. Tiwari went out of the farmhouse to inform the police that he and other security guards saw the deceased lying dead in a pool of blood near the gate of the kothi.

14. In his statement Ex.PW-17/DA, Hari Chand stated the facts which were already stated by Sunil Kumar in his statement Ex.PW-15/DA.

15. In his statement Ex.PW-19/DA, Dilbag Singh also stated the facts which were already stated by Sunil Kumar in his statement Ex.PW-19/DA. Additionally, he stated that on the evening of 19.10.2003 when Surinder Mishra had come to the farmhouse he heard Surinder Mishra telling Nani and his associates that the deceased would surely come to the farmhouse tomorrow, that they should positively eliminate the deceased and that he would tell them the future course of action later to which Nani and his associates replied that they would finish the work assigned to them.

16. In his statement Ex.PW-18/DA Pandit Deepak Sharma stated that he used to perform puja at the residence of Romesh Sharma. On 19.03.1999 he along with Sonu and Dolly went to C-30, Mayfair Garden, the residence of Romesh Sharma, and performed puja there. On the next day he along with Sonu and Dolly went to Jai Mata Di farmhouse where they were met by one Tiwari. Dolly told Tiwari to clean the temple, that they are going to purchase things required for performing puja and that they would return shortly. When they reached at the gate of the farmhouse after making purchases Sonu and Dolly said that the police is present at the farmhouse and thereafter they drove the car towards C-30, Mayfair Garden. Dolly and Sonu dropped him at Main Road, Khelgaon wherefrom he went to the temple where he used to reside.

17. Inspector Jagdish Meena recorded the supplementary statement Ex.PW-16/DA of Ram Achal Tiwari wherein he stated that 1½ months prior to the day of the murder of the deceased one Subba Rao forcibly tried to take possession of Jai Mata Di farmhouse due to which Surinder Mishra had employed Nani and his associates for safety of the farmhouse. Surinder Mishra used to visit the farmhouse almost every day and consume liquor with Nani and his associates. The boy who was referred by him as Prahlad @ Pramod in his earlier statement Ex.PW-

16/A is also known by the name of Sant Ram. Surinder Mishra had often told him that his uncle Romesh Sharma is very distressed these days as the deceased is causing him lot of trouble. The demands of the deceased are increasing day by day despite the fact that Romesh Sharma has given her the house bearing municipal No.C-31, Hauz Khas. One day Surinder Mishra told him that Romesh Sharma would give all his properties to the deceased despite the fact that he, Dolly and Sonu are acting as parokars of Romesh Sharma. At the time of the murder of the deceased, Nani, Ramesh, Rakesh and Sant Ram had gone inside the kothi while Balle, Guddu and Babu were standing at the gate of the farmhouse. Dilbag Singh had told him that Balle, Guddu and Babu were standing at the gate of the farmhouse at the time of the murder of the deceased.

18. On the next day i.e. 21.03.1999 the body of the deceased was sent to mortuary at AIIMS, where Dr.Lal Rozama conducted the post-mortem of the deceased at 11.30 A.M. and prepared the post-mortem Ex.PW-31/A which records following ante-mortem injuries on the person of the deceased:-

“1. Incised wound 3 x 1 cm x subcutaneous depth on left abdomen 6 cm from midline 13 cm from ant superior iliac spine

2. Incised cut wound 3.5 x 1 cm x 5 c depth 3 cm from midline & 13 cm from left nipple on left abdomen
3. Incised stab wound 2.5 x 1 cm x 5 cm deep on left breast 7 cm from nipple
4. Incised stab wound 4 cm x 1 cm x 5 cm depth on left breast 1 cm below nipple
5. Stab wound incised 3.5 x 1 cm x chest cavity depth on 1 cm above left nipple directed downwards and (illegible) piercing tab ant left lung at (illegible) depth
6. (Illegible) cut wound long x 5 cm depth (illegible)
7. Incised wound 3 x 1 cm x bone depth left arm laterally 6 cm above elbow (illegible)
8. Incised cut wound 7.5 cm long x tracheal depth horizontally on neck 4 cm from suprasternal notch
9. Cut wound 6 cm long horizontal placed on front of suprasternal notch and 6 cm from chin trachea horizontally
10. Incised cut wound 6 cm x 2 cm x bone depth (illegible) of outer table of frontal bone (skull) horizontally
11. Incised wound 7 cm long x 1 cm x bone depth (illegible) middle of left (illegible) linear fracture 3 cm long"

19. The post-mortem report further records that the death of the deceased was caused due to the cumulative effect of the afore-noted injuries found on the person of the deceased. That injuries Nos. (5), (10) and (11) found on the person of the deceased were individually sufficient to cause death in the ordinary course of nature and that they were caused by sharp-edged stabbing weapon.

20. After the post-mortem, the doctor handed over the clothes and blood sample of the deceased on a gauze to Inspector Jagdish Meena PW-36, who seized the same vide memo Ex.PW-36/3.

21. Since the investigation so far conducted in the case was pointing towards the complicity of Surinder Mishra, Tejinder Viridi @ Dolly, Jaspreet Viridi @ Sonu, Hem Chand @ Nani, Sant Ram @ Pramod @ Prahlad and Ramesh @ Rajesh @ Ajay @ Raju @ Bobby in the murder of the deceased, the police set out to apprehend them.

22. In the night of 22.03.1999 Inspector Tarun Kumar PW-12, Crime Branch, Ahmedabad, received secret information that accused Surinder Mishra is staying at Kapadia Guest House whereupon he went there and learnt that Surinder Mishra is staying at the said guest house under the name of Raj Kumar Bhatia. Inspector Tarun Kumar apprehended Surinder Mishra and immediately sent the information of the apprehension of Surinder Mishra to police station Mehrauli pursuant to which Inspector Jagdish Meena PW-36, accompanied by SI Vijay Kumar PW-32, proceeded to Ahmedabad. On being apprehended and interrogated by Inspector Tarun Kumar PW-12, Surinder Mishra made a disclosure statement Ex.PW-12/A wherein he disclosed that he, Romesh Sharma, Tejinder Viridi

@ Dolly, Jaspreet Virdi @ Sonu hatched a conspiracy to murder the deceased and that Hem Chand @ Nani, Sant Ram @ Pramod @ Prahlad and Ramesh and Rakesh murdered the deceased in pursuance of the said conspiracy. He also disclosed that his mobile number is 9810114857; that the mobile number of Tejinder Virdi @ Dolly is 9811024145 and that the mobile numbers of Jaspreet Virdi @ Sonu are 9810123175 and 9810137333. He further disclosed that Tejinder Virdi @ Dolly gave a call on his mobile phone in the afternoon of 20.03.1999 after the murder of the deceased. Thus, even Romesh Sharma became a suspect.

23. On reaching Ahmedabad, Inspector Jagdish Meena PW-36, obtained the register of guests maintained at Kapadia Guest House from Amara Bhai PW-5, the manager of the said guest house, and seized the portion Ex.PW-5/1 of the register pertaining to the stay of Surinder Mishra at the said guest house vide memo Ex.PW-36/4. (A perusal of the document Ex.PW-5/1 shows that one Raj Kumar Bhatia checked in Kapadia Guest House at 07.30 P.M. on 22.03.1999). Inspector Jagdish Meena also recorded the statement Ex.PW-5/DA of Amara Bhai PW-5 wherein he stated that Surinder Mishra is the person who was staying as Raj Kumar Bhatia at Kapadia Guest

House. He formally arrested Surinder Mishra in the instant FIR as per arrest memo Ex.PW-32/1.

24. On 25.03.1999 the police recorded the statement Ex.PW-30/DA of Vikram Singh PW-30, wherein Vikram Singh stated that he is running a security agency under the name and style of Washtower Security Agency and that he had deployed the security guards at Jai Mata Di farmhouse. (It may be noted here that it is not clear as to who is the scribe of the statement Ex.PW-30/DA).

25. On the same day i.e. 25.03.1999 Inspector Jagdish Meena seized three letters Ex.PW-27/B, Ex.PW-28/B and Ex.PW-28/C from Pawan Budhiraja PW-28, the brother of the deceased, vide memo Ex.PW-28/D.

26. The letter Ex.PW-27/B is an incomplete letter purportedly written by the deceased to Romesh Sharma and the same reads as under:-

“Sweetheart I do not know what to write and what not to write you are going on saying that go there and do pooja these people are playing tricks and they are not giving the keys to me when pawan asked surinder he said I have given to dolly and dolly says the keys are with surinder and your so called sister who calls herself Mrs.Sharma and Sonu Sharma asked pawan to convey the message that C-30 we are doing the pooja and still they said we don't have the keys. You don't know what all is going on please your intention was that puja should be performed and these people have at least

performed puja at C-30 rest I spoke to Surinder and I have told him that 'you do not want to give keys I myself do not want to take the keys. You could have stood near the temple and that I would have left after performing the puja. You could have done this favour not for me but at least for your uncle'. I have also told goddess that she should herself call you for performance of puja as these people do not allow the performance of puja. You should not worry goddess is seeing everything. She will accept your prayers form wherever you are performing puja. It is quite possible that if I would have performed puja these people would have created some obstacle and the same would not have been a good thing" (Translated Version) (Emphasis Supplied)

27. The letter Ex.PW-28/B purportedly written by Romesh Sharma to the deceased reads as under:-

"Jai Mata di

I pray to Ma sherawali to give you all the happiness and long life so I can feel protected from this wild world. I am doing NavRATRA Pooja and keeping all 9 days fast like before but this time you are not with me to do the pooja but next NavRATRA Ma DURGA will bless us to be together and will do the NAVRATRA FAST & pooja in our JAI MATA DI Farmhouse together. Please do all your pooja without any tension and you can feel that I am always with you all the time and sitting next to you whenever you are doing your pooja to ma sherawali in NAVRATRA otherwise also I am always with you in every moment you can feel my presence. Please take care of your health and yourself completely. You do not have to worry for anything still I am alive whatever you need please let me know I will try to do whatever I can do in this situation. Please during the NAVRATA I request you to take one Indian car whichever you like and think is better car but take the smaller size so that you can find easy for parking. You should take the cheque from your-Dada ji and take on the instalment basis. But you must organise during the NAVRATRA so that Ma sherawali will bless you for everything. This will give me better feeling that you are having your own

transport and you are comfortably going to visit Gurudwara and temple for pooja. Please forgive me for not to organize imported car for you as I lost all the interest in luxury cars. Your all the imported car are getting release very soon but I do not want to advise you to drive them now because they are all unlucky for us. Will start everything from new indian car new indian life therefore I request you to take new indian car for time being, if every Ma sherawali mata will give me opportunity to come out from this hell then I will try to look after you well I want you to have everything in your life. You had everything but suddenly God taken away everything of yours and you lost all your saving your jewellery your happy life and you are living alone without me. Please forgive me for my helplessness not doing any living for you in your suffering. Please write me about your mummy health because I am quite worried when pawan informed me that she was very sick. I pray to sherawali mata for her good health and for her long life. She is the only person behind me who takes your care and provide you full protection from this wild world. I will be grateful to God to give all the happiness to your mummy and Daddy. Please convey my pranam to mummy and Daddy. I always need their blessing to come out from this hell. I want to request you to ask your mummy to start the Hauz Khas H. Centre as soon as possible so that you can have some permanent income and you can feel secure and your family members can keep themselves occupied. But if you feel proper and correct then only you take the decision I also want to request you to shift to Hauz khas if you feel there is no other problem. I want to request you to go C-30 mayfair Garden and Jai mata Di farmhouse during the NAVRATRA and do the pooja like before keep one set of the key of all the places. Take care of yourself yours Romesh Sharma

Request you to do the regular Jai Mata Di farmhouse ...May fair garden In Navratra

Please let me know if you are having all the key of JAI MATA DI FARMHOUSE and of C-30 MAY FAIR GARDEN

If you are not having the key then I will ask surinder to send for you

I hope you must be having key of Jai mata Di FARM and of C-30 May Fair Garden" (Emphasis Supplied)

28. The letter Ex.PW-28/C purportedly written by Romesh Sharma to the deceased reads as under:-

"Dearest Kunjum

JAI MATA DI

I pray to sherawali mata to give you all the happiness and long life please I request you to do the regular pooja of NAVRATRA in JAI MATA DI Farmhouse and in C.30 MAY FAIR GARDEN and C.31 Hauz khas if you are not having the key then I will ask the surinder or tiwari to send it you by today itself. But you should try to contact Pandit ji and request him to start coming every day to do the regular pooja. But at least you should call him for NAVRATRA pooja otherwise you can contact some other Pandit ji to do all this pooja. You should keep all this key of the house of one set so if ever you want to go home you do not have to ask any person. I again request you to buy one new indian car during the NAVRATRA so that I can feel little better here if you need anything else then I will write letter to Babu you can take from there you do not worry for anything I want to know about Pawan computer if he need for his work let me know I will organize for him you keep yourself occupied in pooja and path ma sherawali will listen to us very soon. I got full faith in God and Goddess and in you that very soon I will be out from all this mess. I want to devote all my life to make temple and Ashram like Baba Nagpal if God will forgive me opportunity to do this noble cause. Please take care of yourself. I am always for you. (Emphasis Supplied)

Yours

Romesh Sharma"

29. On 25.03.1999 Inspector Surinder Sharma PW-37, took over the investigation of the case. Accompanied by Inspector

J.S. Joon PW-35 and Lady Constable Milyani PW-21, he went to the residence of Tejinder Viridi @ Dolly and Jaspreet Viridi @ Sonu and arrested them as recorded in the arrest memos Ex.PW-35/1 and Ex.PW-35/2 respectively. At the time of her arrest, as recorded in the arrest memo Ex.PW-35/3 a mobile phone with a SIM Card pertaining to the mobile number 9811024145 was recovered from Tejinder Viridi @ Dolly. On being interrogated by Inspector Surinder Sharma PW-37, in the presence of Inspector J.S. Joon PW-35 and Lady Constable Milyani PW-21, Tejinder Viridi @ Dolly made a disclosure statement Ex.PW-21/2 wherein she confessed to the conspiracy and disclosed that her mobile number is 9811024145 and that Vikram Singh gave a call on her mobile in the afternoon of 20.03.1999 to inform her about the murder of the deceased pursuant to which she contacted Surinder Mishra to inform him about the same and that the mobile number of Surinder Mishra is 9810114857.

30. On being interrogated by Inspector Surinder Sharma PW-37, in the presence of Inspector J.S. Joon PW-35 and Lady Constable Milyani PW-21, Jaspreet Viridi @ Sonu made a disclosure statement Ex.PW-21/1 wherein she also admitted to the conspiracy.

31. On 27.03.1999 Inspector J.S.Joon PW-35, took over the investigation of the case.

32. On 12.04.1999 Inspector V.N. Dixit PW-25, arrested accused Sant Ram in connection with FIR No.58/99 under Section 364 IPC registered at District Sultanpur, UP. On receipt of information about the apprehension of Sant Ram, Inspector J.S. Joon PW-35, proceeded to District Sultanpur and formally arrested him in the present case on 26.04.1999 as recorded in the arrest memo Ex.PW-35/3. On being interrogated by Inspector J.S.Joon PW-35, Sant Ram made a disclosure statement Ex.PW-35/4 wherein he disclosed that Romesh Sharma, Surinder Sharma, Tejinder and Jaspreet Viridi hatched a conspiracy to murder the deceased and that he, Hemchand @ Nani, Ramesh @ Bobby, Ganga Singh @ Guddu, Devender @ Balle, Rakesh and Sudesh @ Babu murdered the deceased in pursuance of the said conspiracy.

33. In the meantime, Inspector J.S. Joon PW-35, obtained an application Ex.PW-27/A purportedly submitted by the deceased at MTNL from Pawan Budhiraja PW-28, the brother of the deceased, and seized the same vide memo Ex.PW-28/A. The application Ex.PW-27/A dated 15.03.1999, records that the deceased has shifted to the house bearing municipal no.C-31,

Hauz Khas, New Delhi and that her old telephone connection be restored at her new residence.

34. On basis of secret information, Inspector J.S. Joon PW-35, accompanied by HC Satish Chand PW-22, arrested accused Hemchand @ Nani from the park at P-Block, Mangol Puri on 09.05.1999 as recorded in the arrest memo Ex.PW22/5. On being interrogated by Inspector J.S.Joon PW-35 in the presence of HC Satish Chand PW-22, Hemchand @ Nani made a disclosure statement Ex.PW-22/1 wherein he disclosed that Romesh Sharma, Surinder Sharma, Tejinder and Jaspreet Viridi hatched a conspiracy to murder the deceased and that he, Rakesh, Guddu, Balle, Ramesh @ Bobby murdered the deceased in pursuance of the said conspiracy. He further disclosed that he had removed the gold chain, mobile phone and black bag of the deceased after murdering her and that he can get the same recovered. Thereafter he led the aforesaid police officers to his residence and got recovered a gold chain from a cupboard which was seized vide memo Ex.PW-22/10.

35. On 09.05.1999 SI Kanwar Lal PW-24, arrested accused Ramesh in connection with the FIR No.474/99 registered under Sections 457/380/411 IPC. Inspector J.S.Joon PW-35, formally arrested accused Ramesh in the present case on 11.05.1999 as recorded in the arrest memo Ex.PW-22/6. On being

interrogated by Inspector J.S.Joon PW-35 in the presence of HC Satish Chand PW-22, Ramesh made a disclosure statement Ex.PW-22/4 wherein he disclosed that Romesh Sharma, Surinder Sharma, Tejinder and Jaspreet Viridi hatched a conspiracy to murder the deceased and that he, Hemchand @ Nani, Ramesh @ Bobby, Ganga Singh @ Guddu, Devender @ Balle, Rakesh and Sudesh @ Babu murdered the deceased in pursuance of the said conspiracy.

36. On 25.05.1999 HC Rameshwar Prasad PW-23, obtained the applications Ex.PW-23/1, Ex.PW-1/2, Ex.PW-1/3, Ex.PW-1/4, Ex.PW-1/5, Ex.PW-1/6, Ex.PW-1/7, Ex.PW-23/18, Ex.PW-23/19 and Ex.PW-23/33 filed by various persons including the accused Surinder Mishra, Tejinder and Jaspreet Viridi in the court of Metropolitan Magistrate for purposes of meeting accused Romesh Sharma in the court during the hearing of his case from the court of Metropolitan Magistrate and handed over the same to Inspector J.S. Joon PW-35, who seized the same vide memo Ex.PW-23/34.

37. A perusal of the application Ex.PW-23/1 records that accused Surinder Mishra, Tejinder and Jaspreet Viridi and Pawan Budhiraja, the brother of the deceased, made a request before the Metropolitan Magistrate to meet Romesh Sharma in the court on 23.02.1999, which request was allowed by the

Magistrate; application Ex.PW-1/2 records that accused Surinder Mishra and Jaspreet Viridi and Pawan Budhiraja, the brother of the deceased, made a request before Metropolitan Magistrate to meet Romesh Sharma in the court on 16.02.1999, which request was allowed by the Magistrate; application Ex.PW-1/3 records that Amritlal Budhiraja, the father of the deceased, and Vikram Singh PW-30, made a request before Metropolitan Magistrate to meet Romesh Sharma in the court on 08.04.1999, which request was allowed by the Magistrate; application Ex.PW-1/4 records that accused Surinder Mishra, Tejinder and Jaspreet Viridi made a request before Metropolitan Magistrate to meet Romesh Sharma in the court on 15.03.1999, which request was allowed by the Magistrate; application Ex.PW-1/5 records that Jaspreet Viridi made a request before Metropolitan Magistrate to meet Romesh Sharma in the court on 16.02.1999, which request was allowed by the Magistrate; application Ex.PW-1/6 records that accused Surinder Mishra and Jaspreet Viridi made a request before Metropolitan Magistrate to meet Romesh Sharma in the court on 18.03.1999, which request was allowed by the Magistrate; application Ex.PW-1/7 records that accused Surinder Mishra and Jaspreet Viridi and Pawan Budhiraja, the brother of the deceased, made a request before Metropolitan Magistrate to meet Romesh Sharma in the court on

16.02.1999, which request was allowed by the Magistrate; application Ex.PW-23/18 records that Amritlal Budhiraja, the father of the deceased, made a request before Metropolitan Magistrate to meet Romesh Sharma in the court on 29.01.1999, which request was allowed by the Magistrate; application Ex.PW-23/19 records that accused Tejinder and Jaspreet Viridi and Pawan and Amritlal Budhiraja, the brother and father respectively of the deceased, made a request before Metropolitan Magistrate to meet Romesh Sharma in the court on 30.01.1999, which request was allowed by the Magistrate and application Ex.PW-23/33 records that accused Tejinder and Jaspreet Viridi made a request before Metropolitan Magistrate to meet Romesh Sharma in the court on 05.01.1999, which request was allowed by the Magistrate.

38. On 29.05.1999 test identification proceedings of the chain recovered at the instance of accused Hemchand was conducted by Rajneesh Kumar Gupta PW-10, Metropolitan Magistrate. As per the report Ex.PW-10/2 of the TIP, Rani Budhiraja PW-27, the mother of the deceased, identified the chain recovered at the instance of accused Hemchand as the chain worn by the deceased on the day of her murder.

39. On 07.06.1999 Inspector J.S. Joon PW-35, formally arrested accused Romesh Sharma in the present case. On

08.06.1999 HC Balbir Singh PW-33, obtained two specimens of the handwriting of Romesh Sharma Ex.PW-33/1 and Ex.PW-33/2 and handed over the same to Inspector J.S. Joon who seized the same vide memo Ex.PW-33/3.

40. On 11.06.1999 Inspector J.S. Joon PW-35, sent the letters Ex.PW-28/B and Ex.PW28/C purportedly written by Romesh Sharma to the deceased and the specimen writing Ex.PW-33/1 and Ex.PW-33/2 of Romesh Sharma to the FSL. Vide report Ex.PW-34/1 it was opined that the letters Ex.PW-28/B and Ex.PW-28/C and the specimens Ex.PW-33/1 and Ex.PW-33/2 are written by a same person.

41. On 14.06.1999 Inspector J.S.Joon PW-35, obtained the attendance sheet Ex.PW-30/1 maintained by Vikram Singh in respect of attendance of security guards deployed by him at Jai Mata Di farmhouse and an agreement Ex.PW-30/2 purportedly executed between Vikram Singh and accused Romesh Sharma and seized the same vide memo Ex.PW-30/3. A perusal of the attendance sheet Ex.PW-30/1 shows that Sunil Kumar PW-15 and Hari Chand PW-17, were deployed as security guards at Jai Mata Di farmhouse in the month of March 1999.

42. On 01.09.1999 Inspector J.S.Joon PW-35, obtained the call records Ex.PW-9/2, Ex.PW-9/1 and Ex.PW-35/8 of the mobile

numbers 9811024145, 9811155439 and 9810114857 respectively from the cellular companies Essar and Airtel and seized the same vide memos Ex.PW-35/6, Ex.PW-35/7 and Ex.PW-35/8 respectively.

43. The call record Ex.PW-9/2 pertains to the period 01.03.1999 to 24.03.1999 and a perusal thereof shows that on 20.03.1999 an incoming call was received on the number 9811024145 from the number 9811155439 at 01.14 P.M.; an outgoing call was made from the number 9811024145 to the number 9811155439 at 01.33 P.M. and that an outgoing call was made from the number 9811024245 to the number 9810114857 at 01.36 P.M. The call record Ex.PW-9/1 pertains to the period 02.03.1999 to 31.03.1999 and a perusal thereof shows that on 20.03.1999 an outgoing call was made from the number 9811155439 to the number 9811024145 at 01.14 P.M. and that an incoming was received on the number 9811155439 from the number 9811024145 at 01.33 P.M. The call record Ex.PW-11/1 pertains to the period 01.03.1999 to 20.03.1999 and a perusal thereof shows that on 20.03.1999 an incoming call was received on the number 98101114857 from the number 9811024145 at 01.38 P.M.

44. Armed with the aforesaid evidence gathered during investigation a charge sheet and a supplementary charge

sheet against the accused Surinder Mishra, Tejinder Viridi @ Dolly, Jaspreet Viridi @ Sonu, Romesh Sharma, Hemchand @ Nani, Sant Ram @ Pramod @ Prahlad and Ramesh @ Bobby @ Rajesh @ Ajay @ Raju was filed. However, the police could not find accused Ganga Singh @ Guddu, Devender Singh @ Balle, Rakesh and Sudesh @ Babu and thus they were declared proclaimed offenders. As per the said charge-sheets, the broad contours of the case set up by the prosecution against the accused are that accused Romesh Sharma and the deceased were having intimate relations since last 4-5 years prior to the day of the murder of the deceased. Accused Surinder Mishra is the nephew of Romesh Sharma and that Romesh Sharma was also having relations with two sisters named Tejinder Viridi and Jaspreet Viridi. Around the month of October 1998, Romesh Shama was lodged in Tihar Jail in connection with some cases registered against him. During the period Romesh Sharma was lodged in jail, the deceased became overbearing and demanding, which greatly annoyed Romesh Shama and he decided to do away with the deceased. In the month of February 1999 Romesh Sharma confided in Surinder Mishra, Tejinder and Jaspreet Viridi who agreed to aid Romesh Sharma in achieving his illegal desire. The aforesaid four persons hatched a conspiracy to murder the deceased during their meetings in the jail and the court. Surinder Mishra, Tejinder

and Jaspreet Viridi also had a motive to eliminate the deceased as they were feeling threatened by the growing intimacy between the deceased and Romesh Sharma and had a feeling that Romesh Sharma would give all his properties to the deceased. To give effect to their illegal designs, Surinder Mishra, Tejinder and Jaspreet Viridi contacted Hemchand @ Nani, Sant Ram @ Pramod @ Prahlad, Ramesh @ Bobby @ Rajesh @ Ajay @ Raju, Ganga Singh @ Guddu, Devender Singh @ Balle, Rakesh and Sudesh @ Babu deployed by Surinder Mishra at Jai Mata Di farmhouse owned by Romesh Sharma for the purposes of security of the said farmhouse, who agreed to participate in the said conspiracy. In pursuance of the said conspiracy, Romesh Sharma wrote a letter to the deceased few days before the murder of the deceased asking her to go to Jai Mata Di farmhouse for performing a puja and accused Surinder Mishra provided the deceased with the keys of the kothi constructed in the said farmhouse. Accused Surinder Mishra, Tejinder and Jaspreet Viridi went to Jai Mata Di farmhouse in the morning of 20.03.1999 to meet Hemchand @ Nani, Sant Ram @ Pramod @ Prahlad, Ramesh @ Bobby @ Rajesh @ Ajay @ Raju, Ganga Singh @ Guddu, Devender Singh @ Balle, Rakesh and Sudesh @ Babu in connection with the conspiracy in question. As per the instructions of Romesh Sharma, the deceased went to Jai Mata Di farmhouse in the

afternoon of 20.03.1999 where Hemchand @ Nani, Sant Ram @ Pramod @ Prahlad, Ramesh @ Bobby @ Rajesh @ Ajay @ Raju, Ganga Singh @ Guddu, Devender Singh @ Balle, Rakesh and Sudesh @ Babu murdered the deceased. Before fleeing from Jai Mata Di farmhouse, accused Hemchand removed the mobile phone, gold chain and bag of the deceased.

45. Needless to state, accused Surinder Mishra, Tejinder Viridi @ Dolly, Jaspreet Viridi @ Sonu, Romesh Sharma, Hemchand @ Nani, Sant Ram @ Pramod @ Prahlad and Ramesh @ Bobby @ Rajesh @ Ajay @ Raju were sent for trial. Charges were framed against accused Surinder Mishra, Tejinder Viridi @ Dolly, Jaspreet Viridi @ Sonu, Romesh Sharma, Hemchand @ Nani, Sant Ram @ Pramod @ Prahlad and Ramesh @ Bobby @ Rajesh @ Ajay @ Raju for committing offence punishable under Section 120-B IPC read with Section 302 IPC. Additionally, charges were framed against Hemchand @ Nani, Sant Ram @ Pramod @ Prahlad and Ramesh @ Bobby @ Rajesh @ Ajay @ Raju for committing offence punishable under Section 302 IPC read with Section 34 IPC.

ANALYSIS OF THE EVIDENCE LED BEFORE THE TRIAL COURT

46. At the trial, the prosecution examined as many as 37 witnesses. We need not note the testimony of the various police officers who took part in the investigation for they have

deposed facts regarding the respective role played by them during investigation which have already been succinctly stated by us in the preceding paragraphs and in respect whereof not much submission were made during arguments in the appeals. However, wherever necessary, to deal with the submissions made by the learned counsel for the appellants, such part of the testimony of the relevant witness would be noted.

47. With a view to have clarity in the analysis of the evidence led by the prosecution, we segregate the relevant witnesses into 8 categories; clubbing in one category witnesses who have thrown light on the same issue.

A Witnesses who participated in the preparation of the necessary documents prepared by the police till the FIR was registered:- HC Joseph PW-3, SI Sunil Lamba PW-6, Const. Garib Chand PW-20, Const.Khushi Ram PW-26, Lady Constable Milyani PW-29 and Inspector Jagdish Meena PW-36.

48. HC Joseph PW-3, deposed that he made an entry pertaining to the present case in the log book Ex.PW-3/1 at 03.00 P.M. on 20.03.1999. Lady Constable Milyani PW-29, deposed that she made an entry pertaining to the present case in the PCR form Ex.PW-29/1 at 02.53 P.M. on 20.03.1999. Inspector Jagdish Meena PW-36, deposed that he recorded the statement Ex.PW-6/1 of Ram Achal Tiwari based whereon he

prepared the endorsement Ex.PW-6/1-A at about 03.00 P.M. on 20.03.1999. SI Sunil Lamba PW-6, deposed having registered the FIR Ex.PW-6/2 at 03.20 P.M. on 20.03.1999. He further deposed that the DD entries Ex.PW-6/5 and Ex.PW-6/6 were prepared by him. Const.Khushi Ram PW-26, deposed having delivered copies of FIR to the Area Magistrate and senior police officers.

B Witnesses who were present at the place of occurrence at the time of the incident: - Ram Achal Tiwari PW-16, Sunil Kumar PW-15, Hari Chand PW-17 and Dilbag Singh PW-19

49. Ram Achal Tiwari PW-16, deposed that Romesh Sharma is the owner of Jai Mata Di farmhouse and that he was employed as caretaker of the said farmhouse on the date of the incident. Surinder Mishra is the nephew of Romesh Sharma. Romesh Sharma was lodged in jail since about one year prior to the date of the murder of the deceased. After the arrest of Romesh Sharma, the deceased used to come to the farmhouse and give him money for the purposes of the maintenance of the farmhouse. Besides him, one Dilbag who used to look after cows and buffaloes kept in the farmhouse, two watchmen, one gardener named Rameshwar and another gardener whose name he does not remember used to reside at the farmhouse. After five-six months of the arrest of Romesh

Sharma one Subba Rao forcibly tried to take possession of the farmhouse. He had given information of the murder of the deceased to the police at Chattarpur Mandir pursuant to which the police came to the farmhouse and recorded his statement Ex.PW-6/1. The statement Ex.PW-6/1 bore his signature. Resiling from his complaint Ex.PW-6/1 he stated that he does not know any Vikram Singh and that no security guard was employed at the farmhouse. Nobody had come to the farmhouse in the morning of 20.03.1999. On 20.03.1999 at about 12.30 P.M. the deceased had come to the farmhouse in a car. The front tyre of the car of the deceased was punctured and she told him to bring a mechanic whereupon he brought a mechanic to the farmhouse. After inspecting the car the mechanic went to his shop to bring some tools. Thereafter the deceased told him to fetch food for ducks and dogs and that when he came back he saw that the deceased was lying murdered on the ground.

50. Since the witness was resiling from his earlier statement Ex.PW-6/1 he was cross-examined by the counsel for the prosecution. He denied that five security guards were deployed by Vikram Singh at Jai Mata Di farmhouse as per the instructions of Romesh Sharma. He denied that Surinder Mishra had kept seven persons at the farmhouse. He denied

that the shirt worn by him on the day of the incident was stained with blood. He deposed that the police had taken the shirt worn by him on the day of the incident from him. He stated that the police asked him to append his signatures on the complaint Ex.PW-6/1. On being questioned about the shirt worn by him on the day of the incident the witness stated: *'This shirt Ex.P.2 was seized vide memo Ex.PW16/1. The same bear my signature at point A. It is incorrect to suggest that my signature on this memo was procured on 20.3.99. It is incorrect to suggest that the shirt was kept in pulanda and sealed in my presence. The police took it to Police Station and I do not know what happened thereafter. I do not know whether the shirt Ex.P.2 bears blood stains of Kunjum. I do not know whether the blood stains on shirt Ex.P.2 were sustained at the time Kunjum was murdered. I was taken by police officials to Police Station I was kept for one month, thereafter I wrote to my brother who came and took me to Lucknow. Police has never told me that I had committed the murder. It is incorrect to suggest that in connivance with accused persons I got Kunjum murdered hence there were blood stains on my shirt.'* On being confronted with his statement Ex.PW-6/1 he stated: *'Statement Ex.PW6/1 portion A to A is read over to the witness and he admits that he has given this statement to the police. Portion B to B of statement Ex.PW6/1 is read over to witness*

who denied to have statement to police that Surinder Mishra nephew of Surinder Mishra used to look after Jai Mata Di Farmhouse. The portion C to C of Ex.PW6/1 is read over to the witness who denied to having made statement to police that on 20.3.99 at 8 A.M. Surinder Mishra came at the farmhouse.....I want to say that police had written my statement of their own and obtained my signatures. At that time I was very much perplexed, I had not gone through the contents of my statement before I signed the same. I am 8th class pass and without my specs I cannot read my statement Ex.PW-6/1. I was not in a state of mind read my statement Ex.PW6/1 though I could read it being educated person. It is correct that the copy of the FIR which was based on my statement Ex.PW-6/1 was given to me. Till today I have not given any writing to say authority or Judge or police that my statement has been wrongly recorded by the police and that I was not eye witness to the murder of Kunjum.' He denied that he made the statement Ex.PW-16/2 to the police. He denied that the keys of the farmhouse used to remain with Surinder Mishra.

51. On being cross-examined by the defence, he stated that Tejinder Virdi and Jaspreet Virdi were the members of the political party floated by Romesh Sharma and that they used

to tie rakhi on the wrist of Romesh Sharma. He stated that after the arrest of Romesh Sharma the keys of the farmhouse used to remain with the deceased.

52. Sunil Kumar PW-15, deposed that he was working as a security guard in a security agency run by Vikram Singh in March 1999. Vikram Singh had deployed him as security guard at Jai Mata Di farmhouse since about one week prior to the date of the murder of the deceased. Besides him, four other security guards namely Dhirender Singh, Nageshwar Singh, Het Ram and Hari Chand were also deployed at Jai Mata Di farmhouse. One Mr.Tiwari was the incharge of the said farmhouse. Besides him, aforesaid security guards and Mr.Tiwari, four persons namely Nani, Rakesh, Sant Ram and Ramesh and three persons whose names he does not remember were also staying in the said farmhouse. He is not aware about the fact that who had employed aforesaid seven persons in the farmhouse. There is a kothi and temple inside the farmhouse. Surinder Mishra, Tejinder and Jaspreet Viridi used to visit the farmhouse very often and that Mr.Tiwari had told him the names of the said two ladies. During his visits to the farmhouse, Surinder Mishra used to meet Nani, Rakesh, Sant Ram, Ramesh etc. On 20.03.1999 at about 8.00 A.M. Surinder Mishra came to the farmhouse and met Nani, Rakesh,

Sant Ram, Ramesh etc. After staying in the farmhouse for about half an hour Surinder Mishra left from there. At about 11.30 A.M. Tejinder and Jaspreet Viridi accompanied by a priest came to the farmhouse. The two ladies first met Tiwari and told him to get the temple cleaned and thereafter they met Nani, Rakesh, Sant Ram and Ramesh. After meeting Nani, Rakesh, Sant Ram and Ramesh they told Tiwari that they are going to the market to purchase things required for performance of puja and that they would come back in a short while. However, the two ladies did not return to the farmhouse. After about half an hour of the departure of the two ladies the deceased came to the farmhouse. The front tyre of the car of the deceased was punctured. The deceased asked Tiwari to bring a mechanic upon which Tiwari brought a mechanic to the farmhouse. After inspecting the car the mechanic went to his shop to bring the tools. Thereafter the deceased took out keys from her purse, gave the same to Tiwari and told him to get the kothi cleaned. The deceased and Tiwari went inside the kothi. After 5-7 minutes he noticed Nani, Rakesh, Sant Ram and Ramesh going inside the kothi. After 15-20 minutes Nani, Rakesh, Sant Ram and Ramesh came out of the kothi and told the other three persons that they should go to the market pursuant to which all the seven persons left from the farmhouse. After 5-7 minutes Tiwari came out of the

kothi and told him and other security guards that the aforesaid seven persons had murdered the deceased. Tiwari told him and other security guards to take care of the deceased and that he is going to inform the police about the incident. Thereafter he and other security guards went inside the kothi and saw that the deceased was smeared with blood. After sometime the police along with Tiwari came to the farmhouse.

53. On being cross-examined about his employment in the security agency run by Vikram Singh, he stated that *'There was no appointment letter. No written direction. He had brought me there. There is no document to show that I was working with Mr.Vikram in his security service and was deputed and brought by Vikram himself to Jai Mata Di Farm to join my duty.'* On being cross-examined about his omission to mention the fact that Tejinder and Jaspreet used to visit the farmhouse prior to the date of the murder of the deceased in his statement Ex.PW-15/DA recorded by the Investigating Officer he stated: *'I had stated to police in my statement that Dolly and Sonu used to visit the Farmhouse prior date of occurrence. (confronted with Ex.PW15/DA where it is not so recorded). Again said I had not told this fact to police.'* On being cross-examined about the fact that Tejinder and Jaspreet visited farmhouse on the day of the incident with reference to

his statement Ex.PW-15/DA he stated: *'I had stated to police that Sonu and Dolly had come with Pandit on 20.3.99 at about 11.30 A.M. (facts are recorded but names of Dolly and Sonu are not recorded).'* On being cross-examined about his omission to mention the fact that Tejinder and Jaspreet met Nani, Rakesh, Ramesh and Sant Ram at the farmhouse on the date of the incident in his statement Ex.PW-15/DA he stated: *'I had stated to police that Dolly and Sonu had met Nani, Ramesh, Rakesh and Sant Ram etc. (confronted with Ex.PW15/DA where it is not so recorded).'*

54. Hari Chand PW-17, deposed that he had worked as a security guard in a security agency run by Vikram Singh who had deployed him as security guard at Jai Mata Di farmhouse in February-March 1999. One Mr.Tiwari was the caretaker of the said farmhouse and that he used to reside in the said farmhouse. Besides Mr.Tiwari, three persons namely Nani, Ramesh and Santram and four persons whose names he does not remember used to reside at the said farmhouse. Surinder Mishra, Tejinder and Jaspreet Viridi used to visit the farmhouse. Besides him, four other security guards namely, Dhirender Singh, Tuglesh Singh, Het Ram and Sunil @ Sanjay were also deployed at Jai Mata Di farmhouse. During his visits to the farmhouse, Surinder Mishra used to meet Nani, Sant Ram,

Ramesh and their friends. On 20.03.1999 at about 8.00 A.M. Surinder Mishra came to the farmhouse and met Nani, Sant Ram and Ramesh. After staying in the farmhouse for about half an hour Surinder Mishra left from there. At about 11.30 A.M. Tejinder and Jaspreet Viridi accompanied by a priest came to the farmhouse. The two ladies first met Nani, Sant Ram and Ramesh and thereafter they met Tiwari and told him to get the temple cleaned. They also told him that they are going to the market to purchase things required for performance of puja and that they would come back in a short while. At about 12.00 P.M. the deceased came to the farmhouse. The front tyre of the car of the deceased was punctured. The deceased asked Tiwari to bring a mechanic upon which Tiwari brought a mechanic to the farmhouse. After inspecting the car the mechanic went to his shop to bring the tools. Thereafter the deceased handed over the keys of the kothi to Tiwari and she and Tiwari went inside the kothi. After sometime Nani, Santram and Ramesh also entered the kothi. After about 5 minutes Nani, Santram and Ramesh came out of the kothi and met their five associates who were standing at the gate of the farmhouse. After sometime all the seven persons left from the farmhouse. Thereafter Mr.Tiwari came out of the kothi and told him and other security guards that the aforesaid seven persons had murdered the deceased. He gave a call on mobile

number 9811155439 of Vikram and informed him about the murder of the deceased. After sometime the police arrived at the farmhouse.

55. On being cross-examined about his employment in the security agency run by Vikram Singh he stated: *'Mr. Vikram had brought to Jai Mata Di Farmhouse to depute me at work and he had not given me any letter. There is no document with me to show that I was posted by Mr.Vikram at Jai Mata Di Farm.'* On being cross-examined about his omission to mention the fact that Tejinder and Jaspreet used to visit the farmhouse prior to the date of the murder of the deceased in his statement Ex.PW-17/DA he stated: *'I had stated to the police Sonu and Dolly used to come with Surinder Mishra to Farmhouse prior to occurrence (confronted with Ex.PW17/DA wherein it is not so recorded).'* On being cross-examined about the fact that Tejinder and Jaspreet visited farmhouse on the day of the incident with reference to his statement Ex.PW-17/DA he stated: *'I had told the police in my statement that on the day of occurrence Dolly and Sonu came at about 11.30 (confronted with Ex.PW-17/DA wherein it is not so recorded but it is mentioned that two Madam came in morning).'* On being cross-examined about his omission to mention the fact that Tejinder and Jaspreet met Nani, Ramesh and Sant Ram at the

farmhouse on the date of the incident in his statement Ex.PW-17/DA the witness stated that *'I had stated to police that Dolly and Sonu met after coming to farmhouse at 11.30 A.M. had first met Nani, Sant Ram and Ramesh (confronted with Ex.PW17/DA where it is not so recorded)'*.

56. Dilbag Singh PW-19, deposed that he was employed at Jai Mata Di farmhouse since 26th January 1998, which farmhouse was owned by Romesh Sharma. He does not know Surinder Mishra. He first deposed that Ram Achal Tiwari had deployed security guards at farmhouse; however, he subsequently stated that the security guards were employed by the deceased. He has no knowledge about any fact pertaining to the incident of the murder of the deceased.

57. Since the witness was resiling from his earlier statement Ex.PW-19/DA he was cross-examined by the counsel for the prosecution, however nothing worthwhile could be extracted therefrom.

C Witnesses to prove the complicity of the accused persons in the murder of the deceased: - Rani Budhiraja PW-27, Pawan Budhiraja PW-28 and Vikram Singh PW-30.

58. Rani Budhiraja PW-27, the mother of the deceased, deposed that the deceased and Romesh Sharma wanted to

marry as they were in love with each other. Surinder Mishra is the nephew of Romesh Sharma. The deceased had shifted to the house bearing Municipal No.C-31, Hauz Khas, New Delhi nine days prior to her murder. The said house was owned by Romesh Sharma and that he had asked the deceased to reside there. The application Ex.PW-27/A was submitted by the deceased to MTNL and that the said application contains her signatures. The letter Ex.PW-27/B is written by the deceased. Before leaving for Jai Mata Di farmhouse on 20.03.1999 the deceased was wearing a gold chain but the same was not found on her dead body. On one occasion Tejinder and Jaspreet Viridi had abused her son Pawan Budhiraja and got him assaulted from some muscle men at Tihar jail when he had gone there to meet Romesh Sharma. Tejinder Viridi had told her over telephone that she wanted to marry Romesh Sharma.

59. On being cross-examined by the defence about the cremation of the deceased she stated: *'It is correct that Romesh Sharma accused had joined the cremation of my daughter with the permission of the court, at the time of cremation, filled the Sindoor and thereafter she was cremated. Vol: But they were not married and Romesh Sharma liked her and wanted to marry her'*. On being cross-examined by the

defence about the performance of puja at Jai Mata Di farmhouse she stated: *'It is correct that my daughter used to go to Jai Mata Di farmhouse with the accused Romesh Sharma, and used to perform puja there. Vol She never used to go alone and she used to go with Romesh Sharma'*. On being cross-examined by the defence about the keys of Jai Mata Di farmhouse she stated: *'It is incorrect to suggest that the keys of the farmhouse were with my daughter after accused Romesh Sharma was confined to Jail. Vol. On the day of the occurrence, accused Surinder Mishra came at 7 a.m. and handed over the keys....I do not know whether Kunjum was having the keys of that house which was constructed in Jai Mata Di farmhouse. The very fact that Surinder Mishra came to house to hand over the keys and this shows that my daughter was not having the keys.'* (It be noted here that the witness was not subjected to any cross-examination on behalf of Surinder Mishra).

60. Pawan Budhiraja PW-28, the brother of the deceased, deposed that he knows Surinder Mishra, Tejinder and Jaspreet Viridi. Surinder Mishra is the nephew of Romesh Sharma. He also knows the other accused persons namely Hem Chand @ Nani, Sant Ram and Ramesh as he had seen them at Jai Mata Di farmhouse but he does not know their names. Romesh

Sharma was lodged in prison since few months prior to the date of the murder of the deceased. The property of Romesh Sharma was looked after by Surinder Mishra, Tejinder and Jaspreet Viridi during the time Romesh Sharma was lodged in the prison. He and his father used to visit Romesh Sharma in jail. Romesh Sharma and the deceased used to communicate with each other through the medium of letters during the time Romesh Sharma was lodged in the prison. He used to carry the letters written by Romesh Sharma to the deceased and pass the same to the deceased. Likewise, he used to carry the letters written by the deceased to Romesh Sharma and pass the same to Romesh Sharma. The application Ex.PW-27/A was submitted by the deceased to MTNL and that the said application contains her signatures. The letter Ex.PW-27/B is written by the deceased and that the letters Ex.PW-28/B and Ex.PW-28/C are written by Romesh Sharma. Surinder Mishra, Tejinder and Jaspreet Viridi also used to meet Romesh Sharma in the jail. Whenever he used to go to jail to meet Romesh Sharma Surinder Mishra, Tejinder and Jaspreet Viridi used to taunt him but he used to ignore the same. Tejinder Viridi wanted to marry Romesh Sharma. In the month of March 1999 Surinder Mishra, Tejinder and Jaspreet Viridi had abused him and got him assaulted from some muscle men at Tihar jail when he had gone there to meet Romesh Sharma. He had

seen accused Hem Chand @ Nani, Sant Ram and Ramesh at Jai Mata Di farmhouse when he had gone there after the arrest of Romesh Sharma and that the said persons were employed by Surinder Mishra. Surinder Mishra, Tejinder and Jaspreet Viridi were having the keys of the building constructed in Jai Mata Di farmhouse. On 19.03.1999 he had gone to Tihar Jail to meet Romesh Sharma and that Romesh Sharma told him to convey a message to the deceased that the deceased should perform puja at Jai Mata Di farmhouse and that Surinder Mishra will give her the keys of the kothi constructed in the said farmhouse. In the evening of 19th March 1999 he had gone to C-30 May Fair Garden where he met Tejinder and Jaspreet Viridi. He asked them to give him the keys of the farmhouse but they did not give him the same. On the night of 19th March 1999 he heard the deceased asking Surinder Mishra that why he insulted him when he had asked him to give the keys of the farmhouse. He had seen the deceased writing the letter Ex.PW-27/C in the night of 19th March 1999 but she could not complete the same as she was tensed due to the nasty behaviour of Surinder Mishra, Tejinder and Jaspreet Viridi towards him.

61. On being cross-examined by the defence about the performance of puja at C-30 May Fair Garden he stated: *'It is*

correct that my sister used to be invited for the Pooja at C-30 May Fair Garden'. (It be noted here that the witness was not subjected to any cross-examination on behalf of Surinder Mishra).

62. Vikram Singh PW-30, deposed that he runs a security agency under the name and style of Washtower Security Detectives. He knows Romesh Sharma since the year 1998. At the request of Romesh Sharma he deployed security guards at Jai Mata Di farmhouse with effect from 20.02.1999. In the month of March 1999 he had deployed five security guards namely Hari Chand, Het Ram, Dhirender Singh and Sunil @ Sanjay at Jai Mata Di farmhouse. He used to maintain an attendance sheet in respect of the security guards deployed at Jai Mata Di farmhouse in respect of each month and that the document Ex.PW-30/1 is the attendance sheet maintained by him in the month of March 1999. On 01.03.1999 he entered into an agreement Ex.PW-30/2 with Romesh Sharma with respect to the security arrangements at Jai Mata Di farmhouse. Romesh Sharma appended his signatures on the agreement Ex.PW-30/2 in the court when he had come there in connection with the hearing of the case registered against him. He knows accused Surinder Mishra, Tejinder and Jaspreet Viridi and Pawan and Amritlal Budhiraja, the brother and father of the

deceased respectively. Surinder Mishra is the nephew of Romesh Sharma and Tejinder and Jaspreet Viridi are his friends. Tejinder and Jaspreet Viridi were the parokars of Romesh Sharma and they used to look after his cases. He used to go to Tihar jail to meet Romesh Sharma in connection with the security arrangements at Jai Mata Di farmhouse. On 05.03.1999 he received a call from Pawan Budhiraja who told him to come to Tihar jail. On reaching Tihar jail he saw that some muscle men were extending threats to Pawan Budhiraja at the instance of Tejinder and Jaspreet Viridi. In the month of March 1999 his mobile number was 9811155439. The mobile number of Tejinder Viridi at that time was 9811024145. On 20.03.1999 he was present in house when at around 2.00 P.M. Hari Chand who was deployed by him at Jai Mata Di farmhouse called him and informed that a girl has been murdered at Jai Mata Di farmhouse by the persons who were residing at the said farmhouse namely Guddi, Nani, Rakesh, Balle etc. Thereafter he called Tejinder Viridi on her mobile and gave her the aforesaid information. Tejinder Viridi told him that the name of the girl who has been murdered at Jai Mata Di farmhouse is Kunjum. After sometime Tejinder Viridi called him on his mobile and asked him to tell whether the boys who committed the murder of the deceased had run away or not and that he should call him after checking the aforesaid fact.

Pursuant thereto he went to Jai Mata Di farmhouse where he met Ram Achal Tiwari and he saw that the shirt worn by Ram Achal Tiwari was stained with blood. He had seen Hem Chand @ Nani, Sant Ram and Ramesh at Jai Mata Di farmhouse prior to the day of the murder of the deceased.

63. On being cross-examined by the defence about the presence of accused Hem Chand @ Nani, Sant Ram and Ramesh at Jai Mata Di farmhouse, he stated: Ram Achal Tiwari had told him that the said persons were employed by Surinder Mishra. On being cross-examined by the defence about the recording contained in his statement Ex.PW-30/DA that Hari Chand told him that the name of the girl who was murdered at Jai Mata Di farmhouse was Kunjum he stated *'When the guard Hari Chand at about 1/1.05 P.M. informed me on mobile the name of the deceased was not told by him the name of the deceased was told by Sonu and Dolly. (later answer on the question of the court). (confronted with Ex.PW30/DA where the name of deceased as Kunjum is recorded as having been told to witness by guard)'*. On being cross-examined by the defence about his omission to mention the fact that he had given a phone call to Tejinder Viridi on the day of the murder of the deceased he stated: *'I had stated to the police in my statement that when I rang up Dolly she told me that the*

name of the girl was Kunjum who was murdered (confronted with Ex.PW30/DA where it is not so recorded). I do not remember whether I stated to the police in my statement that she asked me to tell those facts back to her after checking the same (confronted with Ex.PW30/DA where it is not so recorded)'.

D Witnesses to prove the arrest of accused Surinder Mishra: - Amara Bhai PW-5

64. Amara Bhai PW-5, deposed that he is the Manager of Kapadia guest house which is located in Ahmedabad. On 22.03.1999 accused Surinder Mishra came to the said guest house for staying there and told him that his name is Raj Kumar Bhatia and that he is resident of 37 Travels Nagar Indore. He made an entry Ex.PW-5/1 pertaining to the stay of accused in the guest house in the guest register maintained at the guest house. Accused Surinder Mishra signed as Raj Kumar Bhatia against the entry Ex.PW-5/1 in his presence. Accused Surinder Mishra was staying in room no.50 of guest house. In the intervening night of 22-23.03.1999 the police came to the guest house and arrested Surinder Mishra.

65. Inspector Tarun Kumar PW-12, deposed that on 22.03.1999 he got information that accused Surinder Mishra who had committed the murder of the deceased is staying in

Kapadia guest house pursuant to which he went there and found that Surinder Mishra is staying in room no.50 of the said guest house under the name of Raj Kumar Bhatia. He apprehended accused Surinder Mishra. After apprehending Surinder Mishra he conducted his personal search. Thereafter he brought Surinder Mishra to the police station and interrogated him. On being interrogated by him Surinder Mishra made the disclosure statement Ex.PW-12/A. (It be noted here that a suggestion was given to the witness when he was cross-examined by the counsel for Surinder Mishra that he was looking for Abu Salem and Dawood Ibrahim and had wrongly arrested accused Surinder Mishra).

E Witnesses to prove the meetings of Romesh Sharma, Surinder Mishra, Tejinder and Jaspreet Viridi :- Mahinder Parshad PW-4 and Meena Bhatia PW-1

66. Mahinder Parshad PW-4, Assistant Superintendent, Tihar Jail, deposed that in March 1999 he used to supervise the work pertaining to meetings of the visitors with the inmates lodged in jail no. 5. A visitor's register was maintained at jail no.5 to record the meetings of the visitors with the inmates. Romesh Sharma was lodged in jail no.5 in March 1999. On 05.03.1999 Surinder Mishra, Tejinder Viridi and Pawan Budhiraja met Romesh Sharma; on 09.03.1999 Surinder Mishra and Tejinder

Virdi met Romesh Sharma; on 12.03.1999 Surinder Mishra, Tejinder and Jaspreet Virdi met Romesh Sharma; on 16.03.1999 Tejinder and Jaspreet Virdi and Pawan Budhiraja met Romesh Sharma and on 19.03.1999 Surinder Mishra, Tejinder Virdi and Pawan Budhiraja met Romesh Sharma in jail no.5. The entries Ex.PW-4/1, Ex.PW-4/2, Ex.PW-4/3, Ex.PW-4/4 and Ex.PW-4/5 were made in the visitor's register recording the said visits.

67. On being cross-examined by the defence about the meetings between Romesh Sharma, Surinder Mishra, Tejinder and Jaspreet Virdi at Tihar Jail he stated: *'There are 50-60 accused at the time of meeting with the respective visitor. Meeting takes place in room at one place. It is correct that the accused are behind a jali, then there is a gap of 2-2 ½ feet and again Jali is affixed and thereafter the visitor are there who wants to meet the accused/convict. It is correct that Jail staff takes round of the places where the accused are standing and where the visitors are standing. It is correct that there are 1-2 constables available with the prisoners who are high light. It is correct that the two constables who bring the prisoners for meeting in that room they are on duty to keep an eye on the prisoners. It is correct that there if there is lot of crowd the prisoner as well as the persons who had come meet the*

prisoners had to speak loudly.....Normally all the visitors who have come for meeting they come together to meet prisoner and leave together after meeting the prisoner.'

68. Meena Bhatia PW-1, Assistant Ahlmad in the court of Chief Metropolitan Magistrate, deposed that the applications Ex.PW-1/1, Ex.PW-1/2, Ex.PW-1/3, Ex.PW-1/4, Ex.PW-1/5, Ex.PW-1/6, Ex.PW-1/7 and Ex.PW-1/8 were filed in the court of Chief Metropolitan Magistrate.

F Witnesses to prove the record relating to the mobile phones of Surinder Mishra, Tejinder Viridi and Vikram Singh:- Deepak Gupta PW-9 and Captain Rakesh Bakshi PW-11

69. Deepak Gupta PW-9, Deputy Manager, Legal Operation, Essar Cell phones, deposed that the mobile number 9811155439 is registered in the name of Vikram Singh and that the document Ex.PW-9/1 is the call record of the said number pertaining to the period 02.03.1999 to 31.03.1999. The mobile number 9811024145 is allotted to a pre-paid cash card and that the document Ex.PW-9/2 is the call record of the said number pertaining to the period 01.03.1999 to 24.03.1999.

70. Captain Rakesh Bakshi PW-11, an employee of the cellular company Airtel deposed that mobile number

9810114857 is allotted to a pre-paid cash card and that the document Ex.PW-11/1 is the call record of the said number pertaining to the period 01.03.1999 to 20.03.1999. (It be noted here that in the year 1999 no identification proof was required to be furnished to buy a pre-paid cash card and therefore the cellular companies had no record to show the identity of a person who bought a pre-paid card)

G Witnesses to prove the medical and scientific evidence:-
Dr. T. Millo PW-31 and Deepa Verma PW-34

71. Dr. T. Millo PW-31, deposed that the post-mortem report Ex.PW-31/A was prepared by Dr.Lal Rozama.

72. Deepa Verma PW-34, Senior Scientific Officer (Documents), FSL deposed that the FSL report Ex.PW-34/A was prepared by her.

H Residual witnesses: - Mahinder Singh PW-13, Pandit Deepak Sharma PW-18 and HC Prakash Singh PW-7

73. Mahinder Singh PW-13, deposed that in the year 1999 he used to repair punctured tyres at Chattarpur. In the month of March 1999 he had gone to Jai Mata Di farmhouse to repair a punctured tyre. One day in the month of March 1999 at about 11.15-11.30 P.M. one Tiwari came to his shop and told him that the tyre of car of one Madam has punctured and that he

should repair the same upon which he accompanied Tiwari to Jai Mata Di farmhouse. He was not able to repair the punctured tyre as he was not having the required tools. He has no knowledge about the murder of the deceased.

74. Pandit Deepak Sharma PW-18, deposed that he used to perform pujas at the properties owned by Romesh Sharma since last 10-12 years. The statement Ex.PW-18/A was not made by him to the police. He regularly used to perform puja at Jai Mata Di farmhouse and that the deceased used to be present with Romesh Sharma in every puja performed by him at Jai Mata Di farmhouse.

75. HC Prakash Singh PW-7, deposed that he registered the FIR Ex.PW-7/1 on 06.02.1999. The said FIR records that on 06.02.1999 some musclemen forcibly tried to take possession of Jai Mata Di farmhouse at the instance of one Subba Rao, a Member of Parliament.

76. In the backdrop of the aforesaid evidence led by the prosecution, the accused persons were examined under Section 313 Cr.P.C.

77. Accused Surinder Mishra in his statement under Section 313 Cr.P.C. denied all the incriminating circumstances appearing against him and stated that he is falsely implicated

in the present case as he is the nephew of Romesh Sharma. He admitted having filed the applications in the court for meeting Romesh Sharma but denied having met Romesh Sharma in the court. He stated that he had met Romesh Sharma in Tihar jail. He denied having known the deceased or Tejinder and Jaspreet Viridi. He stated that he has never visited Jai Mata Di farmhouse in his lifetime. With respect to his arrest in the present case, Surinder Mishra stated that Delhi police forcibly lifted him from Delhi, took him to Ahmedabad and falsely showed his arrest at Ahmedabad.

78. Accused Tejinder Viridi @ Dolly and Jaspreet Viridi @ Sonu in their statements under Section 313 Cr.P.C. denied all the incriminating circumstances appearing against them and stated that they have been falsely implicated in the present case. They stated that they were the parokars of the cases registered against Romesh Sharma and that they used to meet him in jail in order to take instructions from him regarding his case. They denied that Tejinder Viridi @ Dolly wanted to marry Romesh Sharma.

79. Accused Romesh Sharma in his statement under Section 313 Cr.P.C. denied all the incriminating circumstances appearing against him. He stated that he has no knowledge about the fact that Surinder Mishra is his nephew. He stated

that the family members of the deceased were his parokars. He denied that Tejinder and Jaspreet Viridi were his parokars and that he used to meet them and Surinder Mishra in the jail or in the court. He stated that the deceased was her fiancé. He stated that the deceased and his father were having the keys of his properties including Jai Mata Di farmhouse. With respect to the agreement entered into between him and Vikram Singh Romesh Sharma stated that he does not remember whether he executed any such agreement. He stated that he knows Vikram Singh but that no security guards were deployed by Vikram at Jai Mata Di farmhouse at his instance.

80. Accused Hemchand @ Nani, Sant Ram @ Pramod @ Prahlad and Ramesh @ Bobby @ Rajesh @ Ajay @ Raju in their statements under Section 313 Cr.P.C. pleaded innocence and denied everything.

81. In defence, accused Romesh Sharma examined Naveen Budhiraja DW-1, the brother of the deceased. Naveen Budhiraja DW-1, deposed that the deceased was in love with Romesh Sharma and wanted to marry him. That writing Ex.DX and Ex.DZ and Ex.DW-1/1 to Ex.DW-1/58 are written in the handwriting of the deceased.

82. A perusal of the writing Ex.DX, Ex.DZ and Ex.DW-1/1 to Ex.DW-1/58 goes to show that the Ex.DX is an incomplete

letter; Ex.DZ is a complete letter written on 08.01.1999; Ex.DW-1/1 to Ex.DW-1/2 form a complete letter written on 25.01.1999; Ex.DW-1/3 to Ex.DW-1/4 form a complete letter written on 01.02.1999; Ex.DW-1/5 to Ex.DW-1/6 form a complete letter written on 12.02.1999; Ex.DW-1/7 to Ex.DW-1/8 form an incomplete letter written on 13.02.1999; Ex.DW-1/9 to Ex.DW-1/10 form a complete letter written on 15.02.1999; Ex.DW-1/11 is an incomplete letter; Ex.DW-1/12 is an incomplete letter; Ex.DW-1/13 to Ex.DW-1/14 form a complete letter written on 05.03.1999; Ex.DW-1/15 to Ex.DW-1/16 form a complete letter; Ex.DW-1/17 to Ex.DW-1/18 form an incomplete letter; Ex.DW-1/19 to Ex.DW-1/20 form an incomplete letter written on 29.01.1999; Ex.DW-1/21 to Ex.DW-1/22 form an incomplete letter; Ex.DW-1/23 to Ex.DW-1/24 form an incomplete letter written on 21.02.1999; Ex.DW-1/25 to Ex.DW-1/26 form a complete letter; Ex.DW-1/27 is an incomplete letter; Ex.DW-1/28 is an incomplete letter; Ex.DW-1/28 is an incomplete letter; Ex.DW-1/29 is an incomplete letter; Ex.DW-1/30 is an incomplete letter; Ex.DW-1/31 to Ex.DW-1/32 form a complete letter written on 01.01.1999; Ex.DW-1/33 to Ex.DW-1/34 form an incomplete letter; Ex.DW-1/35 form one complete letter and one incomplete letter written on 18.02.1999 and 19.02.1999 respectively; Ex.DW-1/36 form two complete letters and one incomplete letter

written on 14.02.1999, 16.02.1999 and 17.02.1999 respectively; Ex.DW-1/37 to Ex.DW-1/40 form an incomplete letter written on 07.12.1998; Ex.DW-1/41 to Ex.DW-1/44 form a complete letter; Ex.DW-1/45 to Ex.DW-1/46 form a complete letter written on 04.01.1999; Ex.DW-1/47 to Ex.DW-1/48 form a complete letter written on 09.01.1999; Ex.DW-1/49 to Ex.DW-1/50 form a complete letter written on 09.01.1998; Ex.DW-1/51 to Ex.DW-1/52 form a complete letter written on 05.01.1999; Ex.DW-1/53 to Ex.DW-1/54 form a complete letter written on 06.01.1999; Ex.DW-1/55 to Ex.DW-1/56 form a complete letter 07.01.1999; Ex.DW-1/57 to Ex.DW-1/58 form a complete letter 08.01.1999;

83. A common feature in all the afore-noted letters is that they are addressed to Romesh Sharma. The letters bring out that the deceased was greatly concerned about the well-being of Romesh Sharma; that the deceased was performing pujas and observing fasts for well-being of Romesh Sharma and that the deceased and Romesh Sharma are religious minded persons.

84. The relevant portion of the letter Ex.DW-1/1 to Ex.DW-1/2 dated 25.01.1999 reads as under:-

“.....I don't want anything in my life except just want to see you out of all this mess and then happy forever. Sweetheart you don't at all take any

immaterial thing to your heart these material things don't mean a thing when you will come....you must be aware Sonu called up I don't wanted to give the letter in her hand so now I am sending pawan with it.....Sweetheart I want to meet you myself now please tell me when should I come you can tell Pawan or then you can write me.....”

85. The relevant portion of the letter Ex.DW-1/3 to Ex.DW-1/4 dated 01.02.1999 reads as under:-

“....I am all right and not at all in need of anything.....Please can I come to see you and is there anything for me sweetheart.....I just need nothing I can't even think of anything as long as you don't come home....”

86. The relevant portion of the letter Ex.DW-1/5 to Ex.DW-1/6 dated 12.02.1999 reads as under:-

“.....Sweetheart when I saw you in the court today for a couple of minutes I was trying hard to resist myself I wanted to hide you in my arms and wanted to take you far far away from all these people.....”

87. The relevant portion of the letter Ex.DW-1/12 reads as under:-

“....Sweetheart can I come to see you. Sweetheart from two weeks I am sending the Hauz Khas papers but every time some or the other reason happens. Now I am sending them today again....”

88. The relevant portion of the letter Ex.DW-1/13 to Ex.DW-1/14 dated 05.03.1999 reads as under:-

“....Sweetheart will inform you about hauz khas getting some work done there not me I don't feel like doing anything except want to spend all my time in god's feet....”

89. The relevant portion of the letter Ex.DW-1/15 to Ex.DW-1/16 reads as under:-

“....Rest tell me is there any thing for me, at the moment I can think of nothing else except for how and what should we do to bring you back home at earliest.....pawan has organised each and every thing for health club but he could not start it, all this while as he don't had the authority letter with him as he had already left the job thinking that he would get orders by computer but then computer was also not available somehow.....”

90. The relevant portion of the letter Ex.DW-1/17 to Ex.DW-1/18 reads as under:-

“....Listen Pawan has started working at a very good place. He is doing the work of export since a long time and he wants to purchase a computer from his salary and cash. He says he would contact buyers through email. If you have any computer tell Babbu to give it to Pawan. Pawan would use it and it would give him lot of support. On the new year's eve I would go to farmhouse a light a lamp in front of God. I would also light a lamp in temple at Mayfair if the same is open....” (Translated Version)

91. The relevant portion of the letter Ex.DW-1/19 to Ex.DW-1/20 dated 29.01.1999 reads as under:-

“.....now yours sisters and (illegible) do a lot of mischief as Babbu is also not there at this point we have to take all this in a hope that very soon you will be free to do whatever you want. Listen you just forget about all this although I cannot explain how painful it is but don't at all say anything to anyone as they might get annoyed you understand what I mean that at the moment they are really needed so overlook all this with a heavy heart....you allow me to see you as 3 people can meet you then probably you can ask me to so do some work. I don't come as you always wanted me to keep out of everything as you even asked me not to talk to the adv.....”

92. The relevant portion of the letter Ex.DW-1/21 to Ex.DW-1/22 reads as under:-

“...even today you have fulfilled all your duties towards me I need nothing in my life for except want you out of all this mess.....”

93. The relevant portion of the letter Ex.DW-1/23 to Ex.DW-24 dated 21.02.1999 reads as under:-

“....you have done enough for me before and even being in this situation you have done so much that I can look after all my affairs and live respectfully and spent all my time in praying and without the tension of the basic needs....”

94. The relevant portion of the letter Ex.DW-1/25 to Ex.DW-1/26 reads as under:-

“...One feels like but still I requested surinder to keep all the expensive things somewhere safely whatever is the left over he said he will keep every thing in your room and will lock it I told him surinder “look after every thing if all this is Sharma ji’s its yours as well after all you are his bhatija we all are just friends to him but you are equally the owner of every thing you should see to every thing as its yours as well” I told him all this as he was not happy to see all of us there sweetheart to me I feel let all these things go away they are not important then you just only want to see back home. Sweetheart in a day or maximum two hauz khas papers will be done.....”

95. The relevant portion of the letter Ex.DW-1/27 reads as under:-

“.....and pawan if in any case they don’t manage to pass my letter to you then Rudra will get it in the evening as he will be going to see you as you asked for and will also get the hauz khas papers.....”

96. The relevant portion of the letter Ex.DW-1/30 reads as under:-

“...Listen when I find that there’s not even a single person who is responsible or is interested to do something so that you come out quickly except for just passing time by talks I feel that I should go talk to all the advocates and see you every time and look after all your affairs by ownself I wish I had some identity so that people were answerable to me. Now at times rather I am questioned that who are you....”

97. The relevant portion of the letter Ex.DW-1/31 to Ex.DW-1/32 dated 01.01.1999 reads as under:-

“....Sweetheart you don’t worry about me I am keeping well I am all right and not in need of anything.....Please tell me is there anything I can do....”

98. The relevant portion of the letter Ex.DW-1/33 to Ex.DW-1/34 reads as under:-

“....I don’t have any problem I am not in need of anything but even the thought that how are you taking all this and going through all these sufferings is killing me....Sweetheart we have moved to C-31....”

99. The relevant portion of the letter Ex.DW-1/35 dated 19.02.1999 reads as under:-

“....can I come to see you and please write me about what is happening have you decided upon the advocates....”

100. The relevant portion of the letter Ex.DW-1/37 to Ex.DW-1/40 dated 07.12.1998 reads as under:-

“...I have many times tried to meet you but persons who make enquiries have troubled me a lot....Don't worry about the house as I am at a decent place.....” (Translated Version)

101. The relevant portion of the letter Ex.DW-1/41 to Ex.DW-1/44 reads as under:-

“...I am doing the pooja at C-31 as at the other houses I din't want that there should be any obstruction in performance of puja and you can't even dream of the what all is going on here....Sweetheart Pawan and my cousin went to check for elec bills as they disconnected the elec at hauzkhas but we managed to install it the same day and also went for house tax they will give you all the information on Tuesday. Sweetheart we will finance Santro....Health centre will be starting on Ram navmi probably sweetheart....When we came out after meeting you on your birthday mom requested rakhi again as her parents are adv but she said they can't do anything my husband will not like it....” (Translated Version)

102. The relevant portion of the letter Ex.DW-1/47 to Ex.DW-1/48 reads as under:-

“....Pawan told me that I could see you today at TJ but now that is not possible as you are coming to the court today...”

103. The relevant portion of the letter Ex.DW-1/49 to Ex.DW-1/50 reads as under:-

“.....I want to meet you. I get upset just by hearing about the way you are brought to the court and the way you are allowed to meet. I wonder what would I do when I would see you.... ”(Translated Version)

104. The relevant portion of the letter Ex.DW-1/55 to Ex.DW-1/56 reads as under:-

“....Sweetheart swear on my life that you would not feel sad even if all material things go away. One day God will give you everything you desire. Sweetheart one day all of us have to leave this world and nothing will go with us. Sweetheart everything is there if you are there. Nothing would be there if you are not there.....We all have to go to God one day and therefore love God and don't love these material things....”(Translated Version)

105. The other accused persons did not lead any evidence in support of their defence.

ANALYSIS OF THE IMPUGNED JUDGMENT

106. A perusal of the impugned judgment shows that the same has been written in a rolled over style, where after noting a piece of evidence and the submission of the counsel, no definite conclusion has been reached but the Judge has proceeded to consider the next piece of evidence. By way of an illustration, following portions of the impugned judgment may be noted:-

“2. A-1 to A-3 regular visitor to A-4

i) Next circumstance to infer conspiracy among accused persons is regular visits by A-1 to A-3 to A-4 in jail and outside.

.....

xiv) There is enough evidence on record to show that A-1 to A-3 were in constant/regular touch with A-4. There is no substance if A-1 to A-3 were not having no acquaintance with A-4 prior to the incident. Their names find mention in the letters proved on record. PW16 Ram Achal Tiwari has also deposed about the visits of A-2 and A-3 in his cross-examination. He, however, added that A-2

and A-3 used to come along with A-4 whenever there was a party at farmhouse. PW16 Ram Achal Tiwari, contrary to the stand taken by A-4 has at least admitted that A-1 was known to him as he was the nephew of A-4. Strange enough A-4 does not recognize A-1 as his nephew, though, his trusted Caretaker knows him to be his nephew.

xv) Above evidence discussed reveals that A-1 to A-3 were in constant touch with A-4 prior to the incident. The occurrence took place on 20.03.1999. Only on 19.03.1999, a day before the fateful incident, A-1 and A-2 had met A-4 inside the jail. A-4 has denied this meeting falsely. It seems that A-4 intends to conceal as to what conversation took place between him and A-1 and A-2 at that time. Regular visits of A-1 to A-3 to A-4 in jail show that they were hand in glove with each other. A-4 had no suspicion or complaint against conduct and behaviour of A-1 to A-3 at any time.

xvi) It has further come on record that after this horrible incident on 20.03.99, A-1 to A-3 who used to have frequent visits at regular interval to A-4 did not deem it fit to inform A-4 about murder of his alleged beloved/fiancy. A-4 did not suspect involvement of A-1 to A-3 at any time though, his arrest in this case took place after sufficient long time. A-4 with the permission of the court, attended cremation of deceased Kunjum, filled *sindhoor* in her mang but did not bother to suspect involvement of any person in the commission of the murder of Kunjum. Mere attending cremation and filling *sindhoor* in the mang of the deceased after the incident is not sufficient to establish innocence of A-4. A-4 has failed to justify as to what prevented him to marry the deceased earlier during her life time. The so called marriage with a dead body seems a device adopted by A-4 to wriggle out of the consequences of the offence. It remains mystery as to what prevented A-4 to give identity to the deceased during her life time by marrying her before he was arrested in October, 1998.

.....”

107. From the afore-noted portion of the impugned judgement, it is apparent that while discussing the circumstance pertaining to regular meetings of accused Romesh Sharma, Surinder Mishra, Dolly and Sonu, the learned Trial Judge has also dealt with the circumstances pertaining to false answers given by Romesh Sharma, the conduct of Romesh Sharma, Surinder Mishra, Dolly and Sonu after the murder of the deceased, the conduct of Romesh Sharma before his arrest in connection with other cases lodged against him and the conduct of Romesh Sharma at the time of the cremation of the deceased.

108. No intelligible reasoning whatsoever is forthcoming from the impugned judgment. Be that as it may, a perusal of the impugned judgement shows that following circumstances were pressed into service by the prosecution to bring home the guilt of the accused: - (It may be noted here that during the course of the arguments of the present appeals the learned counsel for the State conceded that there are no incriminating circumstances against the accused other than the ones noted by us).

A Incriminating circumstances against Hemchand @ Nani, Sant Ram @ Pramod @ Prahlad and Ramesh @ Bobby @ Rajesh @ Ajay @ Raju:- (i) Eye-witness account of Ram Achal

Tiwari; (ii) Deceased was last seen alive in the company of the said accused persons; (iii) Accused persons absconded from the farmhouse after the murder of the deceased and (iv) Recovery of gold chain of the deceased at the instance of accused Hemchand @ Nani.

B Incriminating circumstances against Surinder Mishra :- (i) Surinder Mishra employed the killers of the deceased at Jai Mata Di farmhouse; (ii) Surinder Mishra was in regular touch with the killers of the deceased; (iii) Surinder Mishra met the killers of the deceased a day prior to the murder of the deceased; (iv) Surinder Mishra visited the place of the murder of the deceased on the day of the murder of the deceased and met the killers of the deceased; (v) Surinder Mishra absconded after the murder of the deceased; (vi) Surinder Mishra concealed his identity after the murder of the deceased; (vii) Surinder Mishra had motive to do away with the deceased; (viii) Surinder Mishra did not offer condolence to the family of the deceased; (ix) Surinder Mishra did not inform Romesh Sharma about the death of the deceased and (x) Surinder Mishra gave false answers in his statement under Section 313 Cr.P.C.

C Incriminating circumstances against Tejinder Viridi @ Dolly: - (i) Tejinder Viridi was in regular touch with Surinder

Mishra; (ii) Tejinder Viridi met Surinder Mishra a day prior to the murder of the deceased; (iii) Tejinder Viridi visited the place of the murder of the deceased on the day of the murder of the deceased and met the assailants of the deceased; (iv) Tejinder Viridi left the farmhouse on a false pretext on the day of the murder of the deceased; (v) Tejinder Viridi had a motive to do away with the deceased; (vi) Tejinder Viridi contacted Surinder Mishra soon after the murder of the deceased; (vii) Suspicious conduct of Tejinder Viridi after the murder of the deceased; (viii) Tejinder Viridi did not offer condolence to the family of the deceased and (ix) Tejinder Viridi did not inform Romesh Sharma about the murder of the deceased.

D Incriminating circumstances against Romesh Sharma: -

(i) Romesh Sharma was in regular touch with Surinder Mishra and Tejinder Viridi; (ii) Romesh Sharma met Surinder Mishra and Tejinder Viridi a day prior to the murder of the deceased; (iii) Romesh Sharma led the deceased to the place of her murder; (iv) Romesh Sharma had a motive to do away with the deceased; (v) Deceased shifted in the property of Romesh Sharma few days before her murder; (vi) Romesh Sharma did not suspect the involvement of Surinder Mishra, Dolly and Sonu in the crime of the murder of the deceased; (vii) Romesh Sharma did not marry the deceased in her lifetime; (viii)

Romesh Sharma created a scene at the time of the cremation of the deceased; (ix) Romesh Sharma did not meet the deceased in jail despite various requests of the deceased and (x) Romesh Sharma gave false answers in his statement under Section 313 Cr.P.C.

E Incriminating circumstances against Jaspreet Viridi @ Sonu :- (i) Jaspreet Viridi frequently met Surinder Mishra and Romesh Sharma; (ii) Jaspreet Viridi went to the place of the murder of the deceased on the day of the murder of the deceased and met the assailants of the deceased; (iii) Jaspreet Viridi left the farmhouse on a false pretext on the day of the murder of the deceased; (iv) Jaspreet Viridi had a motive to do away with the deceased; (v) Jaspreet Viridi did not offer condolence to the family of the deceased and (vi) Jaspreet Viridi did not inform Romesh Sharma about the death of the deceased.

109. As already noted in the foregoing paras, save and except accused Jaspreet Viridi @ Sonu learned Trial Judge has convicted all the accused persons. The reasons which led the learned Trial Judge to acquit accused Jaspreet Viridi @ Sonu are that: - (i) The prosecution has not been able to prove that Sonu had a motive to murder the deceased; (ii) The deceased did not have a grievance against Sonu; (iii) Sonu did not meet

Romesh Sharma in jail as frequently as Surinder Mishra and Dolly; (iv) Sonu was not present with Surinder Mishra and Dolly when they went to the jail to meet Romesh Sharma on the penultimate day i.e. 19.03.1999 (a day prior to the murder of the deceased) and (v) There is no evidence to show that Sonu was in touch with Surinder Mishra and Dolly after the day of the murder of the deceased.

LAW OF CONSPIRACY

110. As conspiracy is the primary charge against the accused, we first advert to the law of conspiracy – its definition, essential features and proof.

Section 120-A defines ‘criminal conspiracy’ as under:-

“Definition of criminal conspiracy - When two or more person agree to do, or cause to be done, (1) An illegal act, or (2) An act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof Explanation: - It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.”

111. Proof of a criminal conspiracy by direct evidence is not easy to get and probably for this reason Section 10 of the Indian Evidence Act was enacted. It reads as under:-

"10. Things said or done by conspirator in reference to common design:-Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it."

112. Thus, the substantive section of the IPC i.e. Section 120-A adumbrated thereon Section 10 of the Indian Evidence Act give us the legislative provisions applicable to conspiracy and its proof.

113. A conspiracy is a march under a banner. The very agreement, concert or league is the ingredient, of the offence. Like most crimes, conspiracy requires an act (actus reus) and an accompanying mental State (mens rea). From the definition of conspiracy in Section 120-A, it is evident that the agreement constitutes the act and the intention to achieve unlawful object constitutes the mental state. All conspirators are liable for the crimes committed in furtherance of the conspiracy besides being liable for committing an offence of conspiracy itself. Pertaining to conspiracy, law punishes conduct that threatens to produce the harm as well as the conduct that actually produces the harm. In this, lies the difference between the

offence of conspiracy and general penal offences. In case of general offences, attempt to commit a crime merges when the crime is completed but in case of conspiracy, punishment is for both, the conspiracy and the completed crime. This distinctiveness of the offence of conspiracy makes all conspirators as agents of each other. Conspiracy, therefore, criminalizes the agreement to commit a crime. Inherently, conspiracy is a clandestine activity. Its covenants are not formed openly. It has to be inferred from circumstantial evidence of co-operation.

114. If conspiracies are hatched in the darkness of secrecy and direct evidence is seldom forthcoming and if the offence is to be proved in relation to the acts, deeds or things done by the co-conspirators, the question would arise as to what is the nature of these acts, deeds or things. Is merely moving around together or seen in each other's company sufficient? If not, what more should be there from which it could be inferred that the conspirators were acting to achieve the desired offence in furtherance of a crime.

115. In the decision reported as State of Maharashtra and Ors. v. Som Nath Thapa and Ors. (1996) 4 SCC 659 illuminating on this grey area, the Supreme Court observed that for a person to conspire with another, he must have knowledge of what the

co-conspirators were wanting to achieve and thereafter having the intent to further the illegal act takes recourse to a course of conduct to achieve the illegal end or facilitate its accomplishment. Except for extreme cases, intent could be inferred from knowledge for example whether a person was found in possession of an offending article, no legitimate use of which could be done by the offender. To illustrate, a person is found in possession of 100 Kg. of RDX, is proved to be visiting or visited by "A" against whom there is a charge of conspiring to blow up a public place. Here, the recovery of the offending article would be enough to infer a charge of conspiracy. However, such instances apart, it was held that law would require something more. This something more would be a step from knowledge to intent. This was to be evidenced from informed and interested cooperation, simulation and instigation. The following passage from People v. Lauria 251, California APP 2 (d) 471 was cited.

"All articles of commerce may be put to illegal ends,... but all do not have inherently the same susceptibility to harmful and illegal use....This different is important for two purposes. One is for making certain that the seller knows the buyer's intended illegal use. The other is to show that by the same he intends to further promote and cooperate in it. This intent, when given effect by overt act, is the gist of conspiracy. While it is not identical with mere knowledge that another proposes unlawful action, it is not unrelated to such

knowledge..... The step from knowledge to intent and agreement may be taken. There is more than suspicion, more than knowledge, acquiescence, carelessness, indifferent, lack of concern. There is informed and interested cooperation, simulation, instigation."

116. To elucidate further, it is most apposite to quote following observations of Supreme Court in the decision reported as Kehar Singh v State (Delhi Administration) AIR 1988 SC 1883:-

"Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the Court must enquire whether the two persons are independently pursuing the same and or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the latter is. It is, however, essential that the offence of conspiracy requires some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient. Gerald Orchard of University of Canterbury, New Zealand 1974 C L R 297 explains the limited nature of this proposition:

Although it is not in doubt that the offence requires some physical manifestation of agreement, it is important to note the limited nature of this proposition. The law does not require that the act of agreement take

any particular form and the fact of agreement may be communicated by words or conduct. Thus, it has been said that it is unnecessary to prove that the parties "actually came together" and agreed in terms" to pursue the unlawful object; there need ever have been an express verbal agreement, it being sufficient that there was "a tacit understanding between conspirators as to what should be done.

I share this opinion, but hasten to add that the relative acts or conduct of the parties must be conscientious and clear to mark their concurrence as to what should be done. The concurrence cannot be inferred by a group of irrelevant facts artfully arranged so as to give an appearance of coherence. The innocuous, innocent or inadvertent events and incidents should not enter the judicial verdict. We must thus be strictly on our guard. (Emphasis Supplied)

117. Since more often than not, conspiracy would be proved on circumstantial evidence, four fundamental requirements as laid down as far back as in 1881 in the judgment reported 60 years later at the suggestion of Rt. Hon'ble Sir Tej Bahadur Sapru i.e. 1941 All ALJR 416, Queen Empress v. Hoshhak may be re-emphasized:-

- I. That the circumstances from which the conclusion is drawn be fully established;
- II. That all the facts should be consistent with the hypothesis of guilt;

III. That the circumstances should be of a conclusive nature and tendency;

IV. That the circumstances should, by a moral certainty, actually exclude every hypothesis but the one proposed to be proved;

118. The discussion pertaining to standard of proof required for proving the offence of conspiracy can be summarized by the following observations of Supreme Court in the decision reported as State (NCT of Delhi) v Navjot Sandhu AIR 2005 SC 3820:-

"A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused in the offence of criminal conspiracy. (Emphasis Supplied)

119. From the afore-noted narrative of the investigation and evidence relating to the same or gathered during investigation, it is apparent that the prosecution has sought to infer guilt of Surinder Mishra, Tejinder Viridi and Jaspreet Viridi mainly from the fact that they were in regular touch with the killers of the deceased and that of Romesh Sharma from the fact that he was in regular touch with the persons who, in turn, were in contact with the killers of the deceased. Motive has been attributed to Romesh Sharma of being fed up with the deceased who allegedly became over bearing and over demanding. Thus, the success of the case set up by the

prosecution against Romesh Sharma, Surinder Mishra, Tejinder Viridi and Jaspreet Viridi is heavily hinged upon the fact whether the prosecution has been able to establish that Hemchand @ Nani, Sant Ram @ Pramod @ Prahlad and Ramesh @ Bobby @ Rajesh @ Ajay @ Raju were the killers of the deceased. We clarify here that we should not be understood to mean that the case of the prosecution would fail if said fact is not established. What we intend to convey is that said evidence has been used as a vital chain to infer conspiracy.

120. In that view of the matter, we proceed to first deal with the evidence against Hemchand @ Nani, Sant Ram @ Pramod @ Prahlad and Ramesh @ Bobby @ Rajesh @ Ajay @ Raju followed by the evidence marshalled against Surinder Mishra, Tejinder Viridi and Romesh Sharma, noting that Jaspreet Viridi has been acquitted and the State has not challenged her acquittal.

DISCUSSION PERTAINING TO HEM CHAND @ NANI, SANT RAM
AND RAMESH @ BOBBY @ RAJESH @ AJAY @ RAJU

121. The first incriminating circumstance enumerated by the prosecution against the aforesaid accused is that Ram Achal Tiwari PW-16, stated in his statement Ex.PW-6/1 that he witnessed the aforesaid accused murdering the deceased. It is settled law that a first information report stands on a footing

different than statements recorded by the police under Section 161 Cr.P.C.

122. As already noted hereinabove in paras 49 to 51, Ram Achal Tiwari resiled from his statement Ex.PW-6/1 while deposing in Court.

123. In this regard, counsel for the State argued that notwithstanding that Ram Achal Tiwari resiled from his statement Ex.PW-6/1, the same can be relied upon to bring home the guilt of the aforesaid accused, for the reason that the facts and circumstances surrounding the recording of the statement Ex.PW-6/1 as also the deposition of Ram Achal Tiwari in Court establishes that the statement Ex.PW-6/1 is a truthful account of the incident in question stated contemporaneously soon after the incident by Ram Achal Tiwari.

124. The first circumstance pointed out by the learned counsel for the State is that Ram Achal Tiwari admitted that he gave the information to the police about the murder of the deceased pursuant to which Inspector Jagdish Meena recorded his statement. The second circumstance pointed out by the learned counsel for the State is that a perusal of the endorsement Ex.PW-6/1A which was penned beneath the statement Ex.PW-6/1 of Ram Achal Tiwari shows that the

statement Ex.PW-6/1 was recorded by Inspector Jagdish Meena soon after the murder of the deceased which implies that the police had no time to fabricate the statement of Ram Achal Tiwari. The third circumstance pointed out by the learned counsel for the State is that Ram Achal Tiwari admitted that the statement Ex.PW-6/1 bears his signatures. The fourth circumstance pointed out by the learned counsel for the State is that Ram Achal Tiwari admitted that the portions of the statement Ex.PW-6/1 which do not relate to the complicity of accused persons in the crime of the murder of the deceased were stated by him to the police. The fifth circumstance pointed out by the learned counsel for the State is that Ram Achal Tiwari did not make any complaint to the senior police officers or the court that his statement was wrongly recorded by the police.

125. From the testimony of Ram Achal Tiwari, it is apparent that he has been brought over by the accused, evidenced by the fact that after admitting having made a statement to Insp.Jagdish Meena and also admitting that the said statement was Ex.PW-6/1 he went on to admit that he signed the statement after it was written. Thus, at the first instance he admitted the entire contents of the statement Ex.PW-6/1. He also admitted various statements made by him in the said

statement which were not directly relating to the accused. He resiled from those sentences in his statement which inculpated the accused. He also admitted that his shirt Ex.P-2 was seized vide memo Ex.PW-16/1. Surprisingly, he denied that the same was stained with blood. We see no reason why the police would seize his shirt if it had no evidentiary value. Obviously, the shirt was seized because it was stained with blood and that this would be good evidence to show the presence of Ram Achal Tiwari near the deceased when she was murdered and hence would make him a credible eye witness.

126. We have on record the testimony of Sunil Kumar PW-15 and Hari Chand PW-17 which throw light on the contemporaneous utterances of Ram Achal Tiwari. Needless to state on proper proof thereof, these utterances of Ram Achal Tiwari would be admissible under Section 6 of the Evidence Act as *res gestae*.

127. What is the law of *res gestae*?

128. Section 6 of Evidence Act embodies the principle of law usually known as the rule of *res gestae* recognized in English law. The essence of the doctrine is that facts, though not in issue, but so connected with the fact in issue as to form part of the same transaction, become relevant and hence admissible. The reason is that the circumstances, facts and declarations

which grow out of the main facts are contemporaneous with it and serve to illustrate the fact in issue. In that sense, they can safely be said to be an incident of the event under circumstances, and being made or done under the immediate influence of the principal transaction, characterize or explain the principal transaction.

129. Thus, spontaneity and immediacy of the statements or facts in relation to the fact in issue which are made without premeditation or artifice and without a view to the consequences are admissible, because they are the natural result of the act they characterize or elucidate. To form a particular statement as a part of the same transaction, utterances must be simultaneous with the incident or soon after it so as to make it reasonably certain that the speaker is still under stress of excitement in respect of the transaction in question. To put it simply: Everything that may be fairly considered an incident of the event under consideration would be admissible. However, it has to be guarded that there should be no time interval to allow fabrication or to reduce the statements to the mere narrative of a past event. If there is an interval, however slight it may be, which was sufficient for fabrication then the statement is not part of *res gestae*.

130. The principles relatable to the rule of res gestae are four in number:-

I The declarations (oral or written) must relate to the act which is in issue or relevant thereto; they are not admissible merely because they accompany an act. Moreover the declarations must relate to and explain the fact they accompany, and not independent facts previous or subsequent thereto.

II The declarations must be substantially contemporaneous with the fact and not merely the narrative of a past.

III The declaration and the act may be by the same person, or they may be by different persons, eg, the declarations of the victim, assailant and by-standers.

IV Though admissible to explain or corroborate, or to understand the significance of the act, declarations are not evidence of the truth of the matters stated.

131. To appreciate as to what would be admissible as res gestae we may note two decisions taking the extreme view points and thereafter, with reference to the principles applicable to res gestae, determine what evidence is admissible as res gestae.

132. In the decision reported as R Vs. Bedingfield, 1879, 14 Cox CC 341, in a charge of murder, the exclamation of the deceased while rushing with the throat cut, out of his house a minute or two before, shouting '*oh aunt see what Bedingfield has done to me*' was rejected as admissible evidence on the premise that the transaction was over. This is the narrowest view ever taken by any Court in the field of admissibility of res gestae evidence. The swing in the other extreme is in the decision of Lord Denham C.J. in Rough Vs. Gw Rly. Co., 1841 (1) QB 51 wherein it was held that concurrence of time when something was spoken or done, though material, is not essential. As per this view, anything said much after the incident was admissible, as long as it related to the incident in question.

133. The correct view is the middle view extracted by us in paras 128 to 130 above.

134. Before we use the testimony of the said two witnesses, we must consider the challenge to the veracity of the testimony of the said two persons, for only if we hold that the said two persons have deposed truthfully, can we use their testimony with reference to the contemporaneous utterances of Ram Achal Tiwari.

135. What has been deposed to by Sunil Kumar and Hari Chand has been noted by us in paras 52 to 55 above. Only two improvements vis-à-vis what they stated as per their statements recorded under Section 161 Cr.P.C. and their testimony in Court stand highlighted. The first is the two not stating in their statement recorded under Section 161 Cr.P.C. that Sonu @ Jaspreet Viridi and Dolly @ Tejinder Viridi have come in the morning to the farmhouse and the second is that they have not stated in their statement recorded under Section 161 Cr.P.C. that the two ladies used to visit the farmhouse and speak to the accused who were staying in the farmhouse. But for the two aforesaid improvements, both of them have deposed facts which they contemporaneously disclosed to the police. Apart from the aforesaid two improvements, we find nothing else to discredit the two witnesses.

136. The first so called improvement made by these two witnesses pertaining to Sonu and Dolly coming to the farmhouse in the morning with a Pandit are not improvements on their previous statements, for the reason, in their statements recorded under Section 161 Cr.P.C. both of them have clearly stated that two Madams along with a Pandit had visited the farmhouse in the morning. The only difference is,

that while deposing in Court, they named the two Madams being Sonu and Dolly. The only material improvement of consequence is they stating for the first time that even on previous occasions they had seen Sonu and Dolly visiting the farmhouse and speaking with the persons who had committed the murder of the deceased.

137. We shall be discussing the effect of this material improvement in the statement of the two witnesses while discussing the evidence against Tejinder Viridi @ Dolly, but with respect to the testimony of these two witnesses as to what they saw and heard at the farmhouse on the day of the incident, we find the two to be credible witnesses.

138. We note that the extensive cross examination of these two witnesses has yielded nothing adverse.

139. It was urged that both witnesses were planted by the police because there was no proof that they were employed as security guards by Vikram Singh PW-30. It was urged that Vikram Singh PW-30 led no evidence of paying any salary to Sunil Kumar and Hari Chand.

140. With reference to the testimony of Sunil Kumar, as noted in para 53 above, he admitted that no letter of appointment was issued to him. We also note that Vikram Singh PW-30 has

proved the attendance sheet Ex.PW-30/1 as also the agreement Ex.PW-30/2 which he had entered into with Romesh Sharma to provide security at the farmhouse. There is thus evidence that through Vikram Singh, security guards were provided at the farmhouse. It is no doubt true that the attendance sheet as also the agreement in question are fairly unofficious documents and Vikram Singh has not maintained any record pertaining to the persons engaged by him. But, we cannot be oblivious to the ground realities prevailing in this country of small scale businesses being run in a most shoddy manner and record being maintained in most unofficial manner.

141. Though he has turned hostile, Dilbagh Singh PW-19 has deposed that there were security guards deployed at the farmhouse. His testimony also proves the fact that security guards were deployed at the farmhouse. It is settled law that testimony of a hostile witness is not to be thrown out lock, stock and barrel and can be used if corroborated by other evidence.

142. Sunil Kumar and Hari Chand have no axe to grind against the accused. Even Vikram has no axe to grind against the accused. We see no reason why the three would depose falsely. Thus, we hold that there is sufficient evidence on

record to establish that Sunil and Hari Chand were deployed as security guards at the farmhouse and were present at the security gate of the farmhouse in the morning and remained there till late afternoon.

143. The testimony of Sunil Kumar and Hari Chand, contents whereof have been noted by us in paras 52 to 55 above prove that accused Hem Chand, Sant Ram and Ramesh were present in the farmhouse when the murder took place and that after the deceased went inside the building the three came out of the farmhouse and were followed soon by Ram Achal Tiwari who was perplexed and saying that the deceased had been murdered by the said accused, left the farmhouse saying that he was going to inform the police.

144. The said utterances of Ram Achal Tiwari pertaining to the three being the murderers of the deceased as deposed to by Sunil Kumar and Hari Chand are admissible in evidence and thus the same prove the complicity of Hem Chand, Sant Ram and Romesh in the crime.

145. Through the testimony of Sunil Kumar and Hari Chand we also have evidence of the close proximity in terms of time and place when the deceased and the said three accused were seen together vis-à-vis the time the deceased was found dead and the three left the place. Sunil Kumar has categorically

deposed and so has Hari Chand that after Kunjum entered the kothi, after 5-7 minutes the three accused along with Rakesh (absconder) were seen by them going inside the kothi and the four came out of the kothi after about 15-20 minutes and along with their other associates left the farmhouse and never came back.

146. There is no evidence that any other person entered the farmhouse.

147. The testimony of Sunil Kumar as also Hari Chand establishes that the said three accused along with their four other associates were residing in the farmhouse, in the servant quarter, and fled soon after Kunjum was murdered and never came back. There is evidence that the said three accused abscond. Their four other associates are proclaimed offenders.

148. Much was sought to be made out with reference to the statement Ex.PW-6/1 of Ram Achal Tiwari where he named Pramod as one of the persons who participated in the assault on Kunjum. We note that in his supplementary statement Ex.PW-16/DA, Ram Achal had clarified that the reference by him in his earlier statement to Pramod was actually a reference to Sant Ram.

149. We conclude by holding that against Hem Chand @ Nani, Sant Ram and Ramesh @ Bobby @ Rajesh @ Ajay @ Raju the prosecution has successfully established that the three were a part of the group of seven persons staying in the servant quarters of the farmhouse and the three were seen entering the farmhouse after Kunjum and Ram Achal Tiwari entered the farmhouse. No other person entered the farmhouse. After 15-20 minutes of the said accused entering the farmhouse, they left and Kunjum was found murdered soon thereafter inside the farmhouse. The said accused absconded till they were apprehended. Contemporaneous utterances of Ram Achal Tiwari inculcate the three accused. Ignoring the recovery of the gold chain stated to be belonging to the deceased pursuant to the disclosure statement of Hem Chand, we conclude by recording our concurrence with the findings returned by the learned Trial Judge pertaining to the guilt of Hem Chand @ Nani, Sant Ram and Ramesh @ Bobby @ Rajesh @ Ajay @ Raju.

150. We now deal with the evidence martialled against Surinder Mishra. As noted in para 108 (B) above, the prosecution has sought to establish against Surinder Mishra that he employed the killers of the deceased at Jai Mata Di farmhouse; (ii) Surinder Mishra was in regular touch with the

killers of the deceased; (iii) Surinder Mishra met the killers of the deceased a day prior to the murder of the deceased; (iv) Surinder Mishra visited the place of the murder of the deceased on the day of the murder of the deceased and met the killers of the deceased; (v) Surinder Mishra absconded after the murder of the deceased; (vi) Surinder Mishra concealed his identity after the murder of the deceased; (vii) Surinder Mishra had motive to do away with the deceased; (viii) Surinder Mishra did not offer condolence to the family of the deceased; and (ix) Surinder Mishra did not inform Romesh Sharma about the death of the deceased.

151. The learned Trial Judge has additionally used as a piece of incriminating evidence, the fact that Surinder Mishra has given false answers when he was examined under Section 313 Cr.P.C.

152. From the testimony of the various witnesses noted hereinabove it is apparent that Ram Achal Tiwari PW-16 resiled from his earlier statement and disclaimed having told the police that Surinder Mishra had brought 7 persons to the farmhouse i.e. the persons who were involved in the actual murder of Kunjum. Though Sunil Kumar PW-15 and Hari Chand PW-17 stated before the police that Surinder Mishra had deployed Hem Chand @ Nani, Sant Ram and Ramesh as also

their associates, but while being examined in Court, the learned Public Prosecutor did not put any question to them on said aspect and thus neither of the two has stated that Surinder Mishra had deployed the said three persons and their associates at the farmhouse. Under the circumstances it has to be held that there is no legally admissible evidence of Surinder Mishra having deployed Hem Chand, Sant Ram and Ramesh and their four other associates at the farmhouse. But, the said fact not being proved is immaterial for the reason that Sunil Kumar PW-15 and Hari Chand PW-17 have categorically deposed that Surinder Mishra used to regularly come and meet the said 7 persons and on the day of the murder i.e. 20th March 1999 he had come to the farmhouse in the morning at around 8:00 AM and had spent about half an hour with Nani, Sant Ram, Ramesh etc. It is thus proved on record that Surinder Mishra was regularly meeting the assassins of Kunjum and had even met them in the morning. Rani Budhiraja PW-27, the mother of the deceased has deposed that Surinder Mishra had provided the keys of the kothi to her daughter in the morning of 20.3.1999. Through the testimony of Pawan Budhiraja PW-28 and the testimony of Rani Budhiraja PW-27 as also the three letters Ex.PW-27/B, Ex.PW-28/B and Ex.PW-28/C it is apparent that Surinder Mishra knew that the deceased was to perform puja at the farmhouse. He gave the key of the

farmhouse to the deceased in the morning of 20.3.1999 and met the hired killers the same morning with whom he spoke for about half an hour.

153. Pertaining to Surinder Mishra being arrested at Ahmedabad the relevant witnesses are Amara Bhai PW-5 and Insp.Tarun Kumar PW-12. Before discussing the evidence of the said two witnesses and the inferences which can be drawn, we note the submissions made by learned counsel for Surinder Mishra, arising out of the arrest memo Ex.PW-32/1 which shows Surinder Mishra's arrest at Delhi on 23.3.1999. It was urged that the arrest memo Ex.PW-32/1 is proof of the fact that Surinder Mishra was apprehended at Delhi and thus the claim to the contrary of his being arrested at Ahmedabad is false; thus, it would be incorrect to say that Surinder Mishra absconded and tried to conceal his identity. It was urged that there is no evidence to show that Surinder Mishra was produced before a Magistrate at Ahmedabad and no order was produced showing that Delhi Police officials obtained the custody of Surinder Mishra by filing any application in the Court of any Magistrate at Ahmedabad. It was urged that it has not been proved that the entry Ex.PW-5/1 in the Guest House Register of Kapadia Guest House was in the handwriting of Surinder Mishra.

154. It may be stated at the outset that the arrest memo Ex.PW-32/1 shows the formal arrest of Surinder Mishra by the Delhi Police in the instant FIR.

155. The testimony of Inspector Tarun Kumar PW-12 and Amarbhai PW-5 clearly shows that Surinder Mishra was apprehended at Kapadia Guest House at Ahmedabad and was staying there under an assumed name of Raj Kumar Bhatia. Amarbhai PW-5 the Manager of the Guest House has deposed that the entry Ex.PW-5/1 in the Guest House Register was made in his presence by Surinder Mishra. Thus, it stands established that Surinder Mishra was apprehended at Kapadia Guest House in Ahmedabad where he was staying under an assumed name.

156. Thus, we have on record evidence that Surinder Mishra had provided the key to Kunjum in the morning of 20th March 1999 to enable her to perform puja at the farmhouse. He knew that Kunjum would be visiting the farmhouse on said day. Surinder Mishra had been meeting the hired assassins and even on the morning of the day when Kunjum was murdered had met the hired assassins and had spoken to them. We have evidence on record that Surinder Mishra absconded from Delhi and attempted to conceal his identity by

staying under an assumed name of Raj Kumar Bhatia at Ahmedabad.

157. This takes us to an area of discussion which has considerable bearing on the fate of Dolly @ Tejinder Viridi and Romesh Sharma. It relates to the motive to murder Kunjum. It relates to who conspired to murder Kunjum.

158. As per the prosecution the motive was of Romesh Sharma being fed up with Kunjum and he using the services of Dolly and Surinder Mishra who were meeting him as his parokars to contact the hired killers and execute the plan to murder Kunjum. But, through the testimony of Pawan Budhiraja PW-28 and the testimony of Vikram Singh PW-30 we have good evidence on record that Surinder Mishra was not liking Kunjum and her family getting close to Romesh Sharma. Both of them have proved that at the behest of Surinder Mishra, Pawan Budhiraja brother of Kunjum was got assaulted by musclemen because Surinder Mishra was most unhappy with regards to the close relationship between Romesh Sharma and Kunjum. It may be noted that Surinder Mishra is the nephew of Romesh Sharma and was managing the affairs of Romesh Sharma. It is obvious that if Romesh Sharma was screened from Kunjum and her family members, Surinder Mishra would have a field day in managing the affairs of

Romesh Sharma who had entangled himself in the clutches of the law with respect to some dispute with a gentleman called Suba, who is none other than a controversial politician whose allegiance to this country and even his nationality is in doubt. Thus, we have on record good evidence that even Surinder Mishra had a motive to kill Kunjum.

159. Ignoring circumstance (viii) and (ix) as incriminating evidence i.e. Surinder Mishra not offering condolence to the family of Kunjum and not informing Romesh Sharma about the death of the deceased, which are trivial matters, we conclude qua Surinder Mishra by recording that an independent motive attributable to Surinder Mishra alone, his being in constant touch with the killers of Kunjum, he having given the key to Kunjum to enter the farmhouse in the morning of 20.3.1999, he having knowledge that Kunjum would be visiting the farmhouse on 20.3.1999, he having visited the farmhouse in the morning of 20.3.1999 and remaining in the company of the killers of Kunjum for about half an hour, he having absconded from Delhi and he having attempted to conceal his identity are circumstances complete enough wherefrom any reasonable person would draw a presumption or would act on the supposition that its stand proved that Surinder Mishra had a definite hand in the murder of Kunjum.

160. Proceeding further to discuss the evidence pertaining to Tejinder Viridi @ Dolly, we note that in holding her guilty, the first circumstance enumerated by the prosecution against her is that she was in regular touch with Surinder Mishra as also Romesh Sharma and that she was present when Romesh Sharma hatched the conspiracy to kill Kunjum and used the services of Surinder Mishra and Tejinder Viridi to get in touch with hired killers.

161. Inextricably linked is the issue whether it stands proved that Romesh Sharma had at all conspired as alleged.

162. Thus, before we discuss any other evidence inculcating Tejinder Viridi, it would be advisable to discuss the evidence pertaining to Romesh Sharma.

163. It is apparent that the prosecution sought to link Romesh Sharma with reference to his being in regular touch with Surinder Mishra, Tejinder Viridi and her sister Jaspreet Viridi, who has been acquitted. As per the charge sheet the conspiracy was hatched in the meetings held beginning from the month of February 1999 till the last meeting which took place on 19th March 1999.

164. It may be noted at the outset that Romesh Sharma was in jail for the last about 1 year and needed parokars to take

necessary legal steps for a proper defence in the criminal cases against him. He also required instructions to be given with respect to his properties. Thus, there is nothing unusual or incriminating in the fact that Romesh Sharma was meeting Surinder Mishra, Tejinder Viridi, Jaspreet Viridi and the brother of Kunjum i.e. Pawan Budhiraja.

165. The prosecution has led evidence that Romesh Sharma had been meeting Surinder Mishra, Tejinder Viridi, Jaspreet Viridi and Pawan Budhiraja during Court hearings when he was produced in Court as also in jail. A perusal of the testimony of Mahinder Prasad PW-4, noted in paras 66 and 67 above and the applications filed by Romesh Sharma in Court to have a meeting with various persons gist whereof have been noted in para 37 above, shows that eleven meetings took place between Romesh Sharma, Surinder Mishra, Dolly and Sonu between the month of February 1999 till the day of the murder of the deceased at Tihar Jail or in the Court.

166. The first meeting took place on 16.2.1999 when Surinder Mishra, Sonu and Pawan Budhiraja met Romesh Sharma at the Court. The next meeting took place on 23.02.1999 in which Surinder Mishra, Sonu and Dolly were present at the Court. The third meeting took place at Tihar Jail on 05.03.1999 in which Surinder Mishra and Dolly were present. The fourth meeting

took place in jail on 09.03.1999 in which Surinder Mishra and Dolly were present. The next meeting took place in jail on 12.03.1999 in which Sonu, Dolly and Pawan Budhiraja were present. On 15.03.1999 two meetings took place between Romesh Sharma, Surinder Mishra, Sonu and Dolly at Tihar Jail and the court. On 16.03.1999 a meeting took place between Romesh Sharma, Sonu, Dolly and Pawan Budhiraja at Tihar Jail. On 18.03.1999 two meetings took place between Romesh Sharma, Surinder Mishra and Sonu at Tihar Jail and the court. On 19.03.1999 a meeting took place between Romesh Sharma, Surinder Mishra, Dolly and Pawan Budhiraja at Tihar Jail.

167. It is obvious that no conspiracy could have been hatched by accused Romesh Sharma, Surinder Mishra, Sonu and Dolly in the meetings held between them on 23.02.1999, 05.03.1999, 16.03.1999 and 19.03.1999 since Pawan Budhiraja PW-28, the brother of the deceased, was also present in the said meetings. Therefore, the conspiracy, if any, could have been hatched by aforesaid persons in the meetings held between them on 16.02.1999, 09.03.1999, 12.03.1999, 15.03.1999 and 18.03.1999 at Tihar Jail/Court.

168. The testimony of Mahinder Prashad PW-4, provides an answer to the question whether at all a conspiracy could be hatched in jail. As per the said witness, there is a distance of

at least 2-2½ feet between the visitors and the inmates. The meeting between the visitor and the inmate takes place in a crowded room. The witness further stated that the jail officials are always patrolling in the room where the meetings take place and keep an eye on the visitors and the inmates. In such circumstances, the possibility that accused Romesh Sharma, Surinder Mishra, Dolly and Sonu would have hatched the conspiracy to murder the deceased in the meetings held between them in the jail is too remote. Likewise, the possibility that aforesaid accused would have hatched the conspiracy to murder the deceased in the meetings held between them on 16.02.1999, 15.03.1999 and 18.03.1999 at the Court is also remote as the said meetings were held in the presence of a police officer.

169. In this regard it assumes importance to consider the letters Ex.PW-27/B, Ex.PW-28/B and Ex.PW-28/C for the reason the prosecution claims that as part of the conspiracy, Romesh Sharma facilitated the murder by requiring Kunjum to go to his farmhouse and perform puja and as per the plan, hired killers would murder Kunjum.

170. In paras 26 to 28 above, we have extracted the contents of the said three letters, the three letters show that Kunjum was getting frustrated as she was being hampered in her task to perform puja at the farmhouse because the key to the

farmhouse was not being given to her. The incomplete letter Ex.PW-27/B written by Kunjum on 19.3.1999 shows that till 19.3.1999 the key to the farmhouse was not being given to her. Now, if at all a conspiracy was hatched as alleged by the prosecution, everybody would have facilitated the entry of Kunjum in the farmhouse and not obstructed the same. There is thus, considerable doubt whether at all any conspiracy was hatched till 19th March 1999. It assumes importance that Surinder Mishra handed over the key of the farmhouse to Kunjum as deposed to by Kunjum's mother, in the morning of 20th March 1999 the day Kunjum was murdered. Thus one can infer that by 19.3.1999 it was not even certain whether Kunjum would be visiting the farmhouse on 20.3.1999.

171. It is true that Romesh Sharma met Surinder Mishra and Dolly at Tihar Jail on 19.3.1999, but it is important to note that even Pawan Budhiraja was present with them. The circumstance used by the learned Trial Judge of Romesh Sharma meeting Surinder Mishra and Dolly in the jail as incriminating is in blissful ignorance of the fact that Pawan Budhiraja, brother of Kunjum was also present and this rules out any discussion regarding execution of the plan to murder Kunjum.

172. It is no doubt true that Romesh Sharma had desired Kunjum to perform puja at the farmhouse. But this was not for

the first time that a puja was to be performed. Letters Ex.DW-1/41 to Ex.DW-1/44 as also the testimony of Pandit Deepak Sharma PW-18 establishes that even in the past, Romesh Sharma and Kunjum used to perform pujas at various properties, including the farmhouse, owned by Romesh Sharma. The letters Ex.DW-1/1 to Ex.DW-1/58, Ex.DX, Ex.DZ, Ex.PW-27/B, Ex.PW-28/B and Ex.PW-28/C establish that both Romesh Sharma and Kunjum used to frequently perform pujas.

173. Pertaining to the motive of Romesh Sharma i.e. that he got fed up with Kunjum who became over bearing and demanding, has been gullibly held proved by the learned Trial Judge with reference to Romesh Sharma giving a house to Kunjum and his desire of giving an imported car to her. The learned Trial Judge has acted on the supposition that Romesh Sharma did so because Kunjum was becoming too demanding.

174. The letters of Kunjum written to Romesh Sharma which were proved in defence through the testimony of Kunjum's brother have been discounted by the learned Trial Judge on the reasoning that Romesh Sharma did not hand over the letters to the police during investigation and that he has selectively handed over the letters which were helpful for his defence and he must have concealed letters indicative of his guilt.

175. We just cannot fathom the logic of the reasoning of the learned Trial Judge.

176. We have noted the dates of the various letters proved in defence in para 82 above. Brief contents of the same have been noted by us in paras 84 to 104 above. Far from proving or establishing even remotely that Kunjum was getting too demanding or over bearing, the same show that Kunjum was desiring nothing but the company of Romesh Sharma. She never sought anything of material value from Romesh Sharma and that whatever Romesh Sharma gave to her was out of his free volition.

177. Sh.Pawan Sharma learned counsel for the State vehemently urged that the letters Ex.PW-28/B, Ex.PW-28/C and the letters Ex.DW-1/12, Ex.DW-1/13, Ex.DW-1/14 to Ex.DW-1/18, Ex.DW-1/25 to Ex.DW-1/27 establish that Kunjum was demanding things of material value from Romesh Sharma.

178. We do not think so. With reference to Ex.PW-28/B and Ex.PW-28/C, it was highlighted that Romesh Sharma told Kunjum to buy an ordinary Indian car and expressed his anguish in not being able to purchase a luxurious car for her. Counsel sought to draw an inference that the same shows that Kunjum was wanting an expensive car and Romesh Sharma was expressing his helplessness by writing to her to purchase a car of lesser value. The argument is without any basis for

the reason the letters show the reverse. They show that it was Romesh Sharma who desired to give a luxurious car to Kunjum, who was wanting nothing, and in that context Romesh Sharma told Kunjum to buy an ordinary car. Similarly, with reference to the other letters, brief contents whereof or relevant extracts whereof have been noted by us in the preceding paragraphs, it is apparent that Kunjum was demanding nothing from Romesh Sharma.

179. The letters exchanged between the two, show the desire of both to marry each other.

180. Thus, we hold that far from motive being established as alleged by the prosecution, the reverse stands established i.e. that Romesh Sharma and Kunjum were in love and desired the company of each other. It does not establish that Romesh Sharma had got fed up with Kunjum.

181. It is in this context it assumes importance to note once again that till 19th March 1999 Kunjum did not have the keys of the farmhouse and had Romesh Sharma a role in her murder, the first thing he would have ensured would be to ensure that she had the keys of the farmhouse, well in time.

182. Wherefrom has the learned Trial Judge drawn a conclusion that at the funeral of Kunjum, Romesh Sharma enacted a drama, has baffled us. A grieving lover falling over the dead body of his mate and performing the ritual of a

marriage can well be an expression of last love and need not necessarily be a drama.

183. It is no doubt true that Romesh Sharma denied each and every circumstance put to him and gave false answers to his relationship with Surinder Mishra i.e. Surinder Mishra being his nephew and his meeting his parokars. But, therefrom nothing adverse can be drawn for the reason, it was observed by the Supreme Court in the decision reported as 1984 (1) SCC 116

Sharad Birdhichand Sharda Vs. State of Maharashtra:-

“It is well settled that the prosecution, must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only this: where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a Court.

.....

It may be necessary here to notice a very forceful argument submitted by the Additional Solicitor-General relying on a decision of this Court in Deonandan Mishra Vs. State of Bihar 1955 Cri LJ 1647, to supplement his argument that if the defence case is false it would constitute an additional link so as to fortify the prosecution case. With due respect to the learned Additional Solicitor General we are unable to agree with the interpretation given by him of the aforesaid case, the relevant portion of which may be extracted thus:

“But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation..... such absence of explanation or false explanation would itself be an additional link which completes the chain.”

It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier, viz., before a false explanation can be used as additional link, the following essential conditions must be satisfied:

- (1) various links in the chain of evidence led by the prosecution have been satisfactorily proved.
- (2) the said circumstance point to the guilt of the accused with reasonable definiteness, and
- (3) the circumstance is in proximity to the time and situation.

If these conditions are fulfilled only then a Court can use a false explanation or a false defence as an additional link to lend an assurance to the Court and not otherwise. On the facts and circumstances of the present case, this does not appear to be such a case. This aspect of the matter was examined in Shankarlal's 1981 Cri LJ 325 (supra) where this Court observed thus:

“Besides, falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. A false plea can at best be considered as an additional circumstance, if other circumstances point unfailingly to the guilt of the accused.”

184. Thus, the sole incriminating evidence against Romesh Sharma of giving false answers to some of the questions being

the only incriminating evidence is incomplete to form a complete chain wherefrom his guilt can be inferred.

185. To conclude qua Romesh Sharma we hold that there is no evidence to establish that he conspired through jail during his meetings with Surinder Mishra, Tejinder Viridi and Jaspreet Viridi to murder Kunjum. There is no evidence that Romesh Sharma was fed up with Kunjum. There is no evidence that Kunjum was becoming over bearing. Thus, Romesh Sharma is entitled to be acquitted.

186. Proceeding with the evidence against Tejinder Viridi, holding that she is entitled to the same benefit i.e. of no conspiracy being hatched between Romesh Sharma, Tejinder Viridi, Jaspreet Viridi and Surinder Mishra we consider the other evidence held to be incriminating against her. We reemphasize that evidence suggests that till late evening of 19.3.1999 there was resistance by Surinder Mishra in Kunjum visiting the farmhouse. It was only the next day morning i.e. on 20.3.1999 that the key to the farmhouse was given to Kunjum by Surinder Mishra. There is no evidence that in the morning of 20.3.1999, before Kunjum visited the farmhouse, Tejinder Viridi and Surinder Mishra had met or spoken to each other.

187. Her visit to the farmhouse in the morning as also that she was in touch with the hired assassins and her conversation

with Surinder Mishra and Vikram have been used as incriminating evidence against her, pertaining to her conduct.

188. Pertaining to Tejinder Viridi being in touch with the hired killers as deposed to by Sunil Kumar PW-15 and Hari Chand PW-17, we refer to the testimony of the said two witnesses as noted by us in paragraphs 52 to 55 above and our discussion to the testimony of the said two witnesses with reference to the improvements made by them vis-à-vis their statements recorded under Section 161 Cr.P.C., as discussed in paras 135 to 137 above. We remind the reader of this order that in para 137 above, we have noted that the effect thereof would be discussed by us while discussing the evidence against Tejinder Viridi.

189. For the facts noted in para 135 and 136 above, it is apparent that Sunil Kumar and Hari Chand made material improvements vis-à-vis their statements given to the police and as deposed in Court when they, for the first time stated that Jaspreet Viridi and Tejinder Viridi had been meeting the hired killers in the farmhouse in the past. No such fact was disclosed by them to the police when their statements were recorded. We have held the said statements to be improvements of a material kind for the reason if true, the said statements would be highly inculpatory of the guilt of Tejinder Viridi and her sister. Thus, the incriminating circumstance used

by the learned Trial Judge of Tejinder Virdi being in regular touch with the hired assassin is held not established.

190. The testimony of Sunil Kumar and Hari Chand establishes that Tejinder Virdi and her sister along with a pundit had come to the farmhouse in the morning and left thereafter to purchase *samagri* for the *pooja* and did not return. It is apparent that Tejinder Virdi learnt about Kunjum's intending visit to the farmhouse on 20.3.1999, but the said knowledge has to be attributed to her as of the morning of 20.3.1999 since the key to the farmhouse was given to Kunjum in the morning of 20.3.1999. But from said fact alone i.e. of Tejinder Virdi having knowledge gained in the morning of 20.3.1999 it would be difficult to infer that she conspired with Surinder Mishra to kill Kunjum.

191. The testimony of Vikram PW-30 also establishes that Vikram had a talk with Tejinder Virdi @Dolly. The contents of the talk between Vikram and Tejinder has been noted by us in para 62 above. The call record of mobile No.9811155439 of Vikram and mobile No.9811024145 of Tejinder Virdi shows that one call was made by Vikram to Tejinder Virdi and one call was made by Tejinder Virdi to Vikram. That Vikram has deposed correctly with reference to his conversation with Tejinder Virdi is doubtful. In para 63 above we have noted the cross-examination of Vikram with reference to his statement Ex.PW-

30/DA recorded by the investigation officer. The comparison of the two brings out that Vikram told the police that the security guard told him that the girl who was murdered was Kunjum, which fact of knowledge gained by him was sought to be attributed by him to Tejinder Viridi. It is apparent that as narrated in Court, the conversation between Vikram and Tejinder Viridi would be suggestive of Tejinder Viridi knowing that the girl murdered was Kunjum where from an inference would be required to be drawn that Tejinder Viridi was aware that Kunjum had to be murdered. It is in this context that we are compelled to hold that Vikram has so changed his version that from an innocuous conversation which he had with Tejinder Viridi, while deposing in Court he has given a colouration of being incriminating to the conversation.

192. There is no evidence on record, except the confessional statement of Surinder Mishra that mobile No.9810114857, was his mobile number. If mobile No.9810114857 is held not to be proved as that of Surinder Mishra, we would have no record of any evidence of conduct of Tejinder contacting Surinder Mishra after she had spoken with Vikram.

193. To overcome this hurdle, learned counsel for the State submitted that when Surinder Mishra made the statement Ex.PW-12/A to Inspector Tarun Kumar PW-12, Surinder Mishra was not an accused in the present case and hence said

statement was admissible in evidence. Second contention urged was that till then the prosecution had no knowledge that mobile No.9811024145 was that of Tejinder Viridi @Dolly and this fact was discovered pursuant to the disclosure statement of Surinder Mishra which was subsequently proved as correct when Tejinder Viridi was apprehended and from the mobile phone recovered from the possession the SIM card pertaining to the mobile No.9811024145 was recovered.

194. The plea that the statement Ex.PW-12/A is admissible in evidence because when it was made to Inspector Tarun Kumar PW-12, Surinder Mishra was not an accused in the offence, is belied from the testimony of Inspector Tarun Kumar PW-12 who categorically deposed that on 22.3.1999 he got information that Surinder Mishra who had committed the murder of Kunjum was staying at Kapadia Guest House and pursuant to said information he reached the guest house from where he arrested Surinder Mishra who was evading arrest by claiming to be Rajkumar Bhatia and only thereafter he recorded the statement Ex.PW-12/A.

195. It is thus apparent that the statement Ex.PW-12/A would be inadmissible in evidence made by an accused to the police officer after he was arrested, save and except such part of the statement as would be protected by Section 27 of the Evidence Act.

196. The tussle, whether to be admissible under Section 27 of the Evidence Act, a physical object has to be recovered and a fact discovered for the first time or merely the discovery of a mental fact is sufficient to remove the bar of inadmissibility to anything said to a police officer by an accused was the subject matter of an intense debate before a Division Bench of this Court in the decision reported as 2003 VII AD (Delhi) 1 State Vs. Mohd. Afzal & Ors.

197. The Division Bench of this Court discussed the case law on the subject. Tracking the history of how Section 27 of the Evidence Act was interpreted with reference to the decision of a Seven Judge Bench of the Lahore High Court reported as AIR 1929 Lahore 344 Sukhan Vs. Emperor; the locus classicus on the subject i.e. AIR 1947 PC 67 Pulukuri Kottaya & Ors. Vs. Emperor, the application thereof in the decisions reported as 1969 (2) SCC 872 Jaffar Hussain Dastagir Vs. State of Maharashtra, AIR 1972 SC 975 H.P. Administration Vs. Om Prakash, AIR 1976 SC 483 Mohd. Inayatullah Vs. State of Maharashtra and 2000 Cri LJ 2301 State of Maharashtra Vs. Damu, concluded as under:-

“396. We, therefore, hold, that in order that Section 27 may be brought in aid, the prosecution must establish:-

1. That consequent to the information given by the accused, it led to the discovery of some fact State d by him.
2. The fact discovered must be one which was not within the knowledge of the police and the knowledge of the fact was for the first time derived from the information given by the accused.
3. Information given by the accused must lead to the discovery of a fact which is the direct outcome of such information.
4. The discovery of the fact must be in relation to a material object and of course would then embrace within its fold the mental condition i.e. the knowledge of the accused of the place from where the object was produced and the knowledge that it was there.
5. Only such portion of the information as is distinctly connected with the said discovery is admissible.
6. The discovery of the fact must relate to the commission of some offence.

397. Fact discovered, therefore, has to be a combination of both the elements i.e. a physical object and the mental condition."

198. The matter was taken up to the Supreme Court in the decision reported as 2005 (11) SCC 600 State (NCT of Delhi) vs. Navjot Sandhu @ Afsan Guru. The Supreme Court gave its seal of approval to the view taken by the Division Bench of this Court and in para 137 of the Report, categorically held: *we do not think that in any of these decisions discovery of fact was held to comprehend a pure and simple mental fact or state of mind relating to a physical object dissociated from the recovery of the physical object.*

199. Assuming that it stands established that Tejinder Virdi spoke to Surinder Mishra as claimed by the prosecution, in the absence of what conversation took place between the two, it would be difficult to arrive at the conclusion which has been reached by the learned Trial Judge. The reason is that Tejinder Virdi and Surinder Mishra were known to each other and both of them were acting as the Parokars of Romesh Sharma. If a friend gains knowledge or acquires information of an untoward incident in the property of his friend and contacts another common friend it would be a natural conduct to share the information pertaining to the incident and such a contact, in the absence of what was told, would not be incriminating evidence.

200. It is true that there is evidence on record that Tejinder Virdi was unhappy with the growing friendship between Romesh Sharma and the deceased, but the fact that the deceased could not get possession of the key of the farmhouse till the morning of 20th March 1999 mitigates Tejinder Virdi conspiring to murder Kunjum. At least it can safely be said that said circumstance makes it highly improbable that she was a conspirator, for if she was, she would have facilitated the access to the farmhouse by Kunjum.

201. That Tejinder Virdi came to the farmhouse in the morning and after telling Ram Achal Tiwari to clean the pooja room and

leaving to get samagri but not returning is at best suspicious conduct and no more.

202. That Tejinder Viridi did not offer condolence to the family members of the deceased is not incriminating evidence nor is her conduct of not informing Romesh Sharma a piece of incriminating evidence. There is evidence that Romesh Sharma got news of Kunjum's death and immediately moved the Court to be granted permission to attend the funeral of Kunjum.

203. Thus, the only incriminating circumstances against Tejinder Viridi is of her coming to the farmhouse in the morning and leaving to purchase hawan samagri and not returning back. Assuming that she did talk to Surinder Mishra after Kunjum was murdered and the same is used as the second piece of incriminating evidence and the third being she being unhappy with the growing intimacy between Kunjum and Romesh Sharma, i.e. had a motive, but noting that Kunjum not being facilitated entry in the farmhouse to a large extent removes the sting of the inference of guilt to be inferred from motive, we hold that the said circumstances are insufficient where from the guilt of Tejinder Viridi has to be drawn and her innocence ruled out. The trinity of the three would at best achieve the status of a suspicious conduct and no more.

204. We conclude by allowing Crl.A.No.237/2008 filed by Tejinder Viridi @ Dolly as also Crl.A.No.415/2008 filed by Romesh Sharma. We set aside their conviction vide impugned judgment and order dated 15.2.2008 and set aside the sentence imposed by them vide order dated 18.2.2008. We acquit them of the charges framed against them. We dismiss Crl.A.No.459/2008, Crl.A.No.536/2008, Crl.A.No.604/2008 and Crl.A.No.639/2008 filed by Surinder Mishra, Hem Chand @ Nani, Sant Ram and Ramesh @ Bobby @ Rajesh @ Ajay @ Raju respectively.

205. Since all the appellants are in jail we direct that if not required in any other case Tejinder Viridi and Romesh Sharma be set free forthwith.

206. We direct the Registry to transmit 6 copies of the present decision to the Superintendent Central Jail Tihar with a direction to him to make available 1 copy each to the appellants whose appeals have been dismissed and retained the others for the record.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

December 16, 2009
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