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IN THE HIGH COURT OF DELHI

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Judgment reserved on : 02.02.2009

Judgment delivered on: 16.03.2009

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CRL.A. No.561/2008

VINOD KUMAR

...Appellant

Through : Mr.L.K.Verma, Advocate.

versus

STATE

...Respondent

Through : Mr.Pawan Sharma, Advocate.

CRL.A. No.624/2008

VIJAY PAL

..... Appellant

Through : Mr.Dinesh Piarni, Advocate.

versus

STATE

...Respondent

Through : Mr.Pawan Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE ARUNA SURESH

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J.

1. On the intervening night of 13/14.08.2001 Const.Bhagwan Das PW-16, who was on patrol duty along with Const.Avtar, saw a Honda City car bearing registration No.DL-3C-S-2356 parked near Hill View Apartment, Block No.78, CPWD Colony, Vasant Vihar, New Delhi in which a lady, wearing a lehenga and chuni, having wounds on her head and chest, was lying on the front left seat of the car and a man sitting on the rear seat was crying with his face covered with a handkerchief. PW-16 transmitted the said information to Police Station Vasant Vihar where HC Shri Kumar PW-13, recorded DD No.4A, Ex.PW-13/A at 12.45 A.M. on 14.08.2001 noting that two people were found injured at the afore-noted place.

2. HC Laxmi Chand PW-9, on patrol duty in a PCR van who also got the information reached the spot and removed the injured lady to Safdarjung Hospital. Likewise, the injured man was taken in another PCR van and got admitted at Safdarjung Hospital.

3. A copy of the DD Entry, Ex.PW-13/A, was handed over to SI J.K.Bhardwaj PW-18, for investigation. Accompanied with Const. Narender he reached the spot. Simultaneously, other police officers, namely, SI Dalip Kumar PW-20 and Inspector Inder Singh PW-29, who had also received the information reached the spot. On learning that the injured persons had been removed to Safdarjung Hospital, SI J.K. Bhardwaj PW-18 and Insp. Inder Singh PW-29, proceeded to the hospital where they were informed that the injured lady whose name is Rajni @ Geetika (hereinafter referred to as the "deceased") has been declared brought dead as noted in the MLC Ex.PW-32/A and the injured man named Vijay Pal (herein after referred to as the "accused

No.1”) was admitted in an injured condition as per MLC Ex.PW-32/B. Inspector Inder Singh PW-29 moved an application Ex.PW-29/X for recording the statement of Vijay Pal on which the doctor opined that the patient was not fit for statement. Thus, the MLC of the deceased and of accused No.1 was obtained by the police officers. We note that on the MLC Ex.PW-32/B of accused No.1 following has been recorded:-

“H/o gun shot injury to left thigh; pt. Brought to casualty by police at 1.03 A.M.

o/e pt conscious, oriented

.....

1. Gun shot wound seen on anterior wall of left thigh around 1.5 cm diameter with powder burn seen surrounding wound. No exit wound seen.

2. Hematoma over right parietal region.”

4. The pant of accused No.1 which he was wearing at the time of his admission in the hospital was handed over to Const.Sunil Kumar PW-5, who seized the same vide memo Ex.PW-5/A.

5. Thereafter PW-18 and PW-29 returned to the spot. Since no eye-witness was found present at the spot or at the hospital, PW-29 made an endorsement, Ex.PW-29/A, on the copy of the DD Entry, Ex.PW-13/A, and forwarded the same through Const.Abdul Rashid PW-16 to the police station for registration of a FIR. Abdul Rashid took Ex.PW-29/A to the police station and handed over the same to HC Ram Kushal PW-22 who recorded the FIR No.235/2001, Ex.PW-22/A.

6. At the spot, PW-29 prepared the site plan, Ex.PW-29/B, recording therein the place at point 'A' where the car was found

parked. On thorough search of the car, one live cartridge was found therein which was seized vide memo Ex.PW-18/A. PW-18 prepared the sketch Ex.PW-18/S of the said cartridge. Blood was found staining the car seat covers. The blood-stained portions of the seat covers of the car, Ex.PW-18/2, PW-18/3 and PW-18/4 were cut and seized vide memo Ex.PW-18/B. Pieces of broken glass of the window of the left side of the car were seized vide memo Ex.PW-18/R. The hair, Ex.PW-18/4, found near the left door of the car were seized vide memo Ex.PW-18/B. The Honda City car, Ex.PW-18/1, was seized vide memo Ex.PW-18/T and was handed over to SI Daleep Kumar PW-20.

7. Const.Chandan Singh (Photographer) PW-12 and Const.R.N. Rawat (Finger Print Expert) PW-17, from the crime team were summoned. 9 photographs, Ex.PW-12/P10 to Ex.PW-10/P18; negatives whereof are Ex.PW-12/P1 to Ex.PW-12/P9 were taken. Chance finger-prints were attempted to be lifted. (Vide report Ex.PW-17/A, PW-17 opined that no chance prints could be lifted from the car.)

8. Since the key of the car could not be traced or found, PW-20 requisitioned the services of M/s Balaji Crane Service and towed the car from the spot to the police station.

9. In the meanwhile the father and the brother of the deceased got information of the deceased dying. They reached Safdarjung Hospital, where in the presence of PW-29 they identified the deceased as Rajni @ Geetika; statements Ex.PW-29/E and Ex.PW-29/F of the father and the brother respectively were recorded to said effect.

10. Since the deceased was declared brought dead at the hospital, her body was sent to the mortuary, where Dr.Arvind Theragaonkar PW-1, conducted the post-mortem at about 12.00 P.M. on 14.08.2001 and gave his report, Ex.PW-1/A, which records the following external ante-mortem injuries:-

“1. Fire arm entry wound on right front parietal region of skull with laceration of scalp in the area of 9 cm X 5 cm skull vault exposed with deglobin of local scalp in the area of 3.5 cm X 3.5 cm with fracture of right parietal bone interiorly. There was blackening of margins of perforating fracture of skull bones and margins of scalp. The margins of fractured bone were inverted and fracture bone tips were invaginated into brain matter. The pulp of brain matter was protruding from fracture side. Size of perforation of wound by which the entry wound was 1.4 cm X 1.4 cm. The sieging of hair were seen around the entry wound. No tattooing, charring, pallets were seen around the wound. Entry wound was located 8 cm above the right eye brow and 5 cm right lateral to mid body line and 9.5 cm above and medial to tragus of right ear.

2. Exit wound was present on left temporal region size was 1 X 0.3 cm. It has everted margins and irregular border. It is 4.5 cm above the tragus of left ear. 9.5 cm lateral to left eye brow. Track was directed from right to left medially downwards and laterally.

3. Fire arm entry wound was seen on the chest in the center on oval shape. 1.6 X 1.5 cm in size with abraded temperate collar of the wound 2 mm size on upper and lower margin of the wound. The wound is located 4 cm below supra sternal notch 12 cm above xiphistarnum 13 cm from medial to left axillary fold and 1 cm medial of right axillary fold. No tattooing charring pallets etc seen at the wound. The margin of the wound irregular, inverted.

4. Tear of right ear lobe 0.5 cm with 0.5 cm with nail abrasions on right ear lobe 0.3 cm X 0.1 cm in size.”

11. The general observations recorded in the post-mortem report Ex.PW-1/A, are as under:-

“Dressed in pink coloured designed chunni with blood stains, with white bra, pink blouse and pink lehnga, white panty. No cut mark was seen on the clothes. Pink bangles

were seen on arm (25 nos). All intact. Rigour mortis was present all over the body. PM staining present on back. Eyes closed, no sub conjunctive hemorrhage was seen. Illegible.”

12. Needless to state, two entry wounds of the bullet, one on the chest and the other on the right fronto parietal region of the skull of the deceased were noted; one exit wound pertaining to the first wound aforesaid was noted; meaning thereby that one bullet had pierced outside the skull. He opined that the cause of death was cardio respiratory failure due to conjoint effect of injury to the brain and heart caused by discharge from a fire-arm from a distance of approximately contact range. It was opined that both injuries caused by the fire-arm were individually and collectively sufficient to cause death in the ordinary course of nature.

13. PW-1 recovered one bullet from the body of the deceased pertaining to the wound on the chest. The deceased was wearing 25 pink coloured glass bangles. The clothes worn by the deceased and her blood sample on a gauze were preserved. After the post-mortem the same i.e. the bullet, the glass bangles, the blood stained clothes of the deceased and her blood sample on a gauze were handed over by PW-1 to SI J.K.Bhardwaj PW-18 who seized the same vide memo Ex.PW-18/Q.

14. On 14.8.2001, Inspector Inder Singh PW-29, recorded the statement Ex.PW-4/DA of Rahul Khari PW-4, the brother of the deceased, under Section 161 Cr.P.C. wherein he disclosed that on 13.08.2001, around 10.30 P.M. the deceased along with her husband accused No.1 had left her parental house for her matrimonial house in

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a Honda City car bearing no.DL-3C-S-2356. That the deceased was wearing a mangalsutra, a gold chain, gold bangles, gold ring and other jewellery at that time. That he had taken a photograph of the deceased and accused No.1 from his camera at the time of their departure from the house. That accused No.1 was having his mobile phone having No. 9810062488 with him.

15. On 16.08.2001, Inspector Inder Singh recorded the statement Ex.PW-29/G of accused No.1, translated version whereof reads as under:-

"I state that I reside with my family at the aforementioned address and work as a property dealer. That we live with my uncles in a joint family. That the Honda City car was received by Ved Pal who is the son of my uncle in his marriage and we keep using cars belonging to each other. That I was married to Rajni who is resident of Wazirpur village in the month of February. That about four months ago while returning from Gurgaon our car met with an accident due to which my wife sustained injuries on her arm and face and had been residing in her matrimonial home since then. That on 13.08.2001 I went to Wazirpur village Ashok Vihar where my wife used to reside in Honda City car to bring her back. That at about 10.30 taking Rajni along I left for my house. That when I reached Sector 1 R.K. Puram Munirka I saw that a boy with a bag in his hand was standing at the Ber Sarai stand. That my wife was sitting on the front seat. That I stopped the car and the boy said that he has to go to Mahipalpur on which I replied that we are going to Ayanagar. That the boy told me to drop him at Vasant Kunj and sat on the rear seat. That while going ½ k.m. towards the road which was going to Kishan Nagar he pointed the katta at my wife and pulled the trigger. That I got scared and he told me to drive the car as per his instructions. That thereafter he pointed the katta at me, threatened me and then talked to somebody saying that 'Sanjiv I am coming'. That after driving for about 800-900 meters we met 2 men on the road near the forest and he asked me to stop the car. That one of the two men who had come later and was about 35-40 years in age sat on the rear seat and they made sit in the middle. That the other boy started to drive the car and they kept inquiring from me about my belongings. That they took my watch

and wallet and removed the jewellery i.e. mangalsutra and ring of my wife. That they had also taken out Rs.10,000/- lying in the desk of the car and kept the same in a polythene. That they once said that a bullet has fallen in the car. That they asked me to cover my face with a handkerchief and kept driving the car for about quarter of an hour. That they shot a bullet at my leg due to which I became unconscious. That thereafter a PCR car took me to hospital where I learnt that my wife has died due to the gun shot. That I can identify the said persons if they are brought in front of me. That they had also taken my phone. I have read my statement and the same is correct.”

16. On 17.08.2001, PW-29 recorded the statement Ex.PW-2/DA of Nepal Singh PW-2, the father of the deceased, wherein he stated that the marriage of the deceased and accused No.1 was solemnized on 20.02.2001 as per Hindu rites and ceremonies. That the deceased used to mostly reside at her parental home even after the marriage because of her illness and that accused No.1 used to frequently meet the deceased. That on one occasion, accused No.1 had taken the deceased for an outing in an old car and that the deceased had told him on return that accused No.1 had taken her towards Palam and that the car had broken down on the way and that after getting the car repaired from a mechanic, they had returned home. That he had gifted an Accent car to the deceased at the time of her marriage but accused No.1 used to mostly bring an old worn out car to their house. That on 01.04.2001 accused No.1 again took the deceased in the same old car for an outing and did not tell her about his plans for outing despite her repeated inquiries about the same. That on said day, late night they were telephonically informed that the deceased and her husband i.e. accused No.1 had met with an accident and had been admitted in Kalyani Hospital. That on reaching the hospital they

learnt that the deceased had suffered grievous injuries while the accused No.1 had suffered minor injuries. That the deceased had told him that accused No.1 drove towards Manesar and that he was driving the car in a strange manner; she had a feeling that he wanted to kill her. He i.e. accused No.1 deliberately drove the car on the wrong side and collided with a truck. His family did not pay heed to the suspicion of the deceased, thinking that it was a case of an accident. That the deceased remained in her parental home because of the injuries sustained by her in the said accident and that accused No.1 used to dilly dally in taking the deceased back to her matrimonial house. That finally, on 13.08.2001, the accused No.1 came in a Honda City car to their house to take the deceased to her matrimonial home. That they had asked him to come during the daytime, but he came around 8.20 P.M. That during the time accused No.1 was present in their house number of calls were received by him on his mobile phone and he had brief conversations in a hushed tone with the caller. That whenever a call was received on the mobile phone, accused No.1 used to quickly go outside the house to speak with the caller. That they could hear only the words 'Pauna Pauna' (three-quarter, three-quarter). That around 10.30 P.M., accompanied by the deceased, accused No.1 left their house in the Honda City car. That he told accused No.1 to keep calling on the way and also on reaching his house; but he did not call even once. That when accused No.1 had come late he got angry and told accused No.1 that it was not safe to travel late in the night since incidents of loot are rampant; to which accused No.1 replied that robbers kill only those people who do not part with their belongings. That the deceased had told him

several times that accused No.1 used to taunt her because of her illnesses. That he is fully convinced that accused No.1 had a role to play in the murder of the deceased.

17. On the same day i.e. 17.08.2001, PW-29 recorded another statement Ex.PW-4/DB of Rahul Khari, wherein he stated that on 13.08.2001 at around 8.30 P.M. a number of calls were received on the mobile phone of accused No.1. That during the same period, accused No.1 also made calls from his mobile phone. That between the time 10-10.30 P.M., when repeated calls were coming on the phone of accused No.1, he went outside to receive the said calls. That during the said time he once heard accused No.1 saying: *'Vinod I am coming in 45 minutes.....are things ready?....today the job is to be completed'*. That the deceased was wearing a gold chain, mangalsutra, 4 gold bangles and 2 rings at that time. That they could not understand the implications of the conversation of the accused No.1 but now understand the purport thereof and he is fully convinced that accused No.1 has a role in the murder of the deceased.

18. Thereafter PW-29 took Nepal Singh PW-2 and Kamlesh PW-28, the mother of the deceased, to the office of the Sub-Divisional Magistrate where Mr.Peter Bara PW-8, the Sub-Divisional Magistrate, recorded their statements Ex.PW-2/A and Ex.PW-8/A respectively. In their respective statements before the SDM, the parents of the deceased disclosed the facts as recorded in the statement Ex.PW-2/A.

19. Since the parents and the brother of the deceased had accused the husband of the deceased of having murdered her, the needle of suspicion pointed towards the accused No.1 and thus he was called to the police station for interrogation on 18.08.2001. He was interrogated by Inspector Inder Singh PW-29 in the presence of SI J.K. Bhardwaj PW-18, SI Dalip Kumar PW-20 and Mahi Pal Singh PW-10, the brother of the father of the deceased. Accused No.1 made a disclosure statement Ex.PW-10/A confessing his guilt and disclosed that Vinod S/o Raghubir (co-accused who has been acquitted) and Vinod S/o Babulal (accused No.2) had assisted him in the crime of murdering his wife. He disclosed that he knew where the key of the Honda City car was thrown and that he can get recovered the key of the Honda City car. He also disclosed that he can help in getting apprehended accused No.2. Accused No.1 was arrested at 3 P.M. on 18.08.2001 as per arrest memo Ex.PW-18/D.

20. Thereafter accused No.1 led the police party consisting of amongst others, SI J.K.Bhardwaj PW-18, Inspector Inder Singh PW-29 and SI Dalip Kumar PW-20. They were accompanied by Mahi Pal Singh PW-10, to the place where the Honda City car was seized by the police in the night of 13.8.2001. Accused No.1 pointed to a place and got recovered the key Ex.PW-18/7 of the Honda City car from near a wall in the park adjoining Hill View Apartments, Vasant Vihar. The same was seized vide seizure memo Ex.PW-18/F.

21. Thereafter accused No.1 led the police team, which inter alia consisted of Inspector Inder Singh, SI J.K.Bhardwaj and SI Dalip Kumar to village Maidan Garhi and pointed out a house, informing them, that

it was the residence of accused No.2; who was found in his house and was arrested at 5.30 PM as per arrest memo Ex.PW-18/H. Accused No.2 was interrogated in his house by Inspector Inder Singh PW-29 who recorded his statement Ex.PW-18/G as per which he confessed to his guilt. He stated that the wrist watch which he was wearing belongs to accused No.1 and was given to him by accused no.1 at the time of the incident; that the gold chain which he is wearing was pledged by him and that he had redeemed the same by making necessary payment from the sum given to him by accused No.1 for assisting him in the murder of the deceased; that he can get recovered the mobile phone of accused no.1 which was given to him by accused no.1 at the time of the offence; that a part of jewellery which the deceased was wearing at the time of the incident is with him and that he can get recovered the same; that he can get recovered the desi katta with which he had fired a shot at the head of the deceased; that he can help in getting apprehended accused Vinod s/o Raghubir.

22. Pursuant thereto, the wrist watch, Ex.PW-18/8, and the gold chain Ex.PW-18/9 worn by accused No.2 at the time of his arrest were seized by the police vide memo Ex.PW-18/K. Accused No.2 got recovered two gold bangles Ex.P-1 and a ring Ex.P-2 from a cupboard in a room on the first floor of his house. The same were seized vide memo Ex.PW-18/L. Thereafter accused No.2 led the police team to the hills near Maidan Garhi village and got recovered a desi katta Ex.PW-18/11 and a live cartridge Ex.PW-18/13 from the bushes. The desi katta was having a spent cartridge Ex.PW-18/12 in its chamber.

The desi katta, live cartridges and spent cartridge were seized vide memo Ex.PW-18/P. PW-18 prepared the sketch Ex.PW-18/N of the said katta and cartridges. Thereafter accused No.2 led the police team to a temple opposite Freedom Fighters Colony, Neb Sarai and got recovered a broken mobile phone, Ex.PW-18/10, having IEMI No.449127881838411 from the grass underneath a tree in the park. The same was seized vide memo PW-18/M.

23. Since both the appellants had indicted Vinod s/o Raghubir (herein after referred to as the "accused No.3") the police began a lookout for him but he could not be traced. The accused No.3 was finally arrested on 03.10.2002. He was interrogated by Inspector Rajender Sharma PW-31, in the presence of SI J.K. Bhardwaj PW-18. The third accused made two disclosure statements Ex.PW-18/W dated 03.10.2002 and Ex.PW-31/B and 07.10.2002 confessing to his guilt and stated that a part of jewellery which the deceased was wearing at the time of the incident is with him and that he can get recovered the same.

24. Thereafter accused No.3 led the police party, consisting of Insp. Rajender Sharma PW-31, SI J.K.Bhardwaj PW-18 and SI Dalip Kumar PW-20 to a room in his rented accommodation at Tukhlakabad Extension where he removed one loose brick from the wall of the room and got recovered one gold bangle Ex.P-3, two silver toe rings Ex.P-4 and one gold nose pin Ex.P-5 from behind the brick. The same were seized vide memo Ex.PW-18/X.

25. On 22.10.2001 test identification parade of the jewellery, namely 2 gold bangles and one ring recovered at the instance of the accused No.2 was conducted by Dr.Kamini Lau PW-24, who was posted as Metropolitan Magistrate at the relevant time. The order sheets relating to the said TIP proceedings are Ex.PW-24/A and the same records that Nepal Singh, the father of the deceased, PW-2, had correctly identified that the said articles belonged to the deceased. The applications filed by SI Inder Singh PW-29, for conducting the TIP proceedings and for the supply of the copy of the TIP proceedings before the Metropolitan Magistrate are Exhibits PW-24/C and PW-24/B respectively.

26. On 30.11.2002 test identification parade of the jewellery namely one gold bangle, two silver toe rings and one gold nose pin recovered at the instance of the third accused was conducted by Ms.Pinky PW-30, who was posted as Metropolitan Magistrate at the relevant time. The order sheets relating to the said TIP proceedings are Ex.PW-30/B and the same records that Nepal Singh, the father of the deceased, PW-2, had correctly identified that the said articles belonged to the deceased. The applications filed by Insp. Rajender Sharma PW-31, for conducting the TIP proceedings and for the supply of the copy of the TIP proceedings before the Metropolitan Magistrate are Exhibits PW-30/A and PW-30/C respectively.

27. The desi katta recovered, the live cartridge found in the Honda City car; the spent cartridge recovered at the instance of accused No.2 and the bullet recovered from the body of the deceased were sent for forensic examination. The blood stained clothes of the

deceased her blood sample and the pieces of the car seat covers stained with blood which were seized were sent to the serologist. Vide FSL report Ex.PW-29/X1 dated 09.08.2002 it was opined that the katta recovered at the instance of the accused No.2 is a .315" bore firearm designed to fire 8mm/.315 cartridge; that the live cartridge found in the Honda City car can be fired through .32" bore firearm; that the spent cartridge recovered at the instance of the accused No.2 can be fired through the katta recovered at the instance of the accused No.2; that the bullet recovered from the body of the deceased corresponds to the bullet of .32" cartridge. Vide FSL report Ex.PW-29/X2 dated 07.03.2002 it was opined that human blood of 'AB' group was detected on the portions of the seat covers of the Honda City car and pant of the accused No.1; that the blood group of the deceased was 'B' and that human blood of 'B' group was detected on her clothes; that human blood of 'B' group was detected on the bullet recovered from the body of the deceased.

28. Armed with the aforesaid material, a challan was filed accusing the accused persons of entering into a conspiracy to murder the deceased and in pursuance thereof having murdered the deceased. Charges were framed against them for having committed offences punishable under Sections 302/120B/201/34 IPC.

29. At the trial, the prosecution examined as many as 35 witnesses. Apart from examining the various police officers associated with the investigation and the ones posted at the malkhana, the Sub-Divisional Magistrate who recorded the statements of the parents of the deceased, the judicial officers who conducted the post-mortem of the

deceased, the officer from the cellular company pertaining to mobile phone having No.9810062488 were examined. We do not intend to note the testimony of all the witnesses for the reason some are only formal witnesses and no issues were raised in appeal pertaining to their evidence. We shall be noting the testimony of only such witnesses pertaining to whom arguments were urged in appeal.

30. Nepal Singh PW-2, the father of the deceased deposed in harmony with his earlier statements Ex.PW-2/DA and Ex.PW-2/A recorded at the time of the investigation. It is most relevant to note the following suggestions given to the said witness on behalf of the accused No.1 in the cross-examination:-

“..... It is wrong to suggest that having expressed already my anger that accused should not travel in late night hours we had asked Rajni to leave all her wearing jewellery as well as any valuable like cash at our house or that she did so before she departed from our house.....It is wrong to suggest that story of this last photograph taken by my son has been concocted by taking use of an old photograph. It is wrong to suggest that photograph mark A is the once created only to introduce a false evidence against the accused.....It is wrong that on 14.8.01 that I had given a list to accused Vijay Pal and his family containing details of value of dowry articles and other expenses which I had had met in connection with the marriage of Rajni or that total amount of that list was Rs.21,30,357/- or that I had asked them to pay this amount. In fact, this list was given after many days and amount was demanded from family of accused only after I had lodged complaint with the police. It is true family of accused paid me a total an amount 19.5 lacs but that was given in two or 3 installments. It is true initial installment was of Rs 10 lacs but details of remaining installments which were 3 or 4 in no. I do not recollect. It is wrong to suggest that Rs.10 lacs was received by me and paid by accused persons on 14.8.01. It is wrong that I demanded my balance amount asking accused family to pay it within 2 or 3 days otherwise I would be implicating them in false criminal case.....It is wrong that accused Vijay Pal was not holding any mobile telephone instrument on 13.8.01 while he was in our house or that he did not make any call from

the telephone or did not receive any call also.....It is wrong to suggest that two bangles a ring which my daughter had on her person on the night of incident were got taken off when she was leaving our house with the accused in the night or that I subsequently handed over these bangles and ring to the police. During investigation to fabricate a false incriminating evidence.....”

31. Rahul Khari PW-4, the brother of the deceased, deposed in harmony with his earlier statement Ex.PW-4/DB recorded at the time of the investigation. It is relevant to note the following suggestions given to the said witness on behalf of the accused No.1 in the cross-examination:-

“.....It is wrong that mobile telephone instrument bearing number 9810062488 had in fact been already taken by me from accused Vijay Pal and was in my own use prior to this incident or that its operating card (chip) had also been got installed by me....It is wrong that despite accused persons had paid a substantial amount or that we had been insisting for more amount from them that only on 17.8.01 that we made false allegations against accused and got him falsely implicated. It is wrong that my sister Rajni when leaving our house on the night of incident not taken gold jewelry items on her person and rather those articles like bangles, mangal sutra etc were got taken off by us as a caution as she was to travel in the night to a far of place....”

32. Bhupender Khari PW-7, the nephew of the father of the deceased, deposed that on 17.08.2001 he had gone to the house of accused No.1 to participate in the mourning ceremonies of the deceased. That when he was going towards the toilet he saw that accused No.1 and his cousin were lying on a bed with their back towards him and that the accused No.1 was saying that '*I have committed a big mistake, I have killed your sister-in-law acting in concert with my friend. You have to save me by doing something.*'

33. Mahi Pal Singh PW-10, the brother of the father of the deceased, had deposed that accused No.1 had made his disclosure statement Ex.PW-10/A and had got recovered the key of the Honda City car in his presence. It is relevant to note following suggestions given to the said witness on behalf of the accused No.1 in the cross-examination:-

“It is wrong to suggest that I had deposed falsely before the court that the accused Vijay Pal received 3-4 telephonic calls on his mobile No.9810062488. It is wrong to suggest that said telephone number instrument was not with accused Vijay but it was kept by brother of Rajni or that no telephone was received by the accused Vijay Pal.”

34. Kamlesh Singh PW-28, the mother of the deceased, deposed in harmony with her earlier statement Ex.PW-8/A recorded by the Sub-Divisional Magistrate. It is relevant to note following suggestions given to the said witness on behalf of the accused No.1 in the cross-examination:-

“....It is incorrect to suggest that on 13.8.2001, accused Vijaypal was not having any mobile phone. It is also incorrect to suggest that the mobile phone identified by me in the court was in the possession of my son Rahul. On 13.8.2001, my son Rahul had taken two photographs of Rajni and Vijaypal while they were leaving.....It is incorrect to suggest that Rahul did not take any photograph as mentioned above on 13.8.2001.....It is incorrect to suggest that I asked my daughter Rajni to leave her jewellery with us before going with Vijaypal as they were going in the late hours.....”

35. R.K. Singh PW-6, Nodal Officer, Bharti Cellular Limited, proved the call records, Ex.PW-6/B to Ex.PW-6/E, of mobile numbers 9810062488, 9810204654, 9810439006 and 9810520887, which

numbers had surfaced during investigation. He also deposed that the mobile number 9810062488 was registered in the name of the accused No.1 and that the mobile number 9810520887 was registered in the name of one Sh.Kul Bhushan Dua, B-19, Vardhman Complex, C Block, Sehkari Nagrik Bank, Yamuna Vihar, Delhi.

36. He proved Ex.PW-6/B being the call record of the mobile number 9810062488 for the period 01.07.2001 to 13.08.2001. The record shows that the said number was being used in a handset having IEMI No.449127881838410; that the said number was last used on 13.08.2001 at 18:23:56.

37. He proved Ex.PW-6/C being the call record of the mobile number 9810439006 for the period 01.07.2001 to 14.08.2001. The same shows that one incoming call was received from the mobile number 9810520887 on the said phone on 08.08.2001 and 11.08.2001 at 13:26:01 and 14:15:13 respectively (The number 9810520887 was allegedly being used by accused No.3); that 6 outgoing calls were made from the said phone to the mobile number 9810204654 on 13.08.2001 at 20:35:10, 22:02:41, 22:27:12, 22:57:41, 23:10:35 and 23:24:23 (mobile number 9810204654 was allegedly used by the accused No.1 on the date of the incident); that 1 incoming call was received from the mobile number 9810204654 on the said number on 13.08.2001 at 20:42:50; that 1 incoming call was received from the mobile number 9810520887 on the said number on 13.08.2001 at 23:32:06; that 2 outgoing calls were made from the said number to the mobile number 9810520887 on 14.08.2001 at 00:17:38 and 00:27:45; that 2 incoming calls were received from the

mobile number 9810520887 on the said number on 13.08.2001 at 00:21:56 and 00:32:54.

38. He proved Ex.PW-6/D being the call record of the mobile number 9810204654 for the period 01.07.2001 to 13.08.2001. The record shows that the said number was being used in a handset having IEMI No.449127881834810, meaning thereby, that the mobile numbers 9810204654 and 9810062488 were being used in the same handset on 13.08.2001. The said document also contains the corresponding entries recorded in the call record Ex.PW-6/C pertaining to exchange of calls between the mobile numbers 9810204654 and 9810439006.

39. He proved Ex.PW-6/E being the call record of the mobile number 9810062488 for the period 01.08.2001 to 13.08.2001. However, the data recorded in the said document need not be noted as the same is already included in the previous record Ex.PW-6/B of the said number which pertained to the period 01.07.2001 to 13.08.2001.

40. He proved Ex.PW-6/X being the call record of the mobile number 9810520887 for the period 01.08.2001 to 20.08.2001. The said document also contains the corresponding entries recorded in the call record Ex.PW-6/C pertaining to the exchange of calls between the mobile numbers 9810520887 and 9810439006.

41. Raj Kumar Gupta, owner of a shop in the PVR complex, Saket was examined as PW-11. He deposed that he could not affirm

whether accused No.1 had purchased the Airtel SIM card having number 9810204654 from him on 12.8.2001.

42. Dr.Subash Khanna PW-23, Senior Consultant, Kalyani Hospital, proved the medical records Ex.PW-23/A and Ex.PW-23/B of the deceased and the accused No.1 relating to the injuries suffered by them in the accident on 01.04.2001. The said medical records evidence that the deceased had sustained grievous injuries whereas accused No.1 had sustained minor injuries in the accident and that the family members of accused No.1 had stated that they do not want to initiate an inquiry into the happening of the said accident.

43. ASI Narender PW-25, deposed that he had recorded the DD No.15 Ex.PW-25/B on 02.04.2001. The said DD Entry contained a recording to the effect that the accident in question had occurred when accused No.1 was driving the car on the wrong side of the road.

44. Dr.Rekha Bharti PW-32, Senior Medical Officer, Safdarjung Hospital, proved the MLCs of the deceased and accused No.1 i.e. Ex.PW-32/A and PW-32/B respectively. She deposed that whenever any valuable article is recovered from a patient, an entry is made in the Register maintained by the Duty Constable in the Casualty and that the said entry is signed by the doctor attending the patient.

45. HC Laxmi Chand PW-9, deposed that he had removed the deceased from the spot to Safdarjung Hospital on the intervening night of 13/14.08.2001 and had made entries in the register Ex.PW-9/A. He deposed having made Entry 'Z1Z29' recorded in the call register Ex.PW-9/A to the following effect:-

“Doctor has declared brought dead. Name of the lady is Rajni. Duty Constable No.1766/SW/Duty Constable Casualty was handed over 3 gold bangles 1 gold ring 1 gold nose pin 2 silver toe rings.” (Translated Version)

46. In his cross-examination PW-9 stated that after declaring the deceased as brought dead the doctor had handed over three gold bangles, one gold ring, one gold nose pin and two silver toe rings of the deceased to the Duty Constable and that a memo in respect of seizure of the said jewellery articles was prepared at the hospital.

47. Since the testimony of PW-9 and the afore-noted entry made by him in the Call Register had damaged the case of the prosecution that the accused No.2 and accused No.3 had taken away the jewellery of the deceased after murdering her and that part of her jewellery were subsequently recovered at their instance, the prosecution re-examined him under Section 311 of the Cr.PC where the said witness discredit earlier depositions made by him by deposing as under:-

“My statement was not recorded by the IO. I had not seen any jewellery on the body of Rajni at the time when I had taken her to the hospital. The doctor had not handed over me the jewellery articles namely three gold bangles, one finger ring of gold, one nose pin, two chutki of silver from her feet. When I was present in the hospital, three persons were standing near accused Vijay Pal. Later on they came out and told me that these jewellery articles namely three gold bangles, one finger ring of gold, one nose pin, two chutki of silver from her feet of Rajni were on the dead body of Rajni and the same were doctor and duty constable. This fact was told to me by those persons on my asking as to whether anything was recovered from the dead body. I had not seen the jewellery on the dead body or in possession of doctor or duty constable with my own eyes. On being so informed by those persons, I made an entry in the Call Book in my own handwriting.

.....It is correct that it is a practice that in case any recovery effected from the body of the deceased or any injured, it should be entered in the said Admission Discharge register. It is our duty to sign the said register regarding the recovery. It is correct that when duty officer handed over such articles to the police, the police officials also sign the register to show that he had received the particular article which was recovered from injured or deceased.

At this stage photocopy of Admission and Discharge Register in connection with accused Vijay and deceased Rajni is shown to the witness. Witness admits that the photocopy does not bear his signature. The photocopy is mark A.

At this stage the attention of witness is drawn to his statement U/S 161 CrPC Ex.PW9/B. The witness has read the entire statement. It is correct that there is no description of recovery of jewellery from the body of the deceased Rajni.

.....Voluntarily (In fact no jewellery was recovered on the dead body of Rajni in my presence).

.....”

48. Const. Rajbir PW-34, proved the Admission and Discharge Register Ex.PW-34/A. He deposed that in case there is recovery of any valuable articles from a deceased or an injured person, the duty constable posted at the hospital is required to make entries to said effect in the entry register and obtain signatures of the doctor, the PCR official and the Investigating Officer on the said Register. The Register Ex.PW-34/A reveals that neither there is any mention of receipt of three gold bangles, one gold ring, one gold nose pin and two silver toe rings recovered from the body of the deceased nor are there any signatures of the doctor or any police officer in the entry in the Register made in relation to the deceased.

49. The various police officers proved the disclosure statements of the three accused and the recoveries made on the pointing out of the

accused after the police was led to the place wherefrom the recoveries were effected.

50. From the afore-noted epilogue of the case set up by the prosecution and the evidence brought on record, the case proved by the prosecution against the accused persons can be succinctly stated as under:-

I. Accused No.1 and the deceased were married to each other on 20.02.2001 which is an admitted fact.

II. The deceased was suffering from various ailments which is an admitted fact.

III. Accused No.1 was not happy with his marriage to the deceased as she was suffering from various ailments as proved from the testimonies of the parents of the deceased.

IV. On 01.04.2001 accused No.1 made an attempt to kill the deceased by staging a fake accident as proved from the testimonies of the parents of the deceased, DD Entry Ex.PW-25/B and the medical records Ex.PW-23/A and Ex.PW-23/B of the accused No.1 and the deceased pertaining to the said accident.

V. Having failed in his attempt to kill the deceased, accused No.1 hatched a conspiracy with the accused Nos.2 and 3 to murder the deceased.

VI. On 13.08.2001 the accused No.1 deliberately went late in the night to the parental house of the deceased to

pick up the deceased as established by the testimonies of the parents of the deceased.

VII. During the period of his stay in the parental house of the deceased mobile number 9810204654 was installed in the handset having IEMI No.449127881838411 and calls were exchanged with mobile number 9810439006 as evidenced from the call records Ex.PW-6/D and Ex.PW-6/C. During same period mobile No.9810062488 was used on the handset having IEMI No.449127881838411.

VIII. That accused No.1 was speaking in a hushed tone with a caller and was using the words 'pauna-pauna' i.e. three quarter, three quarter, suggestive of a time.

IX. That the deceased died due to two gunshot wounds evidenced from the post-mortem report Ex.PW-1/A.

X. A minor gunshot injury was also inflicted on the person of accused No.1 which is evidenced from the MLC Ex.PW-32/B of accused No.1.

XI. The jewellery of the deceased which she was wearing at the time of the offence were removed from her person and were recovered partly from accused No.2 and partly from accused No.3.

XII. There was exchange of calls between the mobile number 9810439006 and the mobile number 9810520887

on the date of the offence evidenced from the call records Ex.PW-6/C and Ex.PW-6/X.

XIII. That the broken down handset used by accused No.1 on the date of the offence having IEMI No. 449127881838411 was recovered at the instance of accused No.2.

XIV. That an attempt had been made to fabricate evidence to the testimony of PW-9 that the jewellery of the deceased was removed by the doctor on duty and handed over to the duty constable whereas the fact of the matter was that when the deceased was brought to the hospital her gold jewellery was missing.

XV. The fact that the glass bangles worn by the deceased were removed by the doctor who conducted the post-mortem evidenced that there was no struggle i.e. no bangle was broken and that the gold jewellery worn by the deceased and especially the gold bangles were removed with ease.

51. Accused No.1 in his examination under Section 313 of the CrPC denied everything. He stated that the family members of the deceased had connived with the police officers and had falsely implicated him as he had refused to pay the amount demanded by them. That the statement Ex.PW-29/G has been wrongly attributed to him by the police. That he had stated to the police that two persons had entered his car when it was stopped at the red light; that they

had put one revolver on his head as also on the head of the deceased; that they forced him to drive as per their directions and then fired a shot at the deceased; that when he had struggled with them to save the deceased they had also shot him; that he had become unconscious due to the bullet injury and had regained consciousness at the hospital; that he had no knowledge about the articles looted by them. That the said statement given by him was not recorded by the police. That the handset having IEMI No. 449127881838410 was in the possession of the brother of the deceased on the date of the incident. That the recovery of the key of the Honda City car attributed to him by the police is false inasmuch as said keys were available in the car itself and that the car was not towed by any crane to the police station on that date.

52. Accused No.2 in his examination under Section 313 of the CrPC denied everything. He stated that he does not know the accused No.1 or the deceased.

53. Accused No.3 in his examination under Section 313 of the CrPC denied everything.

54. On behalf of accused No.1, one Rishipal, cousin brother of the accused No.1 and Sheetal, wife of the cousin brother of accused No.1 and the cousin sister of deceased were examined as DW-2 and DW-3 respectively. DW-2 deposed that the family members of the deceased had demanded money from the family of accused No.1 and had threatened them that they would falsely implicate accused No.1 if they failed to make the payment of the amount demanded by them.

DW-3 had deposed that the relations between the deceased and accused No.1 were cordial and that the family members of the deceased had demanded money from the family of accused No.1.

55. On behalf of accused No.2, one Lalita, sister of accused No.2 was examined as DW-1. She deposed that on 18.08.2001 accused No.2 was present in his residence when at around 10-10.30 A.M. the police officers including an Inspector whose name was Bhardwaj came and forcibly arrested accused No.2.

56. Accused No.3 did not lead any evidence in his defence.

57. Holding that the circumstantial evidence led by the prosecution clinchingly established that accused Nos. 1 and 2 had entered into a conspiracy for murdering the deceased and had murdered her, vide judgment dated 03.06.2008 and order dated 04.06.2008, the learned Trial Judge had convicted them for committing the offences punishable under Section 302/120B IPC and had sentenced them to undergo life imprisonment. Further, holding that the only evidence which connects accused no.3 with the commission of the crime of the murder of the deceased is the recovery of the jewellery articles of the deceased pursuant to his disclosure statement which evidence is tainted by the evidence of Lakshmi Chand PW-9, the learned Trial Judge had acquitted him. The salient features of the discussion of the learned Trial Court are being enumerated herein under:-

I. Even though the evidence led by the prosecution establishes that Laxmi Chand PW-9, had given false evidence that the deceased was wearing jewellery at the

time of her admission in hospital, it is not safe to rely upon the evidence of recovery of part of the jewellery of the deceased at the instance of accused Nos.2 and 3 to base the conviction of the said accused persons.

II. The evidence of Bhupender Khari PW-7, the nephew of the father of the deceased that he had heard accused No.1 confessing to the crime of murdering the deceased is unbelievable.

III. The prosecution has not been able to establish that the wrist watch recovered at the instance of accused No.2 belonged to accused No.1.

IV. The testimonies of the parents of the deceased establish the motive of accused No.1 for causing the death of the deceased.

V. The prosecution has been able to establish that key of the Honda City car was not available in the car at the time of the arrival of the police at the spot and the same was recovered at the instance of accused No.1.

VI. The prosecution has been able to establish that the mobile phone of accused No.1 was recovered at the instance of accused No.2.

VII. The general observations recorded in the post-mortem report Ex.PW-1/A recording that the deceased was wearing pink colored clothes and pink glass bangles at the

time of her admission in the hospital and the fact that the deceased was wearing same colored clothes and bangles in the photograph Ex.PW-4/A establishes that the brother of the deceased had taken said photograph at the time of the departure of the deceased and accused No.1 from their house and thus the stand of accused No.1 that the deceased was not wearing any jewellery when she left her matrimonial house was false and suggestions given to her relatives to said effect were false.

VIII. The call records of the mobile numbers corroborate the testimonies of the family members of the deceased that accused No.1 was conversing with some persons giving them information of his movements.

IX. The evidence of the brother of the deceased that he had heard accused No.1 talking on phone to one Vinod on the date of the incident; the conduct of accused No.1 leading the police team to the house of accused No.2; the recovery of the mobile phone of accused No.1 at the instance of accused No. 2 established that the accused Nos.1 and 2 had conspired with each other to cause the death of the deceased.

X. The prosecution has been able to establish that accused No.1 had previously also attempted to cause the death of the deceased.

XI. Accused No.1 has not been able to give a satisfactory explanation of the injuries received by him at the time of the offence.

58. The finding returned by the learned trial judge is that qua accused No.3, ignoring the recovery of the jewellery items of the deceased pursuant to his disclosure statement, there is no evidence to link him with the crime. Pertaining to accused No.1 & 2 the finding of guilt has been returned on the ground that accused No.1 had a motive to kill his wife and that he failed to satisfactorily explain the injuries received by him and the manner in which he claimed his wife being shot was not possible; recovery of the mobile phone of accused No.1 pursuant to the disclosure statement of accused No.2 has been held to be another link in the chain of accused No.1 being in league with accused No.2. The evidence against accused No.2 is of the recovery of mobile phone of accused No.1 from him and the recovery of the jewellery of the deceased at his instance and pursuant to his disclosure statement.

59. We intend to discuss the evidence against accused No.1 and accused No.2 separately and while so doing would be noting the contentions urged on their behalf.

Discussion Pertaining to the accused No.1

60. A mind which has strategized and on the stratagem of contrivance being established gives clue to a motive and hence the involvement in an offence. It is interesting to note that at the first instance, accused No.1 manipulated PW-9 and made him speak that

the jewellery of the deceased which she was wearing when she was brought to the hospital was removed by the doctor and handed over to the duty constable. It is obvious that this was done to lay a ground that since the police did not record the seizure of said jewellery at the hospital, the jewellery of the deceased recovered from the co-accused was planted. When further evidence was recorded and it became apparent that PW-9 would be thoroughly discredited, another strategy was adopted evidenced by the suggestions given to the brother and the father of the deceased that the deceased was not wearing any jewelry at all. The photograph Ex.PW-4/A taken by the brother of the deceased soon before the deceased left her parental house on the date of the offence, was sought to be discredited by questioning the brother of the time and the date when the photograph was taken. A suggestion was given to him that the photograph was taken much earlier. Needless to note that the photograph shows that the deceased was wearing jewelry. The pink glass bangles which were removed by the doctor who conducted the post-mortem are clearly visible in the forearm of the deceased.

61. Accused No.1 forgot that the afore-noted defence taken by him raises a serious problem for him. If the defence of the accused No.1 is that the deceased was not wearing any jewelry at the time of the offence is to be accepted, the question then would arise as to what was the motive for the crime which led to the criminals shooting twice at his wife.

62. Motive is something which moves or induces a person to act in a particular way; it is something which influences a person's volition.

As observed by the Hon'ble Supreme Court in the decision reported as Basudev v State of Pepsu AIR 1956 SC 488 that motive is something which prompts a person to form an intention. There can be no action without a motive, which must exist for every voluntary act. The motive is in reality to the act, as cause is to the effect and an act without a motive would be an effect without a cause. A man is not supposed to take the life of another human being just for the fun of it. There must be reasons which provoke or motivate a man to commit the serious crime of murder. To bag human body as a game is unnatural.

63. The version of the accused No.1 that two persons had entered his car and murdered his wife if viewed with reference to the wife of accused No.1 wearing no jewelry makes no sense.

64. Having realized that some motive has to be attributed to the persons who fired at his wife accused No.1 sought to feign ignorance of what actually happened when his wife was shot. He stated when examined under Section 313 Cr.P.C.:-

“However, I had told the police that two persons had entered my car when it was stopped at red light and put revolver on my head and also on the head of my wife. They forced me to drive as per their direction and thereafter, they fired at my wife and when I tried to save my wife and I struggled with them, they fired on me also. I became unconscious and regained consciousness in the hospital. I do not know what they had removed/looted.

.....however my father in law and mother in law had told me that it was late in the night therefore my wife should not put heavy jewellery on her person and some of the jewellery was taken by them for safe custody. Some jewellery remained on the person of my wife.” (Emphasis supplied)

65. By raising the afore-noted defence, the accused No.1 had sought to serve a two-fold purpose. Firstly, he has sought to attribute motive to the said two persons who shot at his wife by stating that the deceased was wearing some jewelry on her person at the time of the incident. But, at the same time, he has sought to discredit the recoveries effected by the police from the accused persons by pleading ignorance about the description of the jewelry articles looted by the said two persons on account of his being unconscious on receiving a bullet injury.

66. However, the afore-noted improved defence of the accused No.1 is flawed because of two reasons.

67. The first reason is that the version of the accused No.1 that he became unconscious because of a bullet injury and had regained consciousness only at the hospital is falsified by the evidence led by the prosecution. Const.Bhagwan Das PW-16, who was the first person to see the deceased and the accused No.1 had categorically deposed that he had seen the accused No.1 crying in pain on the rear seat of the Honda City car with his face covered with a handkerchief. Now, if accused No.1 became unconscious when he received the bullet injury and regained consciousness at the hospital, then how did he reach the rear seat of the car, because as per him he was shot when he was driving the car and had become unconscious due to said shot. Further, no suggestion was given to the said witness i.e. PW-16 to the effect that accused No.1 was unconscious or was lying on the driver seat of the car when he had seen him. Further, the MLC Ex.PW-32/B

of accused No.1 which was recorded at the time of his arrival in the hospital clearly records that the '*patient is conscious and oriented*'.

68. The second reason being that the version of the accused No.1 that heavy jewelry was removed by the deceased at her parental house and that some jewelry remained on her person is an afterthought inasmuch as a specific suggestion was given to Nepal Singh, the father of the deceased, PW-2, in cross-examination that the deceased had removed "all" her jewelry at the time of leaving her parental house. Likewise, a suggestion was given to Kamlesh, the mother of the deceased, that she had asked the deceased to leave her jewelry with them.

69. It is apparent that accused No.1 has gone about taking shots in the dark and in the process has totally discredited his explanation as per his statements made when examined under Section 313 Cr.P.C.

70. As already noted herein above, the accused No.1 stated in his examination under Section 313 Cr.P.C. that two persons had entered his car when it halted at the red light; they put revolver on his head as also on the head of the deceased; they forced him to drive as per their direction and then fired at the deceased; that when he struggled with them to save the deceased they also shot him.

71. The post-mortem report Ex.PW-1/A of the deceased records that a gun shot wound was found on the center of the chest of the deceased. The said two persons, who according to accused No.1 were sitting on the rear seat of the car, could not have shot the deceased who was sitting on the front seat on the center of the chest. It is

apparent that the shot had to be fired from the front. It is apparent that accused No.1 had spoken a lie and has failed to explain how his wife was shot in the chest.

72. Likewise, the accused No.1 has failed to explain the gun shot injury on the anterior wall of his left thigh. MLC Ex.PW-32/B of accused No.1 records the gun shot injury on the anterior wall of his left thigh. Accused No.1 had stated that the said two persons had shot him when he was struggling with them. It is not possible for the said two persons who were sitting on the rear portion of the car to shoot at the anterior wall of the left thigh of accused No.1.

73. With respect to evidence relating to handset having IMEI No. 449127881838410 the defence taken by the accused No.1 was that the said handset was in the possession of the brother of the deceased on the day of the incident; that the new SIM Card having number 9810204654 was also got installed by the brother of the deceased in the said handset; that he had no connection with the outgoing/incoming call(s) made/received to/from the mobile number 9810439006.

74. In this regard, it is most relevant to note the deposition of the brother of the deceased wherein he has deposed that the accused No.1 was having mobile phone (Number: 9810062488) with him on the date of the incident and that he was speaking on the said number; not only was he ringing up but was even receiving calls on the said number.

75. It has come on the evidence on record that two mobile numbers namely 9810062488 and 9810204654 were being used on the handset having IMEI No. 449127881838410 on 13.08.2001.

76. The call records of the two afore-noted numbers throw some interesting light on what happened on the day of the incident. The number 9810062488 was used on 13.8.2001 till 18:23:56 hours on the handset having IMEI No. 449127881838410. Thereafter on the same handset the SIM card of Mobile No.9810204654 was used and the last call was made on 23:24:23 hours. That mobile No.9810062488 is that of the accused No.1 is not in dispute. Why did accused No.1 change the SIM card? It is apparent that accused No.1 took a defensive action. He was aware that if for some reasons he became a suspect, his in-laws would depose of him having made and received calls on his mobile number 9810062488 and to discredit them it became a good strategy to change the SIM card. But, accused No.1 appears not to be well versed with the working of mobile phones and the data generated by the service provider. The IMEI number of the handset, as in the instant case, lets the cat out on unwanted occasions. Accused No.1 who was scheming the murder of the deceased had every reason to install a new SIM Card in order to ensure that no suspicion falls upon him in case everything does not work according to his plan. Accused No.1 was duly conscious of the fact that in case suspicion of the murder of the deceased would fall upon him, the evidence which could connect him with the said crime would be his phone, inasmuch as his in-laws would give evidence to the effect that he was conversing with someone few hours before the

incident, therefore, he installed a new number to discredit the evidence of his in-laws. Little did he know that despite taking all the precautions his mobile phone would still connect him with the crime of the murder of the deceased.

77. The call records Ex.PW-6/C and Ex.PW-6/D have corroborated the testimonies of the parents of the deceased inasmuch as there has been exchange of calls between the mobile numbers 9810204654 (which SIM number was installed in the handset having IMEI No. 449127881838410) and 9810439006 (which number allegedly was in the possession of the accused No.2) about the same timings as stated by the parents of the deceased which in turn establishes that the handset having IMEI No. 449127881838410 was in the possession of the accused No.1 at the time of the incident. The defence of the accused No.1 is not that the call records Ex.PW-6/C and Ex.PW-6/D are false or manipulated records but that the handset was in the possession of the brother of the deceased at the relevant time; a defence which is patently false.

78. The conduct of an accused is particularly important in the law relating to evidence; for guilt or the state of mind is often reflected by the conduct. A guilty mind results in a guilty conduct. Under Section 8 of the Indian Evidence Act, 1872 the evidence of the conduct of the person accused of an offence is admissible if two conditions are fulfilled, namely, the conduct must be in reference to the facts in issue or the facts relevant to them and, secondly, the conduct is such as influences or is influenced by the facts in issue or relevant facts. Subject to the fulfillment of these conditions, the evidence of conduct

is relevant whether it is previous to the happening of the facts or subsequent to them.

79. The prosecution had sought to establish that the accused No.1 had earlier also attempted to kill the deceased on 01.04.2001.

80. The evidence relating to previous attempts made by an accused to commit the crime is admissible under Section 8 of the Indian Evidence Act.

81. The parents of the deceased in their respective testimonies had deposed that the deceased had told them the day after the happening of the accident dated 01.04.2001 that the accused No.1 was driving the car in a strange manner on that day; that he was driving the car on the wrong side of the road at the time of the accident; that she had a feeling that the accused No.1 had wanted to kill her.

82. DD No.15 Ex.PW-25/B records that the accident in question had taken place when he was driving the car on the wrong side of the road and that accused no.1 does not want to initiate any police action in the said matter.

83. The medical records of the accused No.1 and the deceased Ex.PW-23/A and Ex.PW-23/B shows that the deceased had sustained grievous injuries whereas the accused No.1 had sustained minor injuries in the said accident.

84. The afore-noted facts namely the testimonies of the parents of the deceased that the deceased had a feeling that the accused No.1

wanted to kill her, the recording contained in the DD Entry Ex.PW-25/B to the effect that the accused No.1 was driving the car on the wrong side of the road, the nature of injuries received by them in the said accident and the conduct of the accused No.1 of not initiating a police action in the said matter establishes that the accused No.1 had previously also attempted to kill the deceased.

85. The evidence of Laxmi Chand PW-9, which has been noted in detail in the foregoing paragraphs needs to be scrutinized.

86. The facts that there is no mention of presence of any jewellery in the 'general observations' in the post-mortem report of the deceased Ex.PW-1/A; there is no entry regarding the jewellery of the deceased in the Admission Discharge Register; non-mentioning about the jewellery of the deceased in his earlier statement Ex.PW-9/B; the admissions of PW-9 in his cross-examination that he had not seen the jewellery on the body of the deceased and that the doctor had not handed over the jewellery of the deceased to the duty constable in his presence and that he had made entries in the Call Register Ex.PW-9/A on the basis of the mere sayings of the relatives of the accused No.1 conclusively establishes that PW-9 had falsely deposed that the doctor had handed over the jewellery articles of the deceased to the duty constable and had made a false entry in the call register Ex.PW-9/A. The false evidence of PW-9 was to the benefit of the accused persons and the accused No.1 is a man of means. It is thus apparent that accused No.1 has even attempted to purchase police officers and has attempted to bring on record false evidence through the testimony of PW-9.

87. The recovery of the key of the car at the instance of the accused No.1 is another circumstance wherefrom his guilt can be inferred. The witnesses to the recovery of the key of the Honda City car namely Mahipal Singh PW-10, SI J.K. Bhardwaj PW-18, SI Dalip Kumar PW-20 and Inspector Inder Singh PW-29 were cross-examined at length but nothing tangible could be extracted there from which could discredit their testimonies. The evidence relating to the recovery of the said key has duly been appreciated by the learned Trial Judge and after due appreciation it has been held that the defence of the accused No.1 that the said key was available in the car is not proved.

88. Pertaining to the evidence relating to the recovery of the key, a submission was advanced by the learned counsel for the accused No.1 that the fact of the recovery of the key of the car is vitiated for the reason the key was recovered from a place which was open and accessible to all.

89. In this regards, it would be apposite to quote the following observations of the Supreme Court in the decision reported as State of H.P. V Inder Singh AIR 1999 SC 1293:-

“There is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is “open or accessible to others”. It is fallacious notion that when recovery of any incriminating article was made from a place which is open and accessible to others, it would vitiate the evidence under Section 27 of the Evidence Act. Any object can be concealed in places which are open and accessible to others. For example, if the article is buried on the main roadside or if it is concealed beneath dry leaves lying on public places or kept hidden in a public office, the article would remain out of the visibility of others in normal

circumstances. Until such article is disinterred its hidden state would remain unhampered. The person who hid it alone knows where it is until he discloses that fact to any other person. Hence the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible to others. If it is not, then it is immaterial that the concealed place is accessible to others.” (Emphasis supplied)

90. In the instant case, the key was found concealed in the park. Therefore, the fact that the key was recovered from a place was accessible to others is no of relevance when it was not ordinarily visible to others.

91. Another argument advanced by the learned counsel for the accused No.1 was that the prosecution has not been able to conclusively establish the motive of the accused No.1 to murder the deceased; that the only evidence led by the prosecution to establish the motive of the accused No.1 is evidence of the parents of the deceased which does not inspire confidence particularly in the light of the defence of the accused No.1 that his in-laws had falsely implicated him in the present case.

92. The failure to prove motive is not fatal as a matter of law. Though it is a sound proposition that every criminal act is done with a motive, it is unsound to suggest that no such criminal act can be presumed unless the motive is proved. After all, motive is a psychological phenomenon. Mere fact that prosecution failed to translate the mental disposition of the accused into evidence does not mean that no such mental condition existed in the mind of the accused. Proof of motive is not indispensable for conviction. Therefore, absence of proof of motive does not break the link in the

chain of circumstances connecting the accused with the crime, nor militates against the prosecution case. (See the decision reported as Mulakh Raj v Satish Kumar 1992 CriLJ 1529 (SC). Be that as it may, in the instant case even motive has been established i.e. that the wife of the accused No.1 used to remain sick and that accused No.1 had wanted to get rid of her.

93. To sum up against accused No.1 it stands established that when he was in the house of his in-laws he was speaking suspiciously with one Vinod and was instructing him that today the work has to be done. He was guiding said Vinod the time when he would be leaving the house of his in-laws. The explanation given by accused No.1 of the circumstance under which his wife received the gun-shot wounds is not acceptable because according to him his wife was shot at from the back but the fact of the matter remains that one shot was fired from the front. The gun-shot injury suffered by accused No.1 cannot be in the manner as explained by him. The injury appears to be voluntarily suffered. The mobile phone of accused No.1 having IMEI No. 449127881838410 was parted company with by him soon after his wife was shot and the same was recovered pursuant to the disclosure statement of accused No.2, evidencing that not only did accused No.1 try to do away with incriminating evidence, but even being in the company of accused No.2 to whom the mobile phone was voluntarily handed over. We repeat, it is not the defence of accused No.1 that the assailants robbed him of the mobile phone. As noted above, suggestions were given to the brother of the deceased that when he left their house along with his wife, accused No.1 had

handed over the phone to the brother of the deceased. We are satisfied that the evidence on record against accused No.1 is sufficient where from an inference of guilt can be inferred against him.

Discussion pertaining to the accused No.2

94. The evidence against accused No.2 is the testimony of the in-laws of accused No.1 who heard accused No.1 speaking with one Vinod on the day of the incident. Recovery of the jewelry of the deceased from the house of the accused No.2 and the recovery of the broken down mobile handset of accused No.1 at the instance of accused No.2.

95. Learned counsel for the accused No.2 urged that the handset could be planted as it was recovered from an open field. The question arises, could it be so.

96. The handset in question was not a thing which could not have been planted unless its possession was with the police. It was an instrument which had an identification code (IMEI Code) which was unique to it. It was not possible for the police to procure a handset and attribute the same to the accused No.2 for no handset in the world could have the same IMEI number as that of the handset in question. The learned Trial Judge, in paragraphs 56 to 66 of the judgment, has explicitly discussed that the handset recovered at the

instance of the accused No.2 is the handset belonging to the accused No.1 as the IMEI number of the said handset tallies with the IEMI number of the handset of the accused No.1. We need not reiterate the said discussion for the reason we are in complete agreement with the reasoning of the learned Trial Judge and affirm the same with a little addition. It has to be noted that it stands established that the handset in question was with accused No.1 till 23:24:23 hours on 13.8.2001 and it was not with accused No.1 when he was brought to the hospital. Obviously, he parted company with the mobile phone between said time. It obviously reached accused No.2 at whose instance it was recovered. Accused No.2 has not stated that accused No.1 gave the phone to him, much less the date. The only inference which can be drawn is that accused No.2 came into possession of the mobile phone after 23:24:23 hours and before accused No.1 was seen by Const.Bhagwan Das PW-16, meaning thereby that accused No.2 was also present at the place where the deceased was murdered.

97. Another circumstance which connects the accused No.2 with the crime of murdering the deceased is the statement of the brother of the deceased wherein he stated that on 13.08.2001 he heard the accused No.1 saying on the phone that '*Vinod I am coming in 45 minutes.....are things ready?....today the job is to be completed*'. It shows that accused No.1 was telling Vinod that he i.e. accused No.1 would be coming in 45 minutes and that the job (murder) has to be completed today. The talk is highly suspicious and inculpatory of Vinod inasmuch as it shows that accused No.1 was letting know the time of his arrival to facilitate the commission of the crime.

98. A submission was advanced by the counsel for the accused No.2 that neither the bullet recovered from the body of the deceased nor the live cartridge found at the spot corresponds with the katta recovered at the instance of the accused No.2 which therefore establishes the defence of the accused No.2 that the police has falsely implicated him in the present case inasmuch it has attributed a fake recovery to him.

99. The case of the prosecution is that two gun shots were fired at the deceased. There is no evidence to show the number of the weapons involved in the offence for the reason one bullet i.e. the one directed towards the head came out on the other side and could not be recovered by the police. The second bullet could not be connected to the desi katta got recovered by accused No.2. But that does not lead us anywhere for the reason it is possible that the desi katta was used to fire the shot at the head.

100. Even otherwise, the fact that the weapon which was recovered at the instance of accused No.2 does not prove to be a weapon of offence is not fatal to the case of the prosecution if otherwise the case set up against him by the prosecution is convincing. In taking the said view, we are also supported by a decision reported as Ambika Prasad v State 1997 CriLJ 2853 wherein it has observed as under:-

“.....Next it was argued for accused Ram Chander that the gun allegedly recovered at his instance was not used as the weapon of offence as per the CFSL report, therefore, it cannot be said that he fired the shot which resulted in the death of Virender. We are not impressed by this argument. This could at best mean that the weapon of offence

remained untraced. There can be no dispute that Virender Singh died as a result of gun shot injury. This is established by the medical evidence on record to which we have already referred. By getting a different gun recovered, accused Ram Chander may be trying to mislead the prosecution. Failure to recover the weapon of offence need not necessarily result in acquittal of an accused when there is other overwhelming evidence on record establishing his guilt. The offence in this case was committed in broad day light, i.e., about 10.30 A.M. on 30th June, 1982 when summer is at its peak. It is committed in open fields. The question about identity of the accused and about his role in the incident does not admit of any doubts even if the gun which was recovered at the instance of the accused was not used in the crime. There is ample evidence on record to establish the guilt of accused Ram Chander.....”

101. In the decision reported as Jai Dev v State of Punjab AIR 1963 SC 612 the Supreme Court has observed that an accused may deliberately surrender a weapon in order to introduce complications in the case and therefore nothing turns if the alleged weapon of offence is not proved to be the actual weapon used for the commission of crime.

102. To sum up against accused No.2 the evidence of accused No.2 coming into possession of the mobile handset of accused No.1 soon after the offence was committed, in our opinion is sufficient to connect accused No.2 with the commission of the offence coupled with the testimony of the brother of the deceased that accused No.2 was heard speaking by him with one Vinod and that the said conversation shows that accused No.1 was letting know Vinod the likely time of his arrival at a pre-designated spot and that accused No.1 was seeking re-assurance from said Vinod that work has to be completed today. The work was none else other than to murder the

deceased. Lastly, the recovery of the jewelry of the deceased at the instance of Vinod, accused No.2 also connects him with the crime.

103. We find no merit in the appeals. The same are dismissed.

104. Trial Court Record be sent back with a copy of the order.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

March 16, 2009

MM