

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on : November 05, 2009*
Judgment Delivered on: February 26, 2010

+ **CRL.APPEAL NO.515/2001**

KIRAN MEHLAWAT Appellant
Through: Mr.R.M.Tufail, Advocate and
Mr.Vishal Sehijpal, Advocate.

versus

STATE Respondent
Through: Ms.Richa Kapoor, A.P.P.

+ **CRL.APPEAL NO.533/2001**

SURINDER SINGH Appellant
Through: Mr.K.B.Andley, Senior Advocate
with Mr.Sanjay Suri, Advocate and
Mr.M.L.Yadav, Advocate.

versus

STATE Respondent
Through: Ms.Richa Kapoor, A.P.P.

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. Appellants Kiran Mehlawat and Surinder Singh and co-accused Jasvinder Singh faced trial for the charge of having murdered Pratap Singh (herein after referred to as the

“Deceased”). Additionally, appellant Kiran faced trial for the charge of having given false information to the police.

2. Vide impugned judgment and order dated 18.05.2001, appellants have been held guilty of committing the offence punishable under Section 302/34 IPC, for which offence they have been sentenced to undergo imprisonment for life and pay fine in sum of Rs.10,000/-; in default to undergo rigorous imprisonment for a period of two months. Additionally, appellant Kiran has also been held guilty of committing the offence punishable under Section 203 IPC, for which offence she has been sentenced to undergo rigorous imprisonment for a period of one year and pay fine in sum of Rs.500/-; in default to undergo rigorous imprisonment for a period of ten days. Co-accused Jasvinder has been acquitted by the learned Trial Judge.

3. Case of the prosecution was that in the intervening night of 28/29.07.1996 Const.Varinder PW-16 and Const.Babu Singh PW-18, were patrolling in the area around Deepali Chowk, Rohini when they saw a motorcycle bearing registration No.DBX-4874 (of Yamaha make) lying abandoned on a service lane near Deepali Chowk. They opened the dicky of the motorcycle where they found the registration certificate of the motorcycle from which they gathered knowledge of the

address of house bearing Municipal No.134, Sainik Vihar, New Delhi. They went to the house in question where they met Kiran, who informed them that the motorcycle belonged to her husband and that the same has been stolen. The police officers told her to check whether anything else was stolen and followed her as she went up to the first floor and saw the dead body of a male having an electric cord around the neck. Kiran told them that the dead body was of her husband.

4. Const.Varinder PW-16, sent the aforesaid information through wireless to police post Shakti Vihar where DD No.23A Ex.PW-7/A was recorded; noting the aforesaid information.

5. On receipt of the aforesaid information, Inspector Naval Kishore PW-26, ASI Ram Swaroop PW-7 and HC Jagir Singh PW-14 proceeded to the house in question. Inspector Naval Kishore PW-26, recorded the statement Ex.PW-6/A of accused Kiran and made an endorsement Ex.PW-26/A thereon, and at around 01.00 AM handed over the same to HC Jagir Singh PW-14, for registration of an FIR. HC Jagir Singh took the endorsement Ex.PW-26/A to the police station and handed over the same to ASI Dharampal PW-14, who recorded the FIR No.428/96 Ex.PW-6/A.

6. Relevant would it be to note that the statement Ex.PW-6/A of accused Kiran reads as under:-

"I reside at the aforesaid address with my husband, mother-in-law and children. My husband Shri Pratap Singh had retired as Major from the army. I am his second wife and that his first wife resides in England. My marriage was solemnized 10 years back. On 26.07.1996 at around 07.00 P.M. my husband who was carrying a sum of Rs.3,50,000/- with him had gone to village Mandora for the purposes of purchasing a piece of land. Yesterday at around 4.00 P.M. he came back to the house and after drinking a glass of water, he went to the first floor of the house. Some dirty clothes and cash was lying in the bag of my husband. I did not count the cash which was lying in the bag of my husband. After taking out the clothes from the bag and keeping them in a corner of the room I kept the bag containing cash on the bed in the same room. My husband went for taking a bath and I went to the other room. After taking bath, my husband switched on the air-conditioner, closed the room and started resting. I came downstairs and got busy in household work. At about 7.00 P.M. I closed the windows and doors of the house. At about 8.00-8.15 P.M. I took my children outside to buy them a cold drink and came back in the house after sometime. At about 9-9.15 P.M. I closed the main gate of my house as also other windows and doors of the house. Two gates which provide access to the first floor of the house were closed. At about 01.00 A.M. a police officer came to my house and informed me that our motorcycle has been found and that address of our house has been found in a motorcycle. The police officer further asked me to check if any other article has been stolen from the house upon which I went upstairs from the door on the front side because the inner gate was closed. I came upstairs and saw that there was dark inside the room. I switched on the light in the room and saw that my husband has been strangled with a wire tied around his neck and that blood was oozing out from his ears. When I tried to move my husband I saw that he was lifeless and that he had died. The bag containing cash and some other things were missing from the room. Someone had committed robbery and killed my husband. An action be taken against him. Statement heard and admitted as correct." (Emphasis Supplied)

7. Thereafter Inspector Naval Kishore PW-26, proceeded to inspect the house. He found a gold chain on the person of the deceased and some foreign currency notes and a gold bangle in an almirah in the room where the deceased was found dead and a torn slip of paper Ex.PW-7/D bearing the stamp of UCO Bank, Rohtak on the floor of the said room. Inspector Naval Kishore PW-26, seized the aforesaid gold chain and torn slip of paper Ex.PW-7/D vide memos Ex.PW-26/H and Ex.PW-7/C respectively and handed over the foreign currency notes and gold bangle found in the almirah to accused Kiran in the presence of Rajinder Sehrawat PW-1, the husband of the sister of the deceased.

8. On 29.07.1996 at about 01.15 P.M. the body of the deceased was sent to Lok Nayak Jai Prakash Hospital where Dr.L.T.Ramani PW-2, conducted the post-mortem of the deceased and prepared the report Ex.PW-2/A which records that an electric cord was found tied around the neck of the deceased; that one lacerated wound and some other injuries were found on the person of the deceased; that ligature marks were found on the neck of the deceased which were caused with the cord found tied around his neck and that the same were sufficient to cause death of the deceased in ordinary course of nature; that the cause of death of the deceased was

asphyxia resulting from strangulation of neck; that other injuries found on the person of the deceased were caused by a blunt weapon and the death of the deceased was caused 15 hours prior to the conduct of post-mortem.

9. After the post-mortem, the doctor handed over the clothes and blood sample of the deceased on a gauze to Const.Joginder PW-19, who handed over the same to Inspector Naval Kishore, who seized the same vide memo Ex.PW-19/A.

10. On 29.07.1996 SI Shanker Banerjee PW-5, recorded the statement Ex.PW-5/A of Dropadi, a maid servant employed at the house of the deceased, under Section 161 Cr.P.C. wherein she stated that accused Kiran was having illicit relations with accused Jasvinder; that accused Kiran frequently used to meet accused Surinder and Jasvinder at her residence and that accused Kiran met accused Surinder at her residence on the day of the murder of the deceased.

11. Thereafter the police recorded the statement Ex.PW-25/X of Vijay Pal, the brother of accused Kiran, under Section 161 Cr.P.C. wherein he stated that accused Kiran was having illicit relations with accused Jasvinder and that accused Jasvinder had told him that accused Surinder had murdered the deceased at the instance of accused Kiran.

12. Since the statements Ex.PW-5/A and Ex.PW-25/X of Dropadi and Vijay Pal respectively were suggestive of the involvement of accused Surinder and Jasvinder in the murder of the deceased, the police set out to apprehend them.

13. On 30.07.1996 a police team consisting of SI Shanker Banerjee PW-5, SI Rajbala PW-11 and SI Yashpal PW-24, arrested accused Surinder from village Thuru. On being interrogated by SI Shanker Banerjee PW-5, in the presence of SI Rajbala PW-11 and SI Yashpal PW-24, accused Surinder made a disclosure statement Ex.PW-5/A wherein he stated that he had murdered the deceased at the instance of accused Kiran and that he can get recovered the sum of Rs.70,000/- given to him by accused Kiran for murdering the deceased. Pursuant thereto, accused Surinder led the aforesaid police officers to his residence and got recovered seven packets containing hundred notes of Rs.100/- each i.e. a sum of Rs.70,000/- lying hidden under heap of cattle feed. It may be noted here that a slip issued by UCO Bank Rohtak was found affixed on one of the packets. SI Shanker Banerjee PW-5, seized the aforesaid seven packets recovered at the instance of accused Surinder vide memo Ex.PW-5/D.

14. Thereafter accused Surinder made another disclosure statement Ex.PW-5/F in the presence of Inspector Naval

Kishore PW-26 and SI Shanker Banerjee PW-5, wherein he stated that he can get recovered the shirt worn by him at the time of the murder of the deceased and the keys of the motorcycle of the deceased used by him for fleeing from the house of the deceased after committing his murder. Pursuant thereto, accused Surinder led the aforesaid police officers to a forest and got recovered a shirt and three keys lying hidden under bushes. Inspector Naval Kishore PW-26, seized the aforesaid shirt and keys recovered at the instance of accused Surinder vide memo Ex.PW-5/G.

15. On the same day i.e. 31.07.1996 a police team consisting of Inspector Naval Kishore PW-26 and ASI Veena PW-10, arrested accused Kiran. On being interrogated by Inspector Naval Kishore PW-26, in the presence of ASI Veena PW-10, accused Kiran made a disclosure statement Ex.PW-10/A wherein she stated that accused Surinder had murdered the deceased at her instance and that she can get recovered an iron rod used to murder the deceased. Pursuant thereto, accused Kiran led the aforesaid police officers to a room in her house and got recovered an iron rod lying hidden therein. Inspector Naval Kishore PW-26, seized the aforesaid iron rod recovered at the instance of accused Kiran vide memo Ex.PW-10/B.

16. On 01.08.1996 Inspector Hoshiar Singh PW-22, arrested accused Jasvinder from the residence of the deceased. Accused Jasvinder was interrogated and his confessional statement was recorded. We note that no recovery was effected nor was a fact discovered by the police pursuant to the said statement made by accused Jasvinder.

17. On 09.08.1996 the iron rod recovered at the instance of accused Kiran was sent to Dr.L.T.Ramani PW-2, for his opinion regarding weapon of offence. Vide his opinion Ex.PW-2/B, the doctor opined that the lacerated wound and other injuries found on the person of the deceased could have been caused by the said iron rod.

18. The seized materials; namely the clothes and blood sample of the deceased, the iron rod recovered at the instance of accused Kiran and the shirt recovered at the instance of accused Surinder were sent to Forensic Science Laboratory for a serological test. Vide FSL reports Ex.PW-20/A and Ex.PW-20/B it was opined that the blood group of the deceased was A and that human blood of group A was detected on the shirt recovered at the instance of accused Surinder.

19. Needless to state, accused Kiran, Surinder and Jasvinder were sent for trial. Charges were framed against them for having committed the offence punishable under Section

302/34 IPC. Additionally, a charge was framed against accused Kiran for having committed the offence punishable under Section 201 IPC.

20. At the trial, the prosecution examined 26 witnesses. (It may be noted here that the prosecution did not examine Dropadi as she could not be traced)

21. Rajinder Sehrawat PW-1, the husband of the sister of the deceased, deposed that on receiving the information about the murder of the deceased he went to the house of the deceased. The police handed over the foreign currency notes and gold ring, found in an almirah lying in the room where the deceased was found dead, as also the gold chain found on the neck of the body of the deceased to accused Kiran in his presence.

22. Prahlad Singh PW-4, the nephew of the deceased, and ASI Ram Swaroop PW-7, deposed that on receiving the information about the murder of the deceased they went to the house of the deceased where amongst other persons the mother of the deceased was also present.

23. Const.Varinder PW-16, deposed that in the intervening night of 28/29.07.1996 he and Const.Babu Singh PW-18, were patrolling in the area around Deepali Chowk, Rohini when they saw that a motorcycle bearing No.DBX-4874 of Yamaha make

was lying abandoned on a service lane near Deepali Chowk. On not finding the key of the said motorcycle, he and Const.Babu Singh opened the dickey of the same wherein they found the registration certificate of the said motorcycle. The said registration certificate recorded that the owner of the motorcycle in question is a resident of house bearing Municipal No.134, Sainik Vihar, New Delhi. Pursuant thereto, he and Const.Babu Singh proceeded to the house in question where they met accused Kiran who informed them that the motorcycle found by them belonged to her husband i.e. the deceased and that the same has been stolen. There was no electricity in the house. When he and Const.Babu Singh enquired from accused Kiran whether any other article has been stolen from her house she signalled towards a room where they saw that the deceased was lying dead. It may be noted here that the testimony of the said witness was not controverted on behalf of accused Kiran.

24. Const.Babu Singh PW-18, deposed that in the intervening night of 28/29.07.1996 he and Const.Varinder, were patrolling in the area around Deepali Chowk, Rohini when they saw that a motorcycle bearing No.DBX-4874 of Yamaha make was lying abandoned on a service lane near Deepali Chowk. On not finding the key of the said motorcycle, he and Const.Varinder

opened the dickey of the same wherein they found the registration certificate of the said motorcycle. The said registration certificate recorded that the owner of the motorcycle in question is a resident of house bearing Municipal No.134, Sainik Vihar, New Delhi. Pursuant thereto, he and Const.Varinder proceeded to the house in question where they were met by accused Kiran who informed them that the motorcycle found by them belongs to her husband i.e. the deceased and that the same has been stolen. When he and Const.Varinder made enquiries about her husband, accused Kiran told them that her husband is sleeping upstairs. When he and Const.Varinder expressed a desire to meet her husband accused Kiran told them that there is no electricity in the house and thus she cannot go upstairs to call her husband upon which he and Const.Varinder along with accused Kiran went upstairs they saw that the deceased was lying dead in a room. It may be noted here that the testimony of the said witness was not controverted on behalf of accused Kiran.

25. Vijay Pal PW-25, turned hostile and denied having made statement Ex.PW-25/X to the police.

26. Inspector Naval Kishore PW-26, deposed that the investigation of the present case was entrusted to him. On receiving the information about the murder of the deceased he

went to the house of the deceased where he saw that the deceased was lying dead in a room and that a gold chain was present on the neck of the body of the deceased. He found some foreign currency notes and a gold bangle in an almirah lying in the room where the deceased was found dead. On being cross-examined about the whereabouts of the mother of the deceased around the time of the incident, the witness stated that (Quote): *'It is correct that mother of deceased her children were also staying in same house. Deceased of mother refused to make statement child of deceased was too small to say anything. Mother in law of Kiran had orally stated that accused Bablu, Surinder and Vijay etc had been visiting their house. I had not recorded any statement in the case diary about this fact.'*

27. In her statement under Section 313 Cr.P.C. save and except admitting the factum of making of statement Ex.PW-6/A accused Kiran denied everything. In their respective statements under Section 313 Cr.P.C. accused Surinder and Jasvinder pleaded innocence and denied everything.

28. The accused did not lead any evidence in defence.

29. As already noted herein above, the learned Trial Judge has convicted accused Kiran and Surinder. The reasons which led the learned Trial Judge to convict accused Kiran are that :-

(i) Conduct of accused Kiran was suspicious inasmuch as she did not inform the police about the murder of the deceased and that she had deliberately disconnected the electricity of her house; (ii) Accused Kiran made a false claim to the police that a robbery has been committed in her house and (iii) The injuries found on the person of the deceased were possible to have been caused by the iron rod recovered at the instance of accused Kiran. The reasons which led the learned Trial Judge to convict accused Surinder are that :- (i) The fact that a slip containing stamp of UCO Bank Rohtak was recovered from the house of the deceased and accused Kiran and that a slip issued by same bank was found affixed on one of the packets of notes recovered at the instance of accused Surinder suggests that the packets of notes recovered at the instance of accused Surinder were given to him by accused Kiran to murder the deceased; (ii) Blood of same group as that of the deceased was found on the shirt recovered at the instance of accused Surinder and (iii) The fact that one of the keys recovered at the instance of accused Surinder was that of the motorcycle belonging to the household of the deceased suggests that the said motorcycle was used by accused Surinder for running away from the house of the deceased after committing the murder of the deceased. However, learned Trial Judge acquitted accused Jasvinder on the ground

that the prosecution has not led even a single piece of evidence which could connect accused Jasvinder with the crime of the murder of the deceased.

CASE AGAINST ACCUSED KIRAN

30. During the hearing of the above captioned appeals, two arguments were advanced by the learned counsel for accused Kiran. The first argument advanced was that the mother of the deceased was a material witness for the reason she could have thrown light on the events which happened around the time of the murder of the deceased as the testimony of Prahlad Singh PW-4, ASI Ram Swaroop PW-7 and Inspector Naval Kishore PW-26, establishes that the mother of the deceased used to reside in the house where the deceased was found murdered and that she was present in the said house around the time of the murder of the deceased. Counsel urged that an adverse inference needs to be drawn against the prosecution for non-examination of the mother of the deceased in terms of illustration (g) appended to Section 114 of Evidence Act that had the mother of the deceased been examined she would not have supported the case of the prosecution. The second argument advanced was that the prosecution has failed to establish the motive of accused Kiran for committing the murder of the deceased. Counsel urged

that accused Kiran deserves to be acquitted for failure to establish motive is fatal to the case of the prosecution when the prosecution seeks to establish the guilt of the accused on the basis of “circumstantial evidence”.

31. Who is a material witness? What is the effect of non-examination of material witness on the veracity of the case set up by the prosecution against an accused?

32. The answer to the aforesaid questions lies in the following observations made by Supreme Court in the decision reported as Takhaji Hiraji v Thakore Kubersing Chamansing AIR 2001 SC 2328:-

“So is the case with the criticism leveled by the High Court on the prosecution case finding fault therewith for non-examination of independent witnesses. It is true that if a material witness, which would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness which though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the Court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the Court ought to scrutinise the worth of the evidence adduced.

The Court of facts must ask itself -- whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the Court can safely act upon it uninfluenced by the factum of non-examination of other witnesses.....”

33. Tested on the aforesaid anvil of law, can it be said that the mother of the deceased was a material witness?

34. The testimony of Inspector Naval Kishore PW-26, throws light on the said aspect of the matter. As already stated herein above, Inspector Naval Kishore PW-26, deposed that the mother of the deceased refused to make a statement under Section 161 Cr.P.C. Merely because of the fact that the mother of the deceased was present in the house in question around the time of the murder of the deceased it cannot be assumed that she was a material witness for the possibility that the mother of the deceased was sleeping or was busy in some household work around the time of the murder of the deceased or because of any other reason could not acquire any knowledge about the events which happened around the time of the murder of the deceased cannot be ruled out. In the absence of any material on record pointing towards the fact that the mother of the deceased had any knowledge regarding

the events which happened around the time of the murder of the deceased it cannot be said that the mother of the deceased was a material witness.

35. Be that as it may, merely because a material witness is not examined by the prosecution, a criminal court would not lean to draw an adverse inference that if he was examined, he would have given a contrary version. The illustration (g) appended to Section 114 of the Evidence Act is only a permissible inference and not a necessary inference. Unless there are other circumstances also to facilitate the drawing of an adverse inference, it should not be a mechanical process to draw the adverse inference merely on the strength of non-examination of a witness even if the witness is a material witness. The afore-noted observations of Supreme Court in Takhaji's case (supra) also bring out that the non-examination of a material witness is not fatal in every case. It is only in cases where there is an infirmity or doubt in the case set of the prosecution, that the non-examination of material witness assumes significance. In the instant case, even if it is assumed that the mother of the deceased was a material witness, the same would not be fatal to the case of the prosecution if the prosecution is able to establish the guilt of accused Kiran beyond any reasonable doubt.

36. In dealing with the second argument advanced by the learned counsel for accused Kiran, suffice would it be to quote the following observations of Supreme Court in the decision reported as State of UP v Babu Ram (2000) 4 SCC 515 :-

“We are unable to concur with the legal proposition adumbrated in the impugned judgment that motive may not be very much material in cases depending on direct evidence whereas motive is material only when the case depends upon circumstantial evidence. There is no legal warrant for making such a hiatus in criminal cases as for the motive for committing the crime. Motive is a relevant factor in all criminal cases whether based on the testimony of eye witnesses or circumstantial evidence. The question in this regard is whether a prosecution must fail because it failed to prove the motive or even whether inability to prove motive would weaken the prosecution to any perceptible limit. No about, if the prosecution proves the existence of a motive it would be well and good for it, particularly in a case depending on circumstantial evidence, for, such motive could then be counted as one of the circumstances. However, it cannot be forgotten that it is generally a difficult area for any prosecution to bring on record what was in the mind of the respondent. Even if the Investigating Officer would have succeeded in knowing it through interrogations that cannot be put in evidence by them due to the ban imposed by law.

12. In this context we would reiterate what this Court has said about the value of motive evidence and the consequences of prosecution failing to prove it, in *Nathuni Yadav v. State of Bihar* and *State of Himachal Pradesh v. Jeet Singh*. Following passage can be quoted from the latter decision:

“No doubt it is a sound principle to remember that every criminal act was done with a motive out its corollary is not that no criminal offence would have been committed if the

prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended.””

37. It is also relevant to note the following observations of Supreme Court in the decision reported as Ujjagar Singh v State of Punjab (2007) 14 SCALE 428:-

“It is true that in a case relating to circumstantial evidence motive does assume great importance but to say that the absence of motive would dislodge the entire prosecution story is perhaps giving this one factor an importance which is not due and (to use the cliché) the motive is in the mind of the accused and can seldom be fathomed with any degree of accuracy”

38. In view of the above judicial pronouncements, we do not find any merit in the argument of the learned counsel that the case set up by the prosecution against accused Kiran must fail on account of the failure of the prosecution to prove the motive of accused Kiran.

39. Having dealt with the arguments advanced by the learned counsel for accused Kiran, we proceed to consider whether the prosecution has been successful in establishing the guilt of accused Kiran.

40. As already noted herein above, in her examination under Section 313 Cr.P.C. accused Kiran admitted that the statement Ex.PW-6/A was made by her. A reading of the statement Ex.PW-6/A, contents whereof have been noted in para 5 above, shows that accused Kiran stated to the police that a robbery had been committed at her house on the day of the murder of the deceased.

41. Whether the aforesaid recording contained in the statement Ex.PW-6/A of accused Kiran which has formed the basis of the registration of the FIR in the present case can be used against her?

42. In the decision reported as Nisar Ali v State of UP AIR 1957 SC 366 the question which arose before Supreme Court was that whether a statement contained in an FIR lodged by an accused can be used against the co-accused. Supreme Court answered the aforesaid question in negative in following terms:-

“....An objection has been taken to the admissibility of this report as it was made by a person who was a

co-accused. A first information report is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under Section 157 of the Evidence Act or to contradict it under Section 145 of that Act. It cannot be used as evidence against the maker at the trial if he himself becomes an accused, nor to corroborate or contradict other witnesses. In this case, therefore, it is not evidence.” (Emphasis Supplied)

43. In the decision reported as *Faddi v State of MP* AIR 1964 SC 1850 the accused who was charged with the offence of murdering his step son lodged an FIR stating therein that he had seen the dead body of the deceased floating in a well, which statement was found to be incorrect. Relying upon afore-noted observations made by Supreme Court in *Nisar's* case (supra) it was contended that the first information report lodged by the accused is an inadmissible piece of evidence. Repelling the said contention, Supreme Court observed as under:-

“The report is not a confession of the appellant. It is not a statement made to a police officer during the course of investigation. Section 25 of the Evidence Act and Section 162 of the Code of Criminal Procedure do not bar its admissibility. The report is an admission by the accused of certain facts which have a bearing on the question to be determined by the Court viz. how and by whom the murder of Gulab was committed, or whether the appellant's statement in Court denying the correctness of certain statements' of the prosecution witnesses is correct or not. Admissions are admissible in evidence under Section 21 of the Act. Section 17 defines an admission to be a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, thereafter mentioned, in the Act. Section 21 provides that admissions are relevant and may be proved as against a person who makes them. Illustrations (c), (d) and (e) to Section 21 are

of the circumstances in which an accused could prove his own admissions which go in his favour in view of the exceptions mentioned in Section 21 to the provision that admissions could not be proved by the person who makes them. It is therefore clear that admissions of an accused can be proved against him.

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It is on these observations that it has been contended for the appellant that his report was inadmissible in evidence. Ostensibly, the expression 'it cannot be used as evidence against the maker at the trial if he himself becomes an accused' supports the appellant's contention. But it appears to us that in the context in which the observation is made and in the circumstances, which we have verified from the record of that case, that the Sessions Judge had definitely held the first information report lodged by the co-accused who was acquitted to be inadmissible against Nisar Ali, and that the High Court did not refer to it at all in its judgment, this observation really refers to a first information report which is in the nature of a confession by the maker thereof. Of course a confessional first information report cannot be used against the maker when he be an accused and necessarily cannot be used against a co-accused. Further, the last sentence of the above-quoted observation is significant and indicates what the Court meant was that the first information report lodged by Qudratullah, the co-accused, was not evidence against Nisar Ali. This Court did not mean — as it had not to determine in that case — that a first information report which is not a confession cannot be used as an admission under Section 21 of the Evidence Act or as a relevant statement under any other provisions of that Act. We find also that this observation has been understood in this way by the Rajasthan High Court in *State v. Balchand* and in *State of Rajasthan v. Shiv Singh* and by the Allahabad High Court in *Allahdia v. State*."

44. It may also be noted here that in Faddi's case (supra) Supreme Court held that the fact that the accused tried to mislead the police by giving false information is an incriminating circumstance against him.

45. The legal principle which emerges from Faddi's case (supra) is that where the accused himself lodges the first information report, the fact of his giving information of crime to the police is admissible against him as evidence of his conduct under Section 8 of Evidence Act and that if the first information report is a non-confessional statement the same can be used against him as an admission under Section 21 of Evidence Act.

46. What is meant by the word "confession"?

47. The word "confession" has not been defined in Evidence Act. For a long time, Indian Courts have adopted the definition of "confession" given in Article 22 of Stephen's Digest of Law of Evidence. According to that definition, a confession is an admission made at any time by a person charged with crime, stating or suggesting the inference that he committed that crime. However, in the decisions reported as R v Jagrup ILR 7 ALL 646 and R v Santya Bandhu 4 Bom LR 633 Allahabad High Court and Bombay High Court respectively did not accept such a wider definition and gave a narrower meaning to the word

“confession” holding that only a statement which is direct acknowledgement of guilt would amount to confession and that a statement which is merely an inculpatory admission which falls short of being admission of guilt would not amount to confession. The issue as to meaning of word “confession” was ultimately settled by Privy Council in the decision reported as Pakala Narayana Swami v Emperor 66 IA 66 where Lord Atkin observed as under:-

“Moreover, a confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession e.g. an admission that the accused is the owner of and was in recent possession of the knife or revolver which caused death with no explanation of any other man’s possession. Some confusion appears to have been caused by the definition of confession in Article 22 of *Stephen’s Digest of the Law of Evidence*, which defines a confession as an admission made at any time by a person charged with crime stating or suggesting the inference that he committed that crime. If the surrounding articles are examined, it will be apparent that the learned author after dealing with admissions generally is applying himself to admissions in criminal cases, and for this purpose defines confessions so as to cover all such admissions, in order to have a general term for use in the three following articles : confession secured by inducement, made upon oath, made under a promise of secrecy. The definition is not contained in the Evidence Act, 1872; and in that Act it would not be consistent with the natural use of language to construe confession as a statement by an accused ‘suggesting the inference that he committed’ the crime.”

48. The aforesaid observations of Lord Atkin in Pakala’s case (supra) received the approval of a 3-Judge Bench of Supreme

Court in the decision reported as Palvinder Kaur v State of Punjab 1953 CriLJ 154.

49. In this regards, it is most apposite to refer to the decision of Supreme Court reported as Aghnoo Nagesia v State of Bihar AIR 1966 SC 119. In the said case, the accused who was charged with the offence (s) of having murdered four persons lodged an FIR with the police. Supreme Court divided the said FIR into 18 parts for the purposes of determining its admissibility. Parts 1, 15 and 18 contained recordings pertaining to the fact that the accused went to the police station to lodge the FIR; parts 2 and 16 contained recordings pertaining to the motive of the accused for committing the murders; parts 3, 5, 8 and 10 contained recordings pertaining to the movements of the accused before and after the commission of murders; part 8 also contained recordings pertaining to intention of the accused; parts 4,6,9, 11 and 12 contained recordings pertaining to admission of guilt by the accused as also his motive for committing the murders and parts 7,13 and 17 contained recordings pertaining to concealment of dead bodies and weapon of offence by the accused and his ability to get recover the same. Supreme Court reiterated the law laid down in Faddi's case (supra) with respect to admissibility of an FIR lodged by the accused.

Thereafter it proceeded to determine that whether the afore-noted 18 parts of the FIR in question amount to a confession or not. It was held by Supreme Court that save and except parts 1, 15 and 18 which contained recordings pertaining to the fact that the accused was the maker of the FIR and the parts which come within the purview of Section 27 of Evidence Act, the entire FIR amounts to confession and should be excluded from evidence. The relevant discussion contained in the said decision is being noted herein under:-

“Now, a confession may consist of several parts and may reveal not only the actual commission of the crime but also the motive, the preparation, the opportunity, the provocation, the weapons used, the intention, the concealment of the weapon and the subsequent conduct of the accused. If the confession is tainted, the taint attaches to each part of it. It is not permissible in law to separate one part and to admit it in evidence as a non-confessional statement. Each part discloses some incriminating fact i.e. some fact which by itself or along with other admitted or proved facts suggests the inference that the accused committed the crime, and though each part taken singly may not amount to a confession, each of them being part of a confessional statement partakes of the character of a confession. If a statement contains an admission of an offence, not only that admission but also every other admission of an incriminating fact contained in the statement is part of the confession.

If proof of the confession is excluded by any provision of law such as Section 24, Section 25 and Section 26 of the Evidence Act, the entire confessional statement in all its parts including the admissions of minor incriminating facts must also be excluded, unless proof of it is permitted by some other section such as Section 27 of the Evidence Act. Little substance and content would be left in Sections 24, 25 and 26 if proof of admissions of incriminating facts in a confessional statement is permitted.

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If the first information report is given by the accused to a police officer and amounts to a confessional statement, proof of the confession is prohibited by Section 25. The confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the confessional statement. No part of the confessional statement is receivable in evidence except to the extent that the ban of Section 25 is lifted by Section 27.” (Emphasis Supplied)

50. In the decision reported as Bheru Singh v State of Rajasthan (1994) 2 SCC 467 the accused was charged with the offence (s) of having murdered his wife, 2 daughters and three sons. The accused lodged a first information report wherein besides confessing to his guilt, the accused stated about his motive for committing the murders and the fact that his sister-in-law was present at the time when he committed the murders. It was held by Supreme Court that the statements contained in the FIR pertaining to motive of the accused and the presence of sister-in-law of the accused are non-confessional in nature and can be used against him.

51. A perusal of the decisions of Supreme Court in Aghnoo and Bheru's cases (supra) shows that there is an apparent conflict between the two decisions. A further perusal of Bheru's case shows that Aghnoo's case (supra) and the legal position laid down therein that the confession includes not only the admission of the offence but all other admissions of incriminating facts related to the offence contained in the

confessional statement was not brought to the notice of Supreme Court in Bheru's (case) supra.

52. In the instant case, no part of the statement Ex.PW-6/A of accused Kiran contains the admission of the offence with which she is charged. In view of the legal position enunciated above, the recording contained in the statement Ex.PW-6/A of accused Kiran that a robbery had been committed at her house on the day of the murder of the deceased can be used against her as the same is non-confessional in nature. It is relevant being her conduct to mislead the police and hence suggestive of a guilty mind.

53. Was any robbery committed at the house of the deceased and accused Kiran on the day of the murder of the deceased as claimed by accused Kiran?

54. The evidence of witnesses namely Rajender Sehwat PW-1 and Inspector Naval Kishore PW-26, establishes that a gold chain was found on the person of the deceased and that some foreign currency notes and jewellery articles were found in an almirah lying in the room where the deceased was found dead on the day of the murder of the deceased. Had a robbery been committed at the house of the deceased and accused Kiran, the robbers surely would have taken gold chain present on the person of the deceased and other valuable articles lying

in the house of the deceased. The fact that valuable articles were found on the person of the deceased as also in the house in question when coupled with the fact that the police did not find any signs of forced entry into the house of the deceased belies the claim of accused Kiran that a robbery was committed in the house in question on the day of the murder of the deceased.

55. The fact of the matter is that accused Kiran tried to mislead the police by falsely stating that a robbery had been committed in the house in question on the day of the murder of the deceased. What turns thereon?

56. In the decision reported as Mohibur Rahman v State of Assam (2002) 6 SCC 715 the deceased was last seen on 24.01.1991 at 05.00 P.M. at a bus stand in the company of accused Taijuddin and Mohibur Rahman and his body was found 13 days after at a distance of 30 to 40 kilometers from the bus stand where the deceased and accused was last seen alive. Accused Taijuddin met the mother and cousin of the deceased and falsely told them that the deceased had eloped with one Balijan Begum. Supreme Court acquitted accused Mohibur on the ground that there is no proximate link between the time when the deceased was last seen alive in the company of accused and the time of his death as also the

place where the deceased was last seen alive in the company of accused and the place from where the body of the deceased was recovered. However, Supreme Court convicted accused Taijjudin. One of the facts which led Supreme Court to convict accused Taijjudin was that accused Taijjudin had tried to mislead the relatives of the deceased.

57. In the decision reported as Basanti v State of HP (1987) 3 SCC 227 accused Basanti and Asoo Ram were charged with the offence of having murdered the husband of accused Basanti. The case set up by the prosecution against accused was that accused Basanti and Asoo Ram were having illicit relations and that they murdered the deceased by striking a blow on his neck while he was asleep. The High Court convicted accused Basanti but acquitted accused Asoo Ram. Supreme Court affirmed the decision of High Court and held accused Basanti guilty of the murder of the deceased. One of the facts which led the court to come to the said conclusion was that she had tried to mislead the relatives of the deceased by falsely stating to them that the deceased had gone away from her village and had not returned.

58. In view of the judicial decisions enunciated above, the fact that accused Kiran tried to mislead the police can certainly be used as an incriminating circumstance against her.

59. The post-mortem of the deceased was conducted at about 01.00 P.M. on 29.07.1996. The post-mortem report Ex.PW-2/A of the deceased records that the deceased died 15 hours prior to the conduct of his post-mortem, meaning thereby, that the deceased died around 10.00 P.M. on 28.07.1996. The statement Ex.PW-6/A of accused Kiran was recorded at about 01.00 A.M. on 29.07.1996 as evident from the endorsement Ex.PW-26/A. In her statement Ex.PW-6/A, accused Kiran stated that she was present in the house in question between the period 09.00 P.M. to 01.00 A.M. in the intervening night of 28/29.07.1996. Accused Kiran has not stated a word about her movements between the period 09.00 P.M. to 01.00 A.M. in the intervening night of 28/29.07.1996. In the absence of any explanation of accused Kiran about her movements between the period 09.00 P.M. to 01.00 A.M. in the intervening night of 28/29.07.1996, it is most reasonable to assume that accused Kiran would have at least gone once to the room where her husband i.e. the deceased was sleeping between the said period of 3 hours and would have learnt that the deceased has been murdered. What would a wife do on learning about the murder of her husband? She would raise hue and cry and inform the police or her neighbours or relatives about the murder of the deceased. However, accused Kiran does nothing of the kind but remains silent. Accused

Kiran breaks her silence only when Const.Varinder PW-16 and Const.Babu Ram PW-18, visit the house of the deceased and accused Kiran and discover that the deceased has been murdered. The aforesaid conduct of accused Kiran is most suspicious and speaks volumes about her guilt.

60. Another incriminating circumstance against accused Kiran is that accused Kiran has not offered any explanation as to what had happened in the house in question on the day of the murder of the deceased in her statement under Section 313 Cr.P.C. It is an established fact that the motorcycle belonging to the household was found abandoned on the day of the murder of the deceased. Accused Kiran has also not offered any explanation as to how the motorcycle in question reached the place from where it was found abandoned in her statement under Section 313 Cr.P.C.

61. In this regards, it would be most apposite to quote the following observations of Supreme Court in the decision reported as Trimukh Maroti Kirkan v State of Maharashtra (2006) 10 SCC 681:-

“Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of

circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.” (Emphasis Supplied)

62. In her statement under Section 313 Cr.P.C., accused Kiran denied that Const.Varinder PW-16, Const.Babu Ram PW-18 and Inspector Naval Kishore PW-26, visited the house in question on the day of the murder of the deceased. The depositions of aforesaid police officers that they had visited the house in question on the day of the murder of the deceased has not been controverted on behalf of accused Kiran thus it is established beyond any doubt that the aforesaid police officers visited the house in question on the day of the murder of the deceased.

63. It is well established legal principle that in a case based on circumstantial evidence where an accused offers false explanation in his statement under Section 313 Cr.P.C. in respect of an established fact, said false denial supply a missing link in the chain of circumstances appearing against him. (See the decisions of Supreme Court reported as State of

Maharashtra v Suresh (2000) 1 SCC 471 and Kuldeep Singh v State of Rajasthan 2001 CriLJ 479)

64. From the above discussion, following four incriminating circumstances appear against accused Kiran:-

I Accused Kiran tried to mislead the regarding the murder of the deceased.

II The conduct of accused Kiran was most suspicious around the time of the murder of the deceased.

III Accused Kiran did not give any explanation in respect of the facts which were within her knowledge.

IV Accused Kiran gave false answers in her statement under Section 313 Cr.P.C.

65. Are the aforesaid circumstances sufficient to conclude that accused Kiran is guilty of the murder of the deceased?

66. The well known rule governing circumstantial evidence is that :- (a) the circumstances from which the inference of guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances; (b) the circumstances should be of a determinative tendency unerringly pointing towards the guilt of the accused; and (c)

the circumstances, taken collectively, are incapable of explanation on any reasonable hypothesis other than that of the guilt of the accused. Of late, the courts have added two riders to the aforesaid principle namely, (i) there should be no missing links but it is not that every one of the links must appear on the surface of the evidence, since some of these links can only be inferred from the proved facts and (ii) it cannot be said that the prosecution must meet any and every hypothesis put forward by the accused however far-fetched and fanciful it may might be. In the decision reported as Rakesh Kumar v State 183 (2009) DLT 658 a Division Bench of this Court of which one of us was member of, namely Pradeep Nandrajog J., held that circumstantial evidence in order to furnish a basis for conviction requires a high degree of probability, that is, so sufficiently high that a prudent man considering all the facts, feels justified in holding that the accused has committed the crime with which he is charged.

67. From the aforesaid four incriminating circumstances appearing against accused Kiran, a prudent man would definitely come to the conclusion that accused Kiran is the guilty of the murder of the deceased. We thus hold that accused Kiran is the guilty of the murder of the deceased.

CASE AGAINST ACCUSED SURINDER

68. As already noted herein above, learned Trial Judge has convicted accused Surinder on the basis of following recoveries effected at his instance:-

I Key of the motorcycle of the deceased.

II T-shirt found to be stained with blood of same group as that of the deceased.

III Packets of notes found to be containing a slip issued by UCO Bank Rohtak.

69. As per the case of the prosecution, three keys were got recovered by accused Surinder in the presence of police officers namely Inspector Naval Kishore PW-26 and SI Shanker Banerjee PW-5 and that one of them was the key of the motorcycle. The learned Trial Judge has accepted said fact ignoring that no police officer has said that the key was used on the motorcycle to start the same i.e. that the key was that of the motorcycle. No witness of the prosecution has deposed that he had been seeing the key and that it was the key of the motorcycle. Thus, it only stands established that a bunch of three keys was got recovered by Surender. There is no evidence that one out of the said key was that of the motorcycle.

70. Pertaining to the t-shirt got recovered by Surinder, the only proof is that he got the t-shirt recovered. The part of his confessional statement that he was wearing the t-shirt when he committed the crime is inadmissible in evidence. The prosecution had to prove through independent evidence that the said t-shirt was worn by him. In the decision reported as Prabhoo v State of UP AIR 1963 SC 1113 an axe, a shirt and a dhoti which were found to be stained with human blood were recovered from the house of the accused, at his instance. Supreme Court clarified the provisions of Section 25 to 27 of the Evidence Act by laying down that any statement of the accused that with a particular weapon of offence, he had committed the murder is not admissible under Section 27 of the Evidence Act as it does not lead to any discovery of fact within the meaning of Section 27 of the Evidence Act and even the statement of the accused that blood stained shirt and dhoti belong to him is not such a statement which leads to any discovery within the meaning of Section 27. It was laid down that it is fallacious to treat the fact discovered within Section 27 as equivalent to the object produced; the fact discovered embraces the place from which the object was produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. It was held that is not legally permissible to admit evidence of the alleged statement

of the accused that the axe had been used to commit the murder or the statement that the blood stained shirt and dhoti were his. It was held that from mere production of the blood stained articles by the accused, one cannot come to the that the accused committed the murder inasmuch as the fact of production cannot be said to be consistent only with guilt of the accused and inconsistent with his innocence, for the reason it is quite possible that someone else committed the murder and kept the blood stained articles in the house of the accused and that the accused might have produced the said articles when interrogated by the police.

71. In the decision reported as Mani v State of Tamil Nadu 2008 (1) JCC 277 the case set up by the prosecution that the appellant and one Moyyasamy had murdered deceased Sivakumar who had strained relationship with Moyyasamy. On 24.11.1996 the deceased was chatting with his father Arunachalam and his other family members when the appellant came there and had a cup of coffee with Arunachalam. At about 6.00 P.M. the appellant took the deceased to his house. When the deceased did not turn up till 10.00 P.M. Arunachalam went to the house of the appellant and found that blood was oozing from the house. Since the house was locked Arunachalam came back to his residence

where one Amulnathan informed him that he had seen the deceased in the company of the appellant and Moyyasamy at 07.00 P.M. On the next morning at 6.00 A.M. Arunachalam again went to the house of the appellant and found trail of blood near the said house and ultimately from that he traced the body of the deceased which was lying in the nearby field. The appellant got recovered blood stained clothes and kodvul lying under the grass in an open ground which was 300 feet away from the field from where the body of the deceased was recovered. The Sessions Court convicted both the accused persons whereas the High Court acquitted Moyyasamy but convicted the appellant. Supreme Court acquitted the appellant for following reasons: - (i) no evidence was led by the prosecution to establish that the house where blood was found was owned or exclusively possessed by the appellant; (ii) Arunachalam is not a trustworthy witness inasmuch in view of the fact that he realized that something unusual has happened at 10.00 P.M. but he did not lodge a report with the police till next day at 10 O' clock; (iii) the discovery is a weak kind of evidence and cannot be wholly relied upon and conviction in such a serious matter cannot be based upon the discovery; (iv) the prosecution never made any attempts to prove that the clothes recovered at the instance of the appellant belonged to him; (v) there is serious discrepancy in

the evidence pertaining to the recovery and (vi) even if the evidence pertaining to recovery is accepted the fact that blood stained clothes and kodvul were recovered at the instance of the appellant does not connect the appellant with the crime. (Emphasis Supplied)

72. In the decision reported as K.V. Chacko @ Kunju v State of Kerala (2001) 9 SCC 277 an axe which was found to be stained with human blood was recovered at the instance of the appellant. It was held by Supreme Court that in the absence of any evidence to establish that the death of the deceased was caused by an axe, the said recovery does not connect the accused with the murder of the deceased.

73. In the decision reported as Narsinbhai Haribhai Prajapati v. Chhatrasinh and Ors AIR 1977 SC 1753 Supreme Court had held that in the absence of any other evidence the circumstances of seizure of blood stained shirt and dhoti from the person of an accused and dharias from the houses of the accused are wholly insufficient to sustain the charge of murder against the accused.

74. In the decision reported as Surjit Singh v. State of Punjab 1993 CriLJ 3901 a watch belonging to the deceased and one dagger which was found to be stained with human blood were

recovered at the instance of the accused. It was held by the Supreme Court that said recovery by itself, does not connect the accused person with the murder of the deceased. It was further held that said circumstance may create some suspicion but the same cannot take the place of proof.

75. From the afore-noted judicial decisions, the legal principle which emerges is that mere recovery of an object at the instance of the accused is a relevant fact only when it is established by other evidence that the object recovered is connected with the accused and the offence with which he is charged. To put it pithily, the connection between the object recovered, the accused and the offence with which the accused is charged must always be established by “evidence alinude”. The decisions further bring out that mere recovery of blood stained articles at the instance of an accused is not sufficient to convict him for the offence of murder.

76. Had the prosecution been able to establish that one of the keys recovered at the instance of accused Surinder was that of the motorcycle of the deceased, the factum of recovery of key of the motorcycle of the deceased at the instance of accused Surinder would have gone a long way in proving the guilt of accused Surinder. However neither the investigating officer nor the prosecutor conducting the trial before the

learned Trial Court were alive to the aforesaid legal position with respect to Section 27 of Evidence Act and a valuable piece of evidence against Surinder has been lost due to lackadaisical attitude of the police and prosecutor.

77. At the time when the instant judgment was being dictated in the chamber, the fact that the prosecution has led no evidence to establish that one of the keys recovered at the instance of accused Surinder was that of the motorcycle of the deceased. Since the motorcycle of the deceased was seized by the police during the investigation of the present case, there was a distinct possibility that the said motorcycle was still lying in Malkhana and thus it could be verified that whether one of the keys recovered at the instance of accused Surinder was that of the motorcycle of the deceased. In such circumstances, above captioned appeals were listed for directions and learned counsel for the State was directed to ascertain the position regarding the availability of the motorcycle of the deceased. On the hearing dated 04.02.2010, learned counsel for the State informed the Court that the motorcycle in question was auctioned by the police in a public auction in the year 2007.

78. In view of the aforesaid factual and legal position, nothing turns upon the fact that three keys and a t-shirt found

to be stained with blood of same group as that of the deceased was found at the instance of accused Surinder.

79. The fact that a slip issued by UCO Bank Rohtak was found affixed on one of the packets of notes recovered at the instance of accused Surinder when seen in the light of the fact that a slip containing the stamp of UCO Bank Rohtak was found in the house of the deceased on the day of the murder of the deceased is a suspicious circumstance for it does suggests that packets of notes recovered at the instance of accused Surinder "*might*" have been taken from the house of the deceased. It is settled legal principle that suspicion cannot take place of proof. Therefore, nothing also turns upon the fact that a slip issued by UCO Bank Rohtak was found affixed on one of the packets of notes recovered at the instance of accused Surinder.

80. The sum and substance of the above discussion is that the prosecution has not been able to connect accused Surinder with the crime of the murder of the deceased.

CONCLUSION

81. The conclusion of the entire discussion is that:-

I Accused Kiran is convicted of the offences of committing the murder of the deceased and giving false information to the

police. We maintain the sentence(s) awarded to accused Kiran by the learned Trial Court.

II Accused Surinder is acquitted of the charge framed against him.

82. Since the appellants are on bail, the bail bond and surety bonds furnished by Surinder are discharged. The bail bond and surety bonds furnished by Kiran Mehlawat are cancelled. She is directed to surrender and suffer the remaining sentence.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

February 26, 2010
dkb