

R-38-42

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

% *Date of Decision: 22nd January, 2010*

+ CRL.A. NO.831/2004

PANKAJ BISWAS Appellant
Through: Mr.Bhupesh Narula, Advocate.

versus

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

CRL.A. NO.369/2004

VINOD @ PRABHAT KUMAR Appellant
Through: Mr.Sumeet Verma, Advocate.

versus

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

CRL.A. NO.609/2004

MOHD. ISRAEL Appellant
Through: Mr.Sumeet Verma, Advocate.

versus

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

CRL.A. NO.513/2005

SHANKAR Appellant
Through: Mr.Sumeet Verma, Advocate.

versus

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

CRL.A. NO.275/2006

SUNIL @ SONU Appellant

Through: Mr.Bhupesh Narula, 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. (Oral)

1. Before proceeding to pen our decision in the above captioned appeals, we would be failing if we do not note that this is the 5th decision noted by us in the last ten working days; author whereof is Shri Narottam Kaushal, ASJ, Delhi, where on a reading of the decisions it has been brought out to us that the learned Trial Judge i.e. Shri Narottam Kaushal, ASJ, Delhi reproduces as the evidence proved by the prosecution by merely narrating facts from the charge-sheet, ignoring that the actual evidence is at variance.

2. In the instant case, with reference to the post-mortem report Ex.PW-5/A of the deceased Mr.P.R.Gupta as per which the deceased died on account of asphyxia as a result of strangulation by ligature, the learned Trial Judge Shri Narottam

Kaushal ASJ Delhi, in para 8 of the decision, has recorded; to quote: *“PW-2 has given eye-witness account of the occurrence, where one of the accused persons had gagged the mouth of the deceased was sitting over his chest and was pressing his neck”* and has returned a finding that as per the testimony of PW-2 it stands proved that the deceased died as a result of the acts of one of the accused person.

3. We note that this reproduction of the alleged eye-witness account has been verbatim lifted from the charge-sheet and no-where is to be found in the deposition of PW-2, the wife of the deceased.

4. It has to be noted that these exact words are to be found in the statement Ex.PW-2/A made by Ms.Pratima Gupta PW-2, the wife of the deceased, to SI Surinder Kumar Sharma PW-12, who was the first police officer to reach the place where crime was committed i.e. her residence in the night of 14th April 2000 at 8:45 PM and for said reason the said has been verbatim narrated in the charge-sheet. But, while deposing in Court as PW-2, Ms.Pratima Gupta deposed that on 14.4.2000 at about 8:45 PM she was present in the kitchen of her house i.e. I-1636, Chittranjan Park, New Delhi and her husband Mr.P.R.Gupta was present in the drawing room on a sofa. She heard a cry ‘AHHA’. She moved towards the drawing room and at that time two boys caught her, one of

whom had a sword like weapon in his hand. The other put a knife on her chest and his legs on her chest. Two others overpowered her and one of them overpowered her husband. They were five in number. One of them pressed her neck with force and one tried to smash her jaw. She told them that she was ready to give everything and pleaded not to take their lives. She handed over to them 5 gold bangles, a heavy gold chain, gold studded ear top and one ruby studded gold ring. They asked her to show the place where other goods have been kept and specifically asked for dollars. They demanded Rs.2 lakhs and she replied that no such money was with her. She was taken to the adjoining bed room and she was made to sit on chair. She was tied to the back of the chair. They opened the locks using the key which she had given them and removed a gold bangle weighing 3½ tola, a gold chain of same weight, another heavy bangle of about 4 tola, one diamond ring, 3 pair of gold ear tops, another 2-3 rings, one time piece of 2 frame, another time piece of gold frame, two wrist watches, Rs.21,000/- in cash, a perfume bottle, one silver ganapati idol, one ganapati idol made of brass, two silver bangles and a silver Natraj as also one bottle of foreign liquor. They tied her hands to the handle of the chair and were also inserting cloth in her mouth. They looted articles from another almirah kept in another bed room and left at about 10:40 PM.

She got herself freed and went towards the drawing room. Her husband was lying on the floor. She called neighbours. It was found that her husband was dead. Police came and took her husband to AIIMS hospital. Her statement Ex.PW-2/A was correct and bore her signatures. That she could identify those persons if produced before her. She pointed out accused Sunil, Mohd.Israel, Pankaj, Vishwajeet and Shankar stating that these were the persons who had come to her house and committed the robbery. She declined having seen accused Vinod on the day of the incident.

5. She further deposed that a silver Nagaraj which was recovered by the police was identified by her in a test identification proceedings conducted by the Magistrate. That the accused had left a knife Ex.P-1 in the house after the incident but could not say with certainty whether this was the same weapon. She volunteered that she was in a horrible condition.

6. We may note that aforesaid testimony was recorded on 30.5.2002 and the learned APP desired the witness to be further examined inasmuch as the case property, a Nagaraj idol, had not been brought from the malkhana. The learned APP had wanted to show the same to the witness and elicit an answer, obviously whether the same was the one which was stolen from her house. As recorded in the order

sheet the witness informed that she had to proceed to Canada and would be returning after 3 or 4 months. The learned Judge declined the request of the learned APP for deferring further cross-examination-in-chief of PW-2 and thereafter on the same day recorded the cross-examination of PW-2. The result was that the Nagaraj idol Ex.P-6 was not identified by the witness as her property.

7. On being cross-examined PW-2 stated that for the first time she saw five accused persons when they were in drawing room while she was going to the drawing room but could not say as to in whose hand the weapon was. She denied the suggestion that the accused did not have a weapon or weapons or that the accused did not enter her house. She stated that four accused overpowered her and the fifth overpowered her husband. When further cross-examined with respect to the role played by each of the accused she stated that she could not tell as to who did what. She deposed that she participated in the judicial test identification proceedings but add that the photographs of the accused persons were shown to her by the investigating officer before she joined the test identification proceedings. That she identified three accused in the test identification proceedings and the other refused to participate in the test identification proceedings. She stated that the accused remained in her house for nearly

two hours.

8. It is apparent that Pratima Gupta PW-2 had not narrated the facts pertaining to the incident in the same way as are recorded in her statement Ex.PW-2/A. She has not deposed in Court that one of the accused persons had gagged the mouth of her husband and sitting over his chest pressed his neck. It is apparent that Shri Narottam Kaushal ASJ Delhi, has not even bothered to read the testimony of Ms.Pratima Gupta PW-2.

9. Day before yesterday, we had noted another serious blunder committed by the same Judge. In fact, the use of the word 'blunder' would be a misnomer. The correct expression has to be that '*we had noted a complete non-application of mind*' by the same Trial Judge, who while examining the accused in said case under Section 313 Cr.P.C. had framed questions in the same sequence as the events of investigation were disclosed in the charge-sheet and no incriminating evidence which had been led at the trial through the testimony of the witnesses were put to the accused.

10. The earlier three misdemeanors noted by us and committed by Shri Narottam Kaushal ASJ Delhi, were ignored by us for the reason we thought that they were aberrations, but by the time we detected the fourth, 2 days ago, we realized that these were not aberrations but were instances of

a Judge totally oblivious of his duties.

11. The role of a Trial Judge in a Sessions Trial and that too where the offence alleged entails the extreme penalty of death, needs no highlighting for the reason law expects that a Trial Judge is vigilant all throughout the trial and has a hawk's eye.

12. One of the greatest assurance of justice being done to an accused at the trial is a vigilant Judge. Where the Judge proceeds to sleep or take a short or a long nap, the first casualty is Article 21 of the Constitution of India; the life and liberty of the accused is jeopardized and the due process of law envisaged by Article 21 of the Constitution of India is defiled.

13. On 14.4.2000 information Ex.PW-16/A was recorded in the PCR form by HC Manju posted as a Constable in the police control room that information has been received through telephone No.6288343 that a person has been killed and house No.I-1636, Chittaranjan Park has been looted. Ex.PW-16/A shows that the information has been received at the police control room at 9:50 PM.

14. The said information was conveyed over the wireless to the police station Chittaranjan Park where it was recorded in the daily diary register vide DD No.19-A and investigation was entrusted to SI Surinder Kumar PW-12, who

proceeded to the spot along with Ct.Harender PW-8. But, in the meanwhile, a PCR van stationed at Chittaranjan Park had already reached the house and had removed Mr.P.R.Gupta to AIIMS where as per MLC Ex.PW-10/A, recording the time 22 hours 29 minutes and the date 14.4.2000, it was noted that the patient had been brought dead to the casualty of AIIMS.

15. After obtaining a copy of the MLC of the deceased he recorded the statement Ex.PW-2/A of Smt.Pratima, the wife of the deceased, and making an endorsement Ex.PW-12/A dispatched the same for FIR to be registered. As recorded in the endorsement the same were dispatched at 12:30 AM on 15.4.2000 i.e. soon after midnight.

16. He recovered a sword type weapon Ex.P-1 from the house as per memo Ex.PW-8/A and drew the sketch Ex.PW-12/C thereof. He lifted another knife Ex.P-5 from a room as recorded in the memo Ex.PW-8/D, sketch whereof is Ex.PW-8/C. Tie Ex.P-2, dhoti Ex.P-3 and three pieces of cloth Ex.P-4 were lifted as recorded in the memo Ex.PW-8/B. Photographer was summoned.

17. Anand Singh Goswami PW-1, the photographer took 40 photographs Ex.P-1 to Ex.P-40; negatives whereof are Ex.P-A1 to Ex.P-A40. He prepared the rough sketch Ex.PW-12/B of the spot indicating the spots wherefrom he lifted various exhibits, the place where the deceased had died, the

cupboards wherefrom articles were taken away. The finger print team lifted chance prints from the place of the crime.

18. The dead body of Mr.P.R.Gupta was seized and sent to the mortuary of AIIMS where Dr.Sanjeev Lalwani PW-5 conducted the post-mortem and noted a ligature mark 12 cm in length traversing anteriorly on the lower part of neck extending laterally on both sides. Abrasion on the left side of anterior chest wall, a bruise each on the forehead, left cheek and right shoulder were also noted. On dissection of the neck massive extravasation of blood was present. Cause of death was opined to be asphyxia as recorded in the report Ex.PW-5/A.

19. It is apparent that the deceased died due to strangulation evidenced by injury No.5 afore-noted and the internal injury thereto, being massive extravasation of blood in the neck. It is apparent that excessive force was applied on the neck with continued strangulation resulting in the blood arteries rupturing in the neck.

20. Save and except the description of 5 accused as per the statement Ex.PW-2/A of Pratima the wife of the deceased which disclosed that the 5 were aged between 18 to 25 years, were thin to medium built, had dark complexion and were speaking Bengali with smuttering of Hindi and were referring to one of them as Daleep, the investigating

machinery had no other clues.

21. No breakthrough could be arrived till November 2000, when in respect of another FIR No.347/2000 registered at the same police station i.e. PS Chittranjan Park, three persons; namely Zahoor Aalam, appellant Pankaj Biswas and Vishwajit Dass (who is the 6th accused to be arrested and convicted in the instant case but has not challenged his conviction) were arrested by the police from a house while committing dacoity (as claimed by the prosecution). Two other persons involved in the said crime had fled. One of them, namely appellant Shankar was arrested and he disclosed his involvement in the instant offence as also that of two of the three persons arrested at the spot pertaining to FIR No.347/2000; namely Pankaj Biswas and Vishwajit Dass, who then confessed to be a part of the gang which committed dacoity in the house of the deceased and murdered him. It may be noted that the said three accused i.e. Shankar, Pankaj Biswas and Vishwajit Dass disclosed the names of three other accused. Thereafter, appellants Vinod, Mohd.Israel and Sunil were apprehended.

22. To cut through the narratives and excluding facts which are not necessary for the adjudication of the appeals, it may be noted that as claimed by the prosecution, four of the six accused; namely, Shankar, Mohd.Israel, Pankaj Biswas and

Vishwajit Dass, in their respective disclosure statements stated that they could get recovered a Nagraj Murti made of silver which they had hidden, after it was stolen from the house of the deceased, in a jungle near a pulia in Jahanpana Forest. Thereafter as recorded in the pointing out cum seizure memo Ex.PW-14/A all four led the investigating officer to a spot in Jahanpana Forest and got recovered from beneath a pulia a silver idol Ex.P-6 of Nagraj. When they were in police custody, without obtaining the permission from the competent court and without following the procedure prescribed for the identification of a prisoner as the Identification of Prisoners' Act 1920, the sample finger prints of the accused were taken and as per the report Ex.PW-22/O, a chance print lifted from the house matched that of appellant Vinod.

23. No other recoveries could be effected in the case.

24. It is thus apparent that the case of the prosecution solely hinged upon the testimony of Pratima Gupta PW-2 and the recovery of Ex.P-6 pursuant to the disclosures statements of four accused, namely Shankar, Mohd.Israel, Pankaj Biswas and Vishwajeet Dass and the said four jointly leading the investigating officer to a pulia at Jahanpana Forest and jointly pointing out the spot beneath the pulia and jointly getting recovered the Nagraj idol Ex.P-6 as also the incriminating report Ex.PW-22/O against Vinod.

25. The learned Trial Judge has disbelieved the recovery of Ex.P-6, holding that the fact that four persons jointly getting effected the recovery does not inspire confidence. The additional reason which has weighed with the learned Trial Judge is that the recovery is from an open place in Jahanpana Forest, a place accessible to all and sundry.

26. We may add one more factor which casts a further doubt on the recovery of the idol Ex.P-6 as a joint venture of four accused. The four accused were arrested on different dates. The first to be arrested was Shankar on 18.11.2000. The other three accused were arrested subsequently, and surprisingly, pertaining to the Nagraj Idol, all made disclosure statements on the same day and got effected the recovery on 24.11.2000. There is an additional problem. As noted in para 6 above, Pratima Gupta PW-2 was under examination-in-chief on 30.5.2002 and the learned APP requested for further examination-in-chief to be deferred since the Nagraj Idol had not been produced from the Malkhana, but the learned Trial Judge refused to defer examination-in-chief and proceeded with the cross-examination of the witness. The result was that there is no witness deposing in Court that the Nagraj Idol Ex.P-6 was the one which was removed/stolen from the house of the deceased and hence does not link the recovery as a fruit of the crime.

27. Vide impugned judgment and order dated 9.2.2004, six accused sent for trial namely Pankaj Biswas, Vinod, Mohd.Israel, Shankar, Sunil and Vishwajit Dass have been convicted for the offence punishable under Section 396 IPC as also the offence punishable under Section 450/34 IPC.

28. The learned Trial Judge has sustained the conviction solely on the testimony of Pratima PW-2 holding that she was a credible eye witness. The credibility of Pratima has been opined on the basis of the fact that after the accused were apprehended they were put up for a test identification and that in the record of the TIP proceedings Ex.PW-19/A to Ex.PW-19/R she correctly identified accused Mohd.Israel, Pankaj Biswas and Shankar. The other three accused refused to participate in the Test Identification Proceedings alleging that their face was shown to the witness.

29. Another independent incriminating evidence has been found against appellant Vinod. Chance prints lifted from the scene of the crime, as per the report Ex.PW-22/O, were opined to be of appellant Vinod.

30. In our opinion the report Ex.PW-22/O cannot be relied upon in evidence for the reason the so-called specimen finger prints of Vinod were obtained when he was in police custody and in violation of Section 5 of the Identification of Prisoners Act 1920, which required his being identified before

a Magistrate. Further, no orders were obtained by the competent Court to obtain the sample finger prints. As held in the decisions reported as AIR 1980 SC 791 State of UP Vs. Ram Babu Mishra and 1994 (5) SCC 152 Sukhvinder Singh & Ors. Vs. State of Punjab and lastly the decision reported as AIR 2003 SC 4377 State of Haryana Vs. Jagbir Singh & Ors., wherever a sample handwriting or a finger print of an accused is taken without obtaining the orders from the competent Court and without the accused being identified as required by the Identification of Prisoners Act 1920, the reports based on such samples taken have to be excluded while considering the evidence.

31. Thus, everything turns on the testimony of Pratima PW-2.

32. Appellant Vinod is obviously entitled to an acquittal for the reason as per Pratima only 5 accused had entered the house. To the specific question whether Vinod was also present in the house she gave a categorical reply, being 'No'. Unfortunately, the learned Trial Judge has not even bothered to consider the testimony of Pratima. He has chosen to record facts as stated by Pratima in her statement Ex.PW-2/A. Even while so doing, the learned Trial Judge forgot that even in said statement Pratima has categorically said that five persons had entered her house. The learned Trial Judge forgot that where

from did the sixth accused surfaced.

33. Pouncing upon Pratima's admissions during cross-examination that the photographs of all the accused were shown to her by the investigating officer before she participated in the Test Identification Proceedings, it is urged that in that view of the matter, Pratima successfully identifying accused Shankar, Pankaj Biswas and Mohd.Israel during TIP proceedings is meaningless and that it is apparent that the other three accused had good reasons to refuse to participate in the TIP proceedings. Counsels urge that the said fact additionally dents Pratima's dock identification of five accused in Court. It is urged that there being no other incriminating evidence against appellants Pankaj Biswas, Mohd.Israel, Shankar and Sunil, they are entitled to an acquittal. Learned counsel urge that even Vishwajit Dass be acquitted, notwithstanding he not having filed any appeal, in view of the decision of the Supreme Court reported as AIR 1988 SC 345 *Hari Nath & Anr. Vs. State of UP.*

34. As held in the decision reported as JT 2000 (9) SC 467 *State of West Bengal vs. Mir Mohammad Omar & Ors.,* deficiencies in investigation cannot be a ground to acquit the accused, if otherwise, credible evidence emerges and is sufficient to sustain a finding of guilt.

35. Likewise, over-enthusiasm shown by an

investigating officer during investigation if found to be polluting some part of the investigation, by itself would not be a ground to throw out the entire evidence collected during investigation.

36. In such circumstances, the Court has to be cautious in evaluating the evidence brought before it.

37. As per Pratima, five persons entered her house at around 8:45 PM and remained in the house for about two hours. As per Ex.PW-16/A information was received at the police control room at 9:50 PM that a person has been killed and house No.I-1636 Chittaranjan Park has been looted.

38. The written document Ex.PW-16/A has to be preferred as a correct recording of the time and thus it is apparent that by 9:50 PM the crime got reported to the police. That Pratima said that the dacoits remained in her house for about two hours does not mean that she is a liar. Nobody remembers the time of an event with reference to the watch. One vaguely remembers the time. That Pratima deposed in Court on 30.5.2002 and the crime took place on 14.4.2000 has to be kept in mind. As per Pratima the dacoits entered the house at 8:45 PM. The PCR form records the time at 9:50 PM i.e. with a gap of one hour and five minutes. Thus, the time of one hour being wrongly said as two hours is a minor embellishment and not a serious infirmity in the testimony of

Pratima.

39. There are decisions and decisions on test identification to be conducted or not. No useful purpose would be served to make a catalog of all the decisions. Sufficient would it be to state that evidence in Court pertaining to the identity of a person is admissible by virtue of Section 9 of the Evidence Act and Test Identification relates to an investigation and has a sanctity by virtue of Section 162 Cr.P.C.

40. Pertaining to identification of an accused, the genesis of test identification proceedings is rooted in the imperfection of the human mind. With passage of time, memory fades and there may be errors in identifying a person seen after a passage of time. Pertaining to crimes, a victim or an eye-witness do normally lose emotional balance and this loss of emotional balance disturbs the power of perception thereby introducing the possibility of an identification being distorted. There is another problem. Motives, not necessarily stipulated originally by the accused personally but the desire of vengeance upon a person believed guilty or the desire, conscious or unconscious to find a scapegoat may compel a victim or a witness to even identify an innocent person.

41. Thus, where an accused is not previously known to the victim or the eye-witness, if such accused is identified at a Test Identification Proceedings soon after the crime by an eye-

witness or the victim, it lends assurance to the credibility of the deposition in Court and dock identification of the accused. But, as held in the decision reported as AIR 1988 SC 345 Harinath & Anr. vs. State of U.P., the absence of corroboration by Test Identification is not necessary and assumes no importance if either the eye-witness or the victim knows the accused earlier *or where the reasons for gaining an enduring impress of the identity on the mind and memory of the witness are, otherwise, brought out.*

42. Thus, where the evidence on record shows that the eye-witness or the victim got sufficient opportunity to see the accused where from it can be reasonably inferred that the features of the accused got well etched in the memory of the eye-witness or the victim, not much importance has to be attached to no Test Identification being conducted or there being a taint in the Test Identification Proceedings.

43. A reference to the deposition of Pratima Gupta, contents whereof have been noted in para 4 above show that after the five accused entered her house, she and her husband were overpowered. She pleaded for their lives and handed over five gold bangles, a heavy gold chain, gold studded ear top and one ruby studded gold ring. Though she has not so deposed, presumably the said jewellery was on her person and she removed the same and handed it over. Time was

consumed when these acts were being performed. She deposed that the accused asked where other goods and dollars as also Rs.2 lakhs was kept. She replied that no such things were in the house. This dialogue, face to face with the accused, took further time. She further deposed that she was taken to the adjoining bedroom and was made to sit on the chair and was tied. This would consume further time. All along, the five accused were in her eye-sight. Thereafter, the almirah was ransacked and after looting the house, the dacoits fled. It is apparent that Pratima Gupta saw the accused, if not for more, at least for about an hour. We are satisfied that the evidence establishes that the features of the five dacoits was well etched in the memory of Pratima Gupta, who interestingly, in her statement Ex.PW-2/A has disclosed the broad features of the accused and no arguments have been advanced that the said broad features so disclosed do not match those of the appellants.

44. It is true that when cross-examined as to what was exactly done by which accused, Pratima failed to disclose the individual role specific to each accused. But, from said fact no adverse inference can be drawn against Pratima. When the number of accused are many it does happen that when called upon after a considerable gap of time, that the viewer i.e. the witness may not be able to specify as to who exactly did what.

The human mind tends to forget the facts at the fringes while remembering the core.

45. An ingenuous argument has been advanced. It is urged that while deposing in Court, Pratima Gupta has not said that any accused strangled her husband. It is thus urged that it has not been proved that the deceased was murdered by the accused. Hence, it is urged that the offence punishable under Section 396 IPC has not been proved.

46. Now, Pratima has deposed that one accused overpowered her husband. She has deposed that after she was overpowered, she was taken to the adjoining bedroom and tied her to a chair and gagged her. She has deposed that after the dacoits left and she untied herself and came to the drawing room where she saw her husband lying dead on the floor. The post-mortem report Ex.PW-5/A and the testimony of Dr.Sanjeev Lalwani PW-5 clearly establishes that the deceased died due to asphyxia consequent upon strangulation. Who else, other than the accused were responsible for the death of the deceased? On the evidence on record, every reasonable and prudent person would respond: It is the accused – It is the accused.

47. That no recoveries have been effected and the Nagaraj idol Ex.P-6 has not got linked as the recovery got effected by the accused, does not mean that there was no

dacoity. The testimony of Pratima establishes that gold and diamond jewellery as also money was looted.

48. To bring the curtains down, Crl.Appeal No.831/2004, Crl.Appeal No.609/2004, Crl.Appeal No.513/2005 and Crl.Appeal No.275/2006 are dismissed.

49. Crl.Appeal No.369/2004 filed by appellant Vinod is allowed and he is acquitted of the charge framed against him. The order of sentence dated 16.2.2004 against him is set aside.

50. Appellant Vinod is still in jail. We direct the Superintendent, Central Jail, Tihar to release him, if he is not required to be kept in custody in any other case.

51. Appellants Shankar and Mohd.Israel have been admitted to bail pending hearing of the respective appeal filed by them. We cancel the bail bond and surety bonds furnished by them and direct that they should be taken into custody.

52. Appellant Sunil and Pankaj Biswas are still in jail. Thus, we direct the Registry to send three copies of the present decision to the Superintendent, Central Jail, Tihar who shall supply a copy each to Pankaj Biswas and Sunil.

53. The Registry is further directed to send a copy of this decision to the Inspecting Judges of Sh.Narottam Kaushal ASJ Delhi with a covering letter highlighting for the benefit of the Hon'ble Inspecting Judges, para 2, 3, 4, 8, 9 and 10 of the

instant decision.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

JANUARY 22, 2010
dk