

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

% *Judgment Reserved On: 3rd March, 2010*
Judgment Delivered On: 5th April, 2010

+ **CRL.APPEAL 537/2006**

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

versus

STATE Respondent
Through: Ms.Richa Kapoor, Advocate

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

PRADEEP NANDRAJOG, J.

1. Dr.S.K.Vishwakarma (hereinafter referred to as the "Deceased") was a Professor in University College of Medical Sciences, GTB Hospital and was heading Indian Council Medical Research Project undertaken by the said hospital.

2. On 13.04.2000 the deceased lodged a complaint Ex.PW-10/A with PS Dilshad Garden stating therein that after forging his signatures on a cheque, on 29.02.2000 an unknown person had fraudulently withdrawn a sum of Rs.40,000/- from the

savings account maintained by him with Canara Bank, GTB Extension Counter, New Delhi. Based thereon FIR No.62/2000, Ex.PW-2/A, for the offence of cheating was registered.

3. On 06.05.2000, SI Inderjeet PW-10 obtained the forged cheque Ex.PW-1/A dated 29.02.2000 from Ashok Shelly PW-1, Manager, Canara Bank, and seized the same vide memo Ex.PW-1/B. On 10.08.2000 SI Inderjeet met the deceased and obtained his specimen signatures and seized the same vide memo Ex.PW-10/C. On 05.10.2000 SI M.C.Pandey PW-5 and Const.Kishan Sahay PW-6, obtained the specimen signature card Ex.P-2 of the deceased in respect of account maintained by the deceased in Canara Bank from the officials of Canara Bank and seized the same vide memo Ex.PW-5/C.

4. No headway could be made in the investigation till the fateful day i.e. 4.7.2001 came into being.

5. On 04.07.2001, at about 2.15 P.M. Dr.Shardha Jain PW-30, employed as a Research Associate in GTB Hospital and working under the supervision of the deceased, went to the cabin of the deceased situated in ward No.25 of GTB Hospital and saw the deceased lying unconscious on a chair with blood oozing from his right ear. Dr.Shardha Jain immediately apprised two nurses Nirmala PW-1 and Jagtar Kaur PW-15, of

the aforesaid fact. Dr.Sanjay Kohli PW-5, reached the cabin of the deceased. He examined the deceased and prepared the MLC Ex.PW-5/A of the deceased. Thereafter the deceased was shifted to the Intensive Care Unit of GTB Hospital where he died.

6. Const.Devender Kumar PW-25, duty constable at GTB Hospital, passed on the information of Dr.S.K.Vishwakarma being grievously injured to PS Dilshad Garden where the duty constable noted the same vide DD No.12A Ex.PW-25/A.

7. Copy of DD Entry Ex.PW-25/A was handed over to SI Manoj Kumar PW-27 who accompanied by Const.Faruq Ahmad PW-9 went to GTB Hospital where the doctors treating the deceased informed him that the deceased had died. The doctors on duty conducted the X-ray and CT scan of the skull of the deceased but could not give any conclusive opinion regarding the cause of death of the deceased. As the cause of death of the deceased was not clear, SI Manoj Kumar chose to wait for the result of the post-mortem of the deceased before proceeding further in the matter.

8. The dead body was seized and sent to the mortuary of the hospital, where on 05.07.2001 at about 11.50 A.M. Dr.S.K. Verma PW-13 conducted the post-mortem and prepared the

post-mortem report Ex.PW-13/A recording thereon that a lacerated firearm entry wound was found on the head of the deceased; that cause of death of the deceased was shock which resulted due to aforesaid head injury; that the said injury was produced by projectile of a firearm and was sufficient to cause death in the ordinary course of nature and that two small fragments of bullet were found in the skull of the deceased.

9. After conducting the post-mortem, Dr.S.K.Verma handed over the two fragments of bullet found in the skull of the deceased to Const.Faruq Ahmad PW-9, who in turn handed over the same to SI Manoj Kumar, vide memo Ex.PW-9/A.

10. On the receipt of the post-mortem report Ex.PW-13/A which clearly pointed towards the fact that the deceased was shot dead by somebody, SI Manoj Kumar PW-27 made an endorsement Ex.PW-27/H on the DD entry Ex.PW-25/A, and got registered FIR No.162/2001, Ex.PW-28/A for the offence of murder.

11. After the registration of the FIR, the investigation of FIR No.162/2001 was taken over by Inspector Shiv Dayal PW-31.

12. On 05.07.2001 Inspector Shiv Dayal recorded the statement of Shalini PW-11, the daughter of the deceased,

wherein she stated that the appellant used to work as a driver with her father i.e. the deceased. When she reached GTB Hospital on learning about the incident in question, she found complaints Ex.PW-3/A, Ex.PW-3/B and Ex.PW-31/C. She further learnt that the appellant had got typed the aforesaid complaints at the asking of the deceased. On one occasion the deceased told her that someone had fraudulently withdrawn huge amount of cash from his bank account. She suspects that the appellant is involved in the murder of the deceased and that he had fraudulently withdrawn money from the bank account of the deceased.

13. Inspector Shiv Dayal PW-31, seized the three complaints Ex.PW-3/A, Ex.PW-3/B and Ex.PW-31/C from Shalini vide memo Ex.PW-31/B. It may be noted here that the complaints Ex.PW-3/B and Ex.PW-31/C were addressed to the SHO P.S. Dilshad Garden and the complaint Ex.PW-3/A was addressed to the Senior Manager of Canara Bank and that the contents of the aforesaid complaints are verbatim the same. The complaints record that amounts of Rs.2,60,000/- and Rs.90,000/- have been fraudulently withdrawn from the bank account of the deceased by means of cheques Nos.16641 and 16442 dated 14.06.2001 and 16.06.2001 respectively. It may also be noted

that the complaints do not bear the signatures of the deceased.

14. Thereafter Inspector Shiv Dayal contacted Vijay Kumar Narula PW-4 an officer of Canara Bank where the deceased had an account and seized 9 cheques and 9 authority letters vide memo Ex.PW-4/A. The 9 cheques and the authority letters purport to be executed by the deceased authorizing the appellant to receive money under the cheques. The details of the cheques as noted in the memo Ex.PW-4/A are as under:-

S. No.	Number of Cheque	Amount of Cheque (in Rupees)	Date of Cheque	Exhibit Mark of Cheque	Exhibit Mark of Corresponding Authority Letter
1.	750855	60,000	13.01.2001	PW-4/B	PW-4/C
2.	750851	40,000	03.03.2001	PW-4/D	PW-4/D
3.	16641	2,60,000	14.06.2001	PW-4/E	PW-4/F
4.	16642	90,000	16.06.2001	PW-4/G	PW-4/H
5.	19071	10,000	19.06.2001	PW-4/J	PW-4/I
6.	789977	5,000	08.06.2001	PW-4/M	PW-4/L
7.	750849	20,000	01.03.2001	PW-4/O	PW-4/N
8.	768609	2,000	09.08.2000	PW-4/Q	PW-4/P
9.	750858	20,000	23.03.2001	PW-4/S	PW-4/R

15. It is apparent that the appellant became the suspect in both FIRs. On 06.07.2001 Inspector Shiv Dayal PW-31 and SI Manoj Kumar PW-27 arrested the appellant. On being interrogated by Inspector Shiv Dayal in the presence of SI Manoj Kumar and two public persons namely Ram Babu Sharma PW-7 and Devender Sharma PW-8, the appellant made a disclosure statement Ex.PW-7/A wherein he admitted his guilt. He further disclosed that he can get recovered a sum of Rs.20,000 – 25,000/-fraudulently withdrawn by him from the account of the deceased as also a motorcycle, a Maruti van, a camera, binoculars, three gold rings and two gold chains purchased by him from the money fraudulently withdrawn by him from the account of the deceased. He also stated that he can get recovered the revolver used by him for murdering the deceased.

16. Pursuant thereto, the appellant led the aforesaid police officers and public persons to his residence and got recovered a sum of Rs.25,000/- a camera, binoculars, three gold rings and two gold chains which were seized vide memo Ex.PW-7/B. Thereafter the appellant got recovered a motorcycle and a Maruti Van parked outside his residence which were seized vide memos Ex.PW-7/C and Ex.PW-7/D respectively. The said motorcycle was made case property in FIR No.62/2000, for the

reason the appellant stated to have purchased the same from the amount of the cheque Ex.PW-1/A, which cheque forms the subject-matter of FIR No.62/2000. After sometime, the appellant got recovered a revolver lying hidden under bushes which was seized vide memo Ex.PW-7/E.

17. On 08.07.2001 Inspector Shiv Dayal obtained the specimen signatures and handwriting of the appellant when he was in police custody as also the specimen writing of Bhagwan Das and seized the same vide memos Ex.PW-22/B and Ex.PW-22/A respectively. Inspector Shiv Dayal handed over one of the papers containing the specimen signatures of the appellant to the investigating officer of FIR No.62/2000 vide memo Ex.PW-11/A.

18. The revolver recovered at the instance of the appellant, the cheques and authority letters seized vide memo Ex.PW-4/A, the fragments of the bullet found in the body of the deceased and specimen signatures and handwritings of the appellant was sent to the Forensic Science Laboratory.

19. The FSL report Ex.PW-31/H records that the revolver recovered at the instance of the appellant is designed to fire a standard .32" cartridge; that the said revolver was found in a working order and that the no opinion could be given

regarding fragments of bullet found in the body of the deceased due to insufficient data.

20. The FSL report Ex.PW-31/G records that the suspect signatures of the deceased contained on the cheques Ex.PW-4/B, Ex.PW-4/D, Ex.PW-4/E and Ex.PW-4/G and the authority letters Ex.PW-4/C, Ex.PW-4/D, Ex.PW-4/F and Ex.PW-4/H were compared with the “admitted signatures” of the deceased contained in the cheques Ex.PW-4/J, Ex.PW-4/M, Ex.PW-4/O, Ex.PW-4/Q and Ex.PW-4/S and the authority letters Ex.PW-4/I, Ex.PW-4/L, Ex.PW-4/N, Ex.PW-4/P and Ex.PW-4/R and that the signatures on the cheques Ex.PW-4/B, Ex.PW-4/D, Ex.PW-4/E and Ex.PW-4/G and the authority letters Ex.PW-4/C, Ex.PW-4/D, Ex.PW-4/F and Ex.PW-4/H are not those of the deceased. The FSL report Ex.PW-31/G further records that some portion of the writings contained in the cheques Ex.PW-4/B, Ex.PW-4/D, Ex.PW-4/E and Ex.PW-4/G and the authority letters Ex.PW-4/C, Ex.PW-4/D, Ex.PW-4/F and Ex.PW-4/H is that of the appellant; that some portion of the writings contained in the cheques Ex.PW-4/B, Ex.PW-4/D and Ex.PW-4/G and the authority letters Ex.PW-4/C, Ex.PW-4/D, Ex.PW-4/F and Ex.PW-4/H is that of Bhagwan Das and that it has not been possible to fix the authorship of the signatures contained in the cheques Ex.PW-

4/B, Ex.PW-4/D, Ex.PW-4/E and Ex.PW-4/G and the authority letters Ex.PW-4/C, Ex.PW-4/D, Ex.PW-4/F and Ex.PW-4/H.

21. In respect of FIR No.62/2000, the cheque Ex.PW-1/A, the specimen signatures of the appellant, the specimen signatures of the deceased and the specimen signature card of the deceased was sent to the FSL. Vide FSL report Ex.A1 it was opined that the cheque Ex.PW-1/A bears the signatures of the appellant.

22. Armed with the aforesaid materials, the police filed charge sheet(s) in both the FIRs namely FIR No.62/2000 and FIR No.162/2001. The appellant was made an accused in both the FIRs.

23. In respect of FIR No.62/2000, charges under Sections 420, 468 and 471 IPC were framed against the appellant for having cheated the appellant; having forged the cheque Ex.PW-1/A and having used the cheque Ex.PW-1/A as a genuine document.

24. In respect of FIR No.162/2001, charges under Sections 302, 420, 468 and 471 IPC and Section 25 Arms Act were framed against the appellant for having murdered the deceased; having cheated the deceased; having forged the cheques Ex.PW-4/B, Ex.PW-4/D, Ex.PW-4/E and Ex.PW-4/G;

having used the cheques Ex.PW-4/B, Ex.PW-4/D, Ex.PW-4/E and Ex.PW-4/G as genuine documents and having possessed the firearm in contravention of Section 5 of Arms Act.

25. In respect of trial pertaining to FIR No.162/2001, the prosecution examined 11 witnesses.

26. Devender Sharma PW-3 and Ram Babu Sharma PW-4, public persons, deposed that the motor cycle bearing No. DL-4S-M-9610 was got recovered by the appellant in their presence. Sunil Kumar PW-8, deposed that he is engaged in the business of sale and purchase of automobiles and that the delivery receipt Ex.PW-8/A issued by him, which receipt records that the motorcycle bearing No. DL-4S-M-9610 was delivered to the appellant, was issued by him.

27. SI Inderjeet PW-10, deposed that the investigation in respect of FIR No.62/2000 registered against the appellant was conducted by him. On being cross-examined about the investigation conducted by him in FIR No.62/2000 regarding the role of the appellant, he stated that (Quote): *'I had met the complainant Dr.S.K.Vishwakarma and he had asked me to make inquiries from his driver also. I had thereon met the driver of the complainant i.e. Accused. At that time the complainant had not suspected the accused for the cheating*

and forgery.....I had made inquiries from the accused in this case.'

28. In respect of trial pertaining to FIR No.162/2001, the prosecution examined 31 witnesses.

29. Nirmala J.Singh PW-1, deposed that on 04.07.2001 she was on duty as a nurse in ward No.25 of GTB Hospital. At about 2.15 P.M. Dr.Shraddha Jain came to her and told her that something untoward had happened to the deceased upon which she apprised the nurse-incharge Jagtar Kaur of the aforesaid facts. Thereafter she, Dr.Shraddha Jain and Jagtar Kaur went to the cabin of the deceased where she saw that the deceased was lying unconscious on a chair and that blood was oozing out of his right ear. After few minutes of their arrival in the cabin of the deceased, the appellant who was the driver of the deceased also came there and that the appellant was carrying a tiffin in his hand.

30. On being questioned about the presence of public in the ward in question, she stated that (Quote): *'It is correct that patient and attendant were also available in the wards....'*

31. Kavinder Kumar PW-3, deposed that he was working a typist in N.V. Computers, GTB Enclave, Delhi in July 2001. In the afternoon of 04.07.2001 the appellant who was the driver

of the deceased came to N.V. Computers and got typed the complaints Ex.PW-3/A and Ex.PW-3/B from him.

32. Vijay Kumar Narula PW-4, deposed that he was working as Special Assistant in Canara Bank, GTB Enclave, Delhi in the year 2001. He knew the deceased as he was maintaining a savings bank account in Canara Bank. Usually, the appellant who was the driver of the deceased used to come to the bank to deposit cheques and withdraw money etc on behalf of the deceased. On two occasions the appellant had withdrawn Rs.2,60,000/- and Rs.90,000/- from the account of the deceased.

33. Ram Babu Sharma PW-7 and Devender Sharma PW-8, public persons deposed that one camera, two gold chains, three gold rings, one maruti van and cash in sum of Rs.25,000/- was got recovered by the appellant from his residence in their presence. They further deposed that the appellant got recovered a revolver lying hidden under bushes in his presence.

34. Shalini PW-11, the daughter of the deceased, deposed that the appellant was working as a driver with her family since the year 1998. On 04.07.2001 when she went to GTB hospital on learning about the incident in question she had the

complaint Ex.PW-3/B in her hand. On 2/3.07.2001 when she had gone to her parental house the deceased told her that a huge amount has been fraudulently withdrawn from his bank account and that he would lodge a complaint with the police and the bank authorities in said regard. She suspected that the appellant had fraudulently withdrawn the money from the bank account of the deceased and that he had committed the murder of the deceased for the expenditure used to be incurred by the appellant were far greater than his salary.

35. Aan Singh Bisht PW-12, deposed that he works as a clerk in Canara Bank. The deceased never came to the bank to operate his bank account and that the appellant who was the driver of the deceased used to operate the bank account of the deceased. The appellant had operated the bank account of the deceased in his presence. On 14.06.2001 the appellant had withdrawn a sum of Rs.2,60,000/- from the account of the deceased. He was working as cashier on 14.06.2001 and that he had made the payment of sum of Rs.2,60,000/- to the appellant.

36. Jagtar Kaur PW-15, deposed that in July 2001 she was working as nurse-incharge in Ward No.25 of GTB Hospital. On one day in July 2001 at about 2.15 P.M. two nurses namely Moli and Nirmala and Dr.Shraddha Jain came to her and

informed her that something untoward had happened to the deceased. Thereafter they all went to the cabin of the deceased where they saw that the deceased was lying unconscious on his chair and that blood was oozing out from his right ear. After few minutes of their arrival in the cabin of the deceased, the appellant who used to come to the hospital with the deceased also came there and that the appellant was carrying a tiffin in his hand.

37. On being questioned about the presence of the public near the cabin of the deceased, she stated that (Quote): *'No public used to go towards the room of the doctor. There was some distance between the stairs and the room of the doctor. It is correct that the toilet and bathroom fall in front of the staircase. The room of the doctor was at a distance of about 20 paces from the stairs. The room of the doctor was similarly at a distance of about 15/20 paces from the toilet/bathroom....It is correct that the stairs are used by the public. Attendants and patients also used the said staircase. There is a passage from the other side for entry to the wards also.'*

38. Bhagwan Das PW-16, deposed that the appellant was his neighbour. The cheques Ex.PW-4/B and Ex.PW-4/D were filled by him at the asking of the appellant. The authority letters

Ex.PW-4/C, Ex.PW-4/D, Ex.PW-4/F and Ex.PW-4/H were written by him at the asking of the appellant. He denied that the cheques Ex.PW-4/E and Ex.PW-4/G were filled by him. The appellant used to tell him that he is asking him to fill/write cheques/authority letters as the deceased does not have the time to do so.

39. Arun Duggal PW-20, deposed that he works as a clerk in Canara Bank. Usually, the appellant who was the driver of the deceased used to come to the bank for withdrawing money on behalf of the deceased. On 16.06.2001 the appellant had withdrawn a sum of Rs.90,000/- from the account of the deceased. He was working as cashier on 16.06.2001 and that he had made the payment of sum of Rs.90,000/- to the appellant.

40. Kuleen Prabhakar PW-21, an employee of University College of Medical Sciences, produced the documents Ex.PW-21/A, Ex.PW-21/B and Ex.PW-21/C and deposed that the same were issued by the said college. The said documents show that the appellant was working as lab attendant in ICMR project headed by the deceased.

41. SI Kumar Santosh PW-22, deposed that SHO of police station of Dilshad Garden had obtained the specimen

signatures and handwriting of the appellant and specimen signature of Bhagwan Das in his presence. On being questioned about the specimen signatures and handwriting of the appellant, he stated that (Quote): *'IO did not obtain permission from area MM to obtain the specimen of the accused in my presence.'*

42. Mohd. Kushnoor PW-26, deposed that he was employed as an orderly in GTB Hospital. On several occasions he had withdrawn cash from the bank account of the deceased. The appellant who was the driver of the deceased used to withdraw money from the bank account of the deceased in his absence. The deceased had told him that he doubted the appellant in respect of fraudulent withdrawal of money from his bank account. When he told the appellant about the aforesaid conversation between him and the deceased the appellant told him that the deceased is speaking unnecessarily as he is suffering from hypertension.

43. SI Manoj Kumar PW-27, deposed that the endorsement Ex.PW-27/H was prepared by him. On being questioned about the specimen signatures and handwriting of the appellant, he stated that (Quote): *'No permission was taken from the court to take specimen handwriting and sign. of accused.'*

44. Ashok Kumar PW-29, deposed that he is engaged in the business of sale and purchase of cars. On 16.06.2001 he had sold Maruti van bearing No.DL-4C-H-9873 to the appellant for a consideration of Rs.1,80,000/-.

45. Shardha Jain PW-30, deposed that she was working as Research Associate in ICMR project headed by the deceased. On 04.07.2001 she was present with the deceased in his cabin from 11.30 P.M. to 01.00 P.M. At about 01.00 P.M. she left from the cabin of the deceased and went to her own cabin. After having lunch she went to the toilet located outside her cabin. When she was returning to her cabin from the toilet she saw the appellant coming out of the cabin of the deceased. The appellant was carrying tiffin and some files in his hands at that time. Thereafter she went to her cabin. After sometime she suspected that someone had bolted the door of her cabin from outside. When she checked the door her doubt was confirmed. She tried to open the door of her cabin but to no vain. She climbed on the sofa kept in her cabin and tried to raise alarm through the window of her room. After about half an hour she saw a lady and a gentleman in the corridor of the floor below to the floor where her cabin was located. On hearing her voice the aforesaid persons came there and opened the door of her cabin. Thereafter she went to the room of the deceased where

she saw that the deceased was lying in an unconscious condition on a chair and blood was oozing out of the right ear of the deceased. She immediately apprised three nurses namely Nirmla, Moli and Jagtar Kaur of the aforesaid facts. The deceased was immediately shifted to Intensive Care Unit of the hospital. At the time when the deceased was being shifted to ICU the appellant also came in the cabin of the deceased and helped in shifting the deceased to ICU. The appellant was carrying tiffin in his hands at that time. At the time when she saw the appellant coming out of the cabin of the deceased she did not notice any other person in the corridor. At the time when she went to the room of the deceased after the door of her cabin was opened she did not see any person outside the cabin of the deceased or in the corridor.

46. On being questioned about the presence of public in the wards in question, she stated that (Quote): *'The peoples in the gallery used to walk freely as there was no restriction for using the same on the persons. It is also correct that about 100 patients used to be admitted in the same ward. It is also correct that the attendants with the patients used to stay in the hospital freely.'*

47. Inspector Shiv Dayal PW-31, deposed that the investigation pertaining to FIR No.162/2001 was conducted by him.

48. In his examination under Section 313 Cr.P.C. save and except admitting the factum of his employment with GTB Hospital, the appellant denied everything and pleaded false implication.

49. In defence, the appellant examined Noor Mohammad DW-1, the father of the wife of the brother of the appellant. The witness deposed that on 29.12.2000 he had given a sum of Rs.1,25,000/- as loan to the appellant as the appellant wanted to purchase a Maruti Van. Out of the said amount of Rs.1,25,000/-, Rs.1,17,000/- was withdrawn by him from his bank account as recorded in the pass book Ex.DW-1/A issued to him by the bank.

50. Though trial pertaining to the two FIRs was conducted separately, but at the fag end, both were clubbed for the reason the prosecution realized a commonality of evidence in the two FIRs. Thus, both FIRs came to be decided by a common judgment.

51. Vide judgment and order dated 28.04.2006 the learned Trial Court has convicted the appellant of all the charges

framed against him in both the FIRs. It has been held by the learned Trial Court that the fact that the signature of the appellant were found on the cheque Ex.PW-1/A and that his writings were contained in the cheques Ex.PW-4/B, Ex.PW-4/D, Ex.PW-4/E and Ex.PW-4/G, establishes that the appellant had forged the cheques Ex.PW-1/A, Ex.PW-4/B, Ex.PW-4/D, Ex.PW-4/E and Ex.PW-4/G and fraudulently withdrawn the money from the bank account of the deceased. It has further been held by the Trial Court that the fact that the appellant had forged the cheques Ex.PW-1/A, Ex.PW-4/B, Ex.PW-4/D, Ex.PW-4/E and Ex.PW-4/G establishes that the appellant had a motive to murder the deceased for the deceased was planning to lodge a complaint with the police in regard to said cheques. Testimony of Dr.Shardha Jain has been used as evidence of the appellant being last seen in the company of the deceased soon before the deceased was found grievously injured in his cabin in the hospital. On the proof of motive and last seen, the appellant has been convicted for the offence of having murdered the deceased.

52. From the narratives stated above, the case set up by the prosecution can be summed up as under: - The appellant was employed as a driver with the deceased and that the deceased reposed utmost faith in the appellant and used to authorize

him to withdraw money from his bank account on his behalf. However, the appellant abused the trust reposed in him by the deceased by forging the signatures of the deceased on certain cheques and fraudulently withdrawn money from the bank account of the deceased. When the factum of the fraudulent withdrawal of money from the bank account of the deceased came to the knowledge of the deceased, he decided to lodge a complaint with the police in said regard. On the day of the incident, the deceased used the services of the appellant to get typed the complaints which the deceased intended to lodge with the bank and the police and fearing that the game was up, to wipe away a vital witness to the acts of forgery and cheating by him, the appellant murdered the deceased.

53. Though it has not been proved that the appellant was employed as a driver by the deceased, but it stands proved that the appellant was employed as a Laboratory Attendant in the ICMR Project headed by the deceased. The same has been proved through the testimony of Kuleen Prabhakar PW-21. Through the testimony of various other witnesses hereinabove noted it stands proved that the appellant used to carry out personal works of the deceased and that the appellant enjoyed the trust and confidence of the deceased and that the appellant used to take the cheques drawn on self by the

deceased and used to encash the same under the authorization of the deceased.

54. Has the prosecution successfully proved that the appellant forged the cheques Ex.PW-1/A, Ex.PW-4/B, Ex.PW-4/D, Ex.PW-4/E and Ex.PW-4/G?

55. A close look at the evidence adduced by the prosecution shows that the prosecution had attempted to establish that the cheques Ex.PW-1/A, Ex.PW-4/B, Ex.PW-4/D, Ex.PW-4/E and Ex.PW-4/G were forged by the appellant by proving either of the following four facts:-

I The signatures of the appellant were found on the cheque Ex.PW-1/A and that the writing on the cheques Ex.PW-4/B, Ex.PW-4/D, Ex.PW-4/E and Ex.PW-4/G were in the hand of the appellant.

II Bhagwan Dass filled the cheques Ex.PW-4/B, Ex.PW-4/D and Ex.PW-4/G and prepared the authority letters Ex.PW-4/C, Ex.PW-4/D, Ex.PW-4/F and Ex.PW-4/H at the instance of the appellant.

III The appellant collected the amount of the cheques Ex.PW-4/E and Ex.PW-4/G from the bank.

IV The appellant got recovered a motorcycle, a maruti van, a camera, binoculars, three gold rings and two gold chains purchased by him from the money fraudulently withdrawn by him from the account of the deceased.

56. The prosecution has sought to prove that signatures on the cheque Ex.PW-1/A and the writings on the cheques Ex.PW-4/B, Ex.PW-4/D, Ex.PW-4/E and Ex.PW-4/G were in the hand of the appellant by means of the report Ex.PW-31/G.

57. The testimony of SI Santosh Kumar PW-22, SI Manoj Kumar PW-27, Inspector Shiv Dayal PW-31, contents whereof have been noted in foregoing paras, makes it abundantly clear that the specimen signatures and writings of the appellant were obtained by Inspector Shiv Dayal when the appellant was in custody. The identification of the appellant as required by the Identification of Prisoner's Act 1920 was not got done. Nor was permission obtained from the court of competent jurisdiction to obtain the specimen signatures and writings of the appellant.

58. The learned Trial Judge has held that in view of the decision reported as 1961 Cri. LJ 856 State of Bombay Vs. Kathi Kalu Oghad & Ors. the report Ex.PW-31/G was admissible in evidence and was properly proved. Decisions cited which

took the view that unless orders were obtained from the Court of Competent Jurisdiction followed by a proper identification of the prisoner as required by Section 5 of the Identification of Prisoners Act 1920, if the alleged specimen writings and signatures were obtained in contravention of said procedure of law, reports based thereon were inadmissible in evidence, have been held by the learned Trial Judge to be contrary to the ratio of law laid down in Kathi Kalu Oghad's case (supra).

59. Unfortunately, the learned Trial Judge has ignored a very basic principle of the law of evidence. Admissibility of evidence is distinct from the proof of a fact. Relevance and admissibility of evidence relates to Section 5 to 55 of the Evidence Act and some provisions in part III of the Evidence Act. Proof of fact is dealt with in part II of the Evidence Act. That a piece of evidence is admissible is entirely different as to how said evidence has to be led and a fact proved.

60. In the decision dated 5.3.2009 disposing of Crl. Appeal No. 682/2008 'Santosh @Bhure v. State' and Crl. Appeal No. 316.2008 'Neeraj v. State', noting the decision of the Constitution Bench of the Supreme Court in Kathi Kalu Oghad's case as also the decisions of Supreme Court reported as (1980) 2 SCR 1067 State of U.P. v. Rambabu Mishra and (1994) 3 SCR 1061 Sukhwinder Singh and Ors. v. State of Punjab; a Crl.A.No.537/2006

Division Bench of this Court, of which, one of us, namely Pradeep Nandrajog, J. was a member, held as under:

“18. Unfortunately, for the prosecution, the charge against Neeraj has to fail for the simple reason Neeraj's specimen handwriting was obtained by the police when he was in their custody. No permission was taken from the Court concerned to obtain his specimen handwriting.

19. Learned Counsel for the State urges that a Constitution Bench of 11 Judges of the Supreme Court, in the decision reported as 1961CriLJ856 State of Bombay v. Kathi Kalu Oghad and Ors. has upheld the constitutional validity of compelling an accused to give specimen handwritings. It has been held that the same does not contravene Article 20(3) of the Constitution of India and thus the fact that the police obtained the specimen handwriting of Neeraj when he was in their custody does not invalidate the said act. Learned Counsel was at pains to point out that the Constitution Bench of the Supreme Court was considering three references pertaining to three views taken by the High Court of Bombay, Punjab and West Bengal pertaining to compelling an accused to give his specimen handwriting, fingerprints and specimen signatures respectively and that in the latter two cases the palm and finger print impressions as also the specimen signatures were obtained with the permission of the magistrate concerned but in the first case pertaining to the Bombay High Court the specimen handwritings were taken when the accused was in police custody. Thus, learned Counsel urged that the Constitution Bench upheld the action of taking specimen handwriting by the police when the accused was in police custody.

20. It may be noted that the Constitution Bench of the Supreme Court was dealing with the issue whether to compel an accused to give his blood sample, palm and fingerprints impressions, signatures and handwriting etc. would or would not be violative of Article 20(3) of the Constitution of India which made it unconstitutional for a person to

be a witness against himself. The Constitution Bench held that to be a witness means to give evidence. It was held that giving handwriting samples or fingerprints or palm impressions did not tantamount to giving evidence and that when a handwriting sample or a fingerprint or a palm impression was obtained by the police it did not amount to compelling an accused to be a witness against himself.

21. In the decision reported reference to the decision of the Constitution Bench in Kathi Kalu Oghad's case (supra) in para 7 it was observed as under:

7. Section 73 of the Evidence Act was considered by us in State (Delhi Administration) v. Pali Ram 1979CriLJ17 where we held that a Court holding an enquiry under the Criminal Procedure Code was entitled under Section 73 of the Evidence Act to direct an accused person appearing before it to give his specimen handwriting to enable the Court by which he may be tried to compare it with disputed writings. The present question whether such a direction, under Section 73 of the Evidence Act, can be given when the matter is still under investigation and there is no proceeding before the Court was expressly left open. The question was also not considered in State of Bombay v. Kathi Kalu Oghad 1961CriLJ856, where the question which was actually decided was that no testimonial compulsion under Article 20(3) of the Constitution was involved in a direction to give specimen signature and handwriting for the purpose of comparison.

22. In para 3 to 6 and para 8 of the decision in Rambabu Mishra's case (supra) it was observed as under:

3. Section 73 of the Evidence Act is as follows:

73. In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any

signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

This section applies also, with any necessary modifications to finger-impressions.

4. The second paragraph of Section 73 enables the Court to direct any person present in Court to give specimen writings "for the purpose of enabling the Court to compare" such writings with writings alleged to have been written by such person. The clear implication of the words "for the purpose of enabling the Court to compare" is that there is some proceeding before the Court in which or as a consequence of which it might be necessary for the Court to compare such writings. The direction is to be given for the purpose of 'enabling the Court to compare' and not for the purpose of enabling the investigating or other agency 'to compare'. If the case is still under investigation there is no present proceeding before the Court in which or as a consequence of which it might be necessary to compare the writings. The language of Section 73 does not permit a Court to give a direction to the accused to give specimen writings for anticipated necessity for comparison in a proceeding which may later be instituted in the Court. Further Section 73 of the Evidence Act makes no distinction between a Civil Court and a Criminal Court. Would it be open to a person to seek the assistance of the Civil Court for a direction to some other person to give sample writing under Section 73 of the Evidence Act on the plea that it would help him to decide whether to institute a civil suit in which the question would be whether certain alleged writings are those of the other person or not? Obviously not. If not, why should it make any difference if the investigating

agency seeks the assistance of the Court under Section 73 of the Evidence Act on the plea that a case might be instituted before the Court where it would be necessary to compare the writings?

5. We may also refer here to Section 5 of the Identification of Prisoners Act, 1920, which provides:

5. If a Magistrate is satisfied that, for the purposes of any investigation or proceeding under the CrPC, 1898, it is expedient to direct any person to allow his measurements or photograph to be taken, he may make an order to that effect, and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in the order and shall allow his measurements or photograph to be taken, as the case may be, by a police officer:

Provided that no order shall be made directing any person to be photographed except by a Magistrate of the first class:

Provided further, that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding.

Section 2(a) of the Act defines "measurements" as including "finger impressions and foot print impressions.

6. There are two things to be noticed here. First, signature and writing are excluded from the range of Section 5 of the Identification of Prisoners Act and, second, 'finger impressions' are included in both Section 73 of the Evidence Act and Section 5 of the Identification of Prisoners Act. A possible view is that it was thought that Section 73 of the Evidence Act would not take in the stage of investigation and so Section 5 of the Identification of Prisoners Act made special provision for that stage and even while making such provision, signature and writings were deliberately excluded. As we said, this is a possible view but not one on which we desire to rest our conclusion. Our conclusion rests on the language of Section 73 of the Evidence Act.

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8. The view expressed by us in the earlier paragraphs, on the construction of Section 73, Evidence Act was the view taken by the Madras High Court in *T. Subbiah v. S.K.D. Ramaswamy Nadar* AIR 1970 Mad. 85, the Calcutta High Court in *Farid Ahmed v. the State* AIR1960Cal32 (Mitter J., at page 32). and *Priti Ranjan Ghosh and Ors. v. The State* (1973) 77 CWN 865, the High Court of Punjab and Haryana in *Dharamvir Singh v. State*, the High Court of Madhya Pradesh in *Brij Bhushan Raghunandan Prasad v. The State* : AIR1957MP106 , the Orissa High Court in *Srikant Rout v. State of Orissa* 1972 (2) CWR 1332 and the Allahabad High Court in the judgment under appeal. A contrary view was taken by the Patna High Court in *Gulzar Khan and Ors. v. State* AIR1962Pat255 and the High Court of Andhra Pradesh in *B. Rami Reddy and Ors. v. State of Andhra Pradesh*. We do not agree with the latter view. We accordingly dismiss the appeal and while doing so we would suggest that suitable legislation may be made on the analogy of Section 5 of the Identification of Prisoners Act and provide for the investiture of Magistrates with the power to issue directions to any person, including an accused person, to give specimen signatures and writings.

23. In the decision reported as [1994]3SCR1061 *Sukhvinder Singh and Ors. v. State of Punjab*, noting that the specimen writing of Sukhvinder Singh was obtained by the police when he was in police custody, notwithstanding the fact that Sukhvinder Singh had admitted in his statement under Section 313 Cr.P.C. that he gave the specimen handwriting it was held that the opinion of the handwriting expert had to be excluded while considering the evidence against Sukhvinder Singh. We note that the said evidence brought on record inculpatory evidence against Sukhvinder Singh in respect of ransom letters Ex.P-A and Ex.P-C alleged by the prosecution to be in the handwriting of Sukhvinder Singh.

24. Thus, excluding the opinion of the handwriting expert pertaining to the letter recovered by the police from the left pocket of the deceased, we are

left with only one piece of evidence against Neeraj.
The same is the recovery of a knife at his instance.”

61. We may note that same view has been taken by the Supreme Court in the decision reported as 2003 Cri. LJ 5054 State of Haryana Vs. Jagbir Singh & Anr., in which decision the earlier decisions of the Supreme Court in Ram Babu Mishra's case (supra) and Sukhvinder Singh's case (supra) have been noted.

62. Thus, the FSL report Ex.PW-31/G has to be excluded from the arena of admissible evidence in the present case, for the reason, no orders were obtained from the competent court to obtain the specimen writings of the appellants nor were the provisions of the Identification of Prisoner's Act 1920 complied with.

63. The necessary corollary which results from the above conclusion is that the prosecution has failed to establish that the signatures on the cheque Ex.PW-1/A and the writings on the cheques Ex.PW-4/B, Ex.PW-4/D, Ex.PW-4/E and Ex.PW-4/G were in the hand of the appellant.

64. The next two facts sought to be proved by the prosecution was that Bhagwan Dass had filled the cheques Ex.PW-4/B, Ex.PW-4/D and Ex.PW-4/G and had prepared the authority letters Ex.PW-4/C, Ex.PW-4/D, Ex.PW-4/F and Ex.PW-

4/H at the instance of the appellant and/or that the appellant collected the amount under the cheques Ex.PW-4/E and Ex.PW-4/G from the bank.

65. The acts of the appellant of getting filled the cheques Ex.PW-4/B, Ex.PW-4/D and Ex.PW-4/G and having got prepared the authority letters Ex.PW-4/C, Ex.PW-4/D, Ex.PW-4/F and Ex.PW-4/H from Bhagwan Das and collecting amount under cheque Ex.PW-4/E and Ex.PW-4/G from the bank would be incriminating against the appellant only if the prosecution establishes that the cheques Ex.PW-4/B, Ex.PW-4/D and Ex.PW-4/G were forged documents.

66. Has the prosecution been able to do so?

67. As already noted herein above, 9 cheques and 9 authority letters were seized by Inspector Shiv Dayal from the bank and that all the 9 cheques and 9 authority letters were sent to the FSL. As per the information supplied by Inspector Shiv Dayal to FSL, as recorded in the FSL report Ex.PW-31/G, the cheques Ex.PW-4/B, Ex.PW-4/D, Ex.PW-4/E and Ex.PW-4/G and the authority letters Ex.PW-4/C, Ex.PW-4/D, Ex.PW-4/F were the documents in dispute and that Ex.PW-4/H and the cheques Ex.PW-4/J, Ex.PW-4/M, Ex.PW-4/O, Ex.PW-4/Q and Ex.PW-4/S and the authority letters Ex.PW-4/I, Ex.PW-4/L,

Ex.PW-4/N, Ex.PW-4/P and Ex.PW-4/R contained the admitted signatures of the deceased.

68. Any recording made by a police officer on any document prepared by him during the investigation based on the statements made to him by the witnesses would be inadmissible in view of provisions of Section 162 Cr.P.C. as it will be no more than a statement made to the police during investigation. (See the decisions of Supreme Court reported as Tori Singh v State of UP AIR 1962 SC 399 and Jagdish Narain v State of UP AIR 1966 SC 3136)

69. In the instant case, Inspector Shiv Dayal PW-31, could have had no personal knowledge about the fact that the signatures contained in the cheques Ex.PW-4/J, Ex.PW-4/M, Ex.PW-4/O, Ex.PW-4/Q and Ex.PW-4/S and the authority letters Ex.PW-4/I, Ex.PW-4/L, Ex.PW-4/N, Ex.PW-4/P and Ex.PW-4/R were the signatures of the deceased. It is plainly obvious that the aforesaid information given by Inspector Shiv Dayal to the FSL was based upon the statements made to him by some family member or close friend of the deceased in said regard.

70. It is apparent that everybody has proceeded on the assumption that the cheques Ex.PW-4/J, Ex.PW-4/M, Ex.PW-4/O, Ex.PW-4/Q and Ex.PW-4/S and the authority letters Ex.PW-

4/I, Ex.PW-4/L, Ex.PW-4/N, Ex.PW-4/P and Ex.PW-4/R bore the signatures of the deceased, without realizing that there was no proof of said fact. The communication of the IO to the FSL Laboratory was treated as proof of said fact. It is apparent that the prosecution has conducted itself in a most casual and callous manner.

71. It was urged that the complaints Ex.PW-3/A, Ex.PW-3/B and Ex.PW-31/C prove that the signatures on the cheques Ex.PW-4/E and Ex.PW-4/G and the corresponding authority letters Ex.PW-4/F and Ex.PW-4/H were forged.

72. It may be noted at the outset that the complaints Ex.PW-3/A, Ex.PW-3/B and Ex.PW-31/C do not bear any signatures thereon. It is to be further noted that the daughter of the deceased i.e. Shalini PW-11 handed over the complaints to the investigating officer without throwing any light as to how she came to possess the said reports. Under the circumstances the testimony of Kavinder Kumar PW-3 who claimed that he typed the said 3 complaints at the asking of the appellant on behalf of the deceased becomes suspect evidence. We reiterate that the manner in which the three complaints have surfaced is most uninspiring.

73. No witness has been examined by the prosecution to prove that the signatures on the cheques Ex.PW-4/J, Ex.PW-4/M, Ex.PW-4/O, Ex.PW-4/Q and Ex.PW-4/S and the authority letters Ex.PW-4/I, Ex.PW-4/L, Ex.PW-4/N, Ex.PW-4/P and Ex.PW-4/R are in the hand of the deceased. No material has been placed on record by the prosecution to show that the amount under the cheques Ex.PW-4/B, Ex.PW-4/D, Ex.PW-4/E and Ex.PW-4/G was not received by the deceased.

74. Of course, through the testimony of SI Inderjit PW-10, pertaining to FIR No.62/2000, we have evidence on record that with respect to cheque Ex.PW-1/A the deceased had made a complaint Ex.PW-10/A in which he had informed the police that he had not drawn the said cheque and that somebody had forged his signatures to withdraw money under the cheque. But, the fact of the matter remains that the report Ex.A-1 of the handwriting expert suffers from the same taint as the report Ex.PW-31/G. It is noteworthy that qua this cheque, no witness of the bank has deposed that the appellant withdrew the money under the cheque. Thus, notwithstanding the complaint Ex.PW-10/A which simply establishes that the cheque Ex.PW-1/A was misused, we have no link evidence that it was the appellant who misused the same.

75. Though Bhagwan Das PW-16 has deposed that the cheques Ex.PW-4/B and Ex.PW-4/D were filled by him at the asking of the appellant and that the authority letters Ex.PW-4/C, Ex.PW-4/D, Ex.PW-4/F and Ex.PW-4/H, but we find from the record that Bhagwan Das is a fairly suspect witness. The investigating officer has thrown no light as to wherefrom he discovered Bhagwan Das whose statement under Section 161 Cr.P.C. has been recorded on 5.7.2001. The name of Bhagwan Das was disclosed to the IO for the first time after the appellant was apprehended on 6.7.2001 and in his disclosure statement, the appellant disclosed that Bhagwan Das had filled the said two cheques, besides two others, as also had scribed the authority letters. If this be so, wherefrom could the IO, who till 6.7.2001 knew nothing about Bhagwan Das, could record his statement under Section 161 Cr.P.C. on 5.7.2001. It is also interesting to note that on being cross-examined, Bhagwan Das admitted that he was deposing at the instance of the police.

76. Now, Mohd.Kushnoor PW-26, as deposed to by him, also used to withdraw cash from the account of the deceased by means of self cheques drawn by the deceased. It is apparent that Mohd.Kushnoor was also a confidant of the deceased and used to do and perform the same work for the deceased as the

prosecution alleges against the appellant. Thus, it became all the more imperative for the investigation to follow the procedures of the law while obtaining the specimen handwritings and signatures of the appellant, for the reason it could well be that Mohd.Kushnoor was the culprit. We are of the opinion that in such a situation it becomes most relevant to ensure that the purity of the investigation is maintained.

77. The sum and substance of the above discussion is that the prosecution has failed to prove that any cheque was forged by the appellant.

78. The last fact sought to be proved by the prosecution was that the appellant had got recovered a motorcycle, a Maruti van, a camera, binoculars, three gold rings and two gold chains purchased by him from the money fraudulently withdrawn by him from the account of the deceased.

79. It is settled legal 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”.

80. In the instant case, there is no evidence to show that the motorcycle, Maruti van, camera, binoculars, three gold rings and two gold chains recovered at the instance of the appellant were purchased by him from the amount withdrawn under any cheque or from the account of the deceased.

81. In that view of the matter, nothing much turns on the fact that a motorcycle, Maruti van, camera, binoculars, three gold rings and two gold chains were recovered at the instance of the appellant. At best, the only inference which can be drawn from the factum of the recovery made at the instance of the appellant is that the expenditure used to be incurred by the appellant were far greater than his means which implies that the appellant was indulging in some hanky-panky business. But, however grave the suspicion may be, the same cannot take place of “proof”. Besides, we cannot ignore the testimony of DW-1 and the entries in the passbook Ex.DW-1/A which show considerable amount withdrawn by DW-1. There is nothing to disprove the claim of the DW-1 that he lent said money to the appellant when the appellant purchased a Maruti Van.

82. We are left with the testimony of Dr.Shardha Jain who claims that she saw the appellant come out of the room of the deceased soon before somebody locked the door of her room and soon thereafter she found the deceased in a seriously injured condition in his cabin.

83. Dr.Shardha Jain PW-30, deposed that at about 01.00 A.M. she left the cabin of the deceased and went to her room. After sometime she went to the toilet. When she was returning from the toilet she saw the appellant coming out of the room of the deceased. "After sometime" she suspected that someone had bolted the door of her cabin from outside. Significantly, the time gap between Dr.Shardha Jain seeing the appellant leaving the room of the deceased and her feeling that door of her cabin was bolted from outside, has not been deposed to by Shardha Jain. She deposed that when she suspected that somebody had bolted her door from outside, she checked the door, and her doubt was confirmed. She deposed that after about 30-45 minutes a lady and a gentleman opened the door of her cabin upon which she went to the cabin of the deceased where she saw that the deceased was lying unconscious on a chair.

84. From the testimony of Nirmala J.Singh PW-1, Jagtar Kaur PW-15 and Dr.Shardha Jain PW-30, it is apparent that the ward

where the cabin of the deceased was situated could be easily accessed by anyone. In such circumstances, the possibility that someone other than the appellant bolted the door of Dr.Shardha Jain and thereafter committed the murder of the deceased cannot be ruled out.

85. The conduct of the appellant around the time of the murder of the deceased also has to be kept in view. The witnesses of the prosecution have themselves proved that the appellant rushed to the cabin of the deceased when it was detected that the deceased had been grievously injured and helped in removing the deceased to the ICU. The normal conduct of a murdered is to flee and not hang around.

86. It is settled law that in a case of circumstantial evidence it has to be kept in view that the circumstances, taken collectively, should have a determinative tendency unerringly pointing towards the guilt of the accused and ruling out his innocence.

87. It is apparent that the prosecution has failed to achieve the said standard of proof.

88. Neither has the motive being proved; it has not been proved that the appellant had been forging the signatures of the deceased on any cheque and thereafter had

misappropriated the money. Only fact proved is that various leafs from the cheque book issued to the deceased were used to withdraw money. It has been proved that the appellant had been taking the said cheques to the bank. Unfortunately for the prosecution, it has not been proved that the signatures on the said cheques were not those of the deceased and that they were those of the appellant. Similarly, the alleged complaints purportedly got prepared by the deceased, being proof that somebody was misusing his cheque book, have also not been proved.

89. Before parting we express our anguish at the manner in which the prosecution has sought to prove its case. The investigating officer has just not bothered to keep into account the requirement of the procedures of law to obtain permission from a competent Court to obtain the sample writing of an accused. The prosecution ignored that statements made during investigation to the investigating officer that certain documents bear the signatures of the deceased was no proof of the fact that signatures on said documents were those of the deceased. Said fact had to be proved by evidence as per the Evidence Act 1872. Had the prosecution been careful, it could have proved that the cheques Ex.PW-4/B, Ex.PW-4/D, Ex.PW-4/E and Ex.PW-4/G were signed by the appellant. It is

also unfortunate that there is no evidence led that the signatures on the cheque Ex.PW-1/A were forged by the appellant. Had the prosecution proved said fact, a very strong motive for the crime would have emerged. It is apparent that a crime goes unpunished because of the lackadaisical manner in which the investigating officer conducted the investigation and sought to prove the case.

90. We are left with no alternative but to allow the appeal. The impugned judgment and order dated 28.4.2006 is set aside. The appellant is acquitted of all the charges framed against him.

91. Copy of this order is directed to be sent to the Superintendent Central Jail Tihar with a direction to set free the appellant if not required in custody in some other case.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

APRIL 05, 2010
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