

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

Judgment Reserved on: October 28, 2014

% *Judgment Delivered on: November 11, 2014*

+ **CRL.A. 1564/2013**

PARDEEP KHATRI Appellant
Represented by: Mr.Ramesh Gupta, Sr.Advocate
instructed by Mr.Bharat Sharma and
Mr.Javed Alvi, Advocates

versus

STATE Respondent
Represented by: Ms.Aashaa Tiwari, APP for the State
Mr.Sunil Kumar Mittal, Advocate
with Mr.Ravinder Chadha, Advocate
for complainant

CRL.A. 1660/2013

SMT CHELA DEVI Appellant
Represented by: Mr.Sunil Kr.Mittal, Advocate with
Mr.Ravinder Chadha and Mr.Kshitij
Mittal, Advocates

versus

STATE & ORS Respondents
Represented by: Ms.Aashaa Tiwari, APP for the State
Mr.Pardeep Kumar Arya, Advocate
with Mr.S.S.Malik, Mr.C.L.Sharma
and Mr.Navinder Chaudhary,
Advocates for Ravi Tyagi

CRL.A. 1000/2014

STATE Appellant
Represented by: Ms.Aashaa Tiwari, APP for the State

versus

RAVI KUMAR TYAGI & ANR Respondents
Represented by: Mr.Pardeep Kumar Arya, Advocate
with Mr.S.S.Malik, Mr.C.L.Sharma
and Mr.Navinder Chaudhary,
Advocates for Ravi Tyagi

Mr.Sunil Kr.Mittal, Advocate with
Mr.Ravinder Chadha, Advocate for
complainant

CORAM:

HON'BLE MR. JUSTICE PARDEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PARDEEP NANDRAJOG, J.

1. March 08, 2008 was a day of joy in the life of Ajay Maan. It was the day of his engagement. Ruby daughter of Nawal Singh Shokeen was the maiden. The venue for the function was Carnival Farm House, Alipur. Invitation cards were distributed to the guests. The celebrations started around 5.30 P.M. and continued late night. Ajay's joy turned into sorrow when he received a gunshot injury on his chest at the parking of the venue at around 11.30 P.M. He died within minutes as a result of the injury suffered by him. The post mortem report Ex.PW-26/A authored by Dr.Munish Wadhawan records that there was a :-

‘Oval lacerated penetrating wound 10 x 7 cm with blackening, tattooing around the wound in left side of chest 13 cm below left cleical and 5 cm from mid line of chest. Margins were irregular and ragged.’

2. On exploration it was found that the 4th to the 7th ribs of the left side were shattered completely underneath the wound with bruising, cherry red discolouration, extravasation of blood and blood clots in surrounding tissues were to be seen. Lower lobe of left lung and apex of the heart were completely lacerated and ruptured. Multiple pellets were recovered from the heart and the left lung. 500 ml of fluid and clotted blood were present in the chest cavity. It was opined by Dr.Munish that the injuries were ante mortem and were caused by a shot gun firearm and the shot was fired from close range. Time since death was approximately 12 hours. The post mortem

commenced, as recorded in the post mortem report, at 11.45 A.M. on March 09, 2008, meaning thereby the death took place between 11.00 P.M. and 12.00 midnight on March 08, 2008. As explained during cross examination by Dr.Munish, by close range he meant that the shot was fired from a distance of 2 mtrs. to 3 mtrs. as contrasted to a shot fired from contact range, which meant that the barrel of the weapon touch the body; in any case, the distance of the barrel could not be more than 6 inches for a shot to be described as fired from a contact range.

3. Ajay being injured with a firearm is recorded in two contemporaneous documents. The first in point of time is the PCR Log Book Form Ex.PW-7/A, authored by HC Sanjay PW-7, the operator in the Police Control Room, who recorded on the form that at 00:35 hrs. on March 09, 2008 through mobile No.9213729883 information was received that at the Carnival Farm, Alipur a man had been injured with a firearm. The second in point of time is the MLC Ex.PW-2/A, authored by Dr.Suryakant PW-2 the Chief Medical Officer of Saroj Hospital & Heart Institute, Rohini which records that Ajay was brought to the hospital at 00:50 hrs. on March 09, 2008 and his brother Antish Kumar (PW-1) gave the history that the patient had received a gunshot injury on his chest. The MLC records that the patient was declared dead when brought to the hospital. The reflection of Ex.PW-7/A is to be found in DD No.3B Mark 'X', recorded at 00:45 hrs. on March 09, 2008 at P.S.Alipur that from the Police Control Room information was received that a man had received a gunshot wound at Carnival Farm, Alipur. This triggered the involvement of the police in the detection of the incident requiring investigation as to how Ajay was injured, and if homicidal, who caused the injury.

4. Being relevant to discuss hereinafter whether Antish Kumar PW-1,

Satish Maan PW-4, Rahul Maan PW-19 and Rajesh Maan PW-24 were witnesses to the incident or whether, they being admittedly present at the Carnival Farm, did not witness the incident but reached the place where Ajay Maan was injured, probably hearing two shots being fired at the parking of Carnival Farm, we note that the proforma of the Police Control Room Form-1 has four distinct parts. The first part requires information to be filled up by the person in the Police Control Room that an informant has given information of some incident (brief particulars whereof as to told by the informant to be noted) which requires investigation by the police. The said information has to be flashed over the wireless so that the nearest PCR van can rush to the spot and secondly the information can be recorded in the Daily Diary by the police officer on duty at the police station within jurisdiction whereof the place of incident is situated. Part-II requires information to be noted on the form as transmitted by the In-charge of the PCR van. This information would be vital because if an injured is found at the spot he has to be rushed to the nearest hospital and if he/she is in a position to speak, to convey whatever is told by the injured. If there is a person with the injured and tells something relevant to the In-charge of the PCR Van, said information conveyed to the Police Control Room has to be recorded. In part-III, entry has to be made recording the name of the police officer at the concerned police station who makes the DD entry at the concerned police station. In part-IV further information sent over the wireless either by the In-charge of the PCR van or by the police officer who proceeds for investigation has to be recorded, and this may contain a brief description of what is conveyed to the Police Control Room. Regretfully, in the instant case the prosecution led evidence through HC Sanjay PW-7 that he recorded on the PCR Form information only in Part-I thereof, i.e. he being informed that at 00:35 hrs. on March 09, 2008 a man had received

gunshot injury at Carnival Farm, Alipur. Thus what has been exhibited as Ex.PW-7/A is only part-I of the PCR Form. The form in question would evidence that in Part-II thereof, the In-charge of the PCR van stationed nearby which reached Carnival Farm at 00:56 hrs. informed that one Sudhir Rana informed that the person injured was named Ajay Maan. In Part-III it is recorded that an engagement ceremony was taking place when Ajay Maan received the gunshot injury and he had been already removed to Jaipur Golden Hospital. In Part-IV, four writings exist. In the first '*Mark DX*' it is recorded that the injured was being removed to Jaipur Golden Hospital and the last recording records that at 01:30 hrs. information was conveyed that Ajay Maan has been brought dead and nobody present was giving information as to who shot Ajay Maan and Ajay Maan's mother had a suspicion on the in-laws of her elder brother. The last writing at 01:30 hrs., which has been marked '*DY*' is in vernacular and it reads : '*Ajay Maan Ko Doctoron Nee Brought Dead Bataya Hai. Goli Kisne Maari Hai Ye Abhi Pata Nahe. Ladke Ki Maa Ko Apne Bade Ladke Ki Sasural Walo Pe Shak Hai. ACP, SHO Sahib Bhe Aa Gaye*'.

5. Evidenced from Ex.PW-21/A, authored by Ct.Kuldeep PW-21, and the testimony of Ct.Kuldeep Kumar, it appears to be a case whereafter HC Sanjay filled up Part-I of the PCR Form containing the writing Ex.PW-7/A, and some other police officer at the Police Control Room made further entries in Part-II, III and IV of the PCR Form, but regrettably the investigating officer, unmindful of the fact that the last entry in Part-IV (noted by us in the preceding paragraph) was very crucial has not cited said police person as a witness to prove further entries recorded in the PCR Form and thus we have only one writing on the PCR form as a proved document. But, Ct.Kuldeep's testimony brings out that he was the operator

at Channel No.130 in the Police Control Room and he had recorded the writing Ex.PW-21/A at 01:30 hrs. that from telephone No.27557205 from Saroj Hospital, Rohini he had received information, and we choose to note the same in vernacular : *'Ek Patient Jhagda Karke Brought Dead Aaya Hai. Goli Lagi Hai. Jiska Alipur Mai Jhadga Hua Tha. Uske Sambandhi Jhagda Kar Rahe Hain. Bahut Jaldi Police Bhejee.'* Regretfully, the prosecution, which got an opportunity to lead complete evidence of what was being uttered by the relatives of the deceased when emotions were high and nobody had a time to possibly contrive facts about the incident, faltered once again because we find a writing which has been marked 'D2' on the PCR Form in question, recording *'Mritak Ke Rishtedaron Doctoron Se (illegible) Rahe Hain Ki Kisi Bhe Tarah (illegible) Kar Do. Goli Marne Wale Kaa Naam Pata Aadi Nahe Bata Rahe.'* In other words only a part of the second PCR Form has been proved (Ex.PW-21/A) and not the other contents of the form.

6. The relevance of what we have noted hereinabove would be that if the entries marked 'DY' on the first PCR form, only first portion whereof has been exhibited as Ex.PW-7/A, was proved and so was the last entry marked 'D2' on the second PCR Form, limited portion whereof was proved as Ex.PW-21/A, it would assume significance that the relatives of the deceased who claimed to be eye witnesses did not volunteer the necessary information to the police officers who had reached Saroj Hospital by around 01:00 hrs. But it is nobody's case that said entries were not made at the Police Control Room at the time noted against each entry. Finding a mention in a record maintained during normal course of duty, if relevant for the defence at a murder trial, the Court would be bound to consider them, more so for the reason an unproved document can be read in evidence

against a party who has filed the document and has thus relied upon it.

7. Reverting back to the narratives, picking up from the fact noted in the last part of paragraph 3 above, at 00:45 hrs. on March 09, 2008 when DD No.3B (Mark 'X') was recorded at P.S.Alipur, copy thereof was entrusted to SI Shrikishan PW-22 who, as deposed to by him, proceeded to Carnival Farm in the company of Ct.Hari Prasad (not examined). On reaching Carnival Farm he learnt that one Ajay Maan had received a gunshot injury and had been removed to Saroj Hospital. As deposed to by Insp.Surinder Sand PW-28 he was the SHO of P.S.Alipur and was patrolling in his area in Gypsy No.DL 1CJ 5663 which was being driven by HC Om Prakash, and Ct.Virender (not examined) was with him. On his wireless through the duty officer he received information of a person being shot at Carnival Farm therefore he proceeded to the Farm where he met SI Shrikishan and Ct.Hari Prasad. He saw a 12 bore gun with one fired cartridge at the spot as also huge quantity of blood. As deposed to by him nobody present at the spot claimed to be an eye witness. He learnt that injured Ajay Maan had been taken to Saroj Hospital. Leaving behind Ct.Hari Prasad, Insp.Surinder Sand and SI Shrikishan went to Saroj Hospital and learnt that Ajay Maan had been declared brought dead at the casualty having received a gunshot injury on his chest. Insp.Surinder Sand collected MLC Ex.PW-2/A of Ajay Maan. At the hospital the two police officers, as deposed to by Insp.Surinder Sand, met Antish Maan (PW-1), Satish Maan (PW-4) and Rajesh Maan (PW-24), all of whom claimed to be eye witnesses, but he chose to record the statement of Ex.PW-1/B of Rajesh Maan, because as per him Antish and Satish the brothers of the deceased were crying and Rajesh, a cousin of the deceased, was in a position to make a statement. As deposed to by him, thereafter he returned to the Carnival Farm leaving behind SI Shrikishan at

Saroj Hospital. At Carnival Farm he made the endorsement Ex.PW-28/B beneath the statement Ex.PW-1/B and handed over the rukka to Ct.Virender for FIR to be registered. At the police station HC Balwan Singh PW-14 registered the FIR Ex.PW-14/A for offences punishable under Section 302 IPC read with Sections 25/27 of the Arms Act. HC Balwan Singh, as deposed to by him, made DD entry 9A, Ex.PW-14/A in the Daily Diary to the effect that the FIR No.52/2008 for offences punishable under Section 302/34 IPC and Sections 27 of the Arms Act was registered at 05:45 hrs. on March 09, 2008. As further deposed to by Insp.Surinder Sand he had requisitioned the Crime Team. SI Baljeet PW-16 In-charge of the Mobile Crime Team for North-West District, Delhi reached the spot at 5.00 A.M. Ct.Dalbir PW-3 accompanied him who took the photographs Ex.PW-3/A-24 to Ex.PW-3/A-45, negatives whereof are Ex.PW-3/A-1 to Ex.PW-3/A-23. SI Baljeet Singh prepared the report Ex.PW-16/A recording therein what he had seen at the place of the crime, and for the reasons as we would be highlighting soon hereinafter i.e. appellants not disputing they being present at the Carnival Farm when Ajay Maan received the gunshot wound and further appellants not disputing the recovery made from the scene of the crime except appellant Ravi Kumar Tyagi who challenges only the recovery of the red colour indica car No.DL 3CW 9294 belonging to his father from the spot, we do not note in extensive the contents of the report Ex.PW-16/A.

8. A word about the photographs Ex.PW-3/A-24 to Ex.PW-3/A-45. The photographs show the presence of a white colour Ford Fiesta car No. DL 4C AF 1433 near which blood is splattered. A short double barrel gun, black in colour, is lying nearby. An empty cartridge is also lying nearby. In the dickey a briefcase, another firearm and a belt with live cartridges is to be

seen. Two photographs show a red colour indica car parked next to Ford Fiesta car No.DL 4C AF 1433 but the number thereof is not visible.

9. Similarly we need not note the testimony of Insp.Surinder Sand in detail and another witnesses to the exhibits seized from the spot except to note that as per Insp.Surinder Sand he found a fired cartridge near the white coloured Ford Fiesta Car as also a double short barrel gun, on inspection of which he found one fired cartridge in the barrel. The exhibits seized being a double barrel gun Ex.P-1, a locket Ex.P-2, a finger ring Ex.P-3, the empty cartridge Ex.P-10 (recovered from the barrel of the gun), the empty cartridge Ex.P-12 (lying at the spot), belt containing 10 live cartridges, out of which two were separately sealed for forensic evaluation, Ex.P-11 collectively, the Ford Fiesta car Ex.P-14, Tata Indica Car DL 4CW 9294 Ex.P-15, a black colour leather bag Ex.P-16 and a laptop Ex.P-17, a briefcase Ex.P-18 containing ₹1 lakh, arms licence Ex.P-19.

10. And now the reason why we are not noting in detail the testimony of Insp.Surinder Sand and other witnesses to the recoveries. As per the prosecution the gun Ex.P-1 belonged to appellant Pardeep Khatri and so did the white coloured Ford Fiesta car. The two fired cartridges, one found in the barrel of Ex.P-1 and the other lying at the spot near the car were from the ammunition sold to Pardeep Khatri who was also the owner of Ford Fiesta car and said facts being admitted by Pardeep Khatri who also admits the recovery thereof from the spot. He admits his presence at Carnival Farm. As regards Ravi Kumar, he admits his presence at the Carnival Farm and the fact that the red coloured Tata indica car DL 4CW 9294 belongs to his father and that he went in the car to Carnival Farm but claims that he left in the car after the engagement ceremony was over and denies it being seized from the spot. Regarding said denial we note that his claim was that the car was seized on March 10, 2008, but except for said statement made by him and

repeated by his counsel during arguments, we find nothing to discredit the testimony of Insp.Surinder Sand and other witnesses to the recovery that said car was seized from the spot and had been left behind by Ravi Kumar. A conduct of absconsion which would be a relevant piece of evidence and in respect of which, at this stage we simply note said fact, rest to follow at the end of our discussion where incriminating evidence against the accused would be summarized by us. We also thereof need not note the testimony of various witnesses examined to prove ownership of the two cars in question, the ownership of the gun Ex.P-1, ammunition sold to Pardeep Khatri, FSL report that the two cartridges, one recovered from the barrel of Ex.P-1 and the other from the scene of the crime were fired from Ex.P-1, because Pardeep Khatri admits that the two cartridges belonged to him and he admits that two shots were fired at the spot from Ex.P-1. But his version is that the deceased desired to celebrate his engagement by firing celebration shots in the air and thus as per him the deceased fired one shot in the air and as he pulled the trigger to fire the second shot, due to some malfunctioning the shot was not fired and as the deceased lowered the barrel to inspect it an accidental fire took place causing injury to Ajay Maan. Both accused thus claimed innocence as aforesaid, and for which we note that said aspect emerge from the answers given by the two when examined under Section 313 Cr.P.C.

11. Ravi Kumar Tyagi's response to questions No.18, 55, 70, 71 and 85 brings out his defence (and we note the questions as well) as under:-

"Q.18 It is further in evidence against you that on 08.03.2008 PW19/Rohit Maan was present at Engagement Ceremony of his friend Ajay Maan at Carnival Farm House, Alipur, Delhi. What you have to say?"

A. It is correct.

Q.55 It is further in evidence against you that your car Turbo Indica Tata Red color car No.DL-3CW-9294 Ex.P15 was taken in possession by PW-28 vide seizure memo Ex.PW-22/A which was parked near the place of occurrence in suspicious condition. What you have to say?

A. It is incorrect. My aforesaid car was seized on 10.03.2008, when I brought the same to the PS on the asking of the SHO.

Q.70 It is further in evidence against you that PW-8 Sh.Om Prakash/Record Keeper, Transport Authority, Sheikh Sarai, Delhi proved registration particular Ex.PW-8/A, computerized copy Ex.PW-8/B of registration and photocopy of application form Ex.PW-8/C for registration of vehicle No.DL 3C W 9294 issued by the Transport Authority in your name. What you have to say?

A. It's a matter of record.

Q.71 It is further in evidence against you that your father, namely PW-27/Satya Prakash owned Ex.15 Car No.DL3C W 9294, which was released on superdaganama Ex.PW-27/B to him and he produced RC Ex.PW-27/A. What you have to say?

A. It is correct.

Q.85 Do you want to say anything else?

A. I have been falsely implicated in this case, as I opposed the police officials while they were preparing the FIR, the names of the persons, who were not present there, which was opposed by the relatives of the deceased present there. I might have been implicated in this case after due deliberation."

12. Pardeep Kumar Khatri's response to questions No.12, 17, 31, 52, 68, 72 and 85 (and we note the questions as well) as under brings out his admissions and defence as aforesaid :-

"Q.12 It is further in evidence against you that on being common acceptance of this match by the family of PW1/Antesh

Maan and family member of girl, the engagement ceremony was scheduled to be perform at Carnival Farm House, Alipur on 8.03.2008. Ajay Maan was to marry with Ruby D/o. Nawal Singh, R/o. Village Nilothi. What you have to say?

A. I do not know whether engagement between deceased Ajay Maan with Ruby was fixed by common acceptance of their family. However, I was invited by the deceased in the said engagement ceremony held on 08.03.2008.

Q.17 It is further in evidence against you that the programme of Engagement Ceremony had started at about 5.00/5.30 P.M. at Carnival Farm House, Alipur, where about 200 persons from the family side of PW-1 and about 60/70 persons were from the girl side had attended. What you have to say?

A. I do not know. However, many persons were present in the said Engagement Ceremony.

Q.31 It is further in evidence against you that after hearing the noise of bullet 50/60 persons have gathered there. PW-24 also went near Ajay Maan and lifted/removed him in a car, which was being driven by Amit Rana accompanied by Virender Maan and Pummi to the hospital. What you have to say?

A. It is correct.

Q.52 It is further in evidence against you that PW-28 took possession of the Laptop Ex.P17 with bag of Compaq Ex.P16. Two Mobile in the Packets Ex.P-1/X11 to X13 and gave pullandas S.No.11, 12A & 12B respectively. PW-28 also took possession of the said briefcase Ex.P18 (four photographs) Ex.PW-1/X-7 to X-10 which found containing the Armed License Ex.P19 in your name affixed with your photograph, Rupees One Lac in case (six photographs) Ex.PW1/X-1 to X-6, diary and some papers Ex.P20 (Colly) and gave pullanda S.No-13. What you have to say?

A. My laptop with bag and two mobiles, armed license, ₹1 lakh were lying in my car parked in the parking of Carnival Farm House, which have been taken into possession by the

police, but I do not know when and where the same were taken into possession by the police.

Q.68 It is further in evidence against you that PW-10/Sh.R.K.Sharma, partner of M/s. Kewal Krishan Sharma, Arms and Ammunition dealer had issued to you cash memo No.3714 Dt.09.02.2008 Ex.PW-10/A out of the case memo book No.38 by mentioning your armed license for selling 25 gun cartridges. 12 bore Shaktiman @ ₹35/- each amounting ₹875/- plus VAT charges ₹109.50, which was signed by him and you. PW-10 also made entry Ex.PW-10/B signed by you at page No.- 94 in daily sale register on 09.02.2008 with regard to sale of the said 25 cartridges to you. PW-10 also fixed the stamp of his firm and his signature on you license at page No.15 on 09.02.2008 Ex.PW-10/C. What you have to say?

A. It is correct.

Q 72. It is further in evidence against you that PW-9 Sh.Ashok Kumar/Assistant Dealing Clerk, State Transport Authority, Raja Garden, Delhi proved registration particular Ex.PW-9/A, computerized copy Ex.PW-9/B of registration and photocopy of application form Ex.PW-9/C for registration of vehicle No.DL 4C AF 1433 LMV Car Ford India Ltd. issued by the Transport Authority in your name. What you have to say?

A. It is correct that I am the registered owner of the abovesaid car.

Q.85 Do you want to say anything else?

A. I and deceased Ajay Maan were doing the business of property dealing and both of us were friends. I was invited in the function of engagement ceremony of Ajay Maan by Ajay Maan and I received invitation card to this effect from Ajay Maan duly written my name on the slip affixed on the plastic cover of the invitation was Mark A.

I never objected the Engagement Ceremony with the daughter of Nawal Singh Shokeen. Nawal Singh Shokeen is not known to me nor I have any concern with him or his family members. I

never threatened Ajay Maan or anybody regarding the Engagement. I only came to know about the Engagement when I got the invitation card from Ajay Maan.

The deceased Ajay Maan had asked me to carry with me some money as in case of need to be paid for clearing the dues of the Carnival Farm House, where the reception of the engagement ceremony was held and Ajay Maan would have taken the same from me. I came in function at Carnival Farm House, At G.T.Karnal Road, Alipur in my Ford Fiesta Car and the car was parked in the parking area and attended the function with other friends. When function was almost over, Ajay Maan told me to give ₹1 lakh and he also told me that the same were required to settle the account of invitation hall.

The deceased Ajay Maan accompanied me in my car, when I opened the dicky of my car to take out the briefcase to hand over ₹1 lakh to the deceased Ajay Maan, he saw my dunali bandook lying in the car. He insisted me that, he wanted to celebrate the occasion of his engagement ceremony. He should have celebrate by firing in the air. Ajay Maan took out dunali bandook from the dicky of my car and fired one shot in the air. Ajay Maan triggered another shot but the said shot could not be fired because of some fault in the dunali bandook. When the second shot could not be fired, Ajay Maan lowered down the dunali and started inspecting the nasal of the dunali and in the process, fire took place accidentally, which hit Ajay Maan. I helped Rajesh in lifting Ajay Maan in the car to take him to the hospital and later on I was taken to the PS. I have been falsely and wrongly implicated by the police at the instances of family member of Ajay Maan, as they wanted to extort compensation from me. I am totally innocent and have not committed the offence and have been falsely and wrongly implicated by the police.”

13. The rukka i.e. the statement Ex.PW-1/B of Rajesh Maan and the endorsement Ex.PW-28/B made beneath the same by Insp.Surinder Sand records that the same were despatched from Carnival Farm Alipur at 04:30 hrs. on March 09, 2008. DD No.9A Ex.PW-14/A records that the FIR was

registered at 05:45 hrs. on March 09, 2008. The writing Ex.PW-7/A brings out that information of the incident was given to the Police Control Room at 00:35 hrs. on March 09, 2008. The MLC Ex.PW-2/A of Ajay Maan would bring out that at 00:50 hrs. on March 09, 2008, Ajay Maan was brought dead at Saroj Hospital & Heart Institute, Rohini. The post mortem report Ex.PW-26/A would bring out that the death took place between 11.00 P.M. and 12.00 mid-night on March 08, 2008. The relevance of aforesaid time noted by us is to bring out that there is a gap of about 4 hours reckoned from the time when the incident took place and when Rajesh Maan's statement was recorded. The relevance has to be considered in view of the backdrop facts noted by us concerning the writings on the two PCR forms regarding which we have made a reference to in paragraphs 2 to 6 above, as also the testimony of Insp.Surinder Sand PW-28, and in particular what he said during cross examination concerning the recording '*Mark DX*' on the first PCR form to which we have referred to in paragraph 4 above. He admitted that the writing in question mentions that the injured was being taken to Jaipur Golden Hospital. But we find that there is no reference in the evidence to the deceased being taken to Jaipur Golden Hospital. No witness has deposed to said fact. However, said fact needs to be noted because it would be relevant to discuss the credibility of such eye witnesses who support the case of the prosecution.

14. The case of the prosecution can succinctly be culled out from the statement Ex.PW-1/B made by Rajesh Maan PW-24 to Insp.Surinder Sand. Loosely translated the statement reads : '*I stay at the aforementioned address with my family and run a chemist shop. Today i.e. 08.03.2008 I was attending the engagement ceremony of my uncle's son Ajay Maan (aged 25 years r/o Alipur) at Carnival Farm House, Alipur, GT Road. At around 11:15 PM while we were dancing, Pardeep Khatri Shahpuria and Ravi*

Tyagi (both aged around 35 years) arrived at the dance floor and started a verbal altercation with my cousin Ajay Maan. They left after arguing for some time. Thereafter at around 11:30 PM I saw Ajay Maan walking towards the parking and I started walking in the same direction. At the parking, in front of the gate, I saw Pardeep Khatri Shahpuria and Ravi Tyagi standing near a white Fiesta car. They started saying something to him. Pardeep Khatri Shahpuria open the dickey of the whit Fiesta car and took out a double barrel gun and Ravi Tyagi took the gun from Pardeep Khatri and fired at Ajay Maan who received a bullet in his chest and he fell down bleeding. Some other people reached at the spot and the two accused ran away leaving the murder weapon at the spot. I took Ajay Maan to the hospital in my Honda City Car bearing NO.DL 4CT 0468 with my brother Antish Maan and some friends'. Thus, as per the prosecution appellant Pardeep Khatri gave his double barrel gun to appellant Ravi Kumar who fired the fatal shot.

15. Our discussion hereinafter would proceed at two levels. Keeping in view the admission made by Pardeep Khatri that he was present at the spot and that the fatal shot was accidentally fired from his gun, whether the prosecution has brought evidence on record which disproves the claim of Pardeep Khatri and on the contrary proves that the fatal shot was fired not from a contact range but from a close range, and the effect thereof. Secondly, whether the prosecution has proved that on Pardeep Khatri handing over the double barrel gun Ex.P-1 to Ravi Kumar Tyagi he fired the fatal shot.

16. We take up the later first for the reason it would subsume the former.

17. Prosecution had cited Antish Kumar, who was examined as PW-1, Satish Maan who was examined as PW-4, Rohit Maan who was examined as PW-19 and Rajesh Maan who was examined as PW-24 as their star

witnesses, for the reason in his statement Ex.PW-1/B on basis whereof the FIR was registered, Rajesh Maan had claimed that he saw Pardeep Khatri hand over the double barrel gun Ex.P-1 to Ravi Kumar Tyagi who fired the shot from close range, directing the same towards the chest of Ajay Maan and the other three disclosed said facts in their statements recorded under Section 161 Cr.P.C. by Insp.Surinder Sand.

18. But before noting the testimony of the witnesses we need to note, and with considerable concern, that we are disturbed and anguished at the way the learned Trial Judges, who were seized of the trial, conducted the proceedings by liberally adjourning the case at the convenience of learned counsel for the accused, even overlooking that the father of the complainant Rajesh Maan PW-24, made a complaint that his son was being attempted to be suborned; a written complaint to said effect was received by the learned Trial Judge but regrettably hearing deferred in a mechanical manner, without showing any haste to ensure that Rajesh Maan was given police protection and examined as a witness on priority basis.

19. Record of the trial would evince that completing the committal proceedings and ensuring that the charge-sheet along with all relied upon documents were supplied to the two accused, the first date before the learned court of Sessions was July 26, 2008, on which date the learned Presiding Judge noted that arguments on charge could be heard. The date notified for arguments to be heard on charge was September 06, 2008 and we find that the matter was adjourned on as many as fifteen dates. Arguments on the charge were finally heard on March 04, 2009 when an order was passed that prima facie case was made out to frame a charge against the accused for an offence punishable under Section 302/34 IPC and the offence punishable under Section 27 of the Arms Act. The charge was finally framed on April 13, 2009, and the date of June 02, 2009 was notified for commencement of

the trial i.e. the prosecution to commence examining its witnesses.

20. We need not note the case law, which is legion, on the subject of eye witnesses to a crime being examined with utmost despatch because of the possibility of they being threatened, coerced or bought over i.e. suborned. Especially in high-profile cases where the accused are rich and mighty. Regretfully, the two learned Trial Judges, the first who dealt with the matter till August 18, 2008 and the second who dealt with the matter thereafter, simply kept on adjourning the matter at the asking of learned counsel for the accused. Indeed, one grievance made by learned counsel for the mother of the deceased, Smt.Chela Devi, was to the insensitivity shown by the learned Trial Judges in not ensuring hearing of the charge to be completed at the earliest and the result thereof being Rajesh Maan turning hostile.

21. The further insensitivity show by the learned Trial Judges is when the case was listed, after charge was framed, for prosecution to commence examining its witnesses on June 02, 2009 and summons were served upon Rajesh Maan to appear as the first witness of the prosecution. Cognizant of the fact that Rajesh Maan was the complainant and was a very crucial witness, the learned Public Prosecutor rightly took steps to examine him as the first witness of the prosecution. Order dated June 02, 2009 records that Mahender Kumar, the father of Rajesh Maan, complained to the learned Judge that his son Rajesh Maan was missing since yesterday evening and despite his best efforts he could not trace his son. The learned Judge simply took note of said grievance of Mahender Kumar and wrote in the order that Insp.Surender Kumar, the SHO of P.S.Alipur who was present in the Court, was appraised of said fact. The learned Trial Judge directed the SHO to submit a report and adjourned the matter to July 25, 2009.

22. Now, this is not acceptable. The reason being, a crucial witness was found missing by his father and could not be traced and yet the learned Trial

Judge adjourned the matter by granting a date which was 44 days away. The learned Trial Judge ought to have been alert. A date not beyond three to four days should have been given. At least an attempt should have been made to secure the presence of the witness before the learned Trial Judge to ascertain from the witness whether he was under any threat or compulsion, and further, howsoever clogged was the diary of the Court, to take out some time to record the statement of the witness. Keeping in view the statement Ex.PW-1/B and further participation of the witness in the investigation, the experienced Trial Judge would have known that the examination- in-chief of the witness would be over in about one hour, and surely this much time could have been taken out by the learned Trial Judge in the next week or so.

23. The journey of the pain felt by us is not yet over.

24. On June 02, 2009, adjourning the matter to July 25, 2009 and requiring the investigating officer to find out the whereabouts of Rajesh Maan, we find that the order penned on July 25, 2009 simply records that two witnesses : Satish Maan and Antish Maan were present and Rajesh Maan had sent a request to be exempted due to illness. The learned Trial Judge did not examine Satish Maan or Antish Maan because of adjournment sought by counsel for Pardeep Khatri and additionally for the reason the learned APP was on leave. Why did the learned Trial Judge not ascertain : Whether Rajesh Maan was being compelled to send a request for not being able to be present in Court or whether the reason for exemption was genuine. The learned Trial Judge was aware of the fact that on the previous date June 02, 2009 the father of the witness had told the learned Judge that his son was missing since last evening.

25. No attempt was made by the learned Trial Judge on July 25, 2009 as to why the witness was missing on the previous date. Thereafter, the learned Trial Judge made no attempt to ensure the presence of Rajesh Maan,

and we find that on July 25, 2009 two dates were given : being September 05, 2009 and September 19, 2009 for prosecution evidence to be led. On both dates the learned Trial Judge did not bother to find out as to why Rajesh Maan who was supposed to be the first witness examine by the prosecution was not present. On September 05, 2009 Antish Kumar PW-1 was partly examined. On September 19, 2009 the learned Presiding Officer was on leave. The Reader of the Court gave the date October 12, 2009, on which date Ct.Dalbir Singh PW-3 was examined and discharged. Neither Antish Kumar was further examined-in-chief nor examination-in-chief of Rajesh Maan commenced. Examination of the witnesses was liberally deferred at the request of the learned counsel for the accused and we find that examination-in-chief of Antish Kumar Maan PW-1 and Satish Maan PW-4 was completed only on May 04, 2010 and thereafter the two were cross examined. In between, other formal witnesses were examined and discharged. The cross examination of the two witnesses, which had to commence on May 04, 2010, was completed only on April 15, 2011. There was thus ample opportunity to suborn the two witnesses. We find that the third eye witness Rohit Maan was examined on May 12, 2011. He did not support the case of the prosecution. Rajesh Maan PW-24 was examined on August 09, 2011 and even he did not fully support the case of the prosecution, claiming that the noise of a bullet being fired made him turn around towards the place wherefrom the sound of fire emanated and he saw Ajay Maan collapsing on being hit by a bullet. He did admit having signed at point A on the statement Ex.PW-1/B as also the fact that his blood stained clothes were seized by Insp.Surinder Sand as recorded in the memo Ex.PW24/B. But he denied the contents of his statement Ex.PW-1/B claiming that he did not say all that to Insp.Surinder Sand. He claimed that Antish was not present and had not helped him removed Ajay Maan to the

hospital. We note that Antish Kumar PW-1 and Satish Maan PW-4 have supported the case of the prosecution.

26. The learned Trial Judge has disbelieved both witnesses and has thus concluded that the prosecution has failed to prove its case that accused Pardeep Khatri handed over the double barrel gun Ex.P-1 to Ravi Kumar Tyagi who fired the shot which caused the death of Ajay Maan. Ravi Kumar Tyagi has therefore been acquitted. Pardeep Khatri has been convicted because the deceased admittedly died as a result of gunshot injury received from the double barrel gun Ex.P-1; the injury has been held not to be accidental by the learned Trial Judge as per claim of Pardeep Khatri. Act of Pardeep Khatri to abscond leaving behind his Ford Fiesta car has been relied upon as the next incriminating evidence and thus only Pardeep Khatri has been convicted for the offence of having murdered the deceased. The decision is dated October 29, 2013. Vide order on sentence dated October 31, 2013, Pardeep Khatri has been sentenced to undergo imprisonment for life and pay fine in sum of ₹60,000/- and in default to undergo simple imprisonment for six months for the said offence.

27. Antish Maan, appearing as PW-1, deposed that his younger brother Ajay Maan had intimacy with Ruby a resident of village Nilothe which was not to the liking of Pardeep Khatri and he was pressurizing his brother not to marry the girl. This aspect of the facts disclosed by him were not deposed to by him when he was examined in chief on January 05, 2010, January 14, 2010 and April 21, 2010. He claimed that the accused were not invited to the engagement ceremony and he saw them come to the venue stealthily and were consciously avoiding to be captured in the video camera. We highlight that this fact was not disclosed by him in his statement under Section 161 Cr.P.C. During cross examination he admitted that the invitation card with envelope, Ex.PW-1/DX, was the invitation card got printed by the family for

the engagement ceremony of Ajay Maan, and we note that on the plastic cover of the card the name of Pardeep Khatri, as the invitee is written. Similar is the position with respect to the invitation card with envelope Ex.PW-1/DX1 on which the name of Ravi Kumar Tyagi is written.

28. As regards Satish Maan PW-4, he spoke in sync with Antish Maan.

29. In paragraph 49 of the impugned decision the learned Trial Judge has given as many as eight reasons to disbelieve PW-1 and PW-4. The same would be as under:-

“(i) The victim was as per the testimony of PW1 and at about 11.30 p.m, but first information report to the police/PCR was given at 12.45 p.m. on 09.03.2008 i.e. after one hour 15 minutes, no explanation has been given, why the delay of 75 minutes in informing to the police.

(ii) Both the PW1 and PW4 are the brother of the victim Ajay Maan, but they did not make call to the police till informing that, accused Pardeep Khatri had given dunali bandook to accused Ravi Kumar Tyagi and Ravi Tyagi fired the bullet shots upon victim Ajay Maan and killed him.

(iii) In the first information given to the police at 12.35 p.m., which was recorded as DD No.3B, it is not mentioned bullet was hit by someone on victim, but only it is mentioned that bullet hit one person further name of assailant is also not mentioned.

(iv) In MLC Ex.PW-2/A prepared by Dr.Surya Kant alleged history is given of gunshot injury, but name of assailants not given The said MLC was prepared after 00:50 a.m. on 09.03.2008 which proved that till 00:50 am PWs were not aware about the name of the assailant who had fired bullet upon Ajay Maan.

(v) The victim was hit with bullet at 11.30 p.m. on 08.03.2009, but he was brought to Saroj Hospital at 00.50 a.m on 09.03.08 that a delay of 1 hour 20 minutes, it is time of late night. The distance of Saroj Hospital and Carnival Farm

House is hardly 8-10 kms. Hence, in night hours delay of 1 hour 20 minutes though as per PW1 he was immediately taken to the injured to the hospital look impossible. It appear either he was not taken to the hospital immediately as the body noticed, or he has been hit and found injured after considerable time as he was taken somewhere else or suggested by ld.counsel for accused persons during cross examination of PW-1 that he was taken to Saroj Hospital.

(vi) From the testimony of PW7 HC Sanjay it is proved that information of incident was received at PCR HQ at 00:35:36 hours that one person has received bullet injury at Alipur Carnival Farm House in Shadi in marriage in the from mobile phone number 9213729883 and he recorded the information in the Form Ex.PW-7/A. Hence, till 12.35 am (09.03.08) it was not in knowledge that who hit bullet. Further Form Ex.PW7/A, it is evidence that concerned police officer or necessary inspection reached at the spot and he reported that he was informed that in engagement ceremony injured was hit by his friend (“Sagai Ka programme tha, jise uske sathi uaann pata u/k (unknown) ne goli marri hai Jaipur Golden Le gaye hain 01.01”). Which means till 1.05, it was not clear who hit the victim. Further from the form it is evident that at 00:56, Sudhir Rana Rlo, Kodipur, complainant has informed to PCR van driver at). Ajay Maan was hit and injured, but name is not mentioned that, who hit and police arrive at 00:56 hours.

(vii) Further from the form it is evident that at 1.30 am PCR van offence informed that, Ajay Maan was declared brought dead, who hit Ajay Maan not known till date, mother of the victim suspected in laws of elder brother”. Hence till 1.30 am, if not known who hit victim. Which creates doubt about till 1.30 a.m., it was not known who hit victim.

(viii) Further on perusal of the FIR Ex.PW-14/A, I found that FIR has been recorded at 4.45 am, PW14 HC Balwan Singh had stated that Ct.Virender produced one rukka before him at about 5.45 am, whereas PW17 Ct.Virender Kumar stated that, he reached at PS at about 4.45 am but the case was registered at about 5.45 am, why there is delay of one hour in recording the FIR has not been explained by PW 17. Further PW17 says

that Rukka was handed over to him in the Saroj Hospital, as he stated "SHO made endorsement on the statement of Rajesh Maan handed over the same to him, thereafter he left the hospital and next to PS. Whereas PW28 Inspector Surender Sand stated that, he recorded statement of Rajesh Maan and come back at the spot and after perusal of place of occurrence, MLC, endorsement on the statement and handed over the rukka to Ct.Virender Singh at 4.30 am for registration of case. Hence, rukka was handed over to PW 18 at the spot. In my view IO Inspector Surender Sand has falsely deposed the fact that he came on spot and he made endorsement to cover up the delay of almost six hours in recording of the FIR. I do not see any reason why rukka was not sent for registration of FIR immediately after recording statement of Rajesh Maan for only reason that he was taking time to manipulate statement of FIR as alleged by PW24. Delay in FIR creates suspicious about its manipulation."

30. Some of the reasons given by the learned Trial Judge are sound, some may be arguable, but we find the conclusion arrived at by the learned Trial Judge to be correct. From the testimony of the two witnesses who have supported the case of the prosecution and the contents of Ex.PW-1/B i.e. the statement of Rajesh Maan PW-24 who had turned hostile (which statement forms the basis of the FIR), we find that all of them speak that the deceased voluntarily walked towards the car park in the company of Pardeep Khatri and Ravi Kumar Tyagi. Now, if as claimed by the two witnesses, who have supported the case of the prosecution, and as recorded in the statement Ex.PW-1/B, Pardeep Khatri and Ravi Kumar Tyagi were having inimical relations with Ajay Maan, and indeed they came to the venue of the engagement ceremony uninvited and were moving around suspiciously, stealthily avoiding the video camera, it does not stand to logic or reasoning that Ajay Maan would walk with the two outside the hall where music was being played and people were dancing to the rap of the DJ, upto the car park. Pardeep Khatri and Ravi Kumar Tyagi have brought out admissions from

PW-1 that the two were invited to the engagement ceremony. That Pardeep Khatri was carrying with him ₹1 lakh, probabilizes his version that he took the money to the venue at the asking of Ajay Maan, who was his friend, if money was required to settle the account of Carnival Farm. ₹1 lakh being in the dickey of the car of Pardeep Khatri and the act of he along with Ravi Kumar Tyagi and the deceased going to the car probabilizes the version that the three proceeded to the car to bring money and settle the account of Carnival Farm. This comrade between the three disproves the motive sought to be established, and rightly disbelieved by the learned Trial Judge. This also establishes that the movement of the three was not unnatural or suspicious and nobody would consciously watch or follow the three as they walked out; their walking out being natural. Hence the claim of the two eye witnesses who have supported the case of the prosecution and even the recording in the statement Ex.PW-1/B that each one of them followed the three has to be taken with a pinch of salt, with eyebrows raised.

31. The witnesses claim that the firing took place at 11.30 P.M., and to this extent their version appears to be correct for the reason there are traces of evidence that at the first instance the deceased was taken either towards Jaipur Golden Hospital evidenced from the writing Marked 'DX' on the first PCR form referred to us by in paragraph 4 of our opinion, but on a change of mind Ajay Maan was taken to Saroj Hospital where he was brought in the casualty at 00:50 hrs or reaching Jaipur Golden Hospital a decision was taken to take the deceased to Saroj Hospital. The learned Trial Judge has noted that the distance between Carnival Farm and Saroj Hospital is about 10 km. and surely it would not take 1 hour and 20 minutes to cover said distance, and that too around mid-night when there is very little traffic on the road, and hence vehicles move faster i.e. distance of 10 kms being capable of being covered in less than 10 minutes. After all, a seriously injured person

was to be rushed to the hospital. The writing Ex.PW-21/A at 1.30 hrs. on March 09, 2008 to the effect that the patient was brought dead but his relatives were fighting with the doctors brings out that the brothers and cousins of the deceased were refusing to believe that he is dead and hence were fighting with the doctor to do something. The writing Marked 'D2' on the second PCR form that the relative of the deceased were fighting with the doctors and were not telling the name and address of who fired the shot as also the writing at 01:30 hrs. marked 'DY' on the first PCR form to the effect that nobody was disclosing the name and address of the assailant and the mother of the deceased was pointing a finger of suspicion towards the in-laws of her elder son, has been rightly considered by the learned Trial Judge as a pointer towards the fact that till 2 hours of the incident and police personnel being present for nearly 1 hour with the relatives of the deceased, nobody volunteered with the claim of being an eye witness to the incident and at that stage the family members were simply speculating as to who had fired the shot.

32. We overlook reasoning III and IV by the learned Trial Judge for the reason Daily Diary entries are always cryptic and doctors at private hospital shun to record any fact which would require the doctor to depose at a criminal trial. Learned counsel for appellant Pardeep Khatri and the respondent Ravi Kumar Tyagi in the appeal filed by the State and mother of the deceased argued that in view of the decision of this Court in CrI.A.No.81/1997 Kishan Pal Vs. State, where it was held that where the name of the assailant is not disclosed to the doctor by a person who claims to be an eye witness and accompanies the injured to the hospital, it would be a fact relevant to determine the claim of the person to be an eye witness. The decision does not hold as claimed by learned counsel for Pardeep Khatri and Ravi Kumar Tyagi. In said case the witness PW-1 who had accompanied the

deceased to the hospital had told the doctor PW-11 that the deceased had been beaten with stones by some '*known persons*'. Now, if a witness tells the doctor that some known persons had hit the deceased with stones, it stands to reason and logic as to why the witness would not give the names and further if the doctor is prepared to write that the history of the injury to the patient as disclosed by the person accompanying the patient is of being beaten with stones by a known person would not query as to who were the said known persons and thereafter write their names. Besides, in the decision reported as AIR 1985 SC 1715 Pattipati Venkaiah Vs. State of A.P., in paragraph 17 it was held that a doctor is not concerned as to who committed the offence because his primary effort is to save the life of the injured and thus it is irrelevant that the person who claims to be an eye witness and has brought the injured to the hospital has not disclosed the name of the assailant to the doctor.

33. Antish Kumar PW-1 who was conscious of the fact that he and other family members had thought over the incident before Rajesh Maan gave his statement Ex.PW-1/B, and as deposed to by the investigating officer Inspector Surinder Sand not only Rajesh Maan but even Antish Kumar and Satish Maan gave him the same version but he chose to record the statement of Rajesh Maan for purposes of FIR to be registered, and thus we find he attempted to explain the delay in giving the version to the investigating officer, when he was further cross examined on November 10, 2010. The reason he gave was that he became unconscious on being told that his brother had expired and he regained consciousness after 30 or 45 minutes; in the same breath disclosing said reason of his not being aware of PCR officers arriving at the spot.

34. There is another fact to be noted. Two shots were fired from the double barrel gun Ex.P-1, evidenced by the fact that the fired cartridge Ex.P-

12 recovered from a spot, lying on the ground, near the place of the crime and the fired cartridge Ex.P-10 recovered from the barrel of the gun proves the point that two shots were fired from Ex.P-1. Only one of which hit the deceased. Only being aware of the fact, on seeing the deceased when examined at the Saroj Hospital by Dr.Suryakant, that a single shot had injured the deceased, Antish Kumar was also aware that Rajesh Maan in his statement Ex.PW-1/B had said that only one shot was fired at the deceased, and this became his compulsion to so depose in Court, for if he would have deposed that he saw two shots being fired, the same would be a material improvement. Caught between the devil and the deep sea he chose the devil, but the deep sea drowns him. Drowned by the fact that he could not explain two shots being fired. It casts a shadow of doubt on he being an eye witness to the core of the incident and illuminates the fact that his attention was drawn towards the place in the car parking when he heard a gunshot fire; he saw the second part of the incident after the gunshot was fired and thus being only a witness to the fact that Pardeep Khatri and the deceased were near the car of Pardeep Khatri and the deceased fell down. He ran towards the spot, others gathered, the attention of all was to rush the deceased to the hospital. The deceased was in the company of his friends and hence having no doubt on his intentions, the attention of nobody was attracted to the fact that Pardeep Khatri ran away from the spot. So charged was the atmosphere and so overwhelming was the concern to take the injured for medical aid that the human mind saw nothing else but the call for rescue. This explains Satish Maan PW-4 deposing that Ravi Kumar Tyagi fired two bullets which hit on the chest of Ajay Maan. He chose the deep sea and in the process the devil consumed him for the reason concededly only one bullet hit the deceased on the chest. He being aware, when all returned to the scene of the crime that one fired cartridge was recovered from Ex.P-1 and the other from

near the place where Ajay Maan suffered the gunshot injury, said while deposing in Court said that he saw Ravi Kumar Tyagi shooting twice towards the chest of the deceased.

35. The evidence on record and the attendant circumstances probabalize that Pardeep Khatri was a good friend of the deceased and so was Ravi Kumar Tyagi. Both of whom were invited to the engagement ceremony by the deceased. Lest there be a short fall in the money while settling the bill of Carnival Farm, Pardeep Khatri took along with him ₹1 lakh. Everybody made merry at the engagement ceremony. There was dancing and drinking, of course, with good cusines served. As the ceremony was ending and as usual, most of the guests had left and only family members and very close friends remained, the deceased and Pardeep Khatri walked out to the car parking where Pardeep Khatri's car was parked to bring cash and settle the bill. God knows what happened thereafter. Two shots were fired, only one of which hit the deceased. The sound of gun shot fired attracted the attention of the people nearby including the four who initially claimed to be eye witnesses. They only saw the deceased collapse as a result of being injured and Pardeep Khatri nearby. They were confused. The deceased was a good friend of Pardeep Khatri. They had no reason to suspect that Pardeep Khatri had a role in the firing. The concern was to rush the deceased to the hospital. At the first instance decision was taken to take him to Jaipur Golden Hospital but later on there was change of mind and the deceased was taken to Saroj Hospital and this explains the time lag between the shooting and the deceased being admitted in the casualty of Saroj Hospital. This explains nobody informing the PCR officers the names of anybody who were suspects or were seen firing at the deceased. The family members were not ready to reconcile to the fact that the deceased had died and this explains the entries in the PCR forms that the relatives of the deceased were fighting with

the doctors who had declared the deceased brought dead. As the initial pain of sorrow, resulting from the death of a near one somewhat subsided, the human mind started thinking and the flashback revealed to the relatives that Pardeep Khatri and Ravi Kumar Tyagi were good friends inter se the two and in turn were good friends of the deceased. The flashback further revealed that Pardeep Khatri and Ravi Kumar Tyagi were together with each other. The flashback further revealed that they had seen Pardeep Khatri standing near his car when deceased fell on being injured from a gunshot and rather than helping his friend he ran away. Probably around same time even Ravi Kumar Tyagi was seen running away by them. This explains the entry in the PCR form that nobody was telling the PCR officers the names or the identity of the assailants, but the mother of the deceased was having a suspicion on the in-laws of her elder son. In the villages it is common to refer to members of the Gotra as relatives. Antish Kumar has deposed that Pardeep Khatri was married to a girl of Shokeen Gotra and Ruby daughter of Nawal Singh was of Shokeen Gotra. The human mind in such state would probabalize many a version of what could have happened and then centre on what appears to be most logical. Weaving a story backward from what the witnesses had seen, the possibility of they spinning a version of having seen the firing involving even Ravi Kumar Tyagi, because the only method by which two people could be involved would be to assign some role to one and some to the other so as to complete a whole.

36. Concerning the argument that Rajesh Maan PW-24 having admitted that he had signed his statement Ex.PW-1/B at point A after it was written and thus notwithstanding he turning hostile, the facts narrated by him in the statement Ex.PW-1/B are required to be treated to be proved and hence correct, for the reasons we have given hereinabove concerning the appreciation of the testimony of PW-1 and PW-4, the same reasons would

apply to him and thus it has to be held qua him as well that when he made the statement Ex.PW-1/B, he and the other relatives of the deceased had possibly contrived a version and state that Pardeep Khatri had handed over the gun Ex.P-1 to Ravi Kumar Tyagi who fired the shot.

37. Thus we concur with the view taken by the learned Trial Judge that keeping in view the evidence led at the trial, the eye witness account i.e. the claim of the eye witnesses of having seen the actual shooting is not believable, and in any case we find that the nature of evidence is such that the benefit of doubt would entitle the accused to said view being taken.

38. Thus, the only incriminating evidence against Ravi Kumar Tyagi would be his conduct of running away from the spot leaving behind the Tata Indica car No.DL 3CW 9294. But therefrom, being the solitary incriminating circumstantial evidence, it would not be possible to conclude that the prosecution has established the chain of circumstances which unerringly and unhesitatingly point towards his guilt and rules out his innocence. The possibility of he running away out of fear or anxiety with Pardeep Khatri, as Pardeep Khatri ran away after firing the fatal shot cannot be ruled out, because after all he was aware of the fact that the family members of the deceased were aware that he and Pardeep Khatri were good friends. We transpose ourselves into a situation where two good friends are at a party and one of them does a serious wrong, the other would certainly anticipate a retribution by the friends and relatives of the person wronged and hence it would be the natural instinct of such a person to also ran away.

39. But as regards Pardeep Khatri we have the admission made by him, which actually was his compulsion keeping in view the strong evidence collected by the prosecution in the form of he being the person in whose name the licence was issued for the gun Ex.P-1. He being the person to whom ammunition was issued which was recovered from the dicky of the

Ford Fiesta car No. DL 4CAF 1433, which car was owned by him. The seizure of the two spent cartridges, one from within the barrel of Ex.P-1 and the other from the scene of the crime, both of which as per the ballistic expert opinion were proved to be fired from the gun in question. That the deceased died as a result of receiving a gun shot from his gun.

40. This takes us to the first level of our discussion which we are required now to discuss in terms of paragraph 15 above of our decision. Whether deceased died as a result of an accidental fire as claimed by Pardeep Khatri?

41. As per Pardeep Khatri, responding to question No.85 he explained how the deceased suffered the gunshot wound from his double barrel gun. In his words : *The deceased Ajay Maan accompanied me in my car, when I opened the dickey of my car to take out the briefcase to hand over ₹1 lakh to the deceased Ajay Maan, he saw my dunali bandook lying in the car. He insisted me that, he wanted to celebrate the occasion of his engagement ceremony. He should have celebrate by firing in the air. Ajay Maan took out dunali bandook from the dickey of my car and fired one shot in the air. Ajay Maan triggered another shot but the said shot could not be fired because of some fault in the dunali bandook. When the second shot could not be fired, Ajay Maan lowered down the dunali and started inspecting the nasal of the dunali and in the process, fire took place accidentally, which hit Ajay Maan. I helped Rajesh in lifting Ajay Maan in the car to take him to the hospital and later on I was taken to the PS. I have been falsely and wrongly implicated by the police at the instances of family member of Ajay Maan, as they wanted to extort compensation from me. I am totally innocent and have not committed the offence and have been falsely and wrongly implicated by the police.*

42. Ex.PW-28/D is a sketch of the double barrel shot gun Ex.P-1 having 12 mm bore. The butt of the gun is having length of 18 cm and the length of

the barrel is 79 cm. Thus, from the point of the trigger the mouth of the barrel would be about 80 cm away. As per Pardeep Khatri, after Ajay Maan fired the first celebratory shot in the air and proceeded to fire the second, there was a malfunctioning in the gun resulting in the shot not being fired. As Ajay Maan started inspecting the barrel the shot got accidentally fired hitting Ajay Maan.

43. The post mortem report Ex.PW-26/A shows that as the pellets which sprayed out of the barrel of Ex.P-1 hit the deceased on the chest, an oval lacerated penetrating wound 10 X 7 cm resulted with blackening and tattooing. Dr.Munish Wadhawan has opined that the shot was fired from close range and has explained that by close range he meant that the shot was fired from a distance between 2 mtrs to 3 mtrs. In contra distinction to a shot fired from a close range, he has explained that a contact range shot would mean that either the barrel of the weapon touches the body or at best not being at a distance of more than 6 inches from the body. The testimony of an expert witness is otherwise proved by a percipient fact; being the oval lacerated penetrating wound 10 x 7 cm. on the chest of the deceased. Common sense tells us that when a cartridge, having lead pellets inside is fired, as the lead pellets are thrust forward along the length of the barrel, moving towards its mouth, they would spray out as they exit from the mouth of the barrel; the head of the spray increasing as the pellets travel the distance away from the mouth of the barrel, a phenomenon which we can conveniently link to a spray of water from a water cannon. One can see the dimensions of the spray increasing in diameter along the distance of the spray. The dead body speaks its story of how from the living form it was converted into a dead form. The dead body tells us that the shot was fired from a minimum distance of 2 mtrs and this was not possible if the shot was accidental, with the gun in the hand of the deceased, when the deceased was

inspecting the barrel.

44. Thus, against accused Pardeep Khatri we have the evidence that he was in the company of the deceased who died due to a gunshot wound received from the double barrel gun owned by Pardeep Khatri and immediately thereafter Pardeep Khatri ran away from the spot leaving behind his car. His conduct of running away leaving behind his car is also strongly indicative of his guilt for if his dear friend has received the gunshot wound shot accidentally, as claimed by him, he would not have run away but would have, along with others who gathered the spot, rushed his friend to the hospital in his car because his car was the nearest vehicle available to transport his friend. He had ₹1 lakh with him and he knew that a private hospital demands a deposit to be made when a patient is admitted at a hospital. It was in his special knowledge as to how his friend suffered the gunshot wound from his gun in his presence, and his explanation found to be wanting, certainly points the finger of guilt unerringly and unhesitatingly towards him, ruling out his innocence.

45. Learned Senior Counsel for Pardeep Khatri vehemently urged that since Pardeep Khatri and Ravi Kumar Tyagi were charged with the aid of Section 34 of the IPC and the case of the prosecution was that he handed over the gun Ex.P-1 to Ravi Kumar Tyagi who fired the shot which killed the deceased, since Ravi Kumar Tyagi was acquitted, Pardeep Khatri could not be convicted for the offence punishable under Section 302 IPC and for which the learned Senior Counsel relied upon the decision of the Supreme Court reported as 1989 SCC (Cri) 357 Sukhram Vs. State of M.P.

46. In *Sukhram's* case the facts were that Sukhram and his cousin Gokul were charged for the offence punishable under Section 302/34 IPC and the case of the prosecution was that both of them had set on fire the shed belonging to Gendalal PW-1 and Chhoteram PW-3 as a result of which two

humans Ganga Bai the mother of Gendalal and Mukesh the son of Chhoteram lost their lives. Chhoteram had deposed that on hearing the alarm because of fire to their sheds he woke up and saw accused Gokul running away along with Sukhram and he chased the two and caught Sukhram but let him go at the asking of one Nannu and one Badri who advised him to return to the shed to extinguish the fire. Gendalal deposed that he saw Gokul running away. Whereas the court of sessions convicted Sukhram and Gokul, but the High Court acquitted Gokul. Noting that in his statement under Section 161 Cr.P.C. Chhoteram had not said that he saw Sukhram running away from the spot and had raised an alarm. The Supreme Court further noted that it was not known why Nannu and Badri intervened and asked Chhoteram to release Sukhram. The Supreme Court noted that the evidence of Gendalal did not fit in the version given by Chhoteram. It was for said reason that the Supreme Court held that even Sukhram was entitled to be given the benefit of doubt. So holding on facts, in paragraph 10 the Supreme Court observed that on the facts of the case before it the High Court overlooked the fact that Sukhram and Gokul were charged with a common participative act of setting the hut on fire and running away and if Gokul was given the benefit of doubt, the appellant could not be convicted because it could then not be said that he had acted conjointly with anyone in the commission of the crime.

47. The observations of the Supreme Court in paragraph 10 of the decision in Sukhram's case have to be understood in the facts of said case where the evidence was that Gokul bore a grudge against Gendalal who was refusing to return ₹400/- collected as fine from Gokul by the caste panchayatdars which was left in deposit with Gendalal. The fine was imposed chastising Gokul for having illicit intimacy with his daughter-in-law and was interested to Gendalal, to be returned till the panchayatdars decided

that ₹400/- be returned. Gokul used to pester Gendalal to return the money. Gendalal used to refuse. Sukhram and Gokul decided to teach Gendalal a lesson and sharing a common intention committed the offence. In such a case where the case of the prosecution falls against one co-accused because the percipient evidence of the witnesses is found shaky against one, it would logically follow that the percipient evidence would be equally shaky against the other co-accused; and as a matter of fact that had happened in Sukhram's case. We do not find any broad and sweeping declaration of law by the Supreme Court that in each and every case where two persons are accused of the offence of murder and Section 34 of the Penal Code is brought into aid, acquittal of one would automatically result in the acquittal of the other.

48. To hold that the law is as stated by learned counsel for Pardeep Khatri would mean a mechanical commitment to the reasoning of deduction. This cognitive over-commitment would be the result of a regard to a deduction, overlooking the realm of a fact and the reality which the fact accommodates. This has to be resolved by simply abandoning some or all of the commitments whose conjoining creates a contradiction. The process is straightforward : to appraise the comparative plausibilities of what one accepts and restore consistency by ignoring what is less plausible and give way to what is more.

49. In view of the fact that Pardeep Khatri was present at the spot where the deceased died and the cause of the death of the deceased is a homicidal firing (not accidental firing) and the weapon of offence and the ammunition is admitted by Pardeep Khatri as owned by him, unless he gave a satisfactory explanation as to how the deceased was shot, the finger of guilt would point towards him. In the instant case the additional fact is of his running away from the spot leaving behind his car and not rushing the deceased to the hospital, who admittedly was a good friend of Pardeep Khatri.

50. It may be true that the prosecution has not been able to prove a motive. But in most cases motive is very difficult to be proved. God knows what happened, but something certainly happened. In the city of Delhi virtually every week there is a newspaper report of rage related crimes over trivial issues and thus it would be useless for us to speculate on a motive.

51. Crl.A.No.1564/2013 filed by Pardeep Khatri is dismissed. His conviction and sentence imposed are upheld. Crl.A.No.1660/2013 filed by Smt.Chela Devi, the mother of deceased Ajay Maan and Crl.A.No.1000/2014 filed by the State challenging acquittal of Ravi Kumar Tyagi are dismissed. The bail bond and surety bond furnished by Ravi Kumar Tyagi are discharged.

52. TCR be returned.

(PARDEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

NOVEMBER 11, 2014

skb/mamta