

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

% **Reserved on: 21st September, 2015**
Date of Decision: 27th January, 2016

+ **CRIMINAL APPEAL No. 656/2013**

CHANDRAKANT JHA Appellant

Through: Mr. M. L. Yadav, Advocate.

versus

STATE (GOVT. OF NCT) OF DELHI Respondent

Through: Mr. Varun Goswami, APP.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.K.GAUBA

SANJIV KHANNA, J.

1. This appeal by Chandrakant Jha impugns judgment dated 24th January, 2013 convicting him for murder of an unknown person, and for the offence under Section 201 of the Indian Penal Code, 1860 (IPC, for short) in the charge sheet arising out of FIR No.279/2007 dated 18th May, 2007 registered at police station Hari Nagar. By the impugned order on sentence dated 4th February, 2013, Chandrakant Jha has been sentenced to imprisonment for life-till the rest of his life, fine of Rs.10,000/- and in default, to undergo simple imprisonment for one month for the offence under Section 302 IPC; and to rigorous imprisonment for a period of 7 years and fine of Rs.10,000/- and in default to undergo simple imprisonment for a period of one month under Section 201 IPC.
2. On 18th May, 2007 at about 6.30 a.m., someone had informed the police control room on telephone that a dead body was lying in a gunny bag in

front of gate No.1, Tihar Jail. The call was heard by ASI Rampal (PW-18) and communicated to the police station Hari Nagar. Consequently, DD No.10A was recorded at about 6.50 p.m. at the said police station by ASI Chhat Ram (PW-19) and entrusted to ASI Kishan Chand (PW-26) and HC Ram Singh (PW-29) for investigation. A suspicious looking plastic bag duly stitched and firmly closed was found lying on the footpath. The crime team led by Inspector Malkiat Singh (PW-20) and the additional SHO on being informed reached the spot. On opening the plastic bag, a letter written in green ink on both sides of a yellow paper, and on the backside of a printed geography paper, was found and seized vide memo Ex.PW-26/A. On opening the inner gunny bag, a headless body of a male without arms and legs below the knees and private parts was found. The headless torso was seized vide seizure memo Ex.PW-26/B. Photographs Ex.PW-13/A-1 to A-10, vide negatives PW-13/N-1 to N-10 were taken by Jaiveer Singh (PW-13). FIR in question No.279 of 2007, Ex.PW-1/A, was registered at 10.10 hours on 18th May, 2007.

3. Next day, on 19th May, 2007, at about 5.25 a.m., information was conveyed to the police control room regarding a carton lying near the State Bank of India branch in the Tis Hazari Court complex. ASI Arjun Singh (PW-27) and SI Arun Tyagi (PW-25), have deposed that on receipt of DD No.4A, Ex.PW-25/A, they had proceeded to Tis Hazari Courts and noticed a carton box in front of the State Bank of India branch. Information was conveyed to senior officers and Crime Team with a photographer were summoned. On inspection, the box was found to contain two upper limbs i.e. arms; from shoulder to fingers and male genitals in a transparent polythene bag. The aforesaid mutilated body parts were seized vide seizure

memo Ex.PW-25/C. Soon PW-25 and PW-27 learnt that on 18th May, 2007, a day earlier, headless torso, without limbs and private parts of a male was found outside the Tihar Jail and FIR No.279/2007 stands registered at the Police Station Hari Nagar. SI Arun Tyagi (PW-25) in his cross-examination has accepted that he had spoken to Inspector Ombir Singh, SHO, police station Hari Nagar between 8 a.m. and 9 a.m. on 19th May, 2007. HC Suresh Kumar (PW-9), HC Raj Pal Singh (PW-22), the photographer, ASI Yudhister (PW-24) and to some extent even Constable Rambir (PW-36) affirm recovery of body parts in the carton outside the State Bank of India branch at the Tis Hazari Court complex.

4. Dr. Anil Shandil (PW-2), then Sr. Resident, DDU hospital had conducted post mortem on this decapitated and dismembered body without both upper and lower limbs and genitalia on 14th June,2007 vide report ExPW2/A. PW-2 in his deposition has given details of dismembered body parts and corresponding wounds. He has opined that the wounds were post-mortem in nature and caused by a sharp edged weapon. No definite opinion could be given about the cause of death. Sternum with the rib (for DNA finger printing), blood samples etc. were preserved, sealed and handed over to the concerned Investigating Officer. On the same day Dr. Anil Shandil had also conducted post mortem on unknown mutilated of body; both arms from shoulder to fingers and human genitalia vide report Ex.PW2/C. He has opined that the they were dismembered parts of a human body. Right and left humerus bone for DNA finger printing along with public hair and hand with phalanges were preserved, sealed and handed over to the concerned Investigating Officer.

5. Dr. A.K. Srivastava (PW-37), Assistant Director (Bio), DNA Finger Printing has opined that the headless torso and body parts were of the same person vide DNA report, Ex.PW-37/A.
6. The facts stated in paragraphs 2 to 5 above stand proved beyond doubt and are not under challenge.
7. We agree with the findings of the trial court that the prosecution has not been able to establish identity of the victim. The victim as per the charge sheet was known as Dalip, but in the absence of the DNA report or other affirmative evidence led in the Court identifying the corpse as that of Dalip, the assertion would remain a rough guess and a mere conjecture.
8. The case of the prosecution connecting and implicating Chandrakant Jha as the perpetrator, who had committed this murder of an unknown person is predicated and based upon the following evidence:-
 - i. Chandrakant Jha is the author, of the hand written confession letter, Ex.P-4 and P-5, found with the headless and dissembled torso.
 - ii. Evidence led proves involvement of Chandrakant Jha in the crimes subject matter of FIR No.609/2006 relating to murder of Anil Mandal @ Amit and FIR No.243/2007 relating to murder of Upender. This “similar fact evidence” is admissible and relevant in the present case under Sections 14 and 15 of the Evidence Act.
 - iii. Dev Raj (PW-6), the telephone booth operator, has identified Chandrakant Jha as the person who had made the call at about 6.20 a.m. on 18th May, 2007 to the police control room.
 - iv. On 20th May, 2007 human blood was found in the rented room occupied by Chandrakant Jha at the Haiderpur Colony and on the three knives recovered from the said room. Blood group found on one knife could

be ascertained and has matched with the blood group of the deceased.
Reliance is placed on the FSL reports Ex.PW 5/A and 5/B.

9. In order to appreciate the prosecution evidence, we would like to reproduce the handwritten letter (Ex.P-4 and P-5) found with the headless torso. The letter is in the nature of a confession. The writer, sneering with conceit and animosity professes that the author had committed this and two earlier murders and had left the three decapitated torsos outside the Tihar Jail. The letter Ex.P-4 and P-5, which is in Hindi, after excluding expletives, reads:-

"..... Mere priyajano. delhi police ke jaanbaz D.H.G.se lekar I.P.S. Tum sabhi ko tumhare jijaji aur tumhare daamad ke taraf se khullam-khulla challenge hai ki agar vakai mein tumlogon ki maa ko tumlogon ke hi baap ne xxxx paida kiya hai to mujhe pakarkar dikhao warna tum saare upar se niche tak ke delhi police ka staff najayaz maa + baap ka paidaish kahlaoge aur tum log yahi sochna ki vakai mein tum logon ki maa aur behan kisi aur adhikar wallon se xxxx wall hai kyonki (xxxx) xxxx ke aulaad tum delhi police vale bahut hi behxxxxd aur maa chxd ho kyonki tum log najayaz case lagakar ek sharif aadmi ko bahut hi galat tarike se pareshaan aur mazbur tatha badnaam kar dete ho ki vo kamane khane ke laayak bhi nahin reh pata hai. Lekin saale tum log ye bhul jaate ho ki jab ek sharif aadmi sharafat chor kar crime karta hai to phir tum logon ki aise hi maa behan xxxx hai jaisa ki Tihar Jail par hota aaya hai aur hota hi rahega jab tak ki tum log mujhe (DCP) Manish Kumar Aggarwal se nahin baat karva doge aur **main ek baat (SHO Hoshiyar Singh ji) se jarur kehna chahoonga ki abhi jo pichle hi saal 20.10.2006 ko laash mill thi usme us laash ka app logoon ne thik dhang se muaayena nahin kiya tha kyonki us laash par uske haath par (Amit) naam likha tha lekin aap loogoon ne akhbaar mein uska naam bhi nahin dalwaya tha. Vaise main ye letter -likhta to nahin lekin abhi jo shayad 24 ya uske ek aadh din aage-piche April mein main-ne murder karke Tihar Jail par delhi police ke liye tohfa bheja ,tha uske andar jo letter nahin mila to bechare akhbar vale bhi pareshaan ho gaye ki aakhir delhi police valoon ke damaad aur jijajine abki baar letter kyon nahin bheja. Isliye main aap logoon ke shikavat par gaur pharmaya hai. Mujhe ummid hai ki ye shilshila aise**

hi chalta rahega aur delhi police valoon ki maa + behan xxxx rahegi varna mujhe (DCP Manish Kumar Aggarwal) se baath karva do nahin to shale har 15 din mein aisa tohfa bhejna shuru kar doonga aur tum log mera xxxx bhi nahin bigar paaoge. **Kramshah Pr CC Main CC ye baat sina taan kar kabul kar raha hoon ki karib karib saal mein kam se kam 7-8 murder har haal mein karta hoon varna mera dimaag pagal hone lagta hai** kyonki ye xxxxx delhi police vaaloon ne mujhe najayaz case laga-lagakar itna Majboor kar diya ki mujhe majburan ye kadam uthana pada taki unko bhi pata chale ki jab koi sharif aadmi apne haath mein hathiyar uthata hai to uska irada kitna jyada khatarnaak hota hai. Aur shale delhi police ke chote se bare ohdedaaroon tumhe zara si bhi akal nahin hai ki kam se kam itna murder karne vale ke upar abhi tak nahin kuch to 50 hazar inaaam to rakh hi doon ya upar valoon se is CC ke baare mein jyada se jyada khunkhar aur khatarnaak ka upadhi de kar inaaam rakhvaane ka koshih karo taki is khel mein kuch maja aaye kyonki tum to shale sharif ke baare mein akhbar aur challan mein aise darshaate ho jaise ki vo janamjaat peshevar criminal ho lekin xxxxx delhi police vale main teri maa behan xxxx raha hoon khullam-khulla to mere upar inaaam kyon nahin rakh rahe ho. Main apne upar inaaam ki raashi jaanne ke liye ati utsuk hoon. Dhyan rakhna ki mere kaam ke laayak inaaam jarur hona chahiye varna meri bejjati hogi to main tum sabki bejjati karva doonga. Ye letter akhbar valoon ko bhi padhwa dena. Aage phir Tohfa ko samay par bhej doonga — tum loogoon ka — jijaji +daamaad = C. C"

(xs- stands for words deliberately omitted)

The first and the second murders referred to in this revealing self-incriminating anonymous letter were the subject matter of FIR No.609/2006 dated 20th October, 2006 and FIR No. 243/2007 dated 25th April, 2007 registered at police station Hari Nagar. These FIRs were registered after headless torsos of unknown persons were found on the said dates outside the Tihar Jail.

10. By order dated 25th November, 2010, Additional Sessions Judge, North-West-4, Rohini Courts noticed that there were three connected charge sheets arising out of FIR Nos. 609/2006, 243/2007 and 279/2007 all under Sections 302 and Section 201 IPC and relating to Police Station Hari Nagar, in which Chandrakant Jha was facing prosecution. The aforesaid Additional Sessions Judge by the said order had directed that the case may be put up before the District Judge-1 and Sessions Judge, Tis Hazari Courts for appropriate orders. Thereafter, the Sessions Judge, Delhi passed the order dated 1st December, 2010 stating that the aforesaid cases were connected with common witnesses and should be tried in one court. Charge sheet in FIR No. 243/2007 was thereby transferred to the court where the connected charge sheets relating to FIR Nos.609/2006 and 279/2007 were pending (charge sheet in FIR Nos.609/2006 and 243/2007 relate to murder of Anil Mandal @ Amit and Upender, respectively. Pertinently, the order dated 25th November, 2010 passed by Additional Sessions Judge, North-West-4, Rohini Courts records that the defence counsel had no objection. No dissent or protest was raised by the appellant during the trial of three charge sheets before a single Court/Judge. Thereafter, during the course of proceedings before the same Additional Sessions Judge on 4th January, 2012, the three charge sheets were taken up for hearing and it was directed that the State would examine common witnesses.
11. By two other separate judgments again dated 24th January, 2013, passed by the same Additional Sessions Judge, Chandrakant Jha has been convicted for murder of Anil Mandal @ Amit in the charge sheet arising out of FIR No.609/2006 and murder of Upender in the charge sheet arising out of FIR No.243/2007. By orders on sentence dated 6th February, 2013 and 5th

February, 2013, relating to FIR Nos. 609/2006 and 243/2007, respectively; Chandrakant Jha has been sentenced to death and fine of Rs.10,000/-, for the offence under Section 302 IPC and rigorous imprisonment of 7 years and fine of Rs.10,000/- for the offence under Section 201 IPC for each conviction.

12. By separate judgments pronounced today we have upheld the conviction of Chandrakant Jha in FIR Nos. 609/2006 and 243/2007. Judgment in Cr. Appeal No. 216/2015 and Death Reference No.2/2013 relating to FIR No. 609/2006 is elaborate and detailed on legal issues and factual evidence. Question would arise whether evidence led and proved in one charge sheet can be read in the other charge sheet? The answer has to an emphatic “No”. The second aspect is whether the findings on merits in Cr. Appeal No. 216/2015 and Death Reference No.2/2013 can be read as evidence in this case. The answer would be again in negative, with some riders or part exception. The answers would equally apply to the evidence led and our findings in Criminal Appeal No. 655/2013 and Death Reference No.3/2013. Albeit, the letter (Ex.P-4 and P-5) is of relevance in the three cases as the author has confessed his crime and involvement in the three cases and has also explicated on the motive. The contents of the said letter would make the existence or non-existence of evidence as to the identity of the author in other charge sheets relevant in this case and *vice versa*. We have elucidated on this connect and impute subsequently.
13. Returning to the question of relevancy of judgments pronounced in one case, in another case, reference must be made to Sections 41 to 44 of the Evidence Act, 1872 (“Evidence Act”, for short). Section 41 deals with effect of a judgment which would give rise to estoppel in subsequent proceedings.

Section 41 deals with judgments *in rem*. Section 42 deals with judgments other than those mentioned in Section 41, if they relate to a matter of public nature, relevant to the enquiry. Possibly it can be urged that section 42 would have some bearing, as the earlier / subsequent crime in these cases would relate to the matter of public nature, but we would not prefer to rely on this provision to hold that the judgments in other FIRs can be read for the truth or correctness of the contents. Section 43 states that judgments other than those mentioned in Sections 40 to 42 are irrelevant, unless existence of such judgments is a fact in issue or is relevant under some other provision of the Act. This provision would be applicable to a limited extent.

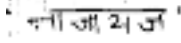
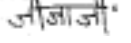
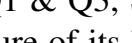
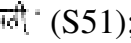
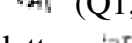
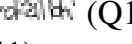
14. Under section 13 of the Evidence Act a transaction in which right to property was asserted and recognized is admissible as relevant. In ***Sital Das Vs. Sant Ram & Ors.*** , AIR 1954 SC 606, a previous judgment though not *inter se* parties was held to be admissible in evidence under Section 13 of the Evidence Act, as a transaction. It appears subsequent judgments did reflect divergence of opinion on whether a judgment is a transaction, but the position that a judgment could be a transaction was reiterated in ***Tirumala Tirupati Devasthanams Vs. K.M. Krishnaiah***, (1998) 3 SCC 331. For the purpose of the present case we would hold that the recitals and findings in our judgment in the Criminal Appeal No.216/2015, Criminal No. 655/2013 and Death Reference No.2/2013 and Death Reference No.3/2013 should not be read as evidence in this case, on the issue and findings recorded therein, i.e. correctness or the truth of the contents. However, the said judgments are relevant as to show their existence, date and legal effect. In other words, the pronouncement of the said judgment would be conclusive in the chargesheet relating to FIR No. 609/2006 as to the fact that it was pronounced and the

result i.e. conviction of the appellant – Chandrakant Jha but not accuracy of the said decision. The judgment can be relied for the purpose of identity of the accused who is convicted. [See *Seth Ramdayal Jat Vs. Laxmi Prasad* 2009 (11) SCC 545, *Vishnu Dutt Sharma Vs. Daya Sapra* (2009) 13 SCC 729 and *K.G. Premshankar Vs. Inspector of Police* (2002) 8 SCC 87.] Thus, we can rely upon our judgment in the Criminal Appeal No.216/2015 and Death Reference of 2/12013 to the effect that Chandrakant Jha was an accused in the said case arising out of FIR No.609/2006 and has been convicted for murder of Anil Mandal @ Amit. To confirm the factual position, the trial court had called for the judicial records relating to FIR No.628/2003, under Sections 25/54/59 of the Arms Act registered at the police station Shalimar Bagh and has affirmed that Anil Mandal @ Amit had appeared in the Court of Mr. Rajesh Goel, Metropolitan Magistrate on 19th Oct.,2006. We would for the same reason take notice of the factum of conviction of Chandrakant Jha for murder of Upendra in FIR No. 243/2007.

15. This ratio would not be contrary or in conflict with Section 54 of the Evidence Act. The judgements/decisions in other FIRs are not relied as "Bad Character" evidence, but their relevancy arises from the letter P-4 and P-5, for the identity of the culprit in the three crimes was same. Thus, evidence to establish and show identity of the perpetrator in other charge sheets is a relevant fact in the present case. We have elucidated the difference between "Bad Character" evidence and "Similar Fact Evidence" in our judgement in Crl. Appeal No.216/2015 and Death Reference No.2/2013.
16. The letter (EX. P-4 and P-5), as per the handwriting expert Dr. Sanjeev Kumar (PW-38) and his report Ex.PW-38/A, is in the hand writing of Chandrakant Jha. Dr. Sanjeev Kumar (PW-38) had compared the

handwriting on the letter Ex.P-4 and P-5 with specimen handwriting on 64 pages (marked PW-28/H) of Chandrakant Jha which were taken after permission was accorded by Mr.Puran Chand (PW-28), Metropolitan Magistrate. The 64 pages were endorsed for identification by Mr. Puran Chand (PW-28) on each page. The specimen hand writing and the letter Ex.P-4 and P-5 were put to exacting and meticulous examination by Dr. Sanjeev Kumar (PW-38), who vide report Ex.PW-38/A has opined that Ex.P-4 and P-5, i.e. the question documents Q1 to Q3, were written by the person, who had written the specimen handwriting marked S1 to S64. The said report is of importance and we would like to reproduce the same, for it discloses the methodical and scientific scrutiny undertaken for the purpose of comparison. The report marked Ex.PW-38/A, reads:-

“The specimen writings marked S1 to S64 show freedom in their execution, natural variation and internal consistency among themselves. The questioned writings marked Q1 to Q3 are also freely written, show natural variation and internal consistency among themselves. On comparison, similarities are observed between questioned and specimen writings in the detailed execution of various characters and parts of characters such as – manner of execution of Hindi letter 'न' in two pen operations, nature and direction of finish of its curved body part as observed in Hindi words 'नमस्ते' (Q1 & S2, S10), 'नमस्ते' (Q1, S11), 'नमस्ते' (Q2, S4), 'नमस्ते' (Q2, Q3, S22), 'नमस्ते' (Q2, S11), 'नमस्ते' (Q3, S50), 'नमस्ते' (Q3, S45); manner of execution of Hindi letter 'र' nature of its start and bifurcating movement of its body part in continuation with its downward vertical stroke as observed in Hindi words 'रीता' (Q1 & S4), 'रहित' (Q1 & S3) 'रहित' (Q2 & S12), 'रहित' (Q2 & S13); manner of formation of Hindi letter 'ह' direction of its finish as observed in Hindi words 'हमारे' (Q1), 'हमारे' (S15 & S19); 'हमारे' (Q1 & S14), 'हमारे' (Q2 & S13), 'हमारे' (Q3 & S41) 'हमारे' (Q3) 'हमारे' (S43); manner of execution of Hindi letter 'क' nature of its shoulders, direction of its finish as observed in questioned similarly observed specimens; manner of formation of Hindi letter 'य', nature of its lower curved body part as observed in Hindi words

 (Q1, Q3, S8 & S22),  (Q2 & S5); manner of formation of Hindi letter 'अ' nature and direction of finish of its body part as observed in Hindi words  (Q1),  (Q2),  (Q1 & S23),  (Q3 & S39); manner of execution of Hindi letter 'ज' nature of its curved body part as observed in Hindi words  (Q1, Q2, Q3, S7 S10 & S17),  (Q1 & Q3, S3, S8); manner of information of Hindi letter 'ह' elongated nature of its lower body part; manner of formation of Hindi letter 'घ' nature of its start as observed in Hindi words  (Q1 & S14),  (Q2 & S41),  (Q3)  (S51); peculiar manner of formation of UKAR  manner of formation of curved part of chanderbindu  and direction of its finish; manner of combining EEKAR  in continuation with the Hindi letter 'अ' as observed in words  (Q1, Q2, Q3 & S11, S15); similar manner of formation of Hindi letters ; peculiar manner of formation of Hindi letter 'क' in continuation with IKAR  as observed in words  (Q1, Q2)  (Q1, S20),  (Q2 & S20),  (S23 & S41); manner of formation of character 'O', location of its start, nature and direction of its finish; manner of execution of 'M' nature of its shoulders as observed in Q1; manner of execution of 'D', nature of its curved part; manner of execution 'J', direction of its finish as observed in Q1 is similarly observed in S28; shape of oval part of 'a', movement while making its downward staff; movement in the formation of character 'n', nature of its shoulder; shape of oval part of 'd', blind loop formation while making its downward staff as observed in word 'and' (Q1 & S28); flying start of character 'I' nature of its loop; nature and location of t-cross bar; manner of formation of letter 'r' nature of its lower round part as observed in the word 'letter' (Q2 & S33); manner of formation of figure '2'; nature of start of figure '6'; manner of combining '00' as observed in figures of date in Q2 is similarly observed in S12; manner of execution of figure '7', nature of its cross-bar; manner of formation of figure '8', nature of its commencement; similar manner of formation of characters 'C', 'P' & 'H' and figure '5'; etc. etc. as observed in questioned is also similarly observed in specimens with similar variations at one or the other places.

Similarities are also observed in general features such as writing movement, skill, speed, spacing, relative size & proportion of characters and nature of commencing & terminating strokes etc.

There is no divergence observed between the questioned and specimen writings and the aforesaid similarities in the writing habit are significant and sufficient and cannot be attributed to accidental

coincidence and when considered collectively they lead me to the above said opinion.”

17. Dr. Sanjeev Kumar (PW-38), Senior Scientific Assistant has testified that the examination of the questioned documents and specimen handwriting was undertaken with the aid of scientific instruments like Stereo Microscope, Video Spectral Comparator-1V, Docucenter and VSC-2000/HR etc. etc. under different lighting condition. In his cross-examination, PW-38 was categorical that the method adopted and his opinion had zero margin of error. He voluntarily added that as an examiner PW-38 had examined more than one thousand exhibits in last 11 years.
18. Dr. Sanjeev Kumar had again deposed in this case as PW-47 to prove his report Ex.PW-47/A on authorship of the first confession letter (marked Ex. PW-22/B), which was found along with the headless torso, subject matter of FIR No.609/2006. Report Ex.PW-47/A and Dr. Sanjeev Kumar, Sr. Scientific Officer as PW-47 has opined that the first confession letter (Ex.PW-22/B) and described as Q1 and Q2 in the report was written by the same person, who had written the specimen handwriting Ex.PW-22/U-1 to U-7, mentioned in the report as S-1 to S-7. The specimen handwriting, Ex.PW-22/U-1 to U-7, it is apparent from the testimony of SI Narender (PW-30), ASI Virender Singh (PW-41) and Inspector Sunder Singh (PW-42), were taken in the presence of the Metropolitan Magistrate, Mr. Bhupesh Kumar with his permission on 21st May, 2007, when Chandrakant Jha was produced in the Court.
19. In order to satisfy the authorship of the two letters, the trial court and we as the Appellate Court, have thoroughly examined the reasons and grounds given in the two opinions marked Exhibit PW-38/A and Exhibit PW-47/A as well as the specimen handwriting of Chandrakant Jha. We must accept and

acknowledge as held by the trial court that there are striking similarities in the letter formation, size and proportion of characters and nature of commencing and termination of strokes in the specimen handwriting and the two confessional letters.

20. Reports Ex.PW-38/A and Ex. PW-47/A, Dr. Sanjeev Kumar's (PW-38/47) and our affirmation posits and indicts Chandrakant Jha as the dubious author of the anonymous letters Ex.P-4/P-5 and Ex.PW22/B (See deposition of Dr. Sanjeev Kumar as PW-47 dated 4.6.2012). However, to uphold and ascribe our decision that Chandrakant Jha is the writer, we would reflect and rely on the contents of P-4 and P-5 for they find corroboration in the other evidence showing Chandrakant Jha's involvement in the two FIR Nos.609/2006 and 243/2007. This letter is relevant evidence in three cases for it accepts that the author was the perpetrator in the three cases. The letter Ex.P-4 and P-5 refers to the tattoo 'Amit' engraved on the body of the first victim and that the author had not enclosed any letter with the second headless torso. This letter stating the masked and dark truths is tell-tale and helps unmask the perpetrator as it confirms that the culprit behind the three murders was the same person. In other words, evidence showing the identity of the perpetrator in FIR No.609/2006 and FIR No.243/2007 would be relevant and material in this case and vice versa. Identification of Chandrakant Jha and evidence to show his involvement in one case would be relevant and admissible in the other cases. For clarity we would reiterate that we would not read evidence led in other charge sheets and not led in charge sheet filed in FIR No.279/2007, as evidence on record. Albeit, evidence led and adduced in the charge sheet arising out of FIR No.279/2007 relating to the

identity of the perpetrator in FIR Nos.609/2006 and 243/2007 would be relevant and admissible evidence in this case.

21. In CrI.A. No. 216/2015 and Death Reference No.2/2013, arising out of FIR No.609/2006, we have examined the principle of ‘similar fact evidence’ in the context of Sections 14 and 15 of the Evidence Act. For the sake of convenience, we would like to reproduce some paragraphs from the said decision, which read thus:-

“17. Generally, the law precludes evidence of previous offences or convictions and such evidence is inadmissible. Similar facts are, therefore, ordinarily inadmissible to prove the main fact, a part of the transaction, or the identity or connection with the accused, as they would only show a general disposition or habit. However, Sections 14 and 15 of the Evidence Act do stipulate and covenant exceptions to this axiom. ‘Similar fact evidence’ is admissible if it bears on the question whether the acts alleged to constitute a crime were designed or mere accidents and thereby to rebut defences alleging an innocent state of mind. This rule applies when mental condition of the person with reference to a particular act is in issue.

18. ‘Similar fact evidence’ can be led when there is a nexus between the similar fact and the main fact in issue. Apposite, when several distinct offences demonstrate a continuity of action, evidence of previous or subsequent acts would, common sense states, become relevant. For in such cases proof of cumulative facts may aid in proving the main fact in a case. A series of transactions or acts are relevant when they seek to bring about a certain result and obtain certain object. The best way to apply the ‘similar evidence test’ is to ascertain the facts to be proved (*factum probus*) and ascertain whether there is sufficient and reasonable connection or a common link with the evidentiary fact. When there is a significant and particular connection of the facts to be proved with the evidentiary fact, i.e., *factum probandum*, ‘similar fact evidence’ is admissible. Mere similarity is not sufficient and is not a common link, but a pre-existing plan or design and where one transaction forms a part of a series designed to bring about certain result with a certain object, the connection envisaged above exists. For example, when A is required

to prove that B has committed a fraud, it is neither sufficient nor relevant to prove that B had committed fraud on others, but it may become relevant if it is to be shown that the fraud committed on B was a part of series of other transaction having common features.

19. Section 7 of the Evidence Act states that facts which tend to prove or disprove the acts under enquiry, immediate or otherwise, or constitute the state of things under which they happened, which afford an opportunity for their occurrence or transaction are relevant. ‘Similar fact evidence’ principle would therefore apply when the earlier and post wrongful acts are a part of systematic pursuit with the same criminal objective. As per Section 8 of the Evidence Act, exculpatory statements are relevant. We accept and acknowledge that the prosecution, to secure conviction is required to rule out the possibility of innocence and another person being the perpetrator. Hence, it can rely upon evidence to establish *animus* of the act to rebut by anticipation defences of ignorance, accident or any other assertions regarding innocent state of mind.

20. The ‘striking similarity’ test could be applied and accepted as permissible within the ambit and scope of Sections 7, 8, 14 and 15 of the Evidence Act. This test negates and repels any chance of misuse or over evaluation for it does not dilute the principle that admission of a mere general disposition or tendencies is impetuous and dangerous being conjectural and remote. ‘Striking similarity’ test finds recognition and can be discerned from the illustrations to Section 14, specially (a) to (d) quoted above. ‘Similar fact evidence’ in such cases may be given to prove and establish, the identity of the perpetrator when it relates to and has a definite and precise reference to a particular matter in question. Strange, exceptional or atypical nature of acts on two or more occasions on a particular matter, could make it safe to rely upon, for interpreting the conduct in question. It is this nexus and link which helps to draw the distinction between a general or particular act. This stringent requirement would satisfy the touchstone and criterion of a particular matter and not a mere general disposition.

21. Thus, similarity in evidence principle can be applied to rule-out probability of co-incidence, mistake or innocent intent, as well as to identify the perpetrator. The first aspect of “similar fact evidence” can be distinguished and is different, when and where the said

principle is articulated and applied to establish the identity of the perpetrator i.e. *actus reus* was committed by the accused and no one else. In the latter case, conviction could require some other evidence to show commission of *actus reus* by the accused, which allows relevancy of the “similar fact evidence” to be taken on record and admitted in evidence, either on account of “striking similarity” or because the evidence is logically relevant to an important matter and issue connecting the accused. The test of “striking similarity” or underlying unity when identity of the accused on the basis of *actus reus* is sought to be established requires a higher threshold. The aforesaid doctrine or principles have to be applied with great caution and care for the general principle is that previous guilt or criminal acts other than those covered by indictment are inadmissible and should not be taken into account when deciding whether the person accused and tried is guilty of the said particular offence.”

22. Relevancy in the present set of cases is predicated not only on ‘similar fact evidence’, i.e. motive, striking similarity of the offences etc., a principle we have referred to in some detail, but as observed above on account of epigraphic connect recorded in the contents of the confession letter. The letter boasts and gloats having committed the three murders, and teasingly mocks at the police.
23. The allegation and contention that the two confessional letters should be discarded and ignored for they were not kept in a sealed cover and, therefore, could have been concocted and fabricated, has to be rejected as farcical and a pretence for several reasons. Significantly, it was never the case of the Chandrakant Jha that he was forced and compelled by anyone to write the two confessional letters. Chandrakant Jha did not make such assertion when he had appeared as defence witness DW-1 and in his statement under Section 313 Cr.P.C. Noticeably, Chandrakant Jha had contested the specimen handwriting examined by the handwriting experts

Dr. Sanjiv Kumar (PW-38/47) proclaiming that these were fabricated. Recovery of the two letters with the decapitated torsos in FIR Nos. 609/2006 and 243/2007 should be accepted for they find reference in the FIRs and the ocular testimonies of several witnesses including ASI Kishan Chand (PW-26) and Head Constable Ram Singh (PW-29) who have deposed as to the second letter Ex.P-4 and Ex.P-5. Regarding specimen handwriting taken on 64 page sheets, Chandrakant Jha's version in his statement under Section 313 Cr.P.C. was that the handwriting was changed by the Investigating Officer later on, which we hold is implausible for each of the said 64 pages bears signature and seal of the Mr.Puran Chand (PW-28), the Metropolitan Magistrate.

24. Recourse to Section 219 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) would have been appropriate for this would have ensured that entire evidence including evidence connecting the three crimes was led in one trial and relied in each charge. Besides, it would have curtailed duplication of evidence, brought clarity and avoided procedural and technical difficulties as the evidence in the three cases is intertwined and inextricably harnessed in a chain. It would have expedited the trial and obviated the need to file repeated applications for leading additional evidence as has happened in the three cases before the same Additional Sessions Judge at the stage of trial. We are constrained to observe that the prosecution has failed and should have led in the present case the unharboured incriminating evidence, that was led to establish and prove that Chandrakant Jha was the perpetrator who had committed the offences in the charge sheets filed in FIR No. 609/2006. If the said evidence had been led, it would have strengthened and reinforced the charge in the present case

against Chandrakant Jha. For unexplainable reasons, possibly arising from failure to examine the legal position, the evidence adduced has got truncated and divided. We had also mulled and thought of taking recourse to Section 391 Cr.P.C to bring this excluded evidence on record in the present appeal, but have refrained after some deliberation. Having said so, we have taken into account and read the evidence which has been led and brought on record by the prosecution and/or is admissible in each case and are, therefore, disposing this appeal by a separate judgment, as indeed we have proceeded with appeals and death references in other FIRs.

25. Before we proceed further and refer to the evidence led by the prosecution to show the identity of the perpetrator, we would like to again quote our judgment in Crl.A. No.216/2015 and Death Reference No.2/2013, relating to FIR No.609/2006 on two aspects in the context that the contents of the letter would furnish proof of authorship and why the letter (Ex.P-4 and P-5) though addressed to the police is not hit by Section 25 and 26 of the Evidence Act. On these two aspects we have held:-

“84. The contents of the aforesaid letters are instructive and convey information on the intent and objective behind the crimes as well as reflect on the identity of the perpetrator. The author of the letters while confessing to the crime, had narrated his earlier implication and trial in a murder case. Chandrakant Jha had been tried and acquitted in a murder case (see mark X-1 produced and relied by Chandrakant Jha). This factum would only confirm that Chandrakant Jha could have been the author and, therefore, relevant, but would not be conclusive or firmly establish his complexity in the crimes in question, for there could be several others, who could meet the said criterion. It is in fact the permeating and spiral effect of the contents, that cascades and their harmonic resonance encircles and entangles the appellant. The contents mutually reciprocate corroborating and supporting evidence. The second letter recovered along with the dead body on 18th May, 2007, which became subject matter of FIR No.279/2007,

acknowledges and confesses the author's involvement and participation in the first and in the second murder case, subject matter of FIR Nos.609/2006 and 243/2007. It refers to the tattoo "Amit" engraved on the body of the first victim and that 'he' had not enclosed any letter with the second headless torso. This gospel stating the masked and dark truths is telltale and unmasks the perpetrator as it confirms that the culprit behind the three murders was the same person. In other words, evidence showing and establishing identity of the perpetrator in FIR Nos.243/2007 and 279/2007 would become relevant to material in FIR No.609/2006 and vice versa. Thus, this letter would be of relevance in the three FIRs. The second letter would connect and link the three offences, as the perpetrator had made reference to the three occurrences in detail and had candidly admitted his involvement, after conspicuously concealing his name and identity. In these circumstances, evidence establishing identity of the perpetrator in any charge sheet would be relevant in the other charge sheets. For this reason, identification of Chandrakant Jha and evidence to show his involvement in the crime in one case, would be of relevance and importance in the other cases. This relevancy is not predicated only on 'similar fact evidence', i.e., motive, striking similarity etc. and is accusative in view of the confession of the perpetrator that he was the person who has committed the said three offences. It is ergative, for the evidence led and relevant in identifying the perpetrator in one case, is of relevance and material in discerning the perpetrator in the other two cases. Having said so, we would still only take into account the record in each case, i.e. the evidence that has been led and brought on record by the prosecution in the said case; and are, therefore, disposing of the appeals by separate judgments.

85. xxxxx

86. The contents of the two letters avow that the writer / perpetrator was one, and when the perpetrator's identity is supplemented and gets assurance from other evidence, we can form a fortified and vitrified opinion as to the authorship of the letters i.e. identity of the writer. Internal evidence in the form of the content can help to decipher and ascertain this individual. Proof of authorship need not be direct and can be circumstantial. The context and content could furnish proof of authorship [*Mobarik Ali Ahmed v/s The State of Bombay*, AIR 1957

SC 857 and *Mohd. Jamiludin Nasir v/s State of W.B.*, 2014 (7) SCC 443]. Therefore, it would be incorrect and wrong to assert that we have accepted authorship of Chandrakant Jha solely on the basis of the handwriting expert's opinion. We have accepted the prosecution version and Chandrakant Jha's authorship by referring to the opinion of the handwriting expert and other substantive and supporting evidences, which cumulatively and collectively establishes that it was Chandrakant Jha and no other person had penned these letters. Thus, the content, the handwriting expert's opinion and asseveration of other evidence identifying the perpetrator, i.e. Chandrakant Jha, have combined and their amalgamation and meld, rules out any possibility of a third party perpetrator.

87. We would also take note of the submission made by the State that with the arrest of the appellant-Chandrakant Jha, repeated dropping of headless torsos had stopped for no other similar instance has been since reported. We would not place primordial reliance on the factual assertion for we perceive that the prosecution must prove their case against the appellant-Chandrakant Jha by leading positive evidence to show his involvement as the perpetrator, though it is a fact that no further case of a headless corpse being thrown outside Tihar Jial has been reported after the arrest of the appellant. This facet would be a supporting or corroborating circumstance, which assures that our positive and affirmative conclusion and finding, on the basis of evidence adduced, is correct.

88. The two letters although addressed to the police, are not hit by Sections 25 and 26 of the Evidence Act. These letters were voluntarily written, even before the police knew the identity/name of the culprit and much before the appellant was arrested or detained. The embargo imposed by Section 25 of the Evidence Act cannot be invoked, as the said letters were not written by an accused person in the presence or in the custody of a police officer, which is a statutory prerequisite for invoking Sections 25 and 26 of the Evidence Act. The letters in the present case must be also distinguished from a first information report made by the culprit to a police officer, whether it is a self-exculpatory version or self-incriminating confession. [see *Aghoo Nagesia versus State of Bihar*, AIR 1966 SC 119, *Khatiri and Hemraj versus State of Gujarat*, AIR 1972 SC 922 and *Kanda Padayachi versus State of*

Tamil Nadu, (1971) 2 SCC 641)]. In these situations, the person charged, hands over a complaint or makes a statement and enters into a direct conversation with a police officer. Thus there is a physical proximity, interaction and personal contact between the offender and the police officer, even when the written communication is not transcribed or penned before the police. In the present case, the letters though addressed and meant for the police, were not written or personally handed over by the offender to a police officer, confessing the crime or professing that a third person or someone else was the perpetrator. In the present case, the writer, while accepting and confessing the crimes had concealed his entity and extorted and teased police to trace and identify the author. Thus, the bar created by sections 25 and 26 of the Act would not be attracted. A similar issue was examined in *Sita Ram Vs. State of U.P.* 1966 SC 1906. In the aforementioned case, the confessions were made by the writer in a letter dated 14th September, 1962 found at the scene of crime. The writer had confessed murdering his wife and that no one else had committed the crime. Subsequently the perpetrator surrendered before court on 19th September, 1962. The prosecution relied upon this letter addressed to a Sub-Inspector. The Supreme Court observed that the letter, being hand written and signed by the accused was admissible as a confession, admitting the crime. The court clarified that the letter, although addressed to a police officer, would not be a confession to a police officer under Section 25 of the Evidence Act, for the reason that the police officer was not present when the letter was written and, therefore, there was no element of inducement or threat. The mere fact that the letter was addressed to the sub-Inspector, and not to any third person, would not by itself make the letter inadmissible. In the present case, the confessions are in the form of letters which were written earlier and before the appellant was first apprehended by the police which signify that they were written voluntarily. There was no chance of inducement or threat. Confessions made in the two letters are admissible.”

26. SI Narender (PW-30), Inspector Dalip Kaushik (PW-39), ASI Virender Singh (PW-41) and Inspector Sunder Singh (PW-42) have deposed as to the arrest of Chandrakant Jha on 20th May, 2007 vide arrest memo Ex.PW-30/A and recording of disclosure statement marked Ex.PW-30/C and recovery of

the motorised rickshaw, an unusual contraption vide possession memo Ex.PW-30/D. They have also referred to lifting of blood stained earth, three knives, Ex.P-12, 13 and 14, and a mobile phone Ex. P-17 from the tenanted room at Haiderpur.

27. Constable Suresh Kumar (PW-10) has deposed having developed 18 photographs Ex.PW-10/A-1 to A-18, which were taken on 20th May, 2007 at the tenanted room of Chandrakant Jha at Haiderpur. Two photographs are of the wall, on which some names and telephone numbers, including the name of Upender, were mentioned.
28. Sanjay Mann (PW-8), landlord of the tenanted room at Alipur had identified Chandrakant Jha and has accepted that Chandrakant Jha and his wife were in occupation of a room in his property. He has also proved that the appellant was arrested, though he was not a signatory to the arrest memo. We would refer to the testimony of Rajeev Kumar (PW-3) subsequently. The said Rajeev Kumar (PW-3) was the landlord of the room occupied by the Chandrakant Jha at Haiderpur, the room from where recoveries were effected.
29. Pertinently, on the basis of the disclosure statement (Ex. PW-30/C) and other leads, the police were able to trace out Pankaj, who has appeared in this case as PW-43 and has testified that Upender Rathor was his brother and had introduced him to Chandrakant Jha. He would call on numbers 9211463742 and 9211463743 from STD booths at Bhiwari in Rajasthan, where he was working and would speak with Upender. PW-43 had last spoken to Upender on 20th April, 2007, for thereafter Upender was untraceable and could not be contacted on number 9211463742. Perturbed, PW-43 had in May, 2007 called on 9211463743, when Chadrakant Jha's daughter had asked him to

call back after 10 minutes. PW-43 had called after 10-15 minutes and conversed with Chandrakant Jha, whose voice he could identify. Chandrakant Jha had told PW-43 that Upender had taken Rs.20,000/-, his rehri/thela and had gone somewhere. Pankaj has testified in some detail about his earlier interactions with Chandrakant Jha. In his cross-examination, PW-43 elucidated about his meetings with Chandrakant Jha, reiterating he knew him. PW-43 testified that Chandrakant Jha in his conversation had stated “Upender ka jaise karam tha, maine uskow aha pahucha diya hai”. [Upender has been dealt with, as per his deeds (karma)].

30. Inspector Sunder Singh (PW-42) in his testimony recorded on 12th March, 2012 has stated on personal search of the appellant-Chandrakant Jha vide memo Ex.PW-30/B, one Tata Samsung mobile phone with ESN No.8562-A099 with Tata Indicom SIM number 9211463742 was recovered. The said SIM and phone were identified by PW-42 as Ex.PW-42/1 and Ex.PW-42/2. Inspector Sunder Singh (PW-42) also collected CDR of this number which were collectively marked Ex.PW-42/C and CDRs of another telephone number 9211463743, which were marked Ex.PW-42/D. The said CDRs that SIM number 9211463742 had been also used in the mobile instrument with ESN No.8781 FA97. SIM No. 9211446743 had also been inserted in the mobile instrument with ESN No. 8562A099. Inspector Sunder Singh has also relied upon certificate under Section 65B of the Evidence Act in respect of the two mobile phone numbers marked Ex.PW-33/G. Gaganjeet Singh Sidhu (PW-33) and M.N. Vijayan (PW-44), Nodal Officers of Tata Telecommunications Ltd. have proved certificates under Section 65B of the Evidence Act marked Ex.PW-33/G and Ex.PW-44/A, in respect of CDRs of telephone numbers 9211463742 for the period 7th May, 2007 to 19th May,

2007 (Ex.PW-33/B), the CDRs for telephone number 9211463742 for the period 1st April, 2007 to 20th May, 2007 (Ex.PW-42/C) and for mobile number 9211463743 (Ex.PW-43/D), respectively. These CDRs confirm the statement of Pankaj(PW-43) that he was in touch with Upendra and his conversations with Chandrakant Jha. The cell tower location chart Ex.PW-42/E would also establish movement of the user of mobile phone 9211463742 on 24th and 25th April, 2007, which we observe, supports that user of the telephone number 9211463742, had travelled in the area where the headless torso and body parts were found.

31. The two telephone numbers in seriatim 9211463742 and 9211463743 were allotted to one Rahul Jain as per customer application forms. However, Inspector Sunder Singh (PW-42) in his cross-examination has stated that on police investigation, Rahul Jain's address was found to be fake and non-existent.
32. This brings us to the evidence of Rajeev Kumar (PW-3), who in his cross-examination made a significant statement that Chandrakant Jha was owner of a scooter engine operated rickshaw. This statement lends support to the prosecution that a scooter engine operated rickshaw was recovered at the behest of the appellant vide seizure memo Ex.PW-30/D. The prosecution version proceeds that this rickshaw was used by Chandrakant Jha to leave the beheaded torso outside Tihar Jail and to drop body parts at different locations. It is obvious that the actual killings and injuries were inflicted at another location. The case of the prosecution is that the unknown victim in the present case was killed/murdered in the tenanted room at Haiderpur in the property owned by Rajeev Kumar (PW-3). Rajeev Kumar (PW-3) has accepted that Chandrakant Jha was a tenant of a room in property number

229/2, Ambedkar Nagar, Haiderpur and used to reside with his wife and children. He used to deal in vegetables at Azadpur Mandi. In April, 2007, Chandrakant Jha had shifted his wife and children to some other place but Chandrakant Jha would visit the said room alone. In May, 2007, he came to know that Chandrakant Jha had been arrested in a murder case. PW-3 has accepted that there were two visits by the police team when they had inspected the rented room at Haiderpur. In an earlier portion of cross-examination, PW-3 admitted that the police had visited the room on the day when Chandrakant Jha was arrested, though he could not give the exact date and month but recollected the year as 2007. On further cross-examination, PW-3 did accept that he was not present when the police officers had visited the room and he was called from his house. This would explain why Rajiv Kumar (PW-3) was somewhat ambivalent and has stated that the appellant Chandrakant Jha was not with the police. Photograph marked Exhibit PW-8/A does reflect presence of Chandrakant Jha at Haiderpur. Chandrakant Jha when confronted with the ocular evidence of the police officers, in his statement under section 313 Cr.P.C. in response has stated that he was taken to Haiderpur and made to sit in a car.

33. The contention that Rajiv Kumar (PW-3) is trumped up or that he was a planted witness is devoid of merit and farcical. Rajiv Kumar (PW-3) has, in his cross-examination, stated that the appellant was residing in the tenanted room with his wife and five children. Infact, one child was born in the tenanted room itself. PW-3's version and the specific details narrated with aplomb and ease were not possible, unless the witness had known and seen Chandrakant Jha. We accept that Chandrakant Jha was in occupation of the tenanted room at Haiderpur.

34. The evidence obtained from the room in question at Haiderpur is emphatically testified by S.I. Anil Kumar (PW-4), a member of the mobile crime team, who had taken four chance prints from the spot and prepared a report marked Ex.PW-4/A, and Naresh Kumar (PW-5), Senior Scientific Assistant (Biology), FSL, Rohini, who had lifted the blood-stained floor pieces from the room and three knives and had prepared a detailed report marked Ex.PW-5/A. PW-5 is also the author of the serological report Ex.PW-5/B. He identified various articles which were seized from the said room including the three knives, floor pieces with blood-stains etc. The aforesaid memos and exhibits were filed with the charge-sheet arising out of FIR No.609/2006 and were taken on record in other cases as well. The testimony of ASI Ajender Singh (PW-7) affirms the testimony of PW-4 and PW-5 and he had prepared a detailed report marked Ex.PW-7/A on visiting the room at Haiderpur. He affirms the presence of Chandrakant Jha at the spot with Inspector Sunder Singh (PW-42).
35. Other witnesses, namely, SI Narender (PW-30), Inspector Dalip Kaushik (PW-39), ASI Virender Singh (PW-41) and Inspector Sunder Singh (PW-42) have deposed about lifting of blood stained earth/floor and recovery of the three knives Ex. P-12, 13 and 14 and that blood stains were found on the knives.
36. The FSL report, Ex.PW-5/A and B show presence of human blood on the three knives and concrete pieces. On one of the weapon of offences, i.e. one knife, blood group could be ascertained to be of AB group. The said blood group matches with the blood group found on cloth pieces like baby frock etc. found with the headless torso on 18th May, 2007.

37. This brings us to the evidence of Dev Raj (PW-6), who was running a general store with an STD booth at Timarpur. He has deposed that at about 6:20 a.m. on 18th May, 2007, a person after inserting a coin in the telephone instrument had made a phone call. After some time, the same person again came and inserted another coin which came out. PW-6 had then asked the said person, to identify the person being called. The caller became perplexed and had handed over the coin and left the shop. PW-6 had concluded that the person must have dialled No.100 as the instrument would usually eject the coin if the said number was dialled. PW-6 testified that the caller was around five and a half feet tall, had slight moustaches and beard and was aged about 35–36 years. PW-6 identified the appellant Chandrakant Jha as the said person. On the same day, i.e. 18th May, 2007, police from the local police station had come to his shop and had recorded his statement. PW-6 had also earlier identified the appellant in the trial court at Rohini. PW-6 produced the original bill of the telephone, Ex.PW-6/A, which was installed in the name of his wife and gave the number as 42133579. In his cross-examination, PW-6 candidly admitted that he was unable to identify Chandrakant Jha on the last date as he had not paid close attention and was seeing the said person after three years. This frank and fair admission by the witness, would show his candidness and that the dock identification of Chandrakant Jha by PW-6 was not at the behest or mere asking of the police. PW-6 was cross-examined in detail and has elaborated that he had seen the face of Chandrakant Jha, when the appellant was paying him and at that time they had a brief conversation. Further, he had seen side profile of the caller, when he had made the phone calls. PW-6 has testified that the appellant had a beard and therefore, no mark on his cheeks could be

seen. PW-6 had not over heard the conversation on the phone. PW-6 clarified that the appellant had walked away after making the first call and had returned after 2 – 3 minutes to make the second call. PW-6 affirmed that the police had come to him at about 9:00/9:30 A.M. on 18th May, 2007 and one of the police officers was Inspector Hoshiyar Singh. He had helped the police to prepare a sketch but had not signed the said sketch.

38. Dock identification by Dev Raj (PW-6) is sought to be challenged on the ground that Chandrakant Jha was never produced in the courts at Rohini on 26th June, 2007 and, therefore, PW-6's assertion that he had identified Chandrakant Jha at the Rohini Courts is incorrect. Reliance was placed on Chandrakant Jha's assertion to the said effect in his statement recorded under Section 313 Cr.P.C. and copy of various RTI replies produced by Chandrakant Jha as a witness DW-1. Pertinently, in his deposition as DW-1, Chandrakant Jha did not advert or assert not being produced in the Rohini Courts on 26th June, 2007. We have dealt with the similar contention and rejected the same in our contemporaneous decision pronounced today in Criminal Appeal No. 216/2015 and Death Reference No. 2/2013.
39. Mr.Puran Chand (PW-28), Metropolitan Magistrate has testified that on 8th June, 2007, an application was moved for conducting judicial Test Identification Parade (TIP) of Chandrakant Jha, which was marked to the said witness. Chandrakant Jha was produced before him in a muffled face and had refused to participate in the said proceedings on the pretext that his photographs had been taken/flushed in the newspaper and television channels. The said TIP proceedings were marked Exhibit PW-28/A and the statement of Chandrakant Jha's refusal to participate is marked Exhibit PW-28/B.

40. It is pertinent and relevant to state that it is a dock or the court identification, which is relevant and material. It is in this context that the testimony of Dev Raj (PW-6) is significant and would be relevant for he had identified Chandrakant Jha as the person, who had made the call from the telephone instrument installed in his shop to the Police Control Room informing them that a headless torso was lying outside Tihar Jail. In *Manu Sharma Vs. State (Govt. of NCT of Delhi)* (2010) 6 SCC 1, the Supreme Court elucidated and highlighted significance of dock identification, observing that TIP etc. relate to the stage of investigation. In *R.Shaji Vs. State of Kerala* (2013) 14 SCC 266, after referring to varied case law on the subject of TIP and Section 9 of the Evidence Act, it was observed that TIP cannot be claimed by the accused as a matter of right and only corroborates identification of the accused in the Court. TIP may be meaningless, if the witness is known to the accused or was shown his photograph or had been exposed to the media. TIP may be helpful in the investigation to ascertain whether the investigation was going in the proper direction and it is the identification in the court that matters. In *State Vs. Sunil Kumar* (2015) 8 SCC 478, the Supreme Court highlighted that identification of an accused in the court by a witness constitutes substantive evidence and TIP is not a rule of law, but a rule of prudence. In a given case, in the absence of TIP, identification in the court may become unreliable and unworthy of reliance, but it would depend upon the factual matrix. Where a witness had abundant opportunity to notice the features and the face of the accused and the offender and witness was in close proximity, the courts can rely upon the dock identification. Recently in *Kulwinder Singh v. State of Punjab*, (2015) 6 SCC 674 it has been observed:

“10. First, we shall deal with the facet of test identification parade. There is no dispute that the test identification parade has not been held in this case. The two witnesses, namely, PW 2 and PW 3 have identified the appellant-accused in court. As per their evidence they had seen the appellant-accused in torchlight and they had also seen them running away. It has also come in the evidence that they chased them but they could not be apprehended. The learned trial Judge as well as the High Court has taken note of the fact that it was 4.00 a.m. in the month of April and, therefore, it was not all that dark and with the help of torchlight, they could have identified the accused persons. The suggestion given to these witnesses is absolutely vague. Nothing really has been elicited in the cross-examination to discard the testimony of these witnesses.

11. In *Matru v. State of U.P.*, it has been held that the identification test does not constitute substantive evidence and it is primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation of an offence is proceeding on the right lines.

12. In *Santokh Singh v. Izhar Hussain*, it has been observed that the identification can only be used as corroborative of the statement in court.

13. In *Malkhansingh v. State of M.P.* it has been held thus: (SCC pp. 751-52, para 7)

“7. ... The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact.”

14. In this context, reference to a passage from *Visveswaran v. State*, would be apt. It is as follows: (SCC p. 78, para 11)

“11. ... The identification of the accused either in test identification parade or in Court is not a sine qua non in every

case if from the circumstances the guilt is otherwise established. Many a time, crimes are committed under the cover of darkness when none is able to identify the accused. The commission of a crime can be proved also by circumstantial evidence.”

15. In the case at hand, as the witnesses have identified the appellant-accused in the court and except giving a bald suggestion that they have not seen the accused persons, there is nothing in the cross-examination we are disposed to accept the identification in court. Hence, the submission canvassed by the learned counsel for the appellants on this score pales into insignificance.”

41. At this stage, it would be also appropriate to deal with other contentions raised by Chandrakant Jha in his defence. Chandrakant Jha in his statement under Section 313 Cr.P.C. has proclaimed that he was detained and picked up by the police on 19th May, 2007 by SI Narender in the evening when he and his family were about to take dinner. Chandrakant Jha as DW-1 did not depose about the said factum in his statement recorded on oath. However, his wife Mamta (DW-3) in her deposition did testify that Chandrakant Jha was lifted on 19th May, 2007 from their house at Alipur in the evening hours by 10-15 persons, who claimed that they were policemen. DW-3 proclaimed that she and her children and one Ram Sewak were also put in a jeep and taken to some place, which appeared to be a police station/office. They had remained there for about 4 days and were not permitted to meet Chandrakant Jha. The said version given by DW-3 is not plausible for Chandrakant Jha was certainly produced in the court on 21st May, 2007 and we do not see any reason for the police to have detained DW-3 for 3-4 days even if we were to assume that Chandrakant Jha was detained on 19th May, 2007. We would once again refer to our decision pronounced today in Criminal Appeal No.

216/2015 and our observations while dealing with the similar contention.

We have observed:-

“39. Chandrakant Jha has contested and challenged his date of arrest. He professes being arrested on 19th May, 2007 and places reliance on a news item published in *Dainik Jagaran* dated 20th May, 2007, marked Ex.PW22/DX-1. A similar assertion was made by Chandrakant Jha in his statement under Section 313 Cr.P.C. We have read the said newspaper item, but hold that the same cannot be read as evidence of truth of its contents. Inspector Sunder Singh (PW22) has highlighted that the news item did not have the name of the arresting officer or the accused. As per the police version and deposition of Sunder Singh (PW-22), Insp. Dalip Kaushik (PW24), ASI Virender Tyagi (PW23) and SI Narender Kumar (PW32), noticed above, Chandrakant Jha was arrested on 20th May, 2007 vide arrest memo Ex.PW22/I which is also signed by his wife Mrs. Mamta Jha. Even if we assume that Chandrakant Jha was arrested a day earlier on 19th May, 2007, it would not corrode or nullify the prosecution case. At best, it would be an irregularity and not an illegality which materially knocks the charge. In *Asif @ Shabbu v/s State*, Cr.I.A.No.615/2011 decided on 28th May, 2014, a Division Bench of this Court has held:-

“27. However, it would not be correct and appropriate to acquit the two appellants for failure to adhere to the limit prescribed in Article 22 and follow the requirements of Sections 52 and 57 of the Cr.P.C. This violation would result in procedural irregularity and would not make the arrest and the prosecution's story in the present case null and void. Strict compliance of statutory provisions should be there but that by itself does not render the acts done by the police officer void ab initio and at the most it may affect the probative value of the evidence regarding arrest or search and in some cases it may invalidate such arrest or search. But such violation by itself does not invalidate the trial or the conviction if otherwise there is sufficient material. [See *H.N. Rishbud and Inder Singh Vs. The State of Delhi*: AIR 1955 SC 196, *Manubhai Ratilal Patel Tr. Ushaben Vs. State of Gujarat and Ors.*: AIR 2013 SC 313, *Sadhwi Pragyna Singh Thakur Vs. State of Maharashtra*: 2011 (10) Scale 77, *Ashok Tshering*

Bhutia Vs. State of Sikkim: AIR 2011 SC 1363, *State of M.P. Vs. Ramesh C. Sharma*, (2005) 12 SCC 628, and *State of Punjab Vs. Balbir Singh*,: AIR 1994 SC 1872 and *State Through Reference Vs. Ram Singh & Ors. And Pawan Kumar Gupta Vs. State*, (Death Sentence Reference No. 6/2013 and CRL. APP. No. 1398/2013 Decided On: 13.03.2014)].

This ratio was followed in *Anil Kumar & Ors. v/s State*; 221 (2015) DLT 516.”

42. We would at this stage like to recapitulate and point-wise record the evidence adduced by the prosecution to implicate and show that the appellant Chandrakant Jha was the perpetrator, who had committed the offence in question. These circumstances are:-

- (i) Sanjiv Kumar, the handwriting expert (PW-38 and PW-47) and his reports (Exhibit PW-38/A and Exhibit PW-47/A) has opined and declare that Chandrakant Jha was the author, who had written the two confessional letters. The second confessional letter marked Exhibit P-4 and P-5 accepts that the author of the said letter had committed the murder in question and also two earlier murders subject matter of FIR No. 609/2006 and FIR No. 243/2007. Report Exhibit PW-47/A and Dr. Sanjiv Kumar (PW-47) has affirmed that the first confessional letter Exhibit PW-22/B was also written by Chandrakant Jha. Proof of authorship of the first letter would be relevant and admissible in the present case, for the reasons set out and discussed in detail above. We have accepted the opinion expressed.
- (ii) Pankaj (PW-43) identified Chandrakant Jha as the person with whom his brother Upender used to work. PW-43 could not get in touch with

Upender after 20th April, 2007 on mobile No. 9211463742 and 9211463743. PW-43 had spoken to Chandrakant Jha on telephone No. 9211463743 and was told by him that Upender had taken Rs.20,000/-, his *rehri/thela* and gone somewhere. Chandrakant Jha was ambiguous and had even alleged that Upender had gone where he deserved, because of his deeds.

- (iii) Evidence of Pankaj (PW-43) is admissible on the principle of 'similar fact evidence' and relevancy in terms of Sections 7, 8, 14 and 15 of the Evidence Act. It is also admissible in view of the contents of the letter P-4 and P-5.
- (iv) Testimony of Pankaj (PW-43) about telephone calls between him and Upender and subsequent conversation with Chandrakant Jha get support and corroboration from CDRs of mobile phone number 9211463742 marked Ex.PW-42/C, CDRs of mobile phone number 9211463743 marked Ex.PW-42/D and call site Ids with location marked Ex.PW-42/E.
- (v) Rajiv Kumar (PW-3) has identified Chandrakant Jha, who was his tenant and was residing at Haiderpur along with his wife and children. Chandrakant Jha also had a scooter operated rickshaw an unusual contraption, which was seized.
- (vi) Sanjay Mann (PW-8), landlord at Alipur has also identified Chandrakant Jha and accepted that he was his tenant.
- (vii) From Chandrakant Jha's tenanted room at Haiderpur blood stained floor and three blood stained knives, Exhibits P-12, P-13 and P-14 were recovered. Human blood was found on blood stained floor and

three knives and on one of the knives blood group ascertained was of 'AB' group, which matches with the blood group of the deceased, i.e., the headless torso vide FSL report Exhibits PW-5/A and PW-5/B.

- (viii) Dev Raj (PW-6), telephone booth operator has identified Chandrakant Jha as the person, who had at about 6.20 on 18th May, 2007 had made a call to the Police Control Room. This call was made by the person, who had informed that a dead body was lying outside the Tihar Jail. Testimony of Dev Raj (PW-6) would show that Chandrakant Jha was aware that a corpse was lying outside Tihar Jail. He was the first person to have communicated this information to the Police Control Room and till then nobody had seen the said stitched gunny bag with the headless torso inside.
- (ix) Upon arrest, Chandrakant Jha had made a disclosure statement Exhibit PW-30/C. Chandrakant Jha's revelations and clues relating to identity of the deceased, subject matter of FIR No. 243/2007, is admissible under Section 8 of the Evidence Act. The information, clues and leads given by Chandrakant Jha had helped the police to identify the second victim as Upender and also Pankaj, his cousin, who has deposed in the present case as PW-43.
- (x) The disclosure statement Exhibit PW-30/C and interrogation had disclosed the identity of the victim in the first FIR No. 609/2006 as Anil Mandal, who was also known as Amit. The said Anil Mandal @ Amit it was disclosed had appeared in a court on 19th October, 2006. Trial court had summoned the judicial records of FIR No. 628/2003, Police Station Shalimar Bagh under Sections 25/54/59 of the Arms

Act and has recorded that Anil Mandal @ Amit had appeared in the court of Mr. Rajesh Goel, Metropolitan Magistrate on 19th October, 2006.

(xi) For the reasons set out above, we can take notice that vide separate judgments of the trial court upheld by this bench, Chandrakant Jha has been convicted for murder of Anil Mandal @ Amit and Upender. Correctness of the judgment or evidence led in these two cases is not admissible but the fact that Chandrakant Jha has been convicted in the two FIR Nos. 609/2006 and 243/2007 in which headless torsos were found outside the Tihar Jail, is admissible and can be read as evidence in the present case.

43. The circumstances established as above unmistakably show that the appellant had committed the acts that brought about the death of the victim whose body parts were found dumped outside the Tihar Jail and the Tis Hazari Court Complex. Given the medical opinion on the manner in which body was hacked into pieces and dumped, coupled with the letter accompanying the headless torso, there can be no doubt whatsoever that the death was the intended result of the acts committed. Thus, we have no hesitation in upholding the conviction of the appellant.

44. On the question of sentence, we do not see any reason to interfere with the order of sentence dated 4th February, 2013 noticing the nature and manner in which the offence has been committed. The head and body parts were chopped. The headless torso was found outside Tihar Jail and the chopped arms and private parts were found on early morning of next day outside the State Bank of India branch at the Tis Hazari Court. The head and other body parts could not be recovered. The letters also speak and reveal the motive

behind this murder, which was to mock and scoff at the police. Conduct of the victim it is apparent was not the cause why Chandrakant Jha had killed the victim, chopped him and had done him to death. The direction of the trial court that imprisonment for life - till the rest of his life i.e. for the remainder of Chandrakant Jha's natural life is affirmed. This punishment would not be subject to remission, but would not affect the constitutional power under Articles 72 and 161 of the Constitution of India.

45. The appeal is accordingly disposed of.

(SANJIV KHANNA)
JUDGE

(R.K. GAUBA)
JUDGE

JANUARY 27th, 2016
VKR/SSN/NA