

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**

--1--

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1- **Crl.Appeal No.D-45-DB of 2010(O&M)**

Ajayvir Singh ... Appellant

Versus

State of Haryana Respondent

AND

2- **Crl. Appeal No.S- 2619-SB of 2009(O&M)**

Parveen ... Appellant

Versus

State of Haryana ... Respondents

Date of Decision : **23.2.2015**

**CORAM: HON'BLE MR.JUSTICE ASHUTOSH MOHUNTA
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU**

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

**Present: Mr. R.S. Rai, Senior Advocate with
Mr. D.S. Brar, Advocate for the appellants.**

**Mr. S.K. Hooda, Additional Advocate General, Haryana
for the respondent-State.**

HARINDER SINGH SIDHU, J.

This order shall dispose of Criminal Appeal No.D-45-DB of 2010 filed by Ajayvir Singh, appellant-accused and Criminal Appeal No. 2619-SB of 2009 filed by Parveen, appellant-accused against the

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**
--2--

judgment dated 15.10.2009 and the order of sentence dated 19.10.2009 passed by learned Additional Sessions Judge, Gurgaon (for short 'learned trial court'), vide which they were convicted and sentenced as under:-

Name of convicts	Offence u/s	Imprisonment	
Ajayvir Singh	302 IPC 27 Arms Act	Imprisonment for Life. RI for 02 years	
Parveen	203 IPC 25 Arms Act	RI for 02 years. Fine Rs.5000/- . RI for 02 years. Fine Rs.5000/- and in default thereof to undergo RI for six months.	

It was specifically ordered that both the sentences shall run concurrently.

Vide the impugned judgment, Joginder @ Prabhu Pehalwan, Jaipal @ Panchi, Vinod, Alok Sharma and Pardeep, co-accused of the present appellants have been acquitted of all the charges by learned trial court.

The case was got registered on the statement Ex.PC made by Ram Narain @ Ramu, complainant before Inderjit, SI/SHO. As per this statement, on 02.09.2005 at about 9.15 PM complainant alongwith his brother Nand Kishore, Rajesh Kumar, Ginni, Lilu Ram, Ombir, Lovekesh Kumar, Manjit, Rajesh Kumar and Ishwar Singh was present in 'Rao Hotel' also known as Shere-e-Punjab, situated in village Lakhuwas. The said hotel had been taken on rent by his

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**

--3--

younger brother Nand Kishore. In the meantime, an Indigo car came there and two persons alighted from the same. They said there had been a quarrel at this hotel day before yesterday and the owner of the hotel was being called by the officer, sitting inside the car. The complainant asked those persons to tell the officer to come to them. Thereafter, an official in uniform got down from the car. There were two stars on his uniform, but he was not wearing any belt. He was carrying a weapon. He enquired as to who is the owner of the hotel. Upon this, Rajesh Kumar replied that he was the owner and the said police officer started giving slaps and fists blows to him. In retaliation, Nand Kishore gave a slap to the uniformed person who thereupon fired thrice at Nand Kishore from his weapon. Thereafter, all the three accused fled away towards Sohna side in their car. The colour of the car was white silver. It appeared to be Indigo and last numbers on the number plate appeared to be 54. On receipt of bullet injuries, Nand Kishore fell down. The complainant alongwith Ishwar brought Nand Kishore to General Hospital, Sohna where he was declared brought dead.

Dr. Renu Saroha sent ruqa Ex.PAAAA to the police station with regard to the arrival of the dead body in the hospital. On receipt of ruqa, Inderjit Singh, Sub Inspector, SHO PS/ Sohna, alongwith other police officials reached the hospital where he recorded the statement of Ram Narain @ Ramu, complainant (Ex.PC). Thereafter

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**

--4--

he made his endorsement Ex.PA over the statement and sent the same to the police station for registration of FIR through Prahlad Singh, Constable and on the basis thereof, FIR Ex.PC/1 was recorded.

On 03.09.2005 photographer was called to General Hospital Sohna. He took snaps of the dead body of Nand Kishore. Proceedings under Section 174 Cr.P.C. were conducted. Post mortem examination on the dead body of Nand Kishore was conducted by the doctor, on the request(Ex.PCCCC), moved by Inderjeet Singh, Sub-Inspector. Thereafter, Inderjeet Singh, SI alongwith police officials and the photographer reached the place of occurrence where the photographer took snaps of the place of occurrence. Rough site plan (Ex.PDDDD) with correct marginal notes was prepared. Two empty cartridges and one Sikka (deformed bullet) Ex MO/2, Ex MO/3 and Ex MO/4 respectively were recovered. Same were converted into a sealed parcel with seal IJ. Blood stained earth was also lifted from the spot and converted into a sealed parcel. Both these articles were taken into possession vide recovery memo Ex.PD. Statements of the witnesses were recorded under section 161 Cr.P.C. Thereafter, SI Inderjeet Singh reached General Hosptial Sohna where Prahlad Singh, Constable handed over sealed parcel containing clothes and other articles of deceased Nand Kishore alongwith sample seals and copy of the post mortem report to him which were taken into

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**

--5--

possession vide recovery memo Ex.PB. Later, on reaching the police station he deposited the case property with the MHC.

On 04.09.2005 SI Inderjeet recorded the statements of Mukhtiar, Ginni, Lilu, Ombir, Ajit and Manjeet under Section 161 Cr.P.C. On 05.09.2005 Parveen-accused, surrendered before learned Addl. Chief Judicial Magistrate, Jind and produced a pistol Ex.P1 with nine live cartridges and one missed cartridge Ex.P2 to Ex.P11 and a magazine. On the request of Parveen accused Ex.PQQQQQ/A, learned Magistrate Sh. R.S. Chaudhary recorded his statement Ex.PQQQQQ under section 164 Cr.P.C., wherein he stated that on 02.09.2005 at about 9.10 PM he alongwith his co-accused Ajayvir Singh had gone to a hotel namely Sher-e-Punjab near Sohna to take dinner and there an altercation took place with the owner of the hotel for committing delay in supplying the food. He further stated that 8 to 10 other persons, who were present at that time, at the instance of owner of the hotel, caught them and in the meanwhile, Ajayvir Singh, accused took out his service revolver, which was snatched by him and he fired 2-3 shots therefrom. He alongwith Ajayvir Singh fled away from the spot in the car. Thereafter, learned Magistrate summoned Vikram Singh, Incharge Malkhana Jind for handing over the pistol Ex.P1 and cartridges Ex.P2 to Ex.P11 to him with a direction to convert the same into a parcel. It was converted into a sealed parcel, as directed, with the

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**

--6--

seal of the Ld. Magistrate bearing mark RS. The seal was handed over to the Ld. Magistrate after use and the parcel was deposited in the malkhana and entry to that effect was made in the register.

On 12.09.2005 Parveen, accused was arrested in this case after taking permission from the Court. During the course of investigation, Parveen, accused made a disclosure statement Ex.PY in the presence of Virender Singh, Hassan Khan, etc. in which he stated that on 4.09.2005 he was present in his house at about 10.00 AM and he received a phone call from Vinod son of Chander resident of Kheri Sad from his mobile Phone No. 9812145357 who asked him to come to Rohtak immediately as he was urgently required there. Parveen expressed his inability to come as he had no source of conveyance as his father had taken his motorcycle and gone out somewhere. As his father did not return for sufficient time, he conveyed to Vinod from his mobile phone that his father had not returned so far and hence he would not be able to come to Rohtak to meet him. On the same night at about 8.30 PM, Vinod came to the house of Parveen in a blue coloured maturi car alongwith Pardeep, Joginder Pehalwan and one other person and disclosed that one person had lost his life as a result of firing by the son of Malik Sahib and some person had to be produced before the police in his place and they requested Parveen to search for some substitute. Parveen assured them as and when he found some suitable person, he would

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**

--7--

inform them. On 5.9.2005 he made a call to Vinod on his mobile phone who asked him to come to Jind bye-pass Rohtak. Parveen accompanied by his cousin Jagdeep reached there on a motorcycle where they were met by Pardeep and Vinod and they all proceeded to H.No.1884/2-3 Sector 2 Rohtak. Vinod told Parveen that in case he offered himself as a substitute for Malik he would be paid Rs.3,00,000/-. Parveen agreed to the proposal and proceeded alongwith them to Jind Courts where Pardeep handed him one pistol and ten cartridges and he appeared before Shri R.S. Chaudhary, ACJM through advocate Balbir Singh and got his statement recorded in the presence of Balbir Singh, Advocate which was the same as had been tutored by Balbir Singh, Advocate.

On 7.12.2005, an application was moved by the Inspector, SIT Gurgaon before JMIC stating that Parveen accused had sent an application through post in the name of Shri Inder Saini, DSP Faridabad in which he had stated that his earlier statement dated 5.9.2005 got recorded u/s 164 Cr.P.C. in the Court of Shri R.S. Chaudhary, JMIC, Jind had been got recorded under fear and pressure and now he wants to get his statement recorded u/s 164 Cr.P.C. before the Magistrate. It was accordingly prayed that his statement u/s 164 Cr.P.C. be recorded. Vide order Ex.PJJJJ, learned JMIC recorded the statement of Parveen. Apart from narrating what had been stated by him in Ex.PY he stated that after they had entered

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**

--8--

in the house of Sector 2 Rohtak he found that one other person was also there who was not known to him earlier. That person told Parveen that he should produce himself in place of son of DGP. Parveen refused. Then that person told him that your cousin is standing outside and both would be killed and no one know about it. Thereafter, Parveen was forcibly made to sit in the Santro and he was taken to Courts in Jind where two persons were already there. They were not known to him. Both told him that in case he wanted his safety then he would have to act as advised by the counsel and sign where he was asked to sign and make the statement as he was asked to by the counsel. He was threatened to be killed in case he did not do so. Then, the advocate came and got his signatures on two to four papers. These papers had something written on. He did as directed and gave his statement as instructed by the counsel. He stated that he had no cellphone with him and therefore he could not contact his family members. His cousin was asked to stay back in Rohtak itself and only he was brought to Jind and he was sent to Jail in a jeep from the Court.

On 20.09.2005 Satyawan, accused was arrested. On 22.09.2005 Ajayvir Singh, accused was arrested. Application Ex.PFFFF for conducting the test identification parade of Ajayvir Singh, accused was moved before the Illaqa Magistrate. On 24.09.2005 statements of MHC Kuldeep and Nathu Ram, Constable

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**

--9--

were recorded and Section 27(3) of the Arms Act was added in the case. On 25.09.2005, Ajayvir Singh, accused made his disclosure statement Ex.PS and on the basis thereof, he identified the place of occurrence vide memo Ex.PT. Motor cycle bearing registration No. HR-12G/3876 was got recovered, which was taken into possession vide memo Ex.PHH. Rough site plan of the place of recovery Ex.PHH/1 was prepared. Thereafter, the investigation was handed over to Sube Singh Lohan, Deputy Superintendent of Police, Headquarter Rewari on 2.10.2005.

On 05.10.2005 the DSP, Rewari arrested Joginder @ Baddu Pehlwan, who on interrogation, made disclosure statement Ex.PNN with regard to the concealment of car, allegedly used by them, in the crime. On the basis of the disclosure statement, the car in question was got recovered, which was taken into possession vide recovery memo Ex.POO. Rough site plan of the place of recovery Ex.POO/1 was also prepared.

On 06.10.2005 Jaipal @ Panchi, accused was arrested by Sube Singh Lohan, DSP. Vinod and Amardeep, accused were arrested on 28.10.2005 and 08.11.2005 respectively.

On 17.11.2005 the investigation of this case was entrusted to Inder Singh Saini, DSP, CID, Faridabad, who took charge of the case with special team on receipt of order of DGP Haryana. On 19.11.2005 he obtained the details of cells mobile Nos. 9311585751,

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**

--10--

9812105815 and 9416050786. On 30.11.2005 vide memo Ex.PMM, he took into possession photocopy of the record (Ex.PLL) pertaining to the issuance of pistol, 18 cartridges, two magazines and other materials to SI Ajayvir Singh for cleaning the same. On 05.12.2005 Alok Sharma, accused was arrested and during interrogation he made disclosure statement Ex.PU with regard to the concealment of a mobile phone No.9812105815 at the house of his maternal uncle K.D. Sharma. Pursuant thereto, mobile phone recovered from the disclosed place was taken into possession vide recovery memo Ex.PN. On the same day, application Ex.POOOOO sent by Parveen, accused, was received in his office through post, in which he stated that he wanted to get his statement recorded under section 164 Cr.P.C which was recorded on the same day as stated above.

On 7.12.2005 an application Ex.PHHHH was moved through Inspector SIT for obtaining permission for getting brain mapping and lie detector test of accused Ajayvir and Amardeep as they had not cooperated in the investigation. However, they did not consent to the same and the application was disposed of.

Parcel containing empty cartridges Ex.MO/2 and Ex.MO/3 and fired bullet Ex.MO/4 were sent to FSL, Haryana, Madhuban for chemical examination on 05.09.2005 through Nathu Ram Constable. Thereafter, it was brought back from FSL Haryana, Madhuban on 17.09.2005 and the same was deposited with CFSL, New Delhi on

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**

--11--

23.09.2005 with seals intact and without tampering. The parcel containing pistol Ex.P1 was brought from the Incharge Malkhana, Jind on 15.09.2005 and was deposited with Incharge Malkhana of Police Station Sohna. The same parcel was also sent to CFSL, New Delhi for examination on 23.09.2005. On examination of pistol Ex. P1, it had been found that the empty cartridges Ex.MO/2 and Ex.MO/3 and fired bullets Ex.MO/4 had been fired from it.

On conclusion of investigation, report under section 173 Cr.P.C. was prepared on 08.12.2005 against eight accused for the offences punishable under sections 302/34, 109, 181, 201, 203, 212, 213 and 214 IPC and under Sections 25 and 27(3) of the Arms Act. The case was committed to the Court of Sessions for trial.

Charge under Sections 302 IPC and 27 of the Arms Act was framed against Ajayvir Singh - accused, whereas, Parveen, accused was charge sheeted for an offence punishable under sections 302 read with section 34 IPC, 202, 203, 213 IPC and section 25 of the Arms Act, Alok Sharma, accused was charge sheeted for an offence punishable under Section 302 read with section 34 IPC . Satyawar Singh, accused was charge sheeted under Section 216 IPC. Joginder alias Prabhu Pehlwan - accused, Vinod, Jaipal, and Pardeep - accused were charge sheeted for an offence punishable under Section 214 read with section 34 IPC and Pardeep, accused was charged under Section 25 of the Arms Act. To the charge

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**

--12--

framed against them, they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined as many as 72 witnesses . The relevant evidence in brief is as under:-

PW-1 Prahlad Singh, Constable, deposed that ruqa Ex.PA with regard to registration of case, was handed over to him for delivering the same to P.S. Sohna, by Inderjit SHO in G.H. Sohna. He further deposed that on 3.9.2005 a sealed parcel containing clothes and other articles of the deceased was handed over to him by the Medical officer, for delivering the same to the investigating officer, which was taken into possession vide recovery memo Ex.PB.

PW-2 Surender Kumar, HC, deposed that on the night intervening 2/3.9.2005 special report, which was handed over to him by ASI Subhash Chand, was delivered to Illaqa Magistrate, Gurgaon and other higher officers. In cross examination, he stated that Special Report was handed over to him at 1.30 a.m. and he delivered the same to the Illaqa Magistrate at about 2.15 a.m.

PW3-Ram Narain, complainant -cum-eye witness, PW4-Ginni , PW5- Sukhpal, PW-6 Leelu Ram, PW-7 Lovkesh Kumar, PW-8 Rajesh Kumar and PW-9 Virender Singh, alleged eye witnesses did not support the prosecution case and were declared hostile. PW-10 Vinod Kumar Kaushik, DSP was declared hostile.

PW-11 Hasab Khan, HC who was posted at P.S. Sohna deposed that in his presence, Parveen accused had suffered

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**

--13--

disclosure statement Ex.PY on 12.09.2005 before Inderjit SI, which was attested by him and C. Virender Singh.

PW-12 Nathu Ram, Constable, tendered his affidavit Ex.PZ in which he stated that on 17.09.2005 he was posted on General Duty as Constable in P.S. Sohna. On 23.09.2005 MHC Kuldip Singh vide RC No.6 recalled one parcel of clothes having six seals of doctor PK and one sample seal and one packet of blood stained earth sealed with seal of IJ with sample seal of IJ. On 23.09.2005 the following were brought back from FSL Madhuban and delivered to MHC Kuldip Singh:-

“One packet of clothes having six seals of the doctor PK, one sample seal and one packet of blood stained earth duly sealed with seal of IJ with sample seal.

One pistol 9 mm with 10 cartridges in one magazine duly sealed bringing back from Madhuban to MHC Kuldip Singh vide RC 6/553. He stated that during this period neither he nor anybody was allowed to tamper with the packets.”

PW-13 Ombir son of Nadan Singh ,PW-14 Ajit son of Jagram , PW-15 Manjit son of Amar Singh, PW-16 Satbir son of Hazari Lal, PW-17 Ishwar Singh son of Sultan Singh, PW-18 Bijender Singh son of Tek Chand, PW-19 Satender son of Rao Gyasi Ram, PW-20 Niamat Ali son of Yamin and PW-32 Daya Nand were declared hostile.

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**

--14--

PW-21 Vikram Singh, Moharrir Malkhana District Jind, deposed that on 5.9.2005 he was summoned by Sh. R.S. Chaudhary A.C.J.M, Jind. One 9 mm pistol bearing No. EYG 688 alongwith 10 cartridges were handed over to him. On the direction of the Court, they were converted into a parcel and sealed with seal RS. After use, the seal was handed over to the ACJM. Thereafter, he deposited the same in District Malkahna, vide entry made in the register Ex.PKK. He identified the said pistol and cartridges in Court. He further stated that on 15.9.2005 on the orders of ACJM Gurgaon, he handed over the case property to HC Desh Raj and made entry in this regard in the DDR register on 15.09.2005.

PW-22- Mukhtiar Singh, ASI deposed that on 9.8.2004 Probationer SI Ajayvir Singh had come to him and he issued pistol, 18 cartridges, 2 magazines, one rod, one brush, one philler with box to him on the orders of SSP Gurgaon. He made entry in the register in this regard after obtaining signatures of Ajayvir . He also proved copy of entry Ex.PLL, which was taken into possession vide recovery memo Ex.PMM.

PW-25- Mohd. Usman, ASI P.S. Sohna deposed that on receipt of ruqa on 2.9.2005, he alongwith Inderjit SI reached the hospital where statement of Ram Narain was recorded and inquest report was prepared in his presence. Thereafter they went to the spot and got recovered two empty cartridges, one sikka(mutilated bullet)

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**

--15--

and also lifted blood stained earth, which were taken into possession vide recovery memo Ex.PD which was attested by him.

PW-27 Gagandeep, Clerk brought the record of Indigo car bearing registration No. HR-15E/0054, registered in the name of Ajayvir Singh son of Ram Singh, r/o H.No. 1219, Sector 1, Rohtak, which was taken into possession vide memo Ex.PXX.

PW-28 Kuldeep Singh, HC tendered his affidavit Ex.PYY in which it was stated that on 2.9.2005 he was working as MHC at Police Station Sohna. On 3.9.2005 SI/SHO Inderjeet Singh handed over to him one packet containing clothes of Nand Kishore - deceased having six seals of PK with sample seal, one packet of blood stained earth duly sealed with seal IJ, one packet of empty cartridges having three seals of IJ alongwith sample seal for depositing with Malkhana. On 15.09.2005 HC Desh Raj got deposited one packet having one pistol 9 mm and one magazine of 10 cartridge duly sealed with seal RS having 9 seals of RS. On 05.09.2005, he took out the said packets under RC No. 498 and delivered to C. Som Dutt one parcel of clothes, blood stained earth container and empty cartridges for depositing with FSL Madhuban who deposited the case property on the same day and handed over a receipt with regard to deposit of the same with FSL which was placed on the file. He further stated that as per orders 19.09.2005 of higher officers those packets were sought to be brought back through C. Natha Ram from FSL Madhuban and he

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**

--16--

was given ruqa for the same. On 23.09.2005 on receipt of said case property from FSL Madhuban and against entry dated 15.09.2005 it was shown as returned back vide RC No.553 dated 23.09.2005 through said Natha Ram, C. and it was got deposited with FSL, Delhi. He deposed that till the packets remained in his possession, neither he nor anybody else was allowed to tamper the same.

PW-29 Ummar Mohd., Photographer, had gone to the spot on 02.09.2005 and taken photographs Ex.P-14 to P-20. He also proved their negatives Ex.P-21 to P-27 respectively.

PW-33 Som Dutt, Constable, tendered his affidavit Ex.PHHH wherein it was stated that on 5.9.2005 he was posted on general duty at Police station Sohna. On that date, MHC Kuldip Singh handed over to him one packet of clothes of deceased Nand Kishore having 6 seals, one sample seal, one packet of blood stained earth, one packet of empty cartridges having 3 seals of IJ and sample seal for being deposited with FSL Madhuban which were deposited by him and receipt obtained therefrom was handed over by him to MHC. He stated that till the time the case property remained in his custody it was not tampered with.

PW-38 Subhash Chand, SI deposed that on receipt of statement of Ram Narain Ex.PC with endorsement Ex.PA made by Inderjeet, SHO, Sohna on 02.09.2005, he recorded the formal FIR Ex.PC-1 and made endorsement Ex.PC/2 on Ex.PC. He also

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**

--17--

deposed about receipt of ruqa through Prahlad Singh, Constable and sending of special report to Illaqa Magistrate through Constable Surender Singh.

PW-39 Bacchu Singh, ASI, brought the original record of DDR No. 20 dated 02.09.2005 recorded by Ajayvir Singh, SI about his joining in Police Line Nuh, copy whereof is Ex.PQQQ. He also proved copy of DDR No.9 dated 06.09.2005 with regard to the absence of SI Ajayvir Singh as Ex.PSSS. In the said report, it is mentioned that SI Ajayvir Singh had gone on casual leave on 3.9.2005 but had not reported for duty today forenoon i.e., 6.9.2005 and has been treated as absent.

PW-40 Sube Singh Lohan, DSP deposed that the investigation of this case was entrusted to him on 02.10.2005 when he was posted as DSP, HQ, Rewari. On 3.10.2005 he recorded the statement of Daya Nand under section 161 Cr.P.C. He stated that Joginder @ Prabhu Pehalwan was arrested by him on 05.10.2005 and during interrogation he made his disclosure statement Ex.PNN, which was signed by the accused and the witnesses. Pursuant to the disclosure statement made by the accused, Maruti Car 800 CC bearing No. DL-8CC-1152 was got recovered and taken into possession, vide recovery memo Ex.POO. He further proved site plan of the place of recovery Ex.POO/1. Thereafter, he handed over the case property to MHC, P.S. Sohana. He also deposed about the

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**

--18--

arrest of accused Jaipal on 6.10.2005, Vinod on 28.10.2005 and accused Amardeep on 8.11.2005.

PW-42 Desh Raj, ASI, on oath stated that on 15.09.2005 Mohan Singh ASI gave him orders of Court for bringing case property from Malkhana Moharir Jind. He went there and Moharir Malkhana handed over to him a sealed parcel containing 9 mm pistol, a parcel containing 10 cartridges and sample seal. The same were deposited by him with MHC P.S Sohna. The seals remained intact throughout.

PW-51 Inderjeet , Inspector, deposed that on 2.9.2005 on receipt of ruqa Ex.PAAA from G.H., Sohna, he alongwith other police officials reached the hospital, where statement of Ram Narain, complainant Ex.PC was recorded by him and he after admitting its contents put his signature on it. After making endorsement Ex.PA on the same, he sent it to the Police Station for registration of case, upon which FIR Ex.PC/1 was recorded. He also deposed about taking the photographs of the dead body as well as regarding police request for conducting the post mortem examination on the dead body by the doctor. He proved rough site plan of the place of recovery, recovery of cartridges and one sikka, which were taken into possession vide separate memos. He also deposed in detail about taking into possession blood stained earth, bullets, arrest of accused, about the disclosure statements as well as recording the statements

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**

--19--

of the witnesses under section 161 Cr.P.C. He deposed about the arrest of accused Parveen on 12.9.2005, accused Satyawar on 20.9.2005 and accused Ajayvir Singh on 22.9.2005 as also the disclosure statements made by them, etc. He deposed about addition of Sections 109, 181, 201, 202, 212, 213 and 214 IPC in the case during the course of investigation.

In cross examination, he stated that he received ruqa from the hospital at about 9.30 P.M. He reached General Hospital at about 10.45 P.M and remained there till 4.00 A.M next day. He started preparing inquest report at about 12.00 night and completed it by 1.00 A.M. He stated the spot is about 4.00 kms from the General Hospital. He had reached the spot at about 6.00 A.M. And remained there till about 9.30 A.M.

PW-52 Ashok Kumar, Draftsman deposed that on police request, he visited the spot and prepared scaled site plan Ex.PGGGG with correct marginal notes on 22.11.2005.

PW-53 Sumer Singh, ACP Traffic deposed that he was a member of special team constituted by the order of DGP, Haryana for investigation of this case, which was headed by Inder Singh Saini, DSP. He stated that an application was moved by him on 23.11.2005 before Illaqa Magistrate for obtaining specimen signatures of accused Ajayvir, but he refused to give his specimen signatures. On 5.12.2005, Alok Sharma, accused, who was interrogated in his

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**

--20--

presence by Inder Singh Saini DSP made a disclosure statement Ex.PU and got recovered a mobile phone, which was taken into possession vide recovery memo Ex.PB.

PW-56 Smt. Raj Gupta, CJM, Panchkula deposed that when she was posted as JMIC, Gurgaon, an application Ex.PMMMM was moved before her by the police for taking specimen signatures of Ajayvir - accused. but he refused to give his signatures vide Ex.PMMMM/1. Order to that effect are Ex.PMMMM/2.

Ajayvir Singh and Amardeep, accused refused to undergo brain mapping and lie detector test on 07.12.2005. Their statements (Ex.PHHHH/1) to this effect were also recorded, upon which she passed order Ex.PHHHH/2. Police also moved application Ex.PJJJJ for recording the statement of Parveen under section 164 Cr. P.C and she had issued certificate Ex.PJJJJ/4 in this regard.

PW-57 Jaibir Singh, JMIC, Jind deposed that on 12.09.2005 police had made an application for conducting test identification parade of accused Parveen, but Parveen refused to get it conducted on the plea that when he surrendered in the Court he was shown to public at large and to the complainant. Ex.PNNNN /1 was the order passed by him on the statement Ex.PNNNN of accused.

On 22.09.2005 another application Ex.PFFFF for conducting test identification parade of accused Ajayvir, accused was

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**

--21--

made but he refused. PW-57 proved his order Ex.PFFFF/1 passed on the application.

PW-58 Sukhdev Singh, IPS, Superintendent of Police stated that on 03.09.2005 P/SI Ajayvir Singh submitted an application Ex.PEEEE before him for six days leave. But he had sanctioned only three days casual leave to him.

PW-62 Dr. Jai Bhagwan, SMO, G.H. Sohna stated that on 3.9.2005 on police application Ex.PCCCC, a Board consisting of him and Dr. Gurvinder Singh conducted post mortem examination on the dead body of Nand Kishore, which was brought by C. Prahlad Singh and Surender Singh, C. The dead body was identified by Virender Singh. He narrated that the body of the deceased was well built, adult male wearing bluish red (multi colour) check shirt, white baniyan and white underwear with black strips. The clothes were soaked with blood and dirt. Mouth was semi open. Eyes were closed. Post mortem PM staining was present on the back side. Rigor mortis was present all over the body and was slightly less in neck and upper limbs.

The injuries were as under:

“Wound of entry

The injury which was found on the person of the deceased were a lacerated oval wound of size 1.25 cm x 1 cm in front of left side of chest 7 cms below left nipple and 11 cm from mid line. Margins

were inverted. Collar of abrasion was present. Corresponding hole was present in the worn baniyan and shirt involving both leaves of pocket.

Wound of exit

A lacerated irregular wound of 2 cm x 1.5 cm size was present on the lateral aspect of right side of the chest in mid auxiliary line, 13 cm away from middle of auxiliary line. Margins were everted. Corresponding hole was present in the worn shirt. On probing wound of entry and exit were continuous, the direction being from left to right and horizontal. On dissection, there was track of laceration involving left chest wall, left lung, pericardium left ventricle right ventricle right lung and right chest wall. Both the ventricles were lacerated. Left and right lungs area intrathoracic was lacerated. Thoracic cavities of right and left side were full of liquid blood. Pericardium was full of blood. Clotted blood was present at places. Infiltration of blood was present in the area.

Wound of Entry

A lacerated oval wound of 1.25 cm x 1 cm in front of left side of abdomen, 7 cm above umbilicus and 5 cm laterally from mid line. Margins of wound were inverted. Collar of abrasion was present. Corresponding hole was present in worn shirt and baniyan.

Wound of Exit

A lacerated wound of 2 cm x 1.25 cms was present on back of right side of abdomen at

the level of L-3 vertebra, 8 cms away from the mid line. Margins were everted. Corresponding hole was present on the worn shirt and baniyan. On probing wound of entry and exit were continuous. The direction being from left to right and downward. On dissection, there was track of laceration involving left anterior abdomen wall , small intestine and large intestine at many places, posterior abdomen wall on right side. Whole of abdomen cavity was full of blood. Clotted blood was present at places. Infiltration of blood was present in areas.”

The cause of death in the opinion of the doctors was shock and haemorrhage as a result of fire arm injury. Injuries were ante mortem in nature and were sufficient to cause death in ordinary course of nature. The probable time between injuries and death was instantaneous and the time between death and post mortem was within 24 hours. He proved carbon copy of PMR Ex.PDDDDD, its diagram Ex.PDDDDD/1 and the inquest report Ex.PBBBB. .

PW- 64 Kuldeep Singh, SI deposed that he was member of the Special investigation. He collected registration paper of Indigo car bearing No.HR 15-E/0054 from Transport Commissioner, Haryana Chandigarh, which were taken into possession vide memo Ex.PXX. He had recorded the statements of Samunder Singh, Sunil Kumar and Jai Bhagwan, ASI and Harish Kumar, JTO on 24.11.2005, 1.12.2005,

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**

--24--

2.12.2005 and 6.12.2005. he again recorded the statement of Samunder singh on 8.12.2005 and arrested accused Pardeep alias Kala on 12.01.2006.

PW-67 Sube Singh, Constable, proved FIR No.314 dated 06.10.2005 u/s 25 of the Arms Act registered at Police Station City Jind Ex.PHHHHH.

PW-68 Desh Raj, SI deposed that accused Ajayvir had joined his duty in Police Line Nuh on 02.09.2005 and on 03.09.2005 he produced before him his leave application for three days, which was sanctioned by SP, Mewat. He proved copies of entries in roznamcha Ex.PIIIII and Ex.PEEEEEE/1 respectively.

PW70- Inder Singh, DCP (South), Gurgaon , deposed that on receipt of order of DGP, Haryana, he took up the investigation of this case with special team. On completion of investigation, final report under section 173 Cr.P.C. was prepared on 08.12.2005. He prepared supplementary report under section 173 Cr.P.C. on 4.2.2006 against Pardeep, accused.

PW71- Sh.Ram Singh Chaudhary, Addl. District Judge, Karnal, (the then JMJC) had recorded statement of accused Parveen, Ex.P-QQQQQ/A, as provided under Section 164 Cr.P.C., in case FIR No.273 dated 2.9.2005. He stated that accused Parveen had surrendered before him and had produced a pistol bearing No. EYG-688 alongwith nine cartridges and one missed cartridges with a

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**

--25--

magazine. The said weapon was handed over to Mohrir Malkhana with a direction to seal the same.

PW72- Rajiv Kumar, Inspector deposed that on completion of investigation, he prepared report dated 22.4.2006 under Section 173 Cr.P.C. against Surender Malik, accused who has since been declared a proclaimed offender. .

Thereafter, evidence of the prosecution was closed by learned Public Prosecutor for the State vide separate statement dated 09.05.2009.

On being examined under Section 313 Cr.P.C., accused denied the allegations levelled against them by the prosecution witnesses. In defence, Ajayvir Singh, accused pleaded that before Nirmal Singh present DGP, his adoptive father M.S. Malik was the DGP Haryana. He was adopted by M.S. Malik, who is brother of his father. Lakhi Ram, retired Superintendent of Police, was his maternal grand father. A dispute was going on about the seniority between M.S. Malik and Nirmal Singh and for that reason Nirmal Singh took undue interest in the matter and he has been falsely implicated at his instance. His service revolver was found missing. His maternal uncle Dhyani Singh Punia was posted in Bhondsi Training Centre, Gurgaon as Inspector but when Nirmal Singh was going to be retired, he reverted back said Dhyani Singh Punia as Sub Inspector. Aggrieved, he had filed a petition before this Court, in

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**

--26--

which stay was granted and now he is working as DSP. Satyawar, his uncle was also made accused at the instance of Nirmal Singh in the present case, who has since died. Surender Pal Singh, who was posted as SI was dismissed by said Nirmal Singh but he filed a petition before this Court and was reinstated and is working as Inspector at Kurukshetra.

Parveen, accused, in his defence, pleaded that he had not been involved in any such offence. He further pleaded that actual offenders being very influential persons had forced him to make the statement before the then Id. ACJM, Jind under threat and pressure and he had made the statement as tutored by those persons and he produced the weapon of offence and cartridges which were handed over to him by them outside the court premises at Jind. He lastly pleaded that he had been falsely implicated in this case.

Joginder @ Prabhu Pehalwan, Jaipal @ Panchi, Vinod, Alok Sharma and Pardeep accused, in defence had pleaded that they were innocent and falsely implicated in the case.

In defence evidence, accused Ajayvir produced Gurnam Singh, HC as DW-1, who on oath proved termination order dated 13.10.2006 Ex.DA against Surender Pal, SI. Surender Pal, SI challenged the said order before this Court. Director General of Police, Haryana had passed an order dated 30.10.2006(Ex.DB) against Dhyan Singh, ASI, which was challenged by him before this

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**

--27--

Court. DW-1 proved certified copies of order (Ex.DC) passed by Central Administrative Tribunal Chandigarh Bench, Ex.DD copy of order dated 19.12.2006 passed by Haryana Government pertaining to promotion of various police officers, Ex.DE copy of tour programme of Nirmal Singh, the then DGP, Haryana for the period from 2.09.2005 to 30.10.2006, Ex. DF copy of the order dated 31.10.2006 of the Government whereby Nirmal Singh DGP was retired. DW 2 Ram Singh father of Ajayvir accused stated that Ajayvir was given in adoption by him to Sh. M.S. Malik who was DGP Haryana from 2002 to 2005. He stated that Lakhi Ram is the father of Smt. Krishna Malik who is the wife of M.S. Malik. When Nirmal Singh was DGP he had reverted Dhyan Singh son of Sh. Lakhi Ram from the rank of Inspector to Sub Inspector. He further deposed that Surender Pal who was his nephew had been dismissed from service by Sh. Nirmal Singh when he was holding office of DG, Haryana.

The Ld. Additional District Judge, Gurgaon vide his judgment and order dated 15.10.2009 convicted accused Ajayvir under Section 302 IPC and Section 27 of the Arms Act. Accused Parveen was convicted under Section 203 IPC and Section 25 of the Arms Act. The other accused were acquitted of all the charges.

Ld. Counsel for the appellant has raised the following contentions

(i) All the witnesses having turned hostile there is no

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**

--28--

direct evidence to link the accused with the crime.

- (ii) The only circumstantial evidence, the report of the CFSL New Delhi to the effect that the empty cartridges and the spent bullet recovered from the site were fired from the Service Revolver of the accused Ajayvir is, by itself, not sufficient to connect the accused with the crime, especially, when admittedly the service revolver was not recovered from the accused but had been surrendered before the Ld. ACJM by accused Parveen on 5.9.2005 and the accused Ajayvir had specifically stated that his service revolver had been lost.
- (iii) The link evidence is missing and it cannot be said that till the time the empty cartridges, fired bullet and the pistol were examined at CFSL, New Delhi, these had not been tampered with. There are glaring discrepancies in the affidavit of Constable Nathu Ram who is said by the prosecution to have brought back the parcel containing the empty cartridges and fired bullets from FSL Madhuban and then deposited the same along with the parcel containing the pistol with CFSL New Delhi on 23.9.2005. His affidavit does not support the prosecution case on the point as contained in the affidavit of HC Kuldeep PW 28.

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**

--29--

(iv) There is no explanation at all as to why the parcels containing the empty cartridges and the fired bullet having been initially sent to FSL Madhuban on 5.9.2005 were suddenly brought back and sent to CFSL New Delhi. This raises suspicion about the intentions of the prosecution especially in the light of the long pending seniority/service dispute between the adoptive father of the accused Ajayvir Sh. M.S. Malik and the then DGP Nirmal Singh who remained Director General of Police from 2002 to 2005. During his entire tenure as DGP Sh. Nirmal Singh maintained a vengeful attitude towards Sh. M.S. Malik the adoptive father of the accused Ajayvir and damaged the service careers of a number of his relations serving in the police Department in Haryana. Ld. Counsel stressed that articles are always sent to FSL, Madhuban and that in no case the articles are sent to CFSL New Delhi. The absence of any explanation for making a departure in the present case is fatal for the prosecution case.

To the contrary, the Ld. State Counsel has supported the conviction of the accused by stating that the accused Ajayvir was a well connected and influential person and he used his influence to force accused Parveen to make a statement before the Ld. ACJM

and surrender the weapon and cartridges before him. Parveen later retracted that statement and stated that he had made the earlier statement under fear and pressure. Ld. State Counsel further stated that as the empty cartridges and the fired bullet have been proved to have been fired from the service revolver of the accused Ajayvir, and he has not satisfactorily explained as to how it came into the possession of accused Parveen, this circumstance is enough to convict the accused.

We have heard the Ld. Counsel for the parties and gone through the record.

All the prosecution witnesses who are alleged to have seen the occurrence including the real brother of the deceased who was also the first informant, have turned hostile. There is no point in speculating about the reason for the same, for whatever the reason the conduct of the witnesses is unfortunate. The Hon'ble Supreme Court in ***Dharam Deo Yadav v. State of U.P., (2014) 5 SCC 509*** has adverted to this tendency of witnesses turning hostile and has observed as under:

“30. The criminal justice system in this country is at crossroads. Many a times, reliable, trustworthy, credible witnesses to the crime seldom come forward to depose before the court and even the hardened criminals get away from the clutches of law. Even the reliable witnesses for the

prosecution turn hostile due to intimidation, fear and host of other reasons. The investigating agency has, therefore, to look for other ways and means to improve the quality of investigation, which can only be through the collection of scientific evidence. In this age of science, we have to build legal foundations that are sound in science as well as in law. Practices and principles that served in the past, now people think, must give way to innovative and creative methods, if we want to save our criminal justice system. Emerging new types of crimes and their level of sophistication, the traditional methods and tools have become outdated, hence the necessity to strengthen the forensic science for crime detection. Oral evidence depends on several facts, like power of observation, humiliation, external influence, forgetfulness, etc. whereas . forensic evidence is free from those infirmities. Judiciary should also be equipped to understand and deal with such scientific materials. Constant interaction of Judges with scientists, engineers would promote and widen their knowledge to deal with such scientific evidence and to effectively deal with criminal cases based on scientific evidence. We are not advocating that, in all cases, the scientific evidence is the sure test, but only emphasising the necessity of promoting scientific evidence also to detect and prove crimes over and above the other evidence.”

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**

--32--

Learned Counsel for the appellant has argued that the link evidence is missing. With particular reference to the affidavit Ex PZ of Constable Nathu Ram PW 12, he has stated that he has not supported Head Constable Kuldeep Singh PW-28 who in his affidavit Ex PYY had stated that on 17.9.2005 the parcel containing the empty cartridges and fired bullet was brought from FSL Haryana Madhuban by constable Nathu Ram and deposited with him and that on 23.9.2005 he had handed over the parcel to Constable Nathu Ram for depositing the same with CFSL New Delhi. He has argued that there is inconsistency in the link evidence and it is not proved as to when the parcels were brought back from FSL Mahduban and further when the same were deposited with FSL New Delhi and through whom.

In our view, this argument of the learned Counsel for the appellant cannot take him far. The Learned Trial Court has rightly rejected it and held that the affidavit of Constable Nathu Ram is ill drafted and does not lead anywhere. The affidavit of Head Constable Kuldeep Singh clearly and categorically deposes about the parcels of the empty cartridges and fired bullets having been sent to FSL Madhuban on 5.9.2005 through Constable Som Dutt, who supports him on this point. Further, he clearly stated that as per orders 19.09.2005 of higher officers those packets were sought to be brought back through C. Nathu Ram from FSL Madhuban and he was given ruqa for the same. On 23.09.2005, on receipt of said case

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**

--33--

property from FSL Madhuban and against entry dated 15.09.2005, it was shown as returned back vide RC No.553 dated 23.09.2005 through said Nathu Ram, C and it was got deposited with FSL, Delhi. He deposed that till the packets remained in his possession, neither he nor anybody else was allowed to tamper the same.

Now, the only question that remains is whether the circumstantial evidence namely that the two empty cartridges Ex. MO/2 and Ex. MO/3 and one fired bullet Ex. MO/4 recovered from the place of occurrence had been fired from the service revolver Ex P 1, which had been allotted to the accused Ajayvir, would be sufficient to convict him as has been held by the learned Trial Court or otherwise. The Ld. Trial Court has reasoned that from the evidence on the file and other connecting circumstances, it is borne out that the parcels containing the empty cartridges, fired bullet and pistol were safe and intact till the time examined in CFSL, New Delhi. As per the report of the CFSL New Delhi Ex PUU the seal on both the parcels when received in the lab were intact and tallied with the specimen seals. The seal on the parcel containing the pistol was of the Ld. ACJM, Jind and as the said seal remained in his custody throughout, there was no question of its having been tampered with till the time it reached CFSL New Delhi. As there was no opportunity with the police to tamper with the parcel containing the pistol, so, no purpose would be served by tampering with the parcel containing the empty cartridges and the

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**

--34--

fired bullets, because if the police intended to change the empty cartridges and fired bullet with a view to connect the same with the pistol Ex P-1, it would be only possible, if hand was laid on the pistol Ex P1 and then firing shots from it to obtain two empty cartridges and a fired bullet and then to substitute the same for the empty cartridges and a fired bullet lifted from the spot, a possibility which the Ld. Trial Court held was discounted by the fact that the seal of the Ld. ACJM on the parcel of the pistol remained untampered and tallied with the specimen seal as per the report of CFSL New Delhi. Still further, as the weapon in question was the Service revolver of the accused, the Ld. Trial Court has held that there was no question of it being planted on him. It was for him to explain as to how it came in the possession of accused Parveen who produced it before the Ld. ACJM. Ld. Trial Court did not believe the explanation of accused Ajayvir that it was lost considering the fact that Ajayvir had not stated that he had lodged any report about it having gone missing with either the police or the department. For these reasons, the Ld. Trial Court distinguished the case of the petitioner from the two decisions relied on by the Ld. Counsel for the accused.

We find ourselves unable to agree with the learned Trial Court on this point.

To begin with, it is important to bear in mind the caution administered by the Hon'ble Supreme Court in founding convictions

based on circumstantial evidence.

In ***Tulshiram Sahadu Suryawanshi v. State of Maharashtra***, (2012) 10 SCC 373, at page 377 :

“8. In Sharad Birdhichand Sarda v. State of Maharashtra³, this Court after referring to various earlier decisions, formulated the following conditions to be fulfilled before a case against an accused can be said to be fully established based on circumstantial evidence: (SCC p. 185, paras 153-54)

“(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned ‘must or should’ and not ‘may be’ established. There is not only a grammatical but a legal distinction between ‘may be proved’ and ‘must be or should be proved’ as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra⁴ where the following observations were made: [SCC p. 807, para 19 : SCC (Cri) p. 1047]

‘19. ... Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between “may be” and “must be” is long and divides vague conjectures from sure conclusions.’

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any

*other hypothesis except that the accused is guilty,
(3) the circumstances should be of a conclusive nature and tendency,
(4) they should exclude every possible hypothesis except the one to be proved, and
(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.*

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

In ***Raj Kumar Singh v. State of Rajasthan, (2013) 5 SCC 722***, after a review of the case law it was observed as under **at page 733** :

“25. In M.G. Agarwal v. State of Maharashtra¹⁵ this Court held, that if the circumstances proved in a case are consistent either with the innocence of the accused, or with his guilt, then the accused is entitled to the benefit of doubt. When it is held that a certain fact has been proved, then the question that arises is whether such a fact leads to the inference of guilt on the part of the accused person or not, and in dealing with this aspect of the problem, benefit of doubt must be given to the accused and a final inference of guilt against him must be drawn only if the proved fact is wholly inconsistent with the innocence of the accused, and

is entirely consistent with his guilt.”

6. Similarly, in ***Sharad Birdhichand Sarda's*** this Court held as under: (SCC pp. 127-28)

“Graver the crime, greater should be the standard of proof. An accused may appear to be guilty on the basis of suspicion but that cannot amount to legal proof. When on the evidence two possibilities are available or open, one which goes in the favour of the prosecution and the other benefits an accused, the accused is undoubtedly entitled to the benefit of doubt. The principle has special relevance where the guilt or the accused is sought to be established by circumstantial evidence.”

In an Essay on the Principles of Circumstantial Evidence by William Wills by T. & J.W. Johnson & Co. 1872, it has been explained as under:

“In matters of direct testimony, if credence be given to the relators, the act of hearing and the act of belief, though really not so, seem to be contemporaneous. But the case is very different when we have to determine upon circumstantial evidence, the judgment in respect

of which is essentially inferential. There is no apparent necessary connection between the facts and the inference; the facts may be true, and the inference erroneous, and it is only by comparison with the results of observation in similar or analogous circumstances, that we acquire confidence in the accuracy of our conclusions.

The term 'presumptive' is frequently used as synonymous with circumstantial evidence; but it is not so used with strict accuracy, The word 'presumption', ex vi termini, imports an inference from facts; and the adjunct 'presumptive', as applied to evidentiary facts, implies the certainty of some relation between the facts and the inference. Circumstances generally, but not necessarily, lead to particular inferences; for the facts may be indisputable, and yet their relation to the principal fact may be only apparent, and not real; and even when the connection is real, the deduction may be erroneous. Circumstantial and presumptive evidence differ, therefore, as genus and species.

The force and effect of circumstantial evidence depend upon its incompatibility with, and incapability of, explanation or solution upon any other supposition than that of the truth of the fact which it is adduced to prove; the mode of argument resembling the method of demonstration by the reductio ad absurdum."

28. Thus, in view of the above, the court must

consider a case of circumstantial evidence in light of the aforesaid settled legal propositions. In a case of circumstantial evidence, the judgment remains essentially inferential. The inference is drawn from the established facts as the circumstances lead to particular inferences. The court has to draw an inference with respect to whether the chain of circumstances is complete, and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion, that the accused alone is the perpetrator of the crime in question. All the circumstances so established must be of a conclusive nature, and consistent only with the hypothesis of the guilt of the accused.”

With this caution in mind, we next reproduce the observations of the Hon'ble Supreme Court in ***Abdulwahab Abdulmajid Baloch v. State of Gujarat, (2009) 11 SCC 625***, regarding basing conviction solely on the forensic report regarding the fatal bullet having been fired from the weapon of the accused.
page 636 :

“37. Be that as it may, we feel that only because the recovery of a weapon was made and the expert opined that the bullet found in the body of the deceased was fired from one of the weapons seized, by itself cannot be the sole premise on which a judgment of conviction under Section 302

could be recorded. There was no direct evidence. The accused, as noticed hereinbefore, was charged not only under Section 302 read with Section 34 of the Penal Code but also under Section 302 read with Section 120-B thereof. The murder of the deceased was said to have been committed by all the accused persons upon hatching a conspiracy. This charge has not been proved.

38.The learned trial Judge himself opined that the recovery having been made after nine months, the weapon might have changed in many hands. In absence of any other evidence connecting the accused with commission of crime of murder of the deceased, in our opinion, it is not possible to hold that the appellant on the basis of such slender evidence could have been found guilty for commission of offence punishable under Section 302 of the Penal Code.”

The Hon'ble Supreme Court has clearly held that the mere fact that the expert opined that the bullet found in the body of the deceased was fired from the weapon seized from the accused cannot be the sole basis on which a judgment of conviction under Section 302 can be recorded.

Learned Trial court has distinguished this judgment by

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**

--41--

stating that in that case the weapon had been recovered nine months after the incident and during this period the weapon might have changed hands many times. Learned Trial Court has observed that in the present case, the weapon was the service revolver of the accused who has not explained as to how it came into the possession of Parveen who produced it before the learned ACJM. The learned Trial Court also found the explanation of accused Ajayvir that he had lost the revolvers as not believable.

But what the learned trial Court has not considered is that in the cited case, it had also been noticed that the revolver in that case had been recovered at the instance of the accused. It had been kept concealed at a place that knowledge of the same could not be attributed to any person other than the accused. Further, the accused could not offer any satisfactory answer as to how he came in possession of the revolver. Despite that the accused had been acquitted. Once these facts are taken into account, the mere fact that in the present case, it is the service revolver which was not the position in the cited case, would not, in our opinion, make a material difference.

In our view the ratio of that case would apply to the present case as well.

The position may have been slightly different if the revolver had been recovered from the accused Ajayvir. But it is not so.

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**

--42--

It was surrendered by Parveen on 5.9.2005. Thus, it has not been established that the revolver remained in possession of the accused throughout. This would be an additional ground rendering it extremely unsafe to rest the conviction merely on the fact that the empties and the fired bullet recovered from the spot were fired from the service revolver of the accused.

Learned Trial Court *next relied on the case **State of M.P. v. Paltan Mallah, (2005) 3 SCC 169.***

But in Paltan Mallah's case the conviction did not rest only on the basis of the ballistic report that the pellets recovered from the body of the deceased had been fired from the pistol recovered at the instance of the accused. There was other evidence in addition thereto, which proved the complicity of the accused in the crime, which included two extra-judicial confessions made to two witnesses and evidence of these witnesses was held to be unimpeachable. There was also prosecution evidence to the effect that the accused had got accessibility to the weapons and that he was staying at the place of occurrence and doing various jobs. It is also established that accused Paltan Mallah was involved in other offences relating to firearms.

Contrary to the position in the case of Paltan Mallah, in the instant case, the only circumstantial evidence is the report of the CFSL that the empty cartridges and the fired bullet recovered from the

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009**
--43--

site of occurrence was fired from the service revolver of the accused Ajayvir.

Another factor which has put us on guard is the failure of the prosecution to explain as to why the parcels containing the empty cartridges and the fired bullet having been initially sent to FSL Madhuban on 5.9.2005 were suddenly brought back and sent to CFSL New Delhi. On whose instructions was this done and why? This has not been explained.

Thus, in the totality of the facts and circumstances of the case, we are of the opinion that the appellant Ajayvir is entitled to benefit of doubt. Criminal Appeal No.D-45-DB of 2010 is allowed and the impugned judgment to that extent is set aside. The appellant who is said to be in custody be set at liberty unless wanted in connection with any other case.

So far as accused Parveen is concerned, no fault with the impugned judgment convicting him is found and thus, Criminal Appeal No.S-2619-SB of 2009 is dismissed. Parveen has been sentenced to undergo rigorous imprisonment for a period of two years for the offence under Section 203 IPC and to pay a fine of Rs. 5,000/- and to undergo rigorous imprisonment for a period of two years for the offence under Section 25 of the Arms Act and to pay a fine of Rs. 5,000/-. In default of payment of fine, he was directed to

**Crl. Appeal No.D-45-DB of 2010 &
Crl. Appeal No.S-2619-SB of 2009
--44--**

undergo rigorous imprisonment for a period of six months. Both the sentences were ordered to run concurrently.

It has come on record that accused Parveen was arrested on 15.9.2005. It has also come on record in the order on quantum of sentence pronounced by the learned Trial Court dated 19.10.2009, that accused Parveen has remained in custody for 17 months during trial. Keeping in view the totality of circumstances the conviction of Parveen is maintained. However his sentence is reduced to that already undergone by him.

**(ASHUTOSH MOHUNTA)
JUDGE**

**(HARINDER SINGH SIDHU)
JUDGE**

23.2.2015
dinesh/atul