

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRA-S-325-SB of 2013
Date of Decision: 11.05.2016

Rishi Pal

...Appellant

Versus

State of Haryana

...Respondent

CORAM:HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. D.P.Singh, Advocate,
for the appellant.

Ms. Kirti Dalal, DAG, Haryana.

1. To be referred to the Reporters or not? Yes
2. Whether the judgment should be reported in the Digest? Yes

Amol Rattan Singh, J.

This appeal has been filed against the judgment of the learned Special Judge, Gurgaon, dated 08.01.2013, convicting the appellant, Rishi Pal, for the commission of offences punishable under Section 306 of the Indian Penal Code and Section 7 of the Prevention of Corruption Act, 1988. Vide order dated 10.01.2013, the appellant was sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.5000/- for the commission of the offence punishable under Section 306 IPC and to undergo rigorous imprisonment for two years and to pay a fine of Rs.5000/- for the commission of the offence punishable under Section 7 of the Prevention of Corruption Act, 1988. Both the sentences were ordered to run concurrently. In default of payment of fine, he is to further undergo simple imprisonment for three months, in respect of each sentence.

2. The facts leading up to the registration of criminal proceedings against the appellant, are that on 26.05.2010, complainant Rampal filed a written complaint (Ex.PA), to the SHO, P.S. Civil Lines, Gurgaon, the English translation of which is as follows:-

“The Station House Officer,
Police Station
Gurgaon.

Sir,

It is submitted that I Ram Pal son of Ram Sawroop caste Ahir am resident of village Garhi Bazidpur, Tehsil Sohna, District Gurgaon. I have three sons and one daughter. All are married and live separately in the area of Gurgaon. My eldest son, Dinesh Kumar, aged 44 years, lives in Sanjay Gram, Gurgaon, alongwith his family. He has his office in Ganpati Apartments in Flat No.411. I am presently employed as a Consultant in Reliance Haryana SEZ and after office duty, live there.

On 23.05.2010 I received a telephone call from my younger brother Dhan Singh from Faridabad that he had received a telephone call from Inspector SHO Rishipal PS DLF Phase I that he had some matter relating to Dinesh and that Dinesh be sent to him immediately; I have just come from his house and that presently the matter would be taken care of or otherwise he would have to repent afterwards. On receipt of this information I rushed to the Police Station DLF Phase I Gurgaon to meet Inspector Rishipal the Station House Officer in the afternoon, who in turn instructed me to produce Dinesh, my son on 24.05.10 at 9:00 AM. I accordingly took my son Dinesh on 24.5.10 and produced him before Inspector Rishipal in the Police Station and found 8 to 10 persons more sitting there. Call details of the mobile of Dinesh were cross checked from the call details of accused Rattan Singh and Ramesh etc. but no connection was

found of accused Rattan Singh with Dinesh. At that time the Patwari of village Kasan was also present.

Contents of Jamabandi were verified in which the property of some Ramesh Kumar was found entered. Handwriting of Dinesh was obtained and it was alleged that (the said entries) were in the hand of Dinesh Kumar. However, ACP Krishan Kumar said in his office that the handwriting is not of Dinesh and he directed that the investigation be conducted in a new direction. On the way Rishipal told me that no harm could be caused to him by Krishan Murari and that he would not let him go free even if the CP (Commissioner of Police) himself told him to leave him (Dinesh). At 6.00 PM after coming to the Police Station DLF Phase I Gurgaon, SHO Rishi Pal said that accepting Rs.25,000/- or 50,000/- was not as per his status and that he would not accept less than Rs.Ten Lacs and only then he could have the desired relief. For that purpose he gave me four days upto 28.05.10 and let us go. Because of that my son remained under great tension and for that purpose I visited Sohna today, where I received information about firing of a bullet, upon which I returned to Gurgaon. I found police at the office of Dinesh Kumar at Flat No.411. When I checked the papers lying on his table, I found one paper written in the hand of my son Dinesh Kumar, on which my son had written that for not fulfilling the demand of Rs.Ten Lacs of Rishipal Inspector SHO PS DLF Phase I Gurgaon, he had been harassed and due to that he was committing suicide. Therefore, my son Dinesh Kumar had committed suicide on account of having been harassed by Inspector SHO P.S. DLF Phase I. My son was compelled to commit suicide on account of his having been harassed by Inspector Rishipal. As such, legal action be taken against Inspector SHO PS DLF Phase I Gurgaon, Shri Rishi Pal and I may be provided justice.

Sd/Rampal son of Shri Ram Saroop

Dated 26.05.10

r/o Garhi Bazeedpur Tehsil Sohna

District Gurgaon.

M.No.9910494417”.

3. The police proceeding recorded on the complaint (Ex.PW38/B), goes on to say that ASI Jagdish of Police Station Civil Lines, Gurgaon, received a phone call saying that a shot had been fired in Flat No.411, Ganpati Apartment Heights and that Dinesh son of Rampal, Ahir, had been injured and had been taken to Kalyani Hospital but had died on the way there. Consequently, ASI Jagdish and HC Himmat, No.1680, Constable Mahavir, No.3190, reached Flat No.411 where the 'Scene of Crime' team was also called. The complainant, Rampal, also reached the spot and submitted his complaint, detailed hereinabove, to the police of Police Post, Sector 14, Gurgaon.

It is further recorded (as part of the police proceedings/action taken) that a suicide note was found, which was taken into possession. An offence punishable under Section 306 IPC having been made out, Constable Mahabir was entrusted with a copy of the complaint and sent to the Police Station for registration of an FIR, and for further sending special reports as required.

4. The FIR itself was registered by ASI Jai Bhan Tyagi at Police Station Civil Lines, Gurgaon, at 3:50 PM, as FIR No.255, dated 26.05.2010.

The recording of the complaint by ASI Jagdish, at the building of Ganpati Apartment Heights, is shown to be at 3:20 PM.

5. Upon investigation, the appellant and one Sanjeev Joshi were indicted by the police in the report submitted under Section 173 Cr.P.C. before the competent Court, on 08.09.2011.

Thereafter, the appellant and his co-accused were both charge sheeted as follows:-

“That during the period 23.05.2010 to 26.05.2010 in the area of DLF, Phase-I, Gurgaon, both of you abetted Dinesh Kumar to give bribe money, illegal gratification of Rs.10 lac, to you Rishi Pal or doing forbearing to do an official act in the exercise of your official function, for an illegal help in criminal complaint in favour of Dinesh Kumar (since deceased) and in consequences of such offence the said Dinesh Kumar (since deceased) has committed suicide, thereby both of you committed an offence punishable under Section 306 IPC read with Section 109 IPC and within the cognizance of this Court.

Secondly, on the same date, time and place, you Rishi Pal, posted as Inspector/SHO, P.S. DLF, Phase-I, Gurgaon, you demanded Rs.10 lac, as bribe, illegal gratification other than legal remembrance as a motive for an illegal help in criminal complaint to Dinesh Kumar (since deceased) through your co-accused Sanjeev Joshi and thereby committed an offence punishable under Section 7 of Prevention of Corruption Act, 1988 and within the cognizance of this Court.

And, I, hereby direct you both be tried by this Court on the aforesaid charges.”

The accused both having pleaded to not being guilty, claimed trial and consequently, were tried by the learned Special Court (under the Prevention of Corruption Act), Gurgaon.

6. The prosecution examined 39 witnesses with 43 documents exhibited by way of evidence.

7. The complainant, Rampal, was the first witness for the prosecution who in the first part of his examination-in-chief reiterated the contents of the complaint, to the extent of having received a telephone call

from his younger brother, Dhan Singh, informing him that Dinesh was required at Police Station DLF Phase-I and that he went there and met the SHO (the appellant) who told him to bring his son the next day, i.e. on 24.05.2010. What is added in the deposition (and is not there in the complaint), is that the SHO offered him tea.

The testimony further goes on to state that he went with his son again to the Police Station the next day and met the appellant, with some other people also sitting there. The appellant made some verbal inquiry from his son and asked him (deceased Dinesh) to come again after four days, with some more facts of the case.

Thereafter, the testimony of PW1 further goes on to read that on 26.05.2010, while he was at Sohna, he received a call that something had happened to his son and after sometime he was told that his son had received a bullet injury and was admitted to Kalyani Hospital, where he went and saw the dead body of his son, with many relatives also present there. He received the belongings of his son from the staff of the hospital, i.e. one gold chain, two rings and one locket, after which the body was brought to the mortuary of Civil Hospital, Gurgaon, for a post mortem examination.

Thereafter, the complainant deposed that he moved an application (Ex.PA) to the police, the signatures on which he identified in Court as being his own; but he further stated that he could not say as to whether anybody was responsible for the murder of his son. He also stated that he had not stated to that effect to anybody.

The witness next stated that he had seen recovery memo, Ex.PB, on which also he identified his signatures. The said the recovery memo was

with regard to this witness handing over five photocopies of the Arms licence of his late son, Dinesh Kumar, showing that the licence had been issued on 14.12.2007, for possession of a .32 bore revolver and was valid till 14.06.2010. As per this recovery memo, a copy of a sale deed bearing No.12490 dated 27.01.1999, and three photocopies of stamp paper bearing No.17AA381264, of a value of Rs.10, were also handed over to the DSP and further, 12 photocopies of an order dated 21.04.2010, passed in Criminal Appeal No.476-SB of 1999 , by this Court (High Court), were also handed over.

(It needs to be noted for the record that though in the testimony, Ex.PB has been shown to be the recovery memo, however, the last line of this document states that the aforesaid documents handed over to the DSP, were taken into possession by him vide a separate memo which was signed by the witnesses in the presence of PW1-complainant Rampal. Thus, actually, Ex.PB is a statement of Rampal in the presence of Ashok Kumar, DSP, State Crime Bureau, Madhuban, dated 23.10.2010).

The witness next identified his signatures on recovery memo, Ex.PC, vide which the suicide note (Ex.PW38/E) was taken into possession by the police.

(The said recovery memo, Ex.PC, states that the suicide note, written in hand (in Hindi), bearing the signatures of deceased Dinesh Yadav (in English), and bearing the date 26.05.2010, was taken into possession, and that this witness (Rampal- PW1), had signed on the back of the suicide note in English. This is also borne out from a perusal of Ex.PW38/E.)

PW1 further stated that his supplementary statement was also recorded by the police, to correct the date in the FIR to 22.05.2010 in place

of 23.05.2010. PW1 also stated that he had not suffered any other statement before the police.

8. Consequent upon the above, he was asked to be declared hostile, by the learned Public Prosecutor, but the trial Court declined that request in view of the earlier part of the statement recorded in the examination-in-chief and the contents of the applications and statement recorded before the police, as were exhibited before that Court.

The Court however allowed the Public Prosecutor to cross-examine the witness on two points:-

(i) with regard to that part of the complaint (Ex.PA) where it was stated that the appellant-accused had told this witness that ACP Krishan Murari cannot proceed against him in any manner and he would not also do anything at the instance of the Commissioner of Police and further, that he had demanded a bribe of Rs.10 lacs, stating that Rs.25,000/- and Rs.50,000/- was not in accordance with his status.

ii) with regard to what was also stated in Ex.PA (complaint) to the effect that his son had committed suicide due to pressure imposed upon him by the appellant, Inspector Rishi Pal.

Consequently, on the above 2 questions, the Public Prosecutor cross-examined PW1, to which he stated that both the aforementioned statements contained in his application Ex.PA, were written on the dictation of an Advocate who was present at the mortuary of the Civil Hospital, because he himself was perplexed on the death of his son. He further stated that at that time, two or three applications were written but were torn off and finally, application Ex.PA was submitted.

He was next cross-examined by the learned Public Prosecutor

with regard to Exs. PD, PE and PF which are shown to be statements made by this witness before the Police, under Section 161 Cr.P.C. He wholly denied ever having made the said statements which are shown to be dated 26.05.2010, 27.05.2010 and 23.10.2010 respectively.

In the last part of the cross-examination by the Public Prosecutor, the witness denied that the appellant, whom he identified in Court, was responsible for the death of his son. He also denied the suggestion that he had deposed falsely just to help the appellant.

9. Upon cross-examination by the learned defence counsel, PW1 stated that his younger brother, Dhan Singh, is also an Inspector in the police.

He was then questioned by the learned Additional Sessions Judge (the Special Court), as to from which department he had retired and in which year, to which the witness replied that he had retired from the Revenue Department in the year 1998, with his last posting as that of the Reader to the SDM, Gurgaon.

He further stated that on 22.05.2010, when he had met the appellant, the latter's behaviour was very cordial, which was also so on 24.05.2010 and that he was also very cordial to his son during the inquiry.

He next stated that when he made his complaint outside the mortuary, more than 2000 people were present, including senior police officers and Advocates. Thereafter, when he was called to the spot, i.e. Flat No.411, Ganpati Apartment, on 26.05.2010, he was shown a suicide letter by the police, on the back of which he signed on the asking of the police, though he did not see the contents of the letter as it was not shown to him.

PW1, in fact, denied knowing whether the suicide note had been written by

his son or not.

He next stated that he had written a letter to the ADGP (Crime), Gurgaon, to have a fair inquiry conducted because he was not sure as to which person was responsible for the death of his son and to ensure that no innocent person may be got implicated.

The witness next denied any relation of his son, whatsoever, with Pinki Yadav (a lady), except that during a business transaction he had got her land sold, in village Baslambi, Tehsil Manesar, District Gurgaon, to some industrialist.

Thereafter, PW1 stated that his son was, in fact, living with him (the witness-his father) alongwith his wife and two children.

He next stated that because of his business, his son always had signed on blank papers, which he (PW1) always disapproved of and had told his son that it was a bad habit which he should desist from.

PW1 then stated that he had not gone to ACP Krishan Murari on 26.05.2010 and that he did not know whether Sanjeev Joshi (co-accused) was a friend of his son, though he was acquainted with him, being in a similar business.

He, lastly, stated that his son never complained against the appellant or anybody at any time, but he admitted that during the early days of investigation, he did as he was told to, by the police.

10. The next witness for the prosecution, PW2, was Rajesh Kumar, son of PW1 Rampal Yadav and brother of the deceased (aged 37 years), who deposed that on 26.05.2010, he had received a telephone call about the mis-happening and that he had gone to Kalyani Hospital, where he found the dead body of his brother lying on a bed, after which the body was taken

to the mortuary in the Civil Hospital.

The witness further deposed that in the evening he went to the office of his brother, where the police took into possession a revolver, a Reynolds pen, "sketch etc.", vide recovery memo Ex.PG, on which he identified his signatures. PW2 also identified his signatures on recovery memo Ex.PH, by which the application to the Incharge of P.S. Manesar, stated to be made by Dinesh Yadav, was recovered.

(Ex.PG also pertains to recovery of a revolver of .32 bore, bearing No.K 1013, which contained two live rounds of ammunition and two empty rounds, on which "CBC32 S8WL" was inscribed. The revolver as well as live and empty rounds were put into a polythene and packed.

Further, the memo shows that a Reynolds pen and a pair of spectacles were also recovered and converted into a parcel and yet further, the memo shows that pieces of a chair cover, blood and vomit on them, were cut away and were put into a separate plastic jar and converted into a separate parcel. All the parcels were sealed with the seal "JC" and were taken into possession vide the said recovery memo).

10-A. Coming back to the deposition of PW2, he thereafter stated that the police had obtained his signatures on some blank papers and that he could not tell about the hand-writing on the paper, i.e. an application dated 02.04.2009, addressed to the SHO, Police Station Manesar (shown to be Mark-A).

At this stage, it is recorded that a question was put to him by the learned Judge of the trial Court, with regard to his qualification, to which PW2 replied that "I am an MBA from ITI".

He was further asked as to whether he used to sign blank papers

in the ordinary course of his business, to which this witness replied that he did not.

Lastly, the learned Judge asked the witness his profession, to which he replied that he was a Manager with the Inter Glob Company, Sector-18, Gurgaon.

At that stage, the learned Public Prosecutor requested the Court that the witness be declared hostile since he was suppressing the truth and he wished to cross-examine him. The request was declined but the Public Prosecutor was allowed to cross-examine the witness on the following point:-

With regard to the application, Mark-A, regarding the hand-writing on it.

On being questioned with regard to the above, PW2 denied that the hand-writing on the said document was that of his brother, Dinesh. He further stated that he had heard the statement, Ex.PJ and that no such statement had been made by him to the police. (The said document, Ex.PJ, is shown to be a statement made by this witness, Rajesh Yadav, to the police under Section 161 Cr.P.C.).

The witness next denied the suggestion that he was deposing falsely in order to help the accused and further denied the suggestion that he had not identified the hand-writing of his deceased brother, knowingly and deliberately.

11. On cross-examination by the defence counsel, PW2 stated that there was a huge crowd in front of the mortuary of the Civil Hospital and that when he reached Flat No.411, Ganpati Apartments, in the evening, he was asked to sign on a recovery memo. However, he had never given any

document for matching the hand-writing of his brother with the suicide note.

He further stated that for the past 15 to 20 years, his brother had been residing separately and that he had neither studied nor worked with his brother, therefore, he could not identify his (Dineshs') hand-writing.

This witness next stated that his brother used to remain in depressed at times, but as they lived separately, he did not know the reason for that. He also denied knowledge of who Pinki Yadav was and stated that he had never heard about her in the family.

PW2 then denied having knowledge as to whether anybody had applied any pressure on his brother, resulting in his finally taking the extreme step of committing suicide.

Lastly, he stated that it was the police who told him about the suicide of his brother and he had no personal knowledge of the same.

12. The 3rd witness for the prosecution was one Om Parkash, Agriculturist of village Kankrola, District Gurgaon, aged 64 years, who, as per his deposition, is the maternal uncle of the deceased and PW2 and brother-in-law of PW1.

This witness deposed that on 26.05.2010 he received a telephone call from his younger nephew, regarding a bullet injury to Dinesh, upon which he reached the Kalyani Hospital, where the doctors had declared Dinesh to be brought dead. The police enquired from him about his relation to the deceased which he told them.

Thereafter, PW3 further testified that he knew nothing about the case and had not made any statement to the police.

Upon the Public Prosecutors' request to cross-examine the

witness, he was allowed to do so, with regard to a statement attributed to him earlier, stated to have been made to the police, to the effect that his brother-in-law ('Jija'-PW1 Rampal), had told him that his sons' case regarding land was under investigation with the SHO, Police Station DLF Phase-I and that his brother-in-law had also told him that the deceased had committed suicide on account of the pressure exerted by the SHO.

Upon cross-examination by the Public Prosecutor, with regard to the above statement (Ex.PK), he denied having ever made it to the police and further stated that he had not told the police that his nephew had committed suicide due to the harassment of the SHO, P.S. DLF Phase-I.

Upon being confronted by the contents of the said document, he identified his signatures on the same but further said that they had been obtained on blank papers by the police.

He denied that he had deposed falsely in order to help the accused-appellant.

On cross-examination by the defence counsel, PW3 stated that no writing work was done by the police in his presence. With regard to any inquiries made from him by the police, he stated they were limited to his relationship with the deceased. He again reiterated that his signatures had been obtained on blank paper.

13. PW4 was Rama Kant, a Security Guard aged 52 years, who testified that on 26.05.2010 he was on duty as such at the Ganpati Heights Complex and that at about 12:30 in the after-noon, a car, model 'Wagon R' of silver colour, "with registration number 2955" came to the complex and that two persons alighted from it. He requested them to make an entry in the Register kept at the gate for visitors but they refused to do so saying that

they would be returning within two minutes after paying some amount to Dinesh (deceased), who they said was a resident in the complex.

The witness further testified that the two persons went up the building in a lift, after which he heard a sound of two shots and within 2/5 minutes thereafter, they came downstairs and hurriedly went away in the car they had come in. As per this witness, when they were coming out of the building, a lady, whom he named as Pinki, cried from the balcony to catch hold of these two persons and also requested him (PW4), to come upstairs. This witness further testified that he alongwith electrician Sanjay, who was working on the gate, and one Washer man, went upstairs where he found Dinesh lying partly on the bed and partly on a chair, with blood oozing out from “two places”.

He further testified that Dinesh was lifted and brought down by the lift and taken in a 'Safari' car to the hospital. As per PW4, the police had come to the spot and he apprised them of the above given facts.

Lastly, in his examination-in-chief, this witness testified that the 'Wagor R' referred to by him also came to the building complex on 25.05.2010, i.e. the previous day.

14. Upon cross-examination by the defence counsel, he stated that Pinki was residing with the deceased, alongwith a child aged about 5 to 6 years, and that it was correct that Dinesh was a married man and that his wife and children used to reside at Sanjay Gram, which is a different place, “at Rajiv Nagar”.

He next stated that there was no paper on the table when he first went to the office, when Pinki had cried out, nor was there any paper on the table, even subsequently, when the police came there and he (PW4) also

went to the room.

The witness next stated that some blood stains had smeared his clothes, as also the clothes of Sanjay.

Next, in the cross-examination, PW4 admitted to be correct, the suggestion that Pinki had told the police in his and his companions' presence, that she had seen two persons running away from the office after hearing the gun shot.

Lastly, the witness stated that Sanjay and the Washer man (who had gone alongwith him upstairs), had also told the police that they had also seen two persons running away from the ground floor to the 'Wagon R' and that "they were frightened when they boarded the 'Wagon R' car".

15. PW5 was Constable Ashok Kumar, who testified that on 26.05.2010 he was posted at Police Station Civil Lines on general duty and on that day, ASI Jai Bhagwan had handed over to him special reports to be delivered to the Illaqa Magistrate and senior officers of the police, which he delivered without any delay.

On cross-examination, this witness stated that he had delivered the special reports within 15 to 20 minutes after they were given to him. Lastly, he denied the suggestion that no such report was given to him.

16. The next witness was one Amit Dangi, who stated that he was the Branch Manager of DCB Bank, Sector-15, Part-I, Gurgaon and that he had brought the statement of account of an account number in the name of deceased, for the period from 01.04.2010 to 31.03.2011.

As per this witness, cheque No.684398, dated 18.05.2010, for an amount of Rs.2000/- was issued by the deceased and another cheque No.684394, dated 15.04.2010, for an amount of Rs.75,000/- was presented

by Dinesh Kumar and cheque No.684393, dated 09.04.2010, for an amount of Rs.25,000/- was also presented by Dinesh Kumar in the bank. The signatures of Dinesh Kumar were disclosed by this witness to be at the back of the cheque, at two places. He further testified that the cheque dated 18.05.2010 was taken into possession by the police vide recovery memo Ex.PL and that the cheques dated 09.04.2010 and 15.04.2010 were taken into possession vide recovery memo Ex.PL/1, in front of him. He stated that both these memos were attested to by him. He also proved the statement of account, Ex.PL/2, which consists of two pages.

His statement with regard to the cheque dated 18.05.2010, which was taken into possession vide recovery memo Ex.PL, was objected to, as recorded in the trial Court proceedings.

On cross-examination by the defence counsel, PW6 stated that the account was not opened in his presence, nor did he know Dinesh Kumar personally and further, that the cheques were also not signed in his presence.

17. PW7, Constable Anil Kumar, testified with regard to production of call details of mobile numbers 9313264687, 9873710014, 9999981827, 9911826052, 9899194247 and 9911143202, w.e.f. 24.05.2010 to 26.05.2010, which he identified to be Mark-A, containing of 15 pages. The witness stated that he had done so on the asking of Inspector Devender Kumar.

Nothing of significance is seen to have been put to him in cross-examination, except that he stated that he had not highlighted the numbers, in the statement of call details.

PW8 was Draftsman Girish Kumar, posted in the office of the

Commissioner of Police, Gurgaon, who testified with regard to a scaled site plan, Ex.PL, which he said was the same that was prepared on the orders of DSP Sumer Singh, on “pointing out” by Rampal (PW1).

In cross-examination, he denied the suggestion that the site plan was, in fact, prepared in the police station itself, or that Rampal never pointed out point-A as shown in the marginal notes.

17-A. PW9 was Constable Mahavir Singh, who stated that on 26.05.2010 he was posted at Police Post, Sector-14, Gurgaon and that on that day, the Medical Officer had handed over a parcel containing the viscera, duly sealed (ten times), alongwith one parcel containing the clothes of the deceased, sealed with five seals and containing a plastic jar which contained lead of a cartridge, which was sealed with two seals. Another parcel contained a plastic jar, and still another one, contained blood stained clothes and samples of the seals. All these parcels are stated to have been handed over by this witness to ASI Jagdish, who took them into possession vide recovery memo Ex.PN, which this witness attested. Nothing of significance was put to him by way of cross-examination.

18. PW10 was HC Himmat Singh, who testified that on 26.05.2010 he was posted at Police Post, Sector-14 as a Head Constable and had joined in the investigation of the case on that day, with ASI Jagdish. Both of them had gone to Flat No.411, Ganpati Heights and the Investigating Officer (Jagdish) had inspected the spot in his presence and had found a revolver lying there, which was taken into possession. The witness further testified that on unloading the revolver, it was found to contain two empty cartridges and two live cartridges “in loaded condition”, which were also recovered and converted into a parcel, sealed with the seal of the ASI, 'JC'.

This witness also, like PW2, stated that one pen of Reynolds make and 'one spectacle' were also taken into possession and that the cover of the cushion of the chair was separated, as it was smeared with blood and vomit and (the separated part) put into a plastic jar and converted into a parcel, again sealed with the same seal. The recovery memo was proved by him to be Ex.PJ (actually PG), attested to by this witness and PW2 Rajesh.

Upon opening of the sealed parcel, in the trial Court, it is recorded that the revolver, Ex.P1, two empty cartridges Ex.P2 and P3, were identified by him as those which were lifted from the spot and taken into possession.

On cross-examination, this witness stated that they had gone to the place of occurrence on receiving a Voice Transmission (VT) message at about 1:00 PM. He further stated that there were a lot of people gathered there and that the Investigating Officer had made inquiries from neighbouring flat owners and the security guards. He admitted that the people gathered at the spot had unanimously declared that two persons who had come in a silver Wagon-R, were responsible for the shoot out. He also stated that a Voice Transmission message was flashed, stating that some persons had shot a resident of Ganpati house and had fled away in a 'Wagon R' of silver colour bearing number 2955, and therefore, barricading (of roads) was requested (by the VT message).

19. PW11 was one Ram Avtar, age 42 years, shown to be a driver and resident of village Baluda, Post-Office Sohna, District Gurgaon.

This witness, in his examination-in-chief, simply stated that he did not know anything about the case and nothing had happened in his presence and he had seen nothing.

Upon the Public Prosecutors' request, this witness was declared to be hostile and on cross-examination, he stated that he had heard the contents of the statement, Ex.PO (shown to be a statement made by this witness, under Section 161 Cr.P.C., to the police). He denied having ever made such a statement to the police. He further deposed that he did not tell the police that on 25.05.2010, he alongwith one Rajender, had gone to the flat of Dinesh in Ganpati Apartments. Upon being confronted with the statement, Ex.PO, where it was recorded to the contrary, he again denied having told the police that on 26.05.2010 they had gone to the flat with an 'Aks' (site plan/map) and found that one person known as 'Panditji' was not there and that only a maid was found there, from whom they enquired about Dinesh but with no response from her.

This witness was again confronted with the said statement, Ex.PO, where it was shown to be recorded as above and further, that upon opening the door they saw that 'bhaisahab' was lying on a chair, wearing an underwear, and that there was a hole beneath his ribs from which blood was oozing out and upon seeing that, he and Rajender became perplexed and came down.

PW11 completely denied ever having made any part of the aforesaid statement to the police.

20. PW12 was Rajender son of Rohtash, age 40 years, shown to be an Agriculturist and resident of village Garhi Wazid, Police Station Sohna, District Gurgaon, i.e. the samevillage where PW1, father of the deceased resided.

This witness also, like PW11, completely denied knowing anything about the case, upon which he was declared to be hostile and upon

cross-examination by the Public Prosecutor, this witness was also confronted with his statement allegedly made to the police under Section 161 Cr.P.C., Ex.PQ.

The statement, which even in cross-examination the witness wholly denied having made, is to the effect that he alongwith Ram Avtar (PW11) had spoken to one Sandeep ('Panditji') regarding 100 acres of land and that one Lakshman Patwari, resident of Dholka, had supplied them papers pertaining to the land and that on 25.05.2010, he alongwith PW11, Ram Avtar and the Patwari, had gone to the flat of Dinesh in Ganpati Apartments, where the aforesaid Sandeep Pandit and Dinesh were present. They had handed over the documents pertaining to the land to Sandeep, upon which he had asked them to come again with the 'Aks' (site plan) of the land in question.

The witness was confronted with the document (Ex.PQ), where it was recorded to the above effect but he wholly denied having made the statement.

He also denied having told the police that on 26.05.2010, he alongwith PW11 had gone to the office of Dinesh where Sandeep Pandit was not found and a lady was found who was cleaning the utensils from whom they enquired about 'bhaisahab' to which she did not reply.

As per Ex.PQ, this witness had also repeated in his statement under Section 161 Cr.P.C., what Ram Avtar is stated to have said in Ex.PO, with regard to Dinesh lying on a chair with a hole beneath his ribs and blood oozing out and these two witnesses having then come downstairs, upon getting “perplexed”.

To repeat, like PW11, PW12 also wholly denied having made any

such statement as above, to the police. He further denied, in the last part of his cross-examination, that he alongwith PW Ram Avtar had ever gone to the house of the deceased where they saw the deceased lying on the sofa with blood oozing out from his wounds.

21. PW13 was a formal witness, Constable Sandeep Kumar, who tendered his affidavit with regard to deposit of the case property in the office of the Director, FSL, Madhuban, on 01.06.2010.

22. PW14 was Dr.B. S. Saini, who testified that he was running a clinic in the name of Bharat Neuro Psychiatric Clinic, alongwith his son Harsh Saini, at 183, Housing Board, Ganpati Enclave, Jharsa Road, Gurgaon, since 1992.

This witness further testified that the deceased was his patient, resident of H.No.411, Ganpati Heights, Gurgaon, and was suffering from neurotic depression and had remained under his treatment for two years. He further testified that sometimes the patient skipped his medicines and did not regularly follow up the treatment.

As per this witness, from the history given by the patient, he was under stress due to domestic problems with his “first wife” and was stated to be living with one Pinki, who was not his wife. He further testified that the deceased visited his office and that his depression was precipitated and aggravated by domestic and 'inter personal problems' and that he was on anti-depressant drugs. He had also advised his patient not to take liquor.

PW14 further testified that Dinesh had last visited his clinic on 12.05.2010 and at that time also he was under moderate depression, for which he was given treatment but thereafter, he had never turned up.

He next testified that, on the asking of the police, he had given his

report, in writing on his letter head, which he identified as Ex.PS, upon which he also identified his signatures.

(The aforesaid document reads to state, in effect, almost exactly as was testified to by this witness, in his examination-in-chief).

In his cross-examination, this witness stated that he was an MBBS and Ph.D. degree holder, and was also a retired Wing Commander, who after retirement had set-up his practice as a neuro psychiatrist. He further stated that he had treated thousands of psychiatric patients for various mental ailments and that his son, Harsh, was also a visiting doctor at the Artemis Hospital, Gurgaon.

He next deposed in his cross-examination that it was correct that in such a condition, as Dinesh was suffering from, alcohol aggravates the malady. The witness further stated that the ailment was incurable but if the patient took medicines regularly, he would remain stable, failing which he would relapse into depression and there would be fluctuations in his mood.

He also testified that such patients have a suicidal tendency and that homicidal and suicidal tendencies frequently co-exist in a depressive illness.

Lastly, PW14 deposed that, often, suicide or attempted suicide, is the first and last symptom of depression.

23. PW15 was a formal witness, Rinku Gautam, a Clerk posted in State Crime Branch at Madhuban, who stated that on 04.11.2010 DSP Ashok Kumar had demanded the call details of three mobile numbers, i.e. 9911826052, 9873710014 and 9313264687, for the period from 24.05.2010 to 26.05.2010, which this witness had demanded from the concerned telephone company through official e-mail. He further identified the call

details of the aforesaid three mobile numbers, as Mark-1, Mark-2 and Mark-3, alongwith details of the numbers of pages in a different case.

In cross-examination, he denied personal knowledge about the call details.

23-A. PW16, ASI Surjit Singh, was another formal witness who testified in terms of his affidavit Ex.PT and denied any collusion between him and the IO, or that he had tampered with any parcels before they were sent to the FSL.

The affidavit is with regard to this witness having accepted the case property on 26.05.2010, as Incharge of the Malkhana in the police station, having deposited it and having ensured that it was not tampered with till it remained with him, before the case property was sent to the FSL, Madhuban.

PW17 was also another formal witness who testified with regard to the deposit of a certain part of the case property with the Director, FSL, Madhuban.

PW18 was Dr.S.P.Singh, Senior Scientific Officer, Serology, FSL, Haryana, Madhuban, who testified to the correctness of the FSL report/opinion, Ex.PV and Serological report Ex.PV/1 and his signatures thereupon.

24. PW19 was Sanjay Ahlawat, DSP, State Crime Branch, Gurgaon. This witness testified that on 31.08.2010 he was posted in the same capacity with the State Crime Branch, when the investigation was entrusted to him. On 11.09.2010, the appellant, Rishi Pal, was asked to join in the investigation and on 14.09.2010, he recorded the supplementary statement of Ms. Pinki. On 15.09.2010, he recorded the statement of psychiatrist

Dr.Bharat Saini (PW14) and on the same day, he also sent ASI Subhash to the State Vigilance Bureau, for bringing copies of case FIR No.10, dated 10.07.1997, registered under Sections 7/13 of the Prevention of Corruption Act and FIR No.20, dated 21.07.2004, registered for the alleged commission of offences punishable under Sections 419,420, 467, 468, 471, 120-B IPC and Section 13(1)(d) of the P.C. Act, both at Police Station, State Vigilance Bureau, Gurgaon.

This witness identified the accused (appellant) Rishi Pal in the Court.

In cross-examination by the defence counsel (for the appellant), the DSP stated that during the course of investigation it had come out that the complainant, Rampal, had earlier been 'challaned' in the aforesaid FIR No.10 dated 10.07.1997 and was actually convicted by the learned Additional Sessions Judge, Gurgaon, vide judgment dated 07.05.1999 and sentenced to one years' rigorous imprisonment, alongwith a fine of Rs.500/-.

In FIR No.20 dated 21.07.2004, the accused were one Jaswant Singh a retired Patwari, Bishan Chand, Lambardar and the deceased Dinesh, son of Rampal, alongwith Sanjeev son of Inderjeet Joshi (co-accused before the trial court in the present case). Others were also stated to be named as accused in that FIR, which was registered in respect of an offence stated to have been committed in the year 1999.

The witness further admitted that during his investigation, nothing incriminating came out against the appellant. However, he identified photocopies of the aforesaid FIRs No.10 and 20 as Mark-1 and Mark-2.

On cross-examination by counsel for the co-accused of the

appellant, Sanjeev Joshi, this witness stated that in his investigation it had come out that Sanjeev Joshi was well known to the deceased Dinesh since 1997, which he corrected to say was 1999. He denied knowledge of the outcome of FIR No.20 dated 21.07.2004, including as to whether the allegations levelled by the complainant of that FIR were withdrawn or not. He admitted that he was not the Investigating Officer in that case and had mentioned about the involvement of Sanjeev Joshi only on the basis of the FIR shown to him in Court that day.

25. PW20 was Dr.Kulvinder Singh, Senior Scientific Officer, of the “Scene of Crime” team, incharge of Mobile Forensic Science, in the office of Commissioner of Police, Gurgaon.

This witness deposed that on 26.05.2010, he received a telephonic message from the SHO, P.S. Civil Lines, Gurgaon, upon which he made a visit to the spot, i.e. Flat No.411, where the deceased had died, alongwith SI Jagbir Singh and Constable Surender Kumar and after inspecting the scene of crime, he prepared his report, which he identified as Ex.PW. He also identified his signatures on the same.

A perusal of the report shows that as per the brief history of the case given therein, ASI Jagdish Chand had stated that the deceased was found with gun shot wounds, lying on a chair in his office, by one Sunder son of Bhure Lal, a friend of the deceased, in the after-noon of 26.05.2010 and was then taken to Kalyani Hospital, where he was declared brought dead and the police informed.

(The rest of the contents of the scene of crime report, would be referred to where found necessary, subsequently.)

In cross-examination, this witness stated that he did not know

whether the complainant, Rampal, was present at the spot or not, or whether Dhan Singh (brother of the complainant), was also present in plain clothes or not. He further stated that he had not mentioned in his report as to what time he received the phone call from the SHO, requesting him to visit the spot, but stated that it may have been at about 2:00 o'clock in the after-noon and that he had reached there at about 2:30 PM. He further stated that he remained there for about two hours and during his stay there, mainly relied upon the version given by the SHO and other police officials.

PW20 also denied ever knowing Sunder, whose name figured in his report (as referred to above), though the scene was reconstructed on the said Sunder's instructions. He also stated that Sunder had been introduced to him by the SHO. Still, this witness further testified, he did not know whether Sunder was an eye witness of the occurrence or as to whether he had reached the scene afterwards. He further denied knowledge of whether the said Sunder had reached immediately thereafter, or two hours thereafter. He also could not say as to how many persons had visited the scene of occurrence before his (PW20) reaching there, but stated that the dead body had already been removed before he reached. The witness further deposed in his cross-examination that he had written in his report that a revolving chair was lying tilted and the left side wooden 'spot' was seen dismantled. Importantly, this witness stated that "bereft of version of Sunder, I can say that the possibility of struggle taking place in the room at the time of occurrence, cannot be ruled out".

PW20 next stated that thereafter he had not enquired from the SHO as to the "whereabouts of Sunder, who had been introduced by the SHO alone. The witness however, stated that there was no purpose of his

recording any statement of witnesses. Further, since the SHO had called a finger print expert, it was not his (PW20s') duty to lift finger prints.

The witness next stated that there was a crowd present at the spot and that since he had reached after the crime, he could not say whether any tampering of the scene of occurrence had taken place or not.

He further denied the suggestion that Inspector Dhan Singh was present at the spot and was managing the whole show by influencing the police. He also denied as incorrect that some fictitious person was introduced by Dhan Singh, at whose behest he reconstructed the entire scene.

26. PW21 was a formal witness, Jagat Singh, who testified with regard to order Ex.PY, by which the Commissioner of Police, Gurgaon, had sanctioned the prosecution of the appellant under Section 197 of the Cr.P.C. and under Section 19 of the PC Act, 1987, in connection with the case out of which the present proceedings arise.

In cross-examination, this witness testified that he had brought the character roll/service record of the appellant, in which all entries regarding service conduct and character were found to be 'fine', with no adverse entry present, prior to the incident in question.

PW22, Constable Kundan Singh, testified with regard to the record relating to the licence issued in the name of the deceased, showing his address to be C-58, Sanjay Gram, Gurgaon, with its validity upto 14.06.2010. He also identified the copy of the arms licence, Ex.PZ, to be that of the licence issued by the Arms Licence Branch.

27. PW23 was Dharambir, Senior Scientific Officer, Forensic Science Laboratory, Madhuban, who tendered his report, Ex.PW23/A, in

evidence and identified his signatures on it.

This witness testified to having seen the revolver, Ex.P1 and having tested it. He also identified two empty cartridges as Ex.P2 and Ex.P3. The witness also identified the parcels which were opened in Court, each containing the seal of AD Ball; as also the contents inside them, i.e. four swabs, Ex.P6 to Ex.P9, the clothes of the deceased, Ex.P10 to Ex.P13 (i.e. the pant, baniyan, underwear and handkerchief).

In cross-examination, he admitted to be correct that in the normal course, in suicidal shots, the gun powder residue would be found on the thumb and index finger. He further admitted as correct that the gun shot discharge residue in the case of the deceased, was found to be in the palms of both his hands. He further stated that it would be possible that the shot discharge residue on both the hands, i.e. the right hand upper palm and left hand upper palm, may be the result of struggle and resistance.

28. Loveleen Kumar Katyal, , Assistant Director, Chemistry, Forensic Science Laboratory, Haryana, Madhuban, appeared as PW24 and tendered his report Ex.PW24/A in evidence, and upon cross-examination, this witness stated that 69 milligrams percentage of Ethyl Alcohol in the blood stream of the deceased, shows that he was sufficiently intoxicated, where “muscular incoordination could have taken place”. He also stated that the possibility of slurring and wavering in the hand-writing of a person may appear with the blood alcohol contents as described.

29. The next witness, PW25, was Dr.Deepak Mathur, Medical Officer, who conducted the post mortem examination on the deceased and tendered in evidence his affidavit, Ex.PW25/A and post mortem report Ex.PW25/B. In cross-examination, this witness stated that it would be

difficult for a person with 69 milligrams percentage alcohol in his blood to make a normal hand-writing and that one should expect slurring/wavering in the hand-writing in such a case.

The witness further testified that as regards injury No.2 on the body of the deceased, it had pierced the chest wall, the underlying muscles, plura and had then pierced the diaphragm and spleen and was seen in the posterior abdominal wall, surrounded with haematoma. (What this witness seems to have meant, was that the bullet had pierced the body as above, at the point of injury no.2).

The witness further testified that with this injury, the person would have had excruciating pain and that with such pain, the injured would most likely be incapacitated to fire a shot again. He also admitted to be correct that only in very rare cases of suicide, a person can shoot himself again, and that the presence of two “blood shots” is indicative and a strong pointer towards homicide.

The doctor further stated that his view as above was supported by various books on medical jurisprudence, including books by Cox, Reddy and Modi.

He further admitted as correct that suicidal shots are invariably contact wounds, in which the skin is burned with singeing of the hair.

He further admitted to be correct that the skin surrounding the wound was hyperemic and showed some bruising, burning, blackening and tattooing. The doctor further testified that this “phenomenon” was missing in injury No.1.

The witness further admitted to be correct, like PW23, that in case of suicidal shots, the shot discharge residue would be found on the index

finger and thumb and that if the gun powder residue is positive in both the hands, then it would suggest that there might have been some struggle at the time of firing.

30. The next prosecution witness, PW26, was HC Charan Singh who deposed with regard to Register No.5-D that is maintained in the police station, with regard to complaints “received by hand” in the police station. He stated that the Register concerned, of the date 02.04.2009, had already been destroyed in terms of the Police Rules, after two years. He further stated that he had seen complaint Mark-A, on the file and Mark-B, i.e. the reverse side of the paper on which the complaint was made, on which the name written was Rajesh Yadav, attested to by Inspector Devender of PS Civil Lines, Gurgaon, on 31.05.2010.

In cross-examination, other than the giving the procedure of filling in the Register and marking of a case to any Investigating Officer, he further stated that nobody had ever enquired from him with regard to the complaint, Mark-A, and that he had never made any statement to the police, in this case.

30-A. The next witness (PW27) had also the same name as the previous one (Charan Singh) but was a Constable who testified with regard to the FIR Register containing FIR NO.76, dated 20.04.2010, registered at Police Station DLF Phase-I and identified a copy of the same as Ex.PW27/A.

In cross-examination, this witness stated that during the investigation of the case, the Investigating Officer had recorded the statement of Mangal Sharma and Rajneesh Tripathi, which were available on the case file that he had brought along. He identified photocopies of the said statements as Mark-D1 and D2.

30-B. The next witness, PW28, Rajeev Sharda, Alternative Nodal Officer, Reliance Communication Ltd., deposed with regard to the call details on the number of the deceased, i.e. 9313264687 for the period from 24.05.2010 to 26.05.2010.

On cross-examination, he stated that there were 69 calls made from the above said number, including SMSs and incoming and out going calls. On 24.05.2010 the first call was made at 7:50 AM and the last at 10:35 PM.

31. PW29 was Gulshan Rai, Deputy Director, Forensic Science Laboratory, Madhuban.

He stated that in his capacity as Assistant Director and Deputy Director, he had examined more than 4000 cases relating to "Questioned Documents" including hand-writing and signatures examination, detection of forgery etc. and had also attended courts as an expert witness. Other than that he also gave his other credentials, in his field.

The witness testified that he had examined the hand-writing in Hindi, marked Q1, on the suicide note (Ex.PW38/E) (though described as Ex.PW29/A by this witness) and the signature in English marked Q3, as also the name Dinesh Yadav, also written in English, Q2. He had compared those with the standard writings Marks A1, A2 and signatures, Mark A3 on an application addressed to the SHO, PS Manesar, dated 02.04.2009 (Ex.PW29/B), as also the standard signatures of the deceased Mark A4 to A12, on both sides of the cheques (referred to earlier in the testimony of PW6).

As per this witness' opinion, the said signatures tallied with those of the deceased, on the suicide note.

In cross-examination, defence counsel had asked him whether it was correct that “for the admission of evidence of handwriting expert, it is essential that a writing with which the comparison made must be proved beyond doubt to be that of person, alleged”? The witness replied that it was not the job of the handwriting expert to assess as to whether the signatures had been proved and then sent to the handwriting expert.

32. The next witness was PW30, Jagbir Singh, Scientific Assistant at the Mobile Forensic Science Unit, Sonapat, who stated that on 26.05.2010, he went to the place of occurrence on being called by the SHO of PS Civil Lines, Gurgaon, where he took the photographs, Ex.PW30/1 to Ex.PW30/12, of the place of occurrence, with a digital camera.

In cross-examination, he corroborated the testimony of other witnesses that there was a huge crowd gathered at the scene of crime, where he reached at about 12:00 noon, alongwith Dr.Kulvinder Singh (PW20). However, thereafter, he stated that he could not deny that the team had actually reached the scene after 2:30 PM and remained there for about one hour. He also denied knowing whether any person by the name of Sunder was present at the spot, or that the photographs were taken on pointing out by the said Sunder.

On further cross-examination by counsel for the co-accused Sanjeev Joshi, this witness (PW30) denied finding any mobile at the site and further stated that till he was clicking photographs, none of the incriminating evidence was taken away from the scene of occurrence or tampered with.

33. Inspector Narender Kumar testified as PW31 with regard to presentation of the report under Section 173 Cr.P.C., on 24.06.2011, in his

capacity as SHO, PS Civil Lines, Gurgaon.

In cross-examination, this witness also deposed with regard to Register 5-D being maintained for the purpose of noting down the number of complaints received by hand in the police station and the methodology followed by filling in the Register and marking the complaint to the Investigating Officer.

On further cross-examination, this witness deposed with regard to Mark-A on the file, purporting to be a complaint at the behest of Dinesh and stated that the said complaint was never given in Police Station, Manesar.

He also denied the suggestion that the report under Section 173 Cr.P.C. was filed without going through the contents thereof.

34. Inspector Devender Kumar, SHO posted at PS Civil Lines, Gurgaon on 26.05.2010, testified as PW32 and stated that he had verified the investigation conducted by ASI Jagdish Chand on 26.05.2010 and had also visited the place of occurrence on that day.

He also testified to recording a supplementary statement of the complainant on 27.05.2010, the statement of Ramakant Guard on 28.05.2010 and of Pinki on 30.05.2010. This witness stated that Rajesh Yadav (PW2) produced an application, Mark-A, which was taken into possession vide recovery memo Ex.PH, which Rajesh testified to.

Further, in his examination-in-chief, PW32 testified that Amit Dangi (PW6) produced cheque No.684398, written out for a sum of Rs.2000/- (Ex.PW32/1, which was objected to). He stated that the cheque was signed on its reverse side by Amit Dangi, though it had not been signed in his (PW32s') presence, but was taken into possession by him vide recovery memo Ex.PL. This witness further stated that he had recorded the

statements of witnesses and on the asking of the DCP had added Section 13 of the PC Act as one of the offences made out against the accused.

In cross-examination, this witness deposed that he had received information of the crime at 1:00 in the after-noon through a telephonic message of Inspector Dhan Singh, uncle of the deceased, and upon that he had reached Kalyani Hospital at about 1:20 PM.

He denied remembering as to whether Sunder son of Bhanwar Lal, resident of Sector-16A, Faridabad, having mobile No.9873004132, met him there or not. He however, stated that he could not deny that Sunder may have been one of the persons who accompanied the dead body from the place of occurrence to Kalyani Hospital, as there was a great rush of people with the body.

PW32 next deposed that he reached Ganpati Heights at about 2:30 PM and that he had also called for additional police force in the hospital itself. He admitted that Ganpati Heights is a multi storey building with residential flats and many people reached there. However, he stated that he had not recorded the statement of any resident except for Pinki, and during the course of investigation, he found that Pinki also used to reside in the same building and the deceased used to visit there, though he could not say whether she was “a keep of Dinesh”. The witness also denied knowledge of whether there was a continuous dispute between the deceased, his wife and children, due to his illicit relations with Pinki. The SHO also could not state as to who called the scene of crime team at the spot, but stated that some persons had already gathered there.

He admitted to be correct that persons present at the spot had told him that a 'Wagon R' car bearing registration No.2955, of silver colour “had

escaped from the scene of crime after firing”. He also admitted to be correct the fact that the VT message was sent from the Incharge, Control Room, Gurgaon, to all SHOs and various Incharges of Police Posts, to the effect that the occupants of the said car had escaped from the spot after the shooting and all the points should be barricaded to nab them.

The witness further admitted that the VT message would have been flashed on the basis of some directions from police officers.

He further stated that Inspector Dhan Singh and Rampal (PW1-complainant) had also reached the place of occurrence and that Rampal was a retired officer with a long service record, though he could not state as to what post he held.

The SHO further denied knowing as to who had reached the scene of crime first, after (the report of two people) running away in a 'Wagon R' car. He also could not remember as to whether Sunder had ever figured in the case. He said that he had never recorded his statement under Section 161 Cr.P.C. and also could not remember as to whether, on 26.05.2010, before conducting the post mortem examination, ACP Ravinder Kumar (PW36), had directed that the appellant be arrested.

Strangely, immediately thereafter, it is recorded in the statement (as per the lower court record), that this witness admitted as correct that Sunder son of Bhanwar Lal had met him in the hospital and had accompanied him to the place of occurrence. It is also again recorded that during investigation, it was found that Pinki Yadav resided with Dinesh. Thereafter, again contrary to what is recorded immediately above, with regard to ACP Ravinders' order, the witness is shown to have admitted to be correct that the said ACP had directed him in the mortuary itself, that

Inspector Rishi Pal (the appellant) be arrested forthwith.

Thereafter, as per record, this witness admitted that as per the call details, the deceased had no conversation with the appellant or vice-a-versa, nor was any text message exchanged.

This witness also admitted to be correct that PW Ramakant, alongwith electrician Sanjay and one “presswala”, as also Sunder mentioned earlier, had brought the bead body down.

The witness further admitted that from 26.05.2010 to 03.06.2010 as long as the investigation remained with him, he did not 'join the occupants' of 'Wagon R' car (No.2955), in the investigation.

He further stated that he came to know of the facts regarding FIR No.76 of 2010, registered at PS DLF Phase-I (in connection with which the deceased is stated to have been summoned by the appellant), and that as per the contents of the FIR, one Ramesh had stated that deceased Dinesh had sent a fictitious person impersonating Rattan Singh to him, and further that Manoj Sharma of the ICICI Bank and Rajneesh Tripathi of Kotak Mahindra Insurance had come to the residence of the deceased, where “fictitious Rattan Singh and Jorawar were produced” and a fictitious driving licence and voter card were given to the bank employees.

The witness then denied that Rampal never made a supplementary statement on 27.05.2010 and that the said statement that had been recorded by this witness himself was a fictitious statement. Similarly, he denied the suggestion that he never recorded any statement of Lado or that PW2 Rajesh Yadav, never produced any copy of the complaint made by Dinesh.

He also denied the suggestion that Mark-A was a false document.

The witness then denied the suggestion that he had intentionally avoided

verifying the signatures on the cheque produced by Amit Dangi (PW6). Finally, he denied the suggestion that the investigation was tainted and influenced by Inspector Dhan Singh.

35. Surender Kumar, Assistant Nodal Officer, Idea Cellular Ltd., appeared as PW33 and testified with regard to Mobile No.9911826052 being issued in the name of the appellant, Rishi Pal. He also stated that Ex.PW33/D was the copy of the call details record, pertaining to conversations from 24.05.2010 to 26.05.2010, of the said mobile number. His contention that he had seen Ex.PW33/D, was objected to.

In cross-examination, the witness admitted that the said Ex.PW33/D had not been produced by him that day and was also not issued by him and further, that it did not bear the seal of the office or the signatures of any of the officials.

He also stated that the call details no longer exist on the server.

36. PW34 was also an Alternate Nodal Officer of Vodafone Mobile Service Ltd., Israr Babu, who testified in respect of mobile No.9873710014, which had been issued in the name of Rajeev Joshi. He stated that he had also brought the call details of the said mobile phone number, between 24.05.2010 to 26.05.2010.

In cross-examination, he stated that he had also brought the compact disc recording of the said number, for the period between 01.11.2009 to 26.05.2010, which was still available in the system. He admitted the certified copies of the same, as Ex.DX and Ex.DX/1, running into 473 pages.

36-A. PW35 was a formal witness, Constable Lalit Kumar, who deposed with regard to depositing of the case property in the FSL, Madhuban.

37. PW36 was ACP Ravinder Kumar who stated that on 04.06.2010 he was posted as ACP, City, Gurgaon and on that day, he had received the case file for further investigation. He had verified the facts of the case, including the suicide notes and signatures of the deceased, obtained from the Bank by the previous IO, which he had then sent to the FSL for examination. He had also recorded the statement of the Moharrar (MMHC) who had sent the sealed the parcel to the FSL, after which the investigation was transferred to the Crime Branch.

In cross-examination, this witness stated that he was the supervisory officer of the case but there was no case diary from his side for investigation before 04.06.2010.

He also admitted that no investigation was conducted qua those persons who had come to the spot in the 'Wagon R' car No.2955.

The witness denied being in collusion with Rajender and Ram Avtar, (PWs12 and 11 respectively) due to which, instead of interrogating them, he had, for extraneous reasons, kept them as witnesses and had taken their statements under Section 161 Cr.P.C. and given them a clean chit.

He further stated that he had joined the said persons only once in the investigation, though the investigation remained with him from 04.06.2010 to 28.08.2010.

Next, in his cross-examination, the ACP deposed that it did not come out during his investigation that there was any meeting between the deceased and the appellant between 24.05.2010 to 26.05.2010. He also denied knowledge of any meeting between the appellant and Inspector Dhan Singh, or even with Rampal, father of the deceased, “directly or indirectly”.

Lastly, he denied the suggestion that his investigation was tainted and that he had given a clean chit to the actual culprits responsible for the murder of Dinesh Kumar.

37-A Ashok Kumar, DSP, appeared as PW37 and stated that he had received the case file for investigation on 19.10.2010, while he was posted as DSP Crime, Faridabad. He had thereafter recorded the supplementary statement of PW1 Rampal on 23.10.2010, who had produced before him a photocopy of an arms licence Ex.P2 and a copy of an agreement to sell and a copy of an order of this Court, which were all taken into possession vide recovery memo, Ex.PB, attested to by Rampal (already noticed in Rampals' testimony).

The DSP further testified that he had collected the call details of mobile phone numbers 9999981827, 9911826052, belonging to the appellant and mobile phone number 9313264687, belonging to the deceased, mobile number 9910494417, belonging to PW1 Rampal and as also of mobile number 9873710014, belonging to Sanjeev Joshi.

He stated that the call details were produced by Rinku Gautam, Clerk in the Computer Section, Madhuban (PW15), whose statement this witness also recorded under Section 161 Cr.P.C.

PW37 further testified that he had joined the appellant in the investigation on 24.05.2011 and that after interrogation he was produced before the Illaqa Magistrate and one days' police remand was sought. He formally arrested his co-accused Sanjeev Joshi on 09.06.2010, in compliance of an order of this Court. He further stated that he had recorded the statements of Draftsman Girish Kumar also, under section 161 Cr.P.C., and had also obtained the sanction to launch prosecution against the

appellant.

During cross-examination, the witness admitted that it had come in his investigation that employees of the ICICI Bank and “fictitious persons”, impersonating as Rattan Singh and Jorawar Singh, had collected at Flat No.411, Ganpati Heights. He had, therefore, joined Vijender SI, Duty Officer, DLF Phase-I, Gurgaon, ASI Ranbir Singh, Manoj Sharma employee of the ICICI Bank, the actual Jorawar Singh, who was the complainant in FIR No.76 of 2010 lodged at Police Station DLF, Phase-I, Gurgaon. He had also joined the said Jorawars’ son Amrish, one Ramesh son of Chiranji, Dev Pal and Rajbir, and Gajraj, Manager of M/s Anant Raj Company, in the investigation, on 06.12.2010.

All these persons, as per this witness, never even whispered that the appellant had subjected the deceased Dinesh to any torture or cruelty of any sort, mental or physical, or had made any demand from him on 24.05.2010.

He further stated in his cross-examination, that it had come out in his investigation that the appellant had produced the deceased and his father Rampal, before ACP Krishan Murari. He further stated that he tried to investigate the antecedents of Dinesh and found that (earlier) FIR No.20 dated 21.07.2004, was also registered against him for fraud etc., with the State Vigilance Bureau, which was investigated by ACP Krishan Murari. The deceased had been arrested in that case.

He further stated that another FIR, bearing No.77/2002, was also registered for the alleged commission of offences punishable under Sections 419, 420, 120-B IPC, at P.S. Vivek Vihar, Delhi, against Dinesh and others.

His involvement was also found in yet another FIR , bearing No.163, dated

12.06.2010, in respect of similar offences, at P.S. DLF Phase-II, Gurgaon.

The witness then denied the suggestion that Rampal (PW1) had never made any supplementary statement, or that he of his own had written down fictitious supplementary statements, or that he had obtained Rampal's signatures on blank papers.

Of course, he also denied that his investigation was tainted and one sided. Yet, he admitted that he had never investigated the case with a view to find out whether the death was homicidal and as to who were "the real culprits".

38. PW38 was ASI Jagdish Chander, the first Investigating Officer of the case, who testified that he had received information with regard to the shooting and that the injured had been taken to Kalyani Hospital, where he died on the way. Thereafter, he deposed in terms of what was recorded by way of the police proceedings in the FIR, already noticed at the outset, in this judgment.

He further testified that he had taken into possession the suicide note, Ex.PW38/E, vide recovery memo Ex.PC and had again visited the place of occurrence and had prepared a rough site plan thereof, which he identified as Ex.PW38/F, with his signatures and marginal notes on it.

The witness then testified with regard to taking into possession the revolver, two live and empty cartridges, a Reynolds Pen and a pair of spectacles and sealing them in separate parcels with his seal. His testimony also corroborates the lifting of samples of the chair cover, with blood stains and vomit on it, and sealing them into separate parcels with his seal, "JC", which was handed over to Rajesh (PW2), after which a recovery memo Ex.PG was prepared, witnessed by the said Rajesh and HC Himmat.

This witness also testified with regard to recording of statements under Section 161 Cr.P.C., at the spot, though no names are given with regard to whose statements they were.

The next part of his examination-in-chief is with regard to production of the case property by Constable Mahavir Singh (PW9), i.e. the viscera, the clothes, lead, swab; all of which were sealed in a parcel with the doctors' seal. He deposed in respect of the depositing of these articles with the Moharrar of the "Malkhana".

Thereafter, the witness stated that the investigation was handed over to Inspector Devender Kumar, Inspector//SHO.

PW38 also identified the revolver Ex.P1, the empty cartridges Ex.P2 and Ex.P3, and the Reynolds pen Ex.P6, to be the same that he took into possession from the place of occurrence.

In cross-examination, the witness stated that Ex.DY was the true copy of the VT message, the reference of which came in case diary No.1-A, dated 26.05.2010, of Devender Singh, SHO.

He further admitted that there were many persons when the complaint, Ex.PA, was handed over to him, which included some Advocates. However, he could not say whether prior to the writing of the said complaint, attempts were earlier also made to write it, before it was given a final shape. He also denied knowledge as to in whose hand-writing the complaint was.

The witness further stated in cross-examination that during his investigation he came to know that the deceased had good friendly relations with the co-accused, Sanjeev Joshi.

He next again identified the rough site plan prepared by him and

the marginal notes, where he had shown various articles found at the place of occurrence, including the table in the room. He admitted to be correct that the “so called suicide note has not been shown either in the plan itself or in the marginal notes”.

The witness further stated that the said note was not handed over to him by any specific person, but it was by someone from the crowd of relatives and neighbours.

This witness next stated that the other articles that were recovered from the spot, i.e. revolver etc. were sealed , but the suicide note was not.

He denied the suggestion that the suicide note was not sealed by him purposely, with an oblique motive.

He also denied that he of his own had written down the statements of witnesses, including PW2 Rajesh as well as Om Parkash and the supplementary statement of Rampal and others.

He, naturally, also denied that he had conducted a lopsided investigation and that the FIR was ante-timed or that no special report was sent to the Illaqa Magistrate and higher police officers. This witness also denied the suggestion that the seals of various parcels had been tampered with before being deposited with the MHC.

Further, in his cross-examination, the witness admitted that as per the ‘ruqa’ from Kalyani Hospital, available in the inquest paper, the dead body of Dinesh was received on 26.05.2010 at 12:45 PM and was brought from Ganpati Apartment by one Naresh son of Lal Singh. He admitted that he had not joined the said Naresh in his investigation, but denied that he purposely avoided joining him.

39. The last witness for the prosecution, PW39, was Pinki Yadav,

aged 29 years, wife of Naresh Yadav and resident of H. No. UG-8, Ganpati Heights Apartment, Ist Floor, Gurgaon. She is shown to be a house wife.

This witness stated that she did not remember the date on which the late Dinesh Yadav, whom she admitted to be in a live-in relationship with, had woken up and taken a bath at 10:00 AM. She deposed that he had told her that he was to deposit the revolver, as “those were the elections days”, after which he went away. Between 11:30 AM and 12:30 PM, one Sunder, a friend of Dinesh Yadav, came to her and told her that Dinesh was lying in the upper portion of Flat No.411 with blood oozing out. She and Sunder both had rushed to the room where Dinesh was lying in a pool of blood, upon which she had raised an alarm and many people had assembled there. Dinesh was made to lie on a Diwan by Sunder and others as he was alive and had a heart beat. She took the mobile phone of Dinesh and rang up Rampal Yadav, after which she rang up Sandeep, a close friend of Dinesh Yadav, who came there. Thereafter, Dinesh was removed to the Kalyani Hospital, Gurgaon, and his father and other relatives also came there. As per this witness, Dinesh Yadav later passed away in the said hospital.

PW39 further testified that on 22.05.2010, the appellant and another police official whose name she did not remember, came to her residence and upon being asked, she told them that she was Dineshs’ wife. She told Dinesh about it and he told her that he would himself talk to them within 2-3 days. Later, on enquiry from Dinesh, he had told her that he had already talked to his uncle, Inspector Dhan Singh. She identified the police official present in Court, who visited her house; (though it is not clear from the record as to who the said official was).

In cross-examination, PW39 stated that two persons had arrived

at the complex but did not sign the entry book meant for that purpose, when Ramakant, Security Guard (PW4) was posted at the gate. Those two persons came to Flat No.411 and it was in fact, upon the screaming of Rama Kant, that they rushed “outside the society”. That had happened immediately after detection of the injuries suffered by Dinesh Yadav.

The witness denied the suggestion that Rama Kant had actually moved into action upon her (PW39) screaming from the balcony of Flat No.411.

In cross-examination by the counsel for the co-accused, she again admitted that she was in a live-in relationship with Dinesh Yadav for about nine months prior to his death and that she had a cordial relationship and bonding with him.

40. With the testimonies of the aforesaid 39 prosecution witnesses, the prosecution evidence was closed before the trial Court by the learned Public Prosecutor and the statement of the appellant was recorded under Section 313 Cr.P.C.; in which, essentially, he simply stated that the case itself was false and that he had been falsely implicated, with witnesses also deposing falsely.

The statement of the appellants' acquitted co-accused, Sanjeev Joshi, under Section 313 Cr.P.C., also is seen to be essentially the same, though the last page of his statement is missing from the record. However, that is not considered relevant, inasmuch as, nothing of significance was pointed to by either counsel for the appellant or the State, and in any case, the acquittal of the said Sanjeev Joshi not being under challenge, the missing page eventually makes no difference.

41. In defence of the appellant, nine witnesses appeared for him and

were examined.

The first defence witness was HC Hari Singh of Police Station Vivek Vihar, Delhi, who testified with regard to FIR No.77 registered on 09.04.2002 at the said Police Station, in respect of the alleged commission of offences punishable under Sections 420, 506, 120-B IPC. He testified that the complainant in the said FIR was one Madan Lal Arora and of the seven accused therein, one was the deceased, Dinesh Yadav. All the accused were sent up for trial, which was still pending at the Karkardooma Courts in Delhi. He produced a photocopy of the said FIR, Ex.DW1/A, and identified the seal on the said copy to be that of his police station.

In cross-examination, he admitted that he had no personal knowledge of the case.

42. DW2 was ASI Madan Mohan of Police Station State Vigilance Bureau, Gurgaon, who testified in respect of FIR No.10 dated 10.07.1997, registered against Rampal, PW1 (complainant & father of the deceased), under Sections 7 and 13 of the PC Act.

This witness stated that PW1 had been convicted of the aforesaid offences and sentenced to one years' imprisonment. He proved the FIR, having brought the original FIR register, and also proved a photocopy thereof as Ex.DW2/A.

Similarly, this witness also proved FIR No.20 dated 21.07.2004, registered for the commission of offences punishable under Section 419, 420, 467 etc., against deceased Dinesh and six others and stated that Dinesh was arrested in connection with that case on 08.06.2009, after which a report under Section 173 Cr.P.C. had been filed and the trial in that case was also pending.

In cross-examination, the witness stated that he could not say as to whether PW1 Rampal had filed any appeal against his conviction.

43. DCP Krishan Murari testified as DW3, that on 24.05.2010 he was posted as ACP, Sadar, Gurgaon and was the Supervisory Officer of Police Station DLF, Phase-I, when the appellant was the SHO there. He stated that Dinesh and his father Rampal were known to him earlier and that he received a call from Rampal informing him that he and his son Dinesh had been summoned to the police station, upon which he told them to come to his office and had also instructed the SHO to reach there with the file of case FIR No.76 of 2010, registered under Sections 420 etc. IPC.

The witness further testified that he went through the facts of the case and after hearing Dinesh, instructed the SHO and Dinesh to produce the “fictitious persons” Rattan Singh and Jorawar Singh within two days. He further testified that since Dinesh and Rampal were well known to him, they never made any complaint against the appellant on 24.05.2010, before that, or after that, including any demand made by him, or of physical torture that he had inflicted.

He also testified that he knew that Sanjeev Joshi and Dinesh were good friends.

In cross-examination by the Public Prosecutor, he denied that since Rishi Pal was his junior, he had deposed in his favour to help him.

44. Inspector Dhan Singh testified as DW4 and stated his relationship with the deceased and his father, i.e. his nephew and brother respectively. He further testified that on 22.05.2010 while he was posted as SHO, P.S. City Ballabhgarh, Distirct Faridabad, the appellant had rung him up and told him that there were serious allegations against Dinesh and that he

should send Dinesh to him. Consequently, he had told his brother to take Dinesh and meet the appellant, who was SHO, P.S. DLF, Phase-I.

He further testified that on 24.05.2010 the appellant again rung him up, informing him that though Rampal and Dinesh were to meet him, they had failed to turn up, upon which he gave Rampals' number to the appellant and also contacted Rampal, who told him that they were in the office of ACP Krishan Murari, as he had called them.

This witness also testified that neither Dinesh nor Rampal ever complained to him that Rishipal was harassing them and demanding any money from them.

He further testified that he had himself verified that Rishipal had nothing to do with the death of Dinesh.

On cross-examination, this witness also denied supporting the appellant only because he was a fellow police officer.

45. DW5 was Inspector Suresh Kumar who testified that on 16.11.2010 he was incharge of Police Post DLF Phase-III, Gurgaon, and on that day, he investigated FIR NO.163 dated 12.06.2010, registered under Sections 149, 420, 448, 468 and 471 etc. IPC, relating to Police Station DLF Phase-III, Gurgaon. He had interrogated one Surender Yadav son of Roshan Lal in that case, who had made a disclosure statement, Ex.DW5/A, signed by the said accused in the presence of this witness and ASI Yashbir Singh. The witness stated that he too had signed the statement. Nothing of significance was stated in his cross-examination.

It is to be noticed that the said document (Ex.DW5/A), is the statement allegedly made by the aforesaid Surender Yadav, that some forged documents had been prepared by the deceased, which were to be

used for registration of a property in the name of his (Surender Yadav's) mother-in law.

46. Surender Yadav appeared as DW6 and deposed in terms of what has been noticed hereinabove, including the fact that he had signed the document (Ex.DW5/A) in connection with the other case registered against him, after the said document was read over to him. As per the witness the deceased had prepared forged documents regarding a property in DLF Phase-III, Gurgaon and had brought "fictitious owners" thereof, Madhu Sharma and Sham Sunder Sharma, before the Tehsildar, for registration.

47. DW7 was one Babu Lal, resident of village Bas Padamka, Tehsil Pataudi, District Gurgaon, who testified that he was posted as the Patwari, Patwar Halqa Kasan, Tehsil Manesar, on 11.02.2010, when Dinesh came to his office and sought a copy of the jamabandi for the year 2003-04, in respect of certain land. The said copy was taken by Ramesh son of Chiranji Lal, at the behest of Dinesh. The witness also identified the said Ramesh in Court, who he stated was known to him earlier. He further stated that he had made the above statement during the investigation of case FIR No.76 dated 20.04.2010.

48. DW8 was the aforesaid Ramesh Chander son of Chiranji, resident of Prem Nagar, Kasan, who corroborated the above testimony of DW7, to the effect that he had been taken by Dinesh on 11.02.2010 to the Patwaris' office and that he (DW8) had obtained the jamabandi from there. He also testified that on the asking of Dinesh, he had gone to Kasan and demarcated the land of Jorawar Singh and others, "to the agents of M/s Antraj and Company", at the end of March 2010.

49. The last defence witness was Manoj Sharma son of Om Parkash,

also resident of Gurgaon, who testified that on 4/5.04.2010 he was working as a Sales Officer in the ICICI Bank, Qutab Plaza, Gurgaon and his friend Hotender had requested him to open a savings account. Hotender also had introduced him to Rajneesh Tripathi for the said purpose, who was working in the Kotak Mahendra Life Insurance Company. He told this witness that he had to open an account of one of his acquaintances and thereafter, both Hotender and Rajneesh Tripathi took him to the flat of the deceased, at 411, Ganpati Heights.

The witness further testified that there he was introduced to Rattan Singh and Jorawar Singh and another person “with beard”, who were all already present there. Rattan Singh informed him (DW9) that Jorawar Singhs’ land had been sold and the sale amount had to be received through cheque, for which purpose they wanted to open a savings bank account in his bank.

The witness told them that they should come to the bank with the original documents; and on 07.04.2010 all the three persons came to the Bank branch. They produced one driving licence and a photocopy of a Voter Card for opening the account, but he had told them that the account could only be opened on production of original documents, upon which they promised to produce the original documents on the next day and filled the form and deposited Rs.10,200/- for opening the account.

The witness further testified that the next day, he rang them up to produce the originals but they failed to do so. He further stated that he had gone to verify the address of the account opener, i.e. Jorawar Singh, at village Baslambi and enquired about him by showing his photograph to people in the village, who informed them that though Jorawar lived there,

the photograph was not his. Thereafter, this witness further testified, that they went to the house of Jorawar Singh and contacted him there, and from there they rung up Rattan Singh who had come to the bank. They told Rattan Singh that the bank team was at the village and requested him to come to the house but despite giving an assurance, he never turned up, after which his phone was found to be switched off. DW9 further stated that the entire matter was told to the “original Jorawar Singh”, who in turn went to Police Station DLF Gurgaon and lodged the FIR. The witness, lastly, testified that his statement was recorded by ASI Rajender Singh in this regard, with FIR No.76, dated 20.40.2010, having been registered at Police Station DLF, Phase-I, Gurgaon, for the alleged commission of offences punishable under Sections 420 etc. IPC.

In cross-examination by the learned Public Prosecutor, the witness admitted that the police had made inquiries from him. The witness stated that till date he did not know the real names of the impostors.

50. Addressing arguments on behalf of the appellant, Mr. D.P. Singh, learned counsel for the appellant, first submitted that as proved by the evidence led and by examination of Dws 1, 2, 3, 7, 8 and 9, the deceased had a number of criminal cases registered against him. He and his co-accused in FIR No.76 dated 24.04.2010, registered for the commission of an offence punishable under Sections 420/ 466/477 and 120-B IPC, were facing criminal charges in a fraudulent transaction of transfer of land, by producing forged documents and by producing persons impersonating the actual land owner, for the sale of the land involved in that case. He submitted that other than the police officials, DWs-7, 8 and 9, i.e. Babu Lal,

Ramesh Chander and Manoj Sharma, also proved the said fact.

In another case, i.e. FIR No.20 dated 21.07.2004, though the fraud was committed in the year 1997, the FIR was registered in the year 2004 after enquiry, and both, the deceased Dinesh Yadav and Sanjeev Joshi, were arrested in June 2009 and were kept in judicial custody for about 2 months.

Thus, the relationship between the deceased and Sanjeev Joshi, including their involvement in fraudulent transactions, went back for about 13 to 15 years and as a matter of fact, it was in connection with a land deal that went bad, that the deceased was probably done to death.

51. Learned counsel submitted that as a matter of fact, the suicide note was a fabricated document which is proved by the fact that there was no mention of it at the first instance. The deceaseds' live in partner, i.e. Pinki Yadav (PW39), did not mention the presence of any suicide note when the body of the deceased was discovered at the spot.

Similarly, PW-38, ASI Jagdish Chander, though had stated in his examination-in-chief that he had taken into possession the suicide note (Ex.P38/E), in cross-examination he admitted that though he had seen various articles found on the place of occurrence, including the table in the room, he had not shown the suicide note either in the plan itself, or even in the marginal notes to the site plan.

This witness further admitted that the suicide note was handed over to him by somebody from the crowd of relatives and neighbours, though he had recovered other items, such as the revolver, live and empty cartridges, a Reynolds pen and a pair of spectacles from the spot.

51-A Further, on the suicide note, Mr. D.P. Singh submitted that it was never established that it was written by the deceased in his own hand writing. He further submitted that a perusal of the suicide note shows that above the signatures stated to be those of the deceased, in English, the suicide note is written in a manner so as to ensure that it fits above the said signatures.

Learned counsel pointed to the fact that the suicide note starts in a larger font in Hindi, then progressively goes on to be written in a smaller font, so as to ensure that the writing fits above the signatures of Dinesh Yadav, if at all those signatures are to be accepted to be those of the deceased.

Thus, as per the learned counsel, the writing was made on a piece of blank paper on which the signatures of the deceased were already present, as otherwise there was no need for the deceased to have signed first and then fitted in the suicide note above the signatures. If he were to write a suicide note, he would maintain the same font by and large, and thereafter sign the suicide note, after he finished writing.

He further submitted that there was also no need for the deceased to write the note in Hindi and then to sign in English.

51-B Learned counsel for the appellant further submitted that the recovery memo, Ex.PH, refers to an application made by deceased Dinesh Yadav (Mark A/Ex. 29B) on 02.04.2009, addressed to the Incharge of the Police Station, Manesar, Gurgaon, with regard to the alleged violation of Court orders by some persons, who had cut the crops on some land belonging to a company, who, Dinesh Yadav stated in that application, he

was an authorized representative of.

He submitted that this was taken to be the standard hand writing with which the suicide note was compared. However, Mr. D.P. Singh further submitted that PW-31, Inspector Narinder Kumar, stated in cross-examination that the said complaint was never given in the police station at Manesar.

Learned counsel further referred to the testimony of PW-29, Gulshan Rai, Deputy Director, FSL, Madhuban, who was a hand-writing expert of repute, on the panel of various Universities as a Guest Lecturer in his subject and was well experienced, having examined more than 4000 cases relating to questioned documents.

Learned counsel submitted that this witness had deposed, after comparing the Hindi writing and English signatures of the deceased, on the suicide note and the application stated to be his standard writing, that the signatures and writing were of the same person, i.e. the deceased Dinesh Yadav. However, in cross-examination, he stated that it was not a hand writing experts' job to determine as to whether the standard writing given to him was actually that of the person to whom it was attributed.

In other words, learned counsel submitted that this witness could not vouch for the fact that what was given to him to be the standard hand writing of the deceased, was actually that of the deceased or not.

Hence, he submitted that when the document taken to be containing the standard hand writing of the deceased, itself was never proved to be containing his hand writing, the comparison was entirely

misplaced and hence the suicide note did not stand proved to have been written by the deceased and consequently, the allegation against the appellant, purportedly made by the deceased in the suicide note, was a charge wholly without any basis.

51-C Further on the suicide note, Mr. D.P. Singh submitted that PW-24, Loveleen Katyal, Assistant Director (Chemistry) of the FSL, Madhuban, had stated that with 69 milligrams percentage of ethyl alcohol in the blood stream of the deceased, muscular in-coordination could have taken place and as such the possibility of a wavering hand writing could always be present in such a case. This testimony further stands corroborated by that of PW-25, Dr. Deepak Mathur, Medical Officer, General Hospital, who conducted the post mortem examination (Ex.P-25/B). In his cross examination, this witness also stated that with 69 m.g. percentage of alcohol in the blood, normally wavering in the hand writing can be expected. However, learned counsel for the appellant pointed to the suicide note, which though progresses from a larger to a smaller font, does not show any wavering in the hand writing, which is otherwise steady. Hence, he submitted that the deceased, in any case, could not have written the suicide note.

52. Mr. D.P. Singh next submitted that in any case, even if the deceased had committed suicide, the circumstances do not point to abetment of such suicide by the appellant.

In this regard, learned counsel first pointed to the testimony of the deceaseds' own brother (PW-2) Rajesh Yadav, in which he admitted that the deceased was suffering from depression, though he did not know the

reason for it.

Learned counsel submitted that this was fortified by the testimony of PW-14, Dr. B.S. Saini, a retired Wing Commander from the Air Force, who testified that he had been treating the deceased for depression for many years and had also proved his report, Ex.PS, made to the police in that regard, which the police had sought from him, in which he stated that the deceased was on anti depressant drugs and that he was depressed on account of domestic and “inter personal problems”.

This witness had further testified, as already noticed, that the deceased had been advised to desist from alcohol, but learned counsel submitted, that he had obviously consumed alcohol on the date of his death.

He, therefore, pointed to the cross-examination of this witness to submit that alcohol taken by a patient like the deceased, suffering from neurotic depression, aggravates the malady, which is otherwise incurable but controllable by regular intake of medicines.

Learned counsel next pointed to that part of the testimony, in which the doctor had stated that the deceased used to skip his medicines at times and was not regularly following up the treatment and that such like patients have both homicidal and suicidal tendencies.

53. Mr. D.P. Singh thereafter submitted that all the relatives of the deceased had stood in testimony actually in favour of the appellant, including the deceaseds' own father, brother, maternal uncle and paternal uncle.

Further, even the Assistant Commissioner of Police, Krishan Murari, who admitted to knowing the deceased and his father Ram Pal,

even before the occurrence, testified in favour of the appellant.

In this regard learned counsel pointed to the testimony of PW-1, i.e. the deceaseds' father and complainant in the FIR, Ram Pal. As already noticed earlier, this witness admitted to having filed the complaint, Ex.PA, in which the entire allegation with regard to the reason for Dinesh Yadav having committed suicide, is against the appellant.

However, learned counsel pointed to that part of the testimony, in which PW-1 stated in his examination-in-chief, that he could not say as to whether anybody is responsible for the murder of his son, further stating that he had not accused anybody.

Mr. Singh next pointed to the cross-examination by the learned Public Prosecutor on the two questions allowed to him for such cross-examination, wherein PW-1 stated that actually the complaint, Ex.PA, was written at the dictation of a lawyer, who was present at the mortuary of the Civil Hospital, Gurgaon and that he (PW-1, complainant) was perplexed after his sons' death.

Mr. Singh further pointed to the testimony to submit that actually Ex.PA was a “well rehearsed document”, it having been written, two-three times before finalization, as admitted by this witness.

He next pointed out that the supplementary statements attributed to the complainant/PW1, dated 26.05.2010, 27.05.2010 and 23.10.2010, obtained under Section 161 Cr.P.C., were all wholly denied by him, further stating that the accused, whom he identified in Court, was not responsible for his sons' death. (Of these three documents, Ex.PD is a statement under Section 161 Cr.PC. with regard to the suicide note having

been recovered in the presence of this witness under his signatures and to the identification of his sons' body. Ex.PE is his statement with regard to the appellant having made a demand of Rs.10 lacs from him on 24.05.2010, stating that it should be paid through Sanjeev Joshi, co-accused; and Ex.PF is simply another statement with regard to this witness having deposited his sons' arm licence, a sale deed, and copies of some orders of this Court in a criminal appeal pending).

Mr.D.P. Singh further submitted that thereafter this witness specifically testified that the appellant had been very cordial towards him and his son on 22.05.2010, 24.05.2010 and during the enquiry. He also stated that he had simply signed behind the suicide note shown to the police, without seeing its contents and as such, he did not know whether it had been written by him or not.

As regards the complainant having written to the ADGP (Crime) to have a fair enquiry, learned counsel pointed to his testimony again to submit that the letter was written by him only to ensure a fair enquiry, in which no innocent person suffered.

54. Learned counsel for the appellant thereafter submitted that the nature of injuries, one on the chest and second on the head of the deceased, pointed to the fact that it was not a suicide and in fact was a homicide.

In this regard, he pointed to the testimony of PW-25, Dr. Deepak Mathur, who stated that the injury on the chest by which the bullet had pierced the chest wall, the muscle thereunder, the lungs, the diaphragm and spleen, would have caused excruciating pain, with which the injured would be most likely incapacitated to fire another shot and that it would

very rarely be in suicide cases, that the person shot himself again. This witness specifically testified that the presence of “two blood shots” was indicative towards homicide.

Learned counsel then again pointed to the testimony of PW-24, with regard to the high level of alcohol leading to muscular in-coordination, to submit that in such a state, the deceased was unlikely to have been able to shoot himself twice, in the process of committing suicide.

55. The next line of argument of counsel for the appellant was to the effect that even though the occurrence pointed towards homicide rather than suicide, the police did not even begin to investigate the possibility of homicide.

Learned counsel first pointed to Ex.DY, which is the voice transmission (radio wireless) message from the incharge of the Police Control Room, Gurgaon, to SHOs etc., stating therein that it had been 'noted' that some persons, after shooting a man at the Ganpati House, opposite the Bus Stand in Gurgaon, had fled the spot in a silver coloured Wagon-R car, bearing no.2955 and that check posts be established.

Mr. Singh then pointed to the testimony of the security guard at Ganpati Apartments (PW-4), corroborating that two persons had alighted from the above described vehicle at the Ganpati Apartments on the said date, 26.05.2010, at about 12.30 p.m. and had told him that they were going to visit Dinesh Yadav and would be returning within two minutes, after which he heard a sound of a gun shot and within 2-3 minutes thereafter, both those persons came running downstairs and fled away in the said car.

According to this witness, even PW-39 (Pinki Yadav) had told

him to try and catch hold of the said two persons.

Though, of course, Pinki Yadav in her testimony denied the above, however, the cross-examination of PW-10, Head Constable Himmat Singh, was also referred to by the learned counsel, wherein that witness also stated that neighbours of the deceased and the security guard had told him that two persons who had come in a silver Wagon-R car, were responsible for the shoot out.

This was also corroborated by the SHO of Police Station, Civil Lines, Gurgaon, PW-32, who was one of the investigating officers. This witness admitted to the aforesaid wireless message having been flashed, but thereafter admitted that he did not investigate with regard to the said two persons, i.e. “he did not join them in the investigation”. This was further corroborated by another investigating/supervising officer, PW-36, ACP Ravinder Kumar.

55-A. Learned counsel next pointed to the fact that there was obviously, according to him, a struggle in the room where the deceased had died. He pointed to the testimony of PW-20, Dr. Kulvinder Singh, who was incharge of the “scene of crime team”, to the effect that he had written in his report that a revolving chair in the room was lying tilted and a 'wooden spot' was seen dismantled, which suggested the possibility of a struggle in the room.

Further the testimonies of PWs-23 and 25, i.e. the Senior Scientific Officer in the FSL, Madhuban and Dr. Deepak Mathur respectively, were also referred to by the learned counsel for the appellant to submit that both these witnesses had stated that in the case of a suicide the

gun powder residue would be found on the thumb and index finger of the deceased, whereas in this case, the residue was found on the palms of both the hands.

The photographs of the scene of crime were also pointed to by the learned counsel, showing a broken wooden board lying on the floor and a fallen office chair.

Next, Mr. D.P. Singh again pointed to that part of the deposition of Dr. Mathur, wherein he stated that gun shot injuries in a suicide are invariably contact wounds in which the skin gets burnt with singeing of the hair, whereas in the case of the deceased the skin surrounding the wound was hyperemic, showing some bruising, burning, blackening and tattooing on the on the chest of the injured, which was missing on the head wound.

Mr. Singh further submitted that the above testimonies, along with the fact that PW-25 had also stated that it was unlikely that a person having excruciating pain, caused by the first injury, would be able to shoot again, all point to the fact that it was actually not a suicide but a murder.

In this regard, learned counsel also submitted that the angle at which the bullet was travelling, i.e. from the chest downwards, would not suggest that the revolver was placed by the deceased on his chest as it normally would be, pointing at a right angle to the chest, but was in fact a bullet which had been fired from a little distance, with the revolver pointing at a downward angle.

55-B. In support of his contention that the deceased actually did not commit suicide but was shot by someone, Mr. Singh next submitted that one

Sunder, friend of the deceased, was present at the spot, as testified to by PW-39, Pinki Yadav, who deposed that the said person had come and told her that the deceased was lying in a pool of blood and further, PW-20 Dr. Kulvinder Singh had also stated that he was instructed by the said Sunder in reconstructing the scene of crime. However, the said Sunder had not been even produced as a witness, though he was obviously one of the first to see Dinesh Yadav lying in a pool of blood.

In fact, learned counsel further pointed to the testimony of Inspector Davinder Kumar, where he though first denied even knowing whether Sunder figured in the case or not, subsequently admitted that he had met him at the hospital, after which he (Sunder) had accompanied this witness to the place of occurrence. Sunder was also stated, by this witness, to have brought down the body from the flat, along with PW Rama Kant, Electrician Sanjay and one "Presswala".

Mr. D.P. Singh further submitted that another important witness, Naresh, who was also one of the persons who had brought the body, as deposed by the first investigating officer, ASI Jagdish Chander (PW-38), was also not examined as a witness. This person also finds a mention in the hospital admission report and the "inquest report of the police".

Mr. Singh thereafter pointed to the fact that even extensive phone records exhibited by both the prosecution and the defence, did not point to any connection between the deceased and the appellant.

56. On the issue of omissions by the prosecution, learned counsel pointed to the fact that despite finger prints having been lifted, as testified to

by PW-20, Dr. Kulvinder Singh, there was no finger print report exhibited, to either rule out or to indicate, the presence of other persons on the spot.

57. Finally, on the charge of abetment to suicide, learned counsel submitted that the appellant had actually been exonerated completely by one of the investigating officers, PW-19, DSP Sanjay Ahlawat, who stated that nothing incriminating against the appellant came in his investigation.

PW-36, ACP, Ravinder Kumar, also testified that in his investigation, no meeting between the accused and the deceased, between 24-26.05.2010, was shown to have taken place.

58. As regards the charge of corruption, Mr. D.P. Singh submitted that once the entire complaint against the appellant, by the father of the deceased, was not supported in his testimony, the question of a demand of a bribe ever having been made by the appellant, from either the deceased or his father, did not arise.

He further submitted that the testimony of PW-21, Jagat Singh, who had proved the service record of the appellant, also showed that the appellant had a completely clean service record, with no adverse entry against him.

In any case, he further contended, that once it is established that the deceased did not commit suicide on account of any harassment by the appellant, the question of demand of a bribe by the appellant, either from the deceased or his father, does not arise at all.

59. In conclusion, learned counsel for the appellant submitted that all the aforesaid conditions and circumstances, proved that firstly the deceased had not committed suicide but had been murdered, either on

account of his live-in relationship with a married woman (Pinki), who admitted that her husband was actually one Naresh Yadav, or on account of his business dealings, due to which he had also been implicated in many criminal cases.

Further, non-pursuance/non investigation of the two persons who came in the Wagon-R car, shows that the police actually tried to cover up a murder by trying to make it look like a suicide.

In any case, learned counsel submitted that even if it is taken to be a suicide, given the aforesaid circumstances of the life style of the deceased, as also the fact that he was admittedly depressive, suffering from neurotic depression, such suicide cannot be linked to the appellant in any manner.

This is further proved, as per the learned counsel, from the fact that his immediate family, i.e. his father and brother, stood to testify that the appellant had never harassed the deceased.

Learned counsel, therefore, submitted that the learned trial Court had wholly erred in recording findings to the contrary, in the face of not just lacunae in the evidence produced by the prosecution, but in the face of evidence actually wholly pointing to the contrary.

60. For the State of Haryana, opposing the appeal, Ms. Kirti Dalal, learned Deputy Advocate General, Haryana, first submitted with regard to the authenticity of the suicide note. She contended that PW29, who is admitted even by the counsel for the appellant to be an accomplished handwriting expert, i.e. Shri Gulshan Rai, Deputy Director, Forensic Science Laboratory, Madhuban, has opined that the hand writing and

signatures on the suicide note and the standard hand writing and signatures of the deceased, as per his application PW29/B, matched each other and were written by the same person. Hence, she submitted that once the standard hand writing and signatures of the deceased were shown by a handwriting expert of great experience, to be matching, the question of the suicide note not having been written by the deceased, does not arise.

61. Learned DAG next submitted that the deceased was an accused in FIR No.76 dated 20.04.2010 (Ex.PW27/A), in which case the appellant was the Investigating Officer. However, the appellant did not arrest the deceased immediately but gave him time of two days to produce two people, and as such, the version put-forward in the original complaint filed by the deceaseds' father, i.e. PW1 Ram Pal, was perfectly believable that actually the deceased was given time by the appellant to arrange the huge sum of money (Rs.10,00,000/-), demanded by him.

62. She next submitted that as regards the contention that the occurrence was not a suicide but a homicide, the said contention is wholly unbelievable in view of the fact that despite emphatic assertion of counsel for the appellant that a scuffle took place at the time of death of the deceased, there was no bruise or injury on his body, other than the two gun shot wounds. Thus there was no scuffle or a struggle, in which the deceased lost his life.

She further submitted that, undoubtedly, the explanation of two people running away from the spot in a Wagon-R car, should have been elaborately given in the report under Section 173 Cr.P.C. However, the matter having been investigated by at least four investigating and supervisory officers, it being a case where an Inspector of police was

involved, the very fact that it was not proved to be a homicide but a suicide, shows that it was actually so.

She further submitted that the said two persons, who are obviously PWs11 and 12, as can be discerned from the testimony of PW36, ACP Ravinder Kumar, were not involved in any murder, but were actually only co-incidental witnesses to the events immediately after the occurrence, i.e. the suicide by the deceased, after which they obviously ran away, on seeing the person whom they had come to meet, lying in a pool of blood, with gun shot wounds.

Hence, learned State counsel submitted that the first version given by the father of the deceased, i.e. PW1 Ram Pal complainant, that led to the registration of the FIR, needs to be accepted as the correct version, from which obviously he resiled thereafter in court, having been won over by the appellant.

Similarly, she submitted, that the brother of the deceased, i.e. PW2, was also won over and having already been won over, the uncle of the deceased, Inspector Dhan Singh, also stood as a defence witness (DW4).

63. As regards the alleged inability of the deceased to have shot himself, or to have written the suicide note in a steady hand, with 69 mg. percentage alcohol in his body, learned counsel submitted that the deceased could have easily consumed the alcohol after having written the suicide note, but before shooting himself, which would also explain as to why he was not able to first shoot himself with a steady hand, in the heart, and consequently, the bullet went in a downward trajectory, after which he shot himself in the temple, eventually leading to his death.

64. Finally, Ms. Dalal submitted, that as per normal human

behaviour, a father would not lodge a false complaint immediately after the death of his son and hence, the first version of PW1 was obviously the correct version, stating that the appellant had demanded a huge bribe of Rs.10,00,000/- from the deceased, which he could not arrange and as such, being under immense pressure, committed suicide.

Therefore, she submitted that the finding of the learned trial Court with regard to both, the charge under the Prevention of Corruption Act, as also for abetment to suicide, are not erroneous in any manner and as such, the conviction and sentences imposed by that Court, deserve to be upheld.

She therefore, prayed for dismissal of the appeal.

65. In rebuttal, Mr. D.P.Singh, learned counsel for the appellant, other than reiterating the essence of his detailed arguments made earlier, again pointed to the opinion of PW25, i.e. Deepak Mathur, who had conducted the post mortem examination, with regard to the fatal gun shot, i.e. injury No.1 in the post mortem report, which was in the head of the deceased. Mr. Singh reiterated that the said injury not showing any bruising, burning and tattooing around, as per the testimony of this witness, it could not have been a suicidal shot but, in fact, a shot fired by another person to the head of the deceased from a short distance.

66. Having considered the arguments of learned counsel for the parties and having gone through the evidence in detail, the finding of this Court are as given hereinafter.

67. I am in complete agreement with the learned counsel for the respondent-State that normally a father would not lodge a false complaint immediately after the death of his son and as such, a presumption of truth

has to be attached to Ex.PA, which was eventually converted into the FIR registered against the appellant and his co-accused Sanjeev Joshi (since acquitted by the trial Court). However, the natural belief put in the said complaint, is to be weighed against the evidence led by the prosecution, including the complete turn about by the complainant himself, as PW1.

Further, the evidence with regard to the often contradictory testimonies of the prosecution witnesses, does at first raise a doubt; however, as already said, the initial complaint itself, does point to the correctness of its contents. What is to be seen is whether such strong presumption can be sustained to uphold the conviction of the appellant.

68. Coming first to the testimonies of the first two persons who are stated to have reached the spot, i.e. Pinki Yadav, live-in partner of the deceased (PW39), and the Security Guard at the apartments, Ramakant (PW4).

Pinki Yadav stated that she had been told by one Sunder, a friend of the deceased, that he (deceased) was lying in the upper portion of flat No.411, with bleeding oozing out of him. She and Sunder both had rushed down and seen that Dinesh was actually lying in a pool of blood, upon which she raised an alarm, after which many people gathered at the place. Dinesh was stated to be alive, since he had a heart beat. She is stated to have rung up the father of the deceased (PW1), after which Dinesh was removed to the hospital.

In cross-examination, this witness denied having said anything about two persons running away from the spot and having told security guard, Ramakant (PW4) to apprehend the said two persons.

On the other hand, the aforesaid Ramakant specifically

testified that two persons came in a car, refusing to make any entry in the visitors' register, telling him that they would be back within 2 to 3 minutes, as they had to meet Dinesh Yadav.

As per this witness, he heard a sound of two shoots after the aforesaid persons went up in the lift and within 2 to 3 minutes thereafter, they came running downstairs and sped away in the car. He specifically testified that Pinki (PW39) came on to the balcony and shouted to him to catch hold of the two persons and also to help her, upon which he went alongwith two others, electrician Sanjay and a washer man, to find Dinesh Yadav lying partly on the bed and partly on a chair, with blood oozing out from two places.

As per this witness, during cross-examination, he stated that there was no paper on the table when he first went into the office of Dinesh Yadav, nor was there any paper subsequently, even when the police came there.

69. Against this testimony, we have that of ASI Jagdish (PW38), who specifically testified that he had recovered the suicide note when he went into the room, alongwith the other articles, i.e. the revolver, live and used bullets, a Reynolds pen and a pair of spectacles. However, he admitted in cross-examination, that he had not shown the suicide note either in the site plan itself, or in the marginal notes and in fact, it was handed over to him by someone from the crowd.

70. Head Constable Himmat Singh, who had accompanied the aforesaid witness, i.e. ASI Jagdish, to the spot soon after the occurrence, strangely did not mention any suicide note having been taken into possession, though he deposed that a revolver with empty and two live

cartridges, a Reynolds pen and a pair of spectacles were taken into possession, other than a cushion cover smeared with blood and vomit. Strangely, this witness (PW10) was not cross-examined on the issue of the suicide note.

The police proceedings recorded on the complaint, Ex.PA, also refer to the presence of one Constable Mahavir who accompanied ASI Jagdish and HC Himmat Singh (PWs 38 and 10) to the place of occurrence. However, this witness (PW9-Constable Mahavir) neither deposed with regard to anything he saw in the apartment, nor was he cross-questioned on it and his testimony is entirely with regard to his having received a parcel of clothes, viscera etc. from the Medical Officer, at the hospital. Of course, it is entirely possible that this witness did not actually accompany the two other police officials into the room and later went from the parking lot itself, to the hospital.

71. The other two witnesses examined, who allegedly saw the deceased soon after the occurrence, in his flat itself, were PWs11 and 12, Ram Avtar and Rajinder respectively. Though it has not been conclusively said anywhere, however, it seems that these were the two persons who, as alleged, went up to the flat of Dinesh and came down running and sped away in the Wagon-R car within 2/3 minutes.

In their respective testimonies, they both stated that they did not know about the case and upon such statement, they were declared to be hostile on a request made by the Public Prosecutor.

In cross-examination, they both denied their statements, Exs.PO and PQ respectively, shown to be made by them to one of the Investigating Officers, on 04.06.2010, under Section 161 Cr.P.C.

Both these statements are quite similar, though the statement Ex.PQ is more detailed. Both these persons (PWs11 and 12) stated that they had first gone to the flat of the deceased on 25.05.2010 in connection with a land transaction/proposal for a land transaction (alongwith one Laxman, Patwari) and were told by one Sandeep Pandit to come back the next day alongwith a site plan of the land. Consequently, both these persons, as per the aforesaid statements, went to the flat of the deceased again on 26.05.2010 but did not find Sandeep Pandit there. They enquired from a maid servant as to where Dinesh was. She did not reply and upon opening the door of the room of the deceased they found Dinesh lying there with blood oozing through a hole in his chest. Having got scared/perplexed, the statement goes on to read, they both ran downstairs, got into their car and went away. After sometime, they allegedly received a phone call from the brother of the deceased, whom they referred to as 'Mukki', whom they narrated the entire incident to, after which they went back to the place of occurrence. However, in the aforesaid statements, under Section 161 Cr.P.C. also, they denied knowing as to whether the deceased had been killed or had committed suicide.

The aforesaid statements (allegedly made by PWs11 and 12, under Section 161 Cr.P.C., as per the prosecution version), were wholly denied by them as witnesses in Court, even upon the statements being pointed out during cross-examination by the Public Prosecutor.

In short, these witnesses entirely denied knowing anything about the case at all.

72. Thus, of those who reached the spot immediately after the occurrence, i.e. PW 39 Pinki, PW4 the watchman, and Sunder, the

testimonies of PWs39 and 4 are contradictory to each other as regards the presence of 2 other persons who ran away from the spot. PW39, Pinki, testified wholly against PW4s' testimony to that extent as she did not corroborate that she had asked him to apprehend any two persons escaping from the complex after the crime.

Sunder, who Pinki stated had told her about Dinesh lying injured, was never examined, even though his presence at the spot, a little later at least, was corroborated by PW20, Dr.Kulvinder Singh, who deposed in his cross-examination that he never knew Sunder, whose name figured in his (PW20s') report, on whose instructions the scene was reconstructed. This witness also denied knowing whether Sunder was an eye witness to the occurrence but further stated that as per his information, Sunder had reached the scene after the occurrence, though he did not know whether he reached immediately thereafter or two hours thereafter. PW20 also stated, in the context of the revolving chair being in a tilted position and the "wooden spot" (actually wooden support/board) lying dismantled, that the possibility of a struggle could not be ruled out. However, this statement was qualified by the witness, saying that he would not rule out a struggle at the spot, "bereft of version of Sunder".

He further deposed that Sunder had been introduced to him by the SHO though he did not enquire with regard to the "whereabouts of Sunder".

As regards the first two police officials who reached the spot, one of them did not mention the suicide note at all and the other, i.e. ASI Jagdish, first testified to having recovered it alongwith other articles lying in the room and thereafter, in cross-examination, stated that he was actually

handed over the suicide note by someone from the crowd of neighbours and relatives.

73. A perusal of the photographs taken from the scene of crime, shows that on the table in the room, a pair of spectacles, a ball point pen, two sheets of paper (on one of which something is written), and some cigarette/"biri" packets are present. Whether one of the two sheets of paper which has a writing on it, was the suicide note, which it does look like, needs to be seen. Strangely, there is no mention of any cigarettes packets having been recovered from the scene of occurrence.

If the paper that has been written upon, as is visible in the photograph, is the suicide note, which seems to be so because a close up photograph of the suicide note was also photographed, then as to why ASI Jagdish stated that it had been given to him from amongst the crowd, is only either because he was won over and testified falsify to the effect, or that the suicide note was placed on the table later, only in order to take the photograph. The latter, though does not seem probable, however, has to be further seen with the other evidence.

74. Other than those witnesses who reached the spot while Dinesh was still lying there, the first witness for the prosecution is the complainant, Rampal, father of the deceased who, as already seen, though he admitted to having filed the complaint and also stood by his signatures thereupon, as also on the recovery memos Exs.PB and PC, however, completely backtracked from the contents therein, inasmuch as, he stated that the complaint was written at the dictation of a lawyer present at the mortuary of the hospital, since he (the complainant-PW1) was perplexed on the death of his son. He also admitted that 2 or 3 applications were written, before the

one which eventually became the complaint, Ex.PA, was finalized and put in. He wholly denied that his son had ever complained about the appellant or anybody else and even denied having seen the contents of the suicide note, which he stated that he had simply signed on at the back, on the asking of the police. The complainant also stated that he did not know as to whether his son had written the suicide note or not.

In other words, though he was not declared to be hostile, the deceaseds' father, effectively did not support the prosecution story at all, despite having emphatically stated in the complaint that the appellant had specifically told him and his son, that unless they paid him Rs.10 lakhs, he would not "leave his son" even on the asking of the ACP or the Commissioner. The complaint, of course, goes on to say, as already noticed, that the appellants' son remained in great tension thereafter and eventually committed suicide due to the harassment by the appellant.

75. The brother of the deceased, PW2, as also already seen, also did not support the prosecution, inasmuch as, he refused to identify his brothers' hand writing, further stating that he did not know why his brother had committed suicide and he was told about it only by the police. This is despite the fact that this witness had signed on the recovery memo by which the document stated to contain the admitted signatures of the deceased (the application dated 02.04.2009, made to the person incharge of the Police Station, Manesar), was recovered.

Similarly, again as already noticed, the maternal uncle of the deceased, PW3, also did not support the prosecutions' version stating that he had not made the statement under Section 175 Cr.P.C. on the date of occurrence (Ex.PK). The said statement is to the effect that his brother-in-

law (complainant-PW1) had told him (on the date of occurrence) that Dinesh had committed suicide on account of his involvement in an issue regarding land, which was being investigated by the appellant as SHO, DLF Phase-I.

As already noticed, the person who is stated to have first informed the complainant that his son was required by the appellant in a investigation of a case registered at Police Station DLF Phase-I, Gurgaon, i.e. Inspector Dhan Singh, brother of PW1 and uncle of the deceased, in fact, appeared as a defence witness and though he corroborated the version that he had rung up his brother to tell him that the deceased Dinesh was required by the appellant, regarding some allegations against him, the subsequent part of his short testimony is to the effect that PW1 and Dinesh never complained to him that the appellant was harassing them or had raised any demand from them. He had also deposed that he had verified that the appellant had nothing to do with the death of Dinesh.

Thus, obviously, the family members and immediate relatives of the deceased, absolved the appellant of any involvement in the death of Dinesh, as per their testimonies before the trial Court.

76. Coming then to considering the statement of the persons who investigated the occurrence immediately after PWs38 and 10, i.e. ASI Jagdish and HC Himmat Singh reached the spot. The first of these would be PW20, Dr.Kulwinder Singh, the incharge of the 'scene of crime' team, who visited the spot alongwith SI Jagbir Singh and Constable Surender Kumar as part of his team.

Most of his testimony is by way of cross-examination in which he stated that he reached the scene of occurrence at 2:30 PM and was

instructed to prepare his report in terms of what Sunder told him and what the SHO and other police officials also told him. This witness, as already noticed twice, stated that he could not rule out the possibility of a struggle having taken place at the time of occurrence. Nothing of great significance can otherwise be discerned from his testimony. As regards his report (Ex.PW), a perusal thereof shows that the history of the case has been given on the basis of the statement of ASI Jagdish Chand, to the effect that Dinesh Kumar was found lying with a gun shot wound, on a chair in his office and was thereafter taken to the Kalyani Hospital, where he was declared brought dead.

Other than that, this report shows the following 'scene' at the place of occurrence:-

- “A. Blood stains with creamish vomit like stains were observed on the seat of a revolving office chair kept behind an office table in a room in the flat (Photo-1).
- B. One more revolving chair was seen lying tilted near the table (Photo-2).
- C. Left side wooden support of the table was seen dismantled (Photo-2).
- D. A pair of “jooti” was seen lying near the tilted revolving chair (Photo-2).
- E. One revolver black in colour with REVOLVER-32 (7.65mm) 2007, K1013 written on it was found near the revolving chair. The revolver contained two empties and two live cartridges (Photo-3 & 4).
- F. No splashes of blood could be observed in the room.
- G. One suicide note written with black ball point pen was found kept on right side of the table under a folded paper sheet (Photo-5). A-4 paper bundle along with other articles were found kept on a side table.

- H. One black ball point pen with cap, a pair of spectacles, cigarette and bidi bundles, match box were seen lying on the table in order (Photo-6).
- I. The wire mesh of the main door of the flat was found tampered near its inside mid bolt. The cut ends of the iron mesh were not fresh and the tampering appeared to have been made earlier some time back (Photo-7).
- J. The dead body of Dinesh Kumar was seen kept at mortuary, CH Gurgaon. Two gun shot wounds were observed on the body. One wound on chest about 5 cm below the left nipple. While another wound was on skull above the right ear (Photo-8,9,10,11 and 12)."

Thereafter, the reconstruction of the scene of occurrence has been recorded as told to this witness by aforementioned Sunder, to the effect that he (Sunder) saw Dinesh Kumar sitting on a smaller revolving chair (now tilted) with his head on the bigger revolving chair (having blood & vomit stains). He also said that the chair got tilted and the left side support of the table got dismantled while the body was being shifted from the room to the Hospital.

It was also observed that the office table was not properly 'screwed up' and it got completely dismantled on pushing.

Thus, as regards the side support of the table getting dismantled, as per the report of the scene of crime team, that happened while the body was being shifted, seemingly on account of the fact that the table was not properly fixed with screws and got dismantled on pushing it.

The report finally concludes with advice being given to cut the blood stained and vomit stained parts of the revolving chair, getting the suicide note and ball point pen compared with the hand writing of the

deceased. (Obviously 'comparison of the ball point pen' would be with regard to comparison of the ink in the pen with the ink on the suicide note). Further, PW20 recommended sending the revolver and bullets for ballistic examination, taking swabs from the hands of the deceased for a gun powder residue test and for photographing the wounds etc.

77. After the above, coming to the testimonies of four other Investigating Officers (other than ASI Jagdish Chander), who initially investigated the case on the date of occurrence.

The first of these, Inspector Devender Kumar (PW32), initially verified the investigation conducted by the aforesaid ASI Jagdiesh Chander but thereafter himself recorded, as per his testimony, the supplementary statements of the complainant (PW1) on 27.05.2010, that of security guard (PW4), Ramakant on 27-28.05.2010 respectively, after which he recorded the statement of Pinki Yadav on 30.05.2010.

As per this witness, the admitted hand writing of the deceased was produced before him by the deceaseds' brother, Rajesh Yadav (PW2), on 31.05.2010, which he identified also as Mark-A, and took it into possession vide recovery memo, Ex.PH, duly witnessed by the aforesaid Rajesh (which of course Rajesh, as already discussed, stated was a signature taken from him by the police and he even refused to identify the hand writing of his brother).

Inspector Devender Kumar also testified to having received cheques shown to be of the savings account of the deceased, in the Development Credit Bank Ltd., Jharsa, Gurgaon, which also tally with the withdrawal from the said bank, as per the statement of account (Ex.PL/2) of the deceased. However, this witness admitted that he did not verify the

signatures on the cheque produced by PW6 Amit Dangi, the Branch Manager of DCB Bank, though of course, he stated that this omission was not intentional.

At this stage itself, it is important note that PW6, Amit Dangi, also proved the statement of account (Ex.PL/2), other than proving that the cheques dated 18.05.2010, 15.04.2010 and 09.04.2010, were presented with the signatures of deceased Dinesh Kumar Yadav on the obverse and reverse of the said instruments.

78. The next Investigating Officer, DSP Sanjay Ahlwat (PW19), who was entrusted the investigation on 31.08.2010, in his cross-examination stated that during his investigation nothing incriminating came out against the appellant. Thus, this witness actually stood in favour of the appellant.

As regards the role of the two persons who had come in the Wagon-R car, PW32 stated that he had sent a VT message to the Control Room in that regard but admitted that there was actually a VT message from the Control Room to all SHOs to the effect that the occupants of the Wagon-R car had escaped from the spot after shooting someone.

Thereafter, ACP Ravinder Kumar (PW36), admitted that he had made no investigation qua those persons who had come on the spot on the Wagon-R car. However, he also admitted that nothing came out in his investigation that there was any meeting between the deceased and the appellant between 24.05.2010 to 26.05.2010. It is in fact, strange that as an Investigating Officer he stated that he could not determine as to whether any meeting took place between the appellant and the father and uncle of the deceased, i.e. the complainant and Inspector Dhan Singh (DW4)

respectively. In other words, this witness neither investigated the angle of homicide nor properly investigated the angle of suicide.

79. The last Investigating Officer was DSP Crime, Faridabad, Ashok Kumar, who was entrusted the investigation on 19.10.2010 and who recorded the supplementary statement of the complainant on 23.10.2010, and also obtained from him the Arms Licence of the deceased and collected details of mobile numbers of the appellant, the deceased, the complainant and the co-accused of the appellant, Sanjeev Joshi (acquitted by the trial Court). The formal sanction to launch prosecution against the appellant was also obtained by this witness.

Thus, it is on the basis of his recommendation, based on the suicide note and the call details, that the appellant was eventually arraigned as an accused in the report under Section 173 Cr.P.C., leading to him being charged for the offences that he was eventually convicted for. In his cross-examination, PW37 did however state that the other persons named alongwith the deceased, in FIR No.76 of 2010, registered at P.S.DLF, Phase-I, Gurgaon, did not accuse the appellant of any demand for money or mental torture, at the time when they were summoned by the appellant.

The remaining part of his testimony refers to the involvement of the deceased in other FIRs registered against him.

80. Thus, amongst the five Investigating Officers examined as witnesses, two of them, i.e. Sanjay Ahlwat and Ravinder Kumar virtually gave a clean chit to the appellant, whereas ASI Jagdish Chander and Inspector Devender Kumar stood by their investigation but with some contradictory statements by Jagdish Chander as regards the suicide note having been discovered either on the table of the deceased or being handed

over to him from the crowd, as already noticed.

DSP Ashok Kumar, also testified in support of his investigation and as such, it is now to be seen as to whether on the basis of the alleged suicide note and the forensic evidence, and the call details between the deceased, the appellant and the acquitted accused, Sanjeev Joshi, as to whether the death of Dinesh Yadav, was in fact, a suicide or possibly a homicide.

81. Coming first of all to the suicide note itself.

The handwriting expert, Gulshan Rai, Deputy Director, Forensic Science Laboratory, Madhuban (PW29), opined that the standard hand writing shown to him, on the application dated 02.04.2009, as also the one on the suicide note, was written by the same person.

This witness further stated that the tint of the ink on the signatures on the suicide note (Q2 and Q3), as also on the hand writing on the suicide note (Q1), was similar to the tint of the sample writing taken from the ball point pen stated to have been recovered from the place of occurrence.

This is obvious from the testimony of this witness, read with his report Ex.PW29/F.

This witness also stated that the signatures on the cheques bearing Sr.No.684398 dated 18.05.2010, 684394 dated 15.04.2010 and 684393 dated 09.04.2010, i.e. signatures marked as A4 to A12 and the signatures on the application form dated 02.04.2009, Marked A2 and A3, tallied with the signatures on the suicide note, marked as Q2 and Q3.

A bare perusal of the said documents also shows that the name 'Dinesh Yadav', written on the alleged suicide note, and the same name

written on the application dated 02.04.2009, are very similar, as are the signatures on the cheques admittedly from the account of the deceased. Thus, as regards the signatures of the deceased, other than the fact that detailed reasoning, by comparison, has been given in the report of the learned Deputy Director, there otherwise also does not seem to be any doubt on the signatures being of the same person.

82. Now the contentions of learned counsel for the appellant, Mr.D.P.Singh, on two aspects of the suicide note, and the alleged standard writing of the deceased, are to be considered.

Mr. Singh had first contended that the suicide note has been written in a manner so to ensure that the writing fits within the space above the signatures, as the font on the top of the page is much larger than the font at the end of the writing.

This without doubt, is very obvious to the naked eye. However, it is also seen that after the first three lines, the font reduces slightly in size for about three lines and thereafter with a very slight further reduction, generally remains the same in the last lines of the suicide note, i.e. till the end of the note. Thus, it actually does not seem that it is an attempt made to fit in a noting above a signature, because firstly it is a natural progression from a larger to a smaller hand written font and secondly because thereafter, there is the correct amount of space between the last lines of the note, written in Hindi, and the name of the deceased written in English.

83. The next aspect is with regard to the standard writing of the deceased (Ex. Mark-A), eventually not having been admitted to be his standard handwriting, by his brother, PW-2.

First, of course, it needs to be noticed that the standard

handwriting is shown as Mark-A and not as a regularly exhibited document. Why that is so is not understood because the said document was admittedly what was put up even before the handwriting expert (Gulshan Rai, PW-29) as the standard handwriting of the deceased, with which he compared the handwriting on the suicide note and thereafter gave his report, Ex. P-29/F.

84. It needs to be noticed here that the said document, dated 02.04.2009, carries on it the stamp of Police Station Civil Lines, Sector 15-II, Gurgaon, i.e. of the Police Station where the FIR in question, (arising out of the complaint made by PW-1), was registered. Admittedly, it does not carry any stamp or serial number of the police station where the application was made, i.e. of Police Station, Manesar, District Gurgaon. This is to be read with the fact that PW-31, Inspector Nrender Kumar, deposed in his cross-examination on this aspect, that Ex. Mark-A was never given in Police Station, Manesar. Though at the time of his deposition, on 27.09.2012, he is shown to be posted as SHO P.S. Kherki Daula, District Gurgaon and not at Police Station Manesar, however, in the earlier part of his cross-examination, he stated that he was posted at Manesar from February 2009 to October 2010. He also deposed that Register 5-D is kept in the police station to record entries with regard to complaints received by hand in the police station. The said register was admittedly destroyed, even as per the testimony of PW-26, i.e. the Moharrar Head Constable at Police Station Manesar. Hence, obviously, PW-31 was deposing with regard to the said document (Mark-A dated 02.04.2009), without verifying it from any record.

To be seen against the above, is the testimony of PW-32 Inspector Devender Kumar, who specifically testified that the said

document was submitted to him by the brother of the deceased on 31.05.2010, which of course, as already noticed, was denied by PW-2, Rajesh Yadav, stating that his signatures had actually been obtained on a blank paper.

Hence, whether the handwriting on the application dated 02.04.2009 is that of deceased Dinesh Yadav or not is not fully proved, though undoubtedly, the signatures at the bottom of the page, even on that document, i.e. the application dated 02.04.2009, are obviously those of Dinesh Yadav, which is also corroborated from the report and testimony of the handwriting expert, Deputy Director, Gulshan Rai (PW-29).

85. This is, still further, to be considered with the testimony of Shri Gulshan Rai, PW29, to the effect that the note was written with a ball point pen, the tint of the ink of which matched with the ball point pen recovered from the scene of occurrence. In fact, this, in the opinion of this Court, is the most conclusive proof that the suicide note was written by the deceased Dinesh Yadav, read with the fact that his signatures on the said note and the bank cheques proved to have been written by him (Exs. PW-32/1), match each other.

Thus, when the signatures on the cheques and on the suicide note are those of Dinesh Yadav, and the ink on the said signatures in the suicide note is also the same in which the text of the suicide note is written, obviously, they were written by the same pen by the same person.

Suicide is further corroborated by other evidence as would be discussed further ahead, with regard to there being no injury marks at all on his body, other than the two bullets wounds.

Thus, in the opinion of this Court, simply because the standard

handwriting, in the form of application Mark-A, dated 02.04.2009, was not fully proved to be that of the deceased, does not demolish the prosecution case to establish that the suicide note was written by the deceased Dinesh Yadav.

This aspect of the evidence needs to be further considered along with other contentions of learned counsel for the appellant, on the issue of the two gun shots which eventually resulted in the death of Dinesh Yadav.

86. The argument of Mr. D.P.Singh, with regard to the evidence pointing towards homicide rather than suicide, is that the gun powder from the revolver, which admittedly belonged to the deceased, was stated to be on the palm of the deceased, as contended by the learned counsel.

A perusal of the report (Ex.PW23/A) of the Senior Scientific Officer (Ballistics), Dharambir (PW23), shows that the hand swabs, taken during post mortem examination, reveal gun shot discharge residue and also that nitrite was detected on the swabs of the right hand palm, right hand upper and left hand palm. Strangely, however, the post mortem report (Ex.PW25/B) records as follows:-

“9. Swabs from fingers of both hands for gun powder residues.”

Thus, as per the post mortem report, swabs were taken only from the fingers of both the hands and not from the palms. As to how PW23 recorded in his report and testified that gun shot discharge residue was found on the palm of both the hands, is wholly un-understood. In fact, he went on to state, in his cross-examination, that it was possible that the gun shot discharge residue on the palm of the deceased, may have been the

result of a “struggle resistance”.

Similarly, PW25, Dr. Deepak Mathur, who conducted the post mortem examination, also stated that in suicidal shots, the residue of the gun shot would be on the index finger and thumb and if the residue is positive on both the hands, it would suggest that there may have been some struggle at the time of firing.

Strangely, no question was put to him as to why in the post mortem report, there is only a mention of swabs being taken from the fingers and not the palms. Similarly, there is no cross-examination to PW23, as to how he wrote in his report that there was gun shot discharge on the swabs taken from the palms of the hands.

87. As regards the testimony of this witness (Dr. Deepak Mathur), that in his opinion a gun shot residue would only be on the index finger and thumb in the case of suicidal shots, and on the palms in a case of homicidal shots (stated to be based upon the opinion of Modi, Cox and Reddy), it is seen that in Modis' Medical Jurisprudence and Toxicology, 23rd Edition, at page 765, it is written as follows:-

“The skin around the entry wound shows characteristic blackening, scorching and tattooing. In such cases the hand used to steady the weapon at the muzzle may be blackened and scorched and may also be stained with squirting of the blood from the injured arteries.”

Thus, even if it is taken that the writing on the post mortem report that the swabs were taken from the fingers, can be extended to include even the palms, it is obvious that if the user of the gun (revolver in this case) uses his other hand to steady the weapon at the muzzle, the

residue of the gun shot wound can come onto the hands.

Further, even by common sense, it may be said that blackening of the index and thumb in suicidal shots cannot be a universally accepted fact and residue on the remaining part of the hand could also be by reason of the hand having brushed against the muzzle or other parts of the gun that contain gun shot residue.

Hence, simply by showing gun powder residue on the hands, does not by itself indicate only a homicidal shot, ruling out all possibilities of suicide. Consequently, that argument of learned counsel for the appellant is rejected.

88. Coming to the next argument of Mr. Singh, as regards the manner of shooting.

In this regard, it may be noticed here itself, as to what is stated at page 769 of Modis' aforesaid edition, as follows:-

“Suicidal wounds of the chest are usually on the left side, and directed downwards and inwards, unless the person happens to be left-handed. Homicidal wounds of the chest are usually distributed over a wider area and are more horizontal, and most of them may be deadly owing to the vital organs being injured or due to a haemothorax. They may be directed from below upwards which is rarely seen in suicidal wounds.”

Hence, as regards the gun shot wound on the chest of the deceased, the post mortem report shows that it was on the left side of the chest and the bullet took a downward trajectory, piercing the diaphragm and eventually lodging on the right posterior abdominal wall. Therefore, the contention of learned counsel, that a suicidal shot can only be horizontal,

since it is aimed at the heart, is also incorrect, though obviously that may also be so in certain cases, i.e. a bullet may travel in a horizontal line, depending on the angle at which the gun is pointed by the shooter, even in a suicide case.

89. That then brings us to the next contention on behalf of the appellant on this aspect, i.e. that having shot himself once in the chest, then, with the excruciating pain of the bullet, he could not have shot himself again in the temple.

Again, this contention cannot be accepted as a universal truth, as a person bent upon committing suicide would go to any length to do so and may especially be edged on to 'conclude his attempt', knowing he had only injured vital organs in the first attempt, immediately preceding the second attempt.

In the present case, possibly excruciating pain may also have been numbed, in view of the percentage of alcohol shown to be existent in the body, as contained in the report of the Senior Scientific Officer (Chemistry), of the FSL, Madhuban (Ex.PW24/A).

Hence, the testimony of the doctor, to the effect that it was unlikely that a person with such excruciating pain would shoot himself again, was also obviously wholly a misplaced statement.

Another excerpt from Modi (page 766), may be cited in this regard, as follows:-

“Immediate death following a firearm wound is uncommon and even when vital organs are injured, a person may be capable of doing extraordinary things.”

Hence, that contention is also found to be without merit.

90. Coming next to the contention of learned counsel that a person with 69 mg percentage of alcohol in his blood could not be expected to write a suicide note in a straight hand.

In this regard, the contention of learned counsel for the State is equally plausible, that the suicide note may have been written prior to the consumption of alcohol but before the suicide was committed.

Of course, if the deceased had consumed alcohol immediately before shooting himself, the bottle, or at least a glass would have been recovered from the place of occurrence, which has at least not been shown to have been recovered. However, it is equally possible that the suicide note was written earlier, after which the deceased may have consumed alcohol in his bed room etc., before actually coming into the office room, where he shot himself.

However, it has to be stated here that this line of reasoning, though not improbable, is conjectural.

91. Be that so, however, seen in the complete circumstances and evidence, the death of Dinesh Yadav does not point to a homicide, with no sign or mark of struggle, whatsoever, on the body of the deceased, who even from the exhibited photographs of his body, does not appear to be a man who was so weak as to be not able to put up any resistance at all.

Other than that, the fact that the table support is shown to have been broken while lifting the body, obviously means that it was not due to any struggle, as conjectured by PW-20, especially, to repeat, in the absence of any mark of struggle, on the body.

In fact, an excerpt from the report (Ex. PW), made by PW20-Dr. Kulvinder Singh, needs to be referred to in this regard. It reads

thus:- “Sh. Sunder (told) S/o Bhure Lal that he saw Dinesh Kumar sitting on smaller revolving chair (now tilted) with his head on the bigger revolving chair (having blood & vomit stains). He also told that the chair got tilted and the left side support of the table got dismantled while the body was being shifted from the room to the Hospital. It was also observed that the office table was not properly screwed up and it got completely dismantled on pushing.”

Thus, as per the said Sunder, who though never examined, the furniture was in some disarray because of the shifting of the deceased, i.e. lifting him from the chairs that he was on, to take him the hospital. That possibility is very obvious in view of the fact that the deceased, as per the photograph taken of his body, is seemingly a heavy person, though the post mortem report states that he was of average build.

No doubt, Dr. Kulwinder Singh, stated in his cross-examination that bereft of Sunders' instructions, he himself would not rule out the possibility of a struggle. However, I see no reason to agree with the opinion of this witness (PW-20), seen from the fact that the suicide note is proved to be written by the deceased and further there was not a single mark of struggle, not even a bruise on his body, other than the gun shots wounds.

92. Other than the above, it is to be seen that the appellant was a police officer and as a matter of fact, two of the Investigating Officers virtually testified in his favour, as already noticed. Hence, as to why none of the investigating officers even pointed towards a homicide, obviously is because of the reason that despite (at places deliberately) shoddy investigation, the angle of homicide was never accepted, though very obviously PWs 10 and 11 were investigated as the two persons who are

stated to have come in a Wagon-R car to the apartment on the date of the occurrence.

Hence, with no animosity shown, of any of the investigating officers, towards the appellant, it is very obvious that had it been a case of homicide rather than suicide, as a fellow police officer he would not have been wrongly implicated.

No doubt, learned counsel had also pointed to the fact that the deceased was living with PW-29, Pinki Yadav, who was married to one Naresh Yadav and it could either be on that count, or because of his land dealings, that he had actually been shot.

If that were so, I do not see why that angle would not have been in fact pursued by the police, rather than eventually implicating a fellow police officer. No scandal, involving any influential people, has even been hinted at, at any time, so as to even to begin to presume, that the whole investigation was a cover up for a homicide.

Consequently, that contention of learned counsel for the appellant, is also rejected.

93. However, before finally holding that the death of Dinesh Yadav was a suicide and not a homicide, in the light of evidence discussed hereinabove, the complete turnabout by the deceaseds' family needs to be discussed.

The complaint (Ex. PA), undoubtedly having been made by PW1, as admitted by him, stating that his son had committed suicide on account of the mental torture he was going through, because of the demand of Rs.10 lakhs as bribe by the appellant, was however wholly diluted by him, the father of the deceased, while testifying in Court. The same is also

true of his other son, i.e. the brother of the deceased (PW-2) and the maternal uncle of the deceased, PW3. Yet, seen with the evidence discussed, there would be no reason to disbelieve the complaint initially filed, because in the circumstances, a father would have no reason to implicate somebody falsely, immediately upon the death of his son. The probability of such a false allegation would be very low, going by normal human behaviour.

In the opinion of this Court, that actually points to the witnesses having been won over, even though most of these witnesses were not allowed to be declared hostile by the trial Court (though cross questioning on limited points was permitted to the Public Prosecutor).

Thus, in the light of the evidence discussed, this Court remains convinced that the version given in the original complaint, by the father of the deceased, was actually the correct version and seen with the suicide note, there is no doubt that the deceased committed suicide.

94. Even having held as above, it still needs to be noticed, for the record, that as per PW-37, phone numbers 99999-81827 and 99118-26052 belonged to appellant Rishi Pal, phone number 93132-64687 belonged to deceased Dinesh Yadav, phone number 99104-94417 belonged to the complainant, Ram Pal and phone number 98737-10014 belonged to the acquitted co-accused of the appellant, Sanjeev Joshi.

A perusal of the phone call records, Ex. PW-28/A, (proved by PW-28, Rajeev Sharda, Alternate Nodal Officer, Reliance Communication Ltd. to be the call details of the deceased from 24.05.2010 to 26.05.2010), shows that he received one phone call from (the acquitted) co-accused, Sanjeev Joshi, on 24.05.2010 at 9:55 a.m. and then again at about 2:00 p.m.,

2:43 p.m., 5:24 p.m. and 5:45 p.m., immediately after which the deceased made a call to his father (PW-1) at 5:48 p.m. On 25.05.2010 also, the deceased received a phone call from the aforesaid Sanjeev Joshi at 10:05 a.m. and then again at 6:57 p.m., 07:07 p.m. and 7:16 p.m., after which he received a phone call from his father at 7:47 p.m. Thereafter, on the date of the occurrence, i.e. 26.05.2010, the deceased received a phone call from Sanjeev Joshi at 12:30 p.m., immediately after which he rung up his father at 12:32 p.m.

The call details records, stated to be of the phone number of Sanjeev Joshi (Ex. DY), (though in the name of one Rajeev Joshi), have also been seen by this Court. A perusal thereof shows that other than the calls made from that mobile phone number (98737-10014) to the deceased, there is an incoming call from the number of the appellant, i.e. 99118-26052, at 3:28 p.m. on 24.05.2010, after which there is an outgoing call to the number of the appellant at 11:10 a.m., then at 11:12 a.m. and 12:35 p.m. on 26.05.2010. Immediately before these calls, Sanjeev Joshi (or the user of phone number 98737-10014) made calls to the deceased at 11:11 a.m. and 12:30 p.m.

From the above, an inference definitely is possible that Sanjeev Joshi was acting as a mediator between the appellant and the deceased. However, what needs further notice is that there is a continuation of incoming and outgoing calls from the number of the deceased, as per Ex. PW-28/A, even after 12:30 p.m., starting from 12:32 p.m. onwards, right through till 11:20 p.m. at night.

Though possibly, his relatives may have started using the deceaseds' phone when they reached the scene of occurrence, however, it is

seen that phone calls continued (incoming and outgoing, in fact with more outgoing calls), right from 12:32 p.m, within a span of two to three minutes each, right up-till 11:20 p.m. (At some places of course, the break between phone calls is more than two to three minutes).

It is also to be noticed here that the telephone of the deceased is not shown to be one of the recovered items from the scene of occurrence.

Hence, even if nothing hinges on these phone calls, which is possibly the reason for the acquittal of Sanjeev Joshi, that does not detract from the fact, in the light of evidence discussed, that the deceased committed suicide.

95. Coming then to the next part of the arguments of Mr.D.P.Singh, to the effect that even if the deceased committed suicide, it cannot be attributed to the appellant, especially as the deceased was proved to have been undergoing treatment for depression.

The contention of the learned counsel stands established, that the deceased was named as an accused in at least three FIRs, two at Gurgaon and one at Delhi, as proved by PWs19, 27 and 37, as also DWs1 and 2. Hence, Mr. Singh submitted that with so many criminal cases registered against him, with his personal life also in disarray, he living away from his wife and children, and with another woman, and the deceased being depressive in any case, and further, having consumed a large amount of alcohol against medical advice, the attribution of suicide to any demand made for money made by the appellant, cannot be believed.

Thus, what is to be seen is as to whether, having accepted the complaint to have been truly made, as per the facts given therein by the complainant, and having held that the deceased actually committed suicide,

does that prove the charge of abetment to suicide, under Section 306 of the IPC, against the appellant?

Though there is no doubt that eventually it was the demand for Rs. 10,00,000/- made by the appellant, which the deceased was not able to fulfill, that finally drove him to take the extreme step; however, the fact remains that the deceased was proved to be a person undergoing treatment for depression and was also facing criminal cases, including FIR No. 76 of 2010 (in connection with which the demand for Rs. 10,00,000/- was stated to have been made from him).

Thus, whether the appellant can be held guilty, for the deceased to have taken the decision to end his life, when he was admittedly a depressive person facing 3 or more criminal proceedings and his personal life was also not smooth, is something which is in doubt, with each individual reacting to adverse circumstances in a different manner. In this regard, though that was a wholly different case, where it was alleged that the driver of the accused had been driven to suicide, because of the accused, however, the judgment of the Supreme Court in **Madan Mohan vs. State of Gujarat** (2010) 8 SCC 628, can be referred to, wherein it was held that:-

“In order to bring out an offence under Section 306, IPC specific abetment as contemplated by Section 107, IPC on the part of the accused with an intention to bring out the suicide of the concerned person as a result of that abetment is required. The intention of the accused to aid or to instigate or to abet the deceased to commit suicide is a must for this particular offence under Section 306, IPC. We are of the clear opinion that there is no question of there being any material for offence under Section 306 IPC either in the FIR or in the so-called suicide note.”

The issue was again discussed by their Lordships in **Parveen**

Pradhan vs. **State of Uttaranchal** (2012) 9 SCC 734. That was a case where the accused had challenged the charge-sheet prepared by the police, on the conclusion of investigation, arraigning him as such therein, for the commission of an offence punishable under Section 306 IPC.

After considering various judgments, including Madan Mohans' case (supra), their Lordships held as follows:-

“10. xxx xxx xxx xxx

A plain and simple reading of this suicide note makes it crystal clear that the appellant had not just humiliated and insulted the deceased on one occasion. In fact, it is evident that the appellant perpetually humiliated, exploited and de-moralised the deceased, which hurt his self-respect tremendously. The words used are, to the effect that the appellant always hurt the self-respect of the deceased and he was always scolding him. The appellant always made attempts to force him to resign.

11. The statements recorded by the police under [Section 161](#) Cr.PC., particularly, one made by Smt. Kavita Singh, widow of the deceased and also those of various other family members, corroborate the version of events, as given in his suicide note. Therefore, the question that arises is whether the court would be justified in quashing the chargesheet filed against the accused, in the instant case.

12. In [Swamy Prahaladdas v. State of M.P. & Anr.](#), (1995) Supp (3) SCC 438, a similar question arose before this Court wherein one Sushila Bai, a married woman allegedly had two paramours. There was sexual jealousy between the two. Sushila had managed to completely bewitch one of them. In one fine morning, while Sushila Bai was having her morning tea with both her paramours, they began to quarrel. During the course

of such quarrelling, one of them made a remark asking the other “to go and die”. The other person to whom such remark was made, went home very dejected and thereafter, committed suicide. This Court held as under:

“3.....In the first place, it is difficult in the facts and circumstances, to come to even a prima facie view that what was uttered by the appellant was enough to instigate the deceased to commit suicide. Those words are casual in nature which are often employed in the heat of the moment between quarrelling people. Nothing serious is expected to follow thereafter. The said act does not reflect the requisite mens rea on the assumption that these words would be carried out in all events. Besides, the deceased had plenty of time to weigh the pros and cons of the act by which he ultimately ended his life. It cannot be said that the suicide by the deceased was the direct result of the words uttered by the appellant.”

13.In Sanju @ Sanjay Singh Sengar v. State of M.P., AIR 2002 SC 1998, a quarrel had taken place between the accused and the deceased during which, the accused asked the deceased “to go and die”. A chargesheet was filed against the accused under [Section 306 read with Section 107 IPC](#) when the said person actually committed suicide. This Court dealt with the issue elaborately, taking into consideration the fact that the accused had also specifically been named in the suicide note left behind by the deceased, and held that merely asking a person “to go and die” does not in itself amount to instigation and also does not reflect mens rea, which is a necessary concomitant of instigation. The deceased was anyway in great distress and depression. The other evidence on record showed him to be a frustrated man who was in the habit of drinking. Thus, considering the said circumstances, this Court quashed the proceedings against the accused, holding that ingredients of abetment were not fulfilled therein.

14. *In Madan Mohan Singh v. State of Gujarat & Anr.*, (2010) 8 SCC 628, this Court re-examined this question, in a similar case, involving [Sections 306/107 IPC](#), wherein the deceased left a suicide note stating that the accused was solely responsible for his death. The deceased in this case, was a driver in the Microwave Project Department. He had undergone a bypass surgery for his heart, just before the occurrence of such incident and his doctor had advised him against performing any stressful duties. The accused was a superior officer to the deceased. When the deceased failed to comply with the orders of the accused, the accused became very angry and threatened to suspend the deceased, rebuking him very harshly for not listening to him. The accused also asked the deceased how he still found the will to live, despite being insulted so. The driver after all this, committed suicide. This Court found that such incident was a one time occurrence. For the purpose of bringing home any charge, vis-à-vis [Section 306/107 IPC](#) against the accused, this Court stated that there must be allegations to the effect that the accused had either instigated the deceased in some way, to commit suicide or had engaged with some other persons in a conspiracy to do so, or that the accused had in some way aided any act or illegal omission to cause the said suicide. In the said case, this court, after assessing the material on record, found that the deceased was suffering from mental imbalance which caused depression. The accused had never intended for the deceased employed under him to commit suicide. This court observed that if the making of observations by a superior officer, regarding the work of his subordinate, is termed as abetment to suicide, it would become almost impossible, for superior officers to discharge their duties as senior employees.

15. *In Chitresh Kumar Chopra v. State (Government of NCT of Delhi)*, AIR 2010 SC 1446, this

Court while dealing with the term ‘instigation’ held:

“16.Instigation is to goad, urge forward, provoke, incite or encourage to do “an act”. To satisfy the requirement of “instigation”, though it is not necessary that actual words must be used to that effect or what constitutes “instigation” must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an “instigation” may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

17. Thus, to constitute ‘instigation’, a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by “goad” or ‘urging forward’. The dictionary meaning of the word “goad” is “a thing that stimulates someone into action; provoke to action or reaction.....to keep irritating or annoying somebody until he reacts.”

16. This Court in [Ramesh Kumar v. State of Chhattisgarh](#), AIR 2001 SC 3837, while dealing with a similar situation observed that what constitutes ‘instigation’ must necessarily and specifically be suggestive of the consequences. A reasonable certainty to incite the consequences must be capable of being spelt out. More so, a continued course of conduct is to create such circumstances that the deceased was left with no other option but to commit suicide.

17. The offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is done by the person who has abetted. The abetment may be by instigation, conspiracy or intentional aid as provided under [Section 107 IPC](#). However, the words uttered in a fit of anger or omission

without any intention cannot be termed as instigation. (Vide: [State of Punjab v. Iqbal Singh](#), AIR 1991 SC 1532; [Surender v. State of Hayana](#), (2006) 12 SCC 375; [Kishori Lal v. State of M.P.](#), AIR 2007 SC 2457; and [Sonti Rama Krishna v. Sonti Shanti Sree](#), AIR 2009 SC 923.)

18. *In fact, from the above discussion it is apparent that instigation has to be gathered from the circumstances of a particular case. No straight-jacket formula can be laid down to find out as to whether in a particular case there has been instigation which force the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide. More so, while dealing with an application for quashing of the proceedings, a court cannot form a firm opinion, rather a tentative view that would evoke the presumption referred to under [Section 228 Cr.P.C.](#)*

19. *Thus, the case is required to be considered in the light of aforesaid settled legal propositions. In the instant case, alleged harassment had not been a casual feature, rather remained a matter of persistent harassment. It is not a case of a driver; or a man having an illicit relationship with a married woman, knowing that she also had another paramour; and therefore, cannot be compared to the situation of the deceased in the instant case, who was a qualified graduate engineer and still suffered persistent harassment and humiliation and additionally, also had to endure continuous illegal demands made by the appellant, upon non-fulfillment of which, he would be mercilessly harassed by the appellant for a prolonged period of time. He had also been forced to work continuously for a long durations in the factory, vis-*

à-vis other employees which often even entered to 16-17 hours at a stretch. Such harassment, coupled with the utterance of words to the effect, that, “had there been any other person in his place, he would have certainly committed suicide” is what makes the present case distinct from the aforementioned cases considering the facts and circumstances of the present case, we do not think it is a case which requires any interference by this court as regards the impugned judgment and order of the High Court. The appeal is, therefore, dismissed accordingly.

20. Before parting with the case, we would clarify that none of the observations made hereinabove would have adverse effect on the rights of the appellant in any of the proceedings during trial as such observations have been made only and only to decide this case.”

96. In the present case, of course, the appellant cannot be held guilty of having instigated the deceased to commit suicide, if one were to look at the literal meaning of the word. As such, looked at from that angle, the appellant cannot be held guilty of any abetment. However, seeing the complaint filed by PW-1 (Ex. PA) and the suicide note itself, abetment could be inferred from what has been stated in **Chitresh Kumar Chopras'** case, referred to in the aforesaid judgment (refer to Para 15 of Pradhan's judgment).

The question therefore is, whether the definition of instigation, as given in **Chitresh Kumar Chopras'** case, can be said to apply to the case in hand. Most definitely, the conduct of the appellant was such, which created pressure on the deceased. However, in **Chitresh Kumar Chopras'** case (supra), it was held as follows:-

“Where the accused had, by his acts or

omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an 'instigation' may be said to be instigation."

In the opinion of this Court, the appellant actually did create such circumstances by making a huge demand for a bribe, which the deceased could not fulfil. However, whether that was the sole reason for his having commit suicide, or it was also a combination of the other factors that there were at least three other criminal case also filed against him, plus his disarrayed family life that led to his taking the extreme step, is a moot question.

Hence, the above being accepted facts, seen with the fact that the deceased was also proved to have been undergoing treatment for depression already, would, in the opinion of this Court, entitle the appellant to benefit of doubt, as regards the charge of abetment to suicide.

He is, consequently, granted that benefit.

97. Now coming to the final question of whether, despite this Court having acquitted the appellant of the charge framed against him under Section 306 IPC, he is still guilty of having committed the offence punishable under Section 7 of the Prevention of Corruption Act, 1988.

In that regard, I have no doubt that the prosecution has fully proved its case, as is borne out from the evidence already discussed in detail, pertaining to the correctness of the complaint made by the father of the deceased, leading to registration of the FIR, despite the complainant having virtually turned hostile, seen together with the suicide note written by the deceased.

To repeat, despite evidence having proved that the note was indeed written by the deceased, the appellant has been acquitted of the charge of abetment to suicide, giving him the benefit of doubt, because the deceased was admittedly undergoing treatment for depression and had also other criminal cases registered against him, all of which may have been led to his taking his own life and not just the single factor of the demand for bribe by the appellant.

However, that does not take away the truth of what has been proved by way of the suicide note as also the complaint made by PW-1, to the effect that a sum of Rs. 10,00,000/- was demanded by the appellant from the deceased, which eventually at least contributed towards his having committed suicide. In other words, the demand for bribe by the appellant from the accused has been fully established as per the evidence led, in the opinion of this Court, and therefore, his conviction for the commission of an offence under Section 7 of the Act of 1988, does not require to be interfered with.

Though Section 7 of the said Act does not need to be reproduced in extenso, however, the relevant part thereof reads as under:-

“7. Public servant taking gratification other than legal remuneration in respect of an official act.--- Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of

section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.”

Thus, it having been proved by the suicide note written by the deceased, corroborated by the complaint immediately filed after the death of the deceased by his father, that the appellant had demanded illegal gratification of Rs. 10,00,000/- from the deceased and his father, for the purpose of forbearing to implicate the deceased in the complaint lodged against him with the police station of which the appellant was the SHO, brings the act of the appellant within the ambit of Section 7 of the Act of 1988.

He is, therefore, guilty of having committed an offence under Section 7 of the said Act and therefore, his conviction for the charge framed against him by the trial Court, for an offence punishable under Section 7 of the Prevention of Corruption Act, 1988 deserves to be upheld.

98. Hence, in conclusion, for the reasons given hereinabove, this appeal is partly allowed. The appellant is given the benefit of doubt and acquitted of the charge framed against him under Section 306 IPC. The judgment of the learned trial Court and order of sentence pertaining to that charge, are set aside. However, the conviction of the appellant under Section 7 of the Prevention of Corruption Act, 1988, is upheld.

99. Coming to the quantum of sentence for that offence, though I see no reason to reduce the sentence of two years awarded by the learned trial Court, however, learned counsel for the appellant had pointed to the order of sentence of the learned trial Court itself, to submit that the appellant was found to be a cancer patient. As per counsel, he is still

suffering from the disease.

That, in the opinion of this Court, may be a mitigating factor as regards the sentence imposed upon the appellant. Consequently, for the commission of an offence punishable under Section 7 of the Prevention of Corruption Act, 1988, the sentence of the appellant is reduced from two years to one and half years rigorous imprisonment. However, the fine to be paid by him for that offence, is increased from Rs. 5,000/- to Rs. 50,000/-, in default of payment of which, he shall undergo further imprisonment for a period of six months.

11.05.2016
dinesh

(AMOL RATTAN SINGH)
JUDGE