

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

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

+ **CRIMINAL APPEAL No. 655/2013**

CHANDRAKANT JHA Appellant
Through: Mr. M. L. Yadav, Advocate.

Versus

STATE (GOVT. OF NCT) OF DELHI Respondent
Through: Mr. Varun Goswami, APP.

DEATH REFERENCE No.3/2013

STATE Appellant
Through: Mr. Varun Goswami, APP.

Versus

CHANDRAKANT JHA Respondent
Through: Mr. M. L. Yadav, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.K.GAUBA

SANJIV KHANNA, J.

1. This appeal by Chandrakant Jha and death reference by the State arise from the judgment dated 24th January, 2013 and the order on sentence dated 5th February, 2013 passed in the charge-sheet filed in FIR No.243/2007 dated 25th April 2007, Police Station Hari Nagar, for murder of one Upender. By

the order of sentence dated 5th February, 2013, the appellant Chandrakant Jha has been awarded death sentence for the offence under Section 302 of the Indian Penal Code, 1860 (IPC for short), fine of Rs.10,000/- , and in case of default of payment of fine, to undergo simple imprisonment for one month. Appellant has been also convicted under Section 201 IPC and sentenced to rigorous imprisonment for seven years and fine of Rs.10,000/- and in default of payment of fine, to further undergo simple imprisonment for one month.

2. We begin with incontrovertible facts proved beyond doubt on the question of recovery of a mutilated headless corpse from a carton box near UTI ATM booth near gate No.3, Central Jail, Tihar at about 8 a.m. on 25th April, 2007. The said factum is testified by the ATM guard Akhilesh Singh Yadav (PW-6), who was the first person to see the carton box and had informed another guard Sumit Kumar (PW-8), who in turn had conveyed the information to police control room at about 8:34 a.m. DD No.15A (Ex.PW-18/C) was recorded and marked to SI Manohar Lal (PW46) and Constable Ajeet (PW-23), who proceeded to the spot. Crime Team and photographer were called and on opening the carton box, a headless torso of a male, aged about 28-30 years, who's both hands, legs and genitalia were chopped off, was discovered. The deceased was wearing half sleeves vest and a grey colour underwear. The dead body was wrapped in a white shawl. FIR, Ex.PW-18/A, under Section 302/201 IPC was registered and the dead body and other incriminating materials found at the spot were seized. The body was sent to the DDU mortuary for being preserved.

3. At about 7.15 a.m. on the same day i.e. 25th April, 2007, Azad Singh (PW-5), a priest had spotted a bag containing a severed leg on the gate of Baba Ramdev Temple at Haiderpur. The bag was also seen by master Devender (PW4). They have deposed, having thrown the said bag across the canal. At about 8.25 a.m., Police Control Room was informed regarding the severed leg lying near AU Block jhuggies, pursuant to which, information was communicated to Police Post Pitampura at about 8.35 a.m. vide DD No.8 (Ex.PW-17/A). Thereto, ASI Naresh Kumar (PW-17) had proceeded to AU Block jhuggies near canal bridge, Haiderpur. He seized one left leg of an unknown person, which had been chopped and wrapped in a polythene bag. Mobile Crime Team was called and photographs of the chopped leg, Ex.PW-17/G-1 and G-2, were taken. The leg was deposited in the mortuary of BJRM Hospital.
4. Mohd. Yasin Malik (PW-11), a resident of village Sallalpur, District Bijnaur, U.P., who had a fruit and a sugarcane juice stall (rehri) at Lal Bagh Subzi Mandi, Loni at about 10 A.M. on 25th April, 2007 was informed that two unclaimed parcels were lying near his stall. On inspection, PW-11 found that the said cartons had a human hand and genitalia. A police complaint with this information was lodged at Police Station Loni vide DD No. 19 (Exhibit PW-40/A). On 8th September, 2007, the Investigating Officer of Police Station Hari Nagar, Delhi had made inquiries from PW-11 and the site plan marked Exhibit PW-11/A was prepared.
5. Head Constable Vinod (PW-25) in his affidavit has affirmed that on 25th April, 2007, human body parts were recovered in the area of Police Station Loni and post-mortem was conducted at Hindon River Mortuary vide post-

mortem No. 548/2007 dated 26th April, 2007. These human body parts were preserved in a jar and deposited in the malkhana of Police Station Loni on 20th May, 2007 (Exhibit PW-25/A). On 10th July, 2007, the said jar with two slips of the doctor pasted thereon were handed over to SI Sharat Kohli (PW-50) in FIR No. 243/2007, Police Station Hari Nagar. On 8th September, 2007, he had handed over photocopy of the extract of the malkhana register of Police Station Loni containing the relevant entries. Constable Jai Singh (PW-40) has deposed that on 25th April, 2007, Mohd. Yasin Malik had submitted a written complaint in Hindi stating that some unknown person had left two unclaimed boxes containing a chopped hand and private parts of a person. PW-40 had accordingly recorded the said information vide DD No. 19, Police Station Loni at about 11 A.M., marked Exhibit PW-40/A. Similar statement is made by SI Sarvesh Yadav (PW-41), the then Incharge Police Post Lalbagh, Police Station Loni, district Ghaziabad, U.P. On 8th September, 2007, PW-41 had handed over the papers including the post-mortem report No. 548/2007 (Ex. PW-56/A) and enclosed original documents, etc. vide Exhibit PW-41/A to IO Sukesh Singh (PW-58), Police Station Hari Nagar, Delhi.

6. Inquest proceedings were conducted by SI Krishan Baldev (PW-57). Dr. P.K. Singh (PW-56), Medical Officer, District Hospital Ghaziabad vide the post mortem report in respect of the left arm, penis and scrotum of an unknown person, marked Ex. PW- 56/A, opined the time since death was 2 days, indicative of the fact that the maim was committed in the intervening night between 24th and 25th April, 2007.

7. Inspector Hoshiyar Singh (PW-55), the investigation officer has accepted in his deposition that on 25th April, 2007, he had learnt regarding recovery of a chopped leg near Haiderpur Canal within the jurisdiction of Police Station Shalimar Bagh. Inspector Hoshiyar Singh (PW-55) in his cross-examination has also accepted that on 29th April, 2007, he had received information that one hand and private parts of a male had been found in the area within the jurisdiction of Police Station Loni, District Ghaziabad, U.P. Significantly, Chandrakant Jha was arrested on 20th May, 2007 at the instance of a secret informer from a street near Shiv Mandir Wali Gali, Alipur. The recoveries at Haiderpur and Loni being prior to the arrest of Chandrakant Jha cannot be attributed to Chandrakant Jha, for the said factum was already in knowledge of Inspector Hoshiyar Singh (PW-55) of the police station Hari Nagar.
8. Inspector Sunder Singh (PW-53), ASI Virender Singh (PW-43), Inspector Dalip Kaushik (PW-44) and SI Narender Kumar (PW-45) in seriatim have testified about the arrest of Chandrakant Jha on 20th May, 2007 at about 3 P.M., vide arrest memo Exhibit PW-43/A in FIR No. 609/2006, Police Station Hari Nagar. On personal search, a paper with names and telephone numbers written thereon and a mobile phone of Samsung make with Tata-Indicom SIM was recovered. This was recorded in the personal search memo Exhibit PW-43/B. The mobile telephone instrument and SIM was identified and marked Exhibit PW-53/2 and Exhibit PW-53/1, respectively. The paper with handwritten telephone numbers was marked Exhibit PW-53/E. Chandrakant Jha had also made a disclosure statement marked Exhibit PW-43/C.

9. The disclosure statement, Ex.PW43/C, is common to FIR No. 243/07 as well as FIR No. 609/2006 dated 20th October, 2006 and FIR No. 279/2007 dated 18th May, 2007 both recorded at the Police Station Hari Nagar. As per police, Chandrakant Jha had identified the first victim as one Anil Mandal @ Amit, whose headless torso was found outside the Tihar Jail on 20th October, 2006. Chandrakant Jha had identified the victim in the present case as Upender who had a relative named Pankaj. He had revealed that he was using rented accommodation at Haiderpur. The disclosure statement, Ex.PW43/C, had revealed that Chandrakant Jha was owner of a scooter engine fitted rickshaw, which was seized vide memo Ex. PW-44/A.
10. The aforesaid disclosure statement, Exhibit PW-43/C; the paper with telephone numbers and names Exhibit, PW-53/E; and the aforesaid telephone number and the SIM card marked Exhibit PW-53/2 and Exhibit PW-53/1; are of relevance for they gave the leads that solved the murder mystery and identified the victim and consequently discerningly implicate and connect the Chandrakant Jha with the crime in question. We elucidate and would allude to this evidence in detail. At first we would examine the legal position on relevance and admissibility of this evidence.
11. Section 162 Cr.P.C. excludes a statement made to a police officer but would not exclude incriminatory conduct on an accused decrypted and discerned. Section 162 bars the prosecution from relying on the statement of an accused, and not evidence relating to accusing conduct, before, at the time of occurrence and thereafter, divulged and disseminated by the accused when confronted or questioned by the police officers. Section 8 of the Evidence Act, reads;-

“Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to a fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.—The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements, but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.”

The said provision states that conduct of a party, both antecedent and subsequent in reference to a proceeding or reference to any issue or relevant fact is relevant. Thus, where inculpatory information or other clues are revealed by the accused, evidence of the Investigating Officer to this effect would be admissible under section 8 of the Evidence Act, when the said fact is corroborated by a third person for the facts testified by the public witness would relate to the conduct of the accused. Information given by an accused that provides leads to the Investigating Officer that unravel facts relating to the accused's conduct, which were till then unknown to the Investigating Officer and which could not have been known, but for such information coming from the accused when sufficiently proved and corroborated by a

public witness would fall under Section 8. This evidence can be relied to prove the accused's complicity. Evidence of conduct when led would carry credibility and weight depending on the facts including nature of confirmation and back ground facts, as is the case of Section 27 of the Evidence Act. Probative value and weight are matters of assessment dependent upon the factual matrix of each case.

12. Sarkar on Law of Evidence, 16th Edition, 2007 at page 228, has explained the distinction between Sections 8 and 27 of the Evidence Act by way of an illustration in the following manner; where an accused takes the investigating officer and the panchas to a dealer from where he had purchased the weapon, this evidence would be inadmissible under section 27, but this evidence when corroborated by the dealer, the conduct of the accused in taking the police to the dealer is admissible under Section 8 of the Evidence Act. We have in our aforesaid narration excluded the entire disclosure statement except the portion which we feel would be admissible under Section 27 or conduct which would be admissible under Section 8 of the Evidence Act. The legal position regarding admissibility with the reference to the two Sections of the Evidence Act has been examined by us in the decision in Criminal Appeal No. 216/2015 and Death Reference No. 2/2013 arising out of charge sheet filed in FIR No. 609/2006 relating to murder of Anil Mandal @ Amit. We would like to reproduce the legal position as summarised by us in the said judgment pronounced today, which reads:-

“44. Section 27 of the Evidence Act has been a subject matter of interpretation in several cases, albeit the judgment of the Privy

Council in *Pulukuri Kotayya Vs. King Empror* AIR 1947 PC 67 is still regarded as locus classicus. The decision holds that a “fact discovered” is not equivalent of the physical object recovered/produced, and that the fact discovered embraces the place from which the object was produced and the knowledge of the accused as to this fact. Information given by the accused must relate distinctly to that fact. Admissibility would obviously not include in its ambit, a fact already known. In *Mohd. Inayatullah Vs. State of Maharashtra*, 1976 (1) SCC 828, it was observed:-

“11. Although the interpretation and scope of Section 27 has been the subject of several authoritative pronouncements, its application to concrete cases is not always free from difficulty. It will therefore be worthwhile at the outset, to have a short and swift glance at the section and be reminded of its requirements. The section says:

“27. How much of information received from accused may be proved. --

Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered may be proved.’

12. The expression “provided that” together with the phrase “whether it amounts to a confession or not” show that the section is in the nature of an exception to the preceding provisions particularly Sections 25 and 26. It is not necessary in this case to consider if this section qualifies, to any extent, Section 24, also. It will be seen that the first condition necessary for bringing this section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only “so much of the information” as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word “distinctly” means “directly”, “indubitably”, “strictly”, “unmistakably”. The word has been advisedly used to limit

and define the scope of the provable information. The phrase “distinctly relates to the fact thereby discovered” is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered.

13. At one time it was held that the expression “fact discovered” in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact (*see Sukhan v. Crown*⁵; *Rex v. Ganee*). Now it is fairly settled that the expression “fact discovered” includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this (*see Palukuri Kotayya v. Emperor*; *Udai Bhan v. State of Uttar Pradesh*).”

45. In *Vasanta Sampat Dupare Vs. State of Maharashtra* (2015) 1 SCC 253 the said provision stands exhaustively examined and it was held that recovery of the dead body of the deceased at the instance of the accused would be a fact within the special knowledge of the accused, and therefore, the said recovery including the recovery of the clothes in the said case, were admissible and are relevant evidences as per section 27 of the Evidence Act. The aforesaid decision also refers to Section 8 of the Evidence Act and quotes paragraph 8 from *Prakash Chand Vs. State (Delhi Administration)*, (1979) 3 SCC 90, which reads:-

“8... ...There is a clear distinction between the conduct of a person against whom an offence is alleged, which is admissible under Section 8 of the Evidence Act, if such conduct is influenced by any fact in issue or relevant fact and the statement made to a Police Officer in the course of an investigation which

is hit by Section 162 of the Criminal Procedure Code. What is excluded by Section 162, Criminal Procedure Code is the statement made to a Police Officer in the course of investigation and not the evidence relating to the conduct of an accused person (not amounting to a statement) when confronted or questioned by a Police Officer during the course of an investigation. For example, the evidence of the circumstance, simpliciter, that an accused person led a Police Officer and pointed out the place where stolen articles or weapons which might have been used in the commission of the offence were found hidden, would be admissible as conduct, under Section 8 of the Evidence Act, irrespective of whether any statement by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 of the Evidence Act.”

Paragraph 9 from *A.N. Venkatesh Vs. State of Karnataka* (2005) 7 SCC 714 was also quoted. The said paragraph reads:-

“9. By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in *Prakash Chand v. State (Delhi Admn.)*. Even if we hold that the disclosure statement made by the accused appellants (Exts. P-15 and P-16) is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8. The evidence of the investigating officer and PWs 1, 2, 7 and PW 4 the spot mahazar witness that the accused had taken them to the spot and pointed out the place where the dead body was buried, is an admissible piece of evidence under Section 8 as the conduct of the accused. Presence of A-1 and A-2 at a place where ransom demand was to be fulfilled and their action of fleeing on spotting the police party

is a relevant circumstance and are admissible under Section 8 of the Evidence Act.”

46. In *State (NCT of Delhi) Vs. Navjot Sandhu* (2005) 11 SCC 600, the two provisions i.e. Section 8 and Section 27 of the Evidence Act were elucidated in detail with reference to the case law on the subject and apropos to Section 8 of the Evidence Act, wherein it was held:-

“**205.** Before proceeding further, we may advert to Section 8 of the Evidence Act. Section 8 insofar as it is relevant for our purpose makes the conduct of an accused person relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. It could be either a previous or subsequent conduct. There are two Explanations to the section, which explain the ambit of the word “conduct”. They are:

*“Explanation 1.—*The word ‘conduct’ in this section does not include statements, unless those statements accompany and explain acts other than statements, but this explanation is not to affect the relevancy of statements under any other section of this Act.

*Explanation 2.—*When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.”

The conduct, in order to be admissible, must be such that it has close nexus with a fact in issue or relevant fact. Explanation 1 makes it clear that the mere statements as distinguished from acts do not constitute “conduct” unless those statements “accompany and explain acts other than statements”. Such statements accompanying the acts are considered to be evidence of *res gestae*. Two illustrations appended to Section 8 deserve special mention:

“(f) The question is, whether A robbed B.

The facts that, after *B* was robbed, *C* said in *A*'s presence — ‘the police are coming to look for the man who robbed *B*’, and that immediately afterwards *A* ran away, are relevant.

* * *

(i) *A* is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.”

It was further held;-

206. We have already noticed the distinction highlighted in *Prakash Chand case* between the conduct of an accused which is admissible under Section 8 and the statement made to a police officer in the course of an investigation which is hit by Section 162 CrPC. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where stolen articles or weapons used in the commission of the offence were hidden, would be admissible as “conduct” under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct, falls within the purview of Section 27, as pointed out in *Prakash Chand case*. In *Om Prakash case* this Court held that: (SCC p. 262, para 14)

“[E]ven apart from the admissibility of the information under Section 27, the evidence of the investigating officer and the panchas that the accused had taken them to PW 11 (from whom he purchased the weapon) and pointed him out and as corroborated by PW 11 himself would be admissible under Section 8 of the Evidence Act as conduct of the accused.”

13. Reference to judgement in Criminal Appeal No.1831/2011 ***Ranjeet Kumar***

Ram @ Ranjeet Kumar Das Vs. State of Bihar and Another decided on 15th

May, 2015 , would be appropriate. On recovery of a dead body of an unknown boy a FIR was registered at the police station Fakuli. On a missing complaint, a FIR was registered at the police station Vaishali. The accused when arrested in the FIR registered at the police station Vaishali, made a disclosure statement. The leads and clues, led to the police team from the police station Vaishali to the police station Fakuli and thereupon the identity of the dead body found prior to the arrest of the accused was ascertained. Referring to the said facts, the Supreme Court opined:

“19. So far as the recovery of dead body of boy under the culvert between Bhagwanpur and Bahadarpur road is concerned, as noticed earlier, a F.I.R. was registered in (Fakuli OP) P.S. Case No.128/2006 dated 22.4.2006 under Sections 302, 201 IPC read with Section 34 IPC. Though the statement recorded from the accused Chintoo Singh (A-5) and Birendra Bhagat (A-3) did not lead to any recovery as admissible under Section 27 of the Evidence Act, their statement led to the disclosure of the details of the dead body and registration of F.I.R. in (Fakuli OP) P.S. Case No.128/2006. If no statement was recorded from the accused, place of the dead body of deceased boy would have remained unknown.”

Equally pertinent are the observations of the Supreme Court in *Mehboob Ali & Anr. Vs. State of Rajasthan* [Criminal Appeal No.808/2010] decided on 27th October, 2015. The contention raised by the accused Mehboob or Firoz was that no portion of the disclosure statement was admissible for currency notes were not recovered from them or their possession. In this case one Puranmal was arrested and from his possession fake currency notes were recovered. He had implicated and stated that these currency notes were handed over to him by the accused Mehboob and Firoz,

who in turn implicated the third accused Anju Ali. Fake currency notes were recovered from Anju Ali. The said Anju Ali identified yet another co-accused Majhar from whose possession also fake currency notes were recovered. Information supplied by Majhar ultimately led to the arrest of Liyakat Ali from whom again fake currency notes and semi printed currency notes were recovered along with some equipment / instrument. On the question whether the disclosure statement of Majhar and Firoz resulting in arrest of Anju Ali could be relied, it was observed as under:

“15. It is apparent that on the basis of the information furnished by accused Mehboob Ali and Firoz other accused, Anju Ali was arrested. The fact that Anju Ali was dealing with forged currency notes was not to the knowledge of the Police. The statement of both accused has led to discovery of fact and arrest of co-accused not known to police. They identified him and ultimately statements have led to unearthing the racket of use of fake currency notes. Thus the information furnished by the aforesaid accused persons vide information memos is clearly admissible which has led to the identification and arrest of accused Anju Ali and as already stated from possession of Anju Ali fake currency notes had been recovered. As per information furnished by accused Mehboob and Firoz vide memos P41 and P42, the fact has been discovered by Police as to the involvement of accused Anju Ali which was not to the knowledge of the Police. Police was not aware of accused Anju Ali as well as the fact that he was dealing with fake currency notes which were recovered from him. Thus the statement of the aforesaid accused Mehboob and Firoz is clearly saved by section 27 of the Evidence Act. The embargo put by section 27 of the Evidence Act was clearly lifted in the instant case. The statement of the accused persons has led to the discovery of fact proving complicity of other accused persons and the entire chain of circumstances clearly makes out that accused acted in conspiracy as found by the trial court as well as the High Court.

16. to 19. xxxxx

20. Considering the aforesaid dictums, it is apparent that there was discovery of a fact as per the statement of Mehmood Ali and Mohd. Firoz. Co-accused was nabbed on the basis of identification made by the accused Mehboob and Firoz. He was dealing with fake currency notes came to the knowledge of police through them. Recovery of forged currency notes was also made from Anju Ali. Thus the aforesaid accused had the knowledge about co-accused Anju Ali who was nabbed at their instance and on the basis of their identification. These facts were not to the knowledge of the Police hence the statements of the accused persons leading to discovery of fact are clearly admissible as per the provisions contained in section 27 of the Evidence Act which carves out an exception to the general provisions about inadmissibility of confession made under police custody contained in sections 25 and 26 of the Evidence Act.”

We would prefer to rely on the said lucid ratio as equally and affirmatively applicable to Section 8 of the Evidence Act.

14. We would next consider the testimonies of ASI Virender Singh (PW-43), Inspector Dalip Kaushik (PW-44), SI Narender Kumar (PW-45) and Inspector Sunder Singh (PW-53) that Chandrakant Jha had also taken them to his rented room in property No. 229/2, village Haiderpur. They entered the tenanted room after breaking the lock and had recovered the second mobile phone instrument marked Exhibit P-17, which was seized vide seizure memo Exhibit PW-44/D. Dr. Naresh Kumar, FSL Expert (PW-16), on being summoned ascertained presence of blood on the floor of the room and on three knives P-12, P-13 and P-14. The blood stained floor was cut and lifted and the knives were seized vide memo Ex. PW-43/D. The aforesaid police officers have deposed having noticed names and telephone numbers written on a wall. These telephone numbers and names were copied on a paper marked Exhibit PW-44/E and this paper itself was seized vide Exhibit PW-

44/D. Photographs of the said room, including the wall with numbers/names were taken by Constable Suresh Kumar (PW-14) and marked Exhibit PW-14/B1 to B18 vide negatives were marked Exhibit A1 to A19. (One of the negatives was a washed out and, therefore, there were 18 positive photographs). Inspection of the said room is also confirmed by Inspector Anil Kumar (PW-27), incharge of mobile team, who along with his team had visited the said room at 229, Ground Floor, Haiderpur colony.

15. Rajeev Kumar (PW-9), landlord of the premises No. 229/2, Haiderpur colony has testified having given the said room on rent to Chandrakant Jha in April, 2006, on recommendation of Vikas, an earlier tenant. Subsequently, in April, 2007, wife and children of Chandrakant Jha had shifted from the said room, but Chandrakant Jha having retained the possession would still occasionally visit. PW-9 in his cross-examination has accepted that on 20th May, 2007, police had broken the lock of the room and had inspected the same.
16. We are inclined to accept the testimony of the police officers referred to above regarding the inspection to the tenanted room at Haiderpur village and the said recoveries. Chandrakant Jha in his statement under Section 313 Cr.P.C. denied knowing Vikas and Rajeev Kumar (PW-9) and had professed that he had never resided in the room in question located in property No. 229/2 at Haiderpur colony. However, he had accepted that he was taken to the house of Rajeev Kumar at Haiderpur on 20th May, 2007, claiming that he had remained there for hardly five minutes and was made to sit in a car outside. Mamta, wife of Chandrakant Jha, who had appeared as a defence witness, DW-3, in her cross-examination has accepted that they used to reside at Haiderpur, but they were residing in a house in gali No. 6. She

could not, recollect the name of the landlord or the number of rooms. It is obvious that she was trying to favour and save Chandrakant Jha by not accepting that they had resided in the property of Rajeev Kumar (PW-9) and for this reason could not give simple and basic details like the property number, rooms, size of room etc. after accepting that they had lived/resided at Haiderpur.

17. Proceeding on the aforesaid leads in the form of the disclosure statement Exhibit PW-43/C, the names and telephone numbers mentioned on the paper Exhibit PW-53/E and the names mentioned on the wall and copied on a paper Exhibit PW-44/E, the investigation team traced down Pankaj, who was working and residing in Bhiwadi, Rajasthan. Noticeably, the paper slip marked Exhibit PW-53/E refers to Pankaj, who was known to Upender@Pintoo.
18. Testimony of Pankaj (PW-1) is revealing for it uncovers as to how the police was able to ascertain the identity of the victim whose headless torso and remains were found on 25th April, 2007 outside Tihar Jail, near Haiderpur canal and at Loni, Ghaziabad. Pankaj (PW-1) has testified that he had a cousin named Upender and he knew Chandrakant Jha. Upender had introduced him to Chandrakant Jha, who used to work in Azadpur Subzi Mandi. Upender and Chadrakant Jha used to share mobile phones and PW-1 would talk to Upender on phone. Upender had started living with Chandrakant Jha at Haiderpur. As Pankaj (PW-1) could not recollect the telephone numbers, he was cross-examined by the Public Prosecutor. Thereupon, PW-1 accepted that the telephone number of Upender was

9211463743 and that of Chandrakant Jha was 9211463742 and the telephone number on which he could be contacted was 01493-220678.

19. PW-1 was in touch with Upender on phone till 24th April, 2007, but thereafter he could not speak to him as his mobile phone was switched off. PW-1 had called and queried Chandrakant Jha, about Upender and was told by Chandrakant Jha that Upender had caused a loss of Rs.20,000/- to him and had fled with the *rehri*. Chandrakant Jha thereafter disconnected the phone stating that he did not know Upender's whereabouts. In an earlier conversation, PW-1 had enquired from Upender whether he would visit the village, and was told by Upender that Chandrakant Jha would not permit him. PW-1 had spoken to one Bali Mohd. to ascertain well-being of Upender and had learnt that Upender was not reporting on duty for the last 4-5 days. PW-1 had once again called Chandrakant Jha and this time spoke to his daughter, who had first professed that it was a wrong number, but on persistence had asked PW-1 to call after 10 minutes. PW-1 had called after 10 minutes and spoke to Chandrakant Jha, who had reiterated his earlier version and had then pontificated "*jaisa uska karam tha o voh wahan pahuch gaya*" (As per his karma, he has gone to place which he deserved). After three-four days, police from Police Station Hari Nagar had met and had interrogated him at Bhiwadi.
20. PW-1's cross-examination confirms that the deposition of the said witness is reliable and the true and correct version of events. In cross-examination, PW-1 has accepted that he could not remember or recollect the full/complete telephone numbers, and that the first four digits were 9211 and that the last two digits were 43 and 42. PW-1 named the STD booth owner from where

he used to make calls as Ravi Sharma and voluntarily added that he had met Chandrakant Jha at the Babu Jagjivan Ram Hospital at Jahangir Puri between 7-8 P.M. He was shown photograph of Chandrakant Jha, which had appeared in a newspaper and had identified Chandrakant Jha in the photograph.

21. Having got details and particulars of the deceased Upender and his parentage, the investigating team then got in touch with Sriram (PW-2) and Dharmi (who did not depose as she had expired) to prove the parentage and identity of the deceased Upender. Inspector Sukesh Singh (PW-58), has testified that on 27th July, 2007 he along with S.I. Sharat Kohli (PW-50) had taken Sriram and Dharmi, father and mother of Upender, to the FSL Rohini along with Jayjeet Singh from blood bank DDU Hospital where one Srivastava, Assistant Director, FSL and Jayjeet Singh had taken blood sample of Sriram and Dharmi. Jayjeet Singh (PW-42) in his deposition has affirmed that he was working as a nursing orderly in World Blood Bank, DDU Hospital and that on directions given by his seniors, had gone to FSL laboratory, Rohini where he had drawn blood samples of Sriram and Dharmi, which were handed over to Dr.Ashutosh Kumar, who had preserved them.
22. Dr. A.K. Srivastava (PW-47), Forensic Director, Finger Printing Unit, FSL Rohini, states that on 27th July, 2007 eight forensic samples were received in their office for DNA finger printing test. All parcels were sealed with the seal of DFMT, DDU Hospital, except parcel No. 6, which was not sealed. PW-47 had opened the said parcels and it was found that parcel No. 3 contained the sample seal. Dr. A.K. Srivastava (PW-47) has testified that Exhibit 1 was the bone piece described as sternum, parcel No. 2 was a gauze cloth piece having dark brown stains described as a blood sample, parcel No.

4 was a bone piece described as fibula tibia and parcel No. 5 was described as a bag in which severed leg was found. Parcel Nos. 7 and 8 were the blood samples of Sriram (PW-2) and his wife Dharma collected on 27th July, 2007. DNA isolation was possible from exhibits 1-4 and 7 and 8 but could not be amplified on Exhibits P-1 and P-4. DNA profile STR analysis was prepared of Exhibits 2, 7 and 8 and the said data was analysed using Genescan and Genotype software. The test showed that alleles from source Exhibit 7 of Sriram and Exhibit 8 of Dharma were accounted in Exhibit 2, i.e., gauze piece of the blood sample of the headless torso taken at the time of post-mortem. Dr. A.K. Srivastava (PW-47) on the basis of the said STR analysis or DNA profiling opined that Exhibit 7 (Sriram) and Exhibit 8 (Dharma) were the biological father and mother of Exhibit P-2. DNA report Exhibit PW-47/A is to the same effect. Annexure-1 of the said report refers to alleles data of Sriram and Dharma and the blood sample from gauze cloth piece. Dr. A.K. Srivastava (PW-47) in his cross-examination has accepted that DNA report was based on probabilities and there could not be 100% matching in case of forensic samples. As a rule when 10 out of 15 bands match, the probability that the DNA was of the same origin was very high. Pertinently, in the present case the 15 bands had matched with Sriram and Dharmi. We have also examined the said report and find that the statement is correct and the alleles data had either matched with Sriram or Dharmi. Thus, we agree with the conclusion/opinion of Dr. A.K. Srivastava (PW-47) that Sriram and Dharmi, were the biological parents of Exhibit P-2, i.e., the deceased whose headless torso was found outside Tihar Jail on 25th March, 2008.

23. Post-mortem on the headless torso whose head, both hands and both legs below knee and private parts were missing was conducted in the DDU Hospital by Dr. Anil Shandil (PW-54) on 20th May, 2007. Dr. Anil Shandil (PW-54) has testified that he had preserved, labelled, sealed and handed over blood and viscera for chemical examination and sternum for DNA finger printing. The post mortem report (Ex. PW-54/A) mentions that the decapitation of head was in front at the level above the anterior clavicular joint and the back cut was over the seventh cervical vertebra. The inter vertebral disc between C 6-7 was clean cut. Five rings of trachea were absent, and the remaining trachea was attached with the cut parts of the base of the neck.
24. Exhibit PW-54/A specifically records no definite opinion could be given as to the cause of death but the observations and findings were consistent with the homicidal death and the wounds were caused by sharp edged weapon. PW-54 has also deposed about the viscera report, Ex.PW-54/B, which affirms that the deceased had consumed alcohol before his death.
25. PW-54 Dr. Anil Shandil was questioned by the court and had answered:
- "Court Question 1: What was the cause of death?
- Court Question 2: Was it on account of cutting of the body parts or the body was cut after the death of the deceased?
- Court Question 3: Was any subsequent opinion had been taken after taking the viscera report?
- Answer 1: Cause of death in this case was consistent with decapitation of head.

Answer 2: The head was decapitated / cut before the death. Vol. the cause of death was decapitation of head.

Answer 3: I do not recollect, but since it is not present on the report, it implies that subsequent opinion was not taken.

"Court Question 4: Now after seeing the viscera report is there any change in your earlier opinion?

Answer 4: Now the witness after seeing the viscera report states my earlier opinion remains the same as there is no indication of poison prior to the death of the deceased which rules out poisoning prior to the death of the deceased or cause of death. However, the viscera report now Ex.PW-54/B shows the presence of ethyl alcohol indicating the consumption of alcohol prior to the death of deceased."

We have reservation in relying on answer to question no.2, as we believe that the said answer was on the persistent questioning with suggested or acceptable answer. There was no reason and cause to ask the said question, when the post mortem report Ex. PW-54/A was lucid that cadaver could not reveal exact reason or cause of death but the death was homicidal.

26. Sriram (PW-2) had appeared and testified having given blood sample and that his wife Dharmi had also given her blood sample but she had expired. Ashes of Upender were taken by them and they had performed his last rites. Harender Lakhwa (PW-3) brother of the deceased Upender in his testimony accepted having received the remains / ashes of Upender. He has stated that Upender used to live with Chandrakant Jha; though he had not visited the room where Upender used to reside. He had stayed in Delhi for 2 to 3

months in 2007 and had resided at Azadpur. PW-3 in his cross-examination professed that he had gone with his mother to the hospital when she had given her blood samples.

27. Telephone Nos.9211463743 and 9211463742 were found mentioned on the wall in the room at Haiderpur and were recorded on the piece of paper marked Ex.PW-44/E. Reference to these numbers is to be found in the testimony of Pankaj (PW-1) and police officer Inspector Sunder Singh (PW-53) and Inspect Hoshiyar Singh (PW-55). SIM card of this telephone number 9211463742 Ex. PW-53/1 was found inserted in the mobile instrument Ex. PW 53/2 found to be in possession of Chandrakant Jha at the time of his arrest. We would like to reproduce the findings and inferences adeptly recorded in the impugned judgment under the heading "Electronic Record" :-

"(233) The Call Details Records also indicate and prove the incoming and outgoing calls along with the location showing the movement of the user of the said phone at various point of time and not only does it confirm that the accused Chanderkant Jha was using the mobile No. 9211463742 the SIM of which was recovered from the Tata Samsung mobile bearing ESN No. 8562A099 which mobile phone was recovered from his possession in his personal search at the time of his arrest on 20.5.2007 but also confirms that calls had been received on the said number from Bhiwari (Rajasthan) i.e. from Pankaj. The relevant entries of the calls so made on the number 9211463742 from Bhiwari (as reflected from the Call Detail Records - 1493 is the STD code of Bhiwari) are reproduced as under:

Sr. No.	Date	Time	Duration	Calling No.	Called No.	Cell ID	ESN No.	Nature of call
1	20070430	210444	572	1493513863	9211463742	28834	8562A099	In
2	20070517	210545	51	1493512553	9211463742		8562A099	In

3	20070517	210555	61	1493512553	9211463742	29026	8562A099	In
4	20070517	211941	622	1493512553	9211463742		8562A099	In
5	20070517	211952	622	1493512593	9211463742	29635	8562A099	In

(234) The above calls conclusively establishes that the witness Pankaj (PW1) used to talk to *his* cousin Upender (deceased) through the mobile phone of accused Chanderkant Jha who was using mobile No. 9211463742 thereby lending credibility to the testimony of Pankaj (PW1). Further, the Call Details Records of mobile phone No. 9211463743 (on which Pankaj used to frequently speak to Upender) confirms the testimony of Pankaj that this phone number 9211463743 was coming switched off from 24.04.2007 onwards (Call Detail Records Ex.PW29/D indicate that mobile no. 9211463743 remained closed from 24.4.2007 till 3.5.2007). It also indicates that both the phones were being used by Chanderkant Jha and his family members because the SIM No. 9211463742 and 9211463743 have been used interchangeably, on the mobile set bearing ESN No. 8562A099 (recovered from the personal search of the accused Chanderkant Jha at the time of his arrest). The said details are reproduced as under:

Sr. No.	Date	Time	Duration	Calling No.	Called No.	Cell ID	ESN No.	Nature of call
1	20070424	132022	65	9211463743	9211463742	28867	8562A09A	out
2	20070503	173741	418	9211463743	9211463742	28867	8562A09A	out

(235) Further, the most important aspect is that the analysis of Call Detail records of Mobile Phone No. 9211463742 used by the accused Chanderkant Jha and his Location Chart reflect that the location of the accused / user of mobile phone No. 9211463742 in the mobile set bearing ESN No. 8562A099 (recovered from the personal search of the accused at the time of his arrest) coincides with the various places from where the body parts of the deceased had been recovered. After analysis of the above data for the sake of convenience I am now putting the same in a tabulated form along with the specific location of the accused on the date of the alleged crime i.e. intervening period i.e. 24.4.2007 and 25.4.2007:

Sr. No.	Date	Time	Calling No.	Called No.	Cell ID	Nature of call	Position
1	20070424	175217	9211463742	9312662591	28866	Out	Alipur
2	20070424	181931	9211463742	9971449287	28867	Out	Alipur
3	20070424	190635	9211463742	9210565615	28867	Out	Alipur
4	20070424	191902	9211463742	9210661810	28867	Out	Alipur
5	20070424	203816	9210565615	9211463742	28867	In	Alipur
6	20070424	203935	9210565615	9211463742	28867	In	Alipur
7	20070424	204009 (8:40 pm)	9211463742	9210565615	28867	Out	Alipur
8	20070425	61812 (6:18 am)	9211463742	9210565615	29090	Out	Sec-13 Rohini (on the way from Alipur to Baba Ramdev Mandir Haiderpur where body parts of Upender were recovered)
9	20070425	82636 (8:26 am)	9211463742	9210565615	17682	Out	Kashmiri Gate (Tis hazari Courts where body parts of Upender were recovered)
10	20070425	102601 (10:26 am)	9211463742	9210565615	21521	Out	Biharipur Sahadara (on way to Loni Ghaziabad from Kashmere Gate where body parts of Upender were recovered)
11	20070425	102959 (10:29 am)	9211463742	9210661810	21521	Out	Biharipur sahadara
12	20070425	134049 (1:40 pm)	9211576717	9211463742	21521	In	Biharipur sahadara
13	20070425	134120 (1:41 pm)	9211576717	9211463742		In	Biharipur sahadara
14	20070425	182128 (6:21 pm)	9911020406	9211463742	22449	In	Model town III
15	20070425	182212	9911020406	9211463742		out	

16	20070425	184635	9911020406	9211463742	28366	In	Alipur
17	20070425	192021	9211463742	9911020406	28866	Out	Alipur
18	20070425	195344	9911020406	9211463742		In	
19	20070425	195357	9911020406	9211463742		In	
20	20070425	201818	9911020406	9211463742	215522	In	Biharipur Shahdara
21	20070425	201901	9911020406	9211463742		In	
22	20070425	205059	9911020406	9211463742	21521	In	Biharipur Sahdara
23	20070425	205143	9911020406	9211463742		In	
24	20070425	223110	9211463742	9911020406	22497	Out	Takmirpur
25	20070425	230445	9211463742	9911020406	29635	Out	
26	20070425	235832	9911020406	9211463742	28866	In	Alipur

(236) It is evident from the aforesaid that the user of the mobile number 9211463742 (Call Detail Records Ex.PW53/F point 1-1 to Z-6 on page 11) starts from Alipur and reaches Sector 13 Rohini subsequently Kashmere Gate, then Tukmirpur (Shahdara), Model Town and return to Alipur and on the same night. According to the disclosure statement of the accused Chandrakant Jha he had killed the victim Upender at Haiderpur, dropped his leg at Baba Ramdev Mandir, dropped his headless dead body at Tihar Jail subsequently moved towards Tis Hazari Courts and threw the hand of Upender and then he moved towards Yamuna and dropped the head of Upender and subsequently he reached Lalbagh (Loni) area and dropped the hand of Upender and then returned to Alipur and the parts of the body recovered on the same day. The electronic record as aforesaid conclusively establishes the following route taken by the accused:

- At 8:40 PM on 24.4.2007 the accused was in the area of Alipur where he resided.
- At 6:18 AM on 25.4.2007 the accused was in the area of Sector -13, Rohini which is on the way from Alipur to Baba Ramdev Mandir Haiderpur where the leg of Upender was discovered by Azad Singh at 7:15 AM.
- Between 7:45 - 8:00 AM on 25.4.2007 the decapitated body of the deceased was discovered by guard of the UTI ATM namely Akhilesh Singh Yadav (Here,. I may note that the distance between Sector - 13

Rohini and Central Jail Tihar via Outer Ring Road is hardly 30-45 minutes and much less in the early morning hours if the traffic is less).

- At 8:26 AM on 25.4.2007 the location of the accused is at Kashmere Gate i.e. Tis Hazari Courts where according to the accused he had thrown one arm the deceased Upender (could not be recovered).
- At 10:00 AM on 25.4.2007 Yasin Malik a fruit seller in Fruit Mandi, Loni Ghaziabad notices carton containing human upper and lower limbs and private parts which according to the disclosure of the accused were of Upender which he had thrown at that place. (Here, I may note that the motorable distance between the Tis Hazari Courts and the Fruit Mandi Loni is about 45 minutes to one hour or may be slightly more in case heavy traffic and the route taken for the same would be via ISBT and Shahdara).
- At 10:26 AM on 25.4.2007 the location of the accused is at Biharipur Shahdara which is on the way while returning from Loni Ghaziabad to Alipur (via Outer Ring Road).

(237) The aforesaid electronic evidence independently corroborates the recovery of the various body parts and is compatible with the time which could have been taken on route. It conclusively connects the accused Chanderkant Jha with the offence.

(238) I may mention that this Court had carried out the spot inspection on 25.2.2012 as per the provisions of Section 310 Cr.P.C. and had inspected various places of incidents including the places where the parts of the dead bodies were thrown and found that the route taken by the accused was a Highway and much of the area from which the body parts had been found were connected or were adjoining to the Highway on the route allegedly taken by the accused and was compatible to the time which could have been taken to reach to various places. The prosecution having proved the recovery of the above mobile phone from the possession of the accused and the call details record showing the movement of the accused and confirms that it was the accused Chanderkant Jha who was using the said mobile. The onus of disproving and contradicting the same shifted upon the accused which onus he has failed to discharge. When the entire material was put to the accused under Section 313 Cr.P.C. the accused simply denied the same but has not lead any evidence in his defence on this aspect. How this mobile phone bearing SIM No. 9211463742

came into his possession? How the Call Detail Record (Location Chart) shows the location of the user of the phone at the area of residence of the accused? How the Call Detail Records indicating the location and time of the user coincides with the location and time of the places where the decapitated body and the body parts were discovered? Why if Pankaj (PW 1) was not known to the accused Chanderkant Jha did he identify him as the person with whom his brother Upender was previously residing and working? All these are facts which would have been in the special knowledge of the accused but he himself having failed to offer any valid explanation, I hold that there is no reason to doubt the above evidence placed before this Court by the prosecution which conclusively links the accused with the crime."

28. We would agree with the aforesaid factual narration as well as the inferences drawn except the assertion and finding relating to Tis Hazari Courts in the aforesaid paragraphs 235 and 236, which have to be ignored and cannot be taken into account for the reason there is no evidence regarding recovery of "body parts" from the court premises. Even if the said factum was mentioned in the disclosure statement marked Ex.PW-43/C, the same would be inadmissible in the absence of any recovery. Prosecution has not led evidence to establish any body parts were left or recovered from the Tis Hazari Court complex.
29. The narration of the aforesaid factual matrix would definitely corroborate and affirm the testimony of Pankaj (PW-1) that he was in touch with both deceased-Upender and appellant-Chandrakant Jha from Bhiwari on mobile phone numbers 9211463742 and 9211463743. The CDRs also confirm that mobile phone number 9211463743 was not used between 1.20 p.m. of 24th April, 2007 to 5.35 p.m. of 3rd May, 2007. Mobile SIM having number 9211463742 and the instrument with IMEI number 8562A099 recovered on

personal search of Chandrakant Jha on 20th May, 2007, would substantially corroborate and affirm the prosecution case. SIM of telephone number 9211463742 was earlier inserted and used in the mobile phone instrument with ESN No.8562a09a (wrongly mentioned as 8562A09A in the above quoted portion of the trial court judgment). Further, the CDRs of number 9211463742 and 9211463743 would indicate that both SIM cards had been installed on some occasion in the mobile phone instrument with ESN No. D40a59c1. The telephone numbers 9211463742 and 9211463743 are not only in seriatim and purportedly allotted to an unidentified person called Rahul Jain, but the SIM cards were at one time or the other used in a common or same mobile instruments. The CDRs for the period 24th April, 2007 and 25th April, 2007 of SIM number 9211463742 are illustrative and would reflect movement/travel undertaking by the person with the mobile phone with SIM on the said dates. On 25th April, 2007, at 6.18 a.m., the instrument had moved from Sector-13, Rohini to Kashmere Gate. At 10.26 a.m., the phone was in Biharipur, Shahdara, which is near Loni Border, Ghaziabad. The said movement would coincide with the recovery of the amputated body parts at Loni and Haiderpur. This phone with number 9211463742 was recovered from Chandrakant Jha. It was used by him. Thus, call records with location chart affirms the charge against Chandrakant Jha.

30. It is in this context that the recovery of the motorized rickshaw is significant and assumes importance. Rajeev Kumar (PW-9) in his cross examination has also confirmed Chandrakant Jha's ownership of the said Rickshaw. The amputated body parts in question were recovered in cartons at Loni and in a

bag at Haiderpur. The headless torso was also found in a carton outside the Tihar Jail. The perpetrator obviously had a vehicle in which he could transport and move the cartons/bag. No one would have travelled in public transport with carton/bag containing headless torso or amputated arms, legs etc. The motorized cycle rickshaw in question is not one which is used to carry passengers but is used for transporting goods. Recovery of the motorised cycle rickshaw, an unusual contraption, which was seized vide seizure memo Exhibit PW-44/A, would be covered under Section 27 of the Evidence Act. Recoveries from the rented room at Haiderpur would also fall under the umbrella of Section 27 of the Evidence Act.

31. The leads and clues given by Chandrakant Jha to the police in the form of identity of the victim in the FIR in question, which hitherto was unknown, would be protected and covered under Section 8 of the Evidence Act, for these facts relating to conduct stand independently corroborated and proved by deposition of public witnesses and incriminating material.
32. We have referred to Sections 8 and 27 of the Evidence Act and its contours in the earlier portion of the judgment. Recovery of the dead body of the victim at the behest and on disclosure statement of an accused is generally considered to be a weighty and incriminating evidence of considerable probative value, specially, when victim is missing and his whereabouts are unknown. In *State of Maharashtra Vs. Suresh*, (2000) 1 SCC 471, it was observed:-

"There are three possibilities when an accused points out the place where a dead body or an incriminating material was concealed without stating that he concealed it. One is that he himself would have concealed it.

Second is that he would have seen somebody else concealing it. And the third is that another person would have told him that it was concealed there. But if the accused declines to tell the criminal court that his knowledge about the concealment was on account of one of the last two possibilities the criminal court can presume that it was concealed by the accused himself. This is because the accused is the only person who can offer the explanation as to how else he came to know of such concealment and if he chooses to refrain from telling the court as to how else he came to know of it, the presumption is a well-justified course to be adopted by the criminal court that the concealment was made by himself. Such an interpretation is not inconsistent with the principle embodied in section 27 of the Evidence Act."

This judgment was relied in *Ningappa Yallappa Hosamani & Ors. Vs. State of Karnataka & Ors.*, (2010) 1 SCC (Cri) 1460, to convict an accused, who had buried the deceased in a gunny bag and his dead body was exhumed in furtherance of the disclosure statement.

33. In the present case, the leads and clues given by Chandrakant Jha and the evidence collected from the place of his residence at Haiderpur and on his personal search being the telephone instrument and a piece of paper containing names and telephone numbers, which led to identification of the unknown decapitated victim, which has been ascertained and established, are relevant facts and are a pronounced pointer as to Chandrakant Jha's involvement in the offence of murder and destruction of evidence. [see *Rakesh Vs. State (Government of NCT of Delhi)*, CrI.A. No.1096/2013 decided on 21st December, 2015] The cumulative effect of the conduct emerging from the testimonies of the police and public witnesses and the

DNA report are of great probative value and weight. They are highly incriminating and accusatory evidence implicating Chandrakant Jha.

34. Chandrakant Jha in his statement under Section 313 Cr.P.C., as noted above, had denied having known Rajeev Kumar (PW-9) and that he had ever resided in his house. He has also denied having known Upender or Pankaj, asserting that he had never met both of them and never knew who was Pankaj. Pankaj had made a false statement at the behest of the Police. Chandrakant Jha has emphatically stated that as he did not know Upender and Pankaj, there was no question of his giving a telephone number to them. He denied that Upender was staying with him. He denied having spoken to Pankaj on mobile phone. He has also stated that he did not have any mobile phone at that time.
35. It is obvious from the evidence on record that the said statement of Chandrakant Jha constitutes a false denial in the teeth of overwhelming evidence to the contrary. This shows that Chandrakant Jha was unable to furnish any explanation whatsoever and rather when his attention was drawn to the aforesaid circumstances inculcating him for the crime, he was evasive. The same can be counted as providing a missing link and adding to the chain of proved circumstances. [see *Jagroop Singh Vs. State of Punjab*, (2012) 11 SCC 768].
36. Chandrakant Jha has been tried and convicted by the trial court by three separate judgments; all dated 24th January, 2013 arising out of charge sheets filed in FIR Nos. 609/2006, 279/2007 and in the present case, FIR No.243/2007. The three cases relate to the three headless corpse, which were found outside the Tihar Jail in the early morning hours on 18th Oct., 2006,

25th April, 2007 and 18th May, 2007. In Crl.A. No.216/2015 and Death Reference No.2/2013 arising out of conviction in FIR No.609/2006, we have elucidated the principle of “similar fact evidence” in detail in the context of Sections 14 and 15 of the Evidence Act. With regret, we observe that the prosecution has failed and did not adduce evidence relating to identity of the perpetrator led by them in FIR No. 609/2006 by relying upon the said principles in the present charge sheet. We had mulled and thought of taking recourse to Section 391 Cr.P.C. to bring this excluded evidence on record in the present case, but have refrained after some deliberation. Perhaps, recourse to Section 219 Cr.P.C. would have been appropriate for this would have ensured that the entire evidence including the evidence connecting the three crimes was led in one trial and relied on each charge. This would have curtailed duplication of evidence, brought clarity and avoided procedural and technical difficulties as some evidence is inter-twined and inextricably harnessed in a chain.

37. Having said so, we would take into account and read in evidence what has been brought on record in the present case, which would establish the identity of the perpetrator. We shall however refer to Section 41 to 44 of the Evidence Act, an aspect dealt with and examined by us in Criminal Appeal No. 656/2013 titled Chandrakant Jha vs. State (Govt. of NCT of Delhi) in the following words:-

"12. By separate judgments pronounced today we have upheld the conviction of Chandrakant Jha in FIR Nos. 609/2006 and 243/2007. Judgment in Cr. Appeal No. 216/2015 and Death Reference No.2/2013 relating to FIR No. 609/2006 is elaborate and detailed on legal issues and factual evidence. Question would arise whether evidence led and proved in one charge sheet can be read in

the other charge sheet? The answer has to an emphatic “No”. The second aspect is whether the findings on merits in Cr. Appeal No. 216/2015 and Death Reference No.2/2013 can be read as evidence in this case. The answer would be again in negative, with some riders or part exception. The answers would equally apply to the evidence led and our findings in Criminal Appeal No. 655/2013 and Death Reference No.3/2013. Albeit, the letter (Ex.P-4 and P-5) is of relevance in the three cases as the author has confessed his crime and involvement in the three cases and has also explicated on the motive. The contents of the said letter would make the existence or non-existence of evidence as to the identity of the author in other charge sheets relevant in this case and *vice versa*. We have elucidated on this connect and impute subsequently.

13. Returning to the question of relevancy of judgments pronounced in one case, in another case, reference must be made to Sections 41 to 44 of the Evidence Act, 1872 (“Evidence Act”, for short). Section 41 deals with effect of a judgment which would give rise to estoppel in subsequent proceedings. Section 41 deals with judgments *in rem*. Section 42 deals with judgments other than those mentioned in Section 41, if they relate to a matter of public nature, relevant to the enquiry. Possibly it can be urged that section 42 would have some bearing, as the earlier / subsequent crime in these cases would relate to the matter of public nature, but we would not prefer to rely on this provision to hold that the judgments in other FIRs can be read for the truth or correctness of the contents. Section 43 states that judgments other than those mentioned in Sections 40 to 42 are irrelevant, unless existence of such judgments is a fact in issue or is relevant under some other provision of the Act. This provision would be applicable to a limited extent.

14. Under section 13 of the Evidence Act a transaction in which right to property was asserted and recognized is admissible as relevant. In ***Sital Das Vs. Sant Ram & Ors.***, AIR 1954 SC 606, a previous judgment though not *inter se* parties was held to be admissible in evidence under Section 13 of the Evidence Act, as a transaction. It appears subsequent judgments did reflect divergence of opinion on whether a judgment is a transaction, but the position that a judgment could be a transaction was reiterated in ***Tirumala Tirupati Devasthanams Vs. K.M. Krishnaiah***, (1998) 3 SCC 331.

For the purpose of the present case we would hold that the recitals and findings in our judgment in the Criminal Appeal No.216/2015, Criminal No. 655/2013 and Death Reference No.2/2013 and Death Reference No.3/2013 should not be read as evidence in this case, on the issue and findings recorded therein, i.e. correctness or the truth of the contents. However, the said judgments are relevant as to show their existence, date and legal effect. In other words, the pronouncement of the said judgment would be conclusive in the chargesheet relating to FIR No. 609/2006 as to the fact that it was pronounced and the result i.e. conviction of the appellant – Chandrakant Jha but not accuracy of the said decision. The judgment can be relied for the purpose of identity of the accused who is convicted. [See *Seth RamdayalJat Vs. Laxmi Prasad* 2009 (11) SCC 545, *Vishnu Dutt Sharma Vs. DayaSapra* (2009) 13 SCC 729 and *K.G. Premshankar Vs. Inspector of Police* (2002) 8 SCC 87.] Thus, we can rely upon our judgment in the Criminal Appeal No.216/2015 and Death Reference of 2/12013 to the effect that Chandrakant Jha was an accused in the said case arising out of FIR No.609/2006 and has been convicted for murder of Anil Mandal @ Amit. To confirm the factual position, the trial court had called for the judicial records relating to FIR No.628/2003, under Sections 25/54/59 of the Arms Act registered at the police station Shalimar Bagh and has affirmed that Anil Mandal @ Amit had appeared in the Court of Mr. Rajesh Goel, Metropolitan Magistrate on 19th Oct.,2006. We would for the same reason take notice of the factum of conviction of Chanrakant Jha for murder of Upendra in FIR No. 243/2007.”

38. This ratio would not be contrary or in conflict with Section 54 of the Evidence Act. The judgements/decisions in other FIRs are not relied as "Bad Character" evidence, but their relevancy arises from the letter wound with the leadless torso on 18th May,2007, putting down that the identity of the culprit in the three crimes was same. Thus, evidence which establishes and proves identity of the perpetrator in other charge sheets is a relevant fact in the present case. We have elucidated the difference between "Bad Character"

evidence and "Similar Fact Evidence" in our judgement in Crl. Appeal No.216/2015 and Death Reference No.2/2013.

39. Order dated 8th November, 2010, passed by the Additional Sessions Judge in the present case records that in compliance of the order dated 5th October, 2010, passed by District and Sessions Judge-I, Sessions Case arising out of FIR No.243/2007 had been transferred to the Court where other cases arising out of FIR Nos.609/2006 and 279/2007 were pending. This fact is also recorded by the Additional Sessions Judge, to whom the case was then transferred in his order dated 25th November, 2010.
40. The prosecution had moved an application dated 25th May, 2012, for taking on record the two confession letters. The confession letters, one each, had been recovered along with the dead body in FIR Nos.609/2006 and 279/2007. Certified copies of the said letters, which had been filed in the charge sheet arising out of FIR Nos. 609/2006 and 279/2007, along with seizure memos, specimen handwriting and the reports of the handwriting expert, were enclosed. This application was allowed and the certified copies of the aforesaid documents were taken on record vide order dated 25th May, 2012. By another order dated 4th June, 2012, statement of Sanjeev Kumar, Senior Scientific Officer (documents) FSL, Rohini recorded in FIR No. 609/2006 as PW-47 was taken on record in the present charge sheet. The statement was duly signed by the witness in original.
41. The reports of Sanjeev Kumar, the handwriting expert on comparison with the specimen handwriting has opined that Chandrakant Jha was the writer of the two confession letters. The second confession letter found along with the headless torso subject matter of FIR No.279/2007 confesses that the author

was the perpetrator of the murder in the present FIR. We have also examined the handwriting in the two confession letters and the specimen handwriting and do observe striking similarity in letter formation, relative size and proportion of characters and nature of commencing and termination of strokes. The confession letters appear to have been written by the person, who had given the specimen handwriting.

42. One of the contentions raised by the appellant is that he was not arrested on 20th May, 2007 and, in fact, he was arrested a day earlier in the evening on 19th May, 2007. Chandrakant Jha who had deposed as DW-1 did not make any such assertion, though he had produced on record replies received under the Right to Information Act. His wife Mamta (DW-3) has professed that Chandrakant Jha was lifted by the police on 19th May, 2007 from their house at Alipur in the evening hours by 10-15 plain clothes persons, who had taken Chandrakant Jha with them in a car. She along with children and one Ram Sewak were also taken and detained for about four days and not permitted to meet Chandrakant Jha. Chandrakant Jha was produced in the Court on 21st May, 2007. The assertion of Mamta (DW-3) that she was detained for about four days on 19th May, 2007 does not appear to be correct. Even otherwise, we do not think that in the facts of the present case, this contention of the appellant challenging the date of arrest carries weight and is of relevance in determining and deciding; whether or not Chandrakant Jha has committed the offence in question.
43. In the light of the aforesaid discussion, we would now like to crystallize and recapitulate our findings that Chandrakant Jha is the perpetrator and the

culprit, who had committed the murder and had left the decapitated torso and body parts outside Tihar Jail, at Haiderpur and at Loni, Ghaziabad:-

- (i) The appellant had taken a room on rent in House No.2/229, Haiderpur Colony from Rajeev Kumar (PW-9). After Chandrakant Jha's arrest, he was taken the police to the said room, where Dr. Naresh Kumar, FSL expert (PW-16) on being summoned, ascertained presence of blood on the floor and on three knives.
- (ii) Telephone numbers and names were found written on the wall and copied on a piece of paper marked Ex.PW-44/E. The telephone numbers included mobile numbers 9211463742 and 9211463743.
- (iii) On personal search of Chandrakant Jha, a mobile phone with SIM number 9211463742 was recovered and recorded in the personal search memo (Ex. PW-43/B)
- (iv) On personal search of Chandrakant Jha, a piece of paper marked Ex.PW-44/C containing names and telephone numbers was also found. Noticeably, this slip of paper marked Ex.PW-53/E refers to Pankaj, who was known to Upender @ Pintu.
- (v) During interrogation, Chandrakant Jha gave vital clues and leads as to the identity of the victim and his relative Pankaj.
- (vi) Pankaj (PW-1) has deposed and identified Chandrakant Jha, who was known and was friendly with his cousin Upender.
- (vii) Pankaj (PW-1) used to work in Bhiwari and would remain in touch with Upender on telephone numbers 9211463742 and 9211463743.
- (viii) Upender had gone missing and could not be contacted after 24th April, 2007. His mobile phone number 9211463742 was switched off.

(ix) Pankaj (PW-1) had got in touch with Chandrakant Jha on telephone number 9211463742 to ascertain well being of Upender, but Chandrakant Jha had given evasive answers. Chandrakant Jha had stated that Upender had caused loss of Rs.20,000/- and had left with his rickshaw and his whereabouts were not known. On the second occasion, Chandrakant Jha had reiterated the said version and had also pointified that Upender had gone to the place where he deserved to be.

(x) DNA report Ex.PW-47/A confirms that the headless torso was of Upender, son of Sriram (PW-2) and Dharma (mother of the victim, who had died before she could appear and depose in the witness box).

(xi) Chandrakant Jha in his statement under Section 313 Cr.P.C. had denied that he knew Upender or Pankaj (PW-1). He has denied that he was using telephone numbers 9211463742 and 9211463743.

(xii) Mobile phone with ESN No.8562 A099 with SIM card number 9211463742 was found from the personal custody of Chandrakant Jha. CDRs of the two telephone numbers 9211463742 and 9211463743 affirm and corroborate the statement of Pankaj (PW-1) and calls from Bhiwari to the two numbers. Telephone number 9211463743 was not used after 25th April, 2007 till 3rd May, 2007. There were calls on telephone number 9211463742 from Bhiwari on 30th April, 2007 and 17th May, 2007. The CDRs along with cell location chart would indicate that the person (Chandrakant Jha) using the phone number 9211463742 on 25th April, 2007 at 6.18 a.m. had moved from Alipur to Rohini, then Kashmere Gate and had visited Biharipur, Shahdara near Loni, Ghaziabad at about 10.26 a.m.

(xiii) The amputated body parts and headless torso were found at early

morning hours outside Tihar Jail, Haiderpur and Loni, Ghaziabad. The CDRs read with cell location chart would, therefore, broadly corroborate Chandrakant Jha's presence at the three locations where the headless torso and body parts were found.

(xiv) The motorized rickshaw was recovered on the disclosure statement of Chandrakant Jha. It is obvious that the headless torso in the carton and the body parts in the bag and carton were transported in a secured or personal vehicle and not in a public transport. Recovery of the motorized rickshaw affirms that the headless torso and the body parts were transported in the said rickshaw, used for carrying goods. (Rickshaw not being a passenger rickshaw.)

(xv) The leads and clues given by Chandrakant Jha would be admissible under Section 8 of the Evidence Act, for these were material and of consequence as this had led to the identification of the victim and also helped the police to trace out and locate Pankaj (PW-1), who has deposed. The identity of the victim whose headless torso was recovered on 25th April, 2007, had remained unknown and a mystery till 20th May, 2007, when Chandrakant Jha was arrested and revealed the victim's identity and details.

(xvi) The two handwritten confession letters as per the report of Dr. Sanjeev Kumar, handwriting expert, were written by Chandrakant Jha. In the second confession letter, the writer has accepted that he had committed murder subject matter of charge sheet in FIR No.243/2007.

(xvii) Chandrakant Jha has been convicted in the charge sheets arising out of FIR No.609/2006 and FIR No.279/2007. Chandrakant Jha's conviction has been upheld.

(xviii)Correctness of the judgment or the evidence led in these two cases is not admissible but the fact that Chandrakant Jha has been convicted in the two FIR Nos. 609/2006 and 279/2007 in which headless torsos were found outside the Tihar Jail, is admissible and can be read as evidence in the present case.

44. The aforesaid evidence, when read individually, may not be sufficient to hold that the prosecution has established and proved the charges. However, when we take cumulative effect of the entire evidence lead and proved by the prosecution, our finding would be in affirmative and we hold that Chandrakant Jha was the perpetrator and no other person had committed the said offence. Thus, we affirm the finding of the trial court that the prosecution has been able to prove the charges and Chandrakant Jha has been rightly convicted.

SENTENCE

45. As already noted above, Chandrakant Jha has been sentenced to capital punishment and awarded death sentence. We have examined this issue in depth in Crl.A. No.216/2005 and Death Reference No.2/2013. We would like to reproduce our findings in the said cases, which are as under:-

“109. The last issue that arises for consideration is the seminal, question of sentence. Punishment should be proportionate to the offender’s culpability and the crime. In *Deepak Rai versus State of Bihar*, (2013) 10 SCC 421, the Supreme Court noticed the shift in sentencing policy after elucidating the perceptible difference between Section 367(5) of the Code of Criminal Procedure, 1898 and Section 354(3) of the present Code enacted in 1973. The Supreme Court has

extensively referred to case law on the subject of death penalty and has quoted the following passage from ***Bachan Singh versus State of Punjab***, (1980) 2 SCC 684 interpreting Section 354(3) of the Code:-

“(a) The normal rule is that the offence of murder shall be punished with the sentence of life imprisonment. The court can depart from that rule and impose the sentence of death only if there are special reasons for doing so. Such reasons must be recorded in writing before imposing the death sentence.

(b) While considering the question of sentence to be imposed for the offence of murder under Section 302 of the Penal Code, the court must have regard to every relevant circumstance relating to the crime as well as the criminal. If the court finds, but not otherwise, that the offence is of an exceptionally depraved and heinous character and constitutes, on account of its design and the manner of its execution, a source of grave danger to the society at large, the court may impose the death sentence.”

110. In ***Bachan Singh's*** case (supra), the Supreme Court thus observed that special reasons means exceptional reasons founded on exceptionally grave circumstances relating to the crime and the criminal. Acknowledging, exceptional difficulty in classifying or making a catalogue of such extreme cases, for infinite unpredictable and unforeseeable factual variations exist, the Supreme Court expounded that relative weight has to be given to aggravating and mitigating circumstances. These two considerations are intertwined and not isolated. Broad illustrative guidelines were laid down emphasising that death penalty was an extreme penalty to be imposed only in rarest of rare crimes. In ***Machhi singh versus State of Punjab***, (1983) 3 SCC 470, the following five categories of crimes were delineated to possibly fall in this extreme category, but with the caution that the aforesaid factors were not inflexible, absolute or immutable, but were only indicators:-

“*I. Manner of commission of murder*

33. *When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community. For instance, (i) when the house of the victim is set aflame with the end in view to roast him alive in the house.*

(ii) when the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death.

(iii) when the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.

II. Motive for commission of murder

34. *When the murder is committed for a motive which evinces total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward (b) a cold-blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-à-vis whom the murderer is in a dominating position or in a position of trust, or (c) a murder is committed in the course of betrayal of the motherland.*

III. Anti-social or socially abhorrent nature of the crime

35. (a) When murder of a member of a Scheduled Caste or minority community, etc. is committed not for personal reasons but in circumstances which arouse social wrath. *For instance when such a crime is committed in order to terrorise such persons and frighten them into fleeing from a place or in order to deprive them of, or make them surrender, lands or benefits conferred on them with a view to reverse past injustices and in order to restore the social balance.*

(b) In cases of 'bride burning' and what are known as 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

IV. Magnitude of crime

36. When the crime is enormous in proportion. For instance when multiple murders say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

V. Personality of victim of murder

37. *When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder (b) a helpless woman or a person rendered helpless by old age or infirmity (c) when the victim is a person vis-à-vis whom the murderer is in a position of domination or trust (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons.*”
(Emphasis supplied)

111. In ***Ramnaresh versus State of Chhattisgarh***, (2012) 4 SCC 257, it was observed that cumulative effect of aggravating and mitigating circumstances has to be considered and it may not be appropriate for the Court to give significance to one of the classes under a particular head, ignoring the classes under the other head for balance and equilibrium is required. The aggravating, mitigating circumstances and the principles, as enunciated read:-

“Aggravating circumstances

(1) The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping, etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions.

(2) The offence was committed while the offender was engaged in the commission of another serious offence.

(3) The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.

(4) The offence of murder was committed for ransom or like offences to receive money or monetary benefits.

(5) Hired killings.

(6) The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.

(7) The offence was committed by a person while in lawful custody.

(8) The murder or the offence was committed to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under Section 43 CrPC.

(9) When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.

(10) When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.

(11) When murder is committed for a motive which evidences total depravity and meanness.

(12) When there is a cold-blooded murder without provocation.

(13) The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

Mitigating circumstances

(1) The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.

(2) The age of the accused is a relevant consideration but not a determinative factor by itself.

(3) The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.

(4) The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.

(5) The circumstances which, in normal course of life, would render such a behaviour possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to

such a peak of human behaviour that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

(6) Where the court upon proper appreciation of evidence is of the view that the crime was not committed in a preordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

(7) Where it is absolutely unsafe to rely upon the testimony of a sole eyewitness though the prosecution has brought home the guilt of the accused.

77. While determining the questions relatable to sentencing policy, the court has to follow certain principles and those principles are the loadstar besides the above considerations in imposition or otherwise of the death sentence.

Principles

(1) The court has to apply the test to determine, if it was the "rarest of rare" case for imposition of a death sentence.

(2) In the opinion of the court, imposition of any other punishment i.e. life imprisonment would be completely inadequate and would not meet the ends of justice.

(3) Life imprisonment is the rule and death sentence is an exception.

(4) The option to impose sentence of imprisonment for life cannot be cautiously exercised having regard to the nature and circumstances of the crime and all relevant considerations.

(5) The method (planned or otherwise) and the manner (extent of brutality and inhumanity, etc.) in which the crime was committed and the circumstances leading to commission of such heinous crime.”

112. When we turn to the factual matrix of the present case and notice the aggravating and mitigating circumstances, we observe that the three offences were taken up for trial together and the judgment of conviction was pronounced on the same day. However, there are separate judgments and orders on sentence and we are concerned with the sentence arising from conviction in the charge sheet filed in FIR No.609/2006. We would, therefore, for the purpose of sentence refer to the evidence and material on record in this case. We accept that there was brutality and diabolicism in the crime for the victim's head was decapitated. The motive and reason for the crime had nothing to do with the personal conduct or provocation by the victim, but as professed, was directed against the police, who were challenged. The language and expressions used in the letters and the manner in which the crime was committed reflects a sense of deride, conceited arrogance and illusions of glory of a person who considered himself to be above the law and who had committed the crimes, to make the police quiver and fret. The perpetrator projected himself and the crimes grandiosely, proclaiming that he would continue to commit murders without being identified and caught. Our aforesaid findings would be primarily and largely predicated on the two confessional letters, which we have quoted in our judgment. The letters, however, also reveal and reflect the mitigating factors, why and how Chandrakant Jha, a family man with children, had committed the said offence. These palliative and relieving factors candidly mentioned in the two letters cannot be ignored or rejected as make-belief. When we read the incriminating or aggravating part of the letters, we must also take into account the mitigating factors, lucid and apparent from the said letters. In *Aghnoo Nagesia v. State of Bihar*, (1966) 1 SCR 134, it has been observed:-

“12. Shortly put, a confession may be defined as an admission of the offence by a person charged with the offence. A statement which contains self-exculpatory matter

cannot amount to a confession, if the exculpatory statement is of some fact which, if true, would negative the offence alleged to be confessed. If an admission of an accused is to be used against him. The whole of it should be tendered in evidence, and if part of the admission is exculpatory and part inculpatory, the prosecution is not at liberty to use in evidence the inculpatory part only. See *Hanumant v. State of U.P.* (1952) SCR 1091, 1111 and *Palvinder Kaur v. State of Punjab*; (1953) SCR 94, 104. The accused is entitled to insist that the entire admission including the exculpatory part must be tendered in evidence. But this principle is of no assistance to the accused where no part of his statement is self-exculpatory, and the prosecution intends to use the whole of the statement against the accused.”

113. It has also been proved and brought on record that Chandrakant Jha was prosecuted and thereafter acquitted in a murder case and had statedly faced prosecution in as many as five other FIRs in the period 2003 till 2005. Chandrakant Jha in the confessional letters has stated that he was innocent, harassed and falsely implicated and this harassment and persecution was the cause of his deviant behaviour. There is evidence to show that the appellant had worked and earned his livelihood as a vendor selling vegetables.

114. In the present case there was no eye witness and the prosecution has relied upon circumstantial evidence which, we have held, has been proved beyond reasonable doubt. By order of sentence dated 4th February, 2013 arising out of charge sheet filed in FIR No. 279/2007, which relates to the third murder committed on or about 18th May, 2007, Chandrakant Jha has been awarded life imprisonment and not capital punishment of death for the reason the victim remained unidentified. Recently, a Constitution Bench of the Supreme Court in *Union of India versus V. Sriharan Murugan and Others*, Writ Petition (Criminal) No. 185/2014 and other cases decided on 2nd December, 2015 has exhaustively examined several questions including what is meant by the term ‘life imprisonment’ and whether imprisonment for life can be for the rest of the convict’s remaining life and whether the courts can award and direct that there would be no

remission or power of remission would not be exercised till the convict has suffered incarceration for a specified period.

115. To answer the question what is meant by the term imprisonment for life and whether it connotes a fixed period or refers to remaining of convicted person's natural life, reference was made to ***Gopal Vinayak Godse Vs. The State of Maharashtra and Ors.*** (1961) 3 SCR 440 and the subsequent decisions of the Supreme Court, to hold that life sentence is nothing less than the life-long imprisonment i.e. for the remaining period of the convicted person's natural life. Reference was also made to different provisions of the IPC and Cr.P.C. including Sections 432, 433 and 433A of Cr.P.C. We would at this stage quote the following paragraph from the judgment in ***Ranjit Singh alias Roda Vs. Union Territory of Chandigarh*** (1984) 1 SCC 31, relating to power of the Government to remit and suspend sentence, which was quoted with approval in ***Sridharan @ Murugan (Supra)***:

"the two life sentences should run consecutively, to ensure that even if any remission is granted for the first life sentence, the second one can commence thereafter".

The said observation was made while commuting death sentence to sentence for life and the Supreme Court had observed that if in one case remission was granted, the sentence of life imprisonment in the second case would commence thereafter. The effect and ambit of Section 428 of Cr.P.C. was also explained.

116. However, more important and relevant for us is the ratio of the majority opinion of the Constitution Bench, explaining and relying upon ***Swamy Shraddhananda (2) alias Murali Manohar Mishra v. State of Karnataka*** (2008) 13 SCC 767 on two aspects. Firstly, the Supreme Court, has held that the courts while awarding life sentence or when modifying award of death penalty in a reference or otherwise in an appeal, to life sentence, can stipulate that the life sentence would mean the entire life span of the convict. It is permissible for Courts to award and impose the said condition and also state that no remission should be granted to nullify such imposition for the remainder of life or for a particular period. This direction would not be contrary to law. However, this direction would not affect the constitutional power of

remission provided under Articles 72 and 161 of the Constitution of India, which would remain untouched by any such direction (we are not concerned in this case with the exercise of the said power).

117. Secondly, the Supreme Court recognized the need to uphold and accept that the courts can award life imprisonment with a negative stipulation with regard to remission for cases which fall in the in-between category i.e. where life imprisonment in which remission can be granted in terms of the Statute; and where capital punishment by way of death is awarded. Thus there could be cases, where imprisonment for life with right of remission would be insufficient and inadequate punishment and death sentence would be too harsh and unjustified. Award of imprisonment for life without remission for entire life or for a specified period would meet the ends of justice. The said position is clearly brought out in the following words of Swami Shraddhananda (supra):

“69. Keeping the above perception of the Rule of Law and the settled principle of Criminal Law Jurisprudence, this Court expressed its concern as to in what manner even while let loose of the said appellant of the capital punishment of death also felt that any scope of the appellant being let out after 14 years of imprisonment by applying the concept of remission being granted would not meet the ends of justice. With that view, this Court expressed its well thought out reasoning for adopting a course whereby such heartless, hardened, money minded, lecherous, paid assassins though are not meted out with the death penalty are in any case allowed to live their life but at the same time the common man and the vulnerable lot are protected from their evil designs and treacherous behavior.”

Paragraph 56 of Swami Shraddhananda (supra) was usefully referred to elucidate and the ratio pronounced to follow:-

“56. But this leads to a more important question about the punishment commensurate to the appellant’s crime. The sentence of imprisonment for a term of 14 years, that goes under the euphemism of life imprisonment is equally, if not

more, unacceptable. As a matter of fact, Mr. Hegde informed us that the appellant was taken in custody on 28-3-1994 and submitted that by virtue of the provisions relating to remission, the sentence of life imprisonment, without any qualification or further direction would, in all likelihood, lead to his release from jail in the first quarter of 2009 since he has already completed more than 14 years of incarceration. This eventuality is simply not acceptable to this Court. What then is the answer? The answer lies in breaking this standardisation that, in practice, renders the sentence of life imprisonment equal to imprisonment for a period of no more than 14 years; in making it clear that the sentence of life imprisonment *when awarded as a substitute for death penalty* would be carried out strictly as directed by the Court. This Court, therefore, must lay down a good and sound legal basis for putting the punishment of imprisonment for life, awarded as substitute for death penalty, beyond any remission and to be carried out as directed by the Court so that it may be followed, in appropriate cases as a uniform policy not only by this Court but also by the High Courts, being the superior courts in their respective States. A suggestion to this effect was made by this Court nearly thirty years ago in *Dalbir Singh v. State of Punjab*. In para 14 of the judgment this Court held and observed as follows: (SCC p. 753):

“14. The sentences of death in the present appeal are liable to be reduced to life imprisonment. We may add a footnote to the ruling in *Rajendra Prasad case*. Taking the cue from the English legislation on abolition, we may suggest that life imprisonment which strictly means imprisonment for the whole of the men’s life but in practice amounts to incarceration for a period between 10 and 14 years may, *at the option of the convicting court, be subject to the condition that the sentence of imprisonment shall last as long as life lasts, where there are exceptional indications of murderous recidivism and the community cannot run the risk of the convict being at*

large. This takes care of judicial apprehensions that unless physically liquidated the culprit may at some remote time repeat murder.”

We think that it is time that the course suggested in *Dalbir Singh* should receive a formal recognition by the Court.”

Reference made is to *Dalbir Singh versus State of Punjab; (1987) 3 SCC 360*. Reference was also made to paragraph 92 of the decision in *Swamy Shraddananda (Supra)*, which reads as under:-

“92. The matter may be looked at from a slightly different angle. The issue of sentencing has two aspects. A sentence may be excessive and unduly harsh or it may be highly disproportionately inadequate. When an appellant comes to this Court carrying a death sentence awarded by the trial court and confirmed by the High Court, this Court may find, as in the present appeal, that the case just falls short of the rarest of the rare category and may feel somewhat reluctant in endorsing the death sentence. But at the same time, having regard to the nature of the crime, the Court may strongly feel that a sentence of life imprisonment subject to remission normally works out to a term of 14 years would be grossly disproportionate and inadequate. What then should the Court do? If the Court's option is limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the Court may feel tempted and find itself nudged into endorsing the death penalty. Such a course would indeed be disastrous. A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the Court i.e. the vast hiatus between 14 years' imprisonment and death. It needs to be emphasised that the Court would take recourse to the expanded option primarily because in the facts of the case, the sentence of 14 years' imprisonment would amount to no punishment at all.”

(Emphasis added)

118. In light of the aforesaid factum and balancing out of the aggravating and mitigating circumstances, we feel that the present case would fall in the category wherein the extreme sentence of death by capital punishment would not be justified and at the same time possibility of award of remission and release of Chandrakant Jha on completion of sentence of 14 years or even thereafter, would be inadequate and parlous. The heinous and outrageous crime, involving inhumane behaviour and torture, must be emphatically and adequately punished. This case falls in the third category, beyond application of remission.”

46. For the same reasons as set out above, we would convert the death sentence to life imprisonment i.e. imprisonment for entire life without remission without affecting the power under Articles 72 and 161 of the Constitution of India. This would be appropriate and proportional sentence in the present case also. We order accordingly.
47. The Criminal Appeal and the Death Sentence stand disposed of in the above terms.

(SANJIV KHANNA)
JUDGE

(R.K. GAUBA)
JUDGE

JANUARY 27th, 2016
VKR/SSN/NA