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

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CRL.A.371/2015

Reserved on : 10th August, 2015
Date of decision: 5th November, 2015

CHANDARJEET KUMAR @ KISHAN Appellant
Through: Mr. Ajay Verma and
Ms. Neha Singh, Advocates.

versus

STATE Respondent
Through: Ms. Aashaa Tiwari, APP
with Inspector Subhash Kumar
from P.S. Saraswati Vihar

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

SANJIV KHANNA, J.

1. This case once again exposits gigantic and undesirable problem of hostile witnesses, which adversely affects and extenuates decision making and disposal of criminal cases. Invariably when confronted with a perjurer, the courts take recourse and rely upon the legal ratio propounded by the Supreme Court way back in 1991 in *Khuji Vs. State of M.P.*, reported as AIR 1991 SC 1853. The vexation persists and in spite of claims on “witness protection” refuses to ebb and fade away. The pyrotechnic concoction of half truth and lies makes the adjudicator’s task and responsibility strikingly onerous and

laboriously exacting for the Court has to be absolutely sure and convinced beyond reasonable doubt that the truth can be separated from disguise and mask before the gospel decrypted can be unfailingly relied. Tutoring, turpitude and verisimilitude must be ruled out.

2. The undisputed position is that one Arun Mandal was shot and had died as a result of fire-arm injuries on 08.01.2007. The death was homicidal is proved and established by the post-mortem report marked Ex.PW-3/A, which records two fire-arm entries wound over left side front of the chest, as elucidated by Dr. Upender Kishore (PW-3), in his testimony:-

- “1. Fire arm entry wound of size 0.3X0.3 cms with abrasion collar present over the left side middle front of chest placed 6 cm inside horizontally to the left nipple, the projectile goes inwards slightly backwards horizontally into the cavity of the chest after piercing the edge of sternum at the fourth intercoastal margin. Left and right atrium of heart through and through into the right chest cavity, pierces the middle lob of lung and coming out from the chest cavity right side at the anterior axillary line placed 14 cms below and outwards to the right nipple of size 05.X05 cms and placed 27 cms above the anterior superior iliac point. No singeing, blackening, tattooing present.
2. Fire arm entry size 0.3X0.3 cms present over the left side chest outer aspect in the anterior axillary line placed 9 cm outwards and downwards to the left nipple, abrasion collar present. The projectile goes inside the chest cavity after piercing the skin subcutaneous tissues, third intercoastal space into the parenchyma of left lung, upper middle lower pierces through and through and comes out from the exit wound at the back of the left side chest of

size 0.5X0.5 cms placed 10 cm below the scapular spine and 5 cm middle to the midline. The direction is inwards and backwards and downwards. No blackening, singeing and tattooing present.

3. Reddish abrasion of size 2x0.5 cms present over the middle of forehead.
4. Reddish abrasion of size 1x1 cms present over the left side inner middle front of forehead.”

The cause of death was shock due to haemorrhage as a result of ante-mortem injuries to the multiple internal organs (heart and both lungs) produced by projectiles of a rifled fire-arm. The injuries were sufficient to cause death in ordinary course of nature.

3. On the question of homicidal death, we would be subsequently referring to the testimonies of Arvind Kumar Mandal (PW-1) and Rejnath Mandal (PW-4), the latter statelty an eye witness to the occurrence who has turned hostile. Statements of the police officers, Inspector Dharamvir (PW-26), HC Rajinder Singh (PW-16) and S.I. Anuj Nautiyal (PW-22) are also relevant. We straight proceed to decide the primary and core issue; whether the appellant Charanjeet Kumar @ Kishan is the culprit and perpetrator, who caused the fire arm injuries on Arun Mandal.
4. Arvind Kumar Mandal (PW-1), is the first informant on whose statement, Ex.PW-1/A, the FIR was registered. He has testified that the deceased Arun Mandal used to run a dental lab from D-499, J.J. Colony, Shakurpur, Delhi. The deceased used to reside in a room on the third floor of the same property, and had long working hours of about 12 hours from 10:00 a.m. to

10:00 p.m. On 08.01.2007 between 6:00 to 6:30 p.m. one Ramesh came to PW-1's address at G-754, Shakurpur, Delhi to inform that Arun Mandal was lying unconscious in his room on the third floor of D-499, J.J. Colony, Shakurpur, Delhi. PW-1 went to the aforesaid property and touched unresponsive Arun Mandal. On opening Arun Mandal's clothes, he noticed wounds on Arun Mandal's chest and under-arm. PW-1's hands got blood-stained. He took Arun Mandal to Muni Maya Ram Hospital, where he was declared dead by the doctors. Arun Mandal was brought back and made to lie on the ground floor. PW-1 informed the police, who came and recorded his statement, lifted evidence in the form of blood lying on the floor, blood-stained earth, etc. vide seizure memo (Ex.PW-1/B), which was signed by PW-1 at point 'A'. A piece of an iron almirah, which had a bullet mark was cut and sealed vide seizure memo (Ex.PW-1/C). Two bullet shells were found and seized vide seizure memo (PW-1/F). The aforesaid cartridges were identified by PW-1 in the court after breaking the seal of FSL, AKS, Delhi, and the same were marked as Ex.P-8. The piece of iron almirah was examined and identified after breaking the seal of FSL, AKS and the same was marked as Ex.P-9. On a leading question being put by the public prosecutor, PW-1 accepted as correct that Pradeep Mandal had told him that about 40-42 days prior to the incident one Kishan with two other associates had visited and threatened Arun Mandal that he should pay Rs.50,000/- or he would be killed. PW-1 answered in affirmative that he knew the said Kishan and

identified the present appellant, Charanjeet as Kishan. In his cross-examination, PW-1 has accepted that the property bearing No.D-499 and D-505, Shakurpur, Delhi were in the name and were owned by his deceased brother Arun Mandal. PW-1, unmarried at the time of occurrence (having got married in March, 2000), has deposed that was living with his family in house No.G-754, Shakurpur, Delhi; his elder brother (Dharmu) was also living with him, but on the date of occurrence he had gone to his village. Property No.D-499, Shakurpur, Delhi was constructed on a plot admeasuring 25 sq. yds., and the third floor consisted of one room and a separate WC-cum-bathroom. Ramesh would help on the ground floor but was not a regular worker. Pradeep would also sometimes work for them. PW-1 identified Ramesh as the person, who used to do ceramic and grinding job and Pradeep would grind the metal. In his cross-examination, PW-1 has stated that the police had seized empty cartridges and one lead from the spot.

5. In Ex.PW-1/A, Arvind Mandal (PW-1) did not name and identify the perpetrator and the culprit has been described as an unknown person. The aforesaid statement was transmuted into *Rukka* after endorsement by Inspector Dharamvir Singh (PW-26) at 8:20 p.m. on 08.01.2007. Thereafter, FIR in question bearing No.21/2007 was recorded at the police station Saraswati Vihar under section 302 of the Indian Penal Code (for short, 'IPC'). Affirming DD No.34-A dated 08.01.2007, was recorded at 9:30 p.m.

6. Ramesh Kumar Mandal (PW-6) has deposed that on 8th January, 2007 he had finished his work in the laboratory at about 5:00 p.m. and had gone to the market. Arun Mandal, the owner, was working in the same dental laboratory. At about 6:15 p.m. he came to know about the occurrence as somebody had called him from the laboratory, but he did not remember his name. The said person informed him that someone had come to D-499, J.J. Colony and shot Arun Mandal. On reaching the spot, PW-6 found that Arun Mandal was unconscious; somebody had called the police, who had come and had inspected the third floor. He was cross-examined by the public prosecutor, but denied the suggestion that Pradeep Mandal was working on the said day with him, claiming that on 8th January, 2007, Pradeep Mandal had gone to his native place. He denied other suggestions given by the public prosecutor. He was not cross-examined on behalf of the accused/appellant.
7. Pradeep Kumar Mandal (PW-7), turned hostile after accepting that he used to work at property D-499, J.J. Colony, Shakurpur, Delhi, which belonged to Arun Mandal (deceased), claiming that for about 2 months he was in his village. However, the court noticed and has recorded that PW-7 had intentionally and deliberately ignored questions put to him by the public prosecutor and was not giving “proper” answers. The trial court in noting dated 15th February 2011 has recorded that the witness did not give complete and true answers to the question that when for 2 months he was in his village and that PW-7’s expression reflected that he was under some pressure and

threat. PW-7 has accepted that he had attended the funeral of Arun Mandal and due to the murder of Arun Mandal, he had left the job in the laboratory and expressed his inability to state anything else. The court granted permission to the public prosecutor to cross-examine PW-7 and several suggestions were put to him, relying upon his statement under Section 161 Cr.P.C. marked Ex.PW-7/A. He denied the suggestion that he had been won over by the accused, who also belonged to district Supol and that due to fear, he had deposed falsely and deliberately did not identify the appellant. On cross-examination by counsel for the appellant, PW-7 proclaimed incredibly that his statement was never recorded by the police and he did not know the appellant present in court, prior to the said date. He claimed that no one had threatened him.

8. Rejnath Mandal (PW-4) has accepted that in the year 2007, he used to reside at Shakurpur and was working in the laboratory run by the deceased Arun Mandal at D-499, J.J. Colony, Shakurpur, Delhi. On 8th January, 2007 at about 6:00 p.m. he had seen three persons, who had caught hold of Arun Mandal. One of them had fired upon Arun Mandal, who fell down, thereafter the assailants left the spot. Arvind Kumar Mandal i.e. PW-1 had taken Arun Mandal to the hospital and subsequently, the police came to the spot. As PW-4 was resiling from his statement recorded under Section 161 Cr.P.C., he was cross-examined on behalf of the State. In his cross-examination PW-4 accepted that one of the assailants had fired at Arun Mandal in his presence, but denied that it was the

appellant (Chanderjeet Kumar @ Krishan), who had fired. PW-4, however, accepted that the appellant, who was even earlier known to him, was present along with Sachin and Uday (Sachin and Uday are proclaimed offenders). PW-4 denied knowledge of any conversation between the deceased Arun Mandal and the present appellant. He was confronted with portions of his statement under section 161 CrPC marked Ex.PW-4/A. It was suggested but decided by PW-4 that he was scared and afraid and because of fear had intentionally not named and implicated the appellant or PW-4 had been threatened with dire consequences that he would be killed if he would disclose the incident to anyone.

9. Pertinently, as per the police case, the appellant, Chanderjeet Kumar @ Krishan was arrested on 13th January, 2007 at the pointing out and on identification by Rejnath Mandal (PW-4). However, Rejnath Mandal (PW-4) denied the said fact, claiming that he had not stated or participated in the events leading to arrest of the present appellant on 13th January, 2007, near bus stop Shakurpur near Ring Road or that he had identified the present appellant. Apposite, Rejnath Mandal (PW-4) accepts his signatures on the arrest memo (Ex.PW-4/A) and the personal search memo of the appellant Charanjeet (Ex.PW-4/B), both signed by PW-4 at point A. PW-4 professed that he was illiterate and could only sign. In his cross-examination only one question was put-forward to PW-4 to the effect; whether Arun Mandal belonged to his native

village. He accepted the said suggestion “that deceased Arun Mandal belonged to his native village”.

10. On the question of arrest of the appellant (Chanderjeet Kumar @ Krishan), we have decisive testimony of Inspector Dharamvir Singh (PW-26), who on 8th January, 2007 was posted as additional SHO. He has deposed that on 13th January, 2007, he with S.I. Anuj Nautiyal (PW-22) and Head Constable Radha Krishan (PW-9), had arrested the present appellant, when he was sitting at the bus stand, Ring Road, J.J. Colony. One of the eye witnesses was also present with them and at his instance the present appellant Chanderjeet Kumar @ Krishan was identified. It is obvious that the reference to the eye-witness is to Rejnath Mandal (PW-4). Inspector Dharamvir Singh (PW-26) has proved the arrest memo (Ex.PW-4/A), which was signed by him at point ‘D’ and signed by the appellant at point ‘X’ and personal search memo, which was signed by him again at point ‘D’ and signed by the appellant at point ‘X’. Similar statements regarding arrest of the appellant Chanderjeet Kumar have been made by Head Constable Radha Krishan (PW-9) and S.I. Anuj Nautiyal (PW-22).
11. The present appellant in his statement under Section 313 Cr.P.C. has accepted that he was arrested on 13.01.2007 and stated that he has been falsely implicated and was innocent and the police had lifted him from his house at B-67, Qutub Vihar, Phase-I, Goyala Dairy, Najafgarh, Delhi. In view of the aforesaid discussion, we are inclined to accept the version given by HC Radha Kishan (PW-9), S.I. Anuj Nautiyal (PW-

22) and Inspector Dharamvir Singh (PW-26) that the present appellant (Chanderjeet Kumar @ Krishan) was arrested on 13th January, 2007 at the instance or on identification of Rejnath Mandal (PW-4), who is a signatory of the arrest memo (Ex.PW-4/A) and personal search memo (Ex.PW-4/B). The version given by PW-4 that he had only signed the said memo but had not participated and he was not aware of the said arrest / detention is *per se* false and incorrect.

12. From the aforesaid ocular evidence it can be held with certainty that Arun Mandal had died as a result of gun-shot wound suffered by him between 5 to 6 p.m. on 8th January, 2007 at D-499, J.J. Colony, Shakurpur, Delhi. The appellant-Chandarjeet Kumar @ Kishan was known to the deceased and was identified by Arvind Kumar Mandal (PW-1). Rejnath Mandal (PW-4) had identified the present appellant, who was arrested on 13th January, 2007 vide arrest memo PW-4/A, as deposed to by Head Constable Radha Krishan (PW-9), S.I. Anuj Nautiyal (PW-22) and Inspector Dharamvir Singh (PW-26). The appellant does not dispute the date of arrest, but has disputed the place of arrest. Rejnath Mandal (PW-4) has accepted that the appellant-Chandarjeet Kumar @ Kishan was present at the time of firing along with Sachin and Uday (both proclaimed offenders). The aforesaid uncontrovertible evidence regarding presence of the appellant at the spot i.e. D-499 JJ colony, Shakurpur, Delhi can be segregated and deciphered in view of Rejnath Mandal (PW-4) ethereal version that he had seen the appellant- Chandarjeet Kumar @ Kishan but the appellant had

not fired. The said segregation is permissible and can be resorted to in the light of the judgment in *Khujji (Supra)* and *Rameshbhai Mohanbhai Koli & Ors. v/s State of Gujarat (2011) 11 SCC 111*, to the effect that evidence of a hostile witness to the extent it is truthful and reliable remains good and it is open to the court depending upon facts of each case to rely upon the dependable and acceptable part of the statement made by a hostile witness, provided that it is possible to segregate and separate truthful statement of facts from untruths, exaggerations or improvements. However, the aforesaid ocular evidence and other materials by themselves would not lead us to a definitive conclusion or firm finding that the appellant was the perpetrator, who had killed Arun Mandal by causing injuries by using fire arm. To uphold the said finding we would rely upon the ballistic report, recovery of the used cartridges and leads from the spot i.e. the place of occurrence and the fire arm recovered from the place of residence of the appellant- Chandarjeet Kumar @ Kishan, at his behest. It is almost seraphic that this strong and cogent evidence when read along with the aforesaid facts ingests and establishes that the appellant- Chandarjeet Kumar @ Kishan was the perpetrator, who had fired from the recovered fire arm, in the absence of any explanation how the appellant-Chandarjeet Kumar @ Kishan came into the possession of the said fire-arm. It is trite law that when we examine and decipher whether the person accused has committed the offence, we have to take into account the factual inference which should be drawn after

taking into account all and different facts, proved and established beyond doubt. It is a combined effect and not each proved fact in isolation, which the adjudication order must consider.

13. We have already referred to the testimony of Arvind Kumar Mandal (PW-1), who has stated that two bullet shells were seized and sealed by the I.O. vide seizure memo (Ex.PW-1/F). He had also identified the two bullet pieces in the court. In his cross-examination on 2nd February, 2009, PW-1 testified that the police had seized empty cartridges and one lead while recording his statement. It is pertinent to mention that *Rukka* (Ex.PW-1/A) recorded at 9:20 p.m. on 8th January, 2007 specifically records that two empty cartridges and two leads of fired bullets including one deformed lead were recovered from the third floor bed-room at the time of inspection. The seizure memo of the empty cartridges and leads marked Ex.PW-1/F records that the fired cartridges had “KF 02-9mm 2Z” engrossed thereon. The crime team report (Ex.PW-11/A) records that empty cartridges 9 mm 2 KF 9mm 2Z and 2 fired leads were found at the spot. The report (Ex.PW-11/A) mentions the locations where the fired cartridges and discharged lead were found. The said report was proved by S.I. Satpal Singh (PW-11), who was then the in-charge of Crime Team, North West District, Pitampura.
14. It was highlighted that there is discrepancy regarding the two or one lead recovered from the spot. With regard to the presence and recovery of two leads, the purported “discrepancy” from

the statement of Arvind Kumar Mandal (PW-1) is rather stretched. In his examination-in-chief, PW-1 had used the term two bullet shells were seized from the spot and sealed by the investigating officer vide seizure memo (Ex.PW-1/F). In his cross-examination, as noticed above, he has mentioned that the police had seized empty cartridges and one lead. The seizure memo (Ex.PW-1/F) as noticed above refers to recovery of two leads including a deformed lead and two empty cartridges with the words “KF02-9mm-2Z” engrossed thereon. The cartridges were of 9 mm diameter and 1.9 cm of length. The diagram / sketch of the said bullets were also prepared at the spot itself vide Ex.PW-22/B. The size of the lead recovered from the spot is 1.5 cm. The recovery of the leads and the fired cartridges from the spot has been mentioned in the *Rukka* and Crime Team report (Ex.PW-11/A).

15. We would at this stage explicate depositions of other police witnesses, who visited the spot and affirm recovery of fired cartridges and two leads from the room on the third floor.
16. Sketch of the empty cartridges marked Ex.-PW-22/B was drawn by S.I. Anuj Nautiyal (PW-22), who has deposed that two empty cartridges were found lying near the bed and near the door. He has also deposed that two leads were found in the room. This incriminating material was lifted from the spot. Head Constable Rajinder Singh (PW-16) has similarly deposed that one bullet led was found near the door and another bullet lead was found near the bed and two empty cartridges were found lying in the room. S.I. Satpal Singh (PW-11), Crime

Team In-charge has testified that two empty shells of cartridges and two bullets were found lying in the room on the top floor. He identified the cartridges' cases as Ex.EC-1 and Ex.EC-2. The testimony of SI Satpal Singh to the extent of lifting and seizure of the fired cartridges and leads of fired bullets remained unchallenged and unquestioned.

17. Inspector Dharamvir Singh (PW26), the Investigating Officer in categorical terms refers to recovery of one fired cartridge near the iron almirah and the second cartridge near the bed. He had prepared the sketch of the fired cartridges (Ex.PW-22/B) and had sealed the same vide seal of DS. Two leads were also recovered. The recoveries were taken into possession vide seizure memo (Ex.PW-1/F). The iron almirah having bullet marks was cut and taken into possession and produced before the Court and marked Ex.P-9. In light of the said copious and affirmative evidence, as deposed to by SI Satpal Singh (PW-11), Rajinder Singh (PW-16), SI Anuj Nautiyal (PW-22) and Inspector Dharmvir Singh (PW-26), as contemporaneously documented and recorded in the Rukka (Ex.PW1/A) and the crime team report (Ex.PW11/A), we accept the prosecution version regarding recovery of the two fired / empty cartridges and two fired leads.
18. As noticed above, the appellant was arrested on 13th February, 2009. Inspector Dharamvir (PW-26), has deposed that he had recorded the disclosure statement marked Ex.PW-9/A, and thereafter, the appellant had led them to his house i.e. B-67, Qutub Vihar, Phase-I, Goyala Dairy, Najafgarh, Delhi and from there they had recovered one pistol of Italian make with

magazine. The said magazine had live cartridges. The sketch of the pistol, magazine and one live cartridge was prepared and marked Ex.PW-9/C. Pertinently Head Constable Rajinder Singh (PW-16) has deposed that on the date of occurrence itself they had gone to the residence of the appellant at B-67, Qutub Vihar, Phase-I, Goyala Dairy, Najafgarh, Delhi, but the same was found locked. Enquiries were then made from the neighbours, but the appellant could not be traced.

19. S.I. Anuj Nautiyal (PW-22) has affirmed testimony of Inspector Dharamvir (PW-26), regarding recovery of the pistol, magazine, etc. at the instance of the appellant from his residence. He has also affirmed and corroborated the version given by Head Constable Radha Krishan (PW-9), who had drawn and proved the sketch of the pistol and the magazine and one live cartridge marked Ex.PW-9/C. Head Constable Radha Krishan (PW-9) has deposed that at the instance of the appellant, the weapon of offence i.e. one loaded pistol engraved with the words PETRO and SROATA was recovered from his house. He has given dimensions and the fact that the pistol was of 9 mm caliber and was identified by him as Ex.F-1. He identified the jar and 23 live cartridges and two used cartridges as Ex.P-3 etc. Inspector Dharamvir (PW-26) had also identified the cartridges, two magazines as Ex.PX-2 and Ex.PX-3.
20. The appellant highlights certain discrepancies on the question of recoveries of the pistol, magazines and the cartridges. It is stated that Inspector Dharamvir (PW-26) in his cross-

examination has accepted that the disclosure statement (Ex.PW-9/A) does not mention that the pistol and the magazine was kept in an iron box. This purported discrepancy with reference to disclosure statement (Ex.PW-9/A) is meaningless and inconsequential. The disclosure statement would reflect and record what is stated by the detenu and the facts stated may be correct or false. Such disclosure statement when a person is in police custody, are inadmissible except to the extent permitted by Section 27 of the Evidence Act. Therefore, what would be considered as judicial evidence is the recovery of the pistol, magazine and the live cartridges at the instance of the appellant. Of course, the prosecution would have to still show that the said recoveries would establish involvement of the person in the crime i.e. person, who had made the disclosure. Similarly, the contention that the iron box from where the pistol etc. was recovered was not seized, is insignificant and not of material consequence. It is correct that Inspector Dharamvir (PW-26) has testified that one magazine contained 9 live cartridges and has also stated that on checking the pistol one magazine with 7 live cartridges was found. As per the prosecution case, in all 25 live bullets were found and recovered from the residence of the appellant - Chandarjeet Kumar @ Kishan. This figure of 25 live cartridges includes the live cartridges found in the two magazines. The aforesaid factual position is affirmed by Head Constable Radha Krishan (PW-9), who has stated that one loaded pistol and one loaded magazine and 9 live cartridges were found. The loaded pistol

and the loaded magazine had 7 and 9 live cartridges respectively. Sketch of one live cartridge was prepared. Importantly the sketch prepared by Head Constable Radha Krishan (PW-9) gives its detail and description of the pistol, cartridges and magazines. Head Constable Radha Krishan (PW-9) had identified the said pistol with the words PETRO and SROATA Italy made engraved thereon. The length of the pistol was 18.6 c.m. with butt of 10.4 c.m. The total length being 22.2 cm. The magazine had the length of 11.5 c.m. with width of 3 c.m. The total length of the cartridge was 2.9 c.m.. 21 cartridges had the words KF 029 MM 2Z engraved thereon. The remaining four cartridges had the words KF 04 -9 MM 2Z, KF 96 -9 MM 2Z, KF 93 -9 MM 2Z and KF 98 -9 MM 2Z engraved thereon. The cartridges had radius of 9 MM and 2 magazines were engraved with the figures 44337. Head Constable Radha Krishan (PW-9) had identified this case property in the court including the cartridges, out of which two had already been used for the purpose of test firing. As per S.I. Anuj Nautiyal (PW-22) one pistol with tagged magazine containing 7 live cartridges, one spare magazine containing 9 live cartridges and 9 live cartridges lying loose in the iron box i.e. 25 live cartridges in all were recovered. This corroborates the version given by the Head Constable Radha Krishan (PW-9).

21. We would now turn to the forensic evidence in the form of the ballistic reports marked Ex.PW-21/A and Ex.PW-21/B, which are crucial and important in the present case. The reports were proved by Puneet Puri, Senior Scientific Officer (Ballistic),

FSL Rohini (PW-21), who has testified that on 27th September, 2007 six sealed parcels with the seal of AKS, FSL Delhi and two parcels with the seal of DS were received by the Ballistic Division of FSL, Rohini. The seals were intact and tallied with the specimen seals. On opening of parcel no.5, two 9 mm cartridge cases, one bullet and one deformed bullet were taken out and marked as Ex.EC-1, Ex.EC-2, Ex.EB-1 and Ex.EB-2 respectively. On opening of parcel No.10, one improvised pistol of 9 mm caliber with number N-44337 and one spare magazine were taken out and marked Ex.F-1 and Ex.M-1 respectively. From parcel no.11, twenty five 9 mm cartridges were taken out and marked as Ex.A-1 to Ex.A-25. On examination the improvised pistol, marked Ex.F-1, was found to be in working order and test fire was conducted by using two cartridges marked Ex.A-1 and Ex.A-2. The test fire cases were marked TC-1 and TC-2 and recovered bullets were marked as Ex.TB-1 and Ex.TB-2. On microscopic comparison of the individual characteristic of the firing pin marks present on Ex.EC-1 and Ex.EC-2 with the test fire cartridge case marked Ex.TC-1, they were found to be identical. Similarly the bullets marked Ex.EB-1 and Ex.EB-2 matched the test fire bullets marked as Ex.TB-1 and Ex.TB-2 as the individual characteristic of firing marks, were found to be identical on microscopic comparison. He proved the detailed report dated 27th September, 2007, Ex.PW-21/A. PW-21 had also examined holes, Ex.H-1 to Ex.H-11 and different clothes which were worn by the deceased and opined that three holes on the jacket

marked Ex. C-1 and four holes on the sweater, T-shirt and the baniyan could have been caused by a cupro jacketed bullet discharged from the firearm, but no opinion could be given to holes H-2, H-3, H-5, H-6, H-7, H-9, H-10 and H-11 due to insufficient data. The dent mark 'DM-1' on the metal sheet marked Exhibit "MSI" could have been caused by a cupro jacketed bullet discharged through a firearm. The exhibits / case property was shown to PW-21 who had examined and identified the same in the court.

22. The fire arm used in the present case is not an ordinary weapon or a *desi katta*. It was improvised and fairly sophisticated pistol with the cartridge case, as is clear from the diagram / sketch mark Ex.PW-9/C.
23. On behalf of the appellant-Chandarjeet Kumar @ Kishan, it is submitted that at the time of examination of Head Constable Radha Krishan (PW-9) with reference to parcel number available, the court had observed that the middle of the envelop, i.e. parcel, was open and one could easily take out and put in any cartridge. There was a plastic jar in the said envelop i.e. parcel (11), which had 23 live cartridges and two used cartridges. We do not think the aforesaid fact should result in acquittal of the appellant. The live bullets / cartridges recovered from the residence of the appellant – Chandarjeet Kumar @ Kishan had earlier been examined by the ballistic expert (Mr.Puneet Puri). Moreover, the words engraved on the bottom of the cartridges has also been noticed and in fact the Head Constable Radha Krishan (PW-9) had initially given

engraving on one of the live cartridges i.e. ‘OK 93 9mm 2z’. He later on corrected himself and had stated that the cartridges did not bear the engraving of ‘OK’ but ‘KF’.

24. Learned counsel for the appellant had relied upon Wakkar and Another versus State of Uttar Pradesh, (2011) 3 SCC 306, wherein the Supreme Court has elucidated that recovery of certain incriminating articles at the instance of the accused under Section 27 of the Evidence Act by itself cannot form basis of conviction. The Supreme Court has observed that recovery of incriminating articles and its evidentiary value has to be considered in light of other relevant circumstances and chain of events and if the said chain of events is complete and shows that the accused was the perpetrator and no one else, conviction should follow. In other cases, the accused would be entitled to acquittal.
25. When we examine the aforesaid facts in light of our findings recorded above, the irresistible conclusion is that Charanjeet Kumar @ Kishan was the perpetrator, who had fired from the firearm, which led to death of Arun Mandal and, therefore, he has been rightly convicted under Section 302 read with Section 34 IPC and under Section 27 of the Arms Act. On the question of sentence, the trial court by order on sentence dated 25th August, 2014 has sentenced Charanjeet Kumar @ Kishan to rigorous imprisonment for life, fine of Rs.1 lac and in default of payment of fine, to undergo simple imprisonment for a period of six months. It has been directed that fine amount of Rs.1 lac, if deposited, shall be paid to the family of Arun

Mandal as compensation. For the offence under Section 27 of the Arms Act, the appellant has been sentenced to imprisonment for a period of five years and fine of Rs.5,000/-. In default of payment of fine, the appellant is to undergo simple imprisonment for a period of fifteen days. The sentences are to run concurrently and Section 428 Cr.P.C. would apply.

26. Keeping in view the aforesaid facts and noticing the conduct of the appellant and the nature and manner in which the offence was committed, we are not inclined to interfere with the order on sentence. The same is confirmed. Sachin @ Pandit @ Chinku and Uday, it is alleged were co-participants and were involved in the commission of the offence. They are absconding. We express no opinion on their involvement. The appeal is accordingly disposed of.

SANJIV KHANNA
(JUDGE)

R.K. GAUBA
(JUDGE)

NOVEMBER 05, 2015
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