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

CRA-215-SB of 1996

Date of decision: March 23, 2017

Indu Anand and others

.....Appellants

Versus

State through CBI, U.T., Chandigarh

.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. S.S. Narula, Advocate and
Mr. J.S. Mehndiratta, Advocate for the appellants.

Ms. Ashima Mor, Standing Counsel for U.T., Chandigarh.

Mr. Sumeet Goel, Retainer Counsel for CBI.

A.B. CHAUDHARI, J (Oral)

Being aggrieved by the judgment and order dated 23.02.1996, passed by Sessions Judge, Chandigarh, in Sessions Case No.3 of 06.02.1985 by which appellant No.1-Indu Anand was convicted for offences punishable under Sections 304 Part-II of the Indian Penal Code, 1860 (for short 'IPC') read with Section 34 IPC, while appellants No.2 and 3, namely Sumanjit Anand and Sandeep Singh were convicted for offences punishable under Section 304 Part-II of the IPC and were sentenced to undergo Rigorous Imprisonment for 2 years each and fine in the sum of ₹2,000/- each; in default Rigorous Imprisonment for 3 months, the present appeal was filed by the three appellants.

FACTS

1. Briefly stated the case of the prosecution (CBI) is that in the morning of 13.07.1983 at about 7:30 AM, police constables, namely Sant Singh, Prem Singh and Mohinder Singh, while patrolling on Sukhna lake, opposite Light Point No.49, noticed the dead body of J.S. Anand, the husband of appellant No.1-Indu Anand. J.S. Anand was an I.P.S. officer of Punjab Cadre, on deputation with Border Security Force posted as D.I.G. at Jodhpur. The dead body was identified by Sumanjit Anand and Sandeep Singh (Nephew), appellants No.2 and 3, respectively (both aged about 16-17 years), who had gone there in the company of PW27-Jasbir Singh Tiwana, the immediate neighbour of appellant No.1. The first information about discovery of dead body was reported to the police station and PW41-Devinder Singh, Inspector/SHO recorded DDR No.3 (Exhibit P/BB(R) and along with other police officials, he went to the spot. The personal search of the dead body was undertaken and some articles were recovered. The inquest *panchnama* was conducted and photographs of the dead body etc. were taken. The dead body was sent to the General Hospital for postmortem. A Board of two Doctors was constituted for conducting the postmortem on same day, i.e. 13.07.1983 at about 1:00 PM. Dr. Kuldip Singh and Dr. J.K. Kalra conducted the postmortem and issued a report Exhibit PT. According to them, the death was due to asphyxia by drowning, but the opinion regarding suicide due to drug/poisoning was reserved awaiting *viscera* report.

sample of water of the lake from where the dead body was recovered. On 14.07.1983, Col. S.S. Anand, brother of the deceased sought second postmortem examination and the same was conducted on 14.07.1983 at about 3:00 PM by the Board of Doctors consisting Dr. Inderjit Dewan, Dr. B.N. Datta and Dr. Rajinder Kalra. They prepared report Exhibit PQ after considering the report Exhibit PO of the chemical examiner. In their opinion, the cause of death was asphyxia and also that drowning could be ruled out. It was also opined that, though, the chemical examiner had detected Organophosphorous compound and alcohol, but the Board did not agree with him. They observed that postmortem findings were not consistent with those seen in the cases of Organophosphorous poisoning. Finally they came to the conclusion that it was not a case of drowning. PW41-Devinder Singh then registered FIR No.362 dated 22.07.1983 and commenced investigation. He recorded the statements of large number of persons, whom he thought, would throw light. While the Chandigarh police continued to investigate, by letter dated 20.07.1983 by the Ministry of Home Affairs, Government of India, the same was entrusted to CBI. Sh. O.P. Chhatwal was entrusted the investigation by CBI who registered CBI case No.4/83. On 27.07.1983, O.P. Chhatwal seized certain articles from appellant No.1-Indu Anand and also from Lt. Col. S.C.S. Guleri. CBI made a request to the Board of Doctors consisting of Professor Hareesh Chandra, Dr. Jagdish Chandra and Dr. Valliaeth seeking their opinion. The Board was constituted on 11.08.1983 and it

the death was due to asphyxia by drowning due to the presence of miliary tuberculosis of lungs, Organophosphorous compound and alcohol in the *viscera* was also taken into consideration while forming their opinion.

3. During continuance of the investigation, CBI arrested Darshan Lal who was working as an orderly in the house of the deceased. He made a confessional statement before Sh. K.C. Lohia, Metropolitan Magistrate, New Delhi admitting his role in the present case leading to the death of J.S. Anand and after some period of time, agreed to become an approver. He was made approver by the CBI for proving its case ultimately in the trial that was conducted before the trial Judge. According to Darshan Lal, the deceased-J.S. Anand, appellants No.1, 2 and 3, on 12.07.1983 at about 9:00 PM had gone in the car to the house of PW51-Col. Guleri after informing that they would take drinks there, but would take meals at home. Accordingly, all of them returned at about 11:00 PM. The family comprised of the deceased J.S. Anand, Indu Anand (wife), Sumanjit Anand (son) and Yuvika (daughter). He opened the main gate of the house for entry of the car. Thereafter, the deceased, appellants No.2 and 3-Sumanjeet Anand and Sandeep Singh had gone upstairs on the first floor while appellant No.1-Indu Anand had gone to the kitchen. After some time, appellant No.1-Indu Anand went upstairs to call her husband and within 2-3 minutes, he heard some altercation between the deceased and Indu Anand, after which, Indu Anand came down and went out in car No.CHB 200 and returned after 20/25 minutes. He, then saw the

deceased proceeding outside the gate of the house and when Darshan Lal reached the gate, he heard Yuvika Anand shouting "*papa papa*", but the deceased had not stopped. Yuvika Anand then shouted "*Nikki Nikki papa is going*" and within 2-3 minutes, appellants No.2 and 3 were also seen going outside the gate of the house in the same direction in which the deceased had gone. They brought the deceased after 10 minutes in the house by holding him by the arms as the deceased appeared to be staggering and drunk. Thereafter, all the appellants along with Yuvika Anand entered the main door and when the deceased reached near the carpet spread besides the sofa set, appellant No.1-Indu Anand caught hold of the neck of the deceased and shouted "*kill kill*", while appellants No.2 and 3 released their grip on the arms of the deceased who then fell on the carpet and his turban went off his head. Darshan Lal saw Yuvika started weeping. He brought some water in a tumbler and poured 3-4 spoons in mouth of the deceased, but he could not swallow it. The appellants started massaging the chest of the deceased for some time and appellant No.1-Indu Anand tried to feel pulse and checked breathing by putting her hands near his nostrils and remarked that DIG Anand appeared to be dead. According to Darshan Lal, thereafter, appellant No.1-Indu Anand told him that he was like a member of their family and suggested him for disposing of the dead body by throwing it into Sukhna lake. When Darshan Lal told her that it would be an illegal act, he was told that if the body was not disposed of, the appellants would be involved in the murder of the deceased and therefore, he agreed

with the suggestion to remove the body. According to him, body was then put in the boot of the car which was driven towards MLA flats and then to the golf club and then to the third flight stairs of Sukhna lake. All of them then went ahead and stopped. The accused and Darshan Lal took out the body and carried the same upstairs, looked around and after lifting the dead body, the same was put on parapet wall of the lake and Darshan Lal and appellants No.2 and 3 got down from the parapet wall. Appellant No.1-Indu Anand asked all of them to throw the body in the lake. Accordingly, Darshan Lal caught the feet of the deceased and rotated it and with the help of the accused it carried down to the water of the lake where the water level was 2-2½ inches deep and body was pushed into the water. Thereafter, all of them returned to the house.

4. CBI requisitioned services of Central Forensic Laboratory for scientific investigation and accordingly, Dr. B.N. Sehgal, Dr. R.K. Bhatnagar and Sh. Jaspal Singh and others had inspected the car for finding out any traces of evidence for investigation and that the traces of blood were detected at the lower edges of the cover of the boot of the car, which was human blood. Finally after investigation, the appellants were arrayed as accused, while Darshan Singh was projected as approver and the star witness for the prosecution. Accordingly, challan was filed for offences under Sections 304 Part-II read with Section 34 and 309 IPC.

5. Chief Judicial Magistrate, Chandigarh committed the case to the Sessions Court and the Sessions Court accordingly, framed the

charge as stated above.

6. To prove its case, prosecution examined number of witnesses with their star witness PW1-Darshan Lal. The prosecution then closed its case. The statements of appellants under Section 313 of the Code of Criminal Procedure, 1973 (for short 'Cr. P.C.') were recorded. The defence also examined its defence witnesses DW1-R.S. Mann, IAS and DW2-C.P. Kaushal. The appellants filed written statement denying the prosecution case and evidence stating that the case against the appellants was false.

7. They stated that on 12.07.1983, appellants visited the house of Col. Guleri and returned after 10:30 PM. Appellant No.1-Indu Anand started arranging the dinner. There was divergent opinion between appellant No.1-Indu Anand and her husband-J.S. Anand, in respect of sale of House No.159, Sector 27-A, Chandigarh which was inherited by her from her father, Sh. Pritam Singh Sekhon and she was sentimentally attached to that house. Hence she was not prepared to sell it. But her husband wanted to sell the said house and invest the money in some commercial property in Delhi, but their tax consultant did not find the proposal practical and as such, appellant No.1-Indu Anand for that reason also did not want to sell her property. She asked her husband to come for dinner and went on the first floor and heard that her husband was talking to somebody about the sale of her house. She felt hurt and there was heated arguments amongst them that it was her father's property and he had no business to sell it. There were some exchange of words. Then they came down by the stairs near

dining table but then the deceased suddenly went out of the house. Appellant No.1-Indu Anand told her daughter Yuvika Anand to call appellants No.2 and 3 (son and nephew) to pacify her husband as he was going out. She then took out her car and drove it to the house of Harinder Singh Kohli and since, he was not in the town, after spending 15 minutes with his parents, she returned back at about 11:35 P.M., finding that neither her sons Sumanjit Anand and Sandeep Singh nor her husband had returned back to the house. Therefore, she started worrying and made telephonic calls to family friends to know whereabouts of her husband. She talked to Dolly Khanna at 11:45 P.M., Sheela Mamik at 12:00 mid night and Mrs. Rani Bakshi at 12:10 A.M., but they were not knowing about it.

8. Appellant No.1-Indu Anand further stated that CBI during investigation was most unfair, biased, incompetent and cruel to everyone in the house and the officer of CBI, Sh. O.P. Sharma got annoyed with her for her adverse remarks about CBI. She stated that Darshan Lal approver was addict of opium, *zarda* and alcohol and had been severally rebuked by her on various occasions. In nutshell, defence was that her husband in anger left the house never to come back. Trial Court thereafter, heard final arguments and came to the conclusion that the evidence of PW1-Darshan Lal was worthy of full reliance and hence, found the appellants guilty of the offence under Section 304 Part-II read with Section 34 IPC. After the conviction and sentence was recorded by the trial Court, the present appeal was filed by the appellants.

ARGUMENTS

9. In support of the appeal, learned counsel for the appellants assailed the impugned judgment and order recorded by the trial Court on number of grounds and reasons. He submitted that the reliance placed on the evidence of PW1-Darshan Lal by the trial Court as a truthful, honest and trustworthy witness is out and out contrary to the record, cross-examination and the conduct of the witness. The evidence of PW1-Darshan Lal, approver has to be examined by taking care that the witness in order to save his own skin, would put the blame on others and therefore, the evidence of such a witness must pass the rigorous test of truthfulness, credibility and trustworthiness, which is totally absent in the instant case. Trial Court however relied on his parole evidence which in no case, can be accepted. It is in this connection, learned counsel for both the parties took me through the entire evidence of PW1-Darshan Lal. Learned counsel for the appellants submitted that PW1-Darshan Lal was not at all a reliable witness and his confessional statement was recorded when he was lodged in Tihar jail before the Metropolitan Magistrate at New Delhi. The prosecution has not tendered any explanation as to why and under what circumstances PW1-Darshan Lal was whisked away from Chandigarh jail to Tihar jail, New Delhi and then why his confessional statement was recorded before a Court at New Delhi rather than undertaking the entire exercise within the territorial jurisdiction of the place where the alleged offence took place. Learned counsel then submitted that PW1-Darshan Lal in his cross-examination clearly

admitted that he had given diametrically opposite statements at the initial stage itself when he was interrogated by Chandigarh police, on 15.07.1983 and 16.07.1983 voluntarily, and had also given information about the incident to several persons but had not said a word about complicity of the appellants in any manner whatsoever. On the contrary, he had told the immediate neighbour PW27-Jasbir Singh Tiwana that the deceased had left the house on foot after quarreling with appellant No.1-Indu Anand. He did not tell his own family members about the complicity of the appellants. On the contrary, his family members stated that Darshan Lal had told them that the deceased had left the house after the quarrel had taken place. PW1-Darshan Lal had a deep sense of grievance against the appellants as after his arrest, none of the family members of the appellants intervened for helping him. According to the learned counsel for the appellants, PW1-Darshan Lal was in the custody of the CBI and he has given them tale telling admissions that he was with the CBI for not less than 20 occasions and was also sleeping in the office of CBI. The fact that CBI did not keep any record about notices to call him for interrogation and the number of days PW1-Darshan Lal was called, clearly indicate that the CBI did not want to place the truth before the Court that it had detained and put PW1-Darshan Lal in trepidation with an eye on him to make him approver for winning the conviction. Learned counsel for the appellants then contended that PW1-Darshan Lal was transferred to Delhi immediately on 01.10.1983 during the period of his suspension, which was made on 19.08.1983 and

continued till 14.03.1984 for which there is no explanation. PW1-Darshan Lal was never prosecuted departmentally and was taken to New Delhi only with a view to make him approver, record his confessional statement etc. Even during recording of confessional statement of PW1-Darshan Lal, the investigating officer Sh. O.P. Chhatwal DSP CBI was present with him and had ensnared him before the Metropolitan Magistrate, obviously, to any how obtain confession statement with a view to make him approver in the case. Such a confession is *void ab initio*.

10. Learned counsel for the appellants then contended that the evidence of PW1-Darshan Lal is wholly untrustworthy and will have to be rejected in the light of several inconsistencies, discrepancies and his vicious conduct brought on record in the cross-examination. Learned counsel then submitted that the entire story about carrying the body of the deceased up to lake in the boot of the car that too through golf club without anybody noticing the same is afterthought and deliberately made for supporting the prosecution case. The evidence of DW1-R.S. Mann connected with the golf club clearly indicate that the premises of the club were fenced with barbed wires running parallel to the *bundh* of Sukhna lake and it was impossible that a car would pass through the golf club towards Sukhna lake. Learned counsel for the appellants then contended that the prosecution does not have any other evidence by way of even the slightest corroboration.

11. Learned counsel for the appellants then contended that the medical evidence tendered by the prosecution before the Court and

even relied by the trial Court, is nothing but a bundle of confusion leading one to nowhere near the prosecution case. According to him, it was never the case of the prosecution that there was even a single drop of blood oozing from the body of the deceased and still the report of the chemical analyzer and the stand about the presence of blood, demonstrate a complete falsity of the case of the prosecution. The prosecution had one time projected the case regarding administration of Organophosphorous compound, which was ultimately found to be wholly incorrect. The prosecution was therefore, not sure about its own case but went on to spread theories after theories in contradistinction. The trial Court also made a grave error legal as well as factual in relying on the prosecution case and convicting innocents. According to the learned counsel for the appellants, the medical evidence did not indicate any injury or pressing mark or any other mark on the neck much less ligature mark since PW1-Darshan Lal deposed about pressing of neck by appellant No.1-Indu Anand. The possibility of death by pressing neck has been completely ruled out. The medical evidence thus, clearly shows that it supports defence rather than prosecution. He, then contended that PW8-Dr. Kuldip Singh stated that 300 cc of body water had ingested while the body remained immersed in the lake and therefore, the prosecution case that J.S. Anand had died at the residence and thereafter, his dead body was thrown in the water, becomes completely false and baseless. Trial Court did not consider the evidence in totality to find out the truth and on the contrary went on relying evidence which was liable to be

rejected.

12. Learned counsel for the appellants then submitted that the learned trial Court committed an error in not giving any importance to the defence evidence particularly because the defence witnesses were independent witnesses having no reason to depose, but had spoken the truth before the Court. The inferences drawn by the learned trial Court on the medical evidence and scientific evidence are all imaginary and the findings of conviction recorded by the learned trial Court are required to be set aside. Finally, he prayed for allowing the appeal. He placed reliance on the following judgments:-

Saravanabhavan and Govindaswamy versus State of Madras, 1966 AIR (SC) 1273 and Joga Gola versus State of Gujarat, 1982 AIR (SC) 1227.”

13. Per contra, Mr. Sumeet Goel, learned counsel for the CBI vehemently opposed the appeal and relied on the judgment under challenge so also the reasons contained therein for recording the conviction of the appellants. Mr. Goel took me through the evidence of PW1-Darshan Lal and the findings recorded by the trial Court on every point. He contended that the evidence of approver PW1-Darshan Lal is fully trustworthy and as a matter of fact, admittedly, he was working in the house of the deceased as orderly and he had no reason to speak against the family members of the deceased. Having realized that he should tell the truth, he himself applied for recording his confession and accordingly, the confession was recorded and certified by the Metropolitan Magistrate who was also examined before the trial

Court to prove his confession. According to Mr. Goel, the prosecution has brought all the pieces of evidences against the appellants together coupled with ocular evidence of PW1-Darshan Lal and succeeded in proving the prosecution case. Mr. Goel then contended that recording of confessional statement by the Metropolitan Magistrate etc. was hotly contested by the appellants by filing petition before the Delhi High Court. The two judges of the Delhi High Court had personally made enquiry from the approver PW1-Darshan Lal and had thereafter, dismissed the petition filed by the appellants. The appellants had challenged the judgment of the Delhi High Court before the Apex Court and the Apex Court had also confirmed the judgment of the Delhi High Court in the matter of recording of confession of the approver PW1-Darshan Lal. He, therefore, submitted that the confession of the approver that was recorded before the Metropolitan Magistrate has thus, attained finality between the parties and at least qua the appellants cannot be questioned by them on any ground. Mr. Goel, Advocate submitted that the learned Sessions Judge was fully justified in recording the finding about truthfulness and genuineness of the confessional statement of the approver PW1-Darshan Lal and in no case, the appellants were entitled to question the exercise of recording of confession of the approver. He submitted that it was crucial in the sense that the finding about genuineness of confession by Delhi High Court became conclusive. The confessional statement has then been found to be legal, correct and proper by the Delhi High Court as well as Apex Court, and no fault can be found out with the trial Court also

accepting the same. Mr. Goel took me to the medical evidence and other evidence tendered by the prosecution and finally, argued that it were the appellants who were in the house but they did not explain as to how Mr. J.S. Anand died, when it was obligatory on their part to disclose the truth. Finally, he prayed for dismissal of the appeal and relied on following judgments:-

“Dinesh Seth versus State of N.C.T. of Delhi, 2008 (4) RCR (Crl.) 81, Dalbir Singh versus State of U.P., 2004 (2) RCR (Crl.) 497, Lakhjit Singh and another versus State of Punjab, 1994 (Sup1) SCC 173, Sangaraboina Sreenu versus State of A.P., 1997 (5) SCC 348, Virendra Kumar versus State of U.P., 2007 (1) RCR (Crl.) 858, Willie (William) Slaney versus State of M.P., 1956 AIR (SC) 116, Santosh Kumari versus State of J&K and others, 2011 (4) RCR (Crl.) 360 and Rafiq Ahmed @ Rafi versus State of U.P., 2011 (8) SCC 300.”

CONSIDERATION:-

14. Heard learned counsel for the rival parties at length. Perused the entire record including the evidence of the witnesses tendered by the prosecution before the trial Court. I have seen the entire judgment made by the trial Court along with the reasons carefully. The decisions cited by both the parties were also carefully seen by me as to ascertain the propositions of law applicable in the present case.

15. Trial Court had framed the following charge against the appellants:-

“That on the night intervening 12/13-7-1983, in the

area of Chandigarh, in furtherance of common intention of you all and approver Darshan Lal, you Sumanjit and Sandeep Singh, accused, along-with the approver Darshan Lal, caused the death of Shri J.S. Anand by pushing his body into the water of Sukhna Lake, Chandigarh, with the knowledge that your said act was likely to cause death and thereby you Sumanjit Singh and Sandeep, accused, committed the offence of culpable homicide not amounting to murder punishable under Section 304 Part (II) of the Indian Penal Code, while you Smt. Indu Anand, accused, became liable therefore under Section 304 Part (II) read with Section 34, IPC, and within cognizance of this court;

Secondly, that on the said night, in the area of Chandigarh, you Indu Anand, accused, attempted to commit suicide and did an act, to wit, swallowed fatal dose of barbiturate tablets towards the commission of it and thereby committed an offence punishable under Section 309 IPC, and within cognizance of this court.”.

Perusal of the above charge framed by the learned trial Court shows that all the appellants and approver PW1-Darshan Lal were charged for causing the death of J.S. Anand by pushing his body in to the water of Sukhna lake and that thereby, committed the offence of culpable homicide not amounting to murder punishable under Section 304 Part-II read with Section 34 IPC. It is significant to note that no charge was framed under Sections 302 IPC and 201 IPC against the appellants for disappearance of evidence. Reading of the above charge also does not show that the appellants were charged for causing the death of J.S. Anand in the residential house itself. The prosecution case from the evidence of the approver PW1-Darshan Lal

is that appellant No.1-Indu Anand had pounced on J.S. Anand, caught hold of his neck and pressed his neck and thereafter, J.S. Anand fell down. Darshan Lal tried to pour water in his mouth but water did not enter the mouth. Upon checking, Indu Anand remarked that J.S. Anand died and hence, body should be removed to make disappearance of evidence. Thus, he died in the house itself. He does not say that death of Sh. J.S. Anand was caused by pushing him into the lake. It is in this context, it would be appropriate now to turn to the evidence of PW1-Darshan Lal.

16. Admittedly, PW1-Darshan Lal was also in the police Department and was working as 'orderly' at the residence of J.S. Anand. His statements were recorded by Chandigarh police on 15.07.1983 and 16.07.1983 and he voluntarily, in those statements, did not say a word about what was stated by him in the trial. He had also not disclosed to Assistant Sub Inspector PW5-Harish Chander, Mrs. Waryam Singh, PW27-Jasbir Singh Tiwana, PW43-Tara Singh, Mohinder Singh driver, Budh Singh Constable, Dr. Santokh Singh and deceased's mother that appellants had any complicity. It is also significant to note the evidence of PW5-Harish Chander, PW27-Jasbir Singh Tiwana and PW43-Tara Singh to whom he made disclosures immediately after the occurrence. Neither the prosecution nor PW1-Darshan Lal have any satisfactory explanation about the immediate disclosures made by him to number of witnesses abovestated that J.S. Anand had walked away from the house never to come back after the quarrel. It is then significant to note that after CBI took over the

investigation, on 19.08.1983 he was arrested and was in their custody for about 20 times, interrogated and he used to sleep in the office of CBI in the night. Even he did not go to Anand's house where he was residing for 24 hours after August 1982 and particularly after posting of Mr. J.S. Anand in BSF at Jodhpur. It is significant to note that the prosecution did not bring before the Court any record pertaining to the presence of PW1-Darshan Lal with the CBI by way of maintaining notices to appear and other zimini entries in police diary. He was thus, ensnared by the CBI. It clearly appears from the reading of the evidence on record that throughout, he was under the full control of the CBI officers and was not allowed to go anywhere. Investigating Officer PW52-O.P. Chhatwal stated that PW1-Darshan Lal was interrogated between 10:00 AM to 5:00 PM. But PW1-Darshan Lal stated in his cross-examination that the CBI was making verbal directions asking him to appear on the next day without giving any written notice. He used to wash his clothes in the evening and wear the same in the morning. He did not go to the house of the deceased for bringing his articles for daily use. The answers given by him during interrogation were not noted down. Despite answers given by him, the officers were telling him every day that he was telling lie. He then stated that 3/4 officials used to interrogate him at one and the same time. He was not attached with any police officer for discharging his duties from 22.07.1983 to 09.08.1984, obviously, because he was along with CBI under their control. He was transferred to Delhi on 01.10.1983, when he was under suspension from 19.08.1983 to

14.03.1984 which was also stated by PW52-O.P. Chhatwal. He was taken to Delhi on 29.08.1983 and lodged in Tihar jail. He did not know why and for what purpose, he was taken to Delhi. His confession was recorded before PW48-K.C. Lohia, Metropolitan Magistrate who stated on page 1307 (10th line from top) that Darshan Lal was identified by the investigating officer, Sh. O.P. Chhatwal which shows that he was surrounded by him and was present throughout with him for recording of confessional statement. PW48-Shri K.C. Lohia stated thus:

“The accused Darshan Lal was identified to me by Sh. O.P. Chhatwal, DSP/CBI, and an endorsement to this effect was made by me at the end of the proceedings, which is also bearing the signatures of Shri O.P. Chhatwal at Ex.PBB/Z/1.”

Careful perusal of evidence of PW48-Shri K.S. Lohia nowhere shows that he had removed Shri O.P. Chhatwal from the room in order to record the confession after identification was made. But the fact that Shri O.P. Chhatwal was present till the end of the recording of proceedings and also signed at the end of the proceedings speaks volumes against the prosecution.

Can one vouchsafe about the voluntary nature, truthfulness and genuineness of such a confession? Apart from that his evidence is full of improvements on material points including description of incident proper, which he claimed to have seen, namely that Sumanjit Anand and Sandeep Singh had held the hands of the deceased and

appellant No.1-Indu Anand had pounced upon the deceased as against

his version that no sooner Indu Anand pounced upon the deceased, both Sumanjit and Sandeep released the arms of the deceased.

17. The story about recording of confessional statement of PW1-Darshan Lal is also somewhat strange. According to PW52-O.P. Chhatwal, he produced PW1-Darshan Lal on 29.08.1983 before the Chief Judicial Magistrate, Chandigarh who extended his remand till 31.08.1983. Then he received a phone call that Darshan Lal was required at Delhi for Lie Detector Test, but 31.08.1983 being a holiday, he went in the evening of 29.08.1983 itself and on 30.08.1983 he was produced before CFSL. After the same was over Darshan Lal expressed (while in custody of Shri O.P. Chhatwal) that he wanted to make confession and gave a written request to him Ex. PCC/O. Hence he produced Darshan Lal in the Court of K.C. Lohia with a request that order to record his confession be passed and since the remand was to expire on next day, i.e. 31.08.1983, he be transferred to the Court of Chief Judicial Magistrate, Chandigarh. Accordingly, K.C. Lohia recorded his confession and was transferred to Chief Judicial Magistrate, Chandigarh by his production on 31.08.1983. When Shri O.P. Chhatwal was asked any other reason for recording of confession at Delhi, he stated thus:-

“xxxx. It is wrong to suggest that the very purpose of my asking for police remand for Darshan Lal alone on 29-08-83, was to isolate him from the other accused and to create such atmosphere where it would be possible to extract a suitable statement. It is also incorrect that my reason for taking Darshan Lal accused Delhi on 29-08-83

was fabricated as an plausible explanation. There is no legal restriction that the confessional statement of accused Darshan Lal could not be recorded at Delhi and therefore, I produced him in the court at Delhi itself instead of bring him back to Chandigarh and there is no other reason for producing him Delhi Court. xxxx.”

Section 164(1) & (2) Cr. P.C. read thus:-

“164. Recording of confessions and statements.- (1) *Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial:*

[Provided that any confession or statement made under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of an offence;

Provided further that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.]

(2) *The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.”*

Section 306 (1) Cr. P.C. reads thus:-

“306. Tender of pardon to accomplice. (1) *With a view to*

obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which this section applies, the Chief Judicial Magistrate or a Metropolitan Magistrate at any stage of the investigation or inquiry into, or the trial of, the offence, and the Magistrate of the first class inquiring into or trying the offence, at any stage of the inquiry or trial, may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof.

xxxx.

3. *Every Magistrate who tenders a pardon under subsection (1) shall record-*

- (a) his reasons for so doing;*
- (b) whether the tender was or was not accepted by the person to whom it was made, and shall, on application made by the accused, furnish him with a copy of such record free of cost.”*

18. Upon reading of the above provisions in juxtaposition, I have no hesitation in holding that under the normal circumstances, the recording of confession statement under Section 164 Cr. P.C. and grant of pardon under Section 306 Cr. P.C. ought to be done by the Magistrate within whose jurisdiction, the offence has been committed. The first reason is the satisfaction of the mind of the Magistrate as the words used in Sub Section (2) are “he has reason to believe that it is being made voluntarily”. Similarly, for tender of pardon to accomplice under Section 306(1) Cr. P.C., the Magistrate is required to give

reasons vide Sub Section (3). I think observation of demeanor of such a person by the Magistrate on both the occasions would play a vital role for fair recording of confession and grant of pardon. The reason is both these proceedings are conducted behind the back of the accused. In the present case, when Darshan Lal expressed his desire, after completion of his lie detector test on 30.08.1983 itself, to make confession, and the remand was to expire on 31.08.1983, in ordinary course, he would have been produced before Chief Judicial Magistrate, Chandigarh who had earlier granted remand till 31.08.1983. The Chief Judicial Magistrate, Chandigarh then would have recorded his confession and granted pardon after his satisfaction. But PW52-O.P. Chhatwal relies on the Section 164(1) Cr. P.C. which allows any Magistrate to record confession and says that there is no legal restriction in recording of confession at Delhi. He asserts there is no other reason. There can no manner of doubt that Section 164(1) Cr. P.C. provides for recording of confession before any Magistrate and it was not mandatory to do so only before Chief Judicial Magistrate, Chandigarh. He may be completely right in law. But it cannot be forgotten that prosecution cannot be exempted from giving satisfactory explanation as to why the normal or ordinary course was not followed, particularly when PW52-O.P. Chhatwal himself says that remand was to expire on 31.08.1983. His explanation that Section 164 (1) permits recording of confession even at Delhi will have to be taken with a pinch of salt. I do not want to say that this conduct would materially affect the prosecution, but is certainly a circumstance to be considered

while marshalling the entire evidence.

19. It is true that appellant No.1-Indu Anand had put to challenge the move on the part of the CBI to record the confessional statement by filing a petition in Delhi High Court and that two Hon'ble judges of the Delhi High Court caused production of Darshan Lal before them and they dismissed the petition filed by Indu Anand. It is also correct that Darshan Lal had told Delhi High Court that he had not authorised anybody to file any petition and that on his own free will he had made confession before K.C. Lohia, Metropolitan Magistrate at Delhi. In that petition validity and genuineness of the confessional statement was challenged. The petition was dismissed on 02.09.1983 by Delhi High Court. Similarly when pardon was granted to PW1-Darshan Lal, a revision application was moved before this Court challenging the grant of pardon and that Criminal Revision Petition No.710 of 1983 was also dismissed on 27.09.1983. SLP was filed against the said order of this Court which was also dismissed. In this connection, the trial Court has held that any attack on the validity and genuineness of the confession made by PW1-Darshan Lal must fail because Delhi High Court dismissed the petition filed by Indu Anand after making enquiry from Darshan Lal and after going through the documents produced from the Court of Shri K.C. Lohia, Metropolitan Magistrate. It is then necessary to note that on record there is no copy of the judgment dated 27.09.1983 in Criminal Revision Petition No.710 of 1983 delivered by J.M. Tondon, J. Hence the same cannot be read as evidence. However I have obtained a copy thereof from the

registry and I have gone through the same. The challenge in the revision was to the mode, manner and procedure for giving pardon and it was contended that no reasons were recorded. The learned judge did not find any substance in either of the contentions and held that there was no abuse of process of law. He rejected the petition. Next, with reference to Delhi High Court's order dated 02.09.1983 in writ petition, I find that the order dated 02.09.1983 was exhibited as Ex.PBBZ-2. I have gone through the said order. It says that Darshan Lal stated before the Division Bench that he gave his confession out of his own free will. The petition was then disposed of.

20. The question of law is whether in the wake of these orders, appellants/accused are estopped, barred & disabled, in challenging the grant of pardon and the confessional statement in the trial, either on the principles *akin to estoppel*, *res judicata* or the public policy! The trial Court in Para 39 of the judgment held that they were so barred. In my opinion, the trial Court made a paradigm shift from the jurisprudence and recorded finding in Para 39 which is *per se* illegal. Following are the reasons:

21. Chapter VIII Cr. P.C. deals with "Trial before a Court of Session". As per Section 226 Cr. P.C., the prosecutor has to state by what evidence he proposes to prove the guilt of the accused. Section 231 Cr. P.C., provides for evidence of prosecution and applying the provisions of Evidence Act, examination-in-chief, cross-examination and re-examination all are required to be conducted. Sections 137 and

Section 138 of Evidence Act, 1872 read thus:-

“137. Examination-in-chief.—The examination of a witness by the party who calls him shall be called his examination-in-chief.

Cross-examination. — The examination of a witness by the adverse party shall be called his cross-examination.

Re-examination.—The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

138. Order of examinations.—Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

Direction of re-examination.—The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.”

In other words, no amount of evidence of a witness whose evidence has not undergone the “test of cross-examination” in the trial would be legal and admissible evidence complying with the basic principles of natural justice. That is a valuable right of the accused and the mandate of Evidence Act. In the case at hand, admittedly, no trial was held in both these proceedings, i.e. before Delhi High Court or in criminal revision before J.M. Tondon, J. nor any finding based on “legally admissible evidence” was returned by these Courts. There

cannot be any dispute that both these proceedings were not the 'trial' but were only of summary nature proceedings. For conduct of a 'trial' Indian Evidence Act, 1872 is the heart and soul thereof. There cannot be any sessions trial without following the mandate of the provisions of the Evidence Act. No adjudication based on any legally admissible evidence was at all made. It is for these reasons, the appellants/accused are not at all bound by both those two orders, nor those orders can come in their way for putting to challenge the confession or the order granting pardon. Both those orders do not constitute any relevant evidence in the trial. Rather, both these orders are liable to be simply ignored in the trial.

22. Reading of the cross-examination of PW1-Darshan Lal shows that there was no light at the top of the *bundh* when as a matter of fact, the body was recovered from the spot opposite light point No.49 and that all the lights were on along with their embankment. There is contradiction about the sloppy surface claimed by him when as a matter of fact, surface in the near embankment of the lake was paved with stones as stated by PW14-Gautam Kumar Surveyor. PW1-Darshan Lal also admitted that he used to open the gate of the house and also used to lock garage every night but still tried to show unawareness as to whether door of the garage was chain or bolted. He did not identify the carpet near the sofa set in the house. The story that car was taken to the Sukhna lake by them through golf course premises, is totally false in as much as DW1-R.S. Mann, member of the golf club stated that the entire golf club was wired fenced with a

hedge around it. There is no reason to discard this evidence. The version given by PW1-Darshan Lal that the car was taken through golf course on the main gate, is thus, totally false.

23. Trial Court in the matter of appreciation of evidence of PW1-Darshan Lal has not given any importance and did not dwell upon the crucial part relating to the conduct of PW1-Darshan Lal which, in my opinion, went to root of the matter to test his testimony on the anvil of marshalling of evidence. PW1-Darshan Lal had immediately, after the incident, given statements under Section 161 of the Cr. P.C. on 15.07.1983 and 16.07.1983 to the effect that the deceased had left the house on foot after quarreling with appellant No.1-Indu Anand never to come back, which clearly shows that J.S. Anand who was inebriated had left the house in anger after quarrel and thereafter, his dead body was found in the lake on the next morning, which was sure indication of J.S. Anand committing suicide by jumping into the lake. All the above story was disclosed by him immediately after the occurrence to several persons including PW5-ASI Harish Chander (record Page 1059 Para 4, cross-examination of PW1-Darshan Lal), Mrs. Waryam, Singh, PW27-Jasbir Singh Tiwaran, PW43-Tara Singh, Mohinder Singh driver, Budh Singh Head Constable, Dr. Santokh Singh (record page 1029, internal page 67). Instead of repeating of all above witnesses what was told by PW1-Darshan Lal, it would be appropriate to quote the following from his cross-examination as to what he had told them. I quote it as under:-

“I told Harish Chander that at about 9:00 P.M., the

deceased, along-with all the three accused, had gone from the house in the car, and returned by about 11.00 P.M. Subsequently, again the deceased had gone, on foot, followed by Sandy and Nikky and that the deceased had not, thereafter, returned, but this was not correct narration of facts. I had talk about the occurrence with Mrs. Waryam Singh, Shr. J.S. Tiwana, Shri Harish Chander, Shri Tara Singh, Mohinder Singh, driver, Budh Singh H.C., Dr. Santokh Singh and deceased's mother during the interval 13.7.1983 to 21.7.1983. I narrated to them the occurrence in the manner, I did while giving my statement to the police on 15.7.1983. I cannot say whether during that interval, I had talked about the occurrence to Sh. Gurdarshan Singh, Mrs. N.S. Anand and Shri T.S. Anand. I had no talk about the occurrence with Shri P.S. Bhindar, during that interval.”

24. It is significant to note that PW1-Darshan Lal nowhere claimed that he made the said statement under any pressure, influence or for any other reason. On various dates, he made the statement to all above persons. He did not claim to be under any pressure, influence or emotional pressure from anybody. There was no reason for him to be under pressure of any kind since he did not claim to be in contact with the accused persons or that accused persons were in his contact and pressurizing him in one way or the other. His explanation that on the very date of the incident, remark was made by appellant No.1-Indu Anand that he also had children and she also had children and that all of them would be tried for murder, if the body is not disposed of, was never claimed by him to have persisted which means PW1-Darshan

Lal was fully free to make any statement on 15.07.1983 and 16.07.1983 and thereafter. That is the reason why he disclosed to several persons as aforesaid that J.S. Anand had left the house in a drunken condition after quarreling with appellant No.1-Indu Anand in that night never to return back. PW1-Darshan Lal has also not stated that there was influence of any sort on him after 13.07.1983 and particularly on 15.07.1983 or 16.07.1983.

25. It is then significant to note that about 30 people were sleeping in the area of the golf course and the adjoining area but the CBI did not either record any statement of any person from that place. It is impossible that if there was activity of car being driven into the uneven area of golf club and the body being thrown in the lake, nobody would see at about 12:30 AM to 1:00 AM. It is then significant to note that the prosecution examined PW27-Jasbir Singh Tiwana, the next door neighbour of the accused persons working as Executive Director, Semi Conductor Complex, Mohali. His testimony has been rejected by the trial Court only for the reason that he was told by the children *Nikky* and *Sandy* that they had last seen the deceased-J.S. Anand in the golf club at about 2:30 AM while according to the trial Court, the medical evidence showed that the death took place at around 1:00 AM. But the time 1:00 AM is not conclusive as PW8-Dr. Kuldip Singh stated thus:-

“Death could have occurred sometime in the midnight during the intervening night of 12/13.07.1983.”

26. Hence, it could be even beyond 1:00 AM. There is no other

reason given by the trial Court for not accepting the evidence of PW27-Jasbir Singh Tiwana who is a respectable person certainly respectable than PW1-Darshan Lal. He was never declared hostile. He stated thus, in his evidence before the Court:-

“We then went to search of Mr. Anand in a car and went towards Golf Club as Nicky and Sandy had already told me that they last saw Mr. Anand in the Golf Club at about 2.30 a.m. At that stage they also told me that they had borrowed my scooter at night in order to search for Mr. Anand. On my enquiry regarding the circumstances of his disappearance they told me that the previous night, Sh. Anand left the house after a quarrel with Mrs. Anand. They further told me that they heard some raised voices in Nicky's room where they were present. They further told me that initially they did not pay any heed to it but subsequently they saw Mr. Anand leaving the house and they followed him without his knowledge. On my enquiry regarding the route followed by them they informed me that they had taken the lake road and went right upto the lake, then took a right turn in front of the Governor's house reaching the Golf course. On my enquiry as to whether he could have spent the night at some friends' house, they said that they were not able to say anything.

Then all three of us reached Golf Club at about 7/7.30 a.m. I instructed Nicky to look for his father in the Golf Club while Sandy and I kept sitting in the car. Nicky came back and told that Mr. Anand was not there. On my enquiry, Sandy pointed towards the Bench where they were sitting in the night. Then all of us proceeded towards the bottom portion of the lake adjoining the Governor's house where the first flight of stairs going to the top of the

lake is situated. On my instructions, Sandy went up to look round for Mr. Anand while I and Nicky drove to the end of the road where the gates of the Dam are located. I made enquiry from some labourers residing in the huts nearby if they had seen some sikh gentleman in the night who replied in negative. We climbed up the flight of stairs located near the gates of the Dam (Revolate) and looked around to be found any where and thereafter we drove back, picked up Sandy from near the second flight of stairs and proceeded to the main gate of the lake to enquire from the Chowkidar if he had seen a Sikh Gentleman during the night or morning and in reply that Chowkidar informed us that one body had been brought out from the lake the same morning and the Chowkidar opened the gate for the car to proceed on the road on the embankment of the lake because cars are not normally allowed on that road. Nicky then drove the car at that point of time towards the spot from where the dead body was stated to have been taken out. On Chowkidar giving the information regarding a dead body had been taken out that morning, Nicky appeared to be terribly shaken probably thinking that the body ___ of his father and then I took up the staring of the car and the same feeling acrossed in my mind that the body could be of Mr. Anand and the Chowkidar also accompanied to the said spot in the car where the dead body had been taken out from the lake. When the car was at a distance of about 100 yards from where the dead body was taken out, was visible my doubts began to crystalised that it was probably of Mr. Anand and I then stopped the car and the same feeling were experienced by Nicky and Sandy. The car was stopped at a distance of 30/50 yards away from the spot where the dead body was lying. Nicky started crying and sobbing and after getting out of the car

I caught hold of Nicky, who put his head on my shoulder and who kept crying and sobbing. In the meantime, I kept telling that the body could of be some other person and console him and Sandy to have a closure look on the body. Sandy had also started sobbing before going to the spot and when he saw the body from close range and identified to be of Mr. Anand he started crying very loudly, which gave the confirmation to us that it was of Sh. Anand. I kept consoling Nicky, who was still sobbing.”

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“At the time Mrs. Anand was put in my car for medical treatment she was not fully conscious and was mumbling something incoherently. Nicky and Sandy had not informed me that Mr. Anand had left home after receiving some telephonic call. At some stage on 13.7.1983, I was told on my enquiry by Sandy that the fight between Mr. Anand and Mrs. Anand had taken place regarding the sale of house in Sector 27. Mrs. Anand had been inherited a house in Sector 27 from her father. I was informed by Sandy and Nicky that Mr. Anand was high in drinks at the time he left his house. I had made enquiry from Nicky as to whether after leaving the house and after leaving him at the Golf Club on the previous night, Mr. Anand might have taken a bus for Patiala volunteered I made enquiry in this regard about two days earlier Mr. Anand told to me that if I wanted to go Patiala. Nicky gave reply that he did not think that his father had much money with him as he had left the house abruptly. At the time of search of Sh. Anand in the Golf Club area at the back of the lake, I did not see Nicky and Sandy pointing towards the kacha path coming through the Golf Course.”

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As a neighbour I knew the family of Mr. Anand

closely, and I had been taken drinks and dinner with Sh. J.S. Anand on 3/4 occasions and about 2/3 days earlier to the incident also, we were together for drinks while sitting in the lawn of his house. I had known Mr. Anand and other members of his family as an ideal neighbour and the members of his family inter-se had cordial relations and they were polite towards me. All the children including Nicky were well behaved towards me as well. There was difference of opinion between Anand and his wife regarding the sale of house in Sector 27 but I do not remember exactly who out of the two was in favour of the sale and who opposed to it.”

27. It is significant to note that PW27-Jasbir Singh Tiwana has, deposed about what had actually happened on the date of the incident in question. It also shows conduct of two teenagers, namely Nicky and Sandy aged about 16 to 17 years and the boys sobbing all the time which is inconsistent with guilt. At the odd hours of that night, he stated that the boys had told him the circumstances of disappearance of J.S. Anand from the house. The prosecution relied on PW27 as its witness. The prosecution did not cross-examine this witness on his aforesaid evidence throwing light on the incident proper, which means, the prosecution accepted the above entire evidence. To repeat, the prosecution did not declare him hostile. There was, therefore, no reason for the trial Court to ignore the entire above evidence of a respectable person from the society, in contradistinction with the evidence of PW1-Darshan Lal who was arrested by CBI and remained in their custody throughout and who was described to be

drunkard by PW5-ASI Harish Chander. He was a person who was whisked away from Chandigarh jail and thrown in Tihar Jail, New Delhi. His confession was recorded at Delhi Court under the penumbra of CBI, when the ordinary territorial jurisdiction was at Chandigarh and not at Delhi. It is the trite law that comparing the evidence of PW1-Darshan Lal, the evidence of the respectable persons like PW27-Jasbir Singh Tiwana and PW5-ASI Harish Chander, Mrs. Waryam Singh, PW43-Tara Singh and Dr. Santokh Singh who were told about the incident by PW1-Darshan Lal to them immediately after the incident, should have been believed. The trial Court however, unfortunately rejected evidence of PW27-Jasbir Singh Tiwana for the only reason that the two teenagers had told him that they had seen the deceased alive at 2:30 AM. PW27 was an independent witness and was required to be treated with holistic approach in juxtaposition with the other evidence. It is a well accepted rule of evidence in India that the maxim '*falsus in uno falsus in omnibus*' has never been accepted as a sound rule. It cannot be forgotten from the reading of his evidence that both these boys were teenagers and were in a panic and were searching for their father, though, unsuccessfully after the quarrel at home. At any rate, the time gap between 1:00 AM and 2: 30 AM is 1.30 hours. It is possible that the boys who were in panic could not express the exact time of 1:00 AM to PW27-Jasbir Singh Tiwana. But to reject his entire unchallenged testimony for such a insignificant reason was not only unjust but unfathomable.

28.

It is then significant to note that PW1-Darshan Lal deposed

about the daughter Yuvika Anand of the deceased as the girl present throughout the incident. He stated that shortly after the quarrel with Indu Anand, J.S. Anand-deceased proceeded to the gate of the house while staggering and when he reached near the gate, Yuvika Anand was shouting “*papa-papa*”, but the deceased did not stop nor he did turn back at her shout and then, she heard Yuvika shouting “*nikky-nikky papa is going*”. Yuvika Anand started weeping when the incident had taken place. The prosecution has given no explanation whatsoever as to why Yuvika Anand who was not made an accused, was not examined as a witness before the Court. The reason is except the three accused, there was no other person except Yuvika Anand in the house. PW52-O.P. Chhatwal, Investigating Officer stated thus:-

“on 23.07.1983, I had interrogated Ms. Yuvika Anand daughter of J.S. Anand but I did not record her statement nor cited her as a witness”.

29. Merely because Yuvika Anand is the daughter of appellant No.1-Indu Anand and the deceased J.S. Anand, the prosecution did not act in fairness in withholding her from telling the truth before the Court. In my opinion, this does not appear to be *bonafide* on the part of the investigating agency as CBI had a paranoia about the appellants. Non-examination of Yuvika Anand by the prosecution before the Court, who was the only remaining eye-witness should lead to one draw adverse inference against the prosecution. There was no reason to presume that Yuvika Anand would have favoured the defence particularly when deceased-J.S. Anand was her beloved and dear

father. However, this aspect of the matter has gone completely unnoticed. CBI preferred to rely on the puppet PW1-Darshan Lal who was produced as approver.

30. Learned trial Court has dealt with the evidence of PW1-Darshan Lal from Para 30 onwards in the impugned judgment. It has been observed in Paras 30 and 31 that PW1-Darshan Lal had witnessed that J.S. Anand had collapsed on account of pressure on his throat by his wife. This is factually incorrect. On the contrary, he stated, if his evidence is read in conjunction, that the deceased was staggering and appeared to be drunk. He was brought into the house from outside by two boys by holding his both arms. Appellant No.1-Indu Anand caught hold of his neck and pressed his neck. Two boys released the grip of the arms of the deceased and therefore, the deceased fell down on the carpet and his turban went off his head. Thus, from the above evidence, it cannot be said that on account of alleged pressure applied by appellant No.1-Indu Anand, deceased fell down but that the deceased was dead drunk and was supported by two boys and after she caught hold of his neck and pressed his neck, two boys had released the grip and thereafter, he fell down. The evidence does not show that she had even slightly pushed him.

31. Trial Court has then relied upon the opinion expressed by the third team of Board of Doctors that was constituted and which gave its opinion not upon examination of the dead body but upon looking at the earlier two report which were prepared on examination of the dead body. Trial Court has considered the testimony of

professor Hareesh Chandra to conclude that because of collapse, there could be vasovagal inhibition and such a victim can be revived by providing artificial aspiration. Trial Court has stated that his evidence has not been challenged in the cross-examination. That J.S. Anand collapsed due to catching of neck by Indu Anand and she and the two boys were responsible for his fall is nothing but wrong reading of evidence, not based on holistic approach. J.S. Anand was so much drunk that he was required to be supported by the two boys. His opinion is nothing but merely academic and it will make no difference, if academic opinion is not challenged in the cross-examination. It is, therefore, not possible to agree with the said finding by the trial Court which has been utilized by the trial Court as corroborative independent medical opinion. It is in this context, it must be said that the trial Court has completely ignored the two medical opinions which were on record and which were made after examination of the dead body. These opinions have simply been reproduced in Para 35 of the impugned judgment but no reason has been furnished as to why they have not been accepted. As a matter of fact, the first two opinions recorded by the Board of Doctors clinch the issue. The opinion recorded was that there was no ligature mark on the neck, that there was no mark of injury around the neck anteriorly, sideways and posteriorly. The skin dissected at three places showed no evidence of ecchymosis in the subcutaneous tissues due to drowning. Further fact that 300 cc mud water was found in the stomach of the deceased in the scientific investigation, clearly runs in tandem with the opinion above

that J.S. Anand died due to asphyxia due to drowning. In this connection, looked at the evidence of PW1-Darshan Lal again, it will be seen that he had brought water and tried to put in the mouth of J.S. Anand but the water did not enter the mouth. He further stated that Indu Anand remarked that J.S. Anand appeared to be dead. He further stated that the body was then lifted, put in the boot of the car, thereafter, it was taken to the golf club, thereafter, it was taken by climbing the stairs and so and so forth. If according to the perception of PW1-Darshan Lal, from the above evidence, J.S. Anand had died in the house itself, the question of finding mud water in his stomach would not arise. This is a tell telling circumstance which clearly falsifies his evidence as he claimed that he had tried to put the water in the mouth of the deceased in the house but the water did not go inside.

32. The second opinion of the Doctors had stated that the death was due to asphyxia and ruled out the possibility of drowning as they did not find any froth or water in the air passage of the lungs. Examining the medical evidence as to the death due to asphyxia, it can be seen that none of the reports show any injury to the neck, ligature mark around the neck or anywhere, not even abrasion and nor there was any damage to the internal part of the neck trachea even the slightest. Therefore, the case of asphyxia due to pressure on the neck by somebody from outside is clearly ruled out. This is not even the case of PW1-Darshan Lal that appellant No.1-Indu Anand had applied such pressure that a person would die. At any rate, it appears that there

was quarrel and some fight and nothing more. Since there is a

scientific evidence that 300 cc of mud water was found in the stomach, the only inference is that the death occurred due to drowning and it is not the case of the prosecution that somebody had given him mud water and that he had engulfed it.

33. Thus, the first medical report itself clearly supports the theory that the deceased-J.S. Anand had a quarrel, left the house out of anger and having been under the influence of liquor went towards golf club and thereafter, to the Sukhna lake and then jumped into it and died. There is no other possibility but for the fact that the CBI made propitious choice of approver PW1-Darshan Lal, a complete liar to buttress its case.

34. The second medical report indicate two injuries. One cannot rule out the fact that J.S. Anand had left the house and the injuries could have been received by him when he jumped into lake as it is not the case of PW1-Darshan Lal that Indu Anand caused him injuries at the place where the injuries have been found by the Doctors.

35. It would be interesting to extract the following observations from Para 44 of the impugned judgment for further discussion regarding the conclusion drawn by the learned trial Court:-

“The deceased along with his wife, son and nephew had visited Col. Guleri for taking drinks in the evening of 12-7-1983 and after returning home, an altercation had taken place between husband and wife, after which DIG Anand had come out of the house and when he was persuaded to come back by Sumanjit and Sandeep accused, he was pounced upon by his wife who caught him by the neck. On

account of this act of the wife, DIG Anand had collapsed and the members of his family had tried to revive him by massaging the soles of his feet after removing the shoes and massaging the stomach and chest after opening the trousers. When their efforts to revive him did not succeed, Mrs. Anand had panic and faced with this situation had solicited the help of Darshan Lal approver with a view to dispose of the body. Thereafter the three accused along with the approver had gone to Sukhna lake and after dumping the body in the water had returned home. The family had apparently tried to cover up the tracks in its own way and by making phone calls and trying to make it appear that they did not know the whereabouts of DIG Anand by mounting a search for him in the area of Golf Club and the lake. Mrs. Indu Anand had gone to sleep and after taking an over-dose of sleeping pills with either vodka or beer. On 13-7-1983 the body of DIG Anand was recovered and when the post mortem report indicated the cause of death to be drowning, the husband's brother Col. S.S. Anand had asked for another post mortem. From the evidence on the record, it is clear that the incident which ultimately culminated in the death of DIG Anand constitute a series of act the first of which was the pouncing upon him by his wife who had caught hold of his throat with the result he had collapsed. While doing so, Mrs. Anand is stated to have shouted "kill kill". The fact that the cause of death of Sh. Anand has already been held to be on account of drowning, no intention to kill can be inferred from the act of either of the accused in the first part of the incident. Thereafter the accused are stated to have panic and tried to dispose of the body under the impression that DIG Anand had been killed on account of their previous act. While doing so, the accused decided to

throw the body in the lake. When one throws the body of a person who though alive was senseless and unconscious and thus not able to save himself from the consequential drowning, one is presumed to know that his act is likely to cause the death of the person so thrown into the water. The act of the accused of throwing the body of Sh. J.S. Anand, who at that time was probably suffering from a vasovagal shock and not dead and was therefore, unable to prevent the consequential drowning into the lake would, in my opinion, attract the provisions of Section 304 Part II of the Indian Penal Code in the case of Sandeep Singh and Sumanjit Singh. In the case of Mrs. Indu Anand accsued at whose instance, this act was done by the aforesaid accused, would be guilty under Section 304 Part II read with Section 34 of the Indian Penal Code.”

36. Perusal of the facts narrated in the charge that was framed show that all the appellants had along with approver Darshan Lal caused the death of J.S. Anand by pushing his body into the water of Sukhna lake. The observations above show that the trial Court made an assumption that J.S. Anand was suffering from vasovagal shock and was not dead but died because of he being thrown in the Sukhna lake. Still the Court has held that the appellants were guilty of the offences under Section 304 Part II of the IPC rather than 302 of the IPC. On the contrary, the case of the prosecution, through PW1-Darshan Lal, is about the death of J.S. Anand in the house itself, which he himself so perceived because his attempt to pour the water in the mouth did not succeed and appellant No.1-Indu Anand remarked that he was dead and therefore, the dead body should be disposed of for which he

extended his help. Thus, his case is that J.S. Anand had already died in the house and he assisted in disposing off the dead body by putting it in the Sukhna lake. This theory runs counter to the facts stated in the charge, rather a tectonic shift, obviously, because the investigating agency itself was not sure what it was doing and was rather going willy-nilly.

37. It is important to note that the finding based on the evidence of Professor Hareesh Chandra about vasovagal shock as held earlier, is merely academic and not based on any evidence because Professor Hareesh Chandra had not been a party to the two postmortem, which were conducted earlier and simply by saying on the basis of the papers of the earlier two postmortem reports, he gave his opinion. The opinion and the finding by the Court that J.S. Anand probably was suffering from vasovagal shock is nothing but a quaint mixture of the figment of imagination not based on any evidence in the case at hand. In case, this opinion is taken into consideration as true then the evidence of PW1-Darshan Lal would again be falsified. The reason is that if J.S. Anand was alive and in a vasovagal shock and was not dead in the house, but was being lifted from the house, put in the boot of the car and thereafter, taken in the car through the golf club on uneven surface, thereafter, climbing upto the area of Sukhna lake and so on and so forth, he would have certainly resisted the persons carrying or throwing him in the lake by shouting or by physically resisting since he was a young police officer and in the words of

PW51-Lt. Col. S.C.S. Guleri “it is correct that Mr. Anand was

physically fit and he was regular and keen golfer”. It is significant to note that as per the out and out false story narrated by PW1-Darshan Lal, appellants No.2 and 3 and others had made a massage on his chest for reviving him. Then he could have easily come out of the vasovagal shock as much time had elapsed after he had taken alcohol. On the contrary, the medical evidence showing absence of any injury on neck or any vital part of the body militates against the case of the prosecution that the deceased had died in the house because of any collapse or strangulation as alleged. On the contrary, presence of 300 cc of mud water in the body as found in the scientific evidence, positively indicates that J.S. Anand had after being drunk become angry because of quarrel with his wife over the issue of sale of her house and left the house by walking, entered Sukhna lake and committed suicide. No other inference can be drawn except the above.

38. It is impossible to believe that appellant No.1-Indu Anand, a young woman having young son of 17 years, daughter of 14 years and nephew of 17 years would even think of getting her dear husband eliminated without thinking about her small children.

39. To sum up, this Court finds that the appellants were unnecessarily prosecuted by the CBI, despite the evidence clearly indicating as discussed above that deceased-J.S. Anand had committed suicide. The appellants were tormented and had to suffer excruciating pain and the ordeal for several years. It was a parody of justice. It cannot be forgotten that “in life values lost can never come back”.

Hence, they must be honourably acquitted.

As a sequitur, the following order is inevitable:-

ORDER

- (i) CRA-215-SB of 1996 is allowed;
- (ii) Impugned judgment and order dated 23.02.1996 passed by Sessions Judge, Chandigarh, in Sessions Case No.3 of 06.02.1985, convicting appellant No.1-Indu Anand was convicted for offences punishable under Sections 304 Part-II of the IPC read with Section 34 IPC, appellants No.2 and 3, namely Sumanjit Anand and Sandeep Singh for offences punishable under Section 304 Part-II of the IPC and sentencing to undergo Rigorous Imprisonment for 2 years each and fine in the sum of ₹2,000/- each; in default Rigorous Imprisonment for 3 months, is set aside;
- (iii) Consequently, appellants, namely appellant No.1-Indu Anand, appellant No.2-Sumanjit Anand and appellant No.3-Sandeep Singh are honourably acquitted of the charge framed against them under Sections 304 Part-II read with Section 34 IPC;
- (iv) Fine, if paid, be refunded to them.

(A.B. CHAUDHARI)
JUDGE

March 23, 2017

mahavir

Whether speaking/ reasoned: **Yes**

Whether Reportable: **Yes**