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

+ CRL.A 1053/2018

DHARMENDRA KUMAR TANDON

..... Appellant

Through Mr. Manu Sharma with Ms.Ridhima
Mandhar, Mr.Kartik Khanna,
Mr.Vijay Singh, Mr.Arjun Kakkar
and Ms.Nishruta, Advocates.

versus

STATE

..... Respondent

Through Mr. Rajat Katyal, APP for the State.

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Date of Decision: 12th September, 2019

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present appeal has been filed by the appellant-accused challenging the judgment as well as order on sentence both dated 4th September, 2017 passed by the Additional Sessions Judge (Central), Tis Hazari Courts, Delhi in Sessions Case No.12/2013 arising from FIR No.147/2012 under Sections 302/307/452 IPC and Sections 25/54/59 of Arms Act registered with PS Rajinder Nagar, whereby the appellant-accused has been convicted under Sections 302/307/452 IPC and sentenced to life imprisonment under

Section 302 IPC and imprisonment for seven years under Sections 307/452 IPC.

RELEVANT FACTS

2. The relevant facts of the present case are that one Sangeeta Kaur was employed as a maid servant in the house of the deceased-Dr. Sanjeev Dhawan and also used to reside in his house viz. House No.49/50 (Basement, Ground and First Floor), New Rajinder Nagar. It is alleged that the appellant-accused, a former armyman married to Mrs. Ramin Tandon, contacted the deceased-Dr. Sanjeev Dhawan telephonically and at his office, i.e., Sir Ganga Ram Hospital, demanding that his 'wife' Sangeeta Kaur be handed over to him. However, the deceased-Dr. Sanjeev Dhawan, in accordance with instruction of Sangeeta Kaur, refused to do the same. Consequently, on the intervening night of 18/19, September, 2012, at about 2.30 a.m., the appellant-accused, in an endeavour to forcibly retrieve Sangeeta Kaur, broke into the house of Shri Tarun Kalra (PW-26), from the Second Floor balcony, holding a gun in his hand and started calling out for Sangeeta Kaur. Wife of Shri Tarun Kalra (PW-26) apprised the appellant-accused that Sangeeta Kaur worked in the house of the deceased-Dr. Sanjeev Dhawan. The appellant-accused attempted to flee, but on finding the door locked, he instructed Shri Tarun Kalra (PW-26) to open the same. While Shri Tarun Kalra (PW-26) was opening the door, the appellant-accused caught hold of him and directed him to take the appellant-accused to the correct house. In the stairs leading to the house of the deceased-Dr. Sanjeev Dhawan, a scuffle ensued between the two and they tumbled down the stairs while grappling with each other, during which Shri Tarun Kalra

(PW-26) snatched the gun from the appellant-accused and ran. The appellant-accused chased Shri Tarun Kalra (PW-26) and attacked him with an axe, which slit the clothes of Shri Tarun Kalra (PW-26). The appellant-accused regained control of the gun and fired at Shri Tarun Kalra (PW-26), but he ran into the house of Shri Naresh Goel (PW-18), who pulled Shri Tarun Kalra (PW-26) inside the house. Hearing the noise, the deceased-Dr. Sanjeev Dhawan and his son, Shri Sarthak Dhawan (PW-13) came out on their first floor balcony. The appellant-accused fired from the road itself the fatal shot at the deceased-Dr. Sanjeev Dhawan.

FINDINGS OF THE TRIAL COURT

3. The relevant portion of the trial court judgment is reproduced hereinbelow:-

“I have already narrated the testimonies of PW13 Sarthak Dhawan, the son of the deceased and PW20 Gopal Gosain, the cook of the deceased. Both of the witnesses had seen accused firing at Dr. Sanjiv Dhawan. At that time, all of them were present in the house no.49/50, Double Storey, New Rajinder Nagar, New Delhi. Although, PW13 and PW20, who had witnessed the incident, had not seen the accused earlier but the deceased had told PW13 on the day of incident itself about the threats being extended by accused. When accused fired at Dr. Sanjiv Dhawan, the shot hit him in his chest. Dr. Sanjiv Dhawan collapsed in the balcony telling PW13 that the person, who had shot him, was Dharamendra Kumar Tandan. PW20 Gopal Gosain heard the noise of breaking of window pane caused by the gun shot. He called Ms Sangeeta and he saw accused in a military uniform in front of the house of Dr. Sanjiv Dhawan. Ms Sangeeta told the name of the accused as Dharmender. PW13 and PW14 identified the accused in the court as the same person, who had shot at Dr. Sanjiv Dhawan. The testimony of the neighbours namely Naresh Goel (PW18) residing in House No.51, Second Floor, Double Storey, New Rajinder Nagar, Delhi testified that he heard loud hue and cry and when he

reached the staircase on the first floor, he found accused in a military dress grappling with Tarun Kalra. Then PW18 returned to his second floor portion and Tarun Kalra also reached there. PW18 pulled Tarun Kalra inside. PW18 saw that accused had gone in the street. PW18 inquired from accused as to what he wanted. Accused told him that Dr. Sanjiv Dhawan had detained his wife Ms Sangeeta. At that time PW18 saw accused firing in air from his gun. Thereafter, he heard knocking at the door of his house and saw that Sarthak was knocking the door. But he did not open the door fearing that accused might not enter his house. PW26 Tarun Kalra testified that on 19.9.2012 at about 2/3:00 am, he heard a loud noise. He rushed to terrace and saw the accused in army clothes, who suddenly entered his drawing room with a gun in his hand and he was profusely bleeding from his thumb. At the instance of accused, PW26 opened the door of his house. Accused told him to take him to correct floor. In the meantime, his neighbour Mr. Goyal came down to help. However, hearing his foot steps, accused pointed the gun at him and they had a scuffle due to which they lost balance and came tumbling down the stairs. PW26 ran on the road. Accused followed him and hit him with axe slitting T-shirt and shorts of PW26, who tried to run towards his house shouting for help. At that time, he heard a shot gun from behind and after a while a few more gun shots and screaming and shouting from Dr. Dhawan's house. Suddenly, son of Dr. Dhawan started knocking the house of Mr. Goyal but they did not open the door fearing that he might be accompanied by accused. He saw from the balcony of Mr. Goyal's house that Dr. Dhawan was being removed to hospital.

The testimonies of all these witnesses are natural and have a ring of truth in them. The evidence of eye witnesses namely PW13 and PW20 cannot be disbelieved because being a son of Dr. Sanjiv Dhawan and being a servant, PW13 and PW20 are supposed to be present in the house of Dr. Sanjiv Dhawan at the time of incident. Their testimonies are fully corroborated by PW18 and PW26.

The Investigating Officer (PW33) collected the exhibits from the spot including four case cartridges and one missed fire cartridge from the park opposite House No. 49/50, which is the house of the deceased. The same were seized vide seizure memo accused with the help of Sangeeta Gaur within a few hours from the

incident. Accused was having a bag in which double barrel 12 bore shot gun, cartridge case and fire arm license were recovered. This DBBL gun was seized vide seizure memo Ex.PW29/E.

This gun recovered from the accused and the cartridge cases recovered from the park in front of the house of the deceased were sent to FSL. As per FSL report Ex.PW31/A, the said cartridge cases marked EC-1 to EC-4 were compared with test cartridge cases fired through the aforesaid gun mark Ex.F-1 under a comparison microscope. After thorough examination and comparison, it was opined that fire pin marks present on Ex.EC-1 to EC-4 were similar with fire pin marks present on the test cartridge cases. Therefore, it is proved that the empty cartridge cases recovered from the park in front of the house of the deceased were fired through the gun recovered from the possession of the accused.

Thus, it stands proved beyond reasonable doubt that it was accused, who had fired at Dr. Sanjiv Dhawan and had killed him. I therefore convict the accused under Section 302 IPC for committing murder of Dr. Sanjiv Dhawan.

It also stands proved that accused hit Tarun Kalra with an axe and thereby attempted to commit murder. Hence, I convict the accused under Section 307 IPC for making an attempt to kill Tarun Kalra.”

ARGUMENTS OF LEARNED COUNSEL FOR APPELLANT-ACCUSED

4. Mr. Manu Sharma, learned counsel for the appellant-accused contends that there are material contradictions in testimonies of eye witnesses negating their veracity and presence at spot. He states that both Shri Sarthak Dhawan (PW-13) and Shri Gopal Gosai (PW-20) claim to have witnessed the murder from the balcony. However, according to him, the testimony of Shri Sarthak Dhawan (PW-13) excludes the presence of Shri Gopal Gosai (PW-20) at the time the shot was fired as he has deposed that the servants reached his room after his father had been fired at. He points out that similarly, the testimony of Shri Gopal Gosai (PW-20) belies the claim of

Shri Sarthak Dhawan (PW-13), as he has deposed that he accompanied the deceased to the balcony and at the time of the fatal shot, Shri Sarthak Dhawan (PW-13) was in his room. He emphasises that Shri Sarthak Dhawan (PW-13) has deposed that since the employment of Sangeeta Kaur as a maidservant, his father had been telling him about the threats and demands of appellant-accused. He states that even though on 18th September, 2012, the deceased brought up the threat by the appellant-accused and on the balcony the deceased told him twice that the assailant was appellant-accused, yet surprisingly, in the MLC, the history given by Shri Sarthak Dhawan (PW-13) is of firing by an unknown person. According to him, this material contradiction militates against the presence of Shri Sarthak Dhawan (PW-13) at the spot. In support of his submission, he relies upon the judgment of this Court in **Ramesh Kumar vs. The State (Delhi Admn.)**, **1989 SCC OnLine Del 402** wherein it has been held as under:-

“23. As already referred to Dinesh injured was got admitted in the casualty of LNJP Hospital by Raju (PW 3). A perusal of the MLC Ext. PW 17/A shows that the injured was taken with the alleged history of having been stabbed by some one. It is admitted case of the prosecution that Raju accompanied the injured and so there could be no escape from the conclusion that the history must have been given by him to the doctor. The very fact that it was stated to the doctor that some one stabbed Dinesh is a clear indication of the fact that Raju had not witnessed the occurrence and was not aware of the assailant. It has clearly been stated by Paramjit alias Pammi (PW 4) that Raju had gone inside to see the doctor and, thus, it is he who was to give information about the history. If Paramjit had witnessed the occurrence, he would have given the name of the assailant to Raju while taking the injured to the hospital....”

5. He emphasises that Shri Gopal Gosai (PW-20) claims to have helped in moving the body of the deceased, whereas Shri Sandeep Kwatra (PW-22), who carried the deceased to the hospital, makes no mention either of him or of Sangeeta Kaur. He submits that the presence of eyewitnesses is doubtful as though they came to have lifted the deceased, yet the police had not seized their bloodstained clothes. In support of his submission, he relies upon *Sunil Kundu & Anr. vs. State of Jharkhand*, (2013) 4 SCC 422, *State of Rajasthan vs. Teja Singh & Ors.*, (2001) 3 SCC 147, *State (Delhi Admn.) vs. Ashok Kumar*, 2006 (87) DRJ 443 (DB) and *Mehraj Singh vs. State of U.P.* (1994) 5 SCC 188.

6. Mr. Manu Sharma, learned counsel for the appellant-accused also contends that Shri Tarun Kalra (PW-26) claims to have fallen down eighteen steps in a grapple with appellant-accused and to have been attacked with an axe, despite which he did not get his medical examination done. He points out that there is no mention of the attack on Shri Tarun Kalra (PW-26) either in the crime team report or in the rough site plan Ex.PW-33/D or the scaled site plan Ex.PW-5/A. According to him, the stoic absence of the incident under Sections 452/307 IPC in the aforesaid initial documents diminishes the veracity of the statement of Shri Tarun Kalra (PW-26). Further, he states, none of the memos prepared on 19th September, 2012 bear the Sections 307/452 IPC. He states that if Shri Tarun Kalra (PW-26) had indeed informed the police of the attack on him, the memos would have mentioned the aforesaid relevant sections.

7. Learned counsel for the appellant-accused further states that both Shri Sarthak Dhawan (PW-13) and Shri Gopal Gosai (PW-20) have deposed that they did not see any other person in the lane, which belies the claim of Shri

Tarun Kalra (PW-26) of being chased by the appellant-accused in the lane. He contends that Shri Naresh Goel (PW-18) and Shri Tarun Kalra (PW-26) have deposed that Shri Sarthak Dhawan (PW-13) knocked the door of Shri Naresh Goel (PW-18), but their claim is belied by the depositions of Shri Sarthak Dhawan (PW-13) and Shri Gopal Gosai (PW-20) wherein no such thing is mentioned. He emphasises that while Shri Naresh Goel (PW-18) claims to have heard the proclamation of appellant-accused and shooting of the deceased from his balcony, Shri Gopal Gosai (PW-20) has limited his narrative to having seen the deceased being removed to the hospital. He points out that the trial court has relied upon Shri Naresh Goel (PW-18) only as a witness to the attack on Shri Tarun Kalra (PW-26). He states that while Shri Naresh Goel's (PW-18) claims to have witnessed the incident from House No. 52, Shri Shivansh Dandon (PW-21) places him in House No. 51.

8. He contends that the prosecution has not examined material witnesses like Sangeeta Kaur (the maidservant), the building security guard as well as Bittoo (who had taken the deceased to the hospital).

9. Mr. Manu Sharma, learned counsel for the appellant-accused contends that from the following circumstances, it is apparent that the FIR was ante-timed and is eroded by afterthoughts and exaggerations:-

- i) The prosecution alleged that the *Rukka* [statement of Shri Sarthak Dhawan (PW-13)] was recorded at 4:30 a.m. on 19th September, 2012 at the hospital and consequently FIR was registered at 4:50 a.m. However, Shri Sarthak Dhawan (PW-13) has deposed that he gave his statement at the police station at about 9:30 a.m.
- ii) In the instant case, none of the external checks and balances contemplated by Sections 154 and 157 Cr. P.C. have been met by

the prosecution, which indicates that the FIR is ante timed, viz.:-

- a) The qayami DD has not been exhibited;
- b) The FIR bearing endorsement of area Metropolitan Magistrate has not been produced.
- iii) The crime team inspection lasted from 4:00 to 7.00 a.m., yet the FIR number or the names of the appellant-accused or the complainant are not mentioned in crime team report Ex. PW-14/A.
- iv) The brief history given in the Autopsy request Ex. PW-8/A1, which was prepared after the alleged registration of FIR, does not match the FIR version.

10. In support of his submission, he relies upon the following judgments of this Court:-

A) ***Mahabir Singh & Anr. vs. State, 1979 SCC OnLine Del 256***, wherein it has been held as under:-

“25. An important counter-check about the time of the registration of a case is the sending of the copy of the F.I.R. to the Ilqa Magistrate as contemplated by S. 157 of the Cr. P.C. There is no evidence on record to show as to when this copy was sent. After the recording of the F.I.R. there is, however, a mention in the police proceedings that the special report was being sent to the higher authorities. This is, a very vague type of expression.”

B) ***Rajinder vs. State of Delhi, 2011 SCC OnLine Del 1414***, wherein it has been held as under:-

“34. There are, however, some fundamental problems with the eyewitness’ testimony. PW-1 states that they had intimated a PP on the way to the hospital. However, this is not corroborated by the police witnesses, including PW-5. Secondly, there is no

dispute about the timing of the attack; all the witnesses mention more or less the same time, i.e. 1:00 PM. It is also a matter on record that the place is in the midst of a crowded neighbourhood, with houses all around, and juggis nearby. PW-1 and PW-2 mentioned that on the day of the previous attack, just two days before the main attack, several persons (10-20) were present, and had intervened to stop the fight. Yet, on the fateful day, the two witnesses depose that no one was present, even though it happened at a reasonably early hour, i.e. just before lunch time. This appears to be highly improbable, in a fairly crowded neighbourhood. The prosecution does not also suggest that this was a special day, or a holiday.....

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Lastly, the MLC PW-3/A mentions that the patient (Vijay) was accompanied by his brother to the hospital (PW-1) with a history of stabbing. It also says that the brother recognized the assailants; yet the names are not recorded in the document. However, PW-1 recognized and identified the assailants, and even deposed that the names were furnished to the doctor attending the deceased. These, as well as the absence of any name in the earliest DD entry, of the assailants, cast grave doubts about the veracity of PW-1 and PW-2.

35. However, the actual endorsement was not produced. Moreover, the entries relied on, according to the admission of PW-15, did not reveal who the Magistrate was, and where the report was furnished.....

36. At this stage, it would be useful to recollect the decision of the Supreme Court in Mehraj Singh (supra) where the duty of the court to scrutinize the evidence and see if the FIR was lodged in time, was emphasized:

“12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of

the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in dispatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 CrPC, is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been antetimed and had not been recorded till the inquest proceedings were over at the spot by PW 8.”

11. Learned counsel for the appellant-accused submits that FSL findings are unreliable on account of doubtful recovery and unsafe custody. He

submits that the trial court has erroneously relied upon the FSL opinion without appreciating the origin and custody of the case property. He points out that no independent witness has attested the seizure memos regarding the seizure of the empty cartridges, DBBL, clothes of appellant-accused, which casts a doubt on the genuineness of recovery and ultimately diminishes the significance of the FSL findings. He contends that the doubtful recovery is exacerbated by the circumstances revealing unsafe custody of the exhibits, viz.:-

- i) HC Darshan Lal (PW-9), MHC(M) has deposed that the IO did not deposit the seal with him.
- ii) Deposition of SI Gautam Malik (PW-29) and Insp. Manish Joshi (PW-33) reveal that at the time of exhibiting case property in Court, the concerned witnesses described two seals, i.e., one by FSL and the other put during investigation (initial seal). However, when it comes to articles recovered from the accused, i.e., his clothes and DBBL, no initial seal is deposed about. This has relevance with respect to the DNA report wherein, the DNA found in Shri Tarun Kalra's (PW-26) knickers is matched with DNA found in the accused' vest.
- iii) The DNA analysis is a complete eyewash as it is based on a comparison of the blood found on Shri Tarun Kalra's (PW-26) knickers and the vest seized from the appellant, without comparing with the blood sample of the appellant which was seized and also sent to the FSL.
- iv) The FSL form was not produced during trial. In support of his submission, he relies upon a judgment of this Court in *Sunil*

Chaudhary vs. State, 2012 SCC OnLine Del 349.

- v) The exhibits were sent to FSL Biology on 26th September, 2012 and ought to have remained with the Biology division till preparation of its report dated 25th June, 2013. However, four exhibits were internally transferred from Bio to Ballistics division on 29th April, 2013, prior to preparation of Bio Division report. This, according to him, reveals a broken chain of custody and blemishes the sanctity of the exhibits.
- vi) Tampering is manifest from the fact that the nature and description of exhibits Q2 and N6 changed after being sent to Ballistics by Biology division and later to DNA division. Q2 in Bio report mentions pieces of rubber like material, whereas in the Ballistics report it became plastic and paper wads. Similarly, N6 (lead slug recovered from the body of deceased) in Bio and DNA report are not the same.
- vii) Despite examination of Ex. N6 in Bio Division and resealing with seal of VSN FSL Delhi, the seal described by DNA FSL on Ex. N6 in report dated 22nd December, 2014 prepared after Bio report, remained NAMC SM.

12. He states that the lead slug N6 which was recovered from the dead body was not examined in FSL ballistic division at all. According to him, this should lead to an adverse inference particularly in view of the fact that the diameter of the lead slug recovered from the body i.e. 1.9 cm is too small to fit into the recovered cartridge case i.e. 2.3 cm.

13. Mr. Manu Sharma, learned counsel for the appellant-accused lastly contends that there are inherent lapses in investigation warranting adverse inferences.

ARGUMENTS ON BEHALF OF LEARNED APP

14. *Per contra*, Mr. Rajat Katyal, learned APP states that Shri Sarthak Dhawan (PW-13) is the son of the deceased- Dr. Sanjeev Dhawan, who has stated in his examination-in-chief what he saw at the time of incident. He points out that in cross examination, Shri Sarthak Dhawan (PW-13) states that servants reached his room on hearing the noise and commotion.

15. He emphasises that Shri Sarthak Dhawan (PW-13) has deposed in respect of the appellant-accused calling deceased- Dr. Sanjeev Dhawan and threatening him in respect of Sangeeta Kaur. He contends that the fact that the appellant-accused was in contact on telephone with the deceased- Dr. Sanjeev Dhawan and Sangeeta Kaur on the date of incident is apparent from the CDRs of mobile numbers 9540122693 and 9899273958 owned and used by the appellant-accused and the mobile No.8527606238 being used by Sangeeta Kaur and mobile No.9811071244 being used by deceased- Dr. Sanjeev Dhawan. In support of his contention, he refers to the statement of appellant-accused under Section 313 Cr.P.C. The relevant portion of the appellant-accused' statement is reproduced hereinbelow:-

“Q57. It is in prosecution evidence against you that mobile phone number 8527606238 was subscribed in the name of D.K. Tondon by Bharti Airtel Ltd. via Customer Application Form with ID proof collectively exhibited as Ex.PW7/A and PW7 Sh. Chander Shekhar, the Nodal Officer of said company submitted the CDR of the said mobile phone for the period of 28.08.2012 to 19.09.2012 which has been exhibited as Ex.PW7/B. What have you to say?

Ans. It is a matter of record. This mobile number was got issued by me but it was handed over to Sangeeta Kaur for use by me.”

16. With regard to non-mentioning of assailant's name in the MLC, learned APP for State states that the injured/deceased-Dr. Sanjeev Dhawan was father of Shri Sarthak Dhawan (PW-13) and at the time of admission in the hospital the main endeavour must have been to give medical aid to the deceased-Dr. Sanjeev Dhawan. Further, he states, this witness categorically stated in his cross examination that he had told the doctor about the fire arm injury only and did not tell the doctor about the assailant.

17. Learned APP points out that Shri Gopal Gosai (PW-20), a servant of deceased, is another eye witness to the incident of shooting of the deceased-Dr. Sanjeev Dhawan. Shri Gopal Gosai (PW-20) in his evidence has categorically deposed the manner in which the sequence of events happened and that Shri Sarthak Dhawan (PW-13) also reached the balcony when gun shot was fired at the deceased-Dr. Sanjeev Dhawan. Mr. Rajat Katyal states that the balcony was accessed from the room of Shri Sarthak Dhawan (PW-13) and thus his presence cannot be doubted.

18. He clarifies that Shri Sandeep Kwatra (PW-22) is another neighbour who took the deceased to the hospital along with Shri Sarthak Dhawan (PW-13). He contends that there is no contradiction in the statements of Shri Sarthak Dhawan (PW-13) and Shri Sandeep Kwatra (PW-22).

19. Learned APP further states that in the intervening night of 18th - 19th September, 2012, the appellant- accused entered the house of Shri Tarun Kalra (PW-26) by breaking a window and in the process suffered an injury on his thumb. He points out that Shri Tarun Kalra (PW-26) has deposed that the appellant-accused was looking for the house of the deceased- Dr.

Sanjeev Dhawan. In fact, he states that upon a grapple in the stairs with appellant-accused and due to use of axe by the latter, Shri Tarun Kalra's (PW-26) clothes got torn. He states that Shri Tarun Kalra (PW-26) was not medically examined as he did not suffer any visible injury and the same is deposed by investigating officer Insp. Manish Joshi (PW-33).

20. Learned APP states that the testimony of Shri Tarun Kalra (PW-26) is corroborated by the testimony of Shri Naresh Goel (PW-18), who is an eye witness to the said grappling. He states that the non-mentioning of knocking of door of Shri Naresh Goel (PW-18) by Shri Sarthak Dhawan (PW-13) and/or the fact that the statement of Shri Sarthak Dhawan (PW-13) was recorded at 09:30 a.m. are inconsequential as they are minor omissions/contradictions and do not go to the root of the matter. He further states that Shri Naresh Goel (PW-18) is a resident of House No.51 and therefore, mentioning of House No.52 in the deposition is an accidental slip.

21. Learned APP for State states that non-mentioning of the attack on Shri Tarun Kalra (PW-26) in the site plan, at the highest, points towards a defective investigation and thus no benefit can be given to the appellant-accused. Learned APP contends that within a short span of time the appellant-accused was arrested after the incident. He states that records reveal that within a short time many statements of witnesses were recorded, appellant-accused was arrested, inquest proceedings were conducted and post-mortem was done. Thus, according to him, non-mentioning of Section 307 IPC at the initial stage is not fatal.

22. He contends that upon reading the evidence of Shri Naresh Goel (PW-18) and Shri Tarun Kalra (PW-26) in their entirety, there is no contradiction. He points out that no question with regard to delay in recording of statement

of Shri Tarun Kalra (PW-26) was put to Insp. Manish Joshi (PW-33). According to him, nothing has come on record to discredit their evidence.

23. He contends that fifteen orders had been passed by the trial court detailing the efforts made to trace and serve Sangeeta Kaur and she was finally dropped on 08th August, 2016. He clarifies that Bittoo is the pet name of Shri Sandeep Kwatra (PW-22) and the same is apparent from the list of witnesses mentioned in the charge-sheet.

24. He states that Sangeeta Kaur was a maidservant at the house of deceased-Dr. Sanjeev Dhawan and nothing has come on record to the contrary. Instead the appellant-accused had put up a false story that Sangeeta Kaur was staying with him in Gurgaon in his deposition under Section 315 Cr.P.C., which stands belied by the evidence on record. In support of his contention, he relies upon the following portion of Section 313 Cr.P.C. statement of the appellant-accused:-

“Q78. Have you anything else to say?

Ans. I have been falsely implicated in this case. PWs are interested witnesses. Reports are manipulated, fabricated and tampered. I have not been supplied complete DNA report. I have collected certified copy of the DNA report on 27.05.2015 and second page of the report was not supplied to me. I do not know when it has been filed and I have not been provided copy till date.

Sangeeta was living with me at Wazirabad, Gurgaon. She was not residing in the house of Dr. Sanjeev Dhawan. She was brought with me at the time of arrest from Gurgaon by the police officials. I have not killed Dr. Sanjeev Dhawan.”

25. Learned APP submits that the fact that the false evidence had been led by the appellant-accused should be taken as a relevant circumstance against

the appellant-accused.

26. Learned APP emphasises that when the evidence of Shri Sarthak Dhawan (PW-13) and Shri Gopal Gosai (PW-20) is read together with Shri Tarun Kalra (PW-26), it clearly shows that Shri Sarthak Dhawan (PW-13) and Shri Gopal Gosai (PW-20) came out only once the gun shot was fired and by that time Shri Tarun Kalra (PW-26) had reached the house of Shri Naresh Goel (PW-18).

27. Learned APP for State denies that no PCR call was made by any of the witnesses. He states that apart from DD Entry No.5A recording a PCR call made by Shri Shivansh Dandon (PW-21), there is another PCR call recorded vide DD Entry No.4A and the same does not give the name and phone number of the caller. Also the call records of phone used by Sangeeta Kaur (Ex.PW7/B) show that she made a PCR call at 2:52 a.m. Call records of Shri Shivansh Dandon (PW-21) (Ex.PW6/G) show that only one PCR call was made by him. Even otherwise, according to him, different persons behave differently in such situations. He emphasises that the eyewitnesses of the incident are mainly the close family members and servants of the deceased and at the relevant time their main aim must have been to provide medical aid to the deceased.

28. He further states that Const. Tara Chand (PW-16) has deposed that he had delivered the special report to the Illaqua magistrate. He states that in the present case, the creditworthiness of the ocular evidence adduced by the prosecution was worthy of acceptance, and the delay, if any, in registering a complaint or sending the same to the Jurisdictional Magistrate, by itself would not in any manner weaken the prosecution case. He points out that the autopsy application which accompanied the inquest report duly mentions

the FIR number. He emphasises that in the present case the name of the appellant-accused had surfaced at the initial stage itself and efforts were made to arrest him. He points out that the call records shows that the appellant-accused was in contact with Sangeeta Kaur on the mobile.

29. He emphasises that prosecution witnesses have duly deposed that the exhibits were not tampered with. According to him, there is also nothing on record to suggest that the recoveries had been planted upon the appellant-accused. He points out that HC Darshan Lal (PW-9) was the MHC Malkhana and he handed over the articles to Const. Prasannan (PW-10), who in turn deposited the same with FSL and proved that the parcels and seals were not tampered with. No suggestion had been given to any prosecution witness with regard to tampering of seals. The FSL reports prove that the exhibits as received were having intact seals. Further, Dr. N.P. Waghmare (PW-31) and Dr. V. Sankaranarayanan (PW-32), the experts from FSL who stated that seals were intact on the exhibits received, were not cross examined on any of the points which are being raised now by the appellant-accused. Learned APP points out that the FSL form received in response to an RTI application had been duly exhibited by the appellant-accused himself.

30. Learned APP states that the ballistic report of the FSL (Ex.PW31/A) and Biology report (Ex.PW32/A) duly record that the seals were intact as per the FSL form. Further, no question had been put to either of the witnesses from the FSL in this regard. He states that there is no bar on forwarding some of the samples prior to the preparation of the Biology report.

31. He contends that the appellant-accused failed to cross-examine the experts with regard to nature of exhibit Q2. With regard to exhibit N6 (lead slug recovered from body of deceased-Dr. Sanjeev Dhawan), learned APP states that in the Bio report, it has been mentioned as two metallic pieces and in DNA report it has also been mentioned as two metallic pieces. Post-mortem report mentions the same as lead slug and seizure memo mentions the same lead. He states that the police officer who received the same had not seen the contents of the box and had given a general description.

32. Mr. Rajat Katyal, learned APP states that upon firing, the dimensions of a slug duly change on all counts and in any event, there must be some width of the circumference of the cartridge case also and the same has to be of decent width, as it has to bear the blast which happens when the hammer of the short gun hits the cartridge on triggering.

33. Learned APP for State submits that an adverse inference should be drawn against the appellant-accused as he refused to participate in Test Identification Parade (TIP). He states that the appellant-accused' contention that he refused to participate in TIP on the ground that his face had been shown to the public through electronic media was false as nothing had been brought on record to substantiate the said plea and no such suggestion had been given to the IO.

34. Learned APP emphasises that the appellant-accused is a habitual offender who had earlier also given injuries/sharp blows to persons on account of Sangeeta Kaur (maid servant). He states that there are previous involvements of the appellant-accused in similar incident whereby in one case the appellant-accused gave knife injuries to a person, which led to filing of FIR No. 119/2012 with Police Station Jaitpur under Section 324/452 IPC.

A list of other cases against the appellant-accused referred to by learned APP are as under:-

Sl. No.	FIR No.	Under Section/s	Police Station
1.	369/2009	294/323/506B/147 IPC	Lormi, Chattisgarh
2.	370/2009	294/323/506/147 IPC	Lormi, Chattisgarh
3.	41/2011	294/506B IPC	Lormi, Chattisgarh
4.	47/2011	307 IPC & 25/27 Arms Act	Kunda, Dist. Kabir Dham, Chattisgarh

REJOINDER ARGUMENT OF LEARNED COUNSEL FOR APPELLANT-ACCUSED

35. In rejoinder, learned counsel for appellant-accused submits that the statement of accused under Section 315 Cr.P.C. cannot be used for strengthening the case of the prosecution and/or to prove the guilt of the accused. In support of his submission, he relies upon ***Yusufbhai Alias Isubbhai Umarbhai Mallek vs. State of Gujarat & Anr., 2009 SCC OnLine Guj 3011***, wherein it has been held as under:-

“19. The aforesaid provisions show that what is required for availing the benefits as per the provisions as contained in the Section is; (1) that there must be a trial in the criminal Court; (2) person applying to be examined under the provisions of the said provisions would be necessarily an accused; (3) when the stage of invoking the provisions of the said Act has reached i.e. to say after conclusion of record of evidence of the prosecution followed by the explanations/submissions of the accused as required under Section 313 of Cr.P.C., is over; (4) the evidence as such accused may adduce will be on oath as a witness and lastly; (5) such

evidence must be in disproving of the charges made against him or any person charged together with him at the trial. Therefore, if the evidence is given by accused after the examination under Section 313 of Cr. P.C., and under Section 315 of Cr.P.C., it is required to be considered in light of the aforesaid provisions of Section 315 of Cr.P.C. The pertinent aspect is that such evidence must be in disproving of the charges made against him or any person charged together with him at the same trial. Therefore, the nature of evidence cannot be for strengthening the case of the prosecution to prove guilt of any of the accused, but must be in disproving of the charges made against him. The evidence of A-1 as recorded by the learned Sessions Judge shows that the same is not in disproving of the charges made against him or in disproving of the charges made against any person together with him at the trial, but is to prove the guilt of A-1 himself and/or other co-accused namely; A-2 and/or A-3. Therefore, such evidence so far as it relates to not in disproving of the charges, could be said as beyond the scope of Section 315(1) of Cr.P.C., for the purpose of deciding the case before the learned Sessions Judge. It is an admitted position that the learned Sessions Judge has not considered the said aspects and if this Court is to examine the said aspects, the deposition of A-1 under Section 315, so far as it relates to involvement of A-1 himself and other co-accused namely; A-2 and A-3, since is not in disproving of the charges, cannot be considered since the same would be outside the scope of Section 315(1) of Cr.P.C.”

COURT'S REASONING

IT IS ESSENTIAL TO OUTLINE THE MANNER IN WHICH EVIDENCE OF THE WITNESSES IS TO BE APPRECIATED BY THE COURTS. THE EVIDENCE OF THE WITNESSES HAS TO BE READ AS A WHOLE AND APPRECIATED ON THAT BASIS. MINOR DISCREPANCIES ARE NOT TO BE GIVEN UNDUE EMPHASIS, ESPECIALLY WHEN THEY DO NOT AFFECT THE CORE OF THE PROSECUTION CASE. AFTER ALL, NO TWO TESTIMONIES CAN BE IDENTICAL.

36. It is essential at the outset to outline the manner in which evidence of the witnesses is to be appreciated by the Courts. It has been repeatedly held

that evidence of witnesses cannot be dissected in the manner as has been done by the learned counsel for the appellant-accused. The evidence of the witnesses has to be read as a whole and appreciated on that basis. Minor discrepancies are not to be given undue emphasis, especially when they do not affect the core of the prosecution case. In fact, the test is whether the testimony of a witness inspires confidence in the mind of the Court and appears to have a ring of truth. After all, no two testimonies can be identical. The Supreme Court in ***Bhajan Singh & Ors. vs. State of Haryana, AIR 2011 SC 2552*** has held as under:-

*“30. It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution’s case, may not prompt the Court to reject the evidence in its entirety. “Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions.” Difference in some minor detail, which does not otherwise affect the core of the prosecution case, even if present, would not itself prompt the court to reject the evidence on minor variations and discrepancies. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution witness. As the mental capabilities of a human being cannot be expected to be attuned to absorb all the details, minor discrepancies are bound to occur in the statements of witnesses. [Vide: *Vijay @ Chinee v. State of M.P.*, (2010) 8 SCC 191; and *Brahm Swaroop (Supra)*].”*

(emphasis supplied)

37. Similarly in **Mritunjoy Biswas Vs. Pranab Alias Kuti Biswas and Another, (2013) 12 SCC 796**, the Supreme Court has held as under:-

*“28. As is evincible, the High Court has also taken note of certain omissions and discrepancies treating them to be material omissions and irreconcilable discrepancies. It is worthy to note that the High Court has referred to the some discrepancies which we find are absolutely in the realm of minor discrepancies. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission (see *Leela Ram v. State of Haryana* [(1999) 9 SCC 525 : 2000 SCC (Cri) 222] , *Rammi v. State of M.P.* [(1999) 8 SCC 649 : 2000 SCC (Cri) 26] and *Shyamal Ghosh v. State of W.B.* [(2012) 7 SCC 646 : (2012) 3 SCC (Cri) 685]).*

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31. The High Court, as we find, has read the evidence not as a whole but in utter fragmentation and appreciated the same in total out of context. It is to be kept in mind that while appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence

as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. (See State of U.P. v. M.K. Anthony [(1985) 1 SCC 505 : 1985 SCC (Cri) 105] .) Tested on the anvil of the aforesaid principle, we have no shadow of doubt that the High Court has erroneously discarded the credible evidence by paving the path of totally hypertechnical approach.”

(emphasis supplied)

THIS COURT IS OF THE VIEW THAT THE APPELLANT-ACCUSED HAS BEEN IDENTIFIED AS THE ASSAILANT BY TWO EYEWITNESSES AND HIS PRESENCE PRIOR TO AND AT THE SCENE OF MURDER HAS BEEN MENTIONED BY A NUMBER OF INDEPENDENT AND NATURAL WITNESSES AS THEY WERE BOUND TO BE PRESENT AT THE SAID HOUR, AS THEY ARE RESIDENTS OF THE SAME PLACE. FURTHER, THEIR TESTIMONIES ARE CLEAR, COGENT, CONSISTENT, CREDIBLE, TRUSTWORTHY AND CORROBORATED BY FORENSIC AND ELECTRONIC EVIDENCE.

38. In the present case, Shri Tarun Kalra (PW-26) is a witness in respect of an incident which happened with him before the shooting incident involving the deceased, i.e. appellant-accused entering his house after breaking a window, appellant-accused suffering an injury on his thumb, appellant-accused asking for Sangeeta Kaur (maid servant of deceased), appellant-accused grappling with him in the stairs and trying to injure him with an axe. The relevant portion of the testimony of Shri Tarun Kalra (PW-26) is reproduced hereinbelow:-

"I am Tax Consultant by profession.

On 19.09.2012, in the early morning, at about 2/3.00 a.m., I alongwith my wife were watching TV in our bedroom. We have a duplex house. We heard a loud noise as something had broken, hearing which we came out of our bedroom and I rushed to the terrace and my wife rushed to my daughter's room. From the third floor, I saw a man in army clothes, suddenly entering my drawing room, with a gun in his hand and he was bleeding profusely from his thumb. He was shouting for Sangeeta, hearing which my wife came out of my daughter's room and I came inside from the terrace. My wife told him that he had come to the wrong floor. On which, he tried to open the main door, failing which he again came up and told me to open the door. As I opened the main door of my house, he caught hold of me from behind and directed me to take him to the correct floor. As we were going downstairs, my neighbour Mr. Goyal hearing the noise, tried to come down to help. Hearing his footsteps, that person pointed the gun at me and we had a scuffle, that person is present in court (the witness correctly identifies the accused). In the struggle, both of us lost our balance and came down tumbling about 8-10 steps of the stairs and as accused, present in Court today, lost his balance, I snatched the gun from his hand and ran on the road. He followed me and tried to hit me with a sharp weapon from behind resulting in slitting of my T-shirt and shorts also entangled in the weapon i.e. axe like which was in the hands of the accused and I tried to turn and see, if I was hurt. The accused again snatched the gun from me. I ran towards behind the parked car to save myself and from there, I tried to run towards my house shouting for help. At that time, I heard a gun short from behind. I climbed the stairs of my house and Mr. Goyal, my neighbour, pulled me into his house to save me.

After a while, we heard a few more gun shots and heard lot of screaming and shouting from Dr. Dhawan's house and suddenly son of Dr. Dhawan started knocking at the door of Mr. Goyal's house asking for help. We did not open the door fearing that he might be accompanied by the accused. Then we heard lot of screams and saw from the balcony of Mr. Goyal's house

that Dr. Dhawan's was being removed to the hospital.

After some time, police also reached there.

In the morning, near the garden, the police found the axe and I identified the same by which the accused tried to attack me. That axe was sealed and seized by the police. Subsequently, the police took my torn T-shirt of blue colour, make Gap and shorts make Jockey and sealed and seized the same. There were blood stains on the T-shirt and shorts. I signed the seizure memos. The seizure memo of my clothes is ExPW26/A bearing my signatures at point A and the seizure memo of axe is Ex.PW26/B bearing my signatures at point A....

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My statement was recorded same day at police station. I have no knowledge if during investigation any site plan of the property was prepared by the IO. I have no idea who made PCR call to the police. There was no need for my medical treatment for the injuries sustained by me. I am an Advocate by profession.

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I returned to my house after the incident from the house of Mr. Goel after the deceased was being removed from the house. The whole incident took time of about 15-20 minutes maximum. When I had gone to the house of Mr. Goel and he pulled me inside his house. It was an iron door and ahead of it was a wooden door. Both were closed. I could not see who were present at the gate of Mr. Goel at that point of time. Voln. We could hear the voice of Sarthak son of the deceased. I do not remember the exact time when this Axe was recovered by the police but it was morning hours. This was before 12.00 when I had gone to the PS on that day. I do not remember how many seizure memos were prepared by the police at my instance. I remember that seizure memo of the recovery of Axe and also seizure memo of the night suit recovered from my house was prepared by the police in my presence.....

.....My house and house of Mr. Goel are in front of each other. Voln. There is a distance of 4 to 5 feet in the gates of the two house. My statement was not recorded by the police after it

reached the house first time. The Axe was recovered by the police from near the garden. I had not gone to the hospital alongwith Sarthak, son of the deceased....”

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It is wrong to suggest that accused was not present at the spot. It is wrong to suggest that accused did not make any gun short firing on the date of the incident. It is wrong to suggest that no injury has been caused to me by the accused during scuffle. It is wrong to suggest that accused was not having any gun with him nor he was having any Axe with him. It is wrong to suggest that neither gun nor Axe has been recovered at the instance of the accused. I had given the physical description of the accused in my statement to the police.

Mr. Goel could not intervene in the scuffle between me and the accused as during the scuffle I had fallen from 8 to 10 stairs and after that I ran away from there. Police did not record the statement of Mr. Goel in my presence. It is wrong to suggest that no scuffle took place between me and the accused on the date of the incident. It is wrong to suggest that it is a cooked up story by me and for that reason neither the security guard nor my wife intervened in the scuffle. It is wrong to suggest that no gun was snatched by me from the hands of the accused. It is wrong to suggest that gun and Axe both are planted weapons. I have no idea about the Axe till the time it was used by the accused at my backside. It is wrong to suggest that this Axe was collected by the accused from my house.

I heard the gun shot firing but I have not seen the incident of firing of my own. It is wrong to suggest that case property is fabricated....”

(emphasis supplied)

39. The fact that the appellant-accused suffered an injury on his thumb on the said night as mentioned by Shri Tarun Kalra (PW-26) is corroborated by the appellant-accused's MLC Ex.PW3/A. The recovery of an axe by the police corroborates the allegation of Shri Tarun Kalra (PW-26) that he had been attacked with an axe by the appellant-accused.

40. The testimony of Shri Tarun Kalra (PW-26) is also corroborated by forensic evidence as the DNA report confirms that the alleles found on his clothes and on the broken glass (taken into possession from the second floor portion in his occupation) were similar to the alleles found on the shotgun and vest of the appellant-accused.

41. The testimony of Shri Tarun Kalra (PW-26) is further corroborated by the testimony of Shri Naresh Goel (PW-18) who is an eyewitness to the shooting incident as well as to the grappling between Shri Tarun Kalra (PW-26) & appellant-accused and proclamation by appellant-accused. The relevant portion of the testimony of Shri Naresh Goel (PW-18) is reproduced hereinbelow:-

“On 29.09.2012, I was sleeping at my aforesaid house. At about 2.45am, I heard loud hue and cry as if someone was calling for being rescued. I got up and reached the staircase. Then I reached the staircase on the first floor. At that time, I saw a boy in military dress and Tarun, my neighbour coming down at speed, through the staircase, while grappling with each other. The boy in military dress, is present in Court, as accused. I identify him. (Witness has rightly pointed out towards the accused.) I saw the accused armed with a small size gun.

Then I returned to the second floor portion. Tarun returned and also came to the second floor portion. He rang the bell of my house. I opened the door and pulled Tarun inside. Tarun was perplexed at that time. I then went to the balcony of my floor. I saw the accused present in the street. I inquired from the accused as to what he wanted. He proclaimed that doctor saab had detained his wife Sangeeta. At that time, I saw the accused firing in air, from his gun. I returned from the balcony. At that time, I heard sound of another shot being fired.

I heard some knocking at the door of my house. I saw through the magic eye that Sarthak son of Dr. Sanjeev Dhawan was knocking at the door. But I did not open the door being afraid of that accused might not enter our house. Sarthak then

went away. I then came to the balcony of my floor. From there I saw Sarthak, with the help of his servant Gopal, removing his father Dr. Sanjeev Dhawan, who was injured, to the car of Sh. Sandeep Kawatra. I also saw Sh. Sandeep Kawatra taking away the car with Dr. Sanjeev Dhawan and Sarthak in the car.

I did not see the accused firing shot at Dr. Sanjeev Dhawan. After some time, police reached the spot. Police made inquiries from me at that time. But I do not remember as to when my statement was recorded.

(At this stage, Ld. Addl. PP submits that witness is not making statement in consonance with the statement made by the witness before the police and he be permitted to put leading questions to the witness. Heard. File perused. Request is allowed.)

XXXX by Sh. Rakesh Mehta, Addl. PP for State.

It is correct that when I reached the staircase of the first floor, I saw the accused aiming gun at Tarun and also that Tarun caught hold of both the hands of the accused very tightly and they grappled. I remember that when the accused proclaimed in the street that doctor saab had detained his wife Sangeeta, he fired two shots in the air and another shot aiming at Dr. Sanjeev Dhawan, while Dr. Sanjeev Dhawan was standing in the balcony. Due to lapse of two years period, I could remember these aspects about which I have been now questioned.

XXX Ms. Kanchan Diwan, Amicus Curiae for accused Dharmender Tandon.

I am cloth merchant. Today, I have not been pressurized by anyone to make statement in Court. I did not try to intervene during the occurrence, being afraid of as the accused was armed with a gun.

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Tarun Kalra came to me one or two minutes after I saw him and the accused grappling in the staircase and jumping out.

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It is wrong to suggest that I did not see the accused firing shot at Dr. Sanjeev Dhawan.

On that night, I and my wife was sleeping in my room.
I did not come out of my house to help in removal of
Dr. Sanjeev Dhawan to hospital being afraid of accused.
(emphasis supplied)

42. Shri Sarthak Dhawan (PW-13) is the son of the deceased and an eyewitness to the incident of the murder. The relevant portion of the testimony of Shri Sarthak Dhawan (PW-13) is reproduced hereinbelow:-

“Ms Sangeeta Kaur, was our maid servant. She was employed at out house on 29.8.2012. After her employment my father started receiving threat calls. My father told me about this fact in the first week of September 2012. My father told me that a person by the name of Dharamendra Kumar Tandon used to call him on phone and represents himself to be husband of Ms. Sangeeta Kaur and further that my father should hand over to him Ms. Sangeeta or otherwise it would lead to dire consequences.

My father was employed as Senior Cardiologist at Sir Ganga Ram Hospital. Around 9th of September 2012 my father also told me that the aforesaid person namely Dharamendra Kumar Tandon had come to him at Sir Ganga Ram Hospital and threatened him with death in case he failed to hand over him Ms. Sangeeta.

On 18.9.2012, at about 9-10 pm, I was present at my house. I, my father and my mother Smt. Jyoti Dhawan were having dinner. My father told me at that time that that even on that day he had received threat call on phone from Dharmender Kumar Tandon that he would kill in case I did not hand over to him Ms.Sangeeta Kaur. After dinner, we went to sleep.

During the night at about 2:30 am, I heard noise and someone was hurling abuses. I also heard sound of shot being fired. On this, I and my father reached the balcony of first floor of our house. We saw Dharmender Kumar Tandon, accused now present in Court, present in the service lane. He was wearing uniform of army personnel. He was holding a gun. He aimed the gun at my father. My father while pointing out

towards accused told me that he was Dharmender Kumar Tandon, who had visited him at Sir Ganga Ram Hospital and used to extend him threat calls. The accused opened fire from his gun and the shot hit my father in his chest. My father collapsed in the balcony, while saying that Dharmender Kumar Tandon had fired shot at him and that he should be caught hold of. I also raised alarm. I then rushed to the ground floor but found that the accused had run away from there.

On hearing noise, our neighbour Bittu reached there. I and Bittu rushed my father to Sir Ganga Ram Hospital where the doctor declared him brought dead.

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I did not tell the police in my statement Ex PW13/A regarding conversation of my father with me at the dinner during which he told me about threat call received on that day from Dharmender Kumar Tandon. Again said, I told this fact to the police in my statement Ex PW13/A. My earlier reply was under the impression that I was asked if I informed the police immediately on having come to know the fact during dinner. My statement Ex PW13/A recorded by the police at about 9:30 am at police station Rajinder Nagar.

We are having good relationship with our neighbours. I did not convey to any of our neighbours the factum of threat calls by Dharmender Kumar Tandon. I do not know if my father ever brought this fact to the notice of any neighbour or our relative.

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When I and my father came to the balcony, we found that the accused present in the service lane had already aimed gun and ultimately opened fire at my father when he pointed out towards the accused tell me that he was Dharmender Kumar Tandon. I could not pull my father inside the room because the shot was fired in fraction of second. We could not inform the police immediately, before he opened fire. I cried from the balcony itself.

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At the time, my father was brought to Sir Ganga Ram hospital, I told the doctor who medically examined him and declared him brought dead, that my father had been fired at. But I did not tell the doctor that such and such person had fired at my father or that Dharmender Kumar Tandon had fired at my father.

(emphasis supplied)

43. As rightly pointed out by learned APP for the State that Shri Sarthak Dhawan's (PW-13) testimony is corroborated by the Call Detail Record (Ex.PW6/E), which shows that his father was receiving calls from the appellant-accused.

44. Further, it is settled law that non-mentioning of the name of the assailant to the doctor when the body of the deceased was taken to the hospital, is not fatal to case of the prosecution. The Supreme Court in ***Pattipati Venkaiah Vs. State of Andhra Pradesh, (1985) 4 SCC 80*** has held as under:-

"17. Another argument advanced before us was that although PWs 1 and 2 were supposed to be eyewitnesses, they never cared to disclose the name of the assailant to the doctor when the body of the deceased was taken to the hospital. This argument is only stated to be rejected. A doctor is not at all concerned as to who committed the offence or whether the person brought to him is a criminal or an ordinary person, his primary effort is to save the life of the person brought to him and inform the police in medico-legal cases. In this state of confusion, PWs 1 and 2 may not have chosen to give details of the murder to the doctor. It is well settled that doctors before whom dead bodies are produced or injured persons are brought, either themselves take the dying declaration or hold the post-mortem immediately and if they start examining the informants they are likely to become witnesses of the occurrence which is not permissible."

(emphasis supplied)

45. Shri Gopal Gosai (PW-20) cook of the deceased is another eyewitness. The relevant portion of his testimony is reproduced hereinbelow:-

In the month of September, 2012, I was serving as a cook as the house of Dr. Sanjeev Dhawan at H. No. 49-50, New Rajinder Nagar.

On the 19.09.2012, upto 2.10 am I was watching telecast while present in the drawing room. Thereafter, I switched off the TV and went to sleep in the same drawing room. At about 2.45 am, I heard breaking of window pane, with a loud noise. I removed the curtain from inside to an extent and noticed that the window pane had got broken to some extent. I then called Sangeeta, who used to work as maid at the same house. She used to sleep in the basement. On hearing my voice Sangeeta came to the drawing room. On removing the curtain, she told me that it was Dharmender Fauzi who had fired shot and that he was present on the road, in front of the house. I also removed the curtain saw Dharmender present on the road, in front of the house of Dr. Sanjeev Dhawan. Dharmender was wearing military uniform. He was having a muffler/piece of cloth tied around his neck. I identify said person namely Dharmender, who is present in Court as accused. I and Sangeeta then rushed to the first floor to inform Dr. Sanjeev Dhawan about all this. The Dr. Sanjeev Dhawan went to the balcony of the first floor of the house. We also followed him upto the balcony. Then I heard a shot being fired from the ground floor. Dr. Sanjeev Dhawan spoke that he had been shot at by Dharmender and that he be caught hold of. Dr. Sanjeev Dhawan in the balcony. I and Sangeeta lifted him and removed from the balcony to the room. At that time, he was bleeding. I may mention Sarthak, son of Dr. Sanjeev Dhawan also reached the balcony when fire was shot at the doctor.

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I do not know if Smt. Sangeeta was married or unmarried at the time she joined employment at the house of Dr. Sanjeev Dhawan. About two months prior to the occurrence, Smt.

Sangeeta had once proceeded on leave. When she again joined after having availed of leave, I saw Dharmender accused with her at that time. He left her in front of the house of Dr. Sanjeev Dhawan. At that time, I had opened the main door and saw Smt. Sangeeta present at the door with the accused and she told me that the person who had accompanied her was Dharmender. After that, I never saw Dharmender accused in front of the house of Dr. Sanjeev except on the night of occurrence.

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From the ground floor, I went to the room of Dr. Sanjeev Dhawan on the first floor and awakened him. Dr. Sanjeev Dhawan got up but did not go to the hall in the basement. He rather went to adjoining room of his son Sarthak. Thereafter, Dr. Sanjeev Dhawan opened the door of the room of Sarthak which opens in the balcony. At the time, Dr. Sanjeev Dhawan went to the balcony, I was accompanying him. Dr. Sanjeev Dhawan did not make any phone call from the balcony.

When Dr. Sanjeev Dhawan fired at in the balcony, he asked me that he had been fired at by Dharmender and he should be caught hold of. From the balcony, I saw one person running away. Then I started taking care of Dr. Sanjeev Dhawan and could not raise hue and cry. At the time, Dr. Sanjeev Dhawan was fired at, Smt. Sangeeta was present in the room of Sarthak, behind me and Dr. Sanjeev Dhawan, while we were present in the balcony. Wife and Son of Dr. Sanjeev Dhawan was also present in the room Sarthak Dhawan at that time.

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My clothes got stained with blood at the time, I caught hold of Dr. Sanjeev Dhawan after having been fired at. I put off, my blood stained clothes at the hospital but I do not know if they were seized by the police or not.

Clothes of Smt. Sangeeta might have stained with blood at the time she also took care of Dr. Sanjeev Dhawan with me. I cannot say with certainty if clothes of Smt. Sangeeta also got stained with blood.

In my presence, statement of no one else was recorded. It is wrong to suggest that I have deposed falsely.”

(emphasis supplied)

46. This Court is of the view that Shri Sarthak Dhawan (PW-13) has not excluded the presence of Shri Gopal Gosai (PW-20) at the time the shot was fired at the deceased. Non-mentioning and exclusion are entirely different concepts. In any event, the balcony where the deceased was shot and the bedroom of Shri Sarthak Dhawan (PW-13) are adjacent to each other and one leads to the other.

47. In the opinion of this Court, there is no material contradiction in the testimonies of Shri Sarthak Dhawan (PW-13) and Shri Gopal Gosai (PW-20). Irrelevant differences in statements of eyewitnesses which do not in any way corrode the credibility of the witness cannot be labelled as omissions or contradictions.

48. Further, the non-seizure of bloodstained clothes of Shri Sarthak Dhawan (PW-13) and Shri Gopal Gosai (PW-20) by the police, at the highest points to a defective investigation, but the appellant-accused cannot take advantage of the same. A coordinate Bench of this Court in ***Dinesh Singh Panwar & Ors. Vs. State N.C.T. of Delhi, 2019 SCC OnLine Del 9549*** has held as under:-

“56. The next submission made by the counsel for the appellants was that in case PW5 was an eye witness to the incident and had taken the deceased to the hospital in a Maruti car driven by PW9 Manender, there would have been blood on his clothes. However, his clothes were not taken into possession by the police and not sent for examination.

57. This submission of the learned counsel for the appellants is also liable to be rejected. Even though the blood stained clothes of PW5 and 9 were not seized but their evidence establishes their presence at the place of the incident. It is settled law that faulty investigation cannot come in the way of dispensing justice. Investigating Officer may have faulted in not

collecting the blood stained clothes of the eyewitnesses, but the benefit of defective investigation cannot accrue to the accused persons. We need not burden this opinion with judicial pronouncements in this regard; suffice to mention that one may usefully refer to Sathi Prasad vs. The State of U.P. reported at AIR 1973 SC 448, State of U.P. v. Anil Singh reported at 1988 Supp SCC 686 (paragraph 17), Mohan Singh v. State of Madhya Pradesh, reported at (1999) 2 SCC 428 (paragraph 11), Dhanaj Singh alias Shera & Ors. Vs. State of Punjab reported at (2004) 3 SCC 654 (paragraphs 5 and 8), State of UP v Krishna Master, reported at (2010) 12 SCC 324 (paragraph 15).”

(emphasis supplied)

49. The Supreme Court in **Ram Bali vs. State of U.P., (2004) 10 SCC 598** has also held as under:-

“12. The investigation was also stated to be defective since the gun was not sent for forensic test. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (See Karnel Singh v. State of M.P. [(1995) 5 SCC 518 : 1995 SCC (Cri) 977])

13. In Paras Yadav v. State of Bihar [(1999) 2 SCC 126 : 1999 SCC (Cri) 104] it was held that if the lapse or omission is committed by the investigating agency or because of negligence there had been defective investigation the prosecution evidence is required to be examined de hors such omissions carefully to find out whether the said evidence is reliable or not and to what extent, such lapse affected the object of finding out the truth. The contaminated conduct of officials alone should not stand in the way of evaluating the evidence by the courts in finding out the truth, if the materials on record are otherwise credible and truthful; otherwise the designed mischief at the instance of biased or interested investigator would be perpetuated and justice would be denied to the complainant party, and in the process to the

community at large.

14. As was observed in Ram Bihari Yadav v. State of Bihar [(1998) 4 SCC 517 : 1998 SCC (Cri) 1085] if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the law-enforcing agency but also in the administration of justice. The view was again reiterated in Amar Singh v. Balwinder Singh [(2003) 2 SCC 518 : 2003 SCC (Cri) 641] . As noted in Amar Singh case [(2003) 2 SCC 518 : 2003 SCC (Cri) 641] it would have been certainly better if the firearms were sent to the Forensic Test Laboratory for comparison. But the report of the ballistic expert would merely be in the nature of an expert opinion without any conclusiveness attached to it. When the direct testimony of the eyewitnesses corroborated by the medical evidence fully establishes the prosecution version, failure or omission or negligence on the part of the IO cannot affect the credibility of the prosecution version.”

(emphasis supplied)

50. There are ample numbers of independent witnesses on record and perusal of the same proves the guilt of the appellant-accused. Non-examination of any person, at the most, hints towards a defective investigation – a fact which as stated hereinabove – no accused can take advantage of. Even otherwise the additional witnesses would have just reiterated the statement of Shri Tarun Kalra (PW-26) and thus non-examination of any other person as a witness is not fatal.

51. Consequently, this Court is of the view that the appellant-accused has been identified as the assailant by two eyewitnesses and his presence prior and at the scene of murder has been mentioned by a number of independent and natural witnesses as they were bound to be present at the said hour, as they are residents of the same place. Further, their testimonies are clear,

cogent, consistent, credible, trustworthy and corroborated by forensic and electronic evidence.

52. It is pertinent to mention that upon arrest, a shotgun was recovered from the appellant-accused. As per the FSL-Ballistic report (Ex.PW31/A), four empty cartridges as recovered from the crime scene were found to have been fired through the seized licensed gun of the appellant-accused.

FROM THE BEGINNING THE POLICE WAS LOOKING FOR THE APPELLANT-ACCUSED. THERE IS NOTHING ON RECORD TO SUGGEST THAT THE REASON FOR ANTE-TIMING OF FIR, IF ANY, WAS TO FALSELY IMPLICATE THE APPELLANT-ACCUSED. WHERE NO PREJUDICE HAS BEEN CAUSED TO THE APPELLANT-ACCUSED, THE SUPREME COURT HAS HELD THAT DELAY, IF ANY, IN REGISTERING THE FIR WOULD NOT IN ANY MANNER WEAKEN THE PROSECUTION CASE. FURTHER, THE APPELLANT-ACCUSED HAD FAILED TO CROSS-EXAMINE ANY OF THE OFFICIAL WITNESSES IN RESPECT OF ANTE-TIMING OF THE FIR. CONSEQUENTLY, NO ADVERSE INFERENCE CAN BE DRAWN AGAINST THE PROSECUTION.

53. In the present case, the name of the appellant-accused had surfaced at the initial stage of investigation itself and efforts were made to arrest him immediately after the murder was committed. The call detail records show that the appellant-accused was in touch with Ms. Sangeeta Kaur (maid servant) at the instance of the police on the mobile phone shortly after the murder. Thus, from the beginning the police was looking for the appellant-accused. There is nothing on record to suggest that the reason for ante-timing of FIR, if any, was to falsely implicate the appellant-accused. In fact, the ocular, forensic and electronic evidence duly proves the case of the prosecution. In such a factual scenario where no prejudice has been caused to the appellant-accused, the Supreme Court has held that delay, if any, in

registering the FIR would not in any manner weaken the prosecution case. The Supreme Court in ***Brahm Swaroop & Anr. Vs. State of Uttar Pradesh, (2011) 6 SCC 288*** has held as under:-

“14. Undoubtedly, there is delay of 5 days in sending the special report. This Court in Badam Singh v. State of M.P. [(2003) 12 SCC 792 : 2005 SCC (Cri) 861], while considering this issue held that where the investigating officer categorically stated that he was not in a position to give any explanation for the delay in sending the special report, it may be fatal to the prosecution’s case.

15. However, a larger Bench of three Judges in Balram Singh v. State of Punjab [(2003) 11 SCC 286 : 2004 SCC (Cri) 149], held as under:

“10. ... we notice that in reality there is no delay in preparing the FIR but there was some delay in transmitting the said information to the Jurisdictional Magistrate. Having been satisfied with the fact that the FIR in question was registered in the morning of 6-5-1990, we do not think that the delay thereafter in communicating it to the Jurisdictional Magistrate on the facts of this case, has really given any room to doubt that the said document (FIR) was created after much deliberations. At any rate, while considering the complaint of the appellants in regard to the delay in the FIR reaching the Jurisdictional Magistrate, we will have to also bear in mind the creditworthiness of the ocular evidence adduced by the prosecution and if we find that such ocular evidence is worthy of acceptance, the element of delay in registering a complaint or sending the same to the Jurisdictional Magistrate by itself would not in any manner weaken the prosecution case.”

16. In State of Rajasthan v. Teja Singh [(2001) 3 SCC 147 : 2001 SCC (Cri) 439], this Court held that the receipt of the special report by the Magistrate is a question of fact and the prosecution may explain the delay in sending the special report. However, the explanation so furnished by the prosecution must be convincing and acceptable. The same view has been reiterated in Ramesh

Baburao Devaskar v. State of Maharashtra [(2007) 13 SCC 501 : (2009) 1 SCC (Cri) 212] .

17. In Sarvesh Narain Shukla v. Daroga Singh [(2007) 13 SCC 360 : (2009) 1 SCC (Cri) 188 : AIR 2008 SC 320] this Court held that delay in forwarding the special report to the Magistrate could not raise a suspicion that FIR had been written later and was ante-timed. Suspicion of manipulation of the documents prepared during the initial investigation would not dislodge the documentary and oral evidence on the spontaneity of the lodging of the FIR.

18. In Aqeel Ahmad [(2008) 16 SCC 372 : (2010) 4 SCC (Cri) 11: AIR 2009 SC 1271] this Court held that the forwarding of the report to the Magistrate is indispensable and absolute and it must be sent at the earliest, promptly and without any undue delay as the purpose is to avoid the possibility of improvement in the prosecution's case and the introduction of a distorted version by deliberations and consultation and to enable the Magistrate concerned to keep a watch on progress of investigation. However, no rule of universal application can be laid down that whenever there is some delay in sending the FIR to the Magistrate, the prosecution version becomes unreliable. It would depend upon the facts of each case. If there has been some lapse on the part of the investigating officer that would not affect the credibility of the prosecution's witnesses. (emphasis supplied)

54. Further, the appellant-accused had failed to cross-examine any of the official witnesses in respect of ante-timing of the FIR. In the absence of any such question, no adverse inference can be drawn against the prosecution. The Supreme Court in *State of Rajasthan vs. Daud Khan, (2016) 2 SCC 607* has held as under:-

“Section 157 CrPC: Submissions and discussion

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27. The delay in sending the special report was also the subject of discussion in a recent decision being *Sheo Shankar Singh v. State of U.P.* [*Sheo Shankar Singh v. State of U.P.*, (2013) 12 SCC 539 : (2014) 4 SCC (Cri) 390] wherein it was held that before such a contention is countenanced, the accused must show prejudice having been caused by the delayed dispatch of the FIR to the Magistrate. It was held, relying upon several earlier decisions as follows:

29. Insofar as the present case is concerned, there was no delay in lodging the FIR. Hence the question of its manipulation does not arise. Additionally, the officer in charge of the police station, PW 21, Surrender Singh was not asked any question about the delay in sending the special report to the Magistrate. An explanation was,

however, sought from the investigating officer, PW 25, Rajinder Parik who tersely responded by saying that it was not his duty to send the special report to the court (or the Magistrate). In the absence of any question having been asked of the officer who could have given an answer, namely, the officer in charge of the police station, no adverse inference can be drawn against the prosecution in this regard, nor can it be held that the delay in receipt of the special report by the Magistrate is fatal to the case of the prosecution. This is apart from the consistent evidence of the eyewitnesses, which we shall advert to a little later.

(emphasis supplied)

55. This Court also finds that the brief history given in the Autopsy request Ex-8/A1 as well as in the FIR are in sum and substance similar, if not identical.

IN THE PRESENT CASE, THE SEALS ON EVERY PULLANDA AS AFFIXED AT THE RESPECTIVE TIMES WERE DULY PROVED TO BE IN ORDER. CONSEQUENTLY, THERE IS NO BROKEN CHAIN OF CUSTODY. IN PIARA SINGH VS. THE STATE OF PUNJAB, 1982 SCC ONLINE P&H 55 (FULL BENCH), IT HAS BEEN UNEQUIVOCALLY HELD THAT THERE IS NO REQUIREMENT IN LAW THAT SEALS MUST BE OUSTED FROM THE POSSESSION OF THE INVESTIGATING OFFICER.

56. This Court is further of the view that there is no requirement of law that all the seals which had ever been put on any exhibit should be kept in a pullanda, especially when a new seal had been put on the same. All that is required is that the custody chain should be complete. In the present case, the seals on every pullanda as affixed at the respective times were duly proved to be in order.

57. Four samples transferred to the Ballistic Department were duly sealed by Biology Department and the seals on the same were found to be in order

by the Ballistic Department and same is mentioned on Ex.PW31/A. Consequently, there is no broken chain of custody.

58. In *Piara Singh vs. The State of Punjab, 1982 SCC OnLine P&H 55 (Full Bench)*, it has been unequivocally held that there is no requirement in law that seals must be ousted from the possession of the investigating officer. The relevant paragraphs of the said judgment are reproduced hereinbelow:-

“1. Whether the fate of a criminal case would be sealed by the mere handing over or otherwise of the seal used by the police officer (for sealing the samples, or the contraband property in the course of Investigation) to a non-official witness is the pointed question which has necessitated these two references to the larger Bench.

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9.Therefore the absence of any mandate in that context would show that it is not the requirement of the law that the seal used for imprinting the wax on the parcel must be ousted from the possession of the Investigating Officer. The statutory provisions do not seem to presume any inherent or inveterate suspicion of the responsible Investigating Officers upon whose efficiency and integrity the investigation into the cognizable crime inevitably rests.

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16. Now apart from the absence and indeed the contradictions from the statutory provisions themselves I am impelled by the under-mentioned four-fold reason (to be elaborated hereinafter) to take the view that the stand taken on behalf of the petitioners is not only counter productive but for ought one knows might well be fraught with public mischief:—

i) The basis of the whole argument stems from an inveterate and ingrained suspicion and assumption that responsible police officers would tamper with the seals and forge and

fabricate evidence with regard to the case property in their custody.

ii) There can be no guarantee that the non official to whom such a seal is entrusted would be one of unimpeachable integrity far above a responsible police official amenable to administrative discipline. Consequently even the handing over of such a seal in no way ensures is being misused.

iii) There can be no warranty that the seal so entrusted to a third person cannot be duplicated.

iv) If the police officers are to be entrusted with a plethora of official seals can be no guarantee or possibility that all of them would be beyond duplication and substantially and materially different from each other.

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21. In view of the aforesaid authoritative enunciation how can one presume that the responsible police officials would act criminally in breaking open the sealed parcel and resealing the same in order to forge or tamper with crucial evidence. Again how can it be assumed that any and every non-official necessarily would be of greater integrity than these public officials. However, what is significant is that if it were to be once presumed that the responsible police officer is determined to tamper with the case property then how can this be prevented by the mere-subterfuge of handing over the seal to a third person. The enigmatic question that who will guard the guards thus arises. If he responsible police official were to be so criminally minded he could easily hand over the seal to a convenient or a subservient person. In fact doing so would absolve him from further responsibility whilst he can always take the seal back from such a person and after mis-using it return the same to him What guarantee can there be that such a third person himself may not be liable to subversion by anyone determined or intent on forging and tampering with the case property. It is indeed unfortunate that occasions have arisen where police officials entrusted with the enforcement and custodianship of the law and order have deviated from there duty I am second to none in condemning such a serious and grievous default. Yet it is a far

cry therefrom to infer an inveterate and inbuilt suspicion that every responsible police official entrusted with case property would forge, fabricate and tamper therewith.

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23. Another slippery ground upon which the contention on behalf of the petitioner was sought to be rested was that the entrustment of the seal to a non-official and his production in the witness-box was a crucial link in the chain of prosecution evidence and in the absence thereof the whole case must snap. I am frankly unable to see how the mere seal, once used in the course of investigation, becomes the vital link in the chain of prosecution evidence even in a case where the sealed parcel remains wholly untampered with. It seems to-be plain that the basic links which the prosecution is bound to establish in such like cases is the recovery of the case property and the establishment of its identity and safety by sealing the parcels if necessary. The next step is that it has to be kept in proper and safe custody in accordance with law, like the police Malkhana, where the possibilities of the same being tampered with are ruled out. Where so enjoined or necessary a sample therefrom or the property itself has to be taken from the place of its safe custody to the Public Analyst or the Chemical Examiner etc., in order to ensure that the report of the Expert is related specifically to the contraband property or samples thereof. These are the major links in the chain of evidence in such like cases without pretending to be exhaustive, I am unable to see how the seal which may have been used for making an imprint on the wax when sealing the sample which may remain wholly untampered with would become the vital and crucial link evidence in case's of this nature. So doctrinaire a view can tend to be fatal not merely in smaller matters of investigation in excise, opium or food adulteration cases but also in major crimes where the very life and liberty of the citizens are involved. The sealing and despatch of bloodstained articles in murder cases and the opinion of the Chemical Examiner and the Serologists are sometimes material pieces of evidence on a charge of murder. The same may well be said about taking in to the custody by the police of empty cartridges or weapons of

offence and forwarding the same to the Ballistic Experts for their opinions thereon. Can the punishment for murder and serious crime be made to depend on the technicalities or the accident of the delivery of a seal to a third person or his failure or refusal to appear in the witness-box? I do not think that matters of substance like the punishment of heinous Crime can be made so utterly dependent on these freakish considerations.

(emphasis supplied)

FSL FORM HAD BEEN DULY EXHIBITED BY THE APPELLANT-ACCUSED HIMSELF. SINCE NO QUESTIONS WITH REGARD TO EITHER DIAMETER OF LEAD SLUG OR NATURE OF EXHIBITS Q2 AND N6 HAD BEEN PUT TO THE BALLISTIC EXPERT OR EXPERTS FROM FSL IN CROSS-EXAMINATION, THE SAID ISSUES CANNOT BE RAISED.

59. Appellant-accused cannot raise a grievance with regard to non-production of the FSL form by the prosecution during the trial because the said FSL form had been duly exhibited by the appellant-accused himself (Ex.DW1/W)(Pg.1383-1391 of Trial Court Record).

60. Since no questions with regard to either diameter of lead slug or nature of exhibits Q2 and N6 had been put to the Ballistic expert or experts from FSL in cross-examination, the said issues cannot be raised. In ***Mahavir Singh vs. State of Haryana, (2014) 6 SCC 716***, the Apex Court has held as under:-

“16. It is a settled legal proposition that in case the question is not put to the witness in cross-examination who could furnish explanation on a particular issue, the correctness or legality of the said fact/issue could not be raised. (Vide Atluri Brahmanandam v. Anne Sai Bapuji [(2010) 14 SCC 466] and Laxmibai v. Bhagwanthbuva [(2013) 4 SCC 97].)”

(emphasis supplied)

61. Further, delay in furnishing the DNA report by itself cannot make the report suspicious.

ADVERSE INFERENCES SHALL HAVE TO BE DRAWN AGAINST THE APPELLANT-ACCUSED FOR REFUSING TO PARTICIPATE IN TIP AND FOR TAKING A FALSE DEFENCE.

62. In the opinion of this Court, adverse inferences shall have to be drawn against the appellant-accused for refusing to participate in TIP and for giving false explanation under Section 313 Cr.P.C. and taking a false defence. The appellant-accused in his deposition as a defence witness under Section 315 Cr.P.C. stated that Sangeeta Kaur was living along with him in Gurgaon on the day of the murder and not at the house of deceased-Dr. Sanjeev Dhawan. The said defence is falsified by the evidence of witnesses on record as well as the CDR of mobile phone used by Sangeeta Kaur, which reveals her position stationed in the area of the house of deceased-Dr. Sanjeev Dhawan before and at the time of incident.

63. Section 315 Cr.P.C. lays down that an accused person is a competent witness for the defence and like any other witness he is entitled to give evidence on oath in disproof of the case laid against him by the prosecution. However, once the accused volunteers to give evidence by written request and enters the witness box, he subjects himself to all the liabilities of an ordinary witness. It is settled law that as a witness, he shall be liable for giving false evidence [*Proviso to Section 132, Evidence Act*], and he cannot invoke Article 20(3) to refuse to answer an incriminating question because he has voluntarily offered himself as a witness. [See *The Peoples Insurance Company, Limited (in liquidation) Vs. Sardul Singh Caveeshar, AIR 1962 P&H 101*]. Consequently, once the evidence of the accused falls within the

ambit of Section 315 Cr.P.C., then it is substantive evidence and if it is found to be false then surely it is a relevant factor/circumstance which shall go against the accused.

CONCLUSION

64. To conclude, deceased Dr. Sanjeev Dhawan was a principled, courageous and a just citizen, who did his best to protect his helpless maid servant i.e. Sangeeta Kaur. Deceased Dr. Sanjeev Dhawan did not succumb to threats, pressure or unjust and unfair demands of an obsessive person i.e. appellant-accused, who despite being married to Mrs. Ramin Tandon and having children wanted custody of Sangeeta Kaur at any cost.

65. The appellant-accused' conduct pre (i.e. past skirmishes with law leading to registration of five FIRs) and post the gruesome murder has not only been unjust, unfair and unreasonable, but also shows a propensity to commit crime. The Police, Jail Administration and Civil Administration must do all to ensure that society at large is protected from such individuals.

66. Keeping in view the aforesaid findings, present appeal being bereft of merits is dismissed and the conviction as well as sentence of appellant-convict is upheld. A copy of the judgment be given to the appellant-convict through the concerned Jail Superintendent.

MANMOHAN, J

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 12, 2019

rn/js