

**\$~R-62**

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

*Judgment reserved on: 21<sup>st</sup>, January, 2020*

*Judgment pronounced on: 31<sup>st</sup> January, 2020*

**+ CRL.A. NO. 702/2018 & CrI.M.(Bail) No.1669/2019**

**ANIL KUMAR SHARMA @ PANDIT..... Appellant**

Through: Mr.Rajiv Mohan with Mr.M.A.Karthik,  
Mr.Abhishek Srivastava and Mr.Lakshya  
Gupta, Advocates

versus

**STATE**

**..... Respondent**

Through: Ms. Neelam Sharma, APP for the State  
with Mr.Naresh Kumar,  
ACP/Operation/Central District

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN**

**HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

**J U D G M E N T**

**SANGITA DHINGRA SEHGAL, J**

1. Present appeal is directed against judgment dated 28.02.2018 and order of sentence dated 05.03.2018 passed by the learned Additional Sessions Judge-03, Special Judge, Dwarka District Courts, New Delhi in Sessions Case No. 02/2014 arising out of FIR No. 153/2011, under Sections 302/201 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and 25/27 of Arms Act registered at Police Station Dwarka North, New Delhi whereby the learned Sessions

Judge found the appellant-accused guilty and sentenced him as follows:

*“Accordingly, interest of justice would be served if convict Anil Kr. Sharma @ Pandit is sentenced as under: -*

- (i) For offence u/s 302 IPC: Life imprisonment along with fine of Rs.10,000/-;*
- (ii) For offence u/s 201 IPC: Rigorous imprisonment for 3 years along with fine of Rs.1,000/-;*
- (iii) For offence u/s 25(1B)(a) Arms Act: Rigorous imprisonment for 3 years along with fine of Rs.1,000/-; and*
- (iv) For offence u/s 27(1) Arms Act: Rigorous imprisonment for 3 years along with fine of Rs.1,000/-;*

*In default of payment of fine, the convict shall undergo additional rigorous imprisonment for 3 months. All the sentences shall run concurrently. Convict Anil Kr. Sharma @ Pandit remained in prison w.e.f. 15.07.2011 to 13.03.2016 and from 28.02.2018 till date and thus, benefit of Section 428 Cr.P.C shall be provided to him.”*

2. The brief facts of the case, as mentioned by the learned Trial Court are reproduced as under:

*“The FIR was registered on the complaint of Amit Kumar (PW3), who mentioned that on the date of incident i.e. 14.07.2011, at about 4.30 pm, his cousin brother (son of mausi) namely Deepak (since deceased) called him from his mobile and asked him to come to his office as he has arranged whiskey and chicken for party and he also told that his friend Anil (accused herein) is also with him. After few calls, he reached at his office at Sector-12 and found that there was no one in the office and the articles were lying*

*scattered in the cabin. Further, he noticed that Deepak was lying on the floor and blood was coming from below his left ear. Thereafter, he called police at phone no. 100. In the meanwhile, one Chandan (PW2) came from the adjoining office and told him that there was a quarrel in that office and then he had heard some noise like of tyre bursting. Further, Chandan also told him that he had seen one boy running away and when he asked him as to what had happened, that boy told him that he had shot dead one person and he would kill him also if he would speak anything.*

*1.2 During investigation, the injured was shifted to hospital, where he was declared "brought dead". Further, his medical documents were collected. Further, the accused was arrested next day and at his instance, his blood-stained clothes, fire-arm used in the incident and his burnt mobile phone were recovered.*

*2. After culmination of investigation, the accused was charge-sheeted. In the light of the above stated facts and proceedings, vide order dated 03.04.2012, Ld. ASJ framed charges under Sections 302/201 IPC and 25/27 Arms Act against the accused, to which he pleaded not guilty and claimed trial."*

3. To bring home the guilt of the accused, the prosecution has examined 53 witnesses in all. The incriminating evidence and circumstances were put to the accused during his statement recorded under Section 313 of Cr.P.C, wherein he reiterated his innocence and claimed to have been falsely implicated in the present case and examined one witness in his defence.
4. After appreciating and considering the rival contentions of the parties and scrutinizing the evidence, the learned Trial Court held the accused guilty and convicted him for the charged offences.

5. Mr. Rajiv Mohan, learned counsel for the appellant opened his submission by contending that the impugned judgment dated 28.02.2018 is based on conjectures and surmises and the same is against the facts and the settled proposition of law as the learned Trial Court has ignored and omitted the material evidence and has disregarded the cogent evidence in favour of the appellant and has failed to appreciate the basic matter in dispute, as to how the appellant has been categorized as the actual perpetrator of the crime because there is no direct evidence on record to establish that the appellant was involved in the commission of the alleged offence.
6. Learned counsel for the appellant further submitted that since the case of the prosecution is based on circumstantial evidence, the entire chain of events had to be proved in a manner to arrive at a just conclusion of guilt of the accused without any hypothesis of guilt, which has not been done in the present case and if the chain of events is broken, the benefit of doubt has to be extended to the appellant/accused.
7. Learned counsel for the appellant further contended that the recoveries effected pursuant to the disclosure statement (*Ex.PW46/D*) of the appellant-accused have no evidentiary value and do not fall within the purview of Section 27 of the Indian Evidence Act.
8. Learned Counsel for the appellant further contended that the version of the prosecution is not corroborated with the medical & scientific evidence on record as the Ballistic Expert had opined that the recovered bullet was insufficient for comparison and the report had not evidently disclosed the fact that the bullet was discharged from

the recovered country made pistol. He further added that as per the biological examination report and the Serological report the blood stains in the recovered clothes of the accused were found to be of B+ Blood Group, which does not provide a conclusive finding connecting the recovered articles with the blood of the deceased and is of no significance.

9. Learned counsel for the appellant further added that the refusal of the appellant to participate in the Test Identification Parade will not lead to an adverse inference against him as the prosecution failed to take the appellant with muffled face to various places for the purpose of recovery of articles.
10. Learned counsel for the appellant further contended that the learned Trial Court failed to take note of the fact that there was no motive on the part of the appellant to commit the alleged offence. As per the prosecution, PW-13 Gajender Yadav has been introduced by the prosecution to establish the motive in the present case, but the same does not inspire confidence and the prosecution had miserably failed to prove the motive for commission of the alleged offence. He further contended that the importance of motive in a case of circumstantial evidence is paramount and the absence of motive in a case of circumstantial evidence is critical to the version of the prosecution and since no motive has been proved by the prosecution in the present case, the appellant deserves acquittal. To substantiate his arguments learned counsel for the appellant relied upon the case ``*Kanhaiya Lal vs State of Rajasthan* reported in (2014) 4 SCC 715.

11. Learned Counsel for the appellant further contended that as per the version of the prosecution, appellant was last seen with the deceased, but it is not prudent to base conviction solely on the basis of last seen evidence because last seen evidence does not necessarily lead to the inference that it was the appellant who had committed the crime. He further contended that the learned Trial Court erred in relying on the testimony of PW-2 Chandan for establishing the last seen theory as the appellant was not even present at the scene of crime on the alleged date of incident and the fact is supported with the testimony of PW-17 Surender Sharma and PW22 Shankar Sharma. To substantiate his arguments learned counsel for the appellant has placed reliance upon the case *Kanhaiya Lal vs State of Rajasthan* reported in (2014) 4 SCC 715 and *Digamber Vaishnav vs State of Chhattisgarh* reported in (2019) 4 SCC 522.
12. Learned counsel for the appellant further submitted that learned Trial Court erred in relying upon the Extra Judicial Confession made by the appellant which is a weak piece of evidence and the same cannot be relied upon. He further contended that the learned Trial Court has erred in relying on the testimonies of prosecution witnesses because there are major contradictions and discrepancies in the statements of the material prosecution witnesses, hence their evidence cannot be exclusively relied on as trustworthy and reliable.
13. Learned counsel for the appellant further contended that it is the duty of the police to investigate the matter fairly and thoroughly and collect all the evidence whether they are for or against the suspect, however, in the present case, there are serious discrepancies in the

investigation which go to the root of the matter and the learned Trial Court erred in ignoring the effect of the defective investigation. In support of his contention, learned counsel for the appellant relied upon the case of *Shahis Khan vs State of Rajasthan* reported in **2016 4 SCC 96**; *H.D. Sikand (D) through L.R's vs CBI* reported in **(2017) 2 SCC 166**; *Arjun Marik vs State of Bihar* reported in **1994 Supp (2) SCC 372** and *Mahavir Singh vs State of Madhya Pradesh* reported in **(2016) 10 SCC 220**.

14. Learned Counsel for the appellant has lastly urged that the trial court has failed to properly appreciate the facts and circumstances of the case, hence, the impugned judgment is liable to be set aside.
15. Ms. Neelam Sharma, learned APP for State, on the other hand, strongly refuted the submissions made by the counsel for the appellant and submitted that the impugned judgment is based on proper appreciation of the facts and evidence, no interference in the impugned judgment is called for by this Court; that the statements of prosecution witnesses and medical/scientific evidence are corroborative in nature and the prosecution has been able to prove its case beyond reasonable doubt.
16. She further submitted that the prosecution has relied upon the various articles recovered at the instance of the appellant and there is no cogent reason to doubt the aforementioned recoveries merely for the reason that the same are effected in the presence of police witnesses and not supported with the presence of an independent witness.
17. She further submitted that there may be some defect in the investigation but the same will not affect the merit and prospectus of

the case of the prosecution and an accused cannot be acquitted only on the basis of defective investigation as held by the Hon'ble Apex Court in a number of cases.

18. Learned APP for the State further submitted that the appellant was last seen with the deceased and the same can be relied upon for enforcing the conviction of the appellant because the same is supported with reliable testimony of material prosecution witnesses. She further submitted that extra-judicial confession is a reliable piece of evidence and in the present case the testimonies of PW-11 and PW-37 clearly establish that the Appellant made an extra-judicial confession before the prosecution witnesses.
19. Learned APP for State further submitted that motive is a relevant factor in all criminal cases, whether based on direct or circumstantial evidence, but the inability to establish motive in a case of circumstantial evidence is not always fatal to the prosecution version.
20. Counsel for the state lastly urged that the evidence produced on record as well as the circumstances proved by the prosecution, form a complete chain pointing unequivocally towards establishing the guilt of the accused. Based on these submissions, counsel for the State urged that this Court may not interfere with the well-reasoned order passed by the learned Trial Court convicting the appellant for the alleged offences.
21. We have heard the learned counsel for the parties and have also perused the material placed on record including the record of the trial court.

22. The present case is based on circumstantial evidence. It is essential for us to determine whether a complete chain of events stands established from the evidence adduced by the prosecution. What, therefore, needs to be seen is whether the prosecution has established the incriminating circumstances upon which it places reliance and whether those circumstances constitute a chain so complete as not to leave any reasonable ground for the appellant to be found innocent.

**Inception Of The Case**

23. In the present case the police machinery was set into motion when on 14.07.2011 at about 5:10 pm, PCR Control Room, PHQ, ITO received a call from mobile number 9911229001 informing that “*Caller ke bhai ko goli maar di*”. The said PCR form (**Ex.PW8/A**) has been proved by PW-8 Ct. Ajeet Kumar, who deposed as under :

*“On 14.07.2011, I was posted as a Chanel Operator in PHQ, ITO from 2:00pm to 8:00pm. On that day, I received a call from mobile phone No. 9911229001 at about 5:10pm and it was informed “Caller ke bhai ko goli maar di”. After recording this information, it was sent on Console Net. I have brought the attested record of the said call received and recorded by me. The same is Ex. PW8/A bearing signatures of ACP Sh. Pravesh Chobey at point ‘A’ for the attestation of the said record.”*

24. Subsequent thereto PW-41 Ct Anjani Kumar received information at about 05:20 am from the Police Control Room, that “*at Sector-12, Dwarka near wine and beer shop No. 203 that the caller's brother had received bullet injury and he was dead.*” and the same was registered as DD No. 66B (**Ex.PW-41/A**) at Police Station Dwarka

South. English translation of the relevant portion of DD No. 66B (**Ex.PW-41/A**) is reproduced herein below: -

*“DD No. 66-B Dated 14.07.2011 PS Dwarka North  
Delhi*

*To  
The DO*

*Receipt of Information on PCR  
through QST and Departure*

*Time 05.20 PM. At this time it is entered that G-50 Operator got recorded an information at PCT QST through wireless set that ‘The brother of the caller has been shot at Dwarka Sector 12 near Wine & Beer Shop No. 203, the mobile No. of the caller is 9911229001’. From Constable Ajeet No. 2824/PCR. The information so received on PCR QST has been entered in Roznamcha and a copy of the report having been separated has been sent to SI Jagdish Chandra through Constable Naveen No. 557/SW who will take appropriate action. The beat staff along with HC Bharatveer No. 361/SW has also been telephonically intimated to reach the spot. The SHO and the ATO have been telephonically apprised regarding the aforesaid call.*

*Scribed by: AC”*

25. On receipt of DD No. 66B (**Ex.PW-41/A**), PW-47, Ret. SI Jagdish Chander along with Ct. Naveen went to the place of incident i.e. Vardhaman Plaza, Second Floor, Shop no. 203, Sector 12, Dwarka and deposed that *“At the spot, I noticed 3-4 chairs, table, desk and other furniture lying in tumble position and scattered. On the floor towards north west side corner, I had noticed blood was spilled over*

*and on the table, there was one helmet in red and black colour, one whiskey bottle which was half filled, two plastic glasses, the glasses was filled with diluted liquor and one beer cane i.e. thunder bold brand, one water bottle of kinley, one plastic dabba consisting of non-veg. Curry, two cigarette packet of gold flag, one mobile and one mixture packet. Visiting cards and on the floor there was one Nokia Mobile phone lying in the floor. Also two litter bottles of water and one litter bottle were lying on the floor and also one McDowell whiskey bottle was lying on the floor. At that time, Inspector Naresh Kumar, then SHO Came to the spot alongwith other staff.”*

26. Corroborating the version of the aforesaid police witnesses, PW-53 Insp. Naresh Kumar has deposed that:-

*“On 14.07.2011, I was posted as SHO, PS Dwarka North. On that day I was present at I.P. University for the purpose of attending one call. In the meantime, I received an information on my mobile phone as well as on my wireless set that shop no. 203, Sector-12, Dwarka, Near Wine & Beer shop “mere bhaikogoli maar di hai”. Later on I came to know about the recording of DD no. 66B in this respect. The certified copy of said DD is already Ex.PW-41/A. Thereafter, I alongwith my staff reached at the spot 2<sup>nd</sup> floor, Shop no.203, Vardhman Plaza, Sector-12, Dwarka where SI Jagdish along with Ct. Naveen met me. After reaching there I inspected the spot where I found that on the 2<sup>nd</sup> floor of Vardhman Plaza, 3-4 chairs, one table, 3 desks were lying there in imbalanced condition in one of the portion of shop no. 203. On the back side portion of said shop one table was found lying on which one helmet, one wine bottle (McDowell no.1 Platinum), two plastic glasses containing*

*liquor, one plastic container having cooked vegetable, one water bottle of Kinley, two Soda bottles of Catch, one packet of Gold Flakes Cigarette, two namkeen packets (of brand Jabson and Kaleva), two beer canes (one Kingfisher & one Thunderbolt) and one mobile phone make Samsung. On the right side corner of the back portion of shop no.203, pool of blood was found lying. Two legs of chair were lying broken on the floor of back portion of shop. One mobile phone make Nokia was found lying on the floor. The cover of McDowell No.1 Platinum was also found lying on the floor. Three bottles of (1 Mountain Dew of 2 Ltrs., 1 Kinley and 1 Bisleri) and visiting cards of Orbit Academic Education Pvt. Ltd. in scattered condition alongwith many other articles were found lying on the floor. Thereafter, SI Jagdish handed over me the DD no. 66-B and told that the injured has been shifted to Ayushman Hospital. I left SI Jagdish and Ct. Naveen on the spot to guard the same and left for Ayushman Hospital. On reaching there injured was found admitted vide MLC No. 2148/11, dated 14.07.2011 and I came to know that injured was declared brought dead by the doctors. Thereafter, I inspected the body formally. I found some bruises on the body of deceased and gunshot injury behind the right ear. I did not find any eye-witness at the hospital. Thereafter, I returned to the spot.*

*On reaching the spot, one Amit Kumar, s/o Shri Dheer Singh met me at the spot who got recorded his statement. I made endorsement on the statement of Amit kumar vide Ex.PW-53/A bearing my signatures at point 'A' and prepared the rukka and handed over the same to Ct. Naveen for registration of the case. Prior to this, I had called the crime team through control room.*

Thereafter, Ct. Naveen went to PS for getting the case registered and I left for Ayushman Hospital and sent the dead body to DDU hospital through Ct. Rajender who got the same preserved at mortuary of DDU hospital. Thereafter, I returned to the spot. The Crime Team had already reached the spot and was inspecting the spot. I also inspected the spot and prepared the rough site plan at the instance of Amit. The site plan is Ex.PW-53/B bearing my signatures at point 'A'. Thereafter, I/C Crime Team handed over the crime team report to me through SI Jagdish. Thereafter, I lifted the blood stained concrete floor and earth control from the floor and put the same in separate plastic polythenes and converted the same into pulanda by keeping them in white cloth and sealed the same with the seal of 'NK'. Thereafter, I lifted the dried blood from the floor and kept the same in a plastic container (dibbi) and put the same in white cloth and converted it into pulanda and sealed it with the seal of NK. I took all the above items into possession vide memo already Ex.PW-3/D bearing my signatures at point 'B'. Thereafter, I lifted the articles lying on the table as mentioned in memo already Ex.PW-3/B and same were converted into pulanda and sealed with the seal of NK and were taken into possession vide memo already Ex.PW-3/B bearing my signatures at point 'B'. Thereafter, I lifted plastic bottles lying near the chair, mobile, whiskey bottle cover, legs of chair and visiting cards as mentioned in memo Ex.PW-3/C from the spot, and same were converted into pulanda and sealed with the seal of NK and were taken into possession vide memo already Ex.PW-3/C bearing my signatures at point 'B'."

27. Perusal of the aforesaid testimonies reveals that the initial statement of PW-3 Amit Kumar was recorded by PW-53 Insp. Naresh Kumar, subsequent to which the Rukka was prepared and the same was handed over to Constable Naveen for registration of FIR. English translation of the initial statement (**Ex.PW3/A**) made by PW-3 Amit Kumar and Rukka (**Ex.PW53/A**) is reproduced herein below:-

*"I reside at the abovesaid address alongwith my family and I am a Taxi Driver. Previously, I used to do a job but now I drive my own taxi bearing No. DL14A7290. Deepak is the son of my maternal Aunt (Mausi). At about 04.30 PM Deepak, the son of my maternal Aunt (Mausi), called me from his mobile No. 8750471625 and asked me as to where I was. On which I replied that I was at home. Thereupon, he asked me to come to office for food, whisky and chicken, which he had ordered. I asked him that who else was with him and advised him not to drink excessively as he did earlier. On which he replied that brother Anil was with him and he was a very nice man and his another friend was also there, whom I did not know and I should come fast there. I told him that I would take some time as I had to talk to Jija Ji (brother-in-law) and to get work for my taxi. Deepak Singh asked to come early after completing the work. I called Jija Ji Rajbir on which he said that at that time he was busy and I should talk to him later. I again received the call of Deepak Singh on which he asked when was I reaching there. Whereupon, I replied that I had left and I was coming and asked him not to drink much. I reached at Sector 7 through my car and I received the phone call on which I replied again that I was reaching soon. I parked my vehicle opposite*

*Vardhman Plaza, Sec -12, and came upstairs and found no one in the office and it was quite there and the chair-table was lying in mess at the outer cabin in the office. I entered in the cabin. There, I found the son of my maternal Aunt (Mausi) namely Deepak Singh lying face down, head in the corner and legs under the table. On the table, a bottle of whisky, food articles, box of curry, glass, bottle of water and soda, one helmet and other articles were lying scattered. And the box of Whisky, used Soda water bottle, mobile phone, chair, etc. were lying unordered. Blood was oozing out from the lower left temple of my brother. I pushed him but he did not respond. I came outside and ran here and there to get help. I called my mother from my phone and informed her. I informed Jija Ji namely Rajbir about this on which he told me to call PCR after calling 100. I called at No. 100. One boy namely Chandan came from the adjacent office. He told that there was a scuffle and he heard a fire like (shot) sound and one boy ran away, when he was asked as to what had happened he replied that one person had been shot and he would also be killed I he tells. After police vehicle reached, I got admitted my brother in the Hospital with the help of my Jija Ji and police my Jija Ji had come meanwhile. The Doctor at Hospital Ayushman declared my brother as dead. I came back at the spot and you have recorded my statement. As he stated, I have the apprehension and confidence that Anil and his friend had killed my brother. Legal action may be initiated against them. I have heard the statement which is correct.”*

28. English translation of Rukka (**Ex.PW53/A**) is reproduced herein below:-

*“To  
The Duty Officer*

*It is officially submitted that today I, the Inspector, along with staff went to I.P. University where an information was received from Control Room that the brother of the caller has been shot dead at Shop No. 203, Dwarka, Sector near Wine & Beer Shop. Mobile No. of the caller is 9911229001. I, the Inspector, along with staff reached the place of occurrence i.e. Second Floor, Shop No. 203. The shop cum office No. 203 in front of the stairs is divided in two portion by way of a partition. Three-Four chairs, L type table and three desks were lying unordered in the front portion and two broken legs of a big revolving chair were lying in the inner portion. The other articles were also lying scattered and blood was lying on the floor in northwest corner of the inner portion. A whiskey bottle of Mc Dowells No. 1 containing less than half whiskey, a red-black colored helmet (make) ‘Popular Kimi’ on which a parking ‘Chit 4110’ is affixed, a plastic curry container-The Green Chicken, Manish Metro Plaza, Sector 12, Pocket 6, Dwarka having curry, two plastic glasses, used shiny paper plates, two cigarette packets of Gold Flake, some opened Namkeen Packets make Jabsons (-sic-), used and half filled soda water bottle and a beer can make Thunder Bolt etc. and other articles are lying scattered here and there. A box of Mc Dowell No. 1 and some used bottles etc. are lying scattered along with visiting cards of Orbit Academic Education Private Limited. Inspection of the spot was got done after calling the Crime Team. **A purse was also found lying at the spot.** I, the Inspector, reached Ayushman Hospital where I obtained the MLC bearing No.2148/11 relating to Deepak S/ Yogendra on which the doctor reduced into writing*

*“Pt. brought to causality in unconscious state and brought dead”. I, the Inspector, inspected the dead body and found injury and abrasion marks on the hands and body of the deceased and a gun shot wound below the left temple from where it appears that he has sustained bullet injury. The deceased had worn Black T-Shirt-Reebok, blue jeans pants and sky blue colored (-sic-). The inspector of the spot, MLC of the dead body and the aforesaid statement reveals the commission of an offence punishable U/s 302 IPC. Hence this writing is being sent through Ct. Naveen 557/SW to the Police Station for the purpose of registration of a case (FIR). The case (FIR) number after its registration may be intimated. A copy of the FIR is being sent to the High Officers through Special Messenger. The Crime Team has reached the spot on being called by me, the Inspector and Senior Officers have also reached the spot. I, the Inspector, may be apprised of the case (FIR) number as I am busy with the investigation at the spot.*

*Date & Time of occurrence: 14.07.2011 at about 5 PM*

*Place of occurrence: IInd Floor, Shop No. 203,  
Vardhman Plaza, Sector-12,  
Dwarka.*

*Date and time of dispatch: 14.07.2011 at 9.30 PM  
of writing*

*Sd/- Naresh Kumar  
(In English)  
Naresh Kumar  
SHO Dwarka North  
New Delhi  
PIS 28871171  
DI 452”*

29. Further, it is evident from the abovementioned record that the FIR was registered on the complaint of Amit Kumar, who had mentioned that on the date of incident, at about 4.30 pm, his cousin brother (son of *Mausi*) namely Deepak (deceased) called him from his mobile and asked him to come to his office. After few calls, he arrived at his office situated at Sector-12 and found various articles lying scattered in his cabin and noticed that his brother was lying on the floor and blood was oozing out from his lower left temple. Subsequently, one boy namely Chandan arrived from the adjoining office and told him that there was a scuffle in the above-mentioned office, he had heard a fire like sound and had seen someone running away from the spot.
30. Perusal of the Rukka also elaborates the fact that a purse was lying at the spot and the same was seized vide seizure memo ***Ex.PW3/E***. English translation of the memo regarding seizure of purse is reproduced herein below:-

***“MEMO REGARDING SEIZURE OF PURSE***

*“In the presence of the witnesses mentioned hereinafter, a brown coloured old wallet has been found lying between the wall and the desk during the search conducted at the place of occurrence i.e., Ist portion of Vardhman Plaza, Shop No. 203 near Wine & Beer Shop, Sector -12, Dwarka containing an RC of vehicle No. DL 9S Q 4110, an I-card belonging to Anil Sharma, an ATM of Punjab National Bank, a Metro Card, 42 visiting cards, eight passport size photos and other documents. The same has been converted into a*

*parcel with the help of a cloth and duly sealed with the seal of 'NK'. The parcel so prepared has been taken into Police possession as a piece of evidence by means of this memo in the aforesaid case.*

*The seizure memo has been prepared.*

*Sd/- Naresh Kumar*

*Inspector  
SHO/PS Dwarka North”*

31. The aforesaid fact is corroborated with the testimony of the investigating officer PW-53 Insp. Naresh Kumar, that an ID-Card belonging to appellant was recovered from the Scene of Crime. Relevant portion from the testimony is reproduced herein below:-

*“During investigation from the spot, I found one brown colour purse in between the desk and wall of the first portion of shop no. 203. When I checked the said purse, it was found containing one RC of a motorcycle bearing no. DL9SQ-4110, one ID card in the name of Anil Sharma, one ATM card of Punjab National bank, one metro travel card, 42 visiting cards, 8 passport size photographs and some documents which I converted into pulanda and were sealed with the seal of NK and were taken into possession vide memo already Ex.PW3/B bearing my signatures at point 'B'. Thereafter I recorded the statement of witnesses and returned to the police station and deposited the case property in malkhana.  
XXX XXXXXX*

*But in the meantime, I received secret information that the boy who had committed the murder in Sector-12 might come to Sector-12 Market, Dwarka on motorcycle. Thereafter, on receiving the information I alongwith my staff reached near Wine & Beer Shop of Sector-12, Dwarka at about 6-6-:15*

*p.m. At About 6:30 p.m one person came on a motorcycle and entered into the market. At the instance of secret informer, he was apprehended. The said person disclosed his name as Anil Kumar Sharma (accused present in the court today, correctly identified by the witness). **Accused Anil Kumar Sharma was then arrested vide arrest memo already Ex.PW-46/A, his personal search was conducted vide memo already Ex.PW-46/B, motorcycle no. DL9SQ-4110 of accused Anil Kumar Sharma was seized vide memo already Ex.PW-46/D, all bearing my signatures at point 'B'.***

32. Joint perusal of the seizure memo (**Ex.PW-3/E**) and the testimony of the Investigating Officer reveals that one RC of a motorcycle bearing registration No. DL9SQ-4110 was also seized from the brown color purse (*recovered from the crime scene*). Subsequently, it is relevant to highlight that when the appellant was arrested vide arrest memo (**Ex.PW-46/A**) on 15.07.2011 from Sector-12, Dwarka Market, he had arrived there on motorcycle bearing registration No. DL9SQ-4110 and the same was seized vide memo already **Ex.PW-46/D**.
33. Hence, in view of the aforesaid facts and circumstances, the plea raised by learned counsel for the appellant with regard to discrepancies in the evidence related to the arrest of the appellant is without any force, as both the arrest witnesses PW-46 (SI Nirmaljeet Singh) and PW-53 (Inspector Naresh Kumar) have supported the case of prosecution.

### **Last Seen Evidence**

34. Learned counsel for the appellant strongly urged that as per the version of the prosecution, appellant was last seen with the deceased, but it is not prudent to base conviction solely on the basis of last seen evidence because last seen evidence does not necessarily lead to the inference that it was the appellant who had committed the crime. He further contended that the learned Trial Court erred in relying on the testimony of PW-2 Chandan for establishing the last seen theory as the appellant was not even present at the scene of crime on the alleged date of incident and the fact is supported with the testimonies of PW-17 Surender Sharma and PW22 Shankar Sharma.
35. Criminal Jurisprudence and a plethora of judicial precedents which place the basic principles not to convict a person on the basis of last seen theory because it is a very weak kind of circumstantial evidence and it is very well affected by a number of factors i.e. the gap between last seen, the time of death and other surrounding factors. The last seen theory is required to be proved by established facts before the same can be actually weighed for the purpose of its relevance for ascertaining the guilt of the accused persons. 'Last seen together' can only be treated as an additional link in the chain of circumstances because the prosecution has to establish an unbroken chain of circumstances, which leads to only one conclusion, which is the guilt and culpability of the accused.
36. The Hon'ble Apex Court in *Nizam and Ors. v. State of Rajasthan* reported in (2016) 1 SCC 550, has held that the conviction on the basis of 'last seen theory' should be enforced keeping in mind the

circumstances that precede the alleged incident. The germane portion of the judgment is extracted below:

*“14. Undoubtedly, “last seen theory” is an important link in the chain of circumstances that would point towards the guilt of the accused with some certainty. The “last seen theory” holds the courts to shift the burden of proof to the accused and the accused to offer a reasonable explanation as to the cause of death of the deceased. It is well-settled by this Court that it is not prudent to base the conviction solely on “last seen theory”. “Last seen theory” should be applied taking into consideration the case of the prosecution in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen.”*

37. We deem it appropriate to peruse the testimonies of prosecution witnesses i.e. PW-3 (Amit Kumar), PW-2 (Chandan), PW-7 (Ram Bahadur Mishra@ Gagan Mishra) and PW-20 (Bharat Lal). PW-3(Amit Kumar) in his examination in chief deposed as under:-

*“Deceased Deepak Kumar was my cousin brother i.e., son of my Mausi. At the time of this incident I used to drive my own taxi No. DL-1YA-7290. On 14.07.2011 at about 4.30 PM. I had received a call from the mobile phone of my brother Deepak Kumar (since deceased). He had made a call to me from mobile phone no. starting from 8570 and rest of the numbers I do not remember. I enquired from Deepak Kumar as to whom the said mobile phone number was belonging as it was not his regular number to which he replied that he had taken new aforesaid mobile number about 2-3 days back.*

Deceased Deepak Kumar had enquired from me as where I was at that time to which I replied that I was at my home. At this Deepak Kumar asked me to come to his office which was situated in Sector-12, Dwarka bearing shop No. 203, Second Floor Vardhman Plaza. Deepak called me to his shop and asked me that whiskey and chicken had been brought there. I enquired from Deepak as to who were other alongwith him and I also told him not to drink more as usual and he further replied me that Anil Bhai was with him. I enquired from Deepak Kumar (since deceased) as to who was Anil to which he reply that he was friend and was a very good man and I do not know him and he told me to reach there as early as possible. I told Deepak that I would take sometime to reach there was as I was to talk to my Jijaji for attaching my vehicle for some work to which Deepak replied to reach there after having conversation with my Jijaji namely Rajbir. Thereafter, I spoke to my Jijaji Rajbir who told me that he was busy and I should talk to me later. I again received the call from Deepak and I told him that I had left for his shop and would be reaching there. When I reached in my aforesaid taxi at Sector – 7, I had again received a call from Deepak and I told him that I would be reaching there as early as possible. I reached at Sector – 12 and parked my vehicle in front of Vardhaman Plaza and reached at the office of my cousin brother Deepak. I did not find any present there and it was total silent there. I found the table and chairs of the office lying scattered in the out cabin and when I entered in the inner cabin of the office I found that Deepak was lying on the floor and his face was towards floor (ondheymouhpadatha) and his hand was on the

side of the corner and his feet were under the table. On the table there was bottle of whisky, other eatable items, vegetables box, glass, water and soda bottles and one helmet and many items lying here and there. I also found the box of the whisky, empty bottles, mobile phones and chair etc. lying scattered. I also found that the blood was coming out from under the left ear of my cousin brother Deepak. I moved my cousin brother but he was not speaking anything. I came out for help. I telephonically informed my mother and my Jijaji Rajbir and I was told by him to call police at 100 number. One person from the nearby shop whose name was later on revealed as Chandan also came there and he told me a quarrel taken place there and that he had also heard some voice like bursting of tyre and that he has also seen one person running from there. The said persons from the nearby shop further told me that when he had enquired from the person who came out from the said shop after he had heard the voice of bursting of tyre, the said person told him 'bandathokdiyahai' and the said person had also threatened the persons of the nearby shop that if he disclosed anything to anyone he would kill him also.

xxxx

xxxx

xxxx

From the spot, IO had lifted exhibits consisting of whisky bottle containing whisky about half bottle of McDowell's, one can of Thunderbolt, two glasses out of which in one glass was containing whisky mixed with water which was got emptied, two mobile phones out of which one was of make Nokia of Black and white colour and the other was of Black and Blue colour of make Samsung, two packets of namkeen, water bottles of Bisleri and Mountain Dew, Soda Bottle of Catch. The

bottle of Mc Dowells referred above and the glasses were lying on the table and one mobile phone was also lying on the table and the other mobile phone was lying under the table. I also found that two legs of one chair lying broken and one empty box of Mc Dowells Platinum were also lying under the table. All the items were sealed separately by the IO and were seized vide Memos Ex.PW3/B and Ex.PW3/C both bearing my signatures at point 'A'. I also found one plastic box of green chicken lying on the table which was got emptied and was also sealed and seized by the IO. One helmet having chit of 4110 was also found lying in the shop which was sealed and seized by the IO. From the spot, blood, blood stained earth and earth control were also lifted, sealed and seized vide Memo Ex.PW3/D bearing my signatures at point 'A'. One purse was also found lying in the said shop in the first part as the shop is divided into two chambers. The said purse was containing some documents which were sealed and seized vide Memo Ex.PW3/E bearing my signatures at point 'A'. In the said purse, one identity card in the name of Anil Kumar Sharma i.e., of accused present in the court today, eight passport size photographs of accused Anil Kumar Sharma, one Metro Yatri Card, one ATM Card of PNB Bank were lying."

38. Further in his cross-examination he has deposed as under: -

"On 14.07.2011 at about 4.30 p.m. I was present at my resident at D-239, Manglapuri, New Delhi. I left my residence after about 10-15 minutes of receiving the call from Deepak Kumar. I had never shown the mobile number in the call details of my mobile phone, to the police during investigation. I had received calls from the

*number, starting from 8570 before 14.07.2011 also, but I cannot tell the date or time of the same. Police did not ask me to give the call details of my mobile phone.*

*xxx                      xxxx                      xxxx                      xxxx*  
*The investigating officer of this case did not ask for any mobile number in context with the investigation of this case. I used to receive calls from mobile number pending ending with 8570 about a month prior to the incident of this case. When I received the first call from the number ending with 8570, I was at my residence. However, when I received the subsequent second call I was near Harijan Basti Palam. It might have taken me about 20-25 minutes to reach Vardhman Shopping Complex, after I received the second call. The duration of the two calls, as far as I remember should be about 1-2 minutes each. I had gone by stairs to the spot. I did not notice any shop / office on the floor where the spot was situated. I did not happen to talk to anybody as nobody as present around, when I reached the spot after receiving the second call. I stayed there for about 15-20 minutes after reaching the spot, I called my brother-in-law Mr.Rajbir within 2-3 minutes. I cannot give the mobile number of Mr.Rajbir as I do not remember the same now. PCR was called by me and they reached in about 15-20 minutes of making my call to number 100. Mr.Rajbir also arrived in about 20-25 minutes of my making call to him. Vol; he arrived after about 10 minutes of reaching the PCR. I do not know who stayed back at the spot. But it is correct that myself, Mr.Rajbir and the PCR officials left for the hospital. Local police i.e., Police officials from the police station met me for the first time, on that day, in the hospital at about 6.00 PM. My statement was recorded, again said*

*I do not remember exactly now as if the same was recorded in the PS or in the hospital. Statement of no one else was recorded while my statement was recorded. I cannot tell the time of recording of my statement. I stay with the police upto about 10.00 pm.”*

39. On the fateful day, PW-2 (Chandan) was working a few shops away from the crime scene. During his examination in chief, he deposed as under:-

***“On 14.07.2011, I was working in Dass photo state and printers shop No. 211, Sector -12, Market New Delhi. On that day at about 5.00 PM, I was sitting on the stairs outside my shop. There was shop No. 203 situated in front of the stairs where I was sitting and some voice of abuses were coming from the said shop No. 203. In the meanwhile, I heard the voice like tyre burst from the shop No. 203 and at the same time one person i.e., accused present in the court today (correctly identified) came out from shop No. 203. I enquired from the accused who came from shop No. 203 as to what had happened to which he replied me ‘bandathokdiya’. The accused had also shown me katta which he had tugged in his pant which katta he had taken out from his pant and threatened me by saying that if I disclosed anything to anyone he would kill me. I was scared due to the abovesaid incident and threat of accused and I went to my shop and did not disclose anything to anyone. Thereafter, I informed about the abovesaid incident to my boss and thereafter when police came I narrated all above facts to the police and then my statement was recorded. I had given the physical description of the accused in my statement*”**

*recorded by the police as he was height of about 5 ft. 7 to 8 inch and thin built.*

*On 20.07.2011 at about 9.00 AM, I went to PS Dwarka North for some work where I saw that police officials were making enquires from one person and on seeing the said person in the PS, I informed the Inspector who was making enquiries from the said person that the person from whom they were making enquiries was the same person to whom I saw in the evening of 14.07.2011 while coming out from shop no. 203 and on making my enquiry he told me 'bandathokdiya' and was the same person who had threatened me on the point of katta which he had taken out from his pant which he had tugged in his pant and he was the same person / accused who had threatened me to be killed, if I disclosed anything to anyone. I also came to know the name of the accused as Anil Sharma. Thereafter, my statement was recorded on 20.07.2011."*

40. Perusal of testimony of PW-3 (Amit Kumar) reflects that he was contacted by the deceased (Deepak Kumar) at 4:30pm on the date of the incident and deceased had invited him to have some drinks and snacks at his shop and one Anil Kumar (appellant herein) was sitting with him at that time. The same has also been corroborated with the testimony of PW-2(Chandan), as his testimony reflects that on the date of incident, he was working in Dass Photostat and Printers Shop No. 211, Sector -12, Market New Delhi and at about 5:00 pm he heard some voice of abuses coming from Shop No. 203.
41. Further, in the meanwhile a noise like a tyre burst from the shop of the deceased and saw the appellant coming out of Shop No. 203,

consequently when he enquired with him that what had happened there, the appellant replied “*bandathokdiya*”, meaning that he had shot a person. He further stated that the appellant showed him a katta, which was tucked in his pant and had threatened him that he would also kill him if he will tell about the confrontation to anyone.

42. The presence of appellant at the scene of crime further receives corroboration with the testimonies of Ram Bahadur Mishra @ Gagan Mishra and Bharat Lal. Ram Bahadur Mishra @ Gagan Mishra stepped into witness box as PW-7 and deposed that :-

*“On 17<sup>th</sup> of the month which I do not remember now, in the year 2011 I was working as home delivery boy with Green Chicken Shop no.5, Sec.12. On that day at about 3/3.15 p.m, on the directions of my manager I have gone to shop no.203 Vardhman Plaza sec.12, IInd floor to delivery some eatables. There I saw three persons present in the said shop. I had seen all of them for the first time and one amongst the said three persons was the accused present in the court today.*”

*At this stage witness has pointed out towards accused Anil Kumar Sharma @ Pandit present in the court today and has correctly identified him.*

*On 20<sup>th</sup> of the same month and year, I had seen the accused present in the police station Dwarka North at about 11 a.m and I informed the IO of this case that the accused was the same person whom he I had seen in shop no. 203 when I had gone to deliver the eatables. I do not know the name of the accused. I also do not know as to whom the shop was belonging where I had gone*

*to deliver the eatables in shop no. 203. My statement was recorded by the police.”*

43. Bharat Lal stepped into witness box as PW-20 and deposed that :-

*“I do not remember the date or month, however, one day in the year 2012, again said I do not remember the year also. One day I went to the shop of Deepak in Sec-12, Dwarka, New Delhi, for taking money as he had taken from me. I reached the office of Deepak at about 2/2.30 p.m. I do not remember the complete address of the shop of Deepak. Accused present in court today (correctly identified) and Deepak were found sitting there when I reached. I went to the shop of Deepak with a beer and I consumed the same at his shop. Accused and Deepak had consumed whisky. After about 45 minutes I left the shop and at that time, accused and Deepak were there. I do not know anything more about his case.”*

44. A perusal of the testimony of Ram Bahadur Mishra establishes the fact that the appellant was with the deceased and was present in Shop No.203 Vardhman Plaza, Sector 12, Dwarka, at about 3:00–3:15 pm, when he had arrived to deliver some food items at the abovementioned spot. Further, Bharat Lal has deposed that he had arrived at the office of Deepak(deceased) at about 2-2.30 p.m and was present there for a brief period of 45 minutes, wherein he had consumed a beer at the abovementioned spot and the appellant had consumed whiskey.

45. Hence, a joint reading of the aforesaid testimonies establish the fact that the appellant was last seen with the deceased and the same has been briefly reproduced below:-

| <b>Witness</b>                      | <b>Statements</b>                                                                                                                                                                                                                                                                                                                                                                                                 |
|-------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>PW-2<br/>(Chandan)</b>           | He was not an eye-witness to the incident; however, he had seen the Appellant leaving the Shop No. 203 Vardhman Plaza, Sector 12, Dwarka (office of the deceased). As per the version of the prosecution, the Appellant-accused had stated to him “ <i>bandathokdiya</i> and showed him a katta, which was tucked in his pant and had threatened him that he would also kill him if he disclose what he had done. |
| <b>PW-3<br/>(Amit Kumar)</b>        | He is the complainant in the present case and was the last person who spoke with the Deepak (Deceased), as the deceased had invited him to have some alcohol and snacks. The deceased had informed him that one Anil (Appellant) was at his shop and he was drinking with him.                                                                                                                                    |
| <b>PW-7<br/>(Ram Bandhu Mishra)</b> | He was the delivery boy and had delivered the food on the day the deceased was killed. When he delivered food, he saw that there were three people (including the deceased) sitting in Shop No. 203. He identified the Appellant as one of the persons in the shop on the day the deceased was killed.                                                                                                            |
| <b>PW-20<br/>(Bharat Lal)</b>       | He visited the shop of the deceased (Shop No. 203) on the day the deceased was killed. In his statement he stated that he met the deceased and the Appellant for about 45 mins, after which he left the shop.                                                                                                                                                                                                     |

46. Further, the learned Trial Court in the impugned judgment while not relying on the testimonies of PW-17 Surender Sharma and PW22 Shankar Sharma and rejecting the plea taken by the appellant that he

was not present at the alleged place of the incident gave its reasoning, which is reproduced herein below: -

*“17. Further, ld. defence counsel had argued that the accused was not present at the place of incident from 2.30 pm onwards and this fact has been proved by PW17 and PW22. It can be seen that both these witnesses were examined to show that the accused was working with them on commission basis and they had given him a mobile phone no. 9212134817 for business purpose. However, it is evident that PW17 has deposed in his cross examination that the accused had remained in his office at Janak Puri from 3.30 pm to 5.30 pm, whereas, PW22 mentioned that he remained there from 2.30 to 5.30 pm. Regarding presence of the accused in the office at Janak Puri and not at the spot at the time of incident, ld. Additional PP has rightly argued that CDR and cell ID chart of aforesaid mobile number of the accused Ex.PW32/B and Ex.PW32/C respectively make it quite clear that his mobile phone was used in Sector-12, Dwarka, from 3.24 pm to 4.13 pm. Further, it also becomes clear that between 5.03 pm to 5.07 pm, the said mobile phone was used at Roshan Garden, Najafgarh, which is not very far from the spot. Further, it is rightly stated by ld. Additional PP that there was no reason with the accused to stay in the said office at Janak Puri continuously for three hours as he was the commission agent. Moreover, as per defence of accused he was supposed to go there with deceased at 5 pm and further none of these two witnesses have mentioned that the accused had come there to purchase RO machine, as disclosed by the accused in his statement u/s 313*

***CrPC. In view of this Court, the aforesaid scientific evidence qua mobile phone location is sufficient enough to reject the testimony of PW17 and PW22 and the defence of the accused that the accused was at Janak Puri from 2.30 pm to 5.00 pm and rather, it confirms the presence of the accused at Dwarka, where place of incident is situated, at the relevant time.***

47. Consequently, this Court is in agreement with the finding of the Trial Court, as the perusal of the above extracted findings clearly and unequivocally lead to one inescapable conclusion that the version of PW-17 (Surender Sharma) and PW-22 (Shankar Sharma) is surrounded by suspicion and casts a shadow of doubt, which evidently makes it unsafe to rely upon.
48. Learned Counsel for the appellant further submitted that learned Trial Court erred in relying upon the Extra Judicial Confession made by the appellant which is a weak piece of evidence and the same cannot be relied upon without corroboration. Moreover, the same has no relevance as the receiver of the call turned hostile and deposed in Court that '*I attended the call but no one called from the other side*'.
49. Learned APP on behalf of the State rebutted the contention of the counsel of the appellant and stated that extra-judicial confession is a reliable piece of evidence and in the present case the testimonies of PW-11 and PW-37 clearly establish that the Appellant made an extra-judicial confession before the prosecution witnesses.

50. Learned Trial Court in this regard has observed as under:-

*“21. 14.07.2011, at about 6.45 pm, the accused took his mobile phone (8802288866) forcibly and called one Chhikara. Further, he stated that the accused told said Chhikara that he had committed murder of Deepak and asked him to arrange a sum of Rs.2.50 lacs. Further, he mentioned that then the accused deleted the said called mobile phone number from his phone and after giving his mobile phone back, he went away on his motorcycle. PW11 Amit Chhikara deposed that on 14.07.2011, he received a telephonic call on his mobile number 9990906100 from an unknown mobile phone number and though he had attended the said call, but no one talked from other side. The witness was declared hostile by Id. Additional PP and during cross examination conducted by Id. Additional PP, he denied the suggestion that the accused had called on his mobile phone from another mobile phone and informed him about committing of murder of the deceased and for arranging the money and a lawyer. However, to corroborate the testimony of PW37, the prosecution has examined PW28 Shishir Malhotra, Nodal Officer of Aircel Ltd., who produced record of mobile phone of PW37. The CDR Ex.PW28/D, makes it quite clear that a call was made from the mobile number 8802288866 to the mobile phone number 9990906100 at 6.48 pm. PW13 had made it clear that he had got issued the mobile phone no. 9990906100 for the use of PW11 Amit Chhikara. Further, the said mobile record makes it quite evident that the aforesaid call was made for 45 seconds and thus, it falsifies the testimony of PW11 that no one talked from*

*other side when he received the said call. Moreover, Id. Additional PP rightly mentioned that no suggestion was given to PW37 by the defence side that the accused used the mobile phone of PW37 while wearing helmet and thus, he was not in a position to identify the accused at that time. In view of this Court, despite cross examination, the testimony of PW37 remains unrebutted even though he had replied that he did not call the police at phone number 100 or raise any alarm after snatching of his mobile phone by the accused. Further, the defence side has not been able to furnish any ground as to why he, being an independent witness, would falsely depose against the accused.”*

51. At this stage, it is relevant to examine as to whether the Appellant confessed to his crime before prosecution witnesses namely PW-11 (Amit Chikkara) and PW-37 (Manik Chand). PW 37 (Manik Chand) in his examination in chief has deposed as under:-

*“that on 14.07.2011 at about 6.45 p.m. when I reached Najafgarh Ganda Nala and I was smoking cigarette. At that time, accused Anil Kumar Sharma (present in the court today, correctly identified) came to me and took my phone forcefully, bearing connection no. 8802288866, which was in my hand and he called to one Chhikara and he told him to arrange a sum of Rs. 2.5 lacs and he also stated that he has already committed murder of Deepak. After making phone, the accused had deleted the said number from mobile to whom he had called. After hearing the same I became frightened and accused gave my phone back and he went away on his bike. I had not noted the registration*

*number of the said bike. I informed the said fact to police on 05.10.2011 and I came to know the name of accused as Anil Kumar on that day. Police recorded by statement.*

xxxx                      xxxx                      xxxx                      xxxx

*Court Question: What sentence was told by accused Anil Kumar on your phone?*

*Answer: Main Anil bolrahahun. Maine Deepak ka murder kardiyahai. Tu dhaai lakh ka intezaamkarlena our vakil ka. Apart from this, I heard nothing. I was standing 2 ft. away from the accused when he talked over my phone.”*

52. PW-11(Amit Chikkara)in his examination in chief deposed as under:-

*“that on 14.07.2011 I received a telephonic call on my mobile phone No. 9990906100 from some mobile phone number which I do not remember now. I do not know who was the caller. I attended the call but no one called from the other side. I do not know who was involved in the murder of Deepak Singh. I do not know anything more about this case.*

*At this stage, the witness is resiling from his previous statement on material aspect.”*

53. From the perusal of the aforesaid testimonies, it is established that the appellant had snatched the mobile phone bearing no. 8802288866 from PW-37 (Manik Chand) and called from the said phone to PW-11 (Amit Chikara) where he confessed that he had committed the murder of the deceased and asked him to arrange a sum of Rs. 2.50 lakhs and the said conversation was made by the appellant/accused in front of PW-37 (Manik Chand). Though PW-11 (Amit Chikkara) turned hostile and deposed in court that on 14.07.2011, he received a telephone call on his mobile number 9990906100from an unknown

number and although he had attended the said call but no one replied from the other end.

54. In our considered view the said confession made by the Appellant to PW-11 (Amit Chikkara) before PW-37 (Manik Chand) is not an extra-judicial confession as PW-11(Amit Chikkara) turned hostile and failed to support the case of the prosecution and deposed that “*I received a telephonic call on my mobile phone No. 9990906100 from some mobile phone number which I do not remember now. I do not know who was the caller. I attended the call but no one called from the other side.*”. However, the testimony of PW-37 (Manik Chand) cannot be discarded as he clearly deposed that he had heard the Appellant confessing his crime to the receiver of phone number 9990906100 and corroborated the version of other prosecution witnesses forming an additional link to complete the chain of circumstances.

### **Recovery of Material Objects**

55. Another limb of argument raised on behalf of the appellant is that the recoveries made pursuant to the disclosure statement (*Ex.PW48/D*) of the appellant cannot be relied upon as the same have been planted on the appellant in order to falsely implicate him.
56. It is a settled principle of law that according to Section 25 of the Indian Evidence Act 1860, no credence can be placed upon the confession made by the accused, however Section 27 of the Indian Evidence Act is in the nature of a proviso or an exception which

partially lifts the prohibition imposed by Section 25 and reads as under:-

***“Section 27 of the Indian Evidence Act:***

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

57. In the light of Section 27 of the Indian Evidence Act, 1872 whatever information is given by the accused in consequence of which a fact is discovered only that would be admissible in the evidence, regardless of the fact that such information amounts to confession or not. The basic idea embedded under Section 27 of the Evidence Act is the doctrine of confirmation by the subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from an accused; such a discovery is true and admissible.
58. From the perusal of the record, we find that the prosecution in the present case has relied upon recovery of material objects at the instance of appellant. The version of the prosecution is supported by the testimonies of PW-46 (SI Nirmaljeet Singh) and PW-53 (Inspector Naresh Kumar). PW-53 (Inspector Naresh Kumar) stepped into the witness box and deposed that:

*“After the arrest of accused Anil, he pointed out the place of incident vide pointing out memo already Ex.PW-46/E bearing my signatures at point ‘B’. Thereafter, as per the disclosure statement made by accused Anil, he*

took the police party to his house B-104, Nangloi-Najafgarh Road, Nirmal Vihar, Najafgarh, New Delhi and house of the accused was got opened and he got recovered his clothes i.e. green shirt and blue jeans having some spots of blood, which he was wearing at the time of incident. The said clothes were converted into pulanda and were sealed with the seal of NK and were seized vide memo already Ex.PW-46/F bearing my signatures at point 'B'.

Thereafter, in pursuance of disclosure statement, accused Anil took us to an open plot near his house where he had burnt his mobile phone and its battery. From there I took the remnants and some ash and the same were kept in a polythene and converted the same into a pulanda and sealed with the seal of NK and seized vide seizure memo cum pointing out memo already Ex.PW-46/G bearing my signatures at 'B'. The site plan of place of abovesaid recovery was prepared vide memo already Ex.PW-46/H bearing my signatures at point 'B'.

Thereafter, accused took us to gandanala, Palam-Najafgarh drain and got recovered one black coloured polythene containing one country made pistol alongwith one live cartridge and when country made pistol was unloaded it was found containing one used cartridge. I made the measurement of country made pistol and that of cartridges and prepared the sketch of country made pistol, lived cartridge and used cartridge. The same is already Ex.PW-46/J bearing my signatures 'B'. The same was seized vide memo already Ex.PW-46/K bearing my signatures at point B. I also prepared the site plan of place of recovery of country made pistol which is already Ex.PW-46/L bearing my signatures at point B. Thereafter, I along with police party returned to the police station deposited the case property with malkhana."

59. PW-46 (SI Nirmaljeet Singh) stepped into the witness box and deposed that:

*“Thereafter, accused led us to the place of incident and pointed out the place spot and I.O. prepared the **pointing out memo Ex.PW-46/E** bearing my signatures at point ‘A’. Thereafter, accused led us to his house i.e. D-104, Nirmal Vihar, Nangloi, Najafgarh Road, Delhi and got recovered his clothes i.e. blue colored jeans and one off/light green shirt from there. The clothes were containing blood strains. I.O. kept the clothes in a pulanda and sealed the same with the seal of NK and seized the same vide seizure memo Ex.PW-46/F bearing my signatures at point ‘A’. Thereafter, accused led us to a vacant plot near his house and got recovered one burnt mobile phone and half burnt mobile battery. I.O. kept the same in a pulanda and sealed the same with the seal of NK. I.O. prepared the pointing out memo and seizure memo of the same vide **Ex.PW-46/G** bearing my signatures at point ‘A’. I.O. had also prepared the site plan of spot from where the burnt mobile and battery were recovered. The said site plan is **Ex.PW-46/H** bearing my signatures at point ‘A’. Thereafter, accused led us to the gandanala (drain), Kakrola and got recovered one black coloured polythene. After opening the same, the same was found containing one country made pistol (desi Katta) and one live cartridge. I.O./Insp. Naresh Kumar got opened the pistol and there was one empty cartridge found inside the barrel. I.O. prepared the sketch of the said pistol Ex.PW-46/J bearing my signatures at point ‘A’. I.O. kept the said items in a polythene and covered the same in a pulanda and sealed the same with the seal of NK and thereafter, seized it vide seizure memo **Ex.PW-46/K** bearing my signatures at point ‘A’. Thereafter, I.O. prepared the site plan of the place of recovery of desi katta vide **Ex.PW-46/L** bearing my signatures at point ‘A’. Thereafter, we*

*came back to police station. I.O. had deposited the case property in malkhana. I.O. recorded my statement.”*

60. Conjoint reading of the aforementioned testimonies of the prosecution witnesses reveals that pursuant to the arrest of the appellant, his disclosure statement (**Ex.PW48/D**) was recorded which led to recovery of following material objects at the instance of the appellant:-

| ITEMS                                                                                                                     | CORRESPONDING DOCUMENTS                                                                                                                                                                                 |
|---------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Recovery of light green shirt and blue jeans made at the instance of the accused from his house (Nirmal Vihar, Najafgarh) | <b>Ex. PW-46/F</b> – Memo regarding pointing out and seizure memo of clothes.                                                                                                                           |
| Country made pistol at the instance of the accused from a gandanala                                                       | <b>Ex. PW-46/J</b> - Sketch of Country made pistol(katta), used and live cartridge<br><b>Ex. PW-46/K</b> –Memo regarding pointing out and seizure memo of Country made pistol, used and live cartridge. |
| Burnt Mobile phone and battery                                                                                            | <b>Ex. PW- 46/G</b> – Memo regarding pointing out, recovery memo and seizure memo of ash and burnt mobile<br><b>Ex. PW- 46/H</b> – Site plan of the recovery                                            |

61. Learned counsel for the appellant extensively argued that the recoveries effected at the instance of the appellant cannot be relied upon as they have no evidentiary value and do not fall within the purview of Section 27 of the Indian Evidence Act. It was further contended that the recoveries were effected in the presence of police

officers and the same are not reliable, as no genuine and sincere efforts were made by the Investigating Officer to authenticate the alleged recoveries with the presence of independent witnesses.

62. As far as recovery of articles at the instance of the accused is concerned, the Apex Court in catena of judgments has held that the recovery and the pointing out memo which directly link the alleged weapon with the commission of the crime is relevant and is admissible in the eyes of law. While dealing with such a case, the Hon'ble Supreme Court of India in the case of **Debapriya Pal vs. State of West Bengal** reported at (2017) 11 SCC 31 has held as under:-

*“10. ...Under Section 27 of the Evidence Act only so much of recovery, as a result of the disclosure statement, which directly pertains to the commission of crime is relevant. Otherwise, such an evidence is barred Under Section 25 of the Evidence Act. Recovery of laptop does not have any bearing. It is neither the weapon of crime nor it has any cause of connection with the commission of crime. The law on this aspect is succinctly said in the case "Jaffar Hussain Dastagir v. State of Maharashtra: (1969) 2 SCC 872 in the following manner:*

*5. Under Section 25 of the Evidence Act no confession made by an Accused to a police officer can be admitted in evidence against him. An exception to this is however provided by Section 26 which makes a confessional statement made before a Magistrate admissible in evidence against an Accused notwithstanding the fact that he was in the custody of the police when he made the incriminating statement. Section 27 is a proviso to Section 26 and makes admissible so much of the statement of the Accused which leads to the discovery of a fact deposed to by him and*

*connected with the crime, irrespective of the question whether it is confessional or otherwise. The essential ingredient of the Section is that the information given by the Accused must lead to the discovery of the fact which is the direct outcome of such information. Secondly, only such portion of the information given as is distinctly connected with the said recovery is admissible against the accused. Thirdly, the discovery of the fact must relate to the commission of some offence.”*

*(emphasis supplied)*

63. Further, there is no good reason for this Court to disbelieve the said recoveries merely because the recovery witnesses PW-46 (SI Nirmaljeet Singh) and PW-53 (Inspector Naresh Kumar) happen to be police officers. In this context, we rely on the case of **Baldev Singh vs. State of Haryana** reported as (2015) 17 SCC 554, wherein the Hon'ble Supreme Court held as under:

*“10. There is no legal proposition that evidence of police officials unless supported by independent evidence is unworthy of acceptance. Evidence of police witnesses cannot be discarded merely on the ground that they belong to police force and interested in the investigation and their desire to see the success of the case. Prudence however requires that the evidence of police officials who are interested in the outcome of the result of the case needs to be carefully scrutinised and independently appreciated. Mere fact that they are police officials does not by itself give rise to any doubt about their creditworthiness.*

*11. Observing that no infirmity is attached to the testimony of police officials merely because they belong to police force and that conviction can be based on the testimony of police officials in*

***GirjaPrasad v. State of M.P., (2007) 7 SCC 625, it was held as under:-***

*“25. In our judgment, the above proposition does not lay down correct law on the point. It is well settled that credibility of witness has to be tested on the touchstone of truthfulness and trustworthiness. It is quite possible that in a given case, a Court of law may not base conviction solely on the evidence of the complainant or a police official but it is not the law that police witnesses should not be relied upon and their evidence cannot be accepted unless it is corroborated in material particulars by other independent evidence. The presumption that every person acts honestly applies as much in favour of a police official as any other person. **No infirmity attaches to the testimony of police officials merely because they belong to police force. There is no rule of law which lays down that no conviction can be recorded on the testimony of police officials even if such evidence is otherwise reliable and trustworthy. The rule of prudence may require more careful scrutiny of their evidence. But, if the Court is convinced that what was stated by a witness has a ring of truth, conviction can be based on such evidence.***

*26. It is not necessary to refer to various decisions on the point. We may, however, state that before more than half-a-century, in **Aher Raja Khima v. State of Saurashtra AIR 1956 SC 217**, VenkataramaAyyar, J. stated:*

*“40. ... The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not judicial approach to distrust and suspect him without good grounds therefore. Such an attitude could do neither credit to the magistracy nor good to the public. It can only*

*run down the prestige of the police administration.'*

27. In ***Tahir v. State (Delhi)*** (1996) 3 SCC 338, dealing with a similar question, Dr A.S. Anand, J. (as His Lordship then was) stated:

*'6. ... Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form the basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case.'*

*(emphasis added)*

64. The aforesaid principle was reiterated by the Hon'ble Apex Court in a very recent judgment titled as ***Kripal Singh v. the State of Rajasthan*** reported in (2019) 5 SCC 646. The germane portion of the judgment is extracted below:

*"21. The submission of the learned senior counsel for the Appellant that recovery has not been proved by any independent witness is of no substance for the reason that in the absence of independent witness to support the recovery in substance cannot be ignored unless proved to the contrary. **There is no such legal proposition that the evidence of police officials unless supported by independent witness is unworthy of acceptance or the evidence of police officials can be out rightly disregarded.**"*

*(emphasis supplied)*

65. Keeping in view the facts of the present case and applying the principles laid down by the Hon'ble Apex Court as well as on the basis of corroborative testimonies of the material police witnesses, we find

no cogent reason to disbelieve the recoveries made by the Investigating Agency at the instance of the appellant as the testimonies of the prosecution witnesses in relation to the recoveries made pursuant to the disclosure statement are consistent, trustworthy and corroborative.

### **Medical and Scientific Evidence**

66. At this stage, it is relevant to examine whether the medical evidence adduced by the prosecution finds support from the testimony of the prosecution witnesses. PW-35 Dr. B.N. Mishra, Medical Officer cum Medical Legal Expert and Criminologist, Department of Forensic Medicines, DDU Hospital had conducted the post-mortem on the body of the deceased and proved the report as **Ex.PW.35/A**. Dr. B.N. Mishra stepped into witness box as PW-35 and deposed that:-

*“On 15.07.2011, I was posted as above, on that day I had conducted a postmortem examination on the body of deceased Deepak Singh S/o Yogender Singh, aged about 25 years, male. The body was sent by Inspector Naresh Kumar and accompanied by Ct. Rajender, PS Dwarka North. The dead body was duly identified by relatives of deceased by named Yogender (father) and Rajbir Singh (brother-in-law). The IO of the case presented 18 inquest papers before commencement of autopsy which were signed on each papers and enclosed with PM report.*

*After completion of postmortem examination, I had opined that the cause of death was due to neurogenic shock cause by pierced projectile (Bullet) into cervical part of spinal cord.*

*All injuries sustained on the body of deceased were antemortem in nature and same of duration.*

*The external injury No.1 (as mentioned in PM report in para external injury No.1) was sufficient to cause death in ordinary course of nature and the findings are suggestive of contact gun shot injury in nature. The*

*postmortem report along with annexures is Ex.PW35/A collectively which bears my signature at point-A.”*

67. Relevant portion from the Post Mortem report (*Ex.PW35/A*) of the deceased is reproduced herein below :-

**“GENERAL DESCRIPTION**

*Clothes worn & their condition: Black half T-shirt, blue jeans and blue underwear, Clothes stained with blood and dust.*

**GENERAL EXAMINATION**

- *Rigor mortis: Present all over the body.*
- *Post Morte containing: Present on the back part of the body.*
- *Condition of eyes: Both eyes closed with cornea, dried and hazy.*
- *Mouth/Tongue: Partially opened, bleeding from the mouth.*
- *Nails cyanosed.*
- *Surgical bandage present over the head.*
- *Seminal discharge present.*

**EXTERNAL EXAMINATION: External Injuries: -**

*1. One entry wound (of bullet) of size 2cm x 1.5cm present on the left side of neck, 5cm below from left ear. The wound appeared wedge shaped and inverted margins. The surrounding area of the wound (7 cm in diameter) found superficially burnt and blackish discolouration along with deposition of carbon particles and unburnt explosive material. The margins of the wound same ragged, irregular, inverted and cherry red in colour which is traceable into deep vicinity of the track. After exploration of the track of the wound revealed that the track directed horizontally towards right side. The all structure like muscles, fascia, and left carotid blood vessels found pierced and lacerated with massive*

**blood collection within the soft tissue of neck. On further exploration the bullet recovered within the body of third cervical vertebra with breaking of the body and neural cannal and half part of it pierced into spinal cord at same level.**

➤ **INTERNAL EXAMINATION**

**A- HEAD**

A- Scalp : **NAD.**

B- Skull : **NAD**

C- Brain, Meninges & Vessels: **Mild Congested.**

D- Base of skull: **Intact.**

**E- NECK**

1. Hyoid Bone/Thyroid Cartilage/Cricoid Cartilage/Tracheal Rings & Mucosa/Any Foreign Body in Trachea: **All cartilages of neck and hyoid bone are intact. Tracheal lumen empty and mucosa of tracheal lumen is pale.**

**2. CHEST (sic.)**

1. Ribs and Chest Wall : **NAD**

2. Oesophagus : **NAD**

3. Pleural Cavities : **NAD**

4. Lungs : **PALE**

5. Heart and pericardial sac : **NAD**

6. Large blood vessels : **Lacerated carotid artery and vein on left side.**

**ABODMEN**

1. Abdominal wall : **NAD**

2. Peritoneal Cavity : **NAD**

3. Stomach:

a. Contents : **Approx. 200 ml of semi digested food**

b. Mucosa : **Mild Congested.**

c. Abnormal Smell : **None.**

- |                                          |        |
|------------------------------------------|--------|
| 4. Small intestine                       | : NAD  |
| 5. Large intestine, vermiform appendix   | : NAD  |
| 6. Liver, gall bladder, biliary passages | : Pale |
| Spleen                                   | : NAD  |
| Kidney, renal pelvis, ureter             | : NAD  |

**GENITAL ORGAN**

- |                    |         |
|--------------------|---------|
| 1. Urinary Bladder | : Empty |
| 2. Rectum          | : Empty |
| 3. Genital organs  | : NAD   |

***SPINAL COLUMN: Intact***

***Notes: (1) Blood on gauge piece (2) clothes (3) one metallic Bullet (3cm length, 0.6cm width in diameter with distorted apical part and stained by blood) (4) blood and viscera of deceased preserved in common salt solution for chemical analysis. All exhibits sealed with seal of "DFMT, DDU Hospital" and handed over to concerned police officials.***

**OPINION:**

- 1. The cause of death is due to neurogenic shock caused by pierced projectile (Bullet) into the cervical part of spinal cord.**
- 2. All injuries are ante mortem in nature and same of duration. The external injury no. 1 (one) is sufficient to cause death in ordinary course of nature.**
- 3. The findings are suggestive of contact gunshot injury in nature.**
- 4. Time since death of deceased is approx. 20-21 hours prior to post-mortem examination.**
- 5. TOTAL No. of inquest papers: Eighteen (18) enclosed with signatures."**

68. A conjoint reading of the testimony of PW-35 (Dr. B.N. Mishra) and the post-mortem report proves that the deceased died due to

*Neurogenic Shock* caused by pierced projectile (Bullet) into the cervical part of the spinal cord. PW-35 further opined that all injuries were ante-mortem and external injury No.1 (as mentioned in Post Mortem report) was sufficient to cause death.

69. Further, it is relevant to highlight that as per the Postmortem Report **Ex.PW35-A**, a bullet (**marked exhibit 'EB1'**) was recovered from the body of the deceased (*from third cervical vertebra with breaking of the body and neural canal and half part of it pierced into spinal cord at same level*) and the same was forwarded to the FSL Department, Ballistic Division along with the Country made pistol (**marked exhibit 'F1'**) and the used cartridge (**marked exhibit 'ECI'**) which were recovered at the instance of the appellant-accused. Shri Puneet Puri, Senior Scientific Officer (Ballistics), FSL, Rohini proved the Ballistic Report as **Ex. PW49/A** and the relevant portion from the report has been reproduced as under:-

**Forensic Science Laboratory**  
**Govt. of NCT of Delhi**  
**Sector 14, Rohini, Delhi-110085**  
**Tel: 011-27555811, Fax:011-27555890**

***Accredited by the National Accreditation Board for  
Testing and Calibration Laboratories (NABL)***

**BALLISTICS DIVISION**  
**Examination Report**

**REPORT No.FSL2011/F-5145**

**Dated: 30.09.2011**

- |                                                                                                                                                                   |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1. Please quote the Report (Opinion) No. &amp; Date in all future correspondence &amp; Summons.</p> <p>2. This report is per se admissible U/S.293 Cr.P.C.</p> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|

To,

The Station House Officer,  
PS: Dwarka North,  
New Delhi.

Your letter no. 2484/R-SHO/Dwarka dated 09.09.2011 regarding two sealed parcels in connection with case FIR No. 153/11 dated 14.07.2011 U/S 302 IPC & 25/27/54/59 A. Act PS: Dwarka North were duly received in this office on 09.09.2011 through the messenger Ct. Vasant No.1877/SW.

**1. DESCRIPTION OF PARCEL (S):**

Sealed cloth parcel(s): 01 (one)

Sealed polythene parcel: 01 (one)

Total: 02 (two)

Two sealed parcels; seals were intact and tallied with the specimen seals as per forwarding letter (FSL FORM).

**2. DESCRIPTION OF ARTICLES CONTAINED IN THE PARCEL (S)/EXHIBIT(S):**

| <b>Parcel No.</b> | <b>No. &amp; Seal Impression</b>    | <b>Description of Exhibit(s) contained in parcel(s)</b>                                                                                                                              |
|-------------------|-------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>1</b>          | <b>09 N K</b>                       | <b>One country made pistol .315" bore marked exhibit 'F1', one improvised cartridge marked exhibit 'A1' and one 8mm/.315" cartridge case 'EC1' (percussion cap found punctured).</b> |
| <b>2</b>          | <b>01 DFMT<br/>DDU<br/>Hospital</b> | <b>One deformed bullet marked exhibit 'EB1'</b>                                                                                                                                      |

**FSL, DELHI**

**FSL 2011/F-5145**

**3. RESULTS OF EXAMINATION/OPINION**

- (1) The country made pistol .315" bore marked exhibit 'F1' is designed to fire a standard 8mm/.315" cartridge. It is in working order in its present condition. Test fire conducted successfully.**
- (2) The improvised cartridge marked exhibit 'A1' is live one and can be fired through .315" bore firearm.**
- (3) The 8mm/.315" cartridge case marked exhibit 'EC1' is a fired empty cartridge.**
- (4) The deformed bullet marked exhibit 'EB1' corresponds to the bullet of 8mm/.315" cartridge.**
- (5) The improvised cartridge marked exhibit 'A1' and two 8mm/.315" cartridges from the laboratory stock were test fired through the country made pistol .315" bore marked exhibit 'F1' above, the test fired cartridge cases were marked as 'TC1', TC2 & 'TC3' and the two recovered test fired bullets were marked as 'TB1' and 'TB2'.**
- (6) The individual characteristic of breech face marks present on evidence fired cartridge case marked exhibit 'EC1' and on test fired cartridge cases marked as 'TC2' and 'TC3' were examined and compared under the Comparison Microscope Model Leica DMC and were found identical. Hence exhibit 'EC1' has been fired through the country made pistol .315" bore marked exhibit 'F1' above.**
- (7) The individual characteristics of striations present on evidence deformed bullet marked exhibit 'EB1' are insufficient for comparison and opinion whether it has been discharged through the country made pistol .315" bore marked exhibit 'F1' above or not.**
- (8) The exhibits 'F1' / 'A1', 'EC1' and 'EB1' are firearm/ammunition as defined in the Arms Act. 1959.**

***NOTE: Case Exhibits/Remnants of Exhibits sent to this laboratory for examination have been sealed with the seal of PP FSL Delhi.***

70. From the perusal of the aforesaid Ballistic report, it is evident that the pistol (*exhibit 'F1'*) which was recovered at the instance of appellant, was in a normal working condition and keeping in mind the individual characteristic of breech face marks present on evidence fired cartridge case (*Exhibit 'EC1'*). It was opined that cartridge case marked exhibit 'EC1' had been fired through the country made pistol '315' bore (*exhibit F1*).
71. Further, as per the case of prosecution, the blood stained gauze of the deceased (*Exhibit-2*), Black half T-Shirt of the deceased (*Exhibit-1a*), blue Jeans of the deceased (*Exhibit-1b*), blue underwear of the deceased (*Exhibit-1c*) and one light green shirt of the appellant-accused (*Exhibit 3a*), one blue jeans of the appellant-accused (*Exhibit 3b*) were forwarded to the forensic department for biological examination. Relevant portion from the Report No. CFSL-2011/B-0795(*Ex. PW48/B*) is reproduced below :-

**BIOLOGY DIVISION**  
**CENTRAL FORENSIC SCIENCE LABORATORY**  
**(CBI),**  
**MINISTRY OF HOME AFFAIRS,**  
**BLOCK-4, CGO COMPLEX,**  
**LODHI ROAD, NEW DELHI-110003.**

**Biological Examination Report**

**REPORT No.: CFSL-2011/B-0795    Dated: 28.11.2011**

**To,**

**Addl. Dy. Commissioner of Police  
Crime: Delhi.**

- 1. Reference:** Case FIR No.: 153/11 Dated: 14.07.2011 P.S./Branch: Dwarka, North Under Section: 302 IPC & 25, 27, 54, 59 A Act.
- 2. Details of Forwarding Memo:** Letter/Memo No.: 2449/R-SHO/Dwarka North Dated: 06.09.2011 regarding Six (06) sealed parcels in connection with the case under reference forwarded by the Addl. Dy. Commissioner of Police, Crime: Delhi for examination in CFSL (CBI), New Delhi.
- 3. Forensic Expert:** Kaushal Kumar, Senior Scientific Officer Gr.-II(Biology) CFSL (CBI), New Delhi. AIC (Equivalent to M.Sc. (Chemistry) & DOP in French and Portuguese. Have an experience of about 30 years in Forensic Biology. Acquired relevant training in the field of Forensic Biology and DNA Profiling.
- 4. Details of Parcel(s) and condition of Seal(s):** Received six (06) sealed parcels on 06.09.2011 in CFSL (CBI), New Delhi through the messenger. The seals were intact and tallied with the specimen seal mark forwarded as per the Forwarding Authority's letter mentioned above.

Sealed polythene parcel: 01  
Sealed cloth parcels: 04  
Sealed envelope: 01  
Total: 06 (Six)

**5. Date of Commencement of Examination:**

20.09.2011

**6. Description of Parcel(s)/Exhibit(s)**

**Parcel-1:** *One sealed polythene parcel sealed with the seal of “DDU HOSPITAL DFMT” marked as “Exhibit no.1”. It contained five exhibits which were marked as exhibits-1a, 1b, 1c, 1d and 1e in Biology Division of this laboratory.*

**Exhibit-1a:** *One black half sleeved T-shirt having darker stains.*

**Exhibit-1b:** *One blue coloured jean pants having reddish brown stains.*

**Exhibit-1c:** *One blue coloured underwear having reddish brown stains.*

**Exhibit-1d:** *One Light grey and violet coloured pair of socks.*

**Exhibit-1e:** *One light orange coloured handkerchief.*

**Parcel-2:** *One sealed paper envelope sealed with the seal of “DDU HOSPITAL DFMT” marked as “Exhibit no.2”. It contained exhibit-2.*

**Exhibit-2:** *Reddish brown stained gauze cloth piece described as “blood on gauze of deceased Deepak Singh”.*

**Parcel-3:** *One sealed cloth parcel sealed with the seal of “NK” marked as “Exhibit no.3”. It contained two exhibits which were marked as exhibits-3a, and 3bin Biology Division of this laboratory.*

**Exhibit-3a:** *One light green coloured full sleeved shirt having reddish brown stains.*

**Exhibit-3b:** *One dirty blue coloured jean pants having reddish brown stains.*

**Parcel-4:** One sealed cloth parcel sealed with the seal of "NK" marked as "Exhibit no.4". It contained exhibits-4.

**Exhibit-4:** Concrete material having dark brown stains described as "blood stained concrete".

**Parcel-5:** One sealed cloth parcel sealed with the seal of "NK" marked as "Exhibit no.5". It contained exhibit-5.

**Exhibit-5:** Concrete material described as "control concrete".

**Parcel-6:** One sealed cloth parcel sealed with the seal of "NK" marked as "Exhibit no.6". It contained exhibit-6.

**Exhibit-6:** Dark brown scrapings described as "dry blood" kept in a small plastic container.

**7. Laboratory Procedure:** Biological examination of the exhibits was carried out as per the procedures laid down in the Working Procedure Manual, Biology Division, CFSL (CBI), New Delhi.

**8. Results of Examination:**

**8.1 Blood was detected on the exhibits-1a, 1b, 1c, 2, 3a, 3b, 4 and 6.**

**8.2 Blood too small for serological analysis was detected on the exhibits-1d and 1e.**

**8.3 Blood could not be detected on the exhibit-5.**

**8.4 A portion of stained areas of the exhibits-1a, 1b, 1c, 2, 3a, 3b, 4 and 6 were sent to Serology Division for serological analysis. Results of serological analysis in original from Serology Division of this laboratory vide report no.: CFSL-2011/B-0795/Sero.No.: 22/2011 Dated: 21.11.2011 is attached herewith.**

72. Relevant portion of Serological report (**Ex.PW48/B**) reads as under:

| <i>Exhibit No.</i> | <i>Description</i>                            | <i>Species of origin</i>  | <i>ABO Group/Remarks</i>  |
|--------------------|-----------------------------------------------|---------------------------|---------------------------|
| <b>1a.</b>         | <b><i>T-shirt</i></b>                         | <b><i>Human</i></b>       | <b><i>“B” Group</i></b>   |
| <b>1b.</b>         | <b><i>Jean pants</i></b>                      | <b><i>Human</i></b>       | <b><i>“B” Group</i></b>   |
| <b>1c.</b>         | <b><i>Underwear</i></b>                       | <b><i>Human</i></b>       | <b><i>“B” Group</i></b>   |
| <b>2.</b>          | <b><i>Blood stained gauze</i></b>             | <b><i>Human</i></b>       | <b><i>“B” Group</i></b>   |
| <b>3a.</b>         | <b><i>Shirt</i></b>                           | <b><i>Human</i></b>       | <b><i>“B” Group</i></b>   |
| <b>3b</b>          | <b><i>Jean pants</i></b>                      | <b><i>Human</i></b>       | <b><i>“B” Group</i></b>   |
| <b>4.</b>          | <b><i>Blood stained concrete material</i></b> | <b><i>Human</i></b>       | <b><i>“B” Group</i></b>   |
| <b>5.</b>          | <b><i>Control concrete material</i></b>       | <b><i>No reaction</i></b> | <b><i>No reaction</i></b> |
| <b>6.</b>          | <b><i>Blood scrappings</i></b>                | <b><i>Human</i></b>       | <b><i>“B” Group</i></b>   |

73. Consequently, from the perusal of the FSL Report, it is evident that “B” Group blood was detected on the blood stained gauze of the deceased (Exhibit-2) and on the clothes of the appellant, which evidently provides a conclusive finding connecting the blood of the deceased with the blood detected on Exhibit 3a (*one light green shirt of the appellant-accused*), Exhibit 3b (*one blue jeans of the appellant-accused*).

74. The summary of the medical and scientific evidence adduced by the prosecution has been reproduced below:-

|                    |            |                                                                                                                             |
|--------------------|------------|-----------------------------------------------------------------------------------------------------------------------------|
| Post-mortem Report | Ex.PW 35/A | Establishes that the cause of death of the deceased was due to neurogenic shock caused by Bullet entering into the cervical |
|--------------------|------------|-----------------------------------------------------------------------------------------------------------------------------|

|                    |           |                                                                                                                                        |
|--------------------|-----------|----------------------------------------------------------------------------------------------------------------------------------------|
|                    |           | part of spinal cord.                                                                                                                   |
| Ballistic Report)  | EX.PW49/A | Establishes that the cartridge case marked exhibit 'EC1 had been fired through the <i>country made pistol '315' bore</i> (exhibit F1). |
| Serological Report | EX.PW48/B | Establishes that the blood stains recovered from the clothes of the Appellant connects with the blood group of the deceased.           |

75. From the medical and scientific reports as detailed above, it is established that the appellant was the perpetrator of the alleged offence.

### **Defective Investigation**

76. Learned counsel appearing on behalf of the appellant contended that there are defects in the investigation conducted by the police which goes to very root of the case and the benefit of the defective investigation shall accrue to the appellant. Learned counsel for the appellant has pointed out the following instances of defective investigation:-

- a) That there were discrepancies in testimony of PW-53 (Insp. Naresh Kumar) who was the investigating officer in the case; that as per the prosecution, a brown colour wallet of the appellant containing his 8 passport size photographs and ID card were seized from scene of crime, however, no efforts were

made to trace or apprehend the appellant based on the aforesaid recovery.

- b) Further, as per the case of prosecution, the appellant was formally arrested on 15.07.2011 based on a secret information, however, the alleged secret information was never reduced to writing nor any DD entry was brought on record to substantiate the prosecution's case.
- c) That no site plan was prepared by the Investigating Officer at the time of recoveries. Further, no efforts were made by the prosecution to establish whether semi-burnt battery of mobile phone recovered from an open plot belonged to the appellant.
- d) That despite the place of incident was densely populated, the Investigating Agency failed to make any sincere effort to examine any independent witness.
- e) That the FIR was registered after an unexplained delay of approximately 2 hours, hence an adverse inference should be drawn against the Investigating Agency.

77. In this context, the Hon'ble Supreme Court in ***Hema v. State*** reported in **(2013) 10 SCC 192**, held that fair investigation is a part of the Constitutional Rights guaranteed under Articles 20 and 21 of the Constitution of India and it is the immediate requirement of the rule of law that investigation must be fair, transparent and judicious and observed as follows:

*“14. It is also settled law that for certain defects in investigation, the accused cannot be acquitted. This aspect has been considered in various decisions. In C. Muniappan v. State of T.N. [(2010) 9 SCC 567*

:(2010) 3 SCC (Cri) 1402], the following discussion and conclusions are relevant which are as follows: (SCC p. 589, para 55)

*“55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation.”*

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

18. It is clear that merely because of some defect in the investigation, lapse on the part of the investigating officer, it cannot be a ground for acquittal. Further, even if there had been negligence on the part of the investigating agency or omissions, etc. it is the obligation on the part of the court to scrutinise the prosecution evidence dehors such lapses to find out whether the said evidence is

*reliable or not and whether such lapses affect the object of finding out the truth. ”*

*(Emphasis supplied)*

78. In ***Kailash Gour and others v. State of Assam*** reported in (2012) 2 SCC 34, the Hon’ble Supreme Court observed as follows:

*“43. At any rate, the legal proposition formulated by Bedi, J. based on the past failures does not appear to us to be the solution to the problem. We say with utmost respect to the erudition of our Brother that we do not share his view that the reports of the Commissions of Inquiry set up in the past can justify a departure from the rules of evidence or the fundamental tenets of the criminal justice system. That an accused is presumed to be innocent till he is proved guilty beyond a reasonable doubt is a principle that cannot be sacrificed on the altar of inefficiency, inadequacy or inept handling of the investigation by the police. **The benefit arising from any such faulty investigation ought to go to the accused and not to the prosecution. So also, the quality and creditability of the evidence required to bring home the guilt of the accused cannot be different in cases where the investigation is satisfactory vis-à-vis cases in which it is not. The rules of evidence and the standards by which the same has to be evaluated also cannot be different in cases depending upon whether the case has any communal overtones or in an ordinary crime for passion, gain or avarice.**”*

*(Emphasis supplied)*

79. The Hon'ble Supreme Court in *Manu Sharma v. State (NCT of Delhi)* reported in (2010) 6 SCC 1 held as follows:

*“197. In the Indian criminal jurisprudence, the accused is placed in a somewhat advantageous position than under different jurisprudence of some of the countries in the world. The criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. In our jurisprudence an accused is presumed to be innocent till proved guilty, the alleged accused is entitled to fairness and true investigation and fair trial and the prosecution is expected to play balanced role in the trial of a crime. The investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. These are the fundamental canons of our criminal jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21 of the Constitution of India.*

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*199. It is not only the responsibility of the investigating agency but as well as that of the courts to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. Equally enforceable canon of the criminal law is that the high responsibility lies upon the investigating agency not to conduct an investigation in tainted and unfair manner. The investigation should not prima facie be indicative of a biased mind and every effort should be made to bring the guilty to law as nobody stands above law de hors his position and influence in the society*

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201. Historically but consistently the view of this Court has been that an investigation must be fair and effective, must proceed in proper direction in consonance with the ingredients of the offence and not in haphazard manner. In some cases besides investigation being effective the accused may have to prove miscarriage of justice but once it is shown the accused would be entitled to definite benefit in accordance with law. **The investigation should be conducted in a manner so as to draw a just balance between citizen's right under Articles 19 and 21 and expansive power of the police to make investigation. These well-established principles have been stated by this Court in Sasi Thomas v. State [(2006) 12 SCC 421 : (2007) 2 SCC (Cri) 72], State (Inspector of Police) v. Surya Sankaram Karri [(2006) 7 SCC 172 : (2006) 3 SCC (Cri) 225] and T.T. Antony v. State of Kerala [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048].** 202. In *Nirmal Singh Kahlon v. State of Punjab* [(2009) 1 SCC 441 : (2009) 1 SCC (Cri) 523]

202. In *Nirmal Singh Kahlon v. State of Punjab* [(2009) 1 SCC 441 : (2009) 1 SCC (Cri) 523] this Court specifically stated that a concept of fair investigation and fair trial are concomitant to preservation of the fundamental right of the accused under Article 21 of the Constitution of India. We have referred to this concept of judicious and fair investigation as the right of the accused to fair defence emerges from this concept itself. The accused is not subjected to harassment, his right to defence is not unduly hampered and what he is entitled to receive in accordance with law is not denied to him contrary to law.”

(emphasis supplied)

80. Further, it is a settled law that the defective investigation by itself cannot be a ground for acquittal as laid down by the Apex Court in the case of **Ram Bali v. State of Uttar Pradesh** reported in (2004) 10 SCC 598. Germane portion of the judgment is extracted below:-

*“in case of defective investigation the Court has to be circumspect while 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 investigation officer if the investigation is designedly defective”*

*(emphasis supplied)*

81. The legal principles that emerge from a careful consideration of the aforesaid decisions are summarized herein below:
- (i) Some defects in the investigation, lapse on the part of the investigating officer, would not entitle the acquittal of the accused.
  - (ii) If the evidence on record bears out that the case of the prosecution and the evidence is of a sterling quality and is reliable then the lapses or irregularities in the investigation will not attribute benefit to the accused.
  - (iii) However, to set aside the conviction of the accused, there must be a sufficient nexus between the conviction and the irregularity in the investigation. If the prosecution evidence on which the accused has been convicted is held to be reliable and of sterling quality, the conviction cannot be set aside solely on the basis of some irregularity or illegality.

82. In view of the aforesaid dictum, if any defect is found in the investigation, benefit of the same should not be extended to the appellant. We are of the opinion that in the case of defective investigation, the court has to be circumspect in evaluating the evidence, but it can be stated that error, illegality or defect in investigation cannot have any impact unless miscarriage of justice is brought about or serious prejudice is caused to the appellant. If the prosecution case is established by the evidence adduced, any failure or omission on the part of the Investigating Officer cannot render the case of the prosecution doubtful. Hence, the plea of the counsel for the appellant is bereft of any merit and holds no ground.

**Test Identification Parade**

83. Further, during the course of argument, learned counsel for the appellant submitted that the refusal of the appellant to participate in the Test Identification Parade will not lead to an adverse inference against him as during investigation the appellant was taken to various locations such as the scene of crime without being muffled.
84. The necessity of Test Identification Parade is just primary evidence to pinpoint that the investigation which is being conducted is going in the right direction; however, it is not a substantive one. It is interesting to note that, if the test identification parade is not conducted and the witness identifies the accused for the first time in the court of law, then, the evidence regarding identification in the court of law does not ipso facto becomes inadmissible and cannot be discarded on the ground that it was not preceded by Test Identification Parade. The Apex Court, in the case of ***Raju Manjhi v.***

*State of Bihar* reported in *AIR 2018 SC 3592* after discussing the aforesaid principles of test identification parade, concluded as under:-

*“16. The identification parade belongs to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim, a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in Court. The weight to be attached to such identification should be a matter for the Courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration [See: *Kanta Prashad v. Delhi Administration*, 1958 CriLJ 698 and *Vaikuntam Chandrappa and Ors. v. State of Andhra Pradesh*, AIR 1960 SC 1340].”*

*(emphasis supplied)*

85. In the present case, the Investigating Officer had applied for conducting the test identification parade, but the appellant refused to participate in the same and it is a case of refusal to participate in test identification parade by the appellant himself.
86. The Hon’ble Apex Court in the case of *Manu Sharma v. State (NCT of Delhi)* reported in *(2010) 6 SCC 1*, had elaborately discussed the relevance, requirement and the value of test identification parade. Germane portion of the judgment is extracted below:-

*“247. As far as refusal of TIP by accused Manu Sharma is concerned, there is no justification in the stand of the defence that TIP was not held due to his photo or he himself being shown to the witness. In this regard, it would be relevant to note*

*that accused Manu Sharma surrendered on 6-5-1999 and on 7-5-1999 he was produced in muffled face before the Metropolitan Magistrate Shri Rajneesh Gupta, PW 79 and the proceedings thereof are recorded vide Ext. PW 79-G wherein accused Manu Sharma's contention for refusal of TIP is that his photograph has appeared in newspapers and his photograph has been shown to the witnesses and that he has been shown physically to the witnesses. All the three contentions of the accused Manu Sharma are incorrect and misconceived with regard to the appearance of the photos in the newspapers. It is submitted that vide Exts. PW 101/11 to 22 the newspapers from 1-5-1999 to 6-5-1999 have been duly exhibited by PW 101. It was pointed out that in none of those newspapers is the photograph of accused Manu Sharma shown. As a matter of fact vide Ext. No. PW 101/15 photograph dated 6-5-1999 clearly shows that he is in muffled face. **In the absence of any defence refusal of TIP on this ground is totally unjustified and an adverse inference ought to be drawn in this regard.**"*

87. As per aforesaid dicta, the refusal to participate in Test Identification Parade, if no plausible reason is offered, would be sufficient to draw an adverse inference against the appellant. Undoubtedly, in the present case, all arrangements to hold the Test Identification Parade were made but the appellant refused to participate in the Test Identification Parade proceedings, hence, an adverse inference is drawn against the appellant in the present case.

### **Motive**

88. Learned counsel of the appellant, during the course of argument had expressed an apprehension that motive in a case of circumstantial

evidence is of paramount importance and the absence of motive in a case of circumstantial evidence is critical to substantiate the version of the prosecution.

89. It is a settled law that the inability of the prosecution to establish motive is not always fatal to the case of the prosecution and does not render any benefit to the accused persons, as the proof of motive will only be an important corroborative piece of evidence.
90. Very recently, we in the case of ***Runeet Gulathi vs State*, 2019 SCC OnLine Del 10208** had an occasion to explain the relevance of motive in a case of circumstantial evidence. The relevant portion of the said judgment is reproduced herein below:

*“121. It is settled law that motive is not a necessary element in deciding culpability but it is equally an important missing link which can be used to corroborate the evidence where conviction is based on circumstantial evidence. The Apex Court on several occasions has considered the law regarding basing of conviction by the Court on circumstantial evidence. It is useful to refer to the judgment of the Apex Court in Gambhir v. State of Maharashtra, (1982) 2 SCC 351, wherein the Apex Court had laid down that circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established. Referring to the above judgment of Gambhir v. State of Maharashtra (supra), principles were again reiterated by the Supreme Court in K.V. Chacko v. State of Kerala, (2001) 9 SCC 277, wherein following law was laid down in paragraph 5:*

*“5. The law regarding basing a conviction by the Courts on circumstantial evidence is well settled. When a case rests upon the **circumstantial evidence**, such evidence must satisfy three tests: (1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established (2) those circumstances should be of a*

*definite tendency unerringly pointing towards guilt of the accused; (3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused. **The circumstantial evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.***

*(emphasis supplied)*

122. With regard to the importance of establishing motive in a case of circumstantial evidence, **the Hon'ble Supreme Court of India in a very recent judgment titled as Sukhpal Singh v. State of Punjab reported in 2019 SCC OnLine SC 178, has held that the inability of the prosecution to establish motive in a case of circumstantial evidence is not always fatal to the prosecution case.** Relevant part from the aforesaid judgment is extracted below:

*“15. The last submission which we are called upon to deal with is that there is no motive established against the Appellant for committing murder. It is undoubtedly true that the question of motive may assume significance in a prosecution case based on circumstantial evidence. But the question is whether in a case of circumstantial evidence inability on the part of the prosecution to establish a motive is fatal to the prosecution case. **We would think that while it is true that if the prosecution establishes a motive for the accused to commit a crime it will undoubtedly strengthen the prosecution version based on circumstantial evidence, but that is far cry from saying that the absence of a motive for the commission of the crime by the accused will irrespective of other material available before the Court by way of circumstantial evidence be fatal to the prosecution. In such circumstances, on account***

*of the circumstances which stand established by evidence as discussed above, we find no merit in the appeal and same shall stand dismissed.”*

*(emphasis supplied)*

**123. Herein it is relevant to highlight that in the case based on circumstantial evidence, proof of motive will be an important corroborative piece of evidence but the inability of the prosecution to establish motive in a case of circumstantial evidence is not always fatal to substantiate their version.**

91. Subsequently, it is settled legal proposition that even if the absence of motive as alleged, is accepted that is of no consequence and pales into insignificance when evidence on record establishes the crime. Undoubtedly, if the genesis of the motive of the occurrence is not proved by the prosecution, the testimony of the witnesses as to the occurrence cannot be discarded only by the reason of the absence of motive. However, in the instant case, the prosecution has examined PW-13 Gajender Yadav who categorically stated in his examination in chief that the appellant and the deceased had a quarrel about two months prior to the incident over a monetary dispute.

### **Conclusion**

92. After considering and re-appreciating the entire evidence in the light of arguments and the reasons given by the learned Trial Court, we are of the considered view that the deceased was last seen with the appellant and the recoveries effected at the instance of the appellant as well as the medical and scientific evidence adduced by the prosecution goes to show that the appellant was perpetrator of the crime. The chain of circumstances and are so well inter-connected and complete which rules out any possibility that there can be any

other person other than appellant who had committed the murder. The circumstances from which an inference of guilt is drawn are cogently and firmly established and the circumstances have definite tendency unerringly pointing towards the guilt of the appellant; the circumstances, taken cumulatively, forms a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the appellant and none else.

93. In the light of the preceding discussion, we find no infirmity in the judgment passed by the trial court and we see no reason to interfere with the same. Accordingly, the conviction of the appellant is upheld. The appeal therefore fails and is dismissed.
94. Copy of the order be communicated to the Trial Court as well as to the Jail Superintendent, Tihar Jail.
95. Trial Court record be sent back along with a copy of this order.

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96. In view of the above order passed in the appeal, the present application is rendered infructuous.
97. The application stands disposed of.

**SANGITA DHINGRA SEHGAL, J.**

**MANMOHAN, J.**

**JANUARY 31, 2020**

**gr**