



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

% Reserved on: 12th April, 2023
Decided on: 26th June, 2023

+ **CRL.A. 399/2018**

SANDEEP @ SANDY Appellant

Represented by: Mr. Mohit Mathur, Sr. Advocate with
 Mr.M.L. Yadav, Mr. Sudershan Joon,
 Mr.Mayank Sharma, Mr. R.S. Kundu
 and Mr. Harsh Gautam, Advocates.

versus

STATE (GOVT. OF NCT OF DELHI) Respondent

Represented by: Mr. B.S. Joon, Spl. PP with
 Ms.Aakirti Mishra, Advocate.
 Mr.Sudhir Nandrajog, Sr. Advocate
 with Mr.Sonat Tokas, Advocate for
 complainant.

+ **CRL.A. 391/2018**

VIJAY DAHIYA Appellant

Represented by: Ms. Neha Kapoor and Mr.Kaushal,
 Advocates.

versus

THE STATE Respondent

Represented by: Mr. B.S. Joon, Spl. PP with
 Ms.Aakirti Mishra, Advocate.
 Mr. Sudhir Nandrajog, Sr. Advocate
 with Mr.Sonat Tokas, Advocate for
 complainant.

+ **CRL.A. 393/2018**

JEET DAHIYA Appellant

Represented by: Ms.Neha Kapoor and Mr.Kaushal,
 Advocates.



versus

THE STATE Respondent
Represented by: Mr.B.S. Joon, Spl. PP with
Ms.Aakirti Mishra, Advocate.
Mr.Sudhir Nandrajog, Sr. Advocate
with Mr.Sonat Tokas, Advocate for
complainant.

+

CRL.A. 444/2018

KISHAN KUMAR MALIK Appellant
Represented by: Mr.Rajeev Mohan, Mr.Swapnil
Krishna, Mr.Nishant Madan,
Mr.Rehan Khan and Ms. Nitika
Pancholi, Advocates.

versus

STATE Respondent
Represented by: Mr. B.S. Joon, Spl. PP with
Ms.Aakirti Mishra, Advocate.
Mr.Sudhir Nandrajog, Sr. Advocate
with Mr.Sonat Tokas, Advocate for
complainant.

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CRL.A. 523/2018

ASHISH JINDAL Appellant
Represented by: Mr.Kanhaiya Singhal, Ms.Jasmeet
Singh, Mr.Udit Bakshi and
Mr.Prasanna, Advocates.

versus

STATE NCT OF DELHI Respondent
Represented by: Mr. B.S. Joon, Spl. PP with
Ms.Aakirti Mishra, Advocate.
Mr.Sudhir Nandrajog, Sr. Advocate
with Mr.Sonat Tokas, Advocate for
complainant.



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CRL.A. 608/2018

SANDEEP @ JAI

..... Appellant

Represented by: Mr. N Hariharan, Sr. Advocate with
Mr. Vaibhav Sharma, Mr. Varun
Deswal, Ms. Punya Rekha Angara,
Ms. Urvashi Sharma, Mr. Prateek
Bhalla, Mr. Aaditya Vashisht and
Mr. Shariah Mukherji, Advocates.

versus

STATE, NCT OF DELHI

..... Respondent

Represented by: Mr. B.S. Joon, Spl. PP with
Ms. Aakirti Mishra, Advocate.
Mr. Sudhir Nandrajog, Sr. Advocate
with Mr. Sonat Tokas, Advocate for
complainant.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE POONAM A. BAMBA

MUKTA GUPTA, J.

1. By way of these appeals, the appellant challenges the common judgment dated 3rd February, 2018 of the learned Trial Court whereby all the six appellants were held guilty for murder of ASI Jogender and Munesh punishable under Sections 302 read with 120B of the Indian Penal Code, 1860 ("IPC") and were sentenced to imprisonment for life (remainder of life) along with fine of ₹50,000/- each, in default whereof simple imprisonment for two years. All the six appellants were also held guilty for offence punishable under Section 120B IPC and were sentenced to imprisonment for imprisonment for life along with fine of ₹50,000/- each in default whereof simple imprisonment for two years. Appellants Sandeep @





Jai and Jeet Dahiya were also held guilty for offence punishable under Section 25 Arms Act, 1959, and were sentenced to rigorous imprisonment for one year along with fine of ₹10,000/- in default whereof simple imprisonment for six months. Both Sandeep @ Jai and Jeet Dahiya were also held guilty for offence punishable under Section 27 Arms Act, and were sentenced to rigorous imprisonment for five years along with fine of ₹10,000/- in default whereof simple imprisonment for one year. Appellants Ashish Jindal and Sandeep Chaudhary @ Sandy were also held guilty under Section 201 IPC and were directed to undergo rigorous imprisonment for seven years along with fine of ₹20,000/- in default whereof, simple imprisonment for two years. Another accused person named Vicky Bajaj was charged for offence punishable under Section 201 IPC and was acquitted by the learned Trial Court.

2. Brief facts of the prosecution case are that on 11th December, 2016, at about 5.00-6.00 AM, Ram Safal Dass (PW-9) went to the street to answer nature's call where he saw one leg of a person protruding outside from the rear room of the office of Jogender, on which he immediately contacted Satya Prakash (PW-10) who told him to call at No.100. After calling at No.100, he called Balwinder (PW-8). Information was recorded by the police vide DD No.13B and SI Mahesh (PW-22) and Ct. Surya Prakash reached the spot, where at the rear room of property No.C-1/82, Deep Vihar, Sector-24, Rohini, dead body of a male was lying on the floor with head resting in the sofa, and body of a female was lying on the bed. SI Mahesh informed about the incident to the SHO and prepared the *rukka* (Ex.PW-3/A) on the basis of which, FIR No.862/2016 dated 11th December, 2016



under Sections 302 IPC and Sections 25/27 Arms Act was registered at PS Shahbad Dairy. SHO inspected the spot, and found used cartridges and lead lying in the room. Crime team was also called at the spot and articles were seized. Thereafter, search was made for any CCTV in the area, and one camera was found installed at C-1/78 belonging to one Sachin Jain, which was viewed and checked in the presence of Zile Singh and Raj Kumar, who identified all the six accused persons. In the meantime, the bodies were sent to mortuary for post-mortem examination. The dead bodies were identified by Zile Singh, who identified the male as Jogender and female as Munesh.

3. Dr. Vijay Dhankar (PW-41) along with Dr. Narayan Dabas (PW-46) conducted the post-mortem examination on the dead bodies of Munesh and Jogender on 11th December, 2016 vide the reports (Ex.PW- 41/A and PW-41/B respectively) and opined:

Injuries to deceased Munesh as per Ex.PW-41/A

“VIII. PROBABLE TIME SINCE DEATH

About 12-24 hours prior to the conduct of postmortem examination based on postmortem changes and within about 2-4 hours of last meal. Body preserved in cold storage.

IX. EXTERNAL EXAMINATION

- 1. Firearm penetrating entry wound, reddish margins, cruciate shaped measuring 3.5cm x 2 cm x brain deep, present over the forehead in midline, directed front to back, midline to left and horizontally, 6 cm below the vertex.*
- 2. Firearm penetrating entry wound, reddish abrasion collar, measuring 2cm x 1cm x muscle deep present over the left side of neck, directed above downwards, right to left and front to back, situated 144 cm above the left heel.*
- 3. Firearm penetrating entry wound, reddish abrasion collar, measuring 1cm x 1cm x abdominal cavity deep present over*



the left side of abdomen, directed above downwards, right to left and front to back, situated 106cm above the right heel, 2.5 cm away from midline.

4. *Firearm exit wound, measuring 1.2cm x 1.2cm x muscle deep present over the back of left shoulder, situated 5cm inner to right shoulder and 142 cm above the left heel.*
5. *Firearm exit wound, measuring 1cm x 0.6cm x muscle deep present over the back on left side, situated 100cm above the left heel and 8 cm away from midline.*
6. *Multiple contusions, bluish to brown, present over the both lower limbs at several places, varying in sizes from 0.5 cm x 0.3 cm to 8 cm x 3 cm.*

X. INTERNAL EXAMINATION

a. Head

On reflection of the scalp, effusion of blood was present beneath the scalp on frontal area. Comminuted fracture of the frontal bone present with spider web pattern of linear fractures originating from the central defect. Blackish soot particles present in the frontal bone and initial half of bullet track. Fractures and defects in the skull and Meninges present corresponding to the entry. Fracture measuring 2x1 cm present over right occipital bone with yellowish metallic projectile in situ in the bone, weighing 4.5 gm and measuring 1.2 xmx 0.7 cm. No epidural hemorrhage was present. Diffuse Subdural and subarachnoid hemorrhage was present over all over the brain. Brain parenchyma was lacerated and bullet track present in the both cerebral hemispheres from left frontal lobe to right occipital lobe passing. Brain weighed 1075 grams.

b. Neck

Extravasation of blood was seen in the soft tissues of neck on the left side. The Larynx, pharynx and tracheal mucosa were unremarkable. Tracheal mucosa was pale. Thyroid gland, right sided strap muscles of neck and right sided vessels of neck were unremarkable. Left sided strap muscles and common carotid artery and vein was lacerated. Hyoid Bone and Thyroid Cartilage were intact.



c. Chest

No Effusion of blood was present on reflection of chest wall. Right and left pleural cavity were unremarkable. Collar bone, ribs and sternum were intact. Both lungs were pale and weighed 376 grams and 372 grams on the left and right side respectively. Cut section was unremarkable except for pallor.

Pericardium and Pericardial cavity was unremarkable. Valves were patent and competent. Coronary ostia were patent. Patency present in the various segments of the coronary tree. No congenital anomalies were present. Diaphragm was intact.

d. Abdomen

Effusion of blood present on reflection of abdominal wall corresponding to external injury no. 3. Peritoneal cavity contained about 500 cc of blood. Visceral organs were pale. Liver was, pale and weighed 1072 grams. Spleen was lacerated on its hilar surface, pale and weighed 83 grams. Cut section was unremarkable except for pallor.

Stomach contained about 50 cc of brownish semi-digested food material. No specific smell was emanating from the contents. No specific food particles were identifiable. Mucosa of the stomach was pale. Multiple lacerated wound caused by bullet present over small intestinal loops. Small intestine contained fluids and gases. Large intestine contained fecal matter and gases. Mucosa of small intestine was unremarkable. Mucosa of large intestine was unremarkable.

Both kidneys were pale and weighed 78 grams and 81 grams on the right and left sides respectively. Both adrenals were unremarkable. Abdominal vessels were grossly normal.

e. Pelvis

Pelvic cavity was unremarkable. Hip bones were intact. Urinary Bladder was empty. Walls of the bladder were grossly normal. Rectum was empty. Uterus and adnexa were unremarkable on cut section.

f. Track of injuries



1. *Bullet entered from injury no. 1 from forehead, penetrated skull and brain, lodged in skull bone on back.*
2. *Bullet entered through external injury no. 2, perforating left side of neck structures and bullet exited through left side of back of shoulder.*
3. *Bullet entered through external injury no. 3, perforating left side of abdomen, spleen, intestines and exited through left side of back.*

Opinion

Death is due to combined effect of craniocerebral damage and hemorrhagic shock consequent to the multiple gunshot injuries over the body. All injuries are ante-mortem and fresh before death except injury no. 6, which was about 2-4 days old. Injury no. 1 to 5 were caused by a projectile discharged through some firearm. Injury no. 6 was caused by blunt force. Injury no. 1 to 5 along with the corresponding internal injuries are sufficient to cause death in the ordinary course of nature.”

Injuries to deceased Jogender as per Ex.PW-41/B

“VIII. PROBABLE TIME SINCE DEATH

About 12-24 hours prior to the conduct of postmortem examination based on postmortem changes and within 2-4 hours of last meal. Body preserved in cold storage.

IX. EXTERNAL EXAMINATION

1. *2 firearm penetrating entry wounds, with overlapping margins over an area of 2x1.2 cm with blackening of wound margins and track, present over left side of forehead, reddish abrasion collar, directed below upwards, front to back and left to right, situated 8 cm below vertex of the head, 9 cm away from midline.*
2. *Firearm penetrating entry wound, reddish abrasion collar, measuring 1.6cm x1.2 cm x pleural cavity deep, present over left side of chest, directed front to back, left to right and horizontally, 8.5 cm away from midline, 6 cm above nipple, 144 cm above the left heel.*



3. *Firearm penetrating entry wound, reddish abrasion collar, measuring 1cm x 1cm x pleural cavity deep, with surrounding tattooing measuring 21cm x 12 cm, present over the outer aspect of left arm, 20cm above the left elbow and 131 cm above the left heel, directed front to back, left to right and horizontally.*
4. *Firearm penetrating entry wound, reddish abrasion collar, measuring 1.2cm x 1cm x abdominal cavity deep, tattooing measuring 28cm x 24cm, present over the right side of abdomen in midline, directed above downwards, right to left and front to back, situated 121cm above the right heel.*
5. *Firearm penetrating entry wound, reddish abrasion collar, measuring 1.8cm x 1.2cm x abdominal cavity deep, tattooing measuring 28cm x 24cm [as described above], present over the right side of abdomen in midline, directed horizontally, outwards and front to back, situated 116cm above the right heel, 8 cm away from midline.*
6. *Firearm penetrating entry wound, reddish abrasion collar measuring 1cm x 1cm x muscle deep, with surrounding tattooing over an area of 13x6 cm, present over the left buttock in its upper and outer quadrant, 91cm above left heel; directed horizontally, back to front.*
7. *Firearm exit wound, measuring 2cm x 1cm x muscle deep present over the back of head on right side, situated 3.5cm away and 4 cm above the external occipital protuberance.*
8. *Firearm exit wound, measuring 2cm x 1cm x muscle deep present over head on right temporal area, situated 6cm below the vertex.*
9. *Firearm exit wound measuring 2cm x 1.5cm x muscle deep present over the back on left flank, 97 above the left heel.*
10. *Lacerated wound, measuring 2cm x 1 cm present over index finger of left hand over the middle phalanx.*
11. *Abrasion, reddish, measuring 6cm x 0.2 cm present over front of left arm, 9 cm below the shoulder tip.*

X. INTERNAL EXAMINATION

a. Head



On reflection of the scalp, effusion of blood was present beneath the scalp on right side. Fractures and defects in the skull and Meninges present corresponding to the entry and exit wounds over head respectively. No epidural hemorrhage was present. Diffuse Subdural and subarachnoid hemorrhage was present over all over the brain. Brain parenchyma was lacerated and bullet track present in the both cerebral hemispheres from left frontal lobe to right temporal lobe and left frontal lobe to right occipital lobe passing through the brain stem. Brain weighed 1263 grams.

b. Neck

No extravasation of blood was seen in the soft tissues of neck. The Larynx, pharynx and tracheal mucosa were unremarkable. Tracheal mucosa was pale. Thyroid gland, strap muscles of neck and vessels of neck were unremarkable. Hyoid Bone and Thyroid Cartilage were Intact.

c. Chest

Effusion of blood was present on reflection of right side of chest wall beneath and surrounding the external injuries over back and front of chest. Yellowish metallic projectile, weighing about 4.5 gm, measuring about 1.2cm x0.7 cm present in the chest wall on right side over the scapula. Right and left pleural cavity contained 800 cc and 1000 of blood respectively. Collar bone, and sternum were intact. Perforating lacerated bullet track present in the both lungs corresponding to external injuries. Both lungs were pale and weighed 410 grams and 215 grams on the left and right side respectively. Cut section was unremarkable except for pallor.

Pericardium was lacerated over front and back, above and below the lacerated ascending aorta. Pericardial cavity contained 250 cc of blood. Valves were patent and competent. Coronary ostia were patent. Patency present in the various segments of the coronary tree. No congenital anomalies were present. Diaphragm was intact.



Yellowish metallic projectile present in the body of 4th thoracic vertebra on right side, weighing about 4.5 gm, measuring about 1.2 cm x 0.7 cm.

Yellowish metallic projectile present over back on right side 24 cm below the right scapula, weighing about 4.5 gm, measuring about 1.2 cm x 0.7 cm.

d. Abdomen

Effusion of blood present on reflection of abdominal wall. Peritoneal cavity contained about 200 cc of reddish fluid. Visceral organs were pale. Liver was, pale and weighed 1155 grams. Spleen was pale and weighed 83 grams. Cut section was unremarkable except for pallor.

Stomach contained about 100 cc of semidigested yellowish material. No specific smell was emanating from the contents. No specific food particles were identifiable. Mucosa of the stomach was pale. Multiple lacerated wound caused by bullet present over small intestinal loops. Small intestine contained fluids and gases. Large intestine contained fecal matter and gases. Mucosa of small intestine was unremarkable. Mucosa of large intestine was unremarkable.

Both kidneys were pale and weighed 88 grams and 94 grams on the right and left sides respectively. Both adrenals were unremarkable. Abdominal vessels were grossly normal.

e. Pelvis

Pelvic cavity was unremarkable. Left hip bone was fractured and yellowish metallic projectile present in the body of left hip bone, weighing about 4.5 gm and measuring about 1.2 cm x 0.7 cm. Right hip bones were intact. Urinary Bladder was empty. Walls of the bladder were grossly normal. Rectum was empty.

f. Track of Injuries

1. *2 Bullets entered from injury no. 1 from left side of forehead, perforated skull and brain and exited separately through external injury no. 7 and 8.*



2. *Bullet entered through external injury no. 2, penetrating left side of chest wall, left lung, perforating heart, right lung and bullet lodged in chest wall over scapula on back on right side.*
3. *Bullet entered through external injury no. 3, perforating left sided arm muscles, left chest wall, left lung and lodged in 4th thoracic vertebra.*
4. *Bullet entered from external injury no. 4, perforated abdominal wall, intestines and exited through external injury no. 9.*
5. *Bullet entered through external injury no. 6, penetrated left hip muscles and lodged in left hip bone.*

XI. OPINION:

Death is due to combined effect of craniocerebral damage and hemorrhagic shock consequent to the multiple gunshot injuries over the body. All injuries are ante-mortem and fresh before death. Injury no. 1 to 10 were caused by projectile discharged through some firearm. Injury no. 1 to 9 along with the corresponding internal injuries are sufficient to cause death in the ordinary course of nature.”

4. On receipt of secret information, Jeet Dahiya and Sandeep @ Jai were arrested vide arrest memo Ex.PW-22/L and Ex.PW-22/N respectively on 11th December, 2016 at G3S Mall Rohini. It came to the knowledge of Insp. Vipin Yadav (PW-51) that appellant Vijay Dahiya was already arrested in an arms case at PS Panipat, Haryana and accordingly, after obtaining permission from the Court, appellant Vijay Dahiya was interrogated and thereafter, arrested vide arrest memo Ex.PW-51/E. Upon secret information, appellant Krishan Kumar Malik was apprehended and arrested from near a mosque opposite a petrol pump at Sector-16, Rohini on 22nd February, 2017 vide arrest memo Ex.PW-51/K. Appellant Ashish Jindal and Sandeep @ Sandy moved applications for surrender before the Court on



28th February, 2017 and 16th March, 2017 respectively which was allowed and they were arrested vide arrest memo Ex.PW-39/H and Ex.PW-39/L respectively. Thereafter, after completion of investigation, the charge-sheet was filed and the accused persons were charged for offences punishable under Sections 120B IPC and 302 IPC read with 120B IPC. Appellants Jeet Dahiya and Sandeep @ Jai was also charged for offence punishable under Sections 25/27 Arms Act. Sandeep Chudhary @ Vicky and Ashish Jindal was also charged for offence punishable under Section 201 IPC. Accused Vicky (since acquitted) was charged for offence punishable under Section 201 IPC for screening his brother Jeet Dahiya.

5. Learned Senior Counsel for the appellant Sandeep @ Sandy assails the impugned judgment on the ground that the charge with respect to the offence of conspiracy itself is very vague and there is no cogent evidence on record to prove the same. It was contended that the prosecution failed to rule out a plausible version put forth by the defence that the deceased Jogender was murdered for being in an adulterous relationship with deceased Munesh who was the wife of Jitender Kumar (PW-4). It was further contended that the testimonies of PW-1, PW-2 and PW-8 are unreliable and untrustworthy as these witnesses identified the assailants from the CCTV footage which was opined by scientific examination that the faces of the assailants are unrecognizable and therefore, the Trial Court erred in putting the testimony of PW-8 on a higher pedestal as that of the scientific evidence. Further, it was pointed out that the investigating agency only showed a selected portion of the CCTV footage to the witnesses as per its convenience when in fact CCTV footage of a better time i.e. in the



evening of 10th June, 2016 around 5.00 PM, when the appellants visited the office of deceased Jogender would have been available. It was also pointed out by learned Senior Counsel that as per the report of the RFSL, the CCTV footage was opined to be blur, out of focus and of low pixel, despite which the learned Trial Court relied upon the testimony of PW-8 who was an interested witness and who also improvised his version while making his statement before the Court. It was further contended that the post-mortem report is also not free from doubt as the same leaves the window open for the time of death. Even the testimony of Dr. Vijay Dhankar (PW-41) reveal that the inquest papers were never sent to him which again renders the prosecution version doubtful. As per the version of the Nodal Officer, the phone of the appellant Sandeep @ Sandy could not be traced as it did not receive or send any message at the relevant time, but the same does not prove destruction of evidence by the appellant and therefore, even the charge under Section 201 IPC framed against the appellant was incorrect. It was further contended that even Sachin Jain (PW-7) is not a reliable witness as he himself admitted that the IO had read over his statement to him before he appeared in the Court. It was also the case on behalf of the appellant Sandeep @ Sandy that no recovery was made at the instance of the appellant. Learned counsel also drew attention of this Court to various contradictions and improvements inter se the version of the prosecution witnesses. And thus, it was prayed that the impugned judgment being erroneous in law and facts be set aside and the appellant be acquitted.

6. Learned counsel appearing on behalf of appellants Jeet Dahiya and Vijay Dahiya contended that the prosecution miserably failed to prove the



alleged motive of offence i.e. the incident of 9th December, 2016 which took place at Kisan Bhawan. It was contended that Raj Kumar (PW-1) made substantial improvements while making his testimony before the Court. He did not mention about the presence of Balwinder (PW-8) at the spot on 11th December, 2016. PW-1 also deposed that the deceased was running a gambling racket which shows that there could be previous animosity with some third persons and thus the possibility of someone else being the offender cannot be ruled out. It was further contended that the testimony of Zile Singh (PW-2) was based on hearsay evidence and, therefore, the same cannot be relied upon. It was further pointed out that Harinder (PW-15) and one Jai Kumar (who was dropped and not examined) stated that police met them after two months of the incident and there was no explanation for delay in recording the statement of PW-15 when he stated to have visited the spot on the day of incident itself. It was further contended that as per the deposition of PW-14, there was no quarrel between deceased Jogender and Jeet etc. rather there was an altercation between Jogender and 4-5 persons who had come with Jogender. It was contended that from the evidence of PW-1, 14, 15, 16 and 18 it was not clear that an altercation took place between the deceased and the accused persons on the night of 9th December, 2016 at Kisan Bhawan which would attribute sufficient motive for the appellants to have committed the crime, and the case being based on circumstantial evidence, absence of motive would dent the case of the prosecution and the chain of circumstantial evidence remains broken.

7. Learned counsel for the appellants pointed out contradictions between the version of prosecution witnesses with respect to the time of viewing the



CCTV footage as also the media on which the footage was viewed. Various contradictions and improvements made by Zile Singh (PW-2) and Balwinder (PW-8) were also pointed out by learned counsel to support her case. It was also the case on behalf of the appellant that the IO failed to investigate the possibility of other suspects like husband of deceased Munesh, wife of Jogender, and also Balwinder Singh and Zile Singh who had the keys of the premises or any other person who had animosity with the deceased. Learned counsel also pointed out that as per the case of the prosecution, the incident took place between 10.42 to 10.47 PM on 10th December, 2016 however, as per the testimony of PW-9, he heard some noises at about 11.00-11.15 PM but even at that time he did not notice anything abnormal outside his house. Therefore, the possibility of murder being committed after 11.15 PM cannot be ruled out. Learned counsel further contended that no explanation was put forth by the IO to explain why DVR was not seized and only the hard disc was seized that too on 16th December, 2016 despite video being seen on 11th December, 2016 itself. Even, thereafter the hard disc was sent to FSL on 4th January, 2017 and no explanation has been put forth to explain the delay. Furthermore, possibility of manipulation in the hard disc cannot be ruled out specially when PW-7 stated that the certificate under Section 65B Evidence Act was prepared by the police itself. Further the hard disc containing the CCTV footage was sent to FSL wherein it was copied in a pen drive and it was this pen drive which was again sent to FSL. On this second instance of sending the footage to the FSL, the pen drive sent for examination was found to contain five videos out of the entire duration from 3.00 PM to 11.00 PM and it is



unknown as to how and when the CCTV footage contained in the hard disc became five videos. And thus, again the possibility of tampering of the video cannot be ruled out. Even otherwise, there was no conclusive matching as per the FSL report of the footage identifying the appellants to be the persons seen in the alleged footage. Learned counsel further pointed that there was a delay in sending the *rukka* for which there is no explanation put forth. Learned counsel also pointed out towards the unnatural conduct of Jitender Kumar (PW-4) who was the husband of deceased Munesh as he stated that he did not make any call or had not gone to search his wife when she was missing from the house on 10th December, 2016. It was also contended that the version of PW-20 that no footprints were observed by him from the scene of crime was impossible looking at the terrain of the area leading to the spot. It was further contended that the information recorded in DD No.13B was recorded at 7.40 AM while the *rukka* (Ex.PW-3/A) was sent at 11.50 AM and there is no explanation put forth in this regard. Furthermore, as per the version of PW-1, 2, 7 and 8, the CCTV footage was seen between 10.00 to 10.30 AM i.e. before sending the *rukka* however, there is no mention about watching this CCTV either in the *rukka* or in the FIR. Learned counsel for the appellants further pointed out that the CDRs in the present case can also not be relied upon because as per the said CDRs, the location of the appellants at the relevant time on 10th December, 2016 was Sector-16/17, Rohini and not Sector-24 which is six kilometers away from the place where the incident took place. It was further contended that as per PW-41, the bullets recovered from the body of the deceased after post-mortem examination were handed over to the police



and therefore, the possibility of planting the same cannot be ruled out as the same were sent to FSL on a later date i.e. on 2nd January, 2017. Learned counsel for the appellants also contended that the pistols which are the alleged weapon of offence in the present case were recovered on 15th December, 2016 and the delay in effecting the recovery creates doubt in view of the fact that the IO had already recorded the disclosure statement of the appellant. It was also contended that even otherwise, the recovery qua appellant Jeet Dahiya has not been proved in terms of the provisions of Section 27 of the Evidence Act and in this regard reliance was placed on the decision in 2022 SCC OnLine SC 1396 Ramanand @ Nandlal Bharti vs. State of U.P. Learned counsel placed reliance on the decision in (2016) 16 SCC 418 Harbeer Singh vs. Sheeshpal & Ors.; Crl.Appeal No.1794/2013 Machindra vs. Sajjan Galpha Rankhamb & Ors.; Crl.Appeal No.954/2011 Shankar vs. State of Maharashtra; Crl.Appeal No.410-411/2015 Ravi Sharma vs. State (Government of NCT of Delhi) & Anr.; AIR 2020 SC 4894 Amar Singh vs. The State (NCT of Delhi); AIR 2022 SC 3765 Khema @ Khem Chandra etc. vs. State of Uttar Pradesh; Crl.Appeal No.384/2006 The State of Karnataka vs. S. Nagaratna and 1996 (36) DRJ (DB) Devi Prasad Sharma vs. State to substantiate her contention and submitted that in the absence of motive, failure to prove the recovery of Dzire car, contradictory FSL reports, doubts in the testimony of material witnesses and delay in seizing the exhibits and sending them to FSL along with other fallacies in the prosecution story are sufficient reasons to hold that the prosecution failed to prove its case beyond reasonable doubt and thereby acquit the appellants.



8. Learned counsel appearing on behalf of appellant Krishan Kumar Malik contended that there is no evidence on record to show that the appellant Krishan Malik entered into an agreement to commit the alleged offence. The case of the prosecution was based on three circumstances i.e. first, the incident at Kisan Bhawan dated 9th December, 2016; second, the presence of all the appellants at 5.30 PM at the office of Jogender on 10th December, 2016; and third, the presence of some of the appellants at 10.00 PM outside the gali leading to Singh Properties. It was submitted by learned counsel that for applicability of Section 10 of the Evidence Act, it is pre-requisite to prove the existence of conspiracy and it is only after it that anything said and done would be a relevant fact. And, in the absence of any evidence to establish the arriving at an agreement or conspiracy, the appellant cannot be held guilty for the same. It was further contended that in a case based on circumstantial evidence, the prosecution is required to prove the guilt of the accused beyond reasonable doubt. It was also submitted that in such cases motive is an important factor and absence of motive in a case of circumstantial evidence would weigh in favour of the accused for which reliance was placed on the decision in (2020) 10 SCC 166 Anwar Ali and Ors. vs. State of Himachal Pradesh. Learned counsel further contended that nothing has been brought on record to show the exact time of the incident. Learned counsel also pointed out that it is unknown how the door of the room where in the incident took place was opened as it could not be a case that both the deceased were not sleeping without bolting the door, and the door was not even found broken, and therefore, it is unknown as to how the appellants got access to the place of incident.



Further, it was pointed out that there were three keys to the room where the incident took place i.e. one was with the deceased Jogender, one with Zile Singh (PW-2) and the other with Balwinder Singh (PW-8) and therefore, the possibility of having access to the room from the front door of the property was never considered in the case. Learned counsel further contended that as per the case of the prosecution, the appellant Krishan Malik was absconding from 11th December, 2016 and was arrested only on 22nd March, 2017 on the basis of a secret information. Insp. Vipin (PW-51) who conducted the investigation in the present case from 19th December, 2016 till the filing of the charge-sheet does not state about any efforts made by him to make the appellant join the investigation. It was submitted that the said appellant was a permanent resident of House No.G-4/230-231, Third Floor, Sector-16, Rohini which was in the knowledge of both the IOs i.e. PW-51 and PW-53. Neither any notice was served on the family members of the appellant nor any notice was pasted on his house informing him to join the investigation nor any raid was conducted at any place to trace the appellant; and therefore, it cannot be said that the appellant was absconding. With respect to the identification of the appellant from the CCTV footage, there are three versions on record; firstly, PW-1, 2 and 8 identified one person in the last group going towards Singh Properties as Krishan Malik; secondly, Kamal Kant (PW-14) failed to identify Krishan Malik in the CCTV footage; and thirdly, that both the reports from FSL (Ex.PW-35/A) and RFSL (Ex.PW-47/A) have stated that no identifiable feature was gathered from the recording to establish the identity of Krishan Malik. And, the expert did not make any observation regarding similarity between the recording and the



photograph taken from the dossier of Krishan Malik (Mark D3). It was submitted by learned counsel that the opinion of expert is based after taking aid and assistance of scientific instruments and thus, the identification by PW-1, 2 and 8 based on their naked eye cannot be given predominance over the scientific evidence. It was also pointed out that it was for the prosecution to explain the basis on which the witnesses identified the appellant as in the absence of any identifiable or distinguishing feature apparent from the recording, the identification by the said witnesses cannot be believed. It was further pointed out that initially the case of the prosecution was that only PW-1 and PW-2 went along with the police to view the CCTV footage but later during the trial, the prosecution changed its stand and added PW-8 as another witness who also viewed the CCTV footage on the day of incident at the office of Sachin Jain (PW-7). Insp. Vipin Yadav in his cross-examination stated that he also viewed the CCTV footage in the presence of witnesses and it was contended that PW-51 did not have any occasion to view the CCTV footage unless he was in possession of the downloaded data from the hard disc, and if the IO was in possession of downloaded data, there is each and every possibility of tutoring the witnesses before their deposition. Learned counsel for the appellant further contended that none of the witnesses were the eye witnesses to the incident and their identification from the CCTV footage cannot be termed at par with the dock identification. Reliance was placed on the decision in (2022) 9 SCC 409 Amrik Singh vs. State of Punjab. It was pointed out that no identification memo was prepared with respect to identification of appellant Krishan Malik during investigation and the scientific evidence runs contrary to the



deposition of the witnesses, and therefore, the identification of the appellant by way of CCTV cannot be relied upon. Learned counsel also contended that the statement under Section 161 Cr.P.C. by the witnesses PW-1, 2 and 8 were in fact not recorded on 11th December, 2016 but were ante-dated. It was submitted that the statements of the witnesses recorded in the case diary by the IOs PW-51 and PW-53 were randomly recorded in that diary and thereby not adhering to the mandate incorporated in Section 172 (1A) and (1B) of Cr.P.C. which casts doubt on the statements of these witnesses. Further, it was submitted that in the absence of any explanation for the same, an adverse inference must be drawn against the case of the prosecution and in this respect, reliance was placed on a decision in CrI.A. No.485/2012 dated 11th February, 2016 Laxmi @ Lachho & Anr. vs. NCT of Delhi.

9. Learned counsel appearing on behalf of appellant Ashish Jindal submitted that neither any altercation took place between deceased Jogender and the appellant on 9th December, 2016 at Kisan Bhawan nor at deceased Jogender's office in the evening of 10th December, 2016. It was submitted that the testimonies of PW-1 and PW-15 are contrary to the CDR of deceased Jogender which shows that the deceased reached Kisan Bawan at about 11.08 PM and stayed there till at least 1.34 AM. The CDR of the deceased further reveals that there were numerous calls exchanged between PW-1 and the deceased Jogender which shows that they were not together. Even otherwise, PW-14 categorically stated that no altercation took place between the deceased Jogender and the appellants, rather an altercation took place between the deceased Jogender and the persons accompanying him



with respect to deceased Munesh. It was also pointed out by learned counsel that during his cross-examination, PW-8 stated that he knew inspector Ashok Sharma (IO) prior to the incident and, therefore, it was contended that the fact that the IO was acquainted with the most vital witness in the case, the cracks in the story are liable to be seen with utmost care. It was also pointed out by learned counsel that although PW-8 denied the presence of deceased Munesh at the office of Jogender in the evening of 10th December, 2016, the CDR of Munesh reveals otherwise and shows her presence at the office of deceased Jogender. It was also contended that the CCTV footage for the period between 4.00 PM to 6.00 PM on 10th December, 2016, which would have been the “best evidence” to show the presence of Scorpio car and the appellant in and around the vicinity of the place of incident was not brought on record and rather the prosecution chose to withhold the same and hence, an adverse inference must be drawn under Section 114 (g) of the Indian Evidence Act and reliance was also placed on the decision in (2015) 7 SCC 178 *Tomaso Bruno vs. State of U.P.* Learned counsel also contended that the testimony of PW-8 is full of variations and improvements and cannot be relied upon for the reason that his conduct was unnatural as, as per PW-8 he got suspicious and noted down the number of Swift Car on his palm despite which he went back to his home and slept. It was submitted that it was beyond imagination that a person noted down a number on his palm when he saw a car on the opposite side of a busy road after which he went to his home, had dinner, and the number still remained on his palm till the next morning when his statement was recorded as he saw the number on his palm and informed the police, despite which his palm



was never photographed. It was also contended that the prosecution failed to prove the ownership of the Swift Dzire car being No. DL 2CAN 3029 in favour of appellant Ashish Jindal, and even otherwise the recovery of the said car is also doubtful as the same was recovered at the instance of appellant Sandeep @ Jai and not at the instance of appellant Ashish Jindal (Ex.PW-22/A2). It was further contended that the possibility of commission of offence by some other person has not been ruled out by the prosecution. It was pointed out that the case of prosecution was not that it was a case of forced entry in the room where the deceased were found dead and on the contrary, spare keys of the said property were available with Zile Singh (PW-2) and Balwinder (PW-8). It was also pointed out that the police did not investigate the angle of any property dispute or the angle that deceased Jogender was probably having an affair with deceased Munesh. Learned counsel drew attention to the post-mortem report of deceased Munesh (Ex.PW-41/A) and of deceased Jogender (Ex.PW-41/B) as also the subsequent opinion (Ex.PW-41/D and C respectively) to contend that the deceased Munesh had contusions and deceased Jogender had abrasion which points out to a possible physical altercation which aspect also remains unexplained. Even otherwise, the nature of injuries as reflected in the said post-mortem report cannot be inflicted within three minutes which is the case of the prosecution as per the CCTV footage. It was further contended that the identification of the appellants from CCTV footage is doubtful. It was pointed out that as per the CDRs and the statement of witnesses PW-1, 15 and Jai Kumar, it is apparent that they were not present at the place of incident between 8.00 AM till 12.51 PM on 11th December, 2016 and



therefore, the case of prosecution that PW-1 was present and saw the CCTV footage at 10.00 AM is concocted. Even otherwise, it is sufficiently clear that PW-1, 2 and 8 were neither close relatives nor close friends of the appellants and therefore, it would be unreasonable to presume that the said witnesses had the occasion to observe the gait/appearance of the appellants and identify them. Learned counsel also pointed out various discrepancies in the investigation of the present case and pointed out that as per the CDR of mobile No.9268043722 which was used by deceased Jogender, there were two calls made at 8.17 and 8.30 AM on 11th December, 2016 to mobile No.9266650360 and the identity of this mobile number was neither brought on record nor sought to be established. Further, it was pointed out that another mobile No.9503380272 which was seized on 11th December, 2016 (Ex.PW-2/G) and was deposited on the same day (Ex.PW-12/A) was in operation on 14th December, 2016 at 5.09 PM at Bawana Road (which is five kilometers from PS Shahbad Diary) and was also in operation on 15th December, 2016 at Village Karala (Which is at a distance of seven kilometers from PS Shahbad Diary). Learned counsel for the appellant also contended that the order on sentence was bad and perverse as the learned Trial Court directed the convicts to undergo “life imprisonment i.e. the remainder of the life” which is unsustainable in view of the decisions of Hon’ble Supreme Court in SLP (Crl.) No.7830/2021 dated 28th February, 2022 Narendra Singh @ Mukesh @ Bhura vs. State of Rajasthan and (2016) 7 SCC 1 Union of India vs. V. Sriharan.

10. Learned Senior Counsel for appellant Sandeep @ Jai contended that there was no motive for the appellant to commit the offence and even if the



prosecution version of incident dated 9th December, 2016 at Kisan Bhawan is to be taken, the same did not subsist as the same was put to quiet after the appellant tendered apology to the deceased. Otherwise, in the light of a blind murder case of the deceased, there is every possibility to use the said incident at Kisan Bhawan against the appellant and falsely implicate them. It was contended that the version of PW-8 is concocted and unbelievable. PW-8 in his testimony admitted that he neither named the six appellants nor narrated that the appellants were sitting in the office nor that those appellants were found standing on the road opposite Sector-24 near Swift Dzire Car in his statement recorded under Section 164 Cr.P.C. It was contended that even the conduct of PW-8 was unnatural as despite him being suspicious, he neither made a call to the police nor any family member of the deceased or the deceased himself to check up on the deceased Jogender. It was further contended that the most crucial piece of evidence i.e. the CCTV footage is also unreliable as the same was seized after a gap of six days after the incident despite having seen the footage on the day of incident itself and no explanation for the same was rendered. And therefore, the possibility of tampering cannot be ruled out. Even otherwise, the certificate under Section 65B of the Evidence Act by Sachin Jain (PW-7) was not valid in the eyes of law when it does not record that Sachin Jain (PW-7) was not the person in operation of the device and did not use to operate the said device. Furthermore, Sachin Jain (PW-7) was tutored witness as he deposed that his statement under Section 161 Cr.P.C was read over to him by the IO before appearing in the Court and also that the certificate under Section 65B Evidence Act was prepared by the police and



handed over to him. It was also pointed out that the learned Trial Court erred in not analyzing and evaluating the CCTV footage on its own and no finding on that account was ever returned by the learned Trial Court, and on the contrary, despite the FSL and RFSL reports, learned Trial Court relied upon the CCTV footage. There is no mention about the CCTV footage in the *rukka* despite having been recorded at 11.40 AM. Dr. Gautam Roy (PW-47) who prepared the second FSL report qua the CCTV footage categorically deposed that the snapshots taken from the alleged footage were blur and without focus as the facial expressions, i.e. chin, forehead, eyebrow, upper and lower lips, nostrils, cheeks, nose, eyes etc. were not visible. It was also pointed out that neither of the witnesses, i.e. PW-1, 2 and 8 stated anything with respect to the walk or gait of the appellants. And therefore, the finding of the learned Trial Court that the witnesses already knowing the accused persons could identify the appellants is patently wrong. Learned Senior Counsel also pointed that statements of PW-1, 2 and 8 were recorded belatedly as the same were recorded in 'typed' format at the police station and in order to fill the lacunae, the subsequent IO introduced a theory that the previous IO was carrying a laptop and printer and that the statements were typed sitting in the mortuary and print outs were taken out. It was further contended that even the alleged recovery of weapon at the instance of the appellant is not in terms with the law under Section 27 of the Evidence Act for which reliance was placed on the decision in Ramanand @ Nandlal Bharti (supra), (1983) 1 SCC 143 Mohd. Abdul Hafiz vs. State of Andhra Pradesh and AIR 1947 PC 67 Pulukuri Kottaya & Ors. vs. Emperor. It was also pointed out by the learned Senior Counsel that as per



the CDR of the appellant Sandeep @ Jai, at 10.04 PM and 11.01 PM on 10th December, 2016, the appellant Sandeep @ Jai was at his house No.B-64, Sector-17, Rohini. It was also pointed out that despite the disclosure statement having been recorded, the recoveries were effected on 15th December, 2016 i.e. after four days of making the disclosure statement and it is unknown as to why it took four days to get the weapon of offence recovered for which no explanation was furnished. Learned counsel for the appellant further contended that since no motive was proved by the prosecution and there is no evidence of meeting of minds of the accused persons, the prosecution failed to prove the complicity on the part of the appellants. It was submitted that the prosecution had failed to complete the chain of circumstances and establish the guilt of the appellant and in this regard, reliance was placed on the decisions in (1984) 4 SCC 116 Sharad Birdhichand Sarda vs. State of Maharashtra and AIR 1981 SC 765 Shankarlal Gyarsilal Dixit vs. State of Maharashtra.

11. On the other hand, learned Spl. P.P. appearing for the State submitted that the present case was based on circumstantial evidence and the chain of circumstantial evidence was complete and that all the appellants were rightly convicted by the learned Trial Court and thus, the present appeals be dismissed. Learned Spl.P.P. relied upon the following facts:

- i. The presence of appellants as well as the witnesses PW-1, PW-14 and PW-15 is admitted at the Kisan Bhawan on 9th December, 2016. The said incident at the Kisan Bhawan took place in front of 50-60 people which left the appellants feeling insulted at the hands of the deceased Jogender. Tendering or feeling apologetic to the deceased



Jogender was not sufficient to conclude the matter and therefore, the appellants holding their grudge reached the office of deceased Jogender at about 5.00-5.30 PM on 10th December, 2016 where again an altercation ensued and thereafter in order to avenge their humiliation the appellants murdered the deceased.

- ii. PW-8 deposed about the presence of appellants at the office of deceased Jogender on 10th December, 2016 at about 5.00/5.30 PM and as per the testimony of Vipin Yadav (PW-51), on analysis of the CCTV footage for the period between 4.00 PM to 6.00 PM, he noticed a Scorpio vehicle at about 5.00 PM going towards C-1/82, Deep Vihar and going back after 40-45 minutes.
- iii. As per PW-8, the appellants were standing at the corner of the street leading towards the place of incident near a Swift Dzire car at about 10.30 PM on 10th December, 2016.
- iv. The appellants were identified from the CCTV footage by PW-1, PW-2 and PW-8 on 11th December, 2016 itself. While going towards the place of incident, Vijay Dahiya and Sandeep @ Jai @ Lamba were identified as the first group at 10.41.56 hours; Sandeep @ Sandy and Krishan Kumar Malik were identified as second group at 10.42.05 hours and Jeet Dahiya and Ashish Jindal were identified as third group at 10.42.39 hours. While going back from the place of incident towards the main road, Ashish Jindal and Krishan Kumar Malik were identified as the first group at 10.46.43 hours; Jeet Dahiya and Sandeep @ Sandy were identified as second group



at 10.47.13 hours and Vijay Dahiya and Sandeep @ Jai @ Lamba were identified as third group at 10.47.47 hours.

- v. The weapons of offence were recovered at the instance of the appellants Jeet Dahiya and Sandeep @ Jai and the recovery was proved by Ct.Pramod (PW-21), SI Mahesh (PW-22), Ct. Karan (PW-48) and Insp. Ashok Sharma (PW-53).
- vi. Appellant Sandeep @Jai and Jeet Dahiya got the Swift Dzire car bearing No.DL 2CAN 3029 from behind House No.B-6/84, Rohini Sector-17 belonging to appellant Sandeep @ Jai which was proved by SI Mahesh Kumar (PW-22) and Insp. Ashok Kumar (PW-53).
- vii. As per the FSL report of the CCTV camera (Ex.PW-47/A), identity of appellant Jeet Dahiya was found matching with the photograph (Ex.PW-47/1 to 5). The parcel received at the FSL were found with the seals intact and therefore, rules out the possibility of any tampering and does not affect the case of the prosecution.
- viii. All the appellants were together on 9th December, 2016 and were again seen together by PW-8 in the office of deceased Jogender and were again seen together in the CCTV footage at 10.42 PM on 10th December, 2016. Further mobile phones of all the accused persons were found switched off after the incident and these facts are sufficient to draw inference of conspiracy against the appellants.

12. Learned Senior Counsel appearing on behalf of the complainant Zile Singh drew distinction with the Ramanand (supra) by contending that the facts of the present case are entirely different from that case as in Ramanand's case, it is not clear whether disclosure statement was recorded



by the IO or not and learned Senior Counsel submitted that only where disclosure statement is not recorded in writing, the IO and the witnesses to the disclosure should state the exact same facts to make that statement admissible in evidence. It was further submitted that counsels for the appellants over-emphasized on the discrepancy with respect to time of various things in the present case and as no person is perfect, discrepancy in timings for about 1-2 hours is normal and cannot be taken against the case of the prosecution. It was further contended that the society to which the appellants and the deceased belonged, motive of revenge would be much stronger in such society. As regards the identification of the appellants from the CCTV footage, learned Senior Counsel had contended that efficacy of facial recognition is much less than finger print. It was submitted that in cases of facial recognition, two kinds of technology are used i.e. first, geometric, which is holistic in nature and is concerned with broader aspects of identification i.e. body shape, forehead, shape of the face, height etc. and the other is photometric technology which is feature based and which converts the digital data into a mathematical data e.g. distance between eyebrows, length of eyes, distance between cheek bones etc., for which a clearer front photo of the face would be required. Even otherwise, different expressions would entail different kinds of faces which is to say that there would be difference in the measurements of the face when a person laughs and when a person frowns. And, therefore, any result from use of this technology would only be corroborative and not conclusive. It was also submitted that when an effort is made to identify a person by comparing his photograph with his footage by an expert, the same might not yield any



positive result as the former is a 2D form and the latter is a 3D form. In the present case, only front face of Sandeep @ Sandy was available which also was a low pixel image and therefore, the technology would not be able to capture his expressions. It was contended by learned Senior Counsel that even if the experts were unable to identify the appellants, the experts could have drawn a negative conclusion that those persons seen in the footage were not appellants which could have help the appellants. It was further submitted that in terms of Section 45 of the Evidence Act, evidence of an expert would only be of a relevant fact which the Court may take into consideration but would not be sufficient for final determination. It was also pointed out that during cross-examination of PW-35 and PW-47, no question was put to these witnesses regarding the features which would have elicited some opinion if not conclusive opinion; and on the contrary there is evidence of three witnesses i.e. PW-1, 2 and 8 who knew the appellants and identified the appellants. It was also submitted that when one person knows the other person and identifies him, such former person need not describe the features of the latter person that is to say, when PW-1, 2 and 8 knew and identified the appellants, it was not necessary for them to describe their features. Learned Senior Counsel also pointed out to the difference between interested witness and related witness and contended that PW-1, 2 and 8 were friends and relatives of the deceased Jogender but they were certainly not interested in the conviction of the appellants. It was also contended that Balwinder (PW-8) was the president of the Resident Welfare Association and therefore, him noting the number of the car based on his suspicion is not an unnatural conduct rather is tenable and acceptable. Thus, in terms of the



aforesaid contentions put forth on behalf of the State and the counsel for the complainant himself, it was prayed that the present appeals be dismissed and the impugned judgment and the order on sentence be upheld.

13. Having heard both the parties at length and perusing the record, the following evidence emerges.

14. Balwinder Singh (PW-8) deposed that on 10th December, 2016 at about 5:30/6.00 PM, he went to the office of the deceased Jogender where appellants Vijay Dahiya, Jeet Dahiya, Sandeep @ Sandy, Ashish, Krishan and Sandeep @ Lamba were also present and all these persons were arguing some matter on which he went back to his own office. He again came back to the office of the deceased Jogender after about an hour and on inquiry, the deceased Jogender informed him that an altercation took place between deceased's cousin and the appellants on the previous evening, and the appellants had come to the office of the deceased Jogender asking that the deceased Jogender's cousin should tender an apology which deceased Jogender denied. On the same day, at about 10:00 PM, while going towards his home from Sector-24, he noticed a Swift Dzire car bearing No. DL 2CA_ 3029 (he did not remember the alphabet after A). He noticed Jeet Dahiya standing near the car wearing white sports shoes along with two persons standing near him and 3-4 persons waiting near the car. The car was parked on the main road leading to the office of deceased Jogender and as he got suspicious, he noted the number of the car on his left hand and went back home. On the next morning, he received a call from Ram Safal who told him that the deceased Jogender was lying in the door of his office with one foot out of the door. He immediately made a call to brother of the



deceased Jogender, Zile Singh. After arrival of the police, he entered the room and found dead body of a lady lying on the bed, whom he did not know. Thereafter, he along with the SHO tried searching for any CCTV camera in the area and two cameras were found installed at the gate of the premises of Sachin Jain. Thereafter, all of them watched the recording of the CCTV and he noticed that the boys who had come on the previous day in the Scorpio vehicle in the office of deceased Jogender had argued with the deceased Jogender. At about 10:41 PM-10:42 PM, six persons of three groups of two each were seen going from the side of the main road towards the office of deceased Jogender and in the first group, he identified the persons to be Vijay Dahiya and Sandeep @ Lamba; in the second group, he identified Sandeep @ Sandy and Krishan and in the third group, he identified Jeet Dahiya and Aashish. All these persons came from the side of the office of the deceased Jogender and went towards the main road where he had seen the Swift Dzire car parked. In his cross-examination, he was confronted with his statement recorded by the police under Section 161 Cr.P.C. (Ex.PW-8/DA) and it was found that there were substantial improvements in the statement of the witness. He stated that he had not seen the CCTV footage of 10th December, 2016 from 4.00 PM to 6.00 PM and that the police had shown him only the relevant portion of the CCTV footage. He also stated that the police had met him several times, however, his statement was recorded once on 11th December, 2016 at about 1.00/1:30 PM.

15. Zile Singh (PW-2) deposed that the deceased Jogender was his elder brother and was working in Delhi Police. He stated that on 10th December,



2016 at about 7:00 AM, he received a call from Balwinder that one foot of his brother was protruding out of the door of the room of the rear door of the office at C-1/82, Deep Vihar, Rohini and he rushed to the spot where he saw that the body of his brother/deceased Jogender was lying on the floor with head on the sofa. Another body of the lady was also lying on a bed in the room and the body of his brother was having a gunshot injury. Thereafter, police arrived at the spot and his statement was recorded by the police. The police lifted empty cartridges, lead, clothes of deceased Jogender, chappal, purse of the deceased Jogender and also took into possession four mobile phones. The body was sent to the hospital where he also went and identified the body. He stated that the police viewed the CCTV footage installed at the factory of Sachin Jain in his presence and on analysis, it was found that at about 10:42 PM, six persons in three groups consisting of two members each went from the main road towards the office of Singh Properties. It was also found from the photos that four persons in two groups were running from main road from the side of office of Singh Properties towards main road and last group of two persons was moving smoothly. One of the persons in the last group who was taller than the other tried to put a weapon in his right dub but suddenly he handed over the same to the left side person who was shorter. He stated that he identified all the persons visible in the CCTV footage as they were known to him prior to the incident as they used to visit his house and office. He stated that he identified all the persons visible in the CCTV footage. He told the police that in the first group moving from main road towards the office of Singh Properties, the two persons were Vijay Dahiya and Sandeep @ Lamba. In the second group, it



was Sandeep @ Sandy followed by Krishan Malik. In the third group, it was Jeet Dahiya and Ashish Jindal going towards the office. The CCTV footage was played in the Court and shown to the witness who identified all the six appellants. In his cross-examination, he was confronted with his statement recorded by the police under Section 161 Cr.P.C. (Ex.PW-2/DA) and it was pointed out that the witness had made certain improvements in his testimony before the Court. He also stated that the deceased Jogender was married to Rajni who was also working as an ASI in Delhi Police. He further stated that the CCTV footage was viewed by him in the presence of Raj Kumar, Balwinder and the police. He denied the suggestion that facial features seen in the CCTV footage were not recognizable.

16. Raj Kumar (PW-1) deposed that on 9th December, 2016, he along with Harinder and Jai Kumar had gone to Kisan Bhawan, Azadpur Mandi to attend a party and they were called by the deceased Jogender on that day and on reaching there at about 10:00/10:30 PM, they asked appellant Jeet Dahiya for arranging liquor on which the appellant Jeet Dahiya became furious and after sometime, the deceased Jogender also reached Kisan Bhawan. An altercation ensued between the deceased Jogender and the appellants and the appellants later apologized to the deceased Jogender. Thereafter, they left the place for their village and the deceased Jogender was still at Kisan Bhawan when he left from there. On 11th December, 2016 at about 7:00/7:30 AM, he received a call that deceased Jogender was murdered and on reaching the spot, he found Zile Singh and police officials along with some public persons were present at the spot. Thereafter, the police inspected a video camera installed at the factory of Sachin Jain and



he also stated to have seen the footage of the camera wherein six persons in three groups consisting of two persons each was coming from the side of the main door towards the office of the deceased Jogender and after about four minutes, these persons were seen going back to the main side of the road. He stated to have known all the six appellants as they used to visit the deceased Jogender and on playing the video in the court, the witness identified all the six appellants from the said footage. In his cross-examination, he stated that it was not clear in the CCTV footage to identify if Jeet and Vijay were wearing jeans, trouser or lower of a track suit and it was also not clear if they were wearing t-shirt or shirt under the jacket. On seeing the footage again, he stated that both of them were wearing sports shoes.

17. Jitender Kumar (PW-4) deposed that he was the husband of deceased Munesh and that he identified her dead body on 11th December, 2016 at mortuary at Ambedkar Hospital, and after the post-mortem examination, the dead body was handed over to him. In his cross-examination he stated that he knew deceased Jogender as he used to visit his house. He stated that his wife/deceased Munesh was a housewife but used to do work of beauty parlour from home. He further stated that when he returned to his house on 10th December, 2016, his wife was not present at the house and also stated that his wife used to go outside the house often without telling him. He stated that he did not know that his wife/deceased Munesh had gone to the office of deceased Jogender. He stated that he received a phone call at about 9.15-9.30 AM on 11th December, 2016 and some police officials



informed him about the murder of his wife/deceased Munesh. He stated that relations between his wife and himself were normal.

18. Sachin Jain (PW-7) deposed that he was running a warehouse at C-1/78, Deep Vihar, near Sector-24, Rohini and on 11th December, 2016 at about 9.00 AM he received a call from the police that they wanted to analyze/view the CCTV footage of the camera installed at his warehouse. On his reaching the spot, police inspected the DVR of the CCTV with respect to the camera facing the road installed outside his warehouse and downloaded the footage in a pen drive and after about 5-6 days, police seized the hard disc of the DVR vide memo Ex.PW-7/A. He issued a certificate (Ex.PW-7/B) regarding the CCTV footage seized by the police. In his cross-examination he stated that on 13th October, 2017 'my statement was read over to me by the IO before appearing in the Court.' He further stated that the police have seized the CCTV footage immediately on 11th December, 2016 however, no document was prepared regarding taking the CCTV footage by the police on 11th December, 2016. He further stated that the certificate Ex.PW-7/B was prepared by the police and given to me which he signed on the asking of the police.

19. Ram Safal Dass (PW-9) stated that on 10th December, 2016, he was sleeping in his house and at about 11.00-11.15 PM, he heard some noise of crackers upon which his wife asked him to check outside but he responded and said that those noises were of bursting of crackers due to some marriage function. When he tried to open his door of the room, the same was found locked from outside after which he contacted his landlord Satya Prakash who came after sometime and opened the door from outside. He found



nothing unusual so he went back to sleep. He further stated that at about 5.00-6.00 AM when he went outside to answer nature's call, he saw one leg of a person protruding outside from the rear room of the office of Jogender on which he immediately contacted his landlord Satya Prakash who asked him to make a call a number 100. He also made a call to Balwinder and informed him about the incident. In his cross-examination he denied having seen the lady whose dead body was found lying in the office before at the office.

20. Kamal Kant (PW-14) deposed that on 9th December, 2016, he had booked four rooms at the third floor of Kisan Bhawan for organizing a party where Jeet, Vijay, Krishan, Sandy, Lamba and Ashish and 4-5 other persons were present. Later on, deceased Jogender along with 4-5 persons also came to the party. In the meantime, deceased Jogender had some altercation with those 4-5 persons who had come along with Jogender. Jeet etc. intervened and thereafter, they all left. Jogender left in his own vehicle i.e. Scorpio and those 4-5 persons in their own vehicle and Jeet etc. in their own vehicle. Thereafter, he was cross-examined by SPP as he was resiling from his previous statement. In his cross-examination he stated that he told the police that on 9th December, 2016, Lakra Sahab came at Kisan Bhawan and had *gali-galuj* with Vijay, Sandeep @ Lamba, Jeet, Krishan, Sandeep @ Sandy and Ashish. He was confronted with his statement under Section 161 Cr.P.C. (Ex.PW-14/A) and before the Court, he denied having identified the appellants on viewing the CCTV footage of 10th December, 2016. He further denied having stated to the police that kaha-suni between the deceased Jogender and four-five other persons was regarding Munesh.



21. Harinder Dabaas (PW-15) deposed that Jogender was his relative and on 9th December, 2016, on invitation of deceased Jogender he along with Jai Kumar and Raj Kumar had reached Kisan Bhawan, Azadpur to attend the party. He stated that on reaching the spot, Jogender was not present there and he inquired from Jeet Dahiya whether alcohol was available or not on which Jeet Dahiya replied that he should go away and misbehaved with them. Thereafter, they called Jogender who asked them to wait for 10-15 minutes as he was about to reach. Thereafter, upon arrival of deceased Jogender, they all went to the third floor where deceased Jogender abused Jeet Dahiya, Vijay Dahiya, Sandeep, Ashish, Krishan and Sandeep @ Lamba for misbehaving with them and a quarrel ensued between the deceased and these persons. Thereafter, all these persons came downstairs where they were again abusing each other and were separated by him after which they left for their village. He further stated that on 11th December, 2016 someone came to his house and informed about the murder of Jogender on which he reached the spot. In his cross-examination, he stated that he met the police for the first time after about two months of the incident on which day his statement was recorded. He further stated that no reference of any lady was made during the kaha-suni between the deceased Jogender and the appellants.

22. SI Mahesh (PW-22) deposed that on the intervening night of 10th and 11th December, 2016, he was on emergency duty and at about 7.45 AM he was informed about the incident by the Duty Officer. DD No.13B was delivered to him at the spot where he had already reached with Ct. Surya Prakash. He inspected the spot and that in the rear room of property C-1/82



Deep Vihar, Sector-24, Rohini, two dead bodies were lying in the said room. One dead body of a male person was lying on the floor with his head on the sofa and another dead body of a female was lying on the bed. He informed the SHO immediately. He also found used cartridge and bullet lead lying at the spot. Thereafter, he prepared *rukka* (Ex.PW-3/A) on which FIR was got registered. SHO and crime team reached the spot, and the investigation was entrusted to SHO/Insp. Ashok Sharma. He further stated that in between 12th to 15th December, 2016, the appellants Sandeep @ Jai and Jeet Dahiya, who were arrested on 11th December, 2016 itself, led the police party to Bawana canal but nothing was recovered and on 15th December, 2016 at about 3.00-4.00 PM both these appellants led the police team to Badli pul and one after the other the appellants pointed at the places which were about 10 meters away where they had thrown the pistols. He stated that the IO asked the appellants to enter the canal to recover the weapon but they refused by saying that they did not know swimming. Thereafter, IO handed over magnets to Ct.Karan and Ct.Pramod and asked them to enter the canal for searching the weapon and after about 10-15 minutes, Ct. Karan took out one pistol from the river which was identified by appellant Jeet Dahiya and one pistol was taken out by Ct.Pramod which was identified by appellant Sandeep. The pistol recovered by Ct. Pramod was having a live round in the magazine and both these pistols were seized vide memo Ex.PW-21/F and Ex.PW-22/V respectively. In his cross-examination, he stated that the *rukka* was sent on the DD entry and not on statement of any person. He further stated that police got opened the front office of Singh properties.



23. Insp. Ashok Sharma (PW-53) was the first IO in this case who deposed that on 11th December, 2016, he along with other police officials reached the spot at C-1/82, Deep Vihar, Rohini and on inspection of the spot, he found that in the rear room of the office, two dead bodies were lying with bullet injuries. He prepared the site plan at the instance of SI Mahesh (Ex.PW-22/Q). He lifted four used cartridges lying in the room and seized them vide memo Ex.PW-2/B. He also lifted three leads from the room and seized them vide memo Ex.PW-2/A. He also found three fired cartridges lying in the street in front of the said room which were seized vide memo Ex.PW-22/D. He also lifted one pillow with bloodstains, one *angochcha*, one *loi*, one lady suit and *chaddar* of multi colour which were having bloodstains and were seized vide memo Ex.PW-22/E. He also lifted with one *baniyan* lying on the neck of the deceased male with two holes on the backside and three holes on the front side which was also stained with blood and was seized vide memo Ex.PW-2/D. He also collected a pair of *chappal* of black colour, one of which was lying outside the gate and another was lying inside the room which was having bloodstains and was seized vide memo Ex.PW-2/C. He also seized bloodstained earth, blood on gauze, blood on *gadda*, blood on sofa, earth control and control sample of *gadda* and sofa vide memo Ex.PW-2/I. He also seized jewellery on the dead body of the female vide memo Ex.PW-22/E. Further he also seized one jeans of light grey colour with an amount of ₹2,480/- found in the back pocket, one black colour female salwar, one pair of shoes, one full sleeve jersey of male vide memo Ex.PW-2/F. Thereafter, he made search for CCTV camera installed in the nearby area and during search he noticed that



a CCTV was installed at C-1/78 belonging to one Sachin Jain. He viewed the footage of the CCTV in the presence of Zile Singh and Raj Kumar, both of whom identified all the six appellants in the footage. In the meantime, the dead bodies were moved to the mortuary along with the inquest papers. At the spot, he also found four mobile phones lying in the said room out of which three were identified by Zile Singh as belonging to the deceased Jogender. All the mobile phones were seized vide memo Ex.PW-2/G. At about 7.30 PM, he received a secret information that two persons involved in the present incident would come at G3S Mall, Sector-11, Rohini on which he rushed to the Mall where at about 8.30 PM after identification by the secret informer, Jeet Dahiya and Sandeep @ Jai were apprehended and arrested vide arrest memo Ex.PW-22/L and Ex.PW-22/N respectively. Disclosure statement of Sandeep @ Jai (Ex.PW-22/O) and Jeet Dahiya (Ex.PW-22/P) were also recorded. On 15th December, 2016, both Jeet Dahiya and Sandeep @ Jai led the police towards the North side at a distance of 10 meter from the pul of *Kacchi Nehar* and pointed the place where they had thrown the weapon after use. Thereafter, he asked both the appellants to take out the pistols from the *nehar* after entering the same, but they refused on the ground that they did not know how to swim, after which he handed over two separate magnets to Ct. Karan and Ct. Pramod and asked them to trace out weapon in the *nehar*. After about 10 minutes Ct.Karan was able to take out one pistol from the place pointed out by Jeet Dahiya, and after about five minutes, Ct. Pramod was able to take out another pistol from the place pointed out by Sandeep @ Jai. A live cartridge was recovered from the pistol which was recovered by Ct. Pramod and both



these pistols were separately seized vide memo Ex.PW-22/V and Ex.PW-21/F. Efforts were continuously made to trace the other accused persons, however, they could not be found out. On 16th December, 2016, he along with other staff members again went back to the spot and went to C-1/78 where Sachin Jain produced one hard disc of CCTV after removing from DVR which was seized vide memo Ex.PW-7/A. On 17th December, 2016, the police party was led behind House No.B-6/84, Sector-17, Rohini belonging to Sandeep @ Jai from where Swift Dzire car bearing No.DL2CAN 3029 was seized vide memo Ex.PW-22/A-2. On 18th December, 2016, accused Sandeep @ Jai again led the police party to his house and got recovered his mobile phone of silver colour make Samsung from the room at ground floor which was seized vide memo Ex.PW-22/A-3. On the same day, Jeet Dahiya also led the police to his House No.H-2/149, Sector-17, Rohini and from an almirah in a room at the ground floor, he got recovered one Samsung mobile phone and one Apple I-phone both of which were seized vide memo Ex.PW-22/A-4. On 19th December, 2016, he completed the file and further investigation was transferred to crime branch.

24. Insp. Vipin Yadav (PW-51) deposed that investigation in the present case was entrusted to him on 19th December, 2016. On 22nd December, 2016, he interrogated both Sandeep @ Jai and Jeet Dahiya and recorded their disclosure statements (Ex.PW-39/A and Ex.PW-39/B respectively). On 29th December, 2016, he called accused Vicky Bajaj along with his brother Appy Bajaj in his office and interrogated Vicky Bajaj (interrogation report Ex.PW-51/A). Vicky Bajaj led the police party to a house of his friend Kartik at F Block, Sector-16, where Kartik produced one blue colour



denim jacket with the label DXI attached to the cap and lace to tie the same from the almirah, which was seized vide memo Ex.PW-29/A. He also seized mobile phone of Apple make of Vicky Bajaj vide memo Ex.PW-39/C. He got the information that Vijay Dahiya was arrested in an arms case at PS Panipat Haryana and he moved an application for production of accused Vijay Dahiya and after obtaining the permission from the Court, he interrogated the accused and arrested him vide memo Ex.PW-51/E. disclosure statement of Vijay Dahiya (Ex.PW-39/D) was also recorded and in pursuance whereof, the accused led the police party to his house and got recovered one mobile phone make Samsung Galaxy which was seized vide memo Ex.PW-39/E. On 10th February, 2017, he sought permission to take accused Jeet Dahiya and Sandeep to FSL for taking their photographs for which both the accused agreed and a similar application was made on 20th February, 2017 with respect to accused Vijay Dahiya and accordingly, photographs of all the three accused persons were taken at FSL Rohini. On 22nd February, 2017, he received an information that Krishan Malik would come at a petrol pump at Sector-16, Rohini and at about 7.00 PM, Krishan Kumar Malik got down from a battery tempo where in front of a mosque opposite the petrol pump, he was apprehended and was thereafter, arrested vide memo Ex.PW-51/K. Disclosure statement of accused Krishan Kumar (Ex.PW-24/C) was recorded, in pursuance whereof he got recovered one blue colour mobile phone of make Samsung from an almirah in his room at House No.GH-230-231, Third Floor, Sector-16, Rohini, which was seized vide memo Ex.PW-24/D. On 28th February, 2017, Ashish Jindal moved and application for surrender, which was allowed after which he was formally



arrested vide arrest memo Ex.PW-39/H and his disclosure statement Ex.PW-39/I was recorded. On 16th March, 2017, accused Sandeep @ Sandy also moved an application for surrender before the Court and after which he was formally arrested vide arrest memo Ex.PW-39/L and his disclosure statement (Ex.PW-39/M) was recorded. Accused Sandeep @ Sandy got recovered a mobile phone of make Intex from his flat No.H-2/144, Sector-16, Rohini which was seized vide memo Ex.PW-39/A. After completion of investigation, he filed the charge-sheet and two supplementary charge sheets before the Trial Court.

25. As per the FSL report dated 3rd April, 2017 (Ex.PW-35/A) wherein photographs of the three accused persons along with the CCTV footage were sent for examination, it was found:

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

Parcel-1: One sealed envelope, sealed with the seal of "P.C. FSL DELHI" at seven places, stated to be containing one CD & nine photographs; on opening, one CD & nine photographs were found and these were marked as "Exhibit-1a" to "Exhibit-1j" in the laboratory.

Exhibit-1(a) to Exhibit 1(i); Photographs, The image of the person in photographs marked "Exhibit- 1a to Exhibit-1i" is collectively marked as "A-1"

Exhibit-1(j): One CD of "moserbaer" make, containing twenty nine image files in folder namely "P.S.SHAHBAD DIARY (CRIME BRANCH) P.C.20.02.2017" and ten image file in file directory "P.S.SHAHBAD DIARY (CRIME BRANCH) P.C.20.02.2017/SELECTED in .JPG" format.

Parcel-2: One sealed envelope, sealed with the seal of "P.C. FSL DELHI" at seven places, stated to be containing one CD & nine photographs; on opening, one CD & sixteen photographs were found and these were



marked as "Exhibit-2a" to "Exhibit-2q" in the laboratory.

Exhibit-2(a) to 2(p): Photographs, the image of the person in photographs marked "Exhibit-2a to Exhibit-2 j" is collectively marked as "A-2" and the image of the person in photographs marked "Exhibit-2k to Exhibit-2p" is collectively marked as "A-3".

Exhibit-2(q): One CD of "moserbaer" make, containing sixty six image files in folder namely "FSLNO-2017-PHO-1048 P.C. 10,02.2017" and sixteen image files in file directory "FSLNO-2017-PHO- 1048 P.C.10,02.2017/SELECTED" in ".JPG" format.

Parcel-3: One sealed envelope, sealed with the seal of "H. K. FSL DELHI" at seven places, stated to be containing one pen drive; on opening, one pen drive was found marked "Exhibit-SPD1".

Exhibit-SPD1: One pen drive of "HP" make, of capacity "64GB" containing five relevant video recordings in folder namely "HDD2" in ".mp4" format.

3. RESULTS OF EXAMINATION/OPINION:

- i) *On laboratory examination of CCTV video files in Pen drive marked "Exhibit-SPD1", it was observed that, video file contains continuous video footage of CCTV recordings. There is no indication of alteration in the continuous video footage of CCTV recordings on the basis of frame-by-frame examination.*
- ii) *Due to low pixel resolution of relevant CCTV video footage in Pen drive marked "Exhibit-SPD1", the facial landmarks could not be recognized. Hence requisite examination could not be carried out with reference to query No.2 & 3 and further query No. 1."*

26. As per the photo comparison examination report dated 27th June, 2017 by RFSL (Ex.PW-47/A), it was opined:

VI. DESCRIPTION OF ARTICLES/EXHIBITS CONTAINED IN PARCELS



PARCEL-1:- One yellow color envelope containing one CD & nine (09) Photographs of accused Vijay Dahiya marked as EX- 1/1 to EX- 1/10 sealed with the seal of C.P Singh FSL Delhi in the laboratory for examination.

PARCEL-2:- One yellow color envelope having one C.D & Sixteen (16) Photographs, of two accused persons namely Sandeep @ Jai & Jeet Dahiya marked as EX- 2/1 to EX- 2/17 sealed with the seal of C.P Singh FSL Delhi in the laboratory for examination.

PARCEL-3:- One yellow color envelope containing one Pen Drive of HP capacity 64 GB containing CCTV footage of the incident between 03PM to 11.00 PM marked as EX-3 sealed with the seal of C.P.Singh FSL Delhi in the laboratory for examination.

Loose Sheets:-One colored print out of dossier of accused Ashish Jindal having his colored photographs marked as EX D-1(Two pages only).One colored print out of dossier of accused Sandeep Chaudhary@ Sandy having his colored photographs marked as Ex D-2(Two pages only).One colored print out of dossier of accused Krishan Kumar Malik having his colored photographs marked as EX D-3(Two pages only).

LABORATORY TEST PROCEDURE. ANALYSIS AND EXAMINATION

____Ex-3 (PD) which contains the CCTV footage on 10/12/16 between 10.40 PM to 10.50 PM was inserted into the USB port of the computer for examination, analyzing and making snapshots of the given time and date. The EX-1/1 (CD) & EX-2/1(CD) inserted into the CD drive of the computer which contains the said to be accused photographs in different angles. The CCTV Footage in EX-3(PD), the said to be accused photographs in CD and hard copies i.e. EX-1/1 to EX-1/10, EX-2/1 to EX-2/17 and D-1 to D-3 their comparable features for e.g. forehead, eye brows, eyes, nostril, nose, upper and lower lips, chin, cheek etc. are not visible in the snapshots taken from CCTV footage since it is blur and defocus. This blur and defocus is due to low light and taken in night time because the camera could not catch the face properly due to poor resolution of the lens.

RESULT OF EXAMINATION





Q-1 Kindly examine and opine whether any of the person shown in the CCTV footage on 10/12/2016 between 10.40 PM to 10.50 PM contained in exhibits SPD1, carrying any weapon / pistol/ in their possession?

Ans-1:-The CCTV footage in EX-3(PD) and the snapshots photos taken from that footage on 10/12/16 between 10.40 PM to 10.50 PM one person said to be carrying pistol/weapon like thing in their possession while they are coming back.

Q-2:- Kindly examine and opine whether any of the people shown in the CCTV footage on 10/12/2016 between 10.40 PM to 10.50 PM contained in exhibits SPD1, matches with the photos of the accused persons containing in exhibits P-1, P-2,D-1, D-2 & D3.

Ans-2:-It is said to be one person with heavy scalp, moustache and beard in the CCTV footage in EX-3(PD) on 10/12/2016 between 10.40 PM to 10.50 PM resemble with the one of the accused having heavy scalp, moustache and beared contained in EX-2/1 to EX-2/17(CD & HARD COPIES).The other said to be accused persons could not resemble with snapshots of CCTV in EX-3(PD) as explained para VII.

Q-3:-Kindly provide the hard copy and snapshots of the person shown in CCTV footage contained in Exhibits -SPD1.

Ans-3:-The snapshots of the CCTV EX-3(PD),14 color photographs provided.

Q-4:- Any other relevant information, may also be supplied please
Ans:-One of the person in EX-3(PD) who is facing towards the camera the face appears to be in focus but the same could not be compared as snapshots were not provided.”

27. As per FSL (Ballistics) report (Ex.PW-38/A), the fire pin marks and the breech face marks present on empty cartridge cases (Ex.EC1 to EC7) were similar with the firing pin marks and the breech face marks present on the test cartridge cases fired through improvised pistol (Ex.F1). Accordingly, it was opined that the said empty cartridge cases were fired through the said pistol. Likewise, the individual striation marks present on bullets (Ex.EB1 to EB7) were found similar with the individual striation



marks present on the test fired bullets through pistol (Ex.F1). Accordingly, it was opined that the said bullet marks (Ex.EB1 to EB7) were discharged through pistol (Ex.F1). Furthermore, the individual striation marks present on bullet (Ex.EB8) were found similar with the individual striation marks present on the test fired bullets fired through pistol (Ex.F2), and it was opined that the bullet (Ex.EB8) was discharged through pistol (Ex.F2).

28. The case of the prosecution is based on circumstantial evidence besides the crucial piece of direct evidence in the form of CCTV footage in the gali at the relevant time when the offence took place.

29. The common contention on behalf of the counsel for the appellants has been with respect to the identification of the appellants from the CCTV footage recovered from the property of Sachin Jain (PW-7). Learned counsels for the appellants have placed reliance on the FSL report (Ex.PW-35/A) and (Ex.PW-47/A) to support their contention as these reports opined that the footage was of the low quality and thus, the appellants could not be identified. This contention of the appellants deserves to be rejected for the reason it is possible for PW-1, PW-2 and PW-8 who were known to the appellants to identify the appellants from the CCTV footage exhibited even though the same was not clear for the purpose of expert opinion. Further, this Court also finds merit in the contention of learned Senior Counsel for the complainant that the photographs of the appellants were compared with the CCTV footage, the same may not necessarily return a positive finding, for the reason, the photographs are a 2D representation and the footages are a 3D representation and that too not a very clear/high resolution or an absolutely clear front footage of the person. As per the CCTV footage, only



front view of appellant Sandeep @ Sandy was visible while side moving profiles of the other appellants was visible in a low resolution, and the said three witnesses PW-1, 2 and 8 having identified the appellants from the footage as also in the Court, proves the case of the prosecution qua identification of the appellants. Further, the defence has also tried to dent the authenticity of the CCTV footage sent to FSL examination however, the same would be of no avail to the appellants as both the FSL reports (Ex.PW-35/A) and (Ex.PW-47/A) categorically mention that the articles were received with seals intact. Faced with a similar situation where a witness on seeing the CCTV footage identified the assailant therein despite the Court observing that the CCTV footage was not of very high quality, a co-ordinate bench of this Court in 2016 SCC OnLine Del. 1136 Kishan Tripathi @ Kishan Painter vs. The State held:

15. HG wells in his book "The Time Machine" had said "Now I want you clearly to understand that this lever, being pressed over, sends the machine gliding into the future, and this other reverses the motion. This saddle represents the seat of a time traveler. Presently I am going to press the lever, and off the machine will go. It will vanish, pass into future Time, and disappear. Have a good look at the thing. Look at the table too, and satisfy yourselves there is no trickery." Time machine is friction, albeit seeing the CCTV footage with your own eyes as a judge gives you an insight into the real world in the past. In the present case, the court has itself seen the CCTV footage, and has travelled back in time to the time when the occurrence took place and thereby has seen the occurrence in the same position as that of a witness, who would have seen the occurrence, if he was present. There cannot be a more direct evidence. This video recording which captures the occurrence, would be per se and mostly discerningly reliable and compellingly conclusive evidence, unless its authenticity and genuineness is in question.





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20. The snap shots re-produced do not include the close-ups of the appellant Kishan Tripathi, who was present in person in the court during the course of hearing of his appeal. We accept that the pixels of the CCTV footage were not very high, albeit, the presence of the appellant and that he was the perpetrator can be established and ascertained from the CCTV footage."

30. The relevant snapshots from the said CCTV footage are as under:

30A. Assailants while coming from main road towards place of incident.

i. Vijay Dahiya and Sandeep @ Jai @ Lamba - the first group at 10.41.56 P.M.

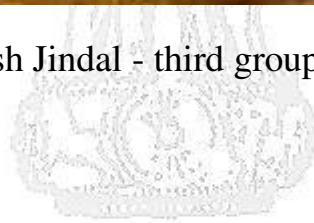




ii. Sandeep @ Sandy and Krishan Kumar Malik - second group at 10.42.05 P.M.



iii. Jeet Dahiya and Ashish Jindal - third group at 10.42.39 P.M.



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30B. Assailants while going back from the place of incident towards the main road:

- i. Ashish Jindal and Krishan Kumar Malik - first group at 10.46.43 P.M. and 10.46.45 P.M.;



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ii. Jeet Dahiya and Sandeep @ Sandy - second group at 10.47.30-31 P.M.





iii. Vijay Dahiya and Sandeep @ Jai @ Lamba - third group at 10.47.47 P.M.





31. As regards identification of handwriting of any person, the Indian Evidence Act, 1872 provides three methods of doing it, i.e. by an expert opinion, by a person acquainted with the handwriting of such person or by the Court itself. As held in the decision reported as (1979) 2 SCC 158 State Delhi Admn.) Vs. Pali Ram:

“21. Apart from this Section, it was well settled that the Court in the case of a disputed writing, was competent to obtain an exemplar or specimen writing. In any case, the Court was competent to compare the disputed writing with the standard or admitted writing of the person in question. The position, as it obtained after the passing of the Criminal Procedure Act 28 and 29 Vict. C. 18, has been summed up by Taylor as follows:-

"Under the Statutory Law, it seems clear.....that the comparison may be made either by the witnesses acquainted with the handwriting, or by witnesses skilled in deciphering



handwriting, or, without the intervention of any witnesses at all, by the jury themselves (Cobbett v. Kilminster [(1865) 4 F & F 490---(See Taylor on Evidence By Johnson & Bridgman, Vol.2, paras 1870 and 1871, p.1155)]), or in the event of there being no jury, by the Court.... It further appears that any person whose handwriting is in dispute, and who is present in Court, may be required by the Judge to write in his presence, and that such writing may be compared with the document in question. Doed Devine v. Wilson, (1855) 10 Moore P. C. 502, 530; 110 R.R. 83; Cobbett v. Kilminster.”

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24. Just as in English Law, the Indian Evidence Act recognises two direct methods of proving the handwriting of a person:

“(1) By an admission of the person who wrote it.

(2) By the evidence of some witness who saw it written”.

These are the best methods of proof. These apart, there are three other modes of proof by opinion. They are:

“(i) By the evidence of a handwriting expert. (Section 45)

(ii) By the evidence of a witness acquainted with the handwriting of the person who is said to have written the writing in question. (Section 47).

(iii) Opinion formed by the Court on comparison made by itself. (Section 73)”.

All these three cognate modes of proof involve a process of comparison. In mode (i), the comparison is made by the expert of the disputed writing with the admitted or proved writing of the person who is said to have written the questioned document. In (ii), the comparison takes the form of a belief which the witness entertains upon comparing the writing in question, with an exemplar formed in his mind from some previous knowledge or repetitive observance of the handwriting of the person concerned. In the case of (iii), the comparison is made by the Court with the sample writing or exemplar obtained by it from the person concerned.

25. A sample writing taken by the Court under the second paragraph of Section 73, is, in substance and reality, the





same thing as "admitted writing" within the purview of the first paragraph of Section 73, also. The first paragraph of the Section, as already seen, provides for comparison of signature, writing, etc. purporting to have been written by a person with others admitted or proved to the satisfaction of the Court to have been written by the same person. But it does not specifically say by whom such comparison may be made. Construed in the light of the English Law on the Subject, which is the legislative source of this provision, it is clear that such comparison may be made by a handwriting expert (Section 45) or by one familiar with the handwriting of the person concerned (Section 47) or by the Court. The two paragraphs of the Section are not mutually exclusive. They are complementary to each other.

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30. The matter can be viewed from another angle, also. Although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identity of a handwriting which forms the sheet-anchor of the prosecution case against a person accused of an offence solely on comparison made by himself. It is, therefore, not advisable that a Judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each other; and the prudent course is to obtain the opinion and assistance of an expert.

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33. Since even where proof of handwriting which is in nature comparison, exists, a duty is cast on the Court to use its own eyes and mind to compare, the admitted writing with the disputed one to verify and reach its own conclusion, it will not be wrong to say that when a Court seised of a case, directs an accused person present before it to write down a sample writing, such direction in the ultimate analysis, "is for





the purpose of enabling the Court to compare" the writing so written with the writing alleged to have been written by such person, within the contemplation of Section 73. That is to say, the words 'for the purpose of enabling the Court to compare' do not exclude the use of such "admitted" or sample writing for comparison with the alleged writing of the accused, by a handwriting expert cited as a witness by any of the parties. Even where no such expert witness is cited or examined by either party, the Court may, if it thinks necessary for the ends of justice, on its own motion, call an expert witness, allow him to compare the sample writing with the alleged writing and thus give his expert assistance to enable the Court to compare the two writings and arrive at a proper conclusion".

32. The same logic of identification of handwriting can also be applied to identification of a person captured in a CCTV footage, this is to say, such a person may be identified by any witness who is acquainted with such person or by way of expert evidence by using different software/tools, or by the Court itself on comparison of the photo of such person with the CCTV footage.

33. Further, in the decision reported as (2008) 11 SCC 425 Dalbir Singh Vs. State of Haryana, the Court upheld identification by a witness who was acquainted with the appellant. It was held:

"8. The Trial Court placed reliance on the evidence led, more particularly, PW8 and directed conviction and imposed sentences as aforesaid so far as appellant is concerned and directed acquittal of co-accused. In appeal, before the High Court the main stand taken was that PW8 had undergone eye operation about two years prior to the date of occurrence and in dark night there was no scope for identification. The High Court did not accept the stand and held that identification was possible, particularly, when



the accused was the grandson of the witness. The appeal was dismissed by the impugned judgment.

(emphasis supplied)

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10. *The stand of the appellant that in dark night recognition would not have been possible from voice is clearly untenable. In a dark night ocular identification may be difficult in some cases but if a person is acquainted and closely related to another, from the manner of speech, gait and voice identification is possible.*

11. *In Anwar Hussain v. The State of U.P. and Anr. (AIR 1981 SC 2073) it was observed that even if there is insufficient light, a witness can identify a person, with whom he is fairly acquainted or is in intimate terms, from his voice, gaits, features etc. Therefore, there is nothing to discard the evidence of PW8 so far as his claim to have recognized the appellant is concerned”.*

(emphasis supplied)

34. Similarly, in the decision reported as (2003) 10 SCC 472 Augustine Saldanha Vs. State of Karnataka, it was held:

“22. Undisputedly the incident took place in a dark night when visibility was poor but identification was possible because the victims of the assailants were known to each other. Therefore, there is nothing wrong in PW1 identifying the accused persons. The fact remains that in the dark night obviously one cannot move without a torch or some other lighted object. In fact, in Exhibit P-1 also there is mention of a torch”.

35. The prosecution has also proved the motive of the appellants to have committed the murder of Jogender on 10th December 2016 and since Munesh was also with him at the relevant time, her murder was also committed. The precursors to the incident dated 10th December 2016 was the incident of 9th December 2016 at Kisan Bhawan, Azad Pur Mandi where the quarrel took place between the appellants and Jogender. Raj Kumar



(PW-1) deposed that Jogender was the son of his maternal uncle and on 9th December 2016, he along with Harender and Jai Kumar had gone to Kisan Bhawan, Azad Pur Mandi to attend a party. Jogender had called them. He stated that when they reached at about 10/10.30 PM, they asked Jeet Dahiya for arranging liquor, on which, he became furious. On this, Raj Kumar informed Jogender about the incident. After some time, Jogender also reached at Kisan Bhawan and had some altercation with Jeet Dahiya, Vijay Dahiya, Sandeep @ Lamba, Krishan, another Sandeep and Aashish. The accused persons started apologizing to Jogender and felt sorry and thereafter, they left the place for their village. However, Jogender continued to be there when Raj Kumar left. This witness was shown the CCTV footage as noted above and he identified that in the first group, accused Vijay Dahiya and Sandeep @ Lamba are seen in the footage. In the second group, accused another Sandeep and Krishan are visible and in the last group, Jeet Dahiya and Aashish are visible. As regards the CCTV footage of 10.46.43 hours is concerned, he stated that the two persons visible running on the screen are Aashish and Krishan. At 10.47.13 hours, he stated that the two persons visible are Jeet Dahiya and Sandeep and at 10.47.47 hours, accused Vijay Dahiya and another Sandeep are visible. In the cross-examination, this witness stated that his statement was recorded by the police on 11th December 2016 when he reached at the spot and the only confrontation thereto was that the words 'time of reaching at the spot' were not mentioned. Extensive cross-examination has been done on the identification of the accused in the CCTV footage, however, this witness stood by his testimony. As regards the quarrel at Kisan Bhawan is



concerned, he stated that it was only an altercation and continued for 5 to 10 minutes. In his cross-examination on behalf of the appellant Sandeep @ Sandy, a suggestion was given that the deceased Jogender was running a gambling racket in partnership with the accused which this witness admitted. Deposition of Raj Kumar (PW-1) is also corroborated by the deposition of Zile Singh (PW-2), the elder brother of deceased Jogender. Zile Singh stated that Jogender was working in Delhi Police whereas he himself was running a college. He stated that on 9th December 2016 at about 10.30/11 PM, when Jogender was leaving his house, he asked him as to where was he going, to which, Jogender stated that he was going to Azad Pur Mandi as Raj Kumar had a quarrel with Jeet Dahiya and other persons. Jogender came back at about 2-3 AM on the next day i.e. 10th December 2016. Zile Singh enquired from him as to the purpose, to which, he told that he had a quarrel with Jeet Dahiya, Vijay Dahiya, Sandeep @ Sandy, Sandeep @ Lamba, Krishan Malik and Aashish Jindal and that he scolded and abused the aforesaid persons. After some time, they settled the dispute, so, Jogender came back. Undoubtedly, from the evidence of these two witnesses, it is evident that an altercation took place at Kisan Bhawan, on which, Jogender scolded and abused the accused persons and though they got pacified over there at that time, however, it is not necessary that they did not hold any grudge against Jogender, particularly when the appellants were already connected with Jogender being his partners in the gambling racket. Thus, the argument of the learned counsels for the appellants that since the appellants got pacified, it cannot be held that the appellants had motive to commit the offence of murder, deserves to be rejected.



36. According to the learned counsel for the appellants, the call details record of Raj Kumar (PW-1) shows that he made number of calls to deceased Jogender on 9th December 2016. It is thus claimed that they were not together and no interaction between the two at Kisan Bhawan could have taken place. Undoubtedly, Raj Kumar made calls to Jogender when altercation took place and only thereafter Jogender reached after 10.30 P.M. as is evident from call detail records of Jogender.

37. Version of Raj Kumar (PW-1) is also sought to be contradicted by deposition of Kamal Kant (PW-14) who does not say about altercation on 9th December 2016. It may be noted that Kamal Kant though deposed that on 9th December 2016, he had booked four rooms at the third floor of Kisan Bhawan for organizing a party and in the party, Jeet, Vijay, Krishan, Sandy, Lamba and Aashish and four/five persons were present and later, Jogender and four/five persons also came in the said party, however, he states that Jogender had some altercation with four/five persons with whom he had come and Jeet etc. intervened in between. This witness was declared hostile and was cross-examined by the learned SPP when he stated that he was sitting at the reception at the ground floor along with Sandeep @ Lamba and Vijay Dahiya and three/four persons came there and told him that they had been sent by Jogender Lakra and those three persons went upstairs when he heard some loud noise coming from the third floor. He also admitted that after some time, Lakra Sahab i.e. the deceased came there and he had some *gaali galauch* with Vijay, Sandeep @ Lamba, Jeet, Krishan, Sandeep @ Sandy and Aashish. Thus, even this witness corroborates the version of Raj Kumar (PW-1) to the extent that an altercation took place at Kisan Bhawan



on 9th December 2016 and that deceased Jogender resorted to abusive language.

38. Learned counsel for the appellants have also contended that though the case of the prosecution is that the appellants came to the office of Jogender at Deep Vihar in the evening at around 4-5 PM, however, there is no evidence that any altercation took place which further fortifies that if any issue remained on 9th December 2016, the same had been settled. This contention of learned counsels for the appellants cannot be accepted, for the reason, even if no altercation took place in the evening of 10th December 2016, the same does not mean that the appellants were not bearing any grudge against the deceased.

39. As regards the charge of criminal conspiracy punishable under Section 120B IPC it was contended that no evidence to prove the same was brought on record, it is well settled that conspiracy is hatched in secrecy and executed in darkness. It is seldom a case that positive evidence of criminal conspiracy can be established, and thus, mere inference of the same from the facts of the case would be sufficient to establish conspiracy. In the present case, it is undisputed that the appellants and the deceased Jogender were present at Kisan Bhawan on 9th December, 2016 and that an altercation took place between them. It is also proved by PW-8 that the appellants were present at the office of deceased Jogender in the evening of 10th December, 2016. The fact that an altercation took place between the appellants and the deceased, and that the appellants were all together in company of each other on both these instances and all these appellants have further been identified as the assailants moving to and from the office of the deceased Jogender at



the relevant time around 10.42 PM to 10.47 PM on 10th December, 2016, is cumulatively sufficient to establish complicity between the appellants. Further, at the relevant time of the incident, the door of house of PW-9 was bolted from outside as proved by PW-9 himself and also PW-10 who unbolted the door would show pre-planning on the part of the appellants. And thus, there is sufficient evidence to establish conspiracy of the appellants.

40. Much of the arguments of the counsel for the appellants were based on the testimony of Balwinder (PW-8) and efforts were made to show how there were contradictions in his testimony and how he was an unreliable witness. Balwinder was the President of the RWA. The property where the dead body of the deceased persons was found also bore signboard in the name of Balwinder and therefore, his presence at the property would only be natural. Balwinder Singh (PW-8) deposed that around 10 PM, he saw a Swift Dzire car bearing No.DL2CA 3029, besides one more alphabet was there, which he did not remember and which was parked near the office of deceased Jogender. According to PW-8, Jeet Dahiya was standing near the car wearing white sports shoes and two more persons were standing near him and 3-4 persons were sitting inside the car. He got suspicious and noted down the number of car on his left hand and left. This version of Balwinder Singh (PW-8) is claimed to be unnatural by the defence, particularly, noting the number of the car. It may be noted that an unusual presence at the night at around 10.30 PM at any place may invoke mix reactions and in this case, since Balwinder Singh knew past associations between the parties and since the appellants should have gone to meet Jogender in his office, otherwise,



their conduct of standing at the entry of the road in the car and besides thereto, certainly leads to suspicious circumstances and any wise person would think in the same manner. Further, it has also been claimed that the car number written in the palm of the hand by PW-8 is unusual circumstance as it would be abnormal that he would be retaining the car number written till the next day in the afternoon. This witness clarified that he has noted this number on his left palm and though he washed his hands but he did not use the soap. The case of the prosecution is that Swift car bearing No. DL2CA 3029 with one more alphabet after 'A' was traced, which belonged to Aashish Jindal and in this regard, PW-50 Deepak Kumar was examined. It is claimed that no definite opinion has been given on the signatures of Aashish on the delivery receipt. Be that as it may, even in the absence of any clear or cogent opinion of the handwriting expert, the deposition of PW-50 Deepak Kumar cannot be discarded. Deepak Kumar (PW-50) in his deposition stated that he was working with P.K.Travels owned by his maternal uncle Praveen Kumar Garg who had purchased one vehicle No. DL2CAN 3029 in his name, which remained with them for about six months and thereafter, his maternal uncle Praveen Kumar Garg told him that he had sold that vehicle, however, he i.e. Deepak Kumar did not sign any delivery receipt. However, on being confronted with previous statement, he admitted that he had told the police that the abovesaid car was sold by him to Aashish Jindal on 4th February 2016. However, in view of this witness' subsequent version in the cross-examination that he had never sold his car to Aashish Jindal and that he had only seen the receipt regarding sale of vehicle and the presence of the appellants around the car at 10.30



PM on 10th December 2016, even if the same is discarded, there is sufficient evidence on record to show the complicity of the appellants in the above-noted offence. Further, Balwinder Singh is a natural witness, for the reason, the place of incident was office-cum-mini residence and though, there was no sign board of Singh Properties, it has a sign board in the name of Balwinder Singh, thereby, showing that he was duly connected in some manner with the said property.

41. Pursuant to their arrest, disclosure statements of appellant Sandeep @ Jai (Ex.PW-22/O) and appellant Jeet Dahiya (Ex.PW-22/P) were recorded. Thereafter, the two appellants led the police party and pointed out towards a place which was at a distance of about 10 metres towards North from Bawana Kacchi canal, Samaypur Badli Pul vide pointing out memos Ex.PW-21/C and Ex.PW-22/T respectively. The appellants told the police party that they do not know how to swim accordingly, Ct. Karan (PW-48) and Ct. Pramod (PW-21) entered the canal in search of the weapons of offence. With the help of a magnate, Ct. Karan found a pistol with which a magazine was attached. The said pistol was identified by appellant Jeet Dahiya and was thereafter seized vide memo Ex.PW-22/V. Ct. Pramod also found a pistol with which a magazine was attached. This pistol was identified by appellant Sandeep @ Jai as the pistol used by him in the commission of offence. Inside the magazine of the pistol recovered by Ct. Pramod, one cartridge was also found. The said pistol was also seized vide memo Ex.PW-21/F. Thereafter, on 17th December, 2016, appellant Sandeep @ Jai led the police party to his H.No. B-6/84, Sector-17, Rohini, from



where, a Swift Dzire Car bearing no. DL 2CAN 3029 was recovered and seized vide memo Ex.PW-22/A2.

42. Challenge has been made to the recovery of the two pistols relying upon the decision of the Hon'ble Supreme Court in the case of Ramanand @ Nandlal Bharti (supra). It may be noted that in the case of Ramanand @ Nandlal Bharti (supra), Hon'ble Supreme Court was dealing with a matter where no disclosure statements were recorded and without recording of the disclosure statements, police officials got the purported recovery made and no deposition in this regard was made by the police officers. Thus, on the facts of the said case, neither was a disclosure statement reduced in writing nor did the police officer depose as to the contents of disclosure statement made by the accused and the consequential manner of pointing out and recovery of the incriminating article, so that the Court could come to the conclusion that the recovery was pursuant to the disclosure statement made by the accused. Hence the decision of the Hon'ble Supreme Court in Ramanand @ Nandlal Bharti (supra) has no applicability to the facts of the present case.

43. The two pistols seized pursuant to the disclosure statements of appellants Sandeep @ Jai and Jeet Dahiya along with the 7 cartridge cases (4 recovered from the room/spot and 3 recovered from the street in front of the said room) and 7 bullets (3 recovered from the room/spot, 4 recovered from the body of deceased Jogender and 1 recovered from the body of deceased Munesh) were sent for FSL examination. As per the Ballistic report (Ex.PW-38/A), the *firing pin marks and the breech face marks present on the exhibit empty cartridge cases marked 'EC1' to 'EC7' were*



similar with the firing pin marks and the breech face marks present on the test cartridge cases fired through the pistol (Ex.F1) recovered at the instance of appellant Jeet Dahiya. Further, the individual striation marks present on exhibit bullets marked 'EB1' to 'EB7' were similar with the individual striation marks present on test bullets fired through the pistol (Ex.F2) recovered at the instance of appellant Jeet Dahiya. Furthermore, the individual striation marks present on exhibit bullet marks 'EB8' were similar with individual striation marks present on test bullets fired through the pistol (Ex.F2) recovered at the instance of appellant Sandeep @ Jai.

44. In view of the discussion aforesaid, this Court finds no error in the impugned judgment of conviction, convicting the appellants for offences punishable under Sections 302 read with 120B IPC . As regards the order on sentence is concerned, the learned Trial Court has awarded imprisonment of life (for the remainder of life) for offence punishable under Sections 302 read with 120B IPC. In the decision reported as (2008) 13 SCC 767 Swamy Shraddananda (2) Vs. State of Karnataka, the Hon'ble Supreme Court noted that a special category of sentence may be formed wherein a convict may be directed to undergo an actual period of incarceration without remissions/commutations by the Executive so that death penalty can be put to actual use as little as possible and really in the rarest of rare cases. It was held:

"92. The matter may be looked at from a slightly different angle. The issue of sentencing has two aspects. A sentence may be excessive and unduly harsh or it may be highly disproportionately inadequate. When an appellant comes to this Court carrying a death sentence awarded by the trial court



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

93. Further, the formalisation of a special category of sentence, though for an extremely few number of cases, shall have the great advantage of having the death penalty on the statute book but to actually use it as little as possible, really in the rarest of rare cases. This would only be a reassertion of the Constitution Bench decision in Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580] besides being in accord with the modern trends in penology.

94. In the light of the discussions made above we are clearly of the view that there is a good and strong basis for the Court to substitute a death sentence by life imprisonment or by a term in excess of fourteen years and further to direct that the convict must not be released from the prison for the rest of his life or for the actual term as specified in the order, as the case may be."



45. In the present case, the gruesome manner in which the offence of murder of two persons including of Munesh with whom the appellants had no enmity has been committed, does not warrant punishment of imprisonment of life which may not exceed 14 years and entitle the appellants to remission. However, as held by the Hon'ble Supreme Court in the decision reported as (2016) 7 SCC 1 Union of India Vs. V.Sriharan, the Sessions Court has no power to award a sentence of a specific term including directing rigorous imprisonment for life till the remainder of life which jurisdiction has been vested with the High Court and the Hon'ble Supreme Court. It was held:

“104. That apart, in most of such cases where death penalty or life imprisonment is the punishment imposed by the trial court and confirmed by the Division Bench of the High Court, the convict concerned will get an opportunity to get such verdict tested by filing further appeal by way of special leave to this Court. By way of abundant caution and as per the prescribed law of the Code and the criminal jurisprudence, we can assert that after the initial finding of guilt of such specified grave offences and the imposition of penalty either death or life imprisonment, when comes under the scrutiny of the Division Bench of the High Court, it is only the High Court which derives the power under the Penal Code, which prescribes the capital and alternate punishment, to alter the said punishment with one either for the entirety of the convict's life or for any specific period of more than 14 years, say 20, 30 or so on depending upon the gravity of the crime committed and the exercise of judicial conscience befitting such offence found proved to have been committed.

105. We, therefore, reiterate that the power derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such specified





offences can only be exercised by the High Court and in the event of further appeal only by the Supreme Court and not by any other court in this country. To put it differently, the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior court”.

46. Considering the nature of offence and the manner, even if the sentence of imprisonment for life awarded for the remainder of their lives was beyond the jurisdiction and competence of the learned Trial Court, in view of the fact that the prosecution has been able to prove that the appellants committed the murder of two persons, out of which one of the deceased had no connection with the appellants, the facts and circumstances of the case, the sentence of the appellants is modified to imprisonment of life for a fixed term without remission. Consequently, the sentence of the appellants is modified to imprisonment for life with minimum of 20 years actual imprisonment without any remission. The fine amount and in default sentence to remain same as awarded by the learned Trial Court.

39. Appeals are accordingly disposed of.

40. Copy of the judgment be uploaded on the website of this Court and be also sent to the Superintendent Jail for intimation to the appellants and updation of records.

(MUKTA GUPTA)
JUDGE



(POONAM A. BAMBA)
JUDGE

JUNE 26, 2023
'vn/akb'

