

SESSIONS CASE OF THE COURT OF ADDL. SESSIONS JUDGE-3,  
CENTRAL DISTRICT, TIS HAZARI COURTS, DELHI

FIR No. 356/2007  
PS Hauz Qazi (Crime Branch)  
Under Sections 302 and 120-B of Indian Penal Code

Sessions Case No. 27762/16

State

Versus

1. **Rishi Pal @ Pappu**  
S/o Sh. Hetram,  
R/o 3159, Mohalla Dassan,  
Hauz Qazi, Delhi. (Named in original chargesheet)
2. **Gopal Krishan Aggarwal**  
S/o Sh. Brij Kishore,  
R/o 2496, Gali Kashmiriyan,  
Chooriwalan, Delhi. (Named in original chargesheet)
3. **Ashok Jain**  
S/o Sh. Virender Prabhakar,  
R/o 3506, Bazaar Sita Ram,  
Hauz Qazi, Delhi.  
Permanent address:  
C-2/32, Bapa Nagar,  
New Delhi. (Named in original chargesheet)
4. **Parmod Singh @ Pammy**  
S/o Sh. Vikram Singh,  
R/o E-781, Ram Park Extn.,  
Loni, Ghaziabad, U.P. (Named in original chargesheet)
5. **Parveen Koli**  
S/o Sh. Amba Parshad,  
R/o A-20/D, Avantika Enclave,  
Rohini, New Delhi. (Named in original chargesheet)

6. **Bhisham @ Chintoo**  
S/o Sh. Ved Parkash,  
R/o 2137, Katra Gokal Shah,  
Bazaar Sita Ram, Delhi. (Named in original chargesheet)

7. **Deepak @ Chowda**  
S/o Sh. Moolchand,  
R/o 2076, Katra Gokalshah,  
84 Ghanta, Bazaar Sita Ram, Delhi.  
(Named in supplementary chargesheet)

...Accused persons

AND

Sessions Case No. 28550/2016

State

Versus

**Desraj @ Desu**  
S/o Late Ramesh Chand,  
R/o 2037, Peeli Kothi,  
Bazaar Sita Ram, Delhi. (Named in original chargesheet)

...Accused person

AND

Sessions Case No. 592/2018

State

Versus

**Kishanpal @ Fauzi**  
S/o Sh. Babulal,  
R/o Village Deval, PS Ramraj,  
District Muzaffarnagar, UP. (Named in supplementary chargesheet)

...Accused person

AND

Sessions Case No. 327/2019

State

Versus

**Hitender @ Chhotu**

**S/o Sh. Laxman Singh Rawat,**

**R/o F-440, Ram Park Extn.,**

**Loni Road, Ghaziabad, UP.**

**(Named in original chargesheet)**

**...Accused person**

**Date of institution of original chargesheet : 22.02.2008**

**Date of institution of supplementary chargesheet  
against accused Deepak @ Chowda : 18.07.2008**

**Date of institution of supplementary chargesheet  
against accused Kishanpal @ Fauzi : 05.09.2009**

**Date of first order of Sessions Court  
on committal of the original chargesheet : 08.04.2008**

**Date of first order of Sessions Court  
on committal of the supplementary chargesheet  
against accused Deepak @ Chowda : 01.08.2008**

**Date of first order of Sessions Court  
on committal of the supplementary chargesheet  
against accused Kishanpal @ Fauzi : 24.09.2009**

**Date on which judgment was reserved  
in all the abovesaid four Sessions Cases  
arising out of one original chargesheet  
and two supplementary chargesheets  
of the same FIR : 11.03.2020**

**Date of Decision : 22.06.2020**

Judgment is being delivered by: Dr. Ashish Aggarwal, currently posted as Joint Registrar (Judicial), Delhi High Court, New Delhi.\*

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\*The Judicial Officer had presided over the Court of Additional Sessions Judge-3, Central District where the case was pending. Final arguments had been heard by the presiding officer. Judgment had been reserved. After the final judgment was reserved, a general transfer order was issued by the Hon'ble Delhi High Court bearing No. 10/G-I/Gaz.IA/DHC/2020 dated 13.03.2020 whereby the Presiding Officer was transferred to be posted as Joint Registrar (Judicial), Delhi High Court. In the transfer order, it was ordained as follows:

*“The judicial officers under transfer shall notify the cases in which they had reserved judgments/orders before relinquishing the charge of the court in terms of the posting/transfer order. The judicial officers shall pronounce judgments/orders in all such matters on the date fixed or maximum within a period of 2-3 weeks thereof, notwithstanding the posting/transfer”.*

In light of the direction received from the Hon'ble High Court, and subsequent order dated 5.6.2020 passed on judicial side in case titled Vinod Kumar @ Gola vs. State CrI. M. C. No. 1491/2020, the judgment is being pronounced by the same Presiding Officer who had heard final arguments. It was intended to be announced within the stipulated period of two to three weeks but that could not be done since the accused persons were not produced from custody on the date fixed and immediately thereafter (before the expiry of the stipulated period for pronouncement of judgment) the functioning of the Court of Joint Registrar, among others, was suspended. Even time-bound matters were directed to be postponed, owing to the coronavirus pandemic, by Order no. 51/RG/DHC/2020 dated 13.03.2020, followed by Order no. 79/RG/DHC/2020 dated 16.03.2020, Order No. 103/RG/DHC/2020 dated 17.3.2020 (emphasizing that the previous orders of suspension of work are to be mandatorily and scrupulously followed by all judicial officers), Order No. 373/Estt./E-I/DHC dated 23.03.2020, Order No. 159/RG/DHC/2020 dated 25.03.2020, Order No. R-77/RG/DHC/2020 dated 15.04.2020, Order No. R-159/RG/DHC/2020 dated 02.05.2020, Order No. R-201/RG/DHC/2020 dated 16.05.2020, Order No. R-271/RG/DHC/2020 dated 21.05.2020 and Order no. 1381/DHC/2020 dated 29.05.2020. Details thereof are set out in the order dated 10.6.2020 passed in this case.

It may be mentioned here that some of the accused persons had filed a transfer petition before Court of Id. District and Sessions Judge (Hqrs.) for transfer of the case to some other Court but the said transfer petition had been dismissed. A letter dated 10.6.2020 was written to the Id Registrar General inquiring if there has been any subsequent order of transfer of the case or of stay of proceedings from any superior court, but no such order was received. Some accused persons filed an application before the Hon'ble Supreme Court for extension of time for passing of judgment, which was dismissed by order dated 18.3.2020. The judgment is therefore being pronounced.

## JUDGMENT

1. This judgment shall decide the aforementioned four Sessions cases that arose out of a common FIR. All the accused persons were earlier being tried together. During trial, three accused persons, namely, Hitender @ Chhotu, Kishanpal @ Fauzi and Desraj @ Desu absconded. They were later arrested. Their trials were separated since the witnesses who had been examined in their absence had to be recalled for being examined afresh. The separate cases were registered as State v. Hitender @ Chhotu, SC No.327/2019, State v. Kishanpal @ Fauzi, SC No.592/2018 and State v. Desraj @ Desu, SC No.28550/2016, which are now being decided together with the main case. These three cases are not in respect of offence under Section 174A of IPC as learned counsel for accused persons has pointed out that the said offence will be tried independently after conclusion of the main case. This case is, therefore, confined to the allegation of commission of offences under Sections 302 and 120B of Indian Penal Code.
2. Briefly stated, it is alleged that the abovenamed accused persons and other persons entered into a criminal conspiracy to commit murder of one Vijay Yadav. For this purpose, accused persons Gopal Krishan Aggarwal, Rishi Pal and Ashok Jain hired the services of other accused persons, namely, Parveen Koli, Deepak @ Chowda, Vinod, Desraj @ Desu, Hitender @ Chhotu, Kishanpal @ Fauzi and one Lokesh Tyagi. It  
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may be noted here that accused Vinod @ Gola is facing trial separately and is presently reported to be mentally unfit for trial, while Lokesh Tyagi has expired. These accused persons alongwith accused Bhisham @ Chintoo allegedly committed murder of Vijay Yadav on 29<sup>th</sup> September, 2007 at 07.00 pm in Gali Arya Samaj, near Shiv Mandir, Sita Ram Bazaar by firing gunshots at him. Accused Parmod who is stated to be a part of the conspiracy allegedly remained in a vehicle for facilitating the escape of other offenders after committing the murder. The accused persons are thus alleged to have committed the offence of entering into a criminal conspiracy and then to have executed the conspiracy by committing murder of Vijay Yadav.

3. On the aforesaid allegations, the police carried out investigation and filed charge-sheet.

#### **Initial Charge-sheet**

4. The initial chargesheet was filed against nine persons. At that time, all those persons were in custody. The names of the said accused persons are as follows:

- a. Hitender Singh @ Chhotu;
- b. Parveen Koli;
- c. Parmod Singh @ Pammy;
- d. Bhisham @ Chintoo;
- e. Vinod Kumar @ Gola;
- f. Rishi Pal @ Pappu;
- g. Gopal Krishan Aggarwal;
- h. Desraj @ Desu; and
- i. Ashok Jain.

5. It is stated in the chargesheet that on 29<sup>th</sup> September, 2007, a PCR call was received at Police Station Hauz Qazi. It was recorded as DD No. 15-A. It was about a man being shot at Gali Arya Samaj, Sita Ram Bazaar. The call was assigned to Sub-Inspector Mahmood Ali. Another call was received from police control room, which was recorded as DD No. 16A. The call was marked to Sub-Inspector Mahmood Ali. Sub-Inspector Mahmood Ali, SHO, Inspector Anil Sharma and other police personnel reached the scene of crime. Blood was found on the ground. Empty shell of 9mm cartridge was also found near the scene of crime. Inquiries revealed that somebody had shot Vijay Yadav @ Vijji. Vijay Yadav @ Vijji had been taken to Lok Nayak Jai Prakash Hospital. The Additional SHO deputed SI Horam and other police staff at the scene of crime. The Additional SHO went to LNJP Hospital. He collected the MLC of Vijay Yadav. The doctor on duty had stated on the MLC that there was a history of firearm injury. The doctor had declared Vijay Yadav as having been brought dead. No witness was found at the spot or at the hospital. An endorsement was made on DD No.15A. It was sent through SI Mahmood Ali to Police Station Hauz Qazi for registration of the case. A photographer and crime team were called at the scene of crime. Clothes of the deceased and his other belongings were sealed by the doctor. They were handed over by Constable Yashvir to the Additional SHO who took them into possession by

seizure memo. The Additional SHO returned to the crime scene with Deepak Sharma who had taken the deceased to the hospital. The crime team and the photographer were found present at the scene of crime. Additional SHO inspected the spot with witness Deepak Sharma. They prepared a rough sketch of the scene of crime. SI Mahmood Ali came to the scene of crime and handed over the rukka along with the FIR to the Additional SHO. The scene of crime was inspected and photographed by the crime team of Central District. The Investigating Officer (hereinafter referred to as "IO") lifted the blood, blood-stained earth and earth control from the scene of crime. They were sealed and seized. The empty cartridge was lifted. Its sketch was prepared. It was sealed and seized. Inquiry was conducted by the IO at the scene of crime and in the surrounding areas. Most of the market was shut down due to the incident. The IO interrogated a few persons.

6. On 30<sup>th</sup> September, 2007, witnesses Parmod Singh and Niranjan Singh @ Billoo told the IO that a person had taken Vijay Yadav @ Vijji from his office at Gali Than Singh after which Vijay Yadav was shot. Ms. Anju Gupta informed that she had seen some persons who had surrounded Vijay Yadav @ Vijji. Ms. Anju Gupta stated that she was not aware of the names and addresses of the said persons. Amar Singh Yadav, father of the deceased, stated that on 29<sup>th</sup> September, 2007 at about 7:30 pm, he had seen his son Vijay Yadav with some persons.



After examining the witnesses, IO reached the mortuary of LNJP Hospital. The IO recorded statements relating to identification of body. He inspected the dead body and carried out proceedings under Section 174 of the Code of Criminal Procedure. Dr. Ankita Dey, Senior Resident, Department of Forensic Examination, MAMC conducted post-mortem on the body. The body was handed over to the relatives of the deceased by the IO. Four sealed parcels were handed over to Inspector Anil Sharma by the mortuary staff. Autopsy surgeon opined the cause of death to be *“combined effects of craniocerebral damage, haemorrhage and shock, consequent upon penetrating injuries to head and abdomen caused by projectile of a rifled firearm via injury no.1, 6-7. Injury no.1, 6-7 are sufficient to cause death in ordinary course of nature.”* Witnesses were examined by Inspector Anil Sharma.

7. It is stated in the chargesheet that on 1<sup>st</sup> October, 2007, the investigation was handed over to Inspector Rajender Dubey. Inspector Rajinder Dubey interrogated local persons. He learnt that some local persons, namely, Bhisham @ Chinto and Vinod @ Gola were missing from the area. It was learnt that the deceased was involved in a financial dispute with one Vijay Bansal and another person who was known to accused Gopal Krishan Aggarwal.
8. It is stated in the chargesheet that on 9<sup>th</sup> October, 2007, the investigation of the case was transferred to the Crime Branch. It was assigned to Inspector K.G. Tyagi. The investigation revealed that suspects Vinod @

Gola, Bhasham @ Chintoo, Deshraj and Deepak @ Choura were missing from their houses since the day of the incident; that some persons claimed that they had seen Vinod @ Gola, Bhasham @ Chintoo, Deshraj and Deepak @ Chowda at the scene of crime near the deceased on the date of the incident, along with other persons; that it was learnt that Vijay Yadav @ Vijji had mediated a financial dispute between Gopal Krishan Aggarwal and one Vijay Bansal; that it was learnt that Gopal Krishan Aggarwal had hired a known criminal named Hitender @ Chhotu and his gang members to settle this financial dispute. During investigation, it was found that Deepak @ Chowda was an active member of the Hitender @ Chhotu gang and he lived at Bazaar Sita Ram, Delhi; that Deepak @ Chowda had been involved in criminal cases with Hitender @ Chhotu; that Deepak @ Chowda and Vinod @ Gola were common friends being local residents; that Vinod @ Teda, who was working with Gopal Krishan Aggarwal, was a friend of Vinod @ Gola; that Gopal Krishan Aggarwal had sent Vinod @ Teda to arrange for some criminals to settle the monetary dispute with Vijay Bansal; that Vinod @ Teda told this fact to Vinod @ Gola who in turn arranged a meeting between Gopal Krishan Aggarwal and the criminals; that the said gang members used to often visit Gopal Krishan Aggarwal in his office.

9. It is further stated in the chargesheet that during investigation, mobile phone number of suspect Vinod @ Gola was obtained; that during search of Hitender @ Chhotu, Sumit @ Dimple Tyagi and others, it was revealed that Hitender @ Chhotu and Sumit @ Dimple Tyagi were notorious criminals who had committed numerous sensational offences of dacoity, attempt to murder, murder, extortion and others in Delhi and Uttar Pradesh; that from call detail analysis and IMEI number search of the mobile phone belonging to suspect Vinod @ Gola, it was found that Vinod @ Gola's mobile phone number was activated at Uttaranchal after the murder of Vijay Yadav @ Vijji; that it was found that Vinod @ Gola had called up some contacts at Bazaar Sita Ram, Delhi by using the same number but using different IMEIs (handsets); that the call detail analysis indicated that the suspect had been moving in the area of Uttaranchal after committing the murder of Vijay Yadav @ Vijji; that the names of Hitender @ Chhotu, Sumit @ Dimple Tyagi, Deshraj @ Desu, Kishan Pal @ Fauzi, Parveen @ Jojo, Parmod @ Pammy and Parveen Koli cropped up as the gang members who along with the earlier known suspects had committed the murder of Vijay Yadav; that raids were conducted at various places at Uttaranchal, Uttar Pradesh, Haryana and Delhi but despite all efforts the suspects were untraceable; that during the search of accused persons, Sumit @ Dimple Tyagi, a suspect in this case, was killed in an encounter with Uttar

Pradesh police at Meerut District.

10. It is further mentioned in the chargesheet that on 25<sup>th</sup> November, 2007 SI Shyam Sunder, Special Team, Prashant Vihar, Rohini, informed that he along with his staff had apprehended suspects Vinod @ Gola and Bhisham @ Chintoo from near Petrol Pump, Bhajanpura, Delhi; that Inspector K.G.Tyagi reached Crime Branch, Prashant Vihar, and after interrogating both of them, he arrested the suspects in the case; that during investigation, both the accused persons disclosed that they along with their other associates, namely, Hitender @ Chhotu, Sumit @ Dimple Tyagi, Deepak @ Chowda, Deshraj @ Desu, Kishan Pal @ Fauzi, Parveen @ JoJo, Parmod @ Pammy and Parveen Koli killed Vijay Yadav on 29<sup>th</sup> September, 2007 pursuant to a conspiracy with Gopal Krishan Aggarwal, Rishi Pal @ Pappu and Ashok Jain; that both accused persons identified the place of incident and the hotel where they along with other co-accused persons planned to kill Vijay Yadav @ Vijji; that both the accused persons were taken on police remand and a team along with them was sent to Uttaranchal for further investigation.
11. It is further mentioned in the chargesheet that during police remand, at the instance of accused Vinod @ Gola, SI Ram Avtar seized the mobile phone instruments which had been used by the accused persons from Uttaranchal; that a gold chain with locket belonging to deceased Vijay Yadav was seized from the premises of Rajender Singh, V&PO

Balawala, Dehradun at the instance of accused Bhisham @ Chintoo; that the same was converted into a parcel, sealed with the seal of RBS and was taken into police possession by SI Ram Avtar.

12. It is further stated in the chargesheet that during police remand, accused Vinod @ Gola and Bhisham @ Chintoo identified the place of occurrence and the hotel where the plan to kill Vijay Yadav was made; that mobile instrument of accused Bhisham @ Chintoo was seized from his home at Katra Gokal Shah, Bazaar Sita Ram, Delhi; that the same was converted into a parcel, sealed with the seal of KGT and taken into police possession; that both the accused persons disclosed that they were a part of the conspiracy to kill Vijay Yadav @ Vijji and disclosed the names of the other conspirators as Gopal Krishan Aggarwal, Rishi Pal @ Pappu and Ashok Jain.

13. The chargesheet goes on to state that Vinod @ Gola and Bhisham @ Chintoo admitted that Gopal Krishan Aggarwal had hired Hitender @ Chhotu and his gang to threaten Vijay Bansal and had given Rupees Three Lakhs as part payment to Hitender @ Chhotu through deceased Vijay Yadav @ Vijji to do the same; that when the dispute had been settled, Hitender @ Chhotu asked for the remaining sum of money from Gopal Krishan Aggarwal; that as per disclosure statements of the accused persons and statements of witnesses, Gopal Krishan Aggarwal refused to pay the remaining sum of money to Hitender @ Chhotu and

allegedly told him that he had paid all the money to Vijay Yadav @ Vijji; that as per the disclosure statements of the accused persons and statements of the witnesses, all three persons, namely, Ashok Jain, Rishi Pal @ Pappu and Gopal Krishan Aggarwal were involved and had formed a nexus to eliminate Vijay Yadav @ Vijji and his brother Abhay Singh Yadav; that Ashok Jain had previous political and personal enmity with Vijay Yadav and as per the statements of witnesses, Vijay Yadav @ Vijji had publicly misbehaved with Ashok Jain on numerous occasions; that as per the statements of witnesses Ashok Jain believed that Abhay Singh and Vijay Yadav were behind the anti-corruption case of CBI against Ashok Jain; that Ashok Jain also believed that he had lost his ticket to the Delhi Assembly due to the propaganda of Abhay Singh and Vijay Yadav and he also felt that Vijay Yadav had been trying to politically weaken him in the area; that Bhisham @ Chintoo was identified as the associate of Ashok Jain; that Bhisham @ Chintoo used to look after the work in the office of Ashok Jain; that statements of witnesses and disclosure statements of accused persons revealed that Ashok Jain felt that Vijay Yadav threatened supporters of Ashok Jain; that Ashok Jain also believed that Vijay Yadav was trying to distract supporters of Ashok Jain from leadership of Ashok Jain and had been trying to ruin the political career of the former; that Rishi Pal @ Pappu had a business partnership with Abhay Singh, but there were

disputes between them over property in the Walled City area; that Rishi Pal @ Pappu had double-crossed Abhay Singh and had told Ashok Jain that Abhay Singh and Vijay Yadav had been behind the CBI anti-corruption case against Ashok Jain; that Rishipal had told Ashok Jain that though the former was a complainant in the CBI raid against Ashok Jain, the main persons behind the raid were Abhay Singh and Vijay Yadav; that statements further revealed that Rishi Pal @ Pappu was annoyed with Abhay Singh and Vijay Yadav for lodging a kidnapping case against Amarpal Sharma, who was a cousin of Rishi Pal @ Pappu; that Abhay Singh had alleged that he suspected that Amarpal Sharma had kidnapped his son but Abhay Singh's son had returned home on his own; that on the day of the incident, Abhay Singh had called up Rishi Pal @ Pappu and had informed him about the incident; that just after receiving Abhay Singh's call, Rishi Pal @ Pappu had called up one Krishan Kumar @ Kuku who in turn immediately called up Ashok Jain to inform him about the shooting in Gali Arya Samaj.

14. The chargesheet further states that accused persons Gopal Krishan Aggarwal and Rishi Pal @ Pappu were arrested on 7<sup>th</sup> December, 2007; that during investigation accused Gopal Krishan Aggarwal admitted that he had enmity with the deceased and that he had hired Hitender Singh @ Chhotu to settle the monetary dispute with Vijay Bansal; that

Gopal Krishan Aggarwal gave rupees three lakhs to Hitender Singh @ Chhotu through Vijay Yadav @ Vijji and the final settlement was done at Police Station Civil Lines; that Inspector Vipin Kumar Bhatia, Police Station Civil Lines corroborated this fact; that Gopal Krishan Aggarwal also revealed that he had a secret pact with Ashok Jain and Rishi Pal @ Pappu to carry out murder of Vijay Yadav @ Vijji, because as per them, Abhay Singh's prime strength comprised of Vijay Yadav @ Vijji, and without him Abhay Singh would not be able to survive; that as per the statements of witnesses, accused Gopal Krishan Aggarwal and Ashok Jain used to hold secret meetings; that Gopal Krishan Aggarwal and Vijay Yadav @ Vijji had exchanged hot words over the issue of paying the remaining amount of money to Hitender @ Chhotu; that copy of the final settlement deed between Gopal Krishan Aggarwal and Vijay Bansal which had been forcibly brought about by Hitender @ Chhotu and his gang was seized at the instance of Gopal Krishan Aggarwal from his office at Gali Arya Samaj, Sita Ram Bazaar, Delhi; that Inspector Vipin Kumar Bhatia, Police Station Civil Lines also handed over copy of this settlement deed which was taken into police possession. It is stated in the chargesheet that accused Rishi Pal @ Pappu disclosed that he had a business partnership with Abhay Singh, brother of deceased Vijay Yadav but despite their partnership, relations between them were far from cordial and Rishi Pal nursed a grudge



against Vijay Yadav as well; that on the day of the incident, Rishi Pal @ Pappu was near the scene of crime and immediately reached there, after being called up by Abhay Singh; that Rishi Pal @ Pappu informed Krishan Kumar @ Kukku, who in turn called Ashok Jain and informed him about the shoot-out; that mobile phone of Rishi Pal @ Pappu was also seized at his instance.

15. The chargesheet mentions that during investigation, the Guest Register of Hotel Kwality, Pahar Ganj, New Delhi was seized, in which accused Hitender @ Chhotu and his gang members had lodged their arrival entry on 20<sup>th</sup> September, 2007 and 28<sup>th</sup> September, 2007; that it was converted into a parcel sealed with seal of KGT; that copies of Guest Register were also taken; that during interrogation, accused Bhisham @ Chintoo disclosed that he had called up both Rishi Pal @ Pappu and Ashok Jain from a STD Shop, Delhi Road, Sonapat after committing the murder while they were leaving Delhi; that Bhisham @ Chintoo had told them that he along with others had killed Vijay Yadav and asked them to take care of things after he had left; that SI Ram Avtar took the STD phone instrument into police possession from the shop.
16. The chargesheet goes on to state that non-bailable warrants were issued by the Court of Sh. Alok Kumar Aggarwal, the then Id. Addl. Chief Metropolitan Magistrate, Delhi against Hitender @ Chhotu, Parmod @ Pammy, Parveen Koli, Deshraj @ Desu and Deepak @ Chowda; that

acting on a secret information, accused Parveen Koli was arrested from outside the Cemetery, near ISBT, New Delhi on 10<sup>th</sup> January, 2008; that accused Parveen Koli was produced before the Court of Id. Addl. Chief Metropolitan Magistrate, Delhi in muffled face and an application for his Test Identification Parade was moved before the Court; during the Test Identification Parade proceedings before Id. Link MM Sh. Vidya Prakash at Tis Hazari, Delhi, accused Parveen Koli refused to participate in the parade. The police took accused Praveen Koli on police remand. During that period, the witnesses correctly identified Praveen Koli as being the person, who had come to the office of Vijay Yadav and who had taken Vijay Yadav along on the day of the incident and minutes before the incident; that during police remand, accused Parveen Koli pointed towards Kwality Hotel, the office of deceased Vijay Yadav @ Vijji and the place of incident i.e. Gali Arya Samaj, Delhi duly chronicled in pointing out memos.

17. It is further mentioned in the chargesheet that Test Identification Parade of case property comprising of gold chain which had previously been recovered at the instance of accused Bhasham @ Chintoo was conducted by Sh. Vidya Prakash, Id. Link MM, Tis Hazari, Delhi; that witness Abhay Yadav correctly identified the same; that witness Abhay Singh was examined separately in this regard.

18. The chargesheet then states that on 28<sup>th</sup> January, 2008, HC Azad Singh, Special Team, Parshant Vihar, Delhi informed that the Team had arrested Hitender @ Chhotu in case FIR No.15/2008 for offence under Section 25 of the Arms Act, registered at Police Station I.P. Estate, Delhi; that the said accused had disclosed that he was involved in the murder of Vijay Yadav; that the accused was interrogated and arrested in the present case and produced before the Court of Ld. Addl. Chief Metropolitan Magistrate in muffled face; that application for Test Identification Parade was moved before the Id. Link MM Sh. Pulstya Pramachala, where accused Hitender @ Chhotu refused to participate in the parade; that custody of the accused was taken by the police on remand for a period of seven days; that the witnesses identified accused Hitender @ Chhotu as the person they had seen with deceased Vijay Yadav on the day of the incident; that during interrogation, the accused admitted to having shot dead Vijay Yadav with the aid of his gang; that he further disclosed that he is the gang leader and had conspired with other co-accused persons to kill Vijay Yadav @ Vijji; that he had also used his vehicle to escape from Delhi after committing the crime along with the other co-accused persons.
19. It is disclosed in the chargesheet that during police custody remand, SI Mukesh Kumar took accused Hitender @ Chhotu to Dehradun and a car of Santro, model bearing No.UA-07T 5313 was seized at his

instance; that the car had been used in the commission of the offence; that a bloodstained gold chain belonging to deceased Vijay Yadav was also seized from the possession of accused Hitender @ Chhotu from his home at Ram Park, Loni, Uttar Pradesh and was taken into police possession after its sealing; that Hitender @ Chhotu pointed towards the place of occurrence and Hotel Kwality, Paharganj.

20. The chargesheet then articulates that on 30<sup>th</sup> January, 2008, HC Naresh Kumar, Special Team, Crime Branch, Prashant Vihar, New Delhi informed that the Team had arrested Parmod Singh @ Pammy in case FIR No.40/2008 for offence under Section 25 of the Arms Act, registered at Police Station D.B.G. Road, Delhi and that he had disclosed about his involvement in the murder of Vijay Yadav; that Parmod @ Pammy was also arrested in the present case and his detailed disclosure statement was recorded; that the said accused was produced before the Court and taken on one day's police custody remand; that during investigation, the accused pointed towards the place of parking of car (of model Santro bearing registration No.UA-07T 5313) and Hotel Kwality, Paharganj, Delhi through pointing out memos.

21. The chargesheet discloses that on 4<sup>th</sup> February, 2008, after receiving secret information, accused Deshraj @ Desu was arrested from the bus stand at Zakir Hussain College, Delhi; that the accused was produced

before the Court in muffled face and an application for Test Identification Parade was moved which was marked to Ld. Link MM by Ld. Addl. Chief Metropolitan Magistrate; that accused Deshraj @ Desu refused to participate in the parade before the ld. Link MM; that the accused was taken on one day's police custody remand; that during police custody remand, the accused pointed towards the place of occurrence, the office of the deceased at Gali Than Singh, Bazaar Sita Ram and Hotel Kwalitiy which was recorded in pointing out memos; that accused Deshraj @ Desu was correctly identified by the witness as the man who had been seen with Parveen @ Koli and deceased Vijay Yadav on the day of the incident.

22. It is further mentioned in the chargesheet that exhibits of the case were deposited in the forensic science laboratory for analysis. It is stated that a scaled site plan is to be prepared by the draughtsman who has already taken measurements. It was also mentioned that applications for narco-analysis test of accused persons Gopal Krishan Aggarwal and Rishi Pal had been filed before the Court of Ld. Additional Chief Metropolitan Magistrate.
23. On the basis of the aforesaid investigation, the following inferences were drawn by Inspector K.G. Tyagi, which he set out in the conclusion of the original chargesheet:

- (i) That accused persons Hitender Singh @ Chhotu, Parveen Koli, Parmod Singh @ Pammy, Bhisham @ Chintoo, Vinod Kumar @ Gola, Rishi Pal @ Pappu, Gopal Krishan Aggarwal, Desraj @ Desu and Ashok Jain, alongwith Kishanpal @ Fauzi, Parveen @ JoJo and Deepak @ Chowda were complicit in committing the murder of Vijay Yadav @ Viji on 29<sup>th</sup> September, 2007 at Gali Arya Samaj, Sita Ram Bazaar;
- (ii) That accused persons Ashok Jain, Rishi Pal @ Pappu and Gopal Krishan Aggarwal entered into a criminal conspiracy with the remaining accused persons for commission of the aforesaid offence;
- (iii) That accused persons Bhisham @ Chintoo, Vinod @ Gola, Deshraj @ Desu, Hitender @ Chhotu, Parveen Koli, Parmod @ Pummy, Kishanpal @ Fauzi, Parveen @ JoJo and Deepak @ Chowda had executed the task of killing Vijay Yadav @ Viji;
- (iv) That the gold chains worn by Vijay Yadav were recovered from Bhisham @ Chintoo and Hitender @ Chhotu, which the latter had carried with them after committing the offence;
- (v) That the vehicle of model Santro bearing registration No.UA-07-T-5313 had been used in the crime and was recovered at the instance of accused Hitender @ Chhotu;
- (vi) That one Dimple Tyagi was also found to be involved in the crime but he died in a police encounter at Meerut.

24. Cognizance was taken of the original chargesheet by order dated 22<sup>nd</sup> February, 2008 passed by the Court of Id. Ld. Addl. Chief Metropolitan Magistrate, Delhi. All nine accused persons named in the original chargesheet, namely, Hitender Singh @ Chhotu, Parveen Koli, Parmod Singh @ Pammy, Bhisham @ Chintoo, Vinod Kumar @ Gola, Rishi Pal @ Pappu, Gopal Krishan Aggarwal, Desraj @ Desu and Ashok Jain were proceeded against. Accused persons were provided copies of the chargesheet and documents. The case was committed to the Court of Sessions.

#### **Supplementary Charge-sheet I**

25. Thereafter, on 18<sup>th</sup> July, 2008, a supplementary chargesheet was filed against accused Deepak @ Chowda. In the supplementary chargesheet, the facts set out in the initial chargesheet were affirmed. The subsequently conducted investigation was then outlined.

26. It was stated in the supplementary chargesheet that customer application forms of mobile phone numbers of accused persons and relevant witnesses were obtained; that it was found that phone connections used by accused persons had been issued in the names of persons other than the users; that the mobile phone number 9761065298 used by accused Hitender @ Chotu had been issued to Ankush Kumar; that the mobile phone number had been obtained by the accused person in another person's name and identity; that during investigation

witness Ankush Kumar disclosed that he had never bought or used the said mobile phone though he is a permanent resident of Delhi, whereas the mobile phone number had been obtained in his name from Dehradun, Uttaranchal, using driving licence of Ankush Kumar but another person's photograph; that accused person Rishipal @ Pappu obtained mobile phone number in the name of his brother Shiv Kumar; that accused Ashok Jain obtained mobile phone number in the name of his nephew Apoorv Jain; that accused Bhisham @ Chintoo obtained mobile phone number in the name of his elder brother Devender Kumar; that accused Gopal Krishan Aggarwal had obtained mobile phone connection in the name of his son Abhinav Aggarwal; that mobile phone number 9911370816 was obtained by the accused persons using fake identity of Kamal Singh as well as photograph of another person; that mobile phone number 9997131643 allegedly used by accused Dimple Tyagi was obtained in the name of witness Rohtash using his driving license.

27. The supplementary chargesheet then asseverates that call detail records revealed that accused Gopal Krishan Aggarwal was in constant contact with Vinod @ Teda on the date of the incident; that accused Gopal Krishan Aggarwal was present in his shop at the time of the incident; that Vinod @ Teda was in contact with accused Vinod @ Gola and accused Bhisham @ Chintoo before and after the incident; that Vinod @



Teda was in contact with accused Vinod @ Gola on the day following the date of incident.

28. It is stated in the supplementary chargesheet that scaled site plan of the scene of crime prepared by the draughtsman at instance of the witnesses was collected and placed on file.
29. The supplementary chargesheet then articulates that non-bailable warrants were got issued from the Court of Sh. Alok Kumar Aggarwal, the then Id. ACMM, Delhi against accused persons Deepak @ Chowda, Kishanpal @ Fauzi and Parveen @ JoJo; that despite best efforts and proceedings under Sections 82 and 83 of Code of Criminal Procedure, the accused persons mentioned in column no. 2 of the supplementary chargesheet could not be traced and arrested; that accused Parveen @ JoJo had been declared as proclaimed offender by the Court of Sh. Alok Aggarwal, Id. ACMM on 15<sup>th</sup> July, 2008.
30. The supplementary chargesheet goes on to disclose that after receiving non-bailable warrants, search of accused persons was made; that acting on secret information, accused Deepak Kumar @ Chowda was apprehended from outside Govt. School, Sector 15, Rohini, New Delhi on 25<sup>th</sup> May, 2008; that accused Deepak @ Chowda was subsequently arrested in the case; that the accused was produced before the Court of Id. ACMM in muffled face and an application for Test Identification Parade was moved before the Court; that during Test Identification

Parade proceedings before Link MM Sh. Ajay Gupta at Tis Hazari Courts, Delhi, accused Deepak @ Chowda refused to participate in the proceedings; that the accused was taken on police custody remand upto 31<sup>st</sup> May, 2008; that the accused was correctly identified by the witnesses as the person, who was present at the time of incident at the scene of crime i.e. Gali Arya Samaj, Bazar Sita Ram, Delhi when deceased Vijay Singh @ Vijji was shot on 29<sup>th</sup> September, 2007; that during the police custody remand, accused Deepak @ Chowda pointed towards Kwality Hotel and the place of incident i.e. Gali Arya Samaj, Delhi through pointing out memos; that during police custody remand, accused Deepak @ Chowda went in custody of SI Sanjeev Kumar to Dehradun, Uttarakhand; that accused Deepak @ Chowda pointed towards Chowdhary Niwas, Village and Post Balawala, Dehradun, Uttarakhand and got recovered a gold bracelet allegedly belonging to deceased Vijay Singh @ Vijji; that SI Sanjeev Kumar seized the bracelet at the instance of accused Deepak @ Chowda.

31. The supplementary chargesheet provides that after arrest, accused Deepak @ Chowda confessed that he was the person who had mediated between Hitender @ Chhotu gang and accused Gopal Krishan Aggarwal to settle the dispute between Vijay Bansal and Dinesh Jain; that a deal had been struck between them for Rs.10 lacs, of which accused Gopal Krishan Aggarwal gave advance of Rs.3 lacs to

them through Vijay Singh @ Vijji; that the hired persons threatened Vijay Bansal to settle the dispute; that when the matter was settled, Gopal Krishan Aggarwal denied paying the remaining sum and said that the matter had been got settled by the police officers of Police Station Civil Lines; that accused Gopal Krishan Aggarwal also stated to them that he had already settled the account with Vijay Singh @ Vijji and that if they have any query, they should ask Vijay Singh @ Vijji for the account; that it was revealed by witnesses (Durga Pandit and Deepak Chaiwala) that after the incident, accused Vinod @ Gola, Bhisham @ Chintoo and Deepak @ Chowda told them that they had killed Vijay Singh @ Vijji, and that Gopal Krishan Aggarwal, Ashok Jain and Rishipal @ Pappu were behind the conspiracy of the murder; that Deepak @ Chowda confessed that they had received Rs.5 lacs as advance money from Gopal Krishan Aggarwal to kill Vijay Singh @ Vijji.

32. It is further stated in the supplementary chargesheet that Test Identification Parade of case property i.e. a gold bracelet recovered at the instance of accused Deepak @ Chowda was conducted by Id. Link MM Sh. Ajay Gupta at Tis Hazari Courts, Delhi; that the case property was correctly identified by witness Abhay Singh Yadav; that witness Abhay Singh Yadav was examined separately in this regard.

33. It is further stated in the supplementary chargesheet that during investigation, customer application forms of mobile phone numbers used by accused persons, namely, Vinod @ Gola, Rishipal @ Pappu, Hitender @ Chhotu, Dimple Tyagi, Ashok Jain, Gopal Krishan Aggarwal, Durga Pandit and also the deceased Vijay Singh @ Vijji have been collected from their respective mobile service companies and placed on the file.
34. It is then mentioned in the supplementary chargesheet that the report of Forensic Science Laboratory, Rohini on the exhibits which had been sent for biological and ballistic analysis are yet to be received and that they would be submitted in the Court in due course.
35. The supplementary chargesheet attempts to reconstruct facts by suturing the evidence collected during investigation. The events set forth in the supplementary chargesheet and the inferences drawn therein are as follows:
- a) that on the day of incident accused Gopal Krishan Aggarwal, Rishipal @ Pappu and Ashok Jain were involved in a criminal conspiracy to kill Vijay Singh @ Vijji, and that is why, they were present in nearby areas of Gali Arya Samaj, Bazar Sita Ram, Delhi;
  - b) that on the day of the incident, accused Gopal Krishan Aggarwal was present inside his shop when the incident took place;
  - c) that accused Ashok Jain was also present in the nearby area and

he received information telephonically from one Kishan Kumar @ Kukku;

d) that accused Rishipal @ Pappu was also present nearby the spot and he received information of the murder from witness Abhay Yadav;

e) that Abhay Yadav first received call from accused Gopal Krishan Aggarwal;

f) that as per the call detail record of accused Gopal Krishan Aggarwal, he was the person who informed police about the incident, but he did not come forward to speak about the incident to the police after the police arrived at the spot;

g) that after receiving information about the incident from accused Gopal Krishan Aggarwal, Abhay Yadav immediately called accused Rishipal @ Pappu to enquire about the incident;

h) that accused Rishipal @ Pappu in turn called Kishan Kumar @ Kukku;

i) that Kishan Kumar @ Kukku informed accused Ashok Jain using a different phone number;

j) that after the incident accused Vinod @ Gola and Bhisham @ Chintoo were constantly in touch with accused Rishipal @ Pappu and Ashok Jain;

k) that call detail records of both the accused persons, namely, Ashok Jain and Rishi Pal @ Pappu show that on the night of the

incident both the accused persons had received calls from a phone situated at an STD Shop, Delhi Road, Sonapat, Haryana;

l) that as per the disclosure statement of accused persons that was the road used by the accused persons on their way to Uttarakhand on fleeing from Delhi after committing murder of Vijay Singh @ Vijji on 29<sup>th</sup> September, 2007;

m) that call detail record of accused Vinod @ Gola shows that after the incident, he was constantly in touch with the persons at Bazar Sita Ram, and had received information about movement of the police;

n) that accused Vinod @ Gola used his original mobile number but kept on using different mobile handsets;

o) that accused Vinod @ Gola contacted Durga Dass @ Durga Pandit and Vinod Chaiwala (who used to run a tea shop in a gali near the house of accused Vinod @ Gola);

p) that Durga Dass @ Durga Pandit revealed that he had received calls from Vinod @ Gola after the incident and Vinod had enquired about the incident and the stage of police action in the area;

q) that Vinod had told the said person that the murder was a conspiracy by accused persons Gopal Krishan Aggarwal, Ashok Jain and Rishipal @ Pappu and Rs.5 lacs had been given by accused Gopal Krishan Aggarwal as advance money to execute the murder of Vijay Singh @ Vijji;

- r) that soon after the incident, accused Rishipal @ Pappu arrived at the spot on his motorcycle. He offered his motorcycle to carry injured person Vijay Singh @ Vijji to the hospital;
- s) that accused Bhisham @ Chintoo had used another mobile phone number which was allegedly given to him by accused Hitender @ Chhotu to communicate with him and with accused Deepak @ Chowda;
- t) that mobile phone number 9911370816 was used by the Bhisham @ Chintoo to communicate with other accused persons;
- u) that call details of mobile phone number 9911370816 show that on and before 29<sup>th</sup> September, 2007, the phone was constantly in touch with the phone number 9761065298;
- v) that the cell ID position of mobile number 9761065298 was in the area of the scene of crime;
- w) that as per the disclosure statement of accused Hitender @ Chhotu, he was using the mobile phone number 9761065298 during that period, and this fact was also disclosed in the confessional statement of accused Deepak @ Chowda.
- x) that after the incident all the accused persons except those accused of criminal conspiracy fled from Delhi and hid in Uttarakhand;
- y) that on 22<sup>nd</sup> October, 2007, accused Dimple @ Sumit Tyagi was shot dead in an encounter with UP Police at Uttar Pradesh;

- z) that during investigation, it was found that at the time of the incident, accused Dimple Tyagi used a mobile phone number 9997131643 and on the date of incident the Cell ID of the mobile phone number was found to be around the scene of crime and on the date of incident, the mobile phone was on roaming in Delhi;
- aa) that as per the statement of witness Vikas Tyagi, mobile phone number 9997131643 was used by Sumit @ Dimple Tyagi;
- bb) that this mobile phone number was obtained on the identity of Rohtash, resident of Rishikesh, Uttarakhand, by accused person Sumit @ Dimple Tyagi;
- cc) that after the encounter, some arms and ammunition had been recovered from possession of accused Dimple @ Sumit Tyagi by UP Police;
- dd) that investigations reveal that accused Bhisham @ Chintoo gave a handsome amount of money to accused Hitender @ Chhotu, Sumit @ Dimple and their associates in advance to kill Vijay Singh @ Vijji;
- ee) that the money was arranged by Bhisham @ Chintoo from Rajender Singh (caterer at Bazar Sita Ram) and his employees;
- ff) that Sh. Rajender Singh was examined and he admitted that Bhisham @ Chintoo used to lure his employees with the promise that he could arrange for jobs in Delhi Jal Board and had fleeced money out of them;



gg) that Bhisham @ Chintoo used to claim that he could get them jobs using his influence and relationship with Sh. Ashok Jain, Ex-Councillor;

hh) that from the investigation conducted so far, it has been established that accused persons named in column nos. (2) and (3) of the supplementary chargesheet are involved in the murder of Vijay Singh @ Vijji on 29<sup>th</sup> September, 2007 at Gali Arya Samaj, Bazar Sita Ram;

ii) that accused Deepak @ Chowda mentioned in column no. (3) along with other accused persons Kishanpal @ Fauzi and Parveen @ JoJo were still to be arrested (and accused persons Ashok Jain, Gopal Krishan Aggarwal, Rishipal @ Pappu, Bhisham @ Chintoo, Vinod @ Gola, Desraj @ Desu, Hitender @ Chotu, Parveen Koli and Parmod @ Pammy were facing trial);

jj) that these accused persons conspired and executed the killing of Vijay Singh @ Vijji and therefore, are liable to be charged under Section 302 read with Section 120B of IPC;

kk) that deceased Vijay Singh's golden bracelet was recovered from accused Deepak @ Chowda which had been taken by him after committing the murder and therefore, he is liable to be additionally charged under Section 404 of IPC;

- ll) that remaining accused persons Kishanpal @ Fauzi and Parveen @ JoJo could not be arrested despite efforts;
- mm) that accused Parveen @ JoJo has been declared proclaimed offender by the Court;
- nn) that investigations conducted till then had revealed criminal relations between Hitender @ Chotu, Dimple Tyagi and Deepak @ Chowda, who were earlier also together involved in different criminal cases.
36. The supplementary chargesheet concluded by stating that the accused person mentioned in column no. (2) thereof could not be arrested and proceedings for declaring Kishanpal @ Fauzi as proclaimed offender were pending in the Court of Sh. Alok Aggarwal, the then Id. ACMM, Tis Hazari, Delhi; that accused person mentioned in column no. (3) Deepak @ Chowda was in judicial custody; that there is sufficient evidence on record to charge-sheet accused person Deepak @ Chowda named in column no. (3); and that the accused person may be summoned for trial.
37. Based on the aforesaid supplementary chargesheet, accused Deepak @ Chowda was proceeded against. The accused was provided copy of the chargesheet and documents. The case was committed to the Court of Sessions by order of Id. Addl. Chief Metropolitan Magistrate dated 31<sup>st</sup> July, 2008.

### Supplementary Charge-sheet II

38. On 05<sup>th</sup> September, 2009, a supplementary chargesheet was filed against accused Kishanpal @ Fauzi. In the supplementary chargesheet, it was mentioned that accused Kishanpal @ Fauzi had been declared proclaimed offender, that the accused was later arrested; that the accused was produced before the Court of Id. Duty Magistrate; that the accused was arrested in this case after obtaining permission from the Court; that disclosure statement of the accused was recorded; that accused Kishanpal @ Fauzi was sent to judicial custody; that an application for conducting Test Identification Parade was filed in Court; that on 25<sup>th</sup> June, 2009, Test Identification Parade proceedings were conducted in the Court of Sh. Siddharth Mathur, Id MM; that custody of accused was obtained by the police for two days; that the accused pointed towards the place of occurrence which was recorded in pointing out memo; that a report of forensic science laboratory had been received; and that statements of witnesses was recorded.
39. Pursuant to filing of the supplementary chargesheet, accused Kishanpal @ Fauzi was proceeded against. He was provided copy of the chargesheet and documents. The said case was committed to the Court of Sessions too by order dated 19<sup>th</sup> September, 2009 passed by the Id. Addl. Chief Metropolitan Magistrate, Delhi.

### Charge

40. Charge was initially framed by order dated 16<sup>th</sup> September, 2010. Charge was framed against all accused persons for offences under Sections 120-B and 302 of IPC.
41. On 27<sup>th</sup> November, 2015, charges were additionally framed against accused persons Desraj @ Desu and Hitender Singh @ Chhotu for offence under Section 174-A of IPC since the said accused persons had absconded during trial (which was common at that time) and had been declared proclaimed offenders. This judgment is not concerned with the offence under Section 174-A of IPC as, by order dated 23<sup>rd</sup> January, 2017, accused persons Desh Raj @ Desu and Hitender Singh @ Chhotu are to be separately tried for those offences. Likewise, accused person Kishanpal @ Fauzi is to be separately tried for offence under Section 174-A of IPC because, according to the submissions of Id counsel for said accused persons made on 15<sup>th</sup> June, 2020, the trial of these three accused persons for offence under Section 174A of IPC has not yet commenced and is to be held by the Court after disposal of the present case.
42. Even the charges framed on 16<sup>th</sup> September, 2010 are not to be considered by this Court qua accused persons Hitender Singh @ Chhotu, Parveen Koli, Parmod Singh @ Pummy, Bhisham @ Chintoo,

Vinod Kumar @ Gola, Desraj @ Desu, Deepak @ Chowda, Rishi Pal @ Pappu, Gopal Krishan Aggarwal and Ashok Jain since those charges were subsequently amended and amended charges were framed by the Id. Predecessor of this Court by order dated 12<sup>th</sup> April, 2017. On 12<sup>th</sup> April, 2017, charges were framed against accused persons Hitender Singh @ Chhotu, Parveen Koli, Parmod Singh @ Pummy, Bhisham @ Chintoo, Vinod Kumar @ Gola, Desh Raj @ Desu, Deepak @ Chowda, Rishi Pal @ Pappu, Gopal Krishan Aggarwal and Ashok Jain as follows:

*"I, Chandra Shekhar, Additional Sessions Judge-02 (Central), Tis Hazari Courts, Delhi do hereby charge you accused:*

- 1) *Hitender Singh @ Chhotu S/o Sh. Laxman Singh Rawat R/o F-440, Ram Park Extension, Loni, Ghaziabad.*
- 2) *Parveen Koli S/o Sh. Amba Prasad R/o A-20/D, Avantika Enclave, Rohini, New Delhi.*
- 3) *Parmod Singh @ Pummy S/o Sh. Vikram Singh R/o E-781, Ram Park Extension, Loni Ghaziabad.*
- 4) *Bhisham @ Chintoo S/o Sh. Ved Prakash R/o 2137, Katra Gokul Shah, Bazaar Sita Ram, Delhi.*
- 5) *Vinod Kumar @ Gola S/o Sh. Ramesh Chand R/o 2061, Gali Akhare Wali, Bazaar Sita Ram, Delhi.*
- 6) *Desh Raj @ Desu S/o Late Sh. Ramesh Chand R/o 2037, Pili Kothi, Bazaar Sita Ram, Delhi.*
- 7) *Deepak @ Chowda S/o Sh. Mool Chand R/o 2076, Katra Gokul Shah, Bazaar Sita Ram, Delhi.*
- 8) *Rishi Pal @ Pappu S/o Sh. Het Ram R/o 3159, Mohalla Dassan, Hauz Qazi, Delhi.*
- 9) *Gopal Krishan Aggarwal S/o Sh. Brij Kishore R/o 2496, Gali Kashmirian, Chauriwalan, Delhi.*

10) Ashok Jain S/o Sh. Virender Prabhakar R/o 3506, Bazaar Sita Ram, Hauz Qazi, Delhi, as under:

*That during the period of which the starting point is not known till all of you were arrested on the respective dates at different places in Delhi and outside, all of you alongwith Lokesh@ Dimple Tyagi (since deceased) and Krishan Pal @ Fauzi (since P.O.) entered into a criminal conspiracy to do an offence i.e. to commit murder of Vijay Yadav @ Vijay S/o Sh. Amar Singh Yadav and for this purpose you accused Gopal Krishan, Rishi Pal and Ashok Jain hired the services of accused Hitender, Parveen Koli, Vinod, Desh Raj, Deepak, Kishan Pal (since P.O.) and Lokesh Tyagi (deceased) and these accused alongwith accused Bhisham committed murder of Vijay Yadav on 29.09.2007 at 07.00 pm in Gali Arya Samaj, near Shiv Mandir, Bazaar Sita Ram by firing upon him. For this purpose, you accused Parmod remained in a Santro Car for effecting the safe escape of all of you after the offence. Thereby all of you have committed an offence punishable under section 120-B r/w section 302 IPC and within the cognizance of this Court.*

*And I therefore, direct you all be tried by this Court for the said charges”.*

43. Amended charge for the offence of murder was also framed against accused persons Hitender Singh @ Chhotu, Parveen Koli, Bhisham @ Chintoo, Vinod Kumar @ Gola, Desh Raj @ Desu, Deepak @ Chowda as follows:

*“I, Chandra Shekhar, Additional Sessions Judge-02 (Central), Tis Hazari Courts, Delhi do hereby charge you accused:*

- 1) *Hitender Singh @ Chhotu S/o Sh. Laxman Singh Rawat R/o F-440, Ram Park Extension, Loni, Ghaziabad.*
- 2) *Parveen Koli S/o Sh. Amba Prasad R/o A-20/D, Avantika Enclave, Rohini, New Delhi.*

3) *Bhisham @ Chintoo S/o Sh. Ved Prakash R/o 2137, Katra Gokul Shah, Bazaar Sita Ram, Delhi.*

4) *Vinod Kumar @ Gola S/o Sh. Ramesh Chand R/o 2061, Gali Akhare Wali, Bazaar Sita Ram, Delhi.*

5) *Desh Raj @ Desu S/o Late Sh. Ramesh Chand R/o 2037, Pili Kothi, Bazaar Sita Ram, Delhi.*

6) *Deepak @ Chowda S/o Sh. Mool Chand R/o 2076, Katra Gokul Shah, Bazaar Sita Ram, Delhi.*

*That on 29.09.2007 at about 07:00 pm at a place near Shiv Mandir, Bazaar Sita Ram, Gali Arya Samaj in pursuance of before mentioned criminal conspiracy, all of you alongwith Lokesh Tyagi (deceased) and Krishan Pal @ Fauzi (since P.O.) committed murder of Vijay Yadav @ Vijyy and thereby all of you have committed an offence punishable under section 302 IPC r/w section 120-B IPC and within the cognizance of this Court.*

*And I therefore, direct you be tried by this Court for the said charges”.*

All the abovenamed accused persons pleaded not guilty and claimed trial.

44. On 12<sup>th</sup> April, 2017, when the charges were amended as aforesaid, accused Kishanpal @ Fauzi was proclaimed offender and was not facing trial. After accused Kishanpal @ Fauzi was found, the Id predecessor of the undersigned, by order dated 9<sup>th</sup> August, 2018, chose to resume recording of evidence without framing of amended charge against him. The charges against accused Kishanpal @ Fauzi, recorded on 16<sup>th</sup> September, 2010, therefore, read as follows:

*“I, Madhu Jain, Additional Sessions Judge-01, North/Delhi do hereby charge you accused:*

xxx

*Kishan Pal @ Fauzi S/o Sh. Babu Ram R/o RZ-D1, 357, Gali No.5, Mahavir Enclave, Delhi.*

xxx

*That during the period of which the starting point is not known till all of you were arrested on the respective dates at different places in Delhi and outside, all of you alongwith Lokesh @ Dimple Tyagi (since deceased) and Parveen Jojo (absconding accused) entered into a criminal conspiracy to do an offence i.e. to commit murder of Vijay Singh Yadav @ Vijay S/o Sh. Amar Singh Yadav and for this purpose you accused Gopal Krishan, Rishi Pal and Ashok Jain hired the services of accused Hitender, Parveen Kohli, Vinod, Desh Raj, Deepak, Kishan Pal, Lokesh Tyagi (deceased) and Parveen Jojo (absconder) and these accused alongwith accused Bhisim committed murder of Vijay Yadav on 29.7.2007 at 7:00 p.m. in Gali Arya Samaj, Near Shiv Mandir, Bazar Sita Ram by firing upon him. For this purpose, you accused Parmod remained in a Santro Car for effecting the safe escape of all of you after the offence. Thereby all of you have committed an offence punishable under section. 120B r/w Sec.302 IPC and within the cognizance of this Court."*

*"I, Madhu Jain, Additional Sessions Judge-01, North/Delhi do hereby charge you accused:*

xxx

*Kishan Pal @ Fauzi S/o Sh. Babu Ram R/o RZ-D1, 357, Gali No.5, Mahavir Enclave, Delhi.*

xxx

*That on 29.07.2007 at about 7 p.m. at a place near Shiv Mandir, Bazar Sita Ram, Gali Arya Samaj in pursuance of before mentioned criminal conspiracy, all of you along with Lokesh Tyagi (deceased) and Parveen jojo (absconder) committed murder of Vijay Yadav @Vijy and thereby all of you have committed an offence punishable under section. 302 IPC r/w Sec. 120B IPC."*

Accused Kishanpal @ Fauzi pleaded not guilty and claimed trial.

45. The fact that the charge in respect of accused Kishanpal @ Fauzi was not amended is, however, inconsequential since the mention of a



different date of commission of offence in the charge framed by the Id predecessor is clearly a typographical error (which has been acknowledged by Id counsel for accused persons on 12<sup>th</sup> April, 2017) and the accused has not been misled by it, which is apparent from the cross-examination of witnesses done on his behalf and the statement made by Id counsel for accused persons on 12<sup>th</sup> April, 2017, who had also been representing accused Kishanpal @ Fauzi all throughout the trial.

46. This Court is to decide, by this judgment, whether the prosecution has succeeded in proving the aforesaid charges as against accused persons Rishi Pal @ Pappu, Gopal Krishan Aggarwal, Ashok Jain, Parmod Singh @ Pammy, Parveen Koli, Bhisham @ Chintoo, Deepak @ Chowda, Desraj @ Desu, Kishanpal @ Fauzi and Hitender @ Chhotu.

### **Prosecution Evidence**

47. Prosecution led evidence in support of its case. The prosecution examined seventy witnesses in all. The testimony of the witnesses is set out here. In order to avoid prolixity, the transcription is summarized in varying degrees depending on the importance of the testimony.
48. The prosecution examined Smt. Anju Gupta as PW1. According to the prosecution, she is an eye witness of the incident. The witness deposed, in her examination-in-chief, that she is residing at house no. 3647, Gali

Rora Achar Wali, Chawri Bazaar, Delhi with her family since 1994; that in the year 2005, she started giving tuitions from her tuition centre situated at 3570, Third Floor, Gali Than Singh, Bazaar Sita Ram and the timings were from 4:00 p.m. to 8:30 p.m.; that she ran the centre for about two years; that she was familiar with one Vijay Yadav @ Vijjy, who was running his office from the second floor of premises No. 3570, Gali Than Singh, Bazaar Sita Ram; that on 29<sup>th</sup> September, 2007, she was running the institute and at about 7:30 p.m. she was going from her Institute to Shiv Mandir, Gali Arya Samaj; that when she was about 10 to 15 steps away from the temple, she saw five or six persons surrounding Vijay Yadav; that out of those five or six boys, she could identify three boys as those who she had seen on earlier occasions in Bazaar Sita Ram; that two persons out of remaining persons were having pistols in their hand; that she stopped there for some time; that the two boys who were carrying pistols fired at Vijay Yadav; that Vijay Yadav fell down on the ground in a pool of blood; that the boys ran towards Hamdard Chowk; that she immediately rushed to the Institute; that in the office of Vijay Yadav, Billu (Niranjan Singh) and Parmod were present; that she narrated to them the incident; that then she went to her Institute, relieved the students and then went to her house.

49. On seeing the accused persons, PW1 Anju Gupta deposed that accused persons Hitender Singh @ Chhotu, Parveen Koli, Bhisham @ Chintoo, Vinod Kumar @ Gola, Desh Raj @ Desu, Deepak @ Chowda and Kishan Pal had been seen by her on the fateful day surrounding Vijay Yadav. She pointed towards the said accused persons though was unable to disclose their names. PW1 Anju Gupta then pointed towards accused persons Hitender and Kishan Pal and disclosed that they are the ones who were carrying pistols at the time of the incident. She pointed towards accused persons Bhisham @ Chintoo, Vinod Kumar @ Gola and Deepak @ Chowda as the persons who had been seen by her on earlier occasions in Sita Ram Bazaar. PW1 Anju Gupta was cross-examined by Id counsels for accused persons and was then discharged.
50. PW2 Dheeraj Sharma is the other purported eye-witness examined by the prosecution. He deposed, in his examination-in-chief, that on 29<sup>th</sup> September, 2007 at about 07:30 pm, he was going from the side of Bombay Chowk towards his house through Gali Arya Samaj, Bazaar Sita Ram; that when he reached near Shiv Mandir, he saw Vijay Yadav surrounded by five or six boys; that out of them, three boys were 'locals' who had been seen by the witness in the area of Sita Ram Bazaar on earlier occasions; that out of the remaining boys, two were having pistols; that those two boys fired the pistols at Vijay Yadav due to which the latter fell down on the ground in a pool of blood; that the

accused persons ran towards Hamdard Chowk; that accused persons Bhisham @ Chintoo, Vinod Kumar @ Gola and Deepak @ Chowda were the local offenders who had surrounded the deceased; that accused persons Hitender Singh @ Chhotu, Parveen Koli, Desh Raj @ Desu and Kishan Pal are the other four offenders who were present among those boys; that accused persons Hitender and Kishan Pal were the ones who were carrying pistols and had fired at Vijay Yadav. The witness did not name the offenders and had only pointed towards them for identification, during his examination-in-chief. PW2 Dheeraj Sharma was cross-examined by Id counsels for accused persons and was then discharged.

51. PW3 Constable Rakesh Kumar was, according to the prosecution, entrusted with the task of delivery of special reports. He deposed, in his examination-in-chief, that on 29<sup>th</sup> September, 2007 he was posted at Police Station Hauz Qazi; that at 10:40 pm, special reports were given to him by the duty officer; that he delivered the reports at the residence of Area Magistrate, at the DCP office and at the ACP office, whereupon he returned to the police station. The witness was not cross-examined by Id counsels for accused persons despite grant of opportunity. He was then discharged.

52. PW4 Shri Parmod Kumar is, according to the prosecution, the person who, along with one Niranjana Singh, was present in the office of the

deceased on the day and at the time of the incident. He deposed, in his examination-in-chief, that in the year 2007, he was working as library attendant at Lala Hardayal Municipal Public Library, Shanker Gali; that on 29<sup>th</sup> September, 2007, at about 06:00 pm, he was present in the office of Vijay Yadav at 3570, II Floor, Gali Than Singh, Bazaar Sita Ram; that Vijay Yadav and Niranjana were also present there; that at about 7pm or 7.15pm an unknown person, who the witness identified as accused Praveen, came there; that Vijay Yadav went near accused Praveen and they had a brief conversation; that Vijay Yadav picked up his two mobile phones, wore his wrist watch and went out with accused Praveen; that after about twenty or twenty-five minutes, Smt. Anju Gupta came in their office and informed that some persons have fired at Vijay Yadav; that the witness and Niranjana Singh went to Gali Arya Samaj near Shiv Mandir; that they saw blood lying at the spot; that he learnt about Vijay Yadav having been shifted to the hospital; that on reaching the hospital, he got to know that Vijay Yadav had expired.

53. That witness then recalled that before the incident, he used to frequently meet and sit with Vijay Yadav; that this had been happening after a quarrel had taken place between the witness, accused Bhisham @ Chintoo (who the witness identified) and one Chandan; that this quarrel took place on 22<sup>nd</sup> or 23<sup>rd</sup> of August, 2009; that Bhisham @

Chintoo and Chandan used to work with Ashok Jain; that the quarrel had taken place because the witness had been seen talking to Vijay Yadav which had annoyed Bhisham @ Chintoo, Chandan and Ashok Jain; that the witness had been beaten up by Bhisham @ Chintoo and Chandan on the asking of Ashok Jain; that the witness had lodged a complaint at P.P. Turkman Gate regarding the incident; that Chandan and Bhisham @ Chintoo had pressurized the witness to enter into a compromise with Ashok Jain; that Ashok Jain was holding a grudge against the witness because the witness had the support of Vijay Yadav. The examination-in-chief of the witness was thus concluded. The witness was cross-examined and then discharged.

54. PW5 Constable Rajender Kumar was, according to the prosecution, responsible for collection of parcels from the hospital. He deposed, in his examination-in-chief, that on 08<sup>th</sup> October, 2007, he was posted at Police Station Hauz Qazi; that on that day, on the instructions of the investigating officer, he went to the mortuary of Maulana Azad Medical College where four parcels sealed with the seal of the hospital were produced by the doctor alongwith sample seal; that Inspector Rajender Dubey seized those items by memo Ex. PW5/A. The witness was cross-examined by Id counsels for accused persons and was then discharged.

55. PW6 HC Shiv Kumar had, according to the prosecution, aided in inquiries from Sonapat from where calls had allegedly been made by accused Bhisham @ Chintoo to accused persons Ashok Jain and Rishi Pal @ Pappu. The witness deposed, in his examination-in-chief, that on 22<sup>nd</sup> December, 2007, he was posted at Inter-State Cell, Chankya Puri; that on that day, he and SI Ram Avtar went to Sonapat, Haryana; that at about 01:00 pm, they reached Saini Dhaba, Opposite Truck Union, Khan Colony, Delhi Road, Sonapat; that two persons namely Vijender Saini and Vijay Saini were present there; that SI Ram Avtar made inquiry from them regarding telephone No. 9896941896; that the phone was found to be in the name of Vijay Saini; that Vijay Saini produced a phone instrument of Beetal Company having sim number of Airtel, which were sealed in a parcel of KGT and seized by memo Ex. PW6/A. The witness identified the said case property which was produced with intact seal. The examination-in-chief of the witness was concluded. The witness was cross-examined and then discharged.

56. PW7 Dr. D.B. Chauhan is the doctor who had treated Abhay Singh Yadav (brother of deceased) in the aftermath of an earlier incident. He has been examined by the prosecution to show prior enmity between accused Rishi Pal @ Pappu on one hand and the deceased's family on the other. The witness stated, in his examination-in-chief, that on 21<sup>st</sup> December, 2002, Abhay Singh Yadav had come to the hospital with

history of sustaining fire arm injury in the scalp; that the witness had stitched the wound and prescribed medicines. The witness identified the treatment record as Ex. PW7/A. The witness was cross-examined by Id counsels for accused persons and was then discharged.

57. PW8 Dr. Ankita Dey had conducted post-mortem on the body of Vijay Yadav. She stated in her examination-in-chief that on 30<sup>th</sup> September, 2007, she was posted as Senior Resident, Maulana Azad Medical College; that on that day, an application was moved for conduct of postmortem on the body of Vijay Yadav; that 17 inquest papers were submitted; that she marked the documents as 1 to 17; that she conducted the postmortem; that the alleged history was of gunshot injuries near house No. 2745, Gali Arya Samaj on 29<sup>th</sup> September, 2007 at about 07:52 PM; that the injured person had been first taken to JPN Hospital where he was declared brought dead on 29<sup>th</sup> September, 2007 at about 08:15 pm; that during postmortem, she observed seven injures out of which 5 were entry wounds of gun shot injury and two were exit wounds; that all these injuries were mentioned by her in the postmortem report; that she also noted down the track of gunshot injuries; that death had occurred due to combined effect of cranio-cerebral damage, haemorrhage and shock consequent upon penetrating injuries to the head and abdomen caused by projectile of a rifled fire arm via injuries marked as no. 1, 6 and 7 which were



sufficient to cause death in the ordinary course of nature; that three projectiles, hand washing swab and blood sample were handed over alongwith sample seals in sealed condition; that the postmortem report is Ex. PW8/A. The witness was cross-examined and then discharged.

58. PW9 Shri Pulastya Pramachala, Id. judicial officer was posted as Metropolitan Magistrate, Delhi on 28<sup>th</sup> January, 2008 and he was examined by the prosecution to prove the record relating to Test Identification Parade of accused Hitender @ Chhotu. He stated in his examination-in-chief that, on that day, an application, which the witness identified as Ex.PW9/A, for conducting Test Identification Parade of accused Hitender @ Chhotu was placed before the witness; that the application had been assigned to the witness by the Court of Shri Alok Kumar, the then Ld. Addl. Chief Metropolitan Magistrate; that accused Hitender @ Chhotu was produced in muffled face by the Investigating Officer; that the accused was told about the purpose of conducting Test Identification Parade; that accused Hitender @ Chhotu refused to participate in the Test Identification Parade; that statement of accused Hitender @ Chhotu was recorded by the witness. The witness identified the record of Test Identification Parade as Ex. PW9/B. The witness was not cross-examined despite grant of opportunity, and was discharged.

59. PW10 Shri Niranjan is, according to the prosecution, the second person (the other being PW4 Shri Parmod Kumar) who was present with the deceased in the office of the latter on the day of the incident. He deposed, in his examination-in-chief, that on 29<sup>th</sup> September, 2007 at about 07.15 pm, he was present in the office of Vijay Yadav at 3570, Second Floor, Gali Than Singh, Bazaar Sita Ram; that at that time Vijay Yadav and Parmod were also present in the office; that a boy entered the office (the witness initially stated that the said boy was not in Court, but immediately thereafter he corrected himself and pointed towards accused Parveen Koli as that boy); that the said boy informed Vijay Yadav that "Bhai Sahab" is calling the latter; that Vijay Yadav asked accused Parveen Koli as to who is "Bhai Sahab"; that accused Parveen asked Vijay Yadav whether everything needs to be discussed there itself; that Vijay Yadav put on his shirt and went along with Parveen while saying that he will return in ten minutes; that after twenty or twenty-five minutes, 'Anju Bhabhi', who was running a Coaching Institute on the third floor of the same building, came there and informed that Vijay Yadav has sustained gunshot injuries; that then Parmod and the witness went to Gali Arya Samaj and saw that blood was lying on the ground; that they got to know that Vijay Yadav had been shifted to LNJP Hospital; that they also went to the hospital.

60. PW10 Shri Niranjan further deposed that Vijay Yadav was known to the former as the former was doing the business of property dealing under the latter; that Parmod was a friend of Vijay Yadav; that their friendship had commenced only a few months back; that before this, Parmod was working with accused Ashok Jain and the latter had got the former employed in a library; that a quarrel had taken place between Parmod and accused Bhisham @ Chintoo; that accused Bhisham @ Chintoo had also been working with accused Ashok Jain; that the cause of the quarrel was familiarity of Parmod with deceased Vijay Yadav; that after the scuffle between Parmod and accused Bhisham @ Chintoo, Vijay Yadav favoured Parmod and thereafter Parmod started visiting the office of Vijay Yadav; that Parmod had also lodged a complaint to the police against accused Bhisham @ Chintoo regarding that quarrel; that one Chandan was favouring accused Bhisham @ Chintoo. The examination-in-chief of the witness was concluded. The witness was cross-examined and then discharged.

61. PW11 Inspector Rajender Dubey is the second police officer to whom the investigation had been entrusted. He deposed in his examination-in-chief that in the month of October 2007, he was posted as Inspector (Investigation) at police station Hauz Qazi; that on 01<sup>st</sup> October, 2007, the investigation of this case was assigned to him; that he collected the record of the case; that during investigation, he interrogated several

persons and came to know that three persons of the locality namely Bhasham @ Chintoo, Deepak @ Chowda and Vinod @ Gola were missing from their houses since the day of the incident; that on 08<sup>th</sup> October, 2007, he collected four exhibits sealed with the seal of Department of Forensic Medicine, MAMC, SKK alongwith sample seal from MAMC Mortuary; that those items were produced by employee of MAMC namely Fagu Baitha and were seized by memo Ex. PW5/A; that the investigation was transferred to crime branch after 9<sup>th</sup> October, 2007. The witness was cross-examined and then discharged.

62. PW12 Shri Vidya Prakash, the then Id. Addl. Chief Metropolitan Magistrate deposed in his examination-in-chief that on 05<sup>th</sup> February, 2008, he was posted as Metropolitan Magistrate, Delhi and was link to the Court of Shri Alok Kumar, Id. Addl. Chief Metropolitan Magistrate, Delhi; that on that day an application Ex. PW12/A was marked to him for the Test Identification Parade of accused Deshraj @ Desu; that accused Deshraj @ Desu was produced in muffled face by the investigating officer and was identified by the latter; that on asking, accused Deshraj @ Desu refused to participate in Test Identification Parade; that the witness warned the accused that his refusal to participate may be used against him but he remained steadfast on his refusal; that the accused justified his refusal by stating that he had been seen earlier as he was resident of the same area. The witness identified

the record of proceedings as Ex. PW12/B.

63. PW12 Shri Vidya Prakash further deposed that on 07<sup>th</sup> January, 2008, an application Ex. PW12/D had been assigned to him for the Test Identification Parade of case property; that witness Abhay was produced by the investigating officer; that the investigating officer produced a parcel sealed with the seal of RBS; that the parcel was opened which was containing gold chain and a locket on which 'V' was inscribed; that the item was mixed with other similar items; that the witness was then called inside the chamber and was asked to identify the chain; that the witness correctly identified the same. The witness identified the record of proceedings as Ex. PW12/E. The witness was not cross-examined despite grant of opportunity, and was discharged.
64. PW13 Shri Phagu Baitha is Laboratory Assistant at Department of Forensic Medicine, Maulana Azad Medical College. He deposed in his examination-in-chief that on 08<sup>th</sup> October, 2007 too, he was posted as Laboratory Assistant in the same department; that on that day he handed over three parcels sealed with the seal of Department of Forensic Medicine, Maulana Azad Medical College alongwith sample seal to the investigating officer which was seized vide memo Ex. PW5/A. The witness was not cross-examined despite grant of opportunity, and was discharged.

65. PW14 Abhay Singh Yadav is brother of the deceased. He stated in his examination-in-chief that Vijay Yadav was his younger brother; that the deceased was residing at 3510, Gali Bajrangbali, Bazaar Sita Ram, Delhi; that the deceased was doing the business of property dealing; that the deceased was having his office at H.No. 3570, Second Floor, Gali Than Singh, Bazaar Sita Ram, Delhi; that Vijay Yadav died on 29<sup>th</sup> September, 2007 due to gunshot injury sustained by him at Gali Arya Samaj; that he received information of the incident at about 07:45 pm on 29<sup>th</sup> September, 2007 and thereafter he went to LNJP Hospital; that in the hospital, he came to know about the death of his brother Vijay Yadav; that he identified the dead body of his brother in the mortuary; that his statement Ex. PW14/A had been recorded in that respect; that on 30<sup>th</sup> September, 2007, postmortem was conducted and after the postmortem, the dead body was received by memo Ex. PW14/B.

66. PW14 Abhay Singh Yadav further stated in his examination-in-chief that after the incident four boys of the locality were found absconding whose names were:

- a) Bhisham @ Chintoo R/o Katra Gokul Shah, Sita Ram Bazaar, Delhi;
- b) Vinod @ Gola R/o Gali Akharewali, Chaurashi Ghanta, Sita Ram Bazaar, Delhi;
- c) Deshraj @ Desu R/o Pili Kothi, Sita Ram Bazaar, Delhi; and

d) Deepak Chaura, R/o Gali Augrawali, Sita Ram Bazaar, Delhi.

67. PW14 Abhay Singh Yadav deposed that the relations between his brother Vijay Yadav and Bhisham @ Chintoo were strained; that Vijay Yadav was having friendly relations with one Parmod Kumar R/o Gali Shankarwali, Bazaar Sita Ram; that a dispute between Parmod Kumar and Bhisham @ Chintoo was being probed in the police station; that an FIR had been registered on the complaint of Parmod Kumar against Bhisham @ Chintoo; that Bhisham @ Chintoo was pressurizing Parmod Kumar to enter into a compromise; that Parmod Kumar was not agreeing to this; that accused Bhisham @ Chintoo was holding Vijay Yadav responsible for not allowing Parmod Kumar to enter into a compromise; that accused Bhisham @ Chintoo was working with accused Ashok Jain who was a former councillor of the area; that accused Ashok Jain had got Bhisham @ Chintoo employed as Safai Karamchari in Municipal Corporation of Delhi by using his position as councillor; that Bhisham @ Chintoo continued to work with Ashok Jain and was a close associate of the latter.

68. PW14 Abhay Singh Yadav then stated in his examination-in-chief that accused Ashok Jain remained councillor of the area on behalf of a certain political party till April 2007; that the election for next session was held in April 2007, but in that election accused Ashok Jain did not get the ticket for the political party; that Vijay Yadav was also

associated with that political party; that Vijay Yadav was vigorously canvassing for, and supporting, the other candidates of the political party namely Mahmood Zia and Krishan Murari Jatav; that since accused Ashok Jain was not able to get the ticket, he had started canvassing against those two candidates of the political party; that in April 2007, before polling, a quarrel took place between Vijay Yadav, Ashok Jain and Bhasham @ Chintoo; that proceedings were conducted by the police and both the parties were bound down to keep peace and good behaviour for six months; that after the incident and after polling had taken place, a quarrel took place between Vijay Yadav and one Durga Pandit; that Durga Pandit was associated with accused Ashok Jain and was residing at Minto Road; that Durga Pandit told the witness about the quarrel; that the witness scolded Vijay Yadav for this; that accused Bhasham @ Chintoo spread rumours in the area that Durga Pandit had beaten up Vijay Yadav.

69. PW14 Abhay Singh Yadav then disclosed in his examination-in-chief that a monetary dispute was going on between Gopal Krishan Aggarwal and his friend Sanjay Supariwala on one hand and a bookie by the name of Vijay Bansal on the other; that Gopal Krishan Aggarwal called Deepak @ Chowda, Vinod @ Gola and Vijay Yadav; that the dispute was got settled on the intervention of Hitender @ Chhotu, Dimple Tyagi, Vikas Yadav, Jagdish, Sumit Tyagi, Deepak @ Chowda,



Vinod @ Gola and Deshraj @ Desu; that these persons demanded their share of money from Gopal Krishan Aggarwal; that Gopal Krishan Aggarwal refused to pay the money and told them that he had himself got the dispute settled through Police Station Civil Lines; that Gopal Krishan Aggarwal rather demanded back the money that had been paid by him to these persons as advance; that all these facts had been told to the witness by the deceased; that Vijay Yadav was being treated as a middleman by both the parties, Gopal Krishan Aggarwal on one hand and Hitender and his associates on the other; that this controversy had taken place two or three months after the election.

70. PW14 Abhay Singh Yadav further stated in his examination-in-chief that Hitender @ Chhotu, Deepak @ Chowda, Deshraj @ Desu, Vinod @ Gola, Dimple Tyagi, Sumit Tyagi, Vikas Yadav and Jagdish went to the premises of Gopal Krishan Aggarwal at Gali Arya Samaj; that Vijay Yadav was being called to the office of accused Gopal Krishan Aggarwal; that Vijay Yadav was reluctant to go to the office; that the witness however sent Vijay Yadav to the office of accused Gopal Krishan Aggarwal; that on returning from the office of accused Gopal Krishan Aggarwal, Vijay Yadav told the witness that both factions were blaming Vijay Yadav for non-payment of money.

71. PW14 Abhay Singh Yadav went on to state in his examination-in-chief that Rishi Pal @ Pappu was his business partner; that Rishi Pal had told

the witness that Vijay Yadav intended to kill Rishi Pal through one Hitender @ Chhotu; that the witness inquired about this from Vijay Yadav who denied this.

72. PW14 Abhay Singh Yadav stated that he recognizes accused Deepak @ Chowda, Vinod @ Gola, Bhisham @ Chintoo and Desh Raj; that these persons had been absent from their houses since the date of murder of brother of the witness; that the witness knew this because he used to reside in the same area; that when the witness saw the dead body of his brother, he noticed that the gold bracelet, a heavy chain of gold and another heavy gold chain with gold locket in the shape of 'V' and a purse were missing.
73. PW14 Abhay Singh Yadav then stated in his examination-in-chief that he knew accused Ashok Jain as he was councillor of their area prior to year 2007; that election for the post of councillor was scheduled to be held in April, 2007; that since accused Ashok Jain had not got ticket from his political party, he had started working against the candidates of the party; that brother of the witness Vijay Yadav was supporting the other candidates in the election; that during the electoral campaign, a quarrel had taken place between Vijay Yadav and Ashok Jain, and both had been asked to furnish bonds under Sections 107/151 of Criminal Procedure Code; that the cause of the dispute was that Vijay Yadav was gaining support in the area which was disliked by accused

Ashok Jain; that accused Ashok Jain felt that the other candidates had won the election because of the support of the witness and of his brother; that a CBI raid had taken place at the premises of accused Ashok Jain for bribery, on the complaint of accused Rishi Pal; that though the complaint had been preferred by Rishi Pal against accused Ashok Jain, Ashok Jain had not only participated in the marriage function of Rishi Pal but name of Ashok Jain also figured in the marriage card.

74. PW14 Abhay Singh Yadav recounted in his examination-in-chief that accused Bhisham @ Chintoo used to sit in the office of accused Ashok Jain; that there were some disputes between brother of the witness and accused Bhisham @ Chintoo as the former was supporting candidates other than Ashok Jain. The witness further stated that during the period when the incident of murder had taken place, his relations with Rishi Pal were not cordial; that in the year 2003 a quarrel had taken place between Ajay Singh, other younger brother of the witness, on one hand and Rishipal and his cousin Amar Pal on the other; that though in year 2003, Rishi Pal was business partner of the witness, their relations were not cordial; that during the *parikrama* of Shani Dev at Kosi, someone had fired at the witness on 21<sup>st</sup> December, 2002; that the name of Rishi Pal surfaced in the said incident; that this was the cause of dispute of Ajay Singh with Amar Pal and Rishi Pal in year 2003; that

Rishi Pal had told the witness that Ajay Singh had wrong impression that he was involved in the incident of firing which had taken place during the *parikrama* on Shani Dev; that the witness did not report the matter of the firing incident to the police on the asking of Rishi Pal.

75. In his narrative, PW14 Abhay Singh Yadav, during his examination-in-chief, went on to disclose that the relations between Vijay Yadav and Gopal Krishan Aggarwal were strained on account of a dispute between them on account of a money transaction; that this was revealed to the witness about two or three months before the murder of Vijay Yadav had taken place.
76. PW14 Abhay Singh Yadav further stated that he knew Sunil Sharma @ Teetu who was residing in the same locality and was working in the office of the former; that Sunil Sharma also used to work for accused Ashok Jain; that about four or five days prior to his death, Vijay Yadav had visited Vaishno Devi Temple, Jammu; that the witness had asked Vijay Yadav to go there as the witness had come to know that accused persons Ashok Jain, Rishi Pal @ Pappu and Gopal Krishan Aggarwal were hatching a conspiracy to kill Vijay Yadav through Bhisham @ Chintoo and his associates Hitender @ Chhotu, Dimple Tyagi, Deepak @ Chowda, Vinod @ Gola, Deshraj and Kishan Pal @ Fauji.
77. PW14 Abhay Singh Yadav stated in his examination-in-chief that during Test Identification Parade, he had identified the belongings of

Vijay Yadav comprising of a gold chain with 'V' shaped locket. The witness identified the record of Test Identification Parade. In Court too, during the examination-in-chief of the witness, he identified a gold chain, and another chain with a locket as belonging to Vijay Yadav. The witness identified the accused persons namely Ashok Jain, Bhisam @ Chintoo, Rishi Pal, Gopal Krishan Aggarwal, Deepak @ Chowda, Desraj @ Desu and Vinod @ Gola. The witness was cross-examined and discharged.

78. PW15 Shri Manish Kumar was cited as a witness by the prosecution because, according to the prosecution, this witness had been asked by accused Rishi Pal @ Pappu to talk to accused Hitender and to persuade him to state before Abhay Singh Yadav that Vijay Yadav had given Hitender some advance money to kill Rishi Pal @ Pappu. As per prosecution, the witness had been told to offer money to accused Hitender which would have been paid by accused Rishi Pal @ Pappu. It is further the case of the prosecution that in the presence of this witness, accused Hitender and his associates went to the shop of Rishi Pal @ Pappu; that Hitender and his associates finally left with parting words that they will be present at Hauz Qazi Chowk; that afterwards Vijay Yadav and his brother went to the shop of Rishi Pal @ Pappu on being called by the latter. The witness had been examined by the prosecution to show the link between accused Rishi Pal @ Pappu and

Hitender.

79. PW15 Shri Manish Kumar however did not support the case of the prosecution. He deposed in his examination-in-chief that he was doing the business of sanitary goods manufacturing at Rithala; that he knew accused Rishi Pal @ Pappu as the goods manufactured in his company were supplied to the shop of Rishi Pal @ Pappu at Chawri Bazaar; that he was not aware as to whose death is involved in this case; that he did not know any Vijay Yadav; that he was not a party to any conversation with Rishi Pal. The witness was cross-examined by the prosecution and was discharged.
80. PW16 Durga Dass was cited as a witness by the prosecution because, according to the prosecution, this witness had informed the police of the following:
- a. that accused Gopal Krishan Aggarwal was incharge of elections to the post of councillor;
  - b. that for not being given ticket of a political party to contest the elections, accused Ashok Jain was canvassing against other candidates;
  - c. that Vijay Yadav was supporting those candidates;
  - d. that due to this there was tension in the area;
  - e. that Ashok Jain and Vijay Yadav became inimical;
  - f. that accused Bhisham @ Chintoo was closely associated with

- accused Ashok Jain;
- g. that the witness had learnt about a plan made by accused Ashok Jain and his employee to harm Vijay Yadav and his brother;
  - h. that Vijay Yadav was making efforts to garner support from followers of Ashok Jain;
  - i. that accused Bhisham @ Chintoo had told the witness on several occasions that Vijay Yadav was troubling the former and making false complaints to the police;
  - j. that there had been a dispute of accused Gopal Krishan Aggarwal;
  - k. that accused Gopal Krishan Aggarwal had availed the assistance of accused Hitender due to which there was a separate monetary dispute between accused Gopal Krishan Aggarwal and Vijay Yadav;
  - l. that accused Hitender and his associates used to visit accused Gopal Krishan Aggarwal in the office of the latter;
  - m. that relations between Vijay Yadav and accused Hitender had soured;
  - n. that on the day of the incident of murder, the witness was to meet accused Rishi Pal @ Pappu but the latter did not turn up till 8pm in the evening;
  - o. that the witness was, during this period, in contact with accused

Rishi Pal @ Pappu;

p. that accused persons Vinod @ Gola, Bhisham @ Chintoo and Deepak @ Chowda had told the witness that they had killed Vijay Yadav on the asking of accused persons Ashok Jain, Rishi Pal @ Pappu and Gopal Krishan Aggarwal;

q. that Deepak @ Chowda had told the witness that he and other accused persons had received Rs. 5 lakhs from accused Gopal Krishan Aggarwal of the total agreed sum of Rs. 15 lakhs.

81. The witness had thus been examined by the prosecution to trace the offence to accused persons Ashok Jain, Rishi Pal @ Pappu and Gopal Krishan Aggarwal.

82. PW16 Durga Dass, however, did not support the case of the prosecution. He deposed in his examination-in-chief that he used to supervise Balmiki Mandir situated at Asaf Ali Road; that he knew accused Rishi Pal @ Pappu who is a builder and also runs a shop of sanitary items; that he did not know any person by the name of Gopal Krishan Aggarwal; that he had not extended his support to any party during the elections of Municipal Corporation of Delhi in the year 2007; that he knew deceased Vijay Yadav, Abhay Singh Yadav and Ashok Jain; that Ashok Jain did not contest elections held in the year 2007; that he did not know any person by the name of Bhisham @ Chintoo. The witness was shown accused persons Gopal Krishan Aggarwal and



Bhisham @ Chintoo. He denied knowing them. The witness was cross-examined and re-examined by the prosecution, cross-examined by Id counsels for accused persons, and was finally discharged.

83. Prosecution examined Sh. Vijay Bansal as PW17. The witness was examined to show motive to commit the crime on the part of accused Gopal Krishan Aggarwal. The witness deposed that he was dealing in real estate; that one Ashok Gupta is known to him as he had some money transaction with him; that a few days prior to the date of this case, the witness had a money transaction with Sh. Ashok Gupta; that Sh. Ashok Gupta owed a sum of Rs. 36 lakhs to him; that the witness demanded the money; that the money was not paid to him even in part.

84. At that stage, PW17 Vijay Bansal submitted that he wanted to say something in the Court. The witness stated that there were two main culprits namely Dinesh Jain and Sanjay Singhal who had called the witness in their office to give money of Rs. 36 lakhs; that there they threatened the witness and hired bad elements who were sent to office of the witness with weapons; that Dinesh Jain gave the witness Rs. 10 lakhs about one week before and thereafter told the witness that the witness should not demand money from Ashok Gupta and that Dinesh Jain would give the remaining sum of Rs. 26 lakhs to the witness within one month.

85. PW17 Vijay Bansal deposed that the incident of bad elements visiting his office was not reported by the witness to the police; that Dinesh Jain, Ashok Gupta and Sanjay Singhal reported the matter to police station Civil Lines; that apart from Dinesh Jain, Ashok Gupta and Sanjay Singhal, no other person was involved in the matter. The witness deposed that Ranjan was the son of his sister; that Ranjan was working with the witness; that the witness did not know whether he had sent Ranjan at any point of time to take part of that money from anyone.
86. PW17 Vijay Bansal was cross-examined by Ld. Special Public Prosecutor. In his cross-examination, the witness admitted that he was fond of playing *satta* on cricket. The witness deposed that the money of Rs. 36 lakhs was somehow related to *satta*. The witness denied the suggestion that Ashok Gupta paid him Rs. 10 lakhs. The witness voluntarily stated that Dinesh Jain took the responsibility of paying the whole sum of money to him. The witness further deposed that Ranjan was deputed to collect and disburse money on his behalf in the daily course of business; that Ashok Gupta was having an office at Daryaganj; that Ranjan was not doing such work for Ashok Gupta. The witness did not remember whether at any point of time, Ashok Gupta sent Rs. 18 lakhs through Ranjan to hand it over to any person in the area of South Delhi; that the witness had no knowledge as to whether

any sum of Rs. 18 lakhs was snatched from Ranjan on his way from Daryaganj to South Delhi; that whenever the witness demanded money from Ashok Gupta, Ashok Gupta would say that he had already paid all the money and there is no balance upon him; that the witness was having friendship with Dinesh Jain and was having monetary dealing with Dinesh Jain but at that time, neither any money was due upon the witness nor upon Dinesh Jain; that the witness had no knowledge whether Dinesh Jain and Ashok Gupta were having any monetary dealings. The witness denied the suggestion that whenever he demanded Rs. 36 lakhs, Ashok Gupta said that he had already paid Rs.18 lakhs and he would deduct that amount from the total amount; that the witness was threatened by persons of Dinesh Jain in a restaurant at Pitampura who said that either the witness should accept the proposal of Dinesh Jain and Sanjay Singhal or the witness should be ready to face the consequences; that the witness was also called at police station Civil Lines; that by the mediation of police station Civil Lines, Rs. 8 lakhs were paid to the witness by a representative of Dinesh Jain in the presence of SHO, Civil Lines at Hotel Oberoi Maidens; that the witness received a total sum of Rs. 18 lakhs out of the Rs. 36 lakhs; that for the remaining sum of money, Dinesh Jain informed that he had already paid the amount to the son of his sister; that the witness had no knowledge when that money was paid to

Ranjan; that Ranjan did not inform the witness about receiving payment of Rs. 18 lakhs from anyone; that the witness could not state the date of receiving the payment; that the witness did not know accused Gopal Krishan Aggarwal; that the witness saw accused Gopal Krishan Aggarwal once in the office of Sh. Dinesh Jain; that the witness saw him in the office of Dinesh Jain when the witness was called by Dinesh Jain in his office to collect the money; that this date was much prior to the date on which the witness received Rs. 8 lakhs. The witness denied the suggestion that he had also seen Gopal Krishan Aggarwal in the company of Dinesh Jain and Sanjay Singhal when he went to police station Civil Lines. The witness was not cross-examined on behalf of the accused persons despite grant of opportunity and was discharged.

87. Prosecution examined Sh. Ashok Gupta as PW18. He is another witness cited by the prosecution to demonstrate that accused Gopal Krishan Aggarwal had motive to commit the crime. The witness deposed in his examination-in-chief that he was running the business of papers; that the witness knew Vijay Bansal because he was having some business transactions with him; that the witness was owing a sum of Rs. 26 lakhs to Sh. Vijay Bansal; that this amount was related to losses incurred due to cricket betting (*satta*); that the total sum due was Rs. 36 lakhs out of which he had paid Rs. 10 lakhs to Vijay Bansal; that one Dinesh Jain was known to the witness; that the witness was not having the whole

sum of money due from him; that Dinesh Jain came as guarantor and requested Vijay Bansal to accommodate the witness for six or seven months and stated that if the witness would not pay the money Dinesh Jain would pay the same to Vijay Bansal; that the said talk took place in the year 2005 or 2006; that son of sister of Vijay Bansal namely Ranjan took Rs. 18 lakhs from the witness in the first quarter of 2006; that Ranjan informed the witness that some robbers had robbed that amount from him; that the witness asked Vijay Bansal and Ranjan to go to police station for reporting this matter; that the witness went to Police Station Shalimar Bagh but none of them came there; that thereafter Vijay Bansal insisted on Dinesh Jain to pay Rs. 26 lakhs but Dinesh Jain replied that Rs. 18 lakhs has been paid and only Rs. 8 lakhs is due; that Vijay Bansal started threatening and abusing Dinesh Jain to pay Rs. 26 lakhs; that Dinesh Jain lodged a complaint at Police Station Civil Lines against Vijay Bansal; that the witness also went to Police Station Civil Lines but subsequently a compromise was entered into between Vijay Bansal and Dinesh Jain and the sum was settled on Rs. 8 lakhs; that on that day, the witness was out of Delhi and this had happened after 7 or 8 months which could be second or third quarter of year 2006; that accused Gopal Krishan Aggarwal met the witness in the police station once or twice with Shri Dinesh Jain in relation to the said settlement. The witness was however unable to identify accused Gopal

Krishan Aggarwal though the latter was present in the Court. On the pointing out by the public prosecutor, however, the witness did identify accused Gopal Krishan Aggarwal. The witness was cross-examined on behalf of accused Gopal Krishan Aggarwal, not by other accused persons, and was finally discharged.

88. Prosecution examined Sh. Amar Singh Yadav as PW19. He is father of deceased Vijay Yadav. The witness deposed in his examination-in-chief that he is running a factory in the name of Tsla Metal and Engineering Works at 429, Main Road, Bazaar Sita Ram, Delhi; that Vijay Yadav @ Viji was his son, who was builder by profession having his office at Gali Than Singh, Bazaar Sita Ram; that he had seen his son Vijay Yadav lastly on 29<sup>th</sup> day of the ninth month October of 2007; that the witness, on asking, stated that he had seen his son Vijay Yadav on 29<sup>th</sup> October, 2007 at about 7.15pm; that he was then present at his factory and shop address; that he had seen Vijay Yadav coming from Than Singh Gali alongwith three or four other persons; that he was accompanied by two or three other persons; that the witness called Vijay Yadav and asked where Vijay Yadav was going; that Vijay Yadav replied that he was going to Gali Arya Samaj and would return shortly; that after about fifteen or twenty minutes, a person came to the shop of the witness and told the witness that Vijay Yadav has been shot at Gali Arya Samaj and was lying there; that the witness became perturbed and his condition

deteriorated; that a few people took the witness to his house; that later the witness visited the place of occurrence and came to know that Vijay Yadav @ Viji had already been taken to LNJP Hospital; that the witness also reached there, where he saw that Abhay Singh Yadav, his mother Chandan Devi and sister Rekha Rani were coming out crying; that the witness came to know that Vijay Yadav had passed away; that on the next day, the witness was called to the hospital; that the witness saw dead body of Vijay Yadav and identified the same; that statement of the witness was recorded which he identified as Ex. PW19/A; that the witness did not know the name and parentage of the persons who were accompanying Vijay Yadav @ Viji on the day of the incident. The witness pointed towards accused Parveen Koli, Deepak @ Chowda and Bhisham @ Chintoo as those who had accompanied the deceased on the date of the incident.

89. PW19 Amar Singh Yadav was cross-examined by the public prosecutor. He stated in his cross-examination that on 6<sup>th</sup> February, 2008, he had visited the office of Crime Branch at Chanakyapuri; that on that day, he had identified an accused; that accused Deshraj @ Desu was that person; that this accused had accompanied the deceased on the date of the incident; that the witness had mistaken identified Deepak @ Chowda as being one of those persons. The witness was cross-examined, and discharged.

90. PW20 Shri Harjeet Singh was examined by the prosecution to show motive on the part of persons who, according to the prosecution, had conspired to the killing of Vijay Yadav. The witness stated in his examination-in-chief that he knew Vijay Yadav @ Viji since 1999; that he used to meet Vijay Yadav three or four times in a week; that about ten or twelve days prior to death of Vijay Yadav, hot words were exchanged between Vijay Yadav and Ashok Jain in the presence of the witness; that Ashok Jain was a former councillor of the area and his supporters had diverted towards Vijay Yadav; that Vijay Yadav had lodged a false complaint against accused Bisham @ Chintoo, the main supporter of Ashok Jain, through one Parmod.
91. PW20 Shri Harjeet Singh went on to depose that ten or twelve days prior to the death of Vijay Yadav, the witness was present in the office of Vijay Yadav where a conversation was taking place between Vijay Yadav and accused Gopal Krishan Aggarwal regarding payment of Rs. 36 lakhs; that the witness was not aware of the exact transaction, of who had to pay and to whom it was to be paid; that the conversation made a reference to a friend of accused Gopal Krishan Aggarwal; that the witness did not know the name of the said friend; from the conversation it transpired that this friend of accused Gopal Krishan Aggarwal had to pay a sum of Rs. 36 lakhs to some person whose name the witness was not aware of; that accused Gopal Krishan Aggarwal



said to Vijay Yadav that his friend did not intend to pay the aforesaid sum and requested Vijay Yadav to intimidate the person to whom payment was to be made by the friend of accused Gopal Krishan Aggarwal; that accused Gopal Krishan Aggarwal offered to pay Rs. 3 lakhs to Vijay Yadav, which was to be given to Hitender @ Chhotu; that as per their conversation, Hitender @ Chhotu was to intimidate the said person in lieu of receipt of the sum of Rs. 3 lakhs.

92. PW20 Shri Harjeet Singh further stated that about fifteen to twenty days prior to the murder of Vijay Yadav, the latter told the former that the work of accused Gopal Krishan Aggarwal had been done by accused Hitender @ Chhotu whereas accused Gopal Krishan Aggarwal told the witness that he had got the work done through the police. After the incident, differences had developed between accused Gopal Krishan Aggarwal and Vijay Yadav.

93. PW20 Shri Harjeet Singh then stated that about two or three years prior to the death of Vijay Yadav, the latter told the former that accused Rishi Pal @ Pappu was involved in the incident of shooting which had taken place during Kosi Yatra in which Abhay Singh Yadav had sustained injury on his neck; that two or three days (later stated by the witness to be a week) prior to the death of Vijay Yadav, the latter told the former that accused Rishi Pal @ Pappu had made a complaint to Abhay Singh Yadav that Vijay Yadav had planned to kill accused Rishi Pal @ Pappu;

that Vijay Yadav told the witness due to this hot words were exchanged between the former, accused Rishi Pal @ Pappu and Abhay Singh Yadav. The witness was cross-examined by Id defence counsels, and was then discharged.

94. PW21 Vijay Saini and PW22 Shri Vijender Saini are persons who were, as per the prosecution, running a restaurant (*dhaba*) with STD call facility at Sonapat. From the STD shop, as per allegations, phone calls were made by accused Bhisham @ Chintoo to accused Rishi Pal @ Pappu and accused Ashok Jain after committing the murder. In those calls, accused Bhisham @ Chintoo allegedly told accused Rishi Pal @ Pappu and accused Ashok Jain that accused Bhisham @ Chintoo along with others had killed Vijay Yadav and asked accused Rishi Pal @ Pappu and accused Ashok Jain to take care of the matter.

95. PW21 Vijay Saini deposed in his examination-in-chief that he has been running a restaurant (*dhaba*) at Delhi Road, Sonapat in the name and style of Bhagat Singh Vaishno Dhaba; that in the year 2007, there was an STD phone facility of Airtel at the said restaurant; that he did not remember the phone number of that instrument as it was not in operation since long; that on 22<sup>nd</sup> December, 2007, the police had visited the said restaurant and seized the phone instrument as well as its SIM Card; that the witness had signed the seizure memo Ex. PW6/A; that police had kept the seized instrument and its SIM card in

a parcel and had sealed it; that the witness did not remember the initials of the seal.

96. At that stage of the testimony, a sealed parcel was produced. It was opened. Its contents comprising of a phone instrument and its SIM card were taken out. The witness saw them and stated that they are the same which had been seized by the police. The witness was cross-examined by Id counsel for accused Rishi Pal @ Pappu, and was then discharged.

97. PW22 Shri Vijender Saini is brother of PW21 Vijay Saini. PW22 Shri Vijender Saini deposed in his examination-in-chief that he has been running a restaurant (*dhaba*) at Delhi Road, Sonapat in the name and style of Saini Vaishno Dhaba; that in the year 2007, there was an STD phone facility of Airtel at the said restaurant; that he did not remember the phone number of that instrument as it was not in operation since long; that on 22<sup>nd</sup> December, 2007, the police had visited the said restaurant and seized the phone instrument as well as its SIM Card; that the witness had signed the seizure memo Ex. PW6/A; that police had kept the seized instrument and its SIM card in a parcel and had sealed it; that the witness did not remember the initials of the seal.

98. At that stage of the testimony, a sealed parcel was produced. It was opened. Its contents comprising of a phone instrument and its SIM card were taken out. The witness saw them and stated that they are the

same which had been seized by the police. On a leading question being asked by the public prosecutor, the witness admitted that the phone connection number was 9896941896. The witness was cross-examined by Id counsel for accused Rishi Pal @ Pappu, and was then discharged.

99. PW23 Inspector Vipin Bhatia was examined by the prosecution to throw light on antecedent events that gave rise to a motive on the part of accused Gopal Krishan Aggarwal to plan the homicide of Vijay Yadav. PW23 Inspector Vipin Bhatia deposed in his examination-in-chief that on 06<sup>th</sup> June, 2007, he was posted at Police Station Civil Lines as Addl. SHO; that on that day, complaint bearing diary number CB-195 Ex. PW23/A dated 06<sup>th</sup> June, 2007 preferred by one Dinesh Jain was assigned to the witness; that the complaint contained allegations against Vijay Bansal "regarding money"; that during the enquiry, the witness called Dinesh Jain, Ashok Gupta, Sanjay Singhal and accused Gopal Krishan Aggarwal (who the witness correctly identified in Court) from the side of the complainant and called Vijay Bansal and Ranjan from the opposite side; that on 12<sup>th</sup> July, 2007, accused Gopal Krishan Aggarwal, Sanjay Singhal, Vijay Bansal and Ranjan came to the office of the witness and told the witness that they had settled the dispute; that they furnished a compromise deed, which the witness identified as Ex. PW23/B; that the deed was signed by Vijay Bansal, Gopal Krishan Aggarwal and Ranjan.

100. PW23 Inspector Vipin Bhatia further deposed in his examination-in-chief that on 21<sup>st</sup> December, 2007, he handed over the original documents Ex. PW23/A and PW23/B, copies of DD Nos. 29A dated 12<sup>th</sup> June, 2007 and 24A dated 11<sup>th</sup> July, 2007, and carbon copy of the notice which he had issued to Vijay Bansal Ex. PW23/C to the investigating officer who seized them and prepared seizure memo Ex. PW23/D. The witness was cross-examined by Id counsel for accused Gopal Krishan Aggarwal, and was then discharged.
101. PW24 the then Sub-Inspector Horam was examined by the prosecution to prove the initial investigation carried out on the part of the local police immediately after receiving information of the incident. PW24 Horam deposed that on 29<sup>th</sup> September, 2007, he was posted at Police Station Hauz Qazi; that the witness accompanied SHO Giri Raj Meena, Inspector Anil Sharma, Inspector Rajender Dubey and Constable Mahipal; that they reached near Bari Dharamshala, near Shiv Mandir, Gali Arya Samaj, Bazaar Sita Ram where SI Mahmood Ali and Constable Rajesh met the former; that the injured person had already been taken to LNJP Hospital by public persons; that SHO Giri Raj Meena alongwith both Inspectors and SI Mahmood Ali left for the hospital; that at about 10:30 pm, Inspector Anil Sharma returned to the place of occurrence; that the witness and others left for the place of occurrence on receipt of DD No. 16A which was received at about 08:00

PM; that before arrival of Inspector Anil Sharma, incharge of crime team, SI Anil and his staff had already reached the spot; that SI Mohmood Ali reached the spot at about 11 pm from the police station and handed over copy of FIR and original rukka to Inspector Anil Sharma; that Mr. Deepak Sharma also reached the place of occurrence after about 10 minutes of the arrival of Inspector Anil Sharma; that on the pointing out of Deepak Sharma, Inspector Anil Sharma prepared the site plan; that the spot was got photographed; that with the help of crime team, Inspector Anil Sharma had lifted blood from the spot on the gauze and also lifted blood-stained earth and earth control; that all the exhibits were kept in separate plastic containers and sealed with the seal of 'AS'; that one empty cartridge of 9 mm cartridge was also recovered from the spot; that the investigating officer prepared sketch of the same and sealed it in a parcel with the seal of 'AS'; that the Investigating Officer handed over the seal to the witness; that they returned to the police station after completion of spot investigation. The witness was cross-examined by Id defence counsels and was then discharged.

102. PW25 the then Inspector Sh. Anil Kumar Sharma is another former police officer examined by the prosecution to prove the initial investigation carried out by police officers of the local police station soon after the incident. The witness stated in his examination-in-chief

that on 29<sup>th</sup> September, 2007, he was posted at Police Station Hauz Qazi as Inspector (ATO); that on that day, at about 08:00 pm, an intimation was received from police control room that a person had been shot at Arya Samaj Gali, near Shiva Temple; that said information was recorded as DD No. 16A; that the said DD entry was assigned to the witness; that the witness alongwith SHO Inspector Giriraj Singh Meena, Inspector Rajender Dubey and other staff left for the place of occurrence (the witness immediately clarified that Inspector Giriraj Singh Meena and Rajender Dubey met the witness at the place of occurrence); that other police staff including SI Mahmood Ali and SI Horam also met the witness at the spot alongwith other police officers; that the place of occurrence was located at Gali Arya Samaj, near Shiva Temple; that there was a lot of blood on the side of the road; that an empty cartridge case was also found there; that people had gathered there; that on inquiry, it was revealed that someone had fired shot at Vijay Yadav @ Viji and the victim had been taken to LNJP Hospital; that the SHO had assigned the investigation to the witness; that after leaving SI Horam and other staff to guard the spot, the witness and SI Mahmood Ali left for the hospital; that on reaching the hospital, the witness collected the MLC of deceased Vijay Yadav @ Viji on which the doctor had made an endorsement that the patient had been brought dead and that the latter had sustained gunshot injury; that duty

constable Yash Pal handed over one parcel duly sealed with the seal of LNJP Hospital containing the clothes of the deceased; that Yash Pal also handed over a sample seal to the witness; that the witness seized the same by preparing a seizure memo Ex. PW25/A.

103. PW25 Former Inspector Sh. Anil Kumar Sharma further deposed in his examination-in-chief that he had earlier made an endorsement on the DD entry as no eye witness had met the witness in the hospital; that the witness sent SI Mahmood Ali to the police station to lodge an FIR for the offence punishable under section 302 of IPC; that DD No. 15A is Ex. PW25/B and his endorsement is Ex. PW25/C; that duty constable Yash Pal had also handed over the personal search articles of the deceased to the witness; that the witness seized the same by preparing a separate memo Ex. PW25/D; that Mr. Deepak Sharma who had got admitted the injured person in the hospital met the witness at the hospital; that Mr. Deepak Sharma alongwith the witness came back to the place of occurrence; that SI Horam alongwith his staff met the witness at the spot; that crime team alongwith photographer were also present there; that crime team had inspected the place of occurrence while the photographer had taken photographs of the spot. The witness identified the photographs (positives) as Ex. PW25/D1 to D12.

104. PW25 Former Inspector Sh. Anil Kumar Sharma further stated in his examination-in-chief that he had recorded the statement of Deepak



Sharma and prepared a site plan Ex. PW25/E of the spot at the instance of Deepak Sharma; that at about 11pm, SI Mahmood Ali reached the spot and handed over copy of FIR and original rukka to the witness; that the witness had seized blood, blood-stained earth and earth control from the spot; that these were sealed in a separate parcel with the seal of 'AS'; that the witness also seized an empty cartridge case from the spot sealed it in a separate parcel with the seal of 'AS' after preparing sketch Ex. PW25/F and taking measurements; that the cartridge was of 9mm; that all the four parcels were seized by preparing separate memo and all the memos bear signatures of the witness; that the memo of cartridge and blood are Ex. PW25/G and PW25/H respectively; that the seizure memo of blood stained earth and earth control are Ex. PW25/I and Ex. PW25/J respectively; that after sealing the parcel, the witness handed over his seal to SI Horam; that the witness alongwith the staff came back to the police station and the sealed parcels were deposited with the MHC(M); that the witness recorded the statement of SI Horam and SI Mahmood Ali; that the witness had also recorded the statement of duty constable Yash Pal in the hospital; that the witness also recorded the statement of In-charge of crime team SI Anil and photographer; that he could not recollect whether he had examined any other public witness on that day except Deepak Sharma; that about 1am, Abhay Singh Yadav alongwith

Parmod Kumar and Niranjan Singh @ Billoo visited police station Hauz Qazi; that after interrogation, he recorded their statements under section 161 of Code of Criminal Procedure.

105. PW25 Anil Kumar Sharma went on to state in his examination-in-chief that at about 9 or 9:30 am, the witness visited the house of Abhay Singh Yadav to investigate the matter where he came to know that a lady named Anju Gupta knew something about the incident; that thereafter, the witness went to the house of Anju Gupta and recorded her statement under section 161 of Code of Criminal Procedure; that thereafter, the witness alongwith Constable Satender reached the mortuary of LNJP Hospital where Abhay Singh Yadav and Amar Singh Yadav met the witness; that Abhay Singh Yadav and Amar Singh Yadav identified the dead body; that the witness prepared the inquest documents; that the inquest form 25.35 is Ex. PW25/K; that the statement of Abhay Singh and Amar Singh Yadav are Ex. PW14/A and Ex. PW19/A respectively; that the witness prepared the brief facts Ex. PW25/L; that the witness moved an application for post-mortem Ex. PW25/M; that after post-mortem, doctor handed over parcels duly sealed with the seal of hospital and sample seal; that the witness mentioned all the details in the memo; that he does not recollect whether the parcels were given to him or not; that investigation was assigned to Inspector Rajender Dubey as the witness had to go to

CDTS, Chandigarh for training; that in January 2008, he called the draughtsman to prepare a scaled site plan; that the witness had pointed out the spot to the draughtsman in the presence of Inspector K.G. Tyagi and, accordingly, the draughtsman prepared the notes and the site plan. On a leading question put by the public prosecutor, the witness stated that the correct name of the duty constable was Yashbir and not Yash Pal. The witness was cross-examined by Id defence counsels and was then discharged.

106. PW26 the then Sub-Inspector Mahmood Ali is yet another person examined by the prosecution to prove the initial investigation carried in the case. The witness deposed in his examination-in-chief that on 29<sup>th</sup> September, 2007, he was posted at Police Station Hauz Qazi as Sub-Inspector; that on that day DD No. 15A Ex. PW25/B was assigned to the witness at about 08:05pm; that on receipt of the same, the witness alongwith Constable Rajesh reached Gali Arya Samaj; that a number of persons had gathered there; that a lot of blood was found lying there; that at a distance of about 6 paces, an empty cartridge case of 9 mm was lying there; that in the meantime, Inspector Anil Kumar Sharma, Inspector Rajender Dubey, SI Horam, the SHO and other staff reached there; that the SHO directed Inspector Anil Kumar Sharma to take over the charge of investigation; that after leaving SI Horam at the spot, the witness and Inspector Anil Sharma left for LNJP Hospital.

107. PW26 Sub-Inspector Mahmood Ali further deposed that on reaching the hospital, Inspector Anil Sharma had collected the MLC of deceased Vijay Yadav; that the doctor had made an endorsement that the patient was brought dead; that no eye witness met them in the hospital; that Investigating Officer made an endorsement on the DD and sent the witness to the police station to lodge an FIR; that the witness went to the police station and got the FIR registered; that further investigation was assigned to Inspector Anil Sharma; that after lodging of FIR, the witness returned to the spot and handed over copy of FIR and original rukka to the Investigating Officer; that the Investigating Officer collected the blood, blood with earth and earth control from the spot and seized the cartridge case; that the Investigating Officer also prepared sketch of the same; that the Investigating Officer sealed all the exhibits in separate parcels with the seal of 'AS'; that the witness signed all memos and the sketch; that after use, the seal was handed over to SI Horam. The witness was cross-examined by Id defence counsels and was then discharged.

108. PW27 Constable Yasbir Singh was the duty constable posted at LNJP Hospital on the day of the incident. He deposed in his examination-in-chief that on 29<sup>th</sup> September, 2007, he was posted as duty constable at LNJP Hospital; that on that day, at about 08:15 pm, a person named Deepak brought an injured person named Vijay who had sustained a

bullet injury; that Vijay was declared brought dead by the doctor; that the witness conveyed the said information to Police Station Hauz Qazi; that the doctor handed over a sealed parcel containing the belongings of the deceased; that the parcel was sealed with the seal of 'LNJP NH New Delhi'; that Inspector Anil Sharma reached the hospital; that the witness handed over the said parcel to Inspector Anil Sharma; that the parcel was seized by the Investigating Officer by preparing memo Ex. PW-25/A.

109. On questioning by the public prosecutor, PW27 Constable Yasbir Singh stated that the Investigating Officer had taken personal search of the dead body and had seized a watch, two gold rings and one iron ring; that the Investigating Officer had sealed them with the seal of 'AS'; that these items were seized by memo Ex. PW25/D; that the dead body was sent to the mortuary. The witness was cross-examined by Id defence counsels and was then discharged.
110. PW28 Vinod Kumar @ Teda has been cited as a witness by the prosecution to show involvement of accused persons Gopal Krishan Aggarwal and Ashok Jain in commission of the offence, and to demonstrate their linkage with those who are alleged to have executed the crime.
111. PW28 Vinod Kumar @ Teda has deposed in his examination-in-chief that in the year 2007, he was residing at 2464, Katra Dina Nath, Sita

Ram Bazaar, Delhi; that he was residing with his family including his mother; that his father had expired about seven or eight years before the date of deposition; that his father was self employed; that his mother was getting pension and has four sons; that the witness was a property dealer; that brother of the witness had business relations with accused Vinod @ Gola; that the witness, however, had no relationship with any of the accused persons of the case; that the witness had never worked with any of the accused persons; that the witness had never visited the premises of any of the accused persons except for accused Gopal Krishan Aggarwal; that the witness used to visit the office of accused Gopal Krishan Aggarwal once a week; that the office of Gopal Krishan Aggarwal was located at Gali Arya Samaj; that the distance between house of the witness and the office of Gopal Krishan Aggarwal could be covered on foot in five or seven minutes; that the witness would run his business from his house; that the witness knew only that Gopal Krishan Aggarwal also deals in property transactions; that the witness had no knowledge of other businesses of accused Gopal Krishan Aggarwal.

112. PW28 Vinod Kumar @ Teda further stated in his examination-in-chief that he has been residing at Sita Ram Bazaar since his birth; that his in-laws were residing at Katra Gokal Shah in a rented accommodation; that he used to visit his in-laws' house once in five or seven days; that

the witness did not know whether any of the accused persons were residing at Katra Gokal Shah; that the witness had no vehicle at the relevant time; that he was not using the vehicle of anyone else; that he do not know Vijay Yadav @ Vijji; that he had no knowledge about the money transaction, if any, between accused Gopal Krishan Aggarwal and Vijay Yadav.

113. Ld Public Prosecutor had got the abovenamed witness declared hostile and cross-examined the witness at length. The witness was cross-examined on the points of his visit to the office of Ashok Jain, his familiarity with accused Bhisham @ Chintoo and Deepak @ Chowda, election to the post of councillor, giving information of death of Vijay Yadav to accused Vinod @ Gola, hot words being exchanged between Vijay Yadav and accused Ashok Jain, demand of money by the witness from accused Gopal Krishan Aggarwal, instructions purportedly given by accused Gopal Krishan Aggarwal to accused Deepak @ Chowda to advance threats to Vijay Bansal and a deal being struck in this regard, visit of some accused persons to the office of accused Gopal Krishan Aggarwal, Vijay Yadav being called there, payment of money in this respect, the deal falling through and consequential straining of relations between Vijay Yadav and accused Gopal Krishan Aggarwal over payment of money, refusal to repay the money and threats being advanced by the abovenamed two persons to each other, accused

Gopal Krishan Aggarwal talking to other accused persons about Vijay Yadav, and about Bhisham confiding in the witness of a plan hatched by accused Gopal Krishan Aggarwal and accused Ashok Jain to eliminate Vijay Yadav. The witness was cross-examined by Id counsel for accused Gopal Krishan Aggarwal. He was not cross-examined by Id counsels for other accused persons despite grant of opportunity, and was finally discharged.

114. PW29 Surender Kumar Tiwari was examined by the prosecution to prove use of mobile phone bearing IMEI no. 355532015014239. The witness stated in his examination-in-chief that one Ayodhya Tiwari was his neighbour; that prior to 04<sup>th</sup> December, 2007, some persons started residing in the house of Ayodhya Tiwari; that one of them took mobile phone of the witness bearing No. 9412902447 from the daughter of the witness in the evening hours of a date which the witness did not remember; that the said person took out the SIM of his phone and handed it over to daughter of the witness; that the said person inserted the SIM in the mobile phone of the witness, as was later informed to the witness by his daughter, since the witness was sleeping at that time; that the mobile phone was later seized by the police; that he could identify the seizure memo Ex. PW29/A of his mobile phone. The witness identified the seizure memo and also the phone bearing IMEI no. 355532015014239 of make Nokia 2310 when shown to him. The



witness was cross-examined by Id counsel for accused Rishi Pal @ Pappu. He was not cross-examined by Id counsels for other accused persons despite grant of opportunity, and was finally discharged.

115. PW30 Sumitra Pawar was also examined by the prosecution to prove use of a mobile phone. This mobile phone was bearing IMEI no. 3555030004248546. The witness stated in her examination-in-chief that that she knew Ayodhya Tiwari who is residing in the same gali; that in the year 2011, she was using mobile number 09412974445; that around the month of December 2007 a boy named Rahul who was residing in the house of Ayodhya Tiwari took her mobile phone by saying that he was not having any mobile phone and had to make a call; that Rahul removed the sim card and gave it to the witness; that Rahul took away the phone; that Rahul later returned the phone; that when police came to the house of the witness, she handed over her phone to the police; that the phone was seized by the police by seizure memo Ex. PW30/A. The witness identified the seizure memo and a phone bearing IMEI no. 3555030004248546 of make Nokia 1100 when shown to her. The witness was cross-examined by Id counsel for accused Rishi Pal @ Pappu. She was not cross-examined by Id counsels for other accused persons despite grant of opportunity, and was discharged.

116. PW31 Shri Manish Kumar Gola is a public witness. He was examined by the prosecution as a witness to the pointing out of a place by

accused Parmod Singh @ Pammy. The witness deposed that on 01<sup>st</sup> February, 2008, between 03:00 pm and 04:00 pm, he was going from Delhi Gate to Arya Samaj Gali via Fasil Road; that he noticed that some persons had gathered at Fasil Road near Himmat Garh crossing; that he saw that a person was in police custody and had been handcuffed. The witness identified accused Parmod Singh @ Pammy as that person. The witness then stated that police officers asked several persons to join the proceedings; that the witness agreed to join the proceedings; that accused Parmod Singh @ Pammy pointed towards the place where a vehicle was parked; that police prepared a pointing out memo in this respect; that the memo is Ex. PW31/A. The witness was cross-examined by ld defence counsel and was discharged.

117. PW32 Mr. Sunil Sharma was examined by the prosecution to show the link between accused persons Rishi Pal @ Pappu, Ashok Jain and Bhisham @ Chintoo and to prove their motive to commit the crime. The witness deposed in his examination-in-chief that he knew Vijay Yadav, Abhay Singh, Ashok Jain, Rishi Pal @ Pappu and Gopal Krishan Aggarwal; that Vijay Yadav had died on 29<sup>th</sup> September, 2007; that he had been murdered; that no part of the conspiracy to murder Vijay Yadav was hatched in the presence of the witness; that Abhay Singh and accused Rishi Pal @ Pappu were engaged in building construction work; that initially they were doing the work jointly but later they got

separated; that the witness was not aware if the relations between Abhay Singh and accused Rishi Pal @ Pappu were cordial or estranged; that the witness could recognize Bhisham @ Chintoo but he did not know the latter by name; that the witness had seen Bhisham @ Chintoo once or twice in the locality; that Bhisham @ Chintoo was working with accused Ashok Jain; that the witness did not know the relationship between accused Ashok Jain and accused Rishi Pal @ Pappu; that the witness did not know about the relationship between accused person Ashok Jain, Rishi Pal @ Pappu and Gopal Krishan Aggarwal; that the witness had never seen them together; that the witness did not know what happened between accused persons Ashok Jain, Rishi Pal @ Pappu, Gopal Krishan Aggarwal and Abhay Singh Yadav after the murder of Vijay Yadav @ Vijji; that accused Rishi Pal @ Pappu had a son and he was married, but the witness had not seen the marriage card.

118. Ld. Public Prosecutor had got the abovenamed witness declared hostile and had cross-examined the witness. The witness was cross-examined on the points of a CBI raid at the premises of accused Ashok Jain, it being perceived to be at the instance of Vijay Yadav and his brother, recording of statement of the witness by the police, about the witness overhearing a conversation between accused persons Ashok Jain, Rishi Pal @ Pappu and Bhisham @ Chintoo to teach a lesson to Vijay Yadav

and his brother, about accused persons Ashok Jain and Rishi Pal @ Pappu instigating Bhisham @ Chintoo to act against Vijay Yadav and his brother, about the witness narrating this to Abhay Singh Yadav and cautioning the latter and about the witness seeing accused Rishi Pal @ Pappu after the incident of murder. The witness was not cross-examined by Id counsels for accused persons despite grant of opportunity, and was discharged.

119. PW33 Inspector Anil Kumar was incharge of the crime team on the day of the incident. He stated in his examination-in-chief that on 29<sup>th</sup> September, 2007, he was a sub-inspector and was posted as Incharge of Mobile Crime Team; that on receipt of information, the witness along with his team reached Gali Arya Samaj; that Inspector Anil Sharma alongwith his staff met the witness there; that the witness saw blood lying in the lane; that the witness found an empty cartridge at the place of occurrence; that Constable Dinesh, photographer was also in the team and he had taken photographs of the spot; that the witness could identify the photographs; that the photographs Ex. PW25/D1 to Ex. PW25/D12 were the ones taken in the presence of the witness by Constable Dinesh; that the witness had inspected the place of occurrence and had prepared the crime team report; that the witness submitted the report to IO Inspector Anil Sharma; that the report is Ex. PW-33/A. The witness was cross-examined by Id defence counsel and

was discharged.

120. PW34 Shri Tek Ram has been examined by the prosecution to prove that accused Gopal Krishan Aggarwal had motive to plan the murder of Vijay Yadav. The witness deposed in his examination-in-chief that he knew Vijay Yadav @ Viji since long as earlier the witness was residing in the same locality i.e. Bazaar Sita Ram; that the witness knew accused Gopal Krishan Aggarwal and accused Ashok Jain (who he correctly identified); that accused Gopal Krishan Aggarwal used to visit the office of Vijay Yadav; that about 1½ months before the murder of Vijay Yadav, the witness had talked to accused Gopal Krishan Aggarwal on phone; that accused Gopal Krishan Aggarwal had inquired from the witness as to whether Vijay Yadav was present in the office; that the witness had told accused Gopal Krishan Aggarwal that Vijay Yadav was present in his office; that accused Gopal Krishan Aggarwal had asked the witness to reach the office of Gopal Krishan Aggarwal with Vijay Yadav; that the witness conveyed the said message to Vijay Yadav; that before this call of Gopal Krishan Aggarwal, Vijay Yadav had received two or three calls on his mobile phone which he had disconnected; that when the witness asked Vijay Yadav why he was disconnecting the calls, Vijay Yadav told the witness that accused Gopal Krishan Aggarwal had a friend named Supariwala who had a money transaction with one Vijay Bansal, a resident of Rohini; that

Vijay Yadav told the witness that Supariwala owed money to Vijay Bansal; that Vijay Bansal dealt in *satta* business; that Gopal Krishan Aggarwal had approached Vijay Yadav for help and Vijay Yadav had assured Gopal Krishan Aggarwal that Vijay Bansal would not harass Supariwala in future against this consideration of Rs. 7 lakhs; that Vijay Yadav also told the witness that Vijay Yadav had settled the said dispute through one Chhotu; that thereafter the witness and Vijay Yadav went to the office of Gopal Krishan Aggarwal; that Gopal Krishan Aggarwal asked Vijay Yadav to refund Rs. 3 lakhs which the former had given to the latter for settling the above dispute whereas Vijay Yadav demanded the balance money for the said settlement; that according to Gopal Krishan Aggarwal, the dispute had been got settled through the police; that this disagreement led to a heated exchange of words between Vijay Yadav and accused Gopal Krishan Aggarwal who even extended threats to each other; that then the witness and Vijay Yadav came back. The witness was cross-examined by Id defence counsels and was discharged.

121. PW35 HC Omender Kumar is a witness to part of the investigation that took place at Inter-State Cell, Crime Branch. He stated in his examination-in-chief that he joined the investigation of the present case on 10<sup>th</sup> January, 2008 when he was posted at Inter State Cell, Crime Branch, Chanakya Puri, New Delhi; that on that day, the witness

alongwith Inspector K.G. Tyagi, SI Ram Avtar, SI Mukesh Kumar, ASI Rajbir, HC Shiv Kumar, HC Narender, HC Sanjay, HC Rajiv, Constable Kirti and Constable Rambir left from the office at about 04:00 pm in an official vehicle and a private vehicle; that they reached Ram Bagh Extension, Loni in search of Hitender @ Chhotu and Parmod @ Pammy but neither of them were present there; that when they were returning and had reached near Traffic Light at Khazoori, Main Wazirabad Road, Inspector K.G. Tyagi received a secret information at about 06:00 pm that two persons named Hitender @ Chhotu and Praveen Koli wanted in this case would come at about 8pm or 9pm to meet their associate at Christian Cremation Ground, Kashmere Gate; that on receipt of this secret information, Inspector K.G. Tyagi constituted a raiding party of abovenamed police officers and asked five or six passers-by to join the raiding party but none came forward; that the secret informer met the police officers at the traffic light; that all of them including the secret informer proceeded towards Kashmere Gate near Christian Cremation Ground; that they reached there at about 7pm; that on reaching there, Inspector K.G. Tyagi asked five or six passers-by to join the raiding party but none agreed; that Inspector K.G. Tyagi deputed the police team at different points near the gate of cremation ground; that at about 08:30pm, they saw that a boy was coming from Ludo Castle School and they stopped near the gate of cremation ground; that when

Inspector K.G. Tyagi tried to apprehend that boy, the other officers including the witness also reached there; that they overpowered that boy; that on inquiry, the boy disclosed his name as Parveen Koli (who the witness correctly identified); that Inspector K.G. Tyagi interrogated Praveen Koli about the murder of Vijay Yadav; that Praveen Koli was arrested and was searched by memos Ex. PW35/A and Ex. PW35/B; that during the personal search of accused Parveen Koli, Rs. 305/- was recovered; that they went to Police Station Hauz Qazi where the personal search articles were deposited; that they then went to their office at Chanakyapuri; that statement of the witness was recorded by the Investigating Officer in the office; that at about 12:30am, Inspector K.G. Tyagi interrogated the accused in the office in the presence of the witness; that whatever the accused disclosed during the interrogation was reduced into writing; that accused Praveen Koli led the police team to Room No. 66, Kwality Hotel, Pahar Ganj; that accused Parveen Koli pointed towards the said room in respect of which pointing out memo Ex. PW35/D was prepared; that accused Parveen Koli led the police team to the place of occurrence located near property No. 2745, Gali Arya Samaj; that on his pointing out, a memo Ex. PW35/E was prepared; that accused Parveen Koli led the police team to property No. 3570, Gali Than Singh i.e. office of Vijay Yadav; that pointing out memo Ex. PW35/F was prepared; that statement of the witness was



recorded in the office of Vijay Yadav; that thereafter, the witness joined the investigation on 19<sup>th</sup> February, 2008; that Inspector K.G. Tyagi sent the witness to Police Station Chandni Mahal with direction to check the record relating to complaint of one Parmod Kumar; that the witness went there and collected copy of DD No. 24 dated 24<sup>th</sup> August, 2007, Police Post Turkman Gate and DD No. 14 dated 10<sup>th</sup> September, 2007, Police Post Turkman Gate and copy of kalandra; that he handed over the said copies to Inspector K.G. Tyagi; that Inspector K.G. Tyagi seized the said documents by preparing memo Ex. PW35/G; that on 20<sup>th</sup> February, 2008, the witness again joined the investigation; that accused Ashok Jain came to the office at Chanakya Puri; that Investigating Officer interrogated accused Ashok Jain and thereafter arrested him; that arrest memo of accused Ashok Jain is Ex. PW35/H; that personal search of accused Ashok Jain was taken by memo Ex. PW35/I; that disclosure statement of accused Ashok Jain was recorded; that accused Ashok Jain (who the witness correctly identified) refused to sign the said disclosure statement; that accused Ashok Jain was produced before the Court and was taken on police custody remand; that then they came to the office; that accused Ashok Jain was again interrogated and his supplementary disclosure statement was recorded; that accused Ashok Jain led the police team to C-2/32, Bapa Nagar, New Delhi and produced an NCR of a mobile phone; that the same was

seized by preparing memo Ex. PW35/L; that thereafter they returned to the office and statement of the witness was recorded; that the witness again joined the investigation on 30<sup>th</sup> May, 2008; that accused Deepak @ Chowda (who the witness correctly identified) was in police custody; that SI Sanjiv, ASI Jai Singh, HC Shiv Kumar, HC Narender and HC Sanjay were also present in the office and joined the investigation; that SI Sanjiv asked the witness and others whether they have to go to Dehradun, Uttarakhand; that they went to Dehradun in a private vehicle alongwith accused; that the accused led the police team to Village Balawala and pointed towards a house namely Chaudhary Niwas; that he pointed towards a mango tree behind the said house towards the eastern side; that the accused pointed towards the spot near the mango tree and stated that he had concealed a polythene bag containing gold bracelet over there; that the accused dug out the said polythene bag from the said place; that on opening of the polythene bag, one gold bracelet was found wrapped in a newspaper; that the said bracelet was checked; that the said bracelet was kept in the same polythene bag after wrapping the newspaper and thereafter it was sealed in a parcel with seal of MKS; that the parcel was seized by preparing memo Ex. PW35/M; that they went to Police Station Raipur; that Investigating Officer went inside the police station and the witness remained outside; that statement of the witness was recorded outside

the police station; that they then returned to Delhi and the case property deposited at Police Station Hauz Qazi.

122. At that stage of the testimony, a parcel sealed with the seal of AG was produced by the MHC(M). It was opened. A polythene bag containing newspaper and a gold bracelet was found in it. On seeing it, the witness identified it as the same bracelet which was got recovered by the accused. The witness was cross-examined by Id defence counsels and was discharged.

123. PW36 Shri Satnam Singh is, according to the prosecution, owner of the hotel where the conspiracy was hatched. The witness deposed in his examination-in-chief that he was running a guest house in the name of Hotel Kwality at 53, Ara Khasha Road, Pahar Ganj, Delhi; that about six or seven years ago, the police had visited the hotel of the witness and had checked the Guest Entry Register; that police had seized the said register through seizure memo Ex. PW36/A.

124. At that stage of the testimony, a parcel sealed with the seal of KGT was produced by the MHC(M). It was opened. A register of Hotel Kwality Ex. PW36/B was found in it. On seeing it, the witness identified it as the same register which had been seized by the police. The witness pointed out that the register contains an entry No. 3243 dated 20<sup>th</sup> September, 2007 in the name of Devi Singh and Hitender Singh. These persons had checked out from the hotel on 22<sup>nd</sup> September, 2007. The

register also contained entry No. 3384 dated 28<sup>th</sup> September, 2007 in the name of Devi Singh and Hitender Singh, with mention of check-out date as 29<sup>th</sup> September, 2007. The witness was cross-examined by Id defence counsel and was discharged.

125. PW37 SI Mahender Singh was the duty officer on the date of the incident in question and had recorded the FIR. He stated in his examination-in-chief that on 29<sup>th</sup> September, 2007, he was posted at Police Station Hauz Qazi as duty officer from 5pm till 1am on the next day; that at about 10:10pm on 29<sup>th</sup> September, 2007, the witness received a rukka from SI Mehmood Ali, which had been sent by Inspector Anil Sharma; that on receiving the rukka, the witness lodged a *kaimi* DD No. 18A and recorded the FIR on computer; that after recording the FIR, the witness made his endorsement on rukka; that the witness also recorded DD entry regarding closure of writing of FIR; that a special messenger was sent to deliver copy of FIR to different authorities; that the witness had brought the office record of the FIR; that copy of FIR is Ex. PW37/A; that the witness had made endorsement on the rukka vide DD No. 18A Ex. PW37/B; that the recording of FIR was concluded at 10:40 pm vide DD No. 19A and copy of the said FIR was sent to the officers through constable Rakesh Kumar, who left from the police station at about 10:40 pm on motor cycle bearing No. DL-1SN-7127; that true copy of DD No. 19A is Ex.

PW37/D; that original rukka and copy of FIR was sent to Inspector Anil Sharma through SI Mahmood Ali; that as per roznamcha, Constable Rakesh returned to the police station at about 02:45 am vide DD No. 6A of 30<sup>th</sup> September, 2007 Ex. PW37/E. The witness was cross-examined by Id defence counsel and was discharged.

126. PW38 HC Suresh Kumar was MHC(M) at PS Hauz Qazi and was responsible for acceptance of parcels deposited in the malkhana. He deposed in his examination-in-chief that on 29<sup>th</sup> September, 2007 and till 22<sup>nd</sup> December, 2007, he was posted as MHC(M) at PS Hauz Qazi; that on 29<sup>th</sup> September, 2007, Inspector Anil Sharma deposited six parcels sealed with the seal of AS along with copy of seizure memo, of which an entry was made at SI No. 1841 in register no. 19 Ex. PW38/A.
127. PW38 HC Suresh Kumar further deposed that on 08<sup>th</sup> October, 2007, Inspector Rajinder Dubey deposited four parcels sealed with the seal of MAMC SKK along with sample seal and copy of seizure memo, of which entry was made at SI No. 1844 in register no. 19 Ex. PW38/B.
128. PW38 HC Suresh Kumar then deposed that on 06<sup>th</sup> December, 2007, Inspector Ram Avtar deposited a parcel duly sealed with the seal of RBS and two SIM cards in malkhana and handed over copy of seizure memo to the witness; that on the same day, Inspector K.G. Tyagi deposited a parcel sealed with the seal of KGT of which entry was made at SI No. 1857 in register no. 19 Ex. PW38/C.

129. PW38 HC Suresh Kumar deposed that on 07<sup>th</sup> December, 2007, Inspector K.G. Tyagi deposed a parcel sealed with the seal of KGT and personal search articles of accused persons Rishi Pal @ Pappu and Gopal Krishan Aggarwal; that entry was made at SI No. 1547A in register no. 19 Ex. PW38/D; that entry 1547A had been inadvertently written in place of 1857A.
130. PW38 HC Suresh Kumar deposed that on 18<sup>th</sup> December, 2007, Inspector K.G. Tyagi deposed a register sealed with the seal of KGT along with copy of seizure memo; that entry was made at SI No. 1853 in register no. 19 Ex. PW38/E.
131. PW38 HC Suresh Kumar further deposed that on 22<sup>nd</sup> December, 2007, SI Ram Avtar of Crime Branch deposed a parcel sealed with the seal of KGT; that entry was made at SI No. 1895 in register no. 19 Ex. PW38/F.
132. PW38 HC Suresh Kumar further deposed that on 25<sup>th</sup> November, 2007, Inspector K.G. Tyagi deposed certain items along with copy of memos; that entry was made at SI No. 1842 in register no. 19 Ex. PW38/G.
133. PW38 HC Suresh Kumar deposed that on 27<sup>th</sup> December, 2007, eight parcels - some sealed with the seal of AS, some sealed with the seal of LNJP and others sealed with the seal of MAMC SKK were sent to the FSL through ASI Jai Singh vide RC No. 102/21; that copy of RC

No.102/21 is Ex. PW38/H; that ASI Jai Singh, after depositing these items at FSL, handed over to the witness the receipt of deposit; that on 17<sup>th</sup> January, 2008, a parcel sealed with the seal of RBS was sent for Test Identification Parade through SI Mukesh vide RC No.02/21/08 by entry Ex. PW38/I. The witness was cross-examined by Id counsels for accused persons, and was discharged.

134. PW39 Constable Dinesh was a part of the mobile crime team that had reached the spot soon after the incident. The witness deposed in his examination-in-chief that on 29<sup>th</sup> September, 2007 he was posted at Mobile Crime Team, Central District, Pahar Ganj; that SI Anil Kumar was the In-charge of the team; that the witness alongwith the team reached in front of Property No. 2746, Arya Samaj Street, Bazaar Sita Ram, Delhi; that Inspector Anil Sharma alongwith his staff met them; that he saw one empty cartridge and blood; that on the instructions of Investigating Officer and In-charge SI Anil Kumar, the witness took the photographs of empty cartridge and blood; that he also took photograph of the spot; that the witness took 12 photographs in total; that the said photographs were developed at Malviya Nagar in the Finger Print Bureau; that the witness had brought the negative photographs and compared the same with the positive photographs Ex. PW25/D1 to PW25/D12; that the positive photographs were true and correct copy of the negative photographs; that the witness filed the

negative photographs Ex. PW39/A. The witness was cross-examined by Id defence counsel, and was discharged.

135. PW40 Inspector Shyam Sunder deposed to part of the investigation carried out in the case, relating of arrest of accused persons Vinod @ Gola and Bhisham @ Chintoo. He deposed in his examination-in-chief that on 25<sup>th</sup> November, 2007, he was posted as SI at Special Team, Crime Branch, Prashant Vihar; that on that day, at about 10:30 am, a secret informer visited the office of the witness and informed the witness that accused Vinod @ Gola and Bhisham @ Chintoo who were wanted in murder case of Sita Ram Bazaar would come at Bhajan Pura Petrol Pump after some time; that the witness conveyed the said information to Inspector Anand Singh and to ACP, Special Team; that the witness reduced the said information into writing vide DD no. 3 Ex. PW40/A; that thereafter the witness organized a raiding party comprising of Inspector Anand Singh, SI Ritesh, HC Balender, HC Rakesh, Const. Ajay and the witness; that the informer also accompanied them; that they reached Petrol Pump of Bhajanpura at about 11:30 am; that at about 2:15 pm, they apprehended accused Vinod @ Gola and Bhisham @ Chintoo (both of whom the witness correctly identified) on the pointing out of secret informer; that after apprehending of both of them, the police officers brought them to their office at Prashant Vihar; that the police officers and the accused persons



reached office between 4 pm and 4:15 pm; that on the way, they informed their office about the apprehending of the accused persons; that when they reached their office, Insp. K.G. Tyagi met them; that the witness handed over both the accused persons to Insp. K.G. Tyagi; that Insp. K.G. Tyagi arrested both of them and carried out their personal search; that the witness signed the memos; that the arrest memos of accused persons Bhisham @ Chintoo and Vinod @ Gola are Ex. PW40/B and PW40/C respectively; that the accused persons' personal search memos are Ex. PW40/D and PW40/E respectively; that at about 4:25 pm, the witness recorded his arrival and the proceedings as DD No. 4 Ex. PW40/F (OSR). The witness was cross-examined by Id defence counsel, and was discharged.

136. PW41 SI Jai Singh was examined by the prosecution to prove part of the investigation carried out by Inter-State Cell, Crime Branch, Chanakyapuri, including the seizure of phones that were used by accused persons, the recovery of a chain at the instance of accused Bhisham @ Chintoo, the recovery and seizure of a car at the instance of accused Hitender @ Chhotu, arrest of accused Deepak @ Chowda, and pointing out of Hotel Kwaliti as place of conspiracy and the place of occurrence by accused Deepak @ Chowda. The witness deposed in his examination-in-chief that on 04<sup>th</sup> December, 2007, he was posted at Inter-State Cell, Crime Branch, Chanakyapuri, New Delhi as ASI; that

on that date he joined the investigation of this case with SI Ram Avtar; that accused Bhisham @ Chintoo and Vinod @ Gola (both of whom the witness identified) were in custody; that the witness alongwith the team headed by SI Ram Avtar and accused persons left for Kotdwar, UP; that accused Bhisham @ Chintoo took the police team to the house of one Harish Patti at Vikas Nagar; that the accused pointed towards a room which was locked; that landlord of the premises Sh. Harish Patti was an old person and was unable to speak; that a tenant named Bunty met the police officers; that Bunty identified both the accused persons and informed the police that both the accused persons had stayed in the house alongwith eight or ten other persons; that Bunty had not disclosed the date of the stay in the said room; that from Vikas Nagar, they went to Raj Hotel at Kotdwar; that from there, they went to Rishikesh, where they went to the house of one Ayodhya Prasad led by both the accused persons; that the house was found locked; that thereafter the accused persons led the police team to the house of one Pitamber; that Pitamber and a lady Sumitra met the police officers there; that SI Ram Avtar made inquiry from Pitamber and Sumitra about some phone; that Sumitra handed over a mobile phone to SI Ram Avtar, which was seized by SI Ram Avtar by memo Ex. PW30/A; that the witness and others then went to the house of Surender Tiwari which was nearby; that SI Ram Avtar made inquiry about a mobile

phone; that Surender Tiwari produced a mobile phone which was seized by memo Ex.PW29/A.

137. PW41 SI Jai Singh further deposed that on 05<sup>th</sup> December, 2007, he again joined the investigation; that they went to Balawal at Dehradun to the house of Rajender Chaudhary at the instance of both the accused persons namely Bhisham @ Chintoo and Vinod @ Gola; that accused Bhisham @ Chintoo disclosed that the accused persons had stayed on the first floor of the room and accused Bhisham @ Chintoo had concealed the gold chain of the deceased in the container of tea leaves; that thereafter the accused pointed towards the said kitchen and produced the chain from the container; that there was a v-shaped locket in the chain; that SI Ram Avtar sealed the said chain after keeping it in a container with the seal of RBS and seized the chain vide memo Ex.PW41/A; that thereafter they returned to Delhi.

138. PW41 SI Jai Singh further deposed that on 27<sup>th</sup> December, 2007, he joined investigation; that at that time accused Hitender @ Chhotu was in custody (who the witness identified); that on the pointing out of accused Hitender @ Chhotu, a car of Santro model was seized from Rawat Mohalla; that the said car was in the name of brother-in-law of accused Hitender @ Chhotu; that key of the vehicle was taken from the mother-in-law of the accused by SI Mukesh, who seized the car and the key; that the witness signed the memo Ex. PW41/B.

139. PW41 SI Jai Singh went on to state in his examination-in-chief that on 28<sup>th</sup> May, 2008, he joined the investigation with Insp. K.G. Tyagi; that a team was constituted on receipt of secret information that accused Deepak @ Chowda would reach near Petrol Pump, Sarvodaya Vidyalaya, Crossing of Sector 15-16, Rohini in the evening at about 7pm; that at about 6:45 pm they reached near crossing of Sectors 15 and 16 at Rohini; that Investigating Officer requested five or six passers-by to join the proceedings but none of them came forward; that at about 7pm, accused Deepak @ Chowda was apprehended (who the witness identified); that arrest memo of the accused Ex.PW41/C was prepared; that personal search of the accused was carried out vide memo Ex. PW41/D; that they brought the accused to the office where he was interrogated; that after interrogation, disclosure statement of the accused was recorded which is Ex.PW41/E.

140. PW41 SI Jai Singh further deposed in his examination-in-chief that on 29<sup>th</sup> May, 2008, he had again joined the investigation; that on the same day, accused Deepak @ Chowda had pointed towards Hotel Kwality, Ara Kasa Road; that a pointing out memo was prepared which is Ex. PW41/F; that the accused pointed towards the place of occurrence; that a pointing out memo was prepared which is Ex.PW41/G. The witness stated that he can identify the recovered mobile phone and gold chain.

141. The MHC(M) produced a container sealed with the seal of Court. On opening the same, a gold chain Ex.P2 was found in a tea leaves' container. On seeing it, PW41 SI Jai Singh stated that it was the same chain which had been got recovered by accused Chintoo. The MHC(M) also produced two mobile phones Ex.P29/1 and P30/1. On seeing them, the witness stated that the said mobile phones were sealed in his presence.
142. PW41 SI Jai Singh was cross-examined by Id defence counsel and was then discharged.
143. PW42 HC Amar Pal (Retd.) was posted in the police control room on the day of the occurrence. He had received PCR call of the incident. The witness deposed in his examination-in-chief that on 29<sup>th</sup> September, 2007, he was posted at police control room and he was on duty from 2 pm to 8 pm; that on that day at about 17:46 hours, a call was received in control room from telephone number 9811607778 from one Gopal Krishan that a person had been shot at Gali Bazaar Sita Ram near Arya Samaj Mandir; that this information was recorded and conveyed to communication NET; that the witness has seen photocopy of the PCR form from judicial file and the same is in his handwriting; that the original form has been destroyed; that he had brought the letter in this regard running into three pages; that the same is Ex. PW42/A; that copy of the PCR form is Ex. PW42/B. The witness was cross-examined

by Id defence counsel and was then discharged.

144. PW43 SI Kavita had also received PCR call of the incident. She deposed that on 29<sup>th</sup> September, 2007, she was posted at police control room and she was on duty from 2 pm to 8 pm; that on that day at about 17:54 hours, a call was received from control room from telephone number 20314915 by a male person that a person had been shot at Gali Bazaar Sita Ram near Arya Samaj Mandir and that assailants have fled away, that about 100 persons have gathered and a request was made to send the force; that this information was recorded and conveyed to communication NET; that the witness has seen photocopy of the PCR form in the judicial file and same is in her handwriting; that the original form had been destroyed; that the witness has brought the letter in this regard running into 3 pages; that the same is Ex.PW43/A; that copy of the PCR form is Ex.PW43/B. The witness was cross-examined by Id defence counsel and was then discharged.

145. PW44 Shri Israr Babu, Alternate Nodal Officer, Vodafone, Mobile Services Ltd. had been examined to prove record relating to certain mobile phone connections. The witness produced and identified customer application form (CAF) of mobile connection No. 9953205136. He deposed in his examination-in-chief that as per record, the said connection was issued in the name of Vinod Kumar, son of Sh. Ramesh Chand; that at the time of obtaining the connection, the subscriber had

furnished copy of his Voter Identity Card; that the witness had brought the original CAF; that copy of CAF and identity proof on the judicial file are true and correct copies of the original; that the same are Ex.PW44/A; that the witness has brought customer application form (CAF) of mobile connection No. 9873056281; that as per record, the said connection was issued in the name of Shiv Kumar, son of Sh. Jaidarth; that at the time of obtaining the connection, the subscriber had furnished copy of his voter identity card; that the witness had brought the original CAF and has seen copy of CAF alongwith the identity document from the judicial file, which are true and correct copies of the original; that the same are Ex.PW44/B; that the witness has brought customer application form (CAF) of mobile connection No. 9761065298; that as per record, the said connection was issued in the name of Ankush Kanwar, son of Sh. Keshar Singh; that at the time of obtaining the connection, the subscriber had furnished copy of his driving licence; that the witness had brought the original CAF and has seen the copy of CAF alongwith identity document from the judicial file, which are true and correct copies of the original; that the same are Ex.PW44/C; that the witness has seen CDR of mobile No. 9953205136 from judicial file, which was given to Delhi Police; that the witness had brought the attested copy and it is true and correct copy of the original; that the same is Ex.PW44/D; that the witness had brought the

certificate under section 65 B of Indian Evidence Act to the effect that the CDRs of the said period are true and correct; that the certificate was generated from the computer system using printer and its contents are true reproduction of the original; that the certificate is Ex.PW44/E; that the witness had seen the CDR of mobile No. 9873056281 from judicial file which had been given to Delhi Police; that the witness had brought attested copy thereof and the same is true and correct copy of the original; that the same is Ex. PW44/F; that the witness had brought certificate under section 65 B of Indian Evidence Act to the effect that the CDRs of the said period are true and correct; that it had been generated from the computer system using printer; that its contents are true reproduction of the original; that the same is Ex.PW44/G; that the witness had seen the CDR of mobile No. 9761065298 from judicial file, which had been given to the Delhi Police; that the witness had brought the attested copy and it is true and correct copy of the original; that the same is Ex. PW44/H; that the witness had brought certificate under section 65 B of Indian Evidence Act to the effect that the CDRs of the said period are true and correct and had been generated from the computer system using printer; that its contents are true reproduction of the original; that the same is Ex.PW44/I; that the details of the calls are stored in their system automatically in the due course of business of the company; that the original data of the above connection is stored in



their server. The witness was cross-examined by Id defence counsel and was then discharged.

146. PW45 Sh. Chander Shekhar, Nodal Officer, Bharti Airtel Ltd. was also examined to prove record relating to a mobile phone connection. The witness deposed in his examination-in-chief that he had brought the customer application form of connection No. 9896941896; that as per record, the said connection was issued in the name of Vijay son of Silak Ram; that the customer application form is Ex.PW45/A. The witness was cross-examined by Id defence counsel and was then discharged.

147. PW46 Sh. Deepak Sharma is the person who had carried the deceased to the hospital immediately after the incident. The witness deposed in his examination-in-chief that he knew Vijay Yadav as the witness had been working with Vijay Yadav; that on 29<sup>th</sup> September, 2007, the witness was present at his house; that between 7:45 pm and 8 pm, the witness received a call of his younger brother Praveen who informed the witness that Vijay Yadav had been shot at near Arya Samaj Mandir; that the witness rushed to Arya Samaj Mandir; that the witness saw that three or four persons were holding Vijay Yadav; that they stopped a motorcyclist and took Vijay Yadav to Hamdard Chowk; that from there, the deceased was taken to LNJP Hospital in a TSR; that on reaching the hospital, the doctor declared Vijay Yadav as having been brought dead; that the witness had accompanied others while taking

Vijay Yadav to Hamdard Chowk; that even thereafter the witness had accompanied the injured person in the TSR; that police met the witness in the hospital; that police brought the witness to the place of occurrence; that the witness had shown the place to the police from where he accompanied the injured person; that police prepared site plan Ex.PW25/E in the presence of the witness; that police had lifted a cartridge from the place of occurrence. The witness was cross-examined by Id defence counsel and was then discharged.

148. The next witness examined by the prosecution is Retd. Inspector Davinder Singh. He was examined on 16<sup>th</sup> November, 2013 before the Court of Id predecessor, who erroneously numbered the witness as PW46, though the earlier witness had already been numbered as PW46. For distinguishing this witness from the preceding one, Retd. Inspector Davinder Singh is referred to here as PW46A. PW46A Retd. Inspector Davinder Singh had prepared scaled site plan of the place of incident. The witness stated in his examination-in-chief that on 07<sup>th</sup> January, .2008, he was working as Inspector (Draftsman), Crime Branch, Delhi Police and on that day at the request of Investigating Officer of the case, he visited the place of occurrence; that he took rough notes and measurements on the pointing out of Inspector Anil Sharma and Inspector K. G. Tyagi; that on the basis of such notes and measurements, he prepared scaled site plan Ex. PW46/A; that the

scaled site plan was handed over to Investigating Officer and thereafter rough notes were destroyed. The witness was not cross-examined despite grant of opportunity, and was discharged.

149. PW47 Rajinder Singh was examined by the prosecution to show the nexus between accused Bhisham @ Chintoo and Ashok Jain. The witness stated in his examination-in-chief that about four or five years ago, he was called by police officers of PS Hauz Quazi for some enquiry; that the police was making enquiry from him as to whether any person had approached him for arranging of a job to which he pleaded ignorance; that nothing except the above had been enquired from the witness by the police; that the witness had not made any statement to the police.

150. PW47 Rajinder Singh was cross-examined by the Id Addl. Public Prosecutor after obtaining permission from the Court. In his cross-examination, the witness stated that he is doing the job of catering; that Jitender, Umesh, Amit, Nischal, Rahul, Dharmender, Komal, Ravi, Sudesh, Vijender, Vikas, Dev Raj, Vijay and Surinder were working with him as labourers on daily wages; that in the year 2008, the witness was running this business from Bazar Sita Ram and at that time the witness was residing in the same locality; that the witness had been residing there since the last 20 to 22 years; that the witness does not know any person by the name of Ved Prakash R/o House No. 2137,

Katra Gokul Shah, Bazar Sita Ram; that the witness does not know any person by the name of Bhisham @ Chintoo; that it is wrong that Bhisham @ Chintoo used to collect money from employees of the witness on the pretext of securing jobs for them. The witness denied having tendered statement to the police. The witness was not cross-examined despite grant of opportunity, and was discharged.

151. PW48 Davinder Kumar is brother of accused Bhisham @ Chintoo. He was examined by the prosecution to prove usage of the phone of the witness by accused Bhisham @ Chintoo. The witness stated in his examination-in-chief that accused Bhisham @ Chintoo is his younger brother; that the mobile phone, the number of which he does not remember, was registered in his name; that the mobile phone connection was of Hutch Company; that the said mobile phone was used by his family members including his brother Bhisham @ Chintoo; that police called him for interrogation in the present case regarding the aforesaid mobile phone; that the witness had disclosed these facts to the police. On cross-examination by the Id Addl. Public Prosecutor, the witness admitted that the mobile phone number was 9873722524. The witness was cross-examined and discharged.

152. PW49 Sh. Ankush Kanwar was examined by the prosecution because a mobile phone connection had been obtained by use of lost identity proof of this witness. The witness stated in his examination-in-chief

that in the year 2008, he was called to the office of Crime Branch, Sector-18, Rohini, Delhi and he was asked as to whether he was acquainted with anybody by the name of Chhotu; that the witness had replied that he had heard the name but was not acquainted with the said person; that an inquiry was made about his driving licence upon which the witness replied that he had lost the same in the month of May, 2007; that the witness had produced the NCR of loss of licence which is marked 49/A; that the enquiry had been made because the police was having information that someone had obtained a mobile connection in the name of the witness by using driving licence of the witness as proof of identity; that the witness did not remember the mobile phone number; that in the office of Crime Branch, a customer application form was there and a driving licence was annexed with the form; that the driving licence was of the witness but the form was not having his photograph; that the witness does not remember in whose name the form was. The witness was not cross-examined despite grant of opportunity, and was discharged.

153. PW50 Dr. Deepak Vats, Senior Medical Officer, Indraprastha Apollo Hospital, New Delhi appeared as witness in the Court to prove the medical report of Abhay Singh Yadav, brother of deceased. The witness deposed in his examination-in-chief that he had been deputed by Dr. Rajinder Prasad, Senior Consultant (Neurosurgery) to depose;

that the witness had seen Dr. Rajinder Prasad writing and signing during the course of his employment; that as a result, the witness was in a position to identify the handwriting and signatures of Dr. Rajinder Prasad; that the witness has seen medical report of patient Abhay Yadav dated 24<sup>th</sup> December, 2002 on the judicial file which contains the handwriting and signatures of Dr. Rajinder Prasad; that as per medical report, Abhay Yadav was admitted in their hospital on 22<sup>nd</sup> December, 2002; that the medical report is Ex. PW50/A. The witness was cross-examined and discharged.

154. PW50 Dr. Deepak Vats was recalled for his examination-in-chief because when he had earlier been examined, accused Desraj @ Desu was a proclaimed offender. After accused Desraj @ Desu was arrested and tried, the witness was re-examined. The witness was examined-in-chief in respect of accused Desraj @ Desu on 27<sup>th</sup> May, 2019. The witness stated that he had been working with Dr. Rajinder Prasad, Senior Consultant (Neuro-Surgery) at Indraprastha Apollo Hospital and he had seen Dr. Rajinder Prasad writing and signing during the ordinary course of discharge of duties in the abovesaid hospital; that he can identify the handwriting and signatures of Dr. Rajinder Prasad; that he had seen the medical report of Mr. Abhay Yadav Ex.PW50/A on the judicial file; that Mr. Abhay Yadav was admitted in the abovesaid hospital on 22<sup>nd</sup> December, 2002 and he was medically

examined by Dr. Rajinder Prasad vide the report Ex.PW50/A which bears the signatures of Dr. Rajinder Prasad at point A; that Mr. Abhay Yadav was discharged from the abovesaid hospital on 24<sup>th</sup> December, 2002. The witness was not cross-examined despite grant of opportunity and was finally discharged.

155. PW51 is B.S. Bhati, Record Clerk, LNJP Hospital, New Delhi who was examined by the prosecution to prove the medico-legal certificate (MLC) of the deceased. He had produced record relating to MLC of the deceased. The witness stated in his examination-in-chief that he had brought the record pertaining to MLC No. 108770 dated 29<sup>th</sup> September, 2007 of patient Vijay Singh Yadav (deceased) S/o Sh. Amar Singh; that the MLC had been prepared by Dr. Anuj Jain, JR (Casualty); that the said doctor had left the hospital and his present whereabouts were not known to the hospital. PW51 B. S. Bhati, Record Clerk stated that he had seen Dr. Anuj Jain writing and signing during the course of his employment; that as a result, the witness was in a position to identify the handwriting and signatures of Dr. Anuj Jain; that the MLC bears signatures of Dr. Anuj Jain; that the MLC is Ex. PW51/A. PW51 B. S. Bhati, Record Clerk was cross-examined and discharged.

156. PW52 Constable Kedhar Singh was examined by the prosecution to prove the proceedings initiated against accused Bhisham @ Chintoo by one Parmod. The witness had produced the original register pertaining

to kalandra records of PS Chandni Mahal. The witness stated in his examination-in-chief that as per record, mentioned as entry no. 175 dated 10<sup>th</sup> September, 2007, two persons namely Bhisham Kumar and Chandan were arrested vide DD No. 14, Police Post Turkman Gate, PS Chandni Mahal. The witness further stated that as per record, the proceedings against them were dropped and they were discharged on 15<sup>th</sup> January, 2008. The witness identified the record as Ex. PW52/A, and copy of kalandra and DD No. 14 as Mark PW52/B and PW52/C respectively. PW52 Constable Kedhar Singh was cross-examined and discharged.

157. PW52 Ct. Kedar Singh was recalled for his examination-in-chief because when he had earlier been examined, accused Desraj @ Desu was proclaimed offender. After accused Desraj @ Desu was arrested and tried, the witness had to be re-examined. The witness was examined-in-chief in respect of accused Desraj @ Desu on 29<sup>th</sup> August, 2019. The witness stated that he was posted as record clerk at Police Station Chandni Mahal; that he had brought record pertaining to DD No. 14 Police Post Turkman Gate, PS Chandni Mahal; that as per record the proceedings against Bhisham Kumar and Chandan had been dropped and they had been discharged on 15<sup>th</sup> January, 2008; that copy of the same is Ex.PW52/A; that the copy of kalandra and DD No. 14 are already marked as Mark PW52/B and Mark PW52/C; that the witness



had brought General Diary no. 60A dated 29<sup>th</sup> March, 2019 of Police Station Chandni Mahal by which the record of kalandra upto 31<sup>th</sup> December, 2010 had already been destroyed in terms of order no. 22980/Gen. (R)/Central District dated 17<sup>th</sup> September, 2018; that the attested copy of general diary No. 60A is Ex. PW52/B. The witness was not cross-examined despite grant of opportunity and was finally discharged.

158. PW53 is HC Pratap Singh. He had been summoned to prove a non-cognizable report (NCR). The witness stated in his examination-in-chief that on 07<sup>th</sup> January, 2008 he was working as Duty Officer from 12.00 midnight to 8.00 am at PS Chandni Chowk; that he has been summoned to produce NCR No. 36/08 dated 07<sup>th</sup> January, 2008 but the same is not available in the police station having been destroyed; that the witness has brought information pertaining to destruction of record of NCR Book for the period up to 31<sup>st</sup> December, 2008 as directed by order of ACP (Headquarters), North District, Delhi on 12<sup>th</sup> December, 2013; that copy of the order is Mark 53/A. This witness was subsequently recalled and he identified copy of NCR No. 36/08 dated 07<sup>th</sup> January, 2008 as PW53/X. The witness was not cross-examined despite grant of opportunity, and was discharged.

159. PW53 ASI Pratap Singh was recalled for his examination-in-chief because when he had earlier been examined, accused Desraj @ Desu

was proclaimed offender. After accused Desraj @ Desu was arrested and tried, the witness had to be re-examined. The witness was examined-in-chief in respect of accused Desraj @ Desu on 07<sup>th</sup> September, 2019. The witness stated that during the intervening night of 06<sup>th</sup> January, 2008 and 07<sup>th</sup> January, 2008 he was working as duty officer at Police Station Chandni Chowk from 12.00 midnight to 08.00 a.m.; that the witness had been summoned to produce NCR No. 36/08 dated 07<sup>th</sup> January, 2008; that the same was not available as it had been destroyed; that the witness had already produced a copy of order dated 12<sup>th</sup> December, 2013 in respect of destruction of the said record; that copy of the said order was already Mark 53/A; that copy of NCR No. 36/08 was already Mark PW53/X. The witness was not cross-examined despite grant of opportunity and was finally discharged.

160. PW54 is Inspector Dharam Singh, DIU, Outer District, Delhi. He had carried out further investigation in the case in respect of accused Kishanpal @ Fauzi. The witness stated in his examination-in-chief that on 30<sup>th</sup> October, 2008 he was posted as Inspector, AHS, Crime Branch; that on that day, the witness received the case file for further investigation; that proceedings under Sections 82 and 83 of Code of Criminal Procedure were already going on against accused Kishanpal @ Fauzi; that on 06<sup>th</sup> June, 2009, accused Kishanpal @ Fauzi was declared proclaimed offender by the Court; that on 16<sup>th</sup> June, 2009, the

witness received information vide DD No. 7 regarding apprehending of accused Kishanpal @ Fauzi by officers of PS Special Cell. The witness appeared before the Court and formally arrested Kishanpal @ Fauzi vide memo Ex. PW54/A after taking permission from the Court; that the witness interrogated accused Kishanpal @ Fauzi; that the accused made disclosure statement; that accused Kishanpal @ Fauzi was produced for judicial Test Identification Parade but he refused to participate in the parade.

161. At that stage, an envelope sealed with the seal of the Court of Sh. Siddharth Mathur, Ld. MM was taken out from the judicial record. Its seals were found to be intact. The parcel was opened. The record of proceedings was taken out. PW54 Inspector Dharam Singh identified the application for judicial Test Identification Parade as Ex. PW54/C. The witness further deposed that the accused was sent to judicial custody and was produced on 25<sup>th</sup> June, 2009; that on that day, the accused refused to participate in Test Identification Parade; that the proceedings are Ex. PW54/D; that copy of the record was supplied to the witness pursuant to his application Ex. PW54/E; that the accused was taken on police custody remand; that the accused pointed towards the place of occurrence vide memo Ex. PW54/F. Ld counsel for accused Kishanpal @ Fauzi did not dispute identity of the accused.

162. PW54 Inspector Dharam Singh further deposed that he had collected relevant documents from PS Special Cell; that he had recorded statements of witnesses and after completion of investigation, he filed supplementary chargesheet against accused Kishanpal @ Fauzi; that along with the supplementary chargesheet, the FSL result dated 11<sup>th</sup> July, 2008 vide number 2007/3-4690/4153 from FSL Rohini, the document Mark 54/B and the document of ownership of Santro Car No. UA 07T-5313 Mark 54/C were also filed; that the FSL Report was regarding examination of the exhibits contained in eight parcels sent on 27<sup>th</sup> December, 2007 by the previous Investigating Officer. PW54 Inspector Dharam Singh was cross-examined and discharged.
163. PW54 Inspector (Retired) Dharamvir Singh was recalled for his examination-in-chief because when he had earlier been examined, accused Desraj @ Desu was a proclaimed offender. After accused Desraj @ Desu was arrested and tried, the witness had to be re-examined. The witness was examined-in-chief in respect of accused Desraj @ Desu on 24<sup>th</sup> September, 2019. The witness stated that he was posted as Inspector at Crime Branch; that the case file was assigned to him for further investigation; that during the course of investigation, on 16<sup>th</sup> June, 2009, the witness arrested accused Kishanpal @ Fauzi vide arrest memo already Ex. PW54/A and recorded his disclosure statement; that accused Kishanpal @ Fauzi was produced before Id.

Metropolitan Magistrate but he (accused) refused to take part in TIP proceedings; that during the further course of investigation, accused Kishanpal pointed out the place of occurrence vide memo already Ex. PW54/F; that the witness recorded the statement of witnesses; that on completion of investigation in respect of accused Kishanpal @ Fauzi, he filed the supplementary charge-sheet before the Court; that the witness had also filed FSL result dated 11<sup>th</sup> July, 2008 and other documents regarding ownership of Santro Car Mark 54/C along with the said charge-sheet; that the witness had not taken part in the investigation in respect of accused Desraj @ Desu. The witness was not cross-examined despite grant of opportunity and was finally discharged.

164. PW55 Rohtash was examined by the prosecution to prove use of a mobile phone by accused persons. The witness stated in his examination-in-chief that in the year 2007, one Mukesh along with his family used to reside as tenant at a premises at Bapugram, Rishikesh, Dehradun; that the witness does not know any person by the name of Deepak or Hitender; that in the month of July, 2007, while the witness was standing outside his school and talking to someone on his mobile phone, two boys were seen coming from the road; that those boys asked about availability of some tenanted accommodation; that the witness initially told them that he was not aware of availability of any such accommodation; that those boys again requested him saying they

had come from outside and were doing contract work for a tower company; that the witness then recommended an accommodation at Shivaji Nagar, Bapugram which belonged to the parents of one of students studying in the school of the witness; that the witness introduced Ayodhya Prasad Tiwari, owner of the house to those boys; that later the witness was told by Ayodhya Prasad Tiwari that those boys had taken two rooms' accommodation on rent at a monthly rent of Rs. 1500/-; that after five or seven days, those boys met the witness on the road and asked for LPG connection; that the witness' tenant Mukesh used to work as delivery man for HP Gas and his wife also used to work at the agency of HP Gas; that the witness sent those boys to Mukesh while Mukesh arranged gas cylinder for them; that thereafter those boys started visiting the house of Mukesh; that in the year 2007, Mukesh had taken a mobile connection on the basis of identity card of the witness and he along with the person who used to visit his house started using that mobile connection in relation to gas connection and other matters; that the witness was unable to give details of those conversations; that Mukesh remained as tenant for about seven or eight months at the aforementioned address; that Mukesh left the tenanted premises in month of December, 2007; that none of the persons who stayed in the tenanted premises of Ayodhya Tiwari was present in Court on the day of the deposition.

165. PW55 Rohtash was cross-examined by the 1d Addl. Public Prosecutor after obtaining permission from the Court. In his cross-examination, attention of the witness was drawn towards accused persons Deepak @ Chowda, Hitender @ Chhotu, Parveen Koli and Parmod Singh @ Pammy, who at that time were present in the Court. The witness specifically denied that those are the same persons who had stayed in the tenanted premises of Ayodhya Tiwari or that they had used the mobile phone connection taken on the identity card of the witness. The witness was not cross-examined by defence counsels despite grant of opportunity, and was discharged.
166. PW55 Shri Rohtas was recalled for his examination-in-chief because when he had earlier been examined, accused Desraj @ Desu and accused Kishanpal @ Fauzi were proclaimed offenders. After accused Desraj @ Desu and accused Kishanpal @ Fauzi were arrested and tried, the witness had to be re-examined. The witness was examined-in-chief in respect of accused Desraj @ Desu and Kishanpal @ Fauzi on 13<sup>th</sup> May, 2019 in each of the files of the respective accused persons. The testimony tendered in the two files is similar. The witness stated that in July 2007, he was running a school; that he did not remember the date, however, in the month of July, 2007, two boys had come to him and requested him to arrange accommodation for them on rent; that the witness arranged a flat of two rooms for them for Rs. 1500/- and they

started residing in the said house which was belonging to Shri Ayodhya Tiwari; that after 5-6 days, those boys again met him and requested him to arrange a gas connection for them; that the witness had arranged a gas connection for them through one Mukesh; that some persons used to meet those boys; that the witness had given a SIM Card to Mukesh after getting the same issued on his identity card; that Mukesh and his wife used to use the said SIM Card; that Mukesh was also his tenant; that after a few days, Mukesh vacated his house and went to some unknown place; that police had approached the witness after some time and recorded his statement; that he could not identify those two boys as well as the persons who used to come to meet those boys; that on 13<sup>th</sup> October, 2014, the witness had appeared in the Court in the trial of this case; that on that day also the witness could not identify those boys as well as persons who used to meet them.

167. PW55 Shri Rohtas in his further examination-in-chief on 30<sup>th</sup> May, 2019 stated that he could not identify those boys for whom he had arranged the accommodation as well as the persons who used to come to meet them. At that stage, all the accused persons were shown to the witness. After seeing the accused persons, the witness stated that none of the accused persons present in the Court had been seen by the witness.



168. Ld. Addl. Public Prosecutor sought permission to cross-examine the witness on the ground that he was resiling from his previous statement. Ld. Addl. Public Prosecutor was permitted to cross-examine the witness.
169. PW55 Shri Rohtas, in his cross-examination by learned Additional Public Prosecutor, stated that it is wrong that two or three friends of those two boys who used to come to meet the occupants of the flat were referred to as Dimple, Deepak Bhai and Chhotu Bhai. The witness denied the suggestion that the persons who he had seen in connection with this case were present in the Court. The witness denied the suggestion that he was deliberately not identifying those persons as he had been won over by the accused persons. The witness was not cross-examined on behalf of accused persons and was finally discharged.
170. PW56 HC Azad Singh was examined by the prosecution to prove arrest of accused Hitender @ Chhotu in a separate case and his disclosure of involvement in this case. The witness stated in his examination-in-chief that on 27<sup>th</sup> January, 2008, he was posted at Special Team, Crime Branch, Prashant Vihar, Delhi as Head Constable; that on that day, SI Yashpal got registered FIR No. 15/08, under section 25 of Arms Act, PS IP Estate against accused Hitender @ Chhotu; that after registration of FIR, investigation of that case was marked to the witness; that the witness reached the spot; that SI Yashpal was already present at the

spot; that SI Yashpal handed over to the witness the case property in sealed condition which the witness took in his possession; that accused Hitender @ Chhotu who had already been apprehended by SI Yashpal was also produced before the witness; that the witness made inquiries from the accused and thereafter arrested the accused in case FIR No. 15/08; that during interrogation, accused Hitender @ Chhotu admitted his involvement in the present case and tendered his disclosure statement Mark PW56/A; that the witness sent intimation to Inter-State Cell, Crime Branch, Chanakyapuri vide DD No. 2; that on the same day, that is 28<sup>th</sup> January, 2008, Inspector K.G. Tyagi from Inter-State Cell, Crime Branch, Chanakyapuri came to their office; that the witness handed over documents prepared by him in case FIR No. 15/08 to Inspector K.G. Tyagi; that Inspector K.G. Tyagi interrogated accused Hitender @ Chhotu, who the witness correctly identified; that Inspector K.G. Tyagi arrested accused Hitender @ Chhotu in this case; that on the same day, accused Hitender @ Chhotu was produced before the Court of Sh. Alok Kumar, Ld. ACMM, Delhi in muffled face; that as per order of Ld. ACMM, accused Hitender @ Chhotu was sent to judicial custody in case FIR No. 15/08 and was remanded to police custody for four days in the custody of Inspector K.G. Tyagi in the present FIR. The witness was cross-examined by ld defence counsel, and was discharged.

171. PW56 ASI Azad Singh was recalled for his examination-in-chief because when he had earlier been examined, accused Desraj @ Desu and accused Kishanpal @ Fauzi were proclaimed offenders. After accused Desraj @ Desu and accused Kishanpal @ Fauzi were arrested and tried, the witness had to be re-examined. The witness was examined-in-chief in respect of accused Desraj @ Desu and Kishanpal @ Fauzi on 13<sup>th</sup> May, 2019 in each of the files of the respective accused persons. The witness stated that he was posted as Head Constable at Special Team, Crime Branch, Prashant Vihar; that SI Yashpal of PS. I. P. Estate was conducting investigation in FIR No. 15/08; that SI Yashpal got the FIR registered for the offence punishable under Sections 25/27 of Arms Act; that after registration of FIR, the investigation of the case was assigned to him and he reached the spot; that SI Yashpal handed over to him the documents of the case, a sealed parcel and the custody of accused Hitender @ Chhotu; that the witness interrogated the accused and arrested him in FIR no. 15/08; that the witness recorded disclosure statement of accused Hitender which was Mark PW56/A; that on 28<sup>th</sup> January, 2008, the witness sent information to State Crime Branch, Chankayapuri vide DD no. 2 in respect of involvement of accused Hitender @ Chhotu in FIR no. 356/07. Inspector K. G. Tyagi came to the Office of Crime Branch, Prashant Vihar. The witness produced accused Hitender @ Chhotu before Inspector K. G. Tyagi

who interrogated the accused and arrested him in FIR no. 356/07; that thereafter, accused was produced before Ld. MM; that accused was remanded to judicial custody in FIR no. 15/08; that four days' police custody remand of the accused was given in FIR no. 356/07; that the witness could identify accused Hitender @ Chhotu. Identity of accused Hitender @ Chhotu was not disputed by Ld. counsel for accused. The witness was not cross-examined and was finally discharged.

172. PW57 HC Naresh Kumar was examined by the prosecution to prove arrest of accused Parmod Singh @ Pammy in a separate case and his disclosure of involvement in this case. The witness stated in his examination-in-chief that on 30<sup>th</sup> January, 2008, he was posted as Head Constable in Special Team, Crime Branch, Prashant Vihar, New Delhi; that on that day, a raiding team headed by Inspector Vijay Rastogi, and including SI Bhopal Singh, the witness and other staff apprehended accused Parmod Singh @ Pammy S/o late Vikram Singh in case FIR No.40/2008, for offence under Sections 25/27 of Arms Act, PS DBG Road. The witness correctly identified accused Parmod Singh @ Pammy present in the Court. The witness further deposed that on interrogation being made, accused Parmod Singh @ Pammy gave disclosure statement admitting his involvement in the present case; that copy of disclosure statement given by the accused in FIR No. 40/08 is Ex. PW57/A; that the original disclosure statement given by the

accused was filed in case FIR No. 40/08; that the witness lodged DD entry no. 15 dated 30<sup>th</sup> January, 2008 at Inter State Cell, Crime Branch regarding apprehending of accused in case FIR No. 40/08; that on 31<sup>st</sup> January, 2008, Inspector K.G. Tyagi, Investigating Officer of this case along with staff came to their office; that the accused was produced before the Investigating Officer; that copy of disclosure statement made by the accused in case FIR No. 40/08 was handed over to Inspector K.G. Tyagi; that Inspector K.G. Tyagi interrogated accused Parmod Singh @ Pammy upon which accused Parmod Singh @ Pammy gave disclosure statement which was recorded by Investigating Officer by disclosure statement Ex. PW57/B; that accused Parmod Singh @ Pammy was arrested by Investigating Officer in the present case by arrest memo Ex. PW57/C; that on the same day, accused Parmod Singh @ Pammy was produced before the concerned Metropolitan Magistrate; that as per the order of Ld. Metropolitan Magistrate, accused Parmod Singh @ Pammy was sent to fourteen days' judicial custody in case FIR No. 40/08 while one day's police custody remand was given in case FIR No. 356/07; that statement of the witness under section 161 of Code of Criminal Procedure was recorded by the Investigating Officer. The witness was cross-examined by ld defence counsel, and was discharged.

173. PW58 HC Rajiv Kumar is the police officer who had accompanied Investigating Officer Inspector K.G.Tyagi to the office of Special Team, Crime Branch on receiving intimation of arrest of accused Parmod Singh @ Pammy. He stated in his examination-in-chief that on 31<sup>st</sup> January, 2008, he was posted at Inter-State Cell, Crime Branch, Chanakyapuri, Delhi; that on that day, at about 10.20 am, the witness along with Inspector K.G. Tyagi, Investigating Officer of this case and other staff went to the office of Special Team, Crime Branch, Prashant Vihar, New Delhi; that they reached there at about 11.15 am.; that HC Naresh produced accused Parmod Singh @ Pammy and handed over to Investigating Officer Inspector K.G. Tyagi copy of disclosure statement made by the accused in case FIR No. 40/08; that Inspector K.G. Tyagi interrogated accused Parmod Singh @ Pammy; that accused Parmod Singh @ Pammy tendered disclosure statement which was recorded by Investigating Officer; that accused Parmod Singh @ Pammy was arrested by Investigating Officer in the present case by arrest memo Ex. PW57/C; that statement of the witness was recorded by Investigating Officer Inspector K.G. Tyagi; that on the same day, accused Parmod was produced before the concerned Ld. Metropolitan Magistrate. As per the order of Ld. Metropolitan Magistrate, accused Parmod Singh @ Pammy was sent to fourteen days' judicial custody in case FIR No. 40/08 while one day's police custody remand of accused was taken in

case FIR No. 356/07; that statement of the witness was recorded by Investigating Officer under section 161 of Code of Criminal Procedure; that on 19<sup>th</sup> February, 2008 as per the directions of Investigating Officer Inspector K.G. Tyagi, the witness collected a pullanda sealed with the seal of KGT along with FSL form vide RC No. 5/21/08 from MHC(M) HC Suresh, PS Hauz Qazi and deposited the same in FSL, Rohini; that after depositing the case property, the witness came back to the police station and handed over copy of RC alongwith acknowledgement receipt to the MHC(M); that the case property remained intact till it remained in the possession of the witness and no tampering was done with it; that statement of the witness under section 161 of Code of Criminal Procedure was recorded by the Investigating Officer. The witness was cross-examined by Id defence counsel, and was discharged.

174. The next witness examined by the prosecution is Inspector Sanjeev Kumar. He was examined on 26<sup>th</sup> August, 2015 before the Court of Id predecessor, who erroneously numbered the witness as PW58, though the earlier witness namely HC Rajiv Kumar had already been numbered as PW58. To distinguish the witnesses, Inspector Sanjeev Kumar is referred to here as PW58A.

175. PW58A Inspector Sanjeev Kumar had carried out investigation with Inspector K.G. Tyagi at Inter-State Cell. The witness stated in his

examination-in-chief that on 14<sup>th</sup> January, 2008, he was posted as Sub-Inspector in Anti-Homicide Section, Crime Branch, Sector-18, Rohini, Delhi; that on that day Inspector K.G. Tyagi, Investigating Officer of this case brought accused Parveen Koli (who the witness correctly identified) to the said office; that the said accused was in police custody; that the witness was instructed by Inspector K.G. Tyagi to take the accused out of station as the accused had disclosed about his stay at different places after commission of the offence; that the witness accordingly conducted investigation and joined ASI Rajbir, HC Omender, Constable Rambir, Constable Harender and accused Parveen Koli; that after seeking permission for going out of station, they all left in a private vehicle; that accused Parveen Koli led the police team to Village Bapunia, Bahadurgarh, Haryana which was the village of maternal uncle of accused Parveen Koli; that on reaching there the accused pointed towards the house of Dilbagh Singh, his maternal uncle and disclosed that he had stayed there along with his other associates after the incident; that the police officers made inquiry from Dilbagh Singh about this fact and he admitted that accused Parveen Koli along with his associates had stayed in his house, but stated that he was not aware that accused Parveen Koli had committed an offence.

176. PW58A Inspector Sanjeev Kumar stated in his examination-in-chief that accused Parveen Koli then led the police team to Village Majri, Karala



Road, Delhi and pointed to the house of one Haria; that accused Parveen Koli disclosed that he had stayed there along with his other associates after the incident; that the police officers made enquiry from Haria about this fact and he admitted that accused Parveen Koli along with his associates had stayed in his house, but stated that he was not aware that accused Parveen Koli had committed an offence.

177. PW58A Inspector Sanjeev Kumar stated in his examination-in-chief that then accused Parveen Koli led the police team to main bus stand, Bulandshahar, U. P. and disclosed that he is not familiar with the place to which he along with his associates had gone; that thereafter all of them returned to Delhi.
178. PW58A Inspector Sanjeev Kumar stated in his examination-in-chief that on reaching the Crime Branch Office at Rohini at about 4.00pm or 5.00pm, custody of accused Parveen Koli was handed over to Constable Ravinder; that the earlier team members, Constable Ravinder and accused Parveen Koli then proceeded to Dehradun in the same private vehicle; that they reached there late at night; that accused Parveen Koli took them to different places at Dehradun but failed to locate the exact place where they took shelter after the incident; that thereafter they returned to their office at Delhi; that after medical examination of accused Parveen Koli, his custody was handed over to Investigating Officer Inspector K.G. Tyagi.

179. PW58A Inspector Sanjeev Kumar recounted in his examination-in-chief that on 28<sup>th</sup> May, 2008, the witness joined the investigation along with Investigating Officer Inspector K.G. Tyagi and other police staff; that the witness was informed at about 6.00 pm by Investigating Officer Inspector K.G. Tyagi that he has received secret information about the presence of accused Deepak @ Chowda near Sarvodaya School, Sector-16, Rohini, Delhi; that a raiding team was constituted by the Investigating Officer consisting of the witness, SI Mukesh, ASI Rajbir, ASI Jai Singh, ASI Shiv Raj, HC Omender, HC Shiv Kumar and others; that they all proceeded from their office in a government gypsy at about 6.30pm; that when they reached near crossing of Sectors 15 and 16, Rohini, Delhi, the vehicle was stopped and five or six passersby were asked by Investigating Officer Inspector K.G. Tyagi to join the raiding team, but none agreed to join the same and left the spot without informing their names and addresses; that Investigating Officer Inspector K.G. Tyagi again briefed the members of raiding team; that they all proceeded on foot from that crossing to petrol pump, Sector-16, Rohini, Delhi; that on reaching near petrol pump, the secret informer who was with them pointed towards a boy standing across the road identifying that boy as accused Deepak @ Chowda about whom he had given information; that when the police officers started proceeding towards the boy, the boy started running; that the boy was chased upto

ten or fifteen steps and was apprehended with the help of ASI Jai Singh; that the boy was interrogated and he revealed his name as Deepak @ Chowda (who the witness correctly identified); that accused Deepak @ Chowda was arrested vide arrest memo Ex. PW41/C; that accused Deepak @ Chowda was interrogated by the Investigating Officer; that accused Deepak @ Chowda made disclosure statement about his involvement in the present case; that the accused was kept in a muffled face and was taken to the office.

180. PW58A Inspector Sanjeev Kumar stated in his examination-in-chief that on 29<sup>th</sup> May, 2008, the witness again joined investigation along with Investigating Officer Inspector K.G. Tyagi and other police staff; that the Investigating Officer had obtained police custody remand of accused Deepak @ Chowda; that accused Deepak @ Chowda led the police team to Hotel Kwalita at Aara Kasha Road, Paharganj, Delhi and identified a room in that hotel disclosing that the accused along with his other associates had conspired to commit murder of Vijay Yadav @ Viji and all of them had proceeded from this room to commit the said murder; that a pointing out memo of that room was prepared which is Ex. PW41/F; that thereafter the accused led them to Gali Arya Samaj, property no. 2745, Bazar Sita Ram, outside Badi Dharamshala and pointed towards the place of murder; that a memo to this effect was prepared which is Ex. PW41/G; that they then returned to their office.

181. PW58A Inspector Sanjeev Kumar stated in his examination-in-chief that on 30<sup>th</sup> May, 2008, Investigating Officer Inspector K.G. Tyagi handed over custody of accused Deepak @ Chowda to the witness for recovery of bracelet of deceased; that the accused had disclosed that he had kept the same at village and post Balawala, Dehradun, Uttrakhand; that the witness along with HC Omender, HC Narender, HC Shiv Kumar and accused Deepak @ Chowda proceeded from their office after taking permission to go out of station; that the accused led them to village and post Balawala; that on reaching there the accused took them to a house known as 'Choudhary Niwas'; that there was a lawn in that house having mango trees; that the accused dug out one polythene under one of the mango trees; that the said transparent polythene was found to be containing a golden bracelet wrapped in a piece of newspaper; that on checking the said bracelet, the letters 'JMD' were found engraved on one side of the hook while letters '23 C and SU' were seen to be engraved on the other side of the hook; that the said bracelet was again wrapped in the same piece of newspaper kept in the same transparent polythene and sealed in a parcel with the seal of 'MKS'; that the parcel was taken into police possession vide seizure memo Ex. PW35/M; that thereafter they took the accused to police station Doiwala, Dehradun; that the police officers made their arrival entry in the said police station; that the witness recorded the statement of HC Omender; that

thereafter they returned to Delhi on 31<sup>st</sup> May, 2008; that the witness moved an application for Test Identification Parade of the bracelet vide his application Ex. PW58/A; that the date of 02<sup>nd</sup> June, 2008 was fixed by the Court for Test Identification Parade; that on 31<sup>st</sup> May, 2008 after reaching office, the witness handed over the case file to Investigating Officer Inspector K.G. Tyagi. PW58A Inspector Sanjeev Kumar correctly identified the bracelet Ex. P-3 which had been got recovered by accused Deepak @ Chowda, on its production in Court in sealed condition. The witness was cross-examined by Id defence counsels, and was discharged.

182. PW59 Constable Rambir Singh was examined to prove that accused Kishanpal @ Fauzi had pointed towards the place of incident during investigation. The witness deposed in his examination-in-chief that on 25<sup>th</sup> June, 2009, he was posted at Anti-Homicide Section, Crime Branch, Sector 18, Rohini, Delhi. He stated that on that day, he joined investigation of this case along with Inspector Dharam Veer; that accused Kishanpal @ Fauzi had already been arrested by Inspector Dharam Veer in the present case and his two days' police custody remand had also been obtained; that during the said police custody, accused Kishanpal @ Fauzi led the police team to outside property no. 2745, Gali Arya Samaj, Sita Ram Bazar and pointed towards the place where murder of Vijay Yadav @ Vijji had been committed; that a

pointing out memo to this effect had been prepared, which is Ex. PW54/F. The witness was not cross-examined by Id defence counsels despite grant of opportunity, and was discharged.

183. PW59 HC Rambir was recalled for his examination-in-chief because when he had earlier been examined, accused persons namely Desraj @ Desu, Kishanpal @ Fauzi and Hitender @ Chhotu were proclaimed offenders. After accused persons Desraj @ Desu, Kishanpal @ Fauzi and Hitender @ Chhotu were arrested and tried, the witness had to be re-examined. The witness was examined-in-chief in respect of accused persons Desraj @ Desu, Kishanpal @ Fauzi and Hitender @ Chhotu on 10<sup>th</sup> April, 2019 in each of the files of the respective accused persons. The witness stated that he was posted as Constable at Anti-Homicide Section, Crime Branch, Sector 18, Rohini, Delhi; that accused Kishanpal @ Fauzi (who the witness correctly identified) was already arrested by Inspector Dharamvir in the present case and he had taken two days police custody remand of accused Kishanpal @ Fauzi; that the witness joined the investigation; that custody of accused Kishanpal @ Fauzi was handed over to him; that accused led police team to outside Property No. 2745, Gali Arya Samaj, Sita Ram Bazar, Delhi and pointed out the place where the murder of Vijay @ vijji was committed. Investigating officer prepared pointing out memo to this effect; that the same was already Ex. PW54/F. The witness was cross-examined and discharged.

184. PW60 Sh. Rajeev Ranjan, Nodal Officer, Tata Teleservices Pvt. Ltd. had been examined to prove record relating to certain mobile phone connections. The witness produced and identified customer application forms (CAFs) of the mobile connections. He stated in his examination-in-chief that he had produced the CAF of mobile no. 9250542424 which was issued to Rajbir S/o Naduli, R/o GH-52, Swaroop Nagar, Delhi on the subscriber furnishing copy of his Ration Card. The witness identified copy of CAF as Ex. PW60/A and the copy of the ration card as PW60/X. The witness then produced CAF of mobile no. 9213659939 and deposed that this had been issued to Ajay S/o Om Prakash, R/o E-124, Vijay Nagar, Sector-12, Ghaziabad, U. P. on the subscriber furnishing copy of his Voter Identity Card. The witness identified copy of CAF as Ex. PW60/B and copy of the voter identity card as Mark PW60/X-1. PW60 Sh. Rajeev Ranjan further stated that he had not brought the CDRs of these mobile phone numbers; that as per licence agreement, they are not empowered to preserve the CDRs for more than one year unless and until specific directions are received from the Court or from the Investigating Officer and that in the present case, they had not received such directions. The witness identified attested copy of the Licence Agreement having clause 41.17 as Ex.PW60/C. The witness was not cross-examined by ld defence counsels despite grant of opportunity, and was discharged.

185. PW60 Mr. Rajeev Ranjan was recalled for his examination-in-chief because when he had earlier been examined, accused persons namely Desraj @ Desu, Kishanpal @ Fauzi and Hitender @ Chhotu were proclaimed offenders. After accused persons Desraj @ Desu, Kishanpal @ Fauzi and Hitender @ Chhotu were arrested and tried, the witness had to be re-examined. The witness was examined-in-chief in respect of accused persons Desraj @ Desu, Kishanpal @ Fauzi and Hitender @ Chhotu on 13<sup>th</sup> May, 2019 in each of the files of the respective accused persons. The witness stated that he had appeared in SC No. 210/13 FIR No. 356/07 P.S. Hauz Qazi and had brought original Customer Application Form in respect of mobile no. 9250542424; that he had proved the Customer Application Form of said mobile connection number as Ex. PW60/A; that the said mobile connection was issued to one Rajbir, son of Naduli; that the witness had seen the said Customer Application Form on the judicial record which was already Ex.PW60/A along with copy of Ration card of subscriber Mark PW60/X; that on that day, the witness had also brought original Customer Application Form in respect of mobile no. 9213659939; that he had proved the Customer Application Form of said mobile connection number as Ex.PW60/B; that the said mobile connection was issued to one Ajay s/o Om Prakash; that the witness had seen the Customer Application Form on judicial record which was already Ex.PW60/B along with copy of



Ration Card of subscriber Mark PW60/X-1; that the CDR of abovesaid mobile phone numbers could not be brought by him on that day as the relevant record was not available in the office being older than 12 months; that as per licence agreement, CDR which was more than 12 months' old could not be retrieved from the system; that the copy of said licence agreement was already Ex.PW60/C. The witness was not cross-examined and was discharged.

186. PW61 Sh. Ajay Gupta, Ld. Addl. Sessions Judge, Karkardooma Courts, Delhi had been examined to prove the record relating to Test Identification Parade of accused Deepak @ Chowda and Test Identification Proceedings of a gold bracelet. The witness deposed in his examination-in-chief that on 29<sup>th</sup> May, 2008 he was posted as Metropolitan Magistrate at Tis Hazari Courts, Delhi; that on that day an application Ex. PW61/A for conducting judicial Test Identification Parade of accused Deepak @ Chowda was placed before him by Inspector K.G. Tyagi, PS Hauz Qazi which had been marked to him by Ld. ACMM Sh. Alok Kumar; that accused Deepak @ Chowda was produced before the witness on the said day in muffled face; that accused refused to participate in judicial Test Identification Parade; that the witness had explained the meaning of Test Identification Parade to the accused and had warned the accused that if he refuses to participate in Test Identification Parade, the trial Court may draw an

adverse inference against him; that the accused persisted in his refusal; that the witness therefore recorded the statement of refusal which the accused signed; that the witness also issued a certificate regarding the conduct of Test Identification Parade proceedings and its correctness. The Test Identification Parade proceedings of accused were identified by the witness as Ex. PW61/B.

187. PW61 Sh. Ajay Gupta, Ld. Addl. Sessions Judge further stated that an application dated 31<sup>st</sup> May, 2008 had been marked to him on 02<sup>nd</sup> June, 2008 to conduct the Test Identification Parade proceedings of case property. The witness identified the application as Ex. PW61/D. PW61 Sh. Ajay Gupta stated that on 02<sup>nd</sup> June, 2008, SI Mukesh Kumar appeared in the Court on behalf of Investigating Officer with case file; that on 07<sup>th</sup> June, 2008, Inspector K.G. Tyagi appeared with one parcel duly sealed with the seal of 'MKS'; that the parcel was stated to be containing a gold bracelet; that the Investigating Officer also produced another parcel sealed with the seal of 'KGT' containing five more bracelets of similar appearance; that the Investigating Officer opened up both the parcels on directions of the witness; that thereafter the Investigating Officer was directed to go out from the chamber; that Abhay Singh Yadav was called inside the chamber; that Abhay Singh Yadav was identified by the Investigating Officer; that the articles were shown to the witness; that the witness correctly identified the case

property; that the Test Identification Parade proceedings are Ex. PW61/E. The witness was cross-examined and was discharged.

188. PW61 Shri Ajay Gupta was recalled for his examination-in-chief because when he had earlier been examined, accused persons namely Desraj @ Desu, Kishanpal @ Fauzi and Hitender @ Chhotu were proclaimed offenders. After accused persons Desraj @ Desu, Kishanpal @ Fauzi and Hitender @ Chhotu were arrested and tried, the witness had to be re-examined. The witness was examined-in-chief in respect of accused persons Desraj @ Desu, Kishanpal @ Fauzi and Hitender @ Chhotu on 13<sup>th</sup> May, 2019 in each of the files of the respective accused persons. The witness stated that he was posted as Metropolitan Magistrate at Tis Hazari Courts, Delhi; that an application of investigating officer ExPW61/A for conducting TIP of accused Deepak @ Chowda was produced before him by Inspector K. G. Tyagi which was marked to him by Ld. ACMM; that accused Deepak @ Chowda was produced before him in muffled face; that the witness explained the meaning of Test Identification Parade to the accused in Hindi; that the witness inquired from accused Deepak @ Chowda whether he (accused) wanted to join Test Identification Parade proceedings; that accused replied that he did not want to join Test Identification Parade proceedings; that the witness warned him that his refusal in participating in Test Identification Parade may draw an adverse

inference against him during trial but the accused persisted not to join the Test Identification Parade proceedings; the witness recorded his statement to this effect; that thereafter, the witness had drawn Test Identification Parade proceedings and same was Ex. PW61/B; that the copy of Test Identification Parade proceedings were handed over to the Investigating Officer on his application Ex.PW61/C; that the witness directed the Ahlmad to send the aforesaid proceedings in sealed cover to concerned Court; that on 02<sup>nd</sup> June, 2008, an application of Investigating Officer Ex. PW61/D was assigned to the witness for conducting Test Identification Parade of case property; that the witness fixed the date for Test Identification Parade of case property for 07<sup>th</sup> June, 2008 and directed the Investigating Officer to bring sufficient articles of similar description; that on 07<sup>th</sup> June, 2008, Inspector K. G. Tyagi produced a sealed envelope which was sealed with the seal of NKS; that the parcel was opened and a gold bracelet was taken out; that Investigating Officer also produced another parcel which was sealed with the seal of KGT; that the parcel was opened and five bracelets of similar appearance were taken out; that thereafter, on the direction of witness, Investigating Officer left his chamber; the witness called witness Abhay Yadav to identify the case property. Sh. Ajay Gupta further stated that he had shown the articles to the witness who correctly identified the case property. The witness deposed that

thereafter he drew up the Test Identification Parade proceedings which were ExPW61/E; that the copy of Test Identification Parade proceedings was given to the Investigating Officer; that the witness directed the Ahlmad to send the abovesaid proceedings in sealed cover to concerned Court. The witness was not cross-examined and was discharged.

189. PW62 ASI (Retired) Rajbir Singh was examined by the prosecution to prove the following:

- a. securing of call detail records,
- b. arrest of accused persons Bhisham @ Chintoo and Vinod @ Gola,
- c. the pointing out of spot of occurrence and place of conspiracy by these accused persons,
- d. recovery of a phone at the instance of accused Bhisham @ Chintoo,
- e. recording of confessional statements and arrest of accused persons Gopal Krishan Aggarwal and Rishi Pal @ Pappu,
- f. recovery of a mobile phone from Rishi Pal @ Pappu on which phone calls of Bhisham @ Chintoo are stated to have been received,
- g. recovery of a settlement deed at the instance of accused Gopal Krishan Aggarwal,
- h. making of inquiries from Satnam Singh, owner of the hotel,

- i. collection of entry register of the hotel from Satnam Singh,
- j. arrest of accused Hitender @ Chhotu and recording of his confessional statement,
- k. refusal of accused Hitender @ Chhotu to undergo Test Identification Parade,
- l. the pointing out of spot of occurrence and place of conspiracy by accused Hitender @ Chhotu,
- m. the pointing out of place of conspiracy and place of parking of vehicle by accused Parmod Singh @ Pammy,
- n. recovery of a gold chain at the instance of accused Hitender @ Chhotu,
- o. arrest and recording of confessional statement of accused Desraj @ Desu,
- p. the pointing out of place of conspiracy, place of occurrence and the office of deceased by accused Desraj @ Desu,
- q. identification of accused Desraj @ Desu by Smt.Anju Gupta and one Amar Singh Yadav.

190. PW62 ASI (Retired) Rajbir Singh stated in his examination-in-chief that on 16<sup>th</sup> October, 2007, the witness was posted at Inter State Cell, Crime Branch, Chanakyapuri; that Inspector K.G.Tyagi took out the printout of call records of certain mobile phone connections which had been received through e-mail; that Inspector K.G. Tyagi took them into

possession vide seizure memo Ex. PW62/A; that the copies of CDRs ran into 17 pages; that on 25<sup>th</sup> November, 2007, on receiving DD no. 7, the witness along with Inspector K.G. Tyagi, SI Mukesh, SI Ram Avtar, ASI Jai Singh, HC Omender, HC Shiv Kumar and HC Narender went to the office of Special Team, Prashant Vihar in a private vehicle and a government vehicle; that upon reaching there, Inspector Anand Singh and SI Shyam Sundar along with staff and two accused persons namely Bhisham @ Chintoo and Vinod Kumar @ Gola, (both of whom the witness correctly identified) were found present; that both the accused persons had been absconding after the incident; that Inspector K.G. Tyagi interrogated both the accused persons who made confessions of murder of Vijay Yadav @ Viji; that Inspector K.G. Tyagi arrested accused Bhisham @ Chintoo and Vinod @ Gola vide arrest memos Ex. PW40/B and Ex. PW40/C respectively and they were personally searched vide personal search memos Ex. PW40/D and Ex. PW40/E; that Inspector K.G. Tyagi recorded the statement of SI Shyam Sundar of Special Team, Crime Branch; that thereafter, both the accused persons were brought back to the office of Inter-State Cell, Crime Branch, Chanakyapuri, New Delhi; that after due interrogation of the accused persons, their disclosure statements Ex. PW62/B and Ex. PW62/C were recorded; that statement of the witness was recorded by Inspector K.G. Tyagi; that on 26<sup>th</sup> November, 2007, the witness accompanied Inspector

K.G. Tyagi, other police staff, accused Bhisham @ Chintoo and Vinod @ Gola in a government gypsy for the investigation of the case; that pursuant to the disclosure of the accused persons, they reached Hotel Kwality, 53, Ara Kasha Road, Ram Nagar, Paharganj, Delhi where both the accused persons pointed towards Room no.66 as the place where the accused persons along with their associates conspired to kill Vijay Yadav @ Vijji; that pointing out memos Ex.PW62/D and Ex.PW62/E respectively were prepared by Inspector K.G. Tyagi; that Inspector K.G. Tyagi gave certain instructions to the hotel owner Satnam Singh; that the accused persons led the police officers to the place of incident i.e. Chowk Boriyan, Gali Arya Samaj, Bazaar Sita Ram, Hauz Qazi, Delhi in front of Property no.2745 and they separately pointed towards the spot as the same place where they along with their associates committed murder of Vijay Yadav @ Vijji; that Inspector K.G. Tyagi prepared separate pointing out memos Ex.PW62/F and Ex.PW62/G respectively; that thereafter, they tried to search for accused Deepak @ Chowda and Desraj @ Desu in their respective houses but they were not found there; that both accused persons Bhisham @ Chintoo and Vinod @ Gola were produced before the Court of Id. ACMM, Tis Hazari Courts, Delhi and Inspector K.G. Tyagi obtained ten days' police custody remand from the said Court; that after their medical examination they were brought back to their office at Chanakyapuri.



191. PW62 ASI (Retired) Rajbir Singh further stated in his examination-in-chief that on 27<sup>th</sup> November, 2007, Inspector K.G. Tyagi again interrogated both the accused persons in detail in the presence of the witness and in the presence of SI Mukesh, and he recorded their supplementary disclosure statements in which they had told some new facts; that disclosure statement of accused Bhisham @ Chintoo is Ex.PW62/H and disclosure statement of accused Vinod @ Gola is Ex.PW62/I respectively; that on 06<sup>th</sup> December, 2007, the witness again joined the investigation along with Inspector K.G. Tyagi, SI Mukesh Kumar, ASI Jai Singh, HC Omender, HC Shiv Kumar, Constable Ravinder and Constable Kirti and all of them along with accused Vinod @ Gola and Bhisham @ Chintoo went to the house of accused Bhisham @ Chintoo at Katra Gokul Shah, Bazaar Sita Ram, Delhi from where accused Bhisham @ Chintoo got recovered one mobile phone of black colour of make SAGEM 101X from the side pocket of the cover kept on top of the refrigerator and informed that the mobile no.9872728524 was used in the said phone; that upon checking the phone number, no SIM card was found loaded; that Inspector K.G. Tyagi kept the mobile phone in a cloth parcel and sealed with the same with the seal of KGT; that the witness prepared seizure memo Ex.PW62/J.
192. PW62 ASI (Retired) Rajbir Singh further stated in his examination-in-chief that on 07<sup>th</sup> December, 2007 the witness joined the investigation

with Inspector K.G. Tyagi, SI Mukesh, SI Ram Avtar and other staff; that at about 02:00 pm while they were present in the office at Chanakyapuri, accused Gopal Krishan Aggarwal (who the witness correctly identified) came to the office since he was called by Inspector K.G. Tyagi; that the witness interrogated him; that accused Gopal Krishan Aggarwal confessed to his involvement in the commission of offence i.e. murder of Vijay Yadav @ Vijji; that the witness arrested accused Gopal Krishan Aggarwal vide arrest memo Ex. PW62/K and personally searched him vide personal search memo Ex.PW62/L; that on the same day at about 07:00 pm, accused Rishi Pal @ Pappu (who the witness correctly identified) came to the office on the call of Investigating Officer; that he was also interrogated by Inspector K.G. Tyagi; that he confessed to his involvement in commission of offence i.e. murder of Vijay Yadav @ Vijji; that accused was arrested by Inspector K.G. Tyagi vide arrest memo Ex.PW62/M and he was personally searched vide personal search memo Ex.PW62/N respectively; that during his personal search, he handed over a mobile phone of make Nokia 2626 of blue colour in which SIM card of mobile no.9873056281 was used, to Inspector K.G. Tyagi, stating that accused Bhisham @ Chintoo informed him on the said number on 29<sup>th</sup> September, 2007 that they had committed the murder of Vijay Yadav @ Vijji; that Inspector K.G. Tyagi prepared the cloth pulanda of the said

mobile phone which was sealed with the seal of KGT and prepared seizure memo Ex. PW62/O; that after detailed interrogation of accused Gopal Krishan Aggarwal and Rishi Pal @ Pappu, Inspector K.G. Tyagi recorded their disclosure statements Ex. PW62/P and Ex.PW62/Q respectively.

193. PW62 ASI (Retired) Rajbir Singh further stated in his examination-in-chief that on 09<sup>th</sup> December, 2007 the witness again joined the investigation with Inspector K.G. Tyagi, who interrogated accused Rishi Pal @ Pappu and Gopal Krishan Aggarwal separately and recorded their supplementary disclosure statements Ex.PW62/R and Ex.PW62/S respectively; that accused Gopal Krishan Aggarwal disclosed that he can produce the settlement deed of money transaction between him on behalf of Ashok Gupta and with Vijay Bansal as the matter had been settled through intervention of Dinesh Jain; that thereafter accused Gopal Krishan Aggarwal led them to his office at Gali Arya Samaj, Bazaar Sita Ram, Hauz Qazi, where he got recovered a copy of settlement deed from the upper drawer of the table Ex. PX-1 having signatures of Gopal Krishan Aggarwal, Vijay Bansal and Rajan Goyal which was taken into possession by Inspector K.G. Tyagi vide seizure memo Ex. PW62/T.

194. PW62 ASI (Retired) Rajbir Singh further stated in his examination-in-chief on 18<sup>th</sup> December, 2007, the witness joined the investigation with

Inspector K.G. Tyagi; that on that day, the witness along with Inspector K.G. Tyagi and other police staff reached Kwaliti Hotel, 53, Ara Kasha Road, Ram Nagar, Paharganj, Delhi, where Inspector K.G. Tyagi made inquiries from Satnam Singh, owner of the Hotel; that Satnam Singh handed over the entry register of the hotel containing entries of Devi Singh and Hitender @ Chhotu for their stay between 20<sup>th</sup> September, 2007 and 28<sup>th</sup> September, 2007; that Inspector K.G. Tyagi kept the register in a cloth parcel and sealed the same with the seal of KGT; that before that the witness got the relevant entries photocopied and kept the same in case file; that the witness prepared seizure memo Ex.PW36/A; that thereafter, they came back to Inter State Cell, Crime Branch, Chanakyapuri while searching for the accused persons; that on 28<sup>th</sup> January, 2008, upon receiving DD no.2 from Special Team Crime Branch, Prashant Vihar, regarding accused Hitender @ Chhotu, the witness along with Inspector K.G. Tyagi, SI Mukesh, SI Sanjeev, ASI Jai Singh, HC Omender, HC Sanjay, HC Narender, Constable Rambir and Constable Kirti, left their office in a private vehicle at about 10:00am vide DD no.6 and reached office of Crime Branch, Prashant Vihar at about 11:00am, where they came to know that the Investigating Officer of the said case was out of the office along with accused Hitender @ Chhotu; that at about 01:00 pm, HC Azad Singh came to the office along with accused Hitender @ Chhotu, who was in muffled face; that HC

Azad Singh informed that accused Hitender @ Chhotu (who the witness correctly identified) was arrested in case FIR no.15/08, PS. I. P. Estate and that he made disclosure regarding his involvement in the present case; that HC Azad Singh also handed over copies of relevant documents to Inspector K.G. Tyagi along with the accused; that Inspector K.G. Tyagi made inquiries from the accused and arrested him vide arrest memo Ex.PW62/U and the accused was personally searched vide personal search memo Ex.PW62/V respectively; that the disclosure statement Ex.PW62/W was also recorded by Inspector K.G. Tyagi; that thereafter they took the accused to Tis Hazari Courts in muffled face and he was produced before Ld. ACMM; that Inspector K.G. Tyagi moved an application for Test Identification Parade of the accused which was marked to Ld. Link MM; that accused was produced before Ld. Link MM, but he refused to participate in Test Identification Parade; that thereafter accused was again produced before Ld. ACMM who granted four days' remand of the accused to police custody on the application of Inspector K.G. Tyagi; that thereafter they brought the accused to their office.

195. PW62 ASI (Retired) Rajbir Singh further stated in his examination-in-chief that on 29<sup>th</sup> January, 2008, the witness along with Inspector K.G. Tyagi, SI Mukesh, other staff and accused Hitender @ Chhotu left the office at about 10:40am; that at the instance of accused Hitender @

Chhotu they reached Kwalitiy Hotel, Ara Kasha Road, Paharganj; that there the accused pointed towards Room No.66 on the 4<sup>th</sup> floor of the Hotel; that the accused stated that he had stayed along with his associates in the said room on 28<sup>th</sup> September, 2007 and had conspired on 29<sup>th</sup> September, 2007 to commit murder of Vijay Yadav @ Vijji and thereafter they committed murder of Vijay Yadav @ Vijji on 29<sup>th</sup> September, 2007 itself; that Inspector K.G. Tyagi prepared pointing out memo Ex.PW62/X; that the accused led them to Gali Arya Samaj, Bazaar Sita Ram, Delhi where he pointed towards the spot in front of Property No.2745 where they committed murder of Vijay Yadav @ Vijji; that Inspector K.G. Tyagi prepared pointing out memo of the place of incident Ex.PW62/Y; that they came back to their office while searching for the remaining accused.

196. PW62 ASI (Retired) Rajbir Singh further stated in his examination-in-chief that on 01<sup>st</sup> February, 2008, the witness was present in his office along with SI Mukesh when Inspector K.G. Tyagi made further inquiries from accused Hitender @ Chhotu and recorded his supplementary disclosure statement Ex.PW62/Z; that thereafter they left their office along with accused Hitender @ Chhotu and accused Parmod Singh @ Pammy (who was also in police custody remand) in private vehicle and reached Kwalitiy Hotel at about 07:30 am at the instance of the accused Parmod Singh @ Pammy; that accused Parmod

Singh @ Pammy (who the witness correctly identified) led them to Room No.66, 4<sup>th</sup> floor of the Hotel and disclosed that it was the same room where he along with accused Hitender @ Chhotu and their associates conspired to commit murder of Vijay Yadav @ Vijji; that Inspector K.G. Tyagi prepared pointing out memo Ex.PW62/Z1; that thereafter they reached Himmatgarh Chowk, Hauz Qazi; that accused Parmod Singh @ Pammy led them to Faseel Road, Near Temple, Himmatgarh Chowk and pointed towards a place and disclosed that on 29<sup>th</sup> September, 2007, he was sitting in Santro Car bearing No.UA-07T-5313, while leaving on the ignition of the car, while his other associates including accused Hitender @ Chhotu went to commit murder of Vijay Yadav @ Vijji in Gali Arya Samaj and that he remained present there till they returned; that when they came back, they sat in the car and he drove away the car; that public person (passer-by) Manish Kumar also joined the investigation at that time; that Inspector K.G. Tyagi prepared pointing out memo Ex.PW31/A; that thereafter accused Hitender @ Chhotu led them to F-440, Ram Park Extension, Loni, District Ghaziabad where accused Hitender @ Chhotu pointed towards the same as his house and got recovered one golden coloured chain which was kept in a polythene bag which was kept inside the cooler and disclosed that it is the same chain which he took out from the neck of Vijay Yadav @ Vijji after committing his murder; that the chain was

blood-stained and was broken from one place; that Inspector K.G. Tyagi kept the gold chain in the same polythene bag, kept the same in a small plastic box, prepared cloth parcel which was sealed with the seal of KGT; that seal was handed over to SI Mukesh after use; that Inspector K.G. Tyagi prepared seizure memo Ex.PW62/Z2; that Inspector K.G. Tyagi recorded statement of the witness.

197. PW62 ASI (Retired) Rajbir Singh further stated in his examination-in-chief that on 04<sup>th</sup> February, 2008, a secret information was received by Inspector K.G. Tyagi regarding accused Desraj @ Desu; that Inspector K.G. Tyagi entered the secret information vide DD No.22 in the DD Register of their office; that thereafter the witness along with Inspector K.G. Tyagi, SI Sanjeev, SI Mukesh, ASI Jai Singh, HC Ominder, HC Sanjay and Const. Deepak left their office in civil clothes along with secret informer in a private vehicle at about 09.00 pm for inquiry of the secret information; that at the instance of secret informer they reached Delhi Gate where Inspector K.G. Tyagi briefed the raiding party; that Inspector K.G. Tyagi also asked four or five public persons to join the raiding team, however, none of them agreed and they went away without disclosing their identities; that they reached in front of new building of Zakir Hussain College near Ram Lila Ground where they took position around the area near the Bus Stand of Zakir Hussain College; that Inspector K.G. Tyagi along with SI Mukesh and secret



informer sat on the bench of Bus Stand and started waiting for accused Desraj @ Desu; that at about 10:30 pm, accused Desraj @ Desu came towards the Bus Stand after crossing the road from the side of Ram Lila Ground while looking around; that the secret informer pointed towards him and identified him as Desraj @ Desu; that thereafter they apprehended accused Desraj @ Desu and disclosed to him regarding their identity; that Inspector K.G. Tyagi made inquiry from Desraj @ Desu who confessed to his involvement in committing murder of Vijay Yadav @ Viji with his associates; that Inspector K.G. Tyagi arrested accused Desraj @ Desu vide arrest memo Ex.PW62/Z3 and personally searched him vide personal search memo Ex.PW62/Z4; that Inspector K.G. Tyagi recorded his disclosure statement Ex.PW62/Z5; that thereafter they went to PS Hauz Qazi along with the accused where Inspector K.G. Tyagi deposited the personal search articles of accused Desraj @ Desu in the malkhana; that thereafter they came back to their office at about 02:00 am on 05<sup>th</sup> February, 2008 where Inspector K.G. Tyagi recorded statement of the witness.

198. PW62 ASI (Retired) Rajbir Singh further stated in his examination-in-chief that on 06<sup>th</sup> February, 2008, the witness and Inspector K.G. Tyagi, SI Mukesh Kumar, ASI Jai Singh, HC Ominder, HC Shiv Kumar and Constable Rambir left their office in a private vehicle along with accused Desraj @ Desu and reached Ara Kasha Road, Paharganj at

about 10:00 am, where accused Desraj @ Desu led them to Room no.66 at 4<sup>th</sup> floor of Hotel Kwality and pointed towards the same and disclosed that he along with his associates had conspired on 29<sup>th</sup> September, 2007 to commit murder of Vijay Yadav @ Vijji; that Inspector K.G. Tyagi prepared pointing out memo Ex.PW62/Z6; that thereafter the accused led them to Gali Arya Samaj, Bazar Sita Ram, Delhi in front of Property No.2745 and pointed towards the same as the place where they committed murder of Vijay Yadav @ Vijji on 29<sup>th</sup> September, 2007; that Inspector K.G. Tyagi prepared pointing out memo Ex.PW62/Z7; that accused Desraj @ Desu led them to Gali Than Singh, Bazar Sita Ram and pointed towards a place in front of House No.3570 and disclosed that this was the same place where he had shown the office of Vijay Yadav @ Vijji to accused Praveen Koli and sent him upstairs; that Inspector K.G. Tyagi prepared pointing out memo Ex.PW62/Z8; that in the meanwhile a lady namely Smt.Anju Gupta and one Amar Singh Yadav met them and identified accused Desraj @ Desu; that Amar Singh Yadav identified him as the same person who he had seen going along with Vijay Yadav @ Vijji on 29<sup>th</sup> September, 2007; that Smt.Anju Gupta told that she had seen the accused along with his associates surrounding Vijay Yadav @ Vijji in Gali Arya Samaj on 29<sup>th</sup> September, 2007; that statement of the witness was recorded by Inspector K.G. Tyagi along with Smt. Anju Gupta and

Amar Singh Yadav.

199. The MHC(M) produced a parcel sealed with the seal of Court. On opening the same, an unsealed plastic container containing a gold chain in a small polythene bag with one *kadi* of the chain was taken out. PW62 ASI (Retired) Rajbir Singh identified the chain.
200. The MHC(M) produced another cloth parcel sealed with the seal of 'KGT'. On opening the same, one mobile phone of black colour of make "Sagem" 101X was taken out. Its battery cover was opened and no SIM card was inside the mobile phone. IMEI number of said mobile was 358529000375580. On seeing it, PW62 ASI (Retired) Rajbir Singh identified the mobile phone as the one which was recovered at the instance of accused Bhisham @ Chintoo.
201. The MHC(M) produced another cloth parcel sealed with the seal of 'KGT'. On opening the same, one mobile phone of blue colour make "Nokia" 2626 was taken out. There was one SIM card inside the mobile phone and its IMEI number was 354843011845604. On seeing it, PW62 ASI (Retired) Rajbir Singh identified the mobile phone which was got recovered from the possession of accused Rishi Pal. PW62 ASI (Retired) Rajbir Singh also identified the register of hotel Kwaliti as that which was handed over by Satnam Singh. PW62 ASI (Retired) Rajbir Singh was cross-examined by Id counsels for accused persons and was discharged.

202. PW62 ASI (retired) ASI Rajbir Singh was recalled for his examination-in-chief because when he had earlier been examined, accused Kishanpal @ Fauzi was proclaimed offender. After accused Kishanpal @ Fauzi was arrested and tried, the witness had to be re-examined. The witness stated that accused Kishanpal @ Fauzi was not arrested during the period when the witness joined the interrogation of this case; that the witness had no concern with the interrogation conducted in respect of accused Kishanpal @ Fauzi; that the witness had nothing to say in respect of accused Kishanpal @ Fauzi. The witness was not cross-examined despite grant of opportunity and was finally discharged.
203. PW63 Shri Deepak Kumar was examined by the prosecution to prove the involvement of accused persons Vinod @ Gola, Deepak @ Chowda and Bhisham @ Chintoo in commission of the offence, and to prove that these persons had informed the witness about they having committed the murder at the behest of accused Ashok Jain, Gopal Krishan Aggarwal and Rishipal @ Pappu.
204. PW63 Shri Deepak Kumar stated in his examination-in-chief that he (the witness) was running a tea stall at the corner of Gali Akhade Wali, Sita Ram Bazar, Delhi from 06.30 am to 07.30 pm; that his brother and his family have been residing at Sita Ram Bazar; that his deceased father also used to reside at Sita Ram Bazar; that the witness has been staying in Sita Ram Bazar since about 27 or 28 years; that in the year

2007 (the exact date of which the witness did not remember) at about 07:00pm or 08:00pm, while the witness was about to leave for his house, he came to know that firing had taken place at Arya Samaj Gali and somebody had shot one Vijji; that the witness knew Vijji since he also used to reside at Murge Wali Gali, Sita Ram Bazar area; that the witness then went to his house.

205. PW63 Shri Deepak Kumar further stated in his examination-in-chief that on the next day, the accused Vinod @ Gola (who the witness correctly identified) called the witness on his mobile phone at about 03:00pm or 04:00pm and he asked him to look after his house; that the witness asked accused Vinod @ Gola as to what had happened, to which the accused said that he would tell after he returns. PW63 Shri Deepak Kumar stated that he did not know anything else about the present case.

206. Ld. Addl. Public Prosecutor obtained permission of the Court and cross-examined PW63 Shri Deepak Kumar. In his cross-examination by Ld. Additional Public Prosecutor, the witness stated that he knew accused Deepak @ Chowda, Desraj @ Desu and Bhisham @ Chintoo (whom the witness correctly identified) since they also used to reside in Sita Ram Bazar area; that he also knew their family members; that in the year 2007, the witness was using mobile number 9210866522; that accused Vinod @ Gola called the witness on this number itself; that the

witness came to his tea stall on the day following the one when the witness had heard about Vijji having been shot; that the witness had learnt that Vijji had been shot in front of office of Gopal Krishan Aggarwal at Gali Arya Samaj by some persons; that the witness had not stated to the police about accused persons Vinod @ Gola, Deepak @ Chowda and Bhisham @ Chintoo being present at Gali Arya Samaj or about they running away from the spot along with some other boys.

207. PW63 Shri Deepak Kumar stated in his cross-examination by Id. Additional Public Prosecutor that indeed he had come to know that accused Vinod @ Gola and Bhisham @ Chintoo were not present in their respective houses after the incident; that Vinod @ Gola used to go out of city for doing work of *halwai*; that he did not come to know the whereabouts of accused persons Vinod @ Gola and Bhisham @ Chintoo.

208. PW63 Shri Deepak Kumar further stated in his cross-examination by Id. Additional Public Prosecutor that he had not stated to the police that on 30<sup>th</sup> September, 2007 at about 03:00-03:15 pm when Vinod @ Gola called him on his mobile phone, Vinod @ Gola told the witness that Vinod @ Gola along with accused Bhisham @ Chintoo, Deepak @ Chowda, Desraj @ Desu and their other associates including Hitender @ Chhotu and Sumit @ Dimple Tyagi had shot Vijay Yadav @ Vijji. PW63 Shri Deepak Kumar further stated in his cross-examination that

he had not stated to the police that on 30<sup>th</sup> September, 2007 during the call, Vinod @ Gola asked the witness to inform the family of Vinod @ Gola of his well being. PW63 Shri Deepak Kumar further stated in his cross-examination that he had not stated to the police that on 30<sup>th</sup> September, 2007 during the call, Vinod @ Gola made the witness talk to accused Bhisham @ Chintoo who told the witness that they had killed Vijay Singh @ Vijji at the instance of Ashok Jain, Gopal Krishan Aggarwal and Rishipal @ Pappu and for this purpose Gopal Krishan Aggarwal had given Rs.5 lacs to them as advance whereas the remaining amount had to come from Ashok Jain and Rishi Pal @ Pappu.

209. PW63 Shri Deepak Kumar, in his cross-examination by Id. Additional Public Prosecutor, denied the suggestion that on the next day at about 05:00 pm accused Vinod @ Gola again called the witness on his mobile phone and told that they were hiding somewhere outside Delhi, that inquiry was made about the police case, that Deepak @ Chowda also talked to the witness and told him that Vijay Yadav @ Vijji had been murdered by them at the instance of Gopal Krishan Aggarwal, Ashok Jain and Rishi Pal @ Pappu and for this purpose they had already received Rs.5 lacs from Gopal Krishan Aggarwal and they had to receive the remaining amount of money from Rishi Pal @ Pappu and Ashok Jain. The witness stated that Vinod @ Gola did call him on that

day and Deepak @ Chowda also had a talk with him but it was a general talk about well being of each other.

210. PW63 Shri Deepak Kumar, in his cross-examination by Id. Additional Public Prosecutor, denied the suggestion that he was intentionally suppressing the fact of confession of accused persons Vinod @ Gola, Bhasham @ Chintoo and Deepak @ Chowda to the witness about they having murdered Vijay @ Vijji at the instance of Gopal Krishan Aggarwal, Ashok Jain and Rishi Pal @ Pappu. The witness denied that he was deposing falsely and was suppressing true facts at the instance of the accused persons because they were his childhood friends.

211. PW63 Shri Deepak Kumar stated in his cross-examination by Id. Additional Public Prosecutor that he knew accused Ashok Jain (who the witness correctly identified) and he was probably the Councillor or MLA of the area; that he did not know accused Gopal Krishan Aggarwal and Rishi Pal @ Pappu. The witness was cross-examined by Id. defence counsel, and was then discharged.

212. PW63 Shri Deepak was recalled for his examination-in-chief because when he had earlier been examined, accused Kishanpal @ Fauzi was a proclaimed offender. After accused Kishanpal @ Fauzi was arrested and tried, the witness had to be re-examined. The witness stated that once he had appeared before the Court and his statement was recorded; that he did not know anything about this case; that he did not know



any of the accused persons; that however accused Vinod @ Gola was his neighbour and was working as cook; that the police had never recorded his statement in this case.

213. Learned Additional Public Prosecutor cross-examined the witness with the permission of the Court. In his cross-examination, the witness deposed that he knew Deepak @ Chowda, Desraj @ Desu and Bhisam @ Chintoo as the latter were his neighbours in year 2007; that the witness had come to know on the next day of the incident that Vijji had been shot. The witness denied the suggestion that he had also come to know that accused Vinod @ Gola, Deepak @ Chowda and Bhisam @ Chintoo were present in Gali Arya Samaj at the time of the incident and that after the incident, they had run away; that the statement dated 10.03.2008 recorded by police Mark PW63/I had not been tendered by the witness to the police; that the witness did not know accused Kishanpal @ Fauzi. The witness was not cross-examined on behalf of accused persons and was finally discharged.

214. PW64 Shri Puneet Puri, Assistant Director Ballistics, FSL, Rohini, Delhi was examined by the prosecution to prove that a broken metallic chain seized in the case had gunshot residue particles around its edges, and to prove the examination of bullets and cartridge case.

215. PW64 Shri Puneet Puri stated in his statement-in-chief that the witness had been working with FSL, Rohini since 1994; that the witness had

done his specialization in Forensic Ballistics from National Institute of Criminology and Forensic Sciences, Ministry of Home Affairs, Government of India in 1997-98; that the witness had examined more than 6000 cases of Forensic Ballistic involving firearms and ammunition as crime exhibits; that on 26<sup>th</sup> May, 2008, a parcel sealed with the seal of KGT of the present case was received in Ballistics Division through the Biology Division of FSL; that the seals on the parcel were intact and were as per the specimen seal provided with the FSL form; that on opening the parcel, one broken metallic chain with brown stains was taken out and marked as Ex. GC1; that on examination of the metallic chain, the witness found gun shot residue particles around the edges of broken portion of metallic chain; that the exhibit was then resealed with the seal of PPFSL, DELHI; that his detailed report in this regard is Ex. PW64/A; that on 01<sup>st</sup> July, 2008, four sealed parcels bearing nos. 3 , 4, 6 and 7 were received from the Biology Division; that Parcel no. 3 was sealed with the seal of AS; that Parcel no. 4 was sealed with the seal of NK FSL DELHI; that Parcel nos. 6 and 7 were sealed with the seal of DEPTT of FORENSIC MEDICINE M. A. M. COLLEGE, N. D. SKK; that the seals on the parcels were intact and were as per the specimen seals provided with the FSL form/forwarding form; that on opening Parcel no. 3 one 9 mm fired cartridge case and one matchstick were taken out and the cartridge case was marked as Exhibit EC1; that

on opening Parcel no. 4, three deformed bullets were taken out and marked as Ex. EB1, EB2 and EB3; that on opening Parcel no. 6, one swab said to be of right hand was taken out and marked as Ex. S1; that on opening Parcel no. 7, one swab said to be of left hand was taken out and marked as Ex. S2; that on examination the witness found that the 9 mm cartridge case marked Ex. EC1 was a fired empty cartridge; that the deformed bullet was marked Ex. EB1 to EB3 were corresponding to the bullet of .32 inch cartridge; that no gunshot residue particles were detected on the swabs marked Exhibit S1 and S2; that the cartridge case marked Exhibit EC1 and the deformed bullets marked Exhibits EB1 to EB3 were ammunition as defined in Arms Act 1959; that the exhibits were then resealed with the seal of PPFSL, DELHI; that detailed report of the witness in this regard is Ex. PW64/B.

216. The MHC(M) produced a parcel sealed with the seal of Court. On opening the same, a plastic container containing a chain having brown coloured spots and one *kadi* of the chain was taken out. PW64 Shri Puneet Puri identified the same.
217. The MHC(M) produced another sealed parcel with the seal of 'PP FSL DELHI'. On opening the same, one match stick and one fired empty cartridge were taken out. PW64 Shri Puneet Puri identified the same.
218. The MHC(M) produced another sealed parcel with the seal of 'PP FSL DELHI'. On opening the same, three deformed bullets were taken out.

- PW64 Shri Puneet Puri identified the same.
219. The MHC(M) produced another sealed parcel with the seal of 'PP FSL DELHI'. On opening the same, one wooden stick having cotton on one end was taken out. PW64 Shri Puneet Puri identified the same.
220. The MHC(M) produced another sealed parcel with the seal of 'PP FSL DELHI'. On opening the same, another wooden stick having cotton on one end was taken out. PW64 Shri Puneet Puri identified the same.
221. PW64 Shri Puneet Puri was cross-examined by Id defence counsel for some accused persons, and was discharged.
222. PW64 Shri Puneet Puri was recalled for his examination-in-chief because when he had earlier been examined, accused Kishanpal @ Fauzi was a proclaimed offender. After accused Kishanpal @ Fauzi was arrested and tried, the witness had to be re-examined. In his examination-in-chief in respect of Kishanpal @ Fauzi, the witness deposed on the lines of his earlier testimony. He reiterated his earlier version. The witness was not cross-examined on behalf of accused persons and was finally discharged.
223. PW65 Mr. Naresh Kumar, Senior Scientific Officer, Biology, FSL, Rohini, Delhi was examined by the prosecution to prove reports of biological and serological examination of exhibits sent to the FSL. The witness stated in his examination-in-chief that on 27<sup>th</sup> December, 2007, the witness was posted at FSL, Rohini as Senior Scientific Assistant

(Biology) and eight parcels sealed as per the seals mentioned in the FSL forms along with sample seal were received in the office of FSL, Rohini; that seals on the parcels were compared with the specimen seals and were found intact; that on opening Parcel no.1, it was found containing concrete material described as blood stained road cutting which was marked Ex.1; that on opening the Parcel no. 2, it was found containing a white pant and a belt having dark brown stains, one cut/torn white vest having dark brown stains, one cut/torn shirt having dark brown stains, one cut/torn underwear having brown stains, one handkerchief having brown stains, which were marked Ex. 2a to Ex. 2e respectively; that on opening the Parcel no. 4, it was found containing three metallic pieces described as bullets which were marked Ex.4; that on opening the Parcel no. 5, it was found containing dark brown gauze cloth piece described as blood in gauze piece which was marked Ex.5; that on opening Parcel no.8, it was found containing cotton wool swab having dark brown stains described as blood in gauze which was marked as Ex.8; that on biological examination, blood gauze detected on Ex.1, 2a, 2b, 2c, 2d, 2e, 4, 5 and 8; that the witness also examined exhibits by using various serological techniques; that all the parcels opened in the Biology Division were then resealed with the seal of NK FSL Delhi; that seals of Parcel nos.3, 6 and 7 were not opened and the parcels were sent in sealed condition itself to Ballistic Division along with Parcel no.4;

that the witness prepared his reports regarding biological and serological examination and the sealed parcels were handed to the police along with the reports; that report of the witness in this regard is Ex.PW65/A; that his serological report is Ex.PW65/B; that four parcels sent to Ballistic Division were received back in the division on 02<sup>nd</sup> March, 2010, sealed with seal of Ballistic Division which were collected by the police later on; that on 26<sup>th</sup> February, 2010 one parcel sealed with seal of PP FSL Delhi, pertaining to the present case was received in their division; that it was found containing a gold chain which was marked as Ex.1; that upon analysis, blood was detected on Ex.1; that on serological examination, the blood was found to be of B group and of human origin; that the witness resealed the parcel after examination with the seal of NK FSL Delhi; that the witness prepared his reports in this regard Ex.PW65/C and Ex.PW65/D respectively.

224. The MHC(M) produced a parcel sealed with the seal of Court. On opening the same, it is found having a plastic container containing a gold chain having brown coloured spots and one *kadi* of the chain which was also taken out. PW65 Mr.Naresh Kumar identified the same.

225. The MHC(M) produced another sealed parcel with the seal of Court. On opening the same, three deformed bullets were taken out. PW65 Mr.Naresh Kumar identified the same.

226. The MHC(M) produced another parcel sealed with the seal of 'NK FSL DELHI'. On opening the same, a white pant and a belt having dark brown stains, one cut/torn white vest having dark brown stains, one cut/torn shirt having dark brown stains, one cut/torn underwear having brown stains and a handkerchief having brown stains were taken out. PW65 Mr.Naresh Kumar identified the same.
227. The MHC(M) produced another sealed parcel with the seal of 'NK FSL DELHI'. On opening the same, a plastic container having some concrete material was taken out. PW65 Mr.Naresh Kumar identified the same as having been examined by him.
228. The MHC(M) produced another sealed parcel with the seal of 'NK FSL DELHI'. On opening the same, a dark brown gauze cloth piece was taken out. PW65 Mr.Naresh Kumar identified the same.
229. The MHC(M) produced another sealed parcel with the seal of 'NK FSL DELHI'. On opening the same, a cotton wool swab having dark brown stains was taken out. PW65 Mr.Naresh Kumar identified the same.
230. PW65 Mr.Naresh Kumar was cross-examined by Id defence counsel for some accused persons, and was discharged.
231. PW65 Shri Naresh Kumar was recalled for his examination-in-chief because when he had earlier been examined, accused Kishanpal @ Fauzi was a proclaimed offender. After accused Kishanpal @ Fauzi was arrested and tried, the witness had to be re-examined. In his

examination-in-chief in respect of Kishanpal @ Fauzi, the witness deposed on the lines of his earlier testimony. He reaffirmed his earlier stance. The witness was not cross-examined on behalf of accused persons and was finally discharged.

232. PW66 Shri S.K. Chaudhary, Director, CMS, DOT was examined by the prosecution to show absence of accused Deepak @ Chowda from his place of employment during the period in question. The witness stated in his examination-in-chief that he (the witness) had given written information to the police regarding a peon Deepak @ Chowda working in BSNL; that as per record, Deepak @ Chowda was absent from his duties from 24<sup>th</sup> April, 2007 onwards and for the unauthorized absence, charges were framed and chargesheet was sent to his known address; that the reply is Ex.PW66/A. The witness was not cross-examined by Id counsel for accused persons despite grant of opportunity, and was discharged.

233. PW66 Shri S.K. Chaudhary, Director, CMS, DOT was recalled for his examination-in-chief because when he had earlier been examined, accused Kishanpal @ Fauzi was a proclaimed offender. After accused Kishanpal @ Fauzi was arrested and tried, the witness had to be re-examined. In his examination-in-chief in respect of Kishanpal @ Fauzi, the witness reiterated his earlier testimony. The witness was not cross-examined on behalf of accused persons and was finally discharged.



234. PW67 SI Mukesh had played an active role in investigation of the case. He was examined by the prosecution to prove the steps taken by the police during investigation.
235. PW67 SI Mukesh stated in his examination-in-chief that on 25<sup>th</sup> November, 2007 on receiving of DD No. 7, the witness along with Inspector K.G. Tyagi, ASI Rajbir, SI Ram Avtar, ASI Jai Singh, HC Omender, HC Shiv Kumar and HC Narender went to the office of Special Team, Prashant Vihar in a private vehicle and a government vehicle, where when they reached, Inspector Anand Singh and SI Shyam Sundar along with staff and two accused persons namely Bhisham @ Chintoo and Vinod Kumar @ Gola (whom the witness correctly identified) were found present; that both the accused persons had been absconding after the incident; that Inspector K.G. Tyagi interrogated both the accused persons, who made confessions regarding the murder of Vijay Kumar @ Vijji; that Inspector K.G. Tyagi arrested accused Bhisham @ Chintoo (who the witness correctly identified) and accused Vinod @ Gola vide arrest memos Ex. PW40/B and Ex. PW40/C respectively and they were personally searched vide personal search memos Ex. PW40/D and Ex. PW40/E respectively; that Inspector K.G. Tyagi recorded the statement of SI Shyam Sundar, Special Team, Crime Branch; that thereafter both the accused persons

were brought back to the office of Inter-State Cell, Crime Branch, Chanakya Puri, New Delhi; that after interrogation of the accused persons, their disclosure statements Ex.PW62/B and Ex. PW62/C respectively were recorded; that statement of the witness was recorded by Inspector K.G. Tyagi.

236. PW67 SI Mukesh further stated in his examination-in-chief that on 26<sup>th</sup> November, 2007, the witness accompanied Inspector K.G. Tyagi, other police staff, accused Bisham @ Chintoo and Vinod @ Gola in a government gypsy for the investigation of the case; that pursuant to the disclosure of the accused persons, they reached Hotel Kwaliti, 53, Ara Kasha Road, Ram Nagar, Paharganj, Delhi where both the accused persons pointed towards Room no. 66, as the place where the accused persons along with their associates conspired to kill Vijay Yadav @ Vijji; that pointing out memos Ex. PW62/D and Ex. PW62/E respectively were prepared by Inspector K.G. Tyagi; that Inspector K.G. Tyagi gave necessary instructions to the Hotel Owner Satnam Singh; that the accused persons led them to the place of incident i.e. Chowk Boriyan, Gali Arya Samaj, Bazar Sita Ram, Hauz Qazi, Delhi in front of property no. 2745 and they separately pointed towards the spot as the same place where they along with their associates committed murder of Vijay Singh @ Vijji; that Inspector K.G. Tyagi prepared separate pointing out memos Ex. PW62/F and Ex. PW62/G respectively; that

thereafter they tried to search for the accused Deepak @ Chowda and Desraj @ Desu in their respective houses, but they were not found there; that both the accused persons were produced before Ld. ACMM, Tis Hazari Courts, Delhi where Inspector K.G. Tyagi obtained their ten days' police custody remand and after their medical examination, they were brought back to the office at Chanakyapuri, Delhi.

237. PW67 SI Mukesh further stated in his examination-in-chief that on 27<sup>th</sup> November, 2007, both the accused persons were again interrogated in detail by Inspector K.G. Tyagi in the presence of ASI Rajbir and the witness recorded their supplementary disclosure statements in which they had told some new facts; that the disclosure statement of accused Bhisham @ Chintoo is Ex. PW62/H and that of accused Vinod @ Gola was Ex. PW62/I.

238. PW67 SI Mukesh further stated in his examination-in-chief that on 06<sup>th</sup> December, 2007, the witness again joined the investigation along with Inspector K.G. Tyagi, ASI Rajbir Singh, ASI Jai Singh, HC Omender, HC Shiv Kumar, Constable Ravinder and Constable Kirti and all of them along with both the accused persons went to the house of accused Bhisham @ Chintoo at Katra Gokul Shah, Bazar Sita Ram, Delhi from where accused Bhisham @ Chintoo got recovered one mobile phone of black colour of make SAGEM 101X from the side pocket of the cover kept on top of the refrigerator and told that mobile number 9872728524

was used in the said phone; that upon checking the phone, no SIM Card was found loaded; that Inspector K.G. Tyagi kept the mobile phone in a cloth parcel and sealed the same with seal of KGT; that the witness prepared seizure memo Ex.PW62/J.

239. PW67 SI Mukesh further stated in his examination-in-chief that on 07<sup>th</sup> December, 2007 the witness joined the investigation with Inspector K.G. Tyagi, ASI Rajbir, SI Ram Avtar and other staff; that at about 02:00pm while they were present in the office at Chanakyapuri, accused Gopal Krishan Aggarwal (who the witness correctly identified) came to the office since he was called by Inspector K.G. Tyagi; that Inspector K.G. Tyagi interrogated him; that accused Gopal Krishan Aggarwal confessed to his involvement in the commission of offence i.e. murder of Vijay Yadav @ Vijji; that Inspector K.G. Tyagi arrested accused Gopal Krishan Aggarwal vide arrest memo Ex.PW62/K and personally searched him vide personal search memo Ex.PW62/L respectively; that on the same day at about 07:00 pm accused Rishi Pal @ Pappu (who the witness correctly identified) came to the office of the investigating team on the call of Investigating Officer; that accused Rishi Pal @ Pappu was also interrogated by Inspector K.G. Tyagi; that the said accused confessed regarding his involvement in commission i.e. murder of Vijay Yadav @ Vijji; that he was arrested by Inspector K.G. Tyagi vide arrest memo Ex.PW62/M and he was personally

searched vide personal search memo Ex.PW62/N respectively; that during his personal search, he handed over a mobile phone of make Nokia 2626 of blue colour in which SIM card of mobile No.9873056281 was used, to Inspector K.G. Tyagi, stating that accused Bhisham @ Chintoo informed him on the said number on 29<sup>th</sup> September, 2007 that they have committed murder of Vijay Singh @ Vijji; that Inspector K.G. Tyagi recorded their disclosure statements Ex.PW62/P and Ex.PW62/Q respectively.

240. PW67 SI Mukesh further stated in his examination-in-chief that on 09<sup>th</sup> December, 2007 the witness again joined the investigation with Inspector K.G. Tyagi, who interrogated accused Rishi Pal @ Pappu and Gopal Krishan Aggarwal separately and recorded their supplementary disclosure statement Ex.PW62/R and Ex.PW62/S respectively; that accused Gopal Krishan Aggarwal disclosed that he can produce the settlement deed of money transaction between him on behalf of Ashok Gupta with one Vijay Bansal as the matter was settled through intervention of Dinesh Jain; that thereafter, accused Gopal Krishan Aggarwal led them to his office at Gali Arya Samaj, Bazar Sita Ram, Hauz Qazi, where the accused got recovered one copy of settlement deed from the upper drawer of the table Ex.PX-1 having signatures of Gopal Krishan Aggarwal, Vijay Bansal and Rajan Goyal which was taken into possession by Inspector K.G. Tyagi by seizure memo

Ex.PW62/T.

241. PW67 SI Mukesh further stated in his examination-in-chief that on 17<sup>th</sup> January, 2008 on the instructions of Inspector K.G. Tyagi the witness reached the malkhana of P.S. Hauz Qazi and he obtained a parcel, which was sealed with the seal of RBS, of the present case from MHC(M) HC Suresh Kumar at about 09:30 am vide RC no.2/21/08 and brought the same in the Court of Shri Vidya Prakash, Id. MM, Tis Hazari Courts, Delhi, where after Test Identification Parade of the case property, Inspector K.G. Tyagi handed over a parcel, sealed with seal of VP to him and the witness deposited the said parcel with the MHC(M) of PS Hauz Qazi along with duplicate Road Certificate no.2/21/08; that till the time the case property was in his possession, it had not been tampered with.

242. PW67 SI Mukesh further stated in his examination-in-chief that on 28<sup>th</sup> January, 2008, upon receiving DD No. 2 from Special Team Crime Branch, Prashant Vihar regarding accused Hitender @ Chhotu, the witness along with Inspector K.G. Tyagi, ASI Rajbir, SI Sanjeev, ASI Jai Singh, HC Omender, HC Sanjay, HC Narender, Constable Rambir and Constable Kirti left their office in a private vehicle at about 10:00 am vide DD No. 6 and reached the office of Crime Branch, Prashant Vihar at about 11.00 am where they came to know that the Investigating Officer of the said case was out of office along with accused Hitender @

Chhotu; that at about 01.00 pm HC Azad Singh came to the office along with accused Hitender @ Chhotu, who was in muffled face (who the witness correctly identified); that HC Azad told that accused Hitender @ Chhotu has been arrested in case FIR No. 15/08, PS I. P. Estate and that he has made disclosure regarding his involvement in the present case; that HC Azad Singh also handed over copies of relevant documents to Inspector K.G. Tyagi along with the accused; that Inspector K.G. Tyagi made inquiries from the accused and arrested him vide arrest memo Ex.PW62/U and the accused was personally searched vide personal search memo Ex.PW62/V; that disclosure statement Ex.PW62/W of accused was also recorded by Inspector K.G. Tyagi; that the accused was produced before Ld. ACMM, Tis Hazari Courts, Delhi in muffled face; that upon moving of an application for Test Identification Parade of the accused, the accused was produced before Ld. Link MM and the accused refused to participate in Test Identification Parade; that the accused was again produced before Ld. ACMM and four days of police custody remand of the accused was granted on the application of Inspector K.G. Tyagi.

243. PW67 SI Mukesh further stated in his examination-in-chief that on 29<sup>th</sup> January, 2008, the witness, Inspector K.G. Tyagi, ASI Rajbir, other staff along with accused Hitender @ Chhotu reached Kwality Hotel, Ara Kasha Road, Paharganj, Delhi, where the accused pointed towards

Room no. 66 on the 4<sup>th</sup> floor of the hotel and stated that he stayed there along with his associates in the said room on 28<sup>th</sup> September, 2007 and had conspired on 29<sup>th</sup> September, 2007 to commit murder of Vijay Yadav @ Vijji; that Inspector K.G. Tyagi prepared pointing out memo Ex. PW62/X; that thereafter the accused led them to Gali Arya Samaj, Bazar Sita Ram, Delhi where he pointed towards the spot in front of property No. 2745 as the place where they committed murder of Vijay Yadav @ Vijji; that Inspector K.G. Tyagi prepared pointing out memo of the place of incident Ex. PW62/Y; that they returned to their office while searching for the remaining accused persons.

244. PW67 SI Mukesh further stated in his examination-in-chief that that in the night hours of 29<sup>th</sup> January, 2008 on the directions of Inspector K.G. Tyagi, the witness along with HC Narender, ASI Jai Singh and HC Sanjay and accused Hitender @ Chhotu left for Uttarakhand in a private vehicle pursuant to the disclosure of accused Hitender @ Chhotu; that they reached Dehradun where the accused led them to the premises at Guler Ghati, Nehru Gram, Dehradun and Bapu Gram, Rishikesh; however no person met them there and nothing was recovered; that thereafter accused Hitender @ Chhotu led them to his in-laws' house at Village Balawala, Dehradun where one white Santro Car bearing no. UA-07T-5313 was recovered from a vacant space in between six houses at Rawat Mohalla; that accused told them that the



accused persons used the said car along with one Wagon R Car in commission of the offence and after committing the offence, they fled away in the said car and that the said car had been taken on hire-purchase basis by his brother in-law Devi Singh; that the accused was using the car; that accused Hitender @ Chhotu took out ignition key of the car from the room in his in-laws' house by which the car was opened; that the witness took into possession the said car vide seizure memo Ex. PW41/B; that the witness made entry regarding recovery of the car at PS Doiwala vide DD No. 30 dated 30<sup>th</sup> January, 2008; that the witness recorded statement of ASI Jai Singh; that thereafter they brought back the car and the accused to Delhi.

245. PW67 SI Mukesh further stated in his examination-in-chief that on 01<sup>st</sup> February, 2008 the witness was present in their office along with ASI Rajbir; that Inspector K.G. Tyagi made further inquiries from accused Hitender @ Chhotu and recorded his supplementary disclosure statement Ex. PW62/Z; that thereafter they left their office along with accused Hitender @ Chhotu and accused Parmod Singh @ Pammy (who was also in police custody remand) in a private vehicle and reached Kwality Hotel at about 7.30am at the instance of accused Parmod Singh @ Pammy (who the witness identified); that accused Parmod Singh @ Pammy led them to Room no. 66, 4<sup>th</sup> floor of the hotel and disclosed that it was the same room where he along with accused

Hitender @ Chhotu and their associates conspired to commit murder of Vijay Yadav @ Vijji; that Inspector K.G. Tyagi prepared pointing out memo Ex. PW62/Z-1; that thereafter they reached Himmatgarh Chowk, Hauz Qazi; that accused Parmod Singh @ Pammy led them to Faseel Road near Temple Himmatgarh Chowk and pointed towards a place disclosing that on 29<sup>th</sup> September, 2007 he was sitting in Santro Car bearing no. UA-07T-5313 while keeping the ignition of the car on, whereas his other associates including accused Hitender @ Chhotu went to commit murder of Vijay Yadav @ Vijji in Gali Arya Samaj; that he remained present there till they returned and when they returned they sat in the car and he drove away the car; that one public person (passer-by) Manish Kumar also joined the investigation at that time; that Inspector K.G. Tyagi prepared pointing out memo Ex. PW31/A; that thereafter accused Hitender @ Chhotu led them to F-440, Ram Park Extension, Loni, District Ghaziabad, where accused Hitender @ Chhotu pointed towards the same as his house and got recovered one golden coloured chain which was kept in polythene which was kept inside the cooler and disclosed that it is the same chain which he took out from the neck of the Vijay Singh @ Vijji after committing his murder; that the chain was blood stained and was broken from one place; that Inspector K.G. Tyagi kept the gold chain in the same polythene bag, kept the same in a small plastic box; prepared cloth parcel which was sealed

with the seal of KGT; that seal was handed over to the witness after use; that Inspector K.G. Tyagi prepared seizure memo Ex. PW62/Z-2; that Inspector K.G. Tyagi recorded statement of the witness.

246. PW67 SI Mukesh further stated in his examination-in-chief that on 04<sup>th</sup> February, 2008, a secret information was received by Inspector K.G. Tyagi regarding accused Desraj @ Desu; that Inspector K.G. Tyagi entered the secret information vide DD No. 22 in the DD register of their office; that the witness along with Inspector K.G. Tyagi , SI Sanjeev, ASI Rajbir, ASI Jai Singh, HC Omender, HC Sanjay and Constable Deepak left their office in civil clothes along with secret informer in a private vehicle at about 09.00 pm for inquiry of the secret information and at the instance of the secret informer, they reached Delhi Gate where Inspector K.G. Tyagi briefed the raiding party; that they reached in front of new building of Zakir Hussain College near Ram Leela Ground where they took position around the area near the bus stand of Zakir Hussain College; that Inspector K.G. Tyagi along with him and secret informer sat on the bench of bus stand and started waiting for accused Desraj @ Desu; that at about 10.30 pm accused Desraj @ Desu came towards the bus stand after crossing the road of Ram Lila Ground while looking around; that secret informer pointed towards him and identified him as Desraj @ Desu; that thereafter accused Desraj @ Desu (who the witness correctly identified) was

apprehended; that the officers disclosed to him their identity; that Inspector K.G. Tyagi made inquiry from accused Desraj @ Desu who confessed to his involvement in committing murder of Vijay Yadav @ Viji along with his associates; that accused Desraj @ Desu was arrested vide arrest memo Ex. PW62/Z3 and personally searched vide personal search memo Ex. PW62/Z4; that disclosure statement of accused Ex. PW62/Z5 was recorded by Inspector K.G.Tyagi; that thereafter they went to PS Hauz Qazi along with the accused where Inspector K.G. Tyagi deposited the personal search articles of accused Desraj @ Desu in the malkhana; that they returned to their office at about 02:00 am on 05<sup>th</sup> February, 2008 where Inspector K.G. Tyagi recorded statement of the witness.

247. PW67 SI Mukesh further stated in his examination-in-chief that on 06<sup>th</sup> February, 2008, the witness, Inspector K.G. Tyagi, ASI Rajbir, ASI Jai Singh, HC Ominder, HC Shiv Kumar and Ct. Rambir left their office in a private vehicle along with accused Desraj @ Desu and reached Ara Kasa Road Paharganj at about 10:00 am where accused Desraj @ Desu led the police team to Room no. 66 at 4<sup>th</sup> floor of Hotel Kwalitiy; that the witness pointed towards the same; that the witness disclosed that he along with his associates had conspired over there on 29<sup>th</sup> September, 2007 to commit murder of Vijay Singh @ Viji; that Inspector K.G. Tyagi prepared pointing out memo Ex. PW62/Z-6; that thereafter the accused

led them to Gali Arya Samaj, Bazar Sita Ram, Delhi in front of Property No.2745 and pointed towards the same as the place where they committed the murder of Vijay Singh @ Vijji on 29<sup>th</sup> September, 2007; that Inspector K.G. Tyagi prepared pointing out memo Ex. PW62/Z7; that accused Desraj @ Desu also led them to Gali Than Singh, Bazaar Sita Ram and pointed towards a place in front of House No. 3570; that accused disclosed that this was the place where he had shown the office of Vijay Yadav @ Vijji to accused Parveen Koli and sent him upstairs; that pointing out memo was prepared by Inspector K.G. Tyagi Ex. PW62/Z8; that meanwhile a lady namely Smt. Anju Gupta and one Amar Singh Yadav met them and identified the accused Desraj @ Desu; that Amar Singh Yadav identified him as the same person who he had seen going along with Vijay Yadav @ Vijji on 29<sup>th</sup> September, 2007; that Smt. Anju Gupta told that she had seen the accused along with his associates surrounding Vijay Yadav @ Vijji in Gali Arya Samaj on 29<sup>th</sup> September, 2007; that the statements of Smt. Anju Gupta and Amar Singh Yadav were recorded by Inspector K.G. Tyagi.

248. The MHC(M) produced a parcel sealed with the seal of Court. On opening it, an unsealed plastic container containing a gold coloured chain bearing some brown coloured spots at various places with one kadi of the said chain in a small polythene bag was taken out. On seeing it, PW67 SI Mukesh identified the same.

249. The MHC(M) produced a parcel sealed with seal of Court. On opening it, a mobile phone of black colour make SAGEM 101X was taken out. On seeing it, PW67 SI Mukesh identified the same as having been recovered from the possession of accused Bhisham Kumar @ Chintoo.
250. The MHC(M) produced a parcel sealed with seal of Court. On opening it, a mobile phone of blue colour and make Nokia 2626 was taken out. On seeing it, PW67 SI Mukesh identified the same as having been recovered from the possession of accused Rishi Pal @ Pappu.
251. PW67 SI Mukesh was cross-examined at length by Id counsels for accused persons and was then discharged.
252. PW67 SI Mukesh was recalled for his examination-in-chief because when he had earlier been examined, accused Kishanpal @ Fauzi was a proclaimed offender. After accused Kishanpal @ Fauzi was arrested and tried, the witness was re-examined. In his examination-in-chief in respect of Kishanpal @ Fauzi, the witness recapitulated the same events, albeit in brief. The witness was not cross-examined on behalf of accused persons and was finally discharged.
253. PW68 Inspector K.G. Tyagi is the last witness examined by the prosecution. He is the main Investigating Officer of the case. He was examined to prove the investigation carried out at Inter-State Cell, Crime Branch.

254. PW68 Inspector K.G. Tyagi stated in his examination-in-chief that on 09<sup>th</sup> October, 2007, the witness was posted as Inspector in Inter-State Cell, Crime Branch, Chanakyapuri, Delhi; that investigation of this case was transferred to Crime Branch by the order of the Police Headquarters and investigation was assigned to him; that after receiving the case file, the witness went through the case file and investigation conducted by the previous Investigating Officer; that the witness found that during course of investigation, the then IO/Inspector Anil Kumar, Additional SHO of Police Station Hauz Qazi had conducted the investigation and found that three local boys namely Deepak @ Chowda, Vinod @ Gola and Bhisam @ Chintoo were missing from their respective houses after the murder of Vijay Yadav @ Vijji; that the witness also found that during investigation the previous Investigating Officer had called various persons including accused Gopal Krishan Aggarwal and Rishi Pal @ Pappu; that after taking over the investigation, the witness visited the spot along with his team and also conducted various raids at different places to find out the suspects; that the witness called accused Gopal Krishan Aggarwal and other persons and made interrogation; that the same was incorporated in the case diary; that the witness also analyzed the call details of various persons including accused Bhisam @ Chintoo, Vinod @ Gola, Gopal Krishan Aggarwal, Rishi Pal @ Pappu and other

persons; that the witness had mentioned their names in his case diary; that the witness carried out the said investigation during the period from 10<sup>th</sup> October, 2007 to 24<sup>th</sup> November, 2007.

255. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 25<sup>th</sup> November, 2007, Duty Officer of Inter State Cell, Crime Branch, Chanakyapuri received information through Special Team vide DD no. 7 which was Ex. PW68/A that two accused persons namely Bhisham @ Chintoo and Vinod @ Gola had been apprehended by the Special Team of Crime Branch, Prashant Vihar; that the witness received copy of the same and the witness along with his team made departure for Prashant Vihar, Crime Branch; that when they reached there, SI Shyam Sunder and other staff met them; that accused persons namely Bhisham @ Chintoo and Vinod @ Gola were also present; that SI Shyam Sunder briefly apprised him about the facts and circumstances in which the abovenamed persons were apprehended; that the witness made interrogation from both the accused persons and formally arrested them.

256. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that the witness prepared the arrest memo of accused Bhisham @ Chintoo and Vinod @ Gola; that the place, time of arrest and date of arrest was mentioned in the arrest memos; that the arrest memos are Ex. PW40/B and Ex.PW40/C respectively; that the witness prepared



personal search memo of accused Bhisham @ Chintoo and Vinod Kumar @ Gola which were Ex. PW40/E and Ex.PW40/D respectively; that the witness recorded the disclosure statement of accused Vinod Kumar @ Gola which is Ex.PW62/C; that similarly the witness recorded the disclosure statement of Bhisham @ Chintoo Ex.PW62/B.

257. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 26<sup>th</sup> November, 2007 the witness made departure from Inter State Cell, Crime Branch, Chanakya Puri, along with accused persons Vinod Kumar @ Gola and Bhisham @ Chintoo and staff for further investigation; that accused Bhisham @ Chintoo pointed towards Hotel Kwality, Ara Kasha Road, Paharganj and at his instance, the witness had prepared the pointing out memo Ex. PW62/D of Room No.66 of that hotel.

258. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on the same day, the witness along with both the accused persons, at the instance of both the accused persons, reached the place of the incident i.e. opposite H. No. 2745, Gali Arya Samaj Mandir, Hauz Qazi, Sita Ram Bazaar, Delhi; that at the instance of both the accused persons, the witness separately prepared pointing out memo at the spot which is Ex.PW62/F and Ex.PW62/G respectively; that whatever was told to him by both the accused persons regarding the said place was mentioned by him in the said pointing out memos; that thereafter, the

witness along with both the accused persons and staff searched for other accused persons but in vain; that the witness produced both the accused persons namely Bhisham @ Chintoo and Vinod @ Gola before Id. ACMM and at the request of the witness, they were remanded for ten days in police custody remand.

259. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 27<sup>th</sup> November, 2007, the witness carried out interrogation of both the accused persons at his office and on sustained interrogation, whatever was disclosed by them was reduced into writing by him vide their supplementary disclosure statements, which were Ex.PW62/H and Ex. PW62/I respectively; that thereafter, on the same day, the witness also recorded statements of the witnesses.

260. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 28<sup>th</sup> November, 2007, after going through the disclosure statements and the interrogation done from accused Bhisham @ Chintoo and Vinod Kumar @ Gola, there was some discovery of facts which were to be verified from different witnesses and persons who were suspected to be involved in the conspiracy with the accused persons; that the witness called different people namely Rajender Singh and others through notices and interrogated them; that the witness also called accused persons Ashok Jain, Rishi Pal @ Pappu and Gopal Krishan Aggarwal through notices and after thorough interrogation

and confrontations, the details were incorporated in the case diary.

261. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 04<sup>th</sup> December, 2007 and 05<sup>th</sup> December, 2007, SI Ram Avtar along with the staff and accused persons namely Bhisham @ Chintoo and Vinod @ Gola went to Dehradun for further investigation.
262. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 06<sup>th</sup> December, 2007, the witness made departure with his staff and accused persons namely Bhisham @ Chintoo and Vinod @ Gola and at the instance of accused Bhisham @ Chintoo, they reached house of accused Bhisham @ Chintoo; that at the instance of accused Bhisham @ Chintoo, they recovered a mobile handset from the pocket of the cover lying on the fridge from the room of the house of accused Bhisham @ Chintoo; that the witness had prepared parcel of the said mobile phone and sealed the same with the seal of KGT.
263. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that accused Bhisham @ Chintoo and Vinod @ Gola were produced before the Court and they were ordered to be sent to the Judicial Custody; that the witness deposited the case property at the malkhana and also recorded statements of witnesses; that accused Gopal Krishan Aggarwal and Rishi Pal @ Pappu were present in the office of Inter State Cell, Crime Branch, Chanakyapuri since they had been called for the purpose of inquiry; that due to paucity of time, both of them were

discharged after giving them written notice for their appearance on 07<sup>th</sup> December, 2007.

264. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 07<sup>th</sup> December, 2007 while the witness along with his team was present at Inter State Cell, Crime Branch, Chanakyapuri, accused Gopal Krishan Aggarwal and Rishi Pal @ Pappu came to the office; that both the accused persons were interrogated; that accused Gopal Krishan Aggarwal was arrested at about 06.30 pm vide arrest memo Ex. PW62/K and he (accused Gopal Krishan Aggarwal) was personally searched vide memo Ex. PW62/L; that accused Rishi Pal @ Pappu was arrested vide arrest memo Ex. PW62/M and was personally searched vide personal memo Ex. PW62/N; that details of belongings in the personal search were mentioned in the personal search memo; that the witness recorded disclosure statement of accused Gopal Krishan Aggarwal Ex. PW62/P; that the witness also recorded disclosure statement of Rishi Pal @ Pappu Ex. PW61/Q; that the witness deposited the personal search belongings of the accused persons at the malkhana; that on 08<sup>th</sup> December, 2007 accused Gopal Krishan Aggarwal and accused Rishi Pal @ Pappu were produced before the Court and upon application of the witness, Id. MM was pleased to grant two days' police custody remand of both the accused persons; that after their medical examination, the witness brought them to his office at Inter

State Cell, Crime Branch, Chanakyapuri, where they were again interrogated.

265. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 09<sup>th</sup> December, 2007, the witness interrogated the accused persons in detail and recorded their supplementary disclosure statements; that supplementary disclosure statement of accused Gopal Krishan Aggarwal was Ex. PW62/R and supplementary statement of accused Rishi Pal @ Pappu was Ex. PW62/S.
266. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that pursuant to the disclosure statement of accused Gopal Krishan Aggarwal, he led them to his office at 2747, Gali Arya Samaj, from where he got recovered a copy of settlement deed Ex. PX-1 from the drawer of the table which was taken into possession by the witness vide seizure memo Ex. PW62/T; that both the accused persons were thereafter produced before Ld. MM from where they were sent to judicial custody.
267. PW68 Inspector K.G. Tyagi recounted during in his examination-in-chief that on 15<sup>th</sup> December, 2007, the witness moved an application for conducting Narco-Analysis Test of accused Gopal Krishan Aggarwal and Rishi Pal @ Pappu before Id. ACMM, Tis Hazari Court, Delhi; that notice was issued to the accused persons and after some hearings on the said application, on the objection raised by both the accused

persons on medical grounds, the said application was dismissed by detailed order of Id. ACMM.

268. PW68 Inspector K.G. Tyagi stated in his examination-in-chief that on 18<sup>th</sup> December, 2007, the witness along with his team went to Hotel Kwality in government vehicle where Satnam Singh, Manager of the Hotel Kwality handed over the guest entry register of the Hotel Ex. PW36/B to him which was taken into possession vide seizure memo Ex. PW36/A; that on 21<sup>st</sup> December, 2007, Inspector Vipin Kumar Bhatia, Addl. SHO, PS Civil Lines came to the office of Inter State Cell, Crime Branch, Chanakyapuri and handed over certain documents including complaint Ex. PW23/A, DD entries, notice to Vijay Bansal Ex. PW23/C and original settlement deed Ex. PW23/B (photocopy of which was Ex. PX-1) which were taken into possession by the witness vide seizure memo Ex. PW23/D; that on 22<sup>nd</sup> December, 2007, the witness deputed SI Ram Avtar to go to Sonapat for the purpose of investigation of the case and he accordingly conducted investigation on that day; that on 24<sup>th</sup> December, 2007, the witness sent a team under the supervision of SI Shivraj for the search of accused persons; that on that day the witness also made inquiries from public witnesses Smt. Anju Gupta and Dheeraj Sharma, recorded their statements and at their instance, the witness prepared site plan Ex. PW68/B depicting the positions of eye-witnesses Ms. Anju Gupta and Dheeraj Sharma; that

on 27<sup>th</sup> December, 2007, the witness sent eight sealed parcels containing exhibits to FSL, Rohini through ASI Jai Singh; that the witness recorded the statement of MHC(M) HC Suresh Kumar as well as ASI Jai Singh.

269. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 07<sup>th</sup> January, 2008 the witness went to the spot where draftsman Inspector Devender Singh as well as previous IO Inspector Anil Sharma also arrived; that at the instance of Inspector Anil Sharma, the draftsman Inspector Devender Singh took measurements of the spot and prepared rough notes for the purpose of preparing scaled site plan; that the witness recorded statement of both of them; that thereafter the witness went to the Court of Ld. ACMM and obtained non-bailable warrants against five absconding accused persons namely Hitender @ Chhotu, Parveen Koli, Parmod Singh @ Pammy, Desraj @ Desu and Deepak @ Chowda.

270. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 10<sup>th</sup> January, 2008, the witness along with his team left for the search of accused persons; that they reached house of accused Hitender @ Chhotu at Ram Park, Loni, but he was not found there; that when they reached Khajoori Chowk, a secret informer met him and told that accused Parveen Koli would come near Christian Cemetery, Kashmere Gate, Delhi; that thereafter all of them went to Christian Cemetery and took positions; that at about 08:30 pm, on the pointing out of the

informer, accused Parveen Koli was apprehended near the Metro Entry Gate of Kashmere Gate Metro Station; that Parveen Koli was arrested at about 10:00 pm, after due interrogation, vide arrest memo Ex. PW35/A, and he was personally searched vide memo Ex.PW35/B; that the witness returned to his office at Inter State Cell, Crime Branch, Chanakyapuri; that the witness deposited the personal belongings of the accused at malkhana.

271. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 11<sup>th</sup> January, 2008, the witness recorded the disclosure statement of accused Parveen Koli which was Ex. PW35/C; that on that day pursuant to his disclosure statement, the witness along with accused Parveen Koli and other team members went to Gali Arya Samaj i.e. place of incident, where at the instance of accused Parveen Koli, the witness prepared pointing out memo Ex. PW35/E; that he led them to Hotel Kwaliti where at the instance of the accused, the witness prepared pointing out memo Ex. PW35/D; that accused Parveen Koli led them to office of Vijay Yadav @ Vijji situated at second floor, H. No. 3570, Gali Than Singh, Bazaar Sita Ram from where he had called the deceased on the date of incident; that the witness prepared pointing out memo Ex. PW35/F; that the accused was produced before Ld. ACMM where the witness moved an application for Test Identification Parade of accused Parveen Koli, however the accused refused to join



the Test Identification Parade proceedings; that thereafter, the witness moved an application for police custody remand and Id. ACMM was pleased to grant police custody remand of accused Parveen Koli; that during police custody remand of accused Parveen Koli, they tried to search for other accused persons but in vain.

272. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 17<sup>th</sup> January, 2008, on his directions SI Mukesh Kumar brought a sealed parcel from the MHC(M) Police Station Hauz Qazi stated to be containing the gold chain recovered at the instance of accused Bhisham @ Chintoo to Tis Hazari Courts; that upon the application of the witness, Id. MM conducted the judicial Test Identification Parade of the said chain through the witness; that the parcel after sealing with the Court seal of VP was handed over to him along with copy of the Test Identification Parade proceedings; that upon his directions, SI Mukesh deposited the sealed parcel again with MHC(M) Police Station Hauz Qazi; that the witness recorded the statement of MHC(M) and thereafter, at his office, the witness recorded the statement of SI Mukesh Kumar.

273. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 28<sup>th</sup> January, 2008, an information was received by the Duty Officer at Inter State Cell, Crime Branch, Chanakypuri regarding arrest of accused Hitender @ Chhotu by Special Team, Crime Branch,

Prashant Vihar, which was reduced into writing vide DD no. 2 Mark 68A; that duty officer handed over copy of DD no. 2 to the witness; that pursuant to the DD entry, the witness along with his team went to the office of Special Team, Crime Branch, Prashant Vihar, where the witness was told that accused Hitender @ Chhotu had been arrested in case FIR No. 15/2008 under sections 25/27 Arms Act Police Station I.P. Estate and that the accused had admitted his involvement in the present case; that copy of said FIR along with disclosure statement of the accused in the said case was also handed over to him with accused Hitender @ Chhotu, who was in muffled face; that copy of FIR was Mark 68B and the copy of disclosure statement was Ex. PW56/A; that the witness interrogated accused Hitender @ Chhotu and arrested him vide arrest memo Ex. PW62/U and he was personally searched vide personal search memo Ex. PW62/V; that the witness recorded his disclosure statement Ex. PW62/W; that the witness properly muffled the face of accused Hitender @ Chhotu again; that they brought accused Hitender @ Chhotu to the Tis Hazari Court, where the witness moved an application for conducting Test Identification Parade before Id. ACMM, who marked the application to Id. Link MM; that accused Hitender @ Chhotu was produced before Id. Link MM in muffled face who, however, refused to participate in Test Identification Parade proceedings; that the witness obtained the police custody remand of

accused Hitender @ Chhotu from Id. ACMM till 01<sup>st</sup> February, 2008; that the witness got the accused medically examined and brought him back to his office i.e. Inter State Cell, Crime Branch for the purpose of detailed interrogation.

274. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 29<sup>th</sup> January, 2008, the witness along with his team and the accused left for Hotel Kwality at the instance of accused Hitender @ Chhotu; that accused Hitender @ Chhotu pointed towards the room where the accused along with his co-accused persons hatched the conspiracy to kill Vijay Yadav @ Viji; that at the instance of accused Hitender @ Chhotu, the witness prepared pointing out memo Ex. PW62/X; that some of the hotel staff told that accused Hitender @ Chhotu was the same person who stayed in the room during the relevant period; that accused Hitender @ Chhotu led the witness and his team to the spot opposite property bearing no. 2745, Gali Arya Samaj, Sita Ram Bazaar, Delhi and pointed towards the place of incident and at his instance, the witness prepared pointing out memo Ex. PW62/Y; that accused Hitender @ Chhotu led them to the houses of his co-accused persons including accused Desraj @ Desu and Deepak @ Chowda, who, however, were not found present there; that thereafter, the witness and his team returned to their office.

275. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that pursuant to the notice, PWs Dheeraj Sharma and Anju came to his office on 30<sup>th</sup> January, 2008 and they were examined under section 161 of Code of Criminal Procedure; that on his directions SI Mukesh went to Dehradun for the purpose of recovery of car mentioned by accused Hitender @ Chhotu in the disclosure statement as well as mentioned in the hotel register; that on 30<sup>th</sup> January, 2008 itself in the night hours, an information was received in his office regarding arrest of accused Parmod Singh @ Pammy by Special Team, Crime Branch, Prashant Vihar in case FIR No. 40/2008 dated 30<sup>th</sup> January, 2008 under section 25/27 Arms Act at Police Station DBG Road, and that the accused made disclosure statement regarding his involvement in the present case, which was reduced into writing vide DD no. 15; that copy of DD no. 15 was Mark-68C; that duty officer handed over copy of the said DD to the witness.

276. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 31<sup>st</sup> January, 2008 the witness along with his team left his office at about 10:20 am in a government vehicle vide DD no. 7 which was Mark 68/D for the office of Special Team, Crime Branch, Prashant Vihar; that HC Naresh Kumar met him and handed over to him copy of FIR No. 40/2008 along with disclosure statement of accused Parmod Singh @ Pammy in the said case and accused Parmod Singh @ Pammy;

that the copy of FIR No. 40/2008 was Mark 68/E and the copy of the disclosure statement of accused Parmod Singh @ Pammy was Ex. PW57/A; that the witness arrested accused Parmod Singh @ Pammy in the present case vide arrest memo Ex. PW57/C; that the witness interrogated accused Parmod Singh @ Pammy and recorded disclosure statement of the accused vide Ex. PW57/B; that thereafter, the witness brought accused Parmod Singh @ Pammy to Tis Hazari Courts, from where the witness obtained one day police custody remand of the accused; that the witness also recorded statements of HC Naresh and HC Rajeev; that thereafter, accused Parmod Singh @ Pammy was got medically examined and was brought back to his office i.e. Inter State Cell, Crime Branch, Chanakyapuri for detailed interrogation; that on 31<sup>st</sup> January, 2008 itself, in late night hours, SI Mukesh returned from Dehradun after recovery of the car used by accused Hitender @ Chhotu and other associates for the purpose of the crime.

277. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 01<sup>st</sup> February, 2008, the witness interrogated accused Hitender @ Chhotu in the morning hours and recorded supplementary disclosure statement Ex. PW62/Z of the accused; that at about 07:30 am, the witness along with his team and accused Hitender @ Chhotu and Parmod Singh @ Pammy left their office for the purpose of investigation vide DD no. 2; that firstly they went to Hotel Kwality

where accused Parmod Singh @ Pammy identified Room no. 66 on the fourth floor while disclosing that he along with his co-accused persons hatched the conspiracy to kill Vijay Yadav @ Vijji in the said room; that at the instance of the accused, the witness prepared pointing out memo Ex. PW62/Z1; that accused Parmod Singh @ Pammy further led them to Faasil Road, Himmatgarh Chowk, near Humdard Building; that the witness asked passers-by to join the proceedings and one Manish Kumar agreed to join investigation; that accused Parmod Singh @ Pammy pointed towards the place near temple on the road and disclosed that this was the same place where he parked the Santro car bearing no. UA-07T-5313 while keeping its ignition on, on the date of incident; that his co-accused persons left for committing murder of Vijay Yadav @ Vijji; that when they came back after execution, all of them rode away in the said car; that the witness prepared pointing out memo Ex. PW31/A and also recorded statement of Manish Kumar.

278. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that accused Hitender @ Chhotu led the witness and his team to his house bearing no. R-440, Ram Park Extension, Loni, District, Ghaziabad, U.P.; that they went inside the house of accused Hitender @ Chhotu; that accused Hitender @ Chhotu opened the side cover of one cooler kept on the right side and got recovered a gold chain which was kept in a small polythene bag kept inside the cooler in the tank; that

accused Hitender @ Chhotu disclosed that after the murder of deceased Vijay Yadav @ Vijji, he pulled out the said gold chain from the neck of the deceased; that the chain was found broken and upon minute inspection, some dried blood was also found on some parts of the chain; that the witness kept the golden chain in the same polythene bag, kept the polythene bag in a small plastic box and sealed the same with the seal of KGT; that the witness prepared seizure memo/pointing out memo Ex. PW62/Z2; that the witness and his team went to Police Station Hauz Qazi where the witness deposited the sealed box with the MHC (M) Police Station Hauz Qazi along with copy of seizure memo; that they went to Tis Hazari Courts, where accused Hitender @ Chhotu and Parmod Singh @ Pammy were produced before Id. ACMM and were remanded to judicial custody; that thereafter, the witness returned to his office at Inter State Cell, Crime Branch. On 05<sup>th</sup> August, 2016, PW68 Inspector K.G. Tyagi clarified that during his examination-in-chief on 04<sup>th</sup> August, 2016, he inadvertently mentioned the date of recording of statements of PWs Anju and Dheeraj Sharma as 30<sup>th</sup> January, 2008 whereas the same had actually been recorded on 29<sup>th</sup> January, 2008.

279. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 04<sup>th</sup> February, 2008, a secret informer met the witness in the office of Inter State Cell, Crime Branch, Chanakyapuri at about 08:00

pm and informed that accused Desraj @ Desu, who was wanted in the present case would come at Bus Stand of Dr. Zakir Hussain College, near Ramlila ground, Kamla Market, Delhi at about 10:00 pm or 11:00 pm for meeting some of his relatives and he could be apprehended if raided; that the witness reduced into writing this information vide DD no. 22 dated 04<sup>th</sup> February, 2008 Mark-68F; that upon receiving the said information, the witness along with his team and the secret informer left their office in a private Scorpio car vide DD no. 23 (Mark-68G) and reached Delhi Gate; that the witness asked four or five passers-by to join the raiding party but none agreed and they went away without disclosing their identities; that without wasting time, the police officers reached Zakir Hussain College and on his instructions, the team members took position around the bus stand; that at about 10:30 pm, accused Desraj @ Desu (whom the witness correctly identified) came to the bus stand and at the instance of the secret informer, the witness along with his team apprehended accused Desraj @ Desu and after due interrogation, accused Desraj @ Desu was arrested vide arrest memo Ex. PW62/Z3; that the accused was personally searched vide personal search memo Ex. PW62/Z4; that the witness recorded his disclosure statement Ex. PW62/Z5; that the face of the accused was muffled; that thereafter the belongings recovered in the personal search of the accused were deposited in the malkhana of Police Station Hauz Qazi;



that the witness came back to his office along with his team at about 03:00 am and recorded the statements of SI Mukesh and ASI Rajbir Singh.

280. PW68 Inspector K.G. Tyagi deposed in his examination-in-chief that on 05<sup>th</sup> February, 2008, accused Desraj @ Desu was produced before Id. ACMM in muffled face; that the witness moved an application for Test Identification Parade of the accused, which was marked to Id. Link MM, however the accused refused to join Test Identification Parade proceedings; that thereafter, upon the application of witness, Id. ACMM was pleased to grant one day's police custody remand of accused Desraj @ Desu; that on 06<sup>th</sup> February, 2008 at about 08:30 am, the witness along with his team and accused Desraj @ Desu left the office vide DD no. 4 dated 06<sup>th</sup> February, 2008; that accused Desraj @ Desu led them to Hotel Kwality, Ara Kasha Road, Paharganj, where the accused pointed towards Room no. 66 on 4<sup>th</sup> floor and disclosed that he along with his associates had hatched a conspiracy to kill Vijay Yadav @ Vijji in the said room during the relevant period; that the witness prepared pointing out memo at his instance which is Ex. PW62/Z6; that from the hotel the accused led them to the place of incident i.e. Property no. 2745, Gali Arya Samaj, Sita Ram Bazaar, Delhi and at the instance of the accused, the witness prepared pointing out memo Ex. PW62/Z7; that the accused further led them to Gali Than Singh,

opposite property no. 3570, Bazaar Sita Ram, and disclosed that from that place he had shown the office of deceased Vijay Yadav @ Vijji to accused Praveen Koli on the date of incident to call deceased Vijay Yadav @ Vijji; that the witness prepared pointing out memo at his instance which is Ex. PW62/Z8; that during the stay at Gali Than Singh, Smt. Anju Gupta and Amar Singh also met the witness and identified accused Desraj @ Desu, as involved in the incident on the relevant date; that the witness recorded their statements under section 161 of Code of Criminal Procedure; that the said accused was produced before Id. ACMM, Tis Hazari Courts, and Id. ACMM was pleased to send him to judicial custody; that the witness went to Sant Parmanand Hospital to inquire about the status of accused Ashok Jain but the witness came to know that he had already been discharged from the hospital; that thereafter, the witness came back to the office of Inter State Cell, Crime Branch, Chanakyapuri where the witness recorded the statement of SI Mukesh and ASI Rajbir Singh.

281. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 19<sup>th</sup> February, 2008, on his instructions, HC Rajeev obtained exhibits from the malkhana of Police Station Hauz Qazi and deposited the same at FSL, Rohini; that after HC Rajeev deposited the exhibits, the witness recorded statements of HC Rajeev and HC Suresh Kumar, MHC (M) of Police Station Hauz Qazi under section 161 of Code of

Criminal Procedure, that the witness came back to his office i.e. Inter State Cell, Crime Branch, Chanakyapuri where HC Omender produced copies of two DD entries and kalandra under section 107/151 of Code of Criminal Procedure which were taken into possession by the witness vide seizure memo Ex. PW35/G; that the DD entries are Mark 68H and Mark 68I and the copy of kalandra was Mark 68J; that Abhay Singh, brother of deceased Vijay Yadav @ Viji also arrived at the office of Inter State Cell, Crime Branch, Chanakyapuri and handed over some medical documents to him pertaining to the bullet injuries sustained by him in the year 2002 at Mathura along with copy of sale deed pertaining to property no. 3570-73, Ward no. 9, Gali Thaan Singh, Bazaar Sita Ram, Delhi executed in favour of Suman Yadav wife of Abhay Singh Yadav; that the witness took into possession the said documents vide seizure memo Ex. PW68/C.

282. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 20<sup>th</sup> February, 2008 accused Ashok Jain came to the office of Inter State Cell, Crime Branch, Chanakyapuri; that the witness interrogated accused Ashok Jain (who the witness correctly identified) at length and after discussion with senior officers, the witness arrested accused Ashok Jain vide arrest memo Ex. PW35/H and personally searched him vide memo Ex. PW35/I; that the witness recorded his disclosure statement Ex. PW35/J; that the accused Ashok Jain

voluntarily gave his disclosure statement, however, after reading the same, accused Ashok Jain refused to sign it and endorsement in this regard of the witness was encircled at point B; that the witness deposited the personal belongings recovered during personal search of accused Ashok Jain at the malkhana of Police Station Hauz Qazi; that thereafter, the said witness produced the accused before Id. ACMM at Tis Hazari Courts, Delhi and obtained his one day's police custody remand; that the witness came back to the office of Inter State Cell, Crime Branch along with accused Ashok Jain; that the witness further interrogated Ashok Jain and recorded his supplementary disclosure statement Ex. PW35/K whereby the accused disclosed that he had taken mobile number (mentioned by him in his disclosure statement) on the identity card of his nephew Apoorv Jain and that accused Bhisham @ Chintoo had called on his said mobile number in the night hours on the date of incident i.e. after the committing murder of Vijay Yadav @ Vijji; that accused Ashok Jain further disclosed that the said mobile phone had been lost in the area of Chandni Chowk and that he had lodged an NCR in this regard, copy of which he can get recovered from his house; that thereafter, accused Ashok Jain led the police to his house no. C-2/32, Bapa Nagar, Delhi and got recovered copy of NCR Mark PW53/X which was taken into possession by the witness vide seizure memo Ex. PW35/L; that thereafter, the witness along with his

team came back to their office at Inter State Cell, Crime Branch where the witness recorded statements of SI Ram Avtar and HC Omender.

283. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that during investigation, it came to light that one wanted accused Dimple Tyagi had been killed in a police encounter; that the witness had already taken non-bailable warrants from the Court against absconding accused persons namely Deepak @ Chowda, Kishanpal @ Fauzi and Praveen @ Jojo; that the witness discussed the matter with senior officers and since the stipulated period of ninety days for filing the chargesheet was going to expire, the witness filed chargesheet against accused Bhisham @ Chintoo, Vinod @ Gola, Hitender @ Chhotu, Parveen Koli, Parmod Singh @ Pammy, Desraj @ Desu, Gopal Krishan Aggarwal, Rishi Pal @ Pappu and Ashok Jain before the Court of Id. ACMM, Tis Hazari Courts, Delhi; that on 10<sup>th</sup> March, 2008 and 12<sup>th</sup> March, 2008 in continuation of further investigation of the case, the witness recorded statement of relevant witnesses.

284. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 28<sup>th</sup> May, 2008, a secret informer came to his office and informed that accused Deepak @ Chowda, who was wanted in the present case, would come near Sarvodaya School, A-Block at Sector- 16, Rohini, Delhi to meet his friend Bablu Bihari and that the accused could be apprehended, if raided; that the witness reduced into writing the

said secret information vide DD no. 15, copy of which was Mark 68K; that thereafter the witness along with his team and secret informer departed from their office vide DD no. 16, copy of which was Mark 68L, and reached near Sarvodaya School, A-Block, Sector-16, Rohini and took positions; that after some time, accused Deepak @ Chowda came near the wall of the school and at about 07:00 pm, he was apprehended at the instance of secret informer; that the witness arrested accused Deepak @ Chowda vide arrest memo Ex. PW41/C and personally searched him vide memo Ex. PW41/D; that the face of the accused was muffled; that the accused was brought to the office of AHS, Sector-18, Rohini, Delhi; that the witness carried out sustained interrogation of the accused and recorded his disclosure statement Ex. PW41/E; that the witness got deposited the articles recovered during the personal search of accused Deepak @ Chowda at the malkhana of Police Station Hauz Qazi.

285. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that in the morning of 29<sup>th</sup> May, 2008, the witness and his team left with accused Deepak @ Chowda to Hotel Kwality, Ara Kasha Road, Paharganj, Delhi, where accused Deepak @ Chowda pointed towards Room no. 66, 4<sup>th</sup> Floor and disclosed that he along with his associates had hatched a conspiracy to kill Vijay Yadav @ Viji in the said room; that the witness prepared pointing out memo Ex PW41/F; that the

accused led them to the place of incident in front of property no. 2745, Gali Arya Samaj, Bazaar Sita Ram, Delhi where at the instance of the accused, the witness prepared pointing out memo Ex. PW41/F; that thereafter accused Deepak @ Chowda was produced before Id. ACMM, Tis Hazari Courts, in muffled face; that the witness moved an application for Test Identification Parade of the accused which was marked to learned link MM, however, the accused refused to participate in Test Identification Parade; that upon his application the Id. ACMM was pleased to remand the accused till 01<sup>st</sup> June, 2008 in police custody; that on 30<sup>th</sup> May, 2008 PWs Anju Gupta and Dheeraj Sharma came to the office of AHS, Sector -18, Rohini, Delhi and they identified accused Deepak @ Chowda as being involved in the incident in question; that the witness recorded their statements under section 161 of Code of Criminal Procedure; that the witness handed over custody of accused Deepak @ Chowda to SI Sanjeev for the purpose of recovery as per his disclosure statement; that upon his directions, SI Sanjeev left for Dehradun along with accused Deepak @ Chowda for the said purpose.

286. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 31<sup>st</sup> May, 2008, SI Sanjeev came back to the office along with accused Deepak @ Chowda; that SI Sanjeev told him that accused Deepak @ Chowda had got recovered one golden bracelet of deceased

Vijay Yadav @ Viji from Chaudhary House at Balabala, Dehradun which had been kept by him in a sealed parcel; that on his directions, SI Sanjeev deposited the sealed parcel with malkhana of Police Station Hauz Qazi; that the witness produced accused Deepak @ Chowda before Id. ACMM when the accused was sent to judicial custody; that the witness also moved an application for Test Identification Parade of the case property and the Test Identification Parade was finally conducted on 07<sup>th</sup> June, 2008.

287. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that during investigation, the witness sent notices under section 91 of Code of Criminal Procedure to different mobile service providers to produce record relating to different mobile phone numbers; that the witness obtained the respective Customer Application Forms; that call detail records of the said mobile numbers had already been obtained by him; that the notice under section 91 of Code of Criminal Procedure is Ex. PW68/D-1 to Ex. PW68/D3; that after obtaining the customer application form, the witness came to know that the mobile phone numbers issued to the respective customers named in the forms were not being used by them and instead were being used by accused persons; that the witness made inquiries from the customers mentioned in the forms and recorded statements under section 161 of Code of Criminal Procedure.



288. PW68 Inspector K.G. Tyagi went on to state in his examination-in-chief that on 28<sup>th</sup> June, 2008, one Rajender Singh produced a list of persons working in his office from whom accused Bhisham @ Chintoo had taken money on the pretext of securing jobs for them; that the list was Ex. PW68/E, which was taken into possession by him vide seizure memo Ex. PW68/F; that accused Praveen @ Jojo and Kishanpal @ Fauzi could not be traced and they were declared proclaimed offenders by the Court; that on 18<sup>th</sup> July, 2008, the witness filed supplementary chargesheet after discussion with senior officers.
289. PW68 Inspector K.G. Tyagi correctly identified accused persons Bhisham @ Chintoo, Vinod @ Gola, Hitender @ Chhotu, Parveen Koli, Parmod Singh @ Pammy, Desraj @ Desu, Gopal Krishan Aggarwal, Rishi Pal @ Pappu, Ashok Jain and Deepak @ Chowda.
290. The MHC(M) produced a parcel sealed with the seal of Court. On opening it, an unsealed plastic container containing a gold chain bearing some brown coloured spots at various places with one *kadi* of the chain, was taken out. On seeing it, PW68 Inspector K.G. Tyagi identified the chain as the one which was recovered at the instance of accused Hitender @ Chhotu.
291. The MHC(M) produced another cloth pulanda sealed with the seal of Court. On opening it, a mobile phone of black colour of make Sagem 101X was found. Its battery cover was opened. There was no SIM card

inside the mobile phone. IMEI No. 358529000375580 was printed on the inside of the mobile phone. On seeing it, PW68 Inspector K.G. Tyagi identified the mobile phone as the one recovered at the instance of accused Bhisham @ Chintoo.

292. The MHC (M) produced another cloth pulanda sealed with the seal of the Court. On opening it, a mobile phone of blue colour of make Nokia 2626 was taken out. Its battery cover was opened. There was a SIM card inside the mobile phone with IMEI No.354843011845604. On seeing it, PW68 Inspector K.G. Tyagi correctly identified the mobile phone as being the one recovered from the personal search of accused Rishi Pal @ Pappu.
293. PW68 Inspector K.G. Tyagi was cross-examined at length by Id counsels for accused persons and was finally discharged.
294. PW68 Inspector K.G. Tyagi was recalled for his examination-in-chief because when he had earlier been examined, accused Kishanpal @ Fauzi was proclaimed offender. After accused Kishanpal @ Fauzi was arrested and tried, the witness was re-examined. In his examination-in-chief in respect of Kishanpal @ Fauzi, the witness reaffirmed his earlier testimony. The witness was not cross-examined on behalf of accused persons and was finally discharged.
295. After examination of the abovenamed witnesses, prosecution evidence was closed.

**Statements of accused persons under section 313 of Code of Criminal Procedure**

296. Statements of accused persons were recorded under section 313 of Code of Criminal Procedure. The entire incriminating evidence was put to the accused persons. They were questioned generally on the case. Accused persons pleaded innocence and denied the correctness of evidence. Responses of the accused persons tendered to the key questions posed to them are delineated below.

**Statement of Accused Rishi Pal @ Pappu**

297. In his statement under section 313 of Code of Criminal Procedure, accused Rishi Pal denied that somebody had fired upon Abhay Singh Yadav on 21<sup>st</sup> December, 2002 during the Parikrama of Shani Dev at Kosi. The accused denied that his name had surfaced in the said incident. He denied that this was a cause of dispute between the accused and Abhay Singh Yadav. The accused denied having knowledge of treatment of Abhay Singh Yadav for the resultant injuries.

298. Accused Rishi Pal denied that he had entered into a criminal conspiracy to commit murder of Vijay Singh Yadav @ Viji and for this purpose he and his co-accused Gopal Krishan Aggarwal and Ashok Jain had hired the services of Hitender @ Chhotu, Bheesham @

Chintoo, Praveen Koli, Vinod, Deshraj, Deepak, Kishan Pal and Lokesh Tyagi @ Dimple.

299. Accused Rishi Pal denied that since Abhay Singh Yadav had come to know that accused was hatching a conspiracy to kill the Vijay Yadav, Abhay Singh Yadav asked Vijay Yadav to visit Vaishno Devi temple, Jammu where Vijay Yadav went four or five days prior to his death.
300. Accused Rishi Pal denied that on 29.09.2007, accused Praveen Koli called Vijay Singh Yadav from his office and then, pursuant to the criminal conspiracy, his co-accused Hitender @ Chhotu alongwith other co-accused Praveen Koli, Vinod @ Gola, Deshraj, Deepak, Kishan Pal, Lokesh Tyagi and Bhasham @ Chintoo committed murder of Vijay Yadav @ Vijji on 29<sup>th</sup> September, 2007 at about 07:00 pm at Gali Arya Samaj near Shiv Mandir Bazar Sita Ram, by firing upon him.
301. Accused Rishi Pal denied that on 30<sup>th</sup> September, 2007 at about 3pm or 4 pm, his co-accused called him on his mobile phone and asked him to look after his house.
302. Accused Rishi Pal denied that on 07<sup>th</sup> December, 2007, he and his co-accused Gopal Krishan Aggarwal were arrested vide arrest memos Ex.PW62/K and Ex.PW62/M, that both of him were personally searched vide personal search memos Ex.PW62/L and Ex.PW62/N respectively and they both tendered disclosure statements Ex.PW62/P and Ex.PW62/Q respectively. Accused Rishi Pal denied that in his

personal search, a mobile phone of model Nokia 2626 Ex. PX3 was recovered in which SIM card of mobile no. 9873056281 was used and the same was taken into possession by the police. The accused stated that he was made to sign many blank papers by the Crime Branch officers and those papers might have been used by them for preparing such disclosure statement.

303. Accused Rishi Pal denied that on 22<sup>nd</sup> December, 2007, PW6 HC Shiv Kumar alongwith SI Ram Avtar went to Saini Dhaba, Opposite Truck Union, Khan Colony, Delhi Road, Sonapat, Haryana and after enquiry, SI Ram Avtar took into possession telephone instrument of Beetal Company having SIM card of Airtel no.9896941896 Ex.P1 vide seizure memo Ex.PW6/A and that this fact was corroborated by PW21 Vijay Saini and PW22 Vijender Saini.
304. Accused Rishi Pal denied having knowledge of whether on 16<sup>th</sup> October, 2007, PW68 Insp. K.G. Tyagi took into possession printouts of CDRs of the relevant mobile phones vide seizure memo Ex.PW62/A, which he had obtained earlier and this included mobile phone of the accused.
305. Accused Rishi Pal stated that he has been falsely implicated in this case by PW14 Abhay Yadav in collusion with IO in order to grab the partnership property which was owned by him and PW14 jointly.

306. Accused Rishi Pal stated that the witnesses had deposed against him as they had been tutored and were interested witnesses. According to the accused, the witnesses had deposed at the instance of PW14 Abhay Singh Yadav.

**Statement of Accused Ashok Jain**

307. In his statement under section 313 of Code of Criminal Procedure, accused Ashok Jain denied the following facts:

(i) that Ashok Jain did not get the ticket of a certain political party for contesting elections for post of the Councillor in the month of April, 2007 as Vijay Singh Yadav supported some other candidate of the political party during the said elections;

(ii) that due to this reason, before polling, a quarrel took place between Vijay Singh Yadav on one side and Ashok Jain and co-accused Bhisham @ Chintoo on the other side and both the parties were bound down to keep peace and good behaviour for six months, by the police;

(iii) that about ten or twelve days prior to Vijay Singh Yadav's death, hot words were exchanged between Vijay Singh Yadav and Ashok Jain as supporters of Ashok Jain had diverted towards Vijay Singh Yadav and also because Vijay Singh Yadav had lodged a complaint through PW4 Parmod against co-accused Bhisham @ Chintoo, who was the main supporter of Ashok Jain;

(iv) that prior to the date of the incident, a quarrel had taken place between PW4 Parmod Kumar on one side and co-accused Bhisham @ Chintoo and Chandan who were working with Ashok Jain on the other side as PW4 Parmod Kumar was seen talking to Vijay Singh Yadav on that day due to which all three of them became annoyed, and PW4 Parmod Kumar also lodged a complaint at PP Turqman Gate regarding the said incident.

308. Accused Ashok Jain denied having knowledge about the kalandra proceedings following the dispute between accused Bhisham Kumar and Parmod.

309. Accused Ashok Jain denied having knowledge that his co-accused Bhisham @ Chintoo had strained relations with Vijay Singh Yadav since he was holding Vijay Singh Yadav responsible for not allowing PW4 Parmod Kumar to enter into a compromise with him in the FIR registered against him on the complaint of PW4 Parmod Kumar Singh. Accused Ashok Jain stated that Bhisham @ Chintoo had never worked with him.

310. Accused Ashok Jain denied that he had entered into a criminal conspiracy to commit murder of Vijay Singh Yadav @ Viji and for this purpose he, Gopal Krishan Aggarwal and Rishipal hired the services of co-accused Hitender @ Chhotu, Bhisham @ Chintoo, Praveen Koli, Vinod, Deshraj, Deepak, Kishan Pal and Lokesh Tyagi @ Dimple.

311. Accused Ashok Jain denied that Vijay Singh Yadav was brought to the spot of the incident from his office and he was murdered by co-accused persons Hitender @ Chhotu, Praveen Koli, Vinod @ Gola, Deshraj, Deepak, Kishan Pal, Lokesh Tyagi and Bhisham @ Chintoo on 29<sup>th</sup> September, 2007 at about 7pm at Gali Arya Samaj near Shiv Mandir Bazar Sita Ram, by firing upon him while his co-accused Parmod @ Pammi kept waiting in a Santro Car near Himmatgarh Crossing for the purpose of their fleeing away from the area.
312. Accused Ashok Jain denied having knowledge that on 29<sup>th</sup> September, 2007 at about 07:30 pm near Shiv Mandir, Gali Arya Samaj, Bazar Sita Ram, PW1 Smt. Anju Gupta and PW2 Dheeraj Sharma saw that his co-accused Hitender @ Chhotu, Praveen Koli, Vinod @ Gola, Deepak @ Chaura, Bhisham @ Chintoo, Deshraj @ Deshu and Kishan Pal @ Fauzi had surrounded Vijay Singh Yadav @ Vijji while his co-accused Hitender @ Chhotu along with Kishan Pal @ Fauji were having pistols in their hands and they both shot Vijay Singh Yadav @ Vijji dead.
313. Accused Ashok Jain denied having knowledge that on 30<sup>th</sup> September, 2007 at about 3pm or 4 pm, his co-accused called him on his mobile phone and asked him to look after his house.
314. Accused Ashok Jain denied having knowledge that on 29<sup>th</sup> September, 2007 at about 07:54 pm, a call was received by PW43 SI Kavita at PCR from telephone no.20314915 from a male person who informed her that



one person had been shot near Arya Samaj Mandir, Gali Bazar Sita Ram and the assailants have fled away.

315. Accused Ashok Jain denied having knowledge that PW25 Insp. Anil Kumar recorded statements of PW14 Abhay Singh Yadav, PW4 Parmod Kumar, PW10 Niranjana and PW1 Anju Gupta.
316. Accused Ashok Jain stated that it is a matter of record that PW68 obtained the call detail records of the relevant period and customer application forms of mobile numbers relevant to the case from the respective companies.
317. Accused Ashok Jain lastly stated that it is a false case, that witnesses are interested, that he is innocent and that has been falsely implicated in this case for harming his career.

**Statement of accused Gopal Krishan Aggarwal**

318. In his statement under section 313 of Code of Criminal Procedure, accused Gopal Krishan Aggarwal denied the following:
- (i) that prior to the date of the incident, a quarrel had taken place between PW4 Parmod Kumar on one side and co-accused Bhisham @ Chintoo and Chandan who were working with Ashok Jain on the other side as PW4 Parmod Kumar was seen talking to Vijay Singh Yadav on that day due to which all three of them became annoyed, and PW4 Parmod Kumar also lodged a complaint at PP Turqman Gate regarding the said incident;

- (ii) that about ten or twelve days prior to death of Vijay Singh @ Viji, Vijay Singh Yadav and the accused talked regarding the payment of Rs.36 lacs;
- (iii) that friend of the accused had to pay an amount of Rs.36 Lacs to some other person;
- (iv) that the accused had told Vijay Singh Yadav that friend of the accused did not intend to make the payment;
- (v) that the accused requested Vijay Singh Yadav to intimidate the person to whom the payment was due;
- (vi) that the accused offered to pay Rs. 3 lacs to Vijay Yadav for intimidating the said person;
- (vii) that later Vijay Yadav told the accused that his work has been done by Vijay Yadav;
- (viii) that the accused however informed Vijay Yadav that the accused had got the work done through police;
- (ix) that due to this differences developed between the accused and deceased Vijay Singh Yadav.

319. Accused Gopal Krishan Aggarwal stated that the entire story is the brainchild of the Investigating Officer and the same has not been supported by PW17 Vijay Bansal and PW18 Ashok Gupta.

320. Accused Gopal Krishan Aggarwal further stated that statement under section 161 of Code of Criminal Procedure of PW20 Harjeet Singh is

claimed to have been recorded for the first time on 07<sup>th</sup> December, 2007 and no explanation for the delay has come on record.

321. Accused Gopal Krishan Aggarwal further stated that he had no connection with the alleged dispute involving any person by the name of Supariwala.

322. Accused Gopal Krishan Aggarwal denied the following:

(i) that on 06<sup>th</sup> June, 2007, a complaint of Dinesh Jain Ex.PW23/A against Vijay Bansal was assigned to PW23 Inspector Vipin Bhatia who was posted as Additional SHO, PS Civil Lines for inquiry;

(ii) that PW23 Inspector Vipin Bhatia called Dinesh Jain, Ashok Gupta, Sanjay Jindal and him from the complainant's side and Vijay Bansal and Ranjan from the opposite side for inquiry;

(iii) that on 12<sup>th</sup> July, 2007 the accused, Sanjay Jindal, Vijay Bansal and Ranjan came to office of PW23 Inspector Vipin Bhatia and furnished a compromise deed Ex.PW23/B which was signed by the accused, Vijay Bansal and Ranjan stating that the dispute has been settled.

323. Accused Gopal Krishan Aggarwal further stated that the entire story is fabricated by the Investigating Officer, that his signatures were obtained on blank papers which were later misused, that no such record is available with PS Civil Lines and that he never went to PS Civil Lines.

324. Accused Gopal Krishan Aggarwal denied the terms of the dealings between PW18 Ashok Gupta and PW17 Vijay Bansal, the payment of partial sum, the reported robbery from Ranjan, and the entering of a compromise between Vijay Bansal and Dinesh Jain in his presence at PS Civil Lines.
325. Accused Gopal Krishan Aggarwal denied that on 21<sup>st</sup> December, 2007, PW23 Inspector Vipin Kumar Bhatia handed over complaint Ex.PW23/A, copy of DDs, notice to Vijay Bansal Ex.PW23/C and original settlement deed Ex.PW23/B copy of which is Ex.PX1 which were taken into possession by PW68 Insp. K.G. Tyagi vide seizure memo Ex.PW23/D.
326. Accused Gopal Krishan Aggarwal further stated that all the aforesaid documents are the brainchild of PW23 and the Investigating Officer, that no such settlement which is Ex. PX1 ever took place, and that he was not a party to the same.
327. Accused Gopal Krishan Aggarwal denied that PW34 Tekram alongwith Vijay Singh Yadav went to his office where he had asked Vijay Singh Yadav to refund the Rs.3 Lacs which he had given to Vijay Singh Yadav for settling the dispute on the ground that he had got the matter settled through police;
328. Accused Gopal Krishan Aggarwal denied that Vijay Singh Yadav was demanding the balance money;

329. Accused Gopal Krishan Aggarwal denied that hot words were exchanged between him and Vijay Singh Yadav and both of them extended threats to each other.
330. Accused Gopal Krishan Aggarwal stated that the abovesaid allegations are based on unfounded suspicion and no evidence had come on record to show his connection with accused Hitender @ Chhotu.
331. Accused Gopal Krishan Aggarwal denied that he had entered into a criminal conspiracy to commit murder of Vijay Singh Yadav @ Viji and for this purpose he, Ashok Jain and Rishipal hired the services of co-accused Hitender @ Chhotu, Bhisham @ Chintoo, Praveen Koli, Vinod, Deshraj, Deepak, Kishan Pal and Lokesh Tyagi @ Dimple.
332. Accused Gopal Krishan Aggarwal denied that pursuant to the criminal conspiracy, Vijay Singh Yadav was brought to the spot of the incident from his office and he was murdered by co-accused persons Hitender @ Chhotu, Praveen Koli, Vinod @ Gola, Deshraj, Deepak, Kishan Pal, Lokesh Tyagi and Bhisham @ Chintoo on 29<sup>th</sup> September, 2007 at about 7pm at Gali Arya Samaj near Shiv Mandir Bazar Sita Ram, by firing upon him while his co-accused Parmod @ Pammi kept waiting in a Santro Car near Himmatgarh Crossing for the purpose of their fleeing away from the area.
333. Accused Gopal Krishan Aggarwal denied that on 29<sup>th</sup> September, 2007 at about 07:30 pm near Shiv Mandir, Gali Arya Samaj, Bazar Sita Ram,

PW1 Smt. Anju Gupta and PW2 Dheeraj Sharma saw that his co-accused Hitender @ Chhotu, Praveen Koli, Vinod @ Gola, Deepak @ Chaura, Bhisham @ Chintoo, Deshraj @ Deshu and Kishan Pal @ Fauzi had surrounded Vijay Singh Yadav @ Vijji while his co-accused Hitender @ Chhotu along with Kishan Pal @ Fauji were having pistols in their hands and they both shot Vijay Singh Yadav @ Vijji dead.

334. Accused Gopal Krishan Aggarwal stated that there is not an iota of evidence available on record which might prove any meeting of minds or that he had any connection with other co-accused.

335. Accused Gopal Krishan Aggarwal admitted that on 29<sup>th</sup> September, 2007 at about 07:46 pm, a call was received by PW42 HC Amarpal at PCR from telephone no. 9811607778 from the accused that one person has been shot near Arya Samaj Mandir, Gali Bazar Sita Ram, who has proved the PCR form as Ex.PW42/B.

336. Accused Gopal Krishan Aggarwal further stated that he was the informant and he had made the call from his mobile no. 9811007778 on coming to know about the firing as his shop is situated near the spot of occurrence.

337. Accused Gopal Krishan Aggarwal denied having knowledge of whether PW25 Insp. Anil Kumar recorded statements of PW14 Abhay Singh Yadav, PW4 Parmod Kumar, PW10 Niranjana and PW1 Anju Gupta.

338. Accused Gopal Krishan Aggarwal denied having tendered disclosure statement or supplementary disclosure statement to the police during interrogation. Accused Gopal Krishan Aggarwal stated that the entire proceedings were fabricated.
339. Accused Gopal Krishan Aggarwal denied that on 09<sup>th</sup> December, 2007, pursuant to his disclosure statement, he led the police to his office at 2747, Gali Arya Samaj, Bazar Sita Ram and got recovered copy of the settlement deed Ex.PX1 which was taken into possession vide seizure memo Ex.PW62/T.
340. Accused Gopal Krishan Aggarwal stated that his signatures were obtained on blank papers by the Investigating Officer under duress which were later converted into the aforesaid documents. Accused Gopal Krishan Aggarwal stated that no recovery took place at his instance.
341. Accused Gopal Krishan Aggarwal denied having knowledge that the Investigating Officer obtained the call detail records of the relevant period and customer application forms of mobile numbers relevant to the case from the respective companies.
342. Accused Gopal Krishan Aggarwal stated that it is a false case, that he had been falsely implicated by Inspector K.G. Tyagi and Advocate Ravinder Chaddha who had been engaged by the Investigating Officer to represent the accused. Accused Gopal Krishan Aggarwal stated that

both the said persons were facing trial on his complaint vide FIR No. 34/08, PS ACB (Anti-Corruption Branch).

343. Accused Gopal Krishan Aggarwal stated that the witnesses were deposing falsely. He stated that either the witnesses have not supported the case of the prosecution or their testimony has been totally demolished in cross-examination.

344. Accused Gopal Krishan Aggarwal stated that this is a false case and he had been falsely implicated in the case. He stated that he was detained at PS Crime Branch illegally from 06<sup>th</sup> October, 2007, that after obtaining his signatures on blank papers under duress, the entire proceedings were manipulated by the Investigating Officer to suit his ends, and that nothing incriminating was recovered or recorded at his instance.

**Statement of Accused Parmod Singh @ Pammy**

345. In his statement under section 313 of Code of Criminal Procedure, accused Parmod Singh @ Pammy denied that he and his co-accused persons alongwith Lokesh @ Dimple Tyagi and Kishan Pal @ Fauji had entered into a criminal conspiracy to commit murder of Vijay Singh Yadav @ Vijji.

346. Accused Parmod Singh @ Pammy denied that pursuant to the criminal conspiracy, he alongwith co-accused Praveen Koli, Vinod @ Gola, Deshraj, Hitender@Chotu, Deepak@ Chowda Kishan Pal, Lokesh Tyagi and Bhisham @ Chintoo committed murder of Vijay Yadav @ Vijji on  
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29<sup>th</sup> September, 2007 at about 07:00 pm at Gali Arya Samaj near Shiv Mandir Bazar Sita Ram, where he kept waiting in a Santro Car near Himmatgarh Crossing for the purpose of their fleeing away from the area.

347. Accused Parmod @ Pammi denied having knowledge of the following:
- (i) that after the incident, upon receiving information from the PCR vide DD No.15A Ex.PW25/B, PW25 Insp.Anil Kumar Sharma went to the spot where Inspector Giri Raj Meena, PW11 Insp.Rajender Dubey, PW24 SI Horam and PW26 SI Mahmood Ali were also present;
  - (ii) that they found lot of blood lying on the side of the road and one empty cartridge case was also found at the spot;
  - (iii) that the victim was stated to have been shifted to LNJP Hospital;
  - (iv) that after leaving other police staff including PW24 SI Horam at the spot to guard the same, PW25 went to LNJP Hospital, collected the MLC of deceased;
  - (v) that duty constable PW27 Ct. Yashbir handed over a pulanda purported to be containing the clothes of the deceased sealed with the seal of hospital which was taken into possession by PW25 vide seizure memo Ex.PW25/A;
  - (vi) that in presence of PW27 Ct. Yashbir the personal search articles of the deceased were seized by PW25 vide seizure memo Ex. PW25/D.

348. Accused Parmod @ Pammi stated that MLC of deceased Vijay Singh Yadav dated 29<sup>th</sup> March, 2007 prepared by Dr. Anuj Jain as Ex.PW51/A is a matter of record.
349. Accused Parmod Singh @ Pammy denied having tendered his confessional statement to the police. He denied having pointed out the place of parking near Himmatgarh Crossing, where he had allegedly parked the vehicle at the time of the incident.
350. Accused Parmod @ Pammi stated that the witnesses are false and interested, and that the accused is innocent.

**Statement of accused persons Parveen Koli, Bhisham @ Chintoo, Deepak @ Chowda, Desraj @ Desu, Kishanpal @ Fauzi and Hitender @ Chhotu**

351. Responses of accused persons Parveen Koli, Bhisham @ Chintoo, Deepak @ Chowda, Desraj @ Desu, Kishanpal @ Fauzi and Hitender @ Chhotu to questions under section section 313 of Code of Criminal Procedure are by and large akin to each other, and are sketched out together to avoid repetition.
352. In their respective statements under section 313 of Code of Criminal Procedure, accused persons Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi and Desraj @ Desu denied having knowledge that co-accused Ashok Jain did not get the ticket from a certain political party for contesting elections of Councillor in the month of April 2007 and Vijay Yadav @ Vijji was supporting the other

candidates of the political party during the said elections and due to this reason, before polling, a quarrel took place between the deceased on one side and the co-accused persons Ashok Jain and Bhisham @ Chintoo on the other side and both the parties were bound down to keep peace and good behaviour for six months by the police. Accused Bhisham @ Chintoo stated the abovesaid fact to be incorrect.

353. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi and Desraj @ Desu denied having knowledge that about ten or twelve days prior to death of deceased, 'hot words' were exchanged between Vijay Yadav @ Vijji and the co-accused Ashok Jain (who was Ex-Councillor of the area) as supporters of co-accused Ashok Jain were diverted towards Vijay Singh Yadav and as Vijay Singh Yadav had lodged a complaint through PW-4 Pramod against the co-accused Bhisham @ Chintoo who was the main supporter of the co-accused Ashok Jain. They further denied having knowledge that about 10-12 days prior to death of Vijay Yadav @ Vijji, PW-20 Harjeet Singh was present in office where Vijay Yadav @ Vijji and co-accused Gopal Krishan Aggarwal were talking regarding the payment of Rs.36 lacs and it was revealed that friend of Gopal Krishan Aggarwal had to pay an amount of Rs.36 lacs to someone and co-accused Gopal Krishan Aggarwal told to Vijay Yadav @ Vijji that his friend did not intend to make the payment and requested Vijay Yadav @ Vijji to intimidate the

person to whom the payment was to be made and he offered to pay Rs.3 lacs to deceased through him to intimidate the said person. They further denied having knowledge that Vijay Yadav @ Vijji told PW-20 Mr. Harjeet Singh that work of Gopal Krishan Aggarwal has been done by accused Hitender @ Chhotu whereas Gopal Krishan Aggarwal was telling Harjeet Singh that he had got his work done through police and due to which differences developed between the co-accused Gopal Krishan Aggarwal and Vijay Yadav @ Vijji. They further denied having knowledge that Vijay Yadav told PW-20 Mr. Harjeet Singh that co-accused Rishipal @ Pappu was involved in the incident of shooting upon his brother Abhay Yadav during Kosi Yatra and about a week before his death, Vijay Yadav @ Vijji told him that co-accused Rishipal @ Pappu made a complaint to his brother Abhay Yadav that Vijay Yadav had planned to kill Rishipal @ Pappu due to which hot words were exchanged between Vijay Yadav and Rishipal @ Pappu and Abhay Yadav. However, accused Bhasham @ Chintoo stated the abovesaid fact to be incorrect.

354. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi and Desraj @ Desu denied having knowledge that prior to the date of incident, a quarrel took place between PW-4 Pramod Kumar on one side and accused Bhasham @ Chintoo and Chandan who were working with co-accused Ashok Jain on the other

side as PW-4 Pramod Kumar was seen talking with deceased Vijay Yadav @ Vijji on that day due to which all the three co-accused became annoyed and PW-4 Pramod Kumar also lodged a complaint at Police Post - Turqman Gate regarding the said incident. However, Bhisham @ Chintoo denied that he did not work with Ashok Jain and complaint lodged at Police Post Turqman Gate has no link with Vijay Singh.

355. Accused Hitender @ Chhotu, Bhisham @ Chintoo, Parveen Koli, Desraj @ Desu, Deepak @ Chowda and Kishanpal @ Fauzi stated it to be a matter of record that PW-52 Constable Kedar Singh has proved the Kalandra proceedings against Bhisham @ Chintoo and Chandan dated 10<sup>th</sup> September, 2007 by DD No.14, PP Turqman Gate as Ex.PW52/A, Copy of Kalandra and DD No.14 as Mark PW52/B and Mark PW52/C.
356. Accused Hitender @ Chhotu, Parveen Koli, Desraj @ Desu, Deepak @ Chowda and Kishanpal @ Fauzi and Bhisham @ Chintoo stated it to be a matter of record that on 19<sup>th</sup> February, 2008, PW-35 HC Omender handed over two DD entries of Police Post Turkman Gate i.e. DD No.24 dated 24<sup>th</sup> August, 2007 and DD No.14 dated 10<sup>th</sup> Septmber, 2007, Mark 68H and Mark 68I and copy of Kalandara Mark 68J to PW-68 Inspector K.G. Tyagi which were taken into possession vide seizure memo Ex.PW35/G.
357. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu denied having knowledge that

accused Bhisham @Chintoo who was working with accused Ashok Jain had strained relations with deceased Vijay Yadav @ Vijji since he was holding the deceased responsible for not allowing PW-4 Pramod Kumar to enter into a compromise with him in the FIR registered against him on the complaint of PW-4 Pramod Kumar Singh. However, accused Bhisham @ Chintoo denied the same.

358. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi and Desraj @ Desu and Bhisham @ Chintoo denied having knowledge that accused Gopal Krishan Aggarwal used to visit the office of deceased Vijay Yadav @ Vijji and a half month prior to the incident, the co-accused Gopal Krishan Aggarwal had talked with PW34 Tekram and asked him to come to his office along with Vijay Yadav @ Vijji.

359. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo denied having knowledge that on the asking of the accused Gopal Krishan Aggarwal, he later on told him that one Supariwala, friend of co-accused Gopal Krishan Aggarwal had to make some payment to Vijay Bansal.

360. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo denied having knowledge that accused Gopal Krishan Aggarwal approached

accused Hitender @ Chhotu for help so that Vijay Bansal should not harass Supariwala in future and for this purpose a consideration of Rs.7 lacs was fixed to be paid to Vijay Yadav @ Viji and that he had settled the said dispute through accused Hitender @ Chhotu.

361. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo denied having knowledge that on 06<sup>th</sup> June, 2007, complaint of Dinesh Jain Ex.PW23/A against Vijay Bansal was assigned to PW-23 Inspector Vipin Bhatia who was posted as additional SHO, PS Civil Lines for inquiry.
362. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo denied having knowledge that Inspector Vipin Bhatia called Dinesh Jain, Ashok Gupta, Sanjay Jindal and the co-accused Gopal Krishan Aggarwal from the complainant side and Vijay Bansal and Ranjan from the opposite side for inquiry.
363. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo denied having knowledge that on 12<sup>th</sup> July, 2007 accused Gopal Krishan Aggarwal, Sanjay Jindal, Vijay Bansal and Ranjan came to his office from the opposite side and furnished a compromise Deed Ex.PW23/B which was signed by Vijay Bansal, Gopal Krishan Aggarwal and

Ranjan stating that the dispute has been settled.

364. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo denied having knowledge that PW-18 Ashok Gupta owed Rs.36 lacs to PW-17 Vijay Bansal.
365. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintu denied having knowledge that out of the said amount he had paid Rs.10 lacs and for the remaining amount, one Dinesh Jain stood as a guarantor.
366. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo denied having knowledge that he had paid Rs.18 Lacs to Ranjan, son of sister of PW-17 Vijay Bansal which was reported to be robbed from Ranjan and further in PS Civil Lines, a compromise took place between Vijay Bansal and Dinesh Jain in presence of the co-accused Gopal Krishan Aggarwal and amount was settled for Rs.8 lacs.
367. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo denied having knowledge that on 21<sup>st</sup> December, 2007, PW-23 Inspector Vipin Kumar Bhatia handed over the complaint Ex. PW23/A, copy of DD's, notice to Vijay Bansal Ex. PW23/C and original settlement deed Ex.PW23/B copy of which is Ex.PXI which were taken into possession



by PW-68 Insp. K.G. Tyagi vide seizure memo Ex. PW23/D.

368. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhasham @ Chintoo denied having knowledge that PW-34 Tekram along with Vijay Singh Yadav went to the office of co-accused Gopal Krishan Aggarwal where accused Gopal Krishan Aggarwal had asked Vijay Yadav @ Vijji (deceased) to refund Rs.3 lacs which he had given to Vijay Singh Yadav (deceased) for settling the dispute.
369. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhasham @ Chintoo denied having knowledge that accused Gopal Krishan Aggarwal had got the matter settled through police whereas Vijay Singh was demanding the balance amount of the said settlement and heated words were exchanged between Vijay Yadav @ Vijji (deceased) and Gopal Krishan Aggarwal and they extended threats to each other.
370. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi denied that the accused Gopal Krishan Aggarwal had hired accused Hitender @ Chhotu and his associates through the deceased to settle the financial disputes with PW-17 Vijay Bansal. However, accused Bhasham @ Chintoo and Desraj @ Desu denied having knowledge about the same.

371. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi denied that when the dispute was resolved, the co-accused Gopal Krishan Aggarwal refused to pay the balance amount and told that he got the matter settled through PS Civil Lines and was demanding back the 'advance' from the deceased. However, accused Bhisham @ Chintoo and Desraj @ Desu denied having knowledge about the same.
372. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo denied having knowledge that somebody fired upon Abhay Singh Yadav on 21<sup>st</sup> December, 2002, during the Parikarma of Shani Dev at Kosi and name of accused Rishipal @ Pappu surfaced in the said incident and due to this, a dispute arose between younger brother of PW-14 Abhay Singh Yadav, namely, Ajay Singh and accused Rishipal @ Pappu.
373. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo denied having knowledge that PW-7 Dr. B.B. Chauhan proved the treatment record dated 21<sup>st</sup> December, 2002 given by him to Abhay Singh Yadav having alleged history of sustained firearm injury on the scalp as Ex.PW7/A.
374. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Desraj @ Desu and Bhisham @ Chintoo denied having knowledge that PW-50

Dr. Deepak Vats has proved the medical report of PW-14 Abhay Yadav dated 24<sup>th</sup> December, 2002 prepared by Dr. Rajender Prasad as Ex.PW50/A.

375. Accused Hitender @ Chhotu, Deepak @ Chowda, Desraj @ Desu, Bhisham @ Chintoo, Parveen Koli and Kishanpal @ Fauzi denied having knowledge and stated to be a matter of record that on 19<sup>th</sup> February, 2008 PW-14 Abhay Singh Yadav handed over some medical documents pertaining to bullet injuries sustained by him in the year 2002 and copy of sale deed of property No. 3570-73, Ward No.9, Gali Than Singh, Bazar Sita Ram, Delhi executed in favour of his wife Suman Yadav which were taken into possession by the IO vide seizure memo Ex.PW68/C. Accused stated this fact to be a matter of record.
376. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo denied that they along with Lokesh @ Dimple Tyagi (since deceased) and Kishanpal @ Fauzi entered into a criminal conspiracy to commit murder of Vijay Yadav @ Vijji and for this purpose, the accused Gopal Krishan Aggarwal, Rishipal @ Pappu and Ashok Jain hired the services of above accused persons, Vinod and Lokesh Tyagi @ Dimple (since deceased).
377. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo denied that

since PW14 Abhay Singh Yadav came to know that accused Ashok Jain, Rishipal @ Pappu, Desraj @ Desu and Gopal Krishan Aggarwal were hatching conspiracy to kill Vijay Singh @ Vijji (deceased), PW14 Abhay Singh Yadav asked the deceased to visit Vaishno devi temple, Jammu, where he (deceased Vijay Singh @ Vijji) visited 4/5 days prior to his death.

378. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo denied that PW-4 Pramod Kumar and PW-10 Niranjan had stated that at about 07.00-07:15 pm, when they were sitting at the office of deceased Vijay Yadav @ Vijji at 3570, 2<sup>nd</sup> Floor, Gali Than Singh, Sita Ram Bazar, Delhi, the co-accused Parveen Koli came there and asked deceased Vijay Yadav @ Vijji to come out of the office as one Bhai Sahib had come and was standing outside the Gali and thereafter, deceased Vijay Yadav @ Vijji picked up his two mobile phones, wore his wrist watch and left the office along with accused Parveen Koli. However, as regards the fact that Vijay Yadav @ Vijji left the office along with accused Praveen Koli after wearing wrist watch and picking up two mobile phones accused Hitender @ Chhotu and Deshraj @ Desu denied the same.

379. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo denied that on the date of incident at about 07:15 PM, PW-19 Amar Singh Yadav

had seen his son-deceased Vijay Yadav @ Vijji, coming from Gali Than Singh along with accused Parveen Koli, Bhisham @ Chintoo and Deshraj @ Desu and had told PW-19 Amar Singh Yadav that he was going to Gali Arya Samaj.

380. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo denied that pursuant to the criminal conspiracy, accused persons, namely, Praveen Koli, Vinod @ Gola, Deshraj, Kishanpal @ Faizo, Lokesh Tyagi (since deceased) and Bhisham @ Chintoo committed murder of Vijay Yadav @ Vijji on 29<sup>th</sup> September, 2007 at about 07:00 pm at Gali Arya Samaj near Shiv Mandir, Sita Ram Bazar, by firing upon him.
381. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo denied that during the incident, accused Pramod Singh @ Pammi kept waiting in a Santro Car near Himmatgarh crossing for the purpose of fleeing away from the area.
382. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo denied that on 29<sup>th</sup> September, 2007 at about 07.30 pm near Shiv Mandir, Gali Arya Samaj Sitarram Bazar, PW-1 Smt. Anju Gupta and PW-2 Vijay Sharma saw them surrounding Vijay Yadav @ Vijji, while accused Hitender @ Chhotu and Kishanpal @ Fauzi were holding pistols in their hands and

they both shot dead Vijay Yadav @ Vijji.

383. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo denied that about 20-25 minutes of the departure of deceased Vijay Yadav @ Vijji from his office, PW-1 Smt. Anju Gupta came to the office of the deceased and informed that some assailants had fired upon Vijay Yadav @ Vijji near Shiv Mandir, Gali Arya Samaj and after hearing this, PW-4 Pramod Kumar and PW-10 Niranjan Singh went near Shiv Mandir and saw blood was lying at the spot and public had gathered, where they came to know that Vijay Yadav @ Vijji was shifted to Irwin Hospital and when they reached there, they came to know that Vijay Yadav @ Vijji had expired. However, accused Parveen Koli, Deepak @ Chowda and Bhisham @ Chintoo denied having knowledge about shifting of Vijay Singh to Irwin Hospital.
384. Accused Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, and Bhisham @ Chintoo denied having knowledge that on 30<sup>th</sup> September, 2007 at about 03:00-04:00 pm, the accused Vinod @ Gola called PW-63 Deepak Kumar on his mobile phone and asked him to look after his house. However, accused Hitender @ Chhotu and Desraj @ Desu denied the same.
385. Accused Hitender @ Chhotu, Parveen Koli, Kishanpal @ Fauzi, Desraj @ Desu, Deepak @ Chowda and Bhisham @ Chintoo denied having

knowledge and stated these facts to be a matter of record that on 29<sup>th</sup> September, 2007 at about 07.54pm, a call was received by PW-43 SI Kavita at PCR from telephone no. 20314915 from one male person that one person had been shot near Arya Samaj Mandir, Gali Bazar Sita Ram and assailants fled away and had proved the PCR form as Ex.PW43/B.

386. Accused Hitender @ Chhotu, Parveen Koli, Kishanpal @ Fauzi and Desraj @ Desu, Deepak @ Chowda and Bhisham @ Chintoo denied having knowledge and stated it to be a matter of record that on 29<sup>th</sup> September, 2007 at about 07.46 pm, a call was received by PW-42 HC Amarpal at PCR from telephone no. 9811607778 from Gopal Krishan informing that one person had been shot near Arya Samaj Mandir, Gali Bazar Sita Ram; assailants fled the spot and had proved the PCR form as Ex.PW42/B.

387. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo denied having knowledge that between 07.45 pm to 08.00 pm, upon receiving a call that Vijji Chacha (deceased) had been shot, PW-46 Deepak Sharma rushed to the spot and accompanied the deceased Vijay Yadav @ Vijji to the hospital where he (deceased Vijay Yadav @ Vijji) was declared brought dead.

388. Accused Hitender @ Chhotu and Deshraj @ Desu stated it to be a matter of record that during the course of investigation, police had prepared site plan Ex.PW25/E at the instance of PW46 Deepak Sharma. However, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi and Bhisham @ Chintoo denied having knowledge of the same.
389. Accused Deepak @ Chowda, Hitender @ Chhotu, Parveen Koli, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo denied having knowledge that after the incident, upon receiving information from the PCR vide DD no. 15A Ex.PW25/B, PW-25 Inspector Anil Sharma went to the spot where Inspector Giri Raj Meena, PW-11 Inspector Rajender Dubey, PW-24 SI Horam and PW-26 SI Mahmood Ali were also present. Further, accused Hitender @ Chhotu and Deshraj @ Desu stated the same to be a matter of record.
390. Accused Hitender @ Chhotu, Parveen Koli, Kishanpal @ Fauzi, Desraj @ Desu, Deepak @ Chowda and Bhisham @ Chintoo denied having knowledge that PW-25 Inspector Anil Sharma found lot of blood lying on the side of the road and one empty cartridge case was also found at the spot. Further, accused Hitender @ Chhotu and Deshraj @ Desu stated the same to be a matter of record.
391. Accused Hitender @ Chhotu, Parveen Koli, Kishanpal @ Fauzi, Desraj @ Desu, Deepak @ Chowda and Bhisham @ Chintoo denied having knowledge that PW-25 Inspector Anil Sharma came to know that the



victim had been shifted to LNJP Hospital and after leaving other police staff including PW-24 SI Horam at the spot to guard the same, PW-25 went to LNJP Hospital. Further, accused Hitender @ Chhotu and Deshraj @ Desu stated the same to be a matter of record.

392. Accused Hitender @ Chhotu, Parveen Koli, Kishanpal @ Fauzi, Desraj @ Desu, Deepak @ Chowda and Bhisham @ Chintoo denied having knowledge denied having knowledge that PW-25 Inspector Anil Sharma collected the MLC of deceased where duty constable/ PW-27 Ct. Yashbir handed over a pullanda purportedly containing the clothes of the deceased sealed with the seal of hospital, which was taken into possession by PW-25 vide seizure memo Ex.PW25/A; in the presence of PW-27 Ct. Yashbir the personal search articles of the deceased were also seized by PW-25 vide seizure memo Ex.PW25/D. Further, accused Hitender @ Chhotu and Deshraj @ Desu also stated the same to be a matter of record.

393. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo stated it to be a matter of record that PW-51 B.S. Bhati record clerk of LNJP Hospital proved the MLC of deceased Vijay Yadav @ Viji dated 29.03.2007 prepared by Dr. Anuj Jain Ex.PW51/A.

394. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo stated it to

be a matter of record and denied having knowledge that since no eye witness met PW25 at the hospital, he made endorsement Ex.PW25/C, proved on DD No. 15/A Ex.PW25/B and handed over the same to PW-26 SI Mahmood Ali for registration of FIR.

395. Accused Deepak @ Chowda, Hitender @ Chhotu, Parveen Koli, Kishanpal @ Fauzi, Bhisham @ Chintoo and Desraj @ Desu denied having knowledge and stated it to be a matter of record that on 29<sup>th</sup> September, 2007, upon receiving the Rukka from PW-26 SI Mahmood Ali, PW-37 SI Mahender Singh lodged Kaimi DD No. 18A Ex.PW37/C and registered the FIR Ex.PW37/A made endorsement on the Rukka Ex.PW37/D.
396. Accused Deepak @ Chowda, Hitender @ Chhotu, Parveen Koli, Kishanpal @ Fauzi, Bhisham @ Chintoo and Desraj @ Desu denied having knowledge and stated it to be a matter of record that PW37 SI Mahender Singh proved DD No. 19A Ex.PW37/D regarding conclusion of FIR and the return of special messenger/ PW-3 Ct. Rakesh vide DD No. 6A dated 30<sup>th</sup> September, 2007 as Ex.PW37/E.
397. Accused Hitender @ Chhotu, Parveen Koli, Kishanpal @ Fauzi, Bhisham @ Chintoo and Desraj @ Desu and Deepak @ Chowda denied having knowledge and stated it to be a matter of record that PW-3 Constable Rakesh Kumar was handed over with special report regarding murder at 10.40 pm and he delivered the reports to Ilaka

MM, DCP Office and ACP office.

398. Accused Hitender @ Chhotu, Parveen Koli, Kishanpal @ Fauzi, Bhisham @ Chintoo and Desraj @ Desu Deepak @ Chowda denied having knowledge and stated it to be a matter of record that on 29<sup>th</sup> September, 2007 upon receipt of information, PW-33 Inspector Anil Kumar who was Mobile Crime Team Incharge, Central District reached at the spot along with his team and photographer/ PW-39 Ct. Dinesh Kumar inspected the site, took photographs Ex.PW25/D1 to Ex.PW25/D12 and PW-33 prepared his report Ex.PW33/A.
399. Accused Hitender @ Chhotu, Parveen Koli, Kishanpal @ Fauzi, Bhisham @ Chintoo and Desraj @ Desu Deepak @ Chowda denied having knowledge and stated it to be a matter of record that PW-25 Inspector Anil Kumar came back to the spot along with PW-46 Deepak Sharma from the hospital where Crime Team inspected the spot and photographs Ex.PW25/D1 to Ex.PW25/D-12 were taken.
400. Accused Hitender @ Chhotu, Parveen Koli, Kishanpal @ Fauzi, Bhisham @ Chintoo and Desraj @ Desu Deepak @ Chowda denied having knowledge and stated it to be a matter of record that Crime Team Photographer proved the photographs PW25/DI to Ex.PW25/D12 and handed over the negatives of the same Ex.PW39/A (colly).

401. Accused Hitender @ Chhotu, Parveen Koli, Kishanpal @ Fauzi, Bhisham @ Chintoo and Desraj @ Desu Deepak @ Chowda denied having knowledge and stated it to be a matter of record that at the instance of PW-46 Deepak Sharma, PW-25 prepared site plan Ex.PW25/E, and PW-26 SI Mahmood Ali came back to the spot and handed over copy of FIR and original rukka to PW-25 Inspector Anil Kumar.
402. Accused Hitender @ Chhotu, Parveen Koli, Kishanpal @ Fauzi, Bhisham @ Chintoo and Desraj @ Desu Deepak @ Chowda denied having knowledge and stated it to be a matter of record that PW-25 Inspector Anil Kumar lifted blood, blood stained earth and earth control from the spot and took into possession the same vide seizure memos Ex.PW25/H, Ex.PW25/I, Ex.PW25/J.
403. Accused Hitender @ Chhotu, Parveen Koli, Kishanpal @ Fauzi, Bhisham @ Chintoo and Desraj @ Desu Deepak @ Chowda denied having knowledge and stated it to be a matter of record that PW25 Inspector Anil Sharma prepared sketch of the recovered empty cartridge from the spot Ex.PW25/F and took into possession the same vide seizure memo Ex.PW25/G and deposited the same with MHC(M), PS Hauz Qazi.
404. Accused Hitender @ Chhotu, Parveen Koli, Kishanpal @ Fauzi, Bhisham @ Chintoo and Desraj @ Desu Deepak @ Chowda denied

having knowledge and stated it to be a matter of record that PW-25 Inspector Anil Kumar prepared the inquest documents Ex.PW25/K after identification of dead body vide statements Ex.PW14/A and Ex.PW19/A by PW-14 Abhay Singh Yadav and PW-19 Amar Singh Yadav.

405. Accused Parveen Koli, Kishanpal @ Fauzi, Bhasham @ Chintoo and Deepak @ Chowda denied having knowledge that when PW-14 Abhay Singh Yadav saw the dead body of his deceased brother, he found his gold bracelet, one heavy chain of gold, another heavy gold chain with gold locket in the shape of "V" and purse, missing. Accused Hitender @ Chhotu and Desraj @ Desu also denied having knowledge about the same and stated the same to be a matter of record.

406. Accused Hitender @ Chhotu, Parveen Koli, Kishanpal @ Fauzi, Desraj @ Desu and Bhasham @ Chintoo and Deepak @ Chowda denied having knowledge and stated it to be matter of record that on 30<sup>th</sup> September, 2007, PW-8 Dr. Ankita Dey conducted the post-mortem upon the dead body of Vijay Singh Yadav @ Vijji vide report Ex.PW8/A, as per which, there were five entry wounds and two exit wounds of gunshot injuries and the cause of death was combined effect of cranio cerebral damage and haemorrhage and shock consequent upon penetrating injuries to the head and abdomen caused by projectile of a rifled firearm and injuries no. 1 to 6 were sufficient to cause death in ordinary course of

nature.

407. Accused Hitender @ Chhotu, Parveen Koli, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo and Deepak @ Chowda and Bhisham @ Chintoo denied having knowledge that PW-14 Abhay Singh Yadav after receiving information that his brother deceased Vijay Singh Yadav had been shot, reached at LNJP hospital where Vijay Yadav @ Viji was declared dead by the doctor. Accused Hitender @ Chhotu and Deshraj @ Desu also stated it to be matter of record.
408. Accused Hitender @ Chhotu, Parveen Koli, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo and Deepak @ Chowda and Bhisham @ Chintoo denied having knowledge that PW14 Abhay Singh identified the dead body of the deceased vide statement Ex.PW14/A and after the post mortem, obtained the dead body vide memo Ex.PW14/B for last rites. Accused Hitender @ Chhotu and Deshraj @ Desu also stated the same to be a matter of record.
409. Accused Hitender @ Chhotu, Deepak @ Chowda, Kishanpal @ Fauzi Bhisham @ Chintoo, Parveen Koli and Desraj @ Desu denied that PW-25 Inspector Anil Kumar recorded statements of PW-14 Abhay Singh Yadav, PW-4 Pramod Kumar, PW-10 Niranjana and PW-1 Anju Gupta.
410. Accused Deepak @ Chowda, Praveen Koli, Kishanpal @ Fauzi and Bhisham @ Chintoo denied that on 24<sup>th</sup> December, 2007, PW-68 Inspector K.G. Tyagi prepared site plan Ex.PW68/B at the instance of

PW-1 Anju Gupta and PW-2 Dheeraj Sharma. However, accused Hitender @ Chotu and Deshraj @ Desu denied having knowledge of the same and stated this fact to be a matter of record.

411. Accused Hitender @ Chhotu, Parveen Koli, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo and Deepak @ Chowda denied having knowledge and stated this fact to be a matter of record that on 07<sup>th</sup> January, 2008, PW-46 Inspector Devender Singh, draughtsman, crime branch visited the spot and took rough notes and measurements on the pointing out of Inspector Anil Sharma, in the presence of PW-68 Inspector K.G. Tyagi.

412. Accused Hitender @ Chhotu, Parveen Koli, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo and Deepak @ Chowda denied having knowledge and stated this fact to be a matter of record that PW46 Inspector Devender Singh prepared scaled site plan Ex.PW46/A and handed over the same to the IO PW-68 Insp. K.G. Tyagi.

413. Accused Hitender @ Chhotu, Parveen Koli, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo and Deepak @ Chowda denied having knowledge and stated this fact to be a matter of record that on 08<sup>th</sup> October, 2007, Inspector Rajendra Dubey collected four sealed parcels sealed with the seal of Department of Forensic Medicine, MAMC, SKK alongwith sample seal in presence of PW-5 Ct. Rajendra Kumar from PW-13 Phaghu Baitha, Laboratory Asst. which were seized vide seizure

memo Ex.PW5/A.

414. Accused Hitender @ Chhotu, Parveen Koli, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo and Deepak @ Chowda denied having knowledge and stated this fact to be a matter of record that on 25<sup>th</sup> November, 2007, on receiving secret information vide DD No. 3 Ex.PW40/A, PW-40 Inspector Shyam Sunder apprehended the co-accused Vinod @ Gola and Bhisham @ Chintoo and PW-40 Inspector Shyam Sunder reduced the proceedings vide DD No. 4 Ex.PW40/F at Crime Branch, Prashant Vihar.
415. Accused Hitender @ Chhotu, Parveen Koli, Kishanpal @ Fauzi, Desraj @ Desu, Bhisham @ Chintoo and Deepak @ Chowda denied having knowledge and stated this fact to be a matter of record that on 25<sup>th</sup> November, 2007, upon receiving DD No. 7A Ex.PW68/A, PW-68 Inspector K.G. Tyagi reached the office of ISC Crime Branch, Chankya Puri and arrested the co-accused Bhisham @ Chintoo and Vinod @ Gola vide arrest memos Ex.PW40/B and Ex.PW40/C and personally searched them vide personal search memos Ex. PW40/D and Ex.PW40/E.
416. Accused Deepak @ Chowda, Praveen Koli, Kishanpal @ FAuji, Bhisham @ Chintoo, Hitender @ Chhotu and Deshraj @ Desu denied that PW-68 Insp. K.G. Tyagi recorded the disclosure statements of accused Bhisham @ Chintoo and Deepak @ Chowda, Ex.PW62/B,



Ex.PW62/C, respectively; obtained copy of DD No. 4 Ex.PW40/F regarding apprehension of abovenamed accused persons from PW-40 SI Shyam Sunder.

417. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo denied that on 26<sup>th</sup> November, 2007, at the instance of accused Vinod @ Gola and Bhisham @ Chintoo, PW-68 Inspector K.G. Tyagi prepared the pointing out memos Ex.PW62/E and Ex.PW62/D respectively of Hotel Quality, Ara Kasha Road, Paharganj, Delhi, where accused Deepak @ Chowda alongwith his associates stayed before murder and planned for the same.
418. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo denied that at the instance of the accused Vinod @ Gola and Bhisham @ Chintoo, pointing out memos Ex.PW62/G and ExPW62/F, respectively of the place of incident were prepared on 27<sup>th</sup> November, 2007; their further supplementary disclosure statements Ex.PW62/H and Ex.PW62/I, respectively were also recorded.
419. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo denied that on 05<sup>th</sup> December, 2007, accused Bhisham @ Chintoo got recovered one gold chain of deceased, Ex.P2 from the container of Tea leaves which

was kept in the house of one Rajender Chaudhary at Balawal, Dehradun which was taken into possession vide seizure memo Ex.PW41/A.

420. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhasham @ Chintoo denied having knowledge that on 06<sup>th</sup> December, 2007, accused Bhasham@ Chintoo got recovered one mobile phone make SAGEM 101X, Ex.PX-2 from his house which was taken into possession by PW-68 Inspector K.G. Tyagi vide seizure memo Ex.PW62/J.

421. Accused Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi and Desraj @ Desu and Bhasham @ Chintoo denied having knowledge and stated it to be a matter of record that on 07<sup>th</sup> December, 2007, accused Gopal Krishan Aggarwal and Rishipal @ Pappu were arrested vide arrest memos Ex.PW62/K and Ex.PW62/M respectively and they were personally searched vide personal search memos Ex.PW62/L and Ex.PW62/N respectively.

422. Accused Hitender @ Chhotu and Deshraj @ Desu denied that the co-accused Gopal Krishan Aggarwal and Rishipal @ Pappu made disclosure statements Ex.PW62/P and EX.PW62/Q respectively. Further, accused Parveen Koli, Kishanpal @ Fauzi, Bhasham @ Chintoo and Deepak @ Chowda denied having knowledge of the same and stated this fact to be a matter of record.

423. Accused Deepak @ Chowda, Parveen Koli, Bhisham @ Chintoo, Kishanpal @ Fauzi, Hitender @ Chhotu and Deshraj @ Desu denied having knowledge and stated it to be a matter of record that in personal search of Rishipal @ Pappu, one mobile phone make Nokia 2626 Ex.PX3 was recovered in which SIM card of Mobile no. 9873056281 was used and the same was taken into possession by PW-62 Inspector K.G. Tyagi vide seizure memo Ex.PW62/O.
424. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo denied that on 09<sup>th</sup> December, 2007, PW-68 recorded supplementary disclosure statements of accused Gopal Krishan Aggarwal and Rishipal @ Pappu Ex. PW62/R and Ex.PW62/S respectively.
425. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi and Bhisham @ Chintoo denied having knowledge that the disclosure statement was made by accused Gopal Krishan Aggarwal, who led the police to his office at 2747, Gali Arya Samaj, Bazar Sita Ram and got recovered one copy of settlement deed Ex.PX1 which was taken into possession vide seizure memo Ex.PW-62/T; they denied having knowledge about the recovery of Settlement Deed.
426. Accused Deepak @ Chowda, Parveen Koli, Bhisham @ Chintoo, Kishanpal @ Fauzi, Hitender @ Chhotu and Deshraj @ Desu stated it to be a matter of record that on 10<sup>th</sup> January, 2008, at the instance of secret

informer the accused Praveen Koli was arrested vide arrest memo Ex.PW35/A and he was personally searched vide personal search memo Ex.PW35/B. Further, accused Hitender @ Chhotu and Desraj @ Desu also denied having knowledge of the same.

427. Accused Deepak @ Chowda, Parveen Koli, Kishanpal @ Fauzi and Deshraj @ Desu denied having knowledge and stated it to be a matter of record that accused Hitender @Chhotu was arrested by PW-56 HC Azad of Crime Branch, Prashant Vihar in case FIR No. 15/08 Mark68/B, under section 25 arms Act on 27<sup>th</sup> January, 2008. Further, accused Hitender @ Chhotu stated that he was falsely implicated in case FIR No. 15/8 and had already been acquitted. Accused Bhisham @ Chintoo, denied the same.

428. Accused Hitender @ Chhotu, Parveen @ Koli, Kishanpal @ Fauzi, Deshraj @ Desu, Bhisham @ Chhotu and Deepak @ Chowda denied that disclosure statement MarkPW56/A was made by accused Hitender @ Chhotu vide which, he admitted his involvement in the present case and after receiving the intimation, on 28<sup>th</sup> January, 2008 PW-68 Inspector K.G. Tyagi went there and arrested him vide arrest memo Ex.PW62/U.

429. Accused Deepak @ Chowda, Parveen Koli, Kishanpal @ Fauzi and Hitender @ Chhotu denied having knowledge about the personal search memo and stated it to be a matter of record that accused

Hitender @ Chhotu was personally searched vide memo Ex.PW62/V and Inspector K.G.Tyagi recorded his disclosure statement Ex.PW62/W. Accused Bhisham @ Chintoo and DEshraj @ Desu denied the same.

430. Accused Deepak @ Chowda, Kishanpal @ Fauzi, Parveen Koli and Bhisham @ Chintoo denied that on 30<sup>th</sup> January, 2008, at the instance of accused Hitender @ Chhotu, one Santro car bearing no. UA-07-T-5312 (correct number) which was used by him and his associates for fleeing away from the spot after incident was seized from Rawat Mohalla, Village Balawala, Dehradun by PW-67 SI Mukesh vide seizure memo Ex. PW41/B. Further, accused Hitender @ Chhotu stated that santro car was not seized at his instance and he had no link with the said car. Further, accused Deshraj @ Desu denied having knowledge of the same and stated it to be a matter of record.
431. Accused Hitender @ Chhotu, Parveen @ Koli, Deepak @ Chowda, Desraj @ Desu, Kishanpal @ Fauzi and Bhisham @ Chintoo denied that on 01<sup>st</sup> February, 2008, at instance of accused Hitender @ Chhotu, police team visited House No. F-440, Ram Park Extension, Loni, Ghaziabad, U.P. from where he got recovered one gold chain of the deceased Ex.P1 from the cooler kept in his house which was taken into possession vide seizure memo Ex.PW62/Z2.

432. Accused Hitender @ Chhotu, Parveen @ Koli, Deepak @ Chowda, Desraj @ Desu and Bhisham @ Chintoo and Kishanpal @ FAuzi stated that it to be a matter of record that on 30<sup>th</sup> January, 2008, accused Pramod @ Pammi was arrested in case FIR No.40/08, PS DBG Road vide memo Ex.PW57/A. Further, they all denied that accused Pramod @ Pammi made any disclosure statement Ex.PW57/B.
433. Accused Deepak @ Chowda, Parveen Koli, Bhisham @ Chhotu, Kishanpal @ Fauzi, Hitender @ Chhotu and Desraj @ Desu stated that recording of DD No. 15 Mark 68/C vide which information from Special Team, Crime Branch, Prashant Vihar in case FIR No. 40/08, Mark68/E regarding arrest of accused Pramod @ Pammi is a matter of record. They further denied that on 31<sup>st</sup> January, 2008, PW-68 Insp. K.G. Tyagi went to the office of Special Team and obtained the copy of FIR, disclosure statement Ex.PW57/A and arrested Pramod@Pammi vide arrest memo Ex.PW57/C, and recorded disclosure statement Ex.PW57/D of accused Pramod @ Pammi.
434. Accused Hitender @ Chhotu, Deepak @ Chowda, Desraj @ Desu Parveen @ Koli, Kishanpal @ Fauzi and Bhisham @ Chintoo denied that on 01<sup>st</sup> February, 2008, PW-68 Inspector K.G. Tyagi recorded supplementary disclosure statement of accused Hitender @ Chhotu EX.PW62/Z.
435. Accused Hitender @ Chhotu, Parveen @ Koli, Deepak @ Chowda,

Desraj @ Desu, Kishanpal @ Fauzi and Bhisham @ Chintoo denied that accused Hitender @ Chhotu and Pramod @ Pammi led the police party to Room No.66 of Hotel Quality where the planning of murder was done by them and at the instance of Pramod Singh @ Pammi pointing out memo Ex-PW62/Z1 was prepared.

436. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo denied that accused Hitender @ Chhotu and Pramod @ Pammi led the police to Fasil Road Himmat Garh Chowk near Hamdard Building where they pointed out the place near temple where he parked Santro Car bearing no.UA-07T-5313 while its ignition on, on the date of incident and in which after commission of murder they all fled away and PW-68 Inspector K.G.Tyagi prepared pointing out memo Ex.PW31/A.

437. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo denied that accused Pramod Singh @ Pammy pointed out towards the place near Himmatgarh crossing where the vehicle was parked by him before the murder and thereafter used for fleeing away by him and co-accused persons and at his instance in presence of PW-31 Manish kumar Gola pointed out memo EX.PW31/A was prepared.

438. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo stated it to

be a matter of record that on 04<sup>th</sup> February, 2008, upon receiving secret information vide DD no.23, Mark 68F, PW-68 and his team left the office of Crime Branch vide DD no.23, Mark 68G, reached at the bus stand of Zakir Hussain College, Delhi and he was apprehended. Further, accused Hitender @ Chhotu and Deshraj @ Desu also denied having knowledge about the same.

439. Accused Hitender @ Chhotu, Bhisham @ Chintoo, Parveen @ Koli, Deepak @ Chowda, Kishanpal @ Fauzi and Desraj @ Desu stated it to be a matter of record that co-accused Deshraj @ Desu was arrested vide arrest memo Ex.PW62/Z3 and he was personally searched vide personal search memo Ex.PW62/Z4.
440. Accused Hitender @ Chhotu, Bhisham @ Chintoo, Parveen @ Koli, Deepak @ Chowda, Kishanpal @ Fauzi and Desraj @ Desu denied having knowledge that co-accused Desraj @ Desu pointed out the place of occurrence vide memo Ex.PW-62/Z8 and the place from where he had shown the office of deceased Vijay Singh Yadav @ Viji to co-accused Praveen Koli.
441. Accused Deepak @ Chowda, Parveen Koli, Kishanpal @ Fauzi, Bhisham @ Chhotu, Hitender @ Chhotu and Deshraj @ Desu stated to be a matter of record that accused Ashok Jain was arrested vide Ex.PW35/H and was searched vide memo Ex.PW35/I. Further, they denied that no disclosure statement of accused Ashok Jain was recorded; accused



Hitender @ Chhotu and Deshraj @ Desu denied having knowledge and stated to be a matter of record that in disclosure statement, accused Ashook Jain disclosed that mobile phone through which he received a call from accused Bhisham @ Chhotu after the incident was lost; got recovered copy of NCR Mark 53/X which was seized vide memo Ex.PW35/L. Further, accused Deepak @ Chowda, Parveen Koli and Bhisham @ Chhotu denied the fact of mobile call.

442. Accused Hitender @ Chhotu, Deepak @ Chowda, Parveen Koli, Desraj @ Desu, Bhisham @ Chintoo and Kishanpal @ Fauzi denied having knowledge and stated it to be a matter of record that on 28<sup>th</sup> May, 2008, upon receiving secret information vide DD no.15 Mark 68/A, PW68 Inspector K.G. Tyagi left along with his team from the office of Crime Branch vide DD no. 16 Mark 68L and apprehended co-accused Deepak @ Chauda from Sarvodaya School, A-Block, Sec. 16 Rohini, Delhi.

443. Accused Hitender @ Chhotu and Desraj @ Desu denied having knowledge and stated it to be a matter of record that accused Deepak @ Chowda was arrested vide arrest memo Ex.PW41/C and was personally searched vide memo Ex.PW41/D and gave his disclosure statement Ex.PW41/E. Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi and Bhisham @ Chintoo denied recording of any disclosure statement however, stated the fact of arrest and personal search of accused Deepak @ Chowda to be a matter of record.

444. Accused Hitender @ Chhotu, Parveen @ Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo denied having knowledge that on 30<sup>th</sup> May, 2008 accused Deepak @ Chowda got recovered the bracelet of deceased Ex.P3 from the Lawn of Chaudhary Niwas, VPO Balawala, Dehradun which was taken into possession vide seizure memo Ex.PW35/M.
445. Accused Hitender @ Chhotu, Parveen @ Koli, Kishanpal @ Fauzi, Bhisham @ Chintoo, Deepak@ Chowda and Desraj @ Desu denied having knowledge and stated to be a matter of record that on 16<sup>th</sup> June, 2009, PW-54 Inspector Dharam Singh arrested co-accused Kishanpal @ Fauzi (since Proclaimed Offedner) vide memo Ex.PW54/A. Further they denied that accused Kishanpal @ Fauzi made disclosure statement Ex.PW54/B; further, as regards, TIP proceedings they stated that the same to be a matter of record.
446. Hitender @ Chhotu, Parveen @ Koli, Kishanpal @ Fauzi, Bhisham @ Chintoo, Deepak@ Chowda and Desraj @ Desu denied having knowledge and stated it to be a matter of record that on 17.01.2008, PW-12 Sh. Vidya Prakash, Ld.MM had conducted TIP proceedings of the case property i.e. gold chain and the locket on which "V" was inscribed Ex.PW12/E upon application Ex.PW12/D whereby the witness Abhay Singh Yadav had correctly identified the case property. Further, accused Deepak @ Chowda, Parveen Koli and Bhisham @

Chhotu stated that no gold chain or locket were recovered and the same were planted and identified to create incriminating evidence against accused persons. Accused Hitender @ Chhotu and DEshraj @ Desu denied having knowledge and stated to be a matter of record regarding recovery of gold chain and locket.

447. Accused Hitender @ Chhotu, Kishanpal @ Fauzi, Deepak@ Chowda and Desraj @ Desu denied having knowledge and stated it to be a matter of record that PW-9 Sh. Pulastya Pramachala, Ld. MM had conducted TIP proceedings of accused Hitender @ Chhotu Ex.PW9/B upon application Ex.PW9/A whereby he had refused to join the TIP proceedings. Further, accused Parveen Koli and Bhisham @ Chhotu denied the same.

448. Accused Hitender @ Chhotu, Parveen @ Koli, Pramod @ Pammi, Bhisham @ Chintoo, Deepak@ Chowda and Desraj @ Desu stated it to be a matter of record that on 02<sup>nd</sup> June, 2008, PW-61 Sh. Ajay Gupta, Ld. MM had conducted TIP Proceedings of the case property, however, denied having knowledge of one gold bracelet Ex.PW61/E upon application Ex.PW61/D in this regard whereby the witness PW-14 Abhay Singh Yadav correctly identified the same.

449. Accused Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi and Bhisham @ Chintoo stated it to be a matter of record that on 05<sup>th</sup> February, 2008, PW-12 Sh. Vidya Prakash, Ld.MM had conducted the

TIP proceedings of accused Deshraj Ex. PW12/B upon application Ex.PW12/A whereby he refused to join the TIP proceedings. Further, accused Hitender @ Chhotu and Deshraj @ Desu admitted the same stating that the face of Deshraj @ Desu was already shown to witnesses, which fact was also informed to Ld. MM.

450. Accused Deepak @ Chowda admitted that PW-61 Sh. Ajay Gupta, Ld. MM had conducted his TIP proceedings Ex.PW61/B on 29<sup>th</sup> May, 2008 on application Ex. PW61/A in this regard whereby he refused to participate in TIP proceedings. However, accused Hitender @ Chhotu, Parveen Koli, Kishanopal @ Fauzi, Bhasham @ Chintoo denied having knowledge about the same and stated the same to be a matter of record.
451. Accused Hitender @ Chhotu and Deshraj @ Desu denied having knowledge and stated it to be a matter of record that on 18<sup>th</sup> December, 2007, PW-68 Insp. K.G. Tyagi visited Hotel Quality, 53, Aara Kasha Road, Paharganj, Delhi and had taken into possession the guest entry register Ex.PW36/B handed over by PW-36 Satnam Singh vide seizure memo Ex.PW36/A. However, accused Deepak @ Chowda, Parveen Koli, Kishanpal @ Fauzi and Bhasham @ Chintoo denied the same stating that records have been fabricated.
452. Accused Hitender @ Chhotu and Desraj @ Desu denied having knowledge and stated it to be a matter of record that PW36 Satnam Singh handed over entry register containing the entry no. 3243 dated

20<sup>th</sup> September, 2007 and 3384 dated 28<sup>th</sup> September, 2007 in his name and in the name of one Devi Singh. Further, accused Deepak @ Chowda, Parveen Koli, Kishanpal @ Fauzi and Bhisham @ Chintoo denied the same stating that records have been fabricated.

453. Accused Hitender @ Chhotu, Deepak @ Chowda and Bhisham @ Chintoo, Parveen@ Koli, Desraj @ Desu, Kishanpal @ Fauzi denied having knowledge that on 22<sup>nd</sup> December, 2007, PW-6 HC Shiv kumar along with SI Ram Avtar went to Saini Dhaba, Opposite Truck Union Khan Colony, Delhi Road, Sonapat, Haryana and after enquiry, SI Ram avtar took into possession telephone instrument of Beetal company having SIM card of Airtel no. 9896941896 EX. P1 vide seizure memo Ex.PW6/A.

454. Accused Hitender @ Chhotu and Desraj @ Desu denied having knowledge that police took into possession the mobile phone make Nokia 2310 having IMEI no. 355532015014239 Ex.PW29/I belonging to PW-29 Surender Kumar Tiwari vide seizure memo through which they made calls at Delhi from Dehradun. Further, accused Deepak @ Chowda, Bhisham @ Chintoo, Parveen Koli and Kishanpal @ Fauzi denied the same.

455. Accused Hitender @ CHhotu and Deshraj @ Desu denied having knowledge that the mobile phone make Nokia 1100 having IMEI no. 3555030004248546 Ex.PW30/I belonging to PW-30 Sumitra Pawar was

seized vide seizure memo Ex.PW30/A through which they made calls at Delhi from Dehradun. Further, accused Deepak @ Chowda, Parveen Koli, Kishanpal @ Fauzi and Bhisham @ Chintoo denied the same.

456. Accused Hitender @ Chhotu, Bhisham @ Chintoo, Parveen Koli, Deepak @ Chowda, Desraj @ Desu and Kishanpal @ Fauzi stated it to be a matter of record that PW-38 HC Suresh Kumar made entries at serial no. 1841, 1844, 1857A, 1853, 1895 and 1842 in register no.19 and proved them as Ex.PW38/A to Ex.PW38/G.

457. Accused Hitender @ Chhotu, Deepak @ Chowda, Desraj @ Desu and Kishanpal @ Fauzi denied having knowledge that PW-48 Devender Kumar was the subscriber of Mobile Phone no 9873722524 of Hutch company and the said mobile number was being used by him, his family members including his brother/ co-accused Bhisham @ Chintoo. Further, accused Bhisham @ Chintoo stated that the said mobile phone was kept at home and was being used by all the family members.

458. Accused Hitender @ Chhotu and Desraj @ Desu denied having knowledge that during investigation, it was revealed that a mobile phone connection was obtained by using driving license of PW-49 Ankush Kanwar as a proof of identity. Further, accused Deepak @ Chowda, Parveen Koli, Kishanpal @ Fauzi and Bhisham @ Chintoo denied the same.

459. Accused Hitender @ Chhotu and Desraj @ Desu denied having knowledge that PW49 Ankush Kanwar had already lost the said driving license in the month of May 2007 and has made NCR regarding the same, copy of which is Mark-49/A. Further, accused Deepak @ Chowda, Parveen Koli, Kishanpal @ Fauzi and Bhisham @ Chintoo denied the same.
460. Accused Hitender @ Chhotu, Bhisham @ Chintoo, Parveen @ Koli, Deepak @ Chowda, Desraj @ Desu, Kishanpal @ Fauzi denied having knowledge and stated it to be a matter of record that PW44 obtained the CDRs of the relevant period and CAF of mobile nos. relevant to the case from the respective companies vide notices under section 91 Cr. P.C. Ex. PW68/DI and Ex.PW68/D2.
461. Accused Hitender @ Chhotu, Bhisham @ Chintoo, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Parveen Koli stated it to be a matter of record that PW-44 Israr Babu from Vodafone company has proved the CAF of mobile phone no. 9953205136 issued in the name of Vinod Kumar S/o Ramesh Chand as Ex.PW44/A.
462. 110. Accused Hitender @ Chhotu, Bhisham @ Chintoo, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Parveen Koli stated it to be a matter of record that PW44 Israr Babu has proved the CAF of mobile phone no. 9873056281 issued in the name of Shiv Kumar S/o Ramesh Kumar as Ex. PW44/B, CAF of mobile phone no. 9761065298

issued in the name of Shiv Kumar S/o Jaidarth as Ex. PW44/B.

463. Accused Hitender @ Chhotu, Bhisham @ Chintoo, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Parveen Koli stated it to be a matter of record that PW44 Israr Babu has proved the CAF of mobile phone no.9761065298 issued in the name of Ankush kumar S/o Keshar Singh as Ex. PW44/C, CDR of mobile phone no.9953205136 and certificate under section 65B of Indian Evidence Act as Ex. PW44/D.

464. Accused Hitender @ Chhotu, Bhisham @ Chintoo, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Parveen Koli stated it to be a matter of record that PW44 Israr Babu has proved Ex. PW44/E, CDR of mobile phone no.9873056281 and certificate under section 65B of Indian Evidence Act as 44/F and Ex. PW44/G and CDR of mobile no.9761065298 and certificate under section 65B of Indian Evidence Act as Ex. PW44/H and Ex. PW44/I.

465. Accused Hitender @ Chhotu, Bhisham @ Chintoo, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Parveen Koli stated it to be a matter of record that PW-45 Chander Shekhar, Nodal Officer, Bharti Airtel has proved the CAF of mobile phone no. 9896941896 issued in the name of Vijay S/o Silak Ram as Ex. PW45/A.

466. Accused Hitender @ Chhotu, Bhisham @ Chintoo, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Parveen Koli stated it to be a matter of record that PW60 Rajiv Ranjan, Nodal Officer, Tata Tele



Services Pvt. Ltd. has proved the CAF of mobile phone no.9250542424 issued in the name of Rajvir S/o Naduli as Ex. PW60/A and the CAF of mobile phone no. 9213659939 issued in the name of Ajay S/o Om parkash as Ex.PW60/B.

467. Accused Hitender @ Chhotu, Bhisham @ Chintoo, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Parveen Koli denied having knowledge that that on 16<sup>th</sup> October, 2007, PW-68 Insp. K.G. Tyagi took into possession the printouts of the CDRs of the relevant mobile phones vide seizure memo Ex.PW62/A.

468. Accused Hitender @ Chhotu, Bhisham @ Chintoo, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Parveen Koli stated it to be a matter of record that on 27<sup>th</sup> December, 2007, PW-38 HC Suresh Kumar handed over eight sealed parcels to PW-41 ASI Jai Singh vide RC no.102/21 Ex.PW38/H which were deposited by him in FSL and on 17<sup>th</sup> January, 2008 PW-38 HC Suresh Kumar handed over one sealed parcel for TIP through SI Mukesh Vide RC No.2/21/08 Ex.PW38/I.

469. Accused Hitender @ Chhotu, Bhisham @ Chintoo, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Parveen Koli stated it to be a matter of record that on 27<sup>th</sup> December, 2007, PW-65 Naresh Kumar, Sr. Scientific Assistant (Biology) received 8 sealed parcels in his division out of which he examined 5 sealed parcels which were containing three deformed bullets Ex.PX2 (colly), white pant with belt, Baniyan, shirt,

underwear and handkerchief it is evidence against you that Ex.PY2, dark brown gauge clothe piece Ex.PY3 and cotton wool swab Ex.PY4.

470. Accused Hitender @ Chhotu, Bhisham @ Chintoo, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Parveen Koli stated it to be a matter of record that PW65 Naresh Kumar has examined the same and found that blood was detected on the concrete material, clothes, deformed bullets, dark brown gauge clothe piece and cotton wool swab and prepared his report Ex.PW65/A and serological report Ex.PW65/B.

471. Accused Hitender @ Chhotu, Bhisham @ Chintoo, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Parveen Koli denied having knowledge and stated it to be a matter of record that again on 26<sup>th</sup> February, 2010, one sealed parcel was received in his division which was found containing one gold chain upon which blood was detected of B Group and of human Origin and he prepared his report Ex.PW 65/C and serological report Ex.PW65/C.

472. Accused Hitender @ Chhotu, Bhisham @ Chintoo, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Parveen Koli stated it to be a matter of record that on 19<sup>th</sup> February, 2008, on the instructions of PW-68 Insp. K. G. Tyagi, PW-58 HC Rajiv Kumar obtained sealed pulanda from MHC(M) and deposited the same at FSL Rohini vide RC No. 5/21/08.

473. Accused Hitender @ Chhotu, Bhisham @ Chintoo, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Parveen Koli stated it to be a matter of record that PW-64 Punit Puri received the sealed parcel in his division at FSL Rohini on 26<sup>th</sup> May, 2008.
474. Accused Hitender @ Chhotu, Bhisham @ Chintoo, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Parveen Koli stated it to be a matter of record that the parcel was found containing one broken metallic chain with brown stains and PW64 Punit Puri found gunshot residue particles on the edges of the broken portion of the said chain and gave his report Ex.PW64/A in this regard.
475. Accused Hitender @ Chhotu, Bhisham @ Chintoo, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Parveen Koli stated it to be a matter of record that on 01<sup>st</sup> July, 2008, Punit Puri received four sealed parcels in his division which were found containing one 9mm fired cartridge case, three deformed bullets and two swabs of right and left hand respectively and found that a cartridge case and deformed bullets were ammunitions.
476. Accused Hitender @ Chhotu, Bhisham @ Chintoo, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Parveen Koli stated it to be a matter of record that PW64 Punit Puri gave his detailed report Ex.PW64/B in this regard and identified the broken chain as Ex.P1, fired empty cartridge as Ex.PX1 three deformed bullets as Ex.PX2

(colly) and the swabs as Ex.PX3 and Ex.PX4.

477. Accused Hitender @ Chhotu, Parveen Koli, Deepak @ Chowda, Kishanpal @ Fauzi, Desraj @ Desu and Bhisham @ Chintoo stated that this is a false case, that witnesses are interested, their testimony is false and that the accused persons are innocent.

### **Defence Evidence**

478. Accused Gopal Krishan Aggarwal alone led defence evidence.
479. Accused persons Rishi Pal @ Pappu and Ashok Jain had declined to lead evidence in their defence. Accused Kishanpal @ Fauzi also stated, on 5<sup>th</sup> March, 2020, that he does not wish to lead defence evidence.
480. Statements under section 313 of Code of Criminal Procedure of accused Hitender @ Chhotu and Desraj @ Desu were recorded twice because some of the witnesses of the prosecution had to be recalled for their examination owing to the accused persons absconding during trial. The accused persons had, in their initial statement, evinced interest in leading defence evidence. However, later when they were tried separately on being re-arrested, they declined to lead defence evidence (on 5<sup>th</sup> March, 2020).
481. Initially, accused Parmod Singh @ Pammy, Parveen Koli, Bhisham @ Chintoo and Deepak @ Chowda stated that they do wish to lead defence evidence. By order dated 3<sup>rd</sup> July, 2017, accused persons were directed to file list of defence witnesses within a week from that day

and to either produce the witnesses by themselves or to seek issuance of summons to them. These accused persons took none of those steps. The case remained at the stage of defence evidence for more than one year. However, these accused persons did not lead evidence. Accused Gopal Krishan Aggarwal was the only one to lead evidence in defence. The case was finally fixed for final arguments, after Gopal Krishan Aggarwal had led defence evidence.

482. Accused Gopal Krishan Aggarwal examined Israr Babu, Alternate Nodal Officer, Vodafone Mobile Services Ltd. as DW1, ACP Mahender Pal as DW2 and Ajeet Singh as DW3. The accused also sought to rely on certain documents. He filed certified copies thereof. Ld Public Prosecutor stated that he does not dispute the genuineness of the documents. By order dated 4<sup>th</sup> April, 2018, it was directed that the documents would be read in evidence without formal proof. Those documents are:

- a. Supplementary statement of ACP Joy Tirkey, SIT, Crime Branch under section 161 of Code of Criminal Procedure;
- b. Statement of Constable Ajit Kumar recorded under section 161 Code of Criminal Procedure;
- c. Certified copy of DD No. 3A PS Chandni Mahal; and
- d. Chargesheet of case titled State Vs K.G. Tyagi and Ors. FIR No. 34/2008.

483. DW1 Mr. Israr Babu, Alternate Nodal Officer, Vodafone Mobile Services Ltd. produced customer application form of mobile no.9873079992 alongwith identity proofs submitted at the time of the application. He stated in his examination-in-chief that as per record, the said mobile number was issued in the name of Vipin Kumar S/o Uttam Chand, R/o G-5/15 (90 metres), Second Floor, Sector 11, Rohini, Delhi. He identified the aforesaid record as Ex.DW-1/A (collectively). The same witness also produced customer application form of mobile no. 9811007778 alongwith identity proofs submitted at the time of the application. He stated in his examination-in-chief that as per record, the said mobile phone number was issued in the name of Abhinav Krishan Aggarwal S/o Gopal Krishan Aggarwal, R/o 2496, Gali Kashmerian, Sadak Prem Narain, Churiwalan, Bazar Sita Ram, Delhi. He identified the aforesaid record as Ex.DW-1/B (collectively).
484. DW1 Mr. Israr Babu further stated that the call detail records and the location chart of the above numbers for the period from 20.09.2007 to 10.12.2007 could not be brought since copies of the same could not be obtained from the system being more than one year old. The witness deposed that as per Licence Agreement Mark DW-1A, the data of more than one year old is destroyed in the systems unless otherwise directed by the licensor.

485. DW1 Mr. Israr Babu also stated that he cannot produce the call detail records of the mobile 9811007778 in the name of Abhinav Krishan Aggarwal for the period of 20.09.2007 to 20.12.2007 as, according to the policy of his company, the record is maintained only for one year. The witness was not cross-examined Id. Addl. Public Prosecutor despite grant of opportunity.
486. DW2 ACP Mahender Pal, PIO, Anti-Corruption Branch, GNCT of Delhi, Delhi deposed in his examination-in-chief that on 4.4.2011, Gopal Krishan Aggarwal had submitted an application seeking supply of information under the Right to Information Act regarding call details of the various telephone numbers mentioned in the said application. Copy of the said application was identified by the witness as Ex.DW2/A. The witness stated that pursuant to the application, the then PIO sent reply vide letter dated 6.5.2011 to Gopal Krishan Aggarwal, which the witness identified as Ex.DW2/B. The witness stated that the call detail records of the phone numbers mentioned in reply Ex.DW2/B were not available with the police but the same may be in the form of a compact disc available on the file of case FIR No. 34/2008 of PS ACB. In his cross-examination by Ld. Additional Public Prosecutor, the witness admitted that he had only brought the record of his office and he had no personal knowledge of case FIR No. 34/2008, PS ACB.

487. DW-3 Sh. Ajeet Singh deposed in his examination-in-chief that he had brought copy of customer service form bearing No.0297163 of mobile no. 9911542789 as the original could not be found; that he had brought copy of electoral voter identity card of Mukesh Kumar Singh and copy of Delhi Police identity card in the name of SI Mukesh Kumar Singh bearing No. 0113459; that mobile no. 9911315653 in the name of Rabir Singh was active from 01.11.2006 till 02.02.2009; that as per the directions of Ministry of Communications & Information Technology by letter No. 19-3/2012-S-I dated 17.05.2012, the customer application form and documents of the subscriber were to be preserved for the period of three years after permanent disconnection of the number and the said record could be destroyed thereafter, unless directed otherwise by the licensor or a Court of law; that this direction had been passed by ADG (Security) Mr. M.A.Rehman, copy of which was Mark A. In his cross-examination by learned Addl. Public Prosecutor, the witness stated that he did not have any personal knowledge of the case.

488. With the aforesaid evidence, the defence evidence was closed.

### **Contentions**

489. The case was taken up for final arguments.

490. Ld. Addl. Public Prosecutor argued that the prosecution has succeeded



in proving its case against the accused persons, particularly accused persons Parveen Koli, Bhisham @ Chintoo, Deepak @ Chowda, Desraj @ Desu, Kishanpal @ Fauzi and Hitender @ Chhotu, beyond doubt. It is urged that on the basis of evidence available on record, the accused persons are liable to be convicted of the alleged offences. Ld Addl. Public Prosecutor has submitted that the eye witnesses have fully supported the case of the prosecution and have identified the abovenamed six accused persons as the assailants. Ld Addl. Public Prosecutor has pointed out that medical evidence has corroborated the allegations and it is argued that minor contradictions in the testimony of witnesses is to be ignored, in view of the overwhelming evidence in the nature of ocular testimony.

491. Ld. Counsels for accused persons have, on the other hand, broadly argued that the prosecution has failed to convincingly prove the allegations. They have advanced distinct arguments for the respective accused persons and the submissions, therefore, deserve independent mention. Instead of outlining the contentions of the accused persons here and then recapitulating them at the time of their appraisal, which will contribute to prolixity, it is deemed fit to set them out alongside the corresponding evidence and then to deal with each contention simultaneously.

492. Having considered the evidence on record, submissions advanced by Ld. Addl. Public Prosecutor as well as Id counsel for accused persons, and the written submissions filed by accused Gopal Krishan Aggarwal, I shall proceed to assess whether the prosecution has been able to bring home the guilt of the accused persons.

493. The offences are being considered distinctly.

**Offence of Murder**

494. Charge for the offence of murder has been framed against accused persons Hitender Singh @ Chhotu, Parveen Koli, Bhisham @ Chintoo, Vinod Kumar @ Gola, Desh Raj @ Desu, Deepak @ Chowda and Kishanpal @ Fauzi. From among these, accused Vinod Kumar @ Gola is not facing trial in these proceedings and this judgment does not relate to him. This Court has to, therefore, consider whether, according to the evidence led before it, accused persons Hitender Singh @ Chhotu, Parveen Koli, Bhisham @ Chintoo, Desh Raj @ Desu, Deepak @ Chowda and Kishanpal @ Fauzi are proven to have committed the offence of murder.

495. As noted above, these persons are accused of committing murder of Vijay Yadav on 29<sup>th</sup> September, 2007 at about 07:00 pm at a place near Shiv Mandir, Bazaar Sita Ram, Gali Arya Samaj.

### **Appraisal of evidence and findings**

496. To prove its case against these accused persons, the prosecution has examined a number of witnesses and has presented a multitude of documents. To conveniently examine the evidence against these accused persons, it would be apt to congregate them by form. This is attempted by classifying the evidence as public witnesses, official witnesses (including police officers) and scientific evidence (including doctors).

### **Public Witnesses**

497. The allegations of the prosecution against accused persons Hitender Singh @ Chhotu, Parveen Koli, Bhisham @ Chintoo, Desh Raj @ Desu, Deepak @ Chowda and Kishanpal @ Fauzi of committing murder of Vijay Yadav rest primarily on direct eye-witness account. According to the prosecution, witnesses Anju Gupta and Dheeraj Sharma had seen the incident. They have been examined as PW1 and PW2, respectively. As the fate of these accused persons hinges substantially on the testimony of PW1 Anju Gupta and PW2 Dheeraj Sharma, it requires close scrutiny.

498. PW1 Anju Gupta stated, in her examination-in-chief, that on 29<sup>th</sup> September, 2007, at about 7:30 p.m., she was going towards Shiv Mandir, Gali Arya Samaj. She stated that ten or fifteen steps away from

the temple, she saw five or six persons surrounding Vijay Yadav. She could identify three boys among them as those who she had seen on earlier occasions in Bazaar Sita Ram. She also stated that two persons out of remaining persons were having pistols in their hand. The witness stopped there for some time. She saw that two boys who were carrying pistols fired at Vijay Yadav due to which Vijay Yadav fell on the ground.

499. The witness (PW1 Anju Gupta) has explained in her examination-in-chief how she was present in that area. She has given her background as being a resident of house no. 3647, Gali Rora Achar Wali, Chawri Bazaar, Delhi, where she claimed to be staying with her family since 1994. She then stated that in the year 2005, she started giving tuitions from her tuition centre at 3570, Third Floor, Gali Than Singh, Bazaar Sita Ram and the timings of classes were from 4:00 p.m. to 8:30 p.m. The witness elaborated that that she had been running the centre since about two years and was familiar with one Vijay Yadav @ Vijji, who was running his office from the second floor of premises No. 3570, Gali Than Singh, Bazaar Sita Ram.

500. This implies that the witness (PW1 Anju Gupta) was present at the spot for adequate reasons. Had her place of residence and workplace been at a distant location, her presence at the spot could have possibly been doubted. That is not so. The witness was residing in the same area. She

was working in the same building, where the office of the deceased was situated. The timings of her Institute are also in line. This background could not have been concocted in ante-date only to show presence of the witness at the spot. The witness has stated that she had been staying at the same address since thirteen years before the incident, and has been giving tuitions from her tuition centre at 3570, Third Floor, Gali Than Singh, Bazaar Sita Ram since two years before the incident. These circumstances, being long-standing, could not have been fabricated only to make her a witness in the case. The witness knew the deceased, and had all the reasons to identify him when he was besieged. Her familiarity gave her greater reason to stop and notice what was being done to him.

501. PW1 Anju Gupta has further recounted that after firing shots, the boys ran towards Hamdard Chowk. She deposed that she immediately rushed to her Institute, and in the office of Vijay Yadav, Billu (Niranjan Singh) and Parmod were present. She narrated to them the incident, she went to her Institute, relieved the students and then went to her house.

502. PW1 Anju Gupta has given a vivid account of the incident. She has explained how she reached the spot, what she noticed, the events that took place immediately after the incident, and the steps she took in its aftermath. It has the trappings of a natural narrative.

503. The witness (PW1 Anju Gupta) went on to identify all persons who had surrounded Vijay Yadav. She also pointed out which of them had pistols in their hands. On seeing the accused persons, PW1 Anju Gupta deposed that accused persons Hitender Singh @ Chhotu, Parveen Koli, Bhisham @ Chintoo, Vinod Kumar @ Gola, Desraj @ Desu, Deepak @ Chowda and Kishan Pal had been seen by her as those who beset Vijay Yadav at the time of the incident. She pointed towards the said accused persons. PW1 Anju Gupta then pointed towards accused persons Hitender @ Chhotu and Kishan Pal and disclosed that they are the ones who were carrying pistols at the time of the incident. She pointed towards accused persons Bhisham @ Chintoo, Vinod Kumar @ Gola and Deepak @ Chowda as the persons who had been seen by her on earlier occasions in Sita Ram Bazaar.
504. Had the witness (PW1 Anju Gupta) not seen the incident, she would not have been able to distinctly point towards each of the accused giving details of their specific roles. She was able to point out not only all the assailants, but also tick off those who were carrying pistols at the time of the incident and those who had been seen by her on earlier occasions in Sita Ram Bazaar.
505. The time of the incident as spelled out by PW1 Anju Gupta is corroborated by the following:

- a. the version of the other eye witness, namely, PW2 Dheeraj Sharma,
- b. the PCR form Ex.PW42/B proved by PW42 HC Amar Pal (Retd.) which chronicled information received of the incident,
- c. the version of PW46 Sh. Deepak Sharma who had carried the deceased to the hospital immediately after the incident,
- d. the version of PW19 Sh. Amar Singh Yadav who had seen Vijay Yadav walking to the spot immediately before the incident,
- e. the version of PW4 Parmod Kumar and PW10 Niranjana who were present in the office before Vijay Yadav was called to the place of incident.

506. The fact that PW1 Anju Gupta had seen the incident is strengthened by the version of PW4 Parmod Kumar and PW10 Niranjana who affirm that indeed Smt. Anju Gupta met them and informed them of the incident soon after the occurrence.

507. PW1 Smt. Anju Gupta was unable to disclose names of the offenders. However, this does not make her testimony any less credible. It is not the case of the accused persons that the witness already knew the accused persons by name, so as to draw advantage from the fact that the witness did not name them. A person who sees any incident by chance obviously had no capacity to name the assailants and could only identify them by appearance. It is not the case of the accused

persons that the witness had got a chance to interact with the accused persons or that the offenders had announced their names while committing the offence or before decamping. Therefore, the accused persons cannot derive any benefit from the inability of the witness to name them. The testimony of PW1 Smt. Anju Gupta is nonetheless clinching since she has identified the offenders on the basis of their appearance. PW1 Smt. Anju Gupta did not stop at that when she said that she can identify the offenders. She went on to say that she had seen three of those persons on earlier occasions in the local area. This gets corroborated by police officers (PW11 Inspector Rajender Dubey and PW68 Inspector K.G. Tyagi) who state that the same three persons, namely, Bhisham @ Chintoo, Deepak @ Chowda and Vinod @ Gola were from the locality, and had been missing after the incident. PW1 Smt. Anju Gupta separately identified the persons among the offenders who were carrying pistols. The witness even described the direction in which the offenders fled. If the witness had not seen the incident, she wouldn't have known this. All these finer points disclosed by the witness show her to be present at the spot, to have seen the incident, and to her narrative being truthful. Had the version been tutored by somebody else, it would not have contained the specifics. The witness might have simply spoken about the part of killing of Vijay Yadav and not what happened afterwards.



508. The witness (PW1 Smt. Anju Gupta) admitted that on 29<sup>th</sup> September, 2007, she did not lodge any complaint to the police regarding murder of Vijay Yadav. Ld counsel for accused persons has questioned the veracity of the account rendered by PW1 Smt. Anju Gupta on the ground that she did not immediately report the incident to the police, and that her version was presented to the police with delay.

509. For analyzing this contention of the accused persons, the examination-in-chief of PW1 Anju Gupta needs to be revisited. The witness has stated in her examination-in-chief that when she saw the incident, she rushed towards her Institute. She went to the office of Vijay Yadav. She informed Billu @ Niranjan Singh and Parmod about the incident. This fact has been corroborated by PW4 Parmod Kumar and PW10 Niranjan. The witness then went back to her Institute and relieved the students. This shows that the witness did inform other persons about the incident. Those persons were present in the office of the deceased himself. It was reasonable for the witness to assume that those persons would come to the help of the victim, they may later report the matter to the police and that appropriate legal consequences would ensue. The witness had no reason to believe that the police would be groping in the dark and would be unaware of the assailants for days after the incident. Nor is this the primary concern of a witness. The first reaction of a witness is to inform a reliable person of an incident so that they

may come to the aid of a victim, rather than to think about being cited as a witness and about nabbing of the offenders. It is not for the witness to keep enquiring or to pursue the matter with the police. The witness was not a family member of the deceased so as to show keen interest in the progress of investigation.

510. On the contrary, it is natural that the witness would have been traumatised and may be even fearing for her own safety after having seen the incident and that too one that happened in full public view, with a gang of assailants having congregated armed with firearms. In that situation, expecting an ordinary woman, who is a single mother, with no safeguard for her own safety and the security of her child (as figures in her cross-examination), to proactively seek police action by promptly reporting facts at the police station, would be unreasonable.

511. The record shows that statement of PW1 Smt. Anju Gupta was recorded by the police in the morning on the very next day following the incident. The incident took place at about 7.30pm on 29<sup>th</sup> September, 2007 and statement of the witness was recorded in the morning of 30<sup>th</sup> September, 2007. It has also come on record that the police officers were performing other tasks concerning the case for most of the time in between and therefore, they cannot be faulted for not recording the statement of PW1 Smt. Anju Gupta earlier.

512. Moreover, the reason for which PW1 Anju Gupta did not report the facts at the police station on the day of the incident are now only being speculated by the accused persons. While learned counsel for accused persons suggested to the witness during her cross-examination that she had not lodged any complaint with the police on 29<sup>th</sup> September 2007, which the witness admitted, learned counsel for accused persons never enquired into the reasons on account of which the witness did not promptly report the matter to the police. If the accused persons wanted to derive any benefit from the delay in rendering of information of involvement of the accused persons in the crime to the police, the accused persons should have questioned the witness about the cause of the delay. Learned counsel for accused persons should have asked the witness as to why she did not inform the police earlier, for her to be able to explain the reason. He only asked whether she had informed the police earlier. In the result, the witness did not get a chance to explain the reason due to which the witness did not immediately go to the police. If those reasons have not been elicited, the Court cannot adjudicate into the sufficiency of the reasons or draw any adverse inference holding the reasons to be insufficient.

513. The Court must also note that the witness has stated in her cross-examination that at the time of the incident, she was not having any mobile phone. That being so, the witness may not have been able to call

the police control room by dialing number 100 from the spot itself, and may have stopped after informing persons in the office of the deceased. Having witnessed the gruesome act, and faced with the frightening and panicky situation, in her wisdom, the witness simply informed the persons who she met in the office of the deceased. She then sent back the students who were present in her institute. This conduct of the witness cannot be said to be unnatural or unbelievable. It shows the witness to be distraught and overwhelmed by fear, which is an obvious fallout of witnessing a number of offenders together brazenly attacking an individual in full public glare in an open place, and by use of dangerous weapons. The witness may have thought that she has done her moral duty by informing persons in the office of the deceased and that they would take it further. She may have further thought that she would be questioned whenever needed. The witness wasn't personally aggrieved by the incident, and therefore may not have wanted to get embroiled into anything unsafe or controversial. In this behalf, it would be appropriate to refer to the decision of Hon'ble Apex Court in the case of *Leela Ram v. State of Haryana*, (1999) 9 SCC 525. In that case, it was observed as under:

*"The Court shall have to bear in mind that different witnesses react differently under different situations: whereas some become speechless, some start wailing while some others run away from the scene and yet there are some who may come forward with courage, conviction and belief that the wrong should be remedied. As a matter of fact it depends upon individuals and individuals. There cannot be any set pattern or*

*uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction not falling within a set pattern is unproductive and a pedantic exercise."*

Thus the argument of learned counsel for accused persons that there was undue delay in obtaining the statement of this witness holds no merit.

514. It was suggested to PW1 Smt. Anju Gupta in her cross-examination that there was improper lighting in the area. The witness denied this. No attempt was, however, made to disprove the denial and to substantiate plea of the accused persons of there being inadequate lighting. The accused persons could have stepped into the witness box to prove the state of lighting in the area, but they did not do so. The accused persons could have summoned other persons of the locality to describe whether the area was adequately lit at the relevant time. Even this was not done. Learned counsel for accused Rishi Pal @ Pappu has also tried to suggest to the witness that there was insufficient lighting at the spot where the incident had occurred. The witness denied that. The witness stated that there was an electric pole (street light) emitting light at the place where the incident had taken place. She was able to point out the exact position of the said pole. This assertion of the witness has not disproved by the accused persons by any evidence. It can, therefore, be safely inferred that there was sufficient lighting at the spot for the witness to clearly see the events taking place and to identify the

offenders. The plea of the accused persons is bald and liable to be rejected.

515. PW1 Smt. Anju Gupta was asked in her cross-examination whether the lane where the incident occurred was so narrow that two persons cannot cross each other shoulder by shoulder. The witness denied this. No attempt was made by the accused persons to disprove the denial and to substantiate the said plea of there being inadequate space in the lane. The accused persons could have stepped into the witness box to describe the width of the lane, but they did not do so. The accused persons could have summoned other persons of the locality to sketch out the width of the passage. That was also not done.
516. Moreover this plea is in conflict with the earlier suggestion made by Id. counsel for accused persons, whereby the counsel tried to suggest to the witness that through the lane, pedestrians, cyclists and motorcyclists keep plying. If there is not enough space for even two persons to walk in opposite directions in the lane, there would obviously not be enough space for cyclists and motorcyclists to ply together. It is relevant to note that counsel for accused persons had suggested to the same witness that the lane remains obstructed due to traffic movement from both sides. If there is traffic movement from both directions, the space would certainly be sufficient for at least two persons to cross each other in the lane. An individual is bound to

occupy lesser space than a vehicle. The contention of the accused persons is illogical and without substance.

517. In her cross-examination, PW1 Smt. Anju Gupta stated that indeed the area where the incident occurred is a busy place, with many people passing by. Based on this, the accused persons have contended that there must have been other persons who witnessed the incident, and those were not made a witness to the case.

518. This contention, I am afraid, is also without merit. It is definitely possible that there are other persons who witnessed the incident. But the police can array as witnesses only those who it finds to be an eye-witness. Such a person must come forward and claim before the police that he or she saw what happened. The police may then verify that claim. If after finding that there is such a witness, it withholds that person from the Court, then it may be permissible to draw an adverse inference against the police. That is not so here. The accused persons have not enlisted names of persons who saw the incident but were held back from the Court.

519. The Court cannot lose sight of the fact that many persons who witness an incident of crime shy away from coming forward before law enforcement authorities. This can be due to a variety of reasons. In this case in particular, some of the accused persons were from the same locality. It is possible that persons who may have seen the incident

would not have come forward out of fear of these offenders. Besides, it is natural for people to avoid becoming witnesses because they perceive that being cited and examined as witnesses will lead to harassment or inconvenience which they wish to avoid. People do not wish to get dragged into any controversy. They do not want to be summoned by Court owing to fear. In the case of Appabhai Vs. State of Gujarat AIR 1988 SC 696, it was observed by Hon'ble Supreme Court as under:

*"Civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the Court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties. The Court, therefore, instead of doubting the prosecution case for want of independent witness must consider the spectrum or the prosecution version and then search for the nugget of truth with due regard to probability, if any, suggested by the accused."*

520. The fact that some witnesses avoid approaching the police does not imply that those cited and examined by the prosecution should also be disbelieved.

521. Further, it is not necessary that all the witnesses to an incident must be cited as witnesses in the case and must be examined. Where there is more than one witness, it is open to the prosecution to cite and examine only one or few of them. It is not the quantity but the quality of



evidence that has to weigh with the Court. In the case of *Namdeo v. State of Maharashtra Appeal (Crl.) no. 914 of 2006* decided by Hon'ble Supreme Court on 13<sup>th</sup> March, 2007, it was held as follows:

*"Our legal system has always laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent Court to fully and completely rely on a solitary witness and record conviction."*

522. In the case of *Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793*, the Hon'ble Supreme Court held that even where a case hangs on the evidence of a single eye witness it may be enough to sustain the conviction on the basis of sterling testimony of a competent witness, in the following words:

*"It is a platitude to say that witnesses have to be weighed and not counted since quality matters more than quantity in human affairs."*

523. This is also the mandate of Section 134 of Evidence Act. A fact can be proved by one among the several witnesses, and it cannot be held that because one or a few of the witnesses were not examined the fact stands not proved. Reference is made to the following observations of Hon'ble Supreme Court in the case of *Takhaji Hiraji v. Thakore Kubersing Chamansing and Ors. (2001) 6 SCC 145*:

*"On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material."*

524. It is thus to be noted that the prosecution is well within its province to leave out some of the witnesses and to examine others, when there are a number of witnesses competent to prove a certain event. The other eye-witnesses, if examined, would have also deposed about the same incident. If the incident is proved by some of the eye-witnesses, it is not necessary to examine the others and the testimony of the latter would have only amounted to a repetition. In the case of *Anil Phukan v. State of Assam*, (1993) 3 SCC 282 the Hon'ble Supreme Court observed as follows:

*"Indeed, conviction can be based on the testimony of a single eye witness and there is no rule of law or evidence which says to the contrary provided the sole witness passes the test of reliability."*

525. If the accused persons feel that there are other persons who saw the incident who may have testified in their favour or may have deposed to their innocence, the accused persons can examine those persons in their defence. Some of the accused persons are from the same locality and would have known persons in the area where the incident occurred. They could have easily named and examined those persons to show that either the incident never took place or that the offenders were other persons. That has not been done. The aforesaid argument of other persons being present but not being joined as witnesses by the police, advanced by Id counsel for accused persons is not tenable and is rejected.

526. Learned counsel for accused persons suggested to PW1 Smt. Anju Gupta during her cross-examination that a person cannot see another person who is ten or fifteen steps ahead of him in the lane during the daytime. This suggestion was denied by the witness. The denial of the witness was not disproved by counsel for accused persons by leading any evidence to show that due to overcrowding or any other reason, it is not possible to look ahead and to ascertain what is happening ten or fifteen steps ahead in the lane. The cross-examination was of no effect.
527. Learned counsel for accused persons tried to suggest to PW1 Smt. Anju Gupta during her cross-examination that there was no reason for the witness to be present at the spot of occurrence at the time of the incident. The witness has explained that she used to visit Shiv temple three or four times in a week and that she used to go only in the evening hours. She also stated in response to a query that there is no fixed time of visiting the temple. There is no reason to dispute the above explanation of the witness, particularly in absence of any evidence led by the accused persons to controvert this. There is nothing unusual in a person visiting a temple, or visiting it three or four times in a week in the evening hours. The witness has adequately explained the reason for her being present at the spot. Learned counsel for accused persons has given no reason and has failed to demolish the testimony of the witness of her seeing the incident or being present

there. He has failed to demonstrate that the witness was not present at the spot at the time of the incident.

528. Learned counsel for accused persons Hitender Singh @ Chhotu, Parveen Koli, Bhasham @ Chintoo, Desh Raj @ Desu, Deepak @ Chowda and Kishanpal @ Fauzi has questioned PW1 Smt. Anju Gupta during her cross-examination and has tried to suggest that the witness was not present at the spot and is not familiar with the area. Ld counsel has asked the witness about location of a school and whether a lane runs opposite the school. The witness has emphatically answered both the questions and that is why, it is not possible to question the witness' familiarity with the area, or to infer that the witness was not present at the spot at the time of the incident, or that she has not been frequenting the said lane.

529. The witness has also described the precise location where she stood when she noticed the incident. She has disclosed the distance between that location and the Shiva Temple. The accused persons have led no evidence to controvert any of the said assertions or to show them to be false.

530. PW1 Smt. Anju Gupta denied the suggestion of counsel for accused persons during her cross-examination that Shiva Temple is next to Bhagirathi School. The accused persons led no evidence in support of the assertion that the temple is adjoining the school. The description of

the witness about shops near the spot has not been proven to be incorrect. PW1 Smt. Anju Gupta has been able to depict the place, though not with photographic precision, but surely in a manner as is expected from a reasonable person who often passes through the lane.

531. Learned counsel for accused persons tried to raise a doubt by suggesting to PW1 Smt. Anju Gupta during her cross-examination that there was another Shiva temple about twenty-five or twenty-seven steps away from the Shiva temple described by the witness. The said suggestion is vague and inconsequential since it is not the case of the accused persons set out through their statement under Section 313 of Code of Criminal Procedure that the incident had taken place at the Shiva temple which is away from the Shiva temple described by PW1 Smt. Anju Gupta. Moreover, nothing has turned out from the statement of PW1 Smt. Anju Gupta about there being another Shiva temple or about the incident taking place at the other Shiva temple. It is apparent from the testimony of PW1 Smt. Anju Gupta that she was unclear and unsure of whether there is another Shiva temple. Initially, the witness admitted that there may be another such temple but she immediately added that she does not have a specific recollection of this. It is not the case of the accused persons, and they have not made any attempt to prove, that PW1 Smt. Anju Gupta was aware of there being another Shiva temple and that she deliberately withheld information about it. A

witness need not be aware of the precise location of every temple in the locality. Nor is this a fact that can demolish the testimony of PW1 Smt. Anju Gupta or show her to be unreliable. From the cross-examination of PW1 Smt. Anju Gupta, it cannot be inferred that the incident had taken place at another Shiva temple which was not visible from the place where the witness was standing. Even if there has been some confusion about the Shiva temple being referred to, it does not go to the root of the matter, let alone branding the witness to be a liar or as being unworthy of credit. Even if there are two Shiva temples in proximity of each other and the witness was unable to describe, with exactitude, about the Shiva temple where the incident had occurred, it does not falsify the accusation about the incident that had taken place. It needs to be noted that the cross-examination was taking place after about four years of the incident. There is bound to be some lapse of memory during this period.

532. It is important to note that while Id counsel for accused persons has tried to suggest that the place of incident being described by PW1 Smt. Anju Gupta is different from that which is described in the site plan prepared by the police, no attempt was made by Id counsel for accused persons to confront the witness with the site plan prepared by the police (by drawing her attention to it) or to show that either the site plan or the stand of the witness is incorrect or that the version of the

witness stands demolished by the site plan. Nothing has been done to prove that the version of the witness and the site plan are irreconcilable. Moreover, even the site plan cannot be stacked up against the witness since, as per her cross-examination, the site plan had not been prepared in her presence.

533. The suggestions made to PW1 Smt. Anju Gupta by learned counsel for accused persons during her cross-examination about she not having seen the incident or she not being present at the spot on the relevant date have been emphatically denied by the witness. The said denial has not been disproved by the accused persons either through the cross-examination of the witness or by any other evidence led by the prosecution or any defence evidence.

534. Learned counsel for accused persons has sought to question the probity of PW1 Smt. Anju Gupta by indicating that the witness was previously known to one Abhay Singh Yadav, who is brother of the deceased. The fact that the witness had familiarity with Abhay Singh Yadav and with the deceased is apparent (and not denied by the witness too) because she had her office in the same building where the deceased had his office. That alone is, however, is not sufficient to discredit the witness. A witness remains an independent witness notwithstanding the fact that she is familiar with the deceased and his family. The fact that a witness has some connection or relationship with the deceased or his

family members is not a reason to doubt her testimony or to read it with suspicion. In this regard, legal position as stressed by the Hon'ble Supreme Court may be underlined.

535. In the case of Dalip Singh v. State of Punjab 1954 SCR 145, the Hon'ble Supreme Court elucidated the law relating to independent witnesses in the following words:

*"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."*

536. It follows from the aforesaid decision that a witness is independent unless he has an axe to grind that is an enmity with the accused or a reason to falsely implicate the accused. It has been consistently held that somebody closely known to the victim does not fall in this category. Such a person is interested in seeing that the real offender receives punishment rather than falsely implicating an innocent person thereby screening the real culprit. The fact that the witness



holds a grudge against the accused has to be specifically proved and the mere fact of a relationship being shared with the victim does not suffice. The latter is viewed, on the contrary, as a “sure guarantee of truth”.

537. In the present case, it is not the case of any of the accused persons that PW1 Smt. Anju Gupta held a grudge against them. They have not even suggested to the witness in her cross-examination about there being any incident due to which difference may have developed between the accused persons and the witness. No cause of enmity or grouse has been shown to exist. There is not even a whisper of this, either in the cross-examination of the witness, or by way of defence evidence. It must, therefore, be inferred that PW1 Smt. Anju Gupta had no reason to falsely implicate the accused persons. It needs to be noted that there are no previous dealings between the accused persons and the witness. The witness did not even know the names of the accused persons. She identified the accused persons on the basis of their appearance. She could only recall having seen three of the accused persons in the locality previously. There is no possibility of the accused persons being falsely implicated by the witness. Moreover, in this case, the witness is not shown to be a relative of the deceased too. As per the aforesaid judgment, PW1 Smt. Anju Gupta qualifies as an independent witness.

538. Another decision of relevance is that of Raju v. State of Tamil Nadu

AIR 2013 SC 983, in which the Hon'ble Supreme Court held as under:

*"We are concerned with four categories of witnesses - a third party disinterested and unrelated witness (such as a bystander or passer-by); a third party interested witness (such as a trap witness); a related and therefore an interested witness (such as the wife of the victim) having an interest in seeing that the accused is punished; a related and therefore an interested witness (such as the wife or brother of the victim) having an interest in seeing the accused punished and also having some enmity with the accused. But, more than the categorization of a witness, the issue really is one of appreciation of the evidence of a witness. A Court should examine the evidence of a related and interested witness having an interest in seeing the accused punished and also having some enmity with the accused with greater care and caution than the evidence of a third party disinterested and unrelated witness. This is all that is expected and required."*

539. The legal position which emerges from the above decision is that the key lies in appreciation of evidence. The Court has to ascertain whether a testimony has the ring of truth. While a testimony is not to be viewed with suspicion merely because of relationship with the victim, the Court must be satisfied that it is consistent and cogent. In the present case, the testimony of PW1 Smt. Anju Gupta has indeed been consistent and convincing. This is apart from the fact that the witness has not been proved to be what the aforesaid judgment referred to as *"a related and interested witness having an interest in seeing the accused punished and also having some enmity with the accused"*.

540. PW1 Smt. Anju Gupta has denied that she is closely related to Abhay Singh Yadav (brother of deceased) and his family. She has also denied

that she was testifying on the asking of Abhay Singh Yadav. The witness has denied that she is financially supported by Abhay Singh Yadav. The witness has further denied that Abhay Singh Yadav was a friend of her husband since childhood. She has denied that Abhay Singh Yadav used to occasionally visit her house. The witness has denied that Abhay Singh Yadav used to visit her house frequently or that this had caused disturbance in her marital life. The witness has denied that her husband used to live separately from her. The witness admitted that during the pendency of a divorce petition, her husband had died. Through the suggestions, ld. counsel for accused persons seems to be suggesting that the relationship between the witness and Abhay Singh Yadav may have been the cause of matrimonial differences of the witness with her husband. Yet, learned counsel for accused persons made no attempt to call for the divorce petition (either from the witness or by summoning it in defence evidence) and to prove that the grounds on which divorce had been sought was the relationship between the witness and Abhay Singh Yadav. In absence of that, there is absolutely no evidence to show that the witness had a close relationship with Abhay Singh Yadav or that this relationship had caused strife in her matrimonial life. This remains a mere speculation on the part of the accused persons. On the basis of this speculation riding on random innuendos, the testimony of the witness cannot be

doubted or rejected.

541. The apriorism of the accused persons that the reason for the separation of PW1 Smt. Anju Gupta from her husband was Abhay Singh Yadav had been emphatically denied by the witness. The witness even explained that her husband did not know any person by the name of Abhay Singh Yadav. This statement of the witness, if false, could have been easily disproved by the accused persons by calling for the divorce petition records or by examining persons related to husband of the witness including children of the witness. None of these was attempted. This means that the notion of the accused persons of the witness having an illicit relationship with Abhay Singh Yadav was merely a shot in the dark.

542. PW1 Smt. Anju Gupta has denied that on separation from her husband, she had shifted into a house which belonged to Abhay Singh Yadav. She stated that the house where she shifted belonged to wife of Abhay Singh Yadav. That being so, it is clear that the house was provided to her by wife of Abhay Singh Yadav, which the wife surely would not have done if the witness had an illicit relationship with Abhay Singh Yadav. This also goes on to show that the witness did not have any such relationship with Abhay Singh Yadav. Also, assuming that the landlord was Abhay Singh Yadav, then too the taking of a premises on rent does not establish that the tenant had an illicit relationship with

the landlord.

543. Had she shared a close relationship with Abhay Singh Yadav, PW1 Smt. Anju Gupta would have at least informed Abhay Singh Yadav of this immediately after the incident. But she expressly stated in her cross-examination that she did not do so on the date of the incident. The relationship between PW1 Smt. Anju Gupta and Abhay Singh Yadav is a mere figment of imagination of the accused persons and this has been concocted with a view to raise fanciful doubts on her rectitude.

544. PW1 Smt. Anju Gupta has denied the suggestion that she was aware of the mobile phone number and landline phone number of the deceased or his family members. She also denied the suggestion that she was having frequent conversations with family members of the deceased. None of this has been controverted by the accused persons on the basis of call records of the witness or any other evidence.

545. Not only this, other denials of PW1 Smt. Anju Gupta have also not been confuted by the accused persons, either through the cross-examination of the witness or through defence evidence. The witness has elaborated that Vijay Yadav used to occasionally visit her house and that was in order to collect rent. This shows that her relationship with the deceased and his family was only work related. Had the witness shared an illicit relationship with the landlord, the brother of the landlord would not be

collecting rent. This also shows that although the witness may be known to Abhay Singh Yadav or to the deceased, this did not have any bearing on her testimony. The witness was deposing on the strength of her own knowledge rather than under the influence of the family members of the deceased.

546. Moreover, there is no reason for the family members of the deceased to implicate, in the murder, innocent persons while leaving out the guilty. Therefore, even if it is assumed that the witness had some relationship with Abhay Singh Yadav as suggested by the accused persons, though denied by the witness and not supported by any evidence, that would not demonstrate that the witness was under the influence of Abhay Singh Yadav and certainly does not show that she had some motive to falsely implicate the accused persons. No such motive of false implication of these six offenders, or any grudge or previous enmity, has been shown to exist on the part of family members of the deceased including Abhay Singh Yadav. On the contrary, the witness having been known to the family of the deceased would assume additional responsibility of stating the truth before the Court so as to help nail the real culprits who had committed the crime. The family members of a victim of a crime have an interest in seeing that the real culprit receives punishment.

547. As noted above, PW1 Smt. Anju Gupta has stated the date and time of the occurrence correctly, which is irrefutably corroborated by other evidence. The fact that she saw the occurrence is confirmed by other witnesses (PW4 Parmod Kumar and PW10 Niranjana) who she notified about the incident immediately after the occurrence. PW1 Smt. Anju Gupta has denied that the persons named by her as the offenders had not committed the crime or were not present at the scene of crime. The witness has denied that she had been shown photographs of the accused persons in the police station before her deposition in the Court. These denials by the witness have not been disproved by the accused persons.
548. Certain queries have been put to PW1 Smt. Anju Gupta about criminal antecedents of Vijay Yadav and his family members. None of those are relevant to the said witness. They do not throw doubt on the testimony of the witness. The witness has denied having any knowledge about the said antecedents. It is not necessary that a tenant would have knowledge of the background and other activities of the landlord or his family members.
549. PW1 Smt. Anju Gupta has denied the suggestion that other witnesses, namely, Dheeraj Sharma, Deepak Sharma, Niranjana Singh and Parmod are related to her. The witness has denied that those persons are her partners or that those persons have been visiting her. The witness has

also denied that they have a common social circle. The witness has further denied knowing where those persons live and what they do. The witness has denied knowing the relationship which those persons have with Abhay Singh Yadav or the deceased. These denials have not been disproved by the accused persons. These facts clearly establish that the witness was an independent witness and had not been planted by others. It also shows that the witness had no connection with others for them to together contrive facts. The fact that her version is corroborated by that of others is because the versions are truthful and not because they have been jointly designed.

550. Learned counsel for accused persons has questioned PW1 Smt. Anju Gupta about the tuition centre that she was running, about the ownership and structure of the property, about the classes being taken at her tuition centre, about payment of service tax and the location of her centre. Nothing has turned out from the responses to these questions, which could cast a doubt on the correctness of the testimony of the witness.

551. PW1 Smt. Anju Gupta admitted that she had been residing in Sitaram Bazaar since 20 or 25 years. She further stated that she was born and brought up in that very area. This shows that the witness was broadly conversant with the area (and has reasonably described the topography and the shops situated there), thus eliminating the chances of error in



her observations.

552. Learned counsel for accused persons has questioned PW1 Smt. Anju Gupta about whether she met witnesses Dheeraj and Deepak in the lane after the incident on the day of the occurrence. The witness has admitted that she did not meet these witnesses. The fact that PW1 Anju Gupta did not meet other witnesses does not prove that she was not present at the spot. It is nobody's case that the three witnesses, namely, Anju Gupta, Dheeraj and Deepak had met each other in the lane immediately after the incident. The incident had occurred in an open public place which was visible from different spots. A detailed scrutiny of the testimony of PW1 Smt. Anju Gupta and PW2 Sh. Dheeraj Sharma shows that their positions at the spot were different although in proximity with each other and they had seen the incident from different points in the same vicinity. PW46 Sh. Deepak Sharma was not even present at the spot at that time. He was present at his house, as deposed by him. Therefore there was no reason for PW1 Smt. Anju Gupta to meet PW46 Sh. Deepak Sharma. It isn't necessary that PW1 Smt. Anju Gupta and PW2 Sh. Dheeraj Sharma must meet each other simply because they had both seen the incident.

553. PW1 Anju Gupta was questioned as to whether she had gone closer to the position where Vijay Yadav had fallen after being shot. The witness stated that she did not go near the deceased but returned from the

place after she saw the incident. This demeanour is not unnatural. The deceased had witnessed a murder, at a public place, by an assemblage acting in concert. Firearms had been used. There were multiple assailants. Although the assailants had decamped, the possibility of their returning to the spot remained. The witness was a lady. She must have been terrified. She would obviously not have stuck her neck out and jeopardize her life by moving closer to the deceased. She was also in no capacity to help the deceased. She is not a doctor or a paramedic. She was not having a vehicle by which she could have taken the deceased to the hospital. Since she had no means of helping the deceased, she may have decided to save herself rather than put herself in peril and she therefore may have decided to return to her own premises. The fact that she did not put her life in danger and did not come to the aid of the deceased does not imply that she did not witness the incident itself. It must be borne in mind that she was not a family member of the deceased and it is natural that she would give greater importance to her own life and safety. In this behalf, it would be apt to refer to the decision of Hon'ble Supreme Court in case of State of U.P. v. Devendra Singh (2004) 10 SCC 616. In that case, it has been observed as under:

*"In view of the rival submissions it has to be first seen whether prosecution has established its case. Strictly speaking, the case is not of circumstantial evidence. Human behavior varies from person to person. Different people behave and react differently in different situations. Human behaviour depends upon the*

*facts and circumstances of each given case. How a person would react and behave in a particular situation can never be predicted. Every person who witnesses a serious crime reacts in his own way. Some are stunned, become speechless and stand rooted to the spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Some may remain tightlipped overawed either on account of the antecedents of the assailant or threats given by him. Each one reacts in his special way even in similar circumstances, leave alone, the varying nature depending upon variety of circumstances. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in any particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way."*

554. Learned counsel for accused persons has questioned PW1 Anju Gupta as to whether she had informed any person in Gali Arya Samaj about the incident and about the name of the assailants. The witness replied that she did not tell persons in the lane about the incident and about the assailants. There is no merit in the contention that this shows that the witness had not seen the incident. The witness has already explained in her testimony that she had informed two persons in the office of the deceased about the incident. It is not necessary that the witness must go about narrating the incident to every person she meets in the lane. No prudent or rational person goes about telling everybody who he or she sees regarding a crime having been witnessed by that person.

555. Also, the witness has already explained that some of the assailants were local persons who she had seen in the area before. The witness would not have the means to know who in that area were supporters or sympathizers of the said offenders. An indiscriminate passing of information to such persons present in the lane could have put the life of the witness in danger. The fact that the witness did not inform persons present in that lane about the incident is therefore not atypical or queer so as to raise doubts on the correctness of her version.

556. It needs to be noted that all the above is only a hypothesis. It was for learned counsel for accused persons to ask PW1 Anju Gupta as to why she had not informed persons in the lane about the incident and about the offenders. This was not done. Since the witness was not questioned about the reasons for not passing on the information, the witness did not set forth those reasons. Since the reasons have not been set out, it is not open to the Court to conclusively opine on the sufficiency of reasons. Learned counsel for accused persons only asked the witness whether information was passed on or not. That, the witness denied. But the witness was not questioned on why the information was not provided. No opportunity was given to the witness to explain her omission to inform these persons. In the result, the Court can only speculate as to what could possibly have been the reason. The actual factors that weighed with the witness cannot be known since ld counsel

for accused persons did not want it to come on record and that is why. he did not question the witness in this behalf. The witness cannot be expected to voluntarily start expounding on the reasons that weighed with her, while she is under cross-examination. She is to answer questions put to her rather than furnish her justifications. Thus, the contention itself is not available to the accused persons as they had not questioned the witness on the reasons for which she did not inform persons in the lane about the incident. Besides, as hypothesis, this Court finds that indeed there were adequate reasons for a rational person to refrain from informing persons in the lane about the incident, which have been noted in the preceding paragraphs.

557. Learned counsel for accused persons has asked PW1 Anju Gupta as to whether she made any attempt to make a phone call from any phone shop in the locality to the police, to family members of the deceased or to anybody else. The witness denied this. This conduct on the part of the witness is not incomprehensible. The witness, as explained earlier, was terrified after the incident. She immediately went to her own workplace. There she first informed two persons present in the office of the deceased. Then she went to her Institute. Every person reacts differently to a situation. Reference is made to the decision of Hon'ble High Court of Delhi in the case of Ram Surat v. State, Crl.A. no. 1236/2012 dated 25<sup>th</sup> August, 2017. In the case, the Hon'ble High Court

rejected the submission of the appellant therein that the conduct of the eyewitness was unnatural as he did not run towards the place of occurrence nor attempted to stop the accused, but rushed to his house to call his wife. It was observed as under:

*“Even otherwise, the behaviour and the conduct of PW17 seems to be most natural and probable, it is natural that every person who witnesses a crime or faces such a situation behaves in a different manner. If there were 5 or 10 persons, their narration of the incident and their conduct and behaviour would be different from one another.*

*As per the appellant, the reaction of the main eye witness, PW17 was unnatural in the event of crime and hence he is a planted witness. In contradiction to this, Criminal Courts should not expect a set reaction from any eye witness on seeing an incident like murder. If five persons witness one incident there could be five different types of reactions from each of them. It is neither a tutored impact nor a structured reaction which the eye witness can make. Unless the reaction demonstrated by an eye witness is so improbable or so inconceivable from any human being pitted in such a situation, it is unfair to dub his reactions as unnatural.”*

558. This decision was quoted, with approval, by Division Bench of Hon’ble High Court of Delhi in the case of Rahul @ Bhuri vs State CrI. Appeal no. 158/2015 decided on 12<sup>th</sup> September, 2017.

559. Possibly the witness may not have found it safe or appropriate to use services of a phone shop. She might have thought it better to physically report about the incident in the office of the deceased. Perhaps, she found the area to be unsafe to stay at any longer. This does not imply that she was not present at the spot itself.

560. Moreover, PW1 Smt. Anju Gupta has not been questioned as to *why* she did not make any attempt to report the matter to the police or to family

members of the deceased by immediately making a phone call from a phone shop. The witness has only been asked *whether* she attempted to make this phone call. The reasons for which she did not make this attempt have not been asked from the witness and therefore, it is not open to the Court to draw inferences as to the sufficiency of her reasoning.

561. Similarly, PW1 Smt. Anju Gupta has been questioned by learned counsel for accused persons as to *whether* she had made telephone call to any person about the incident from her landline telephone connection after reaching home. The witness denied this. The reason as to *why* the witness did not make the phone call has not been specifically sought from the witness. The witness had no opportunity to explain as to why she did not make the said phone call. Therefore, it is not open to the accused persons to contend that the witness did not have adequate reasons to refrain from making the said phone call.

562. That apart, the conduct of PW1 Smt. Anju Gupta in not making the call is not queer. The witness had already informed two persons in the office of the deceased. There was no reason for the witness to continuously make phone calls to find out about the progress in the matter, or to broadcast the information to others.

563. Learned counsel for accused persons has suggested to PW1 Smt. Anju Gupta that she was using a certain mobile phone number. The witness

has denied this. The accused persons have, however, not rebutted this through cross-examination of the witness, or by defence evidence and there is nothing on record to suggest that the said phone number was under the use of this witness.

564. Learned counsel for accused persons has asked PW1 Smt. Anju Gupta if she was having frequent conversation with Abhay Singh Yadav from a certain mobile phone number. This has been denied by the witness. The accused persons have not been able to disprove the said denial either through further cross-examination of the witness or through defence evidence. The witness has remained steadfast with her assertion that she used to talk to Abhay Singh Yadav only when there was some occasion to do so. This shows that the witness was not under the influence or control of Abhay Singh Yadav.

565. PW1 Smt. Anju Gupta has admitted that she did not inform Abhay Singh Yadav about the incident on the date of the occurrence by calling him on his mobile phone. But learned counsel for accused persons did not question the witness about why she did not inform Abhay Singh Yadav. The witness was not given an opportunity to explain the reasons underlying this omission. Therefore, the said omission of the witness cannot be branded as being without justification. The accused persons cannot question the credibility of the witness on this basis. Moreover, this is understandable since the witness had informed two



persons in the office of the deceased and the witness had no reason to believe that those persons would not have in turn informed Abhay Singh Yadav. The same reasons explain why PW1 Smt. Anju Gupta had not personally visited the houses of Abhay Singh Yadav, Dheeraj Sharma, Amar Singh or her neighbours on the day of the incident. Learned counsel for accused persons has not asked the witness to explain the rationale owing to which the witness had refrained from visiting the houses of the abovenamed persons and therefore, the contention that the said omission was without adequate justification, is unavailable to the accused persons. This also explains the omission of the witness to inform her estranged husband, the PCR Van, the police station, the five teachers working in her coaching institute or any other person about the incident, though the reasons for none of these have been elicited from the witness during cross-examination.

566. PW1 Smt. Anju Gupta stated in her cross-examination that she did not return to the spot with Niranjan and Parmod. She stated that she did not go to the hospital to see Vijay Yadav on the day of the incident. None of this should raise eyebrows. There was no obligation on the part of the witness to either visit the spot with Niranjan and Parmod or to visit the hospital. The witness has already stated in her testimony that she was not very close to the family of the deceased and that she was only a tenant of the sister-in-law of the deceased. That being the

case, it was not incumbent upon the witness to visit the hospital or to go to the spot with Niranjana and Parmod. It is also not stated by the witness that Niranjana and Parmod had requested her to accompany them to the spot. Her omission to return to the spot of occurrence or to visit the hospital does not belie her version about what she had seen at the spot.

567. Similarly, there was no obligation on the part of PW1 Anju Gupta to avail assistance of teachers working in her coaching institute for shifting the deceased to the hospital or in informing family members of the deceased after informing persons present in the office of the deceased. PW1 Anju Gupta has deposed that she was not very close to the family of the deceased and therefore, she may not have exhibited keen interest in doing this. It cannot be ignored that sometimes people feel that their involvement at the scene of crime after an incident may embroil them into a controversy and that is why, they may refrain from proactively aiding the victim. It is also possible that the witness may have been too frightened to render any assistance. Also, the witness had already informed persons present in the office of the deceased and she had no reason to believe that her assistance would be needed in shifting the victim to the hospital. She also had no reason to believe that the information of the incident would not have been passed on to the family members of the deceased. Learned counsel for accused

persons has not questioned the witness and has not asked her to explain the reasons for which she did not take assistance from the said teachers in shifting the deceased to the hospital or in sending information to the family members. Had the witness been questioned, she would have had the opportunity to explain her stance. Then only could the validity of the justification be adjudged by the Court. Thus, this contention of the accused persons is also without merit.

568. Learned counsel for accused persons has questioned PW1 Anju Gupta as to whether she had been called by police to prepare sketch of the suspects or culprits between 30<sup>th</sup> September, 2007 and 11<sup>th</sup> October, 2007. The witness has stated that she was not called for preparing sketch of the suspects and that she had not disclosed description of the assailants to the police during the said period. None of the above creates a dent on the correctness of the version of the witness. Firstly, learned counsel for accused persons only asked the witness whether she had been called to prepare a sketch and whether she had provided description of the assailants. Learned counsel for accused persons did not ask the witness the reason for which she did not get the sketch prepared or she did not describe the assailants during the aforesaid period. Till the reasons are asked and are then disclosed by the witness, the reasons cannot be condemned to be inadequate, and the conduct cannot be said to be unnatural. Secondly, a witness will describe the

assailants only when she is asked to do this by the police. She will not prepare a sketch by herself. The witness is not expected to go about proclaiming the description of the assailants to the police on her own. The acts of the witness would be under cloud if the police asks her to describe the assailants or to help in preparation of the sketch and she refuses to do that, which is not the case here. Thirdly, it is not for the Court or for the accused persons to dictate as to how the police must investigate the offence. Possibly, the police may be developing its own intelligence to secure information on who the culprits were. The police may have been obtaining information from different quarters and it may not be resting solely on the version of this witness. Therefore, the Court cannot hold against the witness or against the police that they did not ask this witness to describe the assailants or to help in preparation of the sketch. Fourthly, as to why the witness was not asked to prepare the sketch or to describe the assailants is for the police to answer and not the witness. The witness cannot be faulted since she has not only informed the police about the incident and the number of assailants, she has also informed the police that three of the assailants were residents of the same locality and that she had seen them earlier. She had informed the police that remaining assailants were not residents of that locality. She has also informed the police that she was capable of identifying the assailants on seeing them. Abundant

information was provided by the witness which shows that she had indeed witnessed the incident.

569. It also needs to be noted that PW1 Anju Gupta has explained in her cross-examination that on 11<sup>th</sup> October, 2017, Inspector K.G. Tyagi from crime branch had shown her several photographs. The witness has deposed that after seeing those photographs, she identified, from among persons seen in the photographs, those offenders who used to stay in the same locality. The witness then informed Inspector K.G. Tyagi that those three persons had committed the offence. Since the identification had been done on the basis of photographs on 11<sup>th</sup> October, 2007, there was no need to get the sketch of assailants prepared or to describe them to the police. The police then had sufficient leads to investigate the case and find the offenders.

570. Learned counsel for accused persons has asked PW1 Anju Gupta as to whether she got prepared sketch of the culprits or whether she described them to the police after 11<sup>th</sup> October, 2007. The witness denied this. However, the accused persons did not question the witness as to why this was not done, for the witness to be able to explain this. Till the explanation is elicited, its sufficiency cannot be adjudged. That apart, the question appears to be odd. PW1 Anju Gupta has clearly stated that the identity of some of the assailants became known to the police on 11<sup>th</sup> October, 2017, when Inspector K.G. Tyagi from Crime

Branch showed her several photographs and she identified the offenders from amongst persons seen in the photographs. Since the identification had been done on the basis of photographs on 11<sup>th</sup> October, 2007, there was no need for the police to ask the witness to describe the assailants or to get their sketch prepared.

571. PW1 Anju Gupta has further stated that on 12<sup>th</sup> January, 2018 when she visited the office of crime branch, she did not find any other witness of this case in the said office. The witness has further stated that when she had been shown photographs, those were only of Bhisham @ Chintoo, Vinod @ Gola and Deepak @ Chaura.

572. Learned counsel for accused persons has argued that PW1 Anju Gupta had not informed the police about the identity of the assailants any day before 4<sup>th</sup> October, 2007 and that is why parents of the deceased had written a letter to the Commissioner of Police on 4<sup>th</sup> October, 2007 and on 8<sup>th</sup> October, 2007 requesting for robust efforts to find out the culprits. He has submitted that the writing of the said letters shows that the statement of PW1 Smt. Anju Gupta informing that she had seen the offenders had not been recorded by the police on 30<sup>th</sup> September, 2007, as claimed by the police.

573. The plea is devoid of merit. Firstly, even assuming that such letters had been written on 4<sup>th</sup> October, 2007 or on 8<sup>th</sup> October, 2007 by parents of the deceased, it does not imply that the witness had not informed the

police that she can identify the offenders. Possibly the parents of the deceased felt dissatisfied with the investigation being carried out. They may be unaware of the contents of the statement, of whether the said statement has been recorded, of whether it is being believed by the police and whether it is being acted upon. There is nothing to show that the author of the letters was aware of what the witness had stated to the police before sending the said letters so as to reconsider despatching them. Secondly, even if the witness had informed police officers on 30<sup>th</sup> September, 2007 that she can identify the offenders, the fact remains that the offenders had not been caught on 4<sup>th</sup> October, 2007 and therefore it is not baffling that the parents of the deceased had, if at all, sought effective investigation into the case. Thirdly, even the witness (PW1 Anju Gupta) has stated that she had not named the offenders (as she was unaware of their names) and had only stated that she can identify them on seeing them. The police therefore did not know the name of the offenders and investigation had not made much headway even on 4<sup>th</sup> October, 2007. Parents of the deceased may have thus written a letter on 4<sup>th</sup> October, 2007, which does not belie the recording of statement of PW1 Smt. Anju Gupta on 30<sup>th</sup> September, 2007. Fourthly, it is possible that the parents of the deceased may not be trusting that the witness can identify the offenders or had seen the incident. Fifthly, it needs to be noted that it is not known whether

parents of the deceased had indeed written any such letter on the 4th of October or on 8<sup>th</sup> October, 2007. The letters have not been proved by the accused persons in their defence evidence. Ld. counsel for accused persons did not even show the said letters to Sh. Amar Singh Yadav, father of deceased when he entered the witness box to depose as PW19, to ask if he had sent the said letters. Therefore, it is not permissible to assume that the said letters had been sent, that the letters had expressed dissatisfaction, and that the letters had been founded on the identity of assailants being unknown, so as to contradict the witness. Sixthly, PW1 Smt. Anju Gupta has not been confronted with the said letters so as to elicit her explanation. Her attention has not been invited to the contents of the letters. In light of the aforesaid reasons, the contention of the accused persons is liable to be rejected.

574. Learned counsel for accused persons showed two site plans to PW1 Anju Gupta. The first was a scaled site plan and the other was the site plan which had been prepared by the accused persons. The witness stated that she did not understand the said plans and therefore could not respond to questions asked from her about location of certain points shown in the site plan. This does not enure to the benefit of the accused persons. There is nothing to show that the witness had actually grasped the said plans but had feigned her inability to understand them. The accused persons have also not led any evidence to show that



the place of occurrence was different from the one represented by PW1 Anju Gupta.

575. In her cross-examination by learned counsel for accused Rishi Pal @ Pappu, PW1 Anju Gupta has stated that she does not remember the name of the priest of the temple which she used to visit for prayers. She did not know how many priests used to carry out duties in the temple. None of this is significant. A person who goes to a temple for worship simply performs his part and returns. It is not the business of a devotee to ascertain the name of the priest or to find out how many priests work in the temple.

576. From the above, it is clear that PW1 Smt. Anju Gupta has withstood the test of cross-examination. Her testimony has given a graphic account of the incident. She comes across as a truthful witness. Reading the testimony as a whole shows that there is consistency on the broad aspects of the prosecution case. Deposition of PW1 Smt. Anju Gupta can therefore be relied upon to draw inferences.

577. The other eye-witness examined by the prosecution is PW2 Dheeraj Sharma. He stated in his examination-in-chief that on 29<sup>th</sup> September, 2007 at about 07:30pm, he was going from the side of Bombay Chowk towards his house through Gali Arya Samaj, Bazaar Sita Ram. When he reached near Shiv Mandir, he saw Vijay Yadav surrounded by five or six boys. Among them, three boys were 'locals' who had been seen by

the witness in the area of Sita Ram Bazaar on earlier occasions. Out of the remaining boys, two were carrying pistols. Those two boys fired shots at Vijay Yadav. Vijay Yadav fell on the ground. The accused persons ran towards Hamdard Chowk.

578. PW2 Dheeraj Sharma further deposed that accused persons Bhisham @ Chintoo, Vinod Kumar @ Gola and Deepak @ Chowda were the local offenders who had surrounded the deceased. He stated that accused persons Hitender Singh @ Chhotu, Parveen Koli, Desraj @ Desu and Kishan Pal are the other four offenders who were present among those boys. The witness further deposed that accused persons Hitender and Kishan Pal were the ones who were carrying pistols and had fired at Vijay Yadav. The witness did not name the offenders and only pointed towards them for identification.

579. PW2 Dheeraj Sharma has denied the suggestion put to him by learned counsel for accused persons that he had identified the accused persons on the basis of photographs shown to him by the police before his disposition. This denial has not been disproved by the accused persons. This, and the articulation of several minute details in the testimony of the witness, shows that the witness had identified the accused persons on the basis of what he had observed on the day of the incident and not on the basis of any tutoring.

580. PW2 Dheeraj Sharma has denied the suggestion put to him by learned counsel for accused persons that he had not tendered any statement to the police regarding the incident; that the statement purportedly recorded under section 161 of Code of Criminal Procedure has been belatedly written by the police on its own; that the witness never visited crime branch for investigation of the case; that the statement was concocted by Inspector K.G. Tyagi; that the witness had been tutored by the investigating officer and by Abhay Singh Yadav. The accused persons have not disproved these denials of the witness. There is no evidence or material to suggest that the witness had not seen the incident; that the witness had not tendered any statement to the police regarding the incident during investigation; that the statements purportedly recorded under section 161 of Code of Criminal Procedure had been written by the police or by Inspector K.G. Tyagi on their own; that the witness had never visited crime branch during investigation of the case; that the witness had been deposing at the instance of the investigating officer or of Abhay Singh Yadav.

581. Learned counsel for accused persons has questioned PW2 Dheeraj Sharma about his education, family, marital status, mobile phone number, about whether he was using a mobile phone at the time of the incident, about his landline telephone number, about his business, sales tax registration, trade license, income tax returns, mode of commuting,

work timings and days, about profile of the place where the incident occurred, about the number of dharamshalas in the lane, about the location of Bombay Chowk in Arya Samaj Lane, about shops, clinic and Shiva temples in the vicinity, about ceremonies that are held in the temples, about place of sitting of the priests of the temples, about location of a school, about weekly off day for shops, about employee of the witness, place of residence of the employee, salary being paid to the employee, rental of the godown, owner of the godown, address of the owner, the person through whom the godown had been taken on rent, the names of shops and shopkeepers from whom he used to buy sanitary articles, the name of shopkeepers to whom he would supply articles, bills of sale and purchase, his familiarity with the councillor of the area, the place of residence of the deceased, brother of deceased and father of the deceased, and antecedents of the deceased and his family members. Most of the questions, it is regrettably noted, were irrelevant and have no bearing on the case. The purpose of asking the questions appears to be only to protract the recording of testimony of the witness. It is not the case of the accused persons that the witness has not been staying in that locality and was therefore unaware of the profile of the area or was unfamiliar with persons living there. There was no need to question the witness on his trade, employee and landlord.

582. Learned counsel for accused persons asked the witness about the day of the incident. The witness was asked about purchase of clothes before reaching the place of incident. He stated that he had purchased clothes from a shop at Connaught Place before reaching the place of incident. The witness denied that he had not purchased clothes. There was no reason for the witness to concoct a story about purchase of clothes preceding the incident. If he was fabricating facts, he could have stated that he had directly gone to the spot from his house. The witness also explained that on his way back, he had to leave the autorickshaw at Hamdard Chowk since there was no motorable road from Hamdard Chowk to his house and police doesn't allow rickshaws to enter the lane. This assertion of the witness has also not been disproved by the accused persons by leading any evidence.

583. The witness was then asked whether he knew persons residing at Gali Arya Samaj Road personally, by name and with their place of residence. The witness was asked whether those were shopkeepers. The witness was asked about the length and width of the lane and about location and timings of shops found in the lane, about people passing by, about other buildings in the lane. None of the questions and their responses showed the version of the witness to be not creditworthy.

584. PW2 Dheeraj Sharma was asked as to whether there was an electric pole at the spot of occurrence. He stated that indeed there was an electric pole at the said place. The witness went on to state that the light was switched on at the time of the incident. This is significant since this corroborates the stand of PW1 Anju Gupta about the lighting. Not only does this show that the area was well lit and events were clearly visible, it also shows that the version of both the witnesses is accurate and correct. It is important to note that the witnesses have not stated in their examination-in-chief about the said lighting. Had that been so, perhaps it could have been contended by learned counsel for accused persons that the witnesses had jointly prepared and rehearsed their narratives before coming to Court to depose. The question of street lighting had, however, been raised by learned counsel for accused persons during cross-examination of the witnesses. It is they who raked up the issue and the answer has shown that both the witnesses were present at the spot at the same time and had seen the occurrence.

585. PW2 Dheeraj Sharma has deposed during his cross-examination that he had talking terms with Abhay Singh Yadav although he was not very close to the family. He has stated that before the incident, he was not aware of the phone number of Abhay Singh Yadav and that he had talked to Abhay Singh Yadav on phone only after the incident. He has denied that Abhay Singh Yadav had helped him financially. The mere

fact that brother of the deceased has spoken to the witness of the murder does not imply that the witness has become influenced or that the brother of the deceased has asked the witness to tender a false version. If that had been so, possibly, the witness might have plainly denied being in contact with the brother of the deceased. On the contrary, he has admitted that he knew the deceased and his family members though he wasn't very close to them. Firstly, the fact that the witness had some ties with Abhay Singh Yadav is not sufficient to hold the witness to be unreliable. Secondly, the denial of the witness of having some affinity with Abhay Singh Yadav has not been disproved by the accused persons through any evidence. Thirdly, even if the witness was having a friendship or rapport with Abhay Singh Yadav, there is no reason for the witness to give a false deposition on the asking of Abhay Singh Yadav. Fourthly, the accused persons have not pointed out any reason owing to which Abhay Singh Yadav would ask the witness to falsely point out the accused persons as the offenders. It is not the case of the accused persons that Abhay Singh Yadav had some previous enmity with the accused persons so as to falsely implicate them in this case while protecting the actual culprits who murdered his brother. Fifthly, had PW2 Dheeraj Sharma been deposing only on the asking of someone else, he would not have been able to furnish graphic details of the incident as he has done. Therefore, the

contention of Id counsel for accused persons that the witness was deposing falsely under the influence of Abhay Singh Yadav is liable to be rejected.

586. PW2 Dheeraj Sharma has deposed that he got to know PW1 Anju Gupta only after the incident and that he did not know her previously. This finds corroboration from the testimony of PW1 Anju Gupta too and therefore cannot be doubted. The accused persons have not been able to disprove this assertion or to show that the witnesses had met each other beforehand. This shows that the witnesses have not been planted in a pre-planned manner.

587. PW2 Dheeraj Sharma has deposed in his cross-examination that he had seen Anju Gupta earlier while she was on the roof of her house and that she was visible from the roof of the house of this witness. He has deposed that the houses were at a distance of a hundred metres. The witness later clarified that he had seen Anju Gupta from the roof of house of his neighbour (the deceased), where he used to go to fly kites. The witness has clarified that he had seen the witness earlier but was not aware of her name. The witness stated that he got to know the name of Anju Gupta from documents prepared by Inspector Anil Sharma which he had read when he was there to tender his statement. It needs to be noted that the place where the witnesses are residing is thickly populated and houses are crammed in small zones or spaces.



There it isn't too difficult to find out the name of a person in the neighbourhood if one makes an inquiry. Once PW2 Dheeraj Sharma would have learnt that there is another woman in his neighbourhood who is an eyewitness, he may have been able to find out who she was and he might have learnt that she is the same woman who he had seen from the roof of the building of the deceased. The witness has further explained that on 11<sup>th</sup> October, 2007, Inspector K.G. Tyagi had introduced the witness to Smt. Anju Gupta. There is nothing in the recital that makes the narrative impossible or renders it unbelievable.

588. PW2 Dheeraj Sharma has further stated in his cross-examination that on 11<sup>th</sup> October, 2007, Inspector K.G. Tyagi had visited his house. He stated that he went to the house of Smt. Anju Gupta on the same day in the afternoon. The witness has stated that in his house Inspector K.G. Tyagi had shown to him photographs of some persons which included photographs of the three assailants. This fact finds mention in the testimony of PW1 Anju Gupta too. This shows that indeed Inspector K.G. Tyagi had visited both the witnesses on the said day and had shown the photographs. It also stands proved that photographs of the three accused persons figured among the photographs shown to the witnesses. The depositions of the witnesses corroborate each other. The congruity lends strength to the credibility of the witnesses.

589. PW2 Dheeraj Sharma has stated in his cross-examination that he knew accused persons Rishi Pal @ Pappu and Gopal Krishan Aggarwal. He has however not deposed about these persons being among those who had surrounded the deceased or had fired upon the deceased. The witness stated that he was only informed by Inspector K.G. Tyagi that accused Gopal Krishan Aggarwal was involved in commission of the offence. This shows that the witness was not playing second fiddle to Abhay Singh Yadav. Abhay Singh Yadav believed accused persons Ashok Jain, Rishi Pal @ Pappu and Gopal Krishan Aggarwal also to be the offenders as is clear from his testimony. Had PW2 Dheeraj Sharma been trying to toe the line of Abhay Singh Yadav, he would have named these three persons too, but he did not do so.

590. PW2 Dheeraj Sharma has further deposed in his cross-examination that he had not informed accused Gopal Krishan Aggarwal, accused Rishi Pal @ Pappu or others about the incident. This is neither unusual nor abnormal. There was no reason for the witness to report about the incident to accused Gopal Krishan Aggarwal, accused Rishi Pal @ Pappu or to other persons in the locality. The witness was under no legal or moral obligation to do so. These persons are not demonstrated by the accused persons to be so close to the witness that the witness would immediately apprise them about any crime that he witnesses. Also, a witness who sees a ghastly and gruesome crime, and that too

having been perpetrated by some persons who he believed to be from the same locality among others, may not be sure of who he can trust. He may keep the facts to himself till he is certain of the person who he can confide in.

591. PW2 Dheeraj Sharma has deposed that he straightaway went to his house after seeing the incident. He did not wait to see the removal of the deceased to the hospital. It is probable that the witness may have been rattled on seeing the incident. Therefore, he may have deemed it fit to rush back to his house. People react in different ways after witnessing an incident. In this case, the crime has been committed in an open place. There were a number of assailants. It is not difficult to understand that the witness would have feared for his own life and safety and would have been too terrified to be able to think or act rationally. In fact the witness has himself also explained that he did not check whether Vijay Yadav was alive, that he did not make any effort to shift Vijay Yadav to the hospital and he did not call the police, as he was perplexed. This conduct cannot be held to be atypical.

592. In the case of Yakub Ismailbhai Patel v. State of Gujarat (2004) 12 SCC 229 the Hon'ble Apex Court held as under:

*“The testimony of this witness, in our opinion, proves and corroborates the presence of the complainant PW1 and vice versa. PW2 does not claim to have seen the entire attack but has categorically deposed about having seen the initial attack by the appellant and co-accused with sharp-edged weapons on a vital organ of the deceased, namely, the neck.*

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*The learned counsel for the appellant has argued before this Court as well as the Courts below that the conduct of this witness in not saving the life of his friend, the deceased, renders him an improbable witness. In our view, the act of this witness in running away to save his own life and not going forward to help the deceased at the time of the incident is a most probable and natural human conduct which most men faced in such situation would resort to. In our view, the conduct of PW2 in not having the courage to stop three persons armed with deadly sharp-edged weapons is not and cannot be a circumstance or a ground to disbelieve his testimony particularly when the rest of his testimony is tested with cross-examination."*

593. PW2 Dheeraj Sharma has deposed that he did not inform family members of the deceased that the latter had been shot at. He has explained in his deposition that he had informed his brother about the incident who in turn informed the family members of the deceased. It is not necessary that the witness should have directly informed the family members of the deceased. The purpose was to notify the family members of the deceased about the incident and the witness had passed on the information through his brother. That the witness did not call the family members himself is understandable keeping in view the state of mind of the witness at that time.

594. In the case of *Main Pal v. State of Haryana* (2004) 10 SCC 692 the Hon'ble Supreme Court held as under:

*"Though the conduct of PW2 may appear to some to be somewhat unusual, as rightly noted by the High Court, every person cannot act or react in a particular or very same way and it would depend upon the mental set-up of the person concerned and the extent and nature of fear generated and consequently on the spot his reaction in a particular way has to be viewed on the totality of all such circumstances."*

595. PW2 Dheeraj Sharma has stated in his cross-examination that he did not see PW1 Anju Gupta at the place of incident. This assertion of the witness corroborates the testimony of PW1 Anju Gupta who also stated that she had not met PW2 Dheeraj Sharma at the place of incident. The fact that both of them did not meet does not imply that they were not present at a visible distance from the spot. The spot of incident, even as per the case of the accused persons, was a crowded place. It is not necessary that the persons who see the occurrence from different spots meet each other, especially if they have not continued to stand there and have rather rushed back to their respective destinations immediately after the occurrence. The witnesses were looking at the events and their focus would obviously not be on other spectators. Also, immediately after the incident, as is evident from the call to the police control room (proved by PW43 SI Kavita as Ex.PW43/B and not challenged or questioned by accused persons) and is also commonplace, that a crowd of about a hundred persons gathered at the place of occurrence out of sheer curiosity. Due to the swarm of people, and in that situation of panic, there would have been no time or opportunity for the spectators to notice each other. Therefore, the fact that the onlookers did not meet each other does not belie their testimony.

596. In his further cross-examination, PW2 Dheeraj Sharma has denied the suggestion that if there had been no electric pole at the spot, there would have been complete darkness. This statement of the witness has not been disproved by the accused persons through any evidence. This establishes that there was some other lighting at the spot of occurrence too that complemented the street light at the spot, so as to make the events taking place unmistakably visible. This has rather strengthened the narrative of the witness.

597. PW2 Dheeraj Sharma has explained that he and his family members did not inform the police on 29<sup>th</sup> September, 2007 or soon thereafter that he was one of the eyewitnesses of the incident. The witness may not have felt this need since his brother had already informed the family members of the deceased that PW2 Dheeraj Sharma had seen the occurrence. It is possible that the witness may be waiting for the police to get in touch with him on knowing about him from the family of the deceased instead of himself proactively pursuing the matter. The witness may possibly not be too eager to get embroiled into any controversy and that is why he may be reluctant to announce himself to be an eyewitness of the incident. It is also possible that the witness may not be keen on being examined in the case fearing for his own life and safety, having seen first-hand that the deceased has been brazenly killed at an open public place by multiple assailants. There could have

also been other underlying reasons. The reasons that weighed with the witness can only be hypothesised since learned counsel for accused persons did not ask the witness to disclose the said reasons. Had the reasons been elicited, this Court could have adjudged their adequacy. In absence of that, no inference can be formed against the witness.

598. PW2 Dheeraj Sharma has denied that he had incriminated the accused persons on the asking of Abhay Singh Yadav. This denial has not been disproved by the accused persons through any evidence.

599. PW2 Dheeraj Sharma has admitted that he was not aware of the names of the accused persons prior to the incident or immediately after that. He was initially unable to recall as to who had disclosed the names of these offenders to the witness. He later remembered and deposed that he had been informed of the said names by Inspector K.G. Tyagi after the witness had identified those persons from photographs shown to him by Inspector K.G. Tyagi. The witness stated that he learnt the names of the offenders two and a half or three months after 11<sup>th</sup> October, 2007. He specifically denied that he was informed about the said names by Anju Gupta or Abhay Singh Yadav. There is no reason for the Court to disbelieve this statement of the witness.

600. PW2 Dheeraj Sharma denied that his statement had not been tendered to Inspector K.G. Tyagi or that the statement had been recorded by

Inspector K.G. Tyagi on his own as per the choice of the latter. Accused persons have failed to disprove this stance of the witness.

601. PW2 Dheeraj Sharma initially denied having made a statement dated 11<sup>th</sup> October, 2007 to Inspector K.G. Tyagi but remembered, in the same breath, and deposed that indeed he had tendered it. The testimony has to be read as a whole. Human memory is not akin to a computer. A mere failure to instantly recall facts does not imply that the witness is stating a lie before the Court. Therefore no benefit can be derived by the accused persons only because the witness initially floundered on a question that did not even relate to the main incident, and concerned only the recounting of it before the Investigating Officer. In any case, it is the statement made in the Court that amounts to evidence. In the said testimony, PW2 Dheeraj Sharma has identified the offenders. He has vividly described the incident. In light of the testimony, the statement under section 161 of Code of Criminal Procedure purportedly recorded by Inspector K.G. Tyagi pails into insignificance. Even if the statement has not been recorded promptly, it does not have a bearing on the case, given the conspectus of facts.

602. In this context, this Court cannot help but notice from the cross-examination of PW2 Dheeraj Sharma that questions were deliberately made prolix and ponderous, possibly to test the patience of the witness or to nonplus him. The witness was questioned on extremely trivial



and insignificant matters. For instance, he was asked about the manner in which he was contacted when he was called to the police station on a certain day much after the incident, the time at which he was called, the time when he left his home to reach the police station, whether he called the investigating officer on phone before leaving his house, how he reached the police station, the duration for which he remained in the police station, what all he was told at the police station, how he knew the time of the incident, whether he had taken prasad from the temple, whether he had seen the time on reaching home, whether he was wearing a wrist watch, whether he checked the time when the incident occurred, whether he saw the time in the clock at the temple, whether he bowed at the gate of the temple and many other such questions. The consequence was that the witness had begun to flounder and started getting bewildered in respect of paltry and purportless matters.

603. Possibly for this reason, the witness initially denied having tendered statement dated 11<sup>th</sup> October, 2007 to the investigating officer. However, the witness, on listening to the contents of the statement, immediately recollected and clarified that he had indeed made the said statement. Similarly, he deposed that he did not visit the house of Anju Gupta on 11<sup>th</sup> October, 2007 with the investigating officer whereas he had earlier said that indeed he had visited her house. It needs to be borne in mind that the deposition was taking place four years after the

purported visit and it is possible that the witness may not be remembering the trivial and minute details accurately due to lapse of memory owing to passage of time. In any case, the said contradiction is inconsequential since it is on a trifling matter. The question does not relate to the day of incident or something that had happened soon thereafter. Whether one witness has been taken by the investigating officer to the house of the other witness a number of days after the incident and during investigation of the case is inconsequential and the proof of this is not necessary for proving the occurrence. As a corollary, the failure of the prosecution to prove this or a doubt created by the accused persons on this matter, has no bearing on the outcome of the case. The decision of the case depends on what the witnesses depose in the Court. The proof of where their statements were recorded by the investigating officer and other circumstances relating to the recording of statements are no longer germane to the issue at hand since it is now the testimony tendered in Court that is determinative of the final decision.

604. In this behalf, it is apt to quote from the decision of Ram Swaroop and Ors. v. State of Rajasthan 2004 Cri. L.J. 5043 in which the Hon'ble Supreme Court held as follows:

*"In our view the High Court ought to have considered his deposition rather than his statement recorded under section 161 of the Code of Criminal Procedure."*

605. It is clear that statements under section 161 of Code of Criminal Procedure do not bind the witnesses. The witnesses are under no pressure to depose on the lines of what they have stated to the investigating officer. They are at liberty to state whatever they please in the Court. This Court has to therefore decide this case, not as per what the witness stated in his statement under section 161 of Code of Criminal Procedure but by what he has deposed in Court. Thus, the precise date and place of recording of statement under section 161 of Code of Criminal Procedure is inconsequential.

606. PW2 Dheeraj Sharma has deposed in his cross-examination that when he went to the hospital along with others to take the dead body of the deceased, police officers were present. He stated that the police did not record his statement. He also stated that on that day, statement of other witnesses was not recorded in the presence of PW2 Dheeraj Sharma.

607. It has been argued by learned counsel for accused persons that if the witness had indeed seen the incident, he would have tendered his statement to the police at the time when he went to collect the dead body.

608. This argument does not hold water. There are a number of reasons for this.

609. Firstly, the argument is based on a presupposition that PW2 Dheeraj Sharma had deliberately withheld information and for no justifiable

reasons. Why the witness did not tender his statement at that time, should have been specifically asked from the witness. Since those reasons have not been elicited from the witness, the Court cannot adjudicate into the sufficiency of the reasons or draw any adverse inference holding the reasons to be insufficient.

610. Secondly, the day being spoken about is the day immediately after the incident. It is on 30<sup>th</sup> September, 2007 that the dead body was handed over. At that time, all affected persons would have clearly been overwhelmed with grief, shock and awe. The witness himself had not slept the entire night, as deposed by him. He may not be composed and may not be thinking rationally on what he should be doing. He may not have sensed the urgency for tendering his version to the police. The witness may have felt that on that day his priority is to take the dead body and to help the family members to perform the last rites. He may not have deemed it that important to immediately tender the statement to the police, particularly when he did not know the names of the assailants and therefore he could not be cognizant of his statement being of any help to the investigation in making headway.

611. Thirdly, it needs to be understood that a witness cannot on his own start spouting information. It is for the police to question the witness and to ask him to tender the statement. He cannot be expected to ramble about the crime the moment he sees any police officer. It is

nobody's case that the witness was asked whether he had seen the incident and was requested to give his account but the witness refused to do so. It is not that the witness had denied that he was an eyewitness. If that was the case, it could have been believed that the witness was not an eye-witness and that he has been planted only later. If the police does not record the statement of the eye-witness promptly, it is not for the eye-witness to be blamed or doubted. Many persons believe that they need to speak only when specifically questioned by the police. The situation may have again been different had the police recorded the statement of other witnesses and would have refrained from recording the statement of this witness and this witness would have not identified himself as an eye-witness. As per the testimony of this witness, statement of other witnesses was also not recorded in the presence of the witness so as to give him an opportunity to tender his account too after stepping forward as an eye-witness. Thus, simply because statement of this witness was not recorded at the time of collecting the dead body does not imply that he had not seen the incident itself.

612. Fourthly, it may be noted that PW25 Inspector Anil Kumar Sharma is stated to be the investigating officer at that time. He has deposed about his visit to the hospital and identification of the body. He has also talked about preparation of inquest documents, and carrying out of

post-mortem. According to this witness, he met Abhay Singh Yadav and Amar Singh Yadav at the hospital. This shows that although PW2 Dheeraj Sharma may have been present at the hospital, the investigating officer did not take specific note of his presence, and as a consequence the statement of the witness was not recorded there. The investigating officer was, at that time, only concerned with post-mortem. Thus, the failure to record the statement of the eyewitness at that very moment cannot be used for inferring that the witness had not seen the incident.

613. Fifthly, to identify eyewitnesses and to record their statements is the duty of the police and not of the eyewitness. If there are lapses in investigation, they may reflect upon the performance of the police but it doesn't automatically inure to the benefit of the accused persons. It is the duty of the Court to find out the truth notwithstanding defects in police investigation. The Court seldom finds a perfect investigation and certain lapses are practically inevitable. Only because of those imperfections that may be a result of error, oversight or human fallibility, or on account of being overburdened with duties, the case of the prosecution cannot be thrown out. Inability or failure of the police to perform its duties promptly do not denote that the accused is innocent and those lapses cannot be automatically used to deprive the victim and his family of justice. The Court has to see whether the

defects in investigation point towards false implication or whether the absence of those defects would have proved the accused to be innocent. In the case of Gajoo Vs. State of Uttarakhand, Crl. Appeal No. 1856 of 2009 dated 13<sup>th</sup> September, 2012, the Hon'ble Supreme Court has held as follows:

*"This is merely a defect in investigation. A defective investigation, unless affects the very root of the prosecution case and is prejudicial to the accused, should not be an aspect of material consideration by the Court."*

614. In this case, even if the statement of the witnesses would have been recorded on the day of the incident or at the time of handing over of the dead body, nothing would have changed. Even the belated statement did not disclose the names of the offenders and therefore the accused persons cannot contend that the witness was subsequently tutored about the names of the offenders and planted to frame the accused persons. Had that been so, in the statement of the witness which was belatedly recorded, he would have named the offenders.
615. Accordingly, the contention of learned counsel for accused persons is liable to be rejected.
616. The narrative of PW2 Dheeraj Sharma is similar to the account given by PW1 Anju Gupta. Their versions corroborate each other and lend strength to the authenticity of each other.
617. The depositions of PW1 Anju Gupta and PW2 Dheeraj Sharma are to be stacked up with each other because the witnesses saw the incident from

different positions in the same vicinity. This is done hereafter:

- i. PW2 Dheeraj Sharma deposed in his examination-in-chief that the persons who had surrounded the deceased and who were from the same locality are accused Vinod, Deepak @ Chowda and Bhisham @ Chintoo. PW1 Anju Gupta had also stated the same fact in her examination-in-chief.
- ii. PW2 Dheeraj Sharma has deposed that the other accused persons who had surrounded the deceased were Kishanpal, Hitender, Parveen and Deshraj. PW1 Anju Gupta also said the same fact in her examination-in-chief.
- iii. PW2 Dheeraj Sharma deposed that the accused persons who were carrying pistols and who had fired shots at Vijay Yadav were Kishanpal and Hitender. PW1 Anju Gupta also stated the same fact in her examination-in-chief.
- iv. Both the witnesses identified the accused persons correctly.
- v. Both the witnesses have spoken in one voice about the two persons carrying pistols firing gunshots at Vijay Yadav due to which Vijay Yadav fell on the ground in a pool of blood.

618. The witnesses were not walking together and are not related to each other. Standing at different points, both of them noticed the exact same events taking place. This shows that indeed the versions are accurate and there is no padding, distortion or exaggeration of facts. The



consistence in the depositions makes it irresistible to infer that the events, as recounted by the witnesses, did take place.

619. It is not the case of the accused persons that accused persons Vinod, Deepak @ Chowda and Bhisham @ Chintoo were not from the same locality. No evidence has been led by the accused persons in this behalf. The addresses of the accused persons are indeed of the same locality, which corroborates the version of both the eye witnesses. There is ample evidence to show that the witnesses had tendered their version to the police before these accused persons had been caught. It is not the case of the accused persons that they had themselves informed the witnesses that they hail from the same locality. The fact that both witnesses identified these offenders and expressly stated, from their own knowledge, and without having been informed about this by the accused persons, that they are from the same locality, establishes that they had indeed seen the incident and had noticed these persons among those committing the crime. This further demonstrates that the version of the witnesses of these three persons being the offenders was correct.

620. There is no reason to doubt the correctness of the version of PW1 Anju Gupta and PW2 Dheeraj Sharma. It is not the case of the accused persons that these witnesses had any grudge or enmity with the accused persons. There is no reason for these witnesses to falsely

implicate the accused persons.

621. Both these witnesses have been cross-examined at length over several days. They have withstood the test of cross-examination. They have denied the suggestion that they had not witnessed the incident. It is not the case of the accused persons, and they have not even attempted to prove through any evidence, that these witnesses were elsewhere and were not present at the place of occurrence. The testimony of the witnesses has passed the muster and is clearly worthy of reliance.

622. It is settled law that eye-witness account, even of a solitary witness, and even if not corroborated by any material, can be acted upon by the Court to draw conclusions and can even form the basis of conviction. One of the earliest decisions in this behalf is the case of Vadivelu Thevar v. State of Madras 1957 SCR 981 decided by the Hon'ble Supreme Court. In that case, it was held as follows:

*“As a general rule, a Court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.”*

623. Referring to Section 134 of the Evidence Act, the Hon'ble Court noted that the above rule applies equally to murder cases. It rejected the argument that in murder cases, there should be at least two eye-witnesses or that the version of an eye-witness must find corroboration in other material. It was observed thus:

*"The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the Court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof."*

624. In yet another decision of Hon'ble Supreme Court reported as Anil Phukan v. State of Assam (1993) 3 SCC 282, it was held as follows:

*"Indeed, conviction can be based on the testimony of a single eye witness and there is no rule of law or evidence which says to the contrary provided the sole witness passes the test of reliability."*

625. In the case of Kartik Malhar v. State of Bihar (1996) 1 SCC 614, the Hon'ble Supreme Court held thus:

*"On a conspectus of these decisions, it clearly comes out that there has been no departure from the principles laid down in Vadivelu Thevar case and, therefore, conviction can be recorded on the basis of the statement of a single eye witness provided his credibility is not shaken by any adverse circumstance appearing on the record against him and the Court, at the same time, is convinced that he is a truthful witness."*

626. All the aforesaid requirements have been fulfilled in the present case. While the Hon'ble Supreme Court has laid down that the narrative of a single eye-witness is sufficient to return a finding of guilt even in absence of corroboration, here the case of the prosecution stands on a better footing since the Court has the benefit of not one but two eye-witness accounts. This is in addition to the material marshalled by the prosecution to corroborate the version of the eye-witnesses. Both eye-witness accounts have been found to be of sterling quality. Barring very

few instances of faltering on recollection of trivial matters unrelated to the main incident, the witnesses have rendered a consistent and graphic account of events. This Court is convinced that they are truthful witnesses, and therefore, in keeping with the principle laid down in the aforesaid decisions, there is no need to look any further for corroboration from other sources, and it is open to this Court to draw conclusions on the basis of testimony of PW1 Anju Gupta and PW2 Dheeraj Sharma.

627. In the case of Namdeo vs State of Maharashtra Appeal (Crl.) no. 914 of 2006 decided on 13<sup>th</sup> March, 2007, the Hon'ble Supreme Court exemplified on who can be considered an 'independent witness' while who qualifies as an 'interested witness' whose testimony is to be read with circumspection. This is important because one of the foremost arguments raised by ld counsel for accused persons is that the witnesses are known to the family of the deceased and therefore were testifying under their influence. The answer lies in the abovesaid decision. In that case, it was held as follows:

*"From the above case-law, it is clear that a close relative cannot be characterised as an 'interested' witness. He is a 'natural' witness. His evidence, however, must be scrutinized carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the 'sole' testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one."*

628. An interested witnesses is the one who has "*an interest in seeing the accused punished and also having some enmity with the accused*" (Dalip Singh v. State of Punjab 1954 SCR 145). A witness does not cease to be independent only because he or she has an acquaintance, contractual relationship or other association with the victim or his family. Even a person who is closely related to the victim is not an interested witness. His evidence can be acted upon by the Court, without looking for corroboration. Thus, the testimony of a solitary witness closely related to the deceased, if found convincing, can form the basis of conviction.

629. In the present case, eye-witnesses PW1 Smt. Anju Gupta and PW2 Dheeraj Sharma have not been shown to be a close relative or a relative at all of the deceased. Therefore, one cannot raise even a remote doubt on their objectivity. Still, even if they are assumed to be on close friendly terms with the deceased or his family, though there is no evidence to suggest this, then too they would not qualify as 'interested witnesses'. Yet, as a measure of prudence and abundant caution, the testimony of PW1 Smt. Anju Gupta and PW2 Dheeraj Sharma has been subjected to close scrutiny. The statements uttered by them have been analysed threadbare. After undertaking this exercise too, the testimony is found to be reliable and trustworthy. It is palpable that commission of the offence had been seen by PW1 Anju Gupta and PW2 Dheeraj Sharma. Both these witnesses have given a vivid and coherent account

of the incident that had taken place on 29<sup>th</sup> September, 2007. Their versions are corroborative of each other.

630. The accused persons have disclosed no reason for which the witnesses would falsely implicate the accused persons. No enmity or other interest in handing out of punishment to the accused persons has been shown to exist. There is no common history shared between the accused persons and the witnesses. Hence, there is no impediment in relying on the depositions of PW1 Smt. Anju Gupta and PW2 Dheeraj Sharma.

631. From the testimony of PW1 Anju Gupta and PW2 Dheeraj Sharma, it is inferred as follows:

- a. that on 29<sup>th</sup> September, 2007, at about 7:30 p.m., near Shiv Mandir at Gali Arya Samaj, accused persons Deepak @ Chowda, Bhisham @ Chintoo, Kishanpal @ Fauzi, Hitender @ Chhotu, Parveen Koli and Desraj @ Desu had surrounded Vijay Yadav @ Viji;
- b. that two of those persons namely Kishanpal @ Fauzi and Hitender @ Chhotu were carrying pistols, and they fired at Vijay Yadav @ Viji;
- c. that Vijay Yadav @ Viji fell on the ground and lay in a pool of blood, whereupon the assailants fled towards Hamdard Chowk.

632. The above facts stand proved beyond reasonable doubt. The accused persons had acted in concert. They all participated in commission of the offence. Those who were not carrying pistols ensured that the victim does not escape by surrounding him. One of them (Parveen Koli) had first called the victim from his office and then surrounded Vijay Yadav alongwith his co-offenders. The accused persons had come prepared and they knew beforehand that Vijay Yadav had to be killed. All the six accused persons namely Deepak @ Chowda, Bhisham @ Chintoo, Kishanpal @ Fauzi, Hitender @ Chhotu, Parveen Koli and Desraj @ Desu together perpetrated the crime with each other's aid.
633. Apart from the eye-witnesses namely PW1 Smt. Anju Gupta and PW2 Dheeraj Sharma, there are other public witnesses whose testimony is relevant to the offence of murder. These witnesses have corroborated the version of the abovenamed eye-witnesses.
634. PW4 Parmod Kumar and PW10 Niranjan Singh are persons who were present in the office of Vijay Yadav on the date of the incident. Vijay Yadav had, according to the prosecution, left for the spot of incident from the said office a few minutes before he was shot dead. He had been called by one of the accused persons (Parveen Koli) who himself went to the office. Also, information of the incident had been given to the witnesses in the said office soon after the occurrence. Hence, the testimony of these witnesses is relevant as corroborative material.

635. PW4 Parmod Kumar deposed, in his examination-in-chief, that on 29<sup>th</sup> September, 2007, at about 06:00 pm, he was present in the office of Vijay Yadav at 3570, II Floor, Gali Than Singh, Bazaar Sita Ram. Vijay Yadav (deceased) and Niranjan were also present there; that at about 7pm or 7.15pm an unknown person, who the witness identified as accused Parveen Koli, came there. Vijay Yadav had a brief conversation with accused Parveen Koli. Vijay Yadav went out with accused Parveen Koli.
636. PW4 Parmod Kumar further deposed to events that transpired after the occurrence. He stated that after about twenty or twenty-five minutes of departure of Vijay Yadav, Smt. Anju Gupta came to their office and informed that some persons have fired at Vijay Yadav. The witness and Niranjan Singh went to Gali Arya Samaj near Shiv Mandir. They saw blood lying at the spot. They learnt about Vijay Yadav having been shifted to the hospital. On reaching the hospital, the witness got to know that Vijay Yadav had expired.
637. It is worthy to note that when PW4 Parmod Kumar deposed that after the incident Smt. Anju Gupta had come to the office of Vijay Yadav and had stated that some persons had fired at Vijay Yadav, learned counsel for accused persons had objected to the said statement. Ld defence counsel had urged that the statement of PW4 Parmod Kumar about Smt. Anju Gupta giving information of some persons having fired at



Vijay Yadav is barred by the hearsay rule. The Court had recorded, at that time, that the objection would be decided at the time of final disposal of the case.

638. In my opinion, the fact that Smt. Anju Gupta informed PW4 Parmod Kumar about the incident is not hit by the hearsay rule. Those words were uttered by Smt. Anju Gupta. They were heard by the witness. The witness was competent to depose about the uttering of the words. It qualifies as direct evidence within the meaning of Section 60 of Evidence Act, 1872, which permits a person to depose of a fact that can be heard, if he has heard it. The Court cannot however draw an inference from the said statement of PW4 Parmod Kumar that some persons had fired at Vijay Yadav. If such an inference is sought to be drawn from the testimony of PW4 Parmod Kumar, it would definitely be barred by the hearsay rule since PW4 Parmod Kumar had not himself seen the incident and had only been informed about it by Smt. Anju Gupta. However, the testimony of PW4 Parmod Kumar is not being relied upon by the prosecution to prove that the incident of firing had taken place. PW4 Parmod Kumar has only deposed about what happened soon after the incident. Since he had heard Smt. Anju Gupta informing about the incident, he has deposed about the said information being passed on to him and this deposition of PW4 Parmod Kumar is not barred by the hearsay rule.

639. Similarly, when PW4 Parmod Kumar deposed in his examination-in-chief that when he went to the spot, he learnt about Vijay Yadav having been shifted to the hospital, Id defence counsel objected to it on the ground that it amounts to 'hearsay'.
640. That the said witness learnt about the fact of shifting of Vijay Yadav to the hospital is not barred by the hearsay rule because this information had been given to him and he had heard it. The Court may hold on its basis that the witness was so informed. But the Court cannot draw a conclusion from this part of the testimony that indeed Vijay Yadav had been shifted to the hospital. That inference, if sought to be formed from the deposition, would have been barred by the hearsay rule. This has, however, not been done. The fact that Vijay Yadav had been shifted to the hospital has been proved by PW46 Deepak Sharma and the prosecution is not seeking to prove this fact through the testimony of PW4 Parmod Kumar.
641. PW10 Niranjan deposed, in his examination-in-chief, that on 29<sup>th</sup> September, 2007 at about 07.15 pm, he was present in the office of Vijay Yadav at 3570, Second Floor, Gali Than Singh, Bazaar Sita Ram. Vijay Yadav and Parmod were also present in the office. A boy entered the office, who the witness identified as accused Parveen Koli. The said boy informed Vijay Yadav that "Bhai Sahab" is calling the latter. Vijay Yadav asked accused Parveen Koli as to who is "Bhai Sahab". Accused

Parveen Koli asked Vijay Yadav whether everything needs to be discussed there itself, which means accused Parveen Koli did not want to disclose the identity of the person who was calling Vijay Yadav. Vijay Yadav went along with accused Parveen Koli.

642. PW10 Niranjana deposed that after twenty or twenty-five minutes, 'Anju Bhabhi', who was running a Coaching Institute on the third floor of the same building, came there and informed that Vijay Yadav has sustained gunshot injuries. The witness and Parmod went to Gali Arya Samaj and saw that blood was lying on the ground. They got to know that Vijay Yadav had been shifted to LNJP Hospital, whereupon they went to the hospital.

643. PW4 Parmod Kumar and PW10 Niranjana Singh were cross-examined by Id counsel for accused persons. During cross-examination, both the witnesses admitted that their statements had not been recorded by the police on 29<sup>th</sup> September, 2007. They stated that their statements were recorded post-midnight i.e. on 30<sup>th</sup> September, 2007. Both of them denied the suggestion of Id. defence counsel that their statements had been recorded much later and had been ante-dated.

644. Both PW4 Parmod Kumar and PW10 Niranjana Singh denied the suggestion that they were not present in the office of Vijay Yadav on the date of the incident. This denial has not been disproved by the accused persons. It is not the case of the accused persons that at the

time immediately preceding the incident or at the time of the incident, PW4 Parmod Kumar and PW10 Niranjn Singh were not present in the office of Vijay Yadav, and were seen elsewhere.

645. PW4 Parmod Kumar and PW10 Niranjn Singh denied the suggestion that they did not see Parveen Koli in the said office on that day. They denied the suggestion that they had not met Ms. Anju Gupta in the evening on that day. They denied the suggestion that they were not informed by Ms. Anju Gupta about the incident. It is not the case of the accused persons, and there is no evidence to establish, that at the time immediately preceding the incident or at the time of the incident, accused Parveen Koli or PW1 Smt. Anju Gupta had been elsewhere.

646. Both PW4 Parmod Kumar and PW10 Niranjn Singh denied that they were deposing at the instance of Abhay Singh Yadav or Inspector K.G.Tyagi. Both the witnesses denied that the incident had not occurred by the time when they purportedly received information of the occurrence from Anju Gupta. Both witnesses denied that they were identifying accused Parveen Koli because Parveen Koli had been shown to them in the police station before the testimony. These denials of the witnesses have not been rebutted by the accused persons through any evidence. The accused persons have not been able to establish either from cross-examination of the witnesses or through any

other evidence that the witnesses were deposing on the asking of Abhay Singh Yadav.

647. PW4 Parmod Kumar and PW10 Niranjn Singh denied having any association with PW1 Smt. Anju Gupta. They stated that PW1 Smt. Anju Gupta is not their relative, business associate or partner. They went on to say that they have no visiting terms or 'social relation' with her and that they have never visited her house. These assertions of the witnesses have not been disproved by the accused persons. This establishes that all the witnesses were independent of each other. That being so, it cannot be believed that the witnesses got together and contrived their roles to falsely implicate the accused persons. Unless the witnesses had joined hands, their versions could not have been fabricated. For instance, if PW1 Smt. Anju Gupta had not seen the incident and had not given information about it to PW4 Parmod Kumar and PW10 Niranjn Singh, and if she had falsely represented to the Court that she did so, the other witnesses PW4 Parmod Kumar and PW10 Niranjn Singh would have called her bluff by testifying that in fact PW1 Smt. Anju Gupta never informed them of the incident.

648. PW4 Parmod Kumar and PW10 Niranjn Singh talked about a peon named Rahul to have been employed in the office of Vijay Singh Yadav. They stated that the peon was not in office when Parveen Koli had arrived since the peon had gone to fetch tea. Both witnesses

explained that there was no facility of preparing tea in the kitchen which was attached to the office of Vijay Singh Yadav. Both PW4 Parmod Kumar and PW10 Niranjana Singh stated that accused Parveen Koli had visited the office of Vijay Singh Yadav between 7:00pm and 7:15pm on 29<sup>th</sup> September, 2007. Both witnesses described the topography of the area where the incident occurred. The witnesses graphically described the office of Vijay Singh Yadav which shows that they were indeed present in the office. The witnesses stated that they had not seen accused Parveen Koli in the office of the deceased on earlier occasions.

649. As seen above, nothing substantial could be brought out in cross-examination of the witnesses which could discredit them or create a dent on their version. The witnesses have withstood the test of cross-examination and their narratives are reliable, besides being corroborative of each other. Not only statements uttered by them in their examination-in-chief, even answers to the questions put to them in cross-examination concur on facts. The accused persons could not have anticipated the questions that may be posed to them in cross-examination and therefore could not have prepared their answers in advance. For instance, both of them have stated that accused Parveen Koli visited the office between 7 pm and 7.15 pm; both of them have furnished a similar description of the office of Vijay Yadav, both of

them stated about employment of a peon named Rahul in the said office, about he not being present in the office at the time of arrival of accused Parveen Koli, about the peon having gone to fetch tea, about PW1 Smt. Anju Gupta speaking loudly and appearing perplexed when she relayed information of the incident to the witnesses. The fact that the witnesses were in unison on the finer details too shows that they had not been tutored and that they were indeed deposing what they had observed. The account of the witnesses is truthful.

650. From the deposition of PW4 Parmod Kumar and PW10 Niranjn Singh, it follows that on 29<sup>th</sup> September, 2007, between 7pm and 7.15pm, accused Parveen Koli came to the office of Vijay Yadav, told Vijay Yadav that the latter is being called, and then Vijay Yadav went out with accused Parveen Koli. It is also deduced from the deposition of the witnesses that at about 7.40pm, Smt. Anju Gupta came to their office and informed that some persons have fired at Vijay Yadav; that the witnesses went to the spot of incident at Gali Arya Samaj near Shiv Mandir where they saw blood lying at the spot and learnt about Vijay Yadav having been shifted to the hospital.

651. The aforesaid facts having been proved beyond doubt by PW4 Parmod Kumar and PW10 Niranjn Singh, do corroborate the version of eye-witnesses PW1 Smt. Anju Gupta and PW2 Dheeraj Sharma. The narratives are wholly in sync with each other. On 29<sup>th</sup> September, 2007,

it is because accused Parveen Koli came to the office of Vijay Yadav and departed with Vijay Yadav between 7pm and 7.15pm (as deposed by PW4 Parmod Kumar and PW10 Niranjana Singh), that Vijay Yadav was found at the spot of incident at 7.30pm where Parveen Koli was also found along with others (as seen by PW1 Smt. Anju Gupta and PW2 Dheeraj Sharma). It needs to be noted that the distance between the office of Vijay Yadav and the spot of occurrence is stated by PW4 Parmod Kumar and PW10 Niranjana Singh to be such as can be covered in about ten or fifteen minutes on foot. The incident took place at 7.30pm and that is why PW1 Smt. Anju Gupta was able to return and convey the information to PW4 Parmod Kumar and PW10 Niranjana Singh (as deposed by PW4 Parmod Kumar and PW10 Niranjana Singh). The depositions of all four witnesses namely PW1 Smt. Anju Gupta, PW2 Dheeraj Sharma, PW4 Parmod Kumar and PW10 Niranjana Singh are consistent with each other. They prove that initially (at about 7pm or 7.15pm) Parveen Koli arrived at the office of Vijay Yadav and took him along to the spot of occurrence. This happened in the presence of PW4 Parmod Kumar and PW10 Niranjana Singh. There, at about 7:30 p.m., near Shiv Mandir at Gali Arya Samaj, accused persons Deepak @ Chowda, Bhisam @ Chintoo, Kishanpal @ Fauzi, Hitender @ Chhotu, Parveen Koli, Desraj @ Desu and Vinod surrounded Vijay Yadav. Accused persons Kishanpal @ Fauzi and Hitender @ Chhotu fired



gunshots at Vijay Yadav. Vijay Yadav fell on the ground. The accused persons fled. The incident was seen by PW1 Smt. Anju Gupta and PW2 Dheeraj Sharma. PW1 Smt. Anju Gupta then reached the office of Vijay Yadav and notified PW4 Parmod Kumar and PW10 Niranjan Singh. PW4 Parmod Kumar and PW10 Niranjan Singh then went to the spot of incident.

652. PW4 Parmod Kumar and PW10 Niranjan Singh, when they tendered their statement to the police, did not know the version of PW1 Smt. Anju Gupta and PW2 Dheeraj Sharma. They had no means to anticipate the account of PW1 Smt. Anju Gupta and PW2 Dheeraj Sharma, and therefore could not have concocted a story to suit and lend strength to the version of PW1 Smt. Anju Gupta and PW2 Dheeraj Sharma. Also, PW4 Parmod Kumar and PW10 Niranjan Singh would not have known about blood lying at the spot and other details of the spot that they have revealed in their cross-examination, had they not visited the spot. They would not have visited the spot, had they not been informed of the incident by PW1 Smt. Anju Gupta. PW1 Smt. Anju Gupta would not have been able to divulge information of the incident to PW4 Parmod Kumar and PW10 Niranjan Singh had she not seen it. All the events occurred in a close sequence with no time lag and this rules out manipulation or fabrication of facts. One event led to another and they are so intertwined and interdependent that there is no

scope for falsehood. The testimony of PW4 Parmod Kumar and PW10 Niranjan shows not only the involvement of accused Parveen Koli in the crime but also shows that indeed PW1 Smt. Anju Gupta had witnessed the incident, which is why she was able to pass on this information to PW4 Parmod Kumar and PW10 Niranjan a few minutes after the incident.

653. Another public witness examined by the prosecution is PW19 Amar Singh Yadav. He is father of Vijay Yadav. The witness deposed in his examination-in-chief that he had last seen his son Vijay Yadav on 29<sup>th</sup> day of the “ninth month October” of 2007. On asking, the witness stated that he had seen his son Vijay Yadav on 29<sup>th</sup> October, 2007 at about 7.15pm. He then deposed that he had seen Vijay Yadav coming from Than Singh Gali alongwith three or four other persons; that on asking Vijay Yadav replied to the witness that he was going to Gali Arya Samaj and would return shortly; that after about fifteen or twenty minutes, a person came to the shop of the witness and told the witness that Vijay Yadav had been shot at. The witness did not know the name and parentage of the persons who were accompanying Vijay Yadav @ Viji on the day of the incident. The witness initially pointed towards accused persons Parveen Koli, Deepak @ Chowda and Bhisham @ Chintoo as those who had accompanied the deceased on the date of the incident. In cross-examination by Id. public prosecutor, the witness

corrected himself and stated that he had mistakenly identified Deepak @ Chowda as being one of those persons. The witness stated that it was Desraj @ Desu who was seen with Vijay Yadav, and not Deepak @ Chowda. In cross-examination by Id defence counsel, the witness further clarified that even Bhisham @ Chintoo had been mistakenly identified by the witness. In re-examination by Id public prosecutor, the witness stood by his statement that accused Bhisham @ Chintoo had not been seen by the witness with Vijay Yadav on date of the incident.

654. PW19 Amar Singh Yadav erred on two counts. Firstly, he stated the date of seeing his son last to be 29<sup>th</sup> day of October 2007 instead of 29<sup>th</sup> day of September 2007 although reading of the testimony does show that the witness is referring to the date when Vijay Yadav had been killed. Secondly, the witness was not resounding in pointing out the persons who he had seen with his son on the day of the incident. Initially, the witness pointed towards accused persons Parveen Koli, Deepak @ Chowda and Bhisham @ Chintoo as those who were seen with the deceased. In cross-examination by Id. public prosecutor, the witness stated that it was not Deepak @ Chowda but Desraj @ Desu who was seen with Vijay Yadav. In cross-examination by Id defence counsel, the witness stated that even accused Bhisham @ Chintoo was not among those persons. In re-examination by Id public prosecutor, the witness reiterated the final stance.

655. Ordinarily, owing to these weaknesses, the testimony of a witness may have been susceptible to rejection. However, the testimony of PW19 Amar Singh Yadav does not deserve to be summarily rejected. The reason is that some allowance will have to be made by the Court for this witness who was 77 years old at the time of his deposition and was deposing about five years after the date of occurrence. In this behalf, I am guided by the decision of Hon'ble Supreme Court in the case of State of Uttar Pradesh v. Naresh and Ors. (2011) 4 SCC 324, in which it was held that the Court must understand that "discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence." It was laid down that those discrepancies or errors ought not to lead to condemnation of the testimony as being unworthy of reliance.

656. Here, the witness has himself also explained that the errors in identification were a result of confusion in his mind. It needs to be noted that the witness was not prompted by anybody to rectify his error. He corrected himself, on his own, at two stages of the testimony. Therefore, it cannot be stated that the witness was making a false deposition in the Court. He reiterated his ultimate stand during his re-examination by the prosecution. The errors made by the witness were evidently *bona fide* and a consequence of age related confusion and loss

of memory due to lapse of time. The witness is father of the deceased. He has an interest in seeing that the real offender receives punishment. The said witness is therefore unlikely to be making a false deposition to implicate innocent persons. The witness is not shown to have an agenda of his own or some score to settle with accused persons Parveen Koli and Desraj @ Desu that could have induced him to identify them and implicate them in this case. No previous enmity has been shown to exist. There is thus no reason on the part of PW19 Amar Singh Yadav to wrongly identify the two persons. If the witness had an oblique motive, the witness may not have corrected himself, and would certainly not have withdrawn his previous stand of Bhasham @ Chintoo being seen with the deceased. This shows that the witness indeed wanted to render a truthful account before this Court. The testimony of the witness has to be read as a whole and therefore the initial flip-flop on the part of the witness can be overlooked and the eventual position, reiterated during re-examination by the prosecution, alone has to be considered. In the case of Baley Pershad v. Anil Kumar and Ors. Rev. no. 76/09 decided on 29<sup>th</sup> November, 2011, it was held as follows:

*"There is no dispute to the proposition that no one line of a deposition of a witness can be extracted from the rest of his testimony to read it in a manner in which one or the other party wants the Court to read; the entire gist of the testimony of the witness has to be appreciated; his testimony has to be read as a whole and in entirety from which what the witness intends to state has to be gathered."*

657. Reading the testimony of the witness as a whole, it can be gathered that the witness had seen his son in the company of accused Parveen Koli and accused Des Raj @ Desu on the date of the incident.
658. The Court needs to note that the identification by PW19 Amar Singh Yadav of Parveen Koli and Desraj @ Desu was not being done in Court for the first time. PW19 Amar Singh Yadav had seen the same persons in the office of the crime branch during investigation. Then too, PW19 Amar Singh Yadav had identified them as those who were accompanying his son on the date of the incident. There is proved by the depositions of PW68 Inspector K.G.Tyagi, PW62 ASI Rajbir Singh and PW67 SI Mukesh, and has remained uncontroverted in cross-examination of the witnesses.
659. This is also corroborated by PW4 Parmod and PW10 Niranjan who state that Vijay Yadav had left his office along with Parveen Koli at about 7:15pm on the date of the incident. Amar Singh Yadav had also seen his son walking alongside Parveen Koli at around the same time. It is possible that after Vijay Yadav left his office to go with Parveen Koli, accused Des Raj @ Desu joined them and started walking with Vijay Yadav, when they all were spotted by Amar Singh Yadav. The testimony of Amar Singh Yadav is an additional piece of evidence showing involvement of accused persons Parveen Koli and Desraj @ Desu in commission of the offence. It is not the case of the said accused

persons that they went to some other place and were not with Vijay Yadav after Amar Singh Yadav saw them. Apart from the deficiencies pointed out, the testimony of Amar Singh Yadav has remained consistent and can be relied upon. The error in date is also a result of age related loss of memory. The witness has stated the date of seeing his son as 29<sup>th</sup> October, 2007 but he actually meant it to be 29<sup>th</sup> September, 2007. This is apparent from the initial statement of the witness when he said that he had seen his son on the 29<sup>th</sup> day of 'ninth month' of year 2007. It appears that the witness got confused in estimating the ninth month of the year. On a reading of the entire testimony, particularly the description of other events that took place on the day when the witness saw his son, it is apparent that the witness is referring to the day when his son had been killed. It is nobody's case that the witness had last seen the accused on 29<sup>th</sup> October, 2007 since the son of the witness had died on 29<sup>th</sup> September, 2007 itself. Also, the subsequent questions asked from the witness during his cross-examination, and which have been duly answered by the witness referred to the relevant date as 29<sup>th</sup> September, 2007 which shows that the intention of the witness was to refer to the 29<sup>th</sup> day of the month of September itself. The mention of the month of October in place of the month of September is a mere error by the witness which can be ignored. The testimony of PW19 Amar Singh Yadav does corroborate

the testimony of the other public witnesses regarding involvement of accused Parveen Koli and accused Desraj @ Desu. However, even if this Court were to ignore the testimony of PW19 Amar Singh Yadav, owing to the infirmity of mention of wrong date and the original inability to emphatically point towards the persons who had been seen by him with his son, then too the case of the prosecution would not be affected since the involvement of accused persons Parveen Koli and Desraj @ Desu has been convincingly proved by other witnesses namely PW1 Anju Gupta, PW2 Dheeraj Sharma, PW4 Parmod and PW10 Niranjana Singh.

660. Apart from the above evidence, there is also evidence to prove motive to commit the crime on the part of accused Bhisham @ Chintoo. This evidence comprises of the testimony of PW4 Parmod Kumar, PW10 Niranjana and PW14 Abhay Singh Yadav supported by some police record of complaint made against Bhisham @ Chintoo.

661. PW4 Shri Parmod Kumar deposed in his examination-in-chief that there had been a quarrel between the witness and accused Bhisham @ Chintoo; that the witness used to frequently meet and sit with Vijay Yadav, which had antagonized Bhisham @ Chintoo; that the witness had been beaten up by Bhisham @ Chintoo; that the witness had lodged a complaint at P.P. Turkman Gate regarding the incident.



662. PW10 Shri Niranjan had deposed in his examination-in-chief that Parmod was a friend of Vijay Yadav; that a quarrel had taken place between Parmod and accused Bhisham @ Chintoo; that after the scuffle between Parmod and accused Bhisham @ Chintoo, Vijay Yadav favoured Parmod and thereafter Parmod started visiting the office of Vijay Yadav; that Parmod had also lodged a complaint to the police against accused Bhisham @ Chintoo regarding the quarrel.
663. PW14 Abhay Singh Yadav deposed in his examination-in-chief that the relations between his brother Vijay Yadav and Bhisham @ Chintoo were strained; that Vijay Yadav was having friendly relations with Parmod Kumar; that a dispute between Parmod Kumar and Bhisham @ Chintoo was being probed in the police station on an FIR registered on the complaint of Parmod Kumar; that Bhisham @ Chintoo was pressurizing Parmod Kumar to enter into a compromise, which Parmod Kumar was not agreeable to; that accused Bhisham @ Chintoo was holding Vijay Yadav responsible for not allowing Parmod Kumar to enter into a compromise.
664. It may be mentioned here that PW14 Abhay Singh Yadav had also stated in his examination-in-chief that Vijay Yadav had died due to gunshot injury sustained by him at Gali Arya Samaj. The statement had been objected to by learned counsel for accused persons on the ground that it is barred by the hearsay rule. The objection was to be decided at

the stage of final disposal of the case.

665. It needs to be noted that it is not the case of the prosecution that PW14 Abhay Singh Yadav had indeed seen the incident. The witness is therefore not competent to describe the assault. His deposition, to the extent of pointing out the cause of death, is indeed barred by the hearsay rule. That apart, this fact of Vijay Yadav being killed by gunshot wounds at Gali Arya Samaj has been proved by other witnesses. The prosecution is, therefore, not resting its case on the testimony of PW14 Abhay Singh Yadav to prove this fact.

666. PW4 Shri Parmod Kumar, PW10 Shri Niranjana and PW14 Abhay Singh Yadav have deposed about a quarrel between accused Bhisham @ Chintoo and Parmod Kumar, and the association of Parmod Kumar with Vijay Yadav. They have also talked about the annoyance of Bhisham @ Chintoo to the grant of support by Vijay Yadav to Parmod Kumar. This, according to the prosecution, was the motive of Bhisham @ Chintoo in executing the killing of Vijay Yadav, apart from the espousal of other persons which will be dealt with later in this judgment when the role of the conspirators will be examined. The testimony of the abovenamed witnesses, on the point of association of Parmod Kumar with Vijay Yadav, quarrel of Parmod Kumar with Bhisham @ Chintoo and the exasperation of Bhisham @ Chintoo, has remained unshaken during cross-examination of the witnesses. The fact

of the said quarrel having taken place is further demonstrated by the police record comprising of DD No. 24 dated 24<sup>th</sup> August, 2007 Ex. PW4/D-2, DD No. 14 dated 10<sup>th</sup> September, 2007 Police Post Turkman Gate Ex. PW52/C and kalandra under Sections 107/151 of Code of Criminal Procedure Ex. PW52/B made at the instance of PW4 Parmod Kumar. The kalandra was collected by PW35 HC Omender and seized by PW68 Inspector K.G. Tyagi. Both the witnesses have testified to this effect. Inspector K.G. Tyagi seized the said documents by preparing memo Ex. PW35/G. PW52 Constable Kedhar Singh has proved the record of police proceedings, including the record of arrest of accused Bhisham @ Chintoo on the said complaint, which he identified as Ex. PW52/A. The motive of accused Bhisham @ Chintoo to commit the crime stands proved by the above evidence.

667. The motive of other accused persons who are alleged to have committed murder of Vijay Yadav has however not been proved. The case of the prosecution is that they had perpetrated the crime at the instance of accused Gopal Krishan Aggarwal, Ashok Jain and Rishi Pal @ Pappu for money offered by these three persons, of which part payment had been made in advance. The instructions given by accused Gopal Krishan Aggarwal, Ashok Jain and Rishi Pal @ Pappu to accused persons Hitender Singh @ Chhotu, Parveen Koli, Bhisham @ Chintoo, Desh Raj @ Desu, Deepak @ Chowda and Kishanpal @ Fauzi have not

been proved. The allurements of money were not proved. The money allegedly paid for committing the crime has not been recovered. The motive of these accused persons thus stands not proved. This, however, is not fatal to the case of the prosecution. This is because the allegations of commission of murder are supported by direct eye-witness account. The prosecution is thus relieved of its burden to prove the motive. It is settled law that ocular testimony of the witnesses, which is otherwise believable, cannot be discarded only on the ground of absence of motive.

In the case of *State of U.P. v. Kishanpal* (2008) 16 SCC 73, it was held by the Hon'ble Supreme Court as follows:

*"Though it was pointed out that for such a serious crime, the said motive was highly insufficient, as rightly observed by the trial Judge, the motive is a thing which is primarily known to the accused themselves and it is not possible for the prosecution to explain what actually promoted or excited them to commit the particular crime. The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled law that the motive loses all its importance in a case where direct evidence of eye-witnesses is available, because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eye-witnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of eye-witnesses is clear and reliable, the absence or inadequacy of motive cannot stand in the way of conviction."*

In the case of *Bikau Pandey v. State of Bihar*, (2003) 12 SCC 616 it was held by the Hon'ble Supreme Court as under:

*"Even if the absence of motive as alleged is accepted that is of no consequence and pales into insignificance when direct evidence establishes the crime."*

668. In the case of Arjun Mallik v. State of Bihar 1994 Supp (2) SCC 372, the Hon'ble Supreme Court elucidated the legal position in the following words:

*"In this connection it may first be pointed out that mere absence of proof of motive for commission of a crime cannot be a ground to presume the innocence of an accused if the involvement of the accused is otherwise established."*

669. It is seen from the above that the prosecution has demonstrated, convincingly, from the testimony of public witnesses PW1 Smt. Anju Gupta, PW2 Dheeraj Sharma, PW4 Parmod Kumar and PW10 Nirranjan Singh, PW14 Abhay Singh Yadav and PW19 Amar Singh Yadav that on 29<sup>th</sup> September, 2007 first accused Parveen Koli called Vijay Yadav @ Vijji to the spot of occurrence and then accused persons Deepak @ Chowda, Bhisham @ Chintoo, Kishanpal @ Fauzi, Hitender @ Chhotu, Parveen Koli and Desraj @ Desu surrounded Vijay Yadav @ Vijji, while accused persons Kishanpal @ Fauzi and Hitender @ Chhotu fired gunshots at Vijay Yadav @ Vijji thereby killing Vijay Yadav @ Vijji.

### **Official Witnesses**

670. Although the evidence set forth above is sufficient to draw conclusions, in this case, the allegations find support from other material too. The

said material comprises of testimony of police officers to the investigation carried out, articles recovered and facts discovered, documents collected, and those prepared by police during investigation. There are also some judicial officers examined in the case to prove record of Test Identification Parade. The testimony of official witnesses and the documents proved by them are useful for strengthening the narration of public witnesses and for endorsing their correctness. Since the said material does not occupy centrestage in this determination, an elaborate discussion is avoided and the material is briefly outlined.

671. The investigation carried out in the case can be broadly divided into three parts. The first part is investigation carried out by local police (PS Hauz Qazi). The second part concerns the investigation carried out by Inter-State Cell, Crime Branch on transfer of the case to it. The third part relates to investigation carried out by Anti-Homicide Section of Crime Branch in respect of accused Kishanpal @ Fauzi. In addition, the proceedings conducted by crime team, by judicial officers and certain other dimensions including those relating to deposit of case property need to be recapitulated. To aid ready reconstruction of events that took place during police investigation, the testimony of the witnesses is reorganized and assessed under separate heads as under.

### **Police Control Room**

672. Two witnesses posted at the police control room had received separate calls of the incident. These are PW42 HC Amar Pal and PW43 SI Kavita.
673. PW42 HC Amar Pal (Retd.) deposed in his examination-in-chief that on 29<sup>th</sup> September, 2007, he was posted at police control room and he was on duty from 2 pm to 8 pm. On that day at about 17:46 hours, a call was received in control room from telephone number 9811607778 from one Gopal Krishan to the effect that a person had been shot at Gali Bazaar Sita Ram near Arya Samaj Mandir. The witness stated that this information was recorded and conveyed to communication NET. The witness identified copy of the PCR form from judicial file as Ex. PW42/B. He stated that the original form had been destroyed. The witness brought a letter in this regard running into three pages which he identified as Ex. PW42/A.
674. PW43 SI Kavita deposed in her examination-in-chief that on 29<sup>th</sup> September, 2007, she was posted at police control room and she was on duty from 2 pm to 8 pm. She stated that on that day at about 17:54 hours, a call was received from control room from telephone number 20314915 by a male person informing that a person had been shot at Gali Bazaar Sita Ram near Arya Samaj Mandir, that assailants have fled away, that about 100 persons have gathered and a request was made to send the force. She stated that this information was recorded and

conveyed to communication NET. The witness identified copy of the PCR form from judicial file as Ex. PW43/B. She stated that the original form had been destroyed. The witness brought a letter in this regard running into three pages which she identified as Ex. PW43/A.

675. PW42 HC Amar Pal and PW43 SI Kavita have both testified on the basis of the PCR forms that calls had been received by them at 17:46 hours and 17:54 hours respectively. However, both the witnesses have been careless and have testified inaccurately. Perusal of the documents (PCR forms proved by the witnesses as Ex.PW42/B and Ex.PW43/B) on the basis of which the witnesses stated the time of the calls themselves show the time of receipt of the calls as 1946 and 1954 hours respectively. This implies that the witnesses have erred and have been imprecise in stating the time of the PCR calls. Since the PCR forms had been prepared contemporaneously when calls had been received, and the forms are required to be prepared under the police rules, it is the time mentioned in the PCR forms, and not what the witnesses stated from their memory, which must be accepted to reflect the accurate time of the calls.

676. The time mentioned in the PCR forms is in sync with the time stated in the remaining documents prepared by the police and the version of other prosecution witnesses as to the time of the incident. Deriving the time of the PCR calls from the PCR forms is also the mandate of the



principle under section 92 of the Evidence Act, 1872. A person employed in the police control room who receives scores of calls each day cannot be expected to remember the time of receipt of each call, and to reproduce this from his memory six years after receipt of the calls. It is the document prepared at the time of the call that alone can state the exact time of receiving the call. Both the abovenamed witnesses had been examined on the same day and since the mistake in mention of the time is identical, possibly the error had crept in because an attempt may have been made to reduce the 24-hour format to a 12-hour format of the time. Also, the correctness of the said PCR forms has not been questioned by the accused persons during cross-examination of the witnesses or by defence evidence.

677. From the PCR forms Ex.PW42/B and Ex.PW43/B, it is inferred that the phone calls to the police control room had been received at 1946 hours and 1954 hours and had been received by PW42 HC Amar Pal and PW43 SI Kavita respectively. It is relevant to note that nothing material has emerged from the cross-examination of PW42 HC Amar Pal and PW43 SI Kavita which could cast a doubt on their testimony that calls had been received in the police control room. The assertion of the witnesses that the original PCR forms had been destroyed, duly supported by documents Ex.PW42/A and Ex.PW43/A, has remained unchallenged and unrebutted. Since the original documents had been

destroyed and the copies identified by the witnesses are shown to be true copies of the originals, the said PCR forms are wholly admissible as secondary evidence. The forms stand proved as per section 65 read with section 63 of Evidence Act, 1872. From the testimony of PW42 HC Amar Pal and PW43 SI Kavita, read along with the PCR forms proved by these witnesses as Ex.PW42/B and Ex.PW43/B, it is concluded that calls had been made giving information to the police about the occurrence at 7:46pm and 7:54pm on 29<sup>th</sup> September, 2007. This lends support to the version of the public witnesses about the incident which too describes the incident as having occurred at about 7:30pm on that day. Also, the PCR calls talk about use of gunshots to kill Vijay Yadav and since the calls had been made immediately after the incident, the calls further validate the version of public witnesses about gunshots having been fired to assassinate Vijay Yadav.

### **Crime Team**

678. On receiving information of the incident, the crime team had reached the spot. The steps taken by the crime team have been proved by two witnesses namely PW33 Inspector Anil Kumar and PW39 Constable Dinesh.

679. PW33 Inspector Anil Kumar was incharge of the crime team on the day of the incident. He deposed in his examination-in-chief that on 29<sup>th</sup>

September, 2007, on receipt of information, the witness along with his team reached Gali Arya Samaj. Inspector Anil Sharma and his staff met the witness there. The witness saw blood lying at the spot. He found an empty cartridge at the place of occurrence. Constable Dinesh, photographer was also in the team and he took photographs of the spot. The witness identified the photographs as Ex. PW25/D1 to Ex. PW25/D12. The witness stated that he had inspected the place of occurrence and had prepared the crime team report Ex. PW-33/A which he submitted to IO Inspector Anil Sharma.

680. PW39 Constable Dinesh deposed in his examination-in-chief that on 29<sup>th</sup> September, 2007 he was posted at Mobile Crime Team, Central District, Pahar Ganj, of which SI Anil Kumar was the In-charge. The witness alongwith the team reached in front of Property No. 2746, Arya Samaj Street, Bazaar Sita Ram, Delhi. Inspector Anil Sharma alongwith his staff met them. The witness saw an empty cartridge and some blood. On the instructions of Investigating Officer and In-charge SI Anil Kumar, the witness took photographs of empty cartridge and blood. The witness also took photographs of the spot. The said photographs were developed at Malviya Nagar in the Finger Print Bureau. The witness produced the negative photographs and compared the same with the positive photographs Ex. PW25/D1 to PW25/D12. He stated that the positive photographs were true and

correct copy of the negative photographs. The witness filed the negative photographs Ex. PW39/A.

681. There is no reason to doubt the correctness of testimony of the abovenamed witnesses. From their testimony, it stands established that the incident of firing had occurred on 29<sup>th</sup> September, 2007, at Gali Arya Samaj; that Inspector Anil Sharma and his staff were present at the spot; that blood was lying at the spot; that an empty cartridge was also found at the place of occurrence; and that the place is accurately shown in the photographs taken by the police officers. The correctness of the crime team report Ex. PW-33/A also stands proved.

### **Registration of FIR**

682. The registration of FIR has been proved by the duty officer, and this stands validated by the prompt dispatch of special reports to senior officers. The relevant witnesses in this behalf are PW37 SI Mahender Singh and PW3 Constable Rakesh Kumar.

683. PW37 SI Mahender Singh was the duty officer on the date of the incident in question. He stated in his examination-in-chief that on 29<sup>th</sup> September, 2007, he was posted at Police Station Hauz Qazi as duty officer from 5pm till 1am on the next day. At about 10:10pm on 29<sup>th</sup> September, 2007, the witness received a rukka from SI Mehmood Ali, which had been sent by Inspector Anil Sharma. On receiving the rukka,

the witness lodged a *kaimi* DD No. 18A and recorded the FIR on computer. After recording the FIR, the witness made his endorsement on rukka. The witness also recorded DD entry regarding closure of writing of FIR. A special messenger was sent to deliver copy of FIR to different authorities. The witness identified the FIR as Ex. PW37/A. The witness identified endorsement on the rukka vide DD No. 18A as Ex. PW37/B. He stated that the recording of FIR was concluded at 10:40 pm vide DD No. 19A and copy of the said FIR was sent to officers through Constable Rakesh Kumar, who left from the police station at about 10:40 pm on motorcycle bearing No. DL-1SN-7127. The witness identified true copy of DD No. 19A as Ex. PW37/D and stated that that original rukka and copy of FIR was sent to Inspector Anil Sharma through SI Mahmood Ali. The witness deposed that as per roznamcha, Constable Rakesh returned to the police station at about 02:45 am vide DD No. 6A of 30<sup>th</sup> September, 2007 Ex. PW37/E.

684. The witness was cross-examined by Id defence counsel but nothing could emerge which could cast a doubt on the correctness of his testimony.

685. PW3 Constable Rakesh Kumar had been entrusted with the task of delivery of special reports. He deposed, in his examination-in-chief, that on 29<sup>th</sup> September, 2007 he was posted at Police Station Hauz Qazi. At 10:40pm, special reports were given to him by the duty officer. He

delivered the reports at the residence of the Id. Area Magistrate, at the DCP office and at the ACP office, whereupon he returned to the police station. The witness was not cross-examined by Id counsels for accused persons despite grant of opportunity.

686. From the testimony of the abovenamed witnesses, the registration of FIR at about 10.40pm on the date of the incident stands proved, beyond any doubt. It is the rukka that had manifested into the FIR. Therefore, the registration of FIR by the said time shows that the rukka had been prepared by the police before the time of registration of FIR. The testimony of the witnesses shows that indeed before 10:10pm on 29<sup>th</sup> September, 2007, rukka was sent by Inspector Anil Sharma to the police station through SI Mehmood Ali.

**Investigation carried out by police officers of PS Hauz Qazi**

687. To prove the steps taken by police officers of PS Hauz Qazi to investigate the case, the prosecution has examined seven witnesses namely PW27 Constable Yasbir Singh, PW24 the then Sub-Inspector Horam, PW25 the then Inspector Sh. Anil Kumar Sharma, PW26 the then Sub-Inspector Mahmood Ali, PW11 Inspector Rajender Dubey and PW5 Constable Rajender Kumar. Their testimony may be considered individually.

688. PW27 Constable Yasbir Singh was the duty constable posted at LNJP Hospital on the day of the incident. He deposed in his examination-in-chief that on 29<sup>th</sup> September, 2007, he was posted as duty constable at LNJP Hospital. On that day, at about 08:15 pm, a person named Deepak brought an injured person named Vijay who had sustained a bullet injury. Vijay was declared brought dead by the doctor. The witness conveyed the said information to Police Station Hauz Qazi. The doctor handed over a sealed parcel containing the belongings of the deceased. The parcel was sealed with the seal of 'LNJP NH New Delhi'. Inspector Anil Sharma reached the hospital. The witness handed over the said parcel to Inspector Anil Sharma. The parcel was seized by the Investigating Officer by preparing memo Ex. PW-25/ A.
689. On questioning by the public prosecutor, PW27 Constable Yasbir Singh stated that the Investigating Officer had taken personal search of the dead body and had seized a watch, two gold rings and one iron ring. Investigating Officer had sealed them with the seal of 'AS'. These items were seized by memo Ex. PW25/D. The dead body was sent to the mortuary.
690. PW24 Horam was earlier Sub-Inspector at Police Station Hauz Qazi. PW24 Horam deposed in his examination-in-chief that on 29<sup>th</sup> September, 2007, he was posted at Police Station Hauz Qazi. The witness accompanied SHO Giri Raj Meena, Inspector Anil Sharma,

Inspector Rajender Dubey and Constable Mahipal. They reached near Bari Dharamshala, near Shiv Mandir, Gali Arya Samaj, Bazaar Sita Ram where SI Mahmood Ali and Constable Rajesh met the former. The injured person had already been taken to LNJP Hospital by public persons. SHO Giri Raj Meena alongwith both Inspectors and SI Mahmood Ali left for the hospital. At about 10:30 pm, Inspector Anil Sharma returned to the place of occurrence. The witness and others left for the place of occurrence on receipt of DD No. 16A which was received at about 08:00 PM. Before arrival of Inspector Anil Sharma, incharge of crime team, SI Anil and his staff had already reached the spot. SI Mohmood Ali reached the spot at about 11 pm from the police station and handed over copy of FIR and original rukka to Inspector Anil Sharma. Mr. Deepak Sharma also reached the place of occurrence after about 10 minutes of the arrival of Inspector Anil Sharma. On the pointing out of Deepak Sharma, Inspector Anil Sharma prepared the site plan. The spot was got photographed. With the help of crime team, Inspector Anil Sharma had lifted blood from the spot on the gauze and also lifted blood-stained earth and earth control. All the exhibits were kept in separate plastic containers and sealed with the seal of 'AS'. One empty cartridge of 9 mm cartridge was also recovered from the spot. The investigating officer prepared sketch of the same and sealed it in a parcel with the seal of 'AS'. The Investigating Officer handed over the



seal to the witness. They returned to the police station after completion of spot investigation.

691. PW25 the then Inspector Sh. Anil Kumar Sharma is another former police officer examined by the prosecution to prove the initial investigation carried out by police officers of the local police station soon after the incident. The witness stated in his examination-in-chief that on 29<sup>th</sup> September, 2007, he was posted at Police Station Hauz Qazi as Inspector (ATO). On that day, at about 08:00 pm, an intimation was received from police control room that a person had been shot at Arya Samaj Gali, near Shiva Temple. Said information was recorded as DD No. 16A. The said DD entry was assigned to the witness. The witness alongwith SHO Inspector Giriraj Singh Meena, Inspector Rajender Dubey and other staff left for the place of occurrence (the witness immediately clarified that Inspector Giriraj Singh Meena and Rajender Dubey met the witness at the place of occurrence). Other police staff including SI Mahmood Ali and SI Horam also met the witness at the spot alongwith other police officers. The place of occurrence was located at Gali Arya Samaj, near Shiva Temple. There was a lot of blood on the side of the road. An empty cartridge case was also found there. People had gathered there. On inquiry, it was revealed that someone had fired shot at Vijay Yadav @ Vijji and the victim had been taken to LNJP Hospital. The SHO had assigned the investigation to the witness.

After leaving SI Horam and other staff to guard the spot, the witness and SI Mahmood Ali left for the hospital. On reaching the hospital, the witness collected the MLC of Vijay Yadav @ Vijji on which the doctor had made an endorsement that the patient had been brought dead and that the latter had sustained gunshot injury. Duty constable Yash Pal handed over one parcel duly sealed with the seal of LNJP Hospital containing the clothes of the deceased. Yash Pal also handed over a sample seal to the witness. The witness seized the same by preparing a seizure memo Ex. PW25/A.

692. PW25 Sh. Anil Kumar Sharma further deposed in his examination-in-chief that he had earlier made an endorsement on the DD entry as no eye witness had met the witness in the hospital. The witness sent SI Mahmood Ali to the police station to lodge an FIR for the offence punishable under section 302 of IPC. DD No. 15A is Ex. PW25/B and his endorsement is Ex. PW25/C. Duty constable Yash Pal had also handed over the personal search articles of the deceased to the witness. The witness seized the same by preparing a separate memo Ex. PW25/D. Mr. Deepak Sharma who had got admitted the injured person in the hospital met the witness at the hospital. Mr. Deepak Sharma alongwith the witness came back to the place of occurrence. SI Horam alongwith his staff met the witness at the spot. Crime team alongwith photographer were also present there. Crime team had

inspected the place of occurrence while the photographer had taken photographs of the spot. The witness identified the photographs (positives) as Ex. PW25/D1 to D12.

693. PW25 Sh. Anil Kumar Sharma further stated in his examination-in-chief that he had recorded the statement of Deepak Sharma and prepared a site plan Ex. PW25/E of the spot at the instance of Deepak Sharma. At about 11pm, SI Mahmood Ali reached the spot and handed over copy of FIR and original rukka to the witness. The witness had seized blood, blood-stained earth and earth control from the spot. These were sealed in a separate parcel with the seal of 'AS'. The witness also seized an empty cartridge case from the spot sealed it in a separate parcel with the seal of 'AS' after preparing sketch Ex. PW25/F and taking measurements. The cartridge was of 9mm. All the four parcels were seized by preparing separate memo and all the memos bear signatures of the witness. The memo of cartridge and blood are Ex. PW25/G and PW25/H respectively. The seizure memo of blood stained earth and earth control are Ex. PW25/I and Ex. PW25/J respectively. After sealing the parcel, the witness handed over his seal to SI Horam. The witness alongwith the staff came back to the police station and the sealed parcels were deposited with the MHC(M). The witness recorded the statement of SI Horam and SI Mahmood Ali. The witness had also recorded the statement of duty constable Yash Pal in

the hospital. The witness also recorded the statement of In-charge of crime team SI Anil and photographer. He could not recollect whether he had examined any other public witness on that day except Deepak Sharma. At about 1am, Abhay Singh Yadav alongwith Parmod Kumar and Niranjana Singh @ Billoo visited police station Hauz Qazi. After interrogation, he recorded their statements under section 161 of Code of Criminal Procedure.

694. PW25 Anil Kumar Sharma went on to state in his examination-in-chief that at about 9am or 9:30am, the witness visited the house of Abhay Singh Yadav to investigate the matter where he came to know that a lady named Anju Gupta knew something about the incident. Thereafter, the witness went to the house of Anju Gupta and recorded her statement under section 161 of Code of Criminal Procedure. Thereafter, the witness alongwith Constable Satender reached the mortuary of LNJP Hospital where Abhay Singh Yadav and Amar Singh Yadav met the witness. Abhay Singh Yadav and Amar Singh Yadav identified the dead body. The witness prepared the inquest documents. The inquest form 25.35 is Ex. PW25/K. The statement of Abhay Singh and Amar Singh Yadav are Ex. PW14/A and Ex. PW19/A respectively. The witness prepared the brief facts Ex. PW25/L. The witness moved an application for post-mortem Ex. PW25/M. After post-mortem, doctor handed over parcels duly sealed with the seal of hospital and

sample seal. The witness mentioned all the details in the memo. He does not recollect whether the parcels were given to him or not. Investigation was assigned to Inspector Rajender Dubey as the witness had to go to CDTS, Chandigarh for training. In January 2008, he called the draughtsman to prepare a scaled site plan. The witness had pointed out the spot to the draughtsman in the presence of Inspector K.G. Tyagi and, accordingly, the draughtsman prepared the notes and the site plan. On a leading question put by the public prosecutor, the witness stated that the correct name of the duty constable was Yashbir and not Yash Pal.

695. PW26 Mahmood Ali the then Sub-Inspector is another person examined by the prosecution to prove the initial investigation carried in the case. The witness deposed in his examination-in-chief that on 29<sup>th</sup> September, 2007, he was posted at Police Station Hauz Qazi as Sub-Inspector. On that day DD No. 15A Ex. PW25/B was assigned to the witness at about 08:05pm. On receipt of the same, the witness alongwith Constable Rajesh reached Gali Arya Samaj. A number of persons had gathered there. A lot of blood was found lying there. At a distance of about 6 paces, an empty cartridge case of 9 mm was lying there. In the meantime, Inspector Anil Kumar Sharma, Inspector Rajender Dubey, SI Horam, the SHO and other staff reached there. The SHO directed Inspector Anil Kumar Sharma to take over the charge of

investigation. After leaving SI Horam at the spot, the witness and Inspector Anil Sharma left for LNJP Hospital.

696. PW26 Sub-Inspector Mahmood Ali further deposed that on reaching the hospital, Inspector Anil Sharma had collected the MLC of Vijay Yadav. The doctor had made an endorsement that the patient was brought dead. No eye witness met them in the hospital. Investigating Officer made an endorsement on the DD and sent the witness to the police station to lodge an FIR. The witness went to the police station and got the FIR registered. Further investigation was assigned to Inspector Anil Sharma. After lodging of FIR, the witness returned to the spot and handed over copy of FIR and original rukka to the Investigating Officer. The Investigating Officer collected the blood, blood with earth and earth control from the spot and seized the cartridge case. The Investigating Officer also prepared sketch of the same. The Investigating Officer sealed all the exhibits in separate parcels with the seal of 'AS'. The witness signed all memos and the sketch. After use, the seal was handed over to SI Horam.

697. PW11 Inspector Rajender Dubey is the second police officer to whom the investigation had been entrusted. He deposed in his examination-in-chief that in the month of October 2007, he was posted as Inspector (Investigation) at police station Hauz Qazi. On 1<sup>st</sup> October, 2007, the investigation of this case was assigned to him. He collected the record

of the case. During investigation, he interrogated several persons and came to know that three persons of the locality namely Bhisham @ Chintoo, Deepak @ Chowda and Vinod @ Gola were missing from their houses since the day of the incident. On 8<sup>th</sup> October, 2007, he collected four exhibits sealed with the seal of Department of Forensic Medicine, MAMC, SKK alongwith sample seal from MAMC Mortuary. Those items were produced by employee of MAMC namely Fagu Baitha and were seized by memo Ex. PW5/A. The investigation was transferred to crime branch after 9<sup>th</sup> October, 2007.

698. PW5 Constable Rajender Kumar was, according to the prosecution, responsible for collection of parcels from the hospital. He deposed, in his examination-in-chief, that on 8<sup>th</sup> October, 2007, he was posted at Police Station Hauz Qazi. On that day, on the instructions of the investigating officer, he went to the mortuary of Maulana Azad Medical College where four parcels sealed with the seal of the hospital were produced by the doctor alongwith sample seal. Inspector Rajender Dubey seized those items by memo Ex. PW5/A.

699. As can be noted from the above depositions, the narration of the witnesses is coherent. There is no inconsistency in the versions. The depositions corroborate each other. All these witnesses had been cross-examined by Id defence counsels. However, nothing could be brought out in cross-examination which could show their rendition to be

distorted.

700. PW27 Constable Yasbir Singh has been able to prove that on 29<sup>th</sup> September, 2007, at about 08:15 pm, a person named Deepak brought Vijay Yadav to the hospital with history of bullet injury; that Vijay was declared brought dead by the doctor; that this information was relayed by the witness to Police Station Hauz Qazi. The witness has proved the handing over of belongings of the deceased to Inspector Anil Sharma.
701. PW24 Horam proved the arrival of police officers at the spot of occurrence, the proceedings at the spot, the preparation of site plan, photography of scene of crime, lifting of blood, blood-stained earth and earth control and seizure of the empty 9 mm cartridge.
702. PW25 Sh. Anil Kumar Sharma the then Inspector has proved that on 29<sup>th</sup> September, 2007, at about 08:00 pm, on receipt of intimation from police control room, the witness alongwith others went to the place of occurrence, where blood and an empty cartridge case was found. The witness proved the collection of MLC of Vijay Yadav @ Vijji on which the doctor had noted that the patient had been brought dead and that the latter had sustained gunshot injury. The witness also proved seizure of clothes of the deceased, registration of FIR, crime team inspection, taking of photographs of the spot, recording of statement of Deepak Sharma, preparation of site plan Ex. PW25/E of the spot at the instance of Deepak Sharma, seizure of blood, blood-stained earth and



earth control from the spot, seizure of empty cartridge case from the spot, preparation of its sketch, recording of statements of Abhay Singh Yadav, Parmod Kumar and Niranjan Singh @ Billoo, recording of statement under section 161 of Code of Criminal Procedure of PW1 Smt. Anju Gupta, identification of dead body by Abhay Singh Yadav and Amar Singh Yadav, preparation of inquest documents, and conduct of post-mortem.

703. PW26 Mahmood Ali, the then Sub-Inspector, has proved that on 29<sup>th</sup> September, 2007, the witness had reached the spot and had seen blood and an empty cartridge case of 9 mm lying there. The witness has further proved collection of MLC of Vijay Yadav by Inspector Anil Sharma, registration of FIR, collection of blood, blood stained earth and earth control from the spot by Investigating Officer, seizure of cartridge case by Investigating Officer and preparation of its sketch by Investigating Officer.

704. The assertion of the witnesses that PW26 Sub-Inspector Mahmood Ali was sent to the police station to lodge the FIR, is endorsed by version of the duty officer PW37 SI Mahender Singh who stated that indeed Sub-Inspector Mahmood Ali had brought the rukka for registration of FIR.

705. PW11 Inspector Rajender Dubey has proved collection of records of the case, interrogation of persons and collection of exhibits from MAMC Mortuary.

706. PW5 Constable Rajender Kumar has succeeded in proving that on 8<sup>th</sup> October, 2007, on the instructions of the investigating officer, he went to the mortuary of Maulana Azad Medical College from where four parcels sealed with the seal of the hospital were produced by the doctor, which were eventually seized by Inspector Rajender Dubey.

**Investigation carried out at Inter-State Cell, Crime Branch**

707. During investigation, the case was transferred to the Crime Branch and was assigned to Inspector K.G. Tyagi. This is where the police zeroed in on the accused persons and that is why this part of the investigation is of seminal importance. There are nine witnesses through whom the prosecution has attempted to prove this phase of the investigation. They are PW68 Inspector K.G. Tyagi, PW67 SI Mukesh, PW62 ASI (Retired) Rajbir Singh, PW56 HC Azad Singh, PW58A Inspector Sanjeev Kumar, PW35 HC Omender Kumar, PW40 Inspector Shyam Sunder, PW41 SI Jai Singh and PW46A Retd. Inspector Davinder Singh. The relevant parts of the examination of these witnesses that pertain to the charge of murder against accused Deepak @ Chowda, Bhasham @ Chintoo, Kishanpal @ Fauzi, Hitender @ Chhotu, Parveen Koli and Desraj @ Desu are produced in brief here. In analyzing the evidence, the part of the testimony that deals with other accused persons who are not facing the charge of murder namely Parmod Singh @ Pammy, Rishi

Pal @ Pappu, Ashok Jain and Gopal Krishan Aggarwal is left out.

708. Inspector K.G. Tyagi is the last witness examined by the prosecution but since he has given the most comprehensive account of what transpired at Crime Branch, his testimony needs to be considered at the outset. He is the main Investigating Officer of the case.

709. PW68 Inspector K.G. Tyagi stated in his examination-in-chief that on 9<sup>th</sup> October, 2007, the witness was posted as Inspector in Inter-State Cell, Crime Branch, Chanakyapuri, Delhi. He stated that investigation of this case was transferred to Crime Branch by the order of the Police Headquarters and investigation was assigned to him. After receiving the case file, the witness went through the case file and investigation conducted by the previous Investigating Officer. He noted that during the course of investigation, the then IO/Inspector Anil Kumar, Additional SHO of Police Station Hauz Qazi had conducted the investigation and found that three local boys namely Deepak @ Chowda, Vinod @ Gola and Bhisham @ Chintoo were missing from their respective houses after the murder of Vijay Yadav @ Vijji. The witness also found that during investigation the previous Investigating Officer had called various persons including accused Gopal Krishan Aggarwal and Rishi Pal @ Pappu. After taking over the investigation, the witness visited the spot along with his team, conducted raids at different places to find out the suspects and analyzed call details of a

few persons.

710. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 25<sup>th</sup> November, 2007, duty officer of Inter State Cell, Crime Branch, Chanakyapuri received information through Special Team vide DD no. 7 Ex. PW68/A that two accused persons namely Bhasham @ Chintoo and Vinod @ Gola had been apprehended by the Special Team of Crime Branch, Prashant Vihar. The witness received copy of the same and the witness along with his team made departure for Prashant Vihar, Crime Branch. When they reached there, SI Shyam Sunder and other staff met them. Accused persons namely Bhasham @ Chintoo and Vinod @ Gola were also present. SI Shyam Sunder briefly apprised the witness about the facts and circumstances in which the abovenamed persons were apprehended. The witness interrogated the accused persons and formally arrested them. The witness prepared the arrest memo of accused Bhasham @ Chintoo and Vinod @ Gola. He identified the arrest memos as Ex.PW40/B and Ex.PW40/C respectively. The witness stated that he carried out personal search of accused Bhasham @ Chintoo and Vinod Kumar @ Gola. He identified the personal search memos as Ex. PW40/E and Ex.PW40/D respectively. The witness recorded the disclosure statement of Bhasham @ Chintoo Ex.PW62/B. On 26<sup>th</sup> November, 2007, the witness made departure from Inter State Cell, Crime Branch, Chanakyapuri, along with accused persons Vinod

Kumar @ Gola and Bhisham @ Chintoo and staff for further investigation. Accused Bhisham @ Chintoo pointed towards Hotel Kwality, Ara Kasha Road, Paharganj and at his instance, the witness prepared the pointing out memo Ex. PW62/D of Room No.66 of that hotel.

711. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on the same day, the witness along with both the accused persons, at the instance of both the accused persons, reached the place of the incident i.e. opposite H. No. 2745, Gali Arya Samaj Mandir, Hauz Qazi, Sita Ram Bazaar, Delhi. At the instance of both the accused persons, the witness separately prepared pointing out memos at the spot which he identified as Ex.PW62/F and Ex.PW62/G respectively. The witness stated that whatever was told to him by the accused persons regarding the said place was mentioned by the witness in the said pointing out memos.

712. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 27<sup>th</sup> November, 2007, the witness carried out interrogation of both the accused persons at his office and on sustained interrogation, whatever was disclosed by them was reduced into writing by him vide their supplementary disclosure statements, which were Ex.PW62/H and Ex. PW62/I respectively; that thereafter, on the same day, the witness also recorded statements of the witnesses.

713. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 4<sup>th</sup> December, 2007 and 5<sup>th</sup> December, 2007, SI Ram Avtar along with the staff and accused persons namely Bhasham @ Chintoo and Vinod @ Gola went to Dehradun for further investigation.
714. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 6<sup>th</sup> December, 2007, the witness made departure with his staff and accused persons namely Bhasham @ Chintoo and Vinod @ Gola and at the instance of accused Bhasham @ Chintoo, they reached house of accused Bhasham @ Chintoo. There, at the instance of accused Bhasham @ Chintoo, they recovered a mobile handset from the pocket of the cover lying on the fridge from the room of the house of accused Bhasham @ Chintoo. The witness prepared parcel of the said mobile phone and sealed the same with the seal of KGT.
715. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that accused Bhasham @ Chintoo and Vinod @ Gola were produced before the Court and they were ordered to be sent to Judicial Custody. The witness deposited the case property at the malkhana and also recorded statements of witnesses.
716. PW68 Inspector K.G. Tyagi stated in his examination-in-chief that on 18<sup>th</sup> December, 2007, the witness along with his team went to Hotel Kwality in government vehicle where Satnam Singh, Manager of the Hotel Kwality handed over the guest entry register of the Hotel Ex.

PW36/B to him which was taken into possession vide seizure memo Ex.PW36/A. On 24<sup>th</sup> December, 2007, the witness made inquiries from public witnesses Smt. Anju Gupta and Dheeraj Sharma, recorded their statements and at their instance, the witness prepared site plan Ex.PW68/B depicting the positions of eye-witnesses Ms. Anju Gupta and Dheeraj Sharma. On 27<sup>th</sup> December, 2007, the witness sent eight sealed parcels containing exhibits to FSL, Rohini through ASI Jai Singh. The witness recorded the statement of MHC(M) HC Suresh Kumar as well as ASI Jai Singh.

717. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 7<sup>th</sup> January, 2008 the witness went to the spot where draftsman Inspector Devender Singh as well as previous IO Inspector Anil Sharma also arrived. At the instance of Inspector Anil Sharma, the draftsman Inspector Devender Singh took measurements of the spot and prepared rough notes for the purpose of preparing scaled site plan. The witness recorded statement of both of them.

718. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 10<sup>th</sup> January, 2008, the witness along with his team left for the search of accused persons. They reached house of accused Hitender @ Chhotu at Ram Park, Loni, but he was not found there. When they reached Khajoori Chowk, a secret informer met the witness and told that accused Parveen Koli would come near Christian Cemetery,

Kashmere Gate, Delhi. All of them went to Christian Cemetery and took positions. At about 08:30 pm, on the pointing out of the informer, accused Parveen Koli was apprehended near the Metro Entry Gate of Kashmere Gate Metro Station. Parveen Koli was arrested at about 10:00 pm, after due interrogation, vide arrest memo Ex. PW35/A. Accused Parveen Koli was personally searched vide memo Ex. PW35/B.

719. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 11<sup>th</sup> January, 2008, the witness recorded the disclosure statement of accused Parveen Koli which was Ex. PW35/C. On that day pursuant to his disclosure statement, the witness along with accused Parveen Koli and other team members went to Gali Arya Samaj i.e. place of incident, where at the instance of accused Parveen Koli, the witness prepared pointing out memo Ex. PW35/E. The accused led them to Hotel Kwaliti where at the instance of the accused, the witness prepared pointing out memo Ex. PW35/D. Accused Parveen Koli led them to the office of Vijay Yadav @ Vijji situated at second floor, H. No. 3570, Gali Than Singh, Bazaar Sita Ram from where he had allegedly called the deceased on the date of incident. The witness prepared pointing out memo Ex. PW35/F. The accused was produced before Ld. ACMM where the witness moved an application for Test Identification Parade of accused Parveen Koli. However the accused refused to join the Test Identification Parade proceedings. The witness moved an



application for police custody remand and Id. ACMM was pleased to grant police custody remand of accused Parveen Koli. During police custody remand of accused Parveen Koli, they tried to search for other accused persons but in vain.

720. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 17.01.2008, on his directions SI Mukesh Kumar brought a sealed parcel from the MHC(M) Police Station Hauz Qazi stated to be containing the gold chain recovered at the instance of accused Bhisam @ Chintoo to Tis Hazari Courts. On the application of the witness, Id. MM conducted the Test Identification Parade of the said chain through the witness. The parcel, after sealing with the Court seal of VP, was handed over to the witness along with copy of the Test Identification Parade proceedings. On directions of Inspector K.G. Tyagi, SI Mukesh deposited the sealed parcel again with MHC(M) Police Station Hauz Qazi.

721. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 28<sup>th</sup> January, 2008, an information was received by the Duty Officer at Inter State Cell, Crime Branch, Chanakyapuri regarding arrest of accused Hitender @ Chhotu by Special Team, Crime Branch, Prashant Vihar, which was reduced into writing vide DD no. 2 Mark 68A. The duty officer handed over copy of DD no. 2 to the witness. Pursuant to the DD entry, the witness along with his team went to the

office of Special Team, Crime Branch, Prashant Vihar, where the witness was told that accused Hitender @ Chhotu had been arrested in case FIR No. 15/2008 under sections 25/27 Arms Act Police Station I.P. Estate and that the accused had admitted his involvement in the present case. The witness interrogated accused Hitender @ Chhotu and arrested him vide arrest memo Ex. PW62/U. The witness searched accused Hitender @ Chhotu vide personal search memo Ex. PW62/V. The witness recorded disclosure statement Ex. PW62/W. The witness muffled the face of accused Hitender @ Chhotu and brought accused Hitender @ Chhotu to Tis Hazari Court, where the witness moved an application for conducting Test Identification Parade before Id. ACMM. The Id. ACMM marked the application to Id. Link MM. Accused Hitender @ Chhotu was produced before Id. Link MM in muffled face. Accused Hitender @ Chhotu, however, refused to participate in Test Identification Parade. The witness obtained police custody remand of accused Hitender @ Chhotu from Id. ACMM till 1<sup>st</sup> February, 2008. The witness got the accused medically examined and brought him back to his office i.e. Inter State Cell, Crime Branch for the purpose of detailed interrogation.

722. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 29<sup>th</sup> January, 2008, the witness along with his team and the accused left for Hotel Kquality at the instance of accused Hitender @

Chhotu. Accused Hitender @ Chhotu pointed towards the room where the accused along with his co-accused persons had hatched the conspiracy to kill Vijay Yadav @ Vijji. At the instance of accused Hitender @ Chhotu, the witness prepared pointing out memo Ex. PW62/X. Accused Hitender @ Chhotu led the witness and his team to the spot opposite property bearing no. 2745, Gali Arya Samaj, Sita Ram Bazaar, Delhi and pointed towards the place of incident. At his instance, the witness prepared pointing out memo Ex. PW62/Y. Accused Hitender @ Chhotu led them to the houses of his co-accused persons including accused Desraj @ Desu and Deepak @ Chowda, who, however, were not found present there.

723. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that pursuant to the notice, PWs Dheeraj Sharma and Anju came to his office on 30<sup>th</sup> January, 2008 and they were examined under section 161 of Code of Criminal Procedure. On directions of Inspector K.G. Tyagi, SI Mukesh went to Dehradun for the purpose of recovery of car mentioned by accused Hitender @ Chhotu in the disclosure statement as well as mentioned in the hotel register.

724. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that accused Hitender @ Chhotu led the witness and his team to his house bearing no. R-440, Ram Park Extension, Loni, District, Ghaziabad, U.P. They went inside the house of accused Hitender @

Chhotu. Accused Hitender @ Chhotu opened the side cover of one cooler kept on the right side and got recovered a gold chain which was kept in a small polythene bag kept inside the cooler in the tank. Accused Hitender @ Chhotu disclosed that after the murder of Vijay Yadav @ Vijji, he pulled out the said gold chain from the neck of the deceased. The chain was found broken and upon minute inspection, some dried blood was also found on some parts of the chain. The witness kept the golden chain in the same polythene bag, kept the polythene bag in a small plastic box and sealed the same with the seal of KGT. The witness prepared seizure memo/pointing out memo Ex. PW62/Z2. The witness and his team went to Police Station Hauz Qazi where the witness deposited the sealed box with the MHC (M) Police Station Hauz Qazi along with copy of seizure memo.

725. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 4<sup>th</sup> February, 2008, a secret informer met the witness in the office of Inter State Cell, Crime Branch, Chanakyapuri at about 08:00 pm and informed that accused Desraj @ Desu, who was wanted in the present case would come at Bus Stand of Dr. Zakir Hussain College, near Ramlila Ground, Kamla Market, Delhi at about 10:00 pm or 11:00 pm for meeting some of his relatives and he could be apprehended if raided. The witness reduced into writing this information vide DD no. 22 dated 4<sup>th</sup> February, 2008 Mark-68F. The witness along with his team

and the secret informer left their office in a private Scorpio car vide DD no. 23 (Mark-68G) and reached Delhi Gate. The witness asked four or five passers-by to join the raiding party but none agreed and they went away without disclosing their identities. The police officers reached Zakir Hussain College and the team members took position around the bus stand. At about 10:30 pm, accused Desraj @ Desu (who the witness correctly identified) came to the bus stand and at the instance of the secret informer, the witness along with his team apprehended accused Desraj @ Desu. After due interrogation, accused Desraj @ Desu was arrested vide arrest memo Ex. PW62/Z3. The accused was personally searched vide personal search memo Ex. PW62/Z4. The witness recorded his disclosure statement Ex. PW62/Z5.

726. PW68 Inspector K.G. Tyagi deposed in his examination-in-chief that on 5<sup>th</sup> February, 2008, accused Desraj @ Desu was produced before Id. ACMM in muffled face. The witness moved an application for Test Identification Parade of the accused, which was marked to Id. Link MM. The accused refused to join Test Identification Parade. On the application of witness, Id. ACMM was pleased to grant one day's police custody remand of accused Desraj @ Desu. On 6<sup>th</sup> February, 2008 at about 08:30 am, the witness along with his team and accused Desraj @ Desu left the office vide DD no. 4 dated 6<sup>th</sup> February, 2008. Accused Desraj @ Desu led them to Hotel Kwalitiy, Ara Kasha Road, Paharganj,

where the accused pointed towards Room no. 66 on 4<sup>th</sup> floor and disclosed that he along with his associates had hatched a conspiracy to kill Vijay Yadav @ Viji in the said room during the relevant period. The witness prepared pointing out memo at his instance which is Ex. PW62/Z6. From the hotel the accused led them to the place of incident i.e. Property no. 2745, Gali Arya Samaj, Sita Ram Bazaar, Delhi and at the instance of the accused, the witness prepared pointing out memo Ex. PW62/Z7. The accused further led them to Gali Than Singh, opposite property no. 3570, Bazaar Sita Ram, and disclosed that from that place he had shown the office of Vijay Yadav @ Viji to accused Praveen Koli on the date of incident to call Vijay Yadav @ Viji. The witness prepared pointing out memo at his instance which is Ex. PW62/Z8. During the stay at Gali Than Singh, Smt. Anju Gupta and Amar Singh also met the witness and identified accused Desraj @ Desu, as having been involved in the incident on the relevant date. The witness recorded their statements under section 161 of Code of Criminal Procedure.

727. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 19<sup>th</sup> February, 2008, on his instructions, HC Rajeev obtained exhibits from the malkhana of Police Station Hauz Qazi and deposited the same at FSL, Rohini. After HC Rajeev deposited the exhibits, the witness recorded statements of HC Rajeev and HC Suresh Kumar,

MHC (M) of Police Station Hauz Qazi under section 161 of Code of Criminal Procedure.

728. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 28<sup>th</sup> May, 2008, a secret informer came to his office and informed that accused Deepak @ Chowda, who was wanted in the present case, would come near Sarvodaya School, A-Block at Sector- 16, Rohini, Delhi to meet his friend Bablu Bihari and that the accused could be apprehended, if raided. The witness reduced the said secret information into writing vide DD no. 15, copy of which was Mark 68K. The witness along with his team and secret informer departed from their office vide DD no. 16, copy of which was Mark 68L, and reached near Sarvodaya School, A-Block, Sector-16, Rohini and took positions. After some time, accused Deepak @ Chowda came near the wall of the school and at about 07:00 pm, he was apprehended at the instance of secret informer. The witness arrested accused Deepak @ Chowda vide arrest memo Ex. PW41/C and personally searched him vide memo Ex. PW41/D. The face of the accused was muffled. The accused was brought to the office of AHS, Sector-18, Rohini, Delhi. The witness carried out sustained interrogation of the accused and recorded his disclosure statement Ex. PW41/D. The witness got deposited the articles recovered during the personal search of accused Deepak @ Chowda at the malkhana of Police Station Hauz Qazi.

729. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that in the morning of 29<sup>th</sup> May, 2008, the witness and his team left with accused Deepak @ Chowda to Hotel Kwality, Ara Kasha Road, Paharganj, Delhi, where accused Deepak @ Chowda pointed towards Room no. 66, 4<sup>th</sup> Floor and disclosed that he along with his associates had hatched a conspiracy to kill Vijay Yadav @ Viji in the said room. The witness prepared pointing out memo Ex PW41/F. The accused led them to the place of incident in front of property no. 2745, Gali Arya Samaj, Bazaar Sita Ram, Delhi where at the instance of the accused, the witness prepared pointing out memo Ex. PW41/F. Thereafter accused Deepak @ Chowda was produced before Id. ACMM, Tis Hazari Courts, in muffled face. The witness moved an application for Test Identification Parade of the accused which was marked to learned link MM. The accused refused to participate in Test Identification Parade. On his application the Id. ACMM was pleased to remand the accused till 1<sup>st</sup> June, 2008 in police custody. On 30<sup>th</sup> May, 2008 PWs Anju Gupta and Dheeraj Sharma came to the office of AHS, Sector -18, Rohini, Delhi and they identified accused Deepak @ Chowda as being involved in the incident in question. The witness recorded their statements under section 161 of Code of Criminal Procedure. The witness handed over custody of accused Deepak @ Chowda to SI Sanjeev for the purpose of recovery as per his disclosure statement. On his directions, SI Sanjeev



left for Dehradun along with accused Deepak @ Chowda for the said purpose.

730. PW68 Inspector K.G. Tyagi further stated in his examination-in-chief that on 31<sup>st</sup> May, 2008, SI Sanjeev came back to the office along with accused Deepak @ Chowda. SI Sanjeev told him that accused Deepak @ Chowda had got recovered one golden bracelet of deceased Vijay Yadav @ Vijji from Chaudhary House at Balabala, Dehradun which had been kept by him in a sealed parcel. On his directions, SI Sanjeev deposited the sealed parcel with malkhana of Police Station Hauz Qazi. The witness produced accused Deepak @ Chowda before Id. ACMM when the accused was sent to judicial custody. The witness also moved an application for Test Identification Parade of the case property and the Test Identification Parade was finally conducted on 7<sup>th</sup> June, 2008.
731. PW68 Inspector K.G. Tyagi correctly identified accused persons Bhisham @ Chintoo, Vinod @ Gola, Hitender @ Chhotu, Parveen Koli, Desraj @ Desu and Deepak @ Chowda.
732. The MHC(M) produced a parcel sealed with the seal of Court. On opening it, an unsealed plastic container containing a gold chain bearing some brown coloured spots at various places with one *kadi* of the chain, was taken out. On seeing it, PW68 Inspector K.G. Tyagi identified the chain as the one which was recovered at the instance of accused Hitender @ Chhotu.

733. The MHC(M) produced another cloth pulanda sealed with the seal of Court. On opening it, a mobile phone of black colour of make Sagem 101X was found. Its battery cover was opened. There was no SIM card inside the mobile phone. IMEI No. 358529000375580 was printed on the inside of the mobile phone. On seeing it, PW68 Inspector K.G. Tyagi identified the mobile phone as the one recovered at the instance of accused Bhisham @ Chintoo.
734. PW67 SI Mukesh is the next most important police witness as he had accompanied Inspector K.G. Tyagi in the crucial parts of investigation. PW67 SI Mukesh stated in his examination-in-chief that on 25<sup>th</sup> November, 2007 on receiving of DD No. 7, the witness along with Inspector K.G. Tyagi, ASI Rajbir, SI Ram Avtar, ASI Jai Singh, HC Omender, HC Shiv Kumar and HC Narender went to the office of Special Team, Prashant Vihar in a private vehicle and a government vehicle. When they reached there, Inspector Anand Singh and SI Shyam Sundar along with staff and two accused persons namely Bhisham @ Chintoo and Vinod Kumar @ Gola (whom the witness correctly identified) were found present. Both the accused persons had been absconding after the incident. Inspector K.G. Tyagi interrogated both the accused persons, who made confessions regarding the murder of Vijay Kumar @ Vijji. Inspector K.G. Tyagi arrested accused Bhisham @ Chintoo (who the witness correctly identified) and accused Vinod @

Gola vide arrest memos Ex. PW40/B and Ex. PW40/C respectively and they were personally searched vide personal search memos Ex. PW40/D and Ex. PW40/E respectively. Inspector K.G. Tyagi recorded the statement of SI Shyam Sundar, Special Team, Crime Branch. Thereafter both the accused persons were brought back to the office of Inter-State Cell, Crime Branch, Chanakya Puri, New Delhi. After interrogation of the accused persons, their disclosure statements Ex.PW62/B and Ex. PW62/C respectively were recorded.

735. PW67 SI Mukesh further stated in his examination-in-chief that on 26<sup>th</sup> November, 2007, the witness accompanied Inspector K.G. Tyagi, other police staff, accused Bhasham @ Chintoo and Vinod @ Gola in a government gypsy for the investigation of the case. Pursuant to the disclosure of the accused persons, they reached Hotel Kwaliti, 53, Ara Kasha Road, Ram Nagar, Paharganj, Delhi where both the accused persons pointed towards Room no. 66, as the place where the accused persons along with their associates conspired to kill Vijay Yadav @ Viji. Pointing out memos Ex. PW62/D and Ex. PW62/E respectively were prepared by Inspector K.G. Tyagi. Inspector K.G. Tyagi gave necessary instructions to the Hotel Owner Satnam Singh. The accused persons led them to the place of incident i.e. Chowk Boriyan, Gali Arya Samaj, Bazar Sita Ram, Hauz Qazi, Delhi in front of property no. 2745 and they separately pointed towards the spot as the same place where they

along with their associates committed murder of Vijay Singh @ Viji. Inspector K.G. Tyagi prepared separate pointing out memos Ex. PW62/F and Ex. PW62/G respectively. Thereafter they tried to search for the accused Deepak @ Chowda and Desraj @ Desu in their respective houses, but they were not found there. Both the accused persons were produced before Ld. ACMM, Tis Hazari Courts, Delhi where Inspector K.G. Tyagi obtained their ten days' police custody remand and after their medical examination, they were brought back to the office at Chanakyapuri, Delhi.

736. PW67 SI Mukesh further stated in his examination-in-chief that on 27<sup>th</sup> November, 2007, both the accused persons were again interrogated in detail by Inspector K.G. Tyagi in the presence of ASI Rajbir and the witness recorded their supplementary disclosure statements in which they had told some new facts. The disclosure statement of accused Bhisham @ Chintoo is Ex. PW62/H and that of accused Vinod @ Gola was Ex. PW62/I.

737. PW67 SI Mukesh further stated in his examination-in-chief that on 6<sup>th</sup> December, 2007, the witness again joined the investigation along with Inspector K.G. Tyagi, ASI Rajbir Singh, ASI Jai Singh, HC Omender, HC Shiv Kumar, Constable Ravinder and Constable Kirti and all of them along with both the accused persons went to the house of accused Bhisham @ Chintoo at Katra Gokul Shah, Bazar Sita Ram, Delhi from

where accused Bhisham @ Chintoo got recovered one mobile phone of black colour of make SAGEM 101X from the side pocket of the cover kept on top of the refrigerator and told that mobile number 9872728524 was used in the said phone. Upon checking the phone, no SIM Card was found loaded. Inspector K.G. Tyagi kept the mobile phone in a cloth parcel and sealed the same with seal of KGT. The witness prepared seizure memo Ex.PW62/J.

738. PW67 SI Mukesh further stated in his examination-in-chief that on 17<sup>th</sup> January, 2008 on the instructions of Inspector K.G. Tyagi the witness reached the malkhana of P.S. Hauz Qazi and he obtained a parcel, which was sealed with the seal of RBS, of the present case from MHC(M) HC Suresh Kumar at about 09:30 am vide RC no.2/21/08 and brought the same in the Court of Shri Vidya Prakash, Id. MM, Tis Hazari Courts, Delhi, where after Test Identification Parade of the case property, Inspector K.G. Tyagi handed over a parcel, sealed with seal of VP to him and the witness deposited the said parcel with the MHC(M) of PS Hauz Qazi along with duplicate Road Certificate no.2/21/08. Till the time the case property was in his possession, it had not been tampered with.

739. PW67 SI Mukesh further stated in his examination-in-chief that on 28<sup>th</sup> January, 2008, upon receiving DD No. 2 from Special Team Crime Branch, Prashant Vihar regarding accused Hitender @ Chhotu, the

witness along with Inspector K.G. Tyagi, ASI Rajbir, SI Sanjeev, ASI Jai Singh, HC Omender, HC Sanjay, HC Narender, Constable Rambir and Constable Kirti left their office in a private vehicle at about 10:00 am vide DD No. 6 and reached the office of Crime Branch, Prashant Vihar at about 11.00 am where they came to know that the Investigating Officer of the said case was out of office along with accused Hitender @ Chhotu. At about 01.00 pm HC Azad Singh came to the office along with accused Hitender @ Chhotu, who was in muffled face (who the witness correctly identified). HC Azad told that accused Hitender @ Chhotu has been arrested in case FIR No. 15/08, PS I. P. Estate and that he has made disclosure regarding his involvement in the present case. HC Azad Singh also handed over copies of relevant documents to Inspector K.G. Tyagi along with the accused. Inspector K.G. Tyagi made inquiries from the accused and arrested him vide arrest memo Ex.PW62/U and the accused was personally searched vide personal search memo Ex.PW62/V. Disclosure statement Ex.PW62/W of accused was also recorded by Inspector K.G. Tyagi. The accused was produced before Ld. ACMM, Tis Hazari Courts, Delhi in muffled face. Upon moving of an application for Test Identification Parade of the accused, the accused was produced before Ld. Link MM and the accused refused to participate in Test Identification Parade. The accused was again produced before Ld. ACMM and four days of police

custody remand of the accused was granted on the application of Inspector K.G. Tyagi.

740. PW67 SI Mukesh further stated in his examination-in-chief that on 29<sup>th</sup> January, 2008, the witness, Inspector K.G. Tyagi, ASI Rajbir, other staff along with accused Hitender @ Chhotu reached Kwality Hotel, Ara Kasha Road, Paharganj, Delhi, where the accused pointed towards Room no. 66 on the 4<sup>th</sup> floor of the hotel and stated that he stayed there along with his associates in the said room on 28<sup>th</sup> September, 2007 and had conspired on 29<sup>th</sup> September, 2007 to commit murder of Vijay Yadav @ Vijji. Inspector K.G. Tyagi prepared pointing out memo Ex. PW62/X. Thereafter the accused led them to Gali Arya Samaj, Bazar Sita Ram, Delhi where he pointed towards the spot in front of property No. 2745 as the place where they committed murder of Vijay Yadav @ Vijji. Inspector K.G. Tyagi prepared pointing out memo of the place of incident Ex. PW62/Y. They returned to their office while searching for the remaining accused persons.

741. PW67 SI Mukesh further stated in his examination-in-chief that that in the night hours of 29<sup>th</sup> January, 2008 on the directions of Inspector K.G. Tyagi, the witness along with HC Narender, ASI Jai Singh and HC Sanjay and accused Hitender @ Chhotu left for Uttarakhand in a private vehicle pursuant to the disclosure of accused Hitender @ Chhotu. They reached Dehradun where the accused led them to the

premises at Guler Ghati, Nehru Gram, Dehradun and Bapu Gram, Rishikesh. However no person met them there and nothing was recovered. Thereafter accused Hitender @ Chhotu led them to his in-laws' house at Village Balawala, Dehradun where one white Santro Car bearing no. UA-07T-5313 was recovered from a vacant space in between six houses at Rawat Mohalla. Accused told them that the accused persons used the said car along with one Wagon R Car in commission of the offence and after committing the offence, they fled away in the said car and that the said car had been taken on hire-purchase basis by his brother in-law Devi Singh. The accused was using the car. Accused Hitender @ Chhotu took out ignition key of the car from the room in his in-laws' house by which the car was opened. The witness took into possession the said car vide seizure memo Ex. PW41/B. The witness made entry regarding recovery of the car at PS Doiwala vide DD No. 30 dated 30<sup>th</sup> January, 2008. The witness recorded statement of ASI Jai Singh. Thereafter they brought back the car and the accused to Delhi.

742. PW67 SI Mukesh further stated in his examination-in-chief that accused Hitender @ Chhotu led them to F-440, Ram Park Extension, Loni, District Ghaziabad, where accused Hitender @ Chhotu pointed towards the same as his house and got recovered one golden coloured chain which was kept in polythene which was kept inside the cooler



and disclosed that it is the same chain which he took out from the neck of the Vijay Singh @ Vijji after committing his murder. The chain was blood stained and was broken from one place. Inspector K.G. Tyagi kept the gold chain in the same polythene bag, kept the same in a small plastic box, and prepared cloth parcel which was sealed with the seal of KGT. Seal was handed over to the witness after use. Inspector K.G. Tyagi prepared seizure memo Ex. PW62/Z-2. Inspector K.G. Tyagi recorded statement of the witness.

743. PW67 SI Mukesh further stated in his examination-in-chief that on 4<sup>th</sup> February, 2008, a secret information was received by Inspector K.G. Tyagi regarding accused Desraj @ Desu. Inspector K.G. Tyagi entered the secret information vide DD No. 22 in the DD register of their office. The witness along with Inspector K.G. Tyagi , SI Sanjeev, ASI Rajbir, ASI Jai Singh, HC Omender, HC Sanjay and Constable Deepak left their office in civil clothes along with secret informer in a private vehicle at about 09.00 pm for inquiry of the secret information and at the instance of the secret informer, they reached Delhi Gate where Inspector K.G. Tyagi briefed the raiding party. They reached in front of new building of Zakir Hussain College near Ram Leela Ground where they took position around the area near the bus stand of Zakir Hussain College. Inspector K.G. Tyagi along with him and secret informer sat on the bench of bus stand and started waiting for accused Desraj @

Desu. At about 10.30 pm accused Desraj @ Desu came towards the bus stand after crossing the road of Ram Lila Ground while looking around. Secret informer pointed towards him and identified him as Desraj @ Desu. Thereafter accused Desraj @ Desu (who the witness correctly identified) was apprehended. The officers disclosed to him their identity. Inspector K.G. Tyagi made inquiry from accused Desraj @ Desu who confessed to his involvement in committing murder of Vijay Yadav @ Viji along with his associates. Accused Desraj @ Desu was arrested vide arrest memo Ex. PW62/Z3 and personally searched vide personal search memo Ex. PW62/Z4. Disclosure statement of accused Ex. PW62/Z5 was recorded by Inspector K.G.Tyagi. Thereafter they went to PS Hauz Qazi along with the accused where Inspector K.G. Tyagi deposited the personal search articles of accused Desraj @ Desu in the malkhana. They returned to their office at about 02:00 am on 5<sup>th</sup> February, 2008 where Inspector K.G. Tyagi recorded statement of the witness.

744. PW67 SI Mukesh further stated in his examination-in-chief that on 6<sup>th</sup> February, 2008, the witness, Inspector K.G. Tyagi, ASI Rajbir, ASI Jai Singh, HC Ominder, HC Shiv Kumar and Ct. Rambir left their office in a private vehicle along with accused Desraj @ Desu and reached Ara Kasa Road Paharganj at about 10:00 am where accused Desraj @ Desu led the police team to Room no. 66 at 4<sup>th</sup> floor of Hotel Kwaliti. The

witness pointed towards the same. The witness disclosed that he along with his associates had conspired over there on 29<sup>th</sup> September, 2007 to commit murder of Vijay Singh @ Vijji. Inspector K.G. Tyagi prepared pointing out memo Ex. PW62/Z-6. Thereafter the accused led them to Gali Arya Samaj, Bazar Sita Ram, Delhi in front of Property No.2745 and pointed towards the same as the place where they committed the murder of Vijay Singh @ Vijji on 29<sup>th</sup> September, 2007. Inspector K.G. Tyagi prepared pointing out memo Ex. PW62/Z7. Accused Desraj @ Desu also led them to Gali Than Singh, Bazaar Sita Ram and pointed towards a place in front of House No. 3570. Accused disclosed that this was the place where he had shown the office of Vijay Yadav @ Vijji to accused Parveen Koli and sent him upstairs. Pointing out memo was prepared by Inspector K.G. Tyagi Ex. PW62/Z8. Meanwhile a lady namely Smt. Anju Gupta and one Amar Singh Yadav met them and identified the accused Desraj @ Desu. Amar Singh Yadav identified him as the same person who he had seen going along with Vijay Yadav @ Vijji on 29<sup>th</sup> September, 2007. Smt. Anju Gupta told that she had seen the accused along with his associates surrounding Vijay Yadav @ Vijji in Gali Arya Samaj on 29<sup>th</sup> September, 2007. The statements of Smt. Anju Gupta and Amar Singh Yadav were recorded by Inspector K.G. Tyagi.

745. The MHC(M) produced a parcel sealed with the seal of Court. On opening it, an unsealed plastic container containing a gold coloured chain bearing some brown coloured spots at various places with one kadi of the said chain in a small polythene bag was taken out. On seeing it, PW67 SI Mukesh identified the same.
746. The MHC(M) produced a parcel sealed with seal of Court. On opening it, a mobile phone of black colour make SAGEM 101X was taken out. On seeing it, PW67 SI Mukesh identified the same as having been recovered from the possession of accused Bhisham Kumar @ Chintoo.
747. PW62 ASI (Retired) Rajbir Singh stated in his examination-in-chief that on 16<sup>th</sup> October, 2007, the witness was posted at Inter State Cell, Crime Branch, Chanakyapuri. Inspector K.G.Tyagi took out the printout of call records of certain mobile phone connections which had been received through e-mail. Inspector K.G. Tyagi took them into possession vide seizure memo Ex. PW62/A. The copies of CDRs ran into 17 pages. On 25<sup>th</sup> November, 2007, on receiving DD no. 7, the witness along with Inspector K.G. Tyagi, SI Mukesh, SI Ram Avtar, ASI Jai Singh, HC Omender, HC Shiv Kumar and HC Narender went to the office of Special Team, Prashant Vihar in a private vehicle and a government vehicle. Upon reaching there, Inspector Anand Singh and SI Shyam Sundar along with staff and two accused persons namely Bhisham @ Chintoo and Vinod Kumar @ Gola (both of whom the

witness correctly identified) were found present. Both the accused persons had been absconding after the incident. Inspector K.G. Tyagi interrogated both the accused persons who made confessions of murder of Vijay Yadav @ Vijji. Inspector K.G. Tyagi arrested accused Bhisham @ Chintoo and Vinod @ Gola vide arrest memos Ex. PW40/B and Ex. PW40/C respectively and they were personally searched vide personal search memos Ex. PW40/D and Ex. PW40/E. Inspector K.G. Tyagi recorded the statement of SI Shyam Sundar of Special Team, Crime Branch. Thereafter, both the accused persons were brought back to the office of Inter-State Cell, Crime Branch, Chanakyapuri, New Delhi. After due interrogation of the accused persons, their disclosure statements Ex. PW62/B and Ex. PW62/C were recorded. Statement of the witness was recorded by Inspector K.G. Tyagi. On 26.11.2007, the witness accompanied Inspector K.G. Tyagi, other police staff, accused Bhisham @ Chintoo and Vinod @ Gola in a government gypsy for the investigation of the case. Pursuant to the disclosure of the accused persons, they reached Hotel Kwalitiy, 53, Ara Kasha Road, Ram Nagar, Paharganj, Delhi where both the accused persons pointed towards Room no.66 as the place where the accused persons along with their associates conspired to kill Vijay Yadav @ Vijji. Pointing out memos Ex.PW62/D and Ex.PW62/E respectively were prepared by Inspector K.G. Tyagi. Inspector K.G. Tyagi gave certain instructions to the hotel

owner Satnam Singh. The accused persons led the police officers to the place of incident i.e. Chowk Boriyan, Gali Arya Samaj, Bazaar Sita Ram, Hauz Qazi, Delhi in front of Property no.2745 and they separately pointed towards the spot as the same place where they along with their associates committed murder of Vijay Yadav @ Vijji. Inspector K.G. Tyagi prepared separate pointing out memos Ex.PW62/F and Ex.PW62/G respectively. Thereafter, they tried to search for accused Deepak @ Chowda and Desraj @ Desu in their respective houses but they were not found there. Both accused persons Bhisham @ Chintoo and Vinod @ Gola were produced before the Court of Id. ACMM, Tis Hazari Courts, Delhi and Inspector K.G. Tyagi obtained ten days' police custody remand from the said Court. After their medical examination they were brought back to their office at Chanakyapuri.

748. PW62 ASI (Retired) Rajbir Singh further stated in his examination-in-chief that on 27<sup>th</sup> November, 2007, Inspector K.G. Tyagi again interrogated both the accused persons in detail in the presence of the witness and in the presence of SI Mukesh, and he recorded their supplementary disclosure statements in which they had told some new facts. Disclosure statement of accused Bhisham @ Chintoo is Ex.PW62/H and disclosure statement of accused Vinod @ Gola is Ex.PW62/I respectively. On 6<sup>th</sup> December, 2007, the witness again joined the investigation along with Inspector K.G. Tyagi, SI Mukesh

Kumar, ASI Jai Singh, HC Omender, HC Shiv Kumar, Constable Ravinder and Constable Kirti and all of them along with accused Vinod @ Gola and Bhisham @ Chintoo went to the house of accused Bhisham @ Chintoo at Katra Gokul Shah, Bazaar Sita Ram, Delhi from where accused Bhisham @ Chintoo got recovered one mobile phone of black colour of make SAGEM 101X from the side pocket of the cover kept on top of the refrigerator and informed that the mobile no.9872728524 was used in the said phone. Upon checking the phone number, no SIM card was found loaded. Inspector K.G. Tyagi kept the mobile phone in a cloth parcel and sealed with the same with the seal of KGT. The witness prepared seizure memo Ex.PW62/J.

749. PW62 ASI (Retired) Rajbir Singh further stated in his examination-in-chief on 18<sup>th</sup> December, 2007, the witness joined the investigation with Inspector K.G. Tyagi. On that day, the witness along with Inspector K.G. Tyagi and other police staff reached Kwality Hotel, 53, Ara Kasha Road, Ram Nagar, Paharganj, Delhi, where Inspector K.G. Tyagi made inquiries from Satnam Singh, owner of the Hotel. Satnam Singh handed over the entry register of the hotel containing entries of Devi Singh and Hitender @ Chhotu for their stay between 20<sup>th</sup> September, 2007 and 28<sup>th</sup> September, 2007. Inspector K.G. Tyagi kept the register in a cloth parcel and sealed the same with the seal of KGT. Before that the witness got the relevant entries photocopied and kept the same in case file. The

witness prepared seizure memo Ex.PW36/A. Thereafter, they came back to Inter State Cell, Crime Branch, Chanakyapuri while searching for the accused persons. On 28<sup>th</sup> January, 2008, upon receiving DD no.2 from Special Team Crime Branch, Prashant Vihar, regarding accused Hitender @ Chhotu, the witness along with Inspector K.G. Tyagi, SI Mukesh, SI Sanjeev, ASI Jai Singh, HC Omender, HC Sanjay, HC Narender, Constable Rambir and Constable Kirti, left their office in a private vehicle at about 10:00am vide DD no.6 and reached office of Crime Branch, Prashant Vihar at about 11:00am, where they came to know that the Investigating Officer of the said case was out of the office along with accused Hitender @ Chhotu. At about 01:00 pm, HC Azad Singh came to the office along with accused Hitender @ Chhotu, who was in muffled face. HC Azad Singh informed that accused Hitender @ Chhotu (who the witness correctly identified) was arrested in case FIR no.15/08, PS. I. P. Estate and that he made disclosure regarding his involvement in the present case. HC Azad Singh also handed over copies of relevant documents to Inspector K.G. Tyagi along with the accused. Inspector K.G. Tyagi made inquiries from the accused and arrested him vide arrest memo Ex.PW62/U and the accused was personally searched vide personal search memo Ex.PW62/V respectively. The disclosure statement Ex.PW62/W was also recorded by Inspector K.G. Tyagi. Thereafter they took the accused to Tis Hazari



Courts in muffled face and he was produced before Ld. ACMM. Inspector K.G. Tyagi moved an application for Test Identification Parade of the accused which was marked to Ld. Link MM. Accused was produced before Ld. Link MM, but he refused to participate in Test Identification Parade. Thereafter accused was again produced before Ld. ACMM who granted four days' remand of the accused to police custody on the application of Inspector K.G. Tyagi. Thereafter they brought the accused to their office.

750. PW62 ASI (Retired) Rajbir Singh further stated in his examination-in-chief that on 29<sup>th</sup> January, 2008, the witness along with Inspector K.G. Tyagi, SI Mukesh, other staff and accused Hitender @ Chhotu left the office at about 10:40am. At the instance of accused Hitender @ Chhotu they reached Kwality Hotel, Ara Kasha Road, Paharganj. There the accused pointed towards Room No.66 on the 4<sup>th</sup> floor of the Hotel. The accused stated that he had stayed along with his associates in the said room on 28<sup>th</sup> September, 2007 and had conspired on 29<sup>th</sup> September, 2007 to commit murder of Vijay Yadav @ Vijji and thereafter they committed murder of Vijay Yadav @ Vijji on 29<sup>th</sup> September, 2007 itself. Inspector K.G. Tyagi prepared pointing out memo Ex.PW62/X. The accused led them to Gali Arya Samaj, Bazaar Sita Ram, Delhi where he pointed towards the spot in front of Property No.2745 where they committed murder of Vijay Yadav @ Vijji. Inspector K.G. Tyagi

prepared pointing out memo of the place of incident Ex.PW62/Y. They came back to their office while searching for the remaining accused.

751. PW62 ASI (Retired) Rajbir Singh further stated in his examination-in-chief that accused Hitender @ Chhotu led them to F-440, Ram Park Extension, Loni, District Ghaziabad where accused Hitender @ Chhotu pointed towards the same as his house and got recovered one golden coloured chain which was kept in a polythene bag which was kept inside the cooler and disclosed that it is the same chain which he took out from the neck of Vijay Yadav @ Vijji after committing his murder. The chain was blood-stained and was broken from one place. Inspector K.G. Tyagi kept the gold chain in the same polythene bag, kept the same in a small plastic box, prepared cloth parcel which was sealed with the seal of KGT. Seal was handed over to SI Mukesh after use. Inspector K.G. Tyagi prepared seizure memo Ex.PW62/Z2. Inspector K.G. Tyagi recorded statement of the witness.

752. PW62 ASI (Retired) Rajbir Singh further stated in his examination-in-chief that on 4<sup>th</sup> February, 2008, a secret information was received by Inspector K.G. Tyagi regarding accused Desraj @ Desu. Inspector K.G. Tyagi entered the secret information vide DD No.22 in the DD Register of their office. Thereafter the witness along with Inspector K.G. Tyagi, SI Sanjeev, SI Mukesh, ASI Jai Singh, HC Ominder, HC Sanjay and Const. Deepak left their office in civil clothes along with secret informer

in a private vehicle at about 09.00 pm for inquiry of the secret information. At the instance of secret informer they reached Delhi Gate where Inspector K.G. Tyagi briefed the raiding party. Inspector K.G. Tyagi also asked four or five public persons to join the raiding team, however, none of them agreed and they went away without disclosing their identities. They reached in front of new building of Zakir Hussain College near Ram Lila Ground where they took position around the area near the Bus Stand of Zakir Hussain College. Inspector K.G. Tyagi along with SI Mukesh and secret informer sat on the bench of Bus Stand and started waiting for accused Desraj @ Desu. At about 10:30 pm, accused Desraj @ Desu came towards the Bus Stand after crossing the road from the side of Ram Lila Ground while looking around. The secret informer pointed towards him and identified him as Desraj @ Desu. Thereafter they apprehended accused Desraj @ Desu and disclosed to him regarding their identity. Inspector K.G. Tyagi made inquiry from Desraj @ Desu who confessed to his involvement in committing murder of Vijay Yadav @ Vijji with his associates. Inspector K.G. Tyagi arrested accused Desraj @ Desu vide arrest memo Ex.PW62/Z3 and personally searched him vide personal search memo Ex.PW62/Z4. Inspector K.G. Tyagi recorded his disclosure statement Ex.PW62/Z5. Thereafter they went to PS Hauz Qazi along with the accused where Inspector K.G. Tyagi deposited the personal search

articles of accused Desraj @ Desu in the malkhana. Thereafter they came back to their office at about 02:00 am on 05.02.2008 where Inspector K.G. Tyagi recorded statement of the witness.

753. PW62 ASI (Retired) Rajbir Singh further stated in his examination-in-chief that on 6<sup>th</sup> February, 2008, the witness and Inspector K.G. Tyagi, SI Mukesh Kumar, ASI Jai Singh, HC Ominder, HC Shiv Kumar and Constable Rambir left their office in a private vehicle along with accused Desraj @ Desu and reached Ara Kasha Road, Paharganj at about 10:00 am, where accused Desraj @ Desu led them to Room no.66 at 4<sup>th</sup> floor of Hotel Kwality and pointed towards the same and disclosed that he along with his associates had conspired on 29<sup>th</sup> September, 2007 to commit murder of Vijay Yadav @ Vijji. Inspector K.G. Tyagi prepared pointing out memo Ex.PW62/Z6. Thereafter the accused led them to Gali Arya Samaj, Bazar Sita Ram, Delhi in front of Property No.2745 and pointed towards the same as the place where they committed murder of Vijay Yadav @ Vijji on 29<sup>th</sup> September, 2007. Inspector K.G. Tyagi prepared pointing out memo Ex.PW62/Z7. Accused Desraj @ Desu led them to Gali Than Singh, Bazar Sita Ram and pointed towards a place in front of House No.3570 and disclosed that this was the same place where he had shown the office of Vijay Yadav @ Vijji to accused Praveen Koli and sent him upstairs. Inspector K.G. Tyagi prepared pointing out memo Ex.PW62/Z8. In the

meanwhile a lady namely Smt.Anju Gupta and one Amar Singh Yadav met them and identified accused Desraj @ Desu. Amar Singh Yadav identified him as the same person who he had seen going along with Vijay Yadav @ Vijji on 29<sup>th</sup> September, 2007. Smt.Anju Gupta told that she had seen the accused along with his associates surrounding Vijay Yadav @ Vijji in Gali Arya Samaj on 29<sup>th</sup> September, 2007. Statement of the witness was recorded by Inspector K.G. Tyagi along with Smt. Anju Gupta and Amar Singh Yadav.

754. The MHC(M) produced a parcel sealed with the seal of Court. On opening the same, an unsealed plastic container containing a gold chain in a small polythene bag with one *kadi* of the chain was taken out. PW62 ASI (Retired) Rajbir Singh identified the chain.
755. The MHC(M) produced another cloth parcel sealed with the seal of 'KGT'. On opening the same, one mobile phone of black colour of make "Sagem" 101X was taken out. Its battery cover was opened and no SIM card was inside the mobile phone. IMEI number of said mobile was 358529000375580. On seeing it, PW62 ASI (Retired) Rajbir Singh identified the mobile phone as the one which was recovered at the instance of accused Bhisham @ Chintoo.
756. The above shows that PW62 ASI (Retired) Rajbir Singh has proved the securing of call detail records, arrest of accused persons Bhisham @ Chintoo and Vinod @ Gola, the pointing out of spot of occurrence and

place of conspiracy by these accused persons, recovery of a phone at the instance of accused Bhisham @ Chintoo, making of inquiries from Satnam Singh, owner of the hotel, collection of entry register of the hotel from Satnam Singh, arrest of accused Hitender @ Chhotu and recording of his confessional statement, refusal of accused Hitender @ Chhotu to undergo Test Identification Parade, the pointing out of spot of occurrence and place of conspiracy by accused Hitender @ Chhotu, recovery of a gold chain at the instance of accused Hitender @ Chhotu, arrest and recording of confessional statement of accused Desraj @ Desu, the pointing out of place of conspiracy, place of occurrence and the office of deceased by accused Desraj @ Desu, and identification of accused Desraj @ Desu by Smt. Anju Gupta and Amar Singh Yadav.

757. PW56 HC Azad Singh stated in his examination-in-chief that on 27<sup>th</sup> January, 2008, he was posted at Special Team, Crime Branch, Prashant Vihar, Delhi as Head Constable. On that day, SI Yashpal got registered FIR No. 15/08, under section 25 of Arms Act, PS IP Estate against accused Hitender @ Chhotu. After registration of FIR, investigation of that case was marked to the witness. The witness reached the spot. SI Yashpal was already present at the spot. SI Yashpal handed over to the witness the case property in sealed condition which the witness took in his possession. Accused Hitender @ Chhotu who had already been apprehended by SI Yashpal was also produced before the witness. The

witness made inquiries from the accused and thereafter arrested the accused in case FIR No. 15/08. During interrogation, accused Hitender @ Chhotu admitted his involvement in the present case and tendered his disclosure statement Mark PW56/A. The witness sent intimation to Inter-State Cell, Crime Branch, Chanakyapuri vide DD No. 2. On the same day, that is 28<sup>th</sup> January, 2008, Inspector K.G. Tyagi from Inter-State Cell, Crime Branch, Chanakyapuri came to their office. The witness handed over documents prepared by him in case FIR No. 15/08 to Inspector K.G. Tyagi. Inspector K.G. Tyagi interrogated accused Hitender @ Chhotu, who the witness correctly identified. Inspector K.G. Tyagi arrested accused Hitender @ Chhotu in this case. On the same day, accused Hitender @ Chhotu was produced before the Court of Sh. Alok Kumar, Ld. ACMM, Delhi in muffled face. As per order of Ld. ACMM, accused Hitender @ Chhotu was sent to judicial custody in case FIR No. 15/08 and was remanded to police custody for four days in the custody of Inspector K.G. Tyagi in the present FIR. PW56 HC Azad Singh thus proved arrest of accused Hitender @ Chhotu in a separate case and his disclosure of involvement in this case.

758. PW58A Inspector Sanjeev Kumar stated in his examination-in-chief that on 14<sup>th</sup> January, 2008, he was posted as Sub-Inspector in Anti-Homicide Section, Crime Branch, Sector-18, Rohini, Delhi. On that day Inspector

K.G. Tyagi, Investigating Officer of this case brought accused Parveen Koli (who the witness correctly identified) to the said office. The said accused was in police custody. The witness was instructed by Inspector K.G. Tyagi to take the accused out of station as the accused had disclosed about his stay at different places after commission of the offence. The witness accordingly conducted investigation and joined ASI Rajbir, HC Omender, Constable Rambir, Constable Harender and accused Parveen Koli. After seeking permission for going out of station, they all left in a private vehicle. Accused Parveen Koli led the police team to Village Bapunia, Bahadurgarh, Haryana which was the village of maternal uncle of accused Parveen Koli. On reaching there the accused pointed towards the house of Dilbagh Singh, his maternal uncle and disclosed that he had stayed there along with his other associates after the incident. The police officers made inquiry from Dilbagh Singh about this fact and he admitted that accused Parveen Koli along with his associates had stayed in his house, but stated that he was not aware that accused Parveen Koli had committed an offence.

759. PW58A Inspector Sanjeev Kumar stated in his examination-in-chief that accused Parveen Koli then led the police team to Village Majri, Karala Road, Delhi and pointed to the house of one Haria. Accused Parveen Koli disclosed that he had stayed there along with his other associates after the incident. The police officers made enquiry from Haria about



this fact and he admitted that accused Parveen Koli along with his associates had stayed in his house, but stated that he was not aware that accused Parveen Koli had committed an offence.

760. PW58A Inspector Sanjeev Kumar stated in his examination-in-chief that then accused Parveen Koli led the police team to main bus stand, Bulandshahar, U. P. and disclosed that he is not familiar with the place to which he along with his associates had gone. Thereafter all of them returned to Delhi.

761. PW58A Inspector Sanjeev Kumar stated in his examination-in-chief that on reaching the Crime Branch Office at Rohini at about 4.00pm or 5.00pm, custody of accused Parveen Koli was handed over to Constable Ravinder. The earlier team members, Constable Ravinder and accused Parveen Koli then proceeded to Dehradun in the same private vehicle. They reached there late at night. Accused Parveen Koli took them to different places at Dehradun but failed to locate the exact place where they took shelter after the incident. Thereafter they returned to their office at Delhi. After medical examination of accused Parveen Koli, his custody was handed over to Investigating Officer Inspector K.G. Tyagi.

762. PW58A Inspector Sanjeev Kumar recounted in his examination-in-chief that on 28.05.2008, the witness joined the investigation along with Investigating Officer Inspector K.G. Tyagi and other police staff. The witness was informed at about 6.00 pm by Investigating Officer

Inspector K.G. Tyagi that he has received secret information about the presence of accused Deepak @ Chowda near Sarvodaya School, Sector-16, Rohini, Delhi. A raiding team was constituted by the Investigating Officer consisting of the witness, SI Mukesh, ASI Rajbir, ASI Jai Singh, ASI Shiv Raj, HC Omender, HC Shiv Kumar and others. They all proceeded from their office in a government gypsy at about 6.30pm. When they reached near crossing of Sectors 15 and 16, Rohini, Delhi, the vehicle was stopped and five or six passersby were asked by Investigating Officer Inspector K.G. Tyagi to join the raiding team, but none agreed to join the same and left the spot without informing their names and addresses. Investigating Officer Inspector K.G. Tyagi again briefed the members of raiding team. They all proceeded on foot from that crossing to petrol pump, Sector-16, Rohini, Delhi. On reaching near petrol pump, the secret informer who was with them pointed towards a boy standing across the road identifying that boy as accused Deepak @ Chowda about whom he had given information. When the police officers started proceeding towards the boy, the boy started running. The boy was chased upto ten or fifteen steps and was apprehended with the help of ASI Jai Singh. The boy was interrogated and he revealed his name as Deepak @ Chowda (who the witness correctly identified). Accused Deepak @ Chowda was arrested vide arrest memo Ex. PW41/C. Accused Deepak @ Chowda was interrogated by the

Investigating Officer. Accused Deepak @ Chowda made disclosure statement about his involvement in the present case. The accused was kept in a muffled face and was taken to the office.

763. PW58A Inspector Sanjeev Kumar stated in his examination-in-chief that on 29<sup>th</sup> May, 2008, the witness again joined investigation along with Investigating Officer Inspector K.G. Tyagi and other police staff. Investigating Officer had obtained police custody remand of accused Deepak @ Chowda. Accused Deepak @ Chowda led the police team to Hotel Kwality at Aara Kasha Road, Paharganj, Delhi and identified a room in that hotel disclosing that the accused along with his other associates had conspired to commit murder of Vijay Yadav @ Viji and all of them had proceeded from this room to commit the said murder. A pointing out memo of that room was prepared which is Ex. PW41/F. Thereafter the accused led them to Gali Arya Samaj, property no. 2745, Bazar Sita Ram, outside Badi Dharamshala and pointed towards the place of murder. A memo to this effect was prepared which is Ex. PW41/G. They then returned to their office.

764. PW58A Inspector Sanjeev Kumar stated in his examination-in-chief that on 30<sup>th</sup> May, 2008, Investigating Officer Inspector K.G. Tyagi handed over custody of accused Deepak @ Chowda to the witness for recovery of bracelet of deceased. The accused had disclosed that he had kept the same at village and post Balawala, Dehradun, Uttrakhand. The witness

along with HC Omender, HC Narender, HC Shiv Kumar and accused Deepak @ Chowda proceeded from their office after taking permission to go out of station. The accused led them to village and post Balawala. On reaching there the accused took them to a house known as 'Choudhary Niwas'. There was a lawn in that house having mango trees. The accused dug out a polythene bag from under one of the mango trees. The said transparent polythene was found to be containing a golden bracelet wrapped in a piece of newspaper. On checking the said bracelet, the letters 'JMD' were found engraved on one side of the hook while letters '23 C and SU' were seen to be engraved on the other side of the hook. The said bracelet was again wrapped in the same piece of newspaper kept in the same transparent polythene and sealed in a parcel with the seal of 'MKS'. The parcel was taken into police possession vide seizure memo Ex. PW35/M. Thereafter they took the accused to police station Doiwala, Dehradun. The police officers made their arrival entry in the said police station. The witness recorded the statement of HC Omender. Thereafter they returned to Delhi on 31<sup>st</sup> May, 2008. The witness moved an application for Test Identification Parade of the bracelet vide his application Ex. PW58/A. The date of 2<sup>nd</sup> June, 2008 was fixed by the Court for Test Identification Parade. On 31<sup>st</sup> May, 2008 after reaching office, the witness handed over the case file to Investigating Officer Inspector K.G.

Tyagi. PW58A Inspector Sanjeev Kumar correctly identified the bracelet Ex. P-3 which had been got recovered by accused Deepak @ Chowda, on its production in Court in sealed condition.

765. PW35 HC Omender Kumar stated in his examination-in-chief that he joined the investigation of the present case on 10<sup>th</sup> January, 2008 when he was posted at Inter State Cell, Crime Branch, Chanakya Puri, New Delhi. On that day, the witness alongwith Inspector K.G. Tyagi, SI Ram Avtar, SI Mukesh Kumar, ASI Rajbir, HC Shiv Kumar, HC Narender, HC Sanjay, HC Rajiv, Constable Kirti and Constable Rambir left from the office at about 04:00 pm in an official vehicle and a private vehicle. They reached Ram Bagh Extension, Loni in search of Hitender @ Chhotu and Parmod @ Pammy but neither of them were present there. When they were returning and had reached near Traffic Light at Khazoori, Main Wazirabad Road, Inspector K.G. Tyagi received a secret information at about 06:00 pm that two persons named Hitender @ Chhotu and Praveen Koli wanted in this case would come at about 8pm or 9pm to meet their associate at Christian Cremation Ground, Kashmere Gate. On receipt of this secret information, Inspector K.G. Tyagi constituted a raiding party of abovenamed police officers and asked five or six passers-by to join the raiding party but none came forward. The secret informer met the police officers at the traffic light. All of them including the secret informer proceeded towards Kashmere

Gate near Christian Cremation Ground. They reached there at about 7pm. On reaching there, Inspector K.G. Tyagi asked five or six passers-by to join the raiding party but none agreed. Inspector K.G. Tyagi deputed the police team at different points near the gate of cremation ground. At about 08:30pm, they saw that a boy was coming from Ludo Castle School and they stopped near the gate of cremation ground. When Inspector K.G. Tyagi tried to apprehend that boy, the other officers including the witness also reached there. They overpowered that boy. On inquiry, the boy disclosed his name as Parveen Koli (who the witness correctly identified). Inspector K.G. Tyagi interrogated Praveen Koli about the murder of Vijay Yadav. Praveen Koli was arrested and was searched by memos Ex. PW35/A and Ex. PW35/B. During the personal search of accused Parveen Koli, Rs. 305/- was recovered. They went to Police Station Hauz Qazi where the personal search articles were deposited. They then went to their office at Chanakyapuri. Statement of the witness was recorded by the Investigating Officer in the office. At about 12:30am, Inspector K.G. Tyagi interrogated the accused in the office in the presence of the witness. Whatever the accused disclosed during the interrogation was reduced into writing. Accused Praveen Koli led the police team to Room No. 66, Kwality Hotel, Pahar Ganj. Accused Parveen Koli pointed towards the said room in respect of which pointing out memo

Ex. PW35/D was prepared. Accused Parveen Koli led the police team to the place of occurrence located near property No. 2745, Gali Arya Samaj. On his pointing out, a memo Ex. PW35/E was prepared. Accused Parveen Koli led the police team to property No. 3570, Gali Than Singh i.e. office of Vijay Yadav. Pointing out memo Ex. PW35/F was prepared. Statement of the witness was recorded in the office of Vijay Yadav. The witness again joined the investigation on 30.05.2008. Accused Deepak @ Chowda (who the witness correctly identified) was in police custody. SI Sanjiv, ASI Jai Singh, HC Shiv Kumar, HC Narender and HC Sanjay were also present in the office and joined the investigation. SI Sanjiv asked the witness and others whether they have to go to Dehradun, Uttarakhand. They went to Dehradun in a private vehicle alongwith accused. The accused led the police team to Village Balawala and pointed towards a house namely Chaudhary Niwas. He pointed towards a mango tree behind the said house towards the eastern side. The accused pointed towards the spot near the mango tree and stated that he had concealed a polythene bag containing gold bracelet over there. The accused dug out the said polythene bag from the said place. On opening of the polythene bag, one gold bracelet was found wrapped in a newspaper. The said bracelet was checked. The said bracelet was kept in the same polythene bag after wrapping the newspaper and thereafter it was sealed in a parcel with seal of MKS.

The parcel was seized by preparing memo Ex. PW35/M. They went to Police Station Raipur. Investigating Officer went inside the police station and the witness remained outside. Statement of the witness was recorded outside the police station. They then returned to Delhi and the case property deposited at Police Station Hauz Qazi.

766. At that stage of the testimony, a parcel sealed with the seal of AG was produced by the MHC(M). It was opened. A polythene bag containing newspaper and a gold bracelet was found in it. On seeing it, the witness identified it as the same bracelet which was got recovered by the accused.

767. PW40 Inspector Shyam Sunder is a witness to the investigation concerning arrest of accused persons Vinod @ Gola and Bhisham @ Chintoo. He deposed in his examination-in-chief that on 25.11.2007, he was posted as SI at Special Team, Crime Branch, Prashant Vihar. On that day, at about 10:30 am, a secret informer visited the office of the witness and informed the witness that accused Vinod @ Gola and Bhisham @ Chintoo who were wanted in murder case of Sita Ram Bazaar would come at Bhajan Pura Petrol Pump after some time. The witness conveyed the said information to Inspector Anand Singh and to ACP, Special Team. The witness reduced the said information into writing vide DD no. 3 Ex. PW40/A. Thereafter the witness organized a raiding party comprising of Inspector Anand Singh, SI Ritesh, HC



Balender, HC Rakesh, Const. Ajay and the witness. The informer also accompanied them. They reached Petrol Pump of Bhajanpura at about 11:30 am. At about 2:15 pm, they apprehended accused Vinod @ Gola and Bhisham @ Chintoo (both of whom the witness correctly identified) on the pointing out of secret informer. After apprehending of both of them, the police officers brought them to their office at Prashant Vihar. The police officers and the accused persons reached office between 4 pm and 4:15 pm. On the way, they informed their office about the apprehending of the accused persons. When they reached their office, Insp. K.G. Tyagi met them. The witness handed over both the accused persons to Insp. K.G. Tyagi. Insp. K.G. Tyagi arrested both of them and carried out their personal search. The witness signed the memos. The arrest memos of accused persons Bhisham @ Chintoo and Vinod @ Gola are Ex. PW40/B and PW40/C respectively. The accused persons' personal search memos are Ex. PW40/D and PW40/E respectively. At about 4:25 pm, the witness recorded his arrival and the proceedings as DD No. 4 Ex. PW40/F (OSR). The witness was cross-examined by ld defence counsel, and was discharged.

768. PW41 SI Jai Singh deposed in his examination-in-chief that on 4<sup>th</sup> December, 2007, he was posted at Inter-State Cell, Crime Branch, Chanakyapuri, New Delhi as ASI. On that date he joined the investigation of this case with SI Ram Avtar. Accused Bhisham @

Chintoo and Vinod @ Gola (both of whom the witness identified) were in custody. The witness alongwith the team headed by SI Ram Avtar and accused persons left for Kotdwar, UP. Accused Bhisham @ Chintoo took the police team to the house of one Harish Patti at Vikas Nagar. The accused pointed towards a room which was locked. Landlord of the premises Sh. Harish Patti was an old person and was unable to speak. A tenant named Bunty met the police officers. Bunty identified both the accused persons and informed the police that both the accused persons had stayed in the house alongwith eight or ten other persons. Bunty had not disclosed the date of the stay in the said room. From Vikas Nagar, they went to Raj Hotel at Kotdwar. From there, they went to Rishikesh, where they went to the house of one Ayodhya Prasad led by both the accused persons. The house was found locked. Thereafter the accused persons led the police team to the house of one Pitamber. Pitamber and a lady Sumitra met the police officers there. SI Ram Avtar made inquiry from Pitamber and Sumitra about some phone. Sumitra handed over a mobile phone to SI Ram Avtar, which was seized by SI Ram Avtar by memo Ex. PW30/A. The witness and others then went to the house of Surender Tiwari which was nearby. SI Ram Avtar made inquiry about a mobile phone. Surender Tiwari produced a mobile phone which was seized by memo Ex.PW29/A.

769. PW41 SI Jai Singh further deposed that on 5<sup>th</sup> December, 2007, he again joined the investigation. They went to Balawal at Dehradun to the house of Rajender Chaudhary at the instance of both the accused persons namely Bhasham @ Chintoo and Vinod @ Gola. Accused Bhasham @ Chintoo disclosed that the accused persons had stayed on the first floor of the room and accused Bhasham @ Chintoo had concealed the gold chain of the deceased in the container of tea leaves. Thereafter the accused pointed towards the said kitchen and produced the chain from the container. There was a v-shaped locket in the chain. SI Ram Avtar sealed the said chain after keeping it in a container with the seal of RBS and seized the chain vide memo Ex.PW41/A. Thereafter they returned to Delhi.
770. PW41 SI Jai Singh further deposed that on 27<sup>th</sup> December, 2007, he joined investigation. At that time accused Hitender @ Chhotu was in custody (who the witness identified). On the pointing out of accused Hitender @ Chhotu, a car of Santro model was seized from Rawat Mohalla. The said car was in the name of brother-in-law of accused Hitender @ Chhotu. Key of the vehicle was taken from the mother-in-law of the accused by SI Mukesh, who seized the car and the key. The witness signed the memo Ex. PW41/B.
771. PW41 SI Jai Singh went on to state in his examination-in-chief that on 28<sup>th</sup> May, 2008, he joined the investigation with Insp. K.G. Tyagi. A

team was constituted on receipt of secret information that accused Deepak @ Chowda would reach near Petrol Pump, Sarvodaya Vidyalaya, Crossing of Sector 15-16, Rohini in the evening at about 7pm. At about 6:45 pm they reached near crossing of Sectors 15 and 16 at Rohini. Investigating Officer requested five or six passers-by to join the proceedings but none of them came forward. At about 7pm, accused Deepak @ Chowda was apprehended (who the witness identified). Arrest memo of the accused Ex.PW41/C was prepared. Personal search of the accused was carried out vide memo Ex. PW41/D. They brought the accused to the office where he was interrogated. After interrogation, disclosure statement of the accused was recorded which is Ex.PW41/E.

772. PW41 SI Jai Singh further deposed in his examination-in-chief that on 29<sup>th</sup> May, 2008, he had again joined the investigation. On the same day, accused Deepak @ Chowda had pointed towards Hotel Kwality, Ara Kasa Road. A pointing out memo was prepared which is Ex. PW41/F. The accused pointed towards the place of occurrence. A pointing out memo was prepared which is Ex.PW41/G. The witness stated that he can identify the recovered mobile phone and gold chain.

773. The MHC(M) produced a container sealed with the seal of Court. On opening the same, a gold chain Ex.P2 was found in a tea leaves' container. On seeing it, PW41 SI Jai Singh stated that it was the same

chain which had been got recovered by accused Chintoo. The MHC(M) also produced two mobile phones Ex.P29/1 and P30/1. On seeing them, PW41 SI Jai Singh stated that the said mobile phones were sealed in his presence.

774. PW41 SI Jai Singh has thus proved seizure of phones that were used by accused persons, the recovery of a chain at the instance of accused Bhasham @ Chintoo, the recovery and seizure of a car at the instance of accused Hitender @ Chhotu, arrest of accused Deepak @ Chowda, and pointing out of Hotel Kwality as place of conspiracy and the place of occurrence by accused Deepak @ Chowda.

775. PW46A Retd. Inspector Davinder Singh had prepared scaled site plan of the place of incident. The witness stated in his examination-in-chief that on 7<sup>th</sup> January, 2008, he was working as Inspector (Draftsman), Crime Branch, Delhi Police and on that day at the request of Investigating Officer of the case, he visited the place of occurrence. He took rough notes and measurements on the pointing out of Inspector Anil Sharma and Inspector K. C. Tyagi. On the basis of such notes and measurements, he prepared scaled site plan Ex. PW46/A. The scaled site plan was handed over to Investigating Officer and thereafter rough notes were destroyed. Unlike other witnesses named above, this witness was not cross-examined despite grant of opportunity.

776. In their examination-in-chief, the abovenamed witnesses have fully supported the case of the prosecution of the steps taken towards investigation of the case. They spoken with precision and have given an account of each development that took place. They have stated about the manner of arrest of accused persons, the recording of disclosure statements, the pointing out of different places by them, the refusal to undergo Test Identification Parade by them and the recovery of different articles by them. It is important to note that the main Investigating Officer Inspector K.G. Tyagi was not a privy to every recovery. Some articles got recovered in the presence of other police officers and this shows that the case is not such as could have been contrived by the Investigating Officer by planting evidence and manufacturing the recoveries. Almost every part of the investigation has more than one police officer as its witness and it is not in the power of any single police officer to manipulate facts and build up this case. During cross-examination too, apart from minor infirmities and discrepancies on insignificant matters, which are bound to occur in the usual course, the testimony of the witnesses has remained consistent. The witnesses have corroborated each other on all material aspects connected with the offence. There is no reason to disbelieve the witnesses. It has not been shown by the accused persons that these witnesses are trying to falsely implicate the accused persons and are

therefore making false statements because of some grudge or enmity with the accused persons. A testimony cannot be rejected or even viewed with greater suspicion only because the witness is a police officer. Since nothing has emerged which could prove the depositions to be dishonest or misleading, I find no impediment in relying on them and drawing conclusions. However, the facts that can be deduced from the testimony of these witnesses and the impact of proof of those facts will be discussed later alongside the evidence that has been presented against accused Kishanpal @ Fauzi.

**Investigation carried out in respect of accused Kishanpal @ Fauzi**

777. When the investigation was being conducted by Inspector K.G. Tyagi and other accused persons were indicted, accused Kishanpal @ Fauzi had been absconding. Therefore investigation against him could not be conducted by the abovenamed witnesses. Accused Kishanpal @ Fauzi was found later and investigation was then completed into his role in commission of the offence. This investigation is proved by the prosecution through two witnesses namely PW54 Inspector Dharam Singh and PW59 Constable Rambir Singh.

778. PW54 Inspector Dharam Singh had carried out further investigation in respect of accused Kishanpal @ Fauzi. The witness stated in his examination-in-chief that on 30<sup>th</sup> October, 2008 he was posted as

Inspector, Anti-Homicide Section, Crime Branch. On that day, the witness received the case file for further investigation. Proceedings under Sections 82 and 83 of Code of Criminal Procedure were already going on against accused Kishanpal @ Fauzi. On 6<sup>th</sup> June, 2009, accused Kishanpal @ Fauzi was declared proclaimed offender by the Court. On 16<sup>th</sup> June, 2009, the witness received information vide DD No. 7 regarding apprehending of accused Kishanpal @ Fauzi by officers of PS Special Cell. The witness appeared before the Court and formally arrested Kishanpal @ Fauzi vide memo Ex. PW54/A after taking permission from the Court. The witness interrogated accused Kishanpal @ Fauzi. The accused made disclosure statement. Accused Kishanpal @ Fauzi was produced for judicial Test Identification Parade but he refused to participate in the parade.

779. At that stage, an envelope sealed with the seal of the Court of Sh. Siddharth Mathur, Ld. MM was taken out from the judicial record. Its seals were found to be intact. The parcel was opened. The record of proceedings was taken out. PW54 Inspector Dharam Singh identified the application for Test Identification Parade as Ex. PW54/C. The witness further deposed that the accused was sent to judicial custody and was produced on 25<sup>th</sup> June, 2009. On that day, the accused refused to participate in Test Identification Parade. The proceedings are Ex. PW54/D. Copy of the record was supplied to the witness pursuant to



his application Ex. PW54/E. The accused was taken on police custody remand. The accused pointed towards the place of occurrence vide memo Ex. PW54/F. Ld counsel for accused Kishanpal @ Fauzi did not dispute identity of the accused.

780. PW54 Inspector Dharam Singh further deposed that he had collected relevant documents from PS Special Cell. He had recorded statements of witnesses and after completion of investigation, he filed supplementary chargesheet against accused Kishanpal @ Fauzi. Along with the supplementary chargesheet, the FSL result dated 11<sup>th</sup> July, 2008 vide number 2007/3-4690/4153 from FSL Rohini, the document Mark 54/B and the document of ownership of Santro Car No. UA 07T-5313 Mark 54/C were also filed. The FSL Report was regarding examination of the exhibits contained in eight parcels sent on 27.12.2007 by the previous Investigating Officer.

781. PW59 Constable Rambir Singh was examined to prove that accused Kishanpal @ Fauzi had pointed towards the place of incident during investigation. The witness deposed in his examination-in-chief that on 25<sup>th</sup> June, 2009, he was posted at Anti-Homicide Section, Crime Branch, Sector 18, Rohini, Delhi. He stated that on that day, he joined investigation of this case along with Inspector Dharam Veer. Accused Kishanpal @ Fauzi had already been arrested by Inspector Dharam Veer in the present case and his two days' police custody remand had

also been obtained. During the said police custody, accused Kishanpal @ Fauzi led the police team to outside property no. 2745, Gali Arya Samaj, Sita Ram Bazar and pointed towards the place where murder of Vijay Yadav @ Viji had been committed. A pointing out memo to this effect had been prepared, which is Ex. PW54/F.

782. The abovenamed witnesses have thus proved the arrest of accused Kishanpal @ Fauzi, the pointing out to the place of occurrence by the said accused and the refusal of the accused to participate in Test Identification Parade. There is no discrepancy in the testimony of the witnesses. The narrations of the witnesses validate and endorse the correctness of each other. I find no impediment in relying on the testimony of the witness which has withstood the test of cross-examination.

#### **Safe custody of Case Property**

783. The safe custody of the articles recovered and seized is important to maintain the identity of the property. It is a vital unit to make the chain complete and to show that the article sent to the Forensic Science Laboratory, or produced before the Court for Test Identification Parade or during the testimony for identification is the same as that which had been recovered and seized.

784. The deposit of the case property in the malkhana and its dispatch for different purposes is proved by the MHC(M) who is incharge of the malkhana. PW38 HC Suresh Kumar was MHC(M) at PS Hauz Qazi and was responsible for acceptance of parcels deposited in the malkhana. He deposed in his examination-in-chief that on 29.09.2007 and till 22.12.2007, he was posted as MHC(M) at PS Hauz Qazi. He stated that on 29.09.2007, Inspector Anil Sharma deposited six parcels sealed with the seal of AS along with copy of seizure memo, of which an entry was made at SI No. 1841 in register no. 19 Ex. PW38/A.
785. PW38 HC Suresh Kumar further deposed that on 08.10.2007, Inspector Rajinder Dubey deposited four parcels sealed with the seal of MAMC SKK along with sample seal and copy of seizure memo, of which entry was made at SI No. 1844 in register no. 19 Ex. PW38/B.
786. PW38 HC Suresh Kumar then deposed that on 6<sup>th</sup> December, 2007, Inspector Ram Avtar deposited a parcel duly sealed with the seal of RBS and two SIM cards in malkhana and handed over copy of seizure memo to the witness. He further stated that on the same day, Inspector K.G. Tyagi deposited a parcel sealed with the seal of KGT of which entry was made at SI No. 1857 in register no. 19 Ex. PW38/C.
787. PW38 HC Suresh Kumar deposed that on 7<sup>th</sup> December, 2007, Inspector K.G. Tyagi deposited a parcel sealed with the seal of KGT and personal search articles of accused persons Rishi Pal @ Pappu and Gopal

Krishan Aggarwal of which entry was made at SI No. 1547A in register no. 19 Ex. PW38/D. He clarified that entry 1547A had been inadvertently written in place of 1857A.

788. PW38 HC Suresh Kumar deposed that on 18<sup>th</sup> December, 2007, Inspector K.G. Tyagi deposited a register sealed with the seal of KGT along with copy of seizure memo, of which entry was made at SI No. 1853 in register no. 19 Ex. PW38/E.
789. PW38 HC Suresh Kumar further deposed that on 22<sup>nd</sup> December, 2007, SI Ram Avtar of Crime Branch deposited a parcel sealed with the seal of KGT of which entry was made at SI No. 1895 in register no. 19 Ex. PW38/F.
790. PW38 HC Suresh Kumar further deposed that on 25<sup>th</sup> November, 2007, Inspector K.G. Tyagi deposited certain items along with copy of memos of which entry was made at SI No. 1842 in register no. 19 Ex. PW38/G.
791. PW38 HC Suresh Kumar deposed that on 27<sup>th</sup> December, 2007, eight parcels - some sealed with the seal of AS, some sealed with the seal of LNJP and others sealed with the seal of MAMC SKK were sent to the FSL through ASI Jai Singh vide RC No. 102/21. He stated that copy of RC No.102/21 is Ex. PW38/H. He further deposed that ASI Jai Singh, after depositing these items at FSL, handed over to the witness the receipt of deposit.

792. PW38 HC Suresh Kumar lastly stated that on 17<sup>th</sup> January, 2008, a parcel sealed with the seal of RBS was sent for Test Identification Parade through SI Mukesh vide RC No.02/21/08 by entry Ex. PW38/I.
793. PW38 HC Suresh Kumar was cross-examined by Id counsels for accused persons, but nothing came out which could make a dent on the testimony. The witness had no other role to play in investigation. The witness had no reason to fabricate evidence against the accused persons. Each part of his oral testimony is supported by documentary evidence. There is no reason to dispute his testimony. The testimony of the witness, when read conjointly with the testimony of the seizing police officers and on comparison of the seals, convincingly shows that indeed the individual case properties were not tampered with and were kept in safe custody.
794. The aforesaid is a summary of the testimony of police officers about the investigation carried out and includes a brief description of the documents prepared and articles recovered during investigation, which they identified at trial. As noted above, by and large the witnesses have stood by their assertions when tested during cross-examination. Their versions have been consistent, unvarnished, lucid and methodical (the events being presented in a chronological manner). The depositions corroborate each other as they talk about events occurring during the same timespan, apart from lending strength to the version of the public

witnesses. The witnesses have identified each of the recovered articles. Their safe custody has also been established beyond the pale of doubt. From the evidence comprising of oral testimony of witnesses as well as the documents and articles proved by the witnesses, the case of the prosecution as to the investigation carried out, which finds mention in the chargesheet too, stands proved. The facts that emerge from this evidence have been enumerated in a piecemeal manner. They need to be brought together and segregated as corresponding to each individual accused so that the facts proved against each of them becomes instantly apparent. This is depicted in a tabulated statement, as follows:

Serial No.	Name of Accused	Role allegedly played in the killing of Vijay Yadav	Name of the police witness and the fact proved by him
1.	Parveen Koli	A few minutes before the incident, he went to the office of the deceased and brought the deceased to the spot; Then he surrounded the deceased while co-offenders fired gunshots.	The accused had refused to undergo Test Identification Parade, before Sh. Vidya Prakash, the then Id MM, Tis Hazari Courts, Delhi. This is proved by PW68 Inspector K.G. Tyagi.  During police remand, the accused pointed out Hotel Kwality, the office of deceased Vijay Yadav @ Viji and the place of incident, recorded in pointing out memos. PW35 HC Omender Kumar and PW68 Inspector K.G. Tyagi proved this, and also the arrest of this accused.
2.	Bhisham @ Chintoo	Surrounded the deceased while co-offenders fired gunshots. He had carried away the gold chain belonging to the deceased and had hidden it.	On interrogation, he disclosed that he and others had killed Vijay Yadav pursuant to a conspiracy hatched at Hotel Kwality, which he pointed out. Also pointed out the place of occurrence. Pointing out of the places is proved by PW67 SI Mukesh, PW62 ASI Rajbir and PW68 Inspector K.G. Tyagi.  PW40 SI Shyam Sunder, PW62 Retd. ASI Rajbir Singh, PW67 SI Mukesh and PW68 Inspector K.G. Tyagi proved arrest of this accused.  A gold chain with locket belonging to deceased was recovered and seized at the instance of this accused. The recovery is proved by PW41 SI Jai Singh.

			Test Identification Parade of the gold chain was conducted by Sh. Vidya Prakash, Id. Link MM, Tis Hazari, Delhi, in which witness Abhay Yadav correctly identified it. PW68 Inspector K.G. Tyagi proved this.
3.	Deepak @ Chowda	Surrounded the deceased while co-offenders fired gunshots. He had carried away the bracelet belonging to the deceased and had hidden it.	<p>PW41 SI Jai Singh, PW58A Inspector Sanjeev Kumar and PW68 Inspector K.G. Tyagi proved arrest of this accused.</p> <p>PWs Anju Gupta and Dheeraj Sharma identified him as one of the offenders, during investigation, proved by PW68 Inspector K.G. Tyagi.</p> <p>The accused refused to undergo Test Identification Parade before Sh. Ajay Gupta, the then Id MM, Tis Hazari Courts, Delhi. PW68 Inspector K.G. Tyagi proved this.</p> <p>A bracelet belonging to deceased was recovered and seized at the instance of this accused. PW35 HC Omender Kumar and PW58A Inspector Sanjeev Kumar proved recovery of gold bracelet of deceased from Dehradun at the instance of accused Deepak @ Chowda. PW68 Inspector K.G. Tyagi proved the proceedings of Test Identification Parade of the bracelet in which it was correctly identified by Abhay Singh Yadav.</p> <p>On interrogation, the accused disclosed that he and others had killed Vijay Yadav pursuant to a conspiracy hatched at Hotel Kwaliti, which he pointed out. He also pointed out the place of occurrence. These are proved by PW41 SI Jai Singh, PW58A Inspector Sanjeev Kumar and PW68 Inspector K.G. Tyagi.</p>
4.	Desraj @ Desu	Surrounded the deceased while co-offenders fired gunshots.	<p>Arrest of this accused is proved by PW62 Retd. ASI Rajbir Singh, PW67 SI Mukesh and PW68 Inspector K.G. Tyagi.</p> <p>The accused had refused to undergo Test Identification Parade before Sh. Vidya Prakash, the then Id MM, Tis Hazari Courts, Delhi. PW68 Inspector K.G. Tyagi proved the said proceedings.</p> <p>Accused pointed out the place of occurrence, the office of the deceased and Hotel Kwaliti which was recorded in pointing out memos. PW68 Inspector K.G. Tyagi, PW67 SI Mukesh and PW62 Retd. ASI Rajbir Singh proved this.</p> <p>PW62 ASI (Retired) Rajbir Singh, PW67 SI Mukesh and PW68 Inspector K.G. Tyagi proved identification of accused Desraj @ Desu by Anju Gupta and Amar Singh Yadav during investigation.</p>
5.	Kishanpal @ Fauzi	Surrounded the deceased and fired gunshots.	The accused had refused to undergo Test Identification Parade, conducted in the Court of Sh. Siddharth Mathur, Id MM.

			<p>Accused pointed out the place of occurrence. PW59 Constable Rambir Singh proved this.</p> <p>PW54 Inspector Dharam Singh, DIU, Outer District, Delhi proved arrest of this accused, the refusal of the accused to participate in test identification parade, and the pointing out of the place of occurrence.</p>
6.	Hitender @ Chhotu	<p>Surrounded the deceased and fired gunshots.</p> <p>He had carried away the gold chain belonging to the deceased and had hidden it.</p>	<p>PW56 HC Azad Singh proved arrest of this accused in a separate case and subsequent arrest of the accused in this case.</p> <p>PW62 Retd. ASI Rajbir Singh, PW67 SI Mukesh and PW68 Inspector K.G. Tyagi proved arrest of the accused and recording of his disclosure statement in this case.</p> <p>The accused had refused to undergo Test Identification Parade before Ld. Link MM Sh. Pulstya Pramachala. This is proved by PW62 Retd. ASI Rajbir Singh, PW67 SI Mukesh and PW68 Inspector K.G. Tyagi.</p> <p>A blood stained gold chain having gunshot marks belonging to deceased Vijay Yadav was recovered at the instance of accused Hitender @ Chhotu from his house at Ram Park, Loni, Uttar Pradesh. This is proved by PW62 Retd. ASI Rajbir Singh, PW67 SI Mukesh and PW68 Inspector K.G. Tyagi.</p> <p>The accused pointed out the place of occurrence and Hotel Kwality, Paharganj. This is proved by PW62 Retd. ASI Rajbir Singh, PW67 SI Mukesh and PW68 Inspector K.G. Tyagi.</p> <p>A car allegedly used in the crime and finding mention in the guest register of the hotel was recovered at the instance of this accused. The said recovery is proved by PW67 SI Mukesh, PW41 SI Jai Singh and corroborated by version of PW68 Inspector K.G. Tyagi who was informed of this.</p> <p>Guest register of Hotel Kwality, Pahar Ganj, New Delhi where conspiracy was hatched, showing arrival entries on 20.9.2007 and 28.9.2007, is proved by PW36 Shri Satnam Singh, PW62 Retd. ASI Rajbir Singh and PW68 Inspector K.G. Tyagi.</p>

795. It can be seen from the above that apart from the general identification and proof of arrest, the police officers have proved the Test Identification Parade (refusal of accused persons to subject themselves



to Test Identification Parade and also the Test Identification Parade of case property), the recovery of articles at their instance and the pointing out of places by them. Each of these events are to be independently assessed to see how far they go to prove commission of the offence by the accused persons. However, before that is done, it needs to be noted that the Test Identification Parade proceedings have not been proved only by the police witnesses. The judicial officers who conducted the proceedings have also appeared in the witness box to prove their proceedings. Their testimony is recapitulated here.

**Judicial Officers examined in the case**

796. Three judicial officers were examined by the prosecution. These are PW9 Shri Pulastya Pramachala, PW12 Shri Vidya Prakash and PW61 Sh. Ajay Gupta.
797. PW9 Shri Pulastya Pramachala, Id. judicial officer stated in his examination-in-chief that he was posted as Metropolitan Magistrate, Delhi on 28<sup>th</sup> January, 2008 and on that day, an application, which the witness identified as Ex.PW9/A, for conducting Test Identification Parade of accused Hitender @ Chhotu was placed before the witness. The application had been assigned to the witness by the Court of Shri Alok Kumar, the then Id. Addl. Chief Metropolitan Magistrate. Accused Hitender @ Chhotu was produced in muffled face by the

Investigating Officer; that the accused was told about the purpose of conducting Test Identification Parade. Accused Hitender @ Chhotu refused to participate in the Test Identification Parade. Statement of accused Hitender @ Chhotu was recorded by the witness. The witness identified the record of Test Identification Parade as Ex. PW9/B.

798. PW12 Shri Vidya Prakash, the then Id. Addl. Chief Metropolitan Magistrate deposed in his examination-in-chief that on 5<sup>th</sup> February, 2008, he was posted as Metropolitan Magistrate, Delhi and was link to the Court of Shri Alok Kumar, Ld. Addl. Chief Metropolitan Magistrate, Delhi. On that day an application Ex. PW12/A was marked to him for the Test Identification Parade of accused Deshraj @ Desu; that accused Deshraj @ Desu was produced in muffled face by the investigating officer and was identified by the latter. On asking, accused Deshraj @ Desu refused to participate in Test Identification Parade. The witness warned the accused that his refusal to participate may be used against him but he remained steadfast on his refusal. The accused justified his refusal by stating that he had been seen earlier as he was resident of the same area. The witness identified the record of proceedings as Ex. PW12/B.

799. PW12 Shri Vidya Prakash further deposed that on 7<sup>th</sup> January, 2008, an application Ex. PW12/D had been assigned to him for the Test Identification Parade of case property. The witness Abhay was

produced by the investigating officer. The investigating officer produced a parcel sealed with the seal of RBS. The parcel was opened which was containing gold chain and a locket on which 'V' was inscribed. The item was mixed with other similar items. The witness was then called inside the chamber and was asked to identify the chain. The witness correctly identified the same property. The witness identified the record of proceedings as Ex. PW12/E.

800. PW61 Sh. Ajay Gupta, Ld. Addl. Sessions Judge, Karkardooma Courts, Delhi had been examined to prove the record relating to Test Identification Parade of accused Deepak @ Chowda and Test Identification Proceedings of a gold bracelet. The witness deposed in his examination-in-chief that on 29<sup>th</sup> May, 2008 he was posted as Metropolitan Magistrate at Tis Hazari Courts, Delhi. On that day an application Ex. PW61/A for conducting judicial Test Identification Parade of accused Deepak @ Chowda was placed before him by Inspector K.G. Tyagi, PS Hauz Qazi which had been marked to him by Ld. ACMM Sh. Alok Kumar; that accused Deepak @ Chowda was produced before the witness on the said day in muffled face. Accused refused to participate in judicial Test Identification Parade. The witness had explained the meaning of Test Identification Parade to the accused and had warned the accused that if he refuses to participate in Test Identification Parade, the trial Court may draw an adverse inference

against him. The accused persisted in his refusal. The witness therefore recorded the statement of refusal which the accused signed. The witness also issued a certificate regarding the conduct of Test Identification Parade proceedings and its correctness. The Test Identification Parade proceedings of accused were identified by the witness as Ex. PW61/B.

801. PW61 Sh. Ajay Gupta, Ld. Addl. Sessions Judge further stated that an application dated 31<sup>st</sup> May, 2008 had been marked to him on 2<sup>nd</sup> June, 2008 to conduct the Test Identification Parade proceedings of case property. The witness identified the application as Ex. PW61/D. PW61 Sh. Ajay Gupta stated that on 2<sup>nd</sup> June, 2008, SI Mukesh Kumar appeared in the Court on behalf of Investigating Officer with case file. On 7<sup>th</sup> June, 2008, Inspector K.G. Tyagi appeared with one parcel duly sealed with the seal of 'MKS'. The parcel was stated to be containing a gold bracelet; that the Investigating Officer also produced another parcel sealed with the seal of 'KGT' containing five more bracelets of similar appearance. The Investigating Officer opened up both the parcels on directions of the witness; that thereafter the Investigating Officer was directed to go out from the chamber. Abhay Singh Yadav was called inside the chamber. Abhay Singh Yadav was identified by the Investigating Officer. The articles were shown to the witness; that the witness correctly identified the case property. The Test

Identification Parade proceedings are Ex. PW61/E.

802. PW9 Shri Pulastya Pramachala and PW12 Shri Vidya Prakash were not cross-examined by Id defence while PW61 Sh. Ajay Gupta had been cross-examined, though nominally. There is nothing on the record to show that the version of the said witnesses was inaccurate. There is also no reason for the judicial officers to present an exaggerated or distorted version of the events, which are also duly chronicled in documents. The testimony of the witnesses is wholly reliable and convincing. It shows that indeed the Test Identification Parade proceedings as recorded in the documents did take place.

803. The assertion of the police witnesses about Test Identification Parade proceedings carried out in the case stands corroborated by the aforesaid testimony of judicial officers. The Test Identification Parade of the articles recovered at the instance of the accused persons is proved additionally by testimony of PW14 Abhay Singh Yadav.

**Effect of Test Identification Parade of accused persons**

804. Test Identification Parade is being discussed in this judgment although it is a module of investigation because it is believed in certain contexts that when a witness identifies an accused person for the first time in Court, that identification is insufficient and must find corroboration in some other evidence to receive accreditation by the Court. It is postulated

that for the Court to accept the identification of accused by the witness in Court during his testimony, it should have been preceded by positive identification in Test Identification Parade proceedings.

805. In the present case, the six accused persons namely Bhisham @ Chintoo, Parveen Koli, Deepak @ Chowda, Desraj @ Desu, Hitender @ Chhotu and Kishanpal @ Fauzi were identified in Court to be the offenders, during the testimony of PW1 Smt. Anju Gupta and PW2 Dheeraj Sharma. This Court therefore needs to examine whether these persons were subjected to Test Identification Parade during investigation and if so what was the outcome thereof.

806. It has already been concluded earlier that from the evidence led by the prosecution, which comprises of oral testimony of witnesses as well as documentary evidence, it stands proved that accused Parveen Koli, Deepak @ Chowda, Desraj @ Desu, Hitender @ Chhotu and Kishanpal @ Fauzi had been produced before a Metropolitan Magistrate for Test Identification Parade but these accused persons had refused to undergo the Parade. It is trite law that Test Identification Parade cannot be held against the consent of an unwilling accused person. After refusing to undergo the parade and thereby preventing the holding of the proceeding, an accused person cannot turn back and seek to derive advantage from his own act by pleading that he has not been identified in Test Identification Parade.

807. In the case of *Munna v. State (NCT of Delhi) (2003) 10 SCC 599*, the Hon'ble Supreme Court examined the issue of refusal of an accused to participate in Test Identification Parade, and its effect in case the said accused is identified by a witness in the Court. It was held that if an accused declines to participate in the Test Identification Parade, the prosecution has no option but to proceed with dock identification. In such a case, the Court can rely on first time identification in Court during testimony to return a finding of guilt, despite the fact that there may be some explanation in the statement of accused under section 313 of Code of Criminal Procedure as to why he did not agree for Test Identification Parade. It was observed thus:

*"It is true that the normal rule is that testimony of a witness, who does not know an accused from before and identifies him for the first time in the Court as a person who had participated in the commission of the crime, without holding a previous identification parade does not carry much weight. The substantive evidence of a witness is the statement in Court but as a rule of prudence, earlier identification proceedings are held in order to corroborate the testimony of a witness given in Court as regards the identity of the accused who is not known to him from before. However, this normal rule can have no application in the present case on account of own conduct of the appellant. The investigating officer produced appellant Munna "baparda" (with his face muffled) in the Court of Metropolitan Magistrate on 15- 2-1992 and an application was given praying that necessary orders be passed for holding his test identification parade. It was mentioned in the application that after his arrest Munna had been kept "baparda" and is being produced in Court in that condition. However, the appellant categorically refused to participate in a test identification parade. Thereafter, the learned Metropolitan Magistrate passed the following order:  
"Accused Munna in muffled face in police custody is produced and identified before me by SI Satya Pal, PS Roop Nagar. The accused was questioned whether he wanted to join test identification parade. He refused to join. He is warned that his refusal to join TIP*

*may be interpreted in evidence against him. Still he does not want to participate in TIP. Let his statement be recorded."*

*Thereafter, the statement of appellant Munna was recorded where he stated that he did not want to participate in the test identification parade because the witnesses had already seen him in the police station.*

*In a case where an accused himself refuses to participate in a test identification parade, it is not open to him to contend that the statement of the eyewitnesses made for the first time in Court, wherein they specifically point towards him as a person who had taken part in the commission of the crime, should not be relied upon. This plea is available provided the prosecution is itself responsible for not holding a test identification parade. However, in a case where the accused himself declines to participate in a test identification parade, the prosecution has no option but to proceed in a normal manner like all other cases and rely upon the testimony of the witnesses, which is recorded in Court during the course of the trial of the case."*

808. A person refuses to undergo Test Identification Parade when he believes that he will be identified by the witness. Therefore the refusal of the accused to undergo the parade shall be considered akin to a positive identification of the accused by the witness. It shall be deemed as if the accused persons have been identified during Test Identification Parade proceedings, before they were identified in Court.

809. The accused persons furnished certain excuses to justify their refusal to undergo Test Identification Parade. The soundness of explanations will have to be assessed by this Court. This is because if the explanation is found to be valid and proved, then the accused is absolved from an adverse view on account of his refusal of Test Identification Parade. If however the explanation is found to be without justification, then it would attract adverse inference against the accused. This principle has



been recognized by Hon'ble High Court of Delhi in the case of Nazim Khan @ Guddu vs. State Crl. Appeal no. 532/2012 decided on 8th May, 2014 in the following words:

*"There can be two results of test identification parade. Firstly, the refusal to participate in the test identification parade by the appellants is without any justification. Such a refusal is a piece of evidence and the Courts can take an adverse inference against the accused that if he would have participated in the test identification parade, he would have been identified by the witness and the refusal can be used to corroborate the dock identification by witness. Secondly, the accused has a justifiable reason to refuse to participate in the test identification parade. Where accused has justifiable reason, no adverse inference can be taken against him."*

810. Accused Hitender @ Chhotu stated that he does not wish to undergo Test Identification Parade because he had been shown to the witness in the police station on the preceding day. Accused Desraj @ Desu stated that he does not wish to join the Test Identification Parade because the witnesses had previously seen him as the accused is resident of the same place. Accused Deepak @ Chowda gave the same reason to justify his refusal to participate in the parade. Accused Kishanpal @ Fauzi stated that he did not wish to participate in the Test Identification Parade because he had been shown to the witnesses when he was taken out from the lock-up and taken to the Court. Accused Parveen Koli stated that he does not wish to join the Test Identification Parade because the witnesses had previously seen him as the accused "used to go to the place of incident".

811. None of the above pretexts offer a valid justification for refusing Test Identification Parade. None of the pleas have been proved by the accused persons in their evidence and their explanations can also not be discerned from the cross-examination of prosecution witnesses. Moreover, even if the accused had been shown to the witnesses earlier, that would be no reason for the witnesses to identify the accused persons as the offenders. The witnesses are educated persons. They are not under the control or influence of the police personnel. There is no likelihood of the witnesses identifying an innocent person and framing him on the dictates of the police officers. Also, the fact that the accused persons have been residing in the same locality or visiting the place of occurrence would have been no ground for a witness to identify the accused person as the offender. The area in question is a busy one. A number of persons stay there. If a witness were to identify a person as the offender only because the witness has previously seen that person in the said locality, then the witness may end up identifying every resident of the area as an offender. No witness can be expected to act with such imprudence. The explanation is fanciful and rather absurd. All the explanations had been furnished evidently only to somehow wriggle out of the Test Identification Parade. They are farcical and cannot be accepted to be valid.

812. In the case of Sidhartha Vashisht @ Manu Sharma vs State Crl. Appeal no. 179 of 2007 decided on 19<sup>th</sup> April, 2010, the Hon'ble Supreme Court held that the basis of refusal of Test Identification Parade must lie in the evidence and if the accused has failed to prove the facts necessary to justifiably evade Test Identification Parade, then an adverse inference must be drawn against the accused and the identification of the accused for the first time in Court would, without looking for corroboration, be sufficient for holding him guilty.
813. The irresistible conclusion is that the accused persons in fact did not want to participate in Test Identification Parade only because they feared that they would be recognized by the witnesses during the Parade. It must be borne in mind that the police did show alacrity in seeking Test Identification Parade of the accused persons soon after their arrest, thus leaving no scope for argument that during the period of custody preceding the request for Test Identification Parade, the accused persons had been shown to the witnesses.
814. Also relevant is the decision of Hon'ble Karnataka High Court in the case of Ranjith K. v. State of Karnataka Crl. Appeal no. 471/2014 decided on 15<sup>th</sup> March, 2019. In that case, the Court held that even if it is shown that indeed the accused had been shown to the witness before the proposed Test Identification Parade and then the accused refused to undergo Test Identification Parade, if the accused is later identified in

Court during testimony of the witness, that will form the basis of conviction, provided the testimony of the witness is otherwise found reliable. The following passage is relevant:

*"In view of the above said decisions, in our opinion, the identification before the Court play a dominant role irrespective of what had happened prior to the witness identifying the accused before the Court, on the basis of his remembrance of seeing the accused persons at the time of the incident. If the accused persons were shown to the witnesses earlier, it may not be a serious error, if the witness had candidly specifically identified the accused before the Court of law.*

*xxx*

*It is also to be borne in mind that normal and natural conduct of Police is that if any complaint is lodged to the police by a person who was totally unknown, a stranger and the police registers a case against some unknown persons at the initial stages, of course there must be some indication about the identifiable features of the accused. On such complaint, whenever the police incur a suspicion and on such suspicion if the accused is arrested in connection with some other case, and he suspects about the involvement of accused in connection with some other case, then the natural and expected approach of the police would be to call the witness to the Police Station and show the accused to him. There is absolutely no procedure so far as this attitude of the police which debars them from calling the witness to the Police Station under any law for the time being in force recognized, much less in the Cr.PC. It is seen from many of the cases (as noted supra) all over the world, the police can only work in this fashion, because this is a fundamental approach. Therefore, that itself cannot be in our opinion a ground to discard the evidence of PW1 in this case, if the evidence of PW1 is otherwise acceptable, trustworthy and credible in nature."*

815. In light of the aforesaid principle, even if it is assumed that the accused persons succeeded in establishing that they have adequate reasons not to participate in Test Identification Parade and that they had been shown to the witnesses beforehand (though this plea has not been taken by all the accused persons and the plea has been proved by none

of them), then too the identification of the accused persons in the Court during testimony of PW1 Smt. Anju Gupta and PW2 Dheeraj Sharma is sufficient to pin down accused persons Parveen Koli, Deepak @ Chowda, Desraj @ Desu, Hitender @ Chhotu and Kishanpal @ Fauzi as the offenders.

816. It is concluded that the refusal of accused Parveen Koli, Deepak @ Chowda, Desraj @ Desu, Hitender @ Chhotu and Kishanpal @ Fauzi to participate in Test Identification Parade during investigation and subsequent identification of these persons in the Court by the eye-witnesses unmistakably proves that indeed these accused persons had committed the crime.

817. About Bhasham @ Chintoo, the record shows that he had not been subjected to Test Identification Parade. However, this is inconsequential since the accused had been identified by the eye-witnesses through his photographs shown by Inspector K.G. Tyagi. This fact has been proved by the testimony of the eye-witnesses. PW1 Anju Gupta has unequivocally stated in her cross-examination that on 11<sup>th</sup> October, 2017, Inspector K.G. Tyagi from Crime Branch had shown her several photographs. The witness deposed that after seeing those photographs, she identified, from among persons seen in the photographs, those offenders who used to stay in the same locality. Earlier, in her examination-in-chief, the witness had already pointed

towards accused Bhisham @ Chintoo to be among the offenders who used to stay in the same locality. Since the identification had been done on the basis of photographs on 11<sup>th</sup> October, 2007, there was no need to hold Test Identification Parade of accused Bhisham @ Chintoo. Similarly PW2 Dheeraj Sharma has also stated in his cross-examination that he was shown the photographs by Inspector K.G. Tyagi on 11<sup>th</sup> October, 2007.

818. Test Identification Parade of an accused is conducted during investigation for an investigating officer to be sure that the person he has nabbed is indeed an offender in the case he is investigating. This purpose of the identification parade has been underlined by Hon'ble Supreme Court in the case of State of Maharashtra v. Suresh (2000) 1 SCC 471, in which it was noted as under:

*"We remind ourselves that identification parades are not primarily meant for the Court. They are meant for investigation purposes. The object of conducting a test identification parade is twofold. First is to enable the witnesses to satisfy themselves that the prisoner whom they suspect is really the one who was seen by them in connection with the commission of the crime. Second is to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence."*

In another decision reported as Rameshwar Singh v. State of J&K (1971) 2 SCC 715, it was held by Hon'ble Supreme Court that Test Identification Parade *"furnishes to the investigating agency an assurance that the investigation is proceeding on right lines."*

819. Thus Test Identification Parade is the need of an Investigating Officer who is unsure if the person he has caught is indeed the one who had been seen by the eye-witness at the time of committing the crime. The Investigating Officer wants to know this from the eye-witness and therefore calls the eye-witness to participate in this exercise of identifying the offender. In the present case, the eye-witnesses had informed the Investigating Officer who the offender was. They had pointed to the offender in the photographs shown to them. The Investigating Officer was no longer in doubt. He knew who the offender was and therefore there was no need for him to carry out Test Identification Parade. Therefore, the Court cannot doubt the prosecution version only because the Investigating Officer did not get Test Identification Parade of accused Bhisham @ Chintoo carried out, nor can the Court draw any adverse inference against the Investigating Officer was not applying for Test Identification Parade. For other accused persons, possibly, the Investigating Officer harboured a doubt on the identity of the offenders and therefore he deemed it fit to seek Test Identification Parade.

820. It is settled law that Test Identification Parade is not an essential requirement in every case. A Test Identification Parade does not even qualify as substantive evidence and its absence is not a ground to throw out the prosecution case.

In the case of Sidhartha Vashisht @ Manu Sharma vs State Crl. Appeal no. 179 of 2007 decided on 19 April, 2010, the Hon'ble Supreme Court held as follows:

*“A close scrutiny of these judgments will reveal that they in fact support the case of the prosecution. These judgments make it abundantly clear that even where there is no previous TIP, the Court may appreciate the dock identification as being above board and more than conclusive.”*

The same principle was recognized by the Hon'ble Supreme Court in the cases of Heera & Anr Vs. State of Rajasthan Appeal (crl.) 1307 of 2006 decided on 20<sup>th</sup> June, 2007 and Jadunath Singh and another v. The State of Uttar Pradesh (1970) 3 SCC 518.

In the case of Malkhan Singh v. State of M.P. (2003) 5 SCC 746, the Hon'ble Supreme Court held as follows:

*“It is trite to say that the substantive evidence is the evidence of identification in Court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in Court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in Court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the Court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon*



*the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in Court. The weight to be attached to such identification should be a matter for the Courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration."*

821. The cases where, as per the above decision, evidence of identification can be accepted by the Court "even without insisting on corroboration" would, in my opinion, include cases where the Investigating Officer is assured of the identity of the accused through photographs, like the present case.

A recent decision of the Hon'ble Supreme Court worthy of mention is that of Raju Manjhi v. State of Bihar CrI. Appeal no. 1333 of 2009 decided on 2<sup>nd</sup> August, 2018. In that case, it was observed as under:

*"Failure to hold a test identification parade would not make inadmissible the evidence of identification in Court. The weight to be attached to such identification should be a matter for the Courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration."*

822. The showing of photographs by Investigating Officer Inspector K.G. Tyagi to the eye-witnesses and they pointing out the offenders from the photographs are in the nature of "photograph identification", which too has the stamp of approval of the Hon'ble Supreme Court.

In the case of Sidhartha Vashisht @ Manu Sharma vs State CrI. Appeal no. 179 of 2007 decided on 19<sup>th</sup> April, 2010, the Hon'ble Supreme Court held as follows:

*“It is further pointed out that the accused Manu Sharma was sent to judicial custody on 15.05.1999 and the statement of witnesses continued even thereafter and thus resort to photo identification was properly taken by mixing the photograph of accused Manu Sharma with number of other photographs and asking the witnesses to pick up the photograph of the person they had witnessed on the fateful night and the morning thereafter i.e. 29/30.04.99. This mode of photo identification was resorted to vis-à-vis Deepak Bhojwani PW1 on 24.05.1999 at Delhi, Shiv Dass PW3 and Karan Rajput PW4 on 29.05.99 and Shyan Munshi PW2 on 19.05.99 at Calcutta. Thus there is no merit in the contention of the defense that the dock identification was a farce as it was done for the first time in the Court. It is also contended by the defence that since the photographs were shown to the witnesses this circumstance renders the whole evidence of identification in Court as inadmissible. For this, it was pointed out that photo identification or TIP before the Magistrate, are all aides in investigation and do not form substantive evidence. Substantive evidence is the evidence of the witness in the Court on oath, which can never be rendered inadmissible on this count. It is further pointed out that photo identification is not hit by 162 Cr.P.C. as adverted to by the defense as the photographs have not been signed by the witnesses.”*

823. It has thus been laid down that if identification in Court is preceded by identification through photographs, then the Court identification cannot be said to be a first-time identification and cannot be held to be of weak character. The identification through photographs was accorded the same status as identification in Test Identification Parade. In the aforesaid judgment, the Court brushed aside the argument of Id defence counsel, based on the decision of Kartar Singh v. Union of India (1994) 3 SCC 569, that identification on the basis of a photograph cannot be equated to the evidence of a test identification parade. The Apex Court relied upon the case of Umar Abdul Sakoor Sorathia v.

Intelligence Officer, Narcotic Control Bureau (2000) 1 SCC 138 to hold that identification by photographs is valid, where the witness subsequently appears in the witness box and identifies the accused as the offender. The following passage from the judgment of Umar Abdul (ibid) was quoted:

*“In the present case prosecution does not say that they would rest with the identification made by Mr. Mkhathswa when the photograph was shown to him. Prosecution has to examine him as a witness in the Court and he has to identify the accused in the Court. Then alone it would become substantive evidence. But that does not mean that at this stage the Court is disabled from considering the prospect of such a witness correctly identifying the appellant during trial. In so considering the Court can take into account the fact that during investigation the photograph of the appellant was shown to the witness and he identified that person as the one whom he saw at the relevant time. It must be borne in mind that the appellant is not a proclaimed offender and we are not considering the eventuality in which he would be so proclaimed. So the observations made in Kartar Singh in a different context is of no avail to the appellant.”*

The Hon'ble Supreme Court concluded thus:

*“Even a TIP before a Magistrate is otherwise hit by Section 162 of the Code. Therefore to say that a photo identification is hit by Section 162 is wrong. It is not a substantive piece of evidence. It is only by virtue of Section 9 of the Evidence Act that the same i.e. the act of identification becomes admissible in Court. The logic behind TIP, which will include photo identification lies in the fact that it is only an aid to investigation, where an accused is not known to the witnesses, the IO conducts a TIP to ensure that he has got the right person as an accused. The practice is not born out of procedure, but out of prudence. At best it can be brought under section 8 of the Evidence Act, as evidence of conduct of a witness in photo identifying the accused in the presence of an IO or the Magistrate, during the course of an investigation.”*

The decision of Sidhartha Vashisht @ Manu Sharma (supra) was followed by Hon'ble Supreme Court in the recent case of Raja v. State CrI. Appeal no. 740 of 2018 decided on December 10, 2019.

824. In light of the above, it is concluded that there is no infirmity with the Investigating Officer not getting Test Identification Parade of accused Bhisham @ Chintoo conducted in Court, or in showing photographs of the accused to the eye-witnesses during investigation, for the case to make headway. The identification of accused Bhisham @ Chintoo in Court by PW1 Smt. Anju Gupta and PW2 Dheeraj Sharma during their testimony can be acted upon, just as the identification of other accused persons by these witnesses.
825. In addition to the above, accused Deepak @ Chowda was also identified during investigation by PW1 Smt. Anju Gupta and PW2 Dheeraj Sharma. Those witnesses had done so in the office of Crime Branch. This stands proved, as noted above, by the testimony of PW68 Inspector K.G. Tyagi. Similarly accused Desraj @ Desu was identified during investigation, in the office of Crime Branch, by PW1 Smt. Anju Gupta and PW19 Amar Singh Yadav. This is proved by the deposition of PW62 ASI (Retired) Rajbir Singh, PW67 SI Mukesh and PW68 Inspector K.G. Tyagi.
826. The aforesaid identification by the eye-witnesses at different stages, along with other evidence, decisively proves that accused persons

Bhisham @ Chintoo, Parveen Koli, Deepak @ Chowda, Desraj @ Desu, Hitender @ Chhotu and Kishanpal @ Fauzi had killed Vijay Yadav on 29<sup>th</sup> September, 2007.

**Recovery of Articles and Test Identification Parade of Case Property**

827. The case of the prosecution for the offence of murder against accused persons Bhisham @ Chintoo, Parveen Koli, Deepak @ Chowda, Desraj @ Desu, Hitender @ Chhotu and Kishanpal @ Fauzi does not rest only on the version of public witnesses, oral testimony of police officers and test identification parade of accused persons. The prosecution seeks to support the allegations of commission of offence of murder by relying on recovery of articles worn by the deceased, at the instance of accused persons. A car used in commission of the offence was also recovered.
828. As noted above, the police witnesses have succeeded in proving recovery of the following articles from the accused persons:

Name of Accused at whose instance the article was recovered	Article recovered
Bhisham @ Chintoo	A gold chain with locket belonging to deceased – recovery proved by PW41 SI Jai Singh.  Test Identification Parade of the gold chain was conducted by Sh. Vidya Prakash, Id. Link MM, Tis Hazari, Delhi, in which witness Abhay Yadav correctly identified it.
Deepak @ Chowda	A bracelet belonging to deceased - PW35 HC Omender Kumar and PW58A Inspector Sanjeev Kumar proved recovery.  In Test Identification Parade, the bracelet was correctly identified by Abhay Singh Yadav.
Hitender @ Chhotu	A blood stained gold chain having gunshot marks – recovery proved by PW62 Retd. ASI Rajbir Singh, PW67 SI Mukesh and PW68 Inspector K.G. Tyagi.  A car allegedly used in the crime and finding mention in the guest register of the hotel was also recovered - recovery proved by PW67 SI Mukesh, PW41 SI Jai Singh and corroborated by version of PW68 Inspector K.G. Tyagi who was informed of this.

829. The accused persons have not led any evidence to rebut the consistent testimony of police officers of the said articles having been recovered. The accused persons have led no evidence to show that they were not taken to the respective places from where articles were recovered. The accused persons could have examined local persons of the respective locations to show that the recovery, as set out by the prosecution, did not take place. That has also not been done. The seizure memos and the entries in the malkhana register, as enlisted above lend strength to the case of the prosecution and corroborate the oral testimony of police officers that the respective articles were indeed recovered. There is no reason for the police to plant the said articles upon the accused persons. It is not the case of the accused persons that the police officers had any enmity with the accused persons.

830. The recovery of two chains and a bracelet at the instance of accused persons finds support from the deposition of PW14 Abhay Singh Yadav, brother of deceased. PW14 Abhay Singh Yadav stated in his examination-in-chief that when he saw the dead body of his brother, he noticed that a gold bracelet, a heavy chain of gold, another heavy gold chain with gold locket in the shape of 'V' and a purse were missing. It is these chains and bracelet that have been recovered from the accused persons and this fact stands established from identification of these

articles by the witness during Test Identification Parade and during his testimony in Court. The fact that they were found missing from the dead body adds up to their recovery.

831. It is urged on behalf of the accused persons that no independent witness was associated in the said recovery and therefore the recovery cannot be believed. This contention cannot be accepted. The reason is that it is not obligatory for an Investigating Officer to join public witnesses at the time of making efforts to recover incriminating evidence. This is not the requirement of Section 102 of Code of Criminal Procedure.

In the case of State v. Sunil (2001) 1 SCC 652, the Hon'ble Supreme Court has held this in unambiguous terms, in the following words:

*"The legal obligation to call independent and respectable inhabitants of the locality to attend and witness the exercise made by the police is cast on the police officer when searches are made under Chapter VII of the Code. Section 100(5) of the Code requires that such search shall be made in their presence and a list of all things seized in the course of such search and of the places in which they are respectively found, shall be prepared by such officer or other person and signed by such witnesses. It must be remembered that search is made to find out a thing or document which the searching officer has no prior idea where the thing or document is kept. He prowls for it either on reasonable suspicion or on some guess work that it could possibly be ferreted out in such prowling. It is a stark reality that during searches the team which conducts search would have to meddle with lots of other articles and documents also and in such process many such articles or documents are likely to be displaced or even strewn helter-skelter. The legislative idea in insisting on such searches to be made in the presence of two independent inhabitants of the locality is to ensure the safety of all such articles meddled with and to protect the rights of the persons entitled thereto. But recovery of an object pursuant to*

*the information supplied by an accused in custody is different from the searching endeavour envisaged in Chapter VII of the Code. This Court has indicated the difference between the two processes in the Transport Commissioner, Andhra Pradesh, Hyderabad & anr. vs. S. Sardar Ali & ors. (1983 SC 1225). Following observations of Chinnappa Reddy, J. can be used to support the said legal proposition: Section 100 of the Criminal Procedure Code to which reference was made by the counsel deals with searches and not seizures. In the very nature of things when property is seized and not recovered during a search, it is not possible to comply with the provisions of sub-section (4) and (5) of section 100 of the Criminal Procedure Code. In the case of a seizure [under the Motor Vehicles Act], there is no provision for preparing a list of the things seized in the course of the seizure for the obvious reason that all those things are seized not separately but as part of the vehicle itself. Hence it is a fallacious impression that when recovery is effected pursuant to any statement made by the accused the document prepared by the Investigating Officer contemporaneous with such recovery must necessarily be attested by independent witnesses. Of course, if any such statement leads to recovery of any article it is open to the Investigating Officer to take the signature of any person present at that time, on the document prepared for such recovery. But if no witness was present or if no person had agreed to affix his signature on the document, it is difficult to lay down, as a proposition of law, that the document so prepared by the police officer must be treated as tainted and the recovery evidence unreliable. The Court has to consider the evidence of the Investigating Officer who deposed to the fact of recovery based on the statement elicited from the accused on its own worth.*

*We feel that it is an archaic notion that actions of the police officer should be approached with initial distrust. We are aware that such a notion was lavishly entertained during British period and policemen also knew about it. Its hang over persisted during post-independent years but it is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the Court cannot start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way around. That official acts of the police have been regularly performed is a wise principle of presumption and recognised even by the legislature. Hence when a police officer gives evidence in Court that a certain article was recovered by him on the strength of the statement made by the accused it is open to the Court to believe the version to be correct if it is not otherwise*



*shown to be unreliable. It is for the accused, through cross-examination of witnesses or through any other materials, to show that the evidence of the police officer is either unreliable or at least unsafe to be acted upon in a particular case. If the Court has any good reason to suspect the truthfulness of such records of the police the Court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with, nor to jettison such action merely for the reason that police did not collect signatures of independent persons in the documents made contemporaneous with such actions.*

*In this case, the mere absence of independent witness when PW17 recorded the statement of A2-Ramesh and the nicker was recovered pursuant to the said statement, is not a sufficient ground to discard the evidence under section 27 of the Evidence Act."*

In the case of *Rahul @ Bhuri vs State* CrI. Appeal no. 158/2015 decided on 12<sup>th</sup> September, 2017, the Hon'ble High Court of Delhi held as follows:

*"We are also unable to second limb of arguments of the arguments as it is not mandatory, but only a rule of prudence that a public witness should be associated at the time of recovery [State v. Vikas @ Bhola & Anr., ILR (2013) 5 Del 4032 (paragraph 13)]. It is only when other cause is shown to suspect the recovery that the same may be discarded. A coordinate bench of this Court in Titu v. State, ILR (2007) 1 Del 990 (paragraph 30) had observed that merely because all the witnesses of recovery were police witnesses and no independent public witness was joined for affecting the recovery would not be fatal [See also Ramesh Kumar (Supra) (paragraph 25) and Jite v. State, MANU/DE/1791/2017 (paragraph 27)]. Accordingly, the absence of a public witness cannot impeach the veracity of the testimonies of PW15, PW21 and PW22."*

832. It is thus held that there is no infirmity with the recovery proceedings. The recovery of the articles cannot be disbelieved only because no public witness had been joined by the police at the time of the recovery.

833. Ld counsel for accused persons has contended that no charge had been framed against the accused persons for the offence of robbery and therefore the recovery at the instance of accused persons cannot be taken into account. I am afraid I am unable to agree with the argument. The recovery of ornaments is a piece of evidence. It being taken into consideration is not dependent on a charge being framed for the offence of robbery or dacoity. If a piece of evidence suggests commission of two offences, one of which is under trial, then the fact that charge has not been framed for the other offence will not shunt out the evidence from being considered in proof of the offence which is at trial. The plea merits outright rejection.
834. It is contended by the accused persons that recovery took place from places which were accessible to others and therefore it cannot be fastened upon the accused persons. This contention needs to be appraised in the backdrop of evidence concerning recovery of each article.
835. A gold chain with locket had been recovered at the instance of accused Bhisham @ Chintoo. PW41 SI Jai Singh has deposed to this fact. PW41 SI Jai Singh has proved that on 5<sup>th</sup> December, 2007, he went to Balawal at Dehradun to the house of Rajender Chaudhary where accused Bhisham @ Chintoo disclosed that the accused persons had stayed on the first floor of the room and that accused Bhisham @ Chintoo had

concealed the gold chain of the deceased in a container of tea leaves. The accused pointed towards the said kitchen and produced the chain from the container. This shows that the gold chain was lying concealed in the container of tea leaves in the kitchen. Accused Bhisham @ Chintoo had knowledge of this fact.

836. A bracelet had been recovered at the instance of accused Deepak @ Chowda. PW35 HC Omender Kumar and PW58A Inspector Sanjeev Kumar have deposed to this fact. PW35 HC Omender Kumar and PW58A Inspector Sanjeev Kumar have proved that accused Deepak @ Chowda led them to village and post Balawala, Dehradun and took them to a house known as 'Choudhary Niwas'. There was a lawn in that house having mango trees. The accused pointed to one of the mango trees, and dug out a polythene bag from under it, which contained the golden bracelet wrapped in a piece of newspaper. This shows that although the place was open, it was inside private premises and was not accessible to all and sundry. This also establishes that the bracelet was lying concealed and was not visible to anybody.

837. A gold chain having gunshot marks had been recovered at the instance of accused Hitender @ Chhotu. PW62 Retd. ASI Rajbir Singh, PW67 SI Mukesh and PW68 Inspector K.G. Tyagi have deposed to this fact. PW62 Retd. ASI Rajbir Singh, PW67 SI Mukesh and PW68 Inspector K.G. Tyagi have proved that accused Hitender @ Chhotu led the police

officers to his house bearing no. R-440, Ram Park Extension, Loni, District, Ghaziabad, U.P. There accused Hitender @ Chhotu went inside, opened the side cover of a cooler and got recovered the gold chain from the tank of the cooler where it had been kept in a small polythene bag. This too shows the chain to have been kept concealed in a place which could not be accessed by others.

838. It is settled law that a recovery cannot be doubted merely because it is from a place which may have been accessed by others, and such recovery will still be attributable to the accused at whose instance it has taken place, provided the article was lying concealed. In this behalf, it would be appropriate to refer to the decision of State of Maharashtra v. Bharat Fakira Dhiwar 2002 SCC (Cr) 217. In that case, the Hon'ble Supreme Court relied on a previous decision of State of H.P. Vs. Jeet Singh (1999) 4 SCC 370 to hold as follows:

*"There is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is 'open or accessible to others'. It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others, it would vitiate the evidence under section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others. For example, if the article is buried in the main roadside or if it is concealed beneath dry leaves lying on public places or kept hidden in a public office, the article would remain out of the visibility of others in normal circumstances. Until such article is disinterred, its hidden state would remain unhampered. The person who hid it alone knows where it is until he discloses that fact to any other person. Hence, the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible*

*to others. If it is not, then it is immaterial that the concealed place is accessible to others.*

*It is now well settled that the discovery of fact referred to in Section 27 of the Evidence Act is not the object recovered but the fact embraces the place from which the object is recovered and the knowledge of the accused as to it. The said ratio has received unreserved approval of this Court in successive decisions. Jaffar Hussain Dastagir v. State of Maharashtra [(1969) 2 SCC 872], K. Chinnaswamy Reddy v. State of A.P. [AIR 1962 SC 1788 : (1963) 1 Cri LJ 8], Earabhadrapa v. State of Karnataka [(1983) 2 SCC 330 : 1983 SCC (Cri) 447], Shamshul Kanwar v. State of U.P. [(1995) 4 SCC 430 : 1995 SCC (Cri) 753], State of Rajasthan v. Bhup Singh [(1997) 10 SCC 675 : 1997 SCC (Cri) 1032]."*

The Hon'ble Supreme Court found the recovery of a blood stained grinding stone from tall grass from a place close to the house of the accused not to be from an open place as "*until they were disinterred, at instance of Respondent, their hidden state had remained unhampered*".

In the case of Ibrahim Musa Chauhan @ Baba Chauhan v. State of Maharashtra, 2013 (3) SCALE 207 the Hon'ble Supreme Court found the recovery of a plastic bag containing hand grenades from a heap in which lay broken tiles was not from an open place. The relevant extract is as under:

*"Undoubtedly, the appellant's disclosure statement had been made before the police, as well as the panch witness. The fact that he did not disclose the place where the contraband had been hidden remains entirely insignificant, for the reason that he had led the police party to the said place, and that the said recovery had been made at his behest. The open space from where the recovery had been made though was accessible to anybody, it must be remembered that the contraband had been hidden, and that it was only after digging was done at the place shown by the appellant, that such recovery was made. Hence, it would have been impossible for a normal person having access to the said place, to know where the contraband goods were hidden."*

In the case of Jite v. State MANU/DE/ 1791/2017, Hon'ble High Court of Delhi repelled the submission that the recovery of the weapon of offence i.e. dagger was doubtful as it had been recovered from a park allowing access to the public in general, by finding that as the dagger was concealed in a heap of construction material.

The aforesaid decisions were followed by Hon'ble High Court of Delhi in the case of Dinesh Kumar Mathur v. State 2017 SCC OnLine Del 9809. In that case, the Hon'ble Court dealt with the issue in detail, and came to the following conclusion:

*"Coming to the case at hand, we find the recovery of the blade of the darati to be reliable. The Investigation Officer (PW27) stated that the kabristan remains closed and not in use and hence, it cannot be said that the area was open or accessible. Be that as it may, all the three witnesses to the recovery (PW10, 21 and 27) have testified that the recovery was effected from a polythene bag concealed amongst the roots of a bargad (banyan) tree and only part of the polythene was visible from outside. In such circumstances, the recovery cannot be said to be from an open area visible to the naked eye. As long as the polythene remained disinterred, its hidden state continued and its recovery remains inside the purview of Section 27 of the Evidence Act."*

The aforesaid decision was followed in the case of Rahul @ Bhuri vs State Crl. Appeal no. 158/2015 decided on 12<sup>th</sup> September, 2017, in which Hon'ble High Court of Delhi held as follows:

*"As regards the first, it is a fictitious notion often urged before us, however, the test is not whether the place of recovery was open or accessible, but whether it was ordinarily visible.*

*xxx*

*Accordingly, the recovery of the knife (Ex.P-1) from the corner of Bada Park cannot be doubted as the same was buried under the ground. Until it remained disinterred, its hidden state*

*continued and the consequent recovery is within the purview of Section 27 of the Evidence Act."*

839. In view of the consistent view of superior Courts in this regard, it is held that the recovery of articles that has taken place in this case is wholly attributable to the respective accused persons. The recovery was of articles that had been hidden and the place of hiding was in the knowledge of the accused persons. The contention that the recovery cannot be wedged to the accused persons since the place of recovery was accessible to others too, is rejected.

840. The recovered chains and bracelet belonged to deceased Vijay Yadav. This fact is proved by PW14 Abhay Singh Yadav through his oral testimony. PW14 Abhay Singh Yadav is brother of deceased. He used to meet his brother often, as is apparent from his deposition. Therefore, he surely must have seen his brother wearing the chains and the bracelet, and was in a position to identify them. Nothing has emerged from the testimony of PW14 Abhay Singh Yadav to show that he was not in a position to identify the ornaments, or that the deceased never used to wear the ornaments. The suggestions of the Id defence counsel to indicate that the ornaments had been planted by the police with the aid of PW14 Abhay Singh Yadav have been denied by the latter, and the accused persons have not been able to disprove the said denial. Sh. Abhay Singh also identified the gold chain and the bracelet during Test Identification Parade proceedings. PW12 Shri Vidya Prakash, the then FIR No. 356/2007 PS Hauz Qazi (Crime Branch)

ld. Addl. Chief Metropolitan Magistrate has deposed to this effect. He stated in his examination-in-chief that the parcel containing the chain was duly sealed with the seal of RBS. He has described that the gold chain had a locket on which the letter 'V' was inscribed. He has deposed that Abhay Singh Yadav correctly identified the chain. He identified the record of proceedings as Ex. PW12/E. The witness was not cross-examined despite grant of opportunity, which implies that the deposition remained unchallenged. PW61 Sh. Ajay Gupta, Ld. Addl. Sessions Judge proved the Test Identification Parade proceedings of bracelet. He stated that the parcel containing the bracelet was duly sealed with the seal of MKS. He has deposed that Abhay Singh Yadav correctly identified the bracelet. He identified the record of proceedings as Ex. PW61/E. Nothing emerged from the cross-examination of this witness which could cast a doubt on the correctness of his testimony.

841. From the aforesaid, it stands proved that the articles which were recovered at the instance of the accused persons were the same which were produced before the concerned judicial officers for Test Identification Parade, and these articles were the same which were identified by Abhay Singh Yadav as belonging to deceased Vijay Yadav. In other words, the articles recovered at the instance of the accused persons have been proved to be belonging to the deceased. These articles were also identified, on their production in Court, by the



recovery witnesses and PW14 Abhay Singh Yadav during their testimony. The entire chain is therefore complete. It stands proved that the articles recovered at the instance of the accused persons were indeed belonging to the deceased.

842. The implication of the accused persons getting the articles of the deceased recovered need to be studied. The recovery has taken place pursuant to confessional statements tendered by the accused persons. After rendering the confessional statements, the accused persons had led the police officers to the place of concealment of the articles.

843. It is trite that a confession made to a police officer is not admissible in evidence. It cannot be proved against its maker. This is laid down in Sections 25 and 26 of the Evidence Act, 1872. Section 25 of the Act reads as follows:

*"No confession made to a police officer shall be proved as against a person accused of any offence."*

Section 26 of the Act is as under:

*"No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of Magistrate, shall be proved as against such person."*

844. This implies that if a person confesses to a police officer of his involvement in a crime, while being in his custody, the said confession is inadmissible. It follows from this that when all accused persons confessed to the Investigating Officer at Crime Branch that they had

killed Vijay Yadav, the confessions were devoid of legal consequences and the police cannot take their aid in proving the allegations against the accused persons.

845. The above embargo on admissibility of confessional statements is, however, subject to an exception. Section 27 of the Evidence Act provides that if a fact is discovered from the information given by an accused who is in custody of the police officer, such information may be proved against the accused.

Section 27 of the Evidence Act is extracted below:

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

846. By operation of Section 27 quoted above, those parts of the confessional statements that led to discovery of facts become admissible in evidence notwithstanding the operation of sections 25 and 26 of the Evidence Act, 1872. This too is a limited saving and only the diminutive portion relating to the discovery can be admitted, dissecting it from the rest of the confessional statement. The confessional statements of accused persons Bhisham @ Chintoo, Deepak @ Chowda and Hitender @ Chhotu to the extent that they can get the articles belonging to the deceased recovered is admissible in evidence and is not hit by Sections 25 and 26 of the Evidence Act, 1872. Section 27 of the said Act permits

the use of such statements since their veracity is confirmed by subsequent discovery of facts. The discovery of facts attests to the truth of the confessional statement.

847. In the case of Charandas Swami vs. State of Gujarat (2017) 7 SCC 177, the Hon'ble Supreme Court held that the disclosure statement made by one of the accused pursuant to which the dead body of the deceased is recovered is admissible in evidence under section 27 of the Evidence Act.

848. In the case of Rajiv @ Monu vs State CrI. Appeal no. 192/2017 decided by Hon'ble High Court of Delhi on 8<sup>th</sup> October, 2018, it was observed as follows:

*“He has not explained as to how he came to know about the dead body being in the borewell. A1 took the police to the borewell and pointed out to the spot where the dead body of the deceased was thrown. This conduct is not only relevant under section 8 of the IEA as held by the Supreme Court in the case of Prakash Chand (supra) but is also a fact discovered which is admissible in evidence under section 27 of IEA as held by Apex Court in Suresh (supra). The factum of the recovery of the knife, iron pipe, jeans pant of the JCL Vicky from the Guard Room, his mobile phone, clothes and said motorcycle in pursuance to the disclosure statement, made by A1 are admissible under section 27 of the IEA.”*

849. The two requirements for invoking Section 27 of the Evidence Act is that firstly, the statement must be the cause of discovery of new fact and secondly, it must relate distinctly to the said discovered fact. Reference in this behalf may be made to the decision of the Hon'ble Supreme Court in the case of Anter Singh Vs. State of Rajasthan (2004)

10 SCC 657. The observations of Privy Council in the case of Pulukuri Kottaya v. King-Emperor AIR 1947 PC 67 were quoted in the decision of Hon'ble Supreme Court and were followed in a large number of other decisions. The observations are thus:

*"It is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this and the information given must relate distinctly to this fact. Information as to past user or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which stabbed A.', these words are inadmissible since they do not related to the discovery of the knife in the house of the informant."*

The following passage from the case of Pulukuri Kottaya v. King-Emperor AIR 1947 PC 67 is also relevant to show the reason for which the exception is engrafted:

*"Section 27, which is not artistically worded, provides an exception to the prohibition imposed by the preceding section, and enables certain statements made by a person in police custody to be proved. The condition necessary to bring the section into operation is that the discovery of a fact in consequence of information received from a person accused of any offence in the custody of a police officer must be proved to, and thereupon so much of the information as relates distinctly to the fact thereby discovered may be proved. The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to the given in evidence, but clearly the extent of*

*the information admissible must be depend on the exact nature of the fact discovered to which such information is required to relate”.*

In the case of State (NCT of Delhi) Vs. Navjot Sandhu 2005 Cri.L.J. 3950, the Hon'ble Apex Court observed as under:

*“It is explicitly clarified in the Section that there is no taboo against receiving such information in evidence merely because it amounts to a confession. At the same time, the last clause makes it clear that it is not the confessional part that is admissible but it is only such information or part of it, which relates distinctly to the fact discovered by means of the information furnished. Thus, the information conveyed in the statement to police ought to be dissected if necessary so as to admit only the information of the nature mentioned in the Section. The rationale behind this provision is that, if a fact is actually discovered in consequence of the information supplied, it affords some guarantee that the information is true and can therefore be safely allowed to be admitted in evidence as an incriminating factor against the accused.*

*xxx*

*Now it is fairly settled that the expression "fact discovered" includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this.”*

The aforesaid observations have been culled out from a long line of authoritative pronouncements, and it represents the consistent view of the Hon'ble Supreme Court.

850. Therefore, the confessional statements of accused Bhisham @ Chintoo, Deepak @ Chowda and Hitender @ Chhotu to the effect that they can get articles of deceased recovered are admissible in evidence. Once this stage has been arrived at, how inferences are to be drawn has been explained in the case of State of Maharashtra Vs. Suresh (2000) 1 SCC

471. That was a case where, after rape and murder of a child, the body was dumped in the field. The statement of the accused which led to recovery of the dead body was held to be admissible. The Hon'ble Supreme Court observed that there could be three possibilities where the accused points out towards the place where a dead body or an incriminating material was concealed. One is that the accused himself would have concealed it; secondly he would have seen somebody else concealing it; and thirdly he would have been told by another person that it was concealed there by other person. If the accused declines to reveal to the Court the source of his knowledge of the concealment on account of one of the last two possibilities, the criminal Court can presume that it was concealed by the accused himself. This is because the accused is the only person who can offer an explanation as to how he came to know of such concealment and if he refrains from telling the Court as to how he came to know of it, the presumption is a well-justified course to be adopted by the Court that the concealment was made by himself and such an interpretation is not inconsistent with the principle embodied in Section 27 of the Evidence Act.

851. The confessional statements have been proved by PW68 Investigating Officer Inspector K.G. Tyagi and other police officers named above. From the said statements, it stands proved that the accused persons were aware of where the articles had been hidden. By their subsequent

conduct, proved by the recovery officers, the accused persons did get the articles recovered.

As per the judgment of State of Maharashtra Vs. Suresh (2000) 1 SCC 471 (ibid), the said recovery gives rise to three possibilities:

- i. Either the accused persons themselves concealed the belongings of the deceased; or
- ii. The accused persons saw somebody else concealing them; or
- iii. The accused persons were told by another person(s) that the articles were lying concealed there.

852. As per the aforesaid decision, if the accused persons decline to reveal to the Court the source of their knowledge of the concealment on account of the latter two possibilities, this Court will presume that the articles were concealed by the accused persons themselves. According to the judgment, this is because the accused persons are the only ones who can offer an explanation as to how they came to know of such concealment.

853. In this case, indeed the accused persons have not offered any explanation as to how they knew about where the articles had been hidden. The fact that the accused persons knew this fact and got the said articles recovered, and finally did not disclose how they came to know of it, leads to the irresistible conclusion that the accused persons

had themselves hidden the articles there, which in turn shows that the accused persons were earlier in possession of the said articles. It follows from this that the accused persons were involved in some activity by which they acquired the chains and the bracelet. The said activity has not been explained by the accused persons, thereby lending support to the allegations of the prosecution that the accused persons had carried away the chains and the bracelet after the incident. The incident of carrying away of the articles is connected with the offence of murder which is proved by direct eye-witness account. It is possible that the articles may have been snatched moments before firing gunshots at Vijay Yadav. Possibly the eye-witnesses noticed the subsequent part of the shooting, but may not have observed the earlier part either because it had already taken place before they started to take note, or because this snatching may have been done while the offenders had surrounded the victim due to which this act may not have been visible. In any case, it is clear that the accused persons did not get a second opportunity to be in contact with the deceased or his family, and therefore there was no other means for them to obtain the ornaments of the deceased, except to take them during the incident of homicide. The recovery of the articles at the instance of the accused persons thus points to involvement of the accused persons in the killing of Vijay Yadav.



854. In addition to the abovestated articles, there has been recovery of a car at the instance of accused Hitender @ Chhotu. Recovery of the car has been proved by PW67 SI Mukesh and PW41 SI Jai Singh. The car was allegedly used in the crime. The prosecution has relied on it on the ground that it finds mention in the guest register of the hotel (Hotel Kwality) where the conspiracy was allegedly hatched.
855. I have perused the guest register of the hotel. It does validate the statement of accused Bisham @ Chintoo regarding stay of accused Hitender @ Chhotu of which there is entry in the register. Assuming the entries to have been proved in accordance with law, they would only reveal that accused Hitender @ Chhotu had stayed at the hotel twice. The dates of arrival, as per the entries, are 20<sup>th</sup> September, 2007 and 28<sup>th</sup> September, 2007. However, the registration number of the vehicle which was recovered at the instance of accused Hitender @ Chhotu finds mention only against entry dated 20<sup>th</sup> September, 2007. It is possible that accused Hitender @ Chhotu may have used the vehicle for his travel during his stay on 20<sup>th</sup> September, 2007. There is nothing apparently sinister in this since the vehicle belonged to the relatives of the accused and he might have borrowed it for his travel on 20<sup>th</sup> September, 2007. No eye-witness has seen the use of the vehicle in commission of the offence of homicide and the prosecution has failed to lead evidence to connect the vehicle to the crime. Therefore the mere

recovery of the vehicle at the instance of accused Hitender @ Chhotu does not aid in proving the allegations against accused Hitender @ Chhotu.

856. The prosecution has succeeded in proving the recovery of ornaments belonging to the deceased at the instance of accused Bhisham @ Chintoo, Deepak @ Chowda and Hitender @ Chhotu. The accused persons have failed to explain their knowledge of the place of concealment of the articles. The recovery of the articles lend strength to the eye-witness account that accused persons Bhisham @ Chintoo, Parveen Koli, Deepak @ Chowda, Desraj @ Desu, Hitender @ Chhotu and Kishanpal @ Fauzi had killed Vijay Yadav on 29<sup>th</sup> September, 2007. The recovery of the articles pursuant to confessional statements and the refusal of Test Identification Parade by the accused persons are all corroborative of the narration of the eye-witnesses. However, even if it is assumed that the recovery of the articles stands not proved, or that the recovery does not point to involvement of accused persons in the crime, then too the case of the prosecution remains unaffected since there is otherwise ample material in the nature of ocular evidence to establish the commission of offence by accused Bhisham @ Chintoo, Parveen Koli, Deepak @ Chowda, Desraj @ Desu, Hitender @ Chhotu and Kishanpal @ Fauzi.

**Pointing out of places by accused persons**

857. Apart from Test Identification Parade proceedings, general investigation and recovery of articles, the police officers have also proved that the accused persons had pointed out to certain places and that this fact was chronicled simultaneously in what the police called 'pointing out memos'. The prosecution has relied on the pointing out memos to prove that the accused persons had committed the offence. According to the prosecution, the accused persons pointed out to the place where the offence had been committed and the place where conspiracy was hatched. The argument of the prosecution is that the pointing out of these places by the accused persons could have been possible only if the accused persons had indeed committed the offence.
858. In order to avoid prolixity, the testimony of the prosecution witnesses is not being reproduced here to highlight the proof of the pointing out of places by the accused persons. Instead, the evidence pertaining to pointing out of places by the accused persons is represented in a tabular statement as follows:

<b>Serial No.</b>	<b>Name of Accused</b>	<b>Places pointed out during investigation</b>	<b>Witnesses by whom this has been proved</b>
1.	Parveen Koli	The accused pointed out Hotel Kwality, the office of deceased Vijay Yadav @ Viji and the place of incident.	PW35 HC Omender Kumar and PW68 Inspector K.G. Tyagi.
2.	Bhisham @ Chintoo	The accused pointed out Hotel Kwality and the place of incident.	PW67 SI Mukesh, PW62 ASI Rajbir and PW68 Inspector K.G. Tyagi.
3.	Deepak @ Chowda	The accused pointed out Hotel Kwality and the place of	PW41 SI Jai Singh, PW58A Inspector Sanjeev Kumar

		incident.	and PW68 Inspector K.G. Tyagi.
4.	Desraj @ Desu	The accused pointed out Hotel Kwality, the office of deceased Vijay Yadav @ Vijji and the place of incident.	PW68 Inspector K.G. Tyagi, PW67 SI Mukesh and PW62 Retd. ASI Rajbir Singh.
5.	Kishanpal @ Fauzi	The accused pointed out the place of occurrence.	PW59 Constable Rambir Singh and PW54 Inspector Dharam Singh, DIU, Outer District, Delhi.
6.	Hitender @ Chhotu	The accused pointed out Hotel Kwality and the place of incident.	PW62 Retd. ASI Rajbir Singh, PW67 SI Mukesh and PW68 Inspector K.G. Tyagi.

859. The significance of the pointing out of places needs to be examined. The pointing out of a place during investigation by an accused person in custody is in the nature of a statement made to the police officer. Where it incriminates the maker, it is a confessional statement. It has already been seen above that a confessional statement made to a police officer by an accused in custody is not admissible in evidence, as provided by Sections 25 and 26 of the Evidence Act, 1872. This interdiction on use of a confessional statement of the accused by the police is subject to the exception carved out by section 27 of the Evidence Act. Section 27 lays down that if a fact is discovered from the information disclosed by an accused who is in custody, that information may be proved against the accused. Section 27 applies not only where an object has been recovered pursuant to a confessional statement. It equally applies where a fact is discovered by the police through the said statement. In the case of State (NCT of Delhi) Vs. Navjot Sandhu 2005 Cri.L.J. 3950, the Hon'ble Apex Court has stressed

this point, in the following words:

*"We are of the view that Kotayya's case is an authority for the proposition that 'discovery of fact' cannot be equated to the object produced or found. It is more than that. The discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place."*

860. It is seen above that Section 27 of the Evidence Act makes parts of the confessional statements that led to discovery of facts admissible in evidence regardless of sections 25 and 26 of the Act. Thus, if by pointing out of a place by an accused, the police discovers a fact, that part of the confessional statement may be admitted in evidence.

861. The next question is about the conditions to be fulfilled before making part of the confessional statement admissible in evidence and the extent to which the statement will be admitted in evidence. The most important decision to throw light on these issues is the case of *Mohmed Inayatullah v. State of Maharashtra AIR 1976 SC 483*. The relevant observations of the Hon'ble Supreme Court made in that case are quoted hereunder:

*"The Sub-Inspector took the accused into custody. He then called the Panchas (including PW6) and, in their presence, interrogated the accused who made a statement which was recorded by the Sub-Inspector. Rendered into English, this statement (incorporated in the Panchanama Ex. C) reads:*

*"I will tell the place of deposit of the three Chemical drums which I took out from the Haji Bunder on 1st August."*

*The accused then led the Police officer and the Panchas to a Musafirkhana in Crawford Market and pointed out the three drums lying there, bearing the markings, 'ACC I Phosphorous Pentaoxide'.*

*xxx*

*Mr. Chaudhry, the learned Counsel for the appellant does not seriously dispute the first two findings. But he forcefully assails the third and the fourth. His contentions are: (a) that the Courts below have not only misconstrued the statement made by the accused but have used more of it than was permissible under Sec. 27, Evidence Act; (b) that properly read, the admissible portion of the statement, in the circumstances of the case, did not warrant an inference under illustration (a) to Sec. 114, Evidence Act, that the appellant was the thief or a receiver of stolen property.*

*As against this, Mr. H. R. Khanna, learned Counsel for the State submits that the whole of the information supplied by the accused was admissible under sec. 27.*

*xxx*

*It will be seen that the first condition necessary for bringing this section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The Second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only "so much of the information" as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word "distinctly" means "directly", "indubitably", "strictly", "unmistakably". The word has been advisedly used to limit and define the scope of the proveable information. The phrase "distinctly" relates to the fact thereby "discovered" is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered.*

*At one time it was held that the expression "fact discovered" in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact (see Sukhan v. Crown I.L.R. 10 Lah. 283 F.B., Rex v. Ganee I.L.R. 56 Bom. 172). Now it is fairly settled that the expression "fact discovered" includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this." (see Palukuri Kotayya and ors. v.*

*Emperor 74 I. A. 65, Udai Bhan v. State of Uttar Pradesh [1962] Supp. 2 S.C.R. 830). Before proceeding further, it is necessary to be clear about the precise statement which had been made by the appellant to the Police officer. This statement finds incorporation in the panchnama, Ex. and we have reproduced an English rendering of the same earlier in this judgment. While considering this statement, the High Court observed that the accused had stated that "he had kept them (drums) there". We have perused the original record of the statement which is in Hindi, and we are of opinion that by no stretching of the words this statement can be so read or construed as has been done by the High Court. The copy Ex. of the Panchnama, in the Paper-book contains a correct English rendering of the same. What the accused had stated was: "I will tell the place of deposit of the three Chemical drums which I took out from the Haji Bunder on first August". It will be seen that he never I said that it was he who had deposited the drums at the place from which they were produced. It seems the latter part of the statement which was an outright confession of the theft, was not completely ruled out of evidence and something of it was imported into and superimposed on the first part of the statement so as to fix the responsibility for deposit and possession of the stolen drums there, on the accused.*

*Having cleared the ground, we will now consider, in the light of the principles clarified above, the application of s. 27 to this statement of the accused. The first step in the process was to pinpoint the fact discovered in consequence of this statement. Obviously, in the present case, the threefold fact discovered was: (a) the chemical drums in question, (b) the place i.e. the Musafirkhana, Crawford Market, wherein they lay deposited and (c) the accused's knowledge of such deposit. The next step would be to split up the statement into its components and to separate the admissible from the inadmissible portion or portions. Only those components or portions which were the immediate cause of the discovery would be legal evidence and not the rest which must be excised and rejected.. Thus processed, in the instant case, only the first part of the statement, viz., "I will tell the place of deposit of the three Chemical drums" was the immediate and direct cause of the fact discovered. Therefore, this portion only was admissible under Sec. 27. The rest of the statement, namely, "which I took out from the Haji Bunder on first August", constituted only the past history of the drums or their theft by the accused: it was not the distinct and Proximate cause of the discovery and had to be ruled out of evidence altogether."*

862. The above principles shall be applied in drawing out the admissible part in the pointing out memos of the accused persons. Coming to the case at hand, the following facts are important:

- a. The place of occurrence has been pointed out by all six accused persons (who have been charged with murder) namely Parveen Koli, Bhisham @ Chintoo, Deepak @ Chowda, Desraj @ Desu, Kishanpal @ Fauzi and Hitender @ Chhotu. However, among them the first to point out the place was accused Bhisham @ Chintoo. Accused Bhisham @ Chintoo had pointed out the place of incident on 26<sup>th</sup> November, 2007.
- b. The place where conspiracy was allegedly hatched (Hotel Kwalitiy) had been pointed out by accused persons Parveen Koli, Bhisham @ Chintoo, Deepak @ Chowda, Desraj @ Desu and Hitender @ Chhotu. Among them the first to point out the place of conspiracy was accused Bhisham @ Chintoo. Accused Bhisham @ Chintoo pointed out the said place on 26<sup>th</sup> November, 2007.
- c. The office of deceased Vijay Yadav was pointed out by accused Parveen Koli and Desraj @ Desu. Accused Parveen Koli pointed it out on 11<sup>th</sup> January, 2008.

863. The date of alleged murder of Vijay Yadav is 29<sup>th</sup> September, 2007. The place is at Gali Arya Samaj, Delhi. The incident was followed by calls to the police control room. The police had arrived at the spot that night



itself. They saw blood and an empty cartridge. Subsequently, the police repeatedly visited the spot of occurrence. Site plan was also prepared. Thus the police was never in doubt about the place of occurrence. Even when the investigation was transferred to the Crime Branch, the police knew precisely where the incident had occurred. When, on 26<sup>th</sup> November, 2007, accused Bhisham @ Chintoo disclosed to the police the place of the incident, the Investigating Officer already knew this fact. Thus the place of incident was not a revelation to the Investigating Officer. It was not discovered pursuant to the disclosure statement of the accused.

864. Similarly, the police already knew during investigation, the exact address of the office of the deceased. This was expressly revealed to the police by a number of witnesses including PW1 Smt. Anju Gupta, whose own office is in the same building. On 11<sup>th</sup> January, 2008, when accused Parveen Koli pointed out the office of the deceased, the Investigating Officer already knew this. Thus the location of the office of deceased was not disclosed for the first time on the pointing out by accused Parveen Koli.

865. Hotel Kwaliti was stated to be the place where conspiracy was allegedly hatched. This place was initially pointed out by accused Bhisham @ Chintoo and Vinod. On 25<sup>th</sup> November, 2007, they mentioned about the said hotel to the Investigating Officer in their

respective confessional statements. On the next day, they pointed it out. On 11<sup>th</sup> January, 2008, when accused Parveen Koli tendered his confessional statement, the Investigating Officer was already aware of the said hotel by virtue of disclosure of accused Bhisham @ Chintoo and Vinod. Thus, the mention of name of the hotel by accused Parveen Koli and subsequently by other accused persons of pointing to this hotel by these accused persons did not result in the disclosure of a new fact.

866. It is settled law that for a confessional statement to be admissible under section 27 of the Evidence Act, it must result in discovery of a fact hitherto unknown to the Investigating Officer. If the Investigating Officer is already aware of the said fact, then the statement of the accused will not escape the proscription of sections 25 and 26 of the Evidence Act.

The Hon'ble High Court of Delhi held, in the case of Rahul @ Bhuri vs State Crl. Appeal no. 158/2015 decided on 12<sup>th</sup> September, 2017, as follows:

*"For application of Section 27 of the IEA, admissible portion of confessional statement has to be found as to a fact which was the immediate cause of discovery and only that would be a part of legal evidence and not the rest. In a statement if something new is discovered or recovered from the accused, which was not in the knowledge of the police before disclosure statement of the accused, is admissible in the evidence."*

In the case of Aladdin & Anr. v. State of Rajasthan Crl. Appeal No. 1050 of 2015 decided by Hon'ble Rajasthan High Court on 19<sup>th</sup> February, FIR No. 356/2007 PS Hauz Qazi (Crime Branch)

2016, it was observed that an information given by an accused person while in custody would ordinarily be hit by Sections 25 and 26 of the Evidence Act, 1872. It would become admissible in evidence under section 27 of the Act only if it leads to discovery of a fact. The discovery should be of a fact which is not already known to the police. If the information is already available to the police, the disclosure statement of the accused containing the same information will not be saved by Section 27 of the Act.

The relevant extract from the aforesaid judgment is as follows:

*“It is a settled principle of criminal jurisprudence that an information given by an accused to the Police Officer under section 27 of the Evidence Act is only admissible to the extent it leads to the discovery of an incriminating fact. A fact already known cannot be rediscovered.*

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*Otherwise also, the information did not lead to the discovery of any incriminating fact because the place of recovery was already known from before. Even a lay man can understand that a fact already known cannot be rediscovered.”*

In the case of Thimma V. State of Mysore AIR 1971 SC 1871, it was observed by Hon’ble Supreme Court as follows:

*“Once a fact is discovered from other sources there can be no fresh discovery even if relevant information is extracted from the accused and Courts have to be watchful against the ingenuity of the investigating officer in this respect so that the protection afforded by the wholesome provisions of Sections 25 and 26 of the Indian Evidence Act is not whittled down by the mere manipulation of the record of case diary.”*

In the case of Bharat Fakira Dhivar V. State of Maharashtra 1997 All.

MR (Cri) 1722, Hon’ble Bombay High Court observed as follows:

*“Moreover, there is no discovery of facts when the facts were already known to the police from other sources. Section 27 of the Indian Evidence Act contemplates that the discovery must be of some facts which the police had not previously learnt from other sources and the knowledge of the fact should be first derived from the information given by the accused.”*

In the case of State (NCT of Delhi) Vs. Navjot Sandhu 2005 Cri.L.J. 3950, the Hon’ble Supreme Court quoted with approval the following observations from the case of Sukhan Vs. Emperor AIR 1929 Lahore 344:

*“What makes the information leading to the discovery of the witness admissible is the discovery from him of the thing sold to him or hidden or kept with him which the police did not know until the information was furnished to them by the accused.”*

867. In light of the above principles, it can safely be concluded that the pointing out of place of incident and place of office of the deceased by the accused persons during investigation are of no aid to the police in proving the allegations. The said acts and the mention of those places in the confessional statements of accused persons are inadmissible in evidence being hit by sections 25 and 26 of the Evidence Act, 1872. Similarly, the pointing out to Hotel Kwality as the venue of the conspiracy by accused Parveen Koli, Deepak @ Chowda, Desraj @ Desu and Hitender @ Chhotu is similarly inadmissible in evidence.

868. The only circumstance that is saved by section 27 of Evidence Act is that of pointing out to Hotel Kwality as the place of conspiracy by accused Bhisham @ Chintoo. Since the pointing out of the said place got validated by the guest register of the hotel, and since this fact was

not known to the police till that stage, the discovery would make part of the confessional statement of accused Bhisham @ Chintoo admissible in evidence. Applying the rule laid down in the Mohmed Inayatullah case, the only admissible portion of the confessional statement of accused Bhisham @ Chintoo that would be admissible would be that he can tell the place where Hitender @ Chhotu stayed (this is all that relates distinctly to the discovery).

869. The knowledge of the place of stay of accused Hitender @ Chhotu became attributable to accused Bhisham @ Chintoo. However, that too does not in any manner advance the case of the prosecution since accused Bhisham @ Chintoo can acquire knowledge of the place of stay of accused Hitender @ Chhotu by many sources. This fact cannot be said to be in the exclusive knowledge of accused Bhisham @ Chintoo. It is possible that the accused may have met Hitender @ Chhotu any time before his arrest and Hitender @ Chhotu may have himself disclosed this fact to accused Bhisham @ Chintoo. Therefore the mere fact that accused Bhisham @ Chintoo is aware of the lodging of accused Hitender @ Chhotu in the hotel does not aid in proving the guilt of accused Bhisham @ Chintoo. The confessional statement of accused Bhisham @ Chintoo cannot be deemed wholly admissible by reason of the discovery so as to infer that the conspiracy had taken place in the hotel. The knowledge of accused Bhisham @ Chintoo about stay of

accused Hitender @ Chhotu in Hotel Kwaliti does not axiomatically lead to the conclusion that a conspiracy was hatched in the hotel.

870. In light of the aforesaid, it is concluded that the prosecution evidence relating to pointing out of different places by accused persons during investigation is of no use to the prosecution in its attempt to prove the allegations of commission of murder. The case of the prosecution may, however, draw support from the remaining evidence to show involvement of the accused persons.

#### **Scientific Evidence**

871. The prosecution has relied upon ocular testimony of PW1 Smt. Anju Gupta and PW2 Dheeraj Sharma, testimony of other public witnesses, version of police officers, deposition of judicial officers and a number of documents that had been prepared and collected during investigation to support the allegations of commission of murder. In addition to these, there is some scientific evidence that it has presented. It is imperative to examine the said evidence which comprises of testimony of doctors, forensic experts, nodal officers and the documents proved by them. These are briefly outlined.

872. PW8 Dr. Ankita Dey is the doctor who had conducted post-mortem on the body of Vijay Yadav. She stated in her examination-in-chief that on 30<sup>th</sup> September, 2007, she was posted as Senior Resident, Maulana Azad

Medical College. On that day, an application was moved for conduct of postmortem on the body of Vijay Yadav. She conducted the postmortem. During postmortem, she observed seven injuries out of which five were entry wounds of gun shot injury and two were exit wounds. All the injuries were mentioned by her in the postmortem report. She unequivocally deposed that death had occurred due to combined effect of cranio-cerebral damage, haemorrhage and shock consequent upon penetrating injuries to the head and abdomen caused by projectile of a rifled firearm which were sufficient to cause death in the ordinary course of nature. The witness stated that three projectiles, hand washing swab and blood sample were handed over along with sample seals in sealed condition. She identified her postmortem report as Ex. PW8/A.

873. The medico-legal certificate (MLC) of the deceased was proved by PW51 Sh. B.S. Bhati, Record Clerk, LNJP Hospital, New Delhi. He had produced the original record relating to MLC of the deceased. The witness stated in his examination-in-chief that he had brought the record pertaining to MLC No. 108770 dated 29<sup>th</sup> September, 2007 of patient Vijay Singh Yadav (deceased) S/o Sh. Amar Singh. The MLC had been prepared by Dr. Anuj Jain, JR (Casualty), who had left the hospital and his whereabouts were not known to the hospital. PW51 B. S. Bhati, Record Clerk stated that he had seen Dr. Anuj Jain writing and

signing during the course of his employment, and was in a position to identify the handwriting and signatures of Dr. Anuj Jain. The witness identified the MLC as Ex. PW51/A.

874. Both the abovenamed witnesses were cross-examined. However, nothing could be elicited during cross-examination which could cast a doubt on their testimony. The witnesses spoke on the strength of record. PW51 Sh. B.S. Bhati, Record Clerk, LNJP Hospital had no personal knowledge of the case. He had to simply produce the original record and identify the signatures of the author of the MLC whose presence could not be secured by the Court. The witness was competent to prove the signatures of Dr. Anuj Jain since the witness had seen the doctor writing and signing during the course of his employment. PW8 Dr. Ankita Dey, on the other hand, is the doctor who had conducted post-mortem on the body of Vijay Yadav. She was deposing on the basis of her own observations. However, the testimony was supported by her report which had been prepared contemporaneously when the post-mortem had been conducted. The witness identified the postmortem report as Ex. PW8/A. Neither of the abovenamed witnesses knew the accused persons, let alone harbouring a grudge against the accused persons. There is no reason for them to tender a false testimony in the Court. The oral testimony of the



witnesses and the documents identified by them inspire confidence and ought to be relied upon.

875. From the testimony of the witnesses and the documents identified by the witnesses, a number of facts stand proved.

876. Firstly, the MLC Ex. PW51/A shows that victim Vijay Yadav was taken to LNJP Hospital by Deepak Sharma. This ratifies the stand of the prosecution and endorses the version of PW46 Sh. Deepak Sharma.

877. Secondly, the MLC Ex. PW51/A shows that victim Vijay Yadav reached the Hospital at about 8.15pm. This validates the version of the eye-witnesses namely PW1 Smt. Anju Gupta and PW2 Dheeraj Sharma about the time of incident. It is in sync with the approximate time given by PW4 Parmod Kumar and PW10 Niranjan Singh about receiving information of the incident, the time stated by PW19 Amar Singh Yadav about seeing Vijay Yadav before the incident, and time of the PCR calls informing about the incident. It negates the suggestion of Id counsel for accused persons that he had put to the eye-witnesses namely PW1 Smt. Anju Gupta and PW2 Dheeraj Sharma (which they had denied) that when PW1 Smt. Anju Gupta gave information to PW4 Parmod Kumar and PW10 Niranjan Singh, the incident had not occurred.

878. Thirdly, the MLC Ex. PW51/A enlists a number of manifestly visible injuries on the body of the deceased. These are consistent with the

observations made in the post-mortem report. The documents authenticate each other.

879. Fourthly, the MLC Ex. PW51/A states that the patient was brought dead. This implies that the victim could not even receive treatment for the injuries. The effect of the injuries was so consumptive that the victim died immediately after the incident and before he could reach the hospital. It also rules out the possibility of the victim dying due to the deficiency or negligence in medical treatment.

880. Fifthly, post-mortem report Ex. PW8/A shows that the victim had received gunshot wounds. This confirms the version of eye-witnesses PW1 Smt. Anju Gupta and PW2 Dheeraj Sharma that the offenders had fired shots at Vijay Yadav.

881. Sixthly, post-mortem report Ex. PW8/A proves that multiple rounds had been fired at Vijay Yadav. As many as five entry wounds of gunshot injury were found including on the head. The repeated firing of gunshots at the victim including on the head shows a clear intent to exterminate the victim.

882. Seventhly, the cause of death was proved by the post-mortem report Ex. PW8/A to be the gunshot injuries. This demonstrates that Vijay Yadav did not relinquish life out of an illness or any other cause. He succumbed to his injuries. It is the assailant who is responsible for extinguishing his life.

883. Eighthly, the injuries are described in the post-mortem report Ex.PW8/A. It is palpable that the injuries are sufficient in the ordinary course of nature to cause death. However, this inference need not be formed by the Court solely by its own perception of the lethality of the injuries. Here, there is a clear opinion in this behalf of a person proficient in medical science and this opinion could not be rebutted by the accused persons. Dr. Ankita Dey has stated, in no uncertain terms, firstly in her post-mortem report, and later in the Court during her testimony, that the injuries were sufficient in the ordinary course of nature to cause death.

884. It has already been held above that the prosecution has proved that the assailants were accused Bhasham @ Chintoo, Parveen Koli, Deepak @ Chowda, Desraj @ Desu, Hitender @ Chhotu and Kishanpal @ Fauzi. They have been proved to be responsible for the demise of the Vijay Yadav. These accused persons had been charged with the offence punishable under section 302 of IPC. This provision provides punishment for the offence of murder. It reads as follows:

*“Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.”*

Murder is defined in section 300 of IPC in the following words:

*“Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-*

*Secondly- If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-*

*Thirdly- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-*

*Fourthly,- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.*

#### *Illustrations*

1. *A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.*

2. *A, knowing that Z is laboring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is laboring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.*

3. *A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here, A is guilty of murder, although he may not have intended to cause Z's death.*

4. *A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.*

*Exception 1- When culpable homicide is not murder- Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the*

*death of the person who gave the provocation or causes the death of any other person by mistake or accident.*

*The above exception is subject to the following provisos:-*

*Firstly- That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing, or doing harm to any person.*

*Secondly- That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.*

*Thirdly- That the provocation is not given by anything done in the lawful exercise of the right of private defense.*

*Explanation- Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.*

#### *Illustrations*

1. *A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, in as much as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.*

2. *Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.*

3. *A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, in as much as the provocation was given by a thing done by a public servant in the exercise of his powers.*

4. *A appears as witness before Z, a Magistrate, Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.*

5. *A attempts to pull Z's nose, Z, in the exercise of the right of private defense, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills*

*Z. This is murder, in as much as the provocation was given by a thing done in the exercise of the right of private defense.*

6. *Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.*

*Exception 2- Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defense of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defense without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defense.*

#### *Illustration*

*Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.*

*Exception 3- Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.*

*Exception 4.- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.*

*Explanation- It is immaterial in such cases which party offers the provocation or commits the first assault.*

*Exception 5- Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.*

### *Illustration*

*A, by instigation, voluntarily causes Z, a person under eighteen years of age to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder."*

885. From the aforesaid definition, it follows that for an act to qualify as 'murder' it must first qualify as 'culpable homicide'. 'Culpable homicide' is stated to be the genus of which 'murder' is a species. 'Culpable homicide' would amount to 'murder' on fulfillment of certain conditions, stipulated in section 300 of IPC. 'Culpable homicide' has been defined in section 299 of IPC as follows:

*"Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.*

### *Illustrations*

1. *A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.*

2. *A knows Z to be behind a bush. B does not know it A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.*

3. *A, by shooting at a fowl with intent to kill and steal it, kills B who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.*

*Explanation 1- A person who causes bodily injury to another who is laboring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.*

*Explanation 2- Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.*

*Explanation 3- The causing of the death of child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born."*

886. The interplay of sections 299 and 300 has been lucidly explained in a recent decision of Hon'ble Supreme Court in the case of Paul v. State of Kerala CrI. Appeal no. 38 of 2020 decided on 21<sup>st</sup> January, 2020. The observations are seminal and are therefore quoted verbatim, as under:

*"As far as the contention that appellant should be handed down conviction under section 304, Part-I, we are not impressed by the said argument. As to what constitutes murder under section 300 of the IPC and what constitutes culpable homicide amounting to murder has been a vexed issue and the subject matter of a large body of case law. Section 300 of the IPC declares that except in those cases which are specifically excepted culpable homicide is murder in situations which have been specifically laid down. These are commonly referred to as firstly, secondly, thirdly and fourthly under section 300 of the IPC. If the intention of the Legislature was that culpable homicide would amount to murder if it did not fall in any of the five exceptions enumerated in Section 300 of the IPC, what was the need for the Legislature to 'waste words' as it were by declaring that culpable homicide is murder if the act fell within any of the 4 clauses in Section 300 of the IPC? In order that an act is to be punished as murder, it must be culpable homicide which is declared to be murder."*



887. The Hon'ble Supreme Court went on to quote, with approval, the following observations by the Hon'ble Supreme Court itself in the case of Andhra Pradesh v. Rayavarapu Punnayya and Another 1976(4) SCC 382:

*"From the above conspectus, it emerges that whenever a Court is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder', on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300 of the Penal Code, is reached. This is the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of "murder" contained in Section 300. If the answer to this question is in the negative the offence would be "culpable homicide not amounting to murder", punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300, the offence would still be "culpable homicide not amounting to murder", punishable under the first part of Section 304, of the Penal Code."*

888. Another decision is relevant on this point. That was an early decision of the Hon'ble Allahabad High Court, but continues to have relevance, having received approval of many Courts over the years. This decision was reported as Behari and Ors. V. State AIR 1953 All 203. In that case, it was noted as follows:

*“Section 299 defines culpable homicide. Culpable homicide is of two kinds, culpable homicide amounting to murder and culpable homicide not amounting to murder. It is strange that in some cases Section 299 has been taken to be the definition of culpable homicide not amounting to murder, although the section clearly speaks of culpable homicide simpliciter. The scheme of the Penal Code is that first the genus 'culpable homicide' is defined and then murder, which is a species of culpable homicide, is defined. What is left out of culpable homicide after the special characteristics of murder have been taken away from it, is culpable homicide not amounting to murder. For this reason the Code does not contain any definition of culpable homicide not amounting to murder.*

xxx

*Clause (a) of Section 299 corresponds with Clause (1) of Section 300. Clause (b) of Section 299 corresponds with Clauses (2) and (3) of Section 300, and Clause (c) of Section 299 corresponds with Clause (4) of Section 300.*

*'Clause (b) of Section 299 and Clause (3) of Section 300.'*

*Clause (b) of Section 299 speaks of intention to cause an injury likely to cause death. Clause (3) of Section 300 speaks of an intention to cause bodily injury which injury is sufficient in the ordinary course of nature to cause death. The word 'likely' means 'probably'. It is distinguished from 'possibly'. When the chances of a thing happening are even with or greater than, its not happening, we say that the thing will 'probably' happen. When the chances of its happening are very high, we say that it will 'most probably' happen. An injury "sufficient in the ordinary course of nature to cause death" merely means that death will be the 'most probable' result of the injury having regard to ordinary course of nature. The expression does not mean that death must result in which such an injury is caused."*

889. In light of the aforesaid decisions, this Court is required to first discern whether *“whether the accused has done an act by doing which he has caused the death of another”*. The six accused persons charged with the offence of murder are Bhisham @ Chintoo, Parveen Koli, Desraj @ Desu,

Deepak @ Chowda, Hitender @ Chhotu and Kishanpal @ Fauzi. As noted above, they have been proven to have surrounded Vijay Yadav while accused Hitender @ Chhotu and Kishanpal @ Fauzi are additionally proven to have fired gunshots. The post-mortem report Ex. PW8/A has proved that the gunshot injuries were responsible for death of Vijay Yadav. The evidence led by the prosecution has proved that the attack by the abovenamed accused persons was the direct and proximate cause of death of Vijay Yadav. The causal connection has thus been established.

890. This Court is next required to ascertain whether the acts of the accused persons amount to 'culpable homicide'. In this case, there is abundant evidence on record to show that the accused persons harboured a pronounced intent to liquidate Vijay Yadav. The accused persons had surrounded Vijay Yadav so that he does not escape. They had come armed with deadly weapons i.e. pistols. So firm was the resolve of the accused persons to annihilate Vijay Yadav that they wanted to leave nothing to chance. They fired repeatedly at Vijay Yadav till he fell in a pool of blood. As many as five bullets entered the body of Vijay Yadav. Shots were fired at vital parts of the body. These acts do not depict that the accused persons wanted to simply threaten Vijay Yadav. Nor is there any evidence to show that all the shots had been fired by mistake or accidentally. The intent to cause death (including bodily injury likely

to cause death) is writ large. The case therefore indubitably falls in the category of 'culpable homicide' as defined in section 299 of IPC.

891. This Court is to now determine whether facts point to commission of the offence of murder. In other words, whether the 'culpable homicide' proven to exist in this case qualifies as 'murder'. In other words, whether the 'culpable homicide' that has been proven to exist in this case, qualifies as 'murder'. 'Culpable homicide' is murder if the circumstances fall under one of the four heads prescribed by section 300 of IPC. These four classes are:

- a. if the act by which the death is caused is done with the intention of causing death, or
- b. if the act by which the death is caused is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or
- c. if the act by which the death is caused is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or
- d. if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act

without any excuse for incurring the risk of causing death or such injury as aforesaid.

892. It has already been held above that accused persons distinctively and unmistakably did the act with a view to cause the death of Vijay Yadav. There is no other conclusion that can be drawn by a series of actions comprising of calling the victim from his office, he being surrounded by at least six persons and then he being shot at repeatedly, on vital organs, by two of those persons who are carrying firearms. The conduct of the accused persons before and after the incident, the use of a firearm which is a deadly weapon (this has been unambiguously held to be relevant factor, in the case of R v. Govinda 1 ILR Bom 342 which has been followed in subsequent cases), the number of shots fired and the location of injuries are all factors that irrefutably point towards an intent to cause death.

893. In support of the view that an act done with intent to cause death and which does result in death, where it does not fall under any of the exclusionary clauses of section 300 of IPC, will attract punishment for murder, it would be apt to refer to the following observations made by Hon'ble Supreme Court in the case of Paul v. State of Kerala (supra):

*"As far as this case is concerned, there can be no doubt that the act which led to the death has been committed by the appellant. We can safely proceed on the basis also that it amounts to culpable homicide. Going by the circumstances present in this case and in particular injuries suffered, it is quite clear that the act would fall within the scope of Section 300 of the IPC. If the*

*act results in culpable homicide which does not amount to murder, then and then alone the question arises of applying Section 304 Part-I or Part-II as the case may be. Appellant cannot extricate himself from the consequence of his act attracting the ingredients of murder by pointing out Section 304 Part I which also contains the expression, "the act with the intention to cause death'. The implications are vastly different. Section 304 of the IPC would apply only in a case where culpable homicide is not murder. If the act amounting to culpable homicide satisfies any of the four criteria to bring it under the offence of murder, being mutually exclusive, there can be no scope for 36 applying Section 304 of the IPC. On the other hand, if the act is culpable homicide as falling in any of the five exceptional circumstances mentioned in Section 300 and then it would amount to culpable homicide not amounting to murder. In cases where the accused is able to establish he is entitled to the benefit of any of the exceptions under section 300 then his case may be considered under Part-I or Part-II of Section 304 of the IPC depending on whether the act which caused the culpable homicide was done with the intention of causing death or with knowledge that it is likely to cause death. That apart cases of culpable homicide which do not attract any of the four situations under section 300 would still be culpable homicide to be dealt with under section 304 of the IPC. However, if the case falls under any of the four limbs of Section 300, there would be no occasion to allow Section 304 to have play. If the act which caused the death and which is culpable homicide is done with the intention of causing death, then it would be murder. This is however subject to the act not being committed in circumstances attracting any of the 5 exceptions. Appellant's contention that it would be culpable homicide not amounting to murder and reliance placed on the words 'done with the intention of causing death' in Section 304 Part-I is wholly meritless. The act of the appellant in the facts of this case clearly show that he has throttled his wife. None of the exceptions in Section 300 are attracted. The act amounts to murder within the meaning of Section 300 of the IPC."*

894. That apart, it will also be reasonable to presume that the accused persons knew, as any other prudent person would know, that the firing of repeated gunshots on the head of the victim is bound to cause him to perish. The injuries were also knowingly inflicted. Therefore the case

would qualify for clause *secondly* of section 300 of IPC too.

895. Not only the above, the medical opinion has irrefutably proved that the injuries were sufficient in the ordinary course of nature to cause death. The medical opinion is to be accorded paramountcy, as laid down in the case of *Gudar Dusadh v. State of Bihar AIR 1972 SC 952*. Even otherwise, it is apparent that the injuries are such as would in ordinary course result in the death of the victim.
896. The accused persons have not led any evidence, and have not even attempted to prove, either by cross-examination of prosecution witnesses or by defence evidence, that the case falls under any of the exceptions provided in section 300 of IPC. There is nothing on record to even remotely suggest that the facts of the case would attract any of the exception clauses of the provision.
897. All the above unerringly prove that the acts of accused persons *Bhisham @ Chintoo, Desraj @ Desu, Deepak @ Chowda, Parveen Koli, Hitender @ Chhotu and Kishanpal @ Fauzi* amount to the offence of 'murder'. As per the tests laid down in the case of *Paul v. State of Kerala (ibid)*, this Court has to look no further and the Court is not to see if the case may fall under 'culpable homicide not amounting to murder'.
898. Apart from medical evidence, there is other scientific evidence led by the prosecution. PW13 *Shri Phagu Baitha* who is Laboratory Assistant

at Department of Forensic Medicine, Maulana Azad Medical College. He deposed to handing over of three parcels sealed with the seal of Department of Forensic Medicine, Maulana Azad Medical College and sample seal to the investigating officer which was seized vide memo Ex. PW5/A.

899. PW64 Shri Puneet Puri, Assistant Director Ballistics, FSL, Rohini, Delhi proved that the broken metallic chain seized in the case (which according to the prosecution had been recovered from accused Hitender @ Chhotu) had gunshot residue particles around its edges. The witness had also examined the bullets and cartridge case. He proved that the bullets constituted ammunition. The witness stated in his statement-in-chief that on 26<sup>th</sup> May, 2008, a parcel sealed with the seal of KGT of the present case was received in Ballistics Division through the Biology Division of FSL. The seals on the parcel were intact and were as per the specimen seal provided with the FSL form. On opening the parcel, a broken metallic chain with brown stains was taken out. On examination of the metallic chain, the witness found gunshot residue particles around the edges of broken portion of metallic chain. The witness identified his report as Ex. PW64/A. The witness further deposed that on 1<sup>st</sup> July, 2008, four sealed parcels bearing nos. 3, 4, 6 and 7 were received from the Biology Division. Parcel no. 3 was sealed with the seal of AS. Parcel no. 4 was sealed with



the seal of NK FSL DELHI. Parcel nos. 6 and 7 were sealed with the seal of DEPTT of FORENSIC MEDICINE M. A. M. COLLEGE, N. D. SKK. The seals on the parcels were intact and were as per the specimen seals provided with the FSL form/forwarding form. On opening Parcel no. 3 one 9 mm fired cartridge case and one matchstick were taken out and the cartridge case was marked as Exhibit EC1. On opening Parcel no. 4, three deformed bullets were taken out and marked as Ex. EB1, EB2 and EB3. On opening Parcel no. 6, one swab said to be of right hand was taken out and marked as Ex. S1. On opening Parcel no. 7, one swab said to be of left hand was taken out and marked as Ex. S2. On examination the witness found that the 9 mm cartridge case marked Ex. EC1 was a fired empty cartridge. He also found that the deformed bullet marked Ex. EB1 to EB3 were corresponding to the bullet of .32 inch cartridge. No gunshot residue particles were detected on the swabs marked Exhibit S1 and S2. The cartridge case marked Exhibit EC1 and the deformed bullets marked Exhibits EB1 to EB3 were ammunition as defined in Arms Act 1959. The witness identified all the abovesaid articles on their production in Court. The version of the witness is believable and there is nothing on record to suggest that the witness had rendered a false testimony in Court or that his report is incorrect. This corroborates the version of the prosecution of use of firearm in the killing of Vijay Yadav. It also lends credence to the assertion of the

prosecution that the chain recovered from accused Hitender @ Chhotu had been snatched from Vijay Yadav during the incident of firing.

900. PW65 Mr. Naresh Kumar, Senior Scientific Officer, Biology, FSL, Rohini, Delhi proved reports of biological and serological examination of exhibits sent to the FSL. The witness identified his reports as Ex.PW65/A and Ex.PW65/B. The witness also deposed about examining a gold chain on which he found blood of B group and of human origin. The witness identified the articles on their production in the Court. Nothing could be elicited in the cross-examination of the witness which could impeach his credibility. The testimony of this witness indicates that the chain recovered from accused Hitender @ Chhotu belonged to Vijay Yadav and had been taken away during the incident of firing.

901. Apart from the scientific evidence of forensic experts, the prosecution tried to prove involvement of accused persons in the commission of murder through the call detail records and customer application forms. The prosecution examined nodal officers of mobile service providers to prove the call detail records and customer application forms. It also examined certain persons to show use of some mobile phone numbers by accused persons. The relevant evidence produced before the Court is delineated in brief.

902. PW29 Surender Kumar Tiwari was examined with a view to prove use of mobile phone bearing IMEI no. 355532015014239. The witness stated in his examination-in-chief that one Ayodhya Tiwari was his neighbour. Prior to 4<sup>th</sup> December, 2007, some persons started residing in the house of Ayodhya Tiwari. One of them took mobile phone of the witness bearing No. 9412902447 from the daughter of the witness in the evening hours of a date which the witness did not remember. The said person took out the SIM of his phone and handed it over to daughter of the witness. The said person inserted the SIM in the mobile phone of the witness, as was later informed to the witness by his daughter, since the witness was sleeping at that time. The mobile phone was later seized by the police. The witness could identify the seizure memo Ex. PW29/A of his mobile phone. The witness identified the seizure memo and also the phone bearing IMEI no. 355532015014239 of make Nokia 2310 when shown to him.

903. The testimony of PW29 Surender Kumar Tiwari has been inconsequential. The gist of his narrative is that a mobile phone belonging to the witness had been taken by one of the persons residing in the house of Mr. Ayodhya Tiwari. The testimony cannot stand judicial scrutiny owing to three reasons. Firstly, the witness has not been able to point out the person among the accused persons who had taken the phone. Secondly, the witness had not seen the incident by

himself. He had only been informed of this by his daughter. His daughter has not been examined in this case. The testimony of the witness about taking of the said phone from the daughter of the witness is barred by the hearsay rule. Thirdly, the witness has not been able to point out the date when the said phone had been taken. To be able to connect the said phone to certain calls, it is essential to establish that on the date of those calls, the phone was in the possession of a certain accused, which the witness has failed to point out. Fourthly, the witness has spoken vaguely about replacement of a sim card. Which sim card had been subsequently placed in the phone has not been revealed by the witness. The testimony of PW29 Surender Kumar Tiwari renders no aid in proving of the allegations.

904. PW30 Sumitra Pawar was examined by the prosecution to prove use of a mobile phone. This mobile phone was bearing IMEI no. 3555030004248546. The witness stated in her examination-in-chief that that she knew Ayodhya Tiwari who was residing in the same lane. In the year 2011, the witness was using mobile number 09412974445. Around the month of December 2007, a boy named Rahul who was residing in the house of Ayodhya Tiwari took her mobile phone by saying that he was not having any mobile phone and had to make a call. Mobile Rahul removed the sim card and gave it to the witness. Rahul took away the phone. Rahul later returned the phone. When

police came to the house of the witness, the witness handed over her phone to the police. The phone was seized by the police by seizure memo Ex. PW30/A. The witness identified the seizure memo and a phone bearing IMEI no. 3555030004248546 of make Nokia 1100 when shown to her.

905. The deposition of PW30 Ms. Sumitra Pawar does not, in any manner, buttress the allegations. The testimony of the witness about a boy named Rahul residing in the house of Ayodhya Tiwari taking away her mobile phone does not show commission of any offence by the accused persons. The witness has not identified the said Rahul. The witness has not even been able to point out the date when Rahul had taken the said phone. According to the witness, her sim card had not been used by Rahul and he had replaced the sim Card. The witness has not been able to give particulars of the sim card which was later placed in her phone. Nothing has been stated by the witness which could help the Court in identifying the offenders.

906. PW48 Davinder Kumar is brother of accused Bhisham @ Chintoo. This witness had been examined by the prosecution to prove usage of the phone of the witness by accused Bhisham @ Chintoo. The witness stated in his examination-in-chief that accused Bhisham @ Chintoo is his younger brother. He stated that a mobile phone, the number of which he did not remember, was registered in his name. He stated that

the said mobile phone was used by his family members including his brother Bhisham @ Chintoo. On cross-examination by the Id Addl. Public Prosecutor, the witness admitted that the mobile phone number was 9873722524.

907. It is apparent from the above that the witness has not been able to point out categorically that his phone was under the exclusive use of accused Bhisham @ Chintoo. The witness has also not been asked pointedly whether the phone was being used by accused Bhisham @ Chintoo on a certain date and at a certain time. If a phone is under the use of the whole family, it is not possible to pinpoint and infer, by that very fact, that a certain call had been made by a particular family member.

908. PW49 Sh. Ankush Kanwar was examined by the prosecution to prove loss of an identity card on the basis of which a phone connection had been obtained. The witness stated in his examination-in-chief that in the year 2008, he was called to the office of Crime Branch, Sector-18, Rohini, Delhi and was asked whether he was acquainted with anybody by the name of Chhotu. The witness had replied that he had heard the name but was not acquainted with the said person. An inquiry was made about his driving licence upon which the witness replied that he had lost the same in the month of May, 2007. The witness had produced the NCR of loss of licence marked 49/A. The witness also stated that in the office of Crime Branch, a customer application form

was there and a driving licence was annexed with the form. The driving licence was of the witness but the form was not having his photograph. The witness did not remember in whose name the form was.

909. As seen above, PW49 Ankush Tanwar has not been able to point out who was using the phone number which had been issued to the witness. He denied having an acquaintance with accused Hitender @ Chhotu. On the contrary, the witness indicated that he had lost his identity proof (driving license), which establishes that the mobile phone connection may have been got issued in the name of this witness by using his identity proof. From the testimony of this witness, it cannot be known as to who was using the mobile phone connection which had been obtained on the basis of an identity proof of the witness. The testimony may absolve the witness of responsibility for the crime but does not help in establishing the identity of the offenders.

910. PW55 Rohtash is yet another witness examined by the prosecution to prove use of a mobile phone by accused persons. The witness stated in his examination-in-chief that in the year 2007, one Mukesh along with his family used to reside as tenant at a premises at Bapugram, Rishikesh, Dehradun. The witness did not know any person by the name of Deepak or Hitender. In the month of July, 2007, while the witness was standing outside his school and talking to someone on his

mobile phone, two boys were seen coming from the road. Those boys asked about availability of some tenanted accommodation. The witness initially told them that he was not aware of availability of any such accommodation. Those boys again requested him saying they had come from outside and were doing contract work for a tower company. The witness then recommended an accommodation at Shivaji Nagar, Bapugram which belonged to the parents of one of students studying in the school of the witness. The witness introduced Ayodhya Prasad Tiwari, owner of the house to those boys. Later the witness was told by Ayodhya Prasad Tiwari that those boys had taken two rooms' accommodation on rent at a monthly rent of Rs. 1500/-. After five or seven days, those boys met the witness on the road and asked for LPG connection. The witness' tenant Mukesh used to work as delivery man for HP Gas and his wife also used to work at the agency of HP Gas. The witness sent those boys to Mukesh where Mukesh arranged gas cylinder for them. Thereafter those boys started visiting the house of Mukesh. In the year 2007, Mukesh had taken a mobile connection on the basis of identity card of the witness and he along with the person who used to visit his house started using that mobile connection in relation to gas connection and other matters. The witness was unable to give details of those conversations. Mukesh remained as tenant for about seven or eight months at the aforementioned address. Mukesh



left the tenanted premises in month of December, 2007. The witness stated that none of the persons who stayed in the tenanted premises of Ayodhya Tiwari was present in Court on the day of the deposition.

911. PW55 Rohtash was cross-examined by the Id Addl. Public Prosecutor after obtaining permission from the Court. In his cross-examination, attention of the witness was drawn towards accused persons Deepak @ Chowda, Hitender @ Chhotu, Parveen Koli and Parmod Singh @ Pammy, who at that time were present in the Court. The witness specifically denied that those are the same persons who had stayed in the tenanted premises of Ayodhya Tiwari or that they had used the mobile phone connection taken on the identity card of the witness.
912. PW55 Rohtash has expressly denied that it was any of the accused persons who had been using the mobile phone connection obtained in the name of the witness. He did state that one Mukesh had obtained a mobile phone connection on the basis of identity card of the said witness. The witness has therefore indicated to the possible use of the said mobile connection by one Mukesh. It is unclear from the testimony of the witness whether the phone connection was used in the presence of the witness. Had that been so, the witness would have been able to give some details of the conversations but he has not done that. The witness has not proved that the said mobile phone was under the use of any of the accused persons. On specifically being shown the accused

persons, he denied that they were the ones to be using the phone. From the testimony, it cannot be concluded that the mobile phone which had been obtained on the identity proof of the witness had been used by any of the accused persons.

913. PW44 Shri Israr Babu, Alternate Nodal Officer, Vodafone Mobile Services Ltd., PW45 Sh. Chander Shekhar, Nodal Officer, Bharti Airtel Ltd. and PW60 Sh. Rajeev Ranjan, Nodal Officer, Tata Teleservices Pvt. Ltd. had been examined to prove record relating to certain mobile phone connections.

914. PW44 Shri Israr Babu, Alternate Nodal Officer, Vodafone Mobile Services Ltd. produced and identified customer application form (CAF) of mobile connection No. 9953205136. He stated that as per record, the said connection was issued in the name of Vinod Kumar, son of Sh. Ramesh Chand. At the time of obtaining the connection, the subscriber had furnished copy of his Voter Identity Card. The witness identified the original CAF as Ex.PW44/A.

915. PW44 Shri Israr Babu had also brought customer application form (CAF) of mobile connection No. 9873056281, which was issued in the name of Shiv Kumar, son of Sh. Jaidarth. The witness identified the CAF as Ex.PW44/B.

916. PW44 Shri Israr Babu had additionally brought customer application form (CAF) of mobile connection No. 9761065298, which had been

- issued in the name of Ankush Kanwar, son of Sh. Keshar Singh. The witness identified the CAF as Ex.PW44/C.
917. PW44 Shri Israr Babu saw CDR of mobile No. 9953205136 from judicial file, which he identified as Ex.PW44/D. The witness also identified certificate under section 65 B of Indian Evidence Act as Ex.PW44/E.
918. PW44 Shri Israr Babu had seen the CDR of mobile No. 9873056281. The witness had brought attested copy thereof and identified it as Ex.PW44/F. The witness had brought certificate under section 65 B of Indian Evidence Act to the effect that the CDRs of the said period were true and correct. He identified the certificate as Ex.PW44/G.
919. PW44 Shri Israr Babu saw the CDR of mobile No. 9761065298. The witness had brought the attested copy and identified it as Ex. PW44/H. The witness had brought certificate under section 65 B of Indian Evidence Act to the effect that the CDRs of the said period were true and correct. The witness identified it as Ex.PW44/I.
920. PW45 Sh. Chander Shekhar, Nodal Officer, Bharti Airtel Ltd. deposed in his examination-in-chief that he had brought the customer application form of connection No. 9896941896, which had been issued in the name of Vijay, son of Silak Ram. The witness identified the customer application form as Ex.PW45/A.
921. PW60 Sh. Rajeev Ranjan, Nodal Officer, Tata Teleservices Pvt. Ltd. stated in his examination-in-chief that he had produced the CAF of

mobile no. 9250542424 which was issued to Rajbir S/o Naduli, R/o GH-52, Swaroop Nagar, Delhi on the subscriber furnishing copy of his Ration Card. The witness identified copy of CAF as Ex. PW60/A and the copy of the ration card as PW60/X. The witness then produced CAF of mobile no. 9213659939 and deposed that this had been issued to Ajay S/o Om Prakash, R/o E-124, Vijay Nagar, Sector-12, Ghaziabad, U. P. on the subscriber furnishing copy of his Voter Identity Card. The witness identified copy of CAF as Ex. PW60/B and copy of the voter identity card as Mark PW60/X-1. PW60 Sh. Rajeev Ranjan further stated that he had not brought the CDRs of these mobile phone numbers as there was no direction to preserve it.

922. It needs to be noted that the call detail records are sterile in the absence of proof of use of the phones by the accused persons. The position may have been different if the sim cards of the mobile phone connections had been issued in the name of the accused persons. Then, possibly a presumption could have been raised that the person to whom a mobile connection had been issued has been using it. However, since that is not the case, the prosecution needs to prove by evidence that the phones and mobile phone connections by which calls had been made or on which calls had been received were under the use of the accused persons. The prosecution has miserably failed to prove this. The vital link in the chain is amiss. The testimony of the abovenamed nodal

officers that certain mobile phone connections were provided to some persons does not aid the Court in establishing the identity of the persons who committed the offence of murder. The prosecution has not been able to point out how the aforesaid evidence shores up its case.

923. It may therefore be concluded that the call detail records and the customer application forms identified by prosecution witnesses, and the witnesses examined by the prosecution to prove the said documents and also to prove the use of mobile phones, are of no assistance to the prosecution in proving the allegations.

**Inferences regarding the offence of Murder**

924. The above shows that though the call detail records and customer application forms turned out to be of no assistance to the prosecution in establishing its case, the remaining part of the evidence comprising of testimony of PW8 Dr. Ankita Dey, the postmortem report Ex.PW8/A, the medico-legal certificate of the deceased Ex. PW51/A, testimony of PW64 Shri Puneet Puri, Assistant Director Ballistics, FSL, Rohini, Delhi, his reports, testimony of PW65 Mr. Naresh Kumar, Senior Scientific Officer, Biology, FSL, Rohini, Delhi and his reports Ex.PW65/A and Ex.PW65/B do corroborate the other evidence, besides proving the nature of injuries and the cause of death. This scientific evidence, standing alone, is not sufficient to prove the guilt of the

accused persons since it does not indicate the identity of the offenders. However, it does supplement the ocular testimony of PW1 Smt. Anju Gupta and PW2 Dheeraj Sharma, testimony of other public witnesses and the version of police officers, to fortify the conclusion that accused persons Bhisham @ Chintoo, Parveen Koli, Deepak @ Chowda, Desraj @ Desu, Hitender @ Chhotu and Kishanpal @ Fauzi had committed murder of Vijay Yadav.

925. It needs to be mentioned that this Court has dealt with the testimony of eye-witnesses (including their cross-examination) in detail but have not discussed the testimony of police witnesses as minutely. The reason is that as regards the offence of murder, the outcome of the case predominantly hinges on evaluation of eye-witness account. The police investigation took place only after the incident had taken place and after the offenders had already decamped. The offenders were not caught at the spot or immediately after the occurrence for the investigation to assume extraordinary importance. Significant breakthrough could be achieved in the case only much later, after the probe had been transferred to Crime Branch. The police officers who testified to the investigation can only depose to the efforts they made to collect evidence. Even if they faltered at certain steps, it will not efface the eye-witness account. Just as the police officers and other official witnesses cannot depose, of their own knowledge, about the guilt of

the accused persons, the statements they utter will not conclusively show the innocence of the accused persons. Their testimony can only have a bearing on the probity of the documents or other evidence they gather, and the steps they took during investigation.

926. It is for this reason that the Court is loathe to accept the contention of the accused persons about PW11 Inspector Rajender Dubey having no knowledge of eye-witness PW1 Smt. Anju Gupta till investigation remained with him. The investigation had remained with him for only eight days. During this period, the witness had been interrogating people, searching for accused persons and collecting exhibits. It is possible that PW11 Inspector Rajender Dubey, who was deposing after a gap of four years from the date of incident, may not have been able to recall precisely whether the statement of PW1 Smt. Anju Gupta was on the record. His inability to remember this cannot be used to contradict the statement of the eye-witness on record (statement of PW1 Smt. Anju Gupta dated 30<sup>th</sup> September, 2007 signed by Insp. Anil Sharma) and the emphatic testimony of PW25 the then Inspector Sh. Anil Kumar Sharma who proved the recording of the statement.

927. Moreover, even if the investigation has been deficient, the Court cannot absolve the accused of the accusation on that very ground. Lapses in investigation do not negate the commission of the offence. I am supported in this view by the decision in the case of Gajoo Vs. State of

Uttarakhand, Crl. Appeal No. 1856 of 2009 dated 13<sup>th</sup> September, 2012,

in which the Hon'ble Supreme Court held as follows:

*"This is merely a defect in investigation. A defective investigation, unless affects the very root of the prosecution case and is prejudicial to the accused, should not be an aspect of material consideration by the Court."*

Therefore, the Court cannot accept the argument that the investigating agency has committed serious errors the benefit of which must necessarily enure to the accused.

928. It is true that in leading scientific evidence collected by the police, some elements in the sequence to show use of certain mobile phones by accused persons could not be proved by the prosecution. That however is not a ground to disbelieve the evidence which it marshalled. This Court, while deciding the case, has to see whether the evidence presented by the prosecution is believable and whether it proves, beyond reasonable doubt, the guilt of the accused. It is not the objective of this Court to find faults in the investigation or to see what further evidence could have been collected but wasn't brought on record. There are myriad ways of collection of evidence. It is quite possible that the police may have been in a position to buttress its allegations with the aid of some specific scientific evidence, but it may have failed to collect the said evidence. That does not imply that the Court would disbelieve or shut its eyes to the evidence that has already been collected and produced before the Court. If the evidence placed before the Court



meets the required standard, the Court would return a finding of guilt notwithstanding the fact that the police failed to make use of its opportunity of collecting some evidence which could have further substantiated its case. There are also complaint cases which are put to trial. In those cases, often little scientific evidence may have been collected and there is no intervention of police. If collection of scientific evidence was indispensable, the said cases would inevitably result in acquittal of the accused persons. That is not the correct approach. Ocular evidence cannot be denied its due worth, and it is rather considered more dominant than expert evidence (Radhakrishna v. State of A.P. CrI. Appeal no. 1707/2009 decided by Hon'ble Supreme Court on 13<sup>th</sup> December, 2012). The Court has to give its finding on the basis of evidence before it and not rue about what could have been brought forth but wasn't produced.

929. The Investigating Officer and his team may not have foreseen and may not have accounted for every conceivable plea in defence that the accused persons may raise. That, however, does not show the innocence of the accused persons.

In the case of Gangadhar Behera and ors. vs State of Orissa Appeal (crl.) no. 1282 of 2001 decided on 10<sup>th</sup> October, 2002, the Hon'ble Supreme Court had aptly remarked as follows:

*“Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. Justice cannot be made sterile on the*

*plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice according to law. See: Gurbachan Singh v. Satpal Singh and Others [AIR 1990 SC 209]. Prosecution is not required to meet any and every hypothesis put forward by the accused. [See State of U.P. v. Ashok Kumar Srivastava [AIR 1992 SC 840]. A reasonable doubt is not an imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. If a case is proved perfectly, it is argued that it is artificial; if a case has some flaws inevitable because human beings are prone to err, it is argued that it is too imperfect. One wonders whether in the meticulous hypersensitivity to eliminate a rare innocent from being punished, many guilty persons must be allowed to escape. Proof beyond reasonable doubt is a guideline, not a fetish. [See Inder Singh and Anr. v. State (Delhi Admn.) ( AIR 1978 SC 1091)]. Vague hunches cannot take place of judicial evaluation. "A judge does not preside over a criminal trial, merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties." Per Viscount Simon in Stirland v. Director of Public Prosecution (1944 AC (PC) 315) quoted in State of U.P. v. Anil Singh (AIR 1988 SC 1998). Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth."*

930. The cross-examination of the witnesses may reveal that the police officers may not have been able to recount every trivial fact and may have wavered in a perfect reproduction of certain details. That, however, is not a ground to reject their testimony, keeping in view the time gap after which their testimony was being recorded. In the case of Damodar V. State of Rajasthan Criminal Appeal No. 1190 of 2001 decided on 18<sup>th</sup> September, 2003, the Hon'ble Supreme Court held as follows:

*"It cannot be lost sight of that long passage of time some times erases the memory and minutes details are lost sight of. In this*

*background, it has been stated that if a case is proved perfectly it is argued that it is artificial. If a case has some flaws inevitably because human beings are prone to err, it is argued that it is too imperfect. While, therefore, assessing the evidence one has to keep realities in view and not adopt a hyper sensitive approach. The so-called discrepancies pointed out by learned counsel for the appellants like the vehicle from which witnesses saw the approaching bus or with which part of the offending vehicle the cycle was hit are too trifling to affect credibility of PW's-15 evidence. Filtering out these minor discrepancies, cream of the evidence remains on which the credibility of the evidence lies."*

931. The witnesses must still be credited with recollection of enormous specifics that find mention in their testimony. They have unerringly recalled and narrated the principal events that took place during investigation.
932. The prosecution has proved the identity of the offenders, the manner in which the offence has been committed, place of commission of the offence, the investigation including the documents prepared, record of Test Identification Parade, the articles recovered and the medical documents including the postmortem report. There is nothing which could shatter the veracity of the prosecution witnesses or falsify the claim of the prosecution. The prosecution witnesses named above have materially supported the prosecution case and the testimony of the prosecution witnesses does not suffer from any substantial infirmity, inconsistency or contradiction. Their narratives are consistent and corroborative of each other.

933. Apart from the witnesses whose testimony has been discussed above, there have been other witnesses who the prosecution examined in its attempt to prove commission of murder by the accused persons. The deposition of those witnesses, though catalogued in the judgment, has not been documented under this head because they have been found to be of no worth and they fail to prove any fact having a bearing on the case.

934. The testimony of eye-witnesses PW1 Smt. Anju Gupta and PW2 Dheeraj Sharma is natural and trustworthy. They have stated about the same persons as being the offenders. Their narrative about how events unfolded on that day is similar. They have both identified the assailants. The individual roles ascribed by the witnesses to the accused persons is identical. Their recital about visibility at the spot and the existence of an electric pole over there is also consistent. It has not been shown that either of them had any enmity with the accused persons. There is no reason or motive with them to frame the accused persons. The witnesses have withstood the test of cross-examination. Several searching and gruelling questions were put to them on a number of hearings spanning nine months. In spite of detailed cross-examination, the witnesses stood their ground and their testimony about what had transpired on the day of the incident remained unshaken. The testimony of the witnesses is reliable. Their account of the manner in

which the offence was committed is corroborated by medical evidence.

The witnesses of the prosecution have been able to build a continuous link between events by suturing together the different facets of the case.

935. Accused persons Bhisham @ Chintoo, Parveen Koli, Deepak @ Chowda, Desraj @ Desu, Hitender @ Chhotu and Kishanpal @ Fauzi have not led defence evidence. The accused persons have not raised any plea of alibi. They have made no attempt to prove that they were elsewhere at the time when the incident occurred.

936. From the testimony of PW1 Anju Gupta and PW2 Dheeraj Sharma, duly supported by deposition of other public witnesses, police officers, judicial officers, medical and forensic experts and the documents proved including those relating to recovery of articles and Test Identification Parades, it stands indubitably established that on 29<sup>th</sup> September 2007, accused persons Bhisham @ Chintoo, Parveen Koli, Desraj @ Desu, Deepak @ Chowda, Hitender Singh @ Chhotu and Kishanpal @ Fauzi had surrounded Vijay Yadav. From among these, accused persons Hitender Singh @ Chhotu and Kishanpal @ Fauzi were carrying pistols. Accused persons Hitender Singh @ Chhotu and Kishanpal @ Fauzi fired successively at Vijay Yadav with their pistols and fatally injured Vijay Yadav.

937. The six accused persons namely Bhisham @ Chintoo, Parveen Koli, Desraj @ Desu, Deepak @ Chowda, Hitender Singh @ Chhotu and

Kishanpal @ Fauzi have been proven, conclusively and beyond doubt, to have committed murder of Vijay Yadav. These accused persons are to be held guilty of the offence under section 302 of IPC.

### **Offence of Criminal Conspiracy**

938. Charge for the offence of conspiring to the murder of Vijay Yadav has been framed against all accused persons namely Hitender Singh @ Chhotu, Parveen Koli, Bhisham @ Chintoo, Vinod Kumar @ Gola, Desh Raj @ Desu, Deepak @ Chowda, Kishanpal @ Fauzi, Parmod Singh @ Pammy, Rishi Pal @ Pappu, Ashok Jain and Gopal Krishan Aggarwal. Since accused Vinod Kumar @ Gola is not facing trial in these proceedings, no opinion is to be rendered regarding his involvement. This Court has to therefore examine whether the prosecution has succeeded in proving that accused persons Hitender Singh @ Chhotu, Parveen Koli, Bhisham @ Chintoo, Desh Raj @ Desu, Deepak @ Chowda, Kishanpal @ Fauzi, Parmod Singh @ Pammy, Rishi Pal @ Pappu, Ashok Jain and Gopal Krishan Aggarwal had entered into a conspiracy to assassinate Vijay Yadav.
939. Before the evidence led by the prosecution is appraised to examine whether the existence of the conspiracy has been proved against the accused persons, it will be appropriate to restate the central principles of the law of conspiracy.

### 'Criminal Conspiracy'

940. Criminal conspiracy is punishable under section 120B of IPC. The said provision reads as follows:

*"120B. Punishment of criminal conspiracy*

*(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.*

*(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both."*

941. This implies that two different punishments are provided for criminal conspiracy, depending on the gravity of the offence which is subject matter of the conspiracy. If the said offence is punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, then, in absence of an express provision for punishment of such a conspiracy, the conspirator is to be punished in the same manner as if he had abetted such offence. If the said offence is not so punishable, the act of entering into the conspiracy will attract punishment that may extend to imprisonment for six months or fine or both.

942. Criminal conspiracy is defined in section 120A of IPC. The said provision reads as under:

*“When two or more persons agree to do, or cause to be done,-*

*(1) an illegal act, or*

*(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:*

*Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.*

*Explanation- It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.”*

943. From the aforesaid definition, it follows that when two or more persons agree to perform an ‘illegal’ act, it amounts to a ‘criminal conspiracy’ defined in section 120A and punishable under section 120B of IPC. The next question is what is an ‘illegal’ act. The expression ‘illegal’ is also defined in IPC. Section 43 of IPC provides that an act is illegal if it is an *“an offence or is prohibited by law, or furnishes ground for a civil action”*. In this judgment, the Court is concerned only with the illegal act of commission of offence of murder, which is alleged to be the subject matter of conspiracy. It thus follows that an agreement to kill, or to cause the execution of another, does qualify as a ‘criminal conspiracy’.

944. The broad principles of criminal conspiracy, its peculiar features, the standard of proof that needs to be attained and the nature of evidence may be accepted in proof of the offence need to be outlined. It is well



settled that a criminal conspiracy is hatched in secrecy. It is usually not possible for the prosecution to prove the existence of conspiracy with direct evidence. The prosecution can discharge its onus by relying on circumstances to establish the existence of criminal conspiracy. These circumstances have to be of a definite character which unerringly point towards guilt of the accused. The Court has to infer facts and circumstances from the evidence.

In the case of *State of Kerala v. P. Sugathan & Another* (2000) 8 SCC 203, Hon'ble Supreme Court observed as follows:

*"We are aware of the fact that direct independent evidence of criminal conspiracy is generally not available and its existence is a matter of inference. The inferences are normally deduced from acts of parties in pursuance of purpose in common between the conspirators. This Court in V.C. Shukla v. State (Delhi Admn.) (1980) 2 SCC 665 held that to prove criminal conspiracy there must be evidence direct or circumstantial to show that there was an agreement between two or more persons to commit an offence. There must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances giving rise to a conclusive or irresistible inference of an agreement between the two or more persons to commit an offence. As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. The circumstances in a case, when taken together on their face value, should indicate the meeting of the minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means."*

In the case of *Central Bureau of Investigation, Hyderabad v. K. Narayana Rao* (2012) 9 SCC 512, it was noted by Hon'ble Supreme Court thus:

*"The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy."*

The above two decisions were followed by Hon'ble High Court of Delhi in the case of Rajiv & Ors. v. State CrI. Appeal no. 192/2017 decided on 8<sup>th</sup> October, 2018. In that case, the Hon'ble High Court of Delhi observed as follows:

*"In considering the question of criminal conspiracy, it is not always possible to give affirmative evidence about the date of formation of conspiracy, about the persons who took part in the formation of conspiracy, about the object which the conspirators set before themselves as the object of conspiracy and the manner in which the object of conspiracy was to be carried out. All this is necessarily a matter of inference. It is not necessary that there should be an express proof of the agreement, as from the acts and conduct of the parties, the agreement can be inferred.*

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*On a bare perusal of Section 120A of the IPC, it is manifestly clear that for imputing a person as a conspirator there has to be existence of an agreement between two or more persons either to do an illegal act or to do a legal act through illegal means. It is a well settled proposition of law that agreement of conspiracy can be proved either by direct evidence or by circumstantial evidence or by both and despite that an offence of conspiracy cannot be deemed to have been established on mere suspicion, surmises or inferences which are not supported by cogent or acceptable evidence."*

945. Apart from the above too, there are a plethora of decisions to throw light on the subject, but to avoid prolixity, reference shall be made to two decisions that eminently cull out and recapitulate the rules of proving criminal conspiracy from a catena of judgments passed over a period of time.

In the case of *State v. Nalini* (1999) 5 SCC 253, the Hon'ble Supreme Court abridged and set out the key aspects of the offence of conspiracy as under:

*"Some of the broad principles governing the law of conspiracy may be summarized though, as the name implies, a summary cannot be exhaustive of the principles.*

*1. Under Section 120A IPC offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is legal act by illegal means overt act is necessary. Offence of criminal conspiracy is exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused had the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever, horrendous it may be, that offence be committed.*

*2. Acts subsequent to the achieving of object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.*

*3. Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually,*

*both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.*

*4. Conspirators may, for example, be enrolled in a chain A enrolling B, B enrolling C, and so on; and all will be members of a single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrolls. There may be a kind of umbrella-spoke enrollment, where a single person at the centre doing the enrolling and all the other members being unknown to each other, though they know that there are to be other members. These are theories and in practice it may be difficult to tell whether the conspiracy in a particular case falls into which category. It may, however, even overlap. But then there has to be present mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse role to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.*

*5. When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.*

*6. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.*

*7. A charge of conspiracy may prejudice the accused because it is forced them into a joint trial and the Court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of object of conspiracy but also of the agreement. In the charge of conspiracy Court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be*

*avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed by Judge Learned Hand that "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders".*

*8. As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement, which is the gravamen of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts, and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy.*

*9. It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done, or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incident to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.*

*10. A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime."*

Similar observations were made by Hon'ble Supreme Court in the cases of *Ajay Agarwal v. Union of India* (1993) 3 SCC 609 and *Esher Singh v. State of Andhra Pradesh* (2004) 11 SCC 585.

In the case of *Rakesh Kumar & Ors. v. State* 2009 (163) DLT 658 the Hon'ble High Court of Delhi summarized the law of criminal conspiracy in the following words:

*"After survey of the case law on the point, following legal principles pertaining to the law of conspiracy can be conveniently culled out:*

*A. When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy [See the decision of Supreme Court in *State v. Nalini* (1999) 5 SCC 253].*

*B. The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participants in the main object of the conspiracy. It is not necessary that all conspirators should agree to the*

*common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or overshooting by some of the conspirators. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy. But then there has to be present mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse role to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role [see the decisions of Supreme Court Yash Pal Mittal v. State of Punjab, (1977) 4 SCC 540 and State v. Nalini, (supra)].*

*C. It is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement, which is the graham of the crime of conspiracy.*

*D. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts, and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy. Since a conspiracy is generally hatched in secrecy, it would quite often happen that there is no evidence of any*

*express agreement between the conspirators to do or cause to be done the illegal act. For an offence under Section 120B, the prosecution need not necessarily prove that the perpetrators expressly agreed to do or cause to be done the illegal act; the agreement may be proved by necessary implication. The offence can be only proved largely from the inference drawn from acts or illegal omission committed by the conspirators in pursuance of a common design. The prosecution will also more often rely upon circumstantial evidence. It is not necessary to prove actual meeting of conspirators. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design is sufficient. Surrounding circumstances and antecedent and subsequent conduct of accused persons constitute relevant material to prove charge of conspiracy [see the decisions of Supreme Court Shivnarayan Laxminarayan Joshi v. State of Maharashtra, MANU/SC/0241/1979 : (1980) 2 SCC 465 : AIR 1980 SC 439; Mohammad Usman Mohammad Hussain Maniyar v. State of Maharashtra, MANU/SC/0180/1981 : (1981) 2 SCC 443 : AIR 1981 SC 1062; and Kehar Singh v. State, MANU/SC/0241/1988 : (1988) 3 SCC 609 : AIR 1988 SC 1883]."*

### **Analysis of Evidence for the Offence of Criminal Conspiracy**

946. Accused persons Hitender Singh @ Chhotu, Parveen Koli, Bhasham @ Chintoo, Desh Raj @ Desu, Deepak @ Chowda, Kishanpal @ Fauzi, Parmod Singh @ Pammy, Rishi Pal @ Pappu, Ashok Jain and Gopal Krishan Aggarwal are alleged to have entered into a criminal conspiracy to commit murder of Vijay Yadav. It is further alleged that accused persons Gopal Krishan Aggarwal, Rishi Pal @ Pappu and Ashok Jain hired the services of accused Hitender, Parveen Koli, Desraj @ Desu, Deepak @ Chowda, Parmod Singh @ Pammy and Kishanpal @ Fauzi. Accused Hitender, Parveen Koli, Desraj @ Desu, Deepak @



Chowda and Kishanpal @ Fauzi are alleged to have, alongwith accused Bhisham @ Chintoo, eventually committed murder of Vijay Yadav on 29<sup>th</sup> September, 2007 at about 07.30 pm at Gali Arya Samaj, near Shiv Mandir, Bazaar Sita Ram by firing upon him. Accused Parmod Singh @ Pammy is accused of remaining seated in a car for facilitating the safe escape of the co-offenders after culmination of the task.

947. The motives of the accused persons presented by the police have been disparate. That however does not rule out invoking of provision of conspiracy since persons may decide and agree to commit a common task for their own personal reasons and peculiar ends, but the acts agreed to be caused to be performed may still be illegal. As has been consistently held in a catena of judgments, there must be unity of object. This common purpose was the killing of Vijay Yadav. Thus, the applicability of section 120-B cannot be precluded only by reason of there being contrasting reasons for which the accused persons may have agreed to the commission of the crime.

948. To prove the allegations of conspiracy, a number of witnesses have been examined by the prosecution. Since the conspiracy is alleged to have been hatched at different places and for different motives, the evidence appearing against the accused persons is segregated and then regrouped. Scrutiny of the evidence is undertaken hereinafter.

Allegations of conspiracy against accused persons Bhisham @ Chintoo, Parveen Koli, Desraj @ Desu, Deepak @ Chowda, Hitender Singh @ Chhotu and Kishanpal @ Fauzi

949. Accused persons Bhisham @ Chintoo, Parveen Koli, Desraj @ Desu, Deepak @ Chowda, Hitender Singh @ Chhotu and Kishanpal @ Fauzi are alleged to have conspired to the murder of Vijay Yadav.
950. As previously held in this judgment, the prosecution has succeeded in proving beyond doubt that the six accused persons namely Bhisham @ Chintoo, Parveen Koli, Desraj @ Desu, Deepak @ Chowda, Hitender Singh @ Chhotu and Kishanpal @ Fauzi in fact committed the murder of Vijay Yadav.
951. The first question before this Court is whether the said accused persons having been convicted of the main offence, can be additionally convicted for conspiring to commit the offence.
952. To answer the above question, this Court takes note that conspiracy is an independent offence. It is separate from the main offence. When persons agree to commit the offence, without having done anything more, they have already committed the offence of criminal conspiracy, inviting punishment under Section 120B of IPC.
953. In the case of Rakesh Kumar & Ors. v. State, 2009 (163) DLT 658, the Hon'ble High Court of Delhi noted:

*"When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose,*

*a crime is committed by each and every one who joins in the agreement. There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed."*

Thus, the offence of criminal conspiracy is complete merely when two or more persons agree to commit an offence (how this fact is to be proved is a different matter altogether). However, when the conspirators commit the offence they had agreed to do, they additionally invite punishment for the said offence, in this case under section 302 of IPC.

In the case of *Firozuddin Basheeruddin v. State of Kerala* (2001) 7 SCC 596 the Hon'ble Supreme Court observed as follows:

*"To put it differently, the law punishes conduct that threatens to produce the harm, as well as conduct that has actually produced it. Contrary to the usual rule that an attempt to commit a crime merges with the completed offence, conspirators may be tried and punished for both the conspiracy and the completed crime. The rationale of conspiracy is that the required objective manifestation of disposition to criminality is provided by the act of agreement."*

It is thus concluded that if proved that the accused persons had conspired to commit a crime, they are to be additionally convicted for the offence of conspiracy notwithstanding the fact that they are held guilty and convicted for the offence they eventually committed.

954. The next question before this Court is whether the prosecution has proved that a conspiracy between the perpetrators of the crime had preceded the crime.

955. The evidence on record, which has already been discussed in detail, has proved that on 29<sup>th</sup> September 2007, accused persons Bhasham @ Chintoo, Parveen Koli, Desraj @ Desu, Deepak @ Chowda, Hitender Singh @ Chhotu and Kishanpal @ Fauzi had surrounded Vijay Yadav. From among these, accused persons Hitender Singh @ Chhotu and Kishanpal @ Fauzi were carrying pistols. Accused Hitender Singh @ Chhotu and Kishanpal @ Fauzi fired a minimum of five rounds at Vijay Yadav with their pistols, causing the demise of Vijay Yadav. A conspiracy would comprise of words spoken or otherwise communicated to each other by the accused persons. There is no witness produced by the prosecution who claims to have heard such words or who can depose to the existence of such a conspiracy. However, that does not imply that the allegations of existence of the conspiracy must be held to be disproved.
956. The existence of a conspiracy is seldom attested by direct witnesses since an offender is always conscious and watchful that his words are not heard in public. He hatches the conspiracy in secrecy. In absence of direct evidence, how the hatching of a conspiracy is to be proved, has been demonstrated by a number of precedents.
957. In the case of Mohammad Usman Mohammad Hussain Maniyar v. State of Maharashtra (1981) 2 SCC 443, the Hon'ble Supreme Court held as follows:

*“The contention of learned counsel is that there is no evidence of agreement of the appellants to do an illegal act.*

*It is true that there is no evidence of any express agreement between the appellants to do or cause to be done the illegal act. For an offence under section 120B, the prosecution need not necessarily prove that the perpetrators expressly agreed to do or cause to be done the illegal act; the agreement may be proved by necessary implication.”*

The aforesaid observation, which finds support in scores of decisions of the Hon’ble Supreme Court, implies that for proving criminal conspiracy, the prosecution is not dependent on direct evidence. The prosecution can prove the existence of the conspiracy by implication and inferences can be drawn from circumstances.

In yet another leading decision on this point, reported as Noor Mohammad Mohd. Yusuf Momin v. State of Maharashtra (1970) 1 SCC 696, the Hon’ble Supreme Court observed as follows:

*“A conspiracy from its very nature is generally hatched in secret. It is, therefore, extremely rare that direct evidence in proof of conspiracy can be forthcoming from wholly disinterested quarters or from utter strangers. But, like other offences, criminal conspiracy can be proved by circumstantial evidence. Indeed, in most cases proof of conspiracy is largely inferential though the inference must be founded on solid facts. Surrounding circumstances and antecedent and subsequent conduct, among other factors, constitute relevant material. In fact, because of the difficulties in having direct evidence of criminal conspiracy, once reasonable ground is shown for believing that two or more persons have conspired to commit an offence then anything done by any one of them in reference to their common intention after the same is entertained becomes, according to the law of evidence, relevant for proving both conspiracy and the offences committed pursuant thereto.”*

From the aforesaid judgment, it follows that the performance of acts towards commission of the offence is relevant not only in proving the commission of the offence, but also for proving the conspiracy preceding it. Antecedent and subsequent conduct of the accused persons is pertinent.

In the case of *Firozuddin Basheeruddin v. State of Kerala* (2001) 7 SCC 596 the Hon'ble Supreme Court elucidated this point in the following words:

*"Conspiracy is a clandestine activity. Persons generally do not form illegal covenants openly. In the interests of security, a person may carry out his part of a conspiracy without even being informed of the identity of his co-conspirators. Since an agreement of this kind can rarely be shown by direct proof, it must be inferred from circumstantial evidence of co-operation between the accused. What people do is, of course, evidence of what lies in their minds."*

It may be inferred from the above passage that the fact that the offence has been committed in cooperation of the accused persons is itself a dominant circumstance to suggest that there may have been a conspiracy among those who committed the act. There can be exceptions to this too. There may be a case where an offence is committed by two or more persons but without having a prior concert and concurrence with each other, or where they form a common object at the spur of the moment without having any accord. In those cases, the respective accused person may perform his part without anticipating aid from the other offenders.

958. Where an offence has been committed and it is alleged that the persons who committed the offence had initially conspired to its commission, the test to find out the truth has been laid down lucidly by Hon'ble Supreme Court in the case of Kehar Singh and others vs. State (Delhi Administration) AIR 1988 SC 1883. In that case, it was held thus:

*"Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the Court must enquire whether the two persons are independently pursuing the same and or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the latter does. It is, however, essential that the offence of conspiracy required some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of the two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient. Conspiracy can be proved by circumstances and other materials."*

From the above decision, it can be deduced that if an offence has been committed by the acts of more than one person, and both were pursuing the unlawful object independently, then no case of conspiracy is made out, but if it is shown that they came together in its pursuit, then the Court must conclude the existence of a conspiracy. This Court has to therefore assess whether the offence in question had been committed by independent pursuit of the abovenamed accused persons, or whether they had joined hands and were working in

unison. In other words, it needs to be ascertained whether the offence was a result of cooperation between the accused persons.

959. The evidence needs to be briefly revisited to draw inferences from the circumstances proved by the prosecution. PW1 Anju Gupta and PW2 Dheeraj Sharma have proved that on 29<sup>th</sup> September, 2007, at about 7:30 p.m., near Shiv Mandir at Gali Arya Samaj, accused persons Deepak @ Chowda, Bhisham @ Chintoo, Kishanpal @ Fauzi, Hitender @ Chhotu, Parveen Koli and Desraj @ Desu had surrounded Vijay Yadav @ Vijji. The witnesses have further proved that two of those persons namely Kishanpal @ Fauzi and Hitender @ Chhotu were carrying pistols, and they fired at Vijay Yadav @ Vijji. As a result, Vijay Yadav @ Vijji fell on the ground and lay in a pool of blood, whereupon the assailants fled towards Hamdard Chowk.

960. The inferences that can be formed from the testimony of prosecution witnesses PW1 Anju Gupta and PW2 Dheeraj Sharma are that on 29<sup>th</sup> September, 2007, accused persons Deepak @ Chowda, Bhisham @ Chintoo, Kishanpal @ Fauzi, Hitender @ Chhotu, Parveen Koli and Desraj @ Desu had already planned the steps they will take to slay Vijay Yadav. There would have otherwise been no means to know how each one of them must manoeuvre so as to assassinate Vijay Yadav. It would not dawn upon them from nowhere that they should surround Vijay Yadav. The act of encircling the victim shows that the accused



persons were aiding each other by preventing the escape of Vijay Yadav. The cooperation is all too apparent.

961. All the abovenamed accused persons being present at the spot at the same time could not have been a coincidence. Two of those persons namely Kishanpal @ Fauzi and Hitender @ Chhotu were carrying pistols. The fact that they came there armed with a deadly weapon shows that the act was pre-planned. There must have been a prior plot to execute Vijay Yadav.

962. After Vijay Yadav collapsed, all the offenders ran in the same direction, which also shows that they were acting concertedly. The testimony of the abovenamed witnesses, read conjointly with other evidence led by the prosecution, unequivocally establishes that the entire act was culminated in a few minutes after Vijay Yadav left his office. There was no argument or quarrel that led to the onslaught. This too demonstrates that the steps to be taken had been planned in advance and the accused persons had already contrived the whole act.

963. The assailants were present there under a single-minded pursuit to execute Vijay Yadav. There was prior meeting of minds of the accused persons. All the abovenamed accused persons actively participated in crime.

964. PW4 Parmod Kumar and PW10 Niranjan Singh were present in the office of Vijay Yadav on the date of the incident. They have proved, as

noted earlier, that one of the accused persons namely Parveen Koli had come to the office of Vijay Yadav and had asked Vijay Yadav to go with him to the spot of occurrence. Vijay Yadav went with him to the spot. At the spot, accused Parveen Koli joined other accused persons and together they exterminated Vijay Yadav. This makes it apparent that under a prior design, Parveen Koli was sent to the office of Vijay Yadav to call him to the spot where other accused persons waited to execute the task. This shows that all the accused persons were acting in collaboration with each other. The irresistible inference is that there was a prior agreement followed by assignment of roles and preparation to commit the act.

965. Another public witness PW19 Amar Singh Yadav has deposed to the effect that on the day of the incident, the witness had seen Vijay Yadav at about 7.15 pm in the company of accused Parveen Koli and Desraj @ Desu, which too is suggestive of an alliance between the accused persons.

966. All the abovenamed witnesses have proved conduct of the accused persons attendant to commission of offence of murder and this Court has used the proof of such conduct to draw inferences about existence of a criminal conspiracy. Such a course has not only been approved by superior Courts, it has been prescribed to be adopted.

In the case of Noor Mohammad Mohd. Yusuf Momin v. State of Maharashtra (1970) 1 SCC 696, the Hon'ble Supreme Court held:

*"A conspiracy from its very nature is generally hatched in secret. It is, therefore, extremely rare that direct evidence in proof of conspiracy can be forthcoming from wholly disinterested quarters or from utter strangers. But, like other offences, criminal conspiracy can be proved by circumstantial evidence."*

In the case of Rakesh Kumar & Ors. v. State 2009 (163) DLT 658 the Hon'ble High Court of Delhi noted:

*"The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts, and conduct of the conspirators." The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy. Since a conspiracy is generally hatched in secrecy, it would quite often happen that there is no evidence of any express agreement between the conspirators to do or cause to be done the illegal act. For an offence under Section 120B, the prosecution need not necessarily prove that the perpetrators expressly agreed to do or cause to be done the illegal act; the agreement may be proved by necessary implication. The offence can be only proved largely from the inference drawn from acts or illegal omission committed by the conspirators in pursuance of a common design. The prosecution will also more often rely upon circumstantial evidence. It is not necessary to prove actual meeting of conspirators. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design is sufficient. Surrounding circumstances and antecedent and subsequent conduct of accused persons constitute relevant material to prove charge of conspiracy."*

In the case of State of Kerala v. P. Sugathan & Another (2000) 8 SCC 203, Hon'ble Supreme Court observed as follows:

*"We are aware of the fact that direct independent evidence of criminal conspiracy is generally not available and its existence*

*is a matter of inference. The inferences are normally deduced from acts of parties in pursuance of purpose in common between the conspirators."*

In the case of Central Bureau of Investigation, Hyderabad v. K. Narayana Rao (2012) 9 SCC 512, it was noted by Hon'ble Supreme Court thus:

*"The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused."*

In the case of Rajiv & Ors. v. State CrI. Appeal no. 192/2017 decided on 8<sup>th</sup> October, 2018, the Hon'ble High Court of Delhi observed as follows:

*"In considering the question of criminal conspiracy, it is not always possible to give affirmative evidence about the date of formation of conspiracy, about the persons who took part in the formation of conspiracy, about the object which the conspirators set before themselves as the object of conspiracy and the manner in which the object of conspiracy was to be carried out. All this is necessarily a matter of inference. It is not necessary that there should be an express proof of the agreement, as from the acts and conduct of the parties, the agreement can be inferred."*

In the case of State v. Nalini (1999) 5 SCC 253, the Hon'ble Supreme Court held as follows:

*"Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually,*

*both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused."*

967. PW4 Shri Parmod Kumar, PW10 Shri Niranjan and PW14 Abhay Singh Yadav have proved that there had been a quarrel between accused Bhisham @ Chintoo and Parmod Kumar. This is supported by police record comprising of DD No. 24 dated 24<sup>th</sup> August, 2007 Ex. PW4/D-2, DD No. 14 dated 10<sup>th</sup> September, 2007 Police Post Turkman Gate Ex.PW52/C and kalandra under Sections 107/151 of Code of Criminal Procedure Ex. PW52/B made at the instance of PW4 Parmod Kumar. The witnesses have proved that the association of Parmod Kumar with Vijay Yadav and the grant of support by Vijay Yadav to Parmod Kumar had annoyed Bhisham @ Chintoo. Thus, there is motive with accused Bhisham @ Chintoo for conniving to kill Vijay Yadav.

968. The proof of motive is, however, not sine qua non to proving the conspiracy since the conduct of the accused persons is tell-tale of their intent. As aptly remarked by Hon'ble Supreme Court in the case of Firozuddin Basheeruddin v. State of Kerala (2001) 7 SCC 596, "*What people do is, of course, evidence of what lies in their minds.*"

969. According to the chargesheet, during investigation, the Guest Register of Hotel Kwalitiy, Pahar Ganj, New Delhi was seized, in which accused Hitender @ Chhotu and his gang members had lodged their arrival entry on 20<sup>th</sup> September, 2007 and 28<sup>th</sup> September, 2007. The said hotel

had been pointed out by accused Bhisham @ Chintoo after his arrest and accused Bhisham @ Chintoo stated that this was the place of conspiracy. It has already been held that discovery of this fact made part of the confessional statement of accused Bhisham @ Chintoo admissible in evidence. However, as noted earlier, the confessional statement of accused Bhisham @ Chintoo does not become admissible in its entirety by reason of the discovery so as to infer that the conspiracy had taken place in the hotel. The knowledge of accused Bhisham @ Chintoo about stay of accused Hitender @ Chhotu in Hotel Kwality can be on account of information given to accused Bhisham @ Chintoo by accused Hitender @ Chhotu himself or someone else disclosing this fact to accused Bhisham @ Chintoo. The knowledge of Bhisham @ Chintoo of the said hotel being the place of stay of accused Hitender @ Chhotu does not necessarily mean that a conspiracy was hatched in the hotel.

It has been repeatedly cautioned by Hon'ble Supreme Court that existence of conspiracy can be deduced from circumstantial evidence only when the existence of the conspiracy is the only possible inference and there can be no other explanation. In this case, accused Bhisham @ Chintoo may have known of the said hotel being the place of stay of accused Hitender @ Chhotu by a variety of reasons and from a number of sources. It would be fallacious to hold that because accused Bhisham

@ Chintoo was able to point out the said hotel, the hotel must surely be the place of conspiracy. In the case of Central Bureau of Investigation, Hyderabad v. K. Narayana Rao (2012) 9 SCC 512, it was noted by Hon'ble Supreme Court thus:

*"Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence."*

Besides, the entries in the guest register do not bear the names of the other accused persons. The entries can, at best, prove the stay of Hitender @ Chhotu in the hotel and they do not prove either the stay or presence of the other offenders, or the hatching of a conspiracy.

The prosecution has failed to prove that the accused had signed on the register.

The prosecution has also failed to satisfactorily prove the entries in the register. PW36 Satnam Singh had been examined by the police to prove the entries. The said witness stated in his cross-examination that he is not the author of the entries. He even revealed that the entries were not made in his presence. This implies that the witness had not seen the persons who actually stayed in the hotel at that time.

The entries in guest register do not advance the case of the prosecution

of hatching of the conspiracy. The existence of conspiracy is, however, decisively demonstrated by the circumstances proved by other witnesses outlined above.

970. The conduct of accused persons attendant to the incident of homicide (immediately preceding it, during the incident and those following the incident), proved by PW1 Anju Gupta, PW2 Dheeraj Sharma, PW4 Parmod Kumar, PW10 Niranjana Singh and PW19 Amar Singh Yadav unerringly establishes that accused persons Deepak @ Chowda, Bhisham @ Chintoo, Kishanpal @ Fauzi, Hitender @ Chhotu, Parveen Koli and Desraj @ Desu had collaborated to commit the murder of Vijay Yadav. There was a prior agreement to commit the crime. The agreement finally led to the accomplishment of the task. It is trite that when the offence is indeed committed by the participation of all accused persons, the existence of the conspiracy can be readily inferred from the circumstances.

In the case of State v. Nalini (1999) 5 SCC 253, the Hon'ble Supreme Court held as follows:

*"To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy."*

The same observation finds mention in the case of Rakesh Kumar & Ors. v. State 2009 (163) DLT 658 decided by Hon'ble High Court of Delhi.



971. It thus stands proved beyond doubt that accused persons Deepak @ Chowda, Bhisham @ Chintoo, Kishanpal @ Fauzi, Hitender @ Chhotu, Parveen Koli and Desraj @ Desu had entered into a criminal conspiracy to commit the murder of Vijay Yadav, and it is this plot that drove them to assassinate Vijay Yadav on 29<sup>th</sup> September, 2007 at Gali Arya Samaj, Bazaar Sita Ram, Delhi.

**Allegations of conspiracy against accused Parmod Singh @ Pammy**

972. Accused Parmod Singh @ Pammy is alleged to have entered into a criminal conspiracy along with other accused persons to commit murder of Vijay Yadav. It is however not the case of the prosecution that accused Parmod Singh @ Pammy had participated in the attack on Vijay Yadav. He is not an assailant. The role ascribed by the prosecution to this accused is that he remained seated in a vehicle for facilitating escape of the offenders.

973. Charge for the offence of murder was not framed against accused Parmod Singh @ Pammy. The charge framed against this accused is only for the offence of entering into a criminal conspiracy of which the object was the murder of Vijay Yadav.

974. According to the chargesheet, this accused was present near spot of occurrence and had participated in the act by aiding the escape of the co-accused persons, though he was not an assailant. The accused has

however not been charged with the offence of murder because there was no evidence to support his participation in the crime, to show that he was present near the spot, to establish that he had accompanied the assailants or to demonstrate that he had aided their escape in a car. It is for this reason that the case of the prosecution, as against this accused, is treated as distinct from its case against others.

975. While against accused Deepak @ Chowda, Bhisham @ Chintoo, Kishanpal @ Fauzi, Hitender @ Chhotu, Parveen Koli and Desraj @ Desu, inferences were drawn about they having entered into a criminal conspiracy from their conduct associated with the commission of offence as proved by witnesses, the same cannot be done in respect of accused Parmod Singh @ Pammy because there is no evidence to throw light on his participation in the crime. Since there is no evidence that this accused had participated in the crime or was at the spot at the time of the incident, it cannot be presupposed that he was aiding others in doing so. Therefore there can be no presumption of he being one of the conspirators. In other words, there is no evidence on record to depict the manner in which accused Parmod Singh @ Pammy contributed to the commission of the crime, and as there is no physical manifestation on the part of this accused, the drawing of inference of an antecedent agreement with he being one of the collaborators is impermissible.

In the case of Noor Mohammad Mohd. Yusuf Momin v. State of

Maharashtra (1970) 1 SCC 696, the Hon'ble Supreme Court stressed this point in the following words:

*"Indeed, in most cases proof of conspiracy is largely inferential though the inference must be founded on solid facts."*

This implies that the facts giving rise to the inference must first be proved. In this case, the manner of participation of the accused in the offence has not been proved, and therefore inference of the conspiracy cannot be drawn.

In the case of Rakesh Kumar & Ors. v. State 2009 (163) DLT 658 the Hon'ble High Court of Delhi noted:

*"The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts, and conduct of the conspirators."*

Applying the aforesaid proposition, there should be "declarations, acts, and conduct" or other circumstances from which facts can be deduced, but these are amiss in this case.

976. It is undeniable that a conspiracy is usually hatched in secrecy and it is difficult for the prosecution to adduce direct evidence of the same. The prosecution can rely on 'evidence of acts of various parties' to infer that they were done in reference to their common intention. But there should be 'evidence of acts of' the accused on record so as to draw the inferences. It is not permissible for the Court to take note of conduct of other accused persons but draw conclusions regarding mental disposition of accused Parmod @ Pammy.

In the case of State v. Nalini (1999) 5 SCC 253, the Hon'ble Supreme Court flagged this issue thus:

*"There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed by Judge Learned Hand that "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders." (Emphasis supplied)*

Thus, the instant accused cannot be saddled with punishment for the acts of others.

977. It is also not permissible to use the confessional statements of other accused persons to form conclusions of involvement of this accused. The disclosure statements are inadmissible and are hit by sections 25 and 26 of the Evidence Act, 1872. Statements mentioned in the disclosure statements of other accused persons are subject to the same limitations regarding accused Parmod @ Pammy as they are with regard to their makers. In other words, just as they are treated with disbelief when they disclose involvement of the maker thereof, they are to be disbelieved when they state about involvement of another person. A person who makes a confessional statement in the custody of police may name anybody as an accomplice. The said utterance will not constitute valid evidence against the person named in it.

In the case of Lohit Kaushal vs State of Haryana CrI. Appeal no. 837 of 2008 decided on 4<sup>th</sup> August, 2009, Hon'ble Supreme Court noted:

*"It will be seen that a statement made to the police can only be used to the limited extent provided under under 27 of the Evidence Act and that too only against the person making the statement."*

978. The prosecution can prove existence of a conspiracy by direct or circumstantial evidence. But in this case, there is also no circumstantial evidence to connect accused Parmod @ Pammy to the crime.
979. The prosecution has predicated its case against accused Parmod Singh @ Pammy on the pointing out of two places by the said accused during investigation of the case. Allegedly, the two places were pointed out by the accused during his interrogation after his arrest. The first is the place of parking of car by the accused where the accused stayed and waited for the assailants to return on commission of the offence. The second is Hotel Kwality, Paharganj, Delhi where according to the prosecution the conspiracy had been hatched. Both of these are stated to be recorded in pointing out memos.
980. The arrest of accused Parmod Singh @ Pammy has been proved by PW57 HC Naresh Kumar, PW58 HC Rajiv Kumar and PW68 Inspector K.G. Tyagi. PW57 HC Naresh Kumar proved that the accused had been arrested initially in a separate case and later by the investigating officer of this case. PW58 HC Rajiv Kumar and PW68 Inspector K.G. Tyagi have proved arrest of the accused in this case.
981. PW62 Retd. ASI Rajbir Singh, PW67 SI Mukesh and PW68 Inspector K.G. Tyagi have testified to the pointing out of both the above places by

accused Parmod Singh @ Pammy. Their deposition may be considered.

982. PW62 ASI (Retired) Rajbir Singh stated in his examination-in-chief that on 1<sup>st</sup> February, 2008, the witness along with SI Mukesh and Inspector K.G. Tyagi left their office along with accused Hitender @ Chhotu and accused Parmod Singh @ Pammy in a private vehicle and reached Kwality Hotel at about 07:30 am at the instance of the accused Parmod Singh @ Pammy. Accused Parmod Singh @ Pammy (who the witness correctly identified) led them to Room No.66, 4<sup>th</sup> floor of the Hotel and disclosed that it was the same room where he along with accused Hitender @ Chhotu and their associates conspired to commit murder of Vijay Yadav @ Vijji. Inspector K.G. Tyagi prepared pointing out memo Ex.PW62/Z1. Then they went to Himmatgarh Chowk, Hauz Qazi. Accused Parmod Singh @ Pammy led them to Faseel Road, Near Temple, Himmatgarh Chowk and pointed towards a place. According to the witness, the accused disclosed that on 29<sup>th</sup> September, 2007, he was sitting in a Santro Car bearing No.UA-07T-5313, while leaving on the ignition of the car, while his other associates including accused Hitender @ Chhotu went to commit murder of Vijay Yadav @ Vijji in Gali Arya Samaj and that he remained present there till they returned. The accused further disclosed that when they came back, they sat in the car and he drove away the car. The witness stated that a public person by the name of Manish Kumar also joined the investigation at that time.

Inspector K.G. Tyagi prepared pointing out memo Ex.PW31/A.

983. PW67 SI Mukesh stated in his examination-in-chief that on 1<sup>st</sup> February, 2008, the witness along with ASI Rajbir and Inspector K.G. Tyagi left their office along with accused Hitender @ Chhotu and accused Parmod Singh @ Pammy in a private vehicle and reached Kwaliti Hotel at about 7.30am at the instance of accused Parmod Singh @ Pammy (who the witness identified). Accused Parmod Singh @ Pammy led them to Room no. 66, 4<sup>th</sup> floor of the hotel and disclosed that it was the same room where he along with accused Hitender @ Chhotu and their associates conspired to commit murder of Vijay Yadav @ Viji. Inspector K.G. Tyagi prepared pointing out memo Ex. PW62/Z-1. Thereafter they reached Himmatgarh Chowk, Hauz Qazi. Accused Parmod Singh @ Pammy led them to Faseel Road near Temple Himmatgarh Chowk and pointed towards a place disclosing that on 29<sup>th</sup> September, 2007 he was sitting in Santro Car bearing no. UA-07T-5313 while keeping the ignition of the car on, whereas his other associates including accused Hitender @ Chhotu went to commit murder of Vijay Yadav @ Viji in Gali Arya Samaj. The accused stated that he remained present there till they returned and when they returned they sat in the car and he drove away the car. The witness stated that a public person Manish Kumar also joined the investigation at that time. Inspector K.G. Tyagi prepared pointing out memo Ex.

PW31/A.

984. PW68 Inspector K.G. Tyagi stated in his examination-in-chief that on 31<sup>st</sup> January, 2008 the witness along with his team left his office at about 10:20 am in a government vehicle vide DD no. 7 Mark 68/D for the office of Special Team, Crime Branch, Prashant Vihar. There HC Naresh Kumar met him and handed over to him copy of FIR No. 40/2008 along with disclosure statement of accused Parmod Singh @ Pammy in the said case and accused Parmod Singh @ Pammy. Copy of FIR No. 40/2008 was Mark 68/E and the copy of the disclosure statement of accused Parmod Singh @ Pammy was Ex. PW57/A. The witness arrested accused Parmod Singh @ Pammy in the present case vide arrest memo Ex. PW57/C. The witness interrogated accused Parmod Singh @ Pammy and recorded disclosure statement of the accused vide Ex. PW57/B. Later, on 1<sup>st</sup> February, 2008, at about 07:30 am, the witness along with his team and accused Hitender @ Chhotu and Parmod Singh @ Pammy left their office for the purpose of investigation vide DD no. 2. Firstly they went to Hotel Kwaliti where accused Parmod Singh @ Pammy identified Room no. 66 on the fourth floor while disclosing that he along with his co-accused persons hatched the conspiracy to kill Vijay Yadav @ Vijji in the said room. At the instance of the accused, the witness prepared pointing out memo Ex. PW62/Z1. Accused Parmod Singh @ Pammy further led them to



Faasil Road, Himmatgarh Chowk, near Humdard Building. The witness asked passers-by to join the proceedings and one Manish Kumar agreed to join investigation. Accused Parmod Singh @ Pammy pointed towards a place near a temple on the road and disclosed that this was the same place where he had parked the Santro car bearing no. UA-07T-5313 while keeping its ignition on, on the date of incident. The accused further stated that his co-accused persons left for committing murder of Vijay Yadav @ Viji and when they came back after execution, all of them rode away in the said car. The witness prepared pointing out memo Ex. PW31/A.

985. All the three abovenamed witnesses have spoken with one voice. There is no discrepancy in their versions and their oral testimony is supported by documents. They have harmoniously described the events, the time of the pointing out and the persons present at that time. Their testimony on this point could not be negated during cross-examination. There is also no other evidence on record to show that the accused had not pointed out to the aforesaid places during investigation. From the testimony of PW62 Retd. ASI Rajbir Singh, PW67 SI Mukesh and PW68 Inspector K.G. Tyagi, which is consistent and corroborative of each other, and the pointing out memos that had been prepared contemporaneously at that time, it stands proved that the accused had indeed pointed out the said places.

986. The pointing out of the place of parking of the vehicle by the accused has even been attested to by an independent witness PW31 Shri Manish Kumar Gola who deposed in Court of the said event taking place. PW31 Shri Manish Kumar Gola deposed that on 1<sup>st</sup> February, 2008, between 03:00 pm and 04:00 pm, he was going from Delhi Gate to Arya Samaj Gali via Fasil Road and he noticed that some persons had gathered at Fasil Road near Himmat Garh Crossing. The witness saw that a person was in police custody and had been handcuffed. The witness identified accused Parmod Singh @ Pammy as that person. The witness then stated that police officers asked several persons to join the proceedings and the witness agreed to join the proceedings. Accused Parmod Singh @ Pammy pointed towards the place where a vehicle was parked. The police prepared a pointing out memo in this respect Ex. PW31/A.

987. From the testimony of the abovenamed persons, it stands proved that the accused had pointed out towards Kwality Hotel and a place of parking of vehicles at Faasil Road, Himmatgarh Chowk, near Hamdard Building.

988. The question before this Court is whether the pointing out of the said places by the accused shows him to be party to the conspiracy and whether this fact can be relied upon by the Court as per sections 25, 26

and 27 of the Evidence Act, 1872.

989. Initially, the accused person stated to the police officers that he can point out the abovementioned places. Later, he took the police officers along and did so. The accused had admitted his involvement in the statement made to the police. The said statement amounts to a confession. As seen earlier in this judgment, a confession made to a police officer while in custody is not admissible in evidence and it cannot be proved against its maker (Sections 25 and 26 of Evidence Act, 1872). Hence, if a person confesses to a police officer of he being a party to a conspiracy, about the conspiracy having been hatched at a certain place, about he having ferried his co-accused persons, about he having parked the vehicle at a certain location from where he could help in the escape of the assailants, such a confession is manifestly inadmissible. The exception to the proscription on use of confessional statements is provided in Section 27 of the Evidence Act which lays down that if a fact is discovered from information given by an accused who is in custody of the police officer, such information may be proved against the accused. The statement of accused Parmod Singh @ Pammy is saved by section 27 of the Evidence Act only if it leads to discovery of a fact.

990. The law visits confessional statements recorded by police with suspicion and disbelief. It is believed that such statements may have

been recorded by the police on its own or may have been extracted by force and by tutoring. There is therefore a general bar on the admissibility of such statements. The exception carved out by section 27 is for those statements that result in discovery of a fact. This is because the discovery proves the veracity of the statement.

The following is the oft-quoted passage from the case of Pulukuri Kottaya v. King-Emperor AIR 1947 PC 67:

*“The section seems to be based on the view that if a fact is actually discovered in consequence of information given, some guarantee is afforded thereby that the information was true, and accordingly can be safely allowed to be given in evidence, but clearly the extent of the information admissible must be depend on the exact nature of the fact discovered to which such information is required to relate”.*

In the case of State (NCT of Delhi) Vs. Navjot Sandhu 2005 Cri.L.J. 3950, the Hon’ble Supreme Court held as under:

*“The rationale behind this provision is that, if a fact is actually discovered in consequence of the information supplied, it affords some guarantee that the information is true and can therefore be safely allowed to be admitted in evidence as an incriminating factor against the accused.”*

I may attempt to paraphrase this principle in simpler terms. If the police is to compel a person to make a confession, that person may confess to his involvement in the crime. However, the police cannot dictate to the person a fact which is hitherto unknown. If such a fact is being discovered from the said statement, and the fact is such as would have been in the exclusive knowledge of the accused, then there can be a presumption that the said statement would have been indeed uttered

by the accused because it could not have been dictated by the police. Therefore such a statement has been permitted to be read in evidence. However, if a statement is uttered by an accused, and the police on its basis does not discover a fact connected to the crime, then the statement does not receive the authenticity and is therefore not saved by section 27 of the Evidence Act, 1872. This illustration may be buttressed with the aid of facts of the case of Sushil Arora vs State CrI. Appeal no. 1284/2015 decided by Hon'ble High Court of Delhi on 8 February, 2017. In that case, the accused made a confessional statement regarding a gun. Nothing was recovered pursuant to the statement. It was contended by Id counsel for accused that "it is only if a fact is actually discovered in consequence of the information given by the accused, some guarantee of truth of that part is afforded, and, only such part of the information which was the clear, immediate and proximate cause of the discovery would be admissible in evidence in view of Section 27 of the Evidence Act."

After discussing the law on the subject, the Hon'ble High Court of Delhi accepted the argument and held that since the statement had not led to recovery, it was not admissible in evidence. The Hon'ble High Court of Delhi relied on two decisions, and it is apt to refer to them.

One was the case of Jaffar Hussain Dastagir v. State of Maharashtra (1969) 2 SCC 872, in which the Hon'ble Supreme Court noted:

*“The discovery, if any, merely related to the whereabouts of Accused 3. There was no discovery of any fact deposed to by the appellant within the meaning of Section 27.”*

The aforesaid observation too attests to the principle of law that if the fact disclosed by the accused does not get authenticated by drawing a connection with the crime, then the statement of the accused is inadmissible.

The other judgment relied upon was the case of Chandrakant Jha vs State CrI. Appeal no. 655 of 2013 decided on 27 January, 2016. In that case, the Hon'ble High Court of Delhi relied upon an illustration in a commentary on the law of evidence, in the following words:

*“Sarkar on Law of Evidence, 16th Edition, 2007 at page 228, has explained the distinction between Sections 8 and 27 of the Evidence Act by way of an illustration in the following manner; where an accused takes the investigating officer and the panchas to a dealer from where he had purchased the weapon, this evidence would be inadmissible under section 27, but this evidence when corroborated by the dealer, the conduct of the accused in taking the police to the dealer is admissible under Section 8 of the Evidence Act.”*

If such a validation is not insisted upon and the presence of any fact in the confessional statement is treated to be admissible, the police will be free to add any fact in the confessional statement to wriggle out of the bar of Sections 25 and 26 of the Evidence Act, 1872. Therefore, it is the duty of the Court to see whether the fact so disclosed was independently found to be true on verification. This postulate is what has come to be known as the “theory of confirmation by subsequent facts”.

In the case of Selvi and Others vs. State of Karnataka (2010) 7 SCC 263 it

was held as under:

*"We have already referred to the language of Section 161 CrPC which protects the accused as well as suspects and witnesses who are examined during the course of investigation in a criminal case. It would also be useful to refer to Sections 162, 163 and 164 CrPC which lay down procedural safeguards in respect of statements made by persons during the course of investigation. However, Section 27 of the Evidence Act incorporates the "theory of confirmation by subsequent facts" i.e. statements made in custody are admissible to the extent that they can be proved by the subsequent discovery of facts."*

In the case of Navaneethakrishnan vs State CrI. Appeal no. 1134 of 2013

decided on 16 April, 2018, the Hon'ble Supreme Court stressed on this

requirement. The facts of that case and what the Court held on those

facts, is evident from the following passage:

*"Section 27 of the Evidence Act is applicable only if the confessional statement leads to the discovery of some new fact. The relevance is limited as relates distinctly to the fact thereby discovered. In the case at hand, the Yashika Camera which was recovered at the instance of Accused No. 3 was not identified by the father as well as the mother of the deceased. In fact, the prosecution is unable to prove that the said camera actually belongs to the deceased-John Bosco. Though the mobile phone is recovered from A-1, but there is no evidence on record establishing the fact that the cell phone belongs to the deceased-John Bosco or to PW8 as the same was not purchased in their name."*

The Court thus held that a mere disclosure of facts is not enough to

make the confessional statement admissible in evidence even if the

disclosure is, according to the confessional statement of accused and

according to the police, related to the offence. It must have been

independently proven before the Court that indeed the fact so disclosed was true and that it “related distinctly” to the offence.

In other words, Section 27 of the said Act permits the use of confessional statements only if their veracity is confirmed by subsequent discovery of facts. The discovery of facts attests to the truth of the confessional statement.

991. In the present case, the accused disclosed and pointed out the place where the vehicle had been parked and where the accused persons arrived after committed the offence. However, the police could not have this fact verified from any source. There is no evidence to connect this to the crime that was committed. There is no witness who affirmed that indeed a car of the registration number disclosed by the accused persons was found parked at the said place at the time of and on the date of the incident. No recovery has taken place pursuant to the confessional statement of the accused. There is nothing to lend authenticity to the statement. It cannot be stated with certainty that the assertion of the car being parked at the said place is indeed correct. In absence of the said authenticity, the confessional statement is not saved from the embargo of sections 25 and 26 of the Evidence Act, 1872. There is no discovery of a fact which is confirmed by evidence. Since the veracity of the statement is not known, the possibility of the police having recorded any such place in the confessional statement on its



own cannot be ruled out. The confessional statement and the pointing out of the place of parking of the vehicle is therefore inadmissible in evidence.

992. There is another reason for which the pointing out of the place of parking of the vehicle cannot be taken aid of by the prosecution. This reason is that the place of parking of the vehicle cannot be said to be in the exclusive knowledge of accused Parmod Singh @ Pammy. Even as per the case of the prosecution, there were other persons who were in the know of this fact. These are the other accused persons. According to the prosecution, the other accused persons had come to the spot in the vehicle and they had also returned to the said place after committing the murder. They were obviously aware of the fact that on the date of the incident, Parmod Singh @ Pammy had parked the vehicle and had waited for them in the vehicle at the said spot. Since this fact was known to others too, its mention in the confessional statement or it being pointed out by accused Parmod Singh @ Pammy does not make it attributable to accused Parmod Singh @ Pammy and the confession does not become admissible in evidence. In holding so, support is drawn from some judgments of superior Courts.

In the case of Sanjay @ Kaka v. State Appeal (Crl.) no. 664 of 2000 decided by Hon'ble Supreme Court on 7 February, 2001, it was noted

as follows:

*“Section 27 is a proviso to Sections 25 and 26. Such statements are generally termed as disclosure statements leading to the discovery of facts which are presumably in the exclusive knowledge of the maker.”*

In the case of Makhan Singh v. State of Punjab 1988 SCR Supl. (1) 613,

the Hon’ble Supreme Court held as follows:

*“Since the exclusive knowledge to the appellant cannot be attributed, the evidence under Section 27 also cannot be said to be a circumstances against the appellant.”*

In the case of State of Rajasthan v. Mangal Singh, Crl. Leave to Appeal

94 of 2017 decided by Hon’ble Rajasthan High Court on 1.3.2017, it was

held as follows:

*“In view of the fact that the information becomes admissible only to the extent of the part leading to the discovery of a fact, the subsequent confirmation gives a guarantee about the sanctity of such information. The facts discovered should be such which are in exclusive knowledge of the accused and none else.”*

993. Also, even if it is assumed that the pointing out of the place of parking of vehicle by accused Parmod Singh @ Pammy is admissible in evidence, and that it is saved by section 27 of the Evidence Act, 1872, then too it would not assist the prosecution in proving the allegations of conspiracy against the said accused. This is because the pointing out of the place by the accused and the confessional statement would be admissible only to the extent to which it relates distinctly to the discovery. In keeping with the principle laid down in the case of

Mohmed Inayatullah v. State of Maharashtra, AIR 1976 SC 483, and which has been elaborated upon earlier in this judgment, the only admissible part shall be that the accused can point out a place. The part of the statement of the accused that on the date of homicide he had parked a certain vehicle at the said place which was used in the crime or that the accused persons had come to the said place after commission of the offence, or that the accused persons had escaped in the vehicle cannot be admitted in evidence. The mere pointing out of the place, by itself, is meaningless and does not advance the case of the prosecution.

994. There is yet another reason for which the pointing out of the place of parking of vehicle is of no effect in proving the allegations. It is for this reason that the pointing out of Hotel Kwality is also rendered devoid of value to the prosecution.

995. This reason is that before the place of parking of the vehicle and the hotel where conspiracy was allegedly hatched could be pointed out by accused Parmod Singh @ Pammy, the said places had already been disclosed by other accused persons. Accused Parmod Singh @ Pammy is proved to have been arrested on 31<sup>st</sup> January, 2008. Disclosure statement of the witness was recorded on the same day. On 1<sup>st</sup> February, 2008, the accused allegedly pointed out to Hotel Kwality and also the place of parking of the vehicle at Faasil Road, Himmatgarh

Chowk, near Hamdard Building. However, much before this, other accused persons had disclosed those facts. The place of parking of the vehicle and the hotel of conspiracy finds mention in the disclosure statements of accused Bhisham @ Chintoo (Ex. PW62/B) and Vinod Kumar @ Gola (Ex. PW62/C) which had been recorded on 25<sup>th</sup> November, 2007. Accused Hitender @ Chhotu too had disclosed the said places in his disclosure statement (Ex. PW62/W) recorded on 28<sup>th</sup> January, 2008. Since the facts had come to the knowledge of the police much before they were disclosed by accused Parmod Singh @ Pammy, the pointing out to those places by accused Parmod Singh @ Pammy did not result in the disclosure of a new fact. It is a settled principle of law that if a confessional statement does not disclose a fact unknown to the police, it cannot escape the bar of admissibility under sections 25 and 26 of the Evidence Act.

996. In the case of State vs Mohd. Naushad Death Sentence Ref. no. 2/2010 dated 22<sup>nd</sup> November, 2012, the Hon'ble High Court of Delhi held as follows:

*"In any event, the prior knowledge of the police ruled out the fact that the police discovered "Dulhan Dupatta" only on 18.6.1996 at the pointing out of the accused. Having regard to these, the pointing out of PW61" s premises by the accused is neither incriminating nor can it be even said to have been proved."*

This principle has already been discussed earlier and has been laid down in the cases of Rahul @ Bhuri (supra), Aladdin (supra), Thimma

(supra), Bharat Fakira Dhivar (supra) and Navjot Sandhu (supra), among others.

997. It is thus held that the pointing out to Hotel Kquality as the place of the conspiracy by accused Parmod Singh @ Pammy and the pointing out to the supposed place of parking of the vehicle by the said accused is inadmissible in evidence, and therefore of no help to the prosecution. It is also held that even if deemed admissible, the limited extent to which it can be read in evidence does not show accused Parmod Singh @ Pammy to be part of the conspiracy. All that can be construed is that accused Parmod Singh @ Pammy was in a position to tell about a place of parking of vehicles and to identify a hotel. Even if the entries in the guest register are deemed to have been proven in accordance with law and it is assumed that they have also been proven to be authentic, they would only show the stay of Hitender @ Chhotu in the Hotel and not the hatching of the conspiracy. Even the name of accused Parmod Singh @ Pammy does not figure among the persons who stayed at the hotel, as per the guest register. Nor has any staff of the hotel identified accused Parmod Singh @ Pammy to be a visitor at the hotel during the period of lodging of accused Hitender @ Chhotu. Knowledge of accused Parmod Singh @ Pammy about stay of Hitender @ Chhotu in the hotel can be attributed to a variety of reasons and it is not an inexorable conclusion that accused Parmod Singh @ Pammy was a part

of the conspiracy. It is thus held that the pointing out of places by accused Parmod Singh @ Pammy is of no avail to the prosecution in proving complicity of accused Parmod Singh @ Pammy in the conspiracy.

998. Accused Parmod Singh @ Pammy is alleged to have waited near the spot of occurrence in a car at the time of the incident. The said car has not been recovered at the instance of accused Parmod Singh @ Pammy. The accused or his kin are not the registered owner of the car.
999. No weapon of assault or article belonging to the deceased, or any other incriminating article has been recovered at the instance of accused Parmod Singh @ Pammy which could have connected him to the crime.
1000. Accused Parmod Singh @ Pammy was not subjected to Test Identification Parade and rightly so since no witness had seen him at or near the spot. It is not the case of the prosecution that this accused had participated in the crime.
1001. The confessional statement of the accused person is inadmissible in evidence. It does not lead to a discovery of fact for it to be able to overcome the embargo of sections 25 and 26 of the Evidence Act, 1872 as per section 27 of the said Act. The prosecution cannot take the aid of the confessional statement to prove the allegations of conspiracy.
1002. There is absolutely no evidence to show that accused Parmod Singh @ Pammy conspired with others to commit the murder of Vijay Yadav.

There is also no circumstance from which such an inference could be drawn.

1003. The inevitable conclusion is that accused Parmod Singh @ Pammy is entitled to be acquitted of the charge of conspiring to the murder of Vijay Yadav.

**Allegations of conspiracy against accused Rishi Pal @ Pappu**

1004. Accused Rishi Pal @ Pappu is alleged to have conspired with others for commission of murder of Vijay Yadav.
1005. It is not the case of the prosecution that accused Rishi Pal @ Pappu had participated in the offensive. Therefore, the presumption of his involvement cannot be drawn from the acts of the said accused during the incident. In the case of accused persons Deepak @ Chowda, Bhasham @ Chintoo, Kishanpal @ Fauzi, Hitender @ Chhotu, Parveen Koli and Desraj @ Desu, inferences were drawn about they having conspired to kill Vijay Yadav from their conduct associated with the commission of offence. But since there is no participation in the crime by accused Rishi Pal @ Pappu, a similar inference cannot be drawn.
1006. The prosecution has however attempted to prove the existence of conspiracy from other evidence which is remarkably distinct from the evidence led in respect of the assailants. Before examining the evidence led by the prosecution, it would be appropriate to set out the role

ascribed to this accused by the prosecution. The evidence shall then be tested to assess whether it has been able to prove the said allegations.

**Motive of Accused Rishi Pal @ Pappu**

1007. According to the prosecution, accused Rishi Pal @ Pappu had more than one reason to eliminate Vijay Yadav. The prosecution has set forth the background owing to which accused Rishi Pal @ Pappu is likely to have conspired to the murder of Vijay Yadav. The motive and the backdrop presented by the prosecution is laid out as follows:

- a) Accused Rishi Pal @ Pappu had a business partnership with Abhay Singh (brother of deceased), but there were disputes between them over property in the Walled City area;
- b) Accused Rishi Pal @ Pappu had made accused Ashok Jain believe that Abhay Singh and Vijay Yadav were behind the CBI anti-corruption case against Ashok Jain, though the name of accused Rishi Pal @ Pappu had been put on the front as the informant;
- c) Accused Rishi Pal @ Pappu was annoyed with Abhay Singh and Vijay Yadav for lodging of a kidnapping case against Amarpal Sharma who was cousin of Rishi Pal @ Pappu, in which it had been alleged that Amarpal Sharma had kidnapped son of Abhay Singh who had later returned home on his own;
- d) Accused Rishi Pal @ Pappu had asked PW15 Shri Manish Kumar to



talk to accused Hitender @ Chhotu and to persuade him to state before Abhay Singh Yadav that Vijay Yadav had given Hitender @ Chhotu some advance money to kill this accused. Accused Rishi Pal @ Pappu offered money to accused Hitender @ Chhotu for this. Accused Hitender @ Chhotu and his associates went to the shop of accused Rishi Pal @ Pappu, and finally left from there with parting words that they will be present at Hauz Qazi Chowk;

- e) At Kosi, someone had fired at Abhay Singh, brother of the deceased on 21<sup>st</sup> December, 2002 and the name of Rishi Pal @ Pappu had surfaced in the said incident.

**Acts ascribed to Accused Rishi Pal @ Pappu**

1008. Accused Rishi Pal @ Pappu is alleged to be one of the conspirators. The proof of conspiracy requires either direct evidence or some circumstances from which an inference could be drawn of the accused having conspired to the crime. The prosecution has presented such circumstances and has led evidence to prove those circumstances. According to the prosecution, certain deeds were performed by accused Rishi Pal @ Pappu which show his involvement in the conspiracy. Those acts are charted out as follows:

- a) As per supplementary chargesheet filed on 18<sup>th</sup> July, 2008, on the day of the incident, accused Rishipal @ Pappu was present near the

spot and had received information of the murder from witness Abhay Singh Yadav (brother of deceased). After receiving information about the incident from accused Gopal Krishan Aggarwal, Abhay Yadav had immediately called accused Rishipal @ Pappu to enquire about the incident. Accused Rishipal @ Pappu in turn called Kishan Kumar @ Kukku. Kishan Kumar @ Kukku informed accused Ashok Jain using a different phone number. Soon after the incident, accused Rishipal @ Pappu arrived at the spot on his motorcycle, and offered his motorcycle for carrying Vijay Singh @ Vijji to the hospital.

b) Accused Bhisham @ Chintoo made a phone call to accused Rishi Pal @ Pappu from Sonapat after the incident and had asked this accused to arrange for remaining money.

1009. Having set out the case of the prosecution, it shall now be assessed whether the evidence led by the prosecution measures up:

- whether it proves the aforesaid alleged motive of accused Rishi Pal @ Pappu;
- whether it proves the role and deeds ascribed to accused Rishi Pal @ Pappu;
- and whether the aforesaid and other evidence shows accused Rishi Pal @ Pappu to have conspired with others in the commission of the crime.

This is attempted hereafter.

**Proof of Motive of Accused Rishi Pal @ Pappu**

1010. The motives of accused Rishi Pal @ Pappu to conspire to commit murder of Vijay Yadav have been stated by the prosecution to be diverse and those have been delineated above. Each one may be considered alongside the corresponding evidence adduced by the prosecution.
1011. The first motive attributed to accused Rishi Pal @ Pappu is that he had a business dispute arising out of his partnership with Abhay Singh, brother of Vijay Yadav. The said dispute is stated to be regarding property in the Walled City area.
1012. The testimony presented by the prosecution in support of this allegation is that of Abhay Singh Yadav. He is also the most obvious witness who could prove the dispute because the dispute was allegedly with him. The said witness is brother of the deceased. He had been examined by the prosecution as PW14. His testimony, to the extent to which it is relevant to this motive, is perused.
1013. PW14 Abhay Singh Yadav stated in his examination-in-chief that Vijay Yadav was the younger brother of the witness. He further stated that accused Rishi Pal @ Pappu was his business partner and that his relations with accused Rishi Pal @ Pappu were not cordial. The witness however did not elaborate on the cause of business discord. He did not spell out the nature and extent of differences between him and accused

Rishi Pal @ Pappu. It is not known from the examination-in-chief of the witness whether it was in the nature of a misunderstanding, friction, hostility or had blown into animosity.

1014. PW14 Abhay Singh Yadav was cross-examined by Id defence counsel. The witness admitted in his cross-examination that accused Rishi Pal @ Pappu was his partner from 1993 till the year 2005. This statement made by the witness shows that the two persons had a long-standing partnership.
1015. PW14 Abhay Singh Yadav further stated in his cross-examination that the witness and accused Rishi Pal @ Pappu were engaged in the business of constructing buildings and that they had invested substantially in this business. This fact shows an element of trust in each other and a desire to continue the business relationship.
1016. PW14 Abhay Singh Yadav stated that there was no litigation between him and accused Rishi Pal @ Pappu. This statement shows the absence of a business dispute. Had there been such a dispute, either of the parties may have instituted a suit or at least issued a notice to the adversary. But that has not been done. On the contrary, PW14 Abhay Singh Yadav has gone further to state in his cross-examination that he has family relations with accused Rishi Pal @ Pappu and there was no dispute between them. This completely rebuts the claim of the prosecution that there was a business dispute between Rishi Pal @

Pappu and Abhay Singh Yadav. The relevant portion in the cross-examination of the witness is as follows:

*"We have family relations with each other. There was no dispute/litigation between me and my family on one hand and Rishi Pal and his family on the other hand".*

The above exposes falsehood in the hypothesis of the prosecution of the crime having been motivated by a business dispute.

1017. PW14 Abhay Singh Yadav has tried to sheepishly suggest in his cross-examination that there was a dispute not between the witness and accused Rishi Pal, but between accused Rishi Pal and Vijay Yadav. However, this appears to be making out a different case from that of the prosecution. The prosecution has alleged the dispute to be between Abhay Singh Yadav and Rishi Pal, and not between Rishi Pal and Vijay Yadav. Vijay Yadav was not even working with Abhay Singh Yadav and Rishi Pal @ Pappu, as per the own case of Abhay Singh Yadav. There is also nothing to support the theory obliquely put forth for the first time in the testimony of the witness. The witness has not explained how he learnt of this fact or the source of his information. PW14 Abhay Singh Yadav is not competent to depose about the said dispute. Even the reason for the said dispute has not been furnished. The allegation is vague and unsubstantiated.

1018. PW14 Abhay Singh Yadav has stated in his testimony that there is no written document to show dissolution of the partnership and that there is also no document to show that the partnership account has been

settled. He further stated that a settlement was done only in respect of one property and the remaining properties are lying as they are. This shows that assets of the firm are continuing to be in joint ownership and the partnership firm, not having been dissolved, must be deemed to be continuing. This circumstance, together with the fact that the witness has unequivocally stated that he is having family relations with accused Rishi Pal @ Pappu and that there is no litigation between them, belies the version of the prosecution about there being a business dispute between Abhay Singh Yadav and Rishi Pal @ Pappu.

1019. PW14 Abhay Singh Yadav has further stated during his cross-examination that after receiving information of the incident, and on being unable to reach out to others, the witness sought help from accused Rishi Pal @ Pappu. The witness requested Rishi Pal to reach the spot immediately. The supplementary charge-sheet filed in the Court also shows that Rishi Pal reached the spot and even offered his motorcycle for taking Vijay Yadav to the hospital. All of this shows that the relations between Abhay Singh Yadav and Rishi Pal were cordial. Abhay Singh Yadav rather relied on Rishi Pal and Rishi Pal also responded by providing assistance.

1020. The version of the witness in Court is itself fluctuant. Initially, the witness stated that he had informed the police about his relations with Rishi Pal being not cordial. Later the witness retracted and stated that

he did not state this fact to the police during investigation.

1021. PW14 Abhay Singh Yadav further stated in his cross-examination that he knew the son of accused Rishi Pal and had attended the marriage function of son of Rishi Pal, which underscores the cordial relationship these persons shared.
1022. The fact that the witness has emphatically stated that he had no dispute with accused Rishi Pal and that they were having family relations removes all doubts and negates the assertion of the prosecution that there were differences between accused Rishi Pal and PW14 Abhay Singh Yadav.
1023. Moreover, even if it is assumed that there was a business dispute, it cannot be inferred from this fact alone that one of the partners will go about killing the kin of the other partner. It has not been proved that there was any litigation between Abhay Singh Yadav and accused Rishi Pal or that Rishi Pal @ Pappu would have benefited by elimination of Vijay Yadav. On the contrary, Abhay Singh Yadav has categorically denied that there was any dispute or any litigation between them. That being so, the stand of the prosecution that accused Rishi Pal was involved in conspiring to kill the brother of Abhay Singh Yadav owing to a business dispute cannot be accepted.
1024. According to the prosecution, the dispute between accused Rishi Pal @ Pappu and PW14 Abhay Singh Yadav was in respect of a property in

Walled City area. The property which is subject matter of the dispute has not been described. How the dispute arose has not been narrated. The event by which the existence of such a dispute could be inferred (For eg. if both were claiming ownership over the property or were claiming right to use the property) has not been disclosed. The aforesaid motive stands not proved.

1025. There is another witness examined by the prosecution to prove the souring of relations between Abhay Singh Yadav and accused Rishi Pal. This is PW32 Sunil Sharma. According to the prosecution, this witness had informed the police during investigation that there was hostility between Abhay Singh Yadav and accused Rishi Pal. However, when examined in Court, the witness denied having tendered any such statement to the police. The witness did not support the case of the prosecution. He stated that he was not aware of whether the relations of these two persons were cordial or not.

1026. The second incident to show motive of accused Rishi Pal @ Pappu for the conspiracy, according to the prosecution, is that accused Rishi Pal @ Pappu had represented to accused Ashok Jain that Abhay Singh and Vijay Yadav were behind the CBI anti-corruption case against Ashok Jain, though the name of accused Rishi Pal @ Pappu had been put on the front as the informant.



1027. To prove this, the prosecution needs to show firstly that there had been a CBI anti-corruption case against Ashok Jain, secondly that Rishi Pal @ Pappu had told accused Ashok Jain that Abhay Singh and Vijay Yadav had got the case booked.
1028. The prosecution has tried to prove this through the testimony of PW14 Abhay Singh Yadav. The said witness stated in his examination-in-chief that a CBI raid had taken place at the premises of accused Ashok Jain for bribery on the complaint of accused Rishi Pal. The witness further deposed that though the complaint had been preferred by accused Rishi Pal @ Pappu against accused Ashok Jain, Ashok Jain had not only participated in the marriage function of son of Rishi Pal but name of Ashok Jain also figured in the marriage card. This shows that the witness has not at all indicated that Rishi Pal @ Pappu had told accused Ashok Jain that Abhay Singh and Vijay Yadav had got the case booked. Also, the witness may not even have been competent to depose about this unless that had been expressed in his presence. Also, if accused Rishi Pal was the complainant or informant in the CBI case, it is unlikely that he would have been able to misrepresent to an educated person that the complainant or informant was someone else. The fact remains that the prosecution has not proved through any evidence that accused Rishi Pal @ Pappu had represented to accused Ashok Jain that Abhay Singh and Vijay Yadav were behind the CBI anti-corruption

case.

1029. There is another witness examined by the prosecution to prove that Rishi Pal @ Pappu had told accused Ashok Jain that Abhay Singh and Vijay Yadav had got the CBI case booked. This is PW32 Sunil Sharma. According to the prosecution, this witness had informed the police during investigation that Rishi Pal @ Pappu had convinced accused Ashok Jain that the CBI case had been booked at the behest of Abhay Singh and Vijay Yadav. However, when examined in Court, the witness denied having tendered any such statement to the police. The witness did not support the case of the prosecution. He stated that he was not aware of whether Rishi Pal @ Pappu had informed accused Ashok Jain that Abhay Singh and Vijay Yadav were behind the CBI case being registered. The said deposition of PW32 Sunil Sharma has not been disproved by the prosecution. The testimony tendered in Court is what qualifies as 'evidence' and the Court has to form inferences on its basis, notwithstanding a contrary version having been recorded by the police during investigation.
1030. The said circumstance of Rishi Pal @ Pappu having informed accused Ashok Jain that Abhay Singh and Vijay Yadav were the driving force behind the CBI case, stands not proved.
1031. The third motive attributed to accused Rishi Pal @ Pappu for the conspiracy, according to the prosecution, is that accused Rishi Pal @

Pappu was annoyed with Abhay Singh and Vijay Yadav for lodging of a kidnapping case against Amarpal Sharma who was cousin of Rishi Pal @ Pappu, in which it had been alleged that Amarpal Sharma had kidnapped son of Abhay Singh who had later returned home on his own.

1032. To prove this, the prosecution need not establish that son of Abhay Singh was missing, or that Amarpal Sharma had a role to play in that or even that Amarpal Sharma was innocent. The prosecution is not required to establish the annoyance of Rishi Pal since this is impossible to prove and concerns the state of mind of the accused. An inference of this can be drawn if it is shown that there had been a case registered against Amarpal Sharma at the instance of Abhay Singh and Vijay Yadav and that Amarpal Sharma is related to accused Rishi Pal.

1033. The record shows that there is not even a whisper of the aforesaid fact in the testimony of PW14 Abhay Singh while he sets forth the motive of the accused persons to commit the crime. The witness has nowhere stated that any kidnapping case had been registered against Amarpal Sharma at the instance of Abhay Singh and Vijay Yadav. Since the cause itself has not been proved to exist, the prosecution has failed to prove the annoyance of accused Rishi Pal too. The prosecution could have additionally proved the registration of such a case by proving the FIR and other police proceedings initiated by Abhay Singh and Vijay

Yadav. That has also not been done.

1034. Strangely PW14 Abhay Singh has stated in his examination-in-chief that the cause of dispute between Ajay Singh, other younger brother of the witness, on one hand and Rishipal and his cousin Amar Pal on the other, was that the name of Rishi Pal had surfaced in a case of firing at Abhay Singh Yadav. This is wholly at variance with the case presented by the prosecution. According to the prosecution there was a kidnapping case booked by Abhay Singh and Vijay Yadav. Also, the dispute described by PW14 Abhay Singh was between Ajay Singh and others. PW14 Abhay Singh is not competent to prove it. Nor is it the case of the prosecution that this was the motive of accused Rishi Pal in entering into the conspiracy.
1035. The third motive attributed to accused Rishi Pal @ Pappu about there being a case registered against Amarpal Sharma at the instance of Abhay Singh and Vijay Yadav, and this having miffed accused Rishi Pal, stands not proved.
1036. The fourth incident to show motive of accused Rishi Pal @ Pappu for the conspiracy, according to the prosecution, is that accused Rishi Pal @ Pappu had asked PW15 Shri Manish Kumar to talk to accused Hitender @ Chhotu and to persuade Hitender @ Chhotu to state before Abhay Singh Yadav that Vijay Yadav had given Hitender @ Chhotu some advance money to kill this accused. Accused Rishi Pal @ Pappu offered

money to accused Hitender @ Chhotu for this. Accused Hitender @ Chhotu and his associates went to the shop of accused Rishi Pal @ Pappu, and finally left from there with parting words that they will be present at Hauz Qazi Chowk.

1037. The prosecution has tried to prove this through the testimony of PW15 Shri Manish Kumar. PW14 Abhay Singh Yadav could not have proved this because it relates to a conversation between accused Rishi Pal and PW15 Shri Manish Kumar. As per the prosecution, accused Rishi Pal @ Pappu had asked PW15 Shri Manish Kumar to talk to accused Hitender @ Chhotu and to persuade Hitender @ Chhotu to state before Abhay Singh Yadav that Vijay Yadav had given Hitender @ Chhotu some advance money to kill this accused. Accused Rishi Pal @ Pappu even offered money to accused Hitender @ Chhotu for this. Accused Hitender @ Chhotu and his associates went to the shop of accused Rishi Pal @ Pappu, and finally left from there with parting words that they will be present at Hauz Qazi Chowk. The latter part too happened, according to the prosecution, in the presence of PW15 Shri Manish Kumar. Therefore PW15 Shri Manish Kumar was examined by prosecution. However, PW15 Shri Manish Kumar did not support the case of the prosecution. He plainly denied that any of the above had happened. He deposed that he knew accused Rishi Pal @ Pappu as the goods manufactured in his company were supplied to the shop of Rishi

Pal @ Pappu at Chawri Bazaar but did not know anything else and was not privy to any of the abovementioned conversation. In his cross-examination by the prosecution, he stated that his statement had not been recorded by the police and that he did not know anyone by the name of Hitender. Nothing emerged from the cross-examination of this witness by the ld public prosecutor to show that indeed the events had occurred as projected by the prosecution or that the version of the witness is false. In the result, the version of the prosecution about accused Rishi Pal @ Pappu having asked Shri Manish Kumar to talk to accused Hitender @ Chhotu to persuade the latter to proclaim that he had been hired by Vijay Yadav to kill Rishi Pal, has remained not proved. The other event of accused Hitender @ Chhotu and his associates going to the shop of accused Rishi Pal @ Pappu, and finally leaving from there with parting words that they will be present at Hauz Qazi Chowk, has also remained not proved.

1038. There is another witness examined by the prosecution in its attempt to prove that Rishi Pal @ Pappu wanted to portray that Vijay Yadav was baying for his blood. This is PW20 Harjeet Singh. This witness has deposed that Vijay Yadav had informed the witness, a week before his death, that Rishi Pal @ Pappu had complained to Abhay Singh that Vijay Yadav wanted to kill Rishi Pal. The witness was confronted with his statement tendered to the police where the aforesaid assertion was

not mentioned. This implies that the aforesaid assertion was an improvement over the version given to the police during investigation. It is likely to be an afterthought on the part of the witness to somehow impute motive on to the accused. This is because a fact which did not occur to the witness when the matter was fresh in his mind, would not suddenly dawn upon the witness during his deposition many years after the incident. Another reason why the aforesaid assertion of the witness should not be acted upon is that the statement of the witness is barred by the hearsay rule. When the statement had been uttered by the witness, it had been objected to by Id defence counsel on this ground. What accused Rishi Pal told Abhay Singh cannot be deposed to by PW20 Harjeet Singh, who was not present at that place and did not hear the words being uttered. PW20 Harjeet Singh had only been informed about the conversation by Vijay Yadav and the information does not directly relate to cause of death so as to be an exception to the hearsay rule as per section 32 (first clause) of the Evidence Act, 1872. Therefore, the witness was not competent to depose about the conversation between Rishi Pal and Abhay Singh.

1039. PW14 Abhay Singh did say in his deposition that accused Rishi Pal told the witness that Vijay Yadav wanted to kill Rishi Pal. However, this assertion even if true would not show motive on the part of accused Rishi Pal. Even as per the case of the prosecution, accused Rishi Pal

actually knew this to be untrue and was only pretending that his life was in danger. That being so, there was no reason for Rishi Pal to be exasperated by his own false assertion of Vijay Yadav trying to harm the accused. Therefore the false pretense being put up by accused Rishi Pal cannot give motive to him to liquidate Vijay Yadav. The prosecution has failed to explain how the abovestated events (had they been proved) would have shown motive or have otherwise demonstrated that accused Rishi Pal had conspired to kill Vijay Yadav. Rishi Pal would not have benefitted by proving to Abhay Singh that Vijay Yadav wanted to kill Rishi Pal. Also, it is unlikely that a person (Hitender) who declined to help Rishi Pal in even making a misrepresentation to Abhay Singh (owing to an apparent trust deficit with Rishi Pal), would later include Rishi Pal in the conspiracy to murder Vijay Yadav.

1040. In light of the aforesaid, the prosecution has failed to prove that accused Rishi Pal had the motive to conspire to kill Vijay Yadav, as Rishi Pal himself was trying to portray to Abhay Singh that Vijay Yadav was trying to eliminate Rishi Pal. The prosecution has failed to prove that in this endeavour, accused Rishi Pal tried to obtain the assistance of accused Hitender. The prosecution also failed to prove that Hitender @ Chhotu and his associates went to the shop of accused Rishi Pal @ Pappu, and finally left from there with parting words that



they will be present at Hauz Qazi Chowk.

1041. The fifth incident to show motive of accused Rishi Pal @ Pappu for the conspiracy, according to the prosecution, is that during the *parikrama* of Shani Dev at Kosi, someone had fired at Abhay Singh, brother of the deceased on 21<sup>st</sup> December, 2002 and the name of Rishi Pal @ Pappu had surfaced as assailant in the said incident.
1042. At the outset, it needs to be noted that the aforesaid fact, even if proved, would not show that accused Rishi Pal @ Pappu had motive to conspire to eliminate Vijay Yadav. This is because the fact that name of Rishi Pal @ Pappu figuring in the probe into attempt to murder of Abhay Singh is not a reason for accused Rishi Pal @ Pappu to feel peeved and to plan the attack on Vijay Yadav. It is not the case of the prosecution that accused Rishi Pal @ Pappu had been planning to eliminate both brothers Vijay Yadav and Abhay Singh and that the earlier attempt on the life of Abhay Singh was only a step in the series of actions in this direction. The prosecution is not proving in this case that Rishi Pal @ Pappu was earlier involved in the firing incident at Kosi. The case of the prosecution is only that name of Rishi Pal @ Pappu had emerged as a suspect in that case. The mere fact that Rishi Pal @ Pappu was a suspect in that case would not induce him to conspire to murder Vijay Yadav.

1043. Assuming that the cropping up of name of Rishi Pal @ Pappu as assailant in the earlier incident, if proved, would give motive to the accused, it may be examined whether the prosecution has succeeded in proving this fact.
1044. To prove this, the prosecution needs to show firstly that there had been an attack on Abhay Singh at Kosi in which someone had fired at him. Secondly, the prosecution has to prove that the name of accused Rishi Pal @ Pappu had surfaced as a suspect in that case.
1045. There are three witnesses who have attempted to prove that Abhay Singh had been fired at in Kosi. The first is PW14 Abhay Singh Yadav himself. The said witness stated in his examination-in-chief that that during the *parikrama* of Shani Dev at Kosi, someone had fired at the witness on 21<sup>st</sup> December, 2002. The second witness to throw light on this is PW7 Dr. D.B. Chauhan. He is the doctor who had treated Abhay Singh Yadav. The witness stated, in his examination-in-chief, that on 21<sup>st</sup> December, 2002, Abhay Singh Yadav had come to the hospital with history of sustaining fire arm injury in the scalp. The witness had stitched the wound and prescribed medicines. The witness identified the treatment record as Ex. PW7/A. The third witness is PW50 Dr. Deepak Vats, Senior Medical Officer, Indraprastha Apollo Hospital, New Delhi. He proved the medical report of Abhay Singh Yadav. The witness deposed in his examination-in-chief that he had been deputed

by Dr. Rajinder Prasad, Senior Consultant (Neurosurgery) to depose, and that the witness had seen Dr. Rajinder Prasad writing and signing during the course of his employment. The witness stated that he was in a position to identify the handwriting and signatures of Dr. Rajinder Prasad. The witness stated that he had seen medical report of patient Abhay Yadav dated 24<sup>th</sup> December, 2002 on the judicial file which contains the handwriting and signatures of Dr. Rajinder Prasad. As per medical report, Abhay Yadav was admitted in the hospital on 22<sup>nd</sup> December, 2002. The witness identified the medical report as Ex. PW50/A. There is no reason for the doctors to render a false deposition. The medical documents on record inspire confidence. From the testimony of the abovesaid witnesses, it stands proved that on 21<sup>st</sup> December, 2002 Abhay Singh had received a firearm injury.

1046. The next fact to be proved by the prosecution is that the name of accused Rishi Pal @ Pappu had surfaced as a suspect in that case. PW14 Abhay Singh Yadav has stated in his examination-in-chief that the name of Rishi Pal had surfaced in the said incident. This is a queer statement. This is because the same witness has stated that he did not report the firing incident to the police on the asking of Rishi Pal. This gives rise to many questions. The first question is how the name of Rishi Pal @ Pappu surfaced as the assailant. The witness has not stated that he himself saw Rishi Pal @ Pappu firing at the former. If he did not

see Rishi Pal @ Pappu as the assailant, he must have been informed by someone that Rishi Pal @ Pappu was the assailant. The said person has not been examined. His name has not been disclosed. His source of knowledge is not known. Since police did not carry out investigation, such a claim being made by the witness that he learnt from his undisclosed sources about Rishi Pal @ Pappu being the assailant is doubtful and cannot pass judicial scrutiny. The witness has not convincingly explained why he did not report the matter to the police. If a person has suffered a savage or murderous attack and one suspects the involvement of his partner, he is bound to report the matter to the police so that the guilty is punished and also because the offender, if at large, is likely to be commit a similar act again. It is inexplicable that the victim would not report the incident to the police at the request of the assailant himself and after knowing the identity of the latter. All these statements do not add up, and story of the name of Rishi Pal @ Pappu figuring as an assailant (in the mind of an unknown person) and then the incident not being reported at the request of Rishi Pal @ Pappu himself seems concocted. Where the name of Rishi Pal @ Pappu surfaced as assailant and how, has not been explained at all. The statement appears to be vague and has loose-ends. Rishi Pal @ Pappu was himself travelling with Abhay Singh Yadav and he could not have perpetrated the attack without being spotted doing so by the victim

and other persons travelling along. From the cross-examination of the witness, it is apparent that the witness intended to state that the name of Rishi Pal @ Pappu had surfaced during police investigation. The witness however himself states ahead in his cross-examination that no FIR was lodged in the case and no police investigation had been carried out. He states that he does not know who conducted the investigation in which name of Rishi Pal @ Pappu surfaced. All of this is self-contradictory and unfathomable. Four years after the incident of firing, the witness had attended the marriage of son of accused Rishi Pal @ Pappu. If the witness knew that Rishi Pal @ Pappu had been trying to kill him, he would surely not have gone to attend the marriage function.

1047. There is another witness examined by the prosecution to prove that the name of Rishi Pal @ Pappu had surfaced as an assailant in the incident of firing. This is PW20 Harjeet Singh. This witness has deposed that Vijay Yadav had informed the witness, two or three years before his death, that Rishi Pal @ Pappu was involved in the said incident. In his cross-examination, the witness was confronted with his statement tendered to the police where the aforesaid assertion was not mentioned. This implies that the aforesaid assertion was an improvement over the narrative tendered to the police during investigation. Like a previous statement, this assertion may also be an

afterthought on the part of the witness to impute motive on to the accused. Another reason why the aforesaid assertion of the witness cannot be relied upon is that the statement of the witness is barred by the hearsay rule. The statement had been objected to by Id defence counsel on this ground. The information of name of Rishi Pal @ Pappu emerging as a suspect was given to PW20 Harjeet Singh by Vijay Yadav, and that too years before the death. PW20 Harjeet Singh did not have personal knowledge of this. The information does not directly relate to cause of death so as to be an exception to the hearsay rule as per section 32 (first clause) of the Evidence Act, 1872. Therefore, the witness was not competent to depose about the emergence of name of accused Rishi Pal @ Pappu.

1048. In light of the above, it can be concluded that the prosecution has failed to prove that the name of Rishi Pal @ Pappu had surfaced as assailant in the incident of firing at Abhay Singh and that this provided motive to accused Rishi Pal @ Pappu to conspire to the murder of Vijay Yadav.

1049. The prosecution has thus failed to demonstrate that accused Rishi Pal @ Pappu had any motive to conspire to the murder of Vijay Yadav.

**Proof of acts of Accused Rishi Pal @ Pappu pointing to Criminal Conspiracy**

1050. Accused Rishi Pal @ Pappu is alleged to have taken certain steps which according to the prosecution point to his involvement in the

conspiracy. These are as follows:

- a) On the day of the incident, accused Rishipal @ Pappu was present near the spot and had received information of the murder from witness Abhay Singh Yadav (brother of deceased). Abhay Yadav called accused Rishipal @ Pappu to enquire about the incident. Accused Rishipal @ Pappu in turn called Kishan Kumar @ Kukku. Kishan Kumar @ Kukku informed accused Ashok Jain using a different phone number. Soon after the incident, accused Rishipal @ Pappu arrived at the spot on his motorcycle, and offered his motorcycle for carrying Vijay Singh @ Viji to the hospital.
- b) Accused Bhisham @ Chintoo made a phone call to accused Rishi Pal @ Pappu from Sonapat after the incident and had asked the latter to arrange for remaining money.

1051. The evidence led by the prosecution in support of the above may be examined, and the effect of proving the above facts, if at all, may be evaluated.

1052. Perusal of the record shows that there is no evidence led by the prosecution to show the precise location of accused Rishipal @ Pappu at the time of the incident. While PW14 Abhay Yadav has deposed that he had called accused Rishipal @ Pappu to inquire about the incident, the prosecution has failed to complete the chain by proving the call to Kishan Kumar @ Kukku allegedly made by accused Rishi Pal @ Pappu.

The contents of the conversation between Rishi Pal @ Pappu and Kishan Kumar @ Kukku have also not been proved by examining Kishan Kumar @ Kukku.

1053. Kishan Kumar @ Kukku is not alleged to be an offender. He is not cited as an assailant or as a conspirator. There is nothing ominous or malevolent in making a phone call to him. The conversation between accused Rishi Pal @ Pappu and Kishan Kumar @ Kukku has not been proved. It has not even been brought to fore in the allegations mentioned in the chargesheets, and it is well-nigh possible and the prosecution itself is unaware of it. Therefore even if the making of the phone call has been proved, it does not even remotely suggest that accused Rishi Pal @ Pappu was a conspirator. If such a conclusion is to be drawn, it would follow that Abhay Singh should also be held to be a conspirator because immediately after the incident he was in telephonic contact with accused Gopal Krishan Aggarwal and accused Rishi Pal @ Pappu. Simply making a phone call or receiving a call to regarding information of the death of a person does not imply that the said person had conspired to the offensive, even though the said person may have prior differences with the deceased or his brother. The steps taken by the accused Rishi Pal @ Pappu, proved by the prosecution, in the aftermath of the incident do not show him to be a conspirator.



1054. The aspect of the phone call being made by accused Bhisham @ Chintoo to accused Rishi Pal @ Pappu shall be dealt with separately ahead in this judgment since a similar allegation has been made against accused Ashok Jain and the evidence led by the prosecution to prove both the calls is largely common. Likewise, there is another segment of evidence about Abhay Singh receiving information of an attempt on the life of Vijay Yadav being likely and Abhay Singh advising Vijay Yadav to go to Vaishno Devi Temple at Jammu. This evidence has been presented to show culpability of accused persons Rishi Pal @ Pappu, Ashok Jain and Gopal Krishan Aggarwal and it being common will also be dealt with later. There is yet another aspect that is common to accused persons Rishi Pal @ Pappu, Ashok Jain and Gopal Krishan Aggarwal regarding the confessional statements of these accused persons and those of others. That too will be dealt with separately.
1055. It is concluded that the deeds attributed to accused Rishi Pal @ Pappu about Rishipal @ Pappu being present near the spot, about Rishipal @ Pappu calling up Kishan Kumar @ Kukku and the latter in turn calling up Ashok Jain, have not been proved. It is also concluded that even if proved, the said circumstances would not have, in any manner, proved that accused Rishi Pal @ Pappu had conspired to eliminate Vijay Yadav.

**Proof of Conspiracy by accused Rishi Pal @ Pappu**

1056. It has been seen above that the prosecution has failed to demonstrate that accused Rishi Pal @ Pappu had motive to conspire to the murder of Vijay Yadav. The steps stated to have been taken by accused Rishi Pal @ Pappu at the time of the incident have also not been proved. It has also been noted above that even if the facts which according to the prosecution are suggestive of an ill-boding motive had been proved by the witnesses, then too the accused cannot be held to be a conspirator since they do not provide motive to terminate Vijay Yadav. It has been held that even if it had been proved that accused Rishi Pal @ Pappu was near the spot and had called up Kishan Kumar @ Kukku and the latter had in turn called up Ashok Jain, that would not have proved accused Rishi Pal @ Pappu to be a conspirator.

1057. Even if it is assumed that the prosecution has succeeded in proving that accused Rishi Pal @ Pappu was inimical to Vijay Yadav and wanted to exterminate Vijay Yadav, that would not imply that Rishi Pal @ Pappu was a conspirator in the murder of Vijay Yadav. It may be suggestive of the death of Vijay Yadav being desired by the witness but does not show that Rishi Pal @ Pappu indeed entered into an agreement with the assailants to eliminate Vijay Yadav. Motive alone is not sufficient to infer existence of a criminal conspiracy. This point is elaborated later in this judgment since this is common to accused persons Ashok Jain and

Gopal Krishan Aggarwal too.

1058. The entire gamut of evidence may be surveyed to see if there is any direct evidence of accused Rishi Pal @ Pappu being privy to the conspiracy.
1059. Testimony of PW14 Abhay Singh Yadav has been dealt with earlier. The witness did not testify about having seen or he listening to a conspiracy being hatched about murder of his brother. The witness had not expressed that he suspected the involvement of accused Rishi Pal @ Pappu in the conspiracy, when he met the police for the first time. In fact, during cross-examination, the witness stated that he does not remember when he informed the police for the first time that he suspected the involvement of accused Rishi Pal @ Pappu. On the contrary, on knowing about the incident, and when the witness was not able to contact anyone, the witness called up accused Rishi Pal @ Pappu and sought the latter's assistance. The witness asked Rishi Pal @ Pappu to reach the place of incident. This has been stated by the witness in no uncertain terms in his cross-examination. If the witness felt that Rishi Pal @ Pappu had previously fired at the witness and if the witness apprehended involvement of accused Rishi Pal @ Pappu in the crime, then the witness would not have sought the assistance of Rishi Pal @ Pappu and the witness surely would not have sent Rishi Pal @ Pappu to the spot of incident. At that time, Abhay Singh did not

know that Vijay Yadav had demised. He could not have afforded to invite greater danger to his brother by sending a suspect (Rishi Pal @ Pappu) to the spot. The above shows that Abhay Singh was actually on amicable terms with Rishi Pal @ Pappu and he rather heavily relied on Rishi Pal @ Pappu. It is not the case of the prosecution that Abhay Singh had come to know about involvement of Rishi Pal @ Pappu in the Kosi incident subsequent to the homicide of Vijay Yadav. The case of the prosecution is that Abhay Singh knew about involvement of Rishi Pal @ Pappu, and that other supposed episodes of hostility had also occurred, long before the incident of murder of Vijay Yadav. Thus, if those episodes had indeed occurred, then on the date of the incident, on learning of the firing upon Vijay Yadav, the witness should have suspected involvement of Rishi Pal @ Pappu rather than seeking the aid of Rishi Pal @ Pappu and requesting the latter to go to the spot. All the above show that the allegations against accused Rishi Pal @ Pappu were actually fictional and had been leveled belatedly for oblique purposes.

1060. It has already been noted that the testimony of PW14 Abhay Singh Yadav, when it comes to the involvement of accused Rishi Pal @ Pappu, has been wavering and shaky. The witness had stated that his terms with accused Rishi Pal @ Pappu were not congenial. Yet, the witness admitted that he had attended the marriage function of son of

Rishi Pal @ Pappu.

1061. PW14 Abhay Singh Yadav stated that he had informed the police that though Rishi Pal @ Pappu was his partner, their terms were not cordial. He was confronted with all the statements of his that were recorded by the police. On seeing those statements, the witness resiled and admitted that he never made the aforesaid statement to the police.
1062. PW14 Abhay Singh Yadav initially deposed that the name of Rishi Pal @ Pappu had surfaced during investigation in the Kosi incident. He later admitted that no FIR of the incident was lodged and no investigation was carried out. He said that he does not know in whose investigation, the name of Rishi Pal @ Pappu had emerged. This shows the version to be exaggerated and there is also possibility of some distortion.
1063. PW14 Abhay Singh Yadav admitted during cross-examination that he had been meeting Rishi Pal @ Pappu regularly before and after the incident of murder of Vijay Yadav. It is incomprehensible that the witness would meet a person he suspects to be the killer of his brother. If the witness had known that Rishi Pal @ Pappu had been attempting to eliminate him, he would not be meeting Rishi Pal @ Pappu even before the incident of homicide of Vijay Yadav. All of these circumstances cast a shadow of doubt on the narrative of PW14 Abhay Singh Yadav regarding involvement of accused Rishi Pal @ Pappu.

1064. PW15 Manish Kumar was examined by the prosecution to show that accused Rishi Pal @ Pappu had asked PW15 Shri Manish Kumar to talk to accused Hitender @ Chhotu and to persuade Hitender @ Chhotu to state before Abhay Singh Yadav that Vijay Yadav had given Hitender @ Chhotu some advance money to kill Rishi Pal @ Pappu. The witness was also examined to show that accused Rishi Pal @ Pappu was in contact with accused Hitender @ Chhotu and his associates. The witness however denied in his testimony that any of the above had happened. The prosecution story thus fell flat.
1065. PW20 Harjeet Singh was examined by the prosecution to prove that Rishi Pal @ Pappu was involved in the incident of firing at Abhay Singh. The said witness was also examined to prove that Rishi Pal @ Pappu had complained to Abhay Singh Yadav about Vijay Yadav planning to liquidate Rishi Pal @ Pappu. On both counts, the testimony of PW20 Harjeet Singh was held to be barred by hearsay rule. The witness had not heard or witnessed those episodes. That apart, those assertions of the witness were found to be questionable improvements over his earlier version tendered to the police.
1066. PW32 Sunil Sharma was examined by the prosecution to show that accused Rishi Pal @ Pappu had animosity towards Abhay Singh Yadav. The witness was also examined to show that Rishi Pal @ Pappu had convinced accused Ashok Jain that the CBI case had been booked at the

behest of Abhay Singh and Vijay Yadav. However, when examined in Court, the witness resiled on both counts. He denied having uttered any such statements to the police.

1067. PW16 Durga Dass was examined by the prosecution to prove, inter alia, that on the day of the incident of murder, the witness was to meet accused Rishi Pal @ Pappu but the latter did not turn up till 8pm in the evening; that the witness was, during this period, in contact with accused Rishi Pal @ Pappu; that accused persons Vinod @ Gola, Bhisham @ Chintoo and Deepak @ Chowda had told the witness that they had killed Vijay Yadav on the asking of accused persons Ashok Jain, Rishi Pal @ Pappu and Gopal Krishan Aggarwal.

1068. PW16 Durga Dass, however, did not depose to any of the above facts. He did not support the case of the prosecution. He deposed in his examination-in-chief that he used to supervise Balmiki Mandir situated at Asaf Ali Road; that he knew accused Rishi Pal @ Pappu who is a builder and also runs a shop of sanitary items; that he did not know any person by the name of Bhisham @ Chintoo. The witness was shown accused persons Gopal Krishan Aggarwal and Bhisham @ Chintoo. He denied knowing them. The witness was cross-examined by Id public prosecutor. In cross-examination, the witness stood by his denial. He stated that during investigation of the case, he was called by the police, made to sit in the police station and then asked to go. No inquiry was

made from him. The witness stated that he was not supposed to meet Rishi Pal @ Pappu on the date of the incident. He did admit calling Rishi Pal @ Pappu twice. He explained in his cross-examination that he spoke to Rishi Pal @ Pappu regarding a wrestling competition which he was organizing and had requested Rishi Pal @ Pappu to fund the prize money, which Rishi Pal @ Pappu agreed to do. This witness is not alleged to be a conspirator. The fact of the said conversation having taken place does not point the needle of suspicion towards Rishi Pal @ Pappu. His version of the conversation he had with accused Rishi Pal @ Pappu has not been shown by the prosecution to be false. There is also no reason for the witness to tender a false testimony in Court. He is an independent witness. The prosecution has not disproved his narrative tendered in Court. On the contrary, this witness being called to the police station and being sent back without inquiry, and then a statement purportedly of this witness being fabricated, is demonstrative of dishonesty and perversion in build-up of the case against Rishi Pal @ Pappu.

1069. That apart, even if PW16 Durga Dass had stood by the version attributed to him by the prosecution, it would not have aided the prosecution in proving the allegations of conspiracy. The failure of accused Rishi Pal @ Pappu to meet this witness, or the witness being in contact with Rishi Pal @ Pappu at the time of the incident does not



show involvement of Rishi Pal @ Pappu in the murder. The extra-judicial confession purportedly made by accused Vinod @ Gola, Bhisham @ Chintoo and Deepak @ Chowda about they having killed Vijay Yadav on the asking of accused persons Ashok Jain, Rishi Pal @ Pappu and Gopal Krishan Aggarwal, even if proved to have been made, would not have been substantive evidence against accused Rishi Pal @ Pappu. It would have also been barred by the hearsay rule. It would not have been admissible under sections 10 or 30 of the Evidence Act, 1872, since the existence of conspiracy has not been demonstrated to exist, and since on the date of the said extra-judicial confession, the conspiracy was not in subsistence even as per the case of the prosecution. There are a number of precedents on this point, but reference to those are not necessary here because the extra-judicial confession has not been proved by the prosecution.

1070. PW63 Deepak Kumar was examined by the prosecution to prove, inter alia, that accused persons Vinod @ Gola, Deepak @ Chowda and Bhisham @ Chintoo had informed the witness about they having committed the murder at the behest of accused Ashok Jain, Gopal Krishan Aggarwal and Rishipal @ Pappu.

1071. Just like PW16 Durga Dass, PW63 Shri Deepak Kumar did not toe the line of the prosecution. PW63 Shri Deepak Kumar stated in his examination-in-chief that he was running a tea stall at the corner of Gali

Akhade Wali, Sita Ram Bazar, Delhi. He deposed that in the year 2007 (the exact date of which the witness did not remember) at about 07:00pm or 08:00pm, while the witness was about to leave for his house, he came to know that firing had taken place at Arya Samaj Gali and somebody had shot one Vijji who the witness knew. The witness then went to his house. PW63 Shri Deepak Kumar further stated in his examination-in-chief that on the next day, accused Vinod @ Gola (who the witness correctly identified) called the witness on his mobile phone at about 03:00pm or 04:00pm and asked the witness to look after his house. The witness asked accused Vinod @ Gola as to what had happened, to which the accused said that he would tell after he returns. PW63 Shri Deepak Kumar stated that he did not know anything else about the present case. Ld. Addl. Public Prosecutor obtained permission of the Court and cross-examined PW63 Shri Deepak Kumar. In his cross-examination by Id. Additional Public Prosecutor, the witness stated that he knew accused Deepak @ Chowda, Desraj @ Desu and Bhisham @ Chintoo (who the witness correctly identified) since they also used to reside in Sita Ram Bazar area. The witness admitted that in the year 2007, the witness was using mobile number 9210866522, and that accused Vinod @ Gola had called the witness on this number itself. PW63 Shri Deepak Kumar further denied that on 30<sup>th</sup> September, 2007 accused Bhisham @ Chintoo told the witness on a

phone call that Bhasham @ Chintoo and his associates had killed Vijay Singh @ Vijji at the instance of Ashok Jain, Gopal Krishan Aggarwal and Rishipal @ Pappu. PW63 Shri Deepak Kumar also denied the suggestion that later Deepak @ Chowda talked to the witness and told him that Vijay Yadav @ Vijji had been murdered by them at the instance of Gopal Krishan Aggarwal, Ashok Jain and Rishi Pal @ Pappu.

1072. Perusal of the cross-examination shows that nothing could be elicited which could demonstrate the denial of the witness to be false, or which could show that indeed any of the assailants had informed the witness that the murder had been committed at the instance of accused persons Gopal Krishan Aggarwal, Ashok Jain or Rishi Pal @ Pappu. The witness did not try to conceal from the Court that he had indeed spoken some of the assailants on phone but explained that it was a general conversation. His version of it being a general conversation has not been proven by the prosecution to be false. There is also no reason for the witness to tender a false testimony in Court, as he is not under the control or influence of either the family of the deceased or the accused persons. He is an independent witness. Thus, the stand of the prosecution of there being an extra-judicial confession made by the assailants additionally pointing towards the involvement of accused Rishi Pal @ Pappu, Gopal Krishan Aggarwal and Ashok Jain has fizzled

out. Otherwise too, it is highly inconceivable that the assailants who are on the run would call up an acquaintance who even knows the deceased and would confess to him about their involvement in the crime, and would reveal to him, on phone, all the events, the role of others and even the financial covenants of contract killing.

1073. That apart, even if PW63 Shri Deepak Kumar had affirmed the stance attributed to him by the prosecution, it would not have bolstered the prosecution case as against accused Rishi Pal @ Pappu, Gopal Krishan Aggarwal and Ashok Jain. The extra-judicial confession purportedly made by accused Bhisham @ Chintoo and Deepak @ Chowda about they having killed Vijay Yadav on the asking of accused persons Ashok Jain, Rishi Pal @ Pappu and Gopal Krishan Aggarwal, even if proved to have been made, would not have been substantive evidence against accused Rishi Pal @ Pappu as he is not the maker of those statements. In the case of Tejinder Singh @ Kaka vs State of Punjab CrI. Appeal no. 1279 of 2008 decided by Hon'ble Supreme Court on 11 April, 2013, this issue was discussed and it was held as follows:

*“The extra-judicial confession is a weak form of evidence and based on such evidence no conviction and sentence can be imposed upon the appellants and other accused. In support of this proposition, the relevant paragraphs of Pancho's case are extracted hereunder:*

*“The extra-judicial confession made by A-1, Pratham is the main plank of the prosecution case. It is true that an extra-judicial confession can be used against its maker, but as a matter of caution, Courts look for corroboration to the same from other evidence on record. In Gopal Sah v. State of*

*Bihar this Court while dealing with an extra-judicial confession held that an extra-judicial confession is on the face of it, a weak evidence and the Courts are reluctant, in the absence of a chain of cogent circumstances, to rely on it for the purpose of recording a conviction. We must, therefore, first ascertain whether the extra-judicial confession of A-1, Pratham inspires confidence and then find out whether there are other cogent circumstances on record to support it."*

*This Court further noted that: (Kashmira Singh case, AIR p. 160, para 10) "cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event, the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession, he would not be prepared to accept."*

*This Court in Haricharan case further observed that Section 30 merely enables the Court to take the confession into account. It is not obligatory on the Court to take the confession into account. This Court reiterated that a confession cannot be treated as substantive evidence against a co-accused."*

In the case of Basanti v. State of Himachal Pradesh AIR 1987 SC 1572,

the Hon'ble Supreme Court observed as follows:

*"The High Court rightly observes that the extra-judicial confession of the co-accused Smt. Basanti could not be used against the respondent Assoo @ Aso Ram."*

Even if the making of the extra-judicial confession had been proved, the drawing of inference of the conspiracy on its basis would have been hearsay since the witness had not himself seen or heard the conspiracy being hatched. Such an extra-judicial confession would also not become admissible under sections 10 or 30 of the Evidence Act, 1872, since the existence of conspiracy has not already been prima facie demonstrated

to exist, and because on the date of the said extra-judicial confession, the conspiracy was not in subsistence even as per the case of the prosecution.

1074. From the above, it follows that the prosecution has miserably failed to prove, either by direct evidence or by circumstantial evidence (from which inferences could be deduced), that accused Rishi Pal @ Pappu was part of the conspiracy aimed at elimination of Vijay Yadav. The charge against accused Rishi Pal @ Pappu stands not proved.

**Allegations of conspiracy against accused Ashok Jain**

1075. Accused Ashok Jain is alleged to have conspired with others to exterminate Vijay Yadav. Just like the case with accused Rishi Pal, the prosecution does not allege that accused Ashok Jain had participated in the assault on Vijay Yadav. Therefore, any inference of his involvement cannot be drawn from the acts of the said accused during the incident, as was done in the case of accused persons Deepak @ Chowda, Bhisham @ Chintoo, Kishanpal @ Fauzi, Hitender @ Chhotu, Parveen Koli and Desraj @ Desu.

1076. The prosecution has attempted to prove the existence of conspiracy from evidence which is distinct from the evidence marshalled against the assailants. The prosecution has alleged that the accused had multiple reasons to eliminate Vijay Yadav and had conspired with

Bhisham @ Chintoo and others for this task to be accomplished. The reasons are extricated from the chargesheet and evidence led by the prosecution, and are presented below.

**Motive of Accused Ashok Jain**

1077. As many as seven distinct reasons have been asseverated by the prosecution to be present for Ashok Jain to commit the crime. The reasons that furnished, according to the prosecution, motive to accused Ashok Jain to conspire to the murder of Vijay Yadav are as follows:

- a) Accused Ashok Jain had previous personal enmity with Vijay Yadav and the latter had publicly misbehaved with Ashok Jain on a number of occasions;
- b) Accused Ashok Jain believed that Vijay Yadav and his brother Abhay Singh were behind the anti-corruption case of CBI against the accused;
- c) Accused Ashok Jain believed that he had lost his ticket to the Delhi Assembly elections due to the propaganda of Vijay Yadav. Accused Ashok Jain felt that Vijay Yadav had been trying to politically weaken him in the area. Accused Ashok Jain felt that Vijay Yadav had threatened supporters of Accused Ashok Jain and was trying to distract them;
- d) Vijay Yadav had supported one Parmod who had a quarrel with Bhisham @ Chintoo (followed by a police case) and the latter was a

close aide of Ashok Jain;

- e) Vijay Yadav was canvassing for a rival prospective candidate in local elections. Accused Ashok Jain felt that the other candidates had won the election because of the support of Vijay Yadav and his brother Abhay Singh;
- f) In April 2007, before polling, a quarrel took place between Vijay Yadav, Ashok Jain and Bhasham @ Chintoo, consequent upon which the police bound the parties to keep peace and good behaviour for six months;
- g) After polling had taken place, a quarrel took place between Vijay Yadav and one Durga Pandit, and the latter was associated with accused Ashok Jain.

**Acts ascribed to Accused Ashok Jain**

1078. According to the prosecution, there are certain circumstances from which it can be inferred that accused Ashok Jain had conspired to the crime. The prosecution has presented those circumstances as follows:

- a) Accused Ashok Jain was present in the nearby area and he received information telephonically from one Kishan Kumar @ Kukku, who had received information of the incident from accused Rishipal @ Pappu;
- b) Accused Bhasham @ Chintoo made a phone call to accused Rishi Pal @ Pappu from Sonapat after the incident and had asked this accused to arrange for remaining money.



**Proof of Conspiracy by accused Ashok Jain**

1079. It shall be assessed whether the evidence led by the prosecution proves the aforesaid alleged motive of, and the acts ascribed to accused Ashok Jain, and also whether the aforesaid and other evidence add up to show accused Ashok Jain to have conspired with others in the commission of the crime.
1080. The first witness through whom the prosecution sought to establish motive of accused Ashok Jain to conspire to the murder of Vijay Yadav is PW4 Parmod Kumar. This witness has been examined to prove that the witness had a dispute with accused Bhisham @ Chintoo and while the witness had the support of Vijay Yadav, Bhisham @ Chintoo enjoyed the patronage of Ashok Jain. According to the prosecution, a quarrel had taken place between the said witness and Bhisham @ Chintoo, the latter being supported by one Chandan, and this episode had annoyed Ashok Jain. It is also the case of the prosecution, though cryptically suggested, that Bhisham @ Chintoo had fought with and thrashed Parmod on the asking of Ashok Jain. Accused to the prosecution, Ashok Jain was holding a grudge against the witness because the witness had the support of Vijay Yadav.
1081. In the part of his examination-in-chief that is relevant to this issue, PW4 Parmod Kumar stated that before the incident, he used to frequently meet and sit with Vijay Yadav; that this had been happening after a

quarrel had taken place between the witness, accused Bhisham @ Chintoo and one Chandan; that this quarrel took place on 22<sup>nd</sup> or 23<sup>rd</sup> of August, 2009; that Bhisham @ Chintoo and Chandan used to work with Ashok Jain; that the quarrel had taken place because the witness had been seen talking to Vijay Yadav which had annoyed Bhisham @ Chintoo, Chandan and Ashok Jain; that the witness had been beaten up by Bhisham @ Chintoo and Chandan on the asking of Ashok Jain; that the witness had lodged a complaint at Police Post Turkman Gate regarding the incident; that Chandan and Bhisham @ Chintoo had pressurized the witness to enter into a compromise with Ashok Jain; that Ashok Jain was holding a grudge against the witness because the witness had the support of Vijay Yadav.

1082. Through the above testimony, the witness has indeed tried to demonstrate that Ashok Jain had resentment towards Vijay Yadav. The witness has pointed to his quarrel with Bhisham @ Chintoo. He has spoken about Vijay Yadav supporting the said witness, about Ashok Jain vouching for Bhisham @ Chintoo, about a quarrel taking place between the witness and Bhisham @ Chintoo because the witness had been seen talking to Vijay Yadav which annoyed Ashok Jain, about Bhisham @ Chintoo beating up the witness on the asking of Ashok Jain which resulted in a police complaint, about Chandan and Bhisham @ Chintoo pressurizing the witness to enter into a compromise with

Ashok Jain and finally about Ashok Jain holding a grudge against the witness since the witness was being supported by Vijay Yadav.

1083. At first blush, the examination-in-chief of PW4 Parmod Kumar regarding the role played by Ashok Jain may show that he has supported the allegations. However, a closer scrutiny of the testimony alongside the statement under Section 161 of the Code of Criminal Procedure of the said witness and the police complaint that had been preferred by the witness at the time of the incident, show that the witness actually had a dispute only with Bhasham @ Chintoo but during his testimony in Court he tried to drag in the name of Ashok Jain as a stakeholder so as to impregnate him with a motive. The statements uttered by PW4 Parmod Kumar about Ashok Jain find no mention in the earlier version of the witness tendered to the police under Section 161 of the Code of Criminal Procedure. It is not the case of the witness that his statement under Section 161 of the Code of Criminal Procedure had been recorded by the police by force or coercion, or that the statement as recorded by the police is inaccurate or different from the narrative voiced by the witness during investigation. The witness has not alleged that the police was prejudiced against the witness or that the police was favouring the accused persons. Thus, it must be presumed that the police recorded whatever the witness had stated. The witness has identified his earlier statement tendered to the

police as Ex.PW4/D1 wherein the witness was describing the quarrel with Bhisham @ Chintoo and the antecedent circumstances. In that statement, the witness stated that Bhisham @ Chintoo had been instrumental in securing a job for the witness and that Ashok Jain used to listen more to Bhisham @ Chintoo and Chandan than to the witness, due to which the witness started being associated with Vijay Yadav. The witness has also stated that this made Bhisham @ Chintoo and Chandan upset and had hurt Ashok Jain. The witness stated that Bhisham @ Chintoo and Chandan had beaten the witness. He further stated that later, Bhisham @ Chintoo pressurized the witness to enter into a compromise.

1084. The witness has nowhere mentioned in the statement under Section 161 of the Code of Criminal Procedure that he started being associated with Vijay Yadav due to a quarrel with Bhisham @ Chintoo as has been deposed by him in his examination-in-chief. The statement under Section 161 of the Code of Criminal Procedure shows that the witness tried to be close to Vijay Yadav because Ashok Jain did not give much importance to the said witness.

1085. While in the testimony in Court, the witness stated that he had been beaten by Bhisham @ Chintoo and Chandan on the asking of Ashok Jain, this finds no mention in the statement under Section 161 of the Code of Criminal Procedure or even in the complaint made to the

police immediately after the incident. In both the documents, the witness does not at all blame Ashok Jain for the beating given to him by Bhisham @ Chintoo. As per the statement under section 161 of Code of Criminal Procedure and the complaint to the police, accused Bhisham @ Chintoo had beaten the witness of his own volition. The complaint to the police and the proceedings conducted by the police are more authentic because they were in close succession to the incident of quarrel leaving no scope for fabrication of evidence.

1086. In any case, it is not the case of the witness that Ashok Jain was present at the spot where the fight had taken place or that Ashok Jain had exhorted Bhisham @ Chintoo, in the presence of the witness, to clobber the witness. Since the witness did not hear the instructions being given by Ashok Jain, if any, to Bhisham @ Chintoo, the witness is not competent to claim that such a direction had been given by Ashok Jain. It is also not the case of the witness that Bhisham @ Chintoo proclaimed during the quarrel that he was doing so on the instructions of Ashok Jain. The assertion of the witness that Bhisham @ Chintoo had manhandled the witness on the asking of Ashok Jain is a mere conjecture on the part of the witness, besides being a significant improvement over the previous account of the incident given by the witness.

1087. In his testimony, PW4 Parmod has stated that the cause of quarrel between him and Bhisham @ Chintoo was that the witness used to talk to Vijay Yadav which had annoyed Ashok Jain. This assertion finds no mention in the statement tendered before the police by this witness under Section 161 of Code of Criminal Procedure. As per the statement, the cause of quarrel was that Bhisham @ Chintoo (and not Ashok Jain) was annoyed with Parmod.
1088. The witness stated in his testimony that Bhisham @ Chintoo had pressurized the witness to enter into a compromise with Ashok Jain. However, in contrast with this, in his statement to the police, the witness had stated that Bhisham @ Chintoo was pressurizing the witness to enter into a compromise with himself (and not with Ashok Jain). The witness had earlier stated that the dispute was only with Bhisham @ Chintoo and Chandan. That being so, there would have been no question of a compromise with a third party (Ashok Jain).
1089. This shows that material improvements have been craftily made by the witness over his previous narrative in order to implant a motive on to Ashok Jain. While a different cause of quarrel had been stated to the police by the same witness during investigation of this case, he changed his version and introduced the name of Ashok Jain connecting it on to the adversary when he came to depose in the Court.

1090. The above are significant improvements and on account of the same, the testimony of the witness cannot be held to be reliable. This point was underlined in the case of Khushal Chand v. State CrI. Appeal no. 109 of 2008 decided on 7<sup>th</sup> March, 2014. In that case, the Hon'ble High Court of Delhi held as follows:

*“The prosecution witnesses who spoke about strained relations between the Appellant and deceased were PW4 Shanti Devi and PW7 Arun Kumar. It appeared that both of them, for the first time in the Court made several improvements to the statements earlier made by them to the police under Section 161 CrPC. This is evident from the cross-examination of these witnesses. As far as PW4 is concerned, although in her examination-in-chief she spoke about the deceased weeping and demanding money during her visits to the house of PW4 and about the Appellant assaulting and harassing the deceased, in her cross-examination when confronted with her statement under Section 161 CrPC (Mark A), she denied making that statement to the police and added that she could not recollect what statement she had made before the IO.*

*The Court has perused the statement made by PW4 to the police under Section 161 CrPC (Mark A). In the said statement, there is not a whisper about the deceased telling PW4 about the ill-treatment meted out to her by the Appellant or about the deceased demanding money. It does mention that the deceased lived with PW4 for at least 7-8 months prior to the date of the incident during which she underwent surgery for removal of her uterus. PW4 had, before the police, gone to the extent of saying that she did not want any case to be registered and that she did not suspect the Appellant.*

*The other witness who spoke about the strained relations between the Appellant and the deceased for the first time in Court was Arun Kumar (PW7). It must be recalled that he virtually grew up with the Appellant and the deceased since childhood. He admitted that his previous statement (Ex. PW7/A) was recorded by the IO on 15th April 2002. His entire cross-examination shows that he was confronted with considerable improvements made by him over the said statement when he deposed before the trial Court. For instance he did not state before the IO that the deceased used to remain*

tense since she did not have a child. He had stated before the IO that the deceased used to say that her life was useless. He had in fact told the IO that the relations between the deceased and the Appellant were cordial. He had denied making statement to the IO that the Appellant was "stubborn and a duffer type of person". He did not made any statement to the IO that the Appellant did not have respect for elders or younger persons. He did not state before the IO that the Appellant used to beat the deceased after consumption of liquor almost four days in a week. He denied telling the IO in his previous statement that the Appellant used to abuse the deceased in a general routine or used to send her to bring cigarettes in odd hours of night or that the deceased was treated by the Appellant in inhumane way or about his lifting flour bin and hitting the deceased once she returned from her mother's home on 14th April 2002 to make her understand that it was empty or that there was an altercation between the Appellant and the deceased on the night previous to the incident. Importantly, PW7 had not stated to the IO that at the hospital the deceased told him that she was dying and that PW7 should not leave the Appellant unpunished.

It is surprising that the trial Court has based its conclusions regarding the guilt of the Appellant for the offence under Section 306/498A IPC only on the depositions of PWs 4 and 7 which, as noted hereinbefore, were substantial improvements over their previous statements under Section 161 CrPC. In *Sunil Kumar Sambhudayal Gupta v. State of Maharashtra* 2010 XI AD (SC) 500, the Supreme Court again explained the legal position that "where the omission(s) amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witness also make material improvements before the Court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence". It was added that in view of the "discrepancies in the evidence of eye-witnesses, if found to be not minor in nature, may be a ground for disbelieving and discrediting their evidence. In such circumstances, witnesses may not inspire confidence and if their evidence is found to be in conflict and contradiction with other evidence or with the statement already recorded, in such a case it cannot be held that prosecution proved its case beyond reasonable doubt".

In *Subhash v. State of Haryana* 2011 (1) JCC 41 SC, the Supreme Court held that the statements of witnesses who



*made substantial improvements over their statements under Section 161 CrPC did not inspire confidence.*

*The trial Court has, in the present case, completely overlooked the above factor and has committed a grave error in basing its conclusion as to the guilt of the Appellant on the wholly unreliable evidence of PWs 4 and 7."*

In the case of Tahsildar Singh v State of UP AIR 1959 SC 1012, the Hon'ble Supreme Court laid down that statements under section 161 of Code of Criminal Procedure may not be substantive evidence and they cannot be used by the prosecution to buttress its allegations but they can and should be referred to for contradicting a witness. The following observation is relevant:

*"At the same time, it being the earliest record of the statement of a witness soon after the incident, any contradiction found therein would be of immense help to an accused to discredit the testimony of a witness making the statement."*

In light of the above, the version of the witness which is a material departure from the statement under section 161 of Code of Criminal Procedure and is also not backed by other evidence, cannot be believed. This is the part of the testimony of PW4 Parmod Kumar that relates to the role of Ashok Jain. The remaining portion that concerns the day of the incident of homicide is independent of this. That part of the deposition is in sync with the statement under section 161 of Code of Criminal Procedure besides being corroborated by a wealth of other evidence including the testimony of PW10 Niranjana, and it can therefore be relied upon.

1091. PW4 Parmod Kumar has tried to paint a different picture of his dispute with Bhisham @ Chintoo, in his deposition in Court. He has attributed his quarrel with Bhisham @ Chintoo to the annoyance of Ashok Jain. The best evidence which can throw light on the circumstances that had led to the brawl between Parmod Kumar and Bhisham @ Chintoo is the complaint that immediately followed the brawl. The version of the witness which was spontaneous to the incident, can help the Court decipher whether, according to the witness, Ashok Jain was a party to the said quarrel and whether the complaint lodged with the police named Ashok Jain so as to give reason to Bhisham @ Chintoo to pressurize the witness to enter into a compromise with Ashok Jain. The complaint is in the form of a statement tendered by PW4 Parmod Kumar to the police. It is the said statement which will clinch the issue about the incident. The said statement tendered by PW4 Parmod Kumar to the police immediately after the quarrel was shown to the witness during his cross-examination. The witness has admitted its correctness. He has stated that indeed this was the statement made by him to the police. The statement was identified as Ex.PW4/D-2. In the said statement, it is mentioned that on 24<sup>th</sup> August, 2007 at about 6:50 p.m., some persons came to the witness. Those persons included Bhisham @ Chintoo. At that time, the witness was standing outside the MCD office. He had gone there to meet the MCD Councillor to submit

a complaint regarding a water tank. This was objected to by those persons and they then started beating Parmod Kumar. From the said complaint, three things become instantly clear. Firstly, Ashok Jain was not a party to the quarrel. Secondly, Parmod Kumar had not been beaten up on the asking of Ashok Jain. Thirdly, the witness had made no complaint to the police against Ashok Jain, which also shows that there was no occasion for Bhisham @ Chintoo to pressurize the witness to enter into a compromise with Ashok Jain. The feud of Parmod Kumar was with accused Bhisham @ Chintoo. The complaint submitted to the police by the witness was only against Bhisham @ Chintoo and Chandan. There was no grievance expressed in the complaint regarding the conduct of Ashok Jain whose name did not even figure anywhere in the complaint. In the statement tendered to the police by Parmod Kumar under Section 161 of Code of Criminal Procedure during investigation of this case, Parmod Kumar had reiterated the same facts. Ashok Jain was not blamed for the quarrel. There was nothing in the said statement to suggest that Ashok Jain was hostile towards Vijay Yadav.

1092. PW4 Parmod Kumar has stated in his examination-in-chief that Ashok Jain was holding a grudge against the witness because the witness had the support of Vijay Yadav. The witness has not explained how he came to know of this fact. A 'grudge' is a feeling. One's feelings are

known to him or her alone. Others are not competent to depose about its existence or absence. They can only see conduct or hear words from which it could be known whether a person has any such feeling. Thus, PW4 Parmod Kumar was not competent to depose that Ashok Jain was holding a grudge against any person. He could have pointed out conduct of Ashok Jain or words uttered by Ashok Jain from which an inference of he harbouring a grudge could have been drawn. The deposition of PW4 Parmod Kumar that Ashok Jain held a grudge against Vijay Yadav is of no effect.

1093. There are other deficiencies in the testimony of PW4 Parmod Kumar which create a doubt on its correctness regarding the involvement of Ashok Jain. The witness stated in his cross-examination that when the quarrel took place, Ashok Jain was not councillor of the area. This shows that when the witness refers to his visit to the office of the MCD Councillor, he was not planning to visit Ashok Jain. Therefore, Bhisham @ Chintoo cannot be said to be preventing the witness from interacting with Ashok Jain and there is nothing to indicate the involvement of Ashok Jain in the said quarrel.

1094. The witness had stated in his examination-in-chief that the quarrel had taken place and that Ashok Jain had become annoyed because the witness had been seen talking to Vijay Yadav. The witness admitted in his cross-examination that he did not state this fact to the police during

the recording of his statement. The witness also stated in his cross-examination that he never told the police that he had been beaten by Bhisham @ Chintoo on the asking of Ashok Jain. However, in his examination-in-chief, the witness turned wiser and emphatically asserted this to have happened.

1095. The witness stated in his examination-in-chief that Ashok Jain was supporting Bhisham @ Chintoo in the quarrel. The witness stated in his cross-examination that he had mentioned this fact to the police during the recording of his statement. However, no such utterance finds mention in the statement Ex.PW4/D-1 which had been recorded by the investigating officer on being tendered by this witness.

1096. The witness had stated in his examination-in-chief that Bhisham @ Chintoo was pressurizing the witness to enter into a compromise with Ashok Jain. However, when confronted with his statement under Section 161 of Code of Criminal Procedure, the witness admitted that he never mentioned this fact to the police during his interrogation. The witness also stated that he never stated to the police that Ashok Jain was holding a grudge against the witness since Vijay Yadav had supported the witness.

1097. While the witness emphatically stated in his examination-in-chief that the cause of quarrel between him and Bhisham @ Chintoo was the annoyance of Ashok Jain to the proximity of the witness with Vijay

Yadav, when cross-examined on his aspect, the witness stated that he was unaware of the cause of the quarrel. He stated that he is unable to remember if the quarrel was on the issue of a water tank. The witness became non-committal and tried to disown the statement made by him in his examination-in-chief. He stated that he is unable to recall if he told the police at all about involvement of Ashok Jain in the said quarrel. All of this shows that PW4 Parmod Kumar was trying to belatedly introduce the name of Ashok Jain so as to show that Ashok Jain had a grievance with Vijay Yadav.

1098. The testimony of PW4 Parmod Kumar does not advance the case of the prosecution and it does not show that Ashok Jain had motive to conspire to the murder of Vijay Yadav.
1099. The second witness through whom the prosecution attempted to prove motive on the part of Ashok Jain is PW14 Abhay Singh Yadav. The foremost allegation that the prosecution wanted to buttress through the deposition of PW14 Abhay Singh Yadav is about motive of Ashok Jain to enter into the conspiracy on account of his involvement in the dispute between Parmod and Bhasham @ Chintoo.
1100. PW14 Abhay Singh Yadav stated in his examination-in-chief that Vijay Singh Yadav was on friendly terms with one Parmod Kumar; that there had been a dispute between Parmod Kumar and Bhasham @ Chintoo; that Parmod Kumar had got an FIR registered against Bhasham @

Chintoo; that Bhisham @ Chintoo was pressurizing Parmod Kumar to enter into a compromise and that Bhisham @ Chintoo was working with Ashok Jain.

1101. Firstly, the aforesaid assertions of PW14 Abhay Singh Yadav, even if held to be proved, do not show that Ashok Jain had motive to conspire to the murder of Vijay Yadav. The connection being drawn is too remote to provide a motive to a person to conspire to the other person's murder. The witness wants the Court to believe that Ashok Jain would conspire to kill Vijay Yadav because a worker in the office of Ashok Jain had a dispute with a friend of Vijay Yadav. This is wholly unbelievable. The link being drawn does not show that there was a personal stake or private interest of Ashok Jain so as to impel him to get involved in the matter. It has not been demonstrated that the murder of Vijay Yadav would have benefitted Ashok Jain in any manner or that it would have put an end to the complaint that had been filed with the police against the supposed employee of Ashok Jain.

1102. Secondly, PW14 Abhay Singh Yadav was not present at the time of the quarrel between Parmod Kumar and Bhisham @ Chintoo. He is not competent to state about whether such a quarrel had taken place.

1103. Thirdly, PW14 Abhay Singh Yadav does not state that in his presence, Bhisham @ Chintoo was exerting pressure on Parmod Kumar Singh to

enter into a compromise. Therefore, the witness is also not competent to depose about this fact.

1104. Fourthly, the involvement of Ashok Jain in the quarrel between Parmod and Bhisham @ Chintoo is contrary to the record as has been seen in the earlier paragraphs. After the incident of quarrel, Parmod had tendered his statement to the police in which he did not name Ashok Jain. The kalandra of the police did not name Ashok Jain as an accused. The statement of Parmod given to the police under section 161 of Code of Criminal Procedure during investigation of this case did not find any blameworthy conduct on the part of Ashok Jain.

1105. Thus, testimony of PW14 Abhay Singh Yadav has lent no support to the allegation of prosecution about Ashok Jain having motive to enter into the conspiracy on account of his involvement in the dispute between Parmod and Bhisham @ Chintoo.

1106. The prosecution then tried to prove through the testimony of PW14 Abhay Singh Yadav that Ashok Jain had the said motive as he was upset by the support given by Vijay Yadav to a candidate in the MCD councillor elections.

1107. PW14 Abhay Singh Yadav has stated in his examination-in-chief that Vijay Yadav was supporting the candidate of a certain political party in the MCD Councillor elections which was not liked by Ashok Jain.



1108. Firstly, PW14 Abhay Singh Yadav has not pointed out any circumstance from which it could be inferred that this was the apple of discord between Vijay Yadav and Ashok Jain. If a person is confident that a certain act has resulted in displeasure of another, he should be able to point out instances where the said displeasure has been expressed or ventilated. There is no way for Abhay Singh Yadav to enter the mind of Ashok Jain and to find out how Ashok Jain feels at a given moment and the root cause of the said feeling. One can only see outward manifestations of a certain feeling and it is that manifestation that is to be proved, from which the Court can draw inferences.
1109. Secondly, the act of Vijay Yadav of supporting a certain person in an election may not have been appreciated by Ashok Jain. Ashok Jain may have disapproved of this. But that would not imply that Ashok Jain, or any prudent person for that matter, would be so agitated that he will go about killing the supporters of that candidate (that too while making no attempt to harm that candidate himself). The fact of support being extended to a candidate gives no impetus to murder the supporter of the candidate, and certainly not to single out a particular supporter, while leaving out the candidate himself and his other supporters.
1110. Thirdly, according to the prosecution, Ashok Jain was canvassing against that candidate although both Ashok Jain and that candidate belonged to the same political party. However, PW14 Abhay Singh

Yadav has not explained how he knew that Ashok Jain was canvassing against the contesting candidate of his own political party. The witness has not revealed the name of any person to whom Ashok Jain was speaking ill about the contesting candidate of his political party. To prove this, the person before whom Abhay Singh Yadav was vilifying or denouncing the contesting candidate should have been produced and examined. The testimony of PW14 Abhay Singh Yadav is of no avail to prove this fact.

1111. Fourthly, when PW14 Abhay Singh Yadav was cross-examined in this behalf, he stated that he never informed any member of the political party that Ashok Jain had been working against the interest of the said party, even though Abhay Singh Yadav himself was actively involved in the election and was staunchly supporting the contesting candidate. The witness made no effort to stall such negative campaigning by a member of the same political party. Such inaction of PW14 Abhay Singh Yadav is not natural.

1112. PW14 Abhay Singh Yadav has stated in his cross-examination that in the year 2007, he was holding the post of Delhi Pradesh Sachiv of the political party. This implies that it was the duty of the witness to point out and to stop any member of the political party who is working against the interest of the political party. Yet, PW14 Abhay Singh Yadav states that when Ashok Jain was campaigning against the

candidate of the political party who was contesting election and even though the witness and his brother Vijay Yadav were strongly supporting the said candidate, the witness never objected to Ashok Jain canvassing against the said candidate. The witness did not even confront Ashok Jain or inform any other party member about this. This shows that the story about Ashok Jain working against the interest of political party has been belatedly concocted so as to show that Ashok Jain was inimical to Vijay Yadav.

1113. Therefore, the case of the prosecution that Ashok Jain may have conspired to the murder of Vijay Yadav because Vijay Yadav supported a candidate in an election cannot be accepted.
1114. Prosecution has attempted to prove, through PW14 Abhay Singh Yadav, another motive of accused Ashok Jain to enter into the conspiracy. According to the prosecution, a quarrel took place between Vijay Yadav and one Durga Pandit who associated with accused Ashok Jain.
1115. PW14 Abhay Singh Yadav has stated in his examination-in-chief that a quarrel had taken place between Vijay Yadav and Durga Pandit. He has further stated that Durga Pandit was associated with Ashok Jain. The witness has tried to portraiture before the Court that Ashok Jain might have conspired to the murder of Vijay Yadav because Vijay Yadav had an altercation with Durga Pandit.

1116. Even if the defence of the accused is not looked into, the record would show the aforesaid assertion of PW14 Abhay Singh Yadav to be devious and misleading.
1117. Firstly, the person referred to as Durga Pandit in the testimony of Abhay Singh Yadav is also known as Durga Dass, as per the supplementary chargesheet filed before the Court. Durga Dass is a prosecution witness. He has been examined as PW16. Perusal of the testimony of this witness would reveal that it is not even the case of the prosecution that this witness ever had a dispute or altercation with Vijay Yadav. The prosecution did not examine the witness to prove the aforesaid fact. The witness was examined by the prosecution to prove that accused Ashok Jain was canvassing against the contesting candidate of a political party, that Vijay Yadav was supporting that candidate, that this had caused differences between Ashok Jain and Vijay Yadav, and that the witness had learnt about the conspiracy to harm Vijay Yadav. This implies that it was never the case of the prosecution since inception that Durga Pandit @ Durga Dass ever had a quarrel with Vijay Yadav. Even the facts which the prosecution intended to prove through PW16 Durga Dass could not be proved as the witness did not support the prosecution case. However, not once did the prosecution try to suggest to the witness in his cross-examination by Id additional public prosecutor that he was associated

with Ashok Jain or that he ever had a quarrel with Vijay Yadav.

1118. Secondly, the assertion of the prosecution that Ashok Jain might have conspired to the murder of Vijay Yadav because Vijay Yadav had an altercation with Durga Pandit, cannot be accepted because it is nobody's case that Durga Pandit was a conspirator in the crime. On the contrary, the prosecution has exalted him as its own witness. It cannot be believed that the alleged bone of contention between Ashok Jain and Vijay Yadav would himself be innocent and be found to be so reliable that the prosecution is resting its case on him to prove the conspiracy. According to the prosecution, the said witness had nothing to do with the offence and had only learnt of the conspiracy (having no connection with the alleged dispute of this witness with Vijay Yadav) from one of the accused. That is why assistance of PW16 Durga Dass @ Durga Pandit was taken by the prosecution to prove its case. Had Durga Dass @ Durga Pandit been believed by the prosecution to be on the side of Ashok Jain and to be so intimate to Ashok Jain that for him Ashok Jain could have plotted a murder (as PW14 Abhay Singh Yadav wants the Court to believe), then the prosecution would not have expected any support from him to its case. It is inconceivable that the person for whose benefit the murder was supposedly being planned had no inkling of it. Nor has it been established that Durga Dass was so closely related by kinship or by friendship that Ashok Jain would take up his

cause, without him knowing about it, and would directly plan the execution of adversary of Durga Dass. If the dispute was between Vijay Yadav and an acquaintance of accused Ashok Jain, surely the said acquaintance (Durga Dass) would be more keen on killing his adversary than a third person. If the acquaintance is not taking any action, there is no reason for Ashok Jain to take up cudgels by himself and to conspire to the murder of Vijay Yadav. Had Durga Dass been one of the offenders, there might have been a possibility of Durga Dass having sought assistance of people closely known to him to settle his scores. But that is not so, as per the prosecution's own case.

1119. Thirdly, PW14 Abhay Singh Yadav is not competent to depose about the alleged dispute between Durga Dass and Ashok Jain. The witness was not present at the time of the altercation. He did not see it happening. He has also not disclosed the source of his information of the dispute. He has not revealed the reason for the quarrel, or whether there was a brawl and if so, when and where it had taken place. The assertion is wholly vague. The witness has also not explained how he came to know that Durga Dass was known to Ashok Jain, which is another fact remaining unproved. The prosecution has miserably failed to prove the existence of the said motive on the part of accused Ashok Jain.

1120. The next reason for accused Ashok Jain to conspire to kill Vijay Yadav, according to the prosecution, is that in April 2007, a quarrel had taken place between Vijay Yadav, Ashok Jain and Bhisham @ Chintoo, consequent upon which the police bound the parties to keep peace and good behaviour for six months.
1121. PW14 Abhay Singh Yadav has stated in his testimony that Ashok Jain was involved in the quarrel between Vijay Yadav and Bhisham @ Chintoo, which was followed by taking of bonds by the police from the parties for keeping peace and good behaviour.
1122. Firstly, PW14 Abhay Singh Yadav has admitted in his cross-examination that the incident of quarrel between Bhisham @ Chintoo and Vijay Yadav did not take place in his presence. The witness was only informed about the said incident. The witness also stated that he is unable to recall as to who had given him this information. This shows that the witness is not competent to depose about the quarrel. He has not even provided the source of information of this quarrel. His testimony about the quarrel is barred by the hearsay rule.
1123. Secondly, whether Ashok Jain was involved in the dispute could have been gathered from the record of proceedings under Section 107 read with Section 151 of Code of Criminal Procedure, in respect of this quarrel. However, the said record has not been proved by the witness.

1124. Thirdly, regarding the quarrel, the testimony of PW14 Abhay Singh Yadav suffers from material contradictions. In his examination-in-chief, the witness categorically states that the altercation was followed by taking of bonds by the police from the parties for keeping peace and good behaviour. However, in cross-examination, the witness denies knowledge of the said kalandra.
1125. Fourthly, the testimony of PW14 Abhay Singh Yadav about the said quarrel is vague and lacks specifics. The witness did not disclose the date and place of the incident and the persons who witnessed the incident.
1126. Fifthly, PW14 Abhay Singh Yadav has stated in his examination-in-chief that the cause of quarrel between Vijay Yadav and Ashok Jain was that Vijay Yadav was gaining support in the area which was disliked by Ashok Jain. It has not been shown by the prosecution as to how PW14 Abhay Singh Yadav learnt that Ashok Jain was averse to rise in stature or garnering of support by Vijay Yadav. The witness has not pointed out any circumstance from which this could be inferred. PW14 Abhay Singh Yadav is not competent to depose about thoughts or feelings of another person. He has demonstrated no act from which such a feeling could be inferred, which shows that assertion of the witness that Ashok Jain was opposed to Vijay Yadav's gaining of support is a mere supposition or a hypothesis. Moreover, this fact by



itself cannot give motive to a person to extinguish the life of another.

1127. The prosecution has failed to prove that Ashok Jain was involved in the quarrel between Vijay Yadav and Bhasham @ Chintoo, and that this constituted his motive to enter into the conspiracy.

1128. Another motive of accused Ashok Jain was set forth by the prosecution. The prosecution has tried to prove from the testimony of PW14 Abhay Singh Yadav that there was acrimony between Ashok Jain and Vijay Yadav since Vijay Yadav had publicly misbehaved with Ashok Jain on a number of occasions; that Ashok Jain believed that he lost ticket to the Delhi Assembly Elections due to the propaganda of Vijay Yadav; that Ashok Jain felt that Vijay Yadav was threatening supporters of Ashok Jain and was trying to divert them so as to politically weaken Ashok Jain. PW14 Abhay Singh Yadav has not deposed to any of the aforesaid facts. Nor is the said witness competent to prove those facts unless they occurred in his presence. It is also not possible for the witness to make an assessment of what the accused was feeling unless the accused expresses those feelings or acts in a manner that makes them evident. Abhay Singh Yadav had no means to know what Ashok Jain felt at different points of time. He is not competent to state whether Ashok Jain blamed the propaganda of Vijay Yadav for his inability to secure ticket for the Delhi Assembly Elections, or that accused Ashok Jain felt that Vijay Yadav was threatening or trying to distract his supporters.

No such words or conduct of accused Ashok Jain has been proved. Whether, indeed, Vijay Yadav had threatened the supporters of Ashok Jain or was trying to draw them away from Ashok Jain, has not been and cannot be deposed to by PW14 Abhay Singh Yadav. For this, the supporters of Ashok Jain who were allegedly being threatened or allured had to be examined.

1129. The prosecution has thus failed to prove, from the testimony of PW14 Abhay Singh Yadav, that there was bitterness between Ashok Jain and Vijay Yadav since Vijay Yadav had publicly misbehaved with Ashok Jain, or that Ashok Jain believed that he had lost ticket to the Delhi Assembly Elections due to the propaganda of Vijay Yadav, or that Ashok Jain felt that Vijay Yadav was threatening supporters of Ashok Jain and was trying to divert them.

1130. According to the prosecution, another motive that Ashok Jain had to conspire to the murder of Vijay Yadav was that Ashok Jain believed that Vijay Yadav and Abhay Singh Yadav had got a CBI Anti-Corruption case booked against Ashok Jain. PW14 Abhay Singh Yadav has spoken about the CBI case against Ashok Jain. In his examination-in-chief, the witness does mention that a CBI raid had been conducted against Ashok Jain for bribery. The witness, however, does not state that anybody had represented to Ashok Jain, or that Ashok Jain had learnt from any source, that Vijay Yadav and Abhay Singh Yadav had

got the case registered or that these persons were the informants in the CBI case. There is nothing on record to suggest that Ashok Jain believed, on the basis of information received by him or out of his own knowledge, that the case has been booked against him at the instance of Vijay Yadav and Abhay Singh Yadav. The said motive does not stand proved from the testimony of PW14 Abhay Singh Yadav.

1131. The Court must be mindful of the fact that PW14 Abhay Singh Yadav did not name Ashok Jain as a suspect till about thirteen days after the murder. If the death of Vijay Yadav had indeed been preceded by the events mentioned in the testimony of PW14 Abhay Singh Yadav and if PW14 Abhay Singh Yadav earnestly believed that Ashok Jain had as many reasons to conspire to the murder of Vijay Yadav, he surely would have been the first person to inform the police that he suspects the involvement of Ashok Jain in the crime, which he did not do. In his cross-examination, the witness admitted that he did not give any statement to the police officers of PS Hauz Qazi that he suspected the murder to be the outcome of the conspiracy of Ashok Jain with others. The failure of Abhay Singh Yadav to promptly narrate the incidents of quarrel and the series of disputes between Ashok Jain and Vijay Yadav (which were later alleged), and the omission of Abhay Singh Yadav to ask the police to investigate the role of Ashok Jain shows that the witness himself did not believe Ashok Jain to be an offender.

1132. The testimony of PW14 Abhay Singh Yadav has not advanced the case of the prosecution so as to show motive on the part of Ashok Jain to conspire to the murder of Vijay Yadav.
1133. PW14 Abhay Singh has stated in his testimony about having received prior information of hatching of a conspiracy by Ashok Jain, Gopal Krishan Aggarwal and Rishi Pal @ Pappu alongwith others, to kill Vijay Yadav and about he advising Vijay Yadav to go to Vaishno Devi Temple some days before the incident. This part of the testimony of PW14 Abhay Singh shall be dealt with later as it relates to accused Gopal Krishan Aggarwal and Rishi Pal @ Pappu too.
1134. The prosecution examined another witness to prove its allegation of there being acrimony between Vijay Yadav and Ashok Jain in which the persons on the front of the dispute are stated to have been Parmod and Bhisham @ Chintoo respectively. PW10 Shri Niranjana was examined to prove the allegations that Bhisham @ Chintoo received the patronage of Ashok Jain; that Bhisham @ Chintoo had beaten Parmod at the instance of Ashok Jain; and that Parmod had been beaten because of his proximity to Vijay Yadav which had annoyed Ashok Jain, to show the rancour between Ashok Jain and Vijay Yadav.
1135. PW10 Shri Niranjana, however, did not support the aforesaid version. The witness did know the background of the quarrel between Parmod and accused Bhisham @ Chintoo. He did depose to the said quarrel but

described it as a feud solely between Parmod and accused Bhisham @ Chintoo. Ashok Jain was not stated to be on either side. The witness does not state that Bhisham @ Chintoo had thrashed Parmod on the asking of Ashok Jain, which is contrary to the picture sought to be painted, belatedly, by PW4 Parmod. The witness does state that Bhisham @ Chintoo had quarrelled with Parmod because of Parmod's familiarity with Vijay Yadav, but he does not state that this familiarity had irked Ashok Jain too. According to the testimony of PW10 Shri Niranjana, the said familiarity had peeved Bhisham @ Chintoo and the latter had therefore beaten up Parmod. No role was ascribed to Ashok Jain in the said quarrel. This only proves motive of accused Bhisham @ Chintoo and does not show displeasure of Ashok Jain towards Vijay Yadav. The only fact stated about Ashok Jain is that Parmod used to earlier work for Ashok Jain but he later joined Vijay Yadav. The witness does not state that this had been resisted or opposed by Ashok Jain. According to the testimony of PW10 Shri Niranjana, after the scuffle between Parmod and accused Bhisham @ Chintoo, Vijay Yadav favoured Parmod and thereafter Parmod started visiting the office of Vijay Yadav. The witness does not state that Ashok Jain extended his support to Bhisham @ Chintoo on the issue of the quarrel. The witness further states that Parmod had lodged a complaint to the police against accused Bhisham @ Chintoo (and not against Ashok Jain, as was later

distorted and portrayed to the Court) regarding that quarrel. The witness states that one Chandan (and not Ashok Jain, as had been pitched by PW4 Parmod for the first time in Court) was favouring accused Bhisham @ Chintoo. The testimony of this witness is at variance with the testimony of PW4 Parmod, and the latter suffers from material improvements regarding the role of Ashok Jain, which have been delineated earlier. Also the fact that the dispute was only between Parmod and Bhisham @ Chintoo (and that Ashok Jain was not a party to it) finds support not only from PW10 Niranjana, but is also borne out from the police records prepared immediately after the dispute. These records comprise of DD No. 24 dated 24<sup>th</sup> August, 2007 Ex. PW4/D-2, DD No. 14 dated 10<sup>th</sup> September, 2007 at Police Post Turkman Gate Ex. PW52/C, kalandra under Sections 107/151 of Code of Criminal Procedure Ex. PW52/B (which had been collected by the police itself and correctness of which is vouched by the prosecution's own witnesses) and the statement of Parmod made to the police Ex. PW4/D2 (of which PW4 Parmod admitted correctness in his cross-examination).

1136. PW10 Niranjana has therefore not proved the motive of accused Ashok Jain to conspire to the murder. On the contrary, the deposition of this witness points to the innocence of the accused by showing that he had nothing to do with the dispute between Bhisham @ Chintoo and

Parmod.

1137. According to the prosecution, accused Ashok Jain received information of the incident telephonically from one Kishan Kumar @ Kukku, who had received information of the incident from accused Rishipal @ Pappu. The contents of the conversation between Kishan Kumar @ Kukku and Ashok Jain have not been proved by examining Kishan Kumar @ Kukku. Kishan Kumar @ Kukku is not alleged to be an offender. He is not indicted as an assailant or as a conspirator. Moreover, Ashok Jain had not himself made the phone call. He had only received the call. Ashok Jain cannot be faulted for receiving a call being made to him. Since it is not the case of the prosecution that Kishan Kumar @ Kukku had anything to do with the offence, the fact that Ashok Jain received a call from Kishan Kumar @ Kukku, even if proved, does not implicate Ashok Jain. As a consequence, the making of the call to Ashok Jain would not establish that accused Ashok Jain was a conspirator to the murder.

1138. PW16 Durga Dass was examined by the prosecution to prove, inter alia, that accused Bhisham @ Chintoo was closely associated with accused Ashok Jain; that the witness had learnt about a plan made by accused Ashok Jain and his employee to harm Vijay Yadav and his brother; that Vijay Yadav was making efforts to garner support from followers of Ashok Jain; that accused Bhisham @ Chintoo had told the

witness on several occasions that Vijay Yadav was troubling the former and making false complaints to the police; and that accused persons Vinod @ Gola, Bhisham @ Chintoo and Deepak @ Chowda had told the witness that they had killed Vijay Yadav on the asking of accused persons Ashok Jain, Rishi Pal @ Pappu and Gopal Krishan Aggarwal. He is a key witness for the prosecution to prove the existence of conspiracy.

1139. PW16 Durga Dass, however, did not support the case of the prosecution. He did not depose to any of the above facts. He stated in his examination-in-chief that he used to supervise Balmiki Mandir situated at Asaf Ali Road; that did not support any political party during the elections of Municipal Corporation of Delhi in the year 2007; that he knew deceased Vijay Yadav, Abhay Singh Yadav and Ashok Jain; that Ashok Jain did not contest elections held in the year 2007; that he did not know any person by the name of Bhisham @ Chintoo. The witness was shown accused Bhisham @ Chintoo. He denied knowing accused Bhisham @ Chintoo.

1140. PW16 Durga Dass was cross-examined by ld public prosecutor. In cross-examination, the witness held his ground. He stated that during investigation of the case, he was called by the police, made to sit in the police station and then asked to go. No inquiry was made from him. The witness denied knowing anything about whether Ashok Jain was



canvassing against the candidate of his political party during the MCD Councillor elections held in the year 2007. He also expressed ignorance of whether Vijay Yadav was canvassing in favour of the said candidate in the election. The witness denied knowing anything about there being tension in the area as a consequence of negative campaigning being done by Ashok Jain and support of Vijay Yadav to the contesting candidate, or whether this resulted in enmity between Vijay Yadav and Ashok Jain. The witness denied knowing about whether Bhisham @ Chintoo was closely associated with Ashok Jain. He denied knowing about any plan of Ashok Jain and his employee to harm Abhay Singh Yadav or Vijay Yadav. The witness denied that Vijay Yadav was trying to gain support from followers of Ashok Jain. The witness denied that accused Bhisham @ Chintoo had told the witness that Vijay Yadav was troubling Bhisham @ Chintoo or that Vijay Yadav was making false complaints to the police. The witness denied that accused persons Vinod @ Gola, Bhisham @ Chintoo and Deepak @ Chowda had told the witness that they had killed Vijay Yadav on the asking of accused persons Ashok Jain, Rishi Pal @ Pappu and Gopal Krishan Aggarwal. The deposition rendered in Court by PW16 Durga Dass has not been shown by the prosecution to be incorrect or driven by influence of accused persons. The testimony of the witness not only disproves the allegations of Ashok Jain being a part of the conspiracy, it also shows

an attempt to manufacture statements under section 161 of Code of Criminal Procedure to embroil an accused person into the case. That apart, even if it had been proved by the prosecution that Vijay Yadav and Ashok Jain were campaigning for rival contenders, that would not have proved Ashok Jain's motive to conspire because undeniably this fact alone would not impel Ashok Jain to turn vindictive and to eliminate Vijay Yadav altogether.

1141. Another witness examined by the prosecution to establish its allegation of conspiracy on the part of accused Ashok Jain is PW20 Harjeet Singh. The witness deposed that about ten or twelve days prior to death of Vijay Yadav, 'hot words' had been exchanged between Vijay Yadav and Ashok Jain in the presence of the witness; that Ashok Jain was a former councillor of the area and his supporters had diverted to Vijay Yadav; that Vijay Yadav had lodged a false complaint against accused Bhisham @ Chintoo, the main supporter of Ashok Jain, through one Parmod and that Bhisham @ Chintoo is the main supporter of Ashok Jain.

1142. In his cross-examination, the witness was confronted with the statement under section 161 of Code of Criminal Procedure of the witness in which there was no mention of many assertions made by him during his testimony. The witness also stated that he had met Vijay Yadav for the first time in jail as the witness and Vijay Yadav were both

lodged in the same jail, though in separate murder cases.

1143. Firstly, it is odd that PW20 Harjeet Singh who claims to have an affinity for Vijay Yadav to the extent that the witness was associated with each event taking place in the life of the deceased, states that he had never met the police before 7<sup>th</sup> December, 2007 for tendering his statement. PW20 Harjeet Singh is a witness who has a history of criminal cases being registered against him. He was on friendly terms with Vijay Yadav. He had no reason to fear being engaged with the police or the judicial system. He was aware of names of possible suspects and was willing to depose. Yet, he did not approach the police and did not tender his statement for more than two months after the incident. This creates a doubt on the credibility of the witness.

1144. Secondly, the witness professes to be aware of the motives and the antecedent events spanning different dates concerning all the three alleged conspirators, which is unlikely. The witness has not explained how he knew that supporters of Ashok Jain were defecting to Vijay Yadav. He has not named any supporter who did so or any supporter who told this witness about having done so. No such supporter has been examined.

1145. Thirdly, the witness has not explained how he knew that Vijay Yadav had lodged a false complaint against Bisham @ Chintoo through Parmod. According to another witness of the prosecution namely PW4

Parmod, the complaint was not false at all and the incident had indeed occurred. As per the other witnesses of the prosecution, no complaint had been lodged by Vijay Yadav regarding the incident and the complaint was only lodged by Parmod. The witnesses have adopted contrasting stands. Also, the record of the police (details have been given above) shows that the complaint was made by Parmod in respect of his own personal grievance, and it had not been lodged by Vijay Yadav. This shows the version of PW20 Harjeet Singh to be incorrect and rebutted by record.

1146. Fourthly, PW20 Harjeet Singh was asked in his cross-examination as to when the spat of Vijay Yadav with Ashok Jain had happened. The witness could not provide a date. This is, however, not an infirmity. It is possible that the witness may have forgotten the precise date due to lapse of time. However, the witness should have been able to disclose at least the year when it happened. The witness had not suffered substantial loss of memory and must be credited with being able to recall several other dates, facts and figures. The witness stated that the 'exchange of hot words' may have happened around the election period in the year 2006 or around the period of incident of homicide. This is contrary to what other witnesses have deposed. The quarrel had happened, as per PW14 Abhay Singh Yadav, in April, 2007 and not in the year 2006. The date of quarrel stated by PW14 Abhay Singh Yadav

does not match either with the year of 2006 or the 'period of incident of homicide' as stated by PW20 Harjeet Singh. This implies that the witness, who claims to be spending most time around Vijay Yadav to be able to depose about the motive of all accused persons as per expectations of the prosecution, could neither state the year of the election, nor the year of the incident of homicide. He was not equipped with the relevant facts and was deposing under the assumption that the said election had happened in the year 2006. The statement of the witness that the feud may be in the year 2006 or even in the year 2007 is suggestive of the fact that either the witness has no recollection of the event, or was simply never present when any of the above events allegedly occurred.

1147. Fifthly, PW20 Harjeet Singh admitted in his cross-examination that he never informed the police during the recording of his statement Ex.PW20/D1 under section 161 of Code of Criminal Procedure that there had been an altercation between Vijay Yadav and Ashok Jain. This implies that this is a new fact being introduced during the Court testimony of the witness. It is hard to believe that a significant fact (the proof of which was the purpose of the examination) which the witness did not recall when he gave statement to the police during investigation, and which would have been fresh in his mind then, suddenly dawned upon the witness during his examination-in-chief in

Court many years afterwards. The version of the witness appears implausible and doubtful. The facts which the witness omitted to state to the Investigating Officer were critical and they form the foundation on which the prosecution built its case against the accused conspirators. On account of their being absent from the statement recorded during investigation while the witness was talking on the same subject, and their surfacing only during the testimony in the Court, it would not be safe to rely on them. They appear to have been introduced belatedly only to somehow make out a case against accused Ashok Jain. As held in the case of *Khushal Chand v. State* CrI. Appeal no. 109 of 2008 decided by Hon'ble High Court of Delhi on 7<sup>th</sup> March, 2014 (*supra*), such a testimony cannot be relied upon.

1148. That apart, even if this Court were to believe that there was an argument between Vijay Yadav and Ashok Jain on the ground of the latter's supporters pulling out, that would not have proved the motive of Ashok Jain to conspire to kill Vijay Yadav. A mere argument with a person gives no ground to start plotting the murder of the adversary. Vijay Yadav may have had arguments with many persons during his lifetime. That does not mean that each person would be made to face charges for conspiring to murder Vijay Yadav.
1149. In light of the above, it is concluded that the prosecution has failed to prove, through the deposition of PW20 Harjeet Singh, that Ashok Jain

had reasons to enter into a conspiracy aimed at the murder of Vijay Yadav.

1150. Another witness of relevance is PW32 Sunil Sharma. He was examined because, according to the prosecution, accused Ashok Jain had received information from accused Rishi Pal that Abhay Singh and Vijay Yadav were behind the CBI anti-corruption case against Ashok Jain, though the name of accused Rishi Pal @ Pappu had been put on the front as the informant. The prosecution has tried to prove this through the testimony of PW32 Sunil Sharma. PW32 Sunil Sharma was examined by the prosecution not only to show the motive to conspire to kill Vijay Yadav, but also to prove involvement of accused Ashok Jain in the hatching of a conspiracy.

1151. As per the prosecution, PW32 Sunil Sharma had stated to the police during investigation that accused Ashok Jain had been convinced by Rishi Pal @ Pappu that the CBI case had been booked at the behest of Abhay Singh and Vijay Yadav; that the witness had overheard a conversation between accused persons Ashok Jain, Rishi Pal @ Pappu and Bhisham @ Chintoo to teach a lesson to Vijay Yadav and his brother; that accused persons Ashok Jain and Rishi Pal @ Pappu had instigated Bhisham @ Chintoo to act against Vijay Yadav and his brother; that the witness had narrated this to Abhay Singh Yadav and cautioned the latter.

1152. The witness deposed in his examination-in-chief that Vijay Yadav had been murdered on 29<sup>th</sup> September, 2007; that no part of the conspiracy to murder Vijay Yadav was hatched in the presence of the witness; that the witness did not know about the relationship between accused persons Ashok Jain, Rishi Pal @ Pappu and Gopal Krishan Aggarwal and they had never been seen together; that the witness did not know what happened between Ashok Jain, Rishi Pal @ Pappu, Gopal Krishan Aggarwal and Abhay Singh Yadav after the murder of Vijay Yadav @ Viji. Ld. Public Prosecutor cross-examined the witness. The witness was cross-examined about a CBI raid at the premises of accused Ashok Jain. The witness stated that he did not know if Rishi Pal @ Pappu had convinced Ashok Jain that the raid was the doing of Abhay Singh Yadav and Vijay Yadav. The witness denied having tendered statement under section 161 of Code of Criminal Procedure to the police. The witness denied having seen Rishi Pal @ Pappu and Bhasham @ Chintoo in the office of Ashok Jain. He denied overhearing a conversation between accused persons Ashok Jain, Rishi Pal @ Pappu and Bhasham @ Chintoo to teach a lesson to Vijay Yadav and Abhay Singh Yadav. The witness denied hearing about holding of Abhay Singh Yadav and Vijay Yadav responsible for certain losses and about instigation of Bhasham @ Chintoo by stating that since Bhasham @ Chintoo has contacts with henchmen and so he should be doing something. The



witness denied narrating these facts to Abhay Singh Yadav and cautioning the latter, and also denied having informed the police of the aforesaid facts. The said witness has not been evasive in replying to questions. He has confidently answered the questions but has stated that none of the alleged events had occurred. The stand of the witness emanating from his deposition has not been disproved by the prosecution. It has not been shown that the witness is under the influence of the accused persons. The above shows that the witness did not hear any conspiracy to murder Vijay Yadav being hatched in his presence. The witness did not see accused persons Ashok Jain, Rishi Pal @ Pappu and Gopal Krishan Aggarwal being together. The witness was unaware that Rishi Pal @ Pappu had convinced Ashok Jain that the raid was the doing of Abhay Singh Yadav and Vijay Yadav. The witness has disowned the statement purportedly recorded under section 161 of Code of Criminal Procedure. This implies that the allegations of the prosecution of the conspiracy having taken place have floundered. PW32 Sunil Sharma is one among the many witnesses who have denied having tendered the statement purportedly recorded by the police under section 161 of Code of Criminal Procedure. The allegations of accused Ashok Jain entering into the conspiracy stand not proved. The allegation of accused Ashok Jain harbouring a belief of Vijay Yadav or Abhay Singh Yadav being responsible for the CBI raid, which might

have induced him to conspire to kill Vijay Yadav, has also remained not proved.

1153. Another witness examined by the prosecution to prove conspiracy on the part of accused Ashok Jain is PW63 Deepak Kumar. According to the prosecution, accused persons Vinod @ Gola, Deepak @ Chowda and Bhasham @ Chintoo had informed the witness about they having committed the murder at the behest of accused persons Ashok Jain, Gopal Krishan Aggarwal and Rishipal @ Pappu. PW63 Shri Deepak Kumar stated in his examination-in-chief that in the year 2007, the witness had learnt about an incident of firing having taken place at Arya Samaj Gali. He also learnt that one Vijji had been shot. PW63 Shri Deepak Kumar further stated in his examination-in-chief that on the next day, accused Vinod @ Gola called the witness on his mobile phone and asked the witness to look after his house. The witness asked accused Vinod @ Gola as to what had happened, to which the accused said that he would tell after he returns. PW63 Shri Deepak Kumar stated that he did not know anything else about the present case. Id. Addl. Public Prosecutor obtained permission of the Court and cross-examined PW63 Shri Deepak Kumar. In his cross-examination by Id. Additional Public Prosecutor, the witness denied that on 30<sup>th</sup> September, 2007 accused Bhasham @ Chintoo told the witness on a phone call that Bhasham @ Chintoo and his associates had killed Vijay

Singh @ Vijji at the instance of Ashok Jain, Gopal Krishan Aggarwal and Rishipal @ Pappu. PW63 Shri Deepak Kumar also denied the suggestion that later Deepak @ Chowda talked to the witness and told him that Vijay Yadav @ Vijji had been murdered by them at the instance of Gopal Krishan Aggarwal, Ashok Jain and Rishi Pal @ Pappu. In cross-examination, nothing could be elicited which could indicate that the witness had changed his stance at the instance of the accused persons, or which could establish that the correct facts were the one recorded by the police and not the testimony rendered to the Court. There is nothing to indicate that indeed any of the assailants had informed the witness that the murder had been committed at the instance of accused persons Gopal Krishan Aggarwal, Ashok Jain or Rishi Pal @ Pappu. The witness is not shown to be amenable to the influence or control of the accused persons. It has already been noted above that this witness, even if he had deposed on the lines of the statement recorded under section 161 of Code of Criminal Procedure, would not have proved that accused Rishi Pal @ Pappu, Gopal Krishan Aggarwal and Ashok Jain had conspired to the crime. The extra-judicial confession allegedly made by accused Bhisham @ Chintoo and Deepak @ Chowda about they having killed Vijay Yadav on the asking of accused persons Ashok Jain, Rishi Pal @ Pappu and Gopal Krishan Aggarwal, even if proved to have been made, would not have been

substantive evidence against accused Ashok Jain as he is not the maker of those statements, as held in the cases of Tejinder Singh @ Kaka (supra) and Basanti (supra). It would have also been barred by the hearsay rule. Besides, as noted earlier, such an extra-judicial confession would not become admissible under sections 10 or 30 of the Evidence Act, 1872, since the existence of conspiracy has not already been demonstrated to exist, and because on the date of the said extra-judicial confession, the conspiracy was not in subsistence even as per the case of the prosecution.

1154. It is concluded that the testimony of PW63 Deepak Kumar is of no help to the prosecution in proving that accused Ashok Jain was one of the conspirators.
1155. The next witness examined by the prosecution to prove motive and participation of accused Ashok Jain in the conspiracy is PW28 Vinod Kumar @ Teda.
1156. This witness was examined by the prosecution because, according to the prosecution, the witness could prove the following facts concerning accused Ashok Jain:
- a. That Ashok Jain was campaigning against the candidate supported by Vijay Yadav in the MCD councillor elections;
  - b. That there was an argument between Ashok Jain and Vijay Singh Yadav on account of the said campaigning;

- c. That accused Bhisham @ Chintoo told the witness that accused Gopal Krishan Aggarwal and Ashok Jain had made a plan for eliminating Vijay Singh Yadav due to previous enmity.
1157. The relevant part of examination-in-chief of the testimony of PW28 Vinod Kumar @ Teda is culled out. The witness has stated that in the year 2007, he was residing at Sita Ram Bazaar, Delhi; that brother of the witness had business relations with accused Vinod @ Gola; that the witness, however, had no relationship with any of the accused persons of the case; that the witness never visited the premises of any of the accused persons except for accused Gopal Krishan Aggarwal, where he used to go once a week. Ld Public Prosecutor cross-examined the witness. In his cross-examination concerning accused Ashok Jain, the witness denied knowledge of Ashok Jain campaigning against the candidate supported by Vijay Yadav in the MCD councillor elections. The witness denied having knowledge of any altercation between Ashok Jain and Vijay Yadav. The witness denied that he went to the police station in this connection. The witness also denied that Bhisham @ Chintoo had informed the witness of a plan made by accused Gopal Krishan Aggarwal and Ashok Jain for eliminating Vijay Singh Yadav.
1158. It can be concluded from the above that PW28 Vinod Kumar @ Teda had not heard any acrimonious exchange of words between Vijay Yadav and accused Ashok Jain. Accused Bhisham @ Chintoo had not

told the witness about any plan hatched by accused Gopal Krishan Aggarwal or accused Ashok Jain to eliminate Vijay Yadav. The witness never stated to the police about the aforesaid episodes. The police wrote those statements on its own as utterances of the witness. This is demonstrative of improbity on the part of the police. The statement under section 161 of Code of Criminal Procedure of the witness is devoid of sanctity, apart from being legally inadmissible in evidence. There is nothing on record to indicate that the witness had heard the feud or spat between Vijay Yadav and Ashok Jain or that the witness had been informed the witness about any scheme devised to kill Vijay Yadav. Also, if the witness had been informed by accused Bhisham @ Chintoo of such a scheme, and since the witness was a party to it, then as a conscientious and law-abiding person the witness would surely have promptly passed on the information to the police. That was not done. There is also no reason for accused Bhisham @ Chintoo to inculcate himself and others, by confiding of such a plot to the witness who was neither a close associate nor a relative so as to be trusted to keep it confidential. All circumstances point towards the account of the prosecution being improbable, apart from receiving no validation from the witness.

1159. The result is that PW28 Vinod Kumar @ Teda has not lent any support to the case of the prosecution of Ashok Jain having the motive to

conspire, of having indeed conspired, to the murder of Vijay Yadav.

The prosecution story remains not proved.

1160. The prosecution has next relied on PW47 Rajinder Singh to prove the nexus between accused Bhisham @ Chintoo and accused Ashok Jain. The witness stated in his examination-in-chief that about four or five years ago, he was called by police officers of PS Hauz Quazi for some enquiry. The police was inquiring from him as to whether any person had approached him for arranging of a job, to which he pleaded ignorance. The witness deposed that nothing except the above had been enquired from the witness by the police. PW47 Rajinder Singh was cross-examined by the Id Addl. Public Prosecutor. In his cross-examination, the witness stated that he is engaged in the work of caterer. Persons named Jitender, Umesh, Amit, Nischal, Rahul, Dharmender, Komal, Ravi, Sudesh, Vijender, Vikas, Dev Raj, Vijay and Surinder were working with him as labourers on daily wages. In the year 2008, the witness was running his business from Bazar Sita Ram and at that time the witness was residing in the same locality. The witness had been residing there since the last 20 to 22 years. The witness denied knowing any person by the name of Ved Prakash or Bhisham @ Chintoo. The witness denied that Bhisham @ Chintoo used to collect money from employees of the witness on the pretext of securing jobs for them. The witness denied having tendered statement

to the police.

1161. PW47 Rajinder Singh did not support the allegations. Nothing has been brought on record by the prosecution to show that the witness was stating incorrect facts in Court during his testimony or to show that the statement recorded by the police under section 161 of Code of Criminal Procedure was actually reflective of the truth. The witness has not been shown to be under the influence of any of the accused persons. He is yet another witness of the prosecution who has disowned the statement recorded by the Investigating Officer. The deposition of this witness has brought to naught the attempt of the prosecution to show the association between Bhisam @ Chintoo and accused Ashok Jain.
1162. It has been seen above that the prosecution has utterly failed to prove that accused Ashok Jain had motive to conspire to the murder of Vijay Yadav. The receipt of phone call from one Kishan Kumar @ Kukku, apart from remaining not proved, is not shown to be even remotely connected to the assailants or their conspiracy to execute Vijay Yadav. It has also been noted that even if the facts which according to the prosecution are suggestive of a foul intent had been proved by the witnesses, then too the accused cannot be held to be a conspirator since they do not provide motive to altogether eliminate Vijay Yadav.
1163. The prosecution had cited several witnesses to prove that accused Bhisam @ Chintoo was associated with accused Ashok Jain. However,



the witnesses either refuted this assertion or were found to be unworthy of credit or incompetent to testify to this fact.

1164. Yet, even if it is assumed that accused Bhisham @ Chintoo was indeed associated with Ashok Jain, that would not imply that every action or step taken by accused Bhisham @ Chintoo shall be deemed to have the concurrence of accused Ashok Jain. A person may act on his own. Accused Bhisham @ Chintoo could make a choice to proceed to do something without Ashok Jain agreeing to it. It has not been proven that Bhisham @ Chintoo was disenfranchised by Ashok Jain and had lost the right to take his own decisions. A mere association cannot lead to an inference of involvement in a conspiracy. If that was so, whenever a person is found guilty of a certain offence, all those who are associated with him as friends, employers or partners should also become axiomatically liable for conspiring to that offence on the basis of on assumption. That would be absurd, apart from being legally impermissible.

In the case of State v. Mohd. Naushad Death Sentence Ref. no. 2/2010 dated 22<sup>nd</sup> November, 2012, the Hon'ble High Court of Delhi held as follows:

*“A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more, to do an unlawful act, or to do a lawful act by unlawful means. So long as such a design rests in intention only it is not indictable. Mere evidence of association is not sufficient to lead to the inference of conspiracy. (Kehar Singh v State AIR 1988 SC 1883; Mohd. Hussain Umar Kochra v. Dalipsinghji K.S. AIR*

*1970 SC 45). Merely because certain persons hold beliefs identical to the offenders, or the bare fact that they were present with persons who were parties to the conspiracy, cannot constitute a valid foundation for a conviction on a charge of conspiracy."*

1165. It has been noted above that the prosecution has failed to demonstrate that accused Ashok Jain had motive to conspire to the murder of Vijay Yadav. The acts of Ashok Jain have not been shown to have the imprint of such a motive. Even if the facts alleged by the prosecution are deemed to have been proved, they would not lay the foundation of a malevolent motive. If there is bad blood between two persons, or if they feel repugnant to each other for political or professional reasons, it would not imply that they will have motive to kill each other. The witnesses who, according to the prosecution, had heard the conspiracy being hatched or were informed about it, have also disclaimed to be knowing anything about the conspiracy.

1166. Another point needs to be underscored. Even if it is deemed to have been proved by the prosecution that accused Ashok Jain was inimical towards Vijay Yadav, and had motive to kill Vijay Yadav, that does not denote that accused Ashok Jain indeed conspired to the murder of Vijay Yadav. Motive to perform a certain act is in the nature of a desire or a goal which a person may wish to achieve. It is not necessary that a person will take affirmative action to fulfil that desire or attain the goal. Unless that affirmative step is taken and an agreement is entered into

with other persons to accomplish that task, a conspiracy is not hatched and no offence is committed. The leading precedents to support this view will be discussed later since the same point applies to accused Gopal Krishan Aggarwal and Rishi Pal @ Pappu too. The admissibility and effect of confessional statements of accused persons shall also be dealt with later as it is common to accused persons Rishi Pal @ Pappu, Ashok Jain and Gopal Krishan Aggarwal.

1167. From the above, it follows that the prosecution has miserably failed to prove, either by direct evidence or by circumstantial evidence that accused Ashok Jain had conspired with accused Bhisham @ Chintoo or other accused persons to eliminate Vijay Yadav.

**Phone calls from Sonapat made to accused persons Ashok Jain and Rishi Pal @ Pappu**

1168. According to the prosecution, on 29<sup>th</sup> September, 2007, accused Bhisham @ Chintoo, while leaving Delhi with his accomplices after gunning down Vijay Yadav, stopped at a restaurant (dhaba) at Delhi Road, Sonapat and called up both Rishi Pal @ Pappu and Ashok Jain from an STD Shop at the restaurant. As per the prosecution, Bhisham @ Chintoo informed them that he along with others had killed Vijay Yadav and asked them to take care of things. The case of the prosecution is that the said conversation establishes that accused Rishi Pal @ Pappu and Ashok Jain were working hand-in-glove with accused

Bhisham @ Chintoo and his accomplices in commission of murder, and there was a joint conspiracy.

1169. Since this allegation is common to accused Rishi Pal @ Pappu and accused Ashok Jain and the supporting evidence led by the prosecution is also common, the case of the prosecution against both these accused persons is being dealt with jointly here.

1170. It needs to be seen whether the prosecution has succeeded in proving its case against Rishi Pal @ Pappu and Ashok Jain as set out above. The prosecution needs to prove the following:

- a. That calls were made from the STD shop on the date of the incident;
- b. That the caller was accused Bhisham @ Chintoo;
- c. That the recipients of the calls were accused Rishi Pal @ Pappu and Ashok Jain respectively;
- d. That the caller spoke about commission of murder and requested to take care of the matter or anything else was spoken which is suggestive of a joint conspiracy.

It may be seen whether the prosecution has succeeded in proving each of these constituents.

#### **Making of calls from the STD Shop**

1171. The prosecution examined persons who were running the restaurant (*dhaba*) with STD call facility at Sonapat. These are PW21 Vijay Saini

and PW22 Shri Vijender Saini.

1172. PW21 Vijay Saini deposed in his examination-in-chief that he has been running a restaurant (*dhaba*) at Delhi Road, Sonapat in the name and style of Bhagat Singh Vaishno Dhaba; that in the year 2007, there was an STD phone facility of Airtel at the said restaurant; that he did not remember the phone number of that instrument as it was not in operation since long; that on 22<sup>nd</sup> December, 2007, the police had visited the said restaurant and seized the phone instrument as well as its sim card; that the witness had signed the seizure memo Ex. PW6/A; that police had kept the seized instrument and its sim card in a parcel and had sealed it. The witness identified the phone instrument and its sim card on their production in Court.

1173. PW22 Shri Vijender Saini is brother of PW21 Vijay Saini. PW22 Shri Vijender Saini deposed on the same lines as PW21 Vijay Saini. There is no discrepancy in the version of the two witnesses. PW22 Shri Vijender Saini too identified the phone instrument and its sim card on their production in Court. On a leading question being asked by the public prosecutor, the witness admitted that the phone connection number was 9896941896.

1174. The abovenamed witnesses were cross-examined by Id counsel for accused Rishi Pal @ Pappu. However, nothing material emerged from the cross-examination which could cast a doubt on their testimony.

1175. Through the testimony of the abovenamed witnesses, it stands proved that:

- a) There was a restaurant (*dhaba*) at Delhi Road, Sonapat by the name of Bhagat Singh Vaishno Dhaba which offered STD call facility in the year 2007;
- b) That the phone number of that instrument was 9896941896; and
- c) That on 22<sup>nd</sup> December, 2007, the police officers had seized the instrument.

1176. Another witness examined to prove these facts was PW6 HC Shiv Kumar. He is the police officer who, alongwith SI Ram Avtar, had gone to Sonapat and had seized the phone instrument. The witness deposed, in his examination-in-chief, that on 22<sup>nd</sup> December, 2007, he was posted at Inter-State Cell, Chankya Puri; that on that day, he and SI Ram Avtar went to Sonapat, Haryana; that at about 01:00 pm, they reached Saini Dhaba, Opposite Truck Union, Khan Colony, Delhi Road, Sonapat; that two persons namely Vijender Saini and Vijay Saini were present there; that SI Ram Avtar made inquiry from them regarding telephone No. 9896941896; that the phone was found to be in the name of Vijay Saini; that Vijay Saini produced a phone instrument of Beetal Company having sim number of Airtel, which were sealed in a parcel of KGT and seized by memo Ex. PW6/A. The witness identified the said case property which was produced with intact seal. Although the witness

was cross-examined, nothing material emerged therefrom.

1177. From the testimony of PW6 HC Shiv Kumar, it stands established that this witness and SI Ram Avtar had gone to Sonapat on 22<sup>nd</sup> December, 2007. They went to Saini Dhaba and seized telephone No. 9896941896.
1178. Clearly, PW6 HC Shiv Kumar has corroborated the version of PW21 Vijay Saini and PW22 Shri Vijender Saini. From their testimony, it stands unambiguously proved that there was a restaurant (*dhaba*) at Delhi Road, Sonapat by the name of Bhagat Singh Vaishno Dhaba which offered STD call facility in the year 2007 and that the phone number of that instrument was 9896941896.
1179. PW45 Sh. Chander Shekhar, Nodal Officer, Bharti Airtel Ltd. was examined by the prosecution to disclose who the aforesaid phone connection had been issued to. The witness deposed in his examination-in-chief that he had brought the customer application form of connection No. 9896941896; that as per record, the said connection was issued in the name of Vijay, son of Silak Ram; that the customer application form is Ex.PW45/A.
1180. This further strengthens the case of the prosecution about ownership of the phone connection and showed the connection to be installed at Sonapat at the restaurant of Vijay Saini and Vijender Saini.
1181. Having reached this far, the prosecution needs to prove that calls were made from the aforesaid number (9896941896) in the night of 29<sup>th</sup>

September, 2007. To prove this, the prosecution should have proved the call detail records of the said phone of the date of 29<sup>th</sup> September, 2007. However, the prosecution did not do so. While the customer application form of the said phone was proved through the nodal officer, no attempt was made to get the call detail records proved. The said records remaining unproved, the version of the calls having been made from the phone stand unsubstantiated.

### **Identity of Caller**

1182. Assuming that the prosecution succeeds in proving that calls were indeed made from the aforesaid phone at Sonapat, the next step for the prosecution is to prove that the caller was accused Bhisham @ Chintoo.
1183. The calls were made from an STD Shop. It had open access. Anybody could have paid and used the phone. Therefore, to prove that indeed the conversation was done with Bhisham @ Chintoo, it needs to be proved that the caller was Bhisham @ Chintoo.
1184. This could have been proved by asking PW21 Vijay Saini or PW22 Shri Vijender Saini to identify if any of the accused persons of the case was the caller. If they were not sitting at the STD shop at the relevant time, the person manning the shop could have been called to the Court to identify the caller. That was not done. The prosecution has not made any attempt to prove the identity of the caller from other evidence, like



the examination of other persons employed at the restaurant or the STD shop or by CCTV camera recordings, if any.

1185. There is nothing to establish that the calls had been made by accused Bhisham @ Chintoo.

**Identity of recipients of calls**

1186. Although the prosecution has failed to prove that calls had been made from the said phone and that accused Bhisham @ Chintoo was the caller, assuming these facts to have been proved, the prosecution has to graduate to the next level of proving that the recipients of the calls were accused Rishi Pal @ Pappu and Ashok Jain respectively.

1187. Two calls had allegedly been made from the said phone. According to the prosecution, the calls had been made to phone numbers 9873056281 and 9811166702 which were under the use of Rishi Pal @ Pappu and Ashok Jain respectively.

1188. The prosecution has to prove from the call detail records of these numbers that the phones calls had been received therein. Then the prosecution needs to prove that these phone numbers had been under the use of the abovenamed accused persons at the relevant period.

1189. The prosecution has tried to the prove the call detail records of phone number 9873056281 stated to be under the use of Rishi Pal @ Pappu, through the testimony of PW44 Shri Israr Babu, Alternate Nodal

Officer, Vodafone Mobile Services Ltd. The witness produced and identified the record relating to certain mobile phone connections including the aforesaid number. He saw the call detail records of phone number 9873056281 and identified it as Ex. PW44/F. The witness supported the call detail records with certificate under section 65-B of Indian Evidence Act to the effect that the records are true and correct. In cross-examination, the witness stated that the certificate under section 65-B of Evidence Act had been drafted by the legal cell, and that the witness had only signed the same. The witness admitted that he had no technical knowledge of operation of the computer though he could use a computer. The witness also stated that the call detail records available on record had not been generated by him. The witness further stated in his cross-examination that server of his company is located in Pune. He stated that he does not have any knowledge of the technical specifications of the server regarding storage of data and security features installed to protect such data in the main server. The witness also stated that he does not know from which designated hard disc the data of call detail records had been generated. The witness was unable to tell the serial number and make of the designated hard disc. He could not disclose how many designated hard discs there were in the company or the name of the administrator of the main server. The witness admitted that he has no

control over operations of the main server. The witness was unable to even inform the details of the computer from which the call detail records of the abovestated phone connection had been generated. He was unable to disclose the format in which the call detail records had been downloaded and the details of security system of the computer.

1190. The above shows that the certificate is devoid of sanctity. The witness was not competent to sign the certificate and to certify the authenticity of the call detail records as he had not generated the said records and therefore knew nothing about their veracity. The witness has himself been non-committal. He said that he simply signed the certificate which had been drafted by the legal cell of the company that he was working for. The witness denied having technical knowledge of operation of computer. He had no knowledge of specifications of the server, storage of data, security features and other details. The witness was apparently being used only as a rubber stamp to mechanically authenticate documents with his signatures and to produce them in Court. In light of the said deficiency, the certificate will have to be held to be invalid and of no effect. Since the call detail record produced before the Court as a print-out is an 'output' and qualifies as secondary electronic evidence, it cannot be admitted in evidence without a valid certificate under section 65B of the Evidence Act, as held by Hon'ble Supreme Court in the case of Anvar P.V. v. P.K. Basheer and Others,

(2014) 10 SCC 473. The document is not saved from the prohibition on its admissibility, as per decision of Hon'ble Supreme Court in Shafhi Mohammad vs State of Himachal Pradesh SLP (Crl.) No.2302 of 2017 dated 30<sup>th</sup> January, 2018, because here the device from which the document is generated is not under the control of the accused.

1191. In absence of valid certificate under section 65B of the Evidence Act, the call detail records of phone number 9873056281 stated to be under the use of Rishi Pal @ Pappu stand not proved.
1192. Coming to phone number 9811166702 stated to be belonging to accused Ashok Jain, here the prosecution did not even make an attempt to prove the call detail records. There is no nodal officer who proved the said call detail records. The call detail records of this phone number remain not proved.
1193. Thus, there is no evidence to show that calls had been made from the phone instrument having phone number 9896941896 installed at the Sonapat STD phone booth to the phone numbers 9873056281 and 9811166702.
1194. Assuming even that the making of the said phone calls have been proved by the prosecution, then too the chain is not complete unless it is shown that the phone numbers 9873056281 and 9811166702 were under the use of accused Rishi Pal @ Pappu and Ashok Jain respectively. As per the own case of the prosecution, the phone

connections were not in the names of these accused persons. Therefore, there cannot be a presumption that the phones numbers were under the use of these accused persons. If the phone connections were not being used by the owners in whose name they had been issued, the prosecution should have examined those owners to prove that the connections were being used by the accused persons and the circumstances in which the sim cards had been passed on.

1195. Phone number 9873056281 was issued in the name of one Shiv Kumar. He has not been examined to prove that the phone number was being used by accused Rishi Pal @ Pappu. According to the prosecution, phone number 9811166702 was under the use of accused Ashok Jain. The phone connection is stated in the chargesheet to have been issued in the name of one Apoorv Jain. He has not been examined to prove that the sim card was being used by accused Ashok Jain. There is nothing on record to show that the phone connections were being used by the accused persons on 29<sup>th</sup> September, 2007.

1196. This is an essential requirement of law. In absence of this, it may be well-nigh impossible to hold that the calls had been made to the accused persons and not to the owners of the sim cards. The importance of this link was underlined by the Hon'ble Punjab and Haryana High Court in the case of Central Bureau Investigation v. Bibi Jagir Kaur & Ors, CRA-D-867-DB of 2012 decided on 4<sup>th</sup> December,

2018, in which while acquitting the accused, the Court noted as follows:

*“Secondly, except the mobile phone of Dalwinder Kaur Dhesi, the prosecution did not prove that the mobile phones allegedly used by other accused persons including Bibi Jagir Kaur were registered in their name or owned by them or that they were physically in possession of those mobile phones registered or belonging to somebody else. Not a single witness by the prosecution was examined nor any evidence has been brought on record that anybody saw mobile phones having SIM cards of the numbers allegedly used by the accused persons. There is thus, no direct evidence to that effect.”*

1197. Presumptions of use of phone connections cannot be drawn on the basis of recovery of phones. The phone connection of phone number 9811166702 alleged to be under the use of accused Ashok Jain was not recovered from the possession of the latter, for the Court to draw a presumption that it was under the use of Ashok Jain. The phone was reported to be lost. Even the complaint of loss of phone had been registered by Apoorv Jain and therefore there is nothing to indicate that this phone was actually under the use of Ashok Jain. The phone bearing no. 9873056281 was recovered from the possession of Rishi Pal @ Pappu but that does not show that the phone was under the use of the accused on 29<sup>th</sup> September, 2007. It is this date of which custody is to be proved by the prosecution and not the date of interrogation of the accused when recovery took place. The recovery of the phone after more than two months (7<sup>th</sup> December, 2007) has no significance because this affords ample opportunity for the phone to exchange hands. The possibility of the phone being earlier used by the owner Shiv Kumar or

someone else and it having reached the hands of Rishi Pal @ Pappu by the date on which it was recovered cannot be ruled out. It is also possible that the police may have itself called for the phone from the accused during his interrogation and the accused may have got it from his relative. Another fact which is relevant is that, according to the prosecution, the Investigating Officer PW68 Inspector K.G. Tyagi had interrogated the accused and had recovered the phone. However, PW68 Investigating Officer Inspector K.G. Tyagi does not depose to this effect. PW68 Investigating Officer Inspector K.G. Tyagi makes no mention of recovery of the phone from the possession of accused Rishi Pal @ Pappu. He also does not state that accused Rishi Pal @ Pappu disclosed that phone call had been received on this very phone from Bhisham @ Chintoo from Sonapat on the date of the incident. This is a material departure from the testimony of other police witnesses namely PW62 ASI (Retired) Rajbir Singh and PW67 SI Mukesh. PW68 Inspector K.G. Tyagi only stated that after interrogation, he arrested the accused and carried out his personal search. The mobile phone finds no mention in the list of recovered articles in the personal search memo Ex. PW62/N of accused Rishi Pal @ Pappu. PW68 Inspector K.G. Tyagi has not testified to the recovery of the mobile phone from accused Rishi Pal @ Pappu or its seizure. The public prosecutor also did not draw the attention of the witness to the said fact during his testimony. Thus the

use of the phone having connection no. 9873056281 on 29<sup>th</sup> September, 2007 cannot be attributed to accused Rishi Pal @ Pappu.

1198. It is apparent that there are gaping holes in the prosecution story and vital linkages are missing. There is no evidence to show that calls were made from the Sonapat phone booth to the phones being used by accused Rishi Pal @ Pappu and Ashok Jain.

#### **Contents of the Conversation**

1199. The mere making of a phone does not indicate anything. A person may, after committing a crime, call up anybody of his choice. That would not incriminate the recipient of the call into the crime. There is no presumption that the person to whom an offender calls is also a conspirator in the crime.
1200. In this case, the content of the conversation is not known and there is no evidence to reveal what had been spoken about. No witness has been examined to prove this.
1201. Also, it is the prosecution's own case that accused Bhisham @ Chintoo was known to both Rishi Pal @ Pappu and Ashok Jain and therefore even if he called the latter, it is not astonishing and it cannot be assumed, from this very fact, that these persons were also involved in the conspiracy. It is possible that Bhisham @ Chintoo may have called for some work of his own. In fact the Investigating Officer of the case



namely Inspector K.G. Tyagi, examined as PW68, has himself stated in his cross-examination that Ashok Jain was a previous councillor of the area and that "It generally happens that the persons of the area contact the councillor of the area to apprise him about the recent happenings in the area".

1202. Thus, even though the prosecution has miserably failed to prove that accused Bhisham @ Chintoo was the caller, and that he had called Rishi Pal @ Pappu and Ashok Jain, yet even if this is deemed to have been proved, it does not establish existence of the conspiracy.

1203. It is concluded that the prosecution has failed to prove that on 29<sup>th</sup> September, 2007, calls were made by accused Bhisham @ Chintoo from the STD shop to accused Rishi Pal @ Pappu and Ashok Jain. The prosecution has also failed to prove that during the call, accused Bhisham @ Chintoo informed about the murder and asked the latter to take care of things or that Bhisham @ Chintoo spoke anything relating to the incident.

1204. A single phone call to a familiar person, even if proved, does not give rise to an inference of they being conspirators in the crime. This point is supported by reference to the decision of Hon'ble High Court of Delhi in the case of Satyapal Singh vs State CrI. A. no. 943/2015 decided on 22 March, 2018, in which it was held as follows:

*"In the present case, what the prosecution was able to produce were the CDRs of A-4 which showed that there were calls exchanged with A-1. However, as rightly pointed out by Mr.*

*Lokur, in a period of 79 days, only 34 calls were exchanged between A-1 and A-4. This is indeed not an unusually large number particularly since A-4 and A-1 were cousins from the same village. Further, the CDRs showed that not a large number of phone calls were exchanged between A-1 and A-4 either shortly before 16th January 2013 or shortly after. The mere fact that there were two calls is not sufficient to prove the existence of criminal conspiracy involving A-1 and A-4.*

*73. There was no proof of payment of Rs. 40,000 by A-1 to A-4 as part of the agreed consideration for killing the deceased. The source of such money and the actual payment by A-4 to A-1 of Rs.40,000 has not been proved by the prosecution. No money was ever recovered from A-1 or A-4."*

The aforesaid judgment applies on all fours to this case since here too there is no proof of payment of money by accused Rishi Pal @ Pappu or Ashok Jain to Bisham @ Chintoo or his accomplices. No part of the tainted money has been recovered.

1205. Therefore, even if the making of the said call had been proved by the prosecution, it would not have aided this Court in concluding that accused Rishi Pal @ Pappu and Ashok Jain were conspirators in the murder of Vijay Yadav.

1206. Even if it is assumed to have been proved that accused Bisham @ Chintoo had informed Rishi Pal @ Pappu and Ashok Jain that he has committed the murder, and may have asked them to take care of things in his absence, that does not make Rishi Pal @ Pappu or Ashok Jain conspirators. A conspiracy is hatched prior to the crime. If one is only sharing information of having committed a crime, or one is confessing to his mistake and soliciting help, and suppose help is even provided,

that would not make the other person a conspirator in the crime that has already been committed. In this behalf, it would be apt to quote from the case of State v. Nalini (1999) 5 SCC 253, in which the Hon'ble Supreme Court held as under:

*"Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder."*

In the case of State of Kerala v. P. Sugathan & Another (2000) 8 SCC 203, Hon'ble Supreme Court observed as follows:

*"A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in time than the actual commission of the offence in furtherance of the alleged conspiracy." (Emphasis supplied)*

1207. From the above, it is concluded that the making of phone calls by accused Bhisham @ Chintoo to accused Rishi Pal @ Pappu and Ashok Jain after the homicide has not been proved. The conversation between accused Bhisham @ Chintoo and Rishi Pal @ Pappu, the conversation that allegedly took place between accused Bhisham @ Chintoo and Ashok Jain has also not been proved. It is also concluded that if the making of such calls had been proved and if the alleged conversation had also been proved, that too would not have made out a case of

conspiracy by accused Rishi Pal @ Pappu and Ashok Jain.

**Disclosure Statements of accused persons Ashok Jain and Rishi Pal @ Pappu**

1208. According to the prosecution, accused persons Ashok Jain and Rishi Pal @ Pappu had disclosed in their confessional statements made to the police that they had received calls on their phone numbers from accused Bhisham @ Chintoo. The question before this Court is whether a finding of involvement in the conspiracy can be returned on the basis of the said confessional statements, which purported to lead to a discovery.

1209. There is no gainsaying that a confession made to a police officer is not admissible in evidence. It cannot be proved against its maker, as per Sections 25 and 26 of the Evidence Act, 1872. This is subject to section 27 of the Evidence Act which provides that if a fact is discovered from the information given by an accused who is in custody of the police officer, such information may be proved against the accused. As per the above provisions, the confessional statements of Rishi Pal @ Pappu and Ashok Jain, by which they purportedly admitted their involvement in the conspiracy, is inadmissible in evidence. But that part of it which leads to discovery of a fact can be admitted in evidence. The question that next arises is whether the making of the calls from Sonapat can be

said to be such a discovery of fact.

1210. The two requirements for invoking Section 27 of the Evidence Act is that firstly, the statement must be the cause of discovery of new fact and secondly, it must relate distinctly to the said discovered fact. (Reference: Case of Anter Singh Vs. State of Rajasthan (2004) 10 SCC 657)

1211. The prosecution has proved a seizure memo dated 16<sup>th</sup> October, 2007 Ex. PW62/A. The document bears testimony to the seizure of call detail records of a number of phone numbers. Among those numbers is phone number 9896941896. This shows that on or before 16<sup>th</sup> October, 2007, the Investigating Officer was already aware of some calls having been made from the Sonapat phone. It cannot be assumed that this was a general inquiry about records of all persons suspected to have been involved in the case. This is because the aforesaid phone number does not belong to any of the accused persons or any suspect. How the Investigating Officer got the whiff of the said phone number for the first time has not been explained in the chargesheet. The police surely got this phone number from some specific information. Howsoever it may have received it, the bottomline is the record of the phone at Sonapat had been received by the police and was found relevant and fit for seizure. After receiving the call detail records, the police knew about the phone calls having been made to the phone numbers

allegedly being carried by Ashok Jain and Rishi Pal @ Pappu from the Sonapat phone number. The police acquired this knowledge on or before 16<sup>th</sup> October, 2007, when the record came to be seized.

1212. As per the prosecution, accused Bhisham @ Chintoo and Vinod @ Gola had been interrogated and arrested on 25<sup>th</sup> November, 2007. On that day, the confessional statements of accused Bhisham @ Chintoo and Vinod @ Gola had been recorded. In their confessional statements, accused Bhisham @ Chintoo and Vinod @ Gola specifically informed the police of the making of the said calls from Sonapat. The Investigating Officer now knew with certainty about the phone calls. The date of this knowledge of the Investigating Officer is 25<sup>th</sup> November, 2007.

1213. Confessional statements of accused Rishi Pal @ Pappu and Ashok Jain were recorded on 7<sup>th</sup> December, 2007 and 20<sup>th</sup> February, 2008 respectively. According to the prosecution, it is on these dates that the Investigating Officer was informed by these accused persons of the making of the aforesaid calls. On that day, as noted above, the Investigating Officer was already aware of the calls having been made. The Investigating Officer knew this fact on 16<sup>th</sup> October, 2007 and it had been confirmed on 25<sup>th</sup> November, 2007 itself.

1214. Thus, the revelation by accused Rishi Pal @ Pappu and Ashok Jain, during their interrogation, of making of the said phone calls to them by

accused Bhisham @ Chintoo, did not result in the disclosure of a new fact. For a confessional statement to be admissible under section 27 of the Evidence Act, it must result in discovery of a fact unknown to the Investigating Officer. If the Investigating Officer is already aware of the said fact, then the confessional statement of the accused persons cannot escape the censorship of sections 25 and 26 of the Evidence Act. This principle has already been discussed earlier and has been laid down in the cases of Rahul @ Bhuri (supra), Aladdin (supra), Thimma (supra), Bharat Fakira Dhivar (supra), Mohd. Naushad (supra) and Navjot Sandhu (supra), among others.

1215. In light of the above, as the confessional statements of accused persons Rishi Pal @ Pappu and Ashok Jain did not result in discovery of a new fact to the police, it is not admissible in evidence.

1216. Even if the aforesaid interdiction is ignored, it is also a settled principle of law that the information so revealed should be such that it is in the exclusive knowledge of the accused. Reference may be made to the cases of Sanjay @ Kaka (supra), Makhan Singh (supra) and Mangal Singh (supra). Here the making of the calls was in the knowledge of accused Bhisham @ Chintoo too and cannot be attributed to the exclusive knowledge of accused Ashok Jain and Rishi Pal @ Pappu. As such, the disclosure of the said information cannot inculcate accused Ashok Jain and Rishi Pal @ Pappu.

1217. Another requirement of law is that the statement uttered by an accused must lead to discovery of a fact connected to the crime. Only then would the statement receive authenticity and can draw aid from section 27 of the Evidence Act, 1872. If a stray fact is stated by the accused which does not bear any connection with the crime, it would not be admissible. In the present case, it has been held that the making of the calls, even if proved, does not show the involvement of recipients of the calls in the conspiracy. Thus, the statements of the accused persons are inadmissible.

1218. Apart from the above, there are other impediments in use of the confessional statements regarding the making of the phone calls. It has been noted earlier in this judgment that the facts disclosed in the confessional statements should have been verified independently and should have been found to be correct, for the confessional statements to be held to be leading to the discovery of a fact. Reference has been made to the cases of Selvi (supra) and Navaneethakrishnan (supra).

1219. In the present case, the prosecution has failed to prove that the calls had indeed been made. The veracity of disclosure in the confessional statements has not been confirmed by subsequent discovery of facts. There is nothing on record to lend authenticity to the statements. It cannot be stated with certainty that the calls had indeed been made. In absence of such validation, the confessional statements are not saved



from the embargo of sections 25 and 26 of the Evidence Act, 1872. As there is no discovery of a fact which is confirmed by evidence, the possibility of the police having recorded the fact of making of the said calls on its own cannot be ruled out. The law does not treat such a confessional statement as admissible in evidence.

1220. Even if it is assumed that the revelation regarding the calls is admissible in evidence, and that it is saved by section 27 of the Evidence Act, 1872, then too it would not assist the prosecution in proving the allegations of conspiracy against the said accused persons. This is because the confessional statements would be admissible only to the extent to which they relate distinctly to the discovery. In keeping with the principle laid down in the case of *Mohmed Inayatullah* (supra), which has been discussed earlier in this judgment, the only admissible part shall be that the calls had been made from one number to another number, and the knowledge of the calls on the part of Ashok Jain and Rishi Pal @ Pappu can, at best, be inferred. The part of the confessional statements mentioning about who made the calls, who attended the calls and what was spoken during the calls cannot be admitted in evidence. The mere making of the said calls, as held above, is of no use because it does not prove the involvement of accused Rishi Pal @ Pappu and Ashok Jain in the conspiracy.

1221. It is thus held that the part of the confessional statements about making of the calls by accused Bhisham @ Chintoo is inadmissible in evidence, and therefore of no help to the prosecution. It is also held that even if deemed admissible, the limited extent to which it can be read in evidence does not show involvement of accused Ashok Jain and Rishi Pal @ Pappu in the conspiracy.
1222. The prosecution has not pointed out any other part of the confessional statement of accused persons Rishi Pal @ Pappu and Ashok Jain which could be admitted in evidence or which led to discovery of a fact, and which could point to their involvement in the conspiracy. The confessional statements of these accused persons lay out the history of dispute they allegedly had with Vijay Yadav and Abhay Singh Yadav. But those occurrences and events were already in the knowledge of the police having been disclosed by Abhay Singh Yadav and others. Nor were they in the exclusive knowledge of these accused persons. They are also not found to be directly connected to the homicide. The limited extent to which such disclosures, if assumed to be admissible, can be read in evidence, do not in any manner advance the case of the prosecution.
1223. Therefore, it is concluded that the confessional statements of accused persons Rishi Pal @ Pappu and Ashok Jain are neither admissible in evidence, nor do they prove the accused persons to be involved in the

conspiracy to slay Vijay Yadav. The charge of the prosecution of accused Rishi Pal @ Pappu and Ashok Jain being involved in the conspiracy stands not proved.

**Allegations of conspiracy against accused Gopal Krishan Aggarwal**

1224. Accused Gopal Krishan Aggarwal is alleged to have entered into a criminal conspiracy along with other accused persons to commit murder of Vijay Yadav. It is not the case of the prosecution that accused Gopal Krishan Aggarwal had also participated in the attack on Vijay Yadav. He is not named as an assailant. The charge framed against this accused is only for the offence of entering into the criminal conspiracy.
1225. Since it is neither the case of the prosecution nor is there any evidence to indicate participation of accused Gopal Krishan Aggarwal in the crime, or he accompanying the assailants or aiding their escape, an inference cannot be drawn about he having entered into the criminal conspiracy from conduct associated with the crime, as was done in respect of accused persons Deepak @ Chowda, Bhisham @ Chintoo, Kishanpal @ Fauzi, Hitender @ Chhotu, Parveen Koli and Desraj @ Desu.
1226. It is trite law and has been discussed earlier in this judgment that direct proof of conspiracy is seldom available and the Court has to often rely on circumstantial evidence to draw inferences. The facts giving rise to

the inference must be proved and then inferences are to be drawn. Before discussing the evidence adduced by the prosecution, it would be appropriate to briefly describe the motive of accused Gopal Krishan Aggarwal as set out by the prosecution and the role ascribed to Gopal Krishan Aggarwal on the date of the incident.

### **Motive of Accused Gopal Krishan Aggarwal**

1227. According to the prosecution, accused Gopal Krishan Aggarwal had a specific motive to eliminate Vijay Yadav. The prosecution has set forth the background that gave rise to such a motive. It is the case of the prosecution that accused Gopal Krishan Aggarwal had hired Hitender @ Chhotu and his gang to threaten one Vijay Bansal and had given Rs. 3 lakhs as part payment to Hitender @ Chhotu through Vijay Yadav for this purpose. When the dispute got settled, Hitender @ Chhotu asked for the remaining sum of money from accused Gopal Krishan Aggarwal. The accused refused to pay the remaining sum of money to Hitender @ Chhotu on the ground that the final settlement had been brought about not by local criminals but by police officers at Police Station Civil Lines. Vijay Yadav was called in and he had an altercation with Gopal Krishan Aggarwal on this plank. For this reason, according to the prosecution, Gopal Krishan Aggarwal conspired to kill Vijay Yadav.

### Acts ascribed to Accused Gopal Krishan Aggarwal

1228. Accused Gopal Krishan Aggarwal is alleged to be one of the conspirators. According to the prosecution (as mentioned in the supplementary chargesheet filed on 18<sup>th</sup> July, 2008), there was some conduct on the part of accused Gopal Krishan Aggarwal on the date of the incident of murder which is suggestive of his hand in the conspiracy. Those acts are as follows:

- a) Accused Gopal Krishan Aggarwal was in constant contact with Vinod @ Teda on the date of the incident (29<sup>th</sup> September, 2007);
- b) Accused Gopal Krishan Aggarwal was present in his shop at the time of the incident;
- c) Accused Gopal Krishan Aggarwal called Abhay Singh Yadav on the date of the incident to inform him of the occurrence;
- d) Accused Gopal Krishan Aggarwal had called the police control room to inform the police about the incident;
- e) In spite of knowing about the incident, accused Gopal Krishan Aggarwal did not come forward to speak about the incident to the police after the police arrived at the spot.

The evidence adduced by the prosecution shall now be tested to assess whether it has been able to prove the motive, the alleged role and deeds ascribed to accused Gopal Krishan Aggarwal and whether these

show the accused to have conspired with others in the commission of the crime.

**Proof of Conspiracy by accused Gopal Krishan Aggarwal**

1229. It shall be assessed whether the evidence led by the prosecution proves the aforesaid alleged motive of, and the acts ascribed to accused Gopal Krishan Aggarwal, and also whether the aforesaid and other evidence together show accused Gopal Krishan Aggarwal to have conspired with others in the commission of murder.
1230. The first witness through whom the prosecution sought to establish motive of accused Gopal Krishan Aggarwal to conspire to the murder of Vijay Yadav is PW14 Abhay Singh Yadav. He is brother of deceased Vijay Yadav.
1231. The testimony of PW14 Abhay Singh Yadav relating to accused Gopal Krishan Aggarwal needs to be revisited. The witness has stated in his examination-in-chief that a monetary dispute was going on between Gopal Krishan Aggarwal and his friend Sanjay Supariwala on one hand and a bookie by the name of Vijay Bansal on the other; that Gopal Krishan Aggarwal called Deepak @ Chowda, Vinod @ Gola and Vijay Yadav; that the dispute was got settled on the intervention of Hitender @ Chhotu, Dimple Tyagi, Vikas Yadav, Jagdish, Sumit Tyagi, Deepak @ Chowda, Vinod @ Gola and Deshraj @ Desu; that these persons

demanded their share of money from Gopal Krishan Aggarwal; that Gopal Krishan Aggarwal refused to pay the money and told them that he had himself got the dispute settled through Police Station Civil Lines; that Gopal Krishan Aggarwal rather demanded back the money that had been paid by him to these persons as advance; that all these facts had been told to the witness by the deceased; that Vijay Yadav was being treated as a middleman by both the parties, Gopal Krishan Aggarwal on one hand and Hitender and his associates on the other; that this controversy had taken place two or three months after the election.

1232. PW14 Abhay Singh Yadav further narrated in his examination-in-chief that Hitender @ Chhotu, Deepak @ Chowda, Deshraj @ Desu, Vinod @ Gola, Dimple Tyagi, Sumit Tyagi, Vikas Yadav and Jagdish went to the premises of Gopal Krishan Aggarwal at Gali Arya Samaj; that Vijay Yadav was being called to the office of accused Gopal Krishan Aggarwal; that Vijay Yadav was reluctant to go to the office; that the witness however sent Vijay Yadav to the office of accused Gopal Krishan Aggarwal; that on returning from the office of accused Gopal Krishan Aggarwal, Vijay Yadav told the witness that both factions were blaming Vijay Yadav for non-payment of money. PW14 Abhay Singh Yadav stated that the above facts were disclosed to him by Vijay Yadav about two or three months before his murder.

1233. The aforesaid version of PW14 Abhay Singh Yadav suffers from several deficiencies. The first deficiency is that PW14 Abhay Singh Yadav was not present when any of the above events occurred. He did not see them happening. He did not hear the conversations. He is therefore not competent to depose on those facts. His testimony is hearsay.
1234. According to the prosecution, the above testimony can be admitted in evidence since those facts were disclosed by Vijay Yadav himself and they had a bearing on the incident in question, because they reveal motive for committing the offence. This contention needs to be appraised in light of provisions of the Evidence Act, 1872.
1235. The Evidence Act, 1872 prescribes how facts are to be proved. Section 59 of the Act ordains use of oral evidence to prove all facts except contents of documents. It reads as follows:

*"All facts, except the contents of documents or electronic records, may be proved by oral evidence."*

As to who is competent to lead oral evidence has been laid down in Section 60 of the Act. The provision reads as follows:

*"Oral evidence must, in all cases, whatever, be direct; that is to say –*

*if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;*

*if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;*

*if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;*



*if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds;*

*Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found; or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable;*

*Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection."*

1236. The reason underlying this provision is that a hearsay testimony lacks accountability. A person who has seen an event or heard a conversation can alone account for the veracity of what he is deposing on. The others are unreliable witnesses who may simply disown their narratives when confronted with the truth and they cannot be held responsible because they didn't see the event and had only claimed to have been told about it by somebody else. In hearing a version and then reciting it, it is likely that errors, exaggerations and omissions creep in, and that may change the meaning and import of the proposition and may have a bearing on the outcome of the case. The veracity of an assertion has to be tested by cross-examination of the witness who says he saw the event or heard the voice. If he is not examined, and the fact is proved through someone to whom the information had been passed on, it is likely to

frustrate the right of cross-examination, which will be rendered meaningless and this may prevent the truth from coming to the fore. The Court will be forced to deal with an assertion of fact the correctness of which has not been tested by cross-examination of the source of information.

This rule may now be applied to the facts of this case.

1237. PW14 Abhay Singh Yadav has testified to there being a monetary dispute between Gopal Krishan Aggarwal and his friend Sanjay Supariwala on one hand and one Vijay Bansal on the other. The witness did not hear any conversation between these persons. He does not know the facts or covenants of the transaction giving rise to a liability on the part of one of the rival contenders. The dispute did not arise in the presence of this witness.

1238. PW14 Abhay Singh Yadav has testified to Gopal Krishan Aggarwal calling Deepak @ Chowda, Vinod @ Gola and Vijay Yadav. The witness was not present with Gopal Krishan Aggarwal when he was calling these persons. The witness did not see or hear the dispatch of a message to call these people. In his presence, Vijay Yadav had only expressed reluctance to go the office of Gopal Krishan Aggarwal and the witness had sent Vijay Yadav to the said office. The witness is therefore competent to only depose about the reluctance of Vijay Yadav and he being sent to the office of Gopal Krishan Aggarwal. What

transpired in the office of Gopal Krishan Aggarwal before or afterwards cannot be testified to by PW14, Abhay Singh Yadav.

1239. PW14 Abhay Singh Yadav has testified to a dispute between third parties being settled by the intervention of Hitender @ Chhotu, Dimple Tyagi, Vikas Yadav, Jagdish, Sumit Tyagi, Deepak @ Chowda, Vinod @ Gola and Deshraj @ Desu. This intervention and the consequent settlement did not happen in presence of or within the hearing of the witness.

1240. PW14 Abhay Singh Yadav has testified to the abovenamed persons demanding their share of money from Gopal Krishan Aggarwal. This event also did not happen in the presence of Abhay Singh Yadav.

1241. PW14 Abhay Singh Yadav has testified to Gopal Krishan Aggarwal refusing to pay the money and informing these persons that he had himself got the dispute settled through Police Station Civil Lines. These words were not uttered in the presence of Abhay Singh Yadav.

1242. PW14 Abhay Singh Yadav has testified to Gopal Krishan Aggarwal demanding back the money that had been paid by him to these persons as advance. This also did not happen in the presence of the witness.

1243. PW14 Abhay Singh Yadav has testified to Vijay Yadav being treated as a middleman by both the parties, Gopal Krishan Aggarwal on one hand and Hitender and his associates on the other. The words which were spoken have not been proved. It is not known as to how Vijay

Yadav being given the position of a middleman could be inferred by the witness. The said event also did not happen in the presence of the witness.

1244. PW14 Abhay Singh Yadav testified to Hitender @ Chhotu, Deepak @ Chowda, Deshraj @ Desu, Vinod @ Gola, Dimple Tyagi, Sumit Tyagi, Vikas Yadav and Jagdish visiting the premises of Gopal Krishan Aggarwal at Gali Arya Samaj, and Vijay Yadav being called there. This also did not happen in the presence of the witness.
1245. PW14 Abhay Singh Yadav has spoken about both factions blaming Vijay Yadav for non-payment of money. This event also did not happen in the presence of the witness.
1246. All the above events and conversations are facts which could be seen and heard. They have to be proved, by oral evidence, of a person who saw or heard them. PW14 Abhay Singh Yadav is not such a person. As per section 60 of the Evidence Act, 1872, he is not competent to prove the facts.
1247. The prosecution has claimed that the aforesaid facts relate to the death of Vijay Yadav and were informed to the witness by Vijay Yadav himself. According to the prosecution, the testimony of PW14 Abhay Singh Yadav would therefore be admissible as dying declaration being an exception to the hearsay rule of section 60 of Evidence Act, 1872.

1248. This plea is based on section 32 (1) of the Evidence Act, 1872. The said provision reads as follows:

*“Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:*

*(1) When it relates to cause of death. -- When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that persons death comes into question.*

*Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.”*

From the above, it is deduced that a statement of a person who is dead at the time of the deposition is relevant when it relates to the cause of his death, or the circumstances of the transaction which resulted in his death, provided the cause of death is in question. In this case, the statements are said to have been uttered by Vijay Yadav himself. He is dead. The cause of his death is in question in the case. The deposition of PW14 Abhay Singh Yadav will be relevant if it is found that it relates to the cause of death or its circumstances and fulfils the requirements of section 32(1) of the Evidence Act, 1872.

1249. The facts being deposed to by PW14 Abhay Singh Yadav may be assessed. They are relating to a monetary dispute between Gopal Krishan Aggarwal and his friend with another person, about some persons being hired to get the dispute settled, about those persons intervening in the matter and the dispute getting settled, about those persons demanding their share of money from Gopal Krishan Aggarwal, about Gopal Krishan Aggarwal refusing to pay and seeking a refund, about Vijay Yadav being treated by them as a middleman and being blamed for non-payment of money. None of these events directly led to the death of Vijay Yadav. The friendship of Gopal Krishan Aggarwal with one Sanjay Supariwala, the dispute of Sanjay Supariwala with one Vijay Bansal, the hiring of persons for bringing about a settlement, the settlement in itself, the demand of the hired persons of remaining money from Gopal Krishan Aggarwal, the refusal of Gopal Krishan Aggarwal to pay, the demand of refund by Gopal Krishan Aggarwal, and the shifting of onus to Vijay Yadav, none of these factors are said to have been a cause of death of Vijay Yadav. The connection that the prosecution is trying to establish is that on account of payment not being made, the rival parties joined hands and executed the middleman (Vijay Yadav). But the payment not being made and the preceding circumstances did not directly cause death of Vijay Yadav. That is why the events mentioned in the deposition of Abhay Singh

Yadav do not qualify as “cause of death or its circumstances” under section 32(1) of the Evidence Act, 1872 for them to be admitted in evidence without the test of truth through cross-examination of the source of information. In holding so, I am supported by the case of Sharad Birdhi Chand Sardar vs State of Maharashtra 1985 SCR (1) 88, in which the Hon’ble Supreme Court quoted with approval the following passage from the books Law of Evidence, by Woodroffe and Amir Ali and Law of Evidence, by Ratanlal and Dhirajlal in the context of section 32(1) of the Evidence Act:

*“The clause does not permit the reception in evidence of all such statement of a dead person as may relate to matters having a bearing howsoever remote on the cause or the circumstances of his death. It is confined to only such statements as relate to matters so closely connected with the events which resulted in his death that may be said to relate to circumstances of the transaction which resulted in his death. (LR 66 IA 66). Circumstances of the transaction which resulted in his death' means only such facts or series of facts which have a direct or organic relation to death. Hence statement made by the deceased long before the incident of murder is not admissible. (1974 CLJ (MP) 1200).”*

1250. The only purpose of proving the circumstances regarding the monetary dispute and its settlement is to give a background to lay foundation for the proof of motive. The cause of death, assuming the prosecution case to be true, is that in the backdrop of the above, there were differences between Gopal Krishan Aggarwal and Vijay Yadav due to which Gopal Krishan Aggarwal may have conspired to kill Vijay Yadav. There is no live link between the death of Vijay Yadav and the supposed dispute of

Sanjay Supariwala with Vijay Bansal. The said monetary dispute or the efforts made for its settlement, the promises made for payment of money to persons hired for the task or the failure to fulfil those promises, have no direct or proximate relationship to the death of Vijay Yadav. That being so, it is clear that the circumstances cannot be proved through the testimony of a person other than the one who saw them. They do not qualify as an exception to the hearsay rule and do not fall in the purview of section 32(1) of the Evidence Act, 1872. The utterances of Vijay Yadav to Abhay Singh Yadav made months before the incident of homicide and giving a general narrative of a conversation he had with Gopal Krishan Aggarwal and not referring to it as a looming threat to his life, do not amount to a dying declaration under the said provision.

1251. Moreover, even Vijay Yadav may not have been competent to depose on some of the facts narrated by Abhay Singh Yadav. For instance, the facts about existence of a monetary dispute between Gopal Krishan Aggarwal and his friend Sanjay Supariwala on one hand and one Vijay Bansal on the other. This dispute did not arise even in the presence of Vijay Yadav. Similarly, the efforts made by Hitender @ Chhotu, Dimple Tyagi, Vikas Yadav, Jagdish, Sumit Tyagi, Deepak @ Chowda, Vinod @ Gola and Deshraj @ Desu for settlement of the dispute did not happen in the presence of Vijay Yadav. What Vijay Yadav could not be



deposing on can surely not be validly testified to by Abhay Singh Yadav to whom these facts were allegedly narrated by Vijay Yadav.

1252. The testimony of PW14 Abhay Singh Yadav being barred by the hearsay rule, cannot be acted upon. It is of no use to the prosecution in proving the allegations.

1253. The second deficiency in the version of PW14 Abhay Singh Yadav is that it is intrinsically implausible. Assuming the testimony of PW14 Abhay Singh Yadav to be admissible in evidence, then too it fails to pass the muster on tenability.

1254. PW14 Abhay Singh Yadav has spoken about a monetary dispute between Gopal Krishan Aggarwal and his friend Sanjay Supariwala on one hand and a bookie by the name of Vijay Bansal on the other. He has given no details of the dispute. He seems to know nothing about the contract out of which the liability had arisen, or the addresses of the contracting parties, or whether the claim of Vijay Bansal was legitimate or recognized by law. He did not know whether any person by the name of Sanjay Supariwala even existed.

1255. The motive that the prosecution imputes on to Gopal Krishan Aggarwal revolves around Sanjay Supariwala and his dispute with one Vijay Bansal. Hence, the direct evidence which the prosecution should have led to prove the existence of the dispute was to call the disputants. Sanjay Supariwala was not called to the Court. He was not examined.

He is the person for whom, according to the prosecution, accused Gopal Krishan Aggarwal had got involved into the controversy. The prosecution should have examined him to prove that he had the said dispute with Vijay Bansal, that he was having friendly relations with accused Gopal Krishan Aggarwal, that Gopal Krishan Aggarwal had attempted to assist him in settlement of the said dispute, that some persons had been hired by accused Gopal Krishan Aggarwal for this, that part payment was made in this behalf, that the dispute got settled and through whom it got settled, and the stand of Sanjay Supariwala and accused Gopal Krishan Aggarwal regarding payment. Sanjay Supariwala would therefore have been a key witness for the prosecution to prove the above facts. Yet, the prosecution made no attempt to examine him. Not only this, even during investigation, the Investigating Officer did not contact him or record his statement. The Investigating Officer did not make any attempt to find out if the said person even existed. During investigation, PW14 Abhay Singh Yadav surely would have asked the Investigating Officer to contact the said Sanjay Supariwala and to find out if there was any such dispute in the first place. That has not been done. The Court does not know whether the said person is alive or is a fictional character. Since as per allegations the dispute had been with Sanjay Supariwala and he was the one whose stakes were involved, payment was to be made for the

services of the hired persons by him only. If there was some dispute over the payment with Vijay Yadav, it was Sanjay Supariwala who must be involved in that dispute, either by himself or through Gopal Krishan Aggarwal. If owing to the disagreement, Vijay Yadav was murdered, there would have been a possibility of Sanjay Supariwala having a hand in it. Had such a person existed or if there was an element of truth in the version of Abhay Singh Yadav, the investigating officer would have surely probed into who the said person is, whether he is involved in the offence and would have also recorded his statement.

1256. The prosecution did secure the presence of the other disputant namely Vijay Bansal to prove the said dispute. However, Vijay Bansal did not at all depose about any dispute with Sanjay Supariwala. He only deposed about a dispute with one Ashok Gupta. Therefore the attempt of the prosecution of proving the existence of a dispute involving Sanjay Supariwala, or the very existence of the person named Sanjay Supariwala or his friendship with Vijay Bansal proved abortive.

1257. Perusal of the investigation carried out and the statements of witnesses recorded by the police, and also the supposed settlement deed allegedly recovered at the instance of accused Gopal Krishan Aggarwal shows that there is no person by the name of Sanjay Supariwala having any monetary dispute. Therefore there is no question of any Sanjay

Supariwala being a friend of Gopal Krishan Aggarwal, or there being any dispute involving the said person, or persons being hired for settlement of the dispute, or this leading to a disagreement over payment of money, or Vijay Yadav and Gopal Krishan Aggarwal sparring with each other for that reason. This further implies that PW14 Abhay Singh Yadav either did not know the truth, or was misrepresenting facts before the Court during his testimony. It is unsafe to rely on such testimony.

1258. There are other reasons which show the version of Abhay Singh Yadav to be inherently improbable. PW14 Abhay Singh Yadav stated in his examination-in-chief that accused Gopal Krishan Aggarwal had called Deepak @ Chowda, Vinod @ Gola and Vijay Yadav; that the dispute was got settled on the intervention of Hitender @ Chhotu, Dimple Tyagi, Vikas Yadav, Jagdish, Sumit Tyagi, Deepak @ Chowda, Vinod @ Gola and Deshraj @ Desu; that these persons demanded their share of money from Gopal Krishan Aggarwal; that Gopal Krishan Aggarwal refused to pay the money and told them that he had himself got the dispute settled through Police Station Civil Lines; that Gopal Krishan Aggarwal rather demanded back the money that had been paid by him to these persons as advance.

1259. The above narration leaves many questions unanswered. PW14 Abhay Singh Yadav has stated that accused Gopal Krishan Aggarwal had

called Deepak @ Chowda, Vinod @ Gola and Vijay Yadav whereas the dispute was got settled on the intervention of Hitender @ Chhotu, Dimple Tyagi, Vikas Yadav, Jagdish, Sumit Tyagi, Deepak @ Chowda, Vinod @ Gola and Deshraj @ Desu. This implies that out of three persons (Deepak @ Chowda, Vinod @ Gola and Vijay Yadav) called to the office of Gopal Krishan Aggarwal, only two persons (Deepak @ Chowda and Vinod @ Gola) were involved in getting the settlement done. If Vijay Yadav was not supposed to get the settlement done, then why he had been called to the office of Gopal Krishan Aggarwal has not been disclosed. The precise role that Vijay Yadav was doing in the deal has not been described. He is stated to be a property dealer by occupation. Therefore there is no reason for him to be called for settlement of a private dispute. Another question that arises is why people were being hired for settlement of the dispute. Whether they were to mediate or to carry out some kind of conciliation between the rival contenders, remains a mystery. This has not been explained by PW14 Abhay Singh Yadav with clarity. From the testimony of the other witnesses, it appears that possibly the hired persons were local goons who were to threaten and pressurize the claimant to desist from pressing his demand. That may have been the role to be played by the Deepak @ Chowda, Vinod @ Gola, Hitender @ Chhotu or their associates. But since there was no part to be played by Vijay Yadav, it

does not stand to reason that the parties would blame Vijay Yadav for the deal falling through. According to PW14 Abhay Singh Yadav, Gopal Krishan Aggarwal was directly in contact with the persons who were to execute the task. The advance had been paid directly to them. Those persons demanded their share of money directly from Gopal Krishan Aggarwal. Since the contract was directly between Gopal Krishan Aggarwal and the hired persons, there was no reason for any of them to put any blame on to Vijay Yadav for breach by the adversary. It is not the case of PW14 Abhay Singh Yadav that Vijay Yadav had stood guarantor for performance of their obligations by either party. The assertion of PW14 Abhay Singh Yadav that Gopal Krishan Aggarwal claimed to have got the dispute settled through Police Station Civil Lines is also queer. According to prosecution, there was no complaint before the police regarding non-payment of money and there was no settlement regarding monetary claims done by the police. Also, it cannot be presumed that the local police would indulge in such dubious activities. There might have been some work assigned to the hired persons and it is also possible that there may have been a payment dispute between them and Gopal Krishan Aggarwal but they cannot be holding Vijay Yadav responsible for it unless some part in the agreement had been assigned to Vijay Yadav. This part has not been spelled out. It is inconceivable that the contracting parties would

point fingers at a third party for breach on the part of the other contracting party. It appears to be only a figment of imagination as no prudent person would do that. But what is even more preposterous is that the contracting parties who are at odds with each other would, for no other reason but their own inter-se dispute, join hands with each other and decide to execute that third party. This is too far-fetched and absurd to be accorded any credence. Gopal Krishan Aggarwal had a grievance with the persons he had hired. He felt that he had paid them and yet his work was not done. The persons so hired had a grouse towards Gopal Krishan Aggarwal because they felt that they had accomplished the task given to them but have not been paid in full. Thus, if at all, Gopal Krishan Aggarwal would have tried to harm those persons and vice-versa. They would not decide to bury the hatchet with each other and to go after a third person instead, and too only because of the money not being given to them by each other. It was not the duty of Vijay Yadav to pay either to Gopal Krishan Aggarwal or to the hired persons. All this points to a conundrum and it seems that a mesh of facts has been constructed to somehow assign opposing roles to Gopal Krishan Aggarwal and Vijay Yadav.

1260. PW14 Abhay Singh Yadav has stated in his cross-examination that he does not remember whether on 30<sup>th</sup> September, 2007, the police had recorded his statement but he had identified the body of Vijay Yadav

before the police. He admitted that an Inspector of PS Hauz Qazi had recorded his statement on 30<sup>th</sup> September, 2007 but I did not recollect whether his name was Inspector Anil Sharma. The witness admitted that the facts relating to accused Gopal Kishan Aggarwal which he had disclosed to the Court were not stated by him to the said Inspector on 30<sup>th</sup> September, 2007.

1261. The above shows that the witness who claims to be aware of the entire background of the dispute between Vijay Yadav and Gopal Krishan Aggarwal, and who thinks that the dispute was grave enough to give motive to Gopal Krishan Aggarwal to eliminate Vijay Yadav, chose not to even mention those facts to the police in his first statement to the police. Not only this, the witness goes on to state that he did not apprise even his father or other family members of those facts though he knew them since two or three months before the incident. PW14 Abhay Singh Yadav has stated that as per his information, Vijay Yadav too had not made any complaint about the said dispute to the police, and the witness too had not made any complaint in that behalf. All such conduct is not natural and shows that the facts may have been concocted later on, so as to make out motive on the part of Gopal Krishan Aggarwal.

1262. PW14 Abhay Singh Yadav has stated in his cross-examination that after the murder of Vijay Yadav, the witness and Gopal Krishan Aggarwal



used to talk to each other face to face as well as on telephone. This shows that till then, in the opinion of PW14 Abhay Singh Yadav, Gopal Krishan Aggarwal was not an offender. Had PW14 Abhay Singh Yadav been aware of circumstances that may have induced Gopal Krishan Aggarwal to plot the murder of Vijay Yadav, Abhay Singh Yadav would not have been in regular contact with Gopal Krishan Aggarwal. It is not the case of fact that he learnt of the alleged dispute between Vijay Yadav and Gopal Krishan Aggarwal subsequent to the arrest of Gopal Krishan Aggarwal. As per Abhay Singh Yadav, he was aware of that background since two or three months before the incident. If that is so, Abhay Singh Yadav would have suspected the involvement of Gopal Krishan Aggarwal in the crime rather than building a close friendship with Gopal Krishan Aggarwal. This casts a shadow of doubt on the narrative of PW14 Abhay Singh Yadav regarding involvement of accused Gopal Krishan Aggarwal and there is a possibility of concoction of a story much after the demise of Vijay Yadav to implicate Gopal Krishan Aggarwal.

1263. It is difficult to believe that for some work of a friend (assuming that friend to be in existence, although there is no evidence to this effect), Gopal Krishan Aggarwal would get so involved that he would hire persons and sponsor the illegal activity of criminal intimidation. It is also unimaginable that the accused would have a feud with Vijay

Yadav as a fallout of that and will go to the extent of planning the murder of Vijay Yadav. The connection sought to be drawn is too remote. Gopal Krishan Aggarwal has not been shown to be benefitting from the killing of Vijay Yadav. Apart from the testimony of PW14 Abhay Singh Yadav, the existence of any monetary dispute between Sanjay Supariwala and Vijay Bansal has not been established by the prosecution by any evidence. The entire story put forth by PW14 Abhay Singh Yadav appears to be a mere fiction.

1264. Even if it is assumed that the prosecution has succeeded in proving that accused Gopal Krishan Aggarwal had a heated argument with Vijay Yadav, it would not imply that Gopal Krishan Aggarwal would, due to that single stray incident, start conspiring to the murder of Vijay Yadav. It may have been possible that Gopal Krishan Aggarwal, due to that incident, developed hatred for Vijay Yadav and may even wish the demise of Vijay Yadav. But that fact alone does not imply that the accused indeed entered into an agreement with the assailants to eliminate Vijay Yadav.

1265. It is worthy to note that PW14 Abhay Singh Yadav did not name Gopal Krishan Aggarwal as a suspect till about thirteen days after the murder. If the death of Vijay Yadav had indeed been preceded by the events mentioned in the testimony of PW14 Abhay Singh Yadav, then the witness would have promptly informed the police of those facts. On

the contrary, as per cross-examination of PW14 Abhay Singh Yadav, the witness had been visiting senior police officers to follow-up on the case alongwith Gopal Krishan Aggarwal. If the witness suspected the hand of Gopal Krishan Aggarwal, he would surely not be moving around in police offices in the company of the suspect. This is suggestive of the fact that PW14 Abhay Singh Yadav himself did not believe Gopal Krishan Aggarwal to be an offender.

1266. All of these circumstances make a dent on the narrative of PW14 Abhay Singh Yadav regarding involvement of accused Gopal Krishan Aggarwal. Besides, even if his version is assumed to be correct, it does not show motive on the part of Gopal Krishan Aggarwal to conspire to the murder of Vijay Yadav. That apart, if motive is deemed to be proved, then too, it cannot be concluded that Gopal Krishan Aggarwal did enter into the conspiracy. Motive alone is not sufficient to hold a person guilty of conspiring to the murder.

1267. The next witness whose testimony is of relevance is PW2 Dheeraj Sharma. The witness stated in his testimony that on 29<sup>th</sup> September 2007, the office of accused Gopal Krishan Aggarwal was open and there were eight or ten persons present in the office.

1268. The above account is not sufficient to return a finding of guilt of accused Gopal Krishan Aggarwal, unless supplemented by other evidence. The witness stated that he had not seen the face of those

persons and he had not entered the said office. This implies that the witness cannot emphatically state that the persons present in the office of accused Gopal Krishan Aggarwal were the ones who surrounded and killed the deceased. He has not reproduced the conversation that was going on in the office. There is nothing to even remotely suggest that the persons present in the office of accused Gopal Krishan Aggarwal were conspiring to eliminate Vijay Yadav. Therefore, a mere oblique reference to some persons being present in the office of accused Gopal Krishan Aggarwal, who could be present there for any reason of their own, does not incriminate the accused. The deposition of PW2 Dheeraj Sharma does not show any involvement of Gopal Krishan Aggarwal in the conspiracy.

1269. The next witness from whose testimony the prosecution attempted to prove motive on the part of accused Gopal Krishan Aggarwal is PW17 Sh. Vijay Bansal. PW17 Vijay Bansal has been examined by the prosecution to prove the involvement of Gopal Krishan Aggarwal in a financial dispute in which one of the parties was Sh. Vijay Bansal. However the witness has not supported the case of the prosecution. The witness deposed that he had some monetary transactions with one Ashok Gupta; that Ashok Gupta owed money to this witness; that Ashok Gupta did not repay the sum; that one Dinesh Jain and one Sanjay Singhal threatened Ashok Gupta so that the witness does not

demand repayment of the money; that Dinesh Jain gave a sum of Rs.10 lakhs to the witness and told the witness that he should not demand money from Ashok Gupta; that Dinesh Jain also undertook to pay the remaining sum of Rs.26 lakhs to the witness; that subsequently Dinesh Jain, Ashok Gupta and Sanjay Singh reported the matter to the police station.

1270. The witness does not name, in his examination-in-chief, any of the accused persons as being involved in advancement of threats to him. He does not state anything about having a dispute with any person by the name of Sanjay Supariwala. He does not state that he had to recover money from Sanjay Supariwala or that he was threatened by anyone not to claim that sum. He does not state anything to show that Gopal Krishan Aggarwal was helping Sanjay Supariwala to avoid repaying the money or that Gopal Krishan Aggarwal was helping anybody else avoid dues of the witness.

1271. PW17 Sh. Vijay Bansal was cross-examined by the prosecution. The witness had remained steadfast with his stance. He stated in his cross-examination that he was fond of cricket betting; that the money due to him was relating to cricket betting. The witness denied the suggestion that Ashok Gupta had paid him Rs. 10 lakhs. The witness stated that the witness was called at P.S. Civil Lines; that by the mediation of officers of P.S. Civil Lines, Rs. 8 lakhs were paid to him by a person of

Dinesh Jain in presence of SHO Civil Lines at Hotel Oberai Maidens; that the witness received a total amount of Rs. 18 lakhs out of this Rs. 36 lakhs; that for remaining amount, Dinesh Jain informed that he had already paid the amount to the son of Vijay Bansal's sister. The witness stated that he had no knowledge when this money was paid to Ranjan; that Ranjan did not inform the witness about receiving payment of Rs. 18 lakhs from anyone. The witness stated that he did not know Gopal Krishan Aggarwal; that he had seen Gopal Krishan Aggarwal once in the office of Sh. Dinesh Jain. The witness denied the suggestion that he had also seen Gopal Krishan Aggarwal in the company of Dinesh Jain and Sanjay Singhal when Vijay Bansal went to P.S. Civil Lines.

1272. It is clear from the above that in cross-examination, PW17 Sh. Vijay Bansal denied knowing accused Gopal Krishan Aggarwal. All that has transpired from the testimony of this witness is that Gopal Krishan Agarwal had been seen by the witness once in the office of Dinesh Jain when the witness had gone there to collect money. The witness has denied the suggestion that accused Gopal Krishan Aggarwal was present when the witness had gone to the police station.

1273. From the testimony of PW17 Sh. Vijay Bansal, it can only be inferred that accused Gopal Krishan Aggarwal was simply present in the office of Dinesh Jain on one occasion when the witness was called to the said office. This does not prove that Gopal Krishan Aggarwal was involved

in the dispute of Vijay Bansal, or that Gopal Krishan Aggarwal wanted it settled, or that Gopal Krishan Aggarwal had hired some persons for this task, or that Gopal Krishan Aggarwal later refused to pay their dues which led to an argument with Vijay Yadav. There is no mention of any dues of Sanjay Supariwala in the deposition of PW17 Sh. Vijay Bansal.

1274. The monetary dispute had been stated by the prosecution to be between Vijay Bansal and one Sanjay Supariwala. However, PW17 Vijay Bansal has refuted this by stating that his dispute was not with any person by the name of Sanjay Supariwala but with one Ashok Gupta. The witness has also not stated that Ashok Gupta had hired goons or henchmen to threaten Vijay Bansal. Vijay Bansal does not state that outlaws had been sent by accused Gopal Krishan Aggarwal or even by Sanjay Supariwala through Gopal Krishan Aggarwal. The witness does indicate that threats were advanced by one Dinesh Jain and one Sanjay Singhal for settlement of his dispute with Ashok Gupta. If Dinesh Jain and Sanjay Singhal were handling the matter of bringing about a settlement, there was no occasion for Gopal Krishan Aggarwal to do the same. The testimony of PW17 Vijay Bansal establishes that neither was there any monetary liability of any person by the name of Sanjay Supariwala, stated to be friend of accused Gopal Krishan Aggarwal, nor was Gopal Krishan Aggarwal involved in settlement of

the dispute concerning Vijay Bansal. According to the prosecution, Gopal Krishan Aggarwal had hired some persons to settle a dispute involving one Sanjay Supariwala. Since the prosecution has not been able to show any dispute involving Sanjay Supariwala, the question of involvement of Gopal Krishan Aggarwal does not arise. PW17 Vijay Bansal has given a clean chit to accused Gopal Krishan Aggarwal. He has emphatically stated that no person except Dinesh Jain, Ashok Gupta and Sanjay Singhal were involved in his dispute. It is also interesting to note that although the witness had been cross-examined by the public prosecutor, no question was put to him to suggest that the witness had a dispute with any person by the name of Sanjay Supariwala. Although, according to the prosecution, accused Hitender @ Chhotu and his associates had been involved in getting the dispute settled, the prosecution made no attempt to show Hitender @ Chhotu or any other accused to this witness for the witness to identify if any of them were ever involved in threatening the witness.

1275. PW17 Vijay Bansal has made a mention of he being called to police station Civil Lines. The witness denied that he had seen accused Gopal Krishan Aggarwal in the company of Dinesh Jain or Sanjay Singhal when he went to the Police Station. This further establishes that Gopal Krishan Aggarwal was not present in the police station, which is contrary to the claim of the prosecution.



1276. Nothing stated by PW17 Vijay Bansal shows any motive on the part of Gopal Krishan Aggarwal or the involvement of Gopal Krishan Aggarwal in settlement of any financial dispute, let alone the dispute stated by the prosecution to be with one Sanjay Supariwala. PW17 Vijay Bansal has disproved the case of the prosecution of there being a monetary dispute involving any person by the name of Sanjay Supariwala. If there was no such dispute involving any friend of Gopal Krishan Aggarwal, there is no reason for Gopal Krishan Aggarwal to meddle into the affairs of others and to hire persons for settlement of disputes of strangers. It is nobody's case that Gopal Krishan Aggarwal shared a close relationship with Ashok Gupta for the former to make efforts to get the dispute of Ashok Gupta settled. It is not even the case of the prosecution that Ashok Gupta had the support of Gopal Krishan Aggarwal or that Gopal Krishan Aggarwal ever made any effort to hire persons to get the dispute of Ashok Gupta with Vijay Bansal settled through them.

1277. The deposition of PW17 Sh. Vijay Bansal does not indicate that accused Gopal Krishan Aggarwal had a motive to eliminate deceased Vijay Yadav. It can possibly be inferred from the testimony of this witness that accused Gopal Krishan Aggarwal was acquainted with Dinesh Jain but even the latter did not have a direct dispute with Vijay Bansal. The testimony of the witness does not demonstrate any friction between

accused Gopal Krishan Aggarwal and Vijay Yadav. The deposition of PW17 Vijay Bansal is of no aid to the prosecution in proving involvement of accused Gopal Krishan Aggarwal in the conspiracy. On the contrary, it attests to the innocence of accused Gopal Krishan Aggarwal. It shows the prosecution case and the testimony of PW14 Abhay Singh Yadav to be flawed since they make mention of a dispute involving one Sanjay Supariwala (stated to be a friend of Gopal Krishan Aggarwal) but this witness does not talk of having any dispute with the said person. The witness instead says that his dispute was with Ashok Gupta who is not shown to have any relationship with Gopal Krishan Aggarwal. The witness also disproves the prosecution case that Gopal Krishan Aggarwal was present in the police station at the time of the settlement.

1278. The next witness the prosecution relies on to prove its allegations against accused Gopal Krishan Aggarwal is PW18 Ashok Gupta. PW18 Ashok Gupta is the person who, according to PW17 Vijay Bansal, owed money to the latter. This witness has articulated that he owed a sum of Rs.36 lakhs to Vijay Bansal; that out of this sum he had paid Rs. 10 lakhs to Vijay Bansal; that one Dinesh Jain was known to the witness; that Dinesh Jain stood guarantor for repayment and requested Vijay Bansal to accommodate the witness for six or seven months on his guarantee; that son of sister of Vijay Bansal namely Ranjan took Rs. 18

lakhs from the witness in the first quarter of 2006; that Ranjan informed the witness that some robbers had robbed that amount from him; that the witness asked Vijay Bansal and Ranjan to go to police station for reporting this matter; that the witness went to Police Station Shalimar Bagh but none of them came there; that thereafter Vijay Bansal insisted on Dinesh Jain paying Rs.26 lakhs but Dinesh Jain replied that Rs. 18 lakhs has been paid and only Rs.8 lakhs is due; that Vijay Bansal started threatening and abusing Dinesh Jain for the latter to pay Rs.26 lakhs; that Dinesh Jain lodged a complaint at Police Station Civil Lines against Vijay Bansal; that the witness also went to Police Station Civil Lines but subsequently a compromise was entered into between Vijay Bansal and Dinesh Jain and the sum was settled at Rs. 8 lakhs; that accused Gopal Krishan Aggarwal met the witness in the police station once or twice with Shri Dinesh Jain in relation to the said settlement. The witness was however unable to identify accused Gopal Krishan Aggarwal though the latter was present in the Court. On the pointing out by the public prosecutor, however, the witness did identify accused Gopal Krishan Aggarwal.

1279. In his cross-examination, PW18 Shri Ashok Gupta admitted that he did not know accused Gopal Krishan Aggarwal personally either before this case or after this case; that Gopal Krishan Aggarwal had no role to play in the money transactions that he had stated before the Court; that

before deposing, he was taken to another room by Inspector K. G. Tyagi, Investigating Officer of the case and there he was asked by Inspector K. G. Tyagi to give a statement in the Court in line with the statement recorded earlier. The witness denied the suggestion that he had followed the dictat of the Investigating Officer. The witness stated that whatever he had stated before the Court was his own version. The witness admitted that he had not seen Gopal Krishan Aggarwal on any occasion.

1280. From the above, it follows that the witness PW18 Shri Ashok Gupta was having a monetary dispute with Vijay Bansal. This endorses the stand taken by PW17 Vijay Bansal that the dispute was between Vijay Bansal and Ashok Gupta and not between Vijay Bansal and Sanjay Supariwala, as has been made out by the prosecution. It also follows from the testimony of PW18 Ashok Gupta that Gopal Krishan Aggarwal had no role to play in the settlement of the dispute. PW18 Ashok Gupta had only approached one Dinesh Jain. Dinesh Jain stood guarantor. There is also mention of one Ranjan taking Rs. 18 lakhs from Ashok Gupta on behalf of Vijay Bansal. Ranjan later informed that the said money had been robbed from him. According to Ashok Gupta, Vijay Bansal had threatened and abused Dinesh Jain due to which Dinesh Jain had to lodge a complaint at the police station. The witness states that Gopal Krishan Aggarwal had visited police station Civil

Lines once or twice and that Gopal Krishan Aggarwal was present there along with Dinesh Jain. However, the witness was not able to identify Gopal Krishan Aggarwal from among the accused persons. The witness stated that Gopal Krishan Aggarwal was not present in the Court although he was standing near the witness. On the pointing out by the public prosecutor, the witness was able to identify Gopal Krishan Aggarwal. From the testimony of the witness, it follows that Gopal Krishan Aggarwal may have possibly accompanied Dinesh Jain to the police station. However, it does not show that Gopal Krishan Aggarwal was actively involved in the settlement of the dispute which Ashok Gupta had with Vijay Bansal. Also, it is not even the case of the prosecution that Gopal Krishan Aggarwal was involved in the settlement of this dispute or that Gopal Krishan Aggarwal had hired goons for this purpose. From the testimony of PW18 Ashok Gupta, it is apparent that this witness had no friendship or other relationship with Gopal Krishan Aggarwal, for Gopal Krishan Aggarwal to make extraordinary efforts for settlement of private dispute of Ashok Gupta. The witness also does not state that he had ever sought assistance of Gopal Krishan Aggarwal for the settlement of the dispute. The witness does not state that Gopal Krishan Aggarwal had, on behalf of the witness, hired henchmen to pressurise Vijay Bansal.

1281. It is obvious that unless the ultimate beneficiary Ashok Gupta paid money to be given to the persons hired for this task, Gopal Krishan Aggarwal would not have shelled out anything for them. It cannot be believed that Gopal Krishan Aggarwal would be so charitable as to spend money from his own pocket to hire some persons for helping a stranger for settlement of a private dispute of that stranger, and that too without the asking of, and even without the knowledge of that stranger. Even the public prosecutor has not questioned the witness on the point of whether he had paid or promised to pay anything to Gopal Krishan Aggarwal for it to be handed over to the persons hired for him by Gopal Krishan Aggarwal. The allegations of the prosecution of Gopal Krishan Aggarwal being involved in the financial dispute of Sanjay Supariwala are not supported by this witness.

1282. Even if it is assumed that it was not the dispute of Sanjay Supariwala but of this witness, and if it is assumed that Gopal Krishan Aggarwal was so indulgent and rather altruistic that he would make efforts on his own and would strive to get the dispute of a stranger settled without any request being made by the latter and without informing the latter, then too, the testimony of the witness does not point to the hiring of any bad elements, or the payment of advance money to them, or the dispute getting settled through the intervention of those persons, or the arising of dispute on payment of money, or the involvement of Vijay

Yadav in the whole episode. The witness has expressly denied that he had any acquaintance with Gopal Krishan Aggarwal. This shows that Gopal Krishan Aggarwal had no reason to make any effort for settlement of the dispute of Ashok Gupta. The express statement of the witness of Gopal Krishan Aggarwal having no role to play in respect of his transaction controverts the claim of the prosecution that Gopal Krishan Aggarwal had an altercation with Vijay Yadav in the course of his efforts to settle the dispute.

1283. The witness has revealed to the Court that the Investigating Officer tried to influence him and had taken the witness to another room before his testimony. The witness has stated that the Investigating Officer asked the witness to give a statement in line with the statement recorded by the Investigating Officer. The witness, however, did not do so and stated that his version reflects the truth. The fact that the witness repelled the efforts of the Investigating Officer to manipulate him shows the witness to be unbiased and detached. He was not amenable to being influenced.

1284. It can be concluded from the testimony of PW18 Ashok Gupta that there was no financial dispute involving any person by the name of Sanjay Supariwala as was represented by the prosecution and PW14 Abhay Singh Yadav. It also follows that there was a dispute involving PW18 Ashok Gupta but that witness never sought the assistance of

Gopal Krishan Aggarwal in settlement of the dispute. Gopal Krishan Aggarwal had no occasion to hire any person for settlement of the said dispute, or to engage Vijay Yadav or any other person for this. Gopal Krishan Aggarwal had no relationship or friendship with Ashok Gupta. The result is that the prosecution has miserably failed to make ground for proving that Gopal Krishan Aggarwal had a feud with Vijay Yadav or that there was cause for hostility between them. Rather than lending support to the case of the prosecution, the witness has exposed its falsehood.

1285. Since the abovenamed witness has referred to the presence of accused Gopal Krishan Aggarwal with one Dinesh Jain, possibly the Investigating Officer could have recorded the statement of Dinesh Jain to throw further light on the role played by Gopal Krishan Aggarwal. Dinesh Jain could have been examined by the prosecution as a witness. That was also not done. A settlement deed has been produced by the prosecution which bears signatures purported to be of Gopal Krishan Aggarwal. The handwriting and signatures on the document have not been compared with the handwriting and signatures of accused Gopal Krishan Aggarwal for the prosecution to be able to prove that indeed the accused had signed the document. PW17 Vijay Bansal had signed the document. The witness does not state that the document was signed by Gopal Krishan Aggarwal too in his presence. The case of the



prosecution against Gopal Krishan Aggarwal has fallen apart.

1286. The next witness through whose testimony, the prosecution attempted to prove motive on the part of Gopal Krishan Aggarwal to enter into the conspiracy is PW23 Inspector Vipin Bhatia.
1287. PW23 Inspector Vipin Bhatia deposed in his examination-in-chief that on 6<sup>th</sup> June, 2007, he was posted at Police Station Civil Lines as Addl. SHO; on that day, complaint Ex. PW23/A dated 6<sup>th</sup> June, 2007 of one Dinesh Jain was assigned to the witness; that the complaint contained allegations against Vijay Bansal; that the witness called Dinesh Jain, Ashok Gupta, Sanjay Singhal and accused Gopal Krishan Aggarwal (who the witness correctly identified in Court) from the side of the complainant and called Vijay Bansal and Ranjan from the opposite side; that on 12<sup>th</sup> July, 2007, accused Gopal Krishan Aggarwal, Sanjay Singhal, Vijay Bansal and Ranjan came to the office of the witness and told the witness that they had settled the dispute; that they furnished a compromise deed, which the witness identified as Ex. PW23/B; that the deed was signed by Vijay Bansal, Gopal Krishan Aggarwal and Ranjan. PW23 Inspector Vipin Bhatia further deposed in his examination-in-chief that on 21<sup>st</sup> December, 2007, he handed over the original documents Ex. PW23/A and PW23/B, copies of DD Nos. 29A dated 12.06.2007 and 24A dated 11<sup>th</sup> July, 2007, and carbon copy of the notice which he had issued to Vijay Bansal Ex. PW23/C to the investigating

officer who seized them and prepared seizure memo Ex. PW23/D.

1288. PW23 Inspector Vipin Bhatia was cross-examined by Id counsel for accused Gopal Krishan Aggarwal. In his cross-examination, the witness stated that it is not mandatory that the police officer to whom a complaint is marked for the purpose of enquiry is required to make an entry in the register when the assigned complaint is closed. PW23 Inspector Vipin Bhatia further stated that he did not remember whether the complaint Ex. PW23/A which was assigned to him for enquiry was recorded in any register; that he did not remember whether he had prepared any report on the culmination of enquiry of the said complaint; that the witness had not recorded the statement of complainant Dinesh Jain during the enquiry conducted by him; that he had not recorded the FIR on receipt of the said complaint as apparently the said complaint was not disclosing commission of any cognizable offence. The witness admitted that there was no reference of accused Gopal Krishan Aggarwal in the said complaint; that there was no reference of accused Gopal Krishan Aggarwal in DD Nos. 29A dated 12<sup>th</sup> June, 2007 and 24A dated 11<sup>th</sup> July, 2007. PW23 Inspector Vipin Bhatia further stated that during the enquiry, the witness tried to find out the subject matter and the nature of dispute between the parties; that the dispute between party was regarding a monetary transaction; that as per his knowledge, during the enquiry, there was no document

pertaining to the transaction between the parties and therefore he did not call for the same. The witness admitted that complainant had not given any document in support of his claim mentioned in the complaint, yet he sent notice to Vijay Bansal because the latter was allegedly harassing the complainant by making repeated calls on telephone at odd hours; that during the enquiry, the witness did not find any evidence that Vijay Bansal was making any such calls.

1289. PW23 Inspector Vipin Bhatia further stated in his cross-examination that on 21<sup>st</sup> December, 2007, he had gone to ACP (Crime) office at PS Chanakyapuri in connection with investigation of present case (FIR no. 356/07) vide DD Ex. PW23/DA; that he had mentioned that he had left from police station in connection with official work. The witness admitted that he had not mentioned in Ex. PW23/DA that he had gone there in connection with the investigation of case FIR No. 356/07; that the officer of Crime Branch did not accompany him when he returned to PS Civil Lines and had made entry Ex. PW23/DB.

1290. PW23 Inspector Vipin Bhatia further stated in his cross-examination that he had handed over the documents mentioned in Ex. PW23/D to Inspector K. G. Tyagi in the office of Crime Branch; that the witness had not mentioned in Ex. PW23/DA that he was carrying documents relating to the complaint of Mr. Dinesh Jain.

1291. PW23 Inspector Vipin Bhatia admitted in his cross-examination that Ashok Gupta had not lodged any complaint with the police; that the witness did not lodge any formal FIR despite knowing the fact that the monetary transaction referred to in the complaint was related to illegal *satta*.
1292. PW23 Inspector Vipin Bhatia further stated in his cross-examination that at the time of joining the investigation on 21<sup>st</sup> December, 2007, the witness was not aware that Gopal Krishan Aggarwal had already been arrested in the case. The witness denied the suggestion that he was deliberately lying on this point. The witness further denied the suggestion that in connivance with the investigating officer of this case he fabricated the settlement Ex. PW23/B bearing signatures of accused Gopal Krishan Aggarwal. The witness denied the suggestion that pursuant to arrest of Gopal Krishan Aggarwal in this case, his signatures were obtained by the investigating officer on a number of blank papers or that on one of such papers Ex. PW23/B was prepared and manipulated.
1293. PW23 Inspector Vipin Bhatia further stated in his cross-examination that he knows that Inspector K.G. Tyagi had been arrested for seeking bribe from the accused person in this case and in that connection a case was registered against K. G. Tyagi by Vigilance Department in which he was arrested and remained in judicial custody for about sixty days.

1294. PW23 Inspector Vipin Bhatia further stated in his cross-examination that during the enquiry conducted by the witness on the complaint of Dinesh Jain, he never recorded the statement of Ashok Gupta, Sanjay Singhal, Ranjan Goyal and Gopal Krishan Aggarwal. The witness denied the suggestion that he was deposing falsely at the instance of and in connivance with Inspector K.G. Tyagi.
1295. The prosecution had examined PW23 Inspector Vipin Bhatia in order to prove that Gopal Krishan Aggarwal had an active role to play in bringing about settlement of a dispute. According to the case of the prosecution, canvassed by it with the aid of testimony of PW14 Abhay Singh Yadav, there was a dispute between one Vijay Bansal and one Sanjay Supariwala. Sanjay Supariwala is stated to be a friend of accused Gopal Krishan Aggarwal. However, this assertion of the prosecution is not supported by PW23 Inspector Vipin Bhatia. This witness had, in discharge of official duties, inquired into the matter. He did not discover any dispute between Vijay Bansal and Sanjay Supariwala. In fact, he never met any person by the name of Sanjay Supariwala. From the settlement deed proved by him, it cannot be inferred that there was any person by the name of Sanjay Supariwala, let alone documenting his discord with Vijay Bansal. Gopal Krishan Aggarwal would have acted for his friend stated to be Sanjay Supariwala. It is not open to the prosecution to say that if it was not

Sanjay Supariwala, it may have been Ashok Gupta. Ashok Gupta, as per his own version, has no friendship or even acquaintance with Gopal Krishan Aggarwal. The discord between Sanjay Supariwala and Vijay Bansal is not the same as discord between Ashok Gupta and Vijay Bansal. Had the former been the case, Gopal Krishan Aggarwal may have had a reason to intervene in the dispute owing to his friendship. In the event of the latter, Gopal Krishan Aggarwal had no incentive to intercede. PW23 Inspector Vipin Bhatia has pointed to the latter being the case. It shows that Gopal Krishan Aggarwal had no reason to make extraordinary efforts to bring about a settlement by hiring outlaws to advance threats.

1296. The complaint made to PW23 Inspector Vipin Bhatia does not show any role played by Gopal Krishan Aggarwal. It does not even name Gopal Krishan Aggarwal. The complaint also does not show any intimidation done by any person hired by Gopal Krishan Aggarwal or by Hitender @ Chhotu or his associates, as made out by the prosecution.

1297. The complaint to the police has not even been preferred by Vijay Bansal who, according to the prosecution, had been allegedly threatened by persons hired by Gopal Krishan Aggarwal. On the contrary, Vijay Bansal was an accused in that complaint. Had Gopal Krishan Aggarwal hired persons to threaten Vijay Bansal, it is the latter who would have

complained to the police, and he would not be standing in the dock.

1298. PW23 Inspector Vipin Bhatia has talked about Gopal Krishan Aggarwal being present in the police station. However, this is refuted by PW17 Sh. Vijay Bansal in his testimony.

1299. PW23 Inspector Vipin Bhatia has stated that Vijay Bansal made no complaint about advancement of threats to him by anyone. The story of the prosecution of persons being hired by Gopal Krishan Aggarwal to threaten Vijay Bansal and they having accomplished this task, finds no support from Vijay Bansal. Perhaps, Vijay Bansal may have initially not reported the matter to the police out of fear. But later when he was himself made to face a complaint in the police station, he would have surely shed the inhibition and would have told the police about having been threatened by persons hired by Gopal Krishan Aggarwal. That not having been done, shows that no such threats were ever advanced by Gopal Krishan Aggarwal or persons hired by him.

1300. PW23 Inspector Vipin Bhatia has referred to Gopal Krishan Aggarwal being present on behalf of one Dinesh Jain. If Gopal Krishan Aggarwal had some equation with Dinesh Jain, the latter would have been the best person to be interrogated about the role played by Gopal Krishan Aggarwal in the aforesaid dispute. The testimony of PW23 is indicative of the fact that Gopal Krishan Aggarwal had been present only on account of his relationship with Dinesh Jain, who was neither the

debtor nor the creditor in the monetary transaction. This casts a duty on the Investigating Officer to have recorded the statement of Dinesh Jain to find out the part played by Gopal Krishan Aggarwal. That was not done.

1301. PW23 Inspector Vipin Bhatia has not stated that accused Gopal Krishan Aggarwal had signed the settlement deed in his presence. As per the witness, the settlement had taken place outside the police station, and a pre-prepared document was simply presented to him.
1302. PW23 Inspector Vipin Bhatia has stated that he had called accused Gopal Krishan Aggarwal along with others to the police station. Since the complaint had neither been preferred by Gopal Krishan Aggarwal, nor were allegations made against Gopal Krishan Aggarwal, there was no reason for Inspector Vipin Bhatia to call Gopal Krishan Aggarwal to the police station. Gopal Krishan Aggarwal was not even named as a witness in the complaint.
1303. Since PW23 Inspector Vipin Bhatia had called accused Gopal Krishan Aggarwal to the police station, Gopal Krishan Aggarwal was duty bound to visit the police station. Even assuming that he did go to the police station, the said visit was in pursuance to the call of the police officer. It cannot be construed from the said visit that Gopal Krishan Aggarwal had been making strenuous efforts to settle the dispute and or that he had gone to the police to seek their help in the settlement of



the dispute. Even if it is assumed that Gopal Krishan Aggarwal had indeed been making efforts to settle the dispute of Ashok Gupta (as opposed to Sanjay Supariwala, as has been canvassed by the prosecution), it certainly does not imply that Gopal Krishan Aggarwal also hired persons to threaten Vijay Bansal, that those persons completed this task, that accused refused to pay the agreed sum, and that this led to some friction between Gopal Krishan Aggarwal and Vijay Yadav. The case of the prosecution of police officers having brokered the settlement, for which goons had earlier been engaged, is disproved by the testimony of PW23 Inspector Vipin Bhatia who does not indicate any such role having been played by the police. The motive to enter into the conspiracy allegedly on the part of Gopal Krishan Aggarwal does not get proved from the testimony of PW23 Inspector Vipin Bhatia.

1304. I have already held in the preceding paragraphs, while discussing the impact of testimony of PW17 Sh. Vijay Bansal, PW18 Sh. Ashok Gupta and PW23 Inspector Vipin Bhatia, that the settlement deed which was furnished by PW23 Inspector Vipin Bhatia to Investigating Officer Inspector K.G. Tyagi, copy of which is stated to have been recovered at the instance of accused Gopal Krishan Aggarwal, also does not make out a case of conspiracy on the part of Gopal Krishan Aggarwal. It has been vociferously contended by Id counsel for accused Gopal Krishan

Aggarwal that the recovery did not take place, that the document was not furnished by PW23 Inspector Vipin Bhatia to Inspector K.G. Tyagi and that the document was fabricated. However, it is not necessary to delve into those arguments since the document, even if presumed to be genuine and to have been recovered at the instance of accused Gopal Krishan Aggarwal, does not show Gopal Krishan Aggarwal to be acting as a mediator, let alone indicating hiring of some persons by Gopal Krishan Aggarwal to advance threats, or the actual advancement of threats, or the involvement of Vijay Yadav in this arrangement, or the controversy of payment of money or the discord between Gopal Krishan Aggarwal and Vijay Yadav. The document denotes only the existence of dispute between two persons and they having entered into a settlement. Even if the document is signed by Gopal Krishan Aggarwal, it does not prove disharmony between Gopal Krishan Aggarwal and Vijay Yadav and it certainly does not establish that they were ill-disposed towards each other to the extent that one could plot the murder of the other. Thus, the settlement deed and the testimony of PW62 ASI (Retired) Rajbir Singh, PW67 SI Mukesh and PW68 Inspector K.G. Tyagi which is relevant only to prove arrest of this accused, recording of his disclosure statement and recovery of copy of the settlement deed, does not advance the case of the prosecution. For the same reason, the defence evidence led by accused Gopal Krishan

Aggarwal need not be adverted to.

1305. The next witness on whom the prosecution relied to prove motive on the part of Gopal Krishan Aggarwal is PW20 Shri Harjeet Singh.
1306. The part of the examination-in-chief of PW20 Shri Harjeet Singh that relates to accused Gopal Krishan Aggarwal may be extracted. The witness stated in his examination-in-chief that ten or twelve days prior to the death of Vijay Yadav, the witness was present in the office of Vijay Yadav where a conversation was taking place between Vijay Yadav and accused Gopal Krishan Aggarwal regarding payment of Rs. 36 lakhs; that the witness was not aware of the exact transaction, of who had to pay and to whom it was to be paid; that the conversation made a reference to a friend of accused Gopal Krishan Aggarwal; that the witness did not know the name of the said friend; from the conversation it transpired that this friend of accused Gopal Krishan Aggarwal had to pay a sum of Rs. 36 lakhs to some person whose name the witness was not aware of; that accused Gopal Krishan Aggarwal said to Vijay Yadav that his friend did not intend to pay the aforesaid sum and requested Vijay Yadav to intimidate the person to whom payment was to be made by the friend of accused Gopal Krishan Aggarwal; that accused Gopal Krishan Aggarwal offered to pay Rs. 3 lakhs to Vijay Yadav, which was to be given to Hitender @ Chhotu; that as per their conversation, Hitender @ Chhotu was to intimidate the said

person in lieu of receipt of the sum of Rs. 3 lakhs.

1307. PW20 Shri Harjeet Singh further stated that about fifteen or twenty days prior to the murder of Vijay Yadav, the latter told the former that the work of accused Gopal Krishan Aggarwal had been done by accused Hitender @ Chhotu whereas accused Gopal Krishan Aggarwal told the witness that he had got the work done through the police. After the incident, differences had developed between accused Gopal Krishan Aggarwal and Vijay Yadav.

1308. The relevant part of the cross-examination of PW20 Shri Harjeet Singh may also be perused. PW20 Shri Harjeet Singh stated in his cross-examination that he had informed the police during investigation that he had learnt from the conversation of Vijay Yadav and Gopal Krishan Aggarwal that a friend of Gopal Krishan Aggarwal had to make payment of a sum of Rs.36 lakhs to some person. The witness was confronted with his statement dated 7<sup>th</sup> December, 2007 Ex. PW20/D1 where the said statement was not recorded.

1309. The witness was asked about whether he had stated to the police at the time of recording of his statement under Section 161 of Code of Criminal Procedure that accused Gopal Krishan Aggarwal had told Vijay Yadav that his friend did not intend to make the aforesaid payment, and had requested Vijay Yadav to intimidate the person who was seeking payment. The witness stated in the affirmative that he had

indeed made those statements to the police. The witness was confronted with the statement Ex.PW20/D1 where the aforesaid assertion was not found to have been recorded.

1310. The witness admitted that in his statement recorded by the police, it has not been mentioned that accused Gopal Krishan Aggarwal had offered a sum of Rs. 3 lakhs to Vijay Yadav for it to be paid to Hitender @ Chhotu.

1311. The witness also stated in his cross-examination that he had not informed the police at the time of recording of his statement that fifteen or twenty days before his murder, Vijay Yadav had told the witness that the work of Gopal Krishan Aggarwal had been completed by Hitender @ Chhotu. The witness further stated that he had not informed the police that Gopal Krishan Aggarwal had told the witness that he had got the work done through police. The witness stated that this fact had been stated by accused Gopal Krishan Aggarwal to Vijay Yadav in the presence of the witness.

1312. The witness further deposed in his cross-examination that he had informed the police that Gopal Krishan Aggarwal had told Vijay Yadav in the presence of the witness that the work had been accomplished through the police. The witness was confronted with his statement recorded by the police in which there was no mention of the aforesaid event happening in the presence of the witness.

1313. The witness further stated in his cross-examination that he had informed the police at the time of recording of his statement that after the aforesaid controversy, differences had developed between Gopal Krishan Aggarwal and Vijay Yadav. The witness was confronted with his statement Ex. PW20/D1 where this was not found recorded in those words.
1314. The witness stated in his cross-examination that he had informed the police at the time of the recording of his statement that as per the conversation of Gopal Krishan Aggarwal and Vijay Yadav, Hitender @ Chhotu was required to intimidate a person against a consideration of Rs.3 lacs. The witness was confronted with the statement Ex.PW20/D1 where this was not found to have been recorded.
1315. The witness was asked whether he had visited the police station to inform the police about the facts which were in his knowledge about the murder of Vijay Yadav soon after the incident. The witness stated that after knowing about the murder of Vijay Yadav, he did not visit the police station to inform the police of the facts known to the witness. The witness stated that he had no explanation for not going to the police station to inform the police of the aforesaid facts.
1316. The witness further stated that he did not remember whether he had received any notice in writing from the Investigating Officer asking the witness to join the investigation. The witness stated that when he was

present in the office of Vijay Yadav, ten or twelve days before the death of Vijay Yadav, Gopal Krishan Aggarwal was present but the witness does not remember if anybody else was present at that time in the office.

1317. The above testimony shows that most of the prominent and critical utterances of the PW20 Shri Harjeet Singh in his examination-in-chief do not form part of his statement under section 161 of Code of Criminal Procedure recorded by the police. For some, the witness explained that he himself did not articulate those facts to the Investigating Officer. For others, he stated that though the witness did set forth those facts, the Investigating Officer did not record them. It is not the case of the witness that his statement under Section 161 of the Code of Criminal Procedure had been recorded by the police by force or coercion, or that the recorded version of the statement suffers from some manipulation. The witness has not alleged that the police was prejudiced against the witness or was trying to help the accused person. No complaint to that effect has been made to any authority by the witness. Thus, it must be presumed that the police recorded whatever the witness had stated.

1318. The witness has identified his earlier statement tendered to the police as Ex.PW20/D1. The Court therefore has to assume that whatever had been stated by the witness to the police had been recorded accurately and if the witness is testifying in Court to some facts that do not find

mention in his statement under section 161 of Code of Criminal Procedure, it has to be inferred that the witness is articulating those for the first time. Similarly, there is no reason for the witness to omit to say some facts to the Investigating Officer in whom he bestowed confidence, and to asseverate them for the first time in Court several years after the incident. Significant and irreconcilable improvements over the previous statement impinge on the credibility of the version of the witness, as held in the cases of Khushal Chand (supra) and Tahsildar Singh (supra). Such improvements render the testimony of the witness unreliable. Since the testimony of the witness in Court is tell-tale of substantial improvements (highlighted in his cross-examination) over his earlier version given to the police, the testimony of the witness cannot be given any credence.

1319. PW20 Shri Harjeet Singh has deposed in his examination-in-chief that the deal between Gopal Krishan Aggarwal and Vijay Yadav had been struck in the office of Vijay Yadav in the presence of the witness. This contrary to the version of PW14 Abhay Singh Yadav who stated that this had happened when Gopal Krishan Aggarwal had called Vijay Yadav. PW14 Abhay Singh Yadav said in his examination-in-chief that “Gopal Krishan Aggarwal also called my brother Vijay Yadav”.

1320. PW20 Shri Harjeet Singh has deposed in his examination-in-chief that the conversation between Gopal Krishan Aggarwal and Vijay Yadav in



which the terms were laid down and the deal had been struck, had happened ten or twelve days prior to the death of Vijay Yadav. As opposed to this, PW14 Abhay Singh Yadav stated that Vijay Yadav had narrated about strained relations with Gopal Krishan Aggarwal regarding the said payment to Abhay Singh Yadav two or three months before the incident of murder. If the deal had been struck only ten or twelve days before the death of Vijay Yadav, the discord between Vijay Yadav and Abhay Singh Yadav as a fallout of the breach of the agreement could not have happened two or three months before. It is obvious that it is only after an agreement is entered into can it be breached, and this can cause a relationship to be strained only at the end. As per the prosecution, the dispute of Vijay Bansal had been settled on 12<sup>th</sup> July, 2007 and there is a settlement deed in that respect on the record. If the dispute had been settled two and a half months before the death of Vijay Yadav, there is no question of Gopal Krishan Aggarwal trying to have a settled dispute again settled ten or twelve days before the demise of Vijay Yadav. It seems that PW20 Shri Harjeet Singh is not a truthful witness.

1321. From the statement of PW20 Shri Harjeet Singh that had been recorded by the police under section 161 of Code of Criminal Procedure, it follows that the witness was not present at the time of alleged conversation between Vijay Yadav and Gopal Krishan Aggarwal. The

witness was only informed about it later by Vijay Yadav. However, when he deposed in Court, he stated that it happened in his presence. If that was so, the witness would have told the Investigating Officer that he has first-hand knowledge of the conversation. There was no need for him to tell the Investigating Officer that he had only been informed of this by Vijay Yadav. It seems that in an attempt to save the testimony from the bar of hearsay, the witness improved his version and claimed his own presence at the time of the conversation, unmindful of the fact that he was making a marked improvement over his earlier stance.

1322. PW20 Shri Harjeet Singh has stated in his examination-in-chief that Gopal Krishan Aggarwal had requested Vijay Yadav to intimidate the claimant of money. This is contrary to the stand of PW14 Abhay Singh Yadav according to whom there was a direct arrangement between the hired persons and Gopal Krishan Aggarwal and Vijay Yadav had only been called there. In fact, Abhay Singh Yadav has portrayed as if the two contracting parties were treating Vijay Yadav as a middleman, whereas the testimony of PW20 Shri Harjeet Singh suggests that the work had been assigned to Vijay Yadav himself, who on his part would involve Hitender @ Chhotu in this task. According to PW20 Shri Harjeet Singh, even payment had been made to Vijay Yadav himself.

1323. PW20 Shri Harjeet Singh has stated in his examination-in-chief that the entire consideration for the work was Rs. Three lakhs which, as per

statement of the witness tendered to the Investigating Officer under section 161 of Code of Criminal Procedure, had been paid in full by Gopal Krishan Aggarwal. As against this, according to the testimony of PW14 Abhay Singh Yadav it was only part payment, and the remaining sum had to be paid after completion of the task. The payment of remaining sum is projected by the prosecution as the bone of contention that led to the feud.

1324. PW20 Shri Harjeet Singh has stated in his examination-in-chief that fifteen or twenty days before the murder of Vijay Yadav, the Vijay Yadav told the witness that the work of accused Gopal Krishan Aggarwal had been done by accused Hitender @ Chhotu whereas accused Gopal Krishan Aggarwal told the witness that he had got the work done through the police. If the agreement to get the work done had been entered into, only ten or twelve days before the death of Vijay Yadav, it is inconceivable that its implementation would have happened fifteen or twenty days before the demise. An agreement cannot be performed before it is even entered into.

1325. PW20 Shri Harjeet Singh has stated in his examination-in-chief that accused Gopal Krishan Aggarwal told the witness that he had got the work done through the police. Firstly, there was no reason for Gopal Krishan Aggarwal to tell the witness this fact since no part was being played by the witness in the deal and he was not even having any

comradeship with Gopal Krishan Aggarwal. Secondly, this assertion is contrary to the earlier statement of the witness made to the Investigating Officer according to which this had been stated by Gopal Krishan Aggarwal to Vijay Yadav only.

1326. As per statement of PW20 Shri Harjeet Singh made to the Investigating Officer, the hired persons had refused to return the money of Gopal Krishan Aggarwal. However, this fact finds no mention in the testimony of the witness tendered in Court. On the contrary, the witness has deposed that indeed Hitender @ Chhotu is the one who completed the task.

1327. From the testimony of PW20 Shri Harjeet Singh, it follows that the witness had seen the initial agreement being entered into but had not seen the later part when, as per allegations, the failure of the deal was being discussed between Gopal Krishan Aggarwal and Vijay Yadav. He stated that he was told of the later part by Vijay Yadav. In his initial statement to the police, the witness informed that the entire episode with Gopal Krishan Aggarwal had been informed to him by Vijay Yadav. The events that had not been seen by the witness and had only been narrated to the witness by Vijay Yadav cannot be deposed to by the witness. The testimony of the witness is therefore barred by the hearsay rule to the extent of proving the discord as a consequence of perceived breach of the agreement. This point has already been

elaborated upon earlier in the context of testimony of PW14 Abhay Singh Yadav and need not be annotated again.

1328. PW20 Shri Harjeet Singh has stated that after the incident, differences had developed between accused Gopal Krishan Aggarwal and Vijay Yadav. This statement was made by the witness as his own observation. The witness does not state that he was informed of this by anybody else. However, the witness has not elucidated on how he felt that "differences had developed" between Gopal Krishan Aggarwal and Vijay Yadav. The rising of differences is a matter of perception. It is not an object or an event that can be seen. There must have been events from which the witness may have discerned there were differences between Gopal Krishan Aggarwal and Vijay Yadav. The witnesses should have pointed out those events so that the Court could grasp from them whether indeed there was discontentment brewing between the two persons. Apart from the above, this fact also finds no mention in the statement tendered by him to the Investigating Officer under section 161 of Code of Criminal Procedure. The witness had been confronted with the statement during his cross-examination but he offered no explanation.

1329. Another startling fact is that the witness made no attempt to visit the police station to report about the circumstances that he knew which may have helped the police to find out the offenders. The witness

claims to have been a close friend of the deceased. Such indifference is not expected of him. He was questioned in his behalf during his cross-examination but he admitted that he *“had no reason whatsoever for not going to the local police station after knowing the murder of Vijay Singh Yadav”* to tell the police that he knew certain facts relating to the murder. This seems to support the contention of accused Gopal Krishan Aggarwal that the witness had been belatedly planted by the police to embroil Gopal Krishan Aggarwal and others in this case.

1330. The record also speaks of notable ingenuity. On the point of dispute of Vijay Yadav with Gopal Krishan Aggarwal, the Investigating Officer had initially recorded the statement of Abhay Singh Yadav on 11<sup>th</sup> October, 2007. He talked of a dispute involving one Sanjay Supariwala. Statement of Harjeet Singh was recorded on 7<sup>th</sup> December, 2007. By the time the Investigating Officer interrogated the witness, he would have already known from the interrogation of accused Gopal Krishan Aggarwal that there was no person by the name of Sanjay Supariwala, and so while recording the statement of Harjeet Singh, the Investigating Officer omitted to mention the name of the friend of Gopal Krishan Aggarwal and left that part open-ended. It is not possible that the witness who claimed to have heard the whole conversation, and who was able to recollect remaining components, failed to mention the name of the said friend of Gopal Krishan Aggarwal for whom the whole scheme was allegedly being devised.

1331. The testimony of PW20 Shri Harjeet Singh has made multiple and weighty departures from the earlier stand of the witness adopted at the time of recording of his statement by the Investigating Officer during investigation. He has not explained the improvements. He has not spelled out important details like the person who had to be intimidated, the friend of Gopal Krishan Aggarwal for whom the plan was being made and the date on which the meeting between Gopal Krishan Aggarwal and Vijay Yadav took place. His assertions in examination-in-chief are at variance with the facts stated by PW14 Abhay Singh Yadav. The witness has not described any event by which it could be deduced that relations between Vijay Yadav and Gopal Krishan Aggarwal had soured. He was only informed about the dispute on the issue of payment of money. He did not see any manifestation of the said dispute.

1332. Owing to the various infirmities pointed out above, the testimony of PW20 Shri Harjeet Singh fails to lend any support to the case of the prosecution that accused Gopal Krishan Aggarwal had conspired to the killing of Vijay Yadav.

1333. The next witness from whose testimony the prosecution is seeking to prove its allegations is PW28 Vinod Kumar @ Teda. The witness deposed in his examination-in-chief that the witness has no relationship with any of the accused persons of the case; that the

witness never worked with any of the accused persons; that the witness used to visit the office of accused Gopal Krishan Aggarwal once a week; that the witness knew only that Gopal Krishan Aggarwal deals in property transactions; that the witness had no knowledge of other business of accused Gopal Krishan Aggarwal; that he did not know Vijay Yadav @ Vijji; that he had no knowledge about the money transaction, if any, between accused Gopal Krishan Aggarwal and Vijay Yadav.

1334. The above negates the prosecution case that PW28 Vinod Kumar @ Teda had heard about persons being hired through Vijay Yadav to intimidate some person, or the other events associated with this. It invalidates the claim of the prosecution that accused Bhisham @ Chintoo had told the witness about a plan hatched by accused Gopal Krishan Aggarwal to eliminate Vijay Yadav. The witness never stated to the police about the aforesaid episodes. As per the witness, the Investigating Officer manufactured those statements on his own. As has been noted earlier, if the witness had been informed by accused Bhisham @ Chintoo of a conspiracy to kill Vijay Yadav, then he would have surely informed about it to the police at the first available opportunity. That was not done. There is also no reason for accused Bhisham @ Chintoo to confide in the witness about the former being a party to a conspiracy. The prosecution story has received no backing



from this witness.

1335. Ld Public Prosecutor cross-examined PW28 Vinod Kumar @ Teda at length. However, nothing has come on record to show that the witness had actually seen events that were a cause of disharmony between Vijay Yadav and Gopal Krishan Aggarwal, or that the witness had been informed of a conspiracy hatched by Gopal Krishan Aggarwal.
1336. PW28 Vinod Kumar @ Teda denied in his cross-examination that he had been taken to police station Chandni Mahal on 23<sup>rd</sup> July, 2008 along with Gopal Krishan Aggarwal by ASI Iqbal Ahmed. This witness stated that he was taken to Chandni Mahal along with some other person and he did not remember whether the date was 23<sup>rd</sup> July, 2008 or some other date. This witness could not say whether ASI Iqbal Ahmed came there on the call of Gopal Krishan Aggarwal which was made at police control room. PW28 Vinod Kumar @ Teda denied that the call was made by Gopal Krishan Aggarwal as PW28 Vinod Kumar @ Teda had gone to the house of Gopal Krishan Aggarwal and demanded money stating that if money is paid to him, he would not make a statement against Gopal Krishan Aggarwal before the police.
1337. It is not known and cannot be stated with certainty on the basis of denial of PW28 Vinod Kumar @ Teda that the aforesaid event did occur and that indeed PW28 Vinod Kumar @ Teda demanded money from Gopal Krishan Aggarwal for changing his version. Since that event has

not been proven, the Court will have to assume that it did not occur. However, even if it occur, and the witness did solicit money from the accused, that does not show the accused to be guilty of the offence. It may reflect on the probity of the witness. It may show him to be unreliable. His testimony may be rendered devoid of sanctity and unworthy of credit, and therefore liable to be ignored. However, it would not permit this Court to punish the accused for the misdemeanour of the witness. It would also not allow this Court to disregard the norms of evidence and to adopt the statement under section 161 of Code of Criminal Procedure of the witness, exalt it to the status of evidence, hold the untested statement to be gospel truth and hand down a finding of guilt of the accused on its basis.

1338. There can also be no presumption that the accused fulfilled the demand of the witness. There can be myriad reasons for a witness to not stand by the statement recorded under section 161 of Code of Criminal Procedure. One of those reasons could be that the statement itself may be far from truth.

1339. Moreover, if the accused would have been willing to fulfil the illegitimate demand of the witness, the accused would have done that in the first instance instead of complaining to the police, as was suggested by the public prosecutor. The fact that the accused decided to complain against the witness shows that the accused was not

interested in such trickery. There is also nothing on record to suggest that the witness was actuated by oblique considerations in not supporting the version of the prosecution.

1340. PW28 Vinod Kumar @ Teda, in his cross-examination, denied having made a complaint before the Crime Branch, Rohini alleging that he was being threatened to change his statement. The prosecution has not proved from any evidence that the witness had been threatened by Gopal Krishan Aggarwal and that this was the reason for the witness not supporting the case of the prosecution. The witness has denied this proposition and the denial has remained unchallenged.

1341. This witness did not know whether Gopal Krishan Aggarwal had made any application in the Court of the witness having demanded money from Gopal Krishan Aggarwal to change the statement. The filing of the application suggested by the prosecution definitely proves that the accused was not interested in fulfilling any such demand of the the witness.

1342. PW28 Vinod Kumar @ Teda denied that he was acquainted with the facts relating to the murder of Vijay Singh Yadav or that he deliberately concealed those facts. He denied that he had made a false statement in the Court that he did not know anything about the murder of Vijay Yadav or having known such a person. This disclaimer of the witness, whether true or false, cannot lead to the inference that the accused had

conspired to the murder. To prove the guilt, there will need to be affirmative and reliable evidence. This requirement of law does not get fulfilled by proving of a hostile witness to be irresponsible and dishonest.

1343. PW28 Vinod Kumar @ Teda further denied in his cross-examination that Gopal Krishan Aggarwal had called Deepak @ Chowda to the office of the former, through the witness. He denied having taken Deepak @ Chowda and Vinod @ Gola to the office of Gopal Krishan Aggarwal. The witness further denied that when he took Deepak @ Chowda and Vinod @ Gola to the office of Gopal Krishan Aggarwal, Gopal Krishan Aggarwal asked Deepak @ Chowda to threaten Vijay Bansal who was demanding money from Gopal Krishan Aggarwal. The witness stated that since he did not go there, the question of he knowing about occurrence of these events does not arise.

1344. PW28 Vinod Kumar @ Teda denied that Deepak @ Chowda told Gopal Krishan Aggarwal in the presence of the witness that the work would be got done and that he would tell the consideration for it later. The witness stated that since he was not present there, the question of he seeing occurrence of these events does not arise. This witness further denied that Hitender and other persons came to the office of Gopal Krishan Aggarwal and Deepak @ Chowda said that 'Hitender bhai' had come. The witness denied that accused Hitender had visited the

office of Gopal Krishan Aggarwal in his presence, or that Deepak @ Chowda had introduced him as Hitender @ Chhotu.

1345. PW28 Vinod Kumar @ Teda further denied that Gopal Krishan Aggarwal had called Vijay Singh Yadav in the office of Gopal Krishan Aggarwal in the presence of this witness. The witness stated that since he was not present, the question of demand of Rs. ten lakhs by Hitender @ Chhotu from Gopal Krishan Aggarwal for extending threat to Vijay Bansal did not arise and he could not state about the negotiations that took place in this behalf.

1346. PW28 Vinod Kumar @ Teda denied that he had collected Rs. three lakhs from the house of Gopal Krishan Aggarwal and had given it in the office of Gopal Krishan Aggarwal. He denied that Gopal Krishan Aggarwal had given the sum to Vijay Yadav in his presence who in turn gave the money to Hitender @ Chhotu. The witness stated that since he was not present, he did not know about any such fact.

1347. PW28 Vinod Kumar @ Teda denied that after taking the money in his presence, Hitender @ Chhotu told Gopal Krishan Aggarwal that his work would be done and Vijay Bansal would not raise any demand henceforth. The witness denied about Hitender having told Gopal Krishan Aggarwal to make arrangement for the balance money.

1348. PW28 Vinod Kumar @ Teda denied that after a few days, Gopal Krishan Aggarwal told him that the work had not been done. The

witness denied that Gopal Krishan Aggarwal demanded return of the money from Vijay Singh Yadav in his presence. PW28 Vinod Kumar @ Teda denied that Gopal Krishan Aggarwal sent him to the house of Vijay Singh Yadav for bringing back the money; that he and Vinod @ Gola went to the house of Vijay Yadav for bringing the money; that Vijay Yadav told the witness that the money was not with Vijay Yadav; that Vijay Yadav went to Rohini for collecting the money from Hitender @ Chhotu; that thereafter the witness along with Vinod @ Gola went to Pitampura Metro Station; that Hitender @ Chhotu and his companion met the witness there; that Hitender @ Chhotu did not return the money to the witness and asked him to go; that on returning, the witness told these facts to Gopal Krishan Aggarwal; that Gopal Krishan Aggarwal blamed Vijay Yadav that he had taken the money but his work had not been done; that Vijay Yadav was demanding the balance sum of Rs. Four or Five Lakhs which had been promised by Gopal Krishan Aggarwal to pay to Hitender @ Chotu.

1349. PW28 Vinod Kumar @ Teda denied that Vijay Yadav told Gopal Krishan Aggarwal that Hitender and his associates were putting pressure upon Vijay Yadav for payment of the balance money. This witness denied about Gopal Krishan Aggarwal blaming Vijay Yadav for this.

1350. PW28 Vinod Kumar @ Teda further denied that on the asking of Gopal Krishan Aggarwal, the witness demanded money from Hitender @ Chhotu who abused the witness or that Hitender @ Chhotu told that as the work had been done, there was no question of return of money. The witness denied that when he told this fact to Gopal Krishan Aggarwal, Gopal Krishan Aggarwal called Vijay Yadav to his office or that a quarrel took place on that issue. This witness further denied that Gopal Krishan Aggarwal called Vijay Singh Yadav on the next date, who refused to come.

1351. PW28 Vinod Kumar @ Teda, in his cross-examination, further denied that he and Vinod @ Gola were sent by Gopal Krishan Aggarwal to Rohini for taking money from Hitender @ Chhotu; that accused Bhisham @ Chintoo joined them; that all three of them went to Rohini, Pitampura Metro Station; that Hitender did not turn up there; that on their return to the office of Gopal Krishan Aggarwal, a call was made on phone by Gopal Krishan Aggarwal to Vijay Yadav who did not attend the call; that thereafter Vijay Yadav and one person Tek Ram reached the office of Gopal Krishan Aggarwal; that Vijay Yadav had demanded payment of the balance sum of Rs. Five lakhs in the presence of PW28 Vinod Kumar @ Teda; that Gopal Krishan Aggarwal had asked for refund of the sum of Rs. Three lakhs stating that the work had not been got done through them; that a quarrel had taken

place between them; that the meeting was dispersed after extending threats to each other; that on 22<sup>nd</sup> July, 2008 pursuant to a PCR call which was recorded vide Deepak @ Chowda No.29A, ASI Iqbal Ahmed of PP Turkman Gate found the witness and Gopal Krishan Aggarwal present there, and that the witness informed ASI Iqbal that Gopal Krishan Aggarwal was pressurising the witness not to depose in the case; that accused Gopal Krishan Aggarwal had made a statement to the police that the witness was demanding money from Gopal Krishan Aggarwal for changing his version.

1352. PW28 Vinod Kumar @ Teda, in his cross-examination, denied that he, on several occasions, went to meet Hitender along with Bhisham and Vinod for demanding the money. The witness denied that Gopal Krishan Aggarwal was blaming Vijay Yadav that Vijay Yadav had taken the money but despite that his work was not done. The witness denied that Vijay Yadav was blaming Gopal Krishan Aggarwal for not making balance payment. This witness stated that no such incident had taken place in his presence. This witness denied that accused Vinod and Bhisham were known to him from prior to the incident because they were living in the same locality. PW28 Vinod Kumar @ Teda denied that about one and a half months prior to the death of Vijay Yadav, Gopal Krishan Aggarwal and Vijay Yadav had extended threats of life to each other. He denied having heard Gopal Krishan Aggarwal



on one occasion talking to Hitender @ Chhotu, Sumit, Dharmesh, Deepak and others taking the name of Vijay Yadav in a loud voice. The witness denied having seen Vijay Yadav going to attend the said meeting and a quarrel having taken place that morning between Gopal Krishan Aggarwal and Vijay Yadav. PW28 Vinod Kumar @ Teda further denied that in his presence accused Bhisham became friendly to him and told him that accused Gopal Krishan Aggarwal and Ashok Jain had made a plan to eliminate Vijay Yadav due to previous enmity. The witness further denied being aware of the circumstances in which death of Vijay Yadav had occurred. He further denied that for that reason, his statement was recorded by Insp. K.G. Tyagi. The witness further denied that he had been won over by the accused persons or that due to the said reason, he had deposed falsely. At that stage, statement of witness under Section 161 of Code of Criminal Procedure was read over and explained to the witness in Hindi and after hearing the statement, PW28 Vinod Kumar @ Teda stated that he had not made any such statement to the police.

1353. From the above, it is clear that the entire story of the prosecution has been denied by PW28 Vinod Kumar @ Teda. He was a prime witness for the prosecution to establish not only the motive of accused Gopal Krishan Aggarwal but the actual involvement of the said accused in hatching of a conspiracy to slay Vijay Yadav. In view of the refusal of

the witness to lend any validation to the prosecution case, the story of the prosecution against accused Gopal Krishan Aggarwal has fallen flat.

1354. The next witness through whose deposition the prosecution intends to prove accused Gopal Krishan Aggarwal to be one of the conspirators is PW16 Durga Dass.

1355. PW16 Durga Dass was examined by the prosecution to prove, *inter alia*, the following:

- a. that there had been a dispute of accused Gopal Krishan Aggarwal for which he availed the assistance of accused Hitender, which led to discord between accused Gopal Krishan Aggarwal and Vijay Yadav;
- b. that accused Hitender and his associates used to visit accused Gopal Krishan Aggarwal in the office of the latter;
- c. that accused persons Vinod @ Gola, Bhasham @ Chintoo and Deepak @ Chowda had told the witness that they had killed Vijay Yadav on the asking of accused persons Ashok Jain, Rishi Pal @ Pappu and Gopal Krishan Aggarwal;
- d. that Deepak @ Chowda had told the witness that he and other accused persons had received Rs. 5 lakhs from accused Gopal Krishan Aggarwal of the total agreed sum of Rs. 15 lakhs.

1356. PW16 Durga Dass, however, did not support the case of the prosecution. He deposed in his examination-in-chief that he did not

know any person by the name of Bhisham @ Chintoo. The witness was shown accused persons Gopal Krishan Aggarwal and Bhisham @ Chintoo. He denied knowing them. None of assertions of the prosecution were endorsed by this witness.

1357. The witness was cross-examined by the ld public prosecutor. In cross-examination, the witness remained steadfast with his denial. He stated that during investigation of the case, he was called by the police, made to sit in the police station and then asked to go. No inquiry was made from him. The witness denied that accused persons Vinod @ Gola, Bhisham @ Chintoo and Deepak @ Chowda had told the witness that they had killed Vijay Yadav on the asking of accused persons Ashok Jain, Rishi Pal @ Pappu and Gopal Krishan Aggarwal. The deposition tendered in Court by PW16 Durga Dass has not been shown by the prosecution to be incorrect or a consequence of exerting of influence or pressure by the accused person. It points to the innocence of accused Gopal Krishan Aggarwal and also indicates fabrication of statements under section 161 of Code of Criminal Procedure. Besides, it has already been noted that even if the prosecution had proved from the testimony of this witness that the extra-judicial confession had indeed been made, it would not have been substantive evidence against accused Gopal Krishan Aggarwal or for that matter against other alleged conspirators, as held in the cases of Tejinder Singh @ Kaka

(supra) and Basanti (supra). It would have been barred by the hearsay rule. It would not have been admissible under sections 10 or 30 of the Evidence Act, 1872, since the existence of conspiracy has not been already demonstrated to exist, and since on the date of the said extra-judicial confession, the conspiracy was not in subsistence even as per the case of the prosecution.

1358. Another witness examined by the prosecution to prove hatching of conspiracy by accused Gopal Krishan Aggarwal is PW63 Deepak Kumar. The witness was examined by the prosecution to prove, inter alia, that accused persons Vinod @ Gola, Deepak @ Chowda and Bhisham @ Chintoo had informed the witness about they having committed the murder at the behest of accused Ashok Jain, Gopal Krishan Aggarwal and Rishipal @ Pappu.

1359. PW63 Shri Deepak Kumar stated in his examination-in-chief that in the year 2007 (the exact date of which the witness did not remember) at about 07:00pm or 08:00pm, while the witness was about to leave for his house, he came to know that firing had taken place at Arya Samaj Gali and somebody had shot one Viji (Vijay Yadav). The witness then went to his house. PW63 Shri Deepak Kumar further stated in his examination-in-chief that on the next day, accused Vinod @ Gola (who the witness correctly identified) called the witness on his mobile phone at about 03:00pm or 04:00pm and asked the witness to look after his

house. The witness asked accused Vinod @ Gola as to what had happened, to which the accused said that he would tell on his return. PW63 Shri Deepak Kumar stated that he did not know anything else about the present case. Ld. Addl. Public Prosecutor obtained permission of the Court and cross-examined PW63 Shri Deepak Kumar. In his cross-examination by Id. Additional Public Prosecutor, the witness stated that he knew accused Deepak @ Chowda, Desraj @ Desu and Bhisham @ Chintoo (who the witness correctly identified) since they also used to reside in Sita Ram Bazar area. The witness stated that he did not know accused Gopal Krishan Aggarwal. The witness admitted that in the year 2007, the witness was using mobile number 9210866522, and that accused Vinod @ Gola had called the witness on this number itself. PW63 Shri Deepak Kumar further denied that on 30<sup>th</sup> September, 2007 accused Bhisham @ Chintoo told the witness on a phone call that Bhisham @ Chintoo and his associates had killed Vijay Singh @ Vijji at the instance of Ashok Jain, Gopal Krishan Aggarwal and Rishipal @ Pappu. PW63 Shri Deepak Kumar also denied the suggestion that later Deepak @ Chowda talked to the witness and told him that Vijay Yadav @ Vijji had been murdered by them at the instance of Gopal Krishan Aggarwal, Ashok Jain and Rishi Pal @ Pappu.

1360. The above shows that PW63 Shri Deepak Kumar has not supported the prosecution case of the witness having been told by the assailants about involvement of accused Gopal Krishan Aggarwal. Nothing has emerged in the cross-examination of the witness which could establish that indeed the assailants had informed the witness that the murder had been committed at the instance of accused persons Gopal Krishan Aggarwal and others. The prosecution has not proven the contents of the conversation between the witness and the assailants so as to indicate that indeed such an extra-judicial confession had made by the assailants pointing towards the involvement of accused Gopal Krishan Aggarwal. Besides, even if PW63 Shri Deepak Kumar had stated that such an extra-judicial confession had been made to him by accused Bhasham @ Chintoo and Deepak @ Chowda, it would not have been substantive evidence against accused Gopal Krishan Aggarwal as he is not the maker of those statements {Ref.: Cases of Tejinder Singh @ Kaka (supra) and Basanti (supra) which have already been discussed earlier}.
1361. In light of the above, it is concluded that the prosecution has failed to prove, through the deposition of PW63 Shri Deepak Kumar, that Gopal Krishan Aggarwal had entered into a conspiracy aimed at the murder of Vijay Yadav.
1362. The prosecution has lastly relied on the deposition of PW34 Shri Tek Ram. From his testimony, the prosecution sought to prove motive of

accused Gopal Krishan Aggarwal for committing the crime.

1363. PW34 Shri Tek Ram deposed in his examination-in-chief that he knew Vijay Yadav @ Vijji since long as earlier the witness was residing in the same locality i.e. Bazaar Sita Ram; that the witness knew accused Gopal Krishan Aggarwal and accused Ashok Jain (who he correctly identified); that accused Gopal Krishan Aggarwal used to visit the office of Vijay Yadav; that about 1½ months before the murder of Vijay Yadav, the witness had talked to accused Gopal Krishan Aggarwal on phone; that accused Gopal Krishan Aggarwal had inquired from the witness as to whether Vijay Yadav was present in the office; that the witness had told accused Gopal Krishan Aggarwal that Vijay Yadav was present in his office; that accused Gopal Krishan Aggarwal had asked the witness to reach the office of Gopal Krishan Aggarwal with Vijay Yadav; that the witness conveyed the said message to Vijay Yadav; that before this call of Gopal Krishan Aggarwal, Vijay Yadav had received two or three calls on his mobile phone which he had disconnected; that when the witness asked Vijay Yadav why he was disconnecting the calls, Vijay Yadav told the witness that accused Gopal Krishan Aggarwal had a friend named Supariwala who had a money transaction with one Vijay Bansal, a resident of Rohini; that Vijay Yadav told the witness that Supariwala owed money to Vijay Bansal; that Vijay Bansal dealt in *satta* business; that Gopal Krishan

Aggarwal had approached Vijay Yadav for help and Vijay Yadav had assured Gopal Krishan Aggarwal, against this consideration of Rs. 7 lakhs, that Vijay Bansal would not harass Supariwala in future; that Vijay Yadav also told the witness that Vijay Yadav had settled the said dispute through one Chhotu; that thereafter the witness and Vijay Yadav went to the office of Gopal Krishan Aggarwal; that Gopal Krishan Aggarwal asked Vijay Yadav to refund Rs. 3 lakhs which the former had given to the latter for settling the above dispute whereas Vijay Yadav demanded the balance money; that according to Gopal Krishan Aggarwal, the dispute had been got settled through the police; that this disagreement led to a heated exchange of words between Vijay Yadav and accused Gopal Krishan Aggarwal who even extended threats to each other; that then the witness and Vijay Yadav came back.

1364. PW34 Tek Ram in his cross-examination stated that he is residing at Faridabad; that earlier, he was residing at Gali Bajrang Bali, Bazar Sita Ram. The witness admitted that earlier he was residing at Gali Murgewali and that the witness knew Abhay Singh Yadav. The witness stated that police had recorded his statement in this case after about fifteen days of death of deceased; that the statement was recorded at his house located at Gali Bajrang Bali; that at that time, Insp. K.G. Tyagi had come to his house along with others; that at that time, police had not recorded his address of Gali Bajrang Gali; that the witness knew



Insp. K.G. Tyagi as he had visited twice or thrice, in his presence, at the office of Abhay Singh Yadav; that the witness had seen Insp. K.G. Tyagi in the office of Abhay Singh Yadav about five of seven days before the recording of his statement; that during the said visit of Inspector K.G. Tyagi, the Investigating Officer had not recorded the statement of any witness; that Insp. K.G. Tyagi used to visit the office along with his staff; that during the said visits of Insp. K.G. Tyagi, the witness did not tender his statement to the Investigating Officer; that during the said visit, the witness had talked to Insp. K.G. Tyagi; that Insp. K.G. Tyagi inquired from the witness about the names of visitors to the office of Abhay Singh Yadav/Vijay Singh Yadav; that both brothers used to share the same office; that the witness informed Inspector K.G. Tyagi that he had not seen any visitors in the said office; that during the said visits, the witness did not disclose his residential address to the Investigating Officer; that the witness was having a mobile phone at that time; that the witness did not give his mobile phone number to Insp. K.G. Tyagi; that in the presence of the witness, Abhay Singh Yadav did not tell Insp. K.G. Tyagi that the witness knew certain facts relevant to this case; that the witness did not meet Insp. K.G. Tyagi except during his abovestated visits and when he came to his residence at Gali Bajrang Bali.

1365. PW34 Tek Ram, in his cross-examination, further stated that he did not give any statement to the police of PS Hauz Qazi from the date of incident of murder of Vijay Yadav till the visit of Insp. K.G. Tyagi at his house; that the witness did not intimate PS Hauz Qazi that he knew certain facts relevant to the case as deposed by him in the Court; that when his statement was recorded by Insp.K.G. Tyagi, the Investigating Officer did not know the residential address of the witness; that Investigating Officer was not aware that the witness was residing at Faridabad. The witness elaborated on his conversation with Investigating Officer Inspector K.G. Tyagi.
1366. PW34 Tek Ram further stated in his cross-examination that he cannot show any document to show that he was working in the office of Abhay Singh Yadav and that he had left the service when police recorded his statement in the case of murder. PW34 Tek Ram stated that he had informed the police that he knew Vijay Yadav since long as earlier Vijay Yadav was residing in the same locality i.e. Bazar Sita Ram. The witness was confronted with his statement under section 161 of Code of Criminal Procedure Ex.PW34/DA where it was not so recorded.
1367. PW34 Tek Ram further stated that he had not disclosed the mobile phone number of Gopal Krishan Aggarwal to the Investigating Officer; that the witness had no knowledge of whether the call details of his

mobile phone were verified by the Investigating Officer to find out whether the witness had received call from Gopal Krishan Aggarwal on his mobile phone; that the Investigating Officer had not shown the call details to the witness at any point of time in this regard; that the witness had not checked his mobile phone; that the witness had not led the police to the office of Gopal Krishan Aggarwal; that he had not shown to Investigating Officer the call details of mobile phone of Vijay Singh Yadav.

1368. PW34 Tek Ram further stated that prior to 29<sup>th</sup> September, 2007, Vijay Yadav had not made any complaint against any person. PW34 Tek Ram further stated that on 29<sup>th</sup> September, 2007, he was at his house at Faridabad when Vijay Singh Yadav was murdered; that he had not received any call from Abhay Singh Yadav but had received phone calls from other persons who intimated him about the murder of Vijay Yadav; that the witness did not remember the names of those persons; that the witness did not receive any call from the family members of Vijay Yadav; that the witness had not received any call from any police officer; that on receipt of information, the witness reached LNJP Hospital; that the witness reached there between 9.30 pm and 10 pm on a motorcycle; that he met family members of Vijay Yadav comprising of Abhay Singh Yadav and his father Amar Singh Yadav in the hospital; that the witness did not see the mother of deceased there; that

the witness did not meet police officers in the hospital; that the witness remained in the hospital till 3.30 am or 4 am and then he left for Faridabad; that the witness did not visit the place of occurrence or the house of Vijay Yadav; that Abhay Singh Yadav and Amar Singh Yadav remained in the hospital till 3.30 am or 4 am.

1369. PW34 Tek Ram further stated that he had not told the date of phone call from Gopal Krishan Aggarwal to Insp. K.G. Tyagi and Insp. K.G. Tyagi also did not ask for the same; that Insp. K.G. Tyagi did not seize mobile phone of the witness; that the witness did not tell the date of visit to office of Gopal Krishan Aggarwal to Insp. K.G. Tyagi nor did Insp. K.G. Tyagi seek this information from the witness; that the witness did not provide the mobile phone number of Vijay Yadav to the Investigating Officer nor did the Investigating Officer seek this information.

1370. PW34 Tek Ram stated in his cross-examination that he had informed the police that he knew Gopal Krishan Aggarwal. The witness was confronted with his earlier statement Ex.PW34/DA where this was not found to have been recorded. The witness articulated that the police did not record this fact in the statement.

1371. There are many reasons owing to which the aforesaid testimony of PW34 Tek Ram does not inspire confidence. They are outlined here.

1372. The witness stated in his examination-in-chief that accused Gopal Krishan Aggarwal used to visit the office of Vijay Yadav. However, during his cross-examination, the witness stated that when Inspector K.G. Tyagi met the witness during investigation of the case, the witness spoke to Inspector K.G. Tyagi. The witness has stated that Inspector K.G. Tyagi enquired from the witness about names of visitors in the office of Vijay Yadav, which office was also being used by Abhay Singh Yadav too. The witness informed the Investigating Officer that he had not seen any visitor in the office.

1373. Since the entire thrust of testimony of PW34 Tek Ram is on the involvement of Gopal Krishan Aggarwal, and the witness has also stated that Gopal Krishan Aggarwal used to visit the office of Vijay Yadav, there was no reason for the witness to tell lies to the Investigating Officer and to misrepresent to the Investigating Officer that the witness had not seen any visitor in the office of Vijay Yadav. The witness has not explained, in his testimony, the reason for misleading the Investigating Officer. This shows that the witness wanted to conceal the equation of Gopal Krishan Aggarwal with Vijay Yadav from the police. It also shows the witness to be unreliable since he has no regard for the truth. According to PW20 Harjeet too, Gopal Krishan Aggarwal had visited the office of Vijay Yadav a few days before the demise of Vijay Yadav where the deal for intimidating a

creditor in a separate monetary transaction was struck. That being so, the visit of Gopal Krishan Aggarwal to the office of Vijay Yadav was an important circumstance. For reasons best known to PW34 Tek Ram, he concealed this fact from the Investigating Officer. The two statements of PW34 Tek Ram made during his testimony are as follows:

*Examination-in-chief: "Gopal Krishan Aggarwal used to visit the office of Vijay Singh Yadav."*

*Cross-examination: "During the said visit, I had talked with Inspector K.G.Tyagi. Inspector K.G. Tyagi enquired from me about the name of the visitors to the office of Abhay Singh Yadav/Vijay Singh Yadav. (Vol. Both brothers were sharing the same office). I informed him that I had not seen any visitors in the said office."*

1374. The case would have been different had the witness been unaware of the visitors in the office. However, the witness himself stated in his examination-in-chief that Gopal Krishan Aggarwal used to visit the office. The witness had been working in that office itself with Abhay Singh Yadav. He had all the means to know if any person visits the office. It does not stand to reason that the witness tried to misdirect the Investigating Officer and concealed that Gopal Krishan Aggarwal was a regular visitor.

1375. Another reason for disbelieving the version of PW34 Tek Ram is that he did not promptly report the facts which were in his knowledge to the police. As per the prosecution, the facts narrated by the witness are indicative of involvement of accused Gopal Krishan Aggarwal in

plotting the crime. That being so, such vital facts should not have been withheld and should have been brought to the notice of the police immediately after the incident. It is not the case of the prosecution that PW34 Tek Ram was not concerned with the death and was indifferent towards the deceased and his family. PW34 Tek Ram has himself stated in his testimony that he had been working with the brother of the deceased. The witness was often present in the office of Abhay Singh Yadav and was also present at the time of visit of Inspector K.G. Tyagi. On receiving intimating of murder of Vijay Yadav, the witness immediately went to the hospital and remained there with the family of the deceased all night. That being so, he would obviously have been concerned about the death and would have wanted the persons behind the murder to be brought to book. If such a witness had been aware of circumstances that might have been provided a motive for commission of the crime, he would have surely informed the police about it when he met police officers on the day following the incident of homicide or as soon as possible after that. The witness has admitted that police officers were present at the hospital. Yet, the witness did not mention anything to them. Even thereafter, for more than fifteen days, the witness never went to the police to tender his version. This is not natural. The fact that after about eighteen days, the witness realised that he was aware of the motive of Gopal Krishan Aggarwal to commit

the crime, and that he must now bring it to the notice of the police, is improbable and far-fetched. All of this shows that the witness may have pretended to have knowledge of the discord between Vijay Yadav and Gopal Krishan Aggarwal.

1376. PW34 Tek Ram has stated that he had informed about the discord between Vijay Yadav and Gopal Krishan Aggarwal to Abhay Singh Yadav even prior to the murder of Vijay Yadav. If that was the case, Abhay Singh Yadav would not have sought the assistance of Gopal Krishan Aggarwal and would not have taken along the latter during his visits to the police to follow-up on the case. Abhay Singh Yadav would instead have suspected the role of Gopal Krishan Aggarwal in the said murder, and would not have wanted Gopal Krishan Aggarwal to be apprised of developments of investigation. This too demonstrates that the story of PW34 Tek Ram about Gopal Krishan Aggarwal having an argument with Vijay Yadav has been trumped up.

1377. According to PW34 Tek Ram, one and a half months before the murder of Vijay Yadav, he had received a call of Gopal Krishan Aggarwal on his phone and Gopal Krishan Aggarwal enquired about Vijay Yadav. Gopal Krishan Aggarwal asked the witness to bring Vijay Yadav to the office of the former. According to PW34 Tek Ram, they went to the office of Gopal Krishan Aggarwal where an altercation ensued between Gopal Krishan Aggarwal and Vijay Yadav. According to the witness,



this event had happened one and a half months before the murder of Vijay Yadav. However, as per PW20 Harjeet Singh, the deal had been struck only ten or twelve days before the murder of Vijay Yadav. If the deal has been struck ten or twelve days before the murder, Gopal Krishan Aggarwal would not have been complaining of its breach one and a half months before the murder. There cannot be a breach of an agreement before the agreement is entered into. This shows that the witness was not aware of the facts and his story is implausible.

1378. The prosecution has not disclosed any specific date on which the alleged deal was struck between Vijay Yadav and Gopal Krishan Aggarwal and the date when the dispute arose regarding payment.
1379. According to PW34 Tek Ram, the quarrel between Gopal Krishan Aggarwal and Vijay Yadav had taken place one and a half months before the murder of Vijay Yadav. However, PW14 Abhay Singh Yadav, who is brother of Vijay Yadav, has stated in his testimony that he had been informed of this two or three months before the murder of Vijay Yadav. Since the event itself had not occurred two or three months before the murder of Vijay Yadav (as per the version of PW34 Tek Ram), Abhay Singh Yadav could not have possibly heard of it at that time. As a corollary, if information of what had transpired between Gopal Krishan Aggarwal and Vijay Yadav had already reached the ears of Abhay Singh Yadav two or three months before the incident of

homicide, PW34 Tek Ram cannot be believed when he says that, in his presence, the event had occurred one and a half months before the death of Vijay Yadav. PW34 Tek Ram has not specified the date when the argument between Gopal Krishan Aggarwal and Vijay Yadav had taken place. Either PW34 Tek Ram was distorting facts or had no recollection of them. It is likely that nothing had happened in the presence of this witness and due to this reason he was not aware of even the approximate date of the event that forms the foundation of the prosecution case against Gopal Krishan Aggarwal.

1380. According to PW34 Tek Ram, he had received a phone call from Gopal Krishan Aggarwal for calling Vijay Yadav to the office of Gopal Krishan Aggarwal. PW34 Tek Ram has not disclosed his mobile phone number to the Investigating Officer. The Investigating Officer has not tried to verify the correctness of the information given to him. He has accepted it as gospel truth without checking its veracity, inspite of the fact that the delay in reporting the facts to the police gives rise to a valid doubt on the authenticity of the information being given. The Investigating Officer has not attempted to match the call detail records of Gopal Krishan Aggarwal and of PW34 Tek Ram to discern whether the said call had indeed been made. The version of PW34 Tek Ram has not been substantiated by any material even though it could have been easily obtained for perusal.

1381. PW34 Tek Ram has stated in his examination-in-chief that he had been informed by Vijay Yadav that Gopal Krishan Aggarwal was having a friend named Supariwala who had some monetary transaction with Vijay Bansal and for the settlement of this transaction, Gopal Krishan Aggarwal had given money to Vijay Yadav. It has already been noted by the Court that the prosecution has miserably failed to prove that any person by the name of Supariwala even existed, let alone he being a friend of Gopal Krishan Aggarwal. The dispute which the other evidence indicates is between Vijay Bansal and one Ashok Gupta. Ashok Gupta is not a friend of Gopal Krishan Aggarwal. This shows that either the information given by Vijay Yadav to the witness was incorrect or PW34 Tek Ram has himself tendered a false deposition in Court. In either event, the consequence will be the same - that the narration of existence of discord between Vijay Yadav and Gopal Krishan Aggarwal will be rendered untrustworthy and unreliable.

1382. Had Gopal Krishan Aggarwal engaged outlaws to threaten someone, he would not have misinformed them of the name of his friend. This because it is for the benefit of that friend of Gopal Krishan Aggarwal that the alleged intimidation was being planned. If the executor of the plan would have not known of the true beneficiary, he surely would not have been able to get his dues dispensed with. Therefore, the Gopal Krishan Aggarwal would not have concealed the name of his friend.

The fault must lie either with PW34 Tek Ram or the source of his information, that is Vijay Yadav.

1383. PW34 Tek Ram has stated that Vijay Yadav was not receiving calls of Gopal Krishan Aggarwal but on the asking of PW34 Tek Ram, Vijay Yadav agreed to go to the office of Gopal Krishan Aggarwal. The events have been narrated in a sequential manner by PW34 Tek Ram leaving no scope for intervention of any other event in between the narrative. However, this is contrary to the version of PW14 Abhay Singh Yadav. According to PW14 Abhay Singh Yadav, Vijay Yadav had met him and had informed PW14 Abhay Singh Yadav that Vijay Yadav is being called by Gopal Krishan Aggarwal and that Vijay Yadav is reluctant to go there. As per PW14 Abhay Singh Yadav, it is he who asked Vijay Yadav to go to the office of Gopal Krishan Aggarwal, and it is only on his instruction that Vijay Yadav agreed to go to the office of Gopal Krishan Aggarwal. However, this finds no mention in the testimony of PW34 Tek Ram. As per the testimony of PW34 Tek Ram, Vijay Yadav and PW34 Tek Ram had a brief conversation about the background and then they left for the office of Gopal Krishan Aggarwal. The aforesaid discrepancy shows that the version of either PW14 Abhay Singh Yadav or PW34 Tek Ram is dishonest and false.
1384. PW34 Tek Ram has stated in his examination-in-chief that there had been an argument between Gopal Krishan Aggarwal and Vijay Yadav

on the point of payment of money. However, the other witnesses by whom these events are said to be proved by the prosecution namely PW20 Harjeet Singh and PW14 Abhay Singh Yadav have not mentioned anything about any quarrel or argument (let alone advancement of threats) having taken place. They have only stated that Vijay Yadav was being treated as a middleman and was being blamed for the non-payment of money.

1385. As per the testimony of PW20 Harjeet Singh, and his statement recorded before the police, the work of criminal intimidation assigned by accused Gopal Krishan Aggarwal had been settled to be done for a sum of Rs. three lakhs. However, the consideration is stated to be Rs. seven lakhs by PW34 Tek Ram. This discrepancy is material because it is in relation to the balance money that the dispute is stated to have flared up. It also shows the version of PW34 Tek Ram to be fictitious and contrived. It is not even the case of the prosecution (as mentioned in the chargesheets) that the deal had been struck for a sum of Rs. seven lakhs.

1386. PW34 Tek Ram has stated that the work of advancement of threats had been assigned by Gopal Krishan Aggarwal to Vijay Yadav, and the latter in turn delegated it to Hitender @ Chhotu. As opposed to this, PW14 Abhay Singh Yadav has stated that it was a direct arrangement between Gopal Krishan Aggarwal and Hitender @ Chhotu. As per

Abhay Singh Yadav, there was nothing to be done by Vijay Yadav in the said deal. Otherwise also, the deceased is stated to be a property dealer and not an outlaw who will undertake the task of advancement of threats which are in the nature of extortion (being aimed at forcing a person to forego a claim).

1387. Neither PW20 Harjeet Singh nor PW14 Abhay Singh Yadav has testified to the presence of PW34 Tek Ram at the time when the conversation between Gopal Krishan Aggarwal and Vijay Yadav was taking place. This too casts a doubt on the presence of the witness at that time and his competence to depose on what transpired there.

1388. PW34 Tek Ram has stated in his cross-examination that Vijay Yadaav had not made any complaint to the police regarding the conspiracy hatched to harm him. As per PW14 Abhay Singh Yadav, Vijay Yadav had already known beforehand about a plot to kill him. So specific was the information of Vijay Yadav that he even knew the names of the conspirators. The correctness of the information was believed by Vijay Yadav and that is why, according to the prosecution, he went to Vaishno Devi Temple. It is strange and rather inexplicable that Vijay Yadav does not make a police complaint to save his own life despite having been tipped off.

1389. Although there are scores of deficiencies in the version of PW34 Tek Ram, even if it were to be believed that indeed an argument took place

between Vijay Yadav and Gopal Krishan Aggarwal on the ground of payment of money, that does not give rise to a motive to Gopal Krishan Aggarwal to conspire to kill Vijay Yadav. A mere argument with a person gives no ground to start plotting the murder of the adversary. A person, even if he has a propensity to commit crime, may plot somebody's murder if he is inimical to that person. He would not go to the extent of assassinating the adversary over a monetary claim, that too not of his own but of a friend. It is possible that Vijay Yadav may have had arguments or quarrels with a number of persons during his lifetime. However, the prosecution has chosen only three persons to face trial without any other valid and admissible evidence appearing against these persons showing their hand in the murder or its conspiracy.

1390. To claim back a sum of Rs. three lakhs, one would not spend Rs. five lakhs to be given to the contract killers (as per the case of the prosecution, a sum of Rs. five lakhs was paid by Gopal Krishan Aggarwal for the killing). It is even more implausible that a person would engage the same person with whom he has a dispute and from whom he has to recover money for this task. It is unfathomable for a disputant to go after the broker to wreak vengeance out of a dispute with the adversary and to take the help of the adversary in this task.

1391. In light of the aforesaid infirmities, it is concluded that the testimony of PW34 Tek Ram has not advanced the case of the prosecution so as to show motive on the part of Gopal Krishan Aggarwal to conspire to the murder of Vijay Yadav.
1392. The testimony of the prosecution witnesses, on whom the prosecution rested its case to prove the allegations against accused Gopal Krishan Aggarwal, has been scanned. Nothing has emerged from which the Court could infer that accused Gopal Krishan Aggarwal had plotted the murder of Vijay Yadav.
1393. Even if it is assumed that the prosecution did succeed in proving, from the testimony of PW34 Tek Ram, PW20 Harjeet Singh or PW14 Abhay Singh Yadav or any other witness, that accused Gopal Krishan Aggarwal had a heated argument with Vijay Yadav, and that this caused acrimony in the mind of Gopal Krishan Aggarwal towards Vijay Yadav, that would not imply that accused Gopal Krishan Aggarwal had conspired to kill Vijay Yadav. This may suggest that the accused may covet the death of Vijay Yadav, but that does not amount to a criminal conspiracy. Criminal conspiracy requires an agreement with others to commit the crime. Motive to harm someone alone is not sufficient to infer existence of a criminal conspiracy.
1394. It is the admitted case of the prosecution that accused Gopal Krishan Aggarwal is the one who had called the police control room



immediately after the incident. If he had a role in the crime, there would have been no reason for him to call the police.

1395. Similarly, it is the admitted case of the prosecution that accused Gopal Krishan Aggarwal called Abhay Singh Yadav on the date of the incident to inform him of the occurrence. If he was involved in the crime, accused Gopal Krishan Aggarwal would not have taken interest to promptly inform the brother of victim Vijay Yadav and run the risk of immediate aid being provided to the victim.

1396. Accused Gopal Krishan Aggarwal is alleged to be present in his shop at the time of the incident and to be in constant contact with Vinod @ Teda on the date of the incident i. e. 29<sup>th</sup> September, 2007. However, that does not show Gopal Krishan Aggarwal to be involved in the conspiracy. There is nothing unusual in being in one's own shop. The timings were not odd and therefore presence in the shop of Gopal Krishan Aggarwal does not raise eyebrows. Vinod @ Teda is not alleged to be an offender. He is not cited as an assailant or as a conspirator. One cannot presume something sinister by the accused being in contact with Vinod @ Teda. Also, Vinod @ Teda has himself been examined in the case as PW28 and he has not stated that he was either present in the shop of Gopal Krishan Aggarwal or was in contact with Gopal Krishan Aggarwal on the date of the incident. The conversation between accused Gopal Krishan Aggarwal and Vinod@

Teda has not been proved. There is nothing to show accused Gopal Krishan Aggarwal to be a conspirator.

1397. It is the case of the prosecution that accused Gopal Krishan Aggarwal did not come forward to speak about the incident to the police after their arrival at the spot. This is not borne out by the record. No police officer who arrived at the spot after receiving the call has stated that he contacted the informant but the informant was evasive or uncooperative. Unless the police questions the informant, he is not required to speak. It is the police that is to be questioned in this behalf and the fault cannot be laid at the door of the accused. It is not the case of the police officers investigating the case that the accused ever avoided appearing before the investigating officer when summoned, or that the accused tried to abscond. On the contrary, as per the police witnesses, the accused repeatedly appeared before the Investigating Officers and was interrogated. Finally, the Investigating Officer at the Crime Branch thought it fit to arrest the accused. The accused even accompanied the brother of the deceased to request the police for robust action in the matter. The brother of the deceased, namely Abhay Singh Yadav, who now claims that he was all throughout aware of the dispute between Gopal Krishan Aggarwal and Vijay Yadav, had availed the assistance of Gopal Krishan Aggarwal after the incident of homicide. He was in regular contact with Gopal Krishan Aggarwal. In

essence, Abhay Singh Yadav seems to be saying that although he was aware of facts indicating involvement of Gopal Krishan Aggarwal since beginning, he still availed help of Gopal Krishan Aggarwal and finally he realized that Gopal Krishan Aggarwal was involved in the conspiracy when he was informed of this by a senior police who he had visited along with Gopal Krishan Aggarwal. All of this does not stand to reason.

1398. From the above, it follows that the prosecution has miserably failed to prove, either by direct evidence or by circumstantial evidence (from which inferences could be deduced), that accused Gopal Krishan Aggarwal had conspired with others to the murder of Vijay Yadav. The charge against accused Gopal Krishan Aggarwal stands not proved.

**Disclosure Statement of accused Gopal Krishan Aggarwal and recovery of copy of settlement deed**

1399. According to the prosecution, accused Gopal Krishan Aggarwal tendered a confessional statement to the Investigating Officer in which he disclosed his involvement in the crime. In addition, copy of a settlement deed is stated to have been recovered at the instance of accused Gopal Krishan Aggarwal, pursuant to the confessional statement. According to the prosecution, the disclosure statement is admissible in evidence as it has led to recovery of the document, and this is a material piece of evidence on the basis of which a finding of

guilt may be returned.

1400. To assess this plea, the confessional statement needs to be considered. As per the prosecution case, on 07<sup>th</sup> December, 2007, at Inter State Cell, Crime Branch, Chanakyapuri, accused Gopal Krishan Aggarwal was interrogated and his confessional statement was recorded. The statement has been identified as Ex. PW 62/P. Assuming the statement to be the one tendered by the accused, it would reveal that the accused had differences with Vijay Yadav on account of a dispute regarding payment of money. One Ashok Gupta owed money to one Vijay Bansal. One Dinesh Jain wanted to assist Ashok Gupta. Dinesh Jain knew one Sanjay Jain. Sanjay Jain was acquainted with Gopal Krishan Aggarwal. Drawing this connection, Gopal Krishan Aggarwal decided to make efforts to get the dispute settled. He arranged for some persons to threaten Vijay Bansal. He contacted those persons through Vijay Yadav. Eventually the dispute was settled by intervention of police. Gopal Krishan Aggarwal sought return of the money that he had paid as advance to the persons hired by him. Those persons refused and rather demanded remaining payment. On account of this, there was disharmony and the accused, along with others agreed to eliminate Vijay Yadav. A plan was hatched and it was executed. The assertions made in the above statement tend to incriminate accused Gopal Krishan Aggarwal but to be acted upon, they have to pass the test of

admissibility.

1401. The legal position may be pithily restated. A confession made to a police officer is not admissible in evidence. It cannot be proved against its maker (Ref.: Sections 25 and 26 of the Evidence Act, 1872). Section 27 of the Evidence Act carves out an exception. It provides that if a fact is discovered from the information given by an accused who is in custody of the police officer, such information may be proved against the accused.

1402. This implies that the confessional statement of accused Gopal Krishan Aggarwal would stand eclipsed by sections 25 and 26 of the Evidence Act, except to the extent that it leads to discovery of a fact. It is a settled principle of law that the information so revealed should be such that it is in the exclusive knowledge of the accused. Reference may be made to the cases of Sanjay @ Kaka (supra), Makhan Singh (supra) and Mangal Singh (supra), which have been discussed earlier. Here, the facts revealed by the confessional statement of Gopal Krishan Aggarwal are as follows:

- (i) that one Ashok Gupta owed money to one Vijay Bansal,
- (ii) that Dinesh Jain wanted to assist Ashok Gupta,
- (iii) that Dinesh Jain knew one Sanjay Jain, who in turn knew Gopal Krishan Aggarwal,
- (iv) that Gopal Krishan Aggarwal decided to make efforts to get the dispute

settled,

- (v) that Gopal Krishan Aggarwal arranged for some persons to threaten Vijay Bansal,
- (vi) that Gopal Krishan Aggarwal called Vijay Yadav;
- (vii) that the dispute was settled by intervention of police;
- (viii) that Gopal Krishan Aggarwal sought return of the money that he had paid as advance to the persons hired by him, whereas the latter demanded remaining payment,
- (ix) that this caused disharmony between accused Gopal Krishan Aggarwal and Vijay Yadav.

None of the above facts can be attributed to the exclusive knowledge of accused Gopal Krishan Aggarwal. These were known to Ashok Gupta, Vijay Bansal, Dinesh Jain, Sanjay Jain, and many others. Similarly, the police had already been informed of the incident that had allegedly taken place in the office of accused Gopal Krishan Aggarwal, by other witnesses including PW14 Abhay Singh Yadav, PW20 Harjeet Singh and PW34 Shri Tek Ram. It cannot be held that the police learnt of the aforesaid facts for the first time through the disclosure of the accused person. This is a necessary condition to be fulfilled, as held in the cases of *Rahul @ Bhuri (supra)*, *Aladdin (supra)*, *Thimma (supra)*, *Bharat Fakira Dhivar (supra)* and *Navjot Sandhu (supra)*. In the case of *Charandas Swami v. State of Gujarat & Anr Criminal Appeal No. 1549*

of 2007 decided on 10<sup>th</sup> April, 2017, it was held as follows:

*“Thus, there must be a discovery of fact not within the knowledge of police officer as a consequence of information received.”*

The facts mentioned in the confessional statement were not in the exclusive knowledge of the accused person. The emergence of those facts cannot inescapably be traced to the accused so as to qualify as a “guarantee of its truth” and to make the disclosure admissible in evidence. Therefore, the disclosure of the said information cannot inculcate accused Gopal Krishan Aggarwal.

1403. Also, another requirement of law is that the statement uttered by an accused must lead to discovery of a fact connected to the crime. Only then would the statement be received in evidence as per section 27 of the Evidence Act, 1872. However, none of the above assertions are directly related to the murder or its conspiracy. A random fact disclosed by an accused will not be used to hold him guilty of the offence. The “guarantee of truth” of the statement would exist only if the fact disclosed by the accused bears a direct connection to the offence, which in this case is absent. The monetary dispute between Ashok Gupta and Vijay Bansal was not the direct or proximate cause of death of Vijay Yadav. The connection being drawn is too remote to save the statement from the prohibition under sections 25 and 26 of the Evidence Act, 1872.

1404. In addition to the above, there is yet another requirement to be fulfilled before the confessional statement can be put to use. The facts disclosed in the confessional statements should have been verified independently and should have been found to be correct, for the confessional statements to be held to be leading to the discovery of a fact. {Ref.: Cases of Selvi (supra) and Navaneethakrishnan (supra) discussed earlier in this judgment}. In this case, the involvement of accused Gopal Krishan Aggarwal has been through one Sanjay Jain (as per the confessional statement), but he has not been examined as a witness to ascertain whether indeed he had roped in Gopal Krishan Aggarwal for settlement of the dispute. No familiarity between Ashok Gupta and Gopal Krishan Aggarwal was found. The proposition in the confessional statement about involvement of local police in negotiating a settlement between the creditor and the debtor, has also been negatived by PW23 Inspector Vipin Bhatia according to whom the police had no role in bringing about any such settlement, and the settlement had taken place among the parties outside the police station. The money stated to have been handed over to accused persons either for intimidating Vijay Bansal or later for committing murder of Vijay Yadav has not been recovered. Remaining facts have also not been verified and proven to exist. The veracity of disclosure in the confessional statement has not been confirmed by subsequent



discovery of facts. There is nothing on record to lend authenticity to the statement. It cannot be stated with certainty that the events described by the accused did take place. In absence of such validation, the confessional statement is not saved from the embargo of sections 25 and 26 of the Evidence Act, 1872. As there is no discovery of a fact which is confirmed by evidence, the possibility of the police having recorded the confessional statement on its own cannot be ruled out. The law does not treat such a confessional statement as being admissible in evidence.

1405. The above shows that statements made about the background of the dispute by accused Gopal Krishan Aggarwal in his confessional statement do not qualify as leading to discovery of facts so as to be admissible under section 27 of the Evidence Act, 1872. There is, however, another aspect relied upon by the prosecution. This is the recovery of copy of settlement deed at the instance of accused Gopal Krishan Aggarwal pursuant to his confessional statement. The confessional statement being referred to is Ex. PW 62/R. This is stated to be a supplementary confessional statement dated 9<sup>th</sup> December, 2007. As per the prosecution, sought to be proved through the testimony of PW62 ASI (Retired) Rajbir Singh, PW67 SI Mukesh and PW68 Inspector K.G. Tyagi, pursuant to the disclosure statement of accused Gopal Krishan Aggarwal, he led them to his office at 2747, Gali

Arya Samaj, from where he got recovered a copy of settlement deed Ex. PX-1 from the drawer of a table. The document is stated to have been taken into possession by the police officers vide seizure memo Ex. PW62/T.

1406. Although the accused has vehemently denied having got recovered copy of any settlement deed, even if it is assumed that the deed in question was indeed recovered at the instance of the accused, it does not bolster the case of the prosecution. There are three reasons for this.

1407. Firstly, the recovery of the deed and its contents do not prove anything connected to the offence. From the recovery taking place at the instance of the accused, the Court will infer, as per the judgment of State of Maharashtra Vs. Suresh (2000) 1 SCC 471, that:

- i. Either the accused himself kept the settlement deed in the drawer; or
- ii. The accused person saw somebody else doing so; or
- iii. The accused person was told by another person(s) that the document was lying there.

1408. As per the aforesaid decision, if the accused person does not reveal to the Court the source of his knowledge of the concealment on account of the latter two possibilities, this Court will presume that the document was kept there by the accused himself. Suppose this Court were to draw this presumption, and it is concluded that the accused person

kept copy of the deed in the drawer, it will only show that at the time of keeping the document there, the accused had a copy of it. The possession of copy of the deed, considered jointly with the presumption that the document bears the signatures of the accused, all that can be inferred is that the accused had witnessed the settlement taking place. The contents of the document do not reveal any role to have been played by accused Gopal Krishan Aggarwal. The document does not show the accused to be a debtor, a creditor, or even a mediator. Even if it is assumed that the document shows the accused to be a mediator (although it is impermissible to read into the document more than what is inscribed therein), then too it would not prove the hiring of local criminals, or payment of advance money to them, or any threat being advanced by them, or the arising of a dispute on payment of money, or the involvement of Vijay Yadav in the whole episode. The mere settlement of a dispute, as denoted by the deed, does not prove anything about the conspiracy in question or involvement of accused Gopal Krishan Aggarwal.

1409. The second reason owing to which the recovery of document cannot be given credence is that it was a mere photocopy. Since it was photocopy, it cannot be held that the police had no means to obtain it except from the accused. The element of exclusivity is at the heart of section 27 of Evidence Act. It is only on the recovery of a thing or a

discovery of the fact that was in the exclusive control or knowledge of the accused, so as to be inexorably attributable to him, that a confessional statement can be deemed to be truthful and voluntary. If the police had the means to obtain the document from any other source, then it cannot be assumed that the accused who was amenable to the pressures of the Investigating Officer had revealed about it and got it recovered. In this case, PW23 Inspector Vipin Bhatia already had the document and he eventually did produce it before the Investigating Officer. Since the original document was already with someone else, that too a colleague of the Investigating Officer in the police force which makes it accessible, it cannot be deemed that the police had no other means to obtain that copy other than from the disclosure statement of accused Gopal Krishan Aggarwal. The element of exclusivity has been lost and therefore inferences cannot be drawn against the accused owing to the recovery.

1410. The third reason is that contents of the settlement deed are at variance with the case of the prosecution. According to the case of the prosecution, as canvassed through the testimony of PW14 Abhay Singh Yadav and PW34 Tek Ram, accused Gopal Krishan Aggarwal had a friend named Sanjay Supariwala who had a money transaction with one Vijay Bansal. This is not supported by the settlement deed. Even if it is assumed that there was a person named Sanjay Jain who contacted

Gopal Krishan Aggarwal, the said accused could not have told Vijay Yadav or other persons allegedly hired by Gopal Krishan Aggarwal the name of Sanjay Supariwala or Sanjay Jain because those people had to advance threats to Vijay Bansal and they should have known the correct name of the debtor to get the dues written off. If it is derived from the settlement deed that the dispute of Vijay Bansal was not with Sanjay Supariwala but was with one Ashok Jain and if it is assumed that Gopal Krishan Aggarwal was helping Ashok Gupta and not Sanjay Supariwala, then too the evidence does not add up because Ashok Gupta has expressly denied in his testimony that he had no acquaintance with Gopal Krishan Aggarwal and this has not been refuted by the prosecution.

1411. The settlement deed documents an amicable settlement. It does not mention any threat having been advanced by anybody. It does not name Vijay Yadav. It does not reflect intervention of police to bring about the settlement. It is worthy to note that the prosecution failed to prove, not only through the settlement deed, but also through the testimony of PW23 Inspector Vipin Bhatia who had inquired into the dispute, that there was any involvement of accused Gopal Krishan Aggarwal, or Vijay Yadav or any anti-social elements in advancement of threats to Vijay Bansal. The deed and PW23 Inspector Vipin Bhatia did not even attest to the hiring of such elements by accused Gopal

Krishan Aggarwal to bring about a settlement.

1412. Even if it is assumed that the confessional statement of accused Gopal Krishan Aggarwal is admissible in evidence, and that it is saved by section 27 of the Evidence Act, 1872, then too it would not assist the prosecution in proving the allegations of conspiracy against the said accused person. This is because the confessional statement would be admissible only to the extent to which it “relates distinctly” to the discovery (Ref.: State of U.P. vs Deoman Upadhyaya AIR 1960 SC 1125). In keeping with the principle laid down in the case of Mohmed Inayatullah (supra), which has been discussed earlier in this judgment, the only admissible part shall be that the accused can get the settlement deed recovered. The knowledge of existence of the settlement deed can, at best, be inferred. The part of the confessional statement mentioning about Gopal Krishan Aggarwal hiring persons to get the dispute settled, the controversy on payment of money, the involvement of Vijay Yadav in the matter and fastening of the blame on to him, the altercation between Gopal Krishan Aggarwal and Vijay Yadav, the motive or involvement of accused Gopal Krishan Aggarwal in the plot to kill Vijay Yadav cannot be admitted in evidence because these disclosures do not “relate distinctly” to the discovery.

1413. Therefore, it is concluded that the confessional statement of accused Gopal Krishan Aggarwal and the recovery of copy of settlement deed

are neither admissible in evidence, nor do they prove the accused to be involved in the conspiracy to commit the murder of Vijay Yadav. The charge of the prosecution of accused Gopal Krishan Aggarwal being involved in the conspiracy stands not proved.

**Issues common to accused Rishi Pal @ Pappu, Ashok Jain and Gopal Krishan Aggarwal**

1414. There are some concerns which jointly apply to accused Rishi Pal @ Pappu, Ashok Jain and Gopal Krishan Aggarwal. These are:
- a) Confessional statements of co-accused persons, recovery of articles and other acts performed by them;
  - b) Statements made by Vijay Yadav to the prosecution witnesses before the incident;
  - c) Testimony of hostile witnesses;
  - d) Prior information of conspiracy;
  - e) Proof of motive; and
  - f) Delay in reporting the matter to the police.

Those are collectively dealt with here, though in brief.

**Confessional statements of co-accused persons, recovery of articles and other acts performed by them**

1415. Accused persons namely Rishi Pal @ Pappu, Ashok Jain and Gopal Krishan Aggarwal are alleged to have entered into a criminal conspiracy with each other and with others to commit murder of Vijay

Yadav.

1416. It has already been seen above that the confessional statements of these accused persons are of no aid in proving the allegations against these accused persons. Besides the confessional statements of these accused persons, there are confessional statements of co-accused persons that the prosecution has relied upon in support of its case. It is urged by the prosecution that in those confessional statements, the makers have admitted not only their own guilt but have also described the involvement of accused Rishi Pal @ Pappu, Ashok Jain and Gopal Krishan Aggarwal.
1417. The makers of those statements are accused Hitender @ Chhotu, Kishanpal @ Fauzi, Desraj @ Desu, Deepak @ Chowda, Parveen Koli and Bhisham @ Chintoo. Even the confessional statements of Rishi Pal @ Pappu has been pitted against accused Gopal Krishan Aggarwal and Ashok Jain. Likewise, the confessional statement of accused Ashok Jain has been set up against accused Rishi Pal @ Pappu and Gopal Krishan Aggarwal. Reference has been made to the confessional statement of accused Gopal Krishan Aggarwal against accused Ashok Jain and Rishi Pal @ Pappu.
1418. It needs no emphasis that a confession made to a police officer is not admissible in evidence and it cannot be proved against its maker (Ref.: Sections 25 and 26 of the Evidence Act, 1872). Section 27 of the



Evidence Act, however, permits some part of the statement to be read in evidence, if a fact is shown to have been discovered from that part of the statement given by an accused.

1419. Some of the confessional statements of the accused persons have been proved to have led to the recovery of incriminating articles comprising of ornaments worn by the deceased. It has been held that the statements are to that extent admissible in evidence against the respective accused persons. The same statements also incriminate accused persons Ashok Jain, Rishi Pal @ Pappu and Gopal Krishan Aggarwal. However, that part of the confessional statements cannot be admitted in evidence since they do not "relate distinctly" to discovery of a fact.

1420. The prosecution has urged that in a case of conspiracy, the said confessional statements become admissible not only against the maker but also against the co-accused persons. Reliance is placed by the prosecution on the provisions of sections 10, 21 and 30 of the Evidence Act, 1872.

1421. This contention may be examined in light of the said provisions.

Section 10 of the Evidence Act, 1872 reads as follows:

*"When there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving*

*the existence of the conspiracy as for the purpose of showing that any such person was a party to it."*

From the above provision, it follows that acts and utterances of an accused can be treated to be relevant against the alleged co-conspirators only if reasonable ground exists to believe that they have conspired together. This is also subject to the condition that the acts and utterances should be of a date when the intention is first entertained by any conspirator.

In this behalf, it will be useful to refer to a few decisions of superior Courts. In case of *Sardar Sardul Singh Caveeshar v. State of Maharashtra*, (1964) 2 SCR 378 it was held as follows:

*"This section, as the opening words indicate will come into play only when the Court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, that is to say, there should be a prima facie evidence that a person was a party to the conspiracy before his acts can be used against his co-conspirators. Once such a reasonable ground exists, anything said, done or written by one of the conspirators in reference to the common intention, after the said intention was entertained, is relevant against the others, not only for the purpose of proving the existence of the conspiracy but also for providing that the other person was a party to it. The evidentiary value of the said acts is limited by two circumstances, namely, that the acts shall be reference to their common intention and in respect of a period after such intention was entertained by any one of them. The expression 'in reference to their common intention' is very comprehensive and it appears to have been designedly used to give it a wider scope than the words 'in furtherance of' in the English law; with the result, anything said, done or written by a co-conspirator, after the conspiracy was formed, will be evidence against the other before he entered the field of conspiracy or after he left it. Another important limitation implicit in the language is indicated by the expressed scope of*

*its relevancy. Anything so said, done or written is a relevant fact only 'as against each of the persons believed to be so conspiring as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.' It can be used only for the purpose of proving the existence of the conspiracy or that the other person was a party to it. It cannot be used in favour of the other party or for the purpose of showing that such a person was not a party to the conspiracy. In short, the Section can be analysed as follows: (1) There shall be a prima facie evidence affording a reasonable ground for a Court to believe that two or more persons are members of a conspiracy; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it; (5) it can only be used against a conspirator and not in his favour."*

The above decision was followed by Hon'ble Supreme Court in the case of *Kehar Singh & Ors. v. The State (Delhi Admn.) AIR 1988 SC 1883*, in which it was held as follows:

*"Section 120A provides for the definition of criminal conspiracy and it speaks of that when two or more persons agree to do or cause to be done an act which is an illegal act and S.120-B provides for the punishment for a criminal conspiracy and it is interesting to note that in order to prove a conspiracy it has always been felt that it was not easy to get direct evidence. It appears that considering this experience about the proof of conspiracy that S.10 of the Indian Evidence Act was enacted.*

*xxx*

*This section mainly could be divided into two: the first part talks of where there is reasonable ground to believe that two or more persons have conspired to commit an offence or an actionable wrong, and it is only when this condition precedent is satisfied that the subsequent part of the section comes into operation and it is material to note that this part of the section talks of reasonable grounds to believe that two or more persons have conspired together and this evidently has reference to*

*S.120-A where it is provided "When two or more persons agree to do, or cause to be done". This further has been safeguarded by providing a proviso that no agreement except an agreement to commit an offence shall amount to criminal conspiracy. It will be therefore necessary that a prima facie case of conspiracy has to be established for application of S.10. The second part of Section talks of anything said, done or written by any one of such persons in reference to the common intention after the time when such intention was first entertained by any one of them is relevant fact against each of the persons believed to be so conspiring as well for the purpose for proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it. It is clear that this second part permits the use of evidence which otherwise could not be used against the accused person. It is well settled that act or action of one of the accused could not be used as evidence against the other. But an exception has been carved out in S.10 in cases of conspiracy. The second part operates only when the first part of the section is clearly established i.e. there must be reasonable ground to believe that two or more persons have conspired together in the light of the language of S.120A. It is only then the evidence of action or statements made by one of the accused, could be used as evidence against the other."*

The above decision was further followed by Hon'ble Supreme Court in the case of Saju vs. State of Kerala (2001) 1 SCC 378 in which it was held as follows:

*"In a criminal case the onus lies on the prosecution to prove affirmatively that the accused was directly and personally connected with the acts or omissions attributable to the crime committed by him. It is settled position of law that act or action of one of the accused cannot be used as evidence against other. However, an exception has been carved out under Section 10 of the Evidence Act in the case of conspiracy. To attract the applicability of Section 10 of the Evidence Act, the Court must have reasonable ground to believe that two or more persons had conspired together for committing an offence. It is only then that the evidence of action or statement made by one of the accused could be used as evidence against the other."*

Again, in the case of Bhagwan Swarup Lal Bishan Lal v. State of Maharashtra, (1964) 2 SCR 378, section 10 was described by the Supreme Court the following manner:

*"This section, as the opening words indicate, will come into play only when the Court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, that is to say, there should be a prima facie evidence that a person was a party to the conspiracy before his acts can be used against his co-conspirators. Once such a reasonable ground exists, anything said, done or written by one of the conspirators in reference to the common intention, after the said intention was entertained, is relevant against the others, not only for the purpose of proving the existence of the conspiracy but also for proving that the other person was a party to it. The evidentiary value of the said acts is limited by two circumstances, namely, that the acts shall be in reference to their common intention and in respect of a period after such intention was entertained by any one of them."*

The above passages show that it is the consistent view of the Hon'ble Supreme Court that for section 10 of the Evidence Act, 1872 to become applicable and for the statements and acts of one accused to be read against another accused, it is necessary for the prosecution to first show, prima facie, that the conspiracy was in existence. It is not open to the prosecution to contend that the conspiracy will be proved through the confession of a co-accused alone. Before relying on the confessional statement of a co-accused, the existence of conspiracy needs to be prima facie demonstrated by other evidence. In this case, this other evidence is missing. There is absolutely nothing to show even prima facie the existence of the conspiracy involving accused Gopal Krishan

Aggarwal, Ashok Jain and Rishi Pal @ Pappu. The witnesses examined by the prosecution have not testified to the existence of a conspiracy. They have either not supported the prosecution at all, or have made a feeble attempt to prove motive, and that attempt too has fizzled out on cross-examination.

On section 10, it is also the view of higher Courts that it does not apply to confessional statements made to the police after arrest, because at that time the conspiracy is no longer in existence. In the case of State of Gujarat Vs. Mohammad Atik & Ors. (1998) 4 SCC 351, the Hon'ble Supreme Court held that Section 10 of the Evidence Act applies only during the subsistence of the intention. It was held that a statement or act of a conspirator is binding on the other only if it is done during the subsistence of common intention between the conspirators. It was observed that a statement made by an accused to a police officer after his arrest, whether confessional or otherwise, will not fall under Section 10 of the Evidence Act so as to be capable of being used against other alleged conspirator. It was noted that once a person is arrested, the conspiracy ceases to subsist. The following observation is relevant:

*"It is well-nigh settled that Section 10 of the Evidence Act is founded on the principle of law of agency by rendering the statement or act of one conspirator binding on the other if it was said during subsistence of the common intention as between the conspirators. If so, once the common intention ceased to exist any statement made by a former conspirator thereafter cannot be regarded as one made "in reference to their common intention." In other words, a post-arrest statement made to a police officer, whether it is a confession or*

*otherwise, touching his involvement in the conspiracy, would not fall within the ambit of Section 10 of the Evidence Act."*

This being so, the prosecution cannot take the aid of section 10 and confessional statements of co-accused persons for proving its case against accused persons Rishi Pal @ Pappu, Ashok Jain and Gopal Krishan Aggarwal.

The next provision cited by the prosecution is section 30 of the Evidence Act, 1872. It reads as follows:

*"When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.*

*Explanation. -- "Offence" as used in this section, includes the abetment of, or attempt to commit, the offence.*

#### *Illustrations*

*(a) A and B are jointly tried for the murder of C". It is proved that A said B and I murdered C. The Court may consider the effect of this confession as against B.*

*(b) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said -- "A and I murdered C". This statement may not be taken into consideration by the Court against A, as B is not being jointly tried."*

The above provision lays down that confession of a co-accused can be read against the other accused if it is self-inculpatory and if both accused persons are being jointly tried. Interpreting this provision, in

the case of Nabi Mohamed Chand Hussein & Ors. Vs. State of Maharashtra 1980 Cri.LJ 860, the Hon'ble Bombay High Court held that statement of an accused leading to discovery of a fact may escape the prohibition of Sections 25 and 26 of the Evidence Act and may be admissible in evidence as per Section 27 of the said Act, but only against its maker. Such a statement cannot be extended and used against a co-accused person even though it may have led to discovery of a fact, even by application of Section 30 of the Evidence Act. It has been held that Section 30 does not permit use of the confessional statement as evidence against a co-accused person. The relevant observations are as follows:

*“Once the information leading to discovery of such articles is established or proved, inferences that primarily arise from informatory statements against the giver of such information depending upon the facts can be : (a) that the informant accused is connected with the facts so discovered and if the fact is incriminatory, the accused's connection therewith is established ; (b) that the fact so discovered was within the exclusive knowledge of the informant ; (c) that the fact is referable to the culpable possession of it by the informant ; (d) that the informant had secreted away the fact with culpable motive and (e) that the informant was a person who was responsible for the culpable act by reason of which the resultant fact was traced and is available. All these inferences that arise because of the fact so discovered are not by themselves informatory statements containing any admission of guilt on the part of the accused. These inferences that arise may be merely circumstantial bringing the accused nearer to the offence and even may not be enough in given cases to inculcate the accused conclusively in the offence with which he is charged and thus would not be confessional. Nevertheless, the informant being known and the information being admissible because of the resultant discovery, these may be raised and used appropriately against the informant. But*



*these illustrative inferences that can be drawn as a result of the facts discovered cannot further be stretched so as to draw similar inculpatory inferences against the persons who are in the position of the co-accused. Such an exercise would mean drawing an inference from a mere inference having no direct nexus with the non-informant. Hardly that can be logical or reasonable. In the context of the statute like the Evidence Act what is important is the direct evidence against the offender. In the realm of "admissions" and "confessions" it is the statement of the maker that is relevant and his liability can be judged on its basis. The same cannot be fastened on others who have not spoken nor are parties to it. To extend to draw such further inference so as to involve the co-accused is not only improper on the principles of fairness and justice but is fraught with obvious danger of false and vexatious implications of one by another. As our system of evidence indicates, it is hazardous to fasten the culpability on the basis of such inferences drawn from inferences flowing from statements of others on the person who are not the makers thereof.*

*The inbuilt limitation for its use against the maker in the provisions of section 27 appears us as available because of its setting after the provisions of sections 24, 25 and 26, and particularly the latter two sections and that goes to show that though in the text of section 27 the words "against such person" available in both sections 25 and 26 are not the part of the enacting text, by its very nature the same should be fairly read to be the part thereof. This is particularly so because the character of section 27 is to carve out an exception to the general rule available in sections 25 and 26 and also to cut down to some extent the general provisions of section 24 operative upon the proof of confessions. If it be the exception to the general rule, which has clear reference to the person accused and "against" when the rule of evidence is being enacted, it follows that the exception has to be read as one enacted with regard to such evidence that is admissible as against such person and no other. So read and together, it is implicit in these provisions that what is permitted to be proved having the information received from the accused pursuant to which discovery is made, is intended to be proved against such accused and not against non-informant co-accused.*

*We are aware that in the body of text of section 27 the words "so much of such information, whether it amounts to confessions or not" have been enacted. The phraseology so employed merely shows that such information so given may amount to confession, in that it may be an admission of an*

*incriminating nature or it may be merely an information without implications or involvement of criminal character. On the principles evident herein, such incriminating information could effectively be used only against the maker, as admissible evidence having assurance of its trust coming forth from the facts discovered pursuant thereto. With regard to co-accused, nothing of the kind is available and it would not be safe to use such information involving the co-accused, though such a statement may contain incriminating information with regard to the maker thereof. In fact, such an information even if proved would not strictly be evidence against the non-maker, for the maker is not a witness nor can be subjected to cross-examination. We must hasten to add that this all relates to informatory statement and not to "the facts" so discovered. Like any other fact being available and established as proved, its use would depend on the other evidence that may connect co-accused with such fact though they may not be linked with it by reason of the information that led to its discovery. Against the maker both the information and the fact discovered would be available for drawing inferences while against others the other evidence will have to be produced to connect them with such a fact."*

The next judgment throwing light on this aspect is that of Kamal Kishore Vs. State 1997 CriLJ 2106. In that case, the Hon'ble High Court of Delhi held that confessional statement of an accused made to the police while in custody and leading to discovery of a fact cannot be applied to his co-accused person under Section 30 of the Evidence Act.

The following passage is relevant:

*"Thus it is clear that the disclosure statement of the accused is not at all admissible in evidence where it has not led to discovery of any fact which was not known to the police. Further under Sec. 27 of the Evidence Act which is in the nature of a provision to Ss. 25 and 26 of the Evidence Act. From the above discussion, it also becomes clear that the confession made while in custody is not to be proved against the accused as the proviso to Ss. 25 and 26 of the said Act does not permit it unless it is made before a Magistrate and also that the statement of the accused leading to discovery cannot*

*be used against co-accused. In the present case, the prosecution has tried to make a case against the petitioner only on the basis of the confessional/disclosure statement made by him while in custody and statements of the co-accused leading to discovery. The latter statement cannot be used against co-accused under S. 30 of the Indian Evidence Act. Thus both are not permissible under law."*

Another judgment that supports this view is that of Kapil Kumar Vs. State 1996 I AD (Delhi) 86 in which the Hon'ble High Court held that a disclosure statement of co-accused cannot be used against the other accused persons facing trial.

In the case of Sahibe Alam Vs. State 98(2002) DLT 167, the Hon'ble High Court of Delhi held that a co-accused cannot be fastened with inferences arising out of a disclosure statement of a co-accused person about conspiracy having been hatched at the house of the former. The relevant observation is as follows:

*"To be noted that no confession made by an accused while in police custody is admissible in evidence against him under Sections 25 and 26 of the Indian Evidence Act, 1872. However, under Section 27 when any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much of such information whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved against the accused. Section 30 of the Act provides that where more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession. However, such a confession under Section 30 of a co-accused is not evidence and it may be taken into consideration only as an element in consideration of the other evidence."*

Section 30 of the Evidence Act has been held to be related to Section 21

of the said Act. Section 21 reads as follows:

*“Admissions are relevant and may be proved as against the person who makes them or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases:*

*(1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.*

*(2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.*

*(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.”*

However, the above provision has also been held to be not permissive of use of confessional statements of accused persons against their co-accused persons. The decision being referred to in this behalf is that of L.K. Advani & Ors. Vs. CBI 1997 CriLJ 2559 decided by Hon'ble High Court of Delhi, in which it was held as follows:

*“The next contention raised for and on behalf of the prosecution is that the impugned diaries and loose sheets (MR 68/91, MR 72/91 and Mr 73/91) are admissible in evidence against the petitioners under Sections 17 & 21 of the Evidence Act. According to the learned counsel for the State, the same can be used against all the petitioners under Section 21 of the Evidence Act. The contention of the learned counsel, I feel, does not hold any water.*

*Section 21 of the Evidence Act is an exception to the rule of*

*hearsay evidence. It deals with the proof of admission against persons making them and by or on their behalf. Section 21 of the Evidence Act provides that admissions are relevant and may be proved as against the persons who makes, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest. The rule is based on the principle that when a statement is made in self serving form the same is not admissible in evidence. However, when it is made in the self hanging form it becomes admissible in evidence as nobody would like to make a statement which would be detrimental to his own interest. Thus it lends assurance to the correctness and authenticity of the said statement. However, as is manifest from above an admission cannot be used against a co-accused person. Though the confession of a co-accused can be used against an accused person under Section 30 of the Evidence Act. Admittedly it is not a confession of a co-accused. Hence it is not admissible under Section 30 of the Evidence Act. The statement of a co-accused cannot be subjected to the test of cross-examination, hence such a statement would fall within the purview of rule of written hearsay evidence. Hence it cannot be held to be admissible in evidence. The rationale behind the said rule is that any statement which can not be subjected to the test of cross-examination can not be read in evidence against a person it has been made. I am tempted here to cite a few lines from Murphy on Evidence, page 180 " At common law, an admission made by one party is evidence against the maker of the statement, but not against any other party implicated by it. This principle is of considerable practical importance in relation to confessions in criminal cases, and is further considered in 8.14.1. In civil cases, admissions made by other parties may now be admissible under S. 2 of the Civil Evidence Act, 1968. The common law rule has the logical, though curious, result that if A and B are jointly charged with the offence of conspiracy, which cannot be committed by one person alone, A may be convicted upon his admission that he and B were guilty of the conspiracy, while B may have to be acquitted because of the lack of admissible evidence against him, As admission being of no evidential value against B." Thus the said admission, if any, can be used against Jains and not against the other petitioners namely, Shri L.K.Advani and Shri V.C.Shukla."*

From the above, it follows that a confessional statement made to the

police can be used against its maker but not against the co-accused. It was held in the aforesaid passage that even Section 30 of the Evidence Act cannot be invoked to make statement of a co-accused person applicable on another accused. It is thus concluded that a confessional statement can only be used against its maker and not against any other person.

1422. The contentions of the prosecution are thus rejected. It is held that the confessional statements of co-accused persons are of no avail to the prosecution in proving the involvement of accused Rishi Pal @ Pappu, Ashok Jain and Gopal Krishan Aggarwal in the conspiracy.

**Statements made by Vijay Yadav to the prosecution witnesses before the incident**

1423. Some of the prosecution witnesses, namely PW14 Abhay Singh Yadav, PW20 Harjeet Singh and PW34 Shri Tek Ram have deposed to several critical facts, not from their own observation and knowledge, but on the strength of information they claimed to have received from Vijay Yadav. According to them, Vijay Yadav informed them of certain circumstances which, in hindsight, seem to show that accused persons Gopal Krishan Aggarwal, Ashok Jain and Rishi Pal @ Pappu may have a motive to eliminate Vijay Yadav. Vijay Yadav, at that time, had allegedly passed on this information to apprise the witnesses of events

that had led to some controversy. But after the commission of the murder, the witnesses felt that those incidents may, when reflected on, demonstrate motive on the part of the persons with whom Vijay Yadav had differences. The question before this court is whether those statements allegedly made by Vijay Yadav can be taken into account as valid evidence.

1424. The ordinary rule of evidence is that only the person who has seen an event or heard some conversation can prove it. Section 59 of the Evidence Act, 1872 provides that all facts, except the contents of documents or electronic records, are to be proved by oral evidence. Oral evidence cannot be led by any person who is not associated with the event. For it to be worthy of reliance, it has to be the testimony of a person who has seen, heard or perceived it. Only that qualifies as "direct evidence" as per section 60 of the Act.

1425. PW14 Abhay Singh Yadav, PW20 Harjeet Singh and PW34 Shri Tek Ram had not seen most of the events on which they were deposing. They are not competent to depose on those facts which they did not see. It is Vijay Yadav who had seen the events happening around him. He alone is to prove it by testifying in court. In this case, he could not have deposed since he has expired.

1426. PW14 Abhay Singh Yadav, PW20 Harjeet Singh and PW34 Shri Tek Ram had only received information of those episodes. Regarding how

the events unfolded, the testimony of these witnesses is hearsay. It was laid down in the case of Bhugdomal Vs. State AIR 1983 SC 906 that the evidence as to receipt of information from a person is not admissible unless the person giving such information is examined as a witness. It was observed as under:

*“But since the informant has not been examined as a witness the evidence of PW12 that he was informed that accused Nos. 3 and 4 would be coming behind the truck in a taxi is not admissible.”*

In the case of Balram Prasad Aggarwal Vs. State of Bihar and ors. AIR 1997 SC 1837, it was laid down that unoriginal, also called derivative, transmitted, second-hand or hearsay, is that which a witness is merely reporting not what he himself saw or heard, not what has come under the immediate observation of his own bodily senses, but what he had learnt respecting the fact through the medium of a third person and such evidence is not admissible. Similar observations have been made in the cases of Kirtan Prasad Vs. State of MP 2005 CrL. LJ 69 and Jagroop and Anr. Vs. Rex AIR 1952 All 276.

In the case of Jaddoo Singh and Anr. Vs. Smt. Malti Devi & Anr. AIR 1983 Allahabad 87, it was observed as follows:

*“Under the circumstances the only evidence about Jaddoo Singh driving the bus is statement of Mahesh Chand PW5 but he has himself not seen Jaddoo Singh driving the bus. He was told by others that Jaddoo Singh was driving the bus. His statement is inadmissible in evidence and cannot be looked into. Section 60 of the Evidence Act provides that oral evidence must be direct.”*



In the case of Kalyan Kumar Gogoi vs Ashutosh Agnihotri & Anr Civil Appeal No. 4820 of 2007 decided on 18 January, 2011, the Hon'ble Supreme Court has explained the hearsay rule in the following words:

*"The idea of best evidence is implicit in the Evidence Act. Evidence under the Act, consists of statements made by a witness or contained in a document. If it is a case of oral evidence, the Act requires that only that person who has actually perceived something by that sense, by which it is capable of perception, should make the statement about it and no one else. If it is documentary evidence, the Evidence Act requires that ordinarily the original should be produced, because a copy may contain omissions or mistakes of a deliberate or accidental nature. These principles are expressed in Sections 60 and 64 of the Evidence Act.*

*The term 'hearsay' is used with reference to what is done or written as well as to what is spoken and in its legal sense, it denotes that kind of evidence which does not derive its value solely from the credit given to the witness himself, but which rests also, in part, on the veracity and competence of some other person. The word 'hearsay' is used in various senses. Sometimes it means whatever a person is heard to say. Sometimes it means whatever a person declares on information given by someone else and sometimes it is treated as nearly synonymous with irrelevant. The sayings and doings of third person are, as a rule, irrelevant, so that no proof of them can be admitted. Every act done or spoken which is relevant on any ground must be proved by someone who saw it with his own eyes and heard it with his own ears.*

*The argument that the rule of appreciation of hearsay evidence would not apply to determination of the question whether change of venue of polling station has materially affected the result of the election of the returned candidate, cannot be accepted for the simple reason that, this question has to be determined in a properly constituted election petition to be tried by a High Court in view of the provisions contained in Part VI of the Representation of the People Act, 1951 and Section 87(2) of the Act of 1951, which specifically provides that the provisions of the Indian Evidence Act, 1872, shall subject to the provisions of the Act, be deemed to apply in all*

*respects to the trial of an election petition. The learned counsel for the appellant could not point out any provision of the Act of 1951, which excludes the application of rule of appreciation of hearsay evidence to the determination of question posed for consideration of this Court in the instant appeal.*

*Here comes the rule of appreciation of hearsay evidence. Hearsay evidence is excluded on the ground that it is always desirable, in the interest of justice, to get the person, whose statement is relied upon, into court for his examination in the regular way, in order that many possible sources of inaccuracy and untrustworthiness can be brought to light and exposed, if they exist, by the test of cross-examination. The phrase "hearsay evidence" is not used in the Evidence Act because it is inaccurate and vague. It is a fundamental rule of evidence under the Indian Law that hearsay evidence is inadmissible. A statement, oral or written, made otherwise than a witness in giving evidence and a statement contained or recorded in any book, document or record whatever, proof of which is not admitted on other grounds, are deemed to be irrelevant for the purpose of proving the truth of the matter stated. An assertion other than one made by a person while giving oral evidence in the proceedings is inadmissible as evidence of any fact asserted. That this species of evidence cannot be tested by cross-examination and that, in many cases, it supposes some better testimony which ought to be offered in a particular case, are not the sole grounds for its exclusion. Its tendency to protract legal investigations to an embarrassing and dangerous length, its intrinsic weakness, its incompetency to satisfy the mind of a Judge about the existence of a fact, and the fraud which may be practiced with impunity, under its cover, combine to support the rule that hearsay evidence is inadmissible.*

*The reasons why hearsay evidence is not received as relevant evidence are: (a) the person giving such evidence does not feel any responsibility. The law requires all evidence to be given under personal responsibility, i.e., every witness must give his testimony, under such circumstance, as expose him to all the penalties of falsehood. If the person giving hearsay evidence is cornered, he has a line of escape by saying "I do not know, but so and so told me", (b) truth is diluted and diminished with each repetition and (c) if permitted, gives ample scope for playing fraud by saying "someone told me that..". It would be attaching importance to false rumour flying from one foul lip to another. Thus statement of witnesses based on information*

*received from others is inadmissible."*

1427. The question that now arises is that in view of demise of Vijay Yadav, whether the facts can be proved by those to whom Vijay Yadav had allegedly narrated them during his lifetime, or whether the recital by those witnesses (PW14 Abhay Singh Yadav, PW20 Harjeet Singh and PW34 Shri Tek Ram) would be hearsay.
1428. To answer this question, reference would have to be made to section 32(1) of the Evidence Act, 1872. The said provision lays down that statements made by a person who is dead are relevant when the statement is made by a person as to the cause of his death, or the circumstances of the transaction which resulted in his death, in cases in which the cause of the death comes into question.
1429. It follows from the above that the statement of a person who is dead at the time of the deposition is relevant when it relates to the cause of his death, or the circumstances of the transaction which resulted in his death, provided the cause of death is in question. In this case, the statements purported to have been made by Vijay Yadav who is no more. The cause of his death is subsumed in the determination undertaken by this court. The narration, from the mouth of PW14 Abhay Singh Yadav, PW20 Harjeet Singh and PW34 Shri Tek Ram, of events that had not been seen by these witnesses but had happened in the presence of Vijay Yadav, would be admissible only if it is found

that the events relate to the cause of death or circumstances of the transaction which resulted in his death, within the meaning of section 32(1) of the Evidence Act, 1872.

1430. The facts being narrated revolve around suspected role of one of the accused in an incident of firing upon the brother of the deceased many years before the incident of homicide which is in question and about interaction of Vijay Yadav with the accused persons on different dates which is essentially a history of conflicts and controversies between them. From these, a motive to commit the crime is sought to be deduced by the prosecution. These events have preceded the attack on Vijay Yadav by some months (except for one which is a few years' old incident). Such events cannot be proved by the aid of section 32(1) of the Evidence Act, 1872.

In the case of Onkar Vs. State of Madhya Pradesh, 1974 CriLJ 1200, the Hon'ble Madhya Pradesh High Court held that statements made by the deceased long before the death purporting to show motive on the part of a certain person to commit the crime, are not admissible in evidence.

The following passage is relevant:

*"In the instant case evidence has been led about statements made by the deceased long before this incident which may suggest motive for the crime. Such statements, in our opinion, are inadmissible in evidence, and must be excluded from consideration."*

1431. It has already been noted earlier that Indian law recognizes as admissible not only the direct cause of death but also “circumstances of the transaction which resulted in his death” which is wider than the former. This includes in its ambit some events other than those that immediately preceded or triggered the death. But those events must have an unbroken connection to the death. The following observation made in the case of Sharad Birdhi Chand Sarda (supra) is relevant:

*“The clause does not permit the reception in evidence of all such statement of a dead person as may relate to matters having a bearing howsoever remote on the cause or the circumstances of his death. It is confined to only such statements as relate to matters so closely connected with the events which resulted in his death that may be said to relate to circumstances of the transaction which resulted in his death. (LR 66 IA 66). Circumstances of the transaction which resulted in his death' means only such facts or series or facts which have a direct or organic relation to death. Hence statement made by the deceased long before the incident of murder is not admissible. (1974 CLJ (MP) 1200).”*

1432. As held above, there needs to be a live and continuous link between the death and the circumstances sought to be proved, for invoking section 32(1) of the Evidence Act. This bond is missing in the present case. It is not the case of the prosecution that ever since the occurrence of the events which were narrated by PW14 Abhay Singh Yadav, PW20 Harjeet Singh and PW34 Shri Tek Ram, Vijay Yadav was constantly tormented by the accused persons and that this finally culminated in his death. The events that have been testified to are not in the nature of an unceasing onslaught upon Vijay Yadav. It is not that the accused

persons and Vijay Yadav had been sparring with each other since those incidents. The altercations come across as one-off episodes. So remote is the link sought to be drawn that the brother of Vijay Yadav namely Abhay Singh Yadav who was in the know of all facts had himself not suspected the hand of any of the accused persons on the basis of those events. He tried to connect the dots and expressed suspicion on these accused persons about thirteen days after the murder. All this while too, the brother of the deceased kept availing the help of at least two of these accused persons, which he would not have done had he suspected the role of the accused persons. Had the incident of homicide not have occurred, possibly those incidents may have been forgotten or dismissed as trivial bickering. It is only because the homicide occurred that those incidents were brought to the fore. If the brother of the deceased himself did not, on the basis of the incidents, find the involvement of the accused persons to be obvious, the incidents must indeed be far-fetched. The narration too does not show the incidents to have any direct connection to the incident of homicide. If such distant events are covered under section 32(1) then every altercation or dispute Vijay Yadav ever had would become admissible and would have to be accepted without the test of cross-examination. That would be a perilous proposition considering that parts of the narrative have been found to be false (including about the existence of a monetary dispute

of one Sanjay Supariwala).

1433. In light of the above, it is concluded that the events mentioned in the deposition of PW14 Abhay Singh Yadav, PW20 Harjeet Singh and PW34 Shri Tek Ram do not qualify as “cause of death or circumstances of the circumstances of the transaction which resulted in death” under section 32(1) of the Evidence Act, 1872 for them to be admitted in evidence without the test of truth through cross-examination of the source of information. The said narration of PW14 Abhay Singh Yadav, PW20 Harjeet Singh and PW34 Shri Tek Ram is held to be inadmissible in evidence, and therefore cannot be relied upon by the court.

#### **Testimony of hostile witnesses**

1434. There are a number of witnesses who the prosecution had lined up to prove its allegations against accused persons Rishi Pal @ Pappu, Ashok Jain and Gopal Krishan Aggarwal. Most of them did not support the prosecution case. Notable among those are PW32 Sunil Sharma, PW16 Durga Dass, PW63 Deepak Kumar, PW28 Vinod Kumar @ Teda and PW47 Rajinder Singh because the prosecution was banking on these witnesses to show not only motive to plot the murder, but the physical manifestations from which existence of a conspiracy could be inferred.

1435. These witnesses declined to endorse the stand of the prosecution. They were cross-examined at length by the Id Addl. Public Prosecutor. But

they did not budge from their stance.

1436. From a long line of decisions of the Hon'ble Supreme Court, it is now settled that the evidence of a witness declared hostile is not wholly effaced from the record and that part of evidence which is otherwise acceptable can be acted upon. Reference may be made to the cases of *Khujji @ Surendra Tewari v State of M.P.* AIR 1991 SC 1853, *Bhagwan Singh v. State of Haryana* (1976) 2 SCR 921, *Rabinder Kumar Dey v. State of Orissa* (1976) 4 SCC 233, *Syed Iqbal v. State of Karnataka* (1980) 1 SCR 95, *Gura Singh v. State of Rajasthan* AIR 2001 SC 330, *Sathya Narayanan v. State* (2012) 12 SCC 627 and *Mrinal Das & Others. v. State of Tripura* (2011) 9 SCC 479.
1437. Therefore, the evidence of the abovenamed prosecution witnesses cannot be rejected in toto merely because the prosecution chose to treat them as hostile and cross-examined them. The deposition of these witnesses can be relied upon to the extent to which their version is found to be dependable, on careful scrutiny. It must be borne in mind that the part of evidence of hostile witness that receives corroboration regarding commission of offence is admissible in evidence. This exercise has been undertaken, as can be seen in the earlier paragraphs. However, no corroboration was found from which the deposition of the witnesses could be used for validating even part of the prosecution case. The witnesses have disowned their previous statements recorded



by the Investigating Officer. Their evidence has been considered as a whole with a view to find out if any weight can be attached to it in support of the prosecution, but in vain.

1438. In light of departure from the earlier stand of the witnesses, and the categorical statement made by them that they do not know anything relating to the conspiracy alleged in the case, or its motive, or any nexus between accused persons Ashok Jain, Rishi Pal @ Pappu and Gopal Krishan Aggarwal, I find that their testimony cannot be relied upon to return a finding of guilt of the accused persons. The prosecution has not been able to demonstrate that the witnesses were deposing under influence of the accused persons or under any pressure or threat, or that they had been won over by the accused persons.

1439. Statements recorded under Section 161 of Code of Criminal Procedure are not, as per Section 162(1) of the Code, to be signed by the person making the statement. As per Section 162(1) of the Code, the said statement cannot be used in inquiry or trial by the prosecution. The reason for this is that Section 162(1) seeks to protect the accused persons from statements made before police during investigation on the assumption that the statements were not made under circumstances inspiring confidence. This has been held by Hon'ble Supreme Court in the case of Tahsildar Singh Vs. State of U.P. AIR 1959 SC 1012. The legislature was thus aware that the police may record statements which

were not uttered by witnesses, to support its case.

1440. It has been held in the case of Emperor Vs. Aftab Mohd. Khan AIR 1940 All 291 that the police may be in a position to influence the maker of statements and there are persons who are “prepared to tell untruths” and therefore the accused is to be protected from being prejudiced by such statements. In the case of Baliram Tikaram Marathe Vs. Emperor AIR 1945 Nag 1, it was held that accused persons have to be protected against “overzealous police officers and untruthful witnesses”. It has been held to be contrary to accepted norms of justice that a witness is under pressure to make a testimony which is in line with the purported statement recorded by the police.

1441. In the case of Tahsildar Singh (supra), it was held by Hon’ble Supreme Court as follows:

*“Indeed, in view of the aforesaid facts, there is a statutory prohibition against police officers taking the signature of the person making the statement, indicating thereby that the statement is not intended to be binding on the witness or an assurance by him that it is a correct statement.”*

1442. In the result, the fact that such statements had been recorded and that the subsequently recorded testimony is at material variance from the said statements, does not empower the court to hold the witness accountable or to try him for perjury. It is to deal with such situations that the Hon'ble Supreme Court has, in the case of Doongar Singh Vs. State of Rajasthan, CrI. Appeal No. 2045/2017 dated 28.11.2017, held

that statements of all eye-witnesses must “invariably” be got recorded before Magistrate under Section 164 of Criminal Procedure Code. However, it appears that the investigating officer made no attempt to have the statement of the witnesses namely PW32 Sunil Sharma, PW16 Durga Dass, PW63 Deepak Kumar, PW28 Vinod Kumar @ Teda and PW47 Rajinder Singh recorded before the Magistrate at the stage of investigation. The result is that while the witnesses have resiled from their earlier statements, they cannot be held accountable since the earlier statements were before the police and their accuracy cannot be presumed by the court, as held in the aforementioned cases. It is also possible that the police may have deliberately not got recorded statement of the witnesses under Section 164 of Code of Criminal Procedure because the police may be fearing that the witnesses would reveal to the Magistrate a fact that may tend to exculpate the accused persons from the alleged crime.

1443. From a reading of the aforesaid testimony, it is evident that eye witnesses PW32 Sunil Sharma, PW16 Durga Dass, PW63 Deepak Kumar, PW28 Vinod Kumar @ Teda and PW47 Rajinder Singh have not supported the case of the prosecution. They were cross-examined by the prosecution. Despite detailed cross-examination, the witnesses have stood by their denial. Nothing has been elicited in the cross-examination which could point towards accused persons Ashok Jain,

Rishi Pal @ Pappu and Gopal Krishan Aggarwal having entered into the conspiracy to the killing of Vijay Yadav. In the result, the Court is left with no option but to form inferences on the basis of the statements uttered by the witnesses while they are in the witness box.

1444. Even if it is assumed that PW32 Sunil Sharma, PW16 Durga Dass, PW63 Deepak Kumar, PW28 Vinod Kumar @ Teda and PW47 Rajinder Singh have been stating untrue facts and they have deliberately disowned their previous versions, either under influence of the accused persons or out of fear of the accused persons, that would only imply that the testimony of the said witnesses is to be ignored. It would not authorize the court to treat the evidence of the said witnesses (of denial) as a positive affirmation of the occurrence as described by the police, and the court cannot, of its own, supply the omitted facts and deem the accused persons to have hatched the conspiracy. In order to bring home the guilt of the accused persons, the court would need other evidence showing that the accused persons had indeed plotted the murder.

In holding so, I am supported by the following observations of Hon'ble High Court of Delhi made in the case of State vs Mohd. Naushad Death Sentence Ref. no. 2/2010 dated 22nd November, 2012:

*"In Muthu Naicker & Ors. vs State of Tamil Nadu AIR 1978 SC 1647, the Supreme Court emphasized the importance of Section 161, and held that the prosecution's obligation to prove the facts mentioned by witness was not discharged merely by pointing to their omission to depose parts of those*

*statements, by contradicting such omitted, or material portions. In other words, if a witness does not support the prosecution case, it is not enough that contradictions are pointed out by the prosecution in its cross-examination (of its witness, by permission of court); other evidence to prove those facts - other than the statement, has to be led. The Court observed, in this context that:*

*"One curious practice not known to law adopted by him was that whenever a witness was asked about an omission with reference to the statement of the witness recorded by the investigating officer under Section 161 Cr.P.C., the learned Public Prosecutor would make a statement whether the statement referred to in evidence was to be found or was not to be found in the statement under Section 161 Cr.P.C. and no attempt was made to prove the omission. Such concession for proof of contradiction or omission lacks support of law and is likely to be unfair to the witness in that when the investigating officer is questioned with regard to the contradiction or omission, a further opportunity will be available to him to explain the contradiction or omission."*

In this case, the prosecution has not been able to establish from any other independent source that the accused persons had indeed conspired to the murder.

1445. Prosecution has relied upon statements tendered by PW32 Sunil Sharma, PW16 Durga Dass, PW63 Deepak Kumar, PW28 Vinod Kumar @ Teda and PW47 Rajinder Singh recorded by police during investigation in order to show that the accused persons were involved in commission of the offence. The statements are not substantive evidence. The case has to be decided on the basis of "evidence". "Evidence" is defined in Section 3 of the Indian Evidence Act, 1872 to comprise of statements made before the court and not those which

were made to the police. This shows that it is for the witnesses to depose about the facts by appearing in the witness box. The said statements articulated in the witness box are to be tested through cross-examination. It is only after the deposition of the witnesses that the court can, on the basis of the said testimony, form conclusions.

It is apt to quote from the recent case of Basheera Begam v. Mohammed Ibrahim & Ors. Criminal Appeal no. 417 of 2010 decided on 31<sup>st</sup> January, 2020, which applies to this case on all fours. In that case, it was held by Hon'ble Supreme Court as follows:

*“Even otherwise, it is inconceivable that the accused should hatch a conspiracy to commit murder, in the presence of witnesses who were not part of the conspiracy.*

*It is also difficult to fathom why PW10 and PW39 were never arrayed as co-accused, if they were present at the time of the conspiracy and they chose to keep quiet about the conspiracy. No credence can be given to the evidence of PW44.*

*It is well settled that statements made to the police under Section 161 of the Criminal Procedure Code in course of investigation are inadmissible in evidence. The evidence of PW44 with regard to what two witnesses namely, Abdul Jafar (PW10) and Farooq (PW39) told him in course of investigation is inadmissible in evidence, and of no value. Significantly, both PW10 and PW39 categorically denied having made to the police, the statements attributed to them.*

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*It is well settled that under the criminal jurisprudence prevalent in this country an accused is presumed innocent, unless proved guilty beyond all reasonable doubt. As held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra (1973) 2 SCC 793, “Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’*

*and 'must be' is long and divides vague conjectures from sure conclusions." For conviction on the basis of circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn should fully be established. The circumstances should be conclusive. The circumstances established should definitely point to the guilt of the accused, and not be explainable on any other hypothesis. The circumstances should exclude any other possible hypothesis except the one to be proved."*

In the result, it is concluded that the testimony of prosecution witnesses PW32 Sunil Sharma, PW16 Durga Dass, PW63 Deepak Kumar, PW28 Vinod Kumar @ Teda and PW47 Rajinder Singh is of no aid to the prosecution in proving that accused persons Rishi Pal @ Pappu, Ashok Jain and Gopal Krishan Aggarwal had conspired to the murder of Vijay Yadav.

#### **Prior information of conspiracy**

1446. PW14 Abhay Singh Yadav has deposed that four or five days before the death of Vijay Yadav, Abhay Singh Yadav received information that there may be an attempt on the life of Vijay Yadav. Abhay Singh Yadav, therefore, advised Vijay Yadav to go to Vaishno Devi temple for a few days. According to Abhay Singh Yadav, he was told that Vijay Yadav may be killed by persons hired by Ashok Jain, Rishipal and Gopal Krishan Aggarwal. The prosecution has trumpeted this to be evidence indicating involvement of accused Ashok Jain, Rishipal and

Gopal Krishan Aggarwal.

1447. I am afraid the aforesaid assertion of PW14 Abhay Singh Yadav cannot be treated as valid evidence showing involvement of accused persons in the conspiracy.
1448. Firstly, the witness did not see or hear the hatching of the conspiracy. His testimony showing that he learnt from some other person about hatching of the conspiracy, is barred by the hearsay rule. The hearsay rule has been explained in the foregoing paragraphs.
1449. Also, while in the examination-in-chief, the witness stated that “he came to know” this fact, when questioned about this during his cross-examination, the witness attributed this to the deceased himself. If indeed the deceased would have told the witness this fact, the witness would have said so in the first place and would not have projected it as if the witness learnt about this from some other source and then passed on this information to Vijay Yadav. The examination-in-chief of the witness is in contrast with the cross-examination.
1450. In his examination-in-chief, the witness conveyed the impression that it is he who asked Vijay Yadav to go to the temple, whereas in his cross-examination the witness stated that Vijay Yadav already had this information and had gone to Jammu by his own choice, rather than on the asking of Abhay Singh Yadav.



1451. The two passages from the examination-in-chief and cross-examination of PW14 Abhay Singh Yadav are as follows:

Examination-in-chief:

*“About 4/5 days prior to his death, Vijay had visited Vaishno Devi Temple, Jammu. I asked him to go there as I came to know that Ashok Jain, Rishi Pal, Gopal Krishan were hatching a conspiracy to kill my brother through Bhisham @ Chintu and his associates namely Hitender @ Chhotu, Dimple Tyagi, Deepak @ Choda, Vinod @ Gola, Deshraj, Kishan Pal @ Fauzi. I was apprehending about the same.”*

Cross-examination:

*“When I asked Vijay Yadav to go Jammu, I did not inform him that he had threat to his life. (vol. Vijay himself told me that he had threat to his life.) Vijay had gone to Jammu of his own. Vijay had not requested for police protection”.*

1452. Section 32(1) of the Evidence Act, 1872 also cannot save the statement of PW14 Abhay Singh Yadav from the bar on its admissibility. This is because Section 32(1) of the Act may, on fulfillment of certain conditions, enable PW14 Abhay Singh Yadav to step into the shoes of Vijay Yadav but nothing more. If Vijay Yadav was himself not competent to depose on a certain fact, then his narration being recited by PW14 Abhay Singh Yadav would not make it admissible.

1453. In this case, even Vijay Yadav would not have been competent to depose on the information of hatching of a conspiracy aimed at his murder. Vijay Yadav did not hear or see the event (conspiracy) taking place and his account was also not first-hand. The conspiracy did not

happen in the presence of Vijay Yadav. Vijay Yadav had only received information of this, assuming this to be true. The source of information has not been revealed either by Vijay Yadav or by Abhay Singh Yadav. That person, who tipped off Vijay Yadav, is not stated to be dead, so as to enable the prosecution to take aid of section 32(1) of the Evidence Act, 1872. This person may be alive and should have been examined to depose on whether he saw or heard the conspiracy taking place or how he learnt that there was such a conspiracy.

1454. In this case, the prosecution has been trying to bring on record obscure evidence, in the nature of testimony of witnesses who had no personal knowledge of the events, and were obliquely trying to suggest motive on the part of the accused persons. Most of these persons have not even supported the allegations. While resting its case on such sluggish evidence, the prosecution has withheld the main witness who could have clinched the issue by directly testifying to the hatching of the conspiracy. No reason has been furnished for not examining this witness, and not even disclosing his identity.

1455. As far as PW14 Abhay Singh Yadav is concerned, the fact remains that what Vijay Yadav could not be deposing on can surely not be validly testified to by Abhay Singh Yadav to whom these facts were allegedly narrated by Vijay Yadav. The testimony of PW14 Abhay Singh Yadav being barred by the hearsay rule, cannot be relied upon.

1456. Apart from the above, there is another reason for not relying on the testimony of PW14 Abhay Singh Yadav about having received information of the conspiracy. The reason is that the version of PW14 Abhay Singh Yadav of having received this information is manifestly inconceivable. PW14 Abhay Singh Yadav admitted in his cross-examination that he did not ask for police protection for his brother when he got to know that a conspiracy has been hatched to kill his brother. According to the witness, he did believe the information given to him. He claims that he acted on the information and advised his brother to save his life by going out of Delhi. The information is stated to be specific as it named the persons who had hatched the conspiracy. If that is so, and if the witness had indeed received information about the life of his brother being in danger, which he believed to be correct, then he would surely have immediately approached the police and sought police protection. That was not done. This shows that in fact no such information had been received. PW14 Abhay Singh Yadav admitted in his cross-examination that he never informed the police about the said information. The witness did not make any complaint against the persons named in that information and he even did not confront any of the persons who had, as per the information, hatched the conspiracy. The conduct of the witness is not natural. A person who apprehends danger to the life of his brother is bound to seek police

assistance or at least make a complaint so that the acts of the persons who are likely to harm his brother, can be investigated.

1457. If PW14 Abhay Singh Yadav had indeed recently received prior information of a conspiracy of killing of his brother, then at least after the incident, his doubt should have been confirmed, and he should have immediately related the homicide to the conspiracy. Had this happened, he would have immediately informed the police that he had earlier received information about the said conspiracy so that the police could investigate the persons named by the witness in the conspiracy. However, that did not happen. While the police kept groping in the dark about identity of the offenders, such vital information was not placed before the police for thirteen days after the homicide.

1458. Also, as per Abhay Singh Yadav, the information received by him mentioned the name of Rishi Pal @ Pappu and Gopal Krishan Aggarwal as conspirators. If that was the case, Abhay Singh Yadav would not have asked a conspirator (Rishi Pal @ Pappu) to go to the spot to help Vijay Yadav immediately after the attack (which PW14 Abhay Singh Yadav deposed in his cross-examination to have done). Abhay Singh Yadav would not have taken assistance of another conspirator (Gopal Krishan Aggarwal) during his visits to different police officers to ask for robust investigation of the case.

1459. It is not understood as to how going to Vaishno Devi Shrine at Jammu would have helped Vijay Yadav to avoid the attack. Vijay Yadav had gone there only for a few days. He had planned to return to Delhi. If there was indeed such information of a conspiracy having been hatched, Vijay Yadav may have chosen to go to a place where he could stay for a longer period to save his life. The visit to the shrine does not appear to have been induced by any information of threat to his life. The prosecution has failed to connect the travel of Vijay Yadav to Jammu with the alleged receipt of information of the conspiracy.
1460. All of these circumstances show that the story about having received prior information of a conspiracy is concocted. The statement made by PW14 Abhay Singh Yadav in his testimony about having received information of conspiracy and about the witness asking Vijay Yadav to go to Jammu to visit the Vaishno Devi Shrine, cannot be relied upon in proving the hatching of a conspiracy by accused persons Ashok Jain, Rishi Pal or Gopal Krishan Aggarwal.

### **Proof of Motive**

1461. It has already been held above that the motive on the part of accused persons Ashok Jain, Rishi Pal and Gopal Krishan Aggarwal to enter into a conspiracy to execute Vijay Yadav has not been proved. However, if it is assumed that these accused persons did aspire to kill

Vijay Yadav, then too, they cannot be held guilty of conspiring to the murder by reason of possessing such a motive.

1462. An accused person may be desirous of seeing the victim dead. The wish of an accused person may be driven by acrimony, hostility or antipathy. However, this remains only an ambition unless the accused decides to make an endeavour and takes some steps to achieve this goal. When, in taking such steps, the accused person enters into an agreement with others to accomplish the task of killing, can the offence of conspiracy be stated to have been committed.

1463. This point may be buttressed by the leading judgments on the subject. In the case of *State v. Nalini* (1999) 5 SCC 253, the Hon'ble Supreme Court held as follows:

*"The question for consideration in a case is did all the accused had the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever, horrendous it may be, that offence be committed."*

In *Devender Pal Singh v. State* (NCT of Delhi) 2002 Cr1 LJ 2035, Hon'ble Supreme Court held thus:

*"Offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if lawful,*

*punishable if for a criminal object or for use of criminal means."*

In the case of State v. Mohd. Naushad Death Sentence Ref. no. 2/2010 dated 22<sup>nd</sup> November, 2012, the Hon'ble High Court of Delhi held as follows:

*"What people do is, of course, evidence of what lies in their minds. To convict a person of conspiracy, the prosecution must show that he agreed with others that together they would accomplish the unlawful object of the conspiracy."*

1464. Bitterness between two persons is not sufficient to hold one to be a conspirator in the killing of another. If a person has hostility towards another, in the event of murder, the police may suspect him to have a hand in the murder and may investigate his role. However, to seek conviction of such a person for the conspiracy, the prosecution will have to show that other evidence indicative of the actual conspiracy pursuant to the aforesaid motive has been gathered during the probe. Moreover, even if a person is aware of the conspiracy having taken place, that would not make him a conspirator, unless he has agreed to it.

In *Girja Shankar Misra v. State of U.P.* AIR 1993 SC 2618 though it was found that there were serious misunderstandings between the deceased and the appellant because of the illicit relationship between the appellant and the wife of the deceased, yet the Court held that despite

the fact that the appellant had a motive, he could not be held responsible for hatching a conspiracy.

*"So far as the motive aspect is concerned, both the courts below have held that there were serious misunderstandings between the deceased and Girja Shankar Misra because of the illicit relationship between Girja Shankar Misra and PW 54, wife of the deceased. PW 54 herself has admitted about the illicit relations between her and Girja Shankar Misra and how the deceased objected and deprecated the same. We have gone through the evidence on this aspect and it can be accepted that there were serious misunderstandings between the accused Girja Shankar Misra and the deceased and therefore it is probable that Girja Shankar Misra had a motive. But motive by itself cannot be a proof of conspiracy."*

In *Kehar Singh & Ors. Vs. State (Delhi Administration)* (1988) 3 SCC 609, Hon'ble Supreme Court quoted with approval the following passage from *Russell on Crime* (12 Ed. Vol. I, 202):

*"The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se, enough."*

1465. In this case too, the prosecution has been at pains to prove the motive, but has made no attempt to prove from other circumstances that the conspiracy had indeed been hatched. It is not the case of the prosecution that accused persons Ashok Jain, Rishi Pal and Gopal Krishan Aggarwal were found to have been present with the assailants at the time of, or even on the day of, the attack on Vijay Yadav. It is not



the case of the prosecution that these persons had supplied the arms or ammunition, or had in any manner assisted in the implementation of any part of the conspiracy. The money alleged to have been to the assailants has not been recovered. These accused persons are not shown to have visited the alleged place of hatching of conspiracy, that is Hotel Kwalitiy. The case of the prosecution is wholly dependent on its attempt to prove friction between the accused persons and Vijay Yadav.

In the case of P.K. Narayanan Vs. State of Kerala (1995) 1 SCC 142, the Hon'ble Supreme Court stressed that motive alone or even motive followed by preparation for the crime would not establish that a person is conspiring to commit the offence. It was held that if circumstances prove the existence of the motive, an opportunity to commit the crime and also a possible complicity in the offence, then too conviction on its basis is not permissible. The following passage is relevant:

*"It may not be necessary for us to discuss that part of the evidence dealing with motive. Assuming that A-1 was apprehensive that the deceased might disclose his trade secrets, that by itself cannot prove the conspiracy. The High Court, however, pointed out that the conduct of the parties would be a relevant circumstance to make out an offence of conspiracy. The conduct of A-1 referred to in this context is that he went to the tourist home at 9 a. m. and that he did not go or meet or console PW1 on that day and that he rewarded A-2 sufficiently to purchase ornaments and make investments. According to the High Court, these circumstances which indicate that A-2 was a close associate of A-1 coupled with the circumstance that A-2 was found running away, would be sufficient to make out a case that A-1 and A-2 conspired to*

*eliminate the deceased. Having given our anxious considerations, we cannot agree with the view taken by the High Court. On the other hand, the evidence relied upon by the prosecution to prove the conspiracy is wholly insufficient. After having perused the judgments of both the courts below, we find that the convictions are based more on suspicion particularly on the ground that A-1 had motive to eliminate the deceased."*

In the case of State of Uttar Pradesh Vs. Dr. Sanjay Singh & Anr. 1994 Supp. (2) SCC 707, the Hon'ble Supreme Court held that circumstantial evidence pointing to only motive to conspire, is insufficient to be acted upon by the Court. It was noted that "motive which induces a man to do any particular act, is known to him and to him alone".

In the case of Damodar V. State of Rajasthan Criminal Appeal No. 1190 of 2001 decided on 18<sup>th</sup> September, 2003 it was observed as follows:

*"Merely because accused-Damodar is the son of Balak Dass who it is brought on record had a dispute with the deceased over properties is not sufficient to establish the charge of conspiracy."*

1466. In light of the aforesaid discussion, it is concluded that even if the prosecution case of accused persons Ashok Jain, Rishi Pal and Gopal Krishan Aggarwal having motive to kill Vijay Yadav is deemed proved, it does not suffice for returning a finding of guilt of these persons.

**Delay in reporting the matter to the police**

1467. After the incident of homicide, there was a lull for about thirteen days. Although the presence of the assailants Parveen Koli, Hitender, Des Raj, Deepak, Kishan Pal and Bhisham was alleged and the process of tracing them had begun, there were no allegations against accused persons Ashok Jain, Rishi Pal or Gopal Krishan Aggarwal. After about thirteen days, suddenly some witnesses started to recall events, which had happened long before the incident of murder and which tended to show that accused persons Ashok Jain, Rishi Pal or Gopal Krishan Aggarwal had differences with Vijay Yadav. It is not the case of the witnesses that they learnt about those facts only after thirteen days. They claimed that they knew these facts all throughout and even before the attack on Vijay Yadav.

1468. If the witnesses knew facts which could help identify the possible suspects, they would have disclosed those facts promptly to the police. The delay in reporting those facts to the police has not been explained by the witnesses although specific questions were put to them in their cross-examination pointing to their failure to report those facts. For instance, PW14 Abhay Singh Yadav stated in his cross-examination that he never gave any statement to the police officers of PS Hauz Qazi to the effect that he had suspicion over the involvement of Gopal Krishan

Aggarwal, Ashok Jain and Rishipal.

1469. Even persons who claimed before the police that the assailants had informed them that they had committed the murder at the behest of accused Gopal Krishan Aggarwal, Ashok Jain and Rishi Pal @ Pappu had not passed on this information to the police.

In the case of Tejinder Singh @ Kaka vs State of Punjab CrI. Appeal no. 1279 of 2008 decided by Hon'ble Supreme Court on 11<sup>th</sup> April, 2013, a similar situation was confronted. The following observations show how it was dealt with:

*“Further, the learned senior counsel has rightly placed reliance upon the testimony of PW7 to whom, according to him, the accused persons namely, Gurdeep Singh, Harnek Singh and Sunny Lal Paswan, co-accused, made a disclosure statement describing the whole incident to him on 12.06.2000 who has neither recorded the alleged extra-judicial confession nor made the disclosure of the said statement within reasonable time but 16 days to disclose the extra-judicial confessions made by the accused persons to inform to the jurisdictional police. The delay in informing the police regarding the extra-judicial confessional statement alleged to have made to him by some of the accused has not been explained by PW7 and the reason sought to be given by him for non-disclosure of the same to the police cannot be accepted by this Court as it is not natural and also not satisfactory. Further, the learned senior counsel Mr. Tulsi has rightly placed reliance upon the judgment of this Court in Dwarkadas Gehanmal's case (supra) with regard to the conduct of the witness in the said case which is inconsistent with the conduct of an ordinary human being. The observations made in the abovementioned case with all fours applicable to the facts situations of the case in hand, that if extra-judicial confessional statement was made by the accused as stated by him in his statement before the trial court were to be true, it was his duty to disclose the same immediately to the police or*

*to the relatives of the deceased. That has not been done by him and therefore his evidence is not believable."*

1470. The above factor however does not come to the rescue of accused persons Parveen Koli, Desraj @ Desu, Deepak @ Chowda, Hitender @ Chhotu, Kishanpal @ Fauzi and Bhisham @ Chintoo because their involvement in the crime is established from direct eye-witness account and it has not demonstrated that there was undue or unreasonable delay in reporting of the facts by her. She did not know these persons but did narrate to the police about them, and too soon after the incident. As opposed to this, in case of accused persons Gopal Krishan Aggarwal, Ashok Jain and Rishi Pal @ Pappu, the witnesses knew exactly the events involving these accused persons. The identity of these persons was known to the witnesses. There was no reason for them to shy away from providing the specific information to the police for more than thirteen days.

1471. The effect of the omission to bring facts tending to show motive of accused persons Gopal Krishan Aggarwal, Ashok Jain and Rishi Pal @ Pappu to the notice of the police officers who were accessible and had even been meeting some of the witnesses, suggests that the facts may have been concocted later, and are therefore of doubtful veracity.

**Inference regarding conspiracy by accused Parmod Singh @ Pammy, Rishi Pal @ Pappu, Ashok Jain and Gopal Krishan Aggarwal**

1472. An analysis of the evidence led by the prosecution reveals that the prosecution has failed to prove that accused Parmod Singh @ Pammy, Rishi Pal @ Pappu, Ashok Jain and Gopal Krishan Aggarwal had a role to play in the plotting of murder of Vijay Yadav. There is no eye-witness account or any other admissible evidence showing involvement or motive on the part of accused Parmod Singh @ Pammy. A majority of the witnesses examined by the prosecution in support of the allegations against accused persons Rishi Pal @ Pappu, Ashok Jain and Gopal Krishan Aggarwal resiled in court and claimed that they knew nothing about the conspiracy or the motive of the accused persons. Those who did support the case in the examination-in-chief were found to be either having no personal knowledge of the facts or to be not credible. Even those witnesses only tended to prove motive on the part of the abovenamed accused persons and on this too, they staggered. Their versions to the police had surfaced after unreasonable and unexplained delay. Their narrative in court was at variance with their versions to the police. Nothing was recovered from accused Parmod Singh @ Pammy, Rishi Pal @ Pappu, Ashok Jain and Gopal Krishan Aggarwal which could point to they being a party to the conspiracy. There was no disclosure of fact in their confessional statements from which such an inference could be deduced. No

weapon of assault or article belonging to the deceased, or any other incriminating article has been recovered at the instance of these accused persons which could help to trace their connection to the crime. Reference may be made to some judgments which lay down the standard to be attained by the prosecution in proving the existence of a conspiracy.

The Hon'ble High Court of Delhi in the case of Rajiv & Ors. v. State CrI. Appeal no. 192/2017 decided on 8<sup>th</sup> October, 2018, observed as follows:

*"It is a well settled proposition of law that agreement of conspiracy can be proved either by direct evidence or by circumstantial evidence or by both and despite that an offence of conspiracy cannot be deemed to have been established on mere suspicion, surmises or inferences which are not supported by cogent or acceptable evidence."*

In the case of State v. Nalini (1999) 5 SCC 253, the Hon'ble Supreme Court noted:

*"There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy."*

In Kehar Singh & Ors. Vs. State (Delhi Administration) (1988) 3 SCC 609, Hon'ble Supreme Court held:

*"I share this opinion, but hasten to add that the relative acts of conduct of the parties must be conscientious and clear to mark their concurrence as to what should be done. The concurrence cannot be inferred by a group of irrelevant facts artfully arranged so as to give an appearance of coherence. The innocuous, innocent or inadvertent events and incidents should not enter the judicial verdict."*

In the case of L.K. Advani & Ors. Vs. CBI 1997 Cri.LJ 2559, the Hon'ble

Hon'ble High Court of Delhi held that the Court can act on the basis of circumstantial evidence to establish conspiracy only if the said circumstantial evidence is incompatible with the innocence of the accused. There should be no other conclusion possible except that of involvement of the accused. The relevant passage is as follows:

*“The present case admittedly is based on circumstantial evidence. It is a well established principle of criminal law that in case of circumstantial evidence it should be of such a nature that it is incapable of explanation on any other hypothesis except the guilt of the accused. It must be a complete chain and no link of the said chain should be missing. In other words it can be said that the facts brought in the form of circumstantial evidence must be incompatible with the innocence of the accused. I am tempted here to cite a few lines in support of my above view from the observations of the Hon'ble Supreme Court in Bakshish Singh v. The State of Punjab AIR 1971 SC 2016, “The law relating to circumstantial evidence has been stated by this Court in numerous decisions. It is needless to refer to them as the law on the point is well settled. In a case resting on circumstantial evidence, the circumstances put forward must be satisfactorily proved and those circumstances should be consistent only with the hypothesis of the guilt of the accused. Again those circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused.”*

1473. In the case of State v. Mohd. Naushad Death Sentence Ref. no. 2/2010 dated 22<sup>nd</sup> November, 2012, the Hon'ble High Court of Delhi cautioned that the court should not be swayed by the gravity of the offence in appreciating the evidence and the latter which must be done strictly as per the recognized principles of law. Conjectures and suspicion should



not be allowed to take the place of legal truth. Similar observations find mention in the cases of Mousam Singha Roy and Ors v. State of West Bengal, (2003) 12 SCC 377 and Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116. In the case of Kashmira Singh v. State of M.P., AIR (1952) SC 159, it has been laid down that *“a murder being particularly cruel and revolting one, it is necessary to examine the evidence with more than ordinary care lest the shocking nature of the crime induce an instinctive reaction against a dispassionate judicial scrutiny of the facts and law”*.

1474. That being so, I have no hesitation in holding that the evidence led by the prosecution to show conspiracy on the part of accused Parmod Singh @ Pammy, Rishi Pal @ Pappu, Ashok Jain and Gopal Krishan Aggarwal is found wanting. It has failed to stand judicial scrutiny. The charge of conspiracy framed against these accused persons stands not proved.

### **Final Conclusions**

1475. The evidence led by the prosecution has succeeded in proving, beyond doubt, that accused persons Hitender Singh @ Chhotu, Kishanpal @ Fauzi, Bhisham @ Chintoo, Desraj @ Desu, Deepak @ Chowda and Parveen Koli initially conspired to, and then gave effect to their conspiracy by committing, the murder of Vijay Yadav. They are held guilty of the offences of murder and criminal conspiracy under sections

302 and 120-B of IPC respectively.

1476. The prosecution, however, faltered in substantiating its allegations against accused Parmod Singh @ Pammy, Ashok Jain, Rishi Pal @ Pappu and Gopal Krishan Aggarwal. It has not been convincingly established that these accused persons were part of the conspiracy aimed at the murder of Vijay Yadav. Accordingly, accused Parmod Singh @ Pammy, Ashok Jain, Rishi Pal @ Pappu and Gopal Krishan Aggarwal are hereby acquitted of the charge of criminal conspiracy under section 120-B of IPC.

**Announced through video-conferencing  
on 22<sup>nd</sup> June, 2020**

**(Ashish Aggarwal)  
Joint Registrar (Judicial)  
Delhi High Court  
New Delhi**