

Court No. - 46

Case :- CRIMINAL APPEAL No. - 8254 of 2022

Appellant :- Piyush Shyamdasani

Respondent :- State of U.P.

Counsel for Appellant :- Sr. Advocate, Aditya Prakash Singh, Neeraj Joshi, Ravitendra Pratap Singh Chandel, Sharique Ahmed, Sushil Shukla

Counsel for Respondent :- Sr. Advocate, Deepankar Shukla, G.A., Pradeep Kumar Mishra, Raghuvansh Misra, Sangam Lal Kesharwani, Saurabh Chaturvedi, Tanzeel Ahmad

with

Case :- CRIMINAL APPEAL No. - 10177 of 2022

Appellant :- Sonu Kashyap

Respondent :- State of U.P.

Counsel for Appellant :- Kamlesh Kumar Tripathi, Padmaker Pandey

Counsel for Respondent :- Deepankar Shukla, G.A., Pradeep Kumar Mishra, Sangam Lal Kesharwani, Tanzeel Ahmad

with

Case :- CRIMINAL APPEAL No. - 10034 of 2022

Appellant :- Renu @ Akhilesh Kanaujiya

Respondent :- State of U.P.

Counsel for Appellant :- Balram Singh, Kamlesh Kumar Tripathi

Counsel for Respondent :- Deepankar Shukla, G.A., Pradeep Kumar Mishra, Sangam Lal Kesharwani, Tanzeel Ahmad

with

Case :- CRIMINAL APPEAL No. - 9481 of 2022

Appellant :- Ashish Kashyap

Respondent :- State of U.P.

Counsel for Appellant :- Sharique Ahmed

Counsel for Respondent :- Deepankar Shukla, G.A., Pradeep Kumar Mishra, Sangam Lal Kesharwani, Tanzeel Ahmad

with

Case :- CRIMINAL APPEAL No. - 10182 of 2022

Appellant :- Awadesh Chaturvedi
Respondent :- State of U.P.
Counsel for Appellant :- Padmaker Pandey
Counsel for Respondent :- Deepankar Shukla,G.A.,Pradeep Kumar Mishra,Sangam Lal Kesharwani,Tanzeel Ahmad

with

Case :- CRIMINAL APPEAL No. - 9005 of 2022

Appellant :- Manisha Makheeja
Respondent :- State of U.P.
Counsel for Appellant :- Sr. Advocate, Kanchan Sharma,Shishir Tandon,Sr. Advocate
Counsel for Respondent :- Deepankar Shukla,G.A.,Pradeep Kumar Mishra,Sangam Lal Kesharwani,Saurabh Chaturvedi,Tanzeel Ahmad

with

Case :- CRIMINAL APPEAL U/S 372 CR.P.C. No. - 121 of 2023

Appellant :- Shankar Lal Nagdev
Respondent :- State Of U.P. And 3 Others
Counsel for Appellant :- Deepankar Shukla,Pradeep Kumar Mishra,Raghuvansh Misra,Sangam Lal Kesharwani,Tanzeel Ahmad
Counsel for Respondent :- G.A.,Sharique Ahmed,Sushil Shukla

Hon'ble Arvind Singh Sangwan,J.
Hon'ble Mohd. Azhar Husain Idrisi,J.

(Per Hon'ble Arvind Singh Sangwan,J.)

1. These appeals have been filed challenging the judgment of conviction dated 20.10.2022 and order of sentence dated 21.10.2022 passed by Additional Sessions Judge, Court No.1, Kanpur Nagar in Sessions Trial No. 36 of 2015, arising out of Case Crime No. 151 of 2014 and in Sessions Trial No. 37 of 2015, arising out of Case Crime No. 155 of 2014, P.S.- Swaroop Nagar, District- Kanpur Nagar vide which the learned Sessions Judge has convicted and sentenced the appellants as under:

Convicte	Name of Accused	Sentence	Fine	Default
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d under Section				Sentenc e
Section 302/120B IPC	Piyush Shyamdasani, Manisha Makheeja, Ashish Kashyap, Awadhesh Chaturvedi, Renu @ Akhilesh Kanaujiya, Sonu Kashyap	Life Imprisonm ent	Rs.20,000/- each	6 Months SI
201/120B IPC	Piyush Shyamdasani, Manisha Makheeja, Ashish Kashyap, Awadhesh Chaturvedi, Renu @ Akhilesh Kanaujiya, Sonu Kashyap	3 years RI	Rs.5000/- each	2 months SI
364/120B IPC	Piyush Shyamdasani, Ashish Kashyap, Awadhesh Chaturvedi, Renu @ Akhilesh Kanaujiya, Sonu Kashyap	10 Years RI	Rs.10,000/- each	3 Months SI
203 IPC	Piyush Shyamdasani,	One year Imprisonm ent	Rs.1000/-	One month SI
404 IPC	Awadhesh Chaturvedi, Renu @ Akhilesh Kanaujiya, Sonu Kashyap	02 Years RI	Rs.5000/- each	Two months SI
4/25 of Arms Act	Renu @ Akhilesh Kanaujiya and Sonu Kashyap	01 year imprisonm ent	Rs. 1,000	Two months SI

2. Heard Sri G.S. Chaturvedi, learned Senior Advocate as well as Sri V.P. Srivastava, learned Senior Advocate for the appellants and Sri Vinay Saran, learned Senior Advocate assisted by Sri Pradeep Kumar Mishra, learned counsel for the informant in all connected appeals and the learned AGA for the State.

3. Brief facts of the prosecution cases are that on 28.7.2014, Piyush Shyamdasani, filed a written complaint to the Police Station- Swaroop Nagar, District- Kanpur Nagar. This complaint reads as under:

"सेवा में थाना अध्यक्ष स्वरूप नगर कानपुर नगर महोदय मैं पियूष श्यामदसानी पुत्र श्री ओम प्रकाश श्याम (का० फटा) निवासी 117/H-1/189 Pandu Nagar, (का० फटा) दिनांक 27.7.14 को अपनी पत्नी श्रीमती ज्योती (का० फटा) दसानी के साथ गाड़ी नं० U.P 78 BR (का० फटा) एकार्ड में होटल बरान्दा वी आई पी रोड से खाना खाकर घर वापस जा रहे थे, कि समय करीब रात 11.30 PM बजे मेरी गाड़ी के सामने चार मोटर साइकिल सवार कुल 7/8 लोग सामने से कम्पनी बाग से रावतपुर रोड पर आ गए और मेरी गाड़ी पर ठोकर मारी सामने से मारी, मेरे विरोध करने पर मेरे साथ मार पीट कर मुझे गाड़ी के बाहर गिरा दिया तथा 3/4 लोग गाड़ी में बैठ कर जिनमें एक व्यक्ति गाड़ी चलाकर लेकर भाग गया, जिस में मेरी पत्नी भी बैठी थी, उपरोक्त में से दो लोग टोपी लगाय थे, सभी लोग रावतपुर की तरफ गाड़ी लेकर भाग गए मैं, थाने आकर सूचना दे रहा हूँ। मेरी रिपोर्ट लिखकर आवश्यक कार्यवाही करने की कृपा करे। प्रार्थी ह० अंग्रेजी पियूष, पियूष श्याम दसानी पुत्र श्री ओम प्रकाश श्यामदसानी Mob. 9956353535 निवासी- 117/H-1/187 पाण्डू नगर थाना- काकादेव दिनांक- 28.7.14 लेखक अभिनव पोद्दार निवासी- सिविल लाइन योग टावर Mob. 9956037000.

ह० C/C 1632 महेश चन्द्र दुबे
थाना- स्वरूप नगर
जनपद- कानपुर नगर
दि० 28/7/14"

4. The police came in action and on the basis of the mobile phone location of victim- Jyoti, wife of the informant, reached the place, where she was found in a critically injured condition inside a Honda Accord Car. She was taken to hospital and on way she succumbed to the injuries and was declared brought dead.

5. During the investigation, a team of six of Investigating Officers was constituted and on the basis of the call details of the informant as well as the victim, the police started investigation. It was found that the last call was made to victim by the informant on her mobile phone for a few seconds and before that the victim herself made a call to PW-7- Monika Ashudani, who was the paternal aunt (Bua) of the deceased. Later on,

during investigation, the police found that there is sufficient evidence against Piyush Shyamdasani, who is the husband of the victim, therefore, arrested him and thereafter, based on his disclosure statement four other accused persons, namely, Awadhesh Chaturvedi, Renu @ Akhilesh Kanauiya, Ashish Kashyap and Sonu Kashyap were arrested. Later on, the police found evidence worth arrest against accused- Manisha Makheeja and she was also arrested. The police collected the post-mortem report of the victim and thereafter, on the basis of the confessional statements made by the aforesaid accused, certain recoveries of articles, i.e. blood stained handkerchief and blood stained clothes belonging to the victims, were effected. Similarly, the weapon of offence i.e. four knives were also recovered which were sent for forensic examination.

6. On completion of investigation, the charge-sheet was presented and the trial court framed the charges against all the accused persons under Sections 364, 302, 201, 120B, 404, 34, 203, 202 I.P.C and Section 4/25 of Arms Act.

7. It is worth noticing that the bail applications of accused- Piyush Shyamadasani, Renu @ Akhilesh Kanauiya, Sonu Kashyap, was rejected vide order dated 17.8.2023 by this Court, however, the bail applications of Manisha Makheeja, Awadhesh Chaturvedi and Ashish Kashyap were allowed vide order dated 2.2.2023.

8. Piyush Shyamdasani filed Special Leave to Appeal (Crl.) No(s). 12641 of 2023, which was dismissed as withdrawn vide order dated 20.2.2024.

9. The present appeals are filed against the impugned judgment as stated above.

10. The informant has also filed Criminal Appeals No.121 of 2023 (Shankar Lal Nagdev vs. State of U.P.) under Section 372 of Cr.P.C. challenging the acquittal of accused- Mukesh Shyamdasani, Kamlesh Shyamdasani, and Smt. Poonam Shyamdasani.

11. For the sake of brevity, all the accused-appellants are referred to as per the memo of judgment of the Trial Court as under:

A-1	Piyush Shyamdasani
A-2	Manisha Makheeja
A-3	Awadhesh Chaturvedi
A-4	Renu @ Akhilesh Kanaujiya
A-5	Sonu Kashyap
A-6	Ashish Kashyap

12. All the accused persons did not plead guilty and claimed the trial.

13. The trial court recorded as much as 37 prosecution witnesses which are referred to in three categories i.e. witnesses of facts, the Investigating Officers and the witnesses who gave technical expert evidence.

A. The witnesses of facts are read as under:

1.	PW-1	Rajesh @ Raja Nagdev, uncle of deceased- Jyoti
2.	PW-2	Vishesh Nagdev, brother of deceased- Jyoti
3.	PW-3	Smt. Maya Devi @ Kanchan Nagdev- mother of deceased- Jyoti
4.	PW-4	Hitesh Nagdev, elder brother of deceased- Jyoti
5.	PW-5	Triveni Shankar Dixit, Astrologer
6.	PW-6	Shankar Nagdev, father of deceased- Jyoti
7.	PW-7	Monika Ashudani, bua of deceased- Jyoti
8.	PW-8	Sanjay Khan, waiter at Varanda Restaurant

B. The Investigating Officers are read as under:

1.	PW-9	Const. Mahesh Chandra Dube
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2.	PW-10	Const. Shri Narayan
3.	PW-11	SI Bholendra Chaturvedi
4.	PW-12	SI Rajesh Kumar Shukla
5.	PW-13	SI Smt. Poonam Awasthi
6.	PW-14	Abhinav Poddar
7.	PW-15	SI Harishankar Mishra
8.	PW-16	SI Jitendra Mohan Singh
9.	PW-18	SI Akhilesh Kumar Gaud
10.	PW-23	SI Shashibhushan Mishra
11.	PW-26	SI Dharm Prakash Shukla
12.	PW-27	SI Gopi Chandra Yadav
13.	PW-29	Const. Kulbhushan Singh
14.	PW-30	Inspector Rajeev Dwivedi
15.	PW-31	Sub Inspector Reena Gautam
16.	PW-32	Const. Karan Kumar Singh
17.	PW-34	Inspector Shiv Kumar Singh Rathaur
18.	PW-35	Const. Om Prakash
19.	PW-36	Head Constable, Brij Kishore Dixit
20.	PW-37	Sub Inspector- Ram Prakash
21.	CW-2	HCP Tejbahadur Singh
22.	CW-3	Inspector Shiv Kumar Singh Rathor

C. The witnesses who gave technical evidence are read as under:

1.	PW-17	Shubham Poddar, owner of Varanda Restaurant
2.	PW-20	Arvind Srivastava (Nodal Officer Tata Teleservice Ltd.)
3.	PW-21	Rajeev Singh Sengar (Nodal Officer Bharti Airtel)

4.	PW-22	Kaushik Ghoshal (Nodal Officer Vodafone)
5.	PW-24	Dr. Praveen Kumar Srivastava, In-charge Forensic Field Unit, Cantt
6.	PW-25	Vinod Kumar (Sr. Forensic Scientist), In-charge Forensic Field Unit, Kanpur Nagar
7.	CW-1	Madhu Balasu (Nodal Officer)

14. PW-1- Rajesh @ Raja Namdev, the real uncle of the deceased stated as under:

"आज दिनांक 19.8.15 को गवाह राजेश @ राजा नागदेव S/O स्व० रामचन्द्र नागदेव, उम्र 47 वर्ष पेशा व्यापार R/O 914/A नेपियर टाउन, जबलपुर ने सशपथ बयान किया कि-

मृतक ज्योति श्याम दसानी मेरी सगी भतीजी थी, उसका घर का नाम पूजा था हमारे सिन्धी समाज में विवाह के बाद लड़की का नाम बदल दिया जाता है इसलिये उसका नाम ज्योति रखा। मैं पियूष श्याम दसानी के अतिरिक्त उनके पिता ओम प्रकाश, माता पूनम, भाई मुकेश व चाचा कमलेश को जानता हूँ जो सभी एक ही घर में रहते हैं।

ज्योति का विवाह कानपुर में 28.11.12 को पियूष श्याम दसानी के साथ हिन्दू रीति रिवाज से हुआ था। ज्योति की मृत्यु की सूचना 27/28 की रात तीन सवा तीन बजे मिली। मृत्यु की सूचना मिलने से पूर्व रात सवा दो बजे मेरे बड़े भतीजे विशेष ने मोबाइल पर फोन कर बताया कि मेरे पापा शंकर नागदेव का फोन आया है और उन्हें कानपुर से यह खबर लगी है कि पूजा @ ज्योति तथा पियूष का अपहरण हो गया है। यह खबर उन्हें चुन्नी लाल द्वारा मिली थी। इस खबर के बाद मैं व मेरा भतीजा विशेष नागदेव के साथ बड़े भाई शंकर नागदेव के पास पहुँचे। वहाँ पहुँचे तो मेरे भाई व भाभी कंचन नागदेव बरामदे में बैठे थे। उन लोगों ने वहीं बात बताई कि चुन्नी लाल का फोन आया है कि ऐसा ऐसा हुआ है। मेरे कहने पर मेरे भाई ने चुन्नीलाल को जो उनके समधी है। को फोन लगाया। फोन चुन्नीलाल ने उठाया और फोन पर एक बात और बताया कि पियूष की हत्या हो गई है तथा पूजा @ ज्योति सीरियस है तथा I.C.U में भर्ती है। हम लोग हतप्रभ हुये, कुछ समय में नहीं आया तो मैंने पुनः चुन्नीलाल को फोन मिलाया। फोन ओमप्रकाश ने उठाया। इस बार उन्होंने बताया कि ज्योति की हत्या हो गई है और पियूष सीरियस है। उन्होंने बताया कि हमारे ऊपर कहर टूट पड़ा है। आप लोग जल्दी निकलिये। हम लोग तुरन्त

कानपुर के लिये निकल पड़े। मैं मेरा बड़ा भाई शंकर नागदेव, भाभी कंचन जबलपुर से निकले तथा भाभी का बड़ा भाई नारायण पंगनानी सतना से हम लोग के साथ हो लिया। हम लोग कानपुर स्टेशन आकर श्री ओम प्रकाश के घर पांडु नगर पहुँचे। वहाँ पर लड़की की शव यात्रा की पूरी तैयारी करके रखी गई थी। हम लोगों के पहुँचने पर शव उठाने की बात पूछी हमने उसका विरोध किया कि मुझे लड़की का शकल देखना है। मेरे कड़े विरोध के बाद उन्होंने लड़की का चेहरा दिखाया। फिर शव यात्रा मेरी अनुमति से प्रारम्भ हो गई। अन्तिम संस्कार के पश्चात हम तीनों ओम प्रकाश के पास गये और कहा कि पियूष से मिलवाइये। उन्होंने बताया कि पियूष अभी सो रहा है। हमारे बार-बार कहने पर वह मर्हें पियूष के कमरे में ले गये जहाँ वह अपनी माँ से बात कर रहा था। हम लोगों ने पियूष से पूछा तो उसने बताया कि हम दोनों Long drive पर जा रहे थे तीन-चार मोटर साइकल पर सात-आठ लोग आये तथा मेरे को गाली देते हुये कोई नुकीली चीज मेरे हाथ में मारकर मुझे उतार दिया तथा गाड़ी के साथ ज्योति को लेकर फरार हो गये मैंने चोट दिखाने को कहा तो कोई चोट नहीं दिखी। मैंने दूसरा प्रश्न पियूष से किया कि तुमने पुलिस को फोन क्यों नहीं किया। जिसका उसने कोई उत्तर नहीं दिया। जब मैंने तीसरा प्रश्न किया तुम्हारी पत्नी को ले जाया जा रहा था। तो तुमने विरोध क्यों नहीं किया तो वह चुप रहा।

घटना से करीब 15 दिन पूर्व मेरे भाई से मेरी बात चीत हुई थी। जहाँ मेरा भतीजा मौजूद था उन्होंने बताया कि पूजा बहुत कठिनाई में है। भाई साहब ने बताया कि पियूष बहुत बिगड़ैल किस्म का लड़का है तथा पियूष का बगल के रहने वाली गुप्ता की लड़की से Strong affair है उसका लड़की का नाम मनीषा है। पियूष रात को 12-01 बजे चला जाता है और सुबह 4-5 बजे लौटता है। पूजा बहुत परेशानी में है उसका कोई हल निकालना है। फिर हम लोगों ने तय कि रक्षा बन्धन का त्योहार आने वाला है उस पर पूजा को बुलाकर बातचीत करके व जरूरत पड़ी तो कानपुर जाकर उनके माता पिता से बात करके हल निकालना है। फिर हमने पूजा पर निगरानी मतलब फोन पर बातचीत, करने लगे। फिर हमें सूचना मिली कि स्थिति और बिगड़ गई है।

घटना के तीन चार दिन पूर्व मेरी पत्नी से पूजा से फोन पर बात हो रही थी तथा मैंने वहीं फोन लेकर पूजा से बातचीत की तो उसने बताया कि स्थिति बिगड़ गई है। आज पियूष के फोन पर मनीषा का फोन आया था तो मैंने उसे उठा लिया तो मनीषा पियूष समझकर यह कह रही थी कि जल्दी काम कराओ। मनीषा ने बोला था लड़के वाले आने वाले हैं मेरा रिस्ता कही तय हो रहा है।

पूजा @ ज्योति मुझे भइया कहती थी यद्यपि मैं सगा चाचा हूँ। फोन पर बात से हम लोगों को यह स्पष्ट हो गया कि पियूष ने मनीषा के कारण साजिश रचकर पूजा @ ज्योति की हत्या करवा दी।"

15. In cross-examination, this witness stated that the statement was recorded by the police on two occasions, firstly on 28.7.2014 and then on 8.8.2014. In cross-examination, this witness stated as under:

"जब घटना के करीब 15 दिन पहले शंकर नागदेव ने मुझसे बुलाकर पियूष व पूजा के सम्बन्धों में बताया तो अचम्भा हुआ, मैंने कल्पना भी नहीं की थी। दरोगा जी ने जब मेरा पहला बयान लिया था कि घटना से करीब 15 दिन पूर्व मेरे भाई से मेरी बातचीत हुई जहाँ मेरा भतीजा मौजूद था। उन्होंने बताया कि पूजा बहुत कठिनाई में है। भाई साहब ने बताया कि पियूष बहुत बिगड़ैल किस्म का लड़का है तथा पियूष के बगल में रहने वाली गुटका व्यवसाई की लड़की से *Strong affair* है उसका लड़की का नाम मनीषा है। पियूष रात को 12 बजे चला जाता है और सुबह 4-5 बजे लौटता है। पूजा बहुत परेशानी मेरे उसका कोई हल निकालता है। फिर हम लोगों ने तय किया कि रक्षा बन्धन का त्योहार आने वाला है उस पर पूजा को बुलाकर व जरूरत पड़ी तो बातचीत कर व उनके माता पिता से हल निकालना है। फिर हम लोगों ने पूजा पर निगरानी मतलब बातचीत करने लगे। यह बातें मैंने दरोगा जी बताई थी यदि नहीं लिखी तो उसकी वजह नहीं बता सकता क्योंकि मैंने विवेचक की शिकायत की थी। कि मनीषा को पुलिस *Support* कर रही थी। दिनांक 8.8.14 को मेरा बयान लिखा गया था बयान लिख पढ़कर सुनाया नहीं गया। यदि 28.7.14 व 8.8.14 के बयानों में कही भी मनीषा का नाम न आया हो तो कारण नहीं बता सकता यद्यपि मैंने मनीषा का नाम बताया था।

दिनांक 28.7.14 के बयान में कि फिर हमने पूजा पर निगरानी मतलब फोन पर बातचीत करने लगे। फिर हमें सूचना मिली कि स्थिति और बिगड़ गई है। जो भी दरोगा जी को बताया यदि न लिखी हो तो मैं वजह नहीं बता सकता। मैंने 28.7.14 के बयान में दरोगा जी को यह बात कि घटना के 3-4 दिन पूर्व मेरी पत्नी से पूजा से फोन पर बातचीत हो रही थी तभी मैंने वहीं फोन लेकर पूजा से बातचीत की तो उसने बताया कि स्थिति बिगड़ गी है। आज पियूष के फोन पर मनीषा की फोन आया तो मैंने उसे उठा लिया तो मनीषा पियूष समझकर यह कह रही थी कि जल्दी काम कराओ मनीषा ने बोला था कि लड़के वाले आने वाले हैं। मेरा रिश्ता कही तय हो रहा है। दरोगा जी को बताया था यदि नहीं लिखा तो मैं उसकी वजह नहीं बता सकता। 8.8.14 के बयान में कि पियूष के फोन पर मनीषा का फोन आया था तो मैंने उसे उठा लिया तो मनीषा पियूष समझकर यह कह रही थी कि जल्दी काम कराओ मनीषा ने बोला था लड़के वाले आने वाले हैं। मेरा रिश्ता कही तय हो रहा है। यह बात दरोगा जी की बताई थी या नहीं मुझे ध्यान नहीं है। दिनांक 8.8.14 को बयान में यह बात होगी कि पियूष सुबह 4-5 बजे लौटता है। यह बात दरोगा जी को बताई थी यदि नहीं लिखी तो वजह नहीं बता सकता। मैंने दिनांक 08.8.14 को यह बात कि हम लोग पूजा पर निगरानी मतलब फोन पर बातचीत करने लगे बताई थी यदि नहीं लिखी तो वजह नहीं बता सकता। "

16. This witness further stated that his family has every reason to believe that Piyush Shyamdasani got the murder of Pooja @ Jyoti, however, if his statement is not recorded by the police, he cannot give any explanation.

17. PW-2- Vishesh Nagdev, brother of deceased Jyoti, has also deposed on the same line as PW-1. This witness stated that on the date of incident, Jyoti made a phone call regarding the family problem and he (PW-2) told her that after 12-15 days, on the occasion of Raksha Bandhan, the victim will come to Jabalpur and they will sort out the problem. This witness deposed on the same line as the deposition made by PW-1 regarding the strained relationship between A-1 and the victim. This witness when confronted with statement under Section 161 of Cr.P.C., he stated that he has told about the affair of A-1 with A-2 to the I.O., if the same is not recorded, he cannot give any other reason.

18. PW-3- Smt. Maya Devi @ Kanchan Nagdev, mother of the deceased also deposed on the same line. The operative part of her statement read as under:

" घटना के 15 दिन पूर्व ज्योति ने टेलीफोन कर बताया कि पानी सर के ऊपर आ गया है, बर्दाश्त नहीं हो रहा है, अब मैं सब खुल कर आपको बताऊंगी। फिर उसने बताया कि यह जो मोबाइल पर होने वाली बातें होती हैं वह बाजू में रहने वाली गुटखे वाले की बेटी मनीषा से उसके affair है, पियूष उसी से बातें करता रहता है। उसके पीछे वह पागल हो चुका है। रात को गायब रहता है। मुझे बात-बात पर चिल्लाता है और डांटता है। मैंने फोन पर ज्योति से कहा कि सभी बातें अपने सास, ससुर जेठ व बड़ी सास को बताओ। बेटी ने कहा कि मैं सब को बता चुकी हूँ, सब को यह बात मालूम है। मेरी बेटी ने यह भी बताया कि सास ससुर आदि कहते हैं कि आज कल के जमाने में बच्चे यही करते हैं, इसको issue मत बनाओ, बात को हल्के में लेकर छोड़ दो। मेरी बातों पर किसी ने ध्यान नहीं दिया।

मैंने इस समस्या के समाधान की कोशिश की थी, मैंने अपनी बेटी की सास को फोन किया था जो उस समय कलकत्ता में थी। मैंने बेटी की सास को बताया कि वह (पियूष) मनीषा के पीछे पागल हो चुका है, आप अपने बेटे को समझाओ, मैंने यह भी कहा कि मेरी बेटी से दूरियां बढ़ती जा रही हैं, वह खुश नहीं है। उन्होंने कोई सन्तोष जनक जबाब नहीं दिया और कह कि जाने के बाद देख लेंगे। फिर मैंने बेटी को बड़ी

सास को फोन किया व उनको भी बताया कि पियूष का बाजू वाली लड़की मनीषा से सम्बन्ध है जो बढ़ गये हैं, आप अपने बेटे को समझाओ। उन्होंने भी यह कह कर कि समझायेंगे और फोन रख दिया।

दिनांक 27 घटना वाले दिन शाम को ज्योति से टेलीफोन पर बात हुई थी उसने बताया कि पियूष मनीषा के पीछे हद से ज्यादा पागल हो गया है कुछ भी कर सकता है। मैंने उसे धैर्य बंधाया। मैंने कहा धीरज रखो तुम रक्षाबन्धन पर आने वाली हो आम्ने सामने बात होगी, समाधान निकालेंगे। यह फोन land line वाले फोन पर आया था। ज्योति घबराई हुई थी, मैंने पूछा घबराई हुई क्यों हो तो उसने बताया कि मैंने एक दो दिन पहले पियूष का फोन उठा लिया जिस पर मनीषा का फोना आया था , मनीषा कह रही थी कि जल्दी से ज्योति का काम खतम करा दो मुझे देखने वाले आने वाले हैं मेरी शादी कहीं और न करा दे। इससे मैं डर गई। मैंने उसे ढाँढस बंधाया कि तुम आने वाली हो हम लोग समझा लेंगे , ये नाजुक रिश्ते हैं। जल्दी तोड़े नहीं जाते। उस दिन दो तीन बार फोन आया था। आखिरी फोन मेरे बड़े बेटे विशेष नागपाल ने उठाया था। "

19. This witness also proved the ornaments of the victim i.e. yellow metal ring, Ex.1, white metal ring, Ex.2, white metal pearl ring, Ex.3 and yellow metal earrings, Ex.4, which were recovered by the police vide Ex.Ka.2 along with letter, Ex.Ka.3. This witness also proved the two diaries of the victim, by stating that the same are in handwriting of her daughter vide Ex.5 and Ex.6. She also proved that the physical project report of B.Ed., recovered from the almirah of her daughter vide Ex.7 and Ex.8.

20. In cross-examination, this witness stated that after the cremation, he went to the house of one Balram, who is a brother of her extended family. His house is situated just after one or two house of Piyush.

21. This witness stated that after the marriage, her daughter came to her parental home on three occasions, when confronted with her statement under Section 161 of Cr.P.C. She stated as under:

"पियूष का हमारे बेटों से कोई खास दोस्ताना नहीं था थोड़ा बहुत घूम फिर लेते थे। मेरी बेटी तीन बार मेरे घर आई तब कोई बात नहीं बताया। घटना के 15 दिन पूर्व विवाद वाली बातें बताई। मैंने 15- 20 दिन पहले बेटी द्वारा टेलीफोन पर बताई गई बात दरोगा जी को बताया था। यदि दरोगा जी ने मेरे बयान में नहीं लिखा हो मैं वजह

नहीं बता सकती, स्वयम् कहा पुलिस मनीषा को बचाना चाहती थी। मैंने पुलिस को यह बात भी पुलिस को बताई थी, पानी सर के ऊपर आ चुका है, बर्दाश्त नहीं हो रहा है अब मैं सब खुल कर आपको बताऊंगी। यदि पुलिस ने मेरे बयान में नहीं लिखा तो मैं इसकी वजह नहीं बता सकती। मैंने दरोगा जी को बताया था कि पियूष बाथरूम में भी जाता है तो मोबाइल लिये रहता है, मेरे से कोई रुचि नहीं लेता है। यदि पुलिस ने मेरे बयान में नहीं लिखा तो मैं वजह नहीं बता सकती। मैंने घटना के 15 दिन पूर्व ज्योति ने मुझे टेलीफोन पर यह भी बताया था कि यह जो मोबाइल पर होने वाली बातें होती हैं वो बाजू में रहने वाली गुटखे वाली की बेटी मनीषा से उसके affair है, पियूष उसी से बातें करता रहता है, उसके पीछे वह पागल हो चुका है, रात को गायब रहता है। यह बयान मैंने दरोगा जी को बताया था यदि दरोगा जी ने नहीं लिखा तो मैं वजह नहीं बता सकती। खुद कहा क्यों कि पुलिस मनीषा को बचा रही थी। मैंने हलफनामे पर किसी अधिकारी को इस बारे में बयान नहीं दिया फिर कहा याद नहीं है। यह कहना गलत है कि मैं इस बात को जान बूझ कर छिपा रही हूँ कि मैंने हलफनामा दिया ही नहीं है। बल्कि मुझे याद ही नहीं है। मेरे पति ने मजिस्ट्रेट के सामने हलफ पर बयान दिया है, औरों के बारे में नहीं मालुम, मैंने मजिस्ट्रेट के सामने बयान नहीं दिया। मैंने पुलिस को यह भी बताया था कि जब ज्योति का टेलीफोन आया था तो मैंने उससे कहा कि अपने सास ससुर, जेठ व बड़ी सास को बताओ। यह बातें बातें पुलिस को बताई थी। यदि पुलिस ने नहीं लिखा तो मैं वजह नहीं बता सकती। मेरी बेटी ने यह बताया कि यह बात मैं सब को बता चुकी हूँ सब को मालुम है। यह बात मैंने पुलिस को बताई थी यदि नहीं लिखा तो मैं वजह नहीं बता सकती। मेरी बेटी ने मुझको टेलीफोन पर बताया था कि सास ससुर आदि कहते हैं कि आज कल के जमाने में बच्चे यही करते हैं,। इसका issue मत बनाओ, बात को हलके में लेकर छोड़ दो। पुलिस को बताया था यदि नहीं लिखा तो वजह नहीं बता सकती। पुलिस को यह बात भी बताई थी कि मेरी बातों में किसी ने ध्यान नहीं दिया। यदि नहीं लिखा तो मैं वजह नहीं बता सकती।”

22. In further cross-examination by A-2, this witness stated that she has informed to the Investigating Officer about name of A-2 and if it is not mentioned, she cannot tell the reason. She denied a suggestion that she has given the name of A-2 for the first time in court.

23. PW-4- Hitesh Nagdev, younger brother of deceased- Jyoti also deposed on the same line and gave description of the mobile phone used by his family member. The operative part of statement read as under:

"ज्योति मेरी सगी बड़ी बहन थी। उसकी शादी 28-11-12 को हाजिर अदालत पियूष श्याम दसानी के साथ हुई थी। शादी के बाद वह बिदा होकर कानपुर अपनी ससुराल

गई। ससुराल में जाने के बाद फोन द्वारा ज्योति से सम्पर्क होता रहता था। मेरे परिवार में और लोगों के पास फोन है। घर पर Land Line व Mobile दोनों है। L/L का नम्बर कोड नं० 0761 एवम् फोन नम्बर 2610340 है। दूसरा L / L का नम्बर 4042572 है। मेरे अपने मोबाइल का नम्बर 9926350009 तथा दूसरे मोबाइल का नम्बर 7415179254 है। मेरे अलावा मेरे परिवार में ज्योति से मेरे पिता शंकर नागदेव , मेरा मां कंचन मायादेवी नागदेव, बड़े भाई विशेष नागदेव और मेरे चाचा राज @ राजेश नागदेव व चाची श्रीमती सोनल नागदेव तथा बुवा मोनिका आशुदानी से भी बात होती रहती थी। मेरे भाई विशेष नागदेव का नं० 9425969999, चाचा राजा का नम्बर 9425154512, चाची सोनल का मोबा० नं० 9329845995 है। ज्योति के बारे में हुई घटना के बारे में मुझे 27/28 की रात 2 - 2 1/2 बजे सूचना मिली थी कि कानपुर से ज्योति के साथ घटना हो गई है। तब पिता ने बताया कि हम लोग कानपुर के लिये रवाना हो रहे हैं और कहा कि तुम अपने भाई के साथ यहीं रुको। दो घन्टे बाद मैं भी कानपुर के लिये रवाना हो गया क्योंकि ज्योति मेरी बड़ी बहन थी, मेरा लगाब था व बेचैनी हो रही थी मैं अगले दिन 28 तारीख को कानपुर पहुंचा। मैं कानपुर पियूष के घर पहुंचा। ये लोगों मेरे माता, पिता व चाचा दाह संस्कार के बाद कानपुर में मेरे चाचा बलराम के घर के लिये निकल रहे थे। मैं भी उन लोगों के साथ बलराम Uncle के घर गया जिनका घर पियूष के घर से एक दो घर छोड़कर है।

घटना के बारे में दरोगा जी ने बलराम Uncle के घर पूछताछ की थी। दिनांक 23-7-14 को मेरी आखिरी बात मेरी मोबाइल पर लगभग 11 बजे रात ज्योति से हुई थी। पहले तो बड़ी बहन के नाते सामान्य बात हुई थी फिर वह बहुत घबराई हुई थी तब मैंने पूछा क्या हुआ। तब उसने कहा आज सच्चाई सामने आ गई है। उसने बताया कि पियूष का फोन बज रहा था मैंने उठा लिया , वह फोन मनीषा का था। मनीषा ने जल्दी जल्दी पियूष समझ कर यह बोला कि ज्योति को जल्दी निपटाओ , मेरे देखने वाले आ रहे हैं मेरी शादी कही और हो जायेगी। मैंने कहा कि घबराओ नहीं रक्षा बन्धन पर घर आ ही रही हो, सब ठीक हो जायेगा। घटना होने के बाद मैंने महसूस किया व मुझे लगा कि पियूष ने मनीषा के साथ षड्यन्त्र कर ज्योति की हत्या कराई।

मेरे बयान में दरोगा जी ने यह बात कि " दिनांक 23-7-14 को आखिरी बार मेरे मोबाइल पर रात लगभग 11 बजे ज्योति से हुई थी। पहले तो बड़ी बहन के नाते सामान्य बात हुई थी फिर वह घबराई हुई थी तब मैंने पूछा क्या हुआ तब उसने कहा आज सच्चाई सामने आ गई है। उसने बताया कि पियूष का फोन बज रहा था मैंने उठा लिया। वह फोन मनीषा का था। मनीषा ने जल्दी जल्दी पियूष समझ कर यह बोला कि ज्योति को जल्दी निपटाओ , मेरी शादी कही और हो जायेगी। मैंने कहा घबराओ नहीं, रक्षा बन्धन पर घर आ ही रही हो, सब ठीक हो जायेगा। घटना होने पर मुझे महसूस हुआ कि पियूष ने मनीषा के साथ षड्यन्त्र कर ज्योति की हत्या कराई नहीं लिखी हो तो मैं वजह नहीं बता सकता।"

24. In cross-examination, this witness also stated that he cannot tell if the Investigating Officer has not recorded this fact in statement under Section 161 of Cr.P.C., about the conspiracy between the A-1 and A-2.

25. PW-5- Triveni Shankar Dixit, an Astrologer of Kanpur, this witness has stated as under:

" मैंने ज्योति और उसके पति का जन्मपत्री देखकर बताया था कि इनका दाम्पत्य जीवन ठीक नहीं है। दाम्पत्य जीवन ठीक रखने के लिए उपाय बताया था कि सात मंगलवार गाय को गुड़ खिलाएं। आठवां मंगल छोड़कर फिर सात मंगलवार गुड़ खिलाएं और इसी क्रम में सात महीना गुड़ खिलाते रहे और मंगल देव की प्रार्थना करते रहे कि हमारा परिवारिक जीवन सुखमय हो। यह सुझाव मैंने ज्योति को दिया था। ज्योति को यह भी सुझाव दिया था कि पीयूष की बुद्धि ठीक करने के लिए सुबह बुधवार को बुद्ध देव से प्रार्थना करे और गाय को हरी चीजे खिलाएं। उस समय यानी सुझाव देते समय परिवार का कोई सदस्य नहीं था। पूनम ज्योति की सास ने पीयूष और ज्योति के सम्बन्ध में चर्चा की थी कि दोनों सम्बन्ध अच्छे नहीं हैं कैसे ठीक होंगे। उनको भी यही उपाय बताया था। मैं उनके परिवार में 5-6 बार गया हूं। मुझे परिवार से बाहर छोड़ने ज्योति आती थी। ज्योति ने मुझसे (sic) यह बात की कि मेरे पति से सम्बन्ध कैसे ठीक होंगे। उसने मुझे यह भी बताया कि मुझे अपने पति से खतरा है। मैंने उसके मन की शान्ती के लिए मोती की अंगूठी पहिनने को कहा। इसके अलावा ज्योति ने और कोई बात नहीं की। मैंने जो अंगूठी अभिमंत्रित करते ज्योति को दिया था उसकी शिनाख्त स्वरूप नगर थाने में मजिस्ट्रेट के समक्ष मुझसे करायी गयी थी। वह उक्त अंगूठी वस्तु प्रदर्श - 3 आज मेरे सामने न्यायालय में है गवाह ने अंगूठी का शिनाख्त की यह अंगूठी सफेद धातु की है जिसमें मोती लगा है। "

26. This witness proved the statement recorded before the Magistrate under Section 164 of Cr.P.C. as Ex.Ka.4. In cross-examination, he gave vague replies to the question of various persons visiting his office by saying the he did not remember their names. In cross-examination by A-2, this witness stated that his statement for the first time was recorded on 19.8.2014, the operative part of the statement read as under:

" जब मैं मजिस्ट्रेट साहब को बयान देने आ रहा था उसके एक दिन पहले दिनांक 03-5-14 को मैं शंकर नागदेव व उनकी पत्नी से नहीं मिला था न उनके साथ रहा। मैं मजिस्ट्रेट साहब के सामने बयान देने अकेला आया था साथ में कौन आता है या नहीं आता है मुझे नहीं मालूम। मैंने यह बात पुलिस को नहीं बतायी थी। कि " उसका किसी लड़की से सम्बन्ध है लड़की का नाम मनीषा ... बताया जो उसके घर के सामने

रहती है। मनीषा के कहने से उसका पति पीयूष कुछ भी कर सकता है। यह बात इसलिए नहीं बतायी थी कि अब तक यह बात मेरे संज्ञान में नहीं थी, बाद में मालूम हुई। ज्योति ने बताया था। मैं अखबार पढ़ता हूँ। जिस दिन से घटना हुई अखबारों में अक्सर मनीषा का नाम आता था। ज्योति से आखिरी बार मेरी मुलाकात घटना के 4-5 दिन पूर्व हुई थी।”

27. In cross-examination, this witness stated that he has given the statement to the I.O. that he has no knowledge about the relationship of A-1 and A-2 but later on he came to know about it. In further cross-examination by A-1, he has stated that he has made statement to the I.O. about his ignorance of relationship between A-1 and A-2 and that he made a call to the victim 4-5 days prior to the incident but the same was not recorded by the I.O. and he cannot tell the reason.

28. Shankar Nagdev (PW-6), father of witness stated that his statement was recorded before the Magistrate under Section 164 Cr.P.C.. It is further stated that he has gone to identify the jewellery and out of some rings kept on the table, he identified three rings with the help of his wife. He stated that he is the owner of a factory in Jabalpur. Regarding matrimonial alliance between accused A1 and A2, this witness stated as under :

“करीब एक-डेढ़ माह वार्ता चलने के बाद विवाह तय हुआ था तथा उसके चार -पांच माह बाद विवाह हुआ था। विवाह की बातचीत से तय होने तक पीयूष के परिवार वाले केवल एकवार आये थे। शादी तय होने के बाद व विवाह के पूर्व पीयूष मेरे घर जबलपुर अकेले आया था और एकदिन रहा था। शादी की जब बातचीत शुरू हुई तब मैं कानपुर एक बार आया और उसके बाद पीयूष का परिवार एक बार जबलपुर आया और शादी तय हो गई। जबलपुर की महिला मीना आहूजा मध्यस्थ थी जो Marriage Bureau चलाती हैं। मैंने कानपुर के अपने जानने वाले रिश्तेदारों से लड़के के परिवार वालों के बारे में जानकारी की थी व बलराम व चन्द्रा से भी उनके बारे में पूछा था। मैंने लड़के वालों के हैसियत के बारे में जानकारी की थी तो लोगो ने बताया था कि ठीक ठाक है। एक जानकारी और मिली थी कि लड़के का एक रिश्ता पहले तय होकर टूट चुका है। मुझे जानकारी हुई थी कि लड़की वालों ने रिश्ता तोड़ा था। दोनों पक्ष एक दूसरे पर आरोप-प्रत्यारोप लगा रहे थे। मैंने पीयूष से भी रिश्ता टूटने के बारे में पूछा था कि आपका किसी अन्य लड़की से सम्बन्ध है, यह आरोप लड़की लगा रही है। तब पीयूष ने बताया कि उसने उसका फोन नहीं उठाया था क्योंकि मैं फैक्ट्री व्यस्त

था इसलिये शक कर लिया। मैंने गहराई से पता लगाया तो मुझे उस समय ऐसा कोई साक्ष्य नहीं मिला कि उसका किसी लड़की से सम्बन्ध है।"

29. This witness further stated that after he received the information of the incident, for the first time, he met the police in the house of Balram where he stayed for two days. With regard to his confrontation with the statement under Sections 161 and 164 Cr.P.C., this witness stated as under:

"मैंने पुलिस को 28.07.14 को यह वयान नहीं दिया था कि "पुनः दूसरी बार रक्षा बन्धन अगस्त 2013 में मेरे घर जवलपुर आई। मेरी पत्नी ने उससे पुनः काफी पूछने की कोशिश की क्योंकि वह इस बार पहले से ज्यादा घबराई हुई थी। मेरी पत्नी ने काफी कोशिश करने पर उससे पूछा तो उसने बताया कि मेरी Problem मैं खुद Solve कर लूंगी, आप लोग बार-बार मत पूँछिये, पापा की तबियत खराब रहती है, आप लोग tention मत लीजिये। इस बार भी वह बाकी बातें टाल गई।" मैंने अपने प्रथम बयान dt 28.7.14 में यह बात कि पहली बार मेरी विटिया जवलपुर आई, स्वास्थ्य गिर गया था मैंने व मेरी पत्नी ने पूछा तो टाल गई यह वयान नहीं दिया था। लेकिन दरोगा जी को प्रथम बयान में बताया था कि "यह इसलिये टाल गई थी कि उसका वैवाहिक जीवन सुखमय नहीं था।" यदि दरोगा जी ने न लिखा हो तो मैं वजह नहीं बता सकती। यह बात मैंने दरोगा जी को 11.8.14 के वयान में यह बात बताई थी कि "जब मैंने पूजा से पूँछा कि तुम दुबली क्यों हो, जो पियूष की मौजूदगी में पूँछा, तो पियूष ने कहा कि नहीं पापा पूजा ने जिम join किया है और आजकल तो slim body का फैशन हैं और विटिया ने पियूष की बात का समर्थन किया और कहा कि जिम join कर लिया है।" मेरी विटिया ने मुझे बताया था कि उससे अपने ससुर भी तबियत के बारे में जब बात होती थी तो वह बताती थी और Normal बातचीत करती थी। जैसे अक्सर मुझसे कहती थी कि पापा जी (ससुर जी) तबियत खराब है आज जान लीजियेगा इत्यादि इत्यादि। मैंने मजिस्ट्रेट साहब u/s 164 crpc के बयान में यह बताया था कि "इस बार जब वह अन्तिम बार जवलपुर आई तब वह पिछली दो बार से ज्यादा परेशान व घबराई हुई थी।" यदि मजिस्ट्रेट ने नहीं लिखा तो वजह नहीं बता सकता। यह बात दरोगा जी को बताई थी या नहीं याद नहीं है। यदि नहीं लिखे तो मुझे याद ही नहीं है क्या कारण बताऊँ। मैंने पहले वयान में दरोगा जी को पियूष द्वारा घन्टो मिली से छुप-छुप कर बात करने वाली बात बताई थी। यदि नहीं लिखा तो मैं वजह नहीं बता सकता। मैंने अपने पहले दोनो u/s 161 crpc के वयानों में यह बात बताई थी कि "आखिरी बार मायके से जाने के बाद वह मेरी पत्नी, पुत्रों व परिवार के अन्य सदस्यों से मोबाइल पर पहले से अधिक बातें करने लगी थी।" यदि मेरे पहले वयान में नहीं लिखा तो मैं वजह नहीं बता सकता।

मैंने अपने पहले, दूसरे व u/s 164 crpc के वयानो मे यह कहा कि "घटना से 15-20 दिन पहले उसने मेरी पत्नी को बताया कि मैं अब आपको बताती हूँ। मैं अब क्यों परेशान हूँ। मेरी बेटी ने पत्नी से बताया कि वह मोबाइल पर छिप कर व वाथरूम मे व अन्य जगहों मे छिपकर किससे बात करता है। हमारे पड़ोस में रहने वाली गुटखा बनाने वाली की लड़की जिसका नाम मनीषा है उसके साथ उसके (पियूष) के अत्यधिक affair हैं। वह उसके चलते मुझे बहुत ही प्रताड़ित करता है व क्रूर व्यवहार कर रहा है वह उसके प्यार में पागल हो गया है। " यदि ये बातें मेरे तीनों बयान मे नहीं आई तो मैं वजह नहीं बता सकता।

Court obsevation:- Case diary के पर्चा नं0 19 बयान dt. 11.8.14 से वयान मे पृष्ठ-8 में विवेचक द्वारा साक्षी के बयान में 26 जुलाई दिन शनिवार रात को 10 बजे वार्ता के सम्बन्ध में यह बयान आया है कि "हमारे घर की वाजू में गुटखा बनाने वालों की सिन्धी लड़की रहती है जिसका नाम मनीषा है जिससे उसका affair चल रहा है। यह बात धारा 164 के बयान मे भी इसी प्रकार से अंकित है।"

30. In further cross examination, this witness stated that on 26.7.2014 at about 10.00 PM, it was Saturday and he was present in Bhagwan Shanidev Temple when he received a phone call from his daughter, victim-Jyoti alias Pooja. She was perturbed and asked whether he was in temple. When PW-6 stated that he is in the temple because of Shani Amawasya, the victim told him to light a lamp in her name. On further enquiry, the victim told that her husband is having affair with a girl named Manisha who belongs to a family, doing business of making *Gutkha* and is residing in their neighbourhood. She stated that for this reason, her husband i.e. accused A-1 is mentally and physically harassing her.

31. This witness further stated that in his first and second statements recorded under Section 161 and 164 Cr.P.C., he has told that while understanding the difficulties faced by her daughter in matrimonial alliance, he was sure that Om Prakash, his wife-Poonam, brother-Suresh & Kamlesh, Manisha and Piyush, in conspiracy, have committed murder of his daughter, Jyoti alias Pooja and has registered a false F.I.R.

32. When confronted with the statement under Section 164 Cr.P.C. where he has informed the police about the fact that his sister, Monika Ashudani (PW-7) has informed her that victim Pooja made a phone call to her from the restaurant and she was apprehending threat to her life.

However, if it is not so recorded in the statement, he cannot tell about the reason. He denied a suggestion that the story made up regarding relationship of A-1 with A-2 is an after made story.

33. Monika Ashudani (PW-7), the parental aunt (Bua of victim-Jyoti) stated that victim was named Pooja whose name was changed after marriage as Jyoti. She was her real niece and used to call her as Mona Didi. She gave her mobile nos. as 9427418629, 9426040838 and landline Number as 0792685017 and stated that Jyoti used to call on the aforesaid mobile number from her mobile number as 8960868686. She stated that Jyoti was married with accused A-1 on 28.11.2012 and for the first time visited parental home in February. When she used to ask about her matrimonial life, victim would avoid telling anything. This witness further stated as under :

“फिर जब मैं अप्रैल 2014 में पहली बार पूजा की शादी के बाद जबलपुर में मिली तो मौका मिलने पर अकेले में मैंने पूजा से पूछा कि पूजा जब भी मैं तुमसे फोन पर तुम्हारे वैवाहिक जीवन या पियूष के बारे में पूछती हूँ तो तुम हमेशा बात टाल देती हो। आज तू मुझे बता आखिर तुझे क्या *problem* है। मेरा ऐसा पूछते ही वह फूट कर रोने लगी और पूजा कहने लगी मोना दीदी क्या बताऊँ, पियूष का व्यवहार मेरे साथ बहुत ही बुरा है। वह मुझे बात-बात पर चीखता चिल्लाता है। अपने सारे काम मेरे से कराता है और खुद सारा दिन मोबाइल पर किसी लड़की से बात करता रहता है। इस पर मैंने पूछा कि पियूष तुमसे कैसे काम कराता है तो पूजा ने बताया कि सबरे *tooth brush* पर *paste* लगवाने से रात को अपने जूते उतरवाने तक को सारे काम करवाता है। पूजा ने कहा जब मैं पियूष से पूछती हूँ कि आखिर आप मेरे साथ ऐसा व्यवहार क्यों करते हैं तो वह मुझे जवाब देता है कि तुम मेरी पसन्द नहीं हो, मेरे मा-बाप ने मेरी शादी तुमसे जबरदस्ती कारवाई है। मैं जिस लड़की से प्यार करता हूँ उस लड़की से मेरी कुन्डली नहीं मिलने की वजह से लड़की के घर वालों ने उसकी शादी मेरे से नहीं करवाई और यह सब बताते हुये वह रोने लगी। मैंने उसे शान्त्वना देते हुये चुप करवाया। दो-तीन घण्टे बाद मैंने फिर से पूजा से अकेले में बात की। मैंने पूजा से कहा कि पूजा अगर पियूष तेरे साथ ऐसा व्यवहार करता है तो तुम अपने सास ससुर को क्यों नहीं बताती हो। इस घर पूजा बोली मोना दीदी जब मैं अपनी सास को यह बात बताती हूँ तो या तो अनसुना कर देती है या हंस कर चली जाती है जिससे मुझे और दुःख होता है। और जब मैंने अपने ससुर से कही तो उन्होंने कहा कि पियूष का व्यवहार धीरे-धीरे ठीक हो जाएगा। ”

34. This witness further stated that she made victim understand that accused A-1 was having love affair with accused A-2, even before marriage and after some time, he will mend his ways as the victim is an adjustable and good wife and, therefore, she advised her not to feel disturbed. This witness further stated as under :-

“फिर घटना के कुछ दिन पहले पूजा ने मुझे फोन किया और कहने लगी मोना दीदी अब मेरे सब्र का बांध टूट रहा है और पियूष जिस लडकी के चक्कर में आकर मेरे साथ ऐसा व्यवहार करता है अब मुझे पता लग गया है कि पडोस में रहने वाली केसर गुटखा वालों की लडकी मनीषा है। इस पर मैंने कहा तू शादी को बहुत समय दे चुकी है अब तू जबलपुर आकर घरवालों को बता। इस पर वह बोली मोना दीदी मैंने जबलपुर में मम्मी को बता दिया है। मम्मी ने कहा है कि वैवाहिक रिश्ते नाजुक होते हैं, हम तुम्हें रक्षाबन्धन पर बुला रहे हैं और तुमसे बात कर के समस्या का समाधान जरूर निकालेंगे। मैंने कहा कि तू अपने सास ससुर से फिर से बात कर अब तो तुझे पता चल गया है कि वह लडकी कौन है। इस पर पूजा बोली मोना दीदी मेरे सास ससुर पियूष की गतिविधियों से अच्छी तरह परिचित है और मुझे कहते हैं कि वह लडकी हमारे बेटे की पहली पसन्द है तुम्हारी पियूष से अब शादी हो चुकी है तुम adjust करो और घर पर इन बातों को लेकर issue मत बनाओ इस पर पूजा यह भी बोली मोना दीदी मैंने अपने सास ससुर की इतनी सेवा की है किन्तु आज घर में मेरा कोई साथ नहीं दे रहा है।

दिनांक 23 जुलाई, 2014 को रात करीब ग्यारह बजे पूजा ने मुझे फोन लगाया और घबराते हुये कहने लगी मोना दीदी पता है आज दोपहर में पियूष का मोबाइल फोन बज रह था तो मैंने चुपके से उठा लिया तो दूसरी ओर से मनीषा थी और वह एक दम से कहने लगी पियूष ज्योति को जल्दी से निपटाओ नहीं तो मेरे घर वाले मेरी शादी कहीं और करवा देंगे और मुझे लडके वाले देखने भी आने वाले हैं। फिर पूजा बोली मोना दीदी यह सब सुन कर मैं बहुत घबरा गई और मैंने फोन काट दिया उस पर मैंने पूजा से कहा पूजा अब तू यह सब बातें जबलपुर में बताती रहना।

दिनांक 27.7.2014 को रात के लगभग साढ़े दस पौने ग्यारह बजे पूजा से मेरी आखिरी बार बात हुई थी। उस समय मैं अहमदाबाद में थी तथा पूजा कानपुर में एक रेस्टोरेन्ट में थी। घटना वाले दिन इससे पहले पूजा ने मुझे तीन-चार बार फोन किया था लेकिन मैं उसका फोन attend नहीं कर पाई थी। रात को करीब 10-1/2 बजे पूजा से मुझे message किया था कि मोना दीदी क्या कर रही हो। उसका Message पढ़ कर मुझे एकदम से एहसास हुआ कि आज पूरे दिन भर से पूजा मेरे से बात करना चाह रही थी घटना वाले दिन जब

रात के लगभग 10-1/2 पौने ग्यारह बजे जब पूजा से मेरी फोन पर बात हुई तो पूजा ने मुझे बताया कि मोना दीदी आज सबेरे से पियूष का व्यवहार बड़ा अजीब सा है वह मुझे सबेरे कहना लगा कि आज अपन Sunday मनाने रात को चलेंगे और हमारे बीच जो problem चल रही है इसे Solve करेंगे। इस पर मैंने पूजा से पूछा कि पूजा तू अभी है कहां तो इस पर पूजा बोली मोना दीदी मैं पियूष के साथ restaurant आई हुई हूं किन्तु पियूष मुझे restaurant में अकेला बिठाकर खुद मोबाइल फोन पर बात करता हुआ कहीं चला गया है। आज वह बड़ा tention में है और पता है आज वह किसी से फोन पर कह रहा था कि तू चिन्ता क्यों करती है आज काम हो ही जायेगा। पूजा बहुत घबराई हुई थी तो मैंने उससे बोला कि तू इतना क्यों घबरा रही है। तो पूजा बोली मोना दीदी आपने ठीक से सुना नहीं वह किसी लडकी से कह रहा था। मैंने आपसे तीन चार दिन पहले वाली बात भी बताई थी जब मैंने चुपके से मनीषा को फोन उठा लिया था फिर कहा पियूष का फोन उठाया था call मनीषा की थी। यह सब सुनकर मैंने पूजा को डांटा कि पूजा तू आज पियूष के साथ बाहर आई ही क्यों उस पर पूजा बोली जब मुझसे पियूष ने चलने को कहा तो मैंने तो उसे मना कर दिया था किन्तु फिर मेरे सास-ससुर, पियूष व मुकेश भइया की Room बन्द करके कुछ बात हुई और फिर मेरे सास-ससुर मेरे पास आये और बोले आज तू हमारे कहने पर पियूष के साथ रात को जाना लेकिन मोना दीदी मैं यहां आई तो हूं पर मुझे बड़ा अजीब से अहसास हो रहा है। ”

35. This witness stated that after the incident, she received a phone call from the Police officer from Kanpur and told her that since the last call made by victim was on the mobile of PW-7, therefore, the Police officer called her to record her statement. In cross examination, this witness stated that she gave description of above stated his mobile phones and that of the victim to the Investigating Officer but if it is not so recorded, in her statement, she cannot tell the reason.

36. She further stated that as he has told the Investigating Officer that she received a phone call from the Police officer to record her statement and if it is not so recorded, she cannot tell the reason.

37. She further stated that whenever the victim used to tell her about her problems, she never shared the same with her brother, sister and even with her husband because Jyoti has restrained her from doing so. But, later on, victim-Jyoti has told about her problem to her parents. On a question whether she made this statement to the Investigating Officer,

which is not so recorded, this witness stated that she cannot tell the reason.

38. She further stated that she had given statement to the Investigating Officer that the victim informed her that the behaviour of Accused A-1 is becoming worse day by day as he is continuously in touch with the said girl and has also stated that she cannot bear the same any more. It is also stated that the fact that Jyoti informed her about the name of Manisha, accused A-2, and it was informed to the Investigating Officer but if it is not so recorded, she cannot tell the reason.

39. She also stated that she had told the Investigating Officer that on 23.7.2014 she received a phone call from victim Pooja alias Jyoti who was very much disturbed and informed her that Manisha (Accused A-2) told Accused-A-1 that her family member are trying to settle her marriage as a boy is coming to meet her and, therefore, he should take immediate action. This fact was told to the Investigating Officer but if it is not so recorded, she cannot tell the reason.

40. PW-8- Sanjay Khan stated that on 27.7.2014, he was employed as a waiter in Varanda Restaurant. A man and a woman came at table no. 40, later on, he came to know that they are husband and wife. Thereafter, they shifted to table no. 35 where the man has ordered for snacks and hukka. Both were talking to each other and from their talk, the girl appeared to be very calm and she was not talking much. The boy was talking on phone and smoking. Next day, he has seen from the C.C.T.V. cameras and found that boy had gone out and thereafter, he came back after 8-10 minutes. In the meantime, the lady was talking on the phone.

41. PW-9- Mahesh Chandra Dube, Constable, stated that on receiving a complaint from accused-A-1, he registered the FIR No. 151 of 2014, under Sections 323, 147, 392, 364 I.P.C. against 7-8 unknown persons, the chik FIR is Ex.Ka.6.

42. PW-10- Shri Narayan, Constable, stated that vide G.D. No. 6 at 00:30 hours on 28.7.2014, Piyush Shyamdasani, Om Prakash Shyamdasani and Abhinav Poddar came to the police station and submitted a complaint. It was scribed by Abhinav Poddar and signed by Piyush Shyamdasani. He proved the G.D. as Ex.Ka.7. This witness also proved G.D. No. 17 regarding arrival of Shambhu Singh, Home Guard with whom accused- A-1 was sent to the hospital for medical examination and it was reported that Piyush Shyamdasani stated that he will get his medical examination himself, which is Ex.Ka.8. In cross-examination, he stated that he has not seen any visible report on accused-A-1.

43. PW-11-Bholendra Chaturvedi, S.I., stated that on 5.8.2014, he along with team of investigators, headed by Shiv Kumar Singh Rathore, S.H.O., brought accused Renu, Sonu, Ashish, Awadhesh Chaturvedi and Piyush Shyamdasani in PCR to police station and also recovered a motorcycle no. UP78BY4588, used by Ashish. He has given the description of investigation conducted by the S.H.O. and recovery of motorcycle vide Ex.Ka.9 In cross-examination, he has given the description of the investigation and denied a suggestion that the investigation was done while sitting in the police station. In further cross-examination, he stated that the motorcycle was not sealed.

44. PW-12- Rajesh Kumar Shukla, S.I., stated that he has physically inspected and investigated about Honda Accord Car No. UP78BR5009. There was no mark of any scratch or dent on the body. On the rear seat and the place where footrest were kept are blood stained. He proved the photographs as Ex.Ka.10. In cross-examination, he denied a suggestion that photographs have not been taken correctly and stated that he has certificate of transport training centre. He denied a suggestion that he has no knowledge about the vehicles and also denied that in the photographs, Ex.Ka.12 to Ex.Ka.17, dent and scratches are visible.

45. PW-13- Smt. Poonam Awasthi, Inspector, stated that she was a co-investigator and she has gone to Varanda Restaurant and recorded the

statement of Hemant Poddar, who is son of the owner Prabha Poddar. She also recorded the statement of the PW-8- waiter who stated that Piyush Shyamdasani along with his wife used to visit their restaurant and on 27.7.2014, both came to the restaurant at about 10:30 PM and after having dinner, made the payment, Piyush Shyamdasani made a comment in the visitors' book 'Good' and gave his mobile number, the same was sealed along with copy of the bill as Ex.Ka.24. He further stated that he has taken the signature of the owner on the certificate as Ex.Ka.25 and proved the signatures as Ex.Ka.26. He stated that Piyush Shyamdasani has made an entry in the visitors' book by giving his Mobile No. 9956353535 by commenting 'Good' in the visitors' book vide Ex.10 and seal cover of restaurant as Ex.11. This witness further stated regarding the investigation and confession of the accused person as under:

“अभियोजन की प्रार्थना पर न्यायालय सील बण्डल मगाके 276- DOC-14 पुलिस अधीक्षक नगर पूर्वी कानपुर नगर खोला गया गया। विवेचना के मध्य दिनांक 31.7.14 को मुझे सहविवेचक द्वारा CD II किता की गयी थी। जिसमें मुझे सहविवेचक द्वारा मुकदमा उपरोक्त के मुख्य विवेचक थाना प्रभारी स्वरूप नगर श्री शिव कुमार राठौर से थाना स्वरूपनगर जाकर वर्ता की गयी उन्होने जानकारी दी कि दिनांक 30.7.2014 को उन्होने स्वरूप के आधार पर रपट संख्या 52 समय 20.20 बजे मुकदमा उपरोक्त में धारा 120B में पढ़ती, की किये जाने की जानकारी दी तथा बताया कि मुकदमा उपरोक्त में पियूष रहने मनीष के ड्राइवर अवधेश तथा पियूष श्यामदानी के पड़ोस में रहने वाली पियूष की महिला मित्र मनीषा भवुजा अवधेश के पश्चात वह उसके घर के पास रहने वाले रेनू, सोनू, व आशीष की संलिपता पता चली है। उन्होने बताया दिनांक 30.7.14 रपट संख्या 63 समय 21.55 बजे पर उपरोक्त में अवधेश को लाया गया था अवधेश के बयान से उसके द्वारा अपने साथियों रेनू, सोनू, अशीष के सहयोग से पियूष श्यामदानी के कहने पर तथा मनीषा व पियूष द्वारा पैसा देने पर दिनांक 27.7.14 को ज्योति की पियूष की सहमित से उन्होने ने चाकू से हत्या कर दी। थी। विवेचक द्वारा बताया गया कि उक्त में गिरफ्तार व्यक्ति थाना स्वरूप नगर हवालात में मौजूद है जिस पर मुझे विवेचक द्वारा स्वरूप नगर हवालात से निकाल कर अभियुक्त अवधेश चतुर्वेदी अभियुक्त रेनू उर्फ अखिल कनौजिया का विस्ता बयान अंकित किया गया तथा अन्य अभियुक्त गण अशीष व सोनू के बयान लेने पर उन्होने अवधेश व रेनू द्वारा मुझे सहविवेचक को उस दिये गये ब्यानों की तस्दीक किया।

अवधेश ने अपने बयान में बताया कि वह दिनांक 21.7.2014 को -- ने तथा रेनू मोल (रेव मोती विसवाया) के अन्दर गयी तथा को पियूष के दिये पैसे से मैंने व रेनू

ने दो चाकू खरीदे थे। इससे पहले | पियूष के साथ जाकर मैंने व रेनू ने 20 तारीख के पहले भी दो चाकू खरीदे थे --- वही गाड़ी खड़ी कर चालू कर चाबी पार्क में फेंक दी रेनू व सोनू ने मुझे दो कान की छोटी बाली दिया उनके मैंने इण्डिय आयल के सामने बिल? का गठ बना है उसमे डाल दिया है चलकर बरामद करा सकता हूँ। मारने में प्रयुक्त चाकू भी फेंक दिया था।

अवधेश व रेनू व अन्य आरोपीगण के बयानों के मुझे सहविवेचक को ज्ञात हुआ कि घटना वाले दिन आरोपीगण लगातार पियूष के सम्पर्क में थे तथा पियूष उनसे मिलने अपनी पत्नी ज्योति को वराण्डा रेस्टोरेन्ट में डिनर के वक्त अकेला छोड़ कर आरोपी गण से मिलने नीचे उतर कर आया था वह उन्हें खुद से लगभग रात्रि 11.15 बजे तक दिनांक 27.7.14 डिनर समाप्त करने की सूचना दिया था। तथा फिर वापस रेस्टोरेन्ट में वापस चला गया। डिनर करने के बाद पियूष और ज्योति कार से आधमोड़ कम्पनी बाग से रावतपुर रोड़ पर आये जहाँ अन्य मुल्जिम मौजूद थे जिन्हें देखकर पियूष गाड़ी से नीचे उतर गया मुल्जिमों को गाड़ी दे दी अवधेश गाड़ी चलाने गया रेनू व सोनू ने पीछे (काफ्टा) बैठकर उसका मुह पकड़ कर पीछे खींच लिया और (काफ्टा) गोत कर मार दिया फिर यह लोग कल्यानपुर क्रेसिंग से पनकी की तरफ चले गये थे। और गाड़ी खड़ी कर दी थी। जब मुल्जिम को गाड़ी दी थी। तो अशीष रेनू की मोटरसाइकिल लेकर चला गया था।

मुझे यह बता दिया था कि पियूष का अभियुक्त मनीषा के साथ प्रेम प्रसंग था। और उसने मनीषा के पुराने ड्राइवर अवधेश से ज्योति को मारने की बात की थी और अपने मोबाइल नम्बर 9956353535 से तथा 8090766853 अवधेश को दिए पर फोन किया था। तथा एक बीस हजार एक बार दस हजार रूपया भी दिया था।”

46. This witness also stated that she collected the hard disk of C.C.T.V. cameras and proved as Ex.Ka.27, in which accused-A-1 was seen going downstairs at about 10:43 PM and victim Jyoti was found sitting alone in the restaurant. This witness further stated that during the search of the room of Piyush Shyamdasani and Jyoti, she recovered two diaries on which ‘good life’ is written and proved as Ex.Ka.28. She stated that at page no.6, which was written by Jyoti in a pencil, ‘*just after married two good days second day 9am crying at night.*’ A specific question was put to this witness, which is stated as under:

Q. Whether name of any girlfriend is mentioned?

A. In my entire conclusion, the name of the girlfriend of Piyush Shyamdasani is not written.

47. This witness stated that on 31.7.2014, she along with other Investigating Officers went to Rave Moti Mall Big Bazar as Awadhesh etc. has purchased knife on 21.7.2014 and has collected the C.C.T.V. footage and hard disk of the said date in which Awadhesh Chaturvedi and Renu @ Akhilesh Kanauiya were seen in the camera and subsequently, they were selecting knives with the help of a salesman and Awadhesh was seen carrying a knife. Thereafter, they were seen at the billing counter making payment. The C.C.T.V. hard disk was Ex.Ka.29. The sealed packet was opened and she identified her signature on the white cloth in which the C.C.T.V. hard disk was sealed as Ex.12 to Ex.14. A mark of FSL as accused-A-2 was already there, come out of the plastic bags, which is Ex.15. Thereafter, the receipt of purchase of knife was obtained from the Rave Moti Mall, which was certified from the mall owner as Ex.Ka.30. This witness stated that confession on 13.7.2014, two knives were purchased by Awadhesh Chaturvedi from the same mall and the receipts were obtained which is Ex.Ka.32 to Ex.Ka.33 and these were certified by the owner of the mall and this witness has signed as Ex.Ka.34. Further on 9.8.2014, she recovered a black colour Nokia phone no. 8858758057 used by one Kamini and the same was Ex.Ka.36. This witness further stated that C.C.T.V. recording of Varanda Restaurant as Ex.16 to Ex.18, mobile as Ex.19 and box of plastic as Ex.20. She further stated that on 31.7.2014, the hard disk taken from Varanda Restaurant and Rave Moti Mall were seen and a technician Pradeep Verma gave a certificate that the same is not tampered in any manner. This witness has given complete details of the different cameras, showing the movement of Piyush Shyamdasani and Jyoti inside the restaurant in a different cameras. She also stated that she came to know about the involvement of Manisha Makheeja, Awadhesh, Renu, Sonu and Ashish. She also came to know about the blurring of C.C.T.V. footage of Mall where accused Awadhesh and Renu were seen. However, she stated that it is correct that in none of the C.C.T.V. footages, either of the Varanda Restaurant or Rave Moti Mall

Big Bazar, accused- Manisha, Awadhesh, Sonu or Ashish separately or collectively were seen with Piyush Shyamdasani. She denied a suggestion that she has collected the evidence to falsely implicate Piyush Shyamdasani. She also denied that Ex.Ka.29 was prepared while sitting in the police station. She further stated that while recording the statement of Awadhesh, she was not stated that Manisha has given any money for committing the murder of Jyoti and denied a suggestion that Manisha has been falsely implicated.

48. PW-14- Abhinav Poddar stated that he has scribed the complaint on the asking of Piyush Shyamdasani as Piyush stated that he is nervous and cannot write. He stated that he was known to Piyush as he was providing raw material in the factory of Piyush.

49. PW-15- Harishankar Mishra, S.I. stated that he was also a co-investigator and was part of a joint team. On the disclosure of the accused, he has identified the place where they left the car after the incident and had thrown the key in bushes which was recovered. He also stated that accused stated that after committing murder of Jyoti, they have taken her jewellery and put it in a white handkerchief. The recovery was effected in pursuance to the confessional statement. Thereafter, he recovered a project file, one in Hindi and one in English, which was given by Maya Devi, mother of Jyoti by stating that these are in the handwriting of Jyoti after seeking signatures of Maya Devi, the said file were recovered vide recovery memo as Ex.2. Thereafter, from the St. Poles College, Dhawalpur in M.P., file of deceased Jyoti regarding her handwriting, was obtained the signature of the Principal of school, which is Ex.Ka.39. He also recorded the statement of the prosecution witnesses which are Ex.Ka.38, recovery memo of articles as Ex.21 and the polythene bag containing articles as Ex.22 to Ex.25. In cross-examination, this witness stated that he has not recorded in the statement of Vishesh Nagadev that Jyoti was perturbed when she made a phone call in a specific question whether PW-3- Maya Devi told him that 15 days prior to the incident,

victim- Jyoti told her on telephone that Piyush Shyamdasani had an affair with Manisha Makheeja, who is from the family of one Gutka manufacturer and talks to her. This witness answered that I was told that Piyush has an affair with a girl residing in his neighbourhood but her name was not disclosed by Maya Devi. In further lengthy cross-examination, this witness gives the complete details about the manner in which the investigation was conducted, recoveries were effected, the confessional statements of the accused persons were recorded and the statement of the prosecution witnesses were recorded. He denied a suggestion that nothing was recovered at the instance of the accused persons.

50. PW-16- Jitendra Mohan Singh, S.I. stated that he was also a co-investigator and on receiving the information of death of Jyoti, he reached mortuary and prepared the Panchayatnama in which accused Piyush Shyamdasani was also there. The Panchayatnama is Ex.Ka.41, letter written to C.M.O., the photographs of the dead body and the challans were Ex.Ka.42 to Ex.Ka.45. In cross-examination, he stated that no videography of the Panchayatnama was conducted.

51. PW-17- Shubham Poddar stated that he is son of late Prabha Poddar, who is owner of Varanda Restaurant. This witness has stated that on the asking of the I.O. he had provided the hard disk of 16 cameras, installed in the restaurant which were proved as Ex.Ka.46. He also stated that he has signed on the recovery memo.

52. In cross-examination, this witness stated that he cannot give the details of the persons who had dinner on that day.

53. PW-18- Akhilesh Kumar Gaur, S.I., another co-investigator, stated about the investigation conducted by him regarding call details, the call location of various mobile numbers, the operative part of the statement giving call details of each and every number allegedly used by accused reproduced as under:

“साक्षी— उप निरीक्षक अखिलेश कुमार गोड़ वर्तमान तैनाती प्रभारी जन सूचना सेल मुजफ्फर नगर ने सशपथ ब्यान किया कि— वर्ष 2014 के माह जुलाई में काइम ब्रांच कानपुर नगर में उप निरीक्षक के पद पर नियुक्त था। नियुक्ति के दौरान श्रीमान वरिष्ठ पुलिस अधीक्षक कानपुर नगर के आदेश **ST/18/SSP/2014** दिनांकित 28.07.14 को द्वारा थाना स्वरूपनगर में पंजीकृत मु0अ0सं0 151/14 धारा 323, 147, 364, 302, 201 की विवेचना में सह विवेचक की हैसियत से नियुक्त किया गया था। जिसमें आदेश के प्राप्त के पश्चात मेरे द्वारा दिनांक 28.07.14 को **SCDI** किता की गयी जिनमें श्रीमान वरिष्ठ पुलिस अधीक्षक के आदेश की नकल व एफ0आई0आर0 की नकल व अवलोकन किया गया तथा घटना में संदिग्ध व्यक्ति व अन्य की काल डिटेल एस0एस0पी0 महोदय के आदेश से प्रोपाइडर कम्पनी के मेल में जाकर काल डिटेल मोबाइल संख्या 9956353535 व मृतक के मोबाइल संख्या 8960868686 की काल डिटेल प्राप्त की गयी जिनके अवलोकन और विश्लेषण से मृतका ज्योती श्याम दासानी उर्फ पूर्वा के नम्बर से समय करीब 22.37 दिनांक 27.07.14 को अपने बुआ मोनी उर्फ मोजिना का मोबाइल नं0 9427418629 से वार्ता होना पाया गया। इसके पश्चात घटना वाले दिन पियूष श्याम दासानी व ज्योति श्याम दासानी अपने घर से समय करीब 9.26 सायं को अपने निवास पाण्डुनगर से निकले जिसकी लोकेशन मोबाइल से प्राप्त हुई तत्पश्चात समय करीब 22.37 पर अगली काल का समय उनकी लोकेशन बराण्डा रेस्टोरेन्ट दिनांक 27.07.14 को पाई गयी तथा उसी दिन मृतका द्वारा समय करीब 23.20 बजे अपनी सास पूनम श्याम दासानी के मोबाइल नं0 9838868686 से भी वार्ता होना पाया गया। तत्पश्चात मृतका के साथ घटना कारित होने के बाद उसकी अंतिम लोकेशन ब्लाक पनकी कानपुर नगर समय 23.54 पर पायी गयी जिसपर मो0 नं0 9956353535 से 29 सेकेण्ड बात होना पाया गया। इससे स्पष्ट होता है कि मृतका को उस दिवस की काल डिटेल से कोई अन्य संदिग्ध नं0 प्राप्त नहीं हुआ। उसके उपरांत मेरे द्वारा मोबाइल संख्या 9956353535 का विश्लेषण अवलोकन किया गया तो दिनांक 27.07.14 को समय 22.42 को मोबाइल में 8090766837 से करीब 7 मिनट की वार्ता होना पाया गया। जो उसकी नोक को मृतका के आवास के लोकेशन पर पाया गया। जो घटना संपूर्ण थी वार्ता पायी गयी थी। जिससे यह नम्बर संदिग्ध पाया गया।

इसी प्रकार एक अन्य नम्बर से जिसका नं0 8858758057 से मोबाइल नम्बर 9956353535 पर एसएमएस आना पाया गया जिससे प्रथम दृष्ट्या नम्बर संदिग्ध पाया गया है। जिसकी काल डिटेल हेतु सम्बन्धित कम्पनी को मेल भेजकर डिटेल प्राप्त करने की रिपोर्ट प्रेषित की गयी।

वरिष्ठ अधिवक्ता की मृत्यु के कारण वाद लंच अधिवक्ता न्यायिक कार्य से विरत है। मुख्य परीक्षण स्थगित की जाती है। मेरे द्वारा तत्पश्चात कम्पनी से काल डिटेल प्राप्त करके अवलोकन व विश्लेषण करते हुए संलग्न केस डायरी किया गया। जो पत्रावली में सामिल है जो क्रम संख्या 1053 लगायत 1070 है इसपर में लघु हस्ताक्षर है। लघु हस्ताक्षर पर सामूहिक रूप से प्रदर्श क-48 डाला गया है जो मृतका ज्योति श्याम दासानी उर्फ पूनम मोबाइल नं0 8960868686 है एवं सीडीआर पियूष श्याम दासानी के मो0 नं0 9956353535 संलग्न केस डायरी है जो पत्रावली में संलग्न है जो 1071 से 1193 तक है जिनपर मेरे सभी पर मेरे लघु हस्ताक्षर है जिसपर सामूहिक रूप से हस्ताक्षरों पर प्रदर्श क-49 डाला गया।

दिनांक 29/30.07.2014 को एससीडी-2 किता किया जिसमें नोडलअधिकारी द्वारा प्रेषित काल डिटेल मोबाइल संख्या 8858758057 व 8090766837 की काल विवरण प्राप्त कर अवलोकन व विश्लेषण करते हुए पियूष श्याम दासानी से जानकारी की गयी तो बताया कि यह नम्बर हमारी फैक्टरी में काम करने वाली महिला कामिनी सचान का नम्बर 8858758057 है एवं पियूष श्याम दासानी ने बताया कि मेरे पास 9956353535 के अतिरिक्त अन्य कोई मो0नं0 नहीं है। इसके उपरांत मेरे द्वारा मो0नं0 8090766837 के बारे में पियूष से पूछा गया तो उसने बताया कि महिला मिस मनीषा मखीजा डी0/ओ0 हरीश मखीजा निवासी 117/618 पाण्डुनगर थाना काकादेव कानपुर नगर का है भी उसके द्वारा ही प्रयोग किया जा रहा है एवं पियूष श्याम दासानी ने बताया कि घटना वाले दिन दिनांक 27.07.2014 को मेरी करीब 7 मिनट बात समय 22.42 पर हुई है।

इस स्तर पर बचाव पक्ष की ओरसे यह आपत्ति की गयी की साक्षी के द्वारा ऐसा साक्ष्य को प्रस्तुत किया जा रहा है जो केस डायरी में अंकित नहीं है। न्यायालय द्वारा उस समय तक के समय विचार किया जायेगा।

तथा पियूष श्याम दासानी से पूछने पर की मनीषा के पास अन्य कोई नम्बर भी है क्योंकि यह नम्बर 8090766837 लगातार बंद जा रहा है। इसपर कोई स्पष्ट उत्तर नहीं दे सका। चूंकि 9956353535 व 8090766837 से आपस में परस्पर बहुत ज्यादा काल विवरण पाया गया इस पर पियूष ने बताया कि मनीषा मखीजा मेरी पड़ोस के रहने वाली है जिससे मेरे कई वर्षों से अंतरिम सम्बन्ध है फिर मेरे द्वारा पूछा गया कि मनीषा मखीजा व कामिनी के अंतरिम सम्बन्धों के बारे में आपकी पत्नी ज्योति श्याम दासानी को जानकारी है तो पियूष ने उत्तर दिया कि मेरी पत्नी को प्रेम सम्बन्धों के बारे में सक था परंतु उसे यह स्पष्ट नहीं हो सका कि मैं अपना फोन लाक करके रखता था एवं घर के अन्य स्थानों से दिन रात में वार्ता करता था। जिसके काल डिटेल के अवलोकन से काल विवरण से स्पष्ट है।

तत्पश्चात थाना स्वरूप नगर से मुख्य विवेचक व सह विवेचक श्रीमती पूनम अवस्थी व अन्य हमराहियों के साथ चलकर मोबाइल नं0 8858758057 के धारक कामिनी सचान के घर आकर परिवारी जनों को उपस्थिति में उसका मोबाइल नं0 से अन्य नम्बरों से वार्ता के सम्बन्ध में बताया कि यह मेरा नम्बर है तथा पियूष के अपने सम्बन्ध की पुष्टि की मेरी व पियूष के मध्य एसएमएस व काल से वार्ता

होती थी जिसमें मैंने दिनांक 27.07.14 को आखिरी एसएमएस के बारे में पूछा गया तो बताया कि मेरी बातें होती थी इसी आधार पर मैंने एसएमएस कर दिया था। जिसमें लवयू लिखा था। कामिनी से पूछा गया कि आप को जानकारी के मुताबिक पियूष श्याम दासानी के पास अन्य कोई नम्बर और भी है तो वादिनी ने बताया कि पियूष के पास 9956353535 के अतिरिक्त एक नम्बर 8090766837 और है जिससे मेरी कभी-कभी बात होती रहती है। कामिनी के मोबाइल नं० 8858758057 की काल डिटेल के अवलोकन से दिनांक 10.07.14 से एसएमएस आने तक वार्ता पायी गयी जिसकी काल डिटेल पत्रावली पर उपलब्ध है।

इसके उपरांत मैं व मुख्य विवेचक सह विवेचक उपस्थित के साथ चलकर मनीषा मखीजा पुत्र हरीश मखीजा धारक मो० संख्या 8090766837 के आवास पर उपस्थित आकर परिवारी जनों को उपस्थित में मनीषा मखीजा के उक्त मोबाइल के काल विवरण के सम्बन्ध में वार्ता की गयी तो बताया कि 8090766837 मेरा ही नम्बर है। मैंने इसे घटना वाला दिन दिनांक 27.07.14 को 22-42 मिनट पर करीब 7 मिनट की वार्ता की गयी। उक्त वार्ता के पश्चात पियूष श्याम दासानी को पत्नी के साथ घटना घटित होती है। क्या इसकी जानकारी आप को है तो घटना की जानकारी होना बताया। 427 सेकेण्ड के वार्ता के बारे में पूछा तो पहले घबरा गये और घबराहट के कारण बताया कि सामान्य प्रति दिन की भांति वार्ता हुई तथा काल के मुताबिक सामान्य से ज्यादा एसएमएस होने पर बताया कि हम एक दूसरे के पड़ोसी होने के नाते जानते हैं एवं हमारे एक दूसरे के अंतरंग सम्बन्ध प्रेमी प्रेमिका की भांति है। इस सम्बन्ध के बारे में पियूष श्याम दासानी की पत्नी को शक एवं जानकारी थी। जिसके कारण पियूष और पियूष की पत्नी के आपसी सम्बन्ध ठीक नहीं थे तब मेरे द्वारा मनीषा से पियूष श्याम दासानी के अन्य नम्बर के बारे में पूछा गया तो बताया कि एक अन्य नम्बर 8090766837 व 9956353535 से मुझसे सम्पर्क किया जाता रहा तथा मेरे पास अन्य नम्बर भी है जिनको मैं समय-समय पर उपयोग किया जाता है। 1. 9839955320 2. 9651886868 3. 9999953030 4. 7897139393 से मेरे द्वारा पियूष के दोनों नम्बरों से बात हुई हो तथा मनीषा द्वारा बताया गया कि 8090766837 सिमकार्ड पियूष श्याम दासानी द्वारा लाकर दिया गया था। जो घटना वाले दिन के बाद बंद करने की बात पियूष ने 21.56 बजे दिनांक 27.07.14 को कहा था व ब्लैक बेरी फोन जिसकी आईएमआई 358567040242810 है जिसके मोबाइल नम्बर 8090766837 नम्बर का प्रयोग करता था। जो मुझे सायं 21.56 बजे के बाद वापस किया था। जो मैंने उसको 28.07.14 को फिर वापस कर दिया था व मेरे द्वारा उक्त ब्लैक बेरी मोबाइल का इस्तेमाल मो० सिम नं० 9651886868 पर किया गया था। अबतक उल्लेखनीय यह रहा कि पियूष श्याम दासानी द्वारा मोबाइल नम्बर 8090766837 प्रयोग (का०फ०) जाने की पुष्टि हो रही है। जिससे कि वह नम्बर पियूष श्याम दासानी द्वारा छिपाया गया जिससे यह नम्बर पूर्णतया संदिग्ध प्रतीत हो रहा है। उक्त नम्बर की डिटेल हेतु सम्बन्धित कम्पनी को मेल कर विवरण प्राप्त किया गया जिससे अवलोकन व विश्लेषण से यह नम्बर 8090766837 को घटना वाले दिनांक 27.07.17 को प्रातः 10.11 बजे चालू होकर रात्रि 21.56 बजे तक प्रयोग किया गया तथा पियूष श्याम दासानी के मुख्य मो० नं० 9956353535 के अवलोकन व विश्लेषण से स्पष्ट हुआ कि उसकी लोकेशन पार्वती बागवा रोड होटल बराण्डा पर पायी जाती है। इसी जगह पर मो० संख्या 8090766837 को 19.49.15 सेकेण्ड बजे की लोकेशन पायी जाती है। न्यायालय समय शेष नहीं बचा मुख्य परीक्षण सीमित। इसी प्रकार 17.34 बजे भी इसी नम्बर की लोकेशन पनधी जहाँ पर मृतका ज्योती श्याम दासानी की शव गाड़ी समेत बरामद हुआ इस कारण फोन नम्बर 8090766837 का धारक पूर्णतया संदिग्ध व घटना में संलिप्त होने की पुष्टि व घटना में सम्मिलित होने की संभावना पाई जाती है। मेरे द्वारा घटना वाले दिन मो० संख्या 8090766837 की समस्त बी पार्टियों की डिटेल प्राप्त किया जाना आवश्यक है। इस पर सम्बन्धित कम्पनी को मेल भेजकर बी पार्टियों की काल डिटेल व समस्त विवरण प्राप्त किया गया जिनका क्रमशः विश्लेषण किया गया है जिसमें पियूष श्याम दासानी के मोबाइल नं० 8090766837 विश्लेषण से संदिग्ध नम्बर 8127986342 का अध्ययन किया गया घटना वाले दिन 27.07.14 को यह नम्बर पियूष श्याम दासानी के मोबाइल नं० 8090766837 से समय 17.42 पर सम्पर्क किया गया व क्रमशः रात्रि 21.55 बजे तक लगातार सम्पर्क में रहा। यही यह भी उल्लेखनीय है कि 21.15 बजे व इसके पूर्व की लोकेशन भी नवाबगंज घटनास्थल के आसपास पायी जाती है। इसके कारण यह मो० नं० भी महत्वपूर्ण हो गया है।

इसी प्रकार संदिग्ध मो० नं० 8127986342 की काल डिटेल सम्बन्धित कम्पनी को मेल भेजकर प्राप्त की गयी। इसके विश्लेषण से घटना वाले दिन मो० संख्या 8090766837 का उपरोक्त नम्बर से प्राप्त 9.07 मिनट से सम्पर्क हुआ जो रात्रि 19.56 बजे तक सम्पर्क में रहा। इसप्रकार यह नम्बर भी संदिग्ध था। जिसका विवरण काल डिटेल का विश्लेषण किया गया तो 21.05 बजे से 21.55 बजे तक घटना स्थल बरामदा रेस्टोरेन्ट पार्वती बागवा नवाबगंज पाया गया। इसकी अन्य लोकेशन समय 23.02 मिनट पर घटनास्थल पर पायी जा रही थी संदिग्ध नम्बर 8090766837 की (बी) पार्टियों में एक नम्बर 8687580730 भी पाया गया जो लगातार सम्पर्क में था। तत्काल मो० सं० 8687580730 की काल विवरण सम्बन्धित कम्पनी को मेल भेज कर प्राप्त किया गया जिसका अध्ययन व विश्लेषण किया गया तो यह नम्बर भी घटना स्थल के दिनांक 27.07.14 को पाण्डुनगर स्वरूप नगर पनकी व शव बरामदगी के स्थान पर उसी दिन का पाया गया था। यहाँ यह भी उल्लेखनीय है कि पियूष श्याम दासानी व ज्योती श्याम दासानी का आवास पाण्डुनगर में है। रात्रि में दोनों होटल बराण्डा वीआईपी रोड। पार्वती बगला रोड पर आते हैं। अतः मृतका ज्योति का शव सी ब्लॉक पनकी पाया जाता है। अतः यह नम्बर भी संदिग्ध व अतिमहत्वपूर्ण हो जाता है। यह नम्बर 8687580730 है जिसमें 5 के बाद

व 8 के पहले 7 है वह सहवन लिखा गया है। जो प्रातः से सायं तक उपरोक्त नम्बरों के सम्पर्क में था। इसी प्रकार संदिग्ध नम्बर 8127986342 का अध्ययन व विश्लेषण किया गया तो उसमें एक नम्बर 7784987598 संदिग्ध प्राप्त हुआ जिसका अवलोकन किया गया तो मोबाइल नम्बर 8127986342 जो 6 टना वाले दिन मोबाइल संख्या 7784987598, 8853902938 व 8687580730, 8090766837 से सम्पर्क में व वार्ता होना पाया गया था। इसी क्रम में यह सारे नम्बर संदिग्ध व घटना में संदिग्ध सामिल है। मोबाइल नम्बर 8127986342 व 8090766837 के धारक के सम्बन्ध में पियूष श्याम दासानी का होना उसकी महिला मित्र मनीषा मखीजा व कामिनी का बताया गया है। उपरोक्त सभी मोबाइल नम्बर को थाने पर उपस्थित मुख्य विवेचक व पियूष श्याम दासानी के मुख्य नम्बर 9956353535 व अन्य संदिग्ध नम्बर से सम्पर्क में आने का एक चित्र के माध्यम से केस डायरी में बनाकर दर्शाया गया है। इसमें उक्त सभी नम्बरों का उल्लेख मैंने किया है। जो ए, बी, सी, डी के क्रम में रखा गया है। पृष्ठताछ में पियूष श्याम दासानी ने बताया कि मोबाइल नम्बर 8127986342 जो ए से दर्शाया गया है उसका प्रयोग कर्ता अवधेश चतुर्वेदी पुत्र गौरी शंकर निवासी ग्राम धारा थाना कोतवाली औरैया का है व मोबाइल नम्बर 8687580730 सोनू कश्यप एस0/ओ0 छोटेलाल कश्यप निवासी रामबरन की मड़ैया पाण्डुनगर द्वारा प्रयोग किया जा रहा था तथा मोबाइल नम्बर (सी) 8090615770 आशीष कश्यप एस0/ओ0 कमलेश कश्यप निवासी रामचरन की मड़ैया पाण्डुनगर द्वारा प्रयोग किया जा रहा है। मोबाइल नं0 (डी) 7784987598 रेनू कनौजिया एस0/ओ0 रामबाबू कनौजिया निवासी रामबरन की मड़ैया थाना काकदेव कानपुर नगर द्वारा प्रयोग किया जा रहा था।

इस प्रकार संदिग्ध नम्बरों की डिटेल् अपने प्रिन्टर से निकालकर संलग्न सीडी किया गया तथा उपरोक्त सारे संदिग्ध नम्बरों का आपस में परस्पर सम्पर्क कर एक मान चित्र बनाया था। जो सामिल मिसिल है। जिसपर मेरे हस्ताक्षर हैं। यह मानचित्र मेरे द्वारा तैयार किया गया है। इस पर प्रदर्श क-50 डाला गया।

मानचित्र में जिन नम्बरों ए, बी, सी, डी सम्पर्क पियूष श्याम दासानी से थे उनके नम्बर ए से मोबाइल नम्बर 8127986342 है जो संदिग्ध अवधेश चतुर्वेदी एस0/ओ0 गौरी शंकर चतुर्वेदी का पाया गया था तथा बी मोबाइल नम्बर 8687580730 से जिसका धारक सोनू कश्यप एस0/ओ0 छोटेलाल एवं डी मोबाइल नम्बर 7784987598 के धारक रेनू कनौजिया एस0/ओ0 राम बाबू कनौजिया का पाया गया था। तथा सी मोबाइल नम्बर 8090615770 के धारक आशीष कश्यप एस0/ओ0 कमलेश कश्यप का पाया गया था। दिनांक 1.08.14 को एससीडी-3 किता किया जिसमें नवाब अली दो अदद मोबाइल फोन की बरामदगी के फर्द दिनांक 1.8.14 कागज संख्या 614 सामिल मिसिल है जो मेरे द्वारा तैयार की गयी थी जो मेरे लेख व हस्ताक्षर में जिसपर प्रदर्श क-51 डाला गया तथा बयान सुश्री निकिता मखीजा के अंकित किये गये तथा बरामदा मोबाइल की आईएमईआई को अवलोकन व विश्लेषण किया गया तो मोबाइल संख्या 9999953030 व 9839955320 व 9651886868, 7897139393 व 8090766837 का विश्लेषण किया जिनका आईएमईआई नम्बर केसडायरी में अंकित किया क्रमशः आईएमईआई दोनों फोन को अंकित कर प्रयोग किये गये मोबाइल नम्बरों को ए व पी से दर्शाते हुए मान चित्र केस डायरी में मेरे द्वारा तैयार किया गया। जिनका विश्लेषण चार्ट तैयार किया गया था। वह चार्ट सामिल पत्रावली है जो कागज संख्या 778 पुस्त में अंकित है। यह चार्ट मेरे द्वारा तैयार किया गया था। जिसपर मेरे हस्ताक्षर हैं। जो कम्प्यूटर से तैयार किया गया था जिसे मैं आज प्रमाणित करता हूँ। इसपर प्रदर्श क-52 डाला गया।

दिनांक 7.8.14 को एससीडी-4 किता किया था जिनमें मेरे द्वारा दूर संचार कम्पनियों को रिपोर्ट तैयार करा कर उनके नोडल अधिकारी को देकर सीडीआर व नाम पता धारक प्राप्त कर संलग्न केस डायरी किया गया।

दिनांक 10.08.14 को एससीडी-5 किता किया जिसमें उपनिरीक्षक संजय यादव द्वारा सेवकों कं0 से प्राप्त डिटेल् थाना स्वरूप नगर में दाखिल किया गया।

दिनांक 18.08.14 को एससीडी-6 किता किया जिसमें दूरसंचार कम्पनियों द्वारा 1.1.14 से 28.07.14 तक का काल विवरण की मांग की गयी वह प्राप्त हुई जिनके लिफाफो को खोलकर अवलोकन कर संलग्न सीडी लिया था।

जिसमें अभियुक्त पियूष श्याम दासानी द्वारा प्रयोग किये जा रहे मोबाइल नम्बर 9956353535 व मोबाइल नम्बरों का अवलोकन किया गया तो अभियुक्त मनीषा मखीजा के विभिन्न नम्बरों से वार्ता में मोबाइल संख्या 7897139393 से एक काल का होना पाया गया तथा अभियुक्ता मनीषा मखीजा के द्वारा प्रयोग किये जा रहे मोबाइल नं0 8090766837 पर 454 काल का आना पाया गया व 54 काल किया गया तथा 164 एसएमएस प्राप्त किये गये थे। 155 एसएमएस किये गये इसप्रकार कुल 418 बार वार्ता किया गया है तथा मोबाइल संख्या 9651886868 से भी 1448 बार वार्ता करना जिसमें 177 काल प्राप्त किया व 187 काल किया गया व 106 एसएमएस प्राप्त किये गये व 578 एसएमएस किया गया पाया गया था एवं मोबाइल संख्या 983995530 पर 34 काल प्राप्त करना व 69 काल किया जाना व 105 एसएमएस प्राप्त करना व 45 एसएमएस किया जाना पाया गया। मोबाइल नम्बर 9999953030 से 34 काल प्राप्त करना व 31 काल करना 94 एसएमएस प्राप्त करना 123 एसएमएस किया जाना पाया गया कुल 283 बार वार्ता का विवरण दिनांक 1.1.14 से 27.07.14 तक का विवरण अंकित किया गया जिसमें मेरे द्वारा एक चार्ट मोबाइल संख्या 9956353535 से वार्ता का चार्ट बनाकर संलग्न सीडी किय गया था। जो कागज संख्या 740 है सामिल मिसिल है। जिसपर मेरे हस्ताक्षर हैं। और मेरे द्वारा कम्प्यूटर से तैयार किया गया है जिसपर प्रदर्श क-53 डाला गया। इसी प्रकार अभियुक्त पियूष श्याम दासानी के मोबाइल नं0 9956353535 से अभियुक्त अवधेश कुमार चतुर्वेदी द्वारा

प्रयोग किये जाने वाले मो०नं० 8627986342 के अवलोकन से पाया गया कि बीस कॉल प्राप्त करना व बाईस कॉल किया जाना एवं आठ एसएमएस प्राप्त करना व एक एसएमएस किया जाना प्राप्त कॉल डिटेल दिनांक 01.01.14 से 27.07.14 तक का पाया गया। इसीप्रकार पीयूष श्याम दासानी में मो० नं० 9956353535 से अभियुक्त आशीष कश्यप के मो० नं० 8090615770 पर दो कॉल का आना पाया गया तथा अभियुक्त सोनू के मो० नम्बर से अभियुक्त पीयूष श्याम दासानी के मो० नम्बर 9956353535 से वार्ता होना नहीं पाया गया। दूरसंचार कम्पनी द्वारा प्राप्त कराया गया कस्टमर आई०डी० फार्म के अवलोकन से अभियुक्त पीयूष श्याम दासानी द्वारा प्रयोग किये जा रहे मो० नम्बर 9956353535 का नाम पता श्री रामजसनानी एस०/ओ० किशनदास जसनानी निवासी 1130 रतनलाल नगर थाना गोविन्दनगर का पाया गया जो संलग्नक केस डायरी किया गया। तत्पश्चात् अभियुक्ता मनीषा मखीजा के द्वारा प्रयोग किये जा रहे मो० नम्बर 7897139393 के कस्टमर आई०डी० फार्म के अवलोकन से स्वयं मनीषा मखीजा डी०/ओ० हरीश कुमार मखीजा निवासी 117/618 पाण्डुनगर कानपुर नगर के नाम से दिनांक 15.07.14 को कय किया जाना पाया गया। (19/1) इसमें अभियुक्त पीयूष श्याम दासानी के मो० नम्बर 9956353535 से एक कॉल का होना पाया गया। जिसकी सी.डी.आर संलग्नक सी.डी. किया गया जो न्यायालय में दाखिल है तथा अभियुक्ता मनीषा मखीजा द्वारा प्रयोग किये जा रहे मो० संख्या 9651886868 का अपने फोन ब्लेकबेरी 9900 की आईएमईआई में दिनांक 09 जनवरी 14 से 15 जनवरी 14 तक प्रयोग किया गया व अपने मोबाईल सैमसंग जा 19152 की आईएमईआई संख्या 356893050247640 पर प्रयोग किया जाना पाया गया। अभि० पीयूष श्याम दासानी के अन्य नम्बर मो० संख्या 8090766853 से भी 181 कॉल किया जाना व 108 कॉल पाया जाना व 10 एसएमएस किया व 11 एसएमएस प्राप्त किया गया पाया गया तथा दूसरे मो० संख्या 9956353535 से अपने नम्बर 9651886868 से 177 कॉल किया व 187 कॉल प्राप्त किया। 506 एसएमएस किया तथा मोबाइल संख्या 8604351351 पर 1140 कॉल किया व 1339 कॉल प्राप्त किया। 121 एसएमएस किया गया व 173 एसएमएस प्राप्त किया गया जो मोबाईल संख्या उपरोक्त सायरा बानो डब्लू०/ओ० मुश्ताक के नाम से लिया गया जो संलग्नक सी.डी. किया गया था।

(19/2) इसी प्रकार अभियुक्त अवधेश कुमार चतुर्वेदी द्वारा प्रयोग किये जा रहे मो० संख्या 8127986342 के अवलोकन से अभियुक्त पीयूष श्याम दासानी में मो० नं० 9956353535 व 8604351351 एवं 8090766853 में अवलोकन से आपस में वार्ता की कॉल पायी गयी जिसकी कॉल डिटेल मेरे द्वारा संलग्न सी.डी. किया गया।

(19/3) इसी प्रकार अभियुक्त अवधेश कुमार चतुर्वेदी द्वारा प्रयोग किये जा रहे मो० संख्या 8127986342 से अभियुक्त आशीष कश्यप के मो० नं० 8090615770 से 54 कॉल का किया जाना व 29 कॉल का प्राप्त किया जाना एक एसएमएस प्राप्त किया जाना विश्लेषण से प्राप्त हुआ तथा अभियुक्त रेनू कनौजिया द्वारा प्रयोग किये जा रहे मो० संख्या 7784987598 पर 29 कॉल किया जाना व 47 कॉल प्राप्त किया जाना 03 एसएमएस किये गये और 07 एसएमएस प्राप्त किये गये का विवरण प्राप्त हुआ तथा रेनू कनौजिया के द्वारा प्रयोग किये जा रहे मोबाइल संख्या 8687145104 से एक कॉल का होना पाया गया तथा अभियुक्त अवधेश कुमार चतुर्वेदी द्वारा प्रयोग किये जा रहे मोबाइल सं० 8127986342 से अभियुक्त सोनू कश्यप के मोबाइल नं० 8687780730 पर 61 कॉल का किया जाना व 80 कॉल प्राप्त किया जाना 3 एसएमएस का किया जाना व 31 एसएमएस प्राप्त किया जाना पाया गया तथा सोनू कश्यप के द्वारा प्रयोग किये जा रहे दूसरे नम्बर

इस स्टेज पर गवाह ने अपना मोबाइल देखकर सोनू कश्यप का मोबाइल नम्बर निकाला फिर मोबाइल बंद कर दिया। इस आपत्ति पर मेरे द्वारा तुरंत मोबाइल बंद किया गया।

पत्रावली में सामिल चार्ट प्रदर्शक 50 देखकर बताया कि सोनू का दूसरा नम्बर 8853902938 से 59 कॉल किया जाना व 11 कॉल प्राप्त किया जाना पाया व 2 एसएमएस प्राप्त किया जाना पाया गया। मोबाइल धारक का नाम पता प्राप्त हुआ अनिल कुमार एस०/ओ० सतीराम निवासी (sic) के नाम से कय किया गया है। जिसमें कस्टमर आई डी से फार्म से स्पष्ट है जो संलग्न सीडी है। सोनू कश्यप द्वारा दूसरा मोबाइल संख्या 8853902938 से अभियुक्त सोनू कश्यप द्वारा प्रयोग किये गये नम्बर का सिम श्रीमती मुन्नी देवी डब्लू०/ओ० छोटे लाल निवासी एच०एन० 1173 पाण्डुनगर कानपुर से कय किया गया था जिनका कस्टमर आई डी फार्म संलग्न केस डायरी किया गया।

दूर संचार कम्पनी वोडाफोन के नोडल अधिकारी से प्राप्त कॉल विवरण मोबाइल नम्बर 9839955320 व 9999953030 को कस्टमर आई डी के अवलोकन से अभियुक्त मनीषा मखीजा डी०/ओ० हरीष कुमार मखीजा निवासी 117/618 पाण्डुनगर के नाम से कय किया जाना पाया गया। तथा अभियुक्त पीयूष श्याम दासानी के अरुन्ध मोबाइल नम्बर 9956353535 व 8090766853 व 8604351351 से वार्ता होना पाया गया।

रिलाइंस दूर संचार कम्पनी द्वारा प्राप्त कॉल डिटेल का अवलोकन किया गया। इसमें अभियुक्त रेनू कनौजिया द्वारा प्रयोग किये जा रहे मोबाइल नं० 8687145104 के कॉल विवरण से दिनांक 1.1.14 से 28.07.14 तक अभियुक्त अवधेश कुमार चतुर्वेदी के मोबाइल संख्या 8127986342 से वार्ता होना पाया गया। इसी प्रकार अभियुक्त सोनू कश्यप द्वारा प्रयोग किये जा रहे मोबाइल 8687580730 से अभियुक्त पीयूष श्याम दासानी के मोबाइल नम्बर 9956353535 व 8090766853 से वार्ता होना पाया गया तथा एसएमएस का भी होना पाया गया।

तथा रेनू कनौजिया द्वारा अपने मोबाइल से 8687145104 से अभियुक्त सोनू आशीष, पीयूष से वार्ता होना नहीं पाया गया। इसी प्रकार सोनू कश्यप द्वारा प्रयोग किये जा रहे मोबाइल संख्या

8687580730 से अभियुक्त अवधेश चतुर्वेदी के मोबाईल नम्बर 8127986342 से वार्ता व एसएमएस का होना पाया गया।

इसी प्रकार दूर संचार कम्पनी यूनीनॉर द्वारा किये गये कॉल विवरण मोबाइल संख्या 8858758057 जो कामिनी सचान के द्वारा प्रयोग किया जा रहा था अभियुक्त पियूष श्याम दासानी के मोबाइल नम्बर 9956353535 व 8090766853 से दिनांक 5.7.14 से वार्ता का होना पाया गया।

अभियुक्त पियूष श्याम दासानी के द्वारा प्रयोग किये जा रहे मोबाईल नं० 8090766853 व 9956353535 व 8604351351 का चार्ट तैयार किया जो मेरे द्वार कम्प्यूटर से तैयार किया गया जिसमें अभियुक्त मनीषा मखीजा के विभिन्न नम्बरों से वार्ता होना पाया गया था। जो चार्ट पत्रावली पर उपलब्ध है। जो मोबाईल नं० 8090766853 व 8604351351 से सम्बन्धित है जो चार्ट पत्रावली में उपलब्ध जो कागज 779 व 781 है जिनपर मेरे हस्ताक्षर हैं जिनकी मेरे द्वारा तैयार किया गया है जिनपर क्रमशः प्रदर्श क-54 व प्रदर्श क-55 डाला गया।

उपरोक्त घटना में गिरफ्तार सभी अभियुक्तों की आपस में वार्ता का एक रेखाचित्र फोटो लगाकर चार्ट तैयार किया गया मेरे द्वारा कम्प्यूटर से तैयार किया गया है जो सामिल मिसिल है फोटो पर संख्या 777 है इसपर मेरे हस्ताक्षर हैं मैं प्रमाणित करता हूँ इसपर प्रदर्श क-56 डाला गया। जिसमें अभियुक्तगण से आपस में बात चीत करने का दिनांक 1.1.14 से 28.07.14 तक का विवरण अंकित है।

अभियुक्त पियूष श्याम दासानी व अभियुक्त मनीषा मखीजा द्वारा घटना के दौरान आपस में प्रयोग किये मोबाइल की आईएमईआई का रेखाचित्र में अभियुक्त के सिम सेमसन जीटी 19152 में आईएमईआई संख्या 356893050247640 में मोबाईल संख्या 9651886868 दिनांक 15.01.2014 से 16.02.14 तक व मोबाईल नम्बर 9999953030 दिनांक 16.03.14 से 11.07.14 तक व मोबाईल संख्या 3839955320 दिनांक 16.02.14 से 6.3.14 तक व मोबाईल संख्या 8090766837 दिनांक 18.01.14 से 22.01.14 तक व पुनः 21.07.14 से 27.07.14 तक प्रयोग किया गया है तथा दूसरी सिम आईएमईआई संख्या 356893050247640 में मोबाइल संख्या 9651886868 दिनांक 16.02.14 से 16.03.14 तक व 9999953030 दिनांक 15.01.14 से दिनांक 16.03.14 तक व 9839955320 दिनांक 11.03.14 से 15.03.14 तक व पुनः 16.03.14 से 28.07.14 तक तथा मोबाईल नम्बर 8090766837 दिनांक 27.05.14 से 21.06.14 तक पुनः 22.06.14 से 21.07.14 तक प्रयोग किया गया।

इसी प्रकार अभियुक्त द्वारा प्रयोग किये जा रहे ब्लैकबेरी मोबाइल संख्या 9900 आईएमईआई संख्या 358567040242810 को अपने मोबाइल नम्बर 9651886868 को दिनांक 9.1.14 से 15.1.14 तक प्रयोग किया गया। जिसमें अभियुक्त पियूष श्याम दासानी द्वारा अपने मोबाइल नम्बर 8604351351 व 9956353535 व 8090766853 में आईएमईआई संख्या ब्लैकबेरी 358567040242810 को जनवरी 15 से सन् 2014 से 27.07.14 तक प्रयोग किया गया है।

न्यायालय समय शेष नहीं बचा मुख्य परीक्षा सीगित। दिनांक 28.08.14 को सीडी-7 किता किया जिसमें सीबीआई एकेडमी गाजियाबाद के प्रधानाचार्य से अनुमति प्राप्त कर निरीक्षक श्री संजय कुमार गौतम के द्वारा उपलब्ध कराये गये साफ्टवेयर व शिस्टम से घटना में प्रयुक्त किये गये मोबाईल नम्बरों की काल डिटेल लोड कर अभियुक्तों के बीच विभिन्न नम्बरों से आपस में की गयी परस्पर वार्ता का एक विश्लेषण चार्ट मेरे द्वारा तैयार किया गया था। वह पत्रावली पर पेपर नं० 775 है। इसमें नाम व मोबाईल नम्बरों का उल्लेख है इसपर मेरे हस्ताक्षर हैं जिसपर प्रदर्श क-57 डाला गया तथा चार्ट का दूसरा पेपर जिसका पेपर संख्या 776 पत्रावली में संलग्न है। फोटो द्वारा तैयार किया गया है। इसपर मेरे हस्ताक्षर हैं इसपर प्रदर्श क-58 डाला गया।

दिनांक 3.9.14 को सीडी-8 किता किया जिनमें तत्कालीन क्षेत्राधिकारी कल्यानपुर के अखिलेश सिंह मय हम राही फोर्स के स्वाती पारले बिस्कुट फैंक्टरी दादानगर की खाना तलाशी ली गयी जिनकी मोके पर तैयार किया गया। जो पत्रावली पर उपलब्ध है कागज संख्या 630 है मेरे लेख व हस्ताक्षर में हैं जिसपर गवाहान के हस्ताक्षर बने हैं। इसपर प्रदर्श क-59 डाला गया।

दिनांक 9.10.14 को सीडी-9 किता किया गया जिसमें पार्टनर स्वाती बिस्कुट श्री राम जसलानी द्वारा एक लिखित पर किया गया सामिल केस डायरी किया गया एवं श्रीराम जसलानी पुत्र स्व० किशनचन्द्र जसलानी निवासी रतनलाल नगर गोरखपुर के बयान अंकित किये गये। तथा कामिनी सचान द्वारा प्रयोग किये गये मोबाईल सं० 8858758057 सीडीआर का अवलोकन कर संलग्न सीडी किया गया। तथा मेरे द्वारा सीडी-10 नहीं किता की गयी जो सहवन सीडी-10 पड़ गया।

श्रीराम जसलानी पर दिनांकित 9.10.14 सामिल मिसिल है जो पेपर संख्या 2574 जिस राम जसलानी हस्ताक्षर बने हैं। टाइपशुदा है।

विवेचना के दौरान दिनांक 6.8.14 को मेरे द्वारा दूरसंचार कम्पनियों के नोडल अधिकारी की व्यक्तिगत श्रीमान नोडल अधिकारी को भेजा गया था जिनकी कम्पनियों 1. वोडाफोन दूर संचार निगम पूर्वी 2. रिलाइंस दूरसंचार निगम पूर्वी 3. एयरटेल दूरसंचार पूर्वी 4. यूनीनॉर दूरसंचार पूर्वी 5. टाटा दूरसंचार पूर्वी हैं। इन सभी फोन पर मेरे हस्ताक्षर हैं जिन्हें पुलिस अधीक्षक पूर्वी से अग्रसारित कराकर भेजी गयी थी।

जो सामिल पत्रावली कागज संख्या 1913 से 1919 तक है। जिनमें एक संशोधित पत्र दिनांक 7.8.14 का है इन सभी पत्रों पर क्रमशः प्रदर्श क-60 लगायत प्रदर्श क-66 डाला गया।

मैंने जो नोडल अधिकारी टाटा टेली सर्विसेज लिमिटेड ने अर्पित श्रीवास्तव को पत्र भेजा था। उसका जवाब उनके द्वारा भेजा मुझे मिला था जो पत्रावली में संलग्न है जो सामान्य संख्या 1920 है। इसके साथ मोबाईल की काल डिटेल व आई डी संलग्न सीडी किया था। टाटा टेलीफोन सेफ

लिमिटेड द्वारा भेजे गये पत्र में मोबाईल नं० 8090766853 व 8090766837, 8090615770, 80960868686 व 8604351351 से सम्बन्धित काल डिटेल का उल्लेख है। सम्बन्धित काल डिटेल जिसपर टाटा सर्विसेज की मुहर लगी हुयी है। पत्रावली पर उपलब्ध कागज संख्या 1922 से लेकर 2315 तक है। तथा एक आई.डी. में शंकर एस०/ओ० निखिल संलग्न पत्रावली है। जो पेपर नं० 1921 है। जिसपर टाटा कॉम सर्विसेज की मुहर लगी है। इसी क्रम में मेरे भेजे गये पत्र के जवाब में एयरटेल द्वारा मोबाईल नं० 9956353535, 9651886868, 7897139393, 8127986342, 8853902938 की कॉल डिटेल नोडल अधिकारी द्वारा उपलब्ध कराई गयी थी। कॉल डिटेल जिसपर भारतीय एयरटेल की मुहर प्रत्येक पेपर में लगी है तथा सभी पर दस्तखत बने हुए है। जिसपर कागज संख्या 1373 लगायत 1785 अंकित है। वोडाफोन दूर संचार कम्पनी द्वारा मोबाईल नं० 9839955320, 9999953030 का प्रमाण पत्र कम्पनी द्वारा दिया गया था जिसे मैंने संलग्न सी.डी. किया था। जिसपर कागज संख्या 1801 अंकित है। जिसपर वोडाफोन की मुहर व दस्तखत नोडल अधिकारी के है। वोडाफोन कं० के उपरोक्त नम्बरों से सम्बन्धित कॉल डिटेल जो कागज संख्या 1786 से 1827 तक है। जिसपर वोडाफोन के नोडल अधिकारी के हस्ताक्षर मुहर लगी है।

रिलाइंस कम्यूनिकेशन को मेरे द्वारा भेजे गये पत्र के संदर्भ में रिलाइंस कं० के नोडल अफसर मधुबाला सुधा पत्र मुझे मिला था। जिसमें उन्होंने मोबाईल नं० 8687145104, 8687580730 को कॉल डिटेल मय कस्टमर आई.डी. अखिलेश कुमार सर्वेश कुमार का मुझे भेजा गया था जिसे मैंने केस डायरी में संलग्न किया था। जो पत्रावली के कागज संख्या 1828 लगायत 1910 तक संलग्न है। जिसपर रिलाइंस कं० के नोडल अफसर के हस्ताक्षर एवं मुहर है।

मेरे द्वारा युनिनान क० को दिनांक 6.8.14 को भी भेजी गयी उसके संदर्भ में मोबाईल नं० 8858758057 की कॉल डिटेल जो मुझे उक्त कम्पनी द्वारा प्राप्त हुआ था जिसमें कम्पनी की प्रत्येक पेपर पर मुहर अंकित है जो कि प्रपत्र संख्या 954 लगायत 1050 है को मेरे द्वारा संलग्न सी.डी. किया गया था।

मेरे द्वारा मोबाईल नं० 7784987598 जो एयरसेल कम्पनी द्वारा पत्र में पाने पर उनके द्वारा कॉल डिटेल एस०एस०पी० कार्यालय को मेल पर भेजा गया था उसकी हार्ड कापी निकाल कर मैंने संलग्न सी.डी. किया था। प्रत्येक पेपर पर मेरे हस्ताक्षर है जो कागज संख्या 1341 लगायत 1352 है। जो मेरे द्वारा संलग्न सी.डी. किया गया।

दिनांक 1.8.14 को अधिवक्ता से बरामद मोबाईल सेमसेन जीटी 19152 व आई फोन डाटा रिकवरी हेतु उप निरीक्षक श्री संजय कुमार यादव को देकर सैम्पोटच प्रा० लिमिटेड पटपरगंज इन्डस्ट्रल एरिया भेजा गया था। जिसकी कार्बन प्रति पत्रावली कागज संख्या 2461 है। जिसपर मेरे हस्ताक्षर है।

आज उपरोक्त केस से सम्बन्धित माल मुकदमा मोबाईल सीलबंद हालत में न्यायालय के समक्ष प्लास्टिक के दो डिब्बे खोले गये जो टांसपेरेंट है। डिब्बे की सील में मु०अ०सं० 15/14 धारा 323, 364, 147, 392, 302, 120बी/34 आई०पी०सी० थाना स्वरूपनगर कानपुर नगर तथा विवेचक मेरे हस्ताक्षर अंकित है। पहले डिब्बे से एक सफेद कागज की चिट निकली जिसमें अभियुक्त पियूष श्याम दासानी एस०/ओ० ओमप्रकाश श्याम दासानी उसका पता 117/एच 1/187 पाण्डुनगर काकादेव कानपुर नगर से बरामद फोन जिसका आईएमईआई नं० 358684055598280 तथा आईफोन एपिल लिखा है। तथा उसके अंदर से उक्त आईफोन निकला। आईफोन पर वस्तु प्रदर्श -27 डाला गया। तथा नाम पता लिखी हुई पर्ची पर वस्तु प्रदर्श-28 तथा प्लास्टिक के डिब्बे पर वस्तु प्रदर्श -29 डाला गया तथा दूसरा डिब्बा प्लास्टिक का टांसपेरेंट खोला गया जिससे सीलबंद है वह टेप है कपड़े का उसपर मु०अ०सं० 151/14 तथा उक्त धारा में अंकित है तथा मेरे हस्ताक्षर है। डिब्बे के अंदर से दो अदद मोबाईल फोन निकले जिसपर नाम व पते की एवं आईएमईआई की चिट बंदी मेरे द्वारा मोबाइल के पुश्त पर चस्पा की गयी है। जिसपर नाम मनीषा मखीजा डी०/ओ० हरीश मखीजा आर०/ओ० 117/एच 1/618 पाण्डुनगर काकादेव, कानपुरनगर दोनों मोबाईलों में अंकित है। 1. सेमसेन जीटी 19152 की आईएमईआई- 356893050247640 अंकित है। 2. आईफोन एपल की आईएम ईआई- 013880007819949 अंकित है। जिनपर क्रमशः वस्तु प्रदर्श -30 वस्तु प्रदर्श -31 डाला गया तथा प्लास्टिक के डिब्बे वस्तु प्रदर्श क-32 डाला गया।

विवेचना के दौरान मैंने पियूष श्याम दासानी के पारिवारिक जनों द्वारा दिनांक 27.07.14 व 28.07.14 को टेलीफोन से आपस में किये गये वार्ता का काल डिटेल का चार्ट तैयार करा मुख्य विवेचक शिवकुमार राठौर को दिया गया था। वह चार्ट पत्रावली में संलग्न पेपर संख्या 772 लगायत 774 तक है। पेपर संख्या 772 पर मैंने अपने लेख में घटना के बाद से पूरे परिवार द्वारा 68 कॉल किये जाने का उल्लेख किया हो किन्तु इस लेख के नीचे अपना हस्ताक्षर करना सहवन भूल गये थे पेपर संख्या 772 पर जो मेरे लेख है। जिसपर प्रदर्श क-67 लेख पर डाला गया।

न्यायालय समय शेष नहीं बचा मुख्य परीक्षा स्थगित। आज सर्व मुहर प्लास्टिक का डिब्बा न्यायालय के समक्ष खोला गया डिब्बे पर कपड़े का टेप से शील है। उक्त टेप के उपर मु०अ०सं० 151/14 धारा 323, 147, 364, 392, 302, 201 120बी/34 **IPC** थाना स्वरूप नगर कानपुर नगर तथा मेरे हस्ताक्षर दिनांक 10.08.14 के है। तथा का० कुल भूषण यादव के इस पर हस्ताक्षर है।

डिब्बे के अन्दर से सफेद कागज की चिटबन्दी निकली जिसमे लिखा है मृतक ज्योती श्याम दासानी **W/o** पियूष श्याम दासानी निवासी 117/1+1/187 पाण्डु नगर थाना काकादेव पाण्डु नगर कानपुर नगर का फोन जो मृतक के पास से कार से बरामद हुआ मोबाइल फोन

सेमसन S4.200M इसका EMEI No. 35698 505100865601 है। चिटबन्दी मेरी द्वारा तैयार की गयी थी चिटबन्दी पर वस्तु प्रदर्श 33 डाला गया। तथा एक अदद मोबाइल मृतक ज्योती का सेमसन कम्पनी का निकला उस पर वस्तु प्रदर्श 34 डाला गया। तथा प्लास्टिक के टांसपैरेंट डिब्बे पर वस्तु प्रदर्श 35 डाला गया।

गवाह ने देखकर मोबाइल को बताया कि यही मोबाइल जो मैंने मृतका के पास से लेकर पुलिस कब्जो में शील मुहर किया था।

मृतका के मोबाइल पर बार बार काल आ रही थी जब हमने उस नम्बर पर बात की तो ज्योती पता चला वह उसकी बुआ मोनिका ज्योती के फोन पर बात कर रही थी।

घटना के बाद मृतका का मोबाइल मेरे कब्जे मे था। उसे अगले दिन जॉच के लिए उप निरीक्षक संजय सिंह को दिया था।

प्रश्न— जिस नम्बर से काल आ रही थी उस नम्बर पर आपने अपने मोबाइल से बात की थी या मृतका के मोबाइल से?

उत्तर— अपने मोबाइल से बात की थी।

प्रश्न— आपकी मोनिका से क्या बात हुई थी?

उत्तर— मेरी मोनिका से बात हुयी थी आप कौन बोल रही है। तब उन्होने बताया कि मै मोनिका बोल रही हूँ। मैंने कहा जिस नम्बर पर बार बार फोन कर रही है उनकी हत्या हो गयी है।

प्रश्न— विवेचना के दौरान पियूष श्याम दासानी का कोई फेक आई डी या फोन नम्बर आपने पाया था। उस सम्बन्ध मे आपने क्या कार्यवाही की?

उत्तर— अभियुक्त पियूष श्याम दासानी द्वारा एक मोबाइल नं० 8090766853 व अभियुक्ता मनीषा नखीया द्वारा मोबाइल नं० 8090766837 का प्रयोग किया जा रहा था। जो गलत नाम पते से क़य कर उपयोग किया जा रहा था। जिसके सम्बन्ध मे मेरे द्वारा मुख्य विवेचक को नाम पता गलत प्रयोग किये गये की मोबाइल नम्बरों के क़य करने के सम्बन्ध मे एक रिपोर्ट प्रेषित की गयी थी। क़य किये गये मोबाइल नम्बरों के नाम पता श्री शंकर एस/ओ डा० निखिल कुमार 65/08 खौदा जिला बोंदा का पाया गया।

इस स्तर पर अभियोजन द्वारा प्रा०पत्र दिया गया और निस्तारण दिनांक 09.11.17 को पेश हो। मुख्य परीक्षा इस स्तर पर स्थगित। घटना के दिन मृतका की अपने परिवारिक जनो से बात चीत अपनी बुआ व मायके मे मोबाइल नम्बर द्वारा से नं० 07614042572 से भी बात की गयी थी जिसका विवरण CDR में उपलब्ध है।

मुझे इलेक्ट्रानिक कार्य करने एवं कम्प्यूटर सीखलायी प्रशिक्षण के दौरान एवं अलग से भी कोर्स डाक्टर भीमराव अम्बेडकर एकादमी मुरादाबाद से प्राप्त किया है।

मैंने दिनांक 08.11.17 को माननीय न्यायालय के समक्ष 65बी के सम्बन्ध मे प्रमाण पत्र जो पत्रावली पर कागज संख्या 307ख व 308ख दिखाया जो मेरे लेख व हस्ताक्षर मे है जिस पर अभियुक्तगण की तरफ से आपत्ति की गयी कि प्रदर्श नहीं डाला जा सकता है। तथा जि० न्यायालय के आदेश पर प्रदर्श क-68 व प्रदर्श 69 डाला गया। जिस पर निर्णय के समय विचार किया जायेगा।

आज अभियोजन द्वारा पेपर संख्या 322ख प्रा०पत्र के साथ मय फेहरिस्त के साथ सत्यापित प्रतियाँ 324ख लगायत 326ख/2 दाखिल किया गया है। जिस मे पेपर संख्या 324ख/2 मेरी आख्या है जिसके आधार पर मुख्य विवेचक द्वारा मु०अ०सं० 158/14 धारा 420, 467, 468, 471IPC मे पंजीकृत किया गया था। मैंने विवेचन के दौरान ग्राम प्रधान खौड़ा थाना तिंदवारी तहसील व जिला बोंदा का प्रमाण पत्र प्राप्त किया था। जिसके अनुसार ग्राम खौड़ा मे शंकर पुत्र निखिल कुमार नाम का कोई व्यक्ति नहीं रहता है प्रमाण पत्र पर प्रधान के हस्ताक्षर व मुहर है।

x x x x by defence
अभियुक्तगण ओमप्रकाश, पूनम, मुकेश, कमलेश, पियूष की तरफ से श्री सईद नकवी एडवोकेट

x x x x by defence
इस केस मे मुख्य विवेचक ने मेरा ब्यान धारा 161CrPC का लिया गया है। तारीख याद नहीं है। व समय याद नहीं है और स्थान भी याद नहीं है। और कितनी बार बयान किया यह भी याद नहीं है।

54. In cross-examination, this witness has stated that mobile no. 9956353535 is not in the name of A-1 and is in the name of Sri Ram Jasrani, partner of his father and it was found that he was using this number. In this regard, he has recorded the statement of Ram Jasrani. In further cross-examination, he stated that it is not specifically stated by

Ram Jasrani that this mobile number was used by Piyush Shyamdasani. He further stated that from the call details record, it is not possible to identify who is using the said phone number and only with the help of IMEI of a mobile, it can be located. This witness further stated that mobile no. 8127986342 is also not in the name of Awadhesh and is in the name of one Anil Kumar and he had not conducted any investigation from said Anil Kumar in any manner. This witness further stated that mobile no. 7784987598 recovered from Renu @ Akhilesh Kanaujiya, which was registered in the name of Monu Sakay and he has not conducted any investigation from said Monu Sakay. Mobile no. 8687580730 recovered from Sonu Kashyap, is registered in the name of Sarvesh Kumar and again he has not conducted any investigation from said Sarvesh Kumar. Mobile no. 8090615770 of accused Ashish Kashayp, as per the call details record, had no calls with the mobile of Piyush Shyamdasani's no. 9956353535. He further stated that he has not seen the said mobiles, recovered from Awadhesh, Ashish Renu and Sonu and he has only collected the call details of the phone. From the accused Piyush Shyamdasani, one Black Berry mobile of IMEI no. 358567040242810 was scanned and old no. 8604351351 was found. He stated that he cannot recollect from whom this black berry mobile phone was recovered. He further stated that he has sent four phones to a private company SAMCO Touchscreen Services Pvt. Ltd. which recovers the data and he has no knowledge if the said company is registered with the government or not. He further stated that mobile nos. 8090766853 and 8090766837 are in the name of one Shankar Singh, s/o Nikhil Kumar and he has not done any investigation from Shankar. This witness has also proved the CDRs (Ex. 49 and Ex.50) regarding the G.D. entry and call details record. In further cross-examination, this witness stated that he has drawn a self conclusion that the fake numbers which are not in the name of accused persons, were in fact used by them and on the basis of the same further investigation was conducted. This witness stated that during his investigation, only the

details of phone call and SMS were collected, however, no transcript of any message was collected by him. He stated that during investigation, he found one SMS 'love you' from mobile nos. 8858758077 and 9956353535 and on investigation, it was found to be sent by one Kamini Sachan and she admitted relationship with him by stating that in routine daily SMS, such a message was sent. This witness further stated as under:

“मेरी सम्पूर्ण विवेचना मे मनीषा और पियूष के प्रेम सम्बन्ध हो यह कोई अभिलख साक्ष्य नहीं थी। मेरी विवेचना मे कामनी के **SMS** के अतिरिक्त अन्य **SMS** जिसके कोल डिटेल निकाली गयी हो तो प्रेम सम्बन्धी **SMS** नहीं मिले।”

This witness further give the details of various recoveries of CDRs and the respective G.D. entries.

55. PW-19- Dr. Rajesh Kumar Agarwal, who conducted the post-mortem examination of the victim, recorded the following injuries on the dead body:

“ 26.2.2018 मैं डा० राजेश कुमार अग्रवाल वर्तमान तैनाती अपर मुख्य चिकित्सा अधिकारी कानपुर नगर (अवकाश) पर

सशपथ कथन किया—

1. दिनांक 28/7/14 को मैं सामुदायिक स्वास्थ्य केन्द्र सरसौल मे सर्जन के पद पर कार्यरत था। उपरोक्त दिनांक पर मैंने डा० दिव्या द्विवेदी, डा० आर पी० तिवारी, डा० अर्जुन ओझा व डा० पुनीत अवस्थी के संयुक्त बोर्ड मे मृतका ज्योतिश्याम देसानी पत्नी पीयूष श्याम देसानी नि० 117/41/187 पाण्डु नगर, पी० एच० काकादेव, कानपुर नगर आयु लगभग 27 वर्ष थी और जिसे सी/- 4625 अखिलेश कुमार व महिला कास्टेबुल 3870 अंजली यादव व होमगार्ड 1543 देवेन्द्र के सील बन्द शव को लेकर आये थे के शव का पोस्टमार्टम किया था। शव की शनाख्त उसे थाने वाले होमगार्ड व कान्स्टेबलो के द्वारा की गई थी।

2. सामान्य परीक्षण

मृतका की लम्बाई 146 से०मी०, औसत कद काठी की थी। शरीर की अकड़न उपरी व निचले एक्जट्री मिटीज मे ली तथा गर्दन से चली गयी थी। पोस्ट मार्टम स्टेनिंग पीठ के उपरी व निचले दोनो हिस्से पर थी। मृतका की आंखे बन्द थी मुंह थोड़ा सा खुला था। दोनो होठो के बाई तरफ नीलगू (कन्ट्र्यूजन) के निशान थे।

3. मृत्यु पूर्व आई चोटें—

1. खरोंच के साथ नीलगू घाव सिर के बाई ओर। आक्सीपीटल क्षेत्र मे दाये कान से 8 से०मी० ऊपर। 6 से०मी० गुणा 4 से०मी०।

2. खरोंच के साथ नीलगू घाव 4 से०मी० गुणा 4 से०मी० सिर पर सीधे फ्रन्टल क्षेत्र मे दाहिनी भौंह के ऊपर।

3. खरोंच के साथ नीलगू घाव 2 से०मी० गुणा 2 से०मी०, सीधे गाल पर दाहिनी आंख की नीचे बाहर की ओर।

4. खरोंच के साथ नीलगू घाव 1.5 से०मी० X 1.5 से०मी० ऊपरी होंठ के बाई तरफ।

5. खरोंच के साथ नीलगू घाव 1.5 से०मी० X 1.5 से०मी० नीचले होंठ के बाई तरफ।

6. खरोंच के साथ नीलगू घाव 3 से०मी० X 1 से०मी० गर्दन के बाई ओर चोट बेस आफ नेक से लोअर नेक तक लीनियर पोजीशन में थी।

7. कटा हुआ 10 घाव 1.5 से० मी० X 1.5 से० मी० से 3.0 से०मी० X 1.5 से०मी० के अलग अलग घाव थे जो दाहिने गाल से गर्दन की तरफ 10 गुणा 10 से०मी० के क्षेत्रफल मे फैले थे मांसपेशी तक गहरे थे।

8. कटा हुआ घाव 4 सेमी0 X 1.5 सेमी0 गर्दन के सीधी तरफ केविटी तक गहरा। सीधी क्लेविकल से 2.5 सेमी0 से ऊपर था।

9. मल्टीपल कन्टयूज्ड एब्रेडेड घाव दाहिनी कंधे के टॉप पर, 8 सेमी0 X 6 सेमी0।

10. कटा हुआ घाव 4 सेमी0 X 2 सेमी0 छाती के सीधे भाग में सीधे निपल से 12 सेमी0 नीचे। 6 'O' क्लोक पोजीशन पर। केविटी तक गहरा था।

11. कटा हुआ घाव 2 सेमी0 X 10 सेमी0 X मांस पेशी तक गहरा पीठ के दाहिनी ओर बेस आफ राईट एक्जिला के 18 सेमी0 नीचे।

12. कटा हुआ घाव 2 सेमी0 X 1 सेमी0 X मांसपेशी तक गहरा, बेस आफ बाई रिंग फिंगर आफ पाए।

13. कटा हुआ घाव 1 सेमी0 X 1 सेमी0 X मांसपेशी तक गहरा। बाये हाथ की रिंग फिंगर के टाप पर (पामा की तरफ)।

14. कटा हुआ घाव 2.5 सेमी0 X 1.5 सेमी0 हड्डी तक गहरा दाहिने तरफ क्षेत्र पर जो कि राईट एन्टीरियर सुपिरियर इलियक स्पाइन से 22 सेमी0 नीचे था।

4. आन्तरिक परीक्षण

गर्दन में ट्रेकिया कटी हुई थी। चेस्ट में खाने की नली (एसोफेगस) कटी थी जो कि चोट नं० 8 का परिणाम था। दोनो फेफड़े पेल थे। दोनो हृदय के चैम्बर खाली थे। दाहिनी तरफ की गर्दन की लार्ज वेसल्स कटी हुई थी।

पेरिटोनियम कैविटी में पेरिटोनियम फटा हुआ था और लगभग आधा लीटर खून मौजूद था। स्टमक कटा हुआ था। लीवर फटा हुआ था। बच्चे दानी को हिस्टो पैथोलोजिक परीक्षण हेतु भेजा गया। वैजाइना से मारल्ड डिस्चार्ज सफेद रंग का उपस्थित था। इस डिस्चार्ज का स्लैब लिया गया। ओरल कैविटी में भी स्लैब लिया गया था।

5. हमारी राय में मृतका की मृत्यु का संभावित समय लगभग आधा दिन था। मृत्यु का कारण मृत्यु पूर्व आई चोटों के फलस्वरूप रक्तस्राव व सदमा था। चोट-नं०1 से 6 किसी सख्त व कुन्द आले से आना संभव है। चोट सं० 7 से 14 तक (9 के अतिरिक्त) किसी धारदार व सख्त हथियार द्वारा आना संभव है। चोट सं० 9 किसी सख्त व कुन्द आले से आना संभव है।

6. जो नमूने लिये गये जार ए में स्टमक उपरी अर्तवस्तुओं? के टुकड़े व आंत के टुकड़े। जार बी में लीवर विद गाल ब्लैडर, स्प्लीन व दोनो किडनियों के टुकड़े। जार सी में पार्ट आफ युरेटर्स/स्ताइड स्लैब बरल कैविटी राईट एण्ट लैफ्ट निपल व वैजाइना। दोनो हाथों के नाखूनों में फंसे हुए बाल। प्यूविक हेयर। हृदय से डी0एन0ए0 टेस्ट के लिये ब्लड सैम्पल लिया था।

7. पोस्ट मार्टम रिपोर्ट डा० सजीव कुमार ओझा ने मेरे सामने अपने हस्तलेख में तैयार कर के अपने हस्ताक्षर किये थे। उनके हस्ताक्षरों की मैं शनाख्त करता हूँ। पैनल के सभी डाक्टरों ने उक्त आख्या से सहमत होते हुए अपने अपने हस्ताक्षर किये थे और मैंने भी किये थे। सभी हस्ताक्षरों को मैं शनाख्त करता हूँ। पोस्टमार्टम रिपोर्ट पर प्रदर्शक-70 डाला जाता है। सम्पूर्ण पोस्टमार्टम की विडियोग्राफी भी हुई थी।

8. मृतका के शव से एक सलवार, एक ब्रा, एक पैन्टी, एक कुर्ता, एक दुपट्टा, दो हेअर क्लिप, एक प्लास्टिक बीड का ब्रेसलेट व दाहिने पैर का स्लीपर बरामद किये गये थे। पोस्टमार्टम करने के बाद पोस्टमार्टम रिपोर्ट मूल मय 12 प्रपत्र। सील बन्द शव व सील बन्द कपड़े व आर्टिकल, सी/ नं० 4625 राकेश कुमार व महिला कान्सटेबल अंजली यादव के हवाले किये थे।

9. मृतका के शरीर पर मृत्यु पूर्व आई चोटे दिनांक 27.7.14 को रात्रि 11 से 12 बजे पहुंचाया जाना संभव है। मृतका के शरीर पर जो जो कटा हुआ घाव पाये गये थे वे धारदार चाकू से आना संभव है।”

56. In cross-examination, this witness stated that the deceased died due to excessive bleeding and shock. The post-mortem report was Ex.Ka.70.

57. PW-20- Arvind Srivastava, Deputy Manager/ Nodal Officer Tata Teleservices Ltd., provided the details of mobile nos. 8090768853, 8604251351, 8090766837, 8090615770 and 8960868686. He stated that the details were given to Akhilesh Kumar Gaud, I.O. by his predecessor Nodal Officer, Arpit Srivastava, who has attested the same. This witness

identified the signature of Arpit Srivastava, who has attested the call details.

58. This witness also produced Ex.Ka.71, certificate issued by the company as Ex.Ka.72, the certificate regarding CDR and other certificate issued by the company, certified by him and also proved the document as Ex.Ka.73. On a court query, whether server data contestation remain in the security. This witness stated that there cannot be any human interference in the data feeding system. He further stated that Ex.Ka.73 was prepared by him.

59. PW-21- Rajeev Singh Sengar, Nodal Officer Bharti Airtel, stated that his predecessor Kaushlendra Tripathi has resigned and he has proved the call details prepared by Kaushlendra Tripathi and submitted to I.O. in pursuance to a letter written by S.S.P. Kanpur, regarding mobile nos. 9651886868, 8853902938, 9956353535, 8127986342 and 7897139393 which proved as Ex.Ka.74 to Ex.Ka.84. In cross-examination, this witness stated that he has not cited as a witness by the I.O. He stated that he has no personal knowledge whether Kaushlendra Tripathi before issuing the certificate, has complied with provisions of Section 65B (4) of Evidence Act.

60. PW-22- Kaushik Ghosal from Vodafone appeared and stated that he has provided the details of the following four numbers are 9839037272, 9838868686, 9838202354, 9839031012. He proved the call details of the phone numbers as per the call details 9839037272, is registered in the name of Kamlesh Kumar and mobile no. 9838202354 is registered in the name of Mahadev Paper Mill through Sanjay Shyamdasani. Mobile No. 9838868686 is registered in the name of one Kamlesh. s/o Raj Mohan and mobile no. 9839955320 is registered in the name of Manisha Makheeja. This witness has provided the call details of all the four numbers which was Ex.Ka.86 to Ex.Ka.100. He further stated the call details of mobile no. 9839955320 in the name of Manisha Makheeja, is having the original call details as Ex.Ka.103 to Ex.Ka.115. This witness has also stated that as

per his certificate issued under Section 65B of Evidence Act, there is no tampering with the computer data and the record is correct. In cross-examination, he has stated about how the call details were prepared and supplied to SSP Kanpur.

61. PW-23- Shashi Bhushan Mishra, the additional Investigating Officer stated about some newspaper cuttings on the basis of which, accused were arrested and people praise the working of police authorities. This witness further stated that he has conducted the search of the factory of accused-A-1 and recovered four numbers C.P.U. In cross-examination, he denied a suggestion that the arrest of accused persons were wrongly shown.

62. PW-24- Dr. Praveen Kumar Srivastava, Scientific Officer, Forensic Field Unit, Kanpur Nagar stated that on receiving the information of murder from the S.H.O., P.S.- Swaroopnagar, he along with his field unit team had visited the place of occurrence and recovered one knife from the bushes and on benzidine test, blood was found. The same was sealed and sent to FSL, Lucknow. In his presence from the sealed packet, a knife was taken out and he stated that this is the same knife which is Ex.36 and the report is Ex.Ka.128. He also proved the certificate under Section 65B of Evidence Act under a signature as Ex.Ka.129 and regarding the videography of the recovery effected at the spot. He also proves the photographs as articles as Ex.37 to Ex.55. He denied a suggestion that he has not visited the spot and stated that he has done the investigation at the spot. He also denied a suggestion that he has manipulated the evidence.

63. PW-25- Vinod Kumar, Sr. Scientist, Forensic Science Lab, Lucknow stated that on receiving the information, he visited the spot and inspected the car from which the following recoveries were made. The operative part of the statement read as under:

“जहां मु.अ.सं. 151/14 धारा 323/147/392/364 आई.पी.सी. से सम्बन्धित घटनास्थल पर पहुंच कर घटनास्थल का निरीक्षण किया जहां से घटनास्थल पर खड़ी कार से निम्नलिखित साक्ष्यों को एकत्र किया गया (1) अदद ब्लड सैंपल इन काटन स्वेब आगे

की लेफ्ट शीट के पास (2) एक अदद ब्लड सेम्पल इन काटन स्वेब जो ड्राइवर सीट के पीछे वाली शीट के पास से (3) एक अदद सफेद रुमाल रक्त रंजित कार की पीछे की शीट के पास से (4) एक अदद पाली वेग में hair sample पीछे की शीट से (5) तीन अदद चाकू जिनकी लम्बाईयां क्रमशः 28, 28 तथा 32 सेमी० नापी गईं- कार की पीछे की शीट से (6) एक अदद लेडिस सैण्डिल रक्त रंजित ब्लू कलर की कार की पीछे की शीट से (7) एक अदद कन्ट्रोल सेम्पल प्लेन काटन (8) फ्रिंगर प्रिन्ट कार्ड एक पर पांच अदद अंगुल चिन्ह जिसे Q1 से Q5 से डीनोट किया गया। जो उक्त कार की शीसों से मिले थे। गाड़ी का नं. UP 78 BR.5009 घटनास्थल पर खड़ी थी जिसे उपरोक्त चीजों प्राप्त हुई थी मेरे द्वारा सघन निरीक्षण कार का किया गया था। और मेरे द्वारा उससे जो उपरोक्त साक्ष्य एकत्रित किया गया था वह विवेचक को सुपुर्द किया था। निरीक्षण के समय मेरे निर्देशन में फोटो ग्राफर आनन कुमार शर्मा से घटना स्थल की फोटो ग्राफी कराई थी। फोटोग्राफी तीन शीटों पर कराई थी जो कुल सं० में 36 हैं।

जो मेरे निर्देशन में कराई थी जो शामिल पत्रावली है। पत्रावली में उपलब्ध कागज सं. 707 व 708 व 709, 710 व 712 हैं। कागज सं. 707 फर्द चालान नं. 708 व 709 घटनास्थल निरीक्षण ही मेरे लेख व हस्ताक्षर में हैं फर्द चालान पर प्रदर्शक 130 डाला गया। घटना निरीक्षण संयुक्त रूप से रिपोर्ट रिपोर्ट पर प्रदर्शक 131 डाला गया। कागज सं. 710 व 711 व 712 पर कुल 36 फोटो ग्राफ हैं जो मेरे द्वारा पत्रावली में समिलित हैं। जो विवेचक को मेरे द्वारा दिया गया था। जो शामिल पत्रावली है जिस क्रमशः प्रदर्शक वस्तु 56 लगायत 92 डाला गया।

इस स्तर पर-

अभियुक्त अवधेश, सोनू व रेनू के विद्वान अधिवक्तागण द्वारा उपरोक्त छायाप्रति फोटो पर वस्तु प्रदर्शक डालने से पहले यह आपत्ति की कि निगेटिव दाखिल नहीं है और मूल नहीं है। और कहा कि इनको साक्ष्य में नहीं पढ़ा जावेगा और प्रदर्शक नहीं डाला जावेगा।

न्यायालय आदेश- गवाह द्वारा बताया गया कि डिजिटल कैमरे से फोटो खींचा गया है। इस सम्बन्ध में यह सभी फोटो ग्राफ पठनीय हैं। या नहीं हैं। वह बहस के समय देखा जावेगा। अभी इन पर वस्तु प्रदर्शक डाला जावे।

मैं अपने साथ 65B भारतीय? साक्ष्य अधिनियम 1872 का प्रमाण पत्र प्रस्तुत कर रहा हूँ। यह प्रमाण पत्र मेरे लेख व हस्ताक्षर में है। आपत्ति- यहां पर अभिगण के विद्वान अधिवक्तागणों ने आपत्ति की कि 65B का प्रमाणपत्र विवेचक को नहीं दिया इस स्तर पर नहीं दिया जा सकता। यह प्रमाण पत्र लिगल प्रमाण पत्र नहीं है। और बाद में बनाया गया है।

न्यायालय आदेश- प्रमाणपत्र साक्ष्य जारी रहेगा तथा इसकी वैधता के सम्बन्ध में बहस। निर्णय के वक्त देखा जावेगा।

मेरे द्वारा मेरी देखरेख में डिजिटल कैमरा व कम्प्यूटर व प्रिन्टर का प्रयोग करके फोटो निकालिये। उपकरण सही थे। और फोटो में कोई छेड़छेड़ नहीं की गई। प्रमाण पत्र पर प्रदर्शक 132 डाला गया।

आज मुकदमे से सम्बन्धित सील मोहर बण्डल खोला गया जिसमें मु०अ०सं० 151/14 सरकार V/s पीयूष शायमदसानी आदि विवरण अंकित हैं। सील मुहर हालत में दोनों पक्षों के उपस्थित में दोनों पक्षों के सामने न्यायालय के समक्ष खोला गया।

बण्डल के अन्दर से एक सफेद ट्रान्सपेरेंट पन्नी के अन्दर कागज में लपेटे हुये तीन आदद चाकू निकले जिनमें से दो चाकू की लम्बाई 8 सेमी व एक चाकू की लम्बाई 32 सेमी. हैं। तीनों चाकूओं पर क्रमशः 32 सेमी पर वस्तु प्रदर्शक 93 तथा 28-28 सेमी पर वस्तु प्रदर्शक 94 व 95 डाला गया। तथा जिन कागजों पर चाकू लिपटे हुये थे। उन पर वस्तु प्रदर्शक 96 से 98 डाला गया तथा पादर्शी पन्नी पर वस्तु प्रदर्शक 99 डाला गया। तथा जिस कपड़े पर तीनों चाकू निकले

उस वस्तु प्रदर्श 100 डाला गया। इस कपड़े पर अ.सं. 151/14 धारा 147/323/364/392/302/201/412/120B/34 आई.पी.सी. थाना स्वरूपनगर बनाम पीयूष श्यामदसानी आदि अंकित है। बड़े बण्डल सील से उपरोक्त वस्तु प्रदर्श चाकू निकाले गये थे। ”

64. In cross-examination, he stated that the articles recovered which were having blood stains were duly marked. He denied a suggestion that the certificate under Section 65B of Evidence Act is a fake document. He also denied a suggestion that articles are not sealed in his presence or that he has made shown the recovery of articles while sitting in the police station.

65. PW-26- Dharmprakash Shukla, another co-investigator, stated about the deposit of the articles with FSL. He also stated about the fingerprints taken at the spot and sent to the FSL for examination. This witness stated that vide diary no.6, he recorded statement of Sagar Ratnani who stated that he had gone to the house of Manisha Makheeja in relation to a matrimonial proposal while confronting his statement, under Section 161 of Cr.P.C. and Section 164 of Cr.P.C, he denied a suggestion that subsequent statement was recorded in order to cover up the discrepancies in the previous statements. He stated that from 24.7.2014 to 28.7.2014, Manisha and Sagar Ratnani were sending message to each other, however, he has not collected the transcript. He stated that he has no knowledge whether in the previous statement under Section 161 of Cr.P.C., Sagar has told about her relation with Manisha Makheeja.

66. PW-27- Gopi Chandra Yadav, Inspector, stated that on 28.7.2014, he received an information through wireless set about abduction of lady in Honda Accord Car No. UP78BR5009 and while searching for the same, he found the car parked near Shanti Medical Store and then he gave information to S.O., Swaroop Nagar, who also reached there and thereafter, the higher officials and field unit dog squad also reached there. The field unit team broke the window pane of the car and took out the injured lady and sent her to the hospital. During the inspection of the spot by field unit, one white colour blood stained handkerchief, three knives

which were blood stained, hair, sandals etc. were recovered which were sealed. He deposited the same in the police station vide G.D. No.7. In cross-examination, he stated that no mobile was found inside the car and denied a suggestion that the proceeding was ante-time and prepared at the police station.

67. PW-28- Amit Kumar Sharma, Nodal Officer Reliance Communication Ltd., stated that his predecessor, Madhu Balusu has prepared a covering letter on which he identified a signature and proved the documents as Ex.Ka.133 to Ex.Ka.134. He stated that mobile no. 8687580730 was issued in the name of Sarvesh Kumar and also stated that while preparing the call details record, no tampering was done with the computer and certificate of Section 65B was issued. In cross-examination, he denied a suggestion that the call detail record is not correct and for providing the certificate of Section 65B, no summon was issued from the court.

68. PW-29- Kulbhushan Singh, S.I., also stated that he had gone to the office of Aircell and therefore, he could not collect the original CDR of mobile no. 7784987598, however, from the mobile ID of the company, the call details were retrieved which are Ex.Ka.145 to Ex.Ka.147 and in this regard, certificate under Section 65B was issued which is Ex.Ka.148. This witness further denied a suggestion that the documents produced by him are fake.

69. PW-30- Rajeev Dwivedi, Inspector, stated that he has received the envelope from the doctor for sending it to the FSL, Lucknow and proved the DNA report from Hyderabad. He stated that S.I., Reena Gautam arrested accused Manisha Makheeja and while in custody, statement of Piyush Shyamdasani and Manisha Makheeja was recorded while they were asked to sit in front of each other. He recovered the details of Black Berry mobile phone which was provided from the company. The operative part of details read as under:

“कम्पनी के पत्र के अनुसार IMEI No. 358567040242816, Email ID दि० 17.9.2011 को manisha05@hotmail.com व 2.10.2012 को Email id Piyush shyam jesani@yahoo.com से activate हुआ था। इस mbl. set पर आखिरी IMEI नं. 405045017477576 दि० 3.7.14 को हुई थी जिससे mbl. No. 8090766853 जो कि पीयूष का नम्बर है, Activate हुआ।”

70. This witness also stated about the recovery of CCTV footage hard disk of Rave Moti Mall and Varanda Restaurant. He also stated about the inspection of the Honda Accord Car by HCP-MT- Rajesh Shukla and inspection of the other suspected places. He also produced the location chart of Piyush Shyamdasani, Awadhesh, Renu, Sonu and Ashish. With regard to the call details, witness stated as under:

“जिसके अनुसार पीयूष ने Mbl. No. 8090766853 से अवधेश के Mbl. No. 8127986342 पर 21.05 पर वार्ता की। इस समय अवधेश की Location Varanda restaurant थी। इसके उपरान्त अभियुक्त रेनू द्वारा अपने Mbl. No. 7784987598 से आशीष के Mbl. No. 8090615770 पर 21.08 पर वार्ता की। इस समय रेनू की Location पार्वती बागला? Road, Varanda Restaurant के पास थी। पीयूष द्वारा अवधेश को पुनः 21.17 पर, 21.55 पर Call की गई। अवधेश की Location Varanda restaurant थी। रेनू द्वारा आशीष को समय 22.13. Mol. पर Call की गई। दोनों की Varanda restaurant के पास मौजूद थे। इसी क्रम में आशीष द्वारा सोनू को समय 22.23, 22.25 बजे Call की गई। Location घटना स्थल पार्वती बागला Road है। सोनू द्वारा आशीष को 23.37 पर Call की गई। सोनू की Location कम्पनी बाग से Rawatpur Road पर मिली। इसी Location पर पीयूष द्वारा Honda कार गाड़ी मृतका ज्योती को अवधेश और उसके साथियों के सुपुर्द कर दिया। इसके उपरान्त सोनू द्वारा आशीष को लगातार Call की गई। जिसमें इनकी Location पनकी क्षेत्र में है जहां से Honda कार व मृतका का शव गाड़ी के अन्दर बरामद हुआ था। सोनू द्वारा आशीष को 28.7.14 समय 00.05 बजे Call की गई है इनकी Location पनकी क्षेत्र में गाड़ी और शव मिलने के स्थान पर हुई। आशीष द्वारा सोनू और रेनू को मो० साइकिल से घर छोड़ा गया। इसी दौरान पीयूष द्वारा मनीषा को समय 22.42 पर Call की गई। पीयूष Varanda restaurant से नीचे आकर अवधेश व साथियों से मिलकर घटना की तैयारी के विषय में जानकारी करता है। सह विवेचक द्वारा पीयूष के Mbl. No. 9956353535 के उपलब्ध कराये गये Chart से घटना पूर्णतः स्पष्ट है। पीयूष द्वारा प्रयुक्त दूसरा Mbl. No. 8090766853 से 21.55 बजे अवधेश को Ph. किया। 21.56 बजे मनीषा को Call किया।”

71. This witness further stated that he has shown the location of all the mobile numbers of the accused excluding Manisha Makheeja on a google map which is Ex.Ka.152. The exhibition of the google map was objected by the defence side, however, the court observed that regarding overruling the aforesaid objection, a separate order is passed. This witness by relying upon this map, told about the locations of the accused persons except Manisha Makheeja on 27.7.2014, immediately before the occurrence and subsequent to the occurrence. This witness further stated that on a previous occasion, i.e. on 13.7.2014, an attempt was made, thereafter, another attempt was made on 27.7.2014 and in this regard, this witness

stated that he has collected the call details of Piyush Shyamdasani, Renu, Sonu, Ashish. The operative part of the statement read as under:

“इसके पूर्व हत्या के प्रयास रविवार के दिन है, गूगल नक्शे पर है। दि० 13.7.14 को हत्या की बनायी गई योजना सचेण्डी स्थित *oriant resort* से वापसी के समय बनाई गयी थी जिसका *Invitation Card* उपलब्ध है, दि० 20.7.14 की बनाई गई योजना गंगा वैराज के आस पास बनाई थी जो कि वारिश के कारण सफल नहीं हो पायी जिसका *Chart* संलग्न है।

दि० 13.7.14 को योजना सफल न होने पर पीयूष द्वारा अपने मो० से रेनू को समय 00.15 बजे व समय 00.18 बजे *Call* की गई। 00.50 पर अवधेश से वार्ता की थी। दि० 20.7.14 को हत्या की योजना सफल न होने पर पीयूष द्वारा रेनू के *Mbl.* पर 22.29 बजे व 22.23 बजे वार्ता की गई तथा अवधेश के *Mbl.* पर *SMS* भेजा गया। 22.38 बजे मनीषा को *call* की। इस प्रकार दि० 20.7.14 को पीयूष, अवधेश से समय 20.27 से लेकर 22.25 बजे तक लगातार सम्पर्क में रहा। समय 21.07 बजे अवधेश व पीयूष दोनों की *Call* का *Location* *Miston Road* का है जो कि बड़े चौराहे के पास स्थित है जिसके अभियुक्तगणों द्वारा *Z square* पर मिलने की पूर्व दिये गये वयानों की पुष्टि होती है। दि० 21.7.14 को भी 21.41 व 21.43 बजे पीयूष की *Location* *Rev Moti* काकादेव क्षेत्र में, अवधेश की *Location* 21.38, 21.53 बजे काकादेव क्षेत्र में, व अभियुक्त पीयूष से वार्ता भी हो रही है। रेनू की लोकेशन 21.36 बजे काकादेव क्षेत्र में *Rev Moti* के पास व अवधेश से वार्ता भी हो रही है। इस विवरण से अवधेश, रेनू द्वारा 21.7.14 को *Rav Moti Big Bazar* से चाकू खरीदने और पीयूष के वहां उपस्थित होने की तथ्य की पुष्टि होती है। इस प्रकार अभियुक्तगण द्वारा प्रयुक्त *Mbl.* नम्बरों के दि० 13.7.14, 20.7.14, 27.7.14 के उपलब्ध *Call* विवरण व *Location* को एक साथ नक्शे पर दर्शाकर विश्लेषण करने के उपरान्त यह पूर्णतः प्रमाणित होता है कि सभी अभियुक्तगण द्वारा योजनाबद्ध तरीके से मृतका ज्योती के दो बार हत्या के असफल प्रयास व तीसरी बार हत्या करके शव को छिपाया गया। ”

72. This witness further stated about the call details between the accused persons on different dates. He also collected the details of IMEI number used by Ashish. He gave complete details of the scientific investigation regarding the recovery memo of the mobile phones, SIM numbers and IMEI numbers used by all the accused persons. This witness stated that as per his investigation, the incident was done neither with a motive for taking away the car nor for making any physical or sexual assault with the lady. The phone of the deceased was lying in the car on which a call was received during the incident. He further stated that during investigation, this fact came on record that mobile no. 8090766837 is of Manisha Makheeja, who is friend of Piyush Shyamdasani and another mobile no. 8858758057, is of an employee, namely, Kamini Sachan who worked in his factory. He stated that he gave complete details of the various phones made on the date of incident between the two numbers and concluded that both accused, A-1 and A-2 were in touch with each other before the incident. It was also found that Awadhesh Chaturvedi is a former driver of Manisha Makheeja, was using mobile no.

8127986842 and knew about their love relationship. This witness stated that on the basis of the evidence, it was concluded that Piyush Shyamdasni in conspiracy with Awadhesh, Sonu, Ashish and Renu in a collective manner committed the murder of his wife by paying ransom to the co-accused. He also stated about recording the scene of occurrence which suggest that the murder was committed in a brutal manner. This witness also stated about the call details, CCTV footage, purchasing of knives and recovery of the diary of the victim.

73. This witness further stated that during investigation, it was found that Piyush Shyamdasani was not having such an intimate relationship with Kamini Sachan that he may commit murder of his wife- Jyoti whereas such evidence came against accused- Manisha Makheeja. This witness also proved the sealed articles which were sent to FSL, Lucknow and were produced before the court by opening the seal, the mobile phones etc. are Ex.103 to Ex.106. In cross-examination, regarding the chart vide Ex.Ka.152, he stated that it was prepared in crime branch and only bears his signatures. He denied a suggestion that google map has been prepared just to create evidence. In further cross-examination, he gave details of the call made between the accused persons regarding the google map. He stated that he had taken the copy from the satellite google map and has shown the location by his own with colours. In further cross-examination, he stated that Piyush Shyamdasani did not get his medical examination.

74. PW-31- Reena Gautam, S.I., stated that she was also an additional investigator and recorded the statement of witness, Manisha under Section 161 of Cr.P.C. At that time, she was not arrested. Manisha told that she is having relationship with Piyush Shyamdasani before his marriage and as Jyoti was objecting to the same, a conspiracy was hatched for murdering Jyoti. This witness stated that she did not suggest the I.O. for recording the statement of Manisha under Section 164 of Cr.P.C. When confronted with her own statement, this witness stated that she has told to the I.O.

that Manisha has told her that she was having relationship with Piyush Shyamdasani prior to the marriage and hatched a conspiracy to kill Jyoti. However, in this regard, she cannot tell the reason why it was not recorded. This witness stated that she arrested Manisha on 30.7.2014.

75. PW-32- Karan Kumar Singh, Constable, stated that in his presence, S.O., Shiv Kumar has done the investigation regarding accused- Sonu, Renu, Awadhesh Chaturvedi and Ashish Kashyap. He recovered the blood stained clothes of Sonu and Renu and he had prepared the G.D. entry as dictated by Shiv Kumar Singh, which was Ex.109 to Ex.110. The sealed packet of the clothes was opened in the court and the clothes worn by Sonu and Renu as articles were Ex.111 to Ex.114 and he proved the recovery as Ex.Ka.154. In cross-examination, he denied a suggestion that the entire proceeding is fake.

76. PW-33- Sagar Ratnani stated that a matrimonial proposal regarding Manisha Makheeja came to his family and he along with his family members came to Kanpur, in the morning of 24.7.2014 by train. He stated that all of them had lunch at the house of Manisha Makheeja and at that time, parents, grand-parents and one mediator, Suresh Nahlani was there. He and Manisha Makheeja had talk while sitting separately. He stated that the girl was uncomfortable because of her short height and told him that it will not look good, if she said no, therefore, suggested him that he should refuse and therefore, he refuse to get married to Manisha Makheeja. This witness stated that he returned to New Delhi on 25.7.2014 and up to 28.7.2014, he had chatting with Manisha Makheeja. He proved a statement recorded under Section 164 of Cr.P.C. as Ex.Ka.155. When confronted with the statement, Manisha suggested him to say no, is not recorded in his statement under Section 164 of Cr.P.C., This witness stated that he cannot tell the reason why the Magistrate has not recorded it.

77. PW-34- Shiv Kumar Singh Rathore, the main Investigating Officer and S.H.O., P.S.- Mangalpur, gave a complete details of the investigation

starting from the information given in the police station for recording of the FIR.

78. He deposed about the investigation conducted by the FSL field unit, the statement of the witnesses, the recovery effected at the spot, the arrest of the accused persons, their confessional statement recorded by the police, he gave a complete details of the confession of all the accused persons. He also gave the details of the mobile phones, the SIM cards, IMEI numbers, call details records received from the various mobile companies, the conclusion drawn by the co-investigating officials.

79. In a lengthy cross-examination summing into 100 pages, this witness gave each and every detail of investigation, information supplied by the prosecution witnesses and all the documents which already stands exhibited in the statement of other prosecution witnesses. In cross-examination, this witness denied a suggestion that all the documents have been prepared while sitting in the police station. In cross-examination by accused- Manisha Makheeja, he stated that he recorded the statement of Manisha Makheeja on three occasions and she was arrested on 30.7.2014. In lengthy cross-examination, the defence counsels put all the questions which were already put to the co-investigating officials and he denied a suggestion that he has collected fake CDR and electronic evidence.

80. PW-35- Om Prakash, Head Constable proved about the recovery of the motorcycle from accused Ashish as well as the knife used in the commission of offence. He was a witness to the same which is Ex.Ka.171. In cross-examination, this witness denied that he has not visited the spot and no recovery was effected in his presence.

81. PW-36- Brij Kishore Dixit, Head Constable, has proved certain G.D. entries prepared by him as well as other police officials as Ex.Ka.173. In cross-examination, this witness also denied a suggestion that the same G.D. entries are prepared in the police station and the signatures of the witnesses have been obtained later on.

82. PW-37- Ram Prakash, Inspector stated that he has prepared *Naksha Najari* as Ex.Ka.174 and Ex.Ka.175. In cross-examination, again this witness was given suggestion that he has not prepared the site plan at the spot and no recovery was effected at the spot.

83. Thereafter, CW-1- Madha Balusu was examined, who proved a certificate CAF, which was downloaded from the computer system regarding the CDR of phone nos. 8687145104 and 868758730.

84. CW-2- Tej Bahadur Singh, Head Constable, stated that accused Om Prakash Shyamdasani died on 28.10.2018 and proved his death certificate as Ex.Ka.156.

85. CW-3 – Shiv Kumar Rathore (PW-34) was re-examined.

86. Thereafter, the trial court recorded the statements of all the accused persons under Section 313 of Cr.P.C and put all incriminating evidence to them, identical questions were put to all accused persons, they denied the same and stated that these are false evidence, created against them. The accused persons stated that they have been falsely implicated and they are innocent. Accused- Piyush Shyamdasni in his statement, recorded under Section 313 of Cr.P.C., has stated that the informant side is highly politically connected as one of them is a sitting MLA at Jabalpur and he has been falsely implicated whereas he has given the correct information in the police station. He stated that the mobile number assigned to him, was not on his name. He also stated that accused- Manisha Makheeja is residing near to his house but he has no love relationship with her and family of Manisha has also participated in his marriage with Jyoti. He stated that Shankar Nagadev was demanding money from his family and had taken Rs.50,00,000/- from demand draft, Rs.10,00,000/- from cheque and Rs.40,00,000/- in the shape of jewellery and also demanded Rs.10,00,000,00/- for settling the case but the accused was not in a position to pay. He further stated that PW-5, Triveni Shankar Dixit was

produced under the influence of aforesaid Shankar Nagdev and recovery of ring is fake.

87. In her statement under Section 313 of Cr.P.C., accused Manisha Makheeja was also confronted with similar questions and she denied the same. In reply to question no.105 whether she was having thick relation with the Piyush Shyamdasani, whether this fact was known to accused-Awadhesh and whether in a criminal conspiracy, all the accused persons committed murder of Jyoti, she denied all facts.

88. In reply to question no.108, PW-31- Reena Gautam, S.I. has stated that when she recorded the statement of Manisha under Section 161 of Cr.P.C., she told her that she was in relationship with Piyush Shyamdasani prior to his marriage and Jyoti was a hurdle, therefore, they all conspired to commit murder of Jyoti. This accused-A-2 stated that this is all fake and concocted story made with due deliberation and she has been falsely implicated. This witness also made a statement under Section 313(5) of Cr.P.C., stating that she had no relationship with Piyush Shyamdasani who was younger to him by few years. She wanted to perform marriage with Sagar Ratnani and therefore, she was in touch with him even after 24.7.2024, when she met with him at her residence and in this connection she was making SMS and Whatsapp call to him. She stated that her marriage proposal broke down because she was involved in the present case and police has spoiled her life. This witness stated that her D.O.B is 5.11.1987 and Piyush Shyamdasni is much younger to her in age and therefore, the allegation of love relationship is false. She also stated that she was arrested after the sun set by PW-31- Reena Gautam and even an attempt was made by moving an application before the court to get her pregnancy test just to defame her. She further stated that police was influenced by the media report and has prepared fake evidence against her.

89. Thereafter, the case was fixed for defence evidence of the accused person.

90. DW-1- Ajeet Kashyap stated about the plea of *Alibi* set up by accused- Ashish Kashyap and stated that on 27.7.2014, Ashish Kashyap was with him at Pandu Nagar crossing.

91. DW-2- Suraj Kashyap stated that he is cousin of Ashish Kashyap and on 27.7.2014, they were together at Pandu Nagar crossing.

92. DW-3- Mukesh Shyamdasani, brother of accused- A-1 stated that Piyush's marriage was performed with Jyoti on 28.11.2012 and he produced the marriage album and other photographs. He stated that after marriage, both Piyush and Jyoti went for honeymoon for Singapore and Malaysia for 15 days and they returned happily. He also produced certain photographs of the honeymoon. This witness further stated that both Piyush and Jyoti celebrated their first marriage anniversary in Kanpur club and programme was organized in which photography was done and all the prosecution witnesses were present and they were seen happy at that time. He produced the photographs as Ex.Kha.1 to Ex.Kha.107. In cross-examination, he stated that after marriage, Piyush and Jyoti were staying happily and had no dispute. He came to know that the family of Jyoti is very miser and used to put pressure on Jyoti to bring money from her in-laws. He stated that on 27.7.2014, he was going to Delhi by train and after some time Piyush called from his phone no. 9956353535 to his phone no. 7408211111 and informed that Jyoti has been kidnapped and he was very perturbed and weeping. He gave the description about the manner she was kidnapped, when they had come out of Varanda Restaurant after taking meals.

93. He stated that his father made a phone call at Number 100 and asked Piyush to reach P.S.- Swaroop Nagar and thereafter, the complaint was given. He produced the copy of the railway ticket as Ex.Kha 108 and Ex.Kha.109. He stated that Shankar Nagdev was continuously

blackmailing them and was demanding crores of rupees to close the case and his family has given Rs.60,00,000/- by demand draft and cheque and Rs. 1,00,000,00/- in cash. He further stated that his family has been involved on the pressure exerted by Chief Minister of Madhya Pradesh. He denied a suggestion that no money was paid or that his family was demanding money.

94. DW-4- Dr. S.K. Juneja stated that the patient by the name of Jyoti visiting her as she could not bear a child and he has given certain prescription which are Ex.Kha.111 to Ex.Kha.113. In cross-examination, she stated that in a medical investigation, certain deformities were found and she was advised medicine for the same.

95. DW-5- Shabab Haidar, Assitant in District Jail, Kanpur Nagar, produced the entries regarding the accused person in District Jail Kanpur.

96. Thereafter, the trial court vide impugned judgment of conviction and order of sentence convicted the accused, A-1 to A-6 whereas accused, A-8 to A-10 were acquitted. Accused A-7 Om Prakash Shyamdasani died during trial.

97. As at the time of hearing of second bail applications, in light of order of the Supreme Court in Special Leave to Appeal (Crl.) No(s). 12641 of 2023 dated 20.2.2024., all the learned Senior Counsels for appellants and informant agreed and, therefore, the arguments on main appeal was heard over for 6 days.

98. Sri V.P. Srivastava, learned Senior Advocate has argued on behalf of accused A-1 Piyush Shyamdasani that the marriage of accused-A-1 was solemnized with victim- Pooja @ Jyoti on 28.11.2012 and there was no motive on the part of the appellant to commit murder of his wife.

(a) Learned Senior Advocate has argued that as per FIR version which is recorded in the statement of A-1 itself on 27.7.2014 at about 11:30 p.m., when he and his wife (victim) was travelling in Honda Accord Car No.

UP78-BR-5009, 7-8 persons on four motorcycles had come in front of his car and hit it from front side, when he protested, they gave him beating and forced him out of car and 3-4 persons including, one by driving the car took it away while his wife was sitting in the same and, therefore, he came to the police station and reported the matter at 12:30 a.m. on the intervening night on 27/28.7.2014 with a allegation that his wife has been abducted.

(b) Learned Senior Advocate has next argued that later on the victim was found lying in a pool of blood inside the car by the police and her jewellery etc. was taken away by the assailants and, therefore, it was a case of abduction and looting. It is next argued that even as per medical evidence, there are injuries on the body of the victim suggesting that she protested against the action of the assailants and, therefore, she was given brutal injuries and as the assailants could not succeed in abducting her because of the protest shown by her, by causing injuries, the assailants took away all the valuable belonging like rings and tops etc.

(c) It is argued that accused-A-1 has given a natural version in the FIR which is corroborated by the postmortem suggesting that the victim had protest injuries on her body. It is next argued that the entire evidence of prosecution is based on circumstantial evidence that the accused A-1 was having love relationship with accused-A-2 (Manisha Makheeja) and in furtherance of conspiracy, they killed the victim, wife of accused-A-1, by engaging four other accused persons, namely, Renu @ Akhilesh Kanauiya, Sonu Kashyap, Ashish Kashyap and Awadesh Chaturvedi.

(d) Learned Senior Advocate has argued that only on the basis of call details, the police has come to the conclusion that it was a conspiracy amongst all six accused persons and other accused persons i.e. accused-A-7 and A-8 who are parents of A-1 and A-9 and A-10 maternal uncle and aunt of A-1 had no knowledge about the conspiracy. The accused A-8 to A-10 were acquitted by the Trial Court as no such evidence came on record.

(e) Learned Senior Advocate has argued that the prosecution has failed to prove the motive against the appellant A-1 to A-6 despite the fact that the witnesses of facts i.e. PW-2, PW-4 and PW-6, when confronted with their statement made under Section 161 Cr.P.C. have stated that they disclosed about the extramarital affair of accused A-1 and A-2 to the investigating officer and if the same is not recorded in their statement, they cannot give any reason. It is next argued that for the first time, all the witnesses of fact have made drastic improvement in the Court by making out the story of criminal conspiracy, ill behaviour of A-1 towards his wife-victim (Pooja @ Jyoti) and illicit affair between A-1 and A-2.

(f) Learned Advocate has argued that there is no consistency in the statement of all the witnesses of facts to establish either motive or conspiracy to commit the murder of victim Pooja @ Jyoti

(g) Learned Counsel has argued that the statement under Section 161 Cr.P. recorded of all the witnesses of fact could not be looked into in the light of the judgment of Supreme Court in ***Mahaveer Singh Vs. State of Haryana, (2001) 7 SCC 148***. Para nos. 11 to 14 of the said judgment read as under : -

“11. The omission in Ext. DA (the statement ascribed under Section 161 of the Code by PW 1 dated 14-10-1991) regarding the role attributed to A-2 to A-4 relates to a very material aspect and hence it amounted to contradiction. When any part of such statement is used for contradicting the witness during cross-examination the Public Prosecutor has the right to use any other part of the statement, during re-examination, for the purpose of explaining it. The said right of the Public Prosecutor is explicitly delineated in the last part of the proviso to Section 162(1) of the Code. The first limb of the proviso says that any part of the statement (recorded by the investigating officer) may be used to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act. The next limb of the proviso reads thus:

“[A]nd when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.”

Explanation added to the section is also extracted below:

“Explanation.—An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.”

12. *The said explanation was inserted into the statute-book when Parliament approved the legal position propounded by a Constitution Bench of this Court regarding the legal implication of an omission to state any fact in the statement under Section 161 vide Tahsildar Singh v. State of U.P. [AIR 1959 SC 1012 : 1959 Cri LJ 1231]*

13. *If a Public Prosecutor failed to get the contradiction explained as permitted by the last limb of the proviso to Section 162(1) of the Code, is it permissible for the court to invoke the powers under Section 172 of the Code for explaining such contradiction? For that purpose we may examine the scope of Section 172 of the Code. That section deals with the diary of proceedings in investigation. Sub-section (1) enjoins on the investigating officer to enter in a diary the time at which he began and the place or places visited by him during the course of investigation. Such entries should be made on a day-to-day basis. Sub-sections (2) and (3) of Section 172 read thus:*

“172. (2) Any criminal court may send for the police diaries of a case under enquiry or trial in such court, and may use such diaries, not as evidence in the case, but to aid it in such enquiry or trial.

(3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the court; but, if they are used by the police officer who made them to refresh his memory, or if the court uses them for the purpose of contradicting such police officer, the provisions of Section 161 or Section 145, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872), shall apply.”

14. *A reading of the said sub-sections makes the position clear that the discretion given to the court to use such diaries is only for aiding the court to decide on a point. It is made abundantly clear in sub-section (2) itself that the court is forbidden from using the entries of such diaries as evidence. What cannot be used as evidence against the accused cannot be used in any other manner against him. If the court uses the entries in a case diary for contradicting a police officer it should be done only in the manner provided in Section 145 of the Evidence Act i.e. by giving the author of the statement an opportunity to explain the contradiction, after his attention is called to that part of the statement which is intended to be so used for contradiction. In other words, the power conferred on the court for perusal of the diary under Section 172 of the Code is not intended for explaining a contradiction which the defence has winched to the fore through the channel permitted by law. The interdict contained in Section 162 of the Code, debars the court from using the power under Section 172 of the Code for the purpose of explaining the contradiction.”*

(h) It is next argued that one of the circumstances relied upon by the Trial Court for convicting the accused-A-1 to A-6 is that victim Pooja @ Jyoti, 2-3 days prior to the incident, had picked up the ringing mobile phone of her husband -A-1 and heard that on the other end accused A-2 presuming that the call is picked up by A-1 hurriedly stated that her marriage is going to be fixed soon, as boy is coming to meet her and,

therefore, A-1 should eliminate the victim. It is argued that this is a hearsay reason of prosecution.

(i) Learned Senior Advocate has argued that if the victim Pooja @ Jyoti has alarmed about this incident to her parents and other witnesses of fact who are the family members, they could have risen to the situation promptly but they never tried to ask accused-A-1 whether this statement made by the victim is correct or not.

(j) Learned counsel has argued that rather it is the case of prosecution that they told the victim that she is coming on the occasion of Raksha Bandhan after 12-14 days , they will discussed this issue with accused-A-1 and, therefore, no such alarming situation informed by the victim which is a made up story after incident.

(k) Learned counsel has argued that in ordinary situation, the parents of the girl on receiving such a alarming situation would have immediately responded and in absence of the same, this story is built up after the incident just to involve the accused-A-1. It is next argued that the noting made by the victim- Pooja @ Jyoti in her diary, material Exhibit M-5 and M-6 nowhere establish that she has any ill feeling towards appellant-A-1, or about the strained husband-wife relationship which suggest that both accused A-1 and A-2 were conspiring to commit her murder.

(l) Learned counsel has argued that that the noting in the diary only reflects trifle issues in the day today matrimonial life of A-1 and the victim. It is also argued that there is no indication in the noting that the accused-A-1 and A-2 were having any relationship and, therefore, the theory set up by the prosecution regarding the conspiracy and motive to murder victim Pooja @ Jyoti is not proved. It is next argued that in the entire evidence of witnesses of fact, nothing has come on record that at any point of time after the marriage of victim with A-7 till the time of incident which has a gap of about eighteen months, any of the witness of fact have stated that either victim Pooja @ Jyoti or they have ever

confronted accused A-1 about his extramarital affair with accused A-2 or about any verbal altercation between accused A-1 with his wife (victim) highlighting that the victim was agitating about extramarital affair of A-1 with accused A-2. It is thus argued that in absence of any such evidence, the element of conspiracy is not at all proved. It is next argued that there is no direct evidence led by the prosecution to establish any illicit intimacy between A-1 and A-2 which would result into a motive to conspire for committing murder of Pooja @ Jyoti.

99. Learned counsel has argued that only the evidence in this regard is the call details and exchange of SMS/ Whatsapp messages between them for a long period of more than six months and, therefore, the prosecution has wrongly drawn an inference that the accused A-1 and A-2 were having intimacy and with a motive, they hatched the conspiracy to kill the victim.

100. Learned Senior Advocate has drawn a reference to the statement of PW-18, Sub Inspector Akhilesh Kumar Gaud, wherein he has stated that during his investigation, he could not find any evidence that accused A-1 and A-2 were having such relationship. It is next argued that it has come in the statement of witness of fact i.e. PW-33 – Sagar Ratnani that prior to the marriage of A-1 with victim- Pooja @ Jyoti, there was a proposal of marriage between A-1 and A-2 but due to mismatch of horoscope, the matrimonial alliance could not mature. It is next argued that in such situation, there is no such occasion for either A-1 and A-2 to proceed in the manner of conspiracy that if the victim-Pooja @ Jyoti is eliminated, their matrimonial alliance between A-1 and A-2 can again mature. It is next argued that the prosecution has wrongly interpreted the statement of PW-33 Sagar Ratnani who has stated that on the matrimonial proposal sent by the family of A-2, he had come to meet her on 24.7.2014, however the alliance could not mature because of short height of A-2. Learned counsel submits that the statement of this witness rather suggest the version of the defence that after the marriage of A-1 with his wife-victim (

Pooja @ Jyoti), the family of A-2 was in fact planing for her marriage through a mediator.

101. Learned counsel has placed reference to the statement of this witness i.e. PW-33 Sagar Ratnani who has stated that after meeting A-2 , he had gone back and for 4-5 days, both of them had chat with each other. As per his statement, he last chatted with A-2 on 28.7.2014 i.e. a date subsequent to the date of incident which suggest that A-2 was looking forward for a arranged marriage proposal with PW-33 and this proposed alliance could not mature for short height of A-2.

102. Counsel submits that it has come in the statement of PW-33 that on 24.7.2014 when he had gone to meet Manisha Makheeja he was having SMS/Whatsapp chat with her till late evening of 28.7.2014 whereas the occurrence has already taken place in the night of 27.7.2014. Counsel submits that this witness also stated that thereafter he came to know about the involvement of Manisha Makheeja from the newspaper and, therefore, he stopped further chatting.

103. Counsel submits that this witness has proved the defence version that Piyush and Manisha Makheeja were not having any such relationship that they may hatch a conspiracy to commit murder of Jyoti so that they may perform marriage with each other. A reference has also been drawn to the statement of Manisha Makheeja recorded under Section 313(5) Cr.P.C wherein she has given her date of birth by stating that she is few years older than Piyush and, therefore, there was no occasion for her to perform marriage with Piyush.

104. Counsel submits that from the evidence of the prosecution, no inference either of conspiracy or motive on the part of appellant A-1 is proved. A reliance is placed on the judgment of the Supreme Court in case of **Ravindra Singh Vs. State of Punjab, (2022) 7 SCC** which read as under : -

“..8. The case of the prosecution herein has remained that the trial court and the High Court have rightly convicted A-2 since the prosecution could successfully establish that there was a motive for the murder. It is contended that the call details produced relating to the phone used by A-1 and A-2 have established that they shared an intimate relationship, which became the root cause of offence committed herein. It is further submitted that the last seen theory, the arrest of the accused, the recovery of material objects and the call details produced, would conclusively establish the guilt of the accused persons in conspiring the murder of the children of PW 5.

9. We have heard the learned counsel for the parties at length and have perused the record.

10. The conviction of A-2 is based only upon circumstantial evidence. Hence, in order to sustain a conviction, it is imperative that the chain of circumstances is complete, cogent and coherent. This Court has consistently held in a long line of cases [see Hukam Singh v. State of Rajasthan [Hukam Singh v. State of Rajasthan, (1977) 2 SCC 99 : 1977 SCC (Cri) 250] ; Eradu v. State of Hyderabad [Eradu v. State of Hyderabad, AIR 1956 SC 316] ; Earabhadrapa v. State of Karnataka [Earabhadrapa v. State of Karnataka, (1983) 2 SCC 330 : 1983 SCC (Cri) 447] ; State of U.P. v. Sukhbasi [State of U.P. v. Sukhbasi, 1985 Supp SCC 79 : 1985 SCC (Cri) 387 : AIR 1985 SC 1224] ; Balwinder Singh v. State of Punjab [Balwinder Singh v. State of Punjab, (1987) 1 SCC 1 : 1987 SCC (Cri) 27] and Ashok Kumar Chatterjee v. State of M.P. [Ashok Kumar Chatterjee v. State of M.P., 1989 Supp (1) SCC 560 : 1989 SCC (Cri) 566 : AIR 1989 SC 1890]] that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.

10.1. In Bhagat Ram v. State of Punjab [Bhagat Ram v. State of Punjab, AIR 1954 SC 621] , it was laid down that where the case depends upon the conclusion drawn from circumstances, the cumulative effect of the circumstances must be such as to negate the innocence of the accused and bring the offence home beyond any reasonable doubt.

10.2. We may also make a reference to a decision of this Court in C. Chenga Reddy v. State of A.P. [C. Chenga Reddy v. State of A.P., (1996) 10 SCC 193 : 1996 SCC (Cri) 1205] , wherein it has been observed that : (SCC pp. 206-07, para 21)

“21. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.”

(emphasis supplied)

11. Upon thorough application of the above-settled law on the facts of the present case, we hold that the circumstantial evidence against the present appellant i.e. A-2 does not conclusively establish the guilt of A-2 in committing the murder of the deceased children. The last seen theory, the arrest of the

accused, the recovery of material objects and the call details produced, do not conclusively complete the chain of evidence and do not establish the fact that A-2 committed the murder of the children of PW 5. Additionally, the argument of the respondent that the call details produced relating to the phone used by A-1 and A-2 have established that they shared an intimate relationship and that this relationship became the root cause of offence is also unworthy of acceptance.

12. The High Court fell in grave error when it fallaciously drew dubious inferences from the details of the call records of A-1 and A-2 that were produced before them. The High Court inferred from the call details of A-2 and A-1 that they shared an abnormally close intimate relation. The Court further inferred from this, that unless they had been madly in love with each other, such chatting for hours would not have taken place. The High Court eventually observed that : (Anita case [State of Punjab v. Anita, 2011 SCC OnLine P&H 17671] , SCC OnLine P&H para 8)

“8. ... We have to infer that the unusual attraction of A-2 towards A-1 had completely blinded his senses, which ultimately caused the death of minor children. It is quite probable that A-2 would have thought that the minor children had been a hurdle for his close proximity with A-1.”

(emphasis supplied)

The above inferences were drawn by the High Court through erroneous extrapolation of the facts, and in our considered opinion, such conjectures could not have been the ground for conviction of A-2. Moreover, the High Court itself observed that “there is no direct evidence to establish that A-1 and A-2 had developed illicit intimacy” and in spite of this observation, the Court erroneously inferred that the murder was caused as an outcome of this alleged illicit intimacy between A-1 and A-2.

13. When a conviction is based solely on circumstantial evidence, such evidence and the chain of circumstances must be conclusive enough to sustain a conviction. In the present case, the learned counsel of the appellant has argued that conviction of A-2 could not just be upheld solely on the ground that the prosecution has established a motive via the call records. However, we hold that not only is such conviction not possible on the present scattered and incoherent pieces of evidence, but that the prosecution has not even established the motive of the crime beyond reasonable doubt.

14. In the present case, the fact that A-1 and A-2 talked on call, only proves that they shared a close relationship. However, what these records do not prove, is that the murder was somehow in furtherance of this alleged proximity between A-1 and A-2. The High Court's inference in this regard was a mere dubious conclusion that was drawn in absence of any cogent or concrete evidence. The High Court itself based its inferences on mere probability when it held that “It is quite probable that A-2 would have thought that the minor children had been a hurdle for his close proximity with A-1”. Moreover, the prosecution has also failed to establish by evidence the supposed objective of these murders and what was it that was sought to be achieved by such an act. The Court observed that the act of A-2 was inspired by the desire to “exclusively possess” A-1. However, it seems improbable that A-2 would murder the minor children of PW 5 and A-1 to increase or protect his intimacy to A-1 rather than eliminate the husband of A-1 himself. Hence, the inference drawn by the High Court from the information of call details presented before them suffers from infirmity and cannot be upheld, especially in light of the fact that there is admittedly no direct evidence to establish such alleged intimacy and that the entire conviction of A-2 is based on mere circumstantial

evidence. We cannot uphold a conviction which is based upon a probability of infatuation of A-2, which in turn is based on an alleged intimacy between him and A-1, which has admittedly not been established by any direct evidence.”

105. It is next argued that there is no evidence led by the prosecution to prove that accused A-1 had either hired or paid any ransom to accused A-3 to A-6 in furtherance to the conspiracy for committing murder of his wife. It is argued that PW-34, main Investigating Officer has admitted in cross examination that during course of investigation he could not find any evidence to suggest that any money was transacted to any of the assailants and therefore, the deposition of PW-34 itself is contrary to the investigation conducted by the other co-investigating officers.

106. It is next argued that simple motive cannot be a proof of conspiracy and has relied upon the judgment of the Supreme Court in case of **Saju Vs. State of Kerala, (2001) 1 SCC 378** which read as under :

“12..... Even otherwise, motive by itself cannot be a proof of conspiracy. In Girja Shankar Misra v. State of U.P. [1994 Supp (1) SCC 26 : 1994 SCC (Cri) 214 : 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.”

107. Counsel submits that the offence of conspiracy as per section 120-A of Evidence Act, 1872 cannot be established on mere suspicion or inference if it is not supported by cogent and legal evidence.

108. It is next argued that the trial court has wrongly recorded a finding that there is delay in reporting the incident of abduction of wife of appellant A-1.

109. Counsel submits that the incident is of 11:30 pm and appellant A-1 who was perturbed with the incident, had reached the police station immediately and within one hour, FIR was registered at 00:30 hours.

110. It is argued that even as per the prosecution evidence, the appellant A-1 and his wife deceased Jyoti had left the Varanda Restaurant at 11:42 pm and after the incident, he made first call to his mother at 12:01 pm to

report to the police by dialling 100 number and a call was also made by his brother Mukesh Shyamdasani at number 100 at 12:04 hours i.e. within 3 minutes of giving information. The appellant promptly called his friend Abhinav Poddar and reached the police station without any delay.

111. It is next argued that the finding recorded by the trial court that appellant even has made a phone call to his wife (deceased) Jyoti in order to confirm from A-3 to A-6 if job is done, was in fact a call made from the police station to find out her location and even PW-34 the main Investigating Officer has also made a phone call on the phone of Jyoti while lodging the FIR. This fact is stated by PW-34 in his statement and, therefore, the trial court has taken a contrary view in an illegal manner.

112. Counsel next argued that another finding recorded that no injury was found on the body of A-1, it is argued that in the FIR (Ex-Ka-6), the accused A-1 has nowhere stated that he was hit by any weapon or suffered a visible injury when he was forced out of the car. It is submitted that this version is consistent with his initial statement recorded under Section 161 Cr.P.C. by PW-34 the main Investigating Officer. Even in Section 313 Cr.P.C. statement A-1 stated that when PW-34 took her to the Government Hospital, there was no doctor and after waiting for some time he came back as he suffered some internal injury and he was in a shock of traumatic incident.

113. It is next submitted that trial court held that appellant acted in cowardly manner by not showing any protest against assailants when they forced him out of the car. Counsel has argued that appellant took it to be incident of abduction of his wife and incident of being hit himself, he tried to save her by contacting police and family members and this finding is wrongly recorded that the appellant had not shown courage for saving the life of his wife.

114. Counsel submits that another finding recorded by the trial court is that there is no scratch on the car though it is stated by appellant A-1 that

motorcycle came in front of his car and hit his car. Counsel submits that primary evidence i.e. car was never produced before the trial court and only on the secondary evidence i.e. photographs, the trial court has recorded such finding.

115. Counsel next submitted that the certificate under Section 65B of Evidence Act issued by the Nodal Officer of the mobile company do not satisfy the requirement of Section 65-B of the Evidence Act. A reliance is placed on the judgment of the Supreme Court in case of **Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1** which read as under : -

*“.....60. It may also be seen that the person who gives this certificate can be anyone out of several persons who occupy a “responsible official position” in relation to the operation of the relevant device, as also the person who may otherwise be in the “management of relevant activities” spoken of in sub-section (4) of Section 65-B. Considering that such certificate may also be given long after the electronic record has actually been produced by the computer, **Section 65-B(4) makes it clear that it is sufficient that such person gives the requisite certificate to the “best of his knowledge and belief”. [Obviously, the word “and” between knowledge and belief in Section 65-B(4) must be read as “or”, as a person cannot testify to the best of his knowledge and belief at the same time.]***

*61. We may reiterate, therefore, that the certificate required under Section 65-B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in **Anvar P.V.** [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] , and incorrectly “clarified” in **Shafhi Mohammad** [Shafhi Mohammad v. State of H.P., (2018) 2 SCC 801 : (2018) 2 SCC 807 : (2018) 2 SCC (Civ) 346 : (2018) 2 SCC (Civ) 351 : (2018) 1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865] . Oral evidence in the place of such certificate cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in **Taylor v. Taylor** [Taylor v. Taylor, (1875) LR 1 Ch D 426] , which has been followed in a number of the judgments of this Court, can also be applied. Section 65-B(4) of the Evidence Act clearly states that secondary evidence is admissible only if led in the manner stated and not otherwise. To hold otherwise would render Section 65-B(4) otiose.+ ”*

116. It is submitted that all the witnesses have stated that they have not recorded the finding on the certificates that they are issued to the best of their knowledge or belief and therefore, the same cannot be read in evidence.

117. It is argued that the trial court has failed to prove original cell phones and the call details which formed the basis of conviction of the

appellants, in fact, recovered from the accused and were registered in their name.

118. Counsel submits that PW-34 has stated that there is no seizure memo regarding recovery of Black Berry mobile which was in the name of the accused A-1 and there is no identity of his mobile device with IMEI number. It is argued that PW-30, Sub Inspector, Rajiv Dwivedi, in his memo Ex-Ka-61 has stated that there was three different IMEI numbers used on this mobile phone though it supports only one IMEI number and therefore, no legal evidence has come on record.

119. It is argued that even in the statement recorded under Section 313 Cr.P.C., no specific question of recovery or use of Black Berry mobile device by appellant A-1 was put to him and therefore, this evidence cannot be relied. It is next argued that main Investigating Officer (PW-34) has stated that no mobile phone was recovered from Awadhesh Chaturvedi at the time of his arrest but the prosecution tried to cover up this lacuna by GD entry KA-147 and recording statement after final argument were heard by the trial court, which proves that this evidence was created later on to fill up the lacuna.

120. Counsel submits that the accused A-1 is assigned another mobile with a fake SIM number 8090766853, on the basis of an interrogation of a girl Kamini Sachan, who had sent message of 'Love You' by her mobile number 9996353535.

121. Counsel submits that the statement of Kamini Sachan under Section 161 Cr.P.C. cannot be used to prove that the appellant was using aforesaid mobile number : 8090766853 as Kamini Sachan was never cited or examined as prosecution witness in the Court and therefore, it breaks the vital link of the prosecution story that appellant was using this mobile number. It is also argued that as per PW-18, S.I. Akhilesh Kumar Gaud, it has come that the fake cell number used by the accused persons were, in fact, belonging to third party which according to his investigation were in

the name of different persons. However, this witness has clearly admitted that he has not examined any person, in whose name mobile numbers were issued and therefore in the absence of the same, it is not legal to rely upon the statement of PW-18 that as per his investigation, fake numbers were used by accused A-1 to A-6 to hatch the conspiracy.

122. It is next argued that the prosecution has tried to prove that on two different occasions, the appellant A-1 had gone with accused A-3 to A-6 for purchase of two sets of knives and the 4 knives were used in commission of offence. It is argued that the trial court has relied upon the statement of PW-34 which is completely inadmissible in law and is based on the confessional statement of accused A-1 and A-3 to A-6 regarding purchase of the knives. A reliance is place on the judgment of the Supreme Court in case of **Randeep Singh Rana @ Rana & Anr Vs. State of Haryana & Ors** in **Criminal Appeal No. 297 of 2024** which read as under :

*“16. A perusal of the deposition of PW-27, which we have quoted above, shows that he attempted to prove the confessions allegedly made by the accused to a police officer Criminal Appeal No.297 of 2024 Page 13 of 18 when they were in Police custody. There is a complete prohibition on even proving such confessions. The learned Trial Judge has completely lost sight of Sections 25 and 26 of the Evidence Act and has allowed PW-27 to prove the confessions allegedly made by the accused while they were in police custody. PW-27 stated that the appellant “suffered disclosure statement at Exhibits ‘P55’ and ‘P56’ respectively”. Obviously, he is referring to disclosure of the information under Section 27 of the Evidence Act. The law on disclosure under Section 27 is well settled right from the classic decision of the Privy Council in the case of **Pulukuri Kotayya & Ors. v. KingEmperor**². In the case of **K. Chinnaswamy Reddy v. State of A.P.**³, this Court relied upon the decision of the Privy Council and in paragraph 9 held thus:*

*“9. Let us then turn to the question whether the statement of the appellant to the effect that “he had hidden them (the ornaments)” and “would point out the place” where they were, is wholly admissible in evidence under Section 27 or only that part of it is admissible where he stated that he would point out the place but not that part where he stated that he had hidden the ornaments. The Sessions Judge in this connection relied on **Pulukuri Kotayya v. King-Emperor** [(1946) 74 IA 65] where a part of the statement leading to the recovery of a knife in a murder case was held inadmissible by the Judicial Committee. In that case the Judicial Committee considered 2 1946 SCC OnLine PC 47 : AIR 1947 PC 67 3 1962 SCC OnLine SC 32 Criminal Appeal No.297 of 2024 Page 14 of 18 Section 27 of the Indian Evidence Act, which is in these terms:*

“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.”

This section is an exception to Sections 25 and 26, which prohibit the proof of a confession made to a police officer or a confession made while a person is in police custody, unless it is made in immediate presence of a Magistrate. Section 27 allows that part of the statement made by the accused to the police “whether it amounts to a confession or not” which relates distinctly to the fact thereby discovered to be proved.

Thus even a confessional statement before the police which distinctly relates to the discovery of a fact may be proved under Section 27. The Judicial Committee had in that case to consider how much of the information given by the accused to the police would be admissible under Section 27 and laid stress on the words “so much of such information...as relates distinctly to the fact thereby discovered” in that connection. It held that the extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate. It Criminal Appeal No.297 of 2024 Page 15 of 18 was further pointed out that “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”. It was further observed that— “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.” This was exemplified further by the Judicial Committee by observing— “Information supplied by a person in custody that ‘I will produce a knife concealed in the roof of my house’ 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. If however to the statement the words be added ‘with which I stabbed A’, these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.” (emphasis added)

Section 27 is an exception to Sections 25 and 26. It permits certain parts of the statement made by the accused to a police officer while in custody to be proved. Under Section 27, only that part of the statement made by the accused is admissible, which distinctly relates to the discovery. It becomes admissible Criminal Appeal No.297 of 2024 Page 16 of 18 when a fact is discovered as a consequence of the information received from the accused. What is admissible is only such information furnished by the accused as relates distinctly to the facts thereby discovered. No other part is admissible. By Exhibits ‘P55’ and ‘P56’, it is alleged that the accused showed the places where the deceased was abducted, where he was murdered and where his body was thrown. In this case, even the inadmissible part of the statement under Section 27 of the Evidence Act has been incorporated in the examination-in-chief of PW-27. The learned trial judge should not have recorded an inadmissible confession in the deposition. A confessional statement made by the accused to a police officer while in custody is not admissible in the evidence except to the extent to which Section 27 is applicable. If such inadmissible confessions are made part of the depositions of the prosecution witnesses, then there is every possibility that the Trial Courts may get influenced by it. ”

123. It is thus argued that section 27 of the Evidence Act is exception to Sections 25 and 26 of the Evidence Act and is totally inadmissible evidence which has been relied upon by the trial court in convicting the appellants.

124. It is argued that in the recovery effected by PW-24, In-Charge, leading team of Forensic Unit, no bloodstains were found on the three knives recovered and therefore, the same were not used in the commission of offence.

125. It is next argued that FSL report and the DNA report cannot be relied as the same is not proved in accordance with law.

126. It is argued that these reports are only tendered in evidence during the trial proceedings. It is also argued that the prosecution has failed to explain how the blood was found by the lab of FSL on the 3 knives when at the time of recovery, no detection of the blood on the knives was found. It is also argued that these reports were never tendered in evidence and, therefore, the evidence counsel were not in position to confront the Investigating Officer with regard to the same.

127. It is also argued that in absence of these reports being put to the accused persons while recording his statement under Section 313 Cr.P.C., the same cannot be used against them.

128. Learned Senior Counsel has relied upon judgment of the Supreme Court in ***Sharad BirdhiChand Sarda Vs. State of Maharastra, (1984) 4 SCC 116***, the operative part of the judgment read as under:

“...152. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant v. State of Madhya Pradesh [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] . This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail (Alias) Simmi v. State of Uttar Pradesh [(1969) 3 SCC 198 : 1970 SCC (Cri) 55] and Ramgopal v.State of Maharashtra [(1972) 4 SCC 625 : AIR 1972 SC 656] . It may be useful to extract what Mahajan, J. has laid down in

Hanumant case [(1952) 2 SCC 71 : AIR 1952 SC 343 : 1952 SCR 1091 : 1953 Cri LJ 129] :

It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the 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 and it must be such as to show that within all human probability the act must have been done by the accused."

129. It is argued that the prosecution has failed to prove the five principles laid down in ***Sharad BirdhiChand's Case (supra)*** and therefore, the fact what apparent is liable to be set aside. The counsel has further relied upon the judgment of the Supreme Court in ***Devi Lal Vs. State of Rajasthan, (2019) 19 SCC 447***, to submit that even if the prosecution evidence raises some suspicion towards accused but has failed to elevate the case from realm of 'may be true' to 'must be true' as indispensably required for conviction of criminal charge and therefore, the suspicion, however grave, cannot be a substitute proof. The operative part of the judgment read as under:

'....11. It is true that an extra-judicial confession is used against its maker but as a matter of caution, advisable for the court to look for a corroboration with the other evidence on record. In Gopal Sah v. State of Bihar [Gopal Sah v. State of Bihar; (2008) 17 SCC 128 : (2010) 4 SCC (Cri) 466] , this Court while dealing with extra-judicial confession held that extra-judicial confession is, on the face of it, a weak evidence and the Court is reluctant, in the absence of a chain of cogent circumstances, to rely on it, for the purpose of recording a conviction. In the instant case, it may be noticed that there are no additional cogent circumstances on record to rely on it. At the same time, Shambhu Singh (PW 3), while recording his statement under Section 164 CrPC, has not made such statement of extra-judicial confession (Ext. D-5) made by accused Babu Lal. In addition, there are no other circumstances on record to support it.

12. The other connecting evidence on which reliance was placed by the prosecution was that accused Babu Lal had given information of handing over the torn leaf of bahi obtaining signatures of deceased Dharam Chand to accused Devi Lal. Accused Devi Lal got the said leaf recovered by giving information to the investigating officer. There is no justifiable explanation available which came on record as to how the torn leaf came in the possession of Devi Lal as the said paper was torn from the Bahi (Article 27) which was recovered from the accused Babu Lal, which has been matched by FSL report. There was also no justification which came forward from the prosecution as to how the torn Bahi paper of Babu Lal containing the signatures of deceased Dharam Chand with black ink came to him. Pen was recovered on the

information of accused Babu Lal, by which handwriting found on the leaf recovered from accused Devi Lal. The further circumstance was recovery of Rs 11,200 on the information given by the accused Babu Lal but from where this money had come to Babu Lal, was not clarified by the prosecution. The other circumstances completing the chain was that accused Devi Lal had not given any clarification with regard to the fact that by which information Devi Lal had come to Babu Lal which had been indicated in the diary recovered from accused Devi Lal under Section 27 of the Evidence Act. Accused Babu Lal was arrested on 13-2-1999 and accused Devi Lal was arrested on 15-2-1999 for the alleged incident of 7-2-1999 which came to the knowledge of the informant on 8-2-1999 and report was lodged on 11-2-1999 and the alleged recovery of torn page of Bahi, which obtained signature of the deceased along with the diary of 1999 (Ext. P-79), under Section 27 of the Evidence Act was made on 24-2-1999. The Bahi, as such, was never produced. Apart from non-production of Bahi, to prove the provenance of the torn piece of blank paper, the similarity of the ink on this torn piece of paper and ledger was extremely doubtful in view of the objection by the FSL and response lead to it which the investigating officer (PW 33) has also admitted in the cross-examination.

13. What was relied upon by the High Court was that the paper, Article 7 recovered on disclosure of appellant accused Devi Lal (from “Darraj” to Barsot”) was one which was torn away from Bahi recovered on information at the instance of the appellant Babu Lal. Secondly, that piece of paper had lower portion which had signatures of deceased Dharam Chand and other than that, the paper was blank.

14. Summarily, the circumstances in totality apart from the extra-judicial confession which has been noticed by the High Court [Babu Lal v. State of Rajasthan, 2009 SCC OnLine Raj 333] are referred to as under: (SCC OnLine Raj)

“(1) Appellant Devilal wanted to purchase half portion of “Bara” from deceased for which he actively pursued.

(2) On February 7th, in morning, around 9-10 a.m., deceased left for Bhagwanpura, not a very distant village.

(3) Around 10-10.30 a.m., he telling of going to house of Babulal for receiving money went towards and to house (“Nohra”) of Babulal.

Going to house of Babulal then never seen alive.

(4) Jeep of Shambhu hired by Babulal on February 6th for use in evening of 7th for going to Village Dhikiya.

Then in evening of 7th around 8 p.m. Babulal and two others carried weighty drum which was left at an isolated site, body of deceased found in a dry well like pit, near the place drum was left.

(5) On information of Babulal, his own concealed clothes recovered from his house, also were bloodstains on compound wall and soil of his “Nohra”. On clothes of Babulal and clothes of deceased blood ‘A’ group.

Stains found on the floor of “Nohra” of ‘A’ group.

Stains on wall of “Nohra” of human blood.

(6) On information of Babulal that is from his possession, recovered a “Bahi” — of the “Bahi” a leaf about 7-8" × 6-7" was torn away.

(7) Babulal informed that above half torn leaf is with Babulal.

(8) On information and at the instance of Devilal, that is from his possession, found above half torn leaf of “Bahi” recovered from “Darraj”, that is a narrow space between frame of door and surrounding wall.

(9) On this torn away leaf at lower side, are signatures of Dharam Chand, otherwise blank is the paper.”

15. Without going into detailed scrutiny of the facts on record under consideration, the circumstances which emerged and taken note of under the impugned judgment in itself gives a suspicion in completing the chain of commission of crime beyond doubt, being committed by the appellant-accused.

16. The classic enunciation of law pertaining to circumstantial evidence, its relevance and decisiveness, as a proof of charge of a criminal offence, is amongst others traceable to the decision of the Court in *Sharad Birdhichand Sarda v. State of Maharashtra* [*Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116 : 1984 SCC (Cri) 487]. The relevant excerpts from para 153 of the decision is assuredly apposite: (SCC p. 185)

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned “must or should” and not “may be” established. There is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved” as was held by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* [*Shivaji Sahabrao Bobade v. State of Maharashtra*, (1973) 2 SCC 793 : 1973 SCC (Cri) 1033] where the observations were made: (SCC p. 807, para 19)

‘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.’

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

17. It has further been considered by this Court in *Sujit Biswas v. State of Assam* [*Sujit Biswas v. State of Assam*, (2013) 12 SCC 406 : (2014) 1 SCC (Cri) 677] and *Raja v. State of Haryana* [*Raja v. State of Haryana*, (2015) 11 SCC 43 : (2015) 4 SCC (Cri) 267]. It has been propounded that while scrutinising the circumstantial evidence, a court has to evaluate it to ensure the chain of events is established clearly and completely to rule out any reasonable likelihood of innocence of the accused. The underlying principle is whether the chain is complete or not, indeed it would depend on the facts of each case emanating from the evidence and there cannot be a straitjacket formula which can be laid down for the purpose. But the circumstances adduced when considered collectively, it must lead only to the conclusion that there cannot be a person other than the accused who alone is the perpetrator

of the crime alleged and the circumstances must establish the conclusive nature consistent only with the hypothesis of the guilt of the accused.”

130. Learned counsel has also relied upon the judgment of the Supreme Court in ***Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and others, (2020) 7 SCC 1***, to submit that there is a clear distinction between primary and secondary evidence qua electronic records/documents. It is argued that the certificate required under Section 65-B (4) of Evidence Act is condition precedent to the admissibility of secondary evidence by way of electronic record. The operative part of the judgment read as under:

“...60. It may also be seen that the person who gives this certificate can be anyone out of several persons who occupy a “responsible official position” in relation to the operation of the relevant device, as also the person who may otherwise be in the “management of relevant activities” spoken of in sub-section (4) of Section 65-B. Considering that such certificate may also be given long after the electronic record has actually been produced by the computer, Section 65-B(4) makes it clear that it is sufficient that such person gives the requisite certificate to the “best of his knowledge and belief”. [Obviously, the word “and” between knowledge and belief in Section 65-B(4) must be read as “or”, as a person cannot testify to the best of his knowledge and belief at the same time.]

61. We may reiterate, therefore, that the certificate required under Section 65-B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] , and incorrectly “clarified” in Shafhi Mohammad [Shafhi Mohammad v. State of H.P., (2018) 2 SCC 801 : (2018) 2 SCC 807 : (2018) 2 SCC (Civ) 346 : (2018) 2 SCC (Civ) 351 : (2018) 1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865] . Oral evidence in the place of such certificate cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in Taylor v. Taylor [Taylor v. Taylor, (1875) LR 1 Ch D 426] , which has been followed in a number of the judgments of this Court, can also be applied. Section 65-B(4) of the Evidence Act clearly states that secondary evidence is admissible only if led in the manner stated and not otherwise. To hold otherwise would render Section 65-B(4) otiose.

62. In view of the above, the decision of the Madras High Court in K. Ramajayam [K. Ramajayam v. State, 2016 SCC OnLine Mad 451 : 2016 Cri LJ 1542] , which states that evidence aliunde can be given through a person who was in charge of a computer device in the place of the requisite certificate under Section 65-B(4) of the Evidence Act is also an incorrect statement of the law and is, accordingly, overruled.”

131. The counsel has also relied upon another judgment of the Supreme Court in ***Anvar P.V. Vs. P.K. Basheer and others, (2014) 10 SCC 473***,

wherein it has held that the copy of the statement pertaining to electronic record is not original electronic record and there is mandatory pre-requirement that it should be proved by certificate under Section 65-B(4) of Evidence Act but proven record like C.D., pen drive etc. and in the absence of proving the certificate, the same is not admissible. The operative part of the judgment read as under:

“.....8. Section 22-A of the Evidence Act reads as follows:

“22-A. When oral admission as to contents of electronic records are relevant.—Oral admissions as to the contents of electronic records are not relevant, unless the genuineness of the electronic record produced is in question.”

9. Section 45-A of the Evidence Act reads as follows:

“45-A. Opinion of Examiner of Electronic Evidence.—When in a proceeding, the court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence referred to in Section 79-A of the Information Technology Act, 2000 (21 of 2000), is a relevant fact.

Explanation.—For the purposes of this section, an Examiner of Electronic Evidence shall be an expert.”

10. Section 59 under Part II of the Evidence Act dealing with proof, reads as follows:

“59. Proof of facts by oral evidence.—All facts, except the contents of documents or electronic records, may be proved by oral evidence.”

11. Section 65-A reads as follows:

“65-A. Special provisions as to evidence relating to electronic record.—The contents of electronic records may be proved in accordance with the provisions of Section 65-B.”

12. Section 65-B reads as follows:

“65-B. Admissibility of electronic records.—(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as “the computer output”) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely—

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly

carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say—

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section—

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation.—For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.”

These are the provisions under the Evidence Act relevant to the issue under discussion.

13. *In the Statement of Objects and Reasons to the IT Act, it is stated thus:*

“New communication systems and digital technology have made drastic changes in the way we live. A revolution is occurring in the way people transact business.”

In fact, there is a revolution in the way the evidence is produced before the court. Properly guided, it makes the systems function faster and more effective. The guidance relevant to the issue before us is reflected in the statutory provisions extracted above.

14. *Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65-A, can be proved only in accordance with the procedure prescribed under Section 65-B. Section 65-B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub-section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document i.e. electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65-B(2). Following are the specified conditions under Section 65-B(2) of the Evidence Act:*

(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;

(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;

(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some

time, the break or breaks had not affected either the record or the accuracy of its contents; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

15. *Under Section 65-B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:*

(a) There must be a certificate which identifies the electronic record containing the statement;

(b) The certificate must describe the manner in which the electronic record was produced;

(c) The certificate must furnish the particulars of the device involved in the production of that record;

(d) The certificate must deal with the applicable conditions mentioned under Section 65-B(2) of the Evidence Act; and

(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

16. *It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.*

17. *Only if the electronic record is duly produced in terms of Section 65-B of the Evidence Act, would the question arise as to the genuineness thereof and in that situation, resort can be made to Section 45-A—opinion of Examiner of Electronic Evidence.*

18. *The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65-B of the Evidence Act are not complied with, as the law now stands in India.*

19. *It is relevant to note that Section 69 of the Police and Criminal Evidence Act, 1984 (PACE) dealing with evidence on computer records in the United Kingdom was repealed by Section 60 of the Youth Justice and Criminal Evidence Act, 1999. Computer evidence hence must follow the common law rule, where a presumption exists that the computer producing the evidential output was recording properly at the material time. The presumption can be rebutted if evidence to the contrary is adduced. In the United States of America, under Federal Rule of Evidence, reliability of records normally go to the weight of evidence and not to admissibility.*

20. *Proof of electronic record is a special provision introduced by the IT Act amending various provisions under the Evidence Act. The very caption of Section 65-A of the Evidence Act, read with Sections 59 and 65-B is sufficient to hold that the special provisions on evidence relating to electronic record shall be governed by the procedure prescribed under Section 65-B of the*

Evidence Act. That is a complete code in itself. Being a special law, the general law under Sections 63 and 65 has to yield.

21. In State (NCT of Delhi) v. Navjot Sandhu [State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600 : 2005 SCC (Cri) 1715] a two-Judge Bench of this Court had an occasion to consider an issue on production of electronic record as evidence. While considering the printouts of the computerised records of the calls pertaining to the cellphones, it was held at para 150 as follows : (SCC p. 714)

“150. According to Section 63, “secondary evidence” means and includes, among other things, ‘copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies’. Section 65 enables secondary evidence of the contents of a document to be adduced if the original is of such a nature as not to be easily movable. It is not in dispute that the information contained in the call records is stored in huge servers which cannot be easily moved and produced in the court. That is what the High Court has also observed [Ed. : Reference is to State v. Mohd. Afzal, (2003) 71 DRJ 178] at para 276. Hence, printouts taken from the computers/servers by mechanical process and certified by a responsible official of the service-providing company can be led in evidence through a witness who can identify the signatures of the certifying officer or otherwise speak of the facts based on his personal knowledge. Irrespective of the compliance with the requirements of Section 65-B, which is a provision dealing with admissibility of electronic records, there is no bar to adducing secondary evidence under the other provisions of the Evidence Act, namely, Sections 63 and 65. It may be that the certificate containing the details in sub-section (4) of Section 65-B is not filed in the instant case, but that does not mean that secondary evidence cannot be given even if the law permits such evidence to be given in the circumstances mentioned in the relevant provisions, namely, Sections 63 and 65.”

It may be seen that it was a case where a responsible official had duly certified the document at the time of production itself. The signatures in the certificate were also identified. That is apparently in compliance with the procedure prescribed under Section 65-B of the Evidence Act. However, it was held that irrespective of the compliance with the requirements of Section 65-B, which is a special provision dealing with admissibility of the electronic record, there is no bar in adducing secondary evidence, under Sections 63 and 65, of an electronic record.

22. The evidence relating to electronic record, as noted hereinbefore, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia specialibus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65-A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65-A and 65-B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this Court in Navjot Sandhu case [State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600 : 2005 SCC (Cri) 1715] , does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65-B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of

Section 65-B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.”

132. The counsel has also relied upon the judgment of Supreme Court in ***Ramanand alias Nandlal Bharti vs. State of Uttar Pradesh, AIR 2022 SCC 5273***, to submit that whether the extra-judicial confession is made after the arrest by an accused person for pointing out the recovery of weapon used in the commission of offence, will not suggest that the accused indicted his involvement. It is submitted that there is a clear distinction between the judicial confession made before the Magistrate or court and extra-judicial confession made before a police officer during the investigation, arrest of an accused and in case, extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful. The counsel submits that finding recorded by the trial court that accused-A-1 was having relationship with A-2 and wanted to settle with her, was the motive of committing the offence is not at all proved. The reference is drawn to relevant part of judgment ***Ramanand alias Nandlal Bharti vs. State of Uttar Pradesh (supra)***, which is read as under:

“....87. It is a settled principle of criminal jurisprudence that in a case based on circumstantial evidence, motive for committing the crime on the part of the accused assumes greater importance. This Court in various decisions has laid down the principles holding that motive for commission of offence no doubt assumes greater importance in cases resting on circumstantial evidence than those in which direct evidence regarding commission of offence is available. It is equally true that failure to prove motive in cases resting on circumstantial evidence is not fatal by itself. However, it is also well settled and it is trite in law that absence of motive could be a missing link of incriminating circumstances, but once the prosecution has established the other incriminating circumstances to its entirety, absence of motive will not give any benefit to the accused.

88. Having regard to the nature of the evidence on record, there is something to indicate that the accused appellant had illicit relationship with Manju and wanted to settle in life marrying Manju. As noted above, in the past accused appellant had got engaged with Manju and was on the verge of getting married. At the relevant point of time when the accused appellant got engaged with Manju, it appears that one and all including the deceased Sangeeta were consenting parties. There is nothing on record to indicate that at the time of engagement of accused appellant with Manju, the deceased Sangeeta had raised hue and cry or had opposed such decision of her husband. Of course, this is something which is very personal. If at all we believe the illicit relationship of the accused appellant with Manju, then it is possible that the deceased Sangeeta might be an absolutely helpless lady and could not have

done anything in that regard. However, the moot question is should this motive by alone be held sufficient to convict the accused appellant for the alleged crime and sentence him to death.”

133. The counsel has also relied upon the judgment of the Supreme Court in ***Subramanya Vs. State of Karnataka, AIR 2022 SCC 5110***, to submit that it is held by the Supreme Court that extra-judicial confession by a co-accused, after lapse of time of the alleged incident, can be used only in support of evidence but cannot be made on foundation of conviction. It is again held by the Supreme Court that recovery of weapon on the statement given by accused while in custody did not suggest that he has indicated himself about his involvement in the offence as mere discovery, cannot be interpreted sufficient to infer the concealment by the person who discovered the weapon. It is also held in this case that motive in the facts and circumstances of the case, creates a strong suspicion against accused but suspicion howsoever strong, cannot be a substitute for proof of guilt of accused beyond doubt. If the evidence regarding motive of the accused to commit crime was hearsay in nature, the same is not proved.

134. Learned Senior Counsel submitted that the trial court has recorded the conviction on the basis of the hearsay evidence as PW-7- Monika Ashudani stated that the deceased on her phone, informed that she has picked up the phone call from A-2 coming on phone of accused-A-1 and she told that her marriage is going to be finalised soon, therefore, he should do away with the deceased, cannot be made a basis of conviction of appellant.

135. Learned counsel for the appellant-A-2 has argued that the conviction of the appellant-A-2 is based on a non-admissible evidence which is in the shape of hearsay. It is argued that Manisha Makheeja is three years older to accused-A-1, Piyush, and it is the case of the prosecution itself that prior to the marriage of A-1 with the victim- Jyoti, a matrimonial alliance was proposed between A-1 and A-2. However, due to mismatch of horoscope, the same could not mature. It is also submitted

that the marriage of Piyush with Jyoti was an arrange marriage and they were living happily as it is proved from the photographs by DW-3. The counsel submits that after the marriage, the couple was living happily as they had gone for their honeymoon and all the prosecution witnesses of fact have stated that Jyoti visited her parental home on three occasions. Though, it is stated by the prosecution witnesses that at the first instance, she did not tell anything about the behaviour of her husband-A-1, however, in the second meeting, she stated that his behaviour is not good and he used to ask her to do lot of things like a servant. The counsel further argued that it is only for the first time that the prosecution has made out a story that a few days before the incident, Jyoti has informed her paternal aunt (Bua)- PW-7- Monika Ashudani about picking up the phone of Manisha Makheeja in which she was inspecting the accused-Piyush and understand that accused A-1 was having love affair with accused A-2 even before marriage.

136. Learned Senior Counsel has further submitted that once as per the prosecution, the marriage of accused A-1 and A-2 could not mature because of mismatch of Horoscope much before the marriage of accused A-1 with Jyoti, therefore there was no occasion for accused A-2 to think about marrying accused A-1, after he commits murder of his wife Jyoti. It is next argued that the parents of A-2 in a natural way were looking for a matrimonial match of A-2 and in that connection, the boy who appeared as PW-33- Sagar Ratnani stated that the talks of his marriage started on 18.7.2014 through a mediator and he along with his family members came to Manisha's house on 24.7.2014. He stated that all of them had lunch at the house of Manisha Makheeja and he and Manisha Makheeja had talk while sitting separately. He found that the girl was uncomfortable because of her short height and told him that it will not look good, if she said no, therefore, suggested him that he should refuse the proposal and therefore, he refuse to get married to Manisha Makheeja. The counsel submits that PW-33 proves the fact that family of Manisha Makheeja was

looking for a suitable match for her marriage and PW-33 was called through a Mediator but it could not mature due to mismatch of height and this incident cannot be taken as part of conspiracy. The counsel submits that prosecution witnesses have stated that the family of Manisha is residing in neighbourhood of accused-A-1 where Jyoti was residing for about 18-19 months after her marriage and it is not possible that she did not know about any such relationship, and in fact in order to complete a chain of circumstances, Manisha was used as a tool because she was on talking terms with A-1 and had exchanged certain messages, transcription of which was never produced on record. It is next argued that the very fact that despite PW-2 and PW-7 stating that Jyoti told them that Manisha was telling to Piyush to get rid off (the deceased) and on this they told her after 12-14 days on the occasion of Raksha Bandhan, both Piyush and Jyoti will come to Jabalpur and they will talk to each other and tried to find out a solution, is not a normal behaviour of the family of the victim. It is argued that if it was such a grave situation, as alarmed by Jyoti that accused, A-1 and A-2 are conspiring to kill her, as a natural human being, they would have immediately responded and rose to the situation and would have come to Kanpur to meet and confront Piyush with the said allegation but no such action was taken by them which proves that after the incident took place, they have concocted the version of telephone call made by accused-A-2 or such information given by deceased Jyoti to PW-6 and PW-7.

137. Learned counsel submits that another important aspect for which the prosecution has failed to investigate is that PW-3, mother of deceased and PW-6, father of the deceased have stated that after the incident, they went to the house of one Balram, who was the cousin of PW-3 and was residing one or two house away from house of Piyush and Jyoti. They stayed there for 2-3 days, where the police recorded their statement. Learned counsel submits that if this person was immediate neighbour of Piyush and Jyoti and was first cousin of mother of Jyoti, it is improbable

to believe that if there was any emergent situation in the matrimonial life of Jyoti, she would not have approached him to intervene and even as per PW-7, when she received a phone call from Jyoti, 3-4 days prior to the incident regarding the alleged conspiracy between A-1 and A-2 to kill her, they would have immediately call to Balram to intervene and find out what is truth. However, during entire investigation, neither Balram is cited as a witness nor the I.O. tried to find out about the relationship of accused A-1 with Jyoti from him.

138. It is next argued that even role of PW-5 who was an Astrologer, is mischievous. This witness has stated that he has told the victim Jyoti that her marriage with Piyush will not pull on and he has advised her certain remedies including giving her a ring with a pearl to wear it. It is argued that in fact this witness for the sake of his astrology, on finding a rich client, had sown the seed of suspicion in the mind of Jyoti so that she started believing that her relationship with husband-A-1 will never be cordial. The counsel submits that this witness, PW-5 has admitted in a statement that he had no knowledge about any such relationship of A-1 and A-2 but later on he came to know the same. It is thus argued that the involvement of A-2 is not proved from the statement of PW-5.

139. Learned counsel for the appellant has further argued that all the witnesses of fact had relied upon the hearsay evidence that victim-Pooja @ Jyoti told them on telephone about the accused A-1 and A-2 conspiring to kill her. It is next contended that neither any complaint in writing was given to any authority after receiving such call nor her husband(A-1) was confronted with the same at any point of time which shows that the story of conspiracy is cooked up only after murder of victim Pooja @ Jyoti.

140. Learned counsel further submitted that even in first statement recorded under Section 161 Cr.P.C., no such story was brought forward before the police about involvement of Manisha Makheeja about any conspiracy with accused A-1 (Piyush Shyamdasani). It is submitted that for the first time drastic improvements have been made while deposing in

court and when confronted, all the witnesses of facts have stated that they cannot tell the reason why the Investigating Officer has not recorded so in their statement under Section 161 Cr.P.C.

141. Learned counsel has further submitted that the statement of PW-6, the father of the victim, was recorded before the Magistrate much after the incident and in a calculated manner, in order to create an evidence of conspiracy for the first time, he has given the name of accused- Manisha Makheeja.

142. Learned counsel has further argued that it has come in the statements of all the six Investigating Officers / Assistant Investigating Officers that though as per record, the SIM cards in mobile phones were issued in the name of different persons but they never interrogated those persons as to how the mobile numbers issued in their name were used by accused persons. Even none of such persons, in whose name the SIM cards were found to be issued by the concerned mobile companies, were cited as a witness to prove that in fact accused persons were using those phone numbers and, therefore, on a mere assumption that the calls are being made from one number to another number, the trial court has wrongly held that accused Manisha Makheeja was also part of conspiracy.

143. Learned counsel has further submitted that as per prosecution evidence, accused A-3 to A-6 in conspiracy with accused A-1 had purchased two knives from Rave Moti Mall, on two occasions i.e 13.7.2014 and 21.7.2014 when two unsuccessful attempts were made to eliminate victim Pooja @ Jyoti. It is next contended that even as per PW-7, when victim Pooja @ Jyoti told her on mobile phone that she has heard A-2 saying that A-1 should eliminate her (deceased – Pooja @ Jyoti) is relating to a date much after the first attempt made by A-1 in conspiracy with A-3 to A-6. Learned counsel thus submits that therefore, the story of conspiracy which is set up between A-1 and A-2, even as per the prosecution is after the first unsuccessful attempt was made to eliminate

the deceased also prove that in fact there was no conspiracy between them and it is only an afterthought story made after the death of Pooja @ Jyoti.

144. Learned counsel has relied upon the judgment of ***Sharad Birdhichandra Sharda (supra)*** to submit that it is well settled principles of law that mere suspicion howsoever strong cannot be taken as a ground to prove the conspiracy. It is next argued that the evidence of conspiracy against accused -A-2 is not made out and she should be acquitted of the charge.

145. Learned counsel appearing on behalf of accused Ashish Kashyap has submitted that he was not present at the spot on the date of incident i.e. 27.7.2014 as two of the witnesses, DW-1 and DW-2 have stated that at the relevant time, he was present with them at a different place in Kanpur.

146. Learned counsels appearing on behalf of accused- Renu @ Akhilesh Kanaujiya, Sonu and Ashish have argued that they have been falsely implicated and they have no role in the commission of crime.

147. On the other hand, learned counsel for the informant has argued that prosecution has led sufficient evidence. Firstly, the matrimonial relationship between accused- A-1 and deceased- Jyoti were not cordial because of the extra-marital affair of accused-A-1 and A-2. It is submitted that all the accused made the first attempt to murder Jyoti on 13.7.2014, however, the same could not mature. The second attempt was made on 20.7.2014, again it could not mature.

148. The counsel submits that on the fateful day i.e. 27.7.2014, the accused Piyush took Jyoti to Varanda Restaurant and after they have dinner, he took her into his Honda Accord Car when accused A-3 to A-6 in furtherance to the conspiracy, stopped the car, abducted Jyoti and later on committed her murder. The counsel has referred to the statement of the prosecution witnesses who have proved the record of call details of the phone call as well as the recoveries effected from the car immediately

after the incident, the recovery of knives and another weapon of offence used by the accused in pursuance to their confessional statement.

149. Learned Senior Counsel has submitted that it is proved from the statement of PW-34, the main I.O. that immediately after the incident, he located the car using the location of the deceased's mobile phone and reached the spot and found that the deceased was lying in a pool of blood. She was taken out by breaking the window pane of the car and took her to Hallet Hospital, where the doctor declared her dead. The counsel submits that in post-mortem as many as 14 wounds were found which proved that she was brutally murdered.

150. Learned counsel has further argued that one another circumstance which proves the conspiracy is that PW-7 has stated that few days before the incident, the victim told her that she has picked up the phone of accused-A-1 by receiving a call from A-2 and heard that she was saying that her marriage is being fixed soon and therefore, accused-A-1 should eliminate the victim. The counsel submits that from this statement, even the victim was sure that the same conspiracy is being hatched to kill her.

151. The counsel has next argued that the electronic evidence i.e. the record of call details of all the mobile phones which were collected during the investigation, the hard disk of the CCTV footage has been duly proved as all the Investigating Officers in their statement has stated that they have received the requisite certificate under Section 65B of the Evidence Act from the Nodal Officers of the concerned mobile companies. It is argued that all the Nodal Officers have appeared as prosecution witnesses and have stated that the requisite certificate were issued by them and there was no tampering of the computer data while preparing the certificates and therefore, the scientific evidence, corroborate ocular version of the prosecution witnesses. The counsel has next argued that the involvement of accused-A-1, A-3 to A-6 in committing the murder is also proved from the Forensic Science Lab Report which proves that on the recovered knives, bloodstains were found which matched with the blood of the

deceased. It is argued the evidence of FSL is admissible under Section 293 of Cr.P.C. and it was duly put to all the accused persons while recording the statement under Section 313 of Cr.P.C. The counsel has relied upon the judgment of the Supreme Court in ***Sharad Birdhichandra's Case (Supra)*** to submit that complete chain has been proved by the prosecution. The counsel has also relied upon the judgment of the Supreme Court in ***Shafi Mohammad Vs. State of Himachal Pradesh, (2018) 2 SCC 801***, to submit that the Supreme Court has held that Sections 65A and 65B of the Evidence Act, cannot be held to be a complete code on the subject of proving an electronic evidence and the threshold admissibility of the electronic evidence cannot be ruled out on any technical ground if it is relevant. It is held that requirement of certificate under Section 65B (4) of Evidence Act being procedural can be relaxed by the court, wherever interest of justice so justifies and therefore, the requirement of certificate under Section 65-B (4) of Evidence Act is not always mandatory. The counsel has also relied upon the judgment of the Supreme Court in ***Balbir Singh Vs. State of Uttarakhand, (2023) Live Law SC 861***, to submit that accused- A-1, Piyush failed to discharge is obtained under Section 106 of the Evidence Act as the defence set up by him stands falsified from the prosecution evidence that some unknown persons have abducted his wife.

152. It would be relevant to FSL report regarding weapon of offence as under:-

"विधि विज्ञान प्रयोगशाला, उत्तर-प्रदेश, महानगर, लखनऊ

प्रेषक,

संयुक्त निदेशक

विधि विज्ञान प्रयोगशाला, उ०प्र०,

महानगर, लखनऊ- 226006.

सेवा में,

पुलिस अधीक्षक नगर (पूर्वी),

कानपुर नगर।

पत्रांक 2009-SERO-14 L/W 2222-SERO-14 जिला: कानपुर नगर

अपराध सं०: 151/14

राज्य बनाम: पीयूष श्याम दसानी

धारा: 302/201/412/120B IPC

थाना: स्वरूप नगर।

आपका पत्र संख्या:

चिकित्सा अधिकारी कानपुर नगर

प्रेषक संदर्भ

उपरोक्त मामले से सम्बन्धित प्रदर्श प्रयोगशाला में दिनांक 25.08.14 को विशेष वाहक द्वारा प्राप्त हुए।

सील का विवरण

एक वस्त्रावृत समुद्रित पार्सल जिस पर (S.B.Y.U.P.P मुद्रानमूनानुसार) की छाप अक्षत थी।

प्रदर्शी का विवरण

- | | |
|------------------|---|
| 1. रुमाल | एक सर्वमुहर बंडल से |
| 2. रूई खूनालूद | एक सर्वमुहर बंडल से (पीछे की सीट से) |
| 2. रूई सादा | एक सर्वमुहर बंडल से |
| 3. स्वेब काटन | एक सर्वमुहर बंडल से (आगे की लेफ्ट सीट से) |
| 4. सैण्डिल लेडीज | एक सर्वमुहर बंडल से (पीछे की सीट से) |
| 5. चाकू | एक सर्वमुहर बंडल से |
| 6. चाकू | |
| 7. चाकू | |
| 8. रुमाल | एक सर्वमुहर बंडल से (अभि० सोनू से) |
| 9. चाकू | एक सर्वमुहर बंडल से (अभि० रेनू से) |
| 10. सलवार | एक सर्वमुहर बंडल पी०एम०नं० 2095/14 से |
| 11. कुर्ता | |
| 12. पैन्टी | |
| 13. ब्रा | |
| 14. दुपट्टा | |
| 15. सैण्डिल | |
| 16. हेयर क्लिप | |
| 17. ब्रासलेट | |
| 18. जीन्स पैन्ट | एक सर्वमुहर बंडल से |
| 19. टी-शर्ट | (अभि० सोनू से) |
| 20. जीन्स शर्ट | एक सर्वमुहर बंडल से |
| 21. टी-शर्ट | (अभि० रेनू से) |
| 22. लाल द्रव | एक सर्वमुहर लिफाफा पी०एम० नं० 2095/14 से |

परीक्षण परिणाम

वस्तु (1) से (22) के बड़े भागों पर रक्त पाया गया।

वस्तु (10) (12) व (20) पर सबसे बड़े धब्बे की लम्बाई क्रमशः लगभग 28,10 व 10 से०मी० थी।

रक्त के लिये प्रारम्भिक बेजिडीन परीक्षण सकारात्मक पाया गया तथा स्पेक्ट्रमीय परीक्षण द्वारा रक्त की पुष्टि की गयी।

वस्तु (3) से (7) (9) से (18) (20) व (22) पर मानव रक्त पाया गया वस्तुतः (1) (2) (8) (19) व (21) पर रक्त (वियोजित) डिसइन्टीग्रेटेड रक्त का मूल निर्धारण जेल प्रसरण विधि द्वारा किया गया।

नोट- रक्त के वर्गीकरण/डी.एन.ए परीक्षण से सम्बन्धित आख्या अलग से प्रेषित की जायेगी।

प्रतिहस्ताक्षरित

ह०अपठनीय

निदेशक

विधि विज्ञान प्रयोगशाला उ०प्र०

लखनऊ।

ह०अपठनीय

डा० राजकुमार

उप-निदेशक सीरो

विधि विज्ञान प्रयोगशाला, उत्तर-प्रदेश, महानगर, लखनऊ

प्रेषक,

संयुक्त निदेशक

विधि विज्ञान प्रयोगशाला, उ०प्र०,

महानगर, लखनऊ- 226006.

सेवा में,

पुलिस अधीक्षक नगर (पूर्वी),

कानपुर नगर।

पत्रांक 2009-SERO-14 L/W 2222-SERO-14 जिला: कानपुर नगर

अपराध सं०: 151/14

राज्य बनाम: पीयूष श्याम दसानी

धारा: 302/201/412/120B IPC

थाना: स्वरूप नगर।

उपरोक्त मामले से सम्बन्धित प्रदर्श प्रयोगशाला में दिनांक 25.08.14 को विशेष वाहक द्वारा प्राप्त हुए।

सील का विवरण

एक वस्त्रावृत समुद्रित पार्सल जिस पर (S.B.Y.U.P.P मुद्रानमूनानुसार) की छाप अक्षत थी।

प्रदर्शों का विवरण

1. रुमाल

एक सर्वमुहर बंडल से

2. रूई खूनालूद

एक सर्वमुहर बंडल से (पीछे की सीट से)

2. रूई सादा

एक सर्वमुहर बंडल से

3. स्वेब काटन

एक सर्वमुहर बंडल से (आगे की लेफ्ट सीट से)

4. सैण्डिल लेडीज	एक सर्वमुहर बंडल से (पीछे की सीट से)
5. चाकू	एक सर्वमुहर बंडल से
6. चाकू	
7. चाकू	
8. रूमाल	एक सर्वमुहर बंडल से (अभि० सोनू से)
9. चाकू	एक सर्वमुहर बंडल से (अभि० रेनू से)
10. सलवार	एक सर्वमुहर बंडल पी०एम०नं० 2095/14 से
11. कुर्ती	
12. पैन्टी	
13. ब्रा	
14. दुपट्टा	
15. सैण्डिल	
16. हेयर क्लिप	
17. ब्रासलेट	
18. जीन्स पैन्ट	एक सर्वमुहर बंडल से
19. टी-शर्ट	(अभि० सोनू से)
20. जीन्स शर्ट	एक सर्वमुहर बंडल से
21. टी-शर्ट	(अभि० रेनू से)
22. लाल द्रव	एक सर्वमुहर लिफाफा पी०एम० नं० 2095/14 से

परीक्षण परिणाम

प्राप्त चिह्नित प्रदर्श (1) से 22 का डी एन ए परीक्षण किया गया।

प्रदर्श (5) से (7) व (9) पर उपस्थित स्रोत स्त्री मूल का पाया गया एवं स्रोत प्रदर्श (10) से (12) व (22) (मृतका से) में समानता पायी गयी।

प्रदर्श (18) व (19) (सोनू से) तथा प्रदर्श (20) व (21) (अभि० रेनू से) के स्रोत में आंशिक डी एन ए प्रोफाइल जेनरेट होने के कारण स्रोत प्रदर्श (10) से (12) व (22) से मिलान के सम्बन्ध में अभिमत दिया जाना संभव न हो सका।

प्रदर्श (2) से (4) (13) व (14) में आंशिक डी एन ए प्रोफाइल जेनरेट हुआ।

प्रदर्श (1) (8) व (15) से (17) में डी एन ए निष्कर्षण न हो सका।

डी एन ए परीक्षण में जेनेटिक एनालाइजर व जीन मैपर सॉफ्टवेयर का प्रयोग किया गया। उक्त परीक्षण में मानक विधियां प्रयोग में लाई गईं।

नोट: 1 सीरोलोजी परीक्षण सम्बन्धी आख्या केस क्रमांक 2009-SERO-14 तथा डीएनए परीक्षण से सम्बन्धित आख्या केस क्रमांक 2222-SERO-14 के द्वारा पूर्व से अलग से प्रेषित की जा चुकी है।

2. समस्त प्रदर्शों को परीक्षणों परांत एक सर्वमुहर बंडल में वापस लौटाया जा रहा है।

3. कृपया परीक्षित प्रदर्शों की वापसी की शीघ्र व्यवस्था करें।

अग्रसारित

ह० अपठनीय

ह० अपठनीय

निदेशक
विधि विज्ञान प्रयोगशाला उ०प्र०
लखनऊ।

उप निदेशक
विधि विज्ञान प्रयोगशाला उ०प्र०
लखनऊ।”

153. The counsel for the informant has argued in an appeal filed under section 372 that accused Mukesh Shymdasan, Kamlesh Shyamdasani, and Smt. Poonam Shyamdasani were wrongly acquitted by trial court though sufficient evidence of conspiracy and concealment of evidence has come again them.

154. After hearing the counsel for the parties, the following questions arises for determination in the present appeal as under :

(A) Whether the deceased Jyoti Shyamdasani was murdered between 11.33 (23.33) on 27.07.2014 and 01.30 a.m. on 28.07.2014?

(B) Whether accused Piyush Shyamdasani, accused Manisha Makheeja, accused Awadhesh Chaturvedi, Renu alias Akhilesh Kanaujia, Sonu Kashyap and accused Ashish Kashyap had conspired with common intention to kidnap deceased Jyoti Shyamdasani and in furtherance of criminal conspiracy committed her murder.

(C) Whether under the said criminal conspiracy accused Piyush, accused Awadhesh Chaturvedi, Renu alias Akhilesh Kanaujia, Sonu Kashyap and Ashish Kashyap formed a common intention to cause the murder of the deceased and for fulfillment of the said common intention, accused Piyush, accused Awdhesh Chaturevedi, Renu @ Akhilesh Kanaujia have caused the death of deceased Jyoti?

(D) Whether the said accused persons attempted committed the murder by leaving the deceased in the car in a secluded place with the intention of escaping the punishment for the said crime?

(E) Whether accused Avdhesh Chaturvedi, Renu Alias Akhilsh Kanaujiya, Sonu Kashyap dishonestly misappropriated the jewellery in the possession of the deceased at the time of her death?

(F) Whether accused Piyush Shyamdasani gave false information to police about the incident?

155. With the assistance of learned Senior Advocates appearing for the appellant along with the assisting counsels as well as learned Senior Counsel appearing for the informant and learned AGA for the State, the entire paper book and evidence is re-scrutinized. The file of material exhibits was also requisitioned and with the assistance of learned counsel for the parties, the same was also re-scrutinized and the entire evidence was re-appreciated as the arguments of learned Senior Counsels for the parties was heard for a period of more than six days.

156. After hearing the counsel for the parties, we find no merit in the appeals filed by accused-A-1, Piyush Shyamdasani, A-3- Awadhesh Chaturvedi, A-4- Renu @ Akhilesh Kanaujiya, A-5- Sonu Kashyap and A-6- Ashish Kashyap, for the following reasons:

(i) The prosecution has proved by primary evidence that on the date of incident i.e. 27.7.2014, accused A-1 took his wife- victim, Jyoti to Varanda Restaurant for dinner where he has made an entry in the visitors' book by stating 'Good' and gave his own mobile no. 9956353535. This fact is disclosed by accused A-1 in the FIR itself that he and his wife Jyoti after having dinner at Varanda Restaurant left at around 11:43 PM. Even PW-8- Sanjay Khan, a waiter of the Varanda Restaurant has also proved that both appellant- A-1 and the victim visited their restaurant and had dinner there. It is also stated by this witness that during the intervening period for 8 to 10 minutes, the accused A-1 went downstairs and the victim was sitting alone at the table. Though an objection is raised by the counsel for the appellants that the hard disk of the CCTV footage is not proved by a valid certificate under Section 65B (4) of the Evidence Act,

forever the same being a corroborative evidence to the primary evidence, duly proved the fact that the accused A-1 with his wife- Jyoti left the restaurant around 11:43 PM on that night.

(ii) The version given by accused A-1 in the FIR as well as in the statement under Section 313 of Cr.P.C. that on way, 7-8 persons on four motorcycles waylaid his Honda Accord Car by hitting it from the front side and they forcibly took him out by causing injury on his hand and then one of the assailants drove the car and three other persons sat in the car, whereas his wife was there and abducted her, is not the true version as per the prosecution investigation and evidence.

(iii) The trial court has rightly recorded the finding that it is unnatural for a husband not to protest when some unknown assailants were trying to abduct his wife, by forcing him out of the car and instead of speeding away the car or showing any protest, he has virtually surrendered before the said persons. His own version that he was hit by some pointed weapon on his hand, is not proved by any medical evidence.

(iv) It has come in the statement of Shambhu Singh, Home Guard, that he was deputed by the SHO to take accused A1 to hospital for his medical examination, but he escaped from that place by saying that he will get it done later on, also proves that accused A-1 did not suffer any injury and is gave incorrect statement in the FIR that he was given injuries by the assailants. Therefore, **question no. F** is decided against accused A-1 as he gave false information to police.

(v) All the witnesses of fact i.e. PW-1 Rajesh @ Raja Nagdev, the uncle of deceased, PW-2- Vishesh Nagdev, brother of the deceased, PW-3- Maya Devi, mother of the deceased, PW-4- Hitesh Nagdev, another brother of deceased, PW-6- Shankar Nagdev, father of the deceased and PW-7- Monika Ashudani, aunt of the deceased have clearly stated that immediately after the marriage, Jyoti was complaining about the

unresponsive and cruel behaviour of her husband-accused A-1 and their testimony could not be shattered despite lengthy cross-examination.

(vi) The circumstance proved by the prosecution that immediately after the incident, the victim was found in an injured condition in car of A-1 and then she was shifted to hospital where she was declared dead, also proved that accused Piyush Shyamdasani has not given the correct version to the police and has failed to discharge burden under Section 106 of Evidence Act.

(vii) A perusal of the post-mortem report reflects that the deceased suffered as many as 14 incised wound injuries out of which injuries nos. 1 to 6 are the scuffle wounds, as the deceased had tried to save her life. Injuries nos. 7 to 14 are the incised wound which shows that she was brutally injured with sharp edged weapon like knife. Injury nos. 12 and 13 also are the defensive wounds as there were on the hand of the victim and the manner in which the injuries are caused to the victim, also suggest that it is not a case of abduction and motive was to commit murder.

(viii) From the prosecution evidence, it is proved that the motive to commit the offence was not dacoity as there is no evidence of looting the money or personal belongings as nothing was taken away from Piyush Shyamdasani. As per his own version, he was forced out of the car and in such eventuality, the assailants would have taken his mobile phone and valuable belongings. Even the mobile phone of the victim was not taken away as it was found inside the car. There was no motive of committing rape or ravishing the victim as it has come on record, in the post-mortem report that there is no evidence of molestation or rape with the victim. Even the motive given in the FIR by accused- A-1 that his wife is kidnapped, is not proved that as in such eventuality the assailants would not have killed the victim and they may have demanded ransom at a subsequent stage.

(ix) Even the motive regarding any enmity has not come on record as the accused A-1 was left scratch less and he had not attributed any enmity with any of the assailants even during the investigation. Therefore, the motive as per the prosecution evidence is proved that accused A-1, in conspiracy with accused A-3 to A-7 committed murder of victim Jyoti. As per the FIR, accused A-1 stated that by hitting his car, the assailants who were on four motorcycles, stopped his car, however, as per the prosecution evidence i.e. PW-12 who has conducted the physical verification of the car and has taken the photographs, has stated that no dent or scratch, was found on the body of the car and therefore, even this version given by the accused A-1 in the FIR is false.

(x) The appellant A-1 was found using mobile no. 9956037000 which was in the name of an employee of his company and mobile no. 9956353535 is admittedly used by accused himself. In the FIR itself, the accused has given both these numbers and undisputedly, he was using these two numbers as per the FIR version itself.

(xi) Even on the date of incident, one of the number was mentioned in the visitors register of Varanda Restaurant as accused A-1 has given a comment 'Good' by mentioning his mobile no. 9956353535.

(xii) The police started the investigation by taking the call details of these two numbers and subsequently unfold the entire story of conspiracy.

(xiii) Though as per the prosecution evidence, the call details of accused Manisha Makheeja with the accused A-1 show that they used to talk to each other, however, there is no call details of her mobile number with other accused persons A-3 to A-6. In the statement of PW-13- Poonam Awasthi, PW-18- Akhilesh Kumar Gaud and PW-34, Shiv Kumar Singh Rathaur, the main I.O., it is clearly stated that from their investigation, they could not collect any information about the name of Manisha Makheeja.

(xiv) The police has also recovered the two diaries of the deceased and proved her handwriting by way of FSL report as these were compared to her admitted handwriting taken from her school diaries. However, the entries in the diary suggest that she was not happy with the marriage but there is nothing recorded that she has written anything about the extra-marital relation between accused A-1 and A-2.

(xv) All the witnesses of facts have clearly deposed that Jyoti was complaining about the behaviour of her husband-A-1 so much so the extent that he was mentally harassing her as explained in the detailed statement of prosecution witnesses, PW-1, PW-2, PW-3, PW-4, PW-6 and PW-7.

(xvi) It has come in the statement of PW-34, the main I.O. that on receiving the information, he got the location of the deceased in mobile phone and reached there with accused A-1 and found Honda Accord Car which was identified by Piyush and by breaking open the glass, the victim was taken out of car and was taken to the hospital where she was declared brought dead. As per the post-mortem report proved by PW-19, total 14 scratches and cut injuries were found on the body of Jyoti, which were caused by hard, blunt weapon and the fatal injuries were caused by sharp edge weapon like knife. The time of the causing injuries were found to be between 11 and 12 PM on 27.7.2014 and the cause of death was that deceased died due to excessive bleeding and shock and hemorrhage as a result of ante-mortem injuries.

(xvii) The defence counsels, could not rebut in the cross-examination of the prosecution witnesses regarding the causing of injuries to the victim, the post-mortem report and the nature of weapon used, therefore, the trial court has rightly recorded the finding that the deceased died due to the ante-mortem injuries on her body. The number and nature of injuries caused on the body of the victim clearly shows that the assailants were made sure that the victim did not survive the injuries and therefore, the

prosecution has proved that the death of deceased Jyoti Shyamdasani was of homicidal in nature and she was murdered.

(xviii) Accordingly, **question nos. A and C** are decided against appellants A-1 and A-3 to A-6 and in favour of the prosecution that the deceased Jyoti Shyamdasani was murdered on the intervening night of 27.7.2014 and 28.7.2014 in conspiracy with each other.

(xix) The arguments raised on behalf of the accused persons are that there is no eye-witness to the incident and the entire case is based on circumstantial evidence only and the entire chain of the circumstances is not proved, is also not acceptable.

(xx) As noticed above, the incident was reported by accused A-1 Piyush Shyamdasani himself to the police and police started the investigation by taking the call detail records of the two mobile numbers given by him in the FIR, the CCTV footage of Varanada Restaurant which was also mentioned in the FIR and the statement of PW-8- Sanjay Khan, a waiter working in the restaurant, PW-17- Shubham Poddar, the owner of the restaurant who provided the DVR of 16 CCTV cameras installed in his hotel along pendrive and a certificate, proves that the accused A-1 while the victim was sitting on the table, had gone downstairs for 8-9 minutes and came back. The hard disk of CCTV camera produced in the pendrive were duly proved by PW-17- Shubham Poddar, owner of Varanda Restaurant and he has given certificate that no tampering was done with the same. Therefore, the same are duly proved under Section 65B of the Evidence Act, as per the judgment in **Shafi Mohammad's Case (supra)**. The co-investigator, PW-13- Poonam Awasthi has also given the complete details of all the cameras, in which the accused and deceased Jyoti were seen coming down from the stairs.

(xxi) It has come in the evidence of prosecution that in the intervening period, accused A-1 made call to accused A3 to A6. The FSL, Lucknow in its report dated 28.12.2014, is also proved that men and women were seen

in the cameras. Even otherwise, it is own case of PW-1, as per the FIR that after visiting the Varanda Restaurant, he along with deceased were going in Honda Accord Car where the incident took place.

(xxii) The statement of PW-7- Monika Ashudani, paternal aunt of the victim that at the relevant time when the victim was present in the Varnada Restaurant, she received a call from victim who told her that she was very tensed, she also told that Piyush had gone downstairs of restaurant while talking on the phone and he was telling someone that the work will be done today and therefore, the victim was having strange feeling of fear, proved that there was a conspiracy between Piyush and other accused persons, A-3 to A-6.

(xxiii) PW-13- Poonam Awasthi, co-investigator has proved the call details of all the mobile phones and the CCTV footage of the Varanda Restaurant.

(xxiv) Another evidence proved by the prosecution is that after the assailants have taken away the car of appellant-A-1 in which victim was sitting, a call was made by accused A-1 on her mobile number which was recovered from the car. This call was made by accused A-1 to make sure that the assailants have carried out the murder of Jyoti.

(xxv) PW-18- SI Akhilesh Kumar Gaud who collected and proved the call details of accused Awadhesh Chaturvedi, Sonu Kashyap, Ashish Kashyap, Renu @ Akhilesh Kanaujiya who were using mobile nos. 8127986342, 8687580730, 8090615770 and 7784987698, respectively, were found to be in contact with each other as they were continuously talking to each other as per the call detail records. He has also proved the location of this mobile phones at the scene of incident. Though, this witness has prepared a chart of the mobile phone on a map which has been objected by the defence side, however, even if the map is not there, in the deposition, this witness has stated that has given complete details of locations of all these accused persons. Even the location of the mobile

phone of the accused persons was found around 00:05 hours at the place where the Honda Accord Car was found, in which the injured victim was recovered. Thus, all these facts prove that accused A-1 and A-3 to A-6 were in continuous conversation with each other.

(xxvi) PW-16- Jitendra Mohan Singh and PW-18- Akhilesh Kumar Gaud have also given details of the calls made by accused A-1 to accused A-2, Manisha Makheeja having long conversation out of which one call was made while accused was present in the Varanda Restaurant, to prove that even A-2 was part of the conspiracy, is not proved by the statement of other co-investigators.

(xxvii) Therefore, **question nos. D & E** are decided against the accused persons holding that accused A-1 and A-3 to A-6 in criminal conspiracy, has caused murder of deceased Pooja @ Jyoti in a car and left her in a secluded place with intention of escaping the punishment and accused A-3 to A-6 conceal the jewellery in possession of the deceased at the time of death to destroy the evidence. Therefore, the finding of Trial Court in this regard is upheld. The only evidence against Manisha Makheeja except the evidence that she was having continuous conversation with accused A-1 on the date of incident. Nothing has come on record that he had talked to accused A-3 to A-6 in furtherance of any conspiracy.

(xxviii) It has come in the statement of PW-30- Rajeev Dwivedi that he collected the information regarding the conversation and location of the mobile phone of accused A-1, A-3 to A-6 which show that accused A-1 talked to all the four accused. At the time when accused A-1 was present in Varanda Restaurant, he made a call on the phone of accused A-3 and even the location of accused A-3 was at the Varanda Restaurant. At that time accused Renu @ Akhilesh and Ashish called each other at about 22:13 hours and location of other mobile numbers was also near the Varanda Restaurant in the same sequence. Ashish called Sonu at 22:23 hours and at that time Sonu's location was at the place of incident. The call details record of all the phones which were used by the accused

persons, were proved by the statement of PW-20, PW-21, PW-22, PW-28 and CW-1, Nodal Officers of the respective mobile companies who have duly proved the certificates under Section 65B of the Evidence Act by stating that there was no tampering with the computers where the data is stored and no one can have access to the same unless he is so authorized and therefore, in the light of the judgment of **Shafi Mohammad's Case (supra)**, the requirement of Section 65-B of Evidence Act is proved and the certificates are duly proved to show that these accused were guilty. It has come in the statement of PW-34 that in the disclosure of accused Awadhesh Chaturvedi, Renu @ Akhilesh Kanaujiya, Sonu Kashyap, they told about throwing the knife, wiping the blood stained knife with a handkerchief, throwing the blood stained handkerchief, removing the jewellery of the deceased at the time of her death, throwing in a hollow electrical pole was followed by a recovery of all the articles and therefore, the disclosure of the accused persons which was followed by the recovery of articles is admissible under Section 27 of the Evidence Act. As per the FSL report, the blood stains on the knives recovered matched with the blood stained of the victim which is also a corroborating evidence regarding the recovery effected in pursuance to the recovery of weapon of offence effected in pursuance to disclosure made by the accused persons.

(xxix) The articles recovered from the accused persons belonging to Jyoti were duly identified by her father- PW-6- Shankar Nagdev, as well as PW-5- Triveni Shankar Dixit, an Astrologer who has provided a ring with a pearl to the victim. Even the recovery of blood stained clothes worn by accused Renu, Sonu Kashyap which they have washed away to remove the blood stained were recovered by PW-34 and duly proved before the court.

(xxx) It is stated by PW-34, that the confessional statement of the accused were recorded in presence of two independent witnesses and therefore, the statement was taken as per Section 27 of the Evidence Act and in pursuance thereof, PW-34 along with a Scientific Officer and independent

witnesses had recovered the knives on their identification. PW-24- Dr. Praveen Kumar Srivastava, In-charge Forensic Field Unit, has also supported the statement of these witnesses and stated that on a Benzidine test, blood was found on the knife and it was sent for forensic examination. PW-13, other co-investigator, on the disclosure of accused Awadhesh and Renu @ Akhilesh Kanaujiya visited Rave Moti Mall Big Bazar from where they purchased two knives on 21.7.2014 and obtained CCTV footage, the bill of purchasing knife has proved in the evidence of procuring the knives for committing offence. Similarly, it is also proved that two knives from the same Rave Moti Mall purchased on 13.7.2014 by accused Awadhesh. PW-30- Rajeev Dwivedi has proved that on 21.7.2014, even as per the call detail records, the location of Piyush was found in Rave Moti Mall along with accused Awadhesh when two knives were purchased which shows that accused A-1 and A-3 to A-6, in conspiracy, had purchased four knives on two different dates from Rave Moti Mall wherein as per the call details, presence of accused A-1 was also found. So far the arguments raised by counsel for the appellants that the call detail records are not proved in accordance with Section 65B (4) of the Evidence Act, has no merit as not only six Investigating Officers but all the Nodal Officers of concerned mobile companies, have duly proved the call detail records of all the mobile phones by issuing requisite certificates as per requirement of Section 65B of Evidence Act.

(xxxii) It has come in the statement of PW-18, Akhilesh Kumar Gaud that some of the phone numbers were not registered in the name of the accused persons and they were in the name of different persons as stated by this witness and he did not try to find out or record the statement of those persons in whose name the numbers were issued, can be a lapse of investigation but not a circumstance to raise a suspicion about the investigation conducted by a team of investigators.

(xxxiii) As per the FSL report Exhibits- 5, 7 & 9, the blood recovered on the knives, were found to be of female origin similarly the source on

Exhibit 10 & 12 was found to be similar with blood on Salwar, Kurta, Petticoat, Ex.22, blood of the deceased. Out of 22 articles sent for investigation, human blood was found on articles nos. 3, 4, 5, 6, 7, 9 and 10 including 17 on the wearing cloths of deceased, the clothes of Sonu and Renu. In DNA test blood was found on article 5, 8, 7 and 9 was of female origin and its source was found to be similar to that found on the clothes of the deceased, therefore, by scientific evidence prosecution has been able to prove that accused- A-3 to A-6 have actively participated in commission of offence of murder of Pooja @ Jyoti in conspiracy with accused A-1. The judgments relied upon by appellants are distinguishable in facts.

157. Regarding **question no.B** about the role of accused A-2 being part of the criminal conspiracy with A-1 and A-3 to A-6, we find that though there is evidence led by the prosecution that accused A-2 was well acquainted with accused A-1, however, we do not find any such clinching evidence to hold her guilty of criminal conspiracy with accused A-1 and A-3 to A-6 for the following reasons:

- a) As per the statements of PW-13, PW-18 and PW-34, the three Investigating Officers, it is stated that they did not find any evidence regarding role of A-2, Manisha Makheeja in the incident except the call details showing that she was in touch with accused-A-1.
- b) Even as per the call details record, accused A-1 was in touch with accused A-2 but she was not in touch with any other accused persons, therefore, even as per the extra-judicial confession made by accused A-3 to A-6, it is accused A-1 who has paid some amount to them on different occasions, to a total of Rs. 50,000/- and none of the accused, A-3 to A-6 stated that Manisha has paid any amount to them.
- c) As per the witnesses of fact, PW-6, father of victim, it is stated that prior to the marriage of accused A-1 with the victim a matrimonial proposal between A-1 and A-2 was proposed, however, the same could

not mature because of mismatch of horoscope, therefore, the motive and conspiracy set up by PW-6- father of the victim and PW-7- paternal aunt of the victim that 3-4 days prior to the date of incident, the victim by chance picked up the ringing phone of her husband-A-1 and heard that A-2 was saying that as per a matrimonial proposal a boy was coming to meet her on 24.7.2014, therefore, he should eliminate Jyoti, do not prove any conspiracy between accused A-1 and A-2 for the reasons that as per the prosecution version two unsuccessful attempts were made by accused A-1 and A-3 to A-6, first on 13.7.2014 when two knives were purchased and one on 21.7.2014, when another two knives were purchased by A-3 to A-6, however, they remained unsuccessful as they could not execute their plan in furtherance to the conspiracy. From the statement of the victim, though it is hearsay as stated by PW-6 and PW-7 the victim informed them that 3-4 days prior to the incident, accused-A-2 has stated that boy coming to meet her on 24.7.2014, would show that Manisha was not a part of conspiracy on the two previous attempts made on 13.7.2014 and 21.7.2014 whereas the incident took place on 27.7.2014.

d) Therefore, the mere suspicion raised by PW-5 & PW-6 about the role of A-2 is not sufficient to uphold her conviction specially when they never rose to a situation which was very alarming because as per Jyoti, A-1 and A-2 were conspiring to eliminate her. Rather in a very casual manner, they told her that she and A-1 are coming on Rakhsa Bandhan after 12-14 days, they will talk to A-2. There is no whisper in statements of all witnesses of fact that on receiving such information from Jyoti, they either contacted their relative Balram or tried to confront A-1 or tried to bring this fact to notice of his parents. This proves that the prosecution has made up this story, later on after death of victim for the first time in statement under Section 164 of Cr.P.C. before Magistrate.

e) PW-6 has stated that prior to the marriage of A-1 and A-2 he has verified the character of the accused A-1 and found that he had no such relationship with any lady and this fact came to his knowledge only when

Jyoti informed her. Another aspect which has been ignored by the Trial Court is that accused A-1 and A-2 are living in neighbourhood and there is another person namely, Balram, first cousin (from the family of PW-3- Maya Devi, mother of the victim), living in their neighbourhood. PW-6, father of the victim has stated that when he was making inquiry about A-1 prior to the marriage of his daughter Jyoti, he has even enquired from aforesaid Balram being neighbour of accused A-1 as Balram was their relative. It is improbable that if accused A-1 and his wife-deceased Jyoti was having strained relationship, on account of extramarital affair with A-2, this fact was not within the knowledge of aforesaid Balram, though, he was involved in the inquiry conducted by PW-6 before performing marriage of his daughter deceased Jyoti with A-1. It is stated by PW-6 that after the incident they stayed at the house of Balram for 2-3 days would show that the family of PW-6 and Balram were having cordial relationship, therefore, when Jyoti made phone call to PW-6 and PW-7 that she has heard A-2 calling on the mobile phone of A-1 that he should eliminate Jyoti because some matrimonial proposal is coming, neither Jyoti nor PW-6 or PW-3 tried to inform Balram about the alarming situation to find out the truth. All Investigating Officers never recorded any statement of Balram as a witness of fact to find out about any such information given to him by Jyoti. As accused A-2 is also neighbour of Balram and all the three persons i.e. A-1, A-2 and Balram were living in same neighbourhood, the non examination of this person about the strained relationship or the conspiracy proves that A-2- Manisha Makheeja was not part of the conspiracy so much so to the extent that she knew that accused A-1- Piyush Shyamdasani in conspiracy with accused A-3- Awadhesh Chaturvedi, A-4- Renu @ Akhilesh Kanaujiya, A-5- Sonu Kashyap and A-6- Ashish Kashyap have conspired to kill Jyoti and in furtherance thereto they committed her murder on 27.7.2014.

f) Another circumstance which has not been appreciated by the Trial Court is that PW-33 Sagar Ratnani with whom the family of Manisha had

a matrimonial proposal through a mediator, namely, Suresh Nahlani would show that the family of Manisha was trying to settle her down by getting herself married. This witness has stated that this proposal could not mature because of short height of Manisha as he is a tall man. The adverse inference which has been drawn against A-2 by the Trial Court is that this witness has stated that Manisha told her to say no to the proposal because of her short height and it will not be appropriate for her to say no, do not prove that she refused for this proposal either because her relationship with A-1 or as part of conspiracy. In fact, this witness nowhere stated that Manisha told him that she is not interested in marrying him as she is having any relationship with A-1.

g) Another aspect which is ignored by the Trial Court is that this witness, PW-33 visited the house of Manisha on 24.7.2014 and has stated that he had exchanged SMS / Whatsapp messages with A-2 from 24.7.2014 till 28.7.2014 i.e. a day subsequent to the date of incident. This reflects that accused A-2 and PW-33 were was still interested in having matrimonial alliance. PW-33 who has stated that after he came to know from the newspaper that name of the Manisha is involved in the present case, he stopped chatting with her also, shows that even he was chatting with Manisha in order to find whether the matrimonial proposal can still mature.

h) In her statement under section 313 (5) Cr.P.C. Manisha has stated that she is three years older to accused A-1 and she was never a part of any criminal conspiracy, she also stated that police also move a false application before the Trial Court for getting her pregnancy test in order to defame her.

i) Even as per PW-5, Astrologer who acted as catalyst in worsening relationship of accused A-1 and his wife-victim Jyoti, by making her believe that her marriage will not work, also did not disclose name of A-2- Manisha Makheeja. This witness stated that he used to meet Jyoti but was

not aware of any such love relationship between A-1 and A-2 and even deposed that after incident, he came to know about this.

j) It has been held in **Sharad Birdhichand's Case (supra)** that mere suspicion cannot be approved of proving complete chain of circumstances. Therefore, in the light of **Sharad Birdhichand's Case (supra)** the prosecution has failed to prove the chain of circumstances which proves that the Manisha had any knowledge of intention of A-1- Piyush Shyamdasani, A-3- Awadhesh Chaturvedi, A-4- Renu @ Akhilesh Kanauiya, A-5- Sonu Kashyap and A-6- Ashish Kashyap. The circumstances are not conclusive against the appellant- A-2 so far as to exclude every possible hypothesis to be proved. Thus, in view of finding recorded in paragraph no. 157 (a to j), the involvement of A-2-Manisha Makheeja in criminal conspiracy with A-1, A-3 to A-6 is not proved and **question no. B** is decided accordingly.

158. As observed above in paragraph no. 156 (i to xxxii), the prosecution has been able to prove the complete chain of evidence against A-1- Piyush Shyamdasani and A-3- Awadhesh Chaturvedi, A-4- Renu @ Akhilesh Kanauiya, A-5- Sonu Kashyap and A-6- Ashish Kashyap and therefore, the finding recorded by the Trial Court holding them guilty of offences is upheld and the judgment of conviction and order of sentence are also upheld.

159. Accordingly, the Criminal Appeal Nos. 8254 of 2022, 10177 of 2022, 10034 of 2022, 9481 of 2022 and 10182 of 2022 are liable to be dismissed and Criminal Appeal No. 9005 of 2022 is allowed and Manisha Makheeja is acquitted of the charge.

160. The appellant- Manisha Makheeja is on bail and her bail surety bonds are discharged. The bail bonds of accused-appellants Awadhesh Chaturvedi and Ashish Kashyap, who are on bail are cancelled and they be taken into custody forthwith to undergo further sentence as per the order of trial court.

161. In view of the finding recorded above, the Criminal Appeal No. 121 of 2023, filed under Section 372 of Cr.P.C. challenging acquittal of Mukesh Shyamdasani, Smt. Poonam Shyamdasani and Kamlesh Shyamdasani is dismissed.

162. Record of the trial court be transmitted back forthwith. The file of material exhibits received from the concerned police station be also remitted back in sealed cover.

Order Date :- 29.11.2024

Mohini/Mukesh/SKS