

SALMAN'S JUDGMENT – AN OVERVIEW

The recent conviction of Salman Khan for poaching a *Chinkara* has drawn the attention of the media, the public and others. Opinions were being expressed in print and television that Salman received a harsh punishment of five years jail sentence due to his celebrity status. It may be recalled that even during the period when hunting was legal – use of wheeled vehicle and spotlights to blind the hunted species was prohibited.

The judgment delivered on April 10, 2006 by the Chief Judicial Magistrate, Jodhpur makes for interesting reading. The Court convicted Salman Khan of hunting *Chinkara* and co-accused Goverdhan for abetting the offence and gave a detailed and well reasoned Judgment of 110 pages in Hindi. Given below is an overview of this lengthy judgment by our advocates. Full english translation of this judgment follows the overview.

In presenting its case to the Court, prosecution examined 38 witnesses including Harish Dulani (the driver), Lalit Boda, Ashok Patani, the Investigating Officer of this case and other witnesses. In addition to deposition by witnesses, other direct and indirect evidences and chain of circumstances eventually favored the prosecution.

On January 24, 2002 Harish Dulani appeared in the Court and gave an eyewitness account of the incident. According to this witness, on September 28, 1998 Salman shot a *Chinkara* from his vehicle, came down and slit the throat of the animal with a knife. The Court found sufficient evidence against accused Salman Khan and Goverdhan Singh from the facts revealed by Harish Dulani. The statement of the witness was later confirmed by other witnesses. Recovery of evidences as well as spot identification was carried out by the investigating team. Although, the testimony of Harish Dulani was no doubt integral to the conviction of Salman Khan, there are other evidences that were relied upon by the prosecution in strengthening their case against Salman Khan and the co-accused.

The case took an interesting turn when in the year 2002 Harish Dulani became untraceable and summons and bailable warrants were issued against him on number of occasions. Prosecution made all possible efforts to procure the presence of this witness. It is relevant to mention here that Harish Dulani himself filed an application in the Court, in addition to submitting applications to Additional S. P, Inspector General of Police and Home Minister about threats received by him from Salman Khan and his associates.

On April 07, 2006, three days before this judgment, accused Salman Khan filed an application for recalling Harish Dulani. With this application, a photocopy of the documents linked to the properties sold by Harish Dulani to a third person was also annexed. The fact that the photocopy of the said documents reached into the hands of accused Salman Khan one day after the alleged television interview of Harish Dulani and his subsequent retraction of statements made in the interview, assisted the Court to establish this argument of apprehension to be correct as forwarded by the prosecution and that he had been under the custody and influence of accused Salman Khan. The Court accepted the evidence of Harish Dulani as admissible under Section 33 of the Indian Evidence Act, 1872 and directed that he should be tried for perjury.

The Court, while delivering its Judgment took into account the following facts relied upon by the Prosecution:

- The accused Salman Khan stayed in Ummed Bhavan (Palace Hotel),
- He drove in an open top vehicle, armed with deadly weapons on the night of the incident and reached the place of occurrence,
- Discovery of hair / blood of the animal from the vehicle and the place of incident.
- Recovery of weapons, pellets and cartridges from various locations,

- Deposition by Shivchand, a witness to the weapons brought by Udai Raghavan from Mumbai residence of Salman Khan and surrendering these to the Investigating Officer.
- The surrendered knife by Sohail Khan brother of Salman Khan to the investigating officer Ashok Patani which was allegedly used for killing the *Chinkara*.
- Seized weapons found fit for firing and also the fact that it was used earlier.
- These recoveries and other evidences established the fact that the accused indeed went with the intention of hunting the deer.

These circumstances as per the prosecution account helped in strengthening the case which included oral and documentary evidences provided by the prosecution. In addition, the place of occurrence and the identification of the crime scene confirmed by the witnesses and the accused gave further impetus to the case.

The Court also observed that in the prosecution account, at times the word ‘deer’ and elsewhere the word ‘*Chinkara*’ has been used, however, this view was clarified in later part of the Judgment when the F. S. L. Serological examination found *Chinkara* blood stained earth from the site of hunting and skinning.

While convicting Salman Khan, the Court took into account his argument that merely by virtue of the accused being popular, it is inappropriate to consider this status as discrimination in the society. The Court fully endorsed its conformity with this argument and held to the effect that the principal of equality before law is applicable to the extent of conviction. However, the question of the quantum of sentence was a different aspect. Accused Salman Khan had not committed this offence under any compulsion or to satisfy his hunger but in fact committed the offence to prove his prowess and superiority. Hence, any argument of principal of equality is not sustainable with regard to the quantum of sentence. Also the fact that the accused is already convicted in another case and a different case pending against him, the Court did not consider it proper to adopt a lenient stance keeping in view the entire facts, circumstances of the case, character and conduct of the accused.

Disclaimer

While interpreting / translating this judgment from its original Hindi version, utmost care has been taken to retain the original facts. Wildlife Trust of India will not be responsible for any error whatsoever, or misinterpretation which might have occurred unintentionally while preparing this document.

In case of any discrepancies, which the reader may notice in this translated judgment, please feel free to bring it to our notice. In case of any doubt, or information or authenticity of this document, the reader may refer to the original Hindi version of this judgment which is available with us.

COURT OF CHIEF JUDICIAL MAGISTRATE, JODHPUR (RAJ.)

Presiding officer – Sh. Brajender Kumar Jain, RJS

Original Criminal Case No.206/1999

Prosecution: - State of Rajasthan

Versus

Accused:-

1. Salman Khan S/o Salim Khan, caste Musalman
R/o 3, Galaxy Apartment, B.J. Road,
Brand Stand, Bandra, Mumbai-50.
2. Dushyant Singh S/o Maharaj Karan Singh
Caste Rajput R/o Ambe Nivas, Air Force Road
Jodhpur.
3. Om Singh S/o Hari Singh, caste Rajput
R/o H.No.31, Sher Vilas Colony,
P.S. Shastri Nagar, Jodhpur.
4. Gordhan Singh S/o Madho Singh, caste Rajput
R/o Hathundi, Mathania, P.S. Khedapa
Distt. Jodhpur.
5. Tulaji Angre S/o Sambha Ji Angre
Caste Rajput (Maratha)
R/o 16, Teen Murti Lane, New Delhi.
At present at 40, Golf Course, Air Force
P.S. Shastri Nagar, Jodhpur.
6. Pratap Singh S/o Dharam Kshetrapal Singh
Caste Rajput R/o Aashpur House
Sideshwar Road, Shivpuri (Madhya Pradesh).

OFFENCE UNDER SECTION 143, 144, 148, 201/149 I.P.C. AND SECTION 27 OF ARMS ACT
AND SECTION 51 OR 51/149 OF WILD LIFE (PROTECTION) ACT

JUDGEMENT

Dated 10.04.2006

1. The facts of the case in brief as per the prosecution story are that on 11.10.1998 the complainant Lalit Boda the then Wild Life Preservation Officer, Jodhpur PW.34 made a written complaint Exh.P.70 to the Addl. Supdt. of Police (City) Jodhpur to the effect that during the course of investigation of FIR No.93 (26) dated 2.10.98 with the Forest Department regarding illegal hunting of Krishan Mrigs (black bucks/deer) by some persons at the night in between 01 and 02.10.1998, Harish stated that on 28.09.98 within the limit of Mathania at the distance of about 7 km. from Ghora Farm, Salman Khan, Dushyant, Pratapji, Omji, Dinesh and one half bald man and one another person taken along from Farm House have jointly hunted deer illegally using guns. Many accused are from other States and weapons used in committing offence and other evidence are to be recovered. Hence, the detailed investigation is required, hence the case may be registered for investigation. The complainant with this complaint enclosed Exh.P.94A copy of statement of Harish Dulani witness taken in the case FIR No.93/26 dated 02.10.98 registered with the Forest Department. It has been stated in the said Exh.P.94A that "at the night of 28th itself, Salman Khan, Dinesh and Dushyant reached the bungalow of Toot Banna and from there they took with them Pratap Singh, Om Singh and one half bald man and moved in Gypsy. Salman himself was driving the vehicle by that time. From there they reached the Ghora Farm at Mathania and there at the instance of Pratap Singh, hood pipes of vehicle was removed. Thereafter, they all took one man from the Farm whom I can identify from his face. After covering distance of 5-7 kms. from farm house, Salman hunted one deer

and after getting down he killed the deer by cutting it's throat with knife. Pratapji was holding search light which was connected to the battery of gypsy and as clip touched the bonnet, there was short circuit and colour of small portion of bonnet right above the battery terminal got burnt. There were two guns in the vehicle, one simple and another was fitted with telescope. Pratap Singh and Omji kept the deer in the gypsy. After coming to Farm, Omji skinned and cut that deer and put it in a gunny bag. Then the man taken along from the Farm was left there and others came to Jodhpur. Omji took the deer with him. It was 2-3 a.m. that night. Salman, Dinesh and Dushyant got down at the palace. Omji and Pratap Singh were dropped at Golf Course and bald man was also dropped there with those two. Thereafter I went to my house." On the said complaint, the Addl. Supdt. of Police (City) Jodhpur directed the SHO, Mathania to register the case for investigation, whereupon SHO, Police Station Mathania registered FIR No.163/98 (Exh.P.71) under Section 147, 148, 149 IPC and Section 9, 39, 51 and 52 of Wild Life (Protection) act and Section 27 of Arms Act against accused persons Salman Khan, Dushyant, Omji, Dinesh, Pratapji and one half bald man and one another person and Addl. Supdt. of Police (City) Jodhpur started conducting investigation of this case. After investigation, the charge sheet (Final Report No.38/99 dated 14.05.99) was filed on 24.05.99 in the court of Judicial Magistrate, Ist Class, Osiayan, Distt. Jodhpur against accused Salman Khan, Dushyant Singh, Pratap Singh, Om Singh, Tulaji Angre, Gordhan Singh under Section 143 144 and 149 IPC and Section 9, 39, 51 and 52 of Wild Life (Protection) act and Section 27 of Arms Act read with Section 201 IPC.

2. It may be relevant to state that accused Dinesh Gavre was on anticipatory bail granted by Hon'ble Rajasthan High Court at Jodhpur but even after making effort to locate him, he was not available for joining investigation and hence investigation continued against him under Section 173 (8) Cr.P.C. which is still pending.

3. It is relevant to state that vide order dated 05.08.1999 of the Hon'ble Distt. & Session Judge, Jodhpur this present case was transferred to this Court and on receiving the case in this court, it was registered and listed on 16.08.99 as regular criminal case.

4. On appearance of all the accused before the court on 20.07.2001, charges were separately framed as under and read over and explained to them separately and accused persons after hearing and understanding the charges pleaded not guilty and sought trial:-

- Accused Salman Khan for the offence under Section 143, 144, 148, 201 read with Section 149 I.P.C. and Section 27 of Indian Arms Act and Section 51 of Wild Life (Protection) Act.
- Accused Om Singh, Dushyant Singh, Gordhan Singh, Tulaji Angre and Pratap Singh for the offence under Section 143, 148, 201 read with Section 149 I.P.C. and Section 51 or 51/149 of Wild Life (Protection) Act.

5. The prosecution in order to prove the charges framed against the accused persons produced the following witnesses PW.1 to PW.38 and got them examined in oral evidence:-

1.	Harish Dulan
2.	Kevra Ram
3.	Pukh Raj
4.	Rupa Ram
5.	Arun Kumar Yadav – owner of Gypsy No.R.J. 19-1-C-2201
6.	Satya Mani Tiwari – the then Mobile Traffic Inspector, Jodhpur.
7.	Ram Kishan
8.	Gordhan Singh, the then Forest Guard, Wild Life Flying Squad, Jodhpur.
9.	Sagar Ram – Forest Gurad
10.	Mahavir Singh, the then F.C., P.S. Mahamandir, Jodhpur.
11.	Ganni Khan
12.	Sumnesh Limba
13.	Daulat Ram
14.	Shiv Chand Bohra, Asstt. Forester, Wild Life Flying Squad,

	Jodhpur
15.	Om Prakash Joshi, the then Regional Forest Officer, Luni, Distt. Jodhpur.
16.	Angad Lal, the then Forester, Forest Dept. Jodhpur.
17.	Mahender Raj Vyas
18.	Man Singh, the then Forester, Office of Dy. Conservator of Forest, Jodhpur.
19.	Ram Singh, the then ASI, Police Station Sardarpura, Jodhpur.
20.	Hanuman Singh, the then HC (Malkhana Incharge), P.S. Udai Mandir, Jodhpur.
21.	Dayal Singh
22.	Kailash Giri, the then Forest Guard, Wild Life Flying Squad, Jodhpur.
23.	Bhakar Ram, the then HC (Malkhana Incharge), Police Station Mathania, Distt. Jodhpur.
24.	Kishna Ram, the then F.C., P.S. Mathania, Distt. Jodhpur.
25.	Virender Singh, the then F.C., P.S. Mathania, Distt. Jodhpur.
26.	Boraj Singh, the then HC, Crime Branch, Office of Supdt. of Police, Jodhpur.
27.	Vijay Dan, MOB Incharge, Jodhpur.
28.	Sohan Lal, F.C.
29.	Madan Lal, H.C.
30.	Rajender Singh
31.	Bhawani Singh, the then Const., Crime Branch, S.P. Office, Jodhpur.
32.	Krishan Lal Chandolia, the then Station Manager, Indian Airlines Limited, Jodhpur.
33.	Rajesh Saraswat
34.	Lalit Kumar Boda, the then Wild Life Preservation Officer, Jodhpur.
35.	Ashok Patni, the then Addl. Supdt. of Police (City), Jodhpur.
36.	Prabhu Singh, HC, MOB, Jodhpur.
37.	Dana Ram
38.	Yashpal Singh, the then Chief Judicial Magistrate, Jodhpur

6. In documentary evidence, the prosecution filed and got exhibited following documents from Exh.P.1 to Exh.P.105 and Article 1 to Article 08:-

Documents:-

Exh.P.1	Site Plan dated 11.10.98 (Ghora Fzarm, Mathania where deer was cut into pieces and skinned)
Exh.P.2	Memo of pointing/identification dated 11.10.98 and seizure memo of blood stained and plain earth packet Marked A and B.
Exh.P.3	Statement of Harish Dulani dated 14.10.98 U/S 164 Cr.P.C. recorded in FIR No.162/98 and 163/98, P.S. Mathania.
Exh.P.4	Supplementary statement of Harish U/S 161 Cr.P.C. dated 11.10.98.
Exh.P.5	Statement of Pukhraj dated 12.10.98 U/S 161 Cr.P.C.
Exh.P.6	Statement of Kanvara Ram dated 12.10.98 U/S 161 Cr.P.C.
Exh.P.7	Statement of Rupa Ram dated 12.10.98 U/S 161 Cr.P.C.
Exh.P.8	Statement of Arun Yadav dated 13.10.98 U/S 161 Cr.P.C.
Exh.P.9	Seizure memo dated 12.10.98 of hair and tail of deer.
Exh.P.9A	Certified copy of licence of revolver of accused Salman Khan.
Exh.P.10	Site plan dated 12.10.98 (the spot where skin of deer was thrown).
Exh.P.11	Memo of inspection of place of occurrence dated 12.10.98 (spot where Chinkara was butchered).
Exh.P.12	Seizure memo dated 12.10.98 of blood mixed earth and hair of deer.
Exh.P.13	Sample Memo of tyre (Office of Forest Deptt.).
Exh.P.14/14A	Seizure memo of Gypsy No.RJ 19-1-C-2201 dated 07.10.98 in FIR No.93/26 dated 02.10.98 Forest Deptt., Jodhpur.
Exh.P.15	Arrest Memo of accused Gordhan Singh
Exh.P.16	Statement of Ganni Khan U/S 161 Cr.P.C. dated 31.10.98.

Exh.P.17/ 17A	Arrest Memo of accused Salman Khan dated 15.10.98 in case No.162/98 P.S. Mathania.
Exh.P.18/ 18A	Production memo of knife by Soheli Khan dated 15.10.98 in case No.162/98 P.S. Mathania.
Exh.P.19/ 19A	Production memo of weapon one revolver and one rifle by Udai Raghavan dated 15.10.98 in FIR No.93/26 dated 02.10.98 Forest Deptt., Jodhpur.
Exh.P.20/ 20A	Seizure memo of pellets and hair etc. dated 12.10.98 in FIR No.93/26 dated 02.10.98, Forest Deptt., Jodhpur.
Exh.P.21/ 21A	Seizure memo of camera, reel, air gun, telescope and pellets etc. dated 12.10.98 in FIR No.93/26 dated 02.10.98, Forest Deptt., Jodhpur.
Exh.P.21A	Letter dated 14.10.98 of Supdt. Of Police, Jodhpur City addressed to FSL, Jaipur in FIR No.93/26 dated 02.10.98, Forest Deptt., Jodhpur.
Exh.P.21A	Letter dated 15.10.98 of Supdt. Of Police, Jodhpur City addressed to FSL, Jaipur in FIR No.93/26 dated 02.10.98, Forest Deptt., Jodhpur.
Exh.P.21A	Letter dated 14.10.98 of Supdt. Of Police, Jodhpur City addressed to FSL, Jaipur in FIR No.93/26 dated 02.10.98, Forest Deptt., Jodhpur.
Exh.P.22A	Receipt of four packets issued by FSL, Jaipur dated 17.10.98 in FIR No.93/26 dated 02.10.98, Forest Deptt., Jodhpur.
Exh.P.23A	Letter dated 16.10.98 of Supdt. Of Police, Jodhpur City addressed to FSL, Jaipur in FIR No.93/26 dated 02.10.98, Forest Deptt., Jodhpur.
Exh.P.24	Letter dated 23.10.98 of Supdt. Of Police, Jodhpur City addressed to FSL, Jaipur in FIR No.93/26 dated 02.10.98, Forest Deptt., Jodhpur.
Exh.P.24A	Copy of Receipt issued by FSL, Jaipur dated 17.10.98 in FIR No.93/26 dated 02.10.98, Forest Deptt., Jodhpur.
Exh.P.25	Receipt of gypsy in question issued by FSL, Jodhpur dated 24.10.98 in FIR No.93/26 dated 02.10.98, Forest Deptt., Jodhpur.
Exh.P.25A	Letter dated 16.10.98 of Supdt. Of Police, Jodhpur City addressed to FSL, Jaipur in FIR No.93/26 dated 02.10.98, Forest Deptt., Jodhpur.
Exh.P.26A	Copy of Receipt issued by FSL, Jaipur dated 17.10.98 Letter dated 14.10.98 of Supdt. of Police, Jodhpur City addressed to FSL, Jaipur in FIR No.93/26 dated 02.10.98, Forest Deptt., Jodhpur.
Exh.P.27	Letter dated 17.11.98 of Supdt. Of Police, Jodhpur City addressed to FSL, Jodhpur.
Exh.P.28	Letter dated 17.11.98 of Supdt. Of Police, Jodhpur City addressed to FSL, Jodhpur.
Exh.P.29	Copy of Receipt issued by FSL, Jodhpur dated 17.11.98.
Exh.P.30	Copy of Receipt issued by FSL, Jodhpur dated 17.11.98.
Exh.P.31A	Road Certificate, P.S. Udaimandir.
Exh.P.32A	Road Certificate, P.S. Udaimandir.
Exh.P.33A	Copy of Malkhana Register dated 11.10.98, P.S. Udaimandir.
Exh.P.34A	Copy of Malkhana Register dated 12.10.98, P.S. Udaimandir.
Exh.P.35A	Copy of Malkhana Register dated 14.10.98, P.S. Udaimandir.
Exh.P.36A	Copy of Malkhana Register dated 13.11.98, P.S. Udaimandir.
Exh.P.37	Statement of Dayal Singh dated 11.10.98 U/S 161 Cr.P.C.
Exh.P.26 to 48	Negatives
Exh.P.49 to 66	Photographs
Exh.P.67	Letter dated 10.12.98 of Supdt. Of Police, Jodhpur addressed to FSL, Jaipur
Exh.P.68	Copy of Malkhana Register dated 10.12.98, P.S. Udaimandir.
Exh.P.69	Letter of Supdt. of Police, Jodhpur City addressed to FSL, Jaipur in FIR No.93/26 dated 02.10.98, Forest Deptt., Jodhpur.
Exh.P.70	Application dated 11.10.98 of Lalit Kumar Boda, the then Wild Life Preservation Officer, Jodhpur.
Exh.P.71	FIR No.163/98, P.S. Mathania (Jodhpur).
Exh.P.72	Copy of D.D. dated 13.10.98 time 8.30 A.M., P.S. Mathania.
Exh.P.73	Copy of D.D. dated 13.10.98 time 7.30 A.M., P.S. Mathania.
Exh.P.74	Statement of K.L. Chandolia dated 08.05.99 /S 161 Cr.P.C.
Exh.P.75	Copy of D.D. dated 04.12.98, P.S. Udai Mandir.
Exh.P.76	Copy of D.D. dated 10.12.98, P.S. Udai Mandir.
Exh.P.77A	Inspection Report dated 17.10.98 of FSL, Jodhpur.

Exh.P.78	Letter dated 17.11.98 of Addl. Supdt. Of Police, Jodhpur addressed to Supdt. of Police, Jodhpur.
Exh.P.79	Letter dated 10.12.98 of Addl. Supdt. Of Police, Jodhpur addressed to Supdt. of Police, Jodhpur.
Exh.P.80	Receipt issued by FSL, Jaipur dated 11.12.98.
Exh.P.81	Receipt by FSL, Jaipur dated 20.01.99.
Exh.P.82	Receipt by FSL, Jaipur dated 20.01.99.
Exh.P.83A	Copy of Report dated 12/15.10.98 of FSL, Jaipur.
Exh.P.84	Letter dated 22.10.98 of Supdt. Of Police, Jodhpur addressed to FSL, Jaipur.
Exh.P.85A	Inspection Report dated 22.02.98 of FSL, Jaipur regarding two air rifles, pellets and telescope in FIR No.93/26 dated 02.10.98 Forest Deptt., Jodhpur.
Exh.P.86A	Inspection Report dated 22.02.98 of FSL, Jaipur regarding one revolver .32 Bore and one Rifle .22 Bore in FIR No.93/26 dated 02.10.98 Forest Deptt., Jodhpur.
Exh.P.87	Letter dated 08.05.99 sent by K.L. Chandolia, Manager, Indian Airlines to SHO, Mathania.
Exh.P.88	Inspection Report dated 07.01.99 of FSL, Jodhpur regarding Gypsy No.RJ 19-1-C-2201 in FIR No.93/26 dated 02.10.98 Forest Dept., Jodhpur.
Exh.P.89	Inspection Report dated 27.02.99 of FSL, Jaipur.
Exh.P.90	Inspection Report dated 31.05.99 of FSL, Jaipur regarding 6 mould tyre of gypsy.
Exh.P.91	List of Passengers of Indian Airlines dated 29.09.98.
Exh.P.92	List of Passengers of Indian Airlines dated 29.09.98.
Exh.P.93A	Seizure memo of Air Rifle dated 12.10.98 in FIR No.93/26 dated 02.10.98 Forest Deptt., Jodhpur.
Exh.P.94/94A	Copy of statement dated 07.10.98 of Harish Dulani recorded in FIR No.93/26 dated 02.10.98 Forest Deptt., Jodhpur.
Exh.P.95	Memo of Information dated 12.10.98 regarding identification/pointing of place of occurrence by Gordhan Singh.
Exh.P.96	Memo of Information dated 12.10.98 by Gordhan Singh U/S 27 of Evidence Act.
Exh.P.97	Memo of intimation of arrest of accused Salman Khan dated 15.10.98.
Exh.P.98A	Copy of Memo of Information dated 15.10.98 by accused Salman Khan U/S 27 of Evidence Act in Case No.162/98, P.S. Mathania.
Exh.P.99	Statement dated 11.10.98 of Dana Ram U/S 161 Cr.P.C.
Exh.P.100	Statement dated 14.10.98 of Dana Ram U/S 161 Cr.P.C.
Exh.P.101	Application dated 13.10.98 filed in the court of CJM, Jodhpur regarding statement of Addl. Supdt. of Police, Jodhpur City U/S 161 Cr.P.C.
Exh.P.102	Summon to witness Dana Ram issued by Court.
Exh.P.103	Summon to witness Harish issued by Court.
Exh.P.104	Letter of Chief Judicial Magistrate, Jodhpur dated 15.10.98.
Exh.P.105	Statement dated 14.10.98 of Harish Dulani U/S 164 Cr.P.C.
	It may be noted that a number of exhibits have been put on one or two or more documents.
Article:-	
No.	2 to 5 Tyre Mould. 6 Knife 7 and 8 Tyre Mould.

7. The statements of accused persons were recorded U/S 313 Cr.P.C., in which accused stating of their false implication wanted to produce evidence in defence but the defence did not produce any evidence whatsoever and got the defence evidence closed. The defence produced following documents which were got exhibited:-

Exh.D.1	Statement dated 06.06.02 of witness Sumlesh Limba recorded in Crl. Case No.207/99 State/Salman Khan & Ors. pending in this Court.
Exh.D.2	Statement dated 06.06.02 of witness Daulat Ram recorded in Crl. Case No.207/99 State/Salman Khan & Ors. pending in this Court.
Exh.D.3	Statement dated 26.10.02 of witness Mahender Vyas recorded in Crl.

	Case No.207/99 State/Salman Khan & Ors. pending in this Court.
Exh.D.3	Letter dated 17.11.98 of Addl. Supdt. Of Police (City), Jodhpur addressed to Supdt. of Police, Jodhpur.
Exh.D.4	Search Memo dated 10.10.98 in FIR No.93/26 dated 02.10.98 Forest Deptt., Jodhpur.
Exh.D.4	Statement dated 24.04.05 of witness Yashpal Singh recorded in Crl. Case No.207/99 State/Salman Khan & Ors. pending in this Court.
Exh.D.5	Arrest Memo of accused Salman Khan dated 12.10.98 in FIR No.93/26 dated 02.10.98 Forest Deptt., Jodhpur.
Exh.D.5	Statement dated 20.12.01 of witness Lalit Boda recorded in Crl. Case No.207/99 State/Salman Khan & Ors. pending in this Court.
Exh.D.6	FSL, Jaipur Report dated 17.11.98.
Exh.D.7	Statement dated 17.04.02 of witness Lalit Boda recorded in Crl. Case No.352/2000 State/Salman Khan & Ors. pending in the court of Judicial Magistrate, Jodhpur Distt., Jodhpur.

8. Final arguments heard. Case file perused carefully.

9. The following questions have arisen before the court to decide:-

"Whether accused Salman Khan, Dushyant Singh, Gordhan Singh, Pratap Singh and Tulaji Angre on the relevant date, relevant time and place after forming unlawful assembly and being member of such unlawful assembly in pursuance of their common object of illegal hunting armed with deadly weapons indulged in rioting using force and violence and all the accused persons caused disappearance of evidence of offence in question committed and accused Salman Khan by keeping in his possession the fire arms without any licence used the said fire arms and thereby along with his accomplice accused persons in pursuance of meeting the said common object illegally hunted Chinkara?"

10. During arguments, the Id. Asstt. Director – Prosecution while arguing seriously and in detail submitted that the charges framed against all the accused are proved beyond any doubt from the aforesaid evidence produced by the prosecution in this case. This case of prosecution is based not only on the evidence of eye witnesses but the said case has been filed on the basis of direct and indirect evidence and chain of sequence of evidence. The evidence produced by the prosecution is fully established as a chain which has not broken anywhere and the offence is fully proved beyond any doubt. In the said case, the complainant Lalit Boda registered a case on 02.10.98 being case No.93/26 in Forest Department regarding illegal hunting. In the course of investigation of the said case, the IO Shri Lalit Boda recorded statement of one witness Harish Dulani on 07.10.98. On the basis of his statement, the IO found that accused persons have also hunted a Chinkara at the night of 28.09.98 near Ujlia Bhakhar boundary, and when complainant Lalit Boda who was at that time working as Wild Life Preservation Officer, Jodhpur and was already busy in conducting investigation into a case No.93/26 relating to same hunting case against these same accused and other accused persons, the complainant keeping in view insufficient resources of his department, very little and limited time and other legal requirement, etc., obtained directions and consultation from his senior officers and thereafter submitted a written complaint which was registered as FIR Exh.P.70 dated 11.10.98 to the Addl. Supdt. of Police, Jodhpur City whereupon Shri Ashok Patni, Addl. Supdt. of Police, Jodhpur City started investigation and on the basis of having sufficient evidence against accused collected after the investigation has filed this final report/charge sheet. The prosecution has produced and got examined PW.1 Harish Dulani the important eye witness of the incident. This witness first time appeared in this court for evidence on 24.01.02. That day, the examination-in-chief of this witness was concluded and on the said date, on behalf of some accused, their counsels cross examined him and remaining counsels did not cross examine this witness due to having urgent work on that day. Thereafter, on the next date of hearing i.e. 20.03.02 also, this witness was produced by the prosecution in this court for cross examination but this witness remained sitting in the court right from morning till around 3.00 p.m. but the Id. Counsel for accused Salman Khan did not come and hence the cross examination could not be done till 3.00 p.m. After that, this witness left without saying anything without completion of his cross examination. After that date, this witness has not been found till date and his whereabouts could not be found. The Court and prosecution tried their best continuously consequent to non-availability of this witness but report on each summon/warrant has been received that "Could not be traced out", "Not found". The prosecution has not been

reckless in producing this witness and has made all out efforts in this regard. The accused cannot claim that the prosecution has deliberately not produced this witness. It is clear from the case file that twice the prosecution has succeeded in producing this witness in the court through summons. It is correct that fact of witness remaining present in the court till 3.00 p.m. has not been mentioned in the order sheet dated 20.03.02 but on that date I myself was making pairvi in this case on behalf of State Government and my statement as a Public Servant and Court Officer is totally true. My this statement is confirmed from the order sheet dated 20.03.02 as well in which consequent to Harish Dulani leaving the court on the said date without leave of the Court, notice of Section 350 Cr.P.C. has been issued to him. It has not been mentioned anywhere in the said order sheet that witness is present or the witness came today. However, issuing notice of Section 350 Cr.P.C. fully proves that this witness remained present in the court on that day and left without leave of the court before completion of cross examination as a result of counsel for accused not coming to the court. Hence, this court can make this strong presumption from the fact of issuing said notice that this witness had come and had he not come, the question of issuing notice of Section 350 Cr.P.C. did not arise at all. Hence, this argument of accused is not at all maintainable that as time is not given in order sheet, the fact of witness remained present till 3.00 p.m. is incorrect. In addition to this, the date when examination-in-chief was done, on said date itself i.e. 24.01.02, this witness Harish Dulani had written an application regarding receiving threat from accused Salman Khan and his goonda elements whereupon the Court also forwarded the said application to the Supdt. of Police for enquiry. There has not been any such act of the prosecution from which the court may make even slight presumption that the prosecution is deliberately not interested to produce this witness. In the sequence of these efforts, the prosecution on 22.11.2005 prayed for recording of evidence on oath in the court of process servers for service of summons of witness but the court held that if court is satisfied from the report with regard to witness not available, the court of its own may make presumption of law. As such, the prosecution has made complete satisfactory efforts to produce this witness in the court and Id. Counsel for accused Salman Khan has also got sufficient opportunity in law to cross examine on 24.1.02 and 20.03.02. The accused Salman Khan has not availed of the said opportunities. As such, the evidence of witness Harish Dulani under Section 33 of Evidence Act is also totally admissible in evidence against accused Salman Khan and remaining accused. In addition to this, on the basis of applications filed by the said witness from time to time, this court can of its own make this presumption that consequent to threat extended by accused Salman Khan and fear, this witness after appearing in the court once or twice has left with his wife and children at some unknown place due to such threat and fear. Hence, in the interest of justice also, the court can admit his evidence under Section 33 of Evidence Act as well. Merely for the reason that the court dismissed the application of the prosecution for cancellation of bail on the ground of threat, this cannot be presumed that accused Salman Khan and his goodna elements have not been extended any threat to this witness. As extending threat is a different fact and cancellation of bail is a separate fact and whereas bail granted earlier under the provisions of Cr.P.C. can be cancelled only on proving very limited, confined and strong grounds and if the court holding the grounds of said threat not proved substantially has rejected the said application of cancellation of bail, it cannot at all means that this witness was not at all threatened or this witness is not afraid and terrified from accused Salman Khan and in fact contrarily this fact of the prosecution gets confirmed that the witness was actually being threatened. As such, keeping in view the entire facts and circumstances of the case, it is fully proved that evidence of witness Harish Dulani is admissible in evidence under Section 33 of Evidence Act.

11. In his further argument, the Id. Asstt. Director, Prosecution submitted that applications in writing submitted by witness PW.1 Harish Dulani, Lalit Boda and statement in case No.93/26 enclosed therewith fully confirm the facts of this incident. The statements of this witness are fully confirmed beyond any doubt from the other oral and documentary evidence of prosecution. In his evidence, this witness names all the accused persons. He also fully confirms his statement Exh.P.3 U/S 164 Cr.P.C. Witness PW.38 Yashpal Singh also confirms recording of said evidence of this witness. This witness has turned hostile in examination-in-chief in respect of some other accused persons in addition to accused Salman Khan. Thereafter, in his examination by prosecution, he fully confirms and supports the incident. Accused cannot take any objection regarding identification of accused; because it has been clearly stated in the statements taken on that day when the court granted permanent exemption from personal attendance to the accused and on the day of examination-in-chief that accused exempted permanently from personal attendance have no objection with regard to identification of accused. Now, these accused cannot

legally raise any objection of identification. Witness P.W.2, 3 and 4 have also turned hostile but in their examination, they confirm the fact of arrival of vehicle used in the incident and firing sound. Evidence of witness PW.5 Arun Kumar Yadav prove the fact of his being owner of Gypsy, Harish Dulani being driver and Harish informing of hunting by accused persons. This witness also confirms the prosecution story with regard to blood spots found on the seat of vehicle. The prosecution has proved from the evidence of witness PW.6 Satya Mani Tiwari that on 29.09.98 accused Salman Khan was present in room No.508, Umed Bhawan Palace and that day, one revolver and .22 Bore Rifle and .22 Bore Air gun, telescope were available in the room in the possession of this accused. Merely on the ground of this witness not getting the case registered under Arms Act even after expiry of limitation and not obtaining search warrant etc. and not filing copy of D.D., it cannot be concluded that this witness is deposing falsely. In practical also, many times police before registering a case confirms the facts of the incident. This witness also did like that. If the IO did not obtain any document, merely on this ground, the evidence of this witness cannot be held to be false. It becomes clear from the evidence of this witness that weapons were available in the room of accused Salman Khan on 29.09.98 which he had sent to Bombay after 28.09.98 the date of this present incident and the same weapons were presented by Udai Raghav at the behest and pointing of accused Salman Khan in the case of Forest Department. There is no such accusation of accused that he had enmity with accused since before or for any other reason, this witness wants to falsely implicate these persons and nor any such suggestion was given by accused Salman Khan in the cross examination. Besides this, documents Exh.P.1, 2, 9 to 12 are fully proved from the evidence of witness PW.7 Ram Kishan. It is proved from the evidence of this witness that on the identification/pointing and information of accused Gordhan Singh, this fact of offence came to light, which is also fully confirmed from FSL Report Exh.P.82. Hence, evidence of this witness confirms as the chain of fact the fact of where accused hunted and where skin removed and where it was thrown. The facts of taking mould of gypsy used in the incident are confirmed from the evidence of witness PW.8 Gordhan Singh and this witness proves Exh.P.13 and 14 substantially in a form of chain. Besides this, this witness also proves the fact of inspection of gypsy by Forest Department. Exh.P.13 Memo of Tyre Mould is proved from the evidence of witness PW.9 Sagar Ram which fact is also confirmed from FSL Report Exh.P.90. As such, fact of vehicle used in the incident is fully confirmed from the evidence of these witnesses. The fact of arrest of accused Gordhan Singh is fully proved from the evidence of witness PW.10 Mahavir Singh. Witness PW.11 Ganni Khan does not support and confirm the prosecution story. Arrest of accused Salman Khan and on the basis of information given by accused Salman Khan, Sohail Khan presenting the weapons used in the incident to the I.O. are proved from the evidence of witness PW.12 Sumnesh Limba and PW.13 Daulat Ram. It cannot be assumed from the fact of knife not bearing blood marks that this weapon was not used in the offence. However, the criminal attempts to destroy the evidence after committing the crime. Knife not having blood spots confirms this allegation of prosecution that accused made unsuccessful attempt to destroy the evidence. When the eye witnesses state the fact of knife having blood spots at the time of incident and there are no blood spots at the time of its seizure, then this fact is fully proved. Hence, the accused cannot get any benefit of doubt on this ground. Witness PW.14 Shiv Chand being the witness of chain of circumstances confirms the fact of Udai Raghavan presenting the weapon to the I.O. after bringing the same from the residence of accused at Bombay. Hence, this cannot at all be termed as false. Evidence of witness PW.15 Om Prakash also confirms the fact of Udai Raghavan handing over weapon to I.O. in the case No.93/26. The said Memo Exh.P.19 is absolutely admissible in evidence. So far the question of not getting these weapons in question produced and exhibited in the court is concerned, the prosecution filed the application to this effect which was dismissed by this court. As the said weapons were already seized and sealed in Forest Deptt. case No.93/26 and were necessary for FSL and further investigation in this case, and in such situation if the IO had seized these again in this case after breaking the seal of these weapons, such entire action would have become unnecessary and null and void and both the cases would have become fully doubtful. In such circumstances, the IO did not seize these weapons and reason of seizure is fully satisfactory and justified and prosecution has absolute legal right and cause for not doing that. On that basis, the aforesaid seizure memo is fully admissible in evidence. Witness PW.16 Angad Lal in his evidence confirms the fact of seizure of gypsy through seizure memo dated 07.10.98 and seizure of pellets and pieces of hair from gypsy and consequent confirmation of said seizure of pellets and hairs, this becomes a chain of successful evidence of prosecution. Similarly, seizure of pellets and hair from gypsy is confirmed from the evidence of witness PW.17 Mahender Vyas. Also, this witness confirms the recovery of material used in the crime such as weapons, pellets etc. from the room of accused Salman Khan. Any evidence cannot be said to be false in law merely on the

ground of one same witness appearing in two seizure memos. However, this witness in his evidence has given sufficient reason of being present at both the times. This witness also does not have any enmity with accused Salman Khan. Deposit of seized case property in FSL is confirmed as a chain of evidence from the evidence of witness PW.18 Man Singh. Witness PW.19 Ram Singh confirms the arrest of accused Gordhan Singh and transporting/forwarding of case property vide Exh.P.27 to Exh.P.32. Witness PW.20 Hanuman Singh is a chain of witness for getting the case property/evidence deposited in FSL. His evidence proves depositing of case property in sealed condition. Witness PW.21 Dayal Singh is an employee in Ghora Farm. Hence, he does not confirm the prosecution story. Evidence of witness PW.22 Kailash Giri confirms the fact of gypsy taken to FSL for examination. Fact of mould of tyres of gypsy kept preserved is confirmed from the evidence of witness PW.23 Makhar Ram and PW.24 Kishna Ram. Photographs taken at the place of occurrence etc., forwarding letter etc. as a chain of evidence is substantially proved and confirmed from the evidence of witness PW.25 Virender Singh. Witness PW.26 Boraj Singh by his evidence confirms the fact of registering the case by himself. Exh.P.13 Mould of Tyres is confirmed from evidence of this witness. It is also evident from the evidence of this witness that mould have been lawfully lifted from the gypsy used in the incident and that the same have been got deposited by him in the malkhana as per rules and statements of some witnesses have also been taken by this witness. If this witness has not inadvertently not given any evidence regarding mould present at the place of occurrence, then his entire evidence cannot be termed as not readable and not reliable. Lapse in view of long period is a natural thing. It is proved from the evidence of witness PW.27 Vijay Dan that this witness had taken mould of gypsy used in the incident from Forest Department office. Fact of receiving sample of earth etc. and depositing the same safely are confirmed from the evidence of this witness PW.28 Sohan Lal. Fact of receiving mould from the malkhana and depositing the same intact in FSL are confirmed from the evidence of witness PW.29 Madan Lal. Witness PW.30 Rajender Singh was the Chief Security Officer of Ummed Bhawan. This witness has turned hostile, but in the cross examination by prosecution, he admits the fact of Officer of Forest Deptt. visiting hotel on 12.10.98 and his own signature in the seizure memo and he also makes it clear that accused Salman Khan stayed in room No.508. He is an educated person posted in an important post like Security Officer. This can be presumed that this witness had signed the seizure memo only after reading the same. It is clear from the evidence of this witness that the seizure memo dated 12.10.98 Exh.P.21A was prepared in presence of this witness. Fact of sending case property and letter to FSL is confirmed from the evidence of witness PW.31 Bhawani Singh. From the evidence of witness PW.32 Krishan Lal Chandelia, who at that time was Manager, Indian Airlines, it is established that accused Pratap Singh and Bal Angre were present at Jodhpur itself at the night of incident. This witness has made it clear that no photo, identification mark and signature etc. are obtained on the air tickets and a person can easily travel against the ticket of another person. When presence of these accused at the place of occurrence at the night of incident is proved from the prosecution evidence, then this fact is confirmed from the evidence of this witness that both the said accused did not travel by air on 29.09.98 and this plea of alibi of both these accused is not at all acceptable and nor both these accused have dared to bring out their this plea through defence evidence. In addition to this, witness PW.34 Lalit Boda is an important witness and I.O. in Forest Deptt. case No.93/26 and he is also an important witness in this present case. The vehicle used by the accused in this present offence/incident is also confirmed from the evidence of this witness and all the documents prepared by this witness during the course of his investigation have been submitted by this witness to the I.O. and thus he has proved the reliability of the same through his evidence on oath. Statement of this witness has been taken in 3-4 cases and due to lapse of long period of incident, if there is some contradiction regarding any fact, such contradiction is natural. The evidence of this witness also proves the prosecution story beyond any doubt. Witness PW.35 Ashok Patni is the IO in this present case. The said IO has fully proved each of his action taken by him during investigation and each of the documents prepared by him and from his evidence has proved that the conclusion given by him about accused involved in the crime is absolutely proper in law. In case of any bonafide lapse in any work committed by the IO during the investigation, does not make the entire case of prosecution as unreliable. As one accused out of accused persons is a popular film actor and youths instantly run after him to see and listen to him and in taking and bringing the said person question of law and order also arises. In such tense atmosphere the lapse of any fact relating to investigation being bonafide under the aforesaid circumstances can be condoned in the interest of justice. Hence, sufficient satisfactory reason of bonafide lapse during the investigation is available. Therefore, in such a case, court cannot draw any adverse presumption from bonafide error committed during investigation. It is fully proved from the evidence of witness PW.36 Prabhu Singh that this witness reached the spot the place

of occurrence of illegal hunting and in the presence of other persons, this witness lifted mould of tyres of vehicles from there as per law and took further legal action. Mould of tyres lifted by the said witness and mould of gypsy seized in the case are fully matched. This also fully confirms and supports the prosecution story. Witness PW.37 Dana Ram is also an employee in Ghora Farm who has turned hostile. It is proved from the evidence of witness PW.38 Shri Yashpal Singh that this witness recorded statements of witnesses Harish Dulani and Dana Ram U/S 164 Cr.P.C. as given by them with their free will without any fear and threat. It is also clear from the evidence of said witness that witnesses Dana Ram and Harish Dulani had given correct statements to the Magistrate but now being afraid of accused, they have not remained affirmed in their earlier statements. The court should punish such witnesses as per process of law.

12. In addition to this, the Id. Asstt. Director – Prosecution has also submitted that it is clear from Exh.P.86 FSL Report that air rifle and rifle are fit for firing, and it is an important link of evidence. It becomes clear from Exh.P.85 FSL Report that shots have also been fired in past from the said revolver and rifle which belonged to accused Salman Khan. It cannot be assumed from the recovery of only empty cartridge that the said weapons were not used in the incident. It is clear from Exh.P.82 FSL Report that the blood chinkara is present at the spot from where earth was seized and in the earth. It becomes clear from Exh.P.88 FSL Report that blood spots found on the gypsy used in the incident were blood of deer. This fact is confirmed from Exh.P.89 FSL Report that blood stained earth and sample plain earth are of same type. It is proved from Exh.P.90 FSL Report that the said gypsy No.RJ 19-1-C-2201 went to the place of occurrence at the night of incident. In addition to this, the Id. Asstt. Director – Prosecution also submitted that the incident is of the year 1998. The statements of witnesses have been taken at different times after lapse of a long period. With the passage of time, minor contradiction in the statements of witnesses is a natural thing. The court should not term the entire prosecution story as false merely due to minor contradictions, because minor contradictions usually come in the statements of true witnesses with the passage of time but there is no such contradictory statement from which the court may even think that this witness is giving totally false statements. In this case, the Id. Counsel for accused Salman Khan has made extraordinarily lengthy cross examination in detail. In case question is asked from a witness again and again in different manner by twisting the question, not only a normal witness but even a clever witness makes some contradictory statement due to not fully understanding the nature of question. Besides this, if the court after analyzing the entire evidence given by the witness bring out the conclusion, then it is fully proved that the fact for which each of the prosecution witness has come to give evidence has taken place before him and he is not a planted/false witness and that the fact has actually taken place before him. Neither any such suggestion has been given by any of the accused and nor there is any such evidence that for which reason this witness has given false or incorrect evidence against the accused. The entire prosecution story cannot said to be false merely for the reason of getting the FIR registered with some delay. The explanation in this regard given by the prosecution is totally explains the reasons for this delay. Hence, the accused cannot get any benefit of doubt on this ground. As such, facts of accused Salman Khan staying in Ummad Bhawan, driving gypsy from there, armed with deadly weapons at the night of incident and reaching the place of occurrence with other accused, hunting the deer at the spot by firing from fire arms, skinning the deer on the way, recovery of evidence of hunting in the seized gypsy, recovery of weapons, recovery of pellets/cartridges and hair etc., presentation of weapons by Udai Raghavan at the pointing of accused Salman Khan, seized weapons being used earlier and found fit for firing are proved from the oral and documentary evidence given by prosecution, and simultaneously place of occurrence and spot of crime are confirmed fully from the identification by witness and accused. As such, this prosecution case is fully proved beyond any doubt from the direct, indirect and chain of circumstantial evidence of prosecution and it is proved from the prosecution evidence that the accused with common object on the day of incident went to Ujalia Bhakar in gypsy, hunted a chinkara there and killed chinkara with a knife and brought the chinkara at Ghora Farm and it was skinned and destroyed the evidence. As such, the charge of offence framed against all the accused is fully proved beyond doubt. Hence, all the accused be convicted for the offence for which they have been charged. The Id. Asstt. Director – Prosecution in support of his aforesaid arguments invited attention of court to the following rulings and with due respect, the same were gone through and perused:-

1. AIR 1974 (SC) page 1723 Mulakh Raj Sikka/Delhi Admn. in which the Hon'ble Supreme Court laid down this principle that evidence of a witness taken before committal Magistrate and at that time if the accused did not cross examine the said witness and subsequent to case committed, he (witness) failed to appear in the Session Court even after making sufficient efforts – evidence of such a witness will be admissible against accused under Section 33 of Evidence Act.
2. AIR 1951 page 25 Harumal & Ors./State of Rajasthan in which the Hon'ble High Court propounded this principle that – witness could not be located even after best efforts of prosecution – evidence taken before the committal Magistrate will be admissible under Section 33 of Evidence Act during trial in Session Court.
3. Cr.L.J. 1993 (Bombay) page 3384 Turner Shori Chand & Company/K.N. Tapria & Ors., in which the Hon'ble Bombay High Court held that – the witness examined before the charge stage and not available for cross examination after framing of charges, evidence of such a witness will be admissible under Section 33 of Evidence Act but such evidence will have to be examined very carefully.
4. Cr.L.J. 1973 (SC) page 749 Ramjas & Ors./State of Uttar Pradesh, in which the Hon'ble Supreme Court laid down this principle that merely for the reason of getting the FIR registered late, the prosecution case does not become doubtful, this delay depends on the reason of delay. If it becomes clear that the prosecution had no motive of wrong substitution behind the said delay, such delay can be condoned / exempted.
5. Cr.L.R. (Raj.) 1994 page 687 Ganpat Ram/State of Rajasthan in which the Hon'ble Rajasthan High Court has held that accused can be convicted on the basis of evidence of only one eye witness. The Hon'ble High Court also laid down this principle that modern principle of criminal law indicates that guilty should not be exonerated from punishment on superficial ground.
6. Cr.L.R. (Raj.) 1976 page 37 Ram Nivas & Ors./State of Rajasthan in which the Hon'ble Rajasthan High Court held that – weapon used in the crime not recovered with blood stains, it cannot be said that injured was not inflicted injuries and such deficiency is not materially vital.
7. AIR 1955 S.C. page 196 H.N. Rishbudh & Ors./Delhi State in which Hon'ble Supreme Court laid down the principle that – an IO committed any illegality in investigation – if such illegality is amenable and can be removed.
8. Cr.L.J. 1994 (Gujarat) page 966 Abdulla Gafoor/State of Gujarat in which the Hon'ble High Court of Gujarat has laid down this principle that – when there is no fact of defence that period of delay committed to implicate the accused in the crime – in such case the delay in registration of report does not hold any adverse effect.
9. Cr.L.J. 2001 (Raj.) page 15 Hardeep Singh/ State of Raj., in which the Hon'ble Rajasthan High Court held that – where neither sample seal affixed and nor has been separately forwarded to FSL amounts to irregularity and accused cannot be acquitted on this ground.
10. S.C.C. 1995 (S.C.) page 977 Karnail Singh/State of Madhya Pradesh in which the Hon'ble Supreme Court propounded the principle that defective investigation by police does not automatically makes the prosecution case weak and merely registering the FIR lately does not give birth to this presumption that the information is false.

11. S.C.C. 2003 page 151 State of Uttar Pradesh/Jagdev & Ors., in which the Hon'ble Supreme Court held that mere erroneous investigation is not the ground for acquittal of accused.

12. S.C.C. 2003 page 641 Amar Singh/Balvinder Singh & Ors., in which the Hon'ble Supreme Court has laid down this principle that late registration of FIR alone is not fatal for the prosecution. Facts and circumstances are directly liable to be considered in this regard and in this case the Hon'ble Supreme Court has also laid down this principle that the entire prosecution case cannot be termed to be false only on the ground of defective investigation and where the remaining prosecution story is confirmed from the evidence of other witnesses, it cannot be held in any circumstances that prosecution case is false.

13. R.Cr.D. 2004 (S.C.) page 94 Krishna/State of Bihar in which the Hon'ble Supreme Court has laid down this principle that – where allegedly accused used fire arm and immediately after the incident, police searched the house of accused but police could not recover any weapon. Weapon not recovered from the house of accused is not fatal for the prosecution case.

14. S.C.C. 2006 page 160 Jaishree Yadav/State of Uttar Pradesh, in which the Hon'ble Supreme Court has laid down this principle that it is not necessary to incorporate the minute details of all the facts of the incident committed by all the accused in the FIR and merely not doing so does not make the prosecution case weak. In addition, the Hon'ble Supreme Court in this ruling has also propounded this principle that where a witness has been cross examined at length and that too after a long period, missing of facts, addition of facts and contradiction in the statements of witness are natural and such things do not diminish the value of importance of evidence of such a witness.

15. Cr.L.R. 1983 (Raj.) page 321 State of Raj. /Banshi Lal, in which the Hon'ble Rajasthan High Court held that – provisions of search rule violated, the recovery of articles cannot be termed doubtful on this ground.

16. J.T. 2000 (9) S.C. page 467 State of West Bengal/Mir Mohd. Omar & Ors., in which the Hon'ble Supreme Court has laid down this principle that the accused cannot be given benefit of doubt and cannot be acquitted merely on the ground of lacuna and irregularity in the investigation.

13. During arguments, the Id. Counsel for accused Salman Khan submitted in detail and strongly that charge in this case is also for destroying evidence by cooking meat in hotel Ashirvad, whereas the incident in this present case as per prosecution is not of Hotel Ashirvad. Hence, charge is bad in law. It is not at all proved from the evidence produced by prosecution that five or more than five persons armed with deadly weapons formed any unlawful assembly and committed any crime or riot. Hence, there is no evidence at all for the charges under Section 143, 144, 148 and 201, 149 I.P.C. The charge under Section 27 of Arms Act against accused Salman Khan is also not proved at all. There is no evidence of prosecution to show that accused Salman Khan used the fire arm in the alleged incident of hunting. The IO has not seized any weapon in this case and nor produced and got exhibited in the court. Hence, charge of Section 27 Arms Act is not proved at all. So far the question of charge of accused Salman Khan in collusion with other accused hunting deer or chinkara is concerned, the said fact is not established in any manner whatsoever from the prosecution evidence. Whereas witness Harish Dulani PW.1 has not been produced by the prosecution in the court for cross examination by accused Salman Khan and when the accused Salman Khan has not got any opportunity to cross examine the said witness, his evidence cannot be used against the accused under Section 33 of Evidence Act. For the purpose of his evidence being admissible under Section 33 of Evidence Act, it is very important that the prosecution prove that witness cannot be located or adverse party has confined him in their possession. No such evidence has been produced by prosecution from which may show that the accused Salman Khan has kept

the witness Harish Dulani in his captivity. The right and opportunity are important facts under Section 33 of Evidence Act. Examination-in-Chief of this witness was conducted in this case on 24.01.02. That day, Shri Jagdev Singh, counsel for other accused persons cross examined this witness. Admittedly, Shri Jagdev Singh was not the advocate of accused Salman Khan. Hence, it is clear that accused Salman Khan did not get any opportunity on the said date to cross examine. The cross examination by Shri Jagdev Singh was not concluded on that day and he sought opportunity on the ground of his requirement for remaining cross examination which fact is mentioned in the statement and order sheet of that date. The word accused persons is written in the order sheet and statement, whereas in this case I am the counsel of only one accused. Hence, it is clear from the word accused persons itself that on that day I did not seek opportunity for cross examination. This witness was to be made available by prosecution for remaining cross examination but this witness did not come to the court and without informing anything left, whereupon the court issued notice to this witness on 20.3.03 under Section 350 Cr.P.C. This statement of Id. Asstt. Director – Prosecution is totally baseless and false that this witness kept on waiting for cross examination in the court premises on 20.03.2002 till 3.00 p.m. Had this witness waited till 3.00 p.m., then certainly the court would have recorded the same in the order sheet of that date. The court cannot make any presumption without recording any fact in the order sheet. The application filed by the prosecution in the court on 21.11.2005 regarding recording of evidence of process servers. In the said application also, the word "they having urgent work" is written. The prosecution in this application has also stated the fact of issue of arrest warrant against witness Harish Dulani, whereas there is no such order or arrest warrant in the case file from which it could be deemed that effort was made at any time to summon this witness through arrest warrant. If witness was not located, the accused Salman Khan cannot be held guilty for this. The accused Salman Khan never threatened or terrorized this witness. Witness himself was false and planted. Hence, with the apprehension of his exposure in the cross examination by accused Salman Khan, he kept on avoiding appearing in the court. The prosecution is not firm at one stand. In their application, the prosecution has also stated the fact of collusion of accused for threatening this witness. It is not the duty of accused to trace out witness, in fact it is the duty of police. Police has not made any effort whatsoever to locate the said witness and nor prosecution has made sincere efforts to trace out. There is different contradictory report on the warrants and summons from which it is proved that the police has merely completed the formality of process servers. Had prosecution wanted, they could make effort to bring this witness to the court by initiating proceedings under Section 82, 83 Cr.P.C. through application but this step has not been taken by them. On 29.05.02 Harish Dulani himself filed an application signed by him through his advocate Ashok Parihar for adjournment, from which it is clear that witness was present at Jodhpur itself and was living at this address. However, police has recorded concocted, fabricated and bogus report on the summons and warrants. Whereas, in the examination-in-chief of this witness, this person has given solid firm statements against accused Salman Khan, and it is fully proved from the same that this witness has no fear or terror from accused Salman Khan. Had it so, certainly, he would not have given any statement against me. It is clear from this that prosecution story about fear or threat or allurement or coercion is totally false. As such, neither accused Salman Khan threatened witness Harish Dulani and nor kept him in his captivity for not allowing him to give evidence and nor accused Salman Khan got any opportunity to cross examine this witness and nor accused Salman Khan sought any adjournment for cross examination of this witness. In such a case, the evidence of this witness is not admissible in the evidence against accused Salman Khan under the provisions of Section 33 of Evidence Act. If the court comes to this conclusion and finds that evidence of witness Harish Dulani is admissible in evidence against accused Salman Khan, even then no cognizable offence is proved beyond doubt from the evidence of this witness against accused Salman Khan. The prosecution has produced this witness as eye witness. Hence, this witness proclaims himself to be an eye witness. This witness has given different contradictory statements of different places/spots. In his statements, he has totally changed the story of his earlier statements. This witness cannot be a reliable witness in any manner whatsoever. In his statements, this witness states the fact of hunting of deer by accused, whereas PW.5 Arun Kumar Yadav, owner of Gypsy and a prosecution witness himself states that Harish Dulani told him that film personalities hunt Titar Bater. The IO himself has also admitted in his cross examination in the investigation conducted by him, the statement of Arun Yadav Exh.P.8 found correct, it is clear from the same that Harish Dulani the witness is not an eye witness of incident. The prosecution has also not got any identification of guns done from this witness. This witness states the fact of killing deer with knife, whereas the IO himself admits that there is difference between knife and *churri*. The said knife was also not got identified from this witness. This witness states the incident of Gudda Farm,

whereas as per prosecution the story is of Ghora Farm. Hence, place of occurrence is also doubtful. This witness states that Om Singh was cook of Salman Khan, whereas in the statement of witness taken earlier, there is no fact of cook stated therein. As per prosecution story, accused Salman Khan has been made accused in three cases of hunting and in all the three cases, this gypsy said to have been used. In such a case, it is also not clear that with which particular hunting case the accused would be connected on the basis of blood spots found on the said gypsy. This witness states that the spot mentioned in Exh.P.1 is the spot where skinning was done (hair removed) and as per prosecution story, this is not the place of occurrence and this also makes the presence of this witness at the spot doubtful. This witness denies and gives different statement than his statements recorded earlier under Section 161 Cr.P.C. and his statements taken before the Magistrate. In such a case, this court cannot treat this witness as reliable witness in any manner whatsoever. As such, neither this witness is an eye witness of the incident and nor can come in the category of reliable witness in any manner whatsoever. Witness PW.2 Pukhraj, PW.3 Kanwara Ram and PW.4 Rupa Ram all three are independent witnesses and all these three do not support and confirm the prosecution story. Witness PW.2 Pukhraj being labour of Rattan Lal is also not proved. Prosecution does not get any assistance from these three witnesses. It cannot at all be adduced from the evidence of witness PW.5 Arun Kumar Yadav that Harish Dulani was the driver of Gypsy of this witness or his gypsy was used by accused Salman Khan or other film personalities. The person who states the fact of bringing gypsy in the hotel the said witness himself does not confirm this fact. This witness has stated the fact of recovery of gypsy, but even on examination of this witness in the court, the prosecution has not even asked a single word from him with regard to the said seizure memo of gypsy Exh.P.1A. Witness Harish Dulani states the fact of his being the driver from 26.09.98, whereas this witness states the fact of driver since 24.09.98. He does not also give any evidence regarding salary. This witness admits that on 29.09.98 when he was sitting with Harish Dulani in the gypsy, there were no blood spots and drops. Then how the said drops appeared on 07.10.98, this fact makes the evidence of this witness totally doubtful. This witness admits that witness Harish Dulani remained in the custody of police and Forest Deptt. As such, the prosecution story is not proved beyond doubt against the accused persons from the evidence of witness Arun Kumar Yadav PW.5. The prosecution story is not confirmed from the statements of witness PW.6 Satya Mani Tiwari. This witness admits that accused Salman Khan gave information at Luni about theft of his revolver and Supdt. of Police also directed to register the case and he with Dinesh Gavre moved out from Luni to get the case registered but this witness has not made it clear that inspite of all this on the way why he changed his mind to search the room of accused Salman Khan. It is automatically evident from this that the story of search is absolutely baseless and concocted. As per search memo, this search was conducted before Rajender Singh, Dinesh Gavre and Beri Sal Singh, whereas witness Rajender Singh denies any search and remaining persons have not been made witnesses by the prosecution. In addition to this, the DD Register has not been produced in the court from which it is clear that there was not such entry made in the Register and nor on that day he went to Ummed Bhawan Hotel. Had it been so, certainly the prosecution would have produced this vital document in the court. This witness also admits that on showing arm licence by Dinesh Gavre, it was found that it has expired. In spite of that, not registering the case in this regard and nor informing this fact to the senior officers proves that this witness did not at all go to the hotel that day and entire story is concocted. This witness also did not make it clear that for which reason the case was not registered. The oral evidence of this witness is not confirmed from any document or oral statements of any other witness and from the same it is evident that the prosecution has produced this witness to establish its story. Besides this, when this witness went with accused Salman Khan on that day from the hotel itself, then why accused Salman Khan instead of giving information to him in the hotel itself informed him at Luni. No sufficient reason of this has been given by prosecution or this witness. As such, it is clear that this witness is absolutely deposing falsely. Witness PW.7 Ram Kishan cannot be held to be reliable in any manner. It is not at all established from the evidence of this witness that IO took seizure action before him. This witness makes statement contrary to prosecution story, contrary to statement to police and statement contrary to documents from which his presence at the time of preparing memos proves totally false. This witness states the fact of recovery of skin, blood and hair of deer before him and also states the fact of recovery of knife (churri) and rifle, whereas it is not the story of prosecution about skin, churri and rifle. Hence, it is evident that this witness is totally fictitious witness. Signature of this witness on all the memos proves that prosecution has prepared him by infusing his spirit being a member of Bishnoi community to depose falsely, because this witness admits that Bishnoi community treat chinkara like God. It is not proved from the evidence of this witness that on 11th how many memos he had signed and on 12th how many memos he had signed.

There is much contradiction in the statements of this witness with regard to number of memos and there is also variance in the evidence of Barni prepared by police. Witness himself admits that police asked him to come again tomorrow to police station. This fully proves this argument of accused that prosecution has implanted this witness, being of a particular community, to give evidence. As per prosecution, accused Gordhan Singh has been arrested on 1.10.98 at 3.30 P.M., whereas this witness shows the fact of his reaching again at the spot on the said date at 10.30 a.m. itself from which it is clear that police prepared the entire papers of false proceedings and action and only signatures of this witness has been taken thereon. This witness does not make statement about his being present with IO Ashok Patni at the time of seizure and in fact states the fact of presence of Boraj Singh at the spot, whereas signature of Boraj Singh is not available in any of the memos. As such, it is clear that the prosecution has prepared and planted this witness and prosecution case is not proved from his evidence. Seizure of gypsy is also not established from the evidence of witness PW.8 Gordhan Singh. Blood said to have been recovered from gypsy does not match with the blood recovered from Ghora Farm and nor these were got matched and therefore how can it be held that blood seized from gypsy is the blood of chinkara killed at the place of occurrence. This witness does not remember anything verbally. This witness has made false statement after seeing memos. This witness does not give any clear evidence regarding the time. This witness admits finding of hair in the gypsy, whereas there is no reference of hair in seizure memo Exh.P.14A. This witness states the fact of writing of seizure memo Exh.P.14A at the spot by Lalit Boda, whereas witness Lalit Boda PW.34 himself admits this that this memo was written after reaching office. This witness admits parking of gypsy in open space and it remaining there itself. The IO did not affix seal on the gypsy and nor it has been kept safely in malkhana. Hence, such seizure cannot be said to be reliable and nor accused can be connected to the things recovered from such a gypsy. This witness admits that gypsy was kept in coal depot and it remained in his custody for 24 hours till the examination by FSL and it was not touched and tempered by any one, whereas as per Inspection Memo Exh.P.81A, FSL Team inspected the said gypsy on 12.10.98 at coal depot. As such, fact of gypsy remaining in his custody also proves false. As such, from the evidence of this witness also, no evidence is available against accused. Fact of lifting mould of tyres of gypsy from the office of Forest Deptt. is not proved from the evidence of witness PW.9 Sagar Ram. There is much contradiction in the statements of this witness and statements of other witnesses with regard to type of land. Hence, evidence of this witness does not prove lifting/taking mould of gypsy. From the evidence of witness PW.10 Mahavir Singh and PW.11 Ganni Khan, no evidence has come against accused. From the evidence of witness PW.12 Sugnesh Limba and PW.13 Daulat Ram, it again becomes totally clear that these witnesses are fabricated and fictitious witnesses. No knife has been recovered in this case and nor information has been given in this case by accused Salman Khan under Section 27 of Evidence Act and nor any such knife has also been got exhibited in the court. This witness in the cross-examination admits the knife being absolutely new. Both these witnesses could not give any reasonable explanation as to how they reached at the time of recovery and arrest. It becomes clear from this that the prosecution has prepared both these witnesses to depose falsely. Both these witnesses admit the recovery site as abadi area. Not calling independent witness strengthens this fact that the prosecution has not done this deliberately. Witness Sumnesh Limba PW.12 makes statement different from his earlier story. Similarly, witness Daulat Ram PW.13 also makes statement different from his previous statement in the court. As such, it is automatically proved from his evidence that no recovery has been made before these witnesses. The prosecution story is also not confirmed from the evidence of witness PW.14 Shiv Chand and PW.15 Om Prakash, because the seized weapons have not been produced and got exhibited. And nor Udai Raghavan has been made witness by prosecution. Hence, his evidence has no justification and importance. It is also evidence from the evidence of witness PW.16 Angad Lal that this witness is totally tutored and fabricated witness. In examination-in-chief itself, this witness states the fact of finding two to four hairs, whereas neither such is the prosecution story and nor mentioned anything in Exh.P.14 Memo. This witness also states the fact of presence of some small skin pieces, whereas there is no such mention in the memo. This memo also pertains to another case, which cannot be deemed to be proved in this case. This witness states the fact of arrival of Arun Yadav at the spot, whereas witness Arun Yadav PW.5 is not even the witness of this memo. In the cross examination, states the fact of Arun Yadav and Harish standing near gypsy, whereas Lalit Boda states the fact of Arun and Harish accompanying him from office. This witness states the fact of writing of meter reading of gypsy in the seizure memo at the time of seizure of gypsy, whereas Lalit Boda himself makes statement contrary to that. This witness states the fact of FSL team taking possession of polythene, hair, pellets and skin on 12.10.98, whereas nothing such has been mentioned in the FSL Test Report Exh.P.83. As such, it is clear from the evidence of

this witness that this witness is either fictitious or he is presenting some other story concealing the reality and actual facts of the prosecution story. There is much contradiction in the statements of this witness with regard to key of gypsy and seal. This witness states the fact of inspection of gypsy by Boraj Singh on 12.10.98 at 9.15 hrs. whereas no such report is available in the file. As such, it is evident from evidence of this witness that Exh.P.14 Memo was not prepared before this witness. It is clear from evidence of witness PW.17 Mahender Vyas that this witness has been prepared by the prosecution to narrate false story in the court. He does not come within the category of chance witness. He does not explain as to for what reason this witness went to the spot at the time of making of both the seizure memos and the explanation given makes it clear that the explanation regarding taking prize is totally fabricated, false and concocted. This witness states the presence of Lalit Boda at the time of seizure, whereas Lalit Boda himself denies this fact. This witness states the seizure of only one air gun, whereas as per Exh.P.21 seizure memo, two air guns were seized. This witness admits the portion of his earlier statement Exh.D.3 from which it is proved that Sharvan Kumar in the search has not made any recovery before him and he is making false statement. The chain of evidence is not linked from the evidence of witness PW.18 Man Singh. Prosecution has not produced Malkhana Register and Malkhana Incharge from which it is proved that no such entry was made. This witness makes statement contrary to statements of witness Mahender Vyas and other witnesses with regard to search of gypsy. It is not at all clear from evidence of this witness that how the hair and pellets were recovered. Evidence of this witness is absolutely doubtful which cannot in any manner termed to be reliable. Evidence of witness PW.19 Ram Singh has no importance. When the seal was not affixed on the gypsy, then the chain of fact of taking sample is not present. Witness PW.21 Dayal Singh does not confirm and support the prosecution story in any manner whatsoever. Witness PW.22 Kailash Giri admits that gypsy was parked in open space. Evidence of this witness does not help the prosecution. Witness PW.23 Bhakhar Ram states the fact of mould Marked A and B handed over by Boraj Singh to him, whereas Boraj Singh does not confirm this fact and nor any such malkhana register has been filed. Hence, this does not connect any chain of evidence of prosecution in any manner whatsoever. Witness PW.24 Kishna Ram also does not give any evidence against me. Witness PW.25 Virender Singh has stated the fact of lifting/taking mould on 12.10.98, whereas the said mould has been got deposited on 10.12.98. No explanation with regard to said period of about two months has been given. This witness has also failed to explain that when and how many photos he had taken and of which place. In such situation, the prosecution case is not proved from the evidence of this witness. Witness PW.26 Boraj Singh, who is an important witness in the case, has made totally ambiguous statement contrary to the statements of other witnesses. This witness does not make it clear that he got the mould sample of tyres of gypsy lifted at the spot and nor any seizure memo of lifting of mould at the spot has been prepared. This witness admits that no document was presented with written report Exh.P.70, whereas it is the prosecution story that copy of statement of Harish Dulani taken in the case of Forest Deptt. Was annexed with this report. This also makes the entire story of prosecution as doubtful. Witness PW.27 Vijay Dan admits parking of gypsy in open space. Hence, in such a case, any mould taken holds no importance. Witness PW.28 Sohan Lal also does not give any evidence against accused. The prosecution story becomes totally doubtful from the evidence of witness PW.29 Madan Lal because this witness had taken the sample mould on 01.12.98, which could not be deposited due to objection. No document were filed with regard to the facts that after the said objection, where, when and by whom the case property was deposited. Hence, chain of depositing sample safely gets broken. Witness PW.30 Rajender Singh totally supports the accused version/story that accused is innocent and no search and seizure was made in the room of accused and it is also clear from Exh.P.21 that his name has been added later on. Witness PW.31 Bhawani Singh also does not give any evidence against accused. Similarly, witness PW.32 Krishan Lal Chadolia does not give any evidence against accused. It is also not clear from the evidence of PW.33 Rajesh Saraswat that accused was Saif Ali Khan or Salman Khan. In addition, in the evidence of witness PW.34 Lalit Boda produced by prosecution, it is fully proved that this witness is totally fabricated and fictitious and the entire story has been concocted to falsely implicate accused Salman Khan. This witness has failed to give any satisfactory reason of not taking search immediately after coming to know of the incident and nor could give sufficient reason of this fact that when Sharavan Kumar had taken search on 10.10.98 and nothing was recovered in it, then how the case property were recovered as alleged in the search taken on 12.10.98. This witness has also not been able to make it clear about the day of hunting incident on which the said gypsy was used. This witness has also not given any explanation of this fact that why he did not make effort to call independent and fair witnesses. He could not give any strong reason of noting down reading in it after making seizure memo. Hence, it becomes clear from evidence of this

witness that this witness is habitual of fabricating and tempering with the documents. This witness has also failed to clarify that why he did not send the letter to Supdt. of Police immediately for FSL testing. This witness does not state that he reached the seizure site on 12.10.98 at the time of inspection of gypsy, whereas other witnesses state the fact of his reaching the spot. In Exh.P.20A seizure memo of gypsy, nothing has been mentioned regarding presence of FSL team at the time of search and presence of weapons. The presumption of minute inspection cannot be made that FSL team conducted this inspection. The gypsy remained locked in garage from the date of seizure – no witness, no document support this fact. Witness himself admits that gypsy remained unsealed. No endorsement was made in the said memo that accused Salman Khan had sent weapons to Bombay. This witness has made statement totally against the entire record that accused Salman Khan tore the said memo. This witness could not explain that why he did not go to Bombay to recovery the weapons which said to have been sent to Bombay by accused Salman Khan. Authority letter on the basis of which the recovery of weapons said to have been made by Udai Raghavan has not been produced. Hence, entire seizure memo Exh.P.19A remains worthless and without any substance. Udai Raghavan has clearly written in Exh.P.19A Memo. It is clear from this that fact regarding instruction is incorrect. Other witnesses of Forest Department have admitted the existence of Malkhana Register of Malkhana. This witness has not made it clear that what has been the reason of not depositing case property in malkhana and not producing such documents in the court. As such, if the entire evidence of this witness is seen, the court may automatically arrive at this conclusion that this witness has presented totally false and fabricated story to prove himself a big officer. The investigation conducted by witness PW.35 Ashok Patni is fully defective and contradictory. It is clear from his evidence that this witness does not even know that how the investigation is conducted. The statements of this witness are not confirmed from statements of any other witnesses. This witness makes statement contrary to the documents prepared by him. This witness states the fact of his giving instructions to Boraj Singh to point out/lift mould from the spot, whereas Boraj Singh does not confirm any such instructions. This witness states the fact of Boraj Singh lifting mould on 13.10.98 from place of occurrence Ujiara Bhakar, whereas Boraj Singh himself does not confirm this and nor any such report has been produced and got exhibited. Merely from the DD report the fact of lifting mould cannot be held to be reliable. There is also no evidence that Marked A and B mould were got deposited in Police Station Mathania. Boraj Singh also does not give any evidence regarding lifting of said mould and nor any witness has been produced with regard to said alleged mould. The IO has not obtained any information from accused Salman Khan under Section 27 of Evidence Act. Information Exh.P.98A is in the case No.162/98 P.S. Mathania. It is also not clear from anywhere in Site Inspection Report dated 13.10.98 of FSL Exh.P.77 that how many moulds were lifted on that day. This witness admits that no endorsement was made by him on the report and he also admits that before getting the FIR registered, the Supdt. of Police ordered him for investigation, whereas on Exh.P.70 Report, the SHO, P.S. Mathania was directed by this witness himself. Witness Harish Dulani was not taken by IO for identification of spot of killing of chinkara and it is clear from this that Harish Dulani was not the eye witness of incident. In cross examination this witness states the fact that no one accompanied him, whereas witness PW.7 Ram Kishan states of going with him. This witness states that he was called by independent witness Bhoraj Singh, whereas said witness states of his going with police to the place of occurrence. This witness states the fact of going to the place of occurrence at 6.30 p.m., whereas independent witnesses state of their presence at 9.00 – 10.00 a.m. When report itself has been registered on 11.10.98 at 11.00 a.m. and witness states his presence from 9.00 – 10.00 a.m., therefore it is clear that the IO collected entire false material to falsely implicate accused persons even prior to registering the FIR and also made entire planning of implicating them. The said IO has not given time in any of the memo and nor mentioned any reason for the same, which proves the fact of false implication. The IO has not found out about the persons in whose possession the gypsy used in the incident remained and nor any inspection was done in this regard that why hair and pellets were not found in the gypsy on 07.10.98 and how the said hair and pellets were found on 12.10.98. This witness states the fact of finding articles in search prior to FIR, whereas as per prosecution documents itself, the said articles said to have been found in the room of accused Salman Khan on 12.10.98 in Ummed Bhawan. It is evident from this that the reason of search stated by this witness is totally fabricated and false. Admittedly no knife has been recovered in this case, whereas this witness contrary to the document states the fact of recovery of knife in this case. This witness has neither given any explanation to this fact that why this witness did not get the place of occurrence identified from accused Salman Khan and how knife reached from accused Salman Khan to Sohail Khan and how weapons reached from Jodhpur to Bombay. This same witness has made contradictory statement regarding the said inspection in another case. No

investigation has been done as to which weapon was used to fire shot. Investigation has also not been done from any other witness to confirm this fact that whether actually witness Satya Mani Tiwari PW.6 searched the room of accused Salman Khan on 29.09.98. As such, it is proved from evidence of this IO that the sole purpose of this IO was to falsely implicate accused Salman Khan in this case and he was earning praise for himself. This witness states that Lalit Boda was confirming the fact and that was the reason of late registration of FIR, whereas Lalit Boda himself states the recovery of weapon as the reason of the delay. As such, the IO has not at all made any effort to find out in this regard that actually why the FIR is being got registered so late. FIR is an important document and it is also the duty of the IO to explain such delay sufficiently. As such, the IO has conducted fabricated, baseless, mala fide, bad and irresponsible investigation and has falsely implicated accused Salman Khan after fabricating false evidence against him. Hence, there is contradiction in the statements of this witness contrary to the result of his own investigation. Hence, the court cannot hold the accused guilty by admitting the conclusion of evidence of such an IO. Witness PW.36 Prabhu Singh states the fact of lifting of mould of marks of tyres from the spot under the direction of Boraj Singh, whereas Boraj Singh does not give any evidence with regard to said direction. This witness does not give any evidence regarding affixing of seal on mould. The prosecution has produced only one witness in respect of mould lifted from place of occurrence. Other witnesses or document do not confirm the statement of this witness. As such, evidence of such an unreliable witness cannot be considered proved beyond doubt. Witness PW.37 Dana Ram also does not give any evidence against us. Evidence of witness PW.38 Yashpal Singh does not have any adverse effect against the accused. Witness himself has denied statements taken before the Magistrate. Therefore, the entire oral and documentary evidence produced by the prosecution are entirely full of contradictions. None of the witnesses is firm on one fact. There is no chain of circumstantial evidence and therefore question of this chain breaking or not breaking does not arise. As such, this case is without any evidence against accused Salman Khan. Hence, accused Salman Khan may be acquitted honorably. The Id. Counsel for accused in support of his arguments invited attention of the Court to the following rulings, which were perused with due respect.

1. Cr.L.R. 1996 (Raj.) page 3760 Mohd. Sharief & Ors./State of Rajasthan, in which the Hon'ble Rajasthan High Court has laid down this principle that – in the case of Wild Life (Protection) Act, there is vital contradiction in the statements of witnesses and prosecution failed to give sufficient explanation with regard to injuries inflicted on the body of wild animal and sufficient cause of death not mentioned in post mortem report, the accused cannot be held guilty.
2. Cr.L.R. 2002 (1) (Raj.) page 761 State of Raj./Jawar Singh, in this case also the Hon'ble Rajasthan High Court has that registration of FIR lately by two days is fatal for the prosecution.
3. Crimes 2003 (1) (Delhi) page 484 Budh Dev/State of Delhi in which the Hon'ble Delhi High Court has laid down this principle that from the evidence of last seen, the prosecution evidence cannot be held to have been proved as a chain of evidence.
4. Cr.L.R. 1999 (Raj.) page 595 Om Prakash & Ors./State of Raj., in which the Hon'ble Rajasthan High Court has laid down this principle that where any kassia (a weapon) recovered on the information of accused but that weapon has no blood spots, such a recovery do not hold any evidentiary importance.
5. C.C.C. 2005 (4) (Karnataka) page 433 Sridhar/State of Karnataka in which also the Hon'ble Karnataka High Court has laid down the principle described hereinabove.
6. Cr.L.J. 2005 (M.P.) page 299 Vijay Singh/State of Madhya Pradesh in which the Hon'ble Madhya Pradesh High Court has laid down this principle that where the prosecution has not immediately forwarded the empty cartridges and fired cartridges to FSL and has failed to explain that delay – no adverse presumption can be drawn against accused and has also laid down this principle that site plan is a

very vital document in the criminal case which helps the court to prove that accused has committed crime or not. It is not a document of formality.

7. Cr.L.R. 1994 (Raj.) page 242 State of Raj./Prakash Chand in which the Hon'ble Rajasthan High Court has laid down this principle that where other people have presented the weapons pertaining to crime – accused cannot be connected to the said recovery.

8. Crimes 2005 (2) (S.C.) page 145 State of Uttar Pradeesh/Gambhir Singh in which the Hon'ble Supreme Court has propounded this principle that where opinion or possibilities coming out from the prosecution evidence – the priority should be given to the probability which are in favour of accused.

9. Crimes 2005 (1) S.C. State of Uttar Pradesh/Srikrishan and in this ruling also, the Hon'ble Supreme Court has laid down the above mentioned principle.

10. C.C.C. 2004 (3) (S.C.) page 750 Narender Singh & Ors./State of Madhya Pradesh. In this ruling, the Hon'ble Supreme Court laid down this principle that where a fact shows two probabilities – the probability favouring the accused should be looked into by the court and also laid down this principle that all the chains of prosecution evidence should be inter-related and also laid down this principle that when accused has taken the plea of alibi, burden to prove this lies on the prosecution.

11. Cr.L.R. 1996-97 (Raj.) page 256 State of Raj./Vipin Kumar, in which the Hon'ble Rajasthan High Court has laid down this principle that where the FIR has been got registered after 48 hours of incident and there is no sufficient explanation of delay, it be held that this delay is fatal for the prosecution.

12. R.C.C. 1976 page 155 Walia/State of Raj., in which the Hon'ble Rajasthan High Court has clearly laid down the difference of "May Be True" & "Must Be True".

13. Cr.L.R. 1977 (Raj.) page 170 Chajja & Ors./State of Raj., in which also the Hon'ble Rajasthan High Court has laid down the same principle as stated in the previous ruling.

14. A.I.R. 1953 (Assam) page 176 State of Assam/Ramani Mohan Chand, in which the Hon'ble Assam High Court has laid down this principle that where the prosecution has got the witness examined and reserved his cross examination and where no such fact is on record that Magistrate afforded the opportunity of cross examination to the accused – the evidence of said witness cannot be admissible under Section 33 of Evidence Act.

15. Cr.L.R. (Raj.) 1981 page 275 Bhakra Ram/State of Raj., in which the Hon'ble Rajasthan High Court has laid down this principle that where the DD Register has not been produced by prosecution, non-production creates a serious doubt and court may make adverse presumption against prosecution.

16. Cr.L.R. 1984 (S.C.) page 296 Sharad Viridi Chand Sarda/State of M.P. in which he Hon'ble Supreme Court has laid down this principle that where a fact purely amounts to opinion, such opinion is not admissible in evidence and along with this, this principle was also propounded that prosecution to prove his case of his own. Prosecution cannot take benefit of weakness of defence.

17. R.C.C. 1991 page 451 Satya Narain Sharma/State of Raj., in which the Hon'ble Rajasthan High Court has laid down the principle that it is the fundamental right of accused to cross examine witness and when counsel for accused does not appear for cross examination, it is the duty of trial court to appoint Amicus Curiae at that time.

18. R.C.C. 1994 page 295 Raju Ram & Ors./State of Raj., in which the Hon'ble Rajasthan High court has laid down this principle that the court should fully satisfy itself before convicting an accused that the circumstances on the basis of which the court has arrived at the finding of conviction of accused are proved beyond any doubt or not. In this ruling itself, the Hon'ble Court also propounded this principle that where any object recovered by police from the place of occurrence and not prepared seizure memo of the said recovery separately and such seized object/article was got deposited in malkhana with abnormal delay and that delay was not explained – in these circumstances the said seizure will be held to be doubtful and fabricated.

19. Cr.L.R. 1995 (Raj.) page 304 Ajit Bhanu Singh & Ors./State of Raj., in which the Hon'ble Rajasthan High Court has laid down this principle that in case the statement of witness in the court is contradictory to the statement to police given earlier, statement given in court will be treated as unreliable and in this ruling, it was also laid down that where on the information of accused, recovery of weapons made and blood spots not found on such recovered weapons – such weapons cannot be related to the weapons used in the crime.

20. Cr.L.J. 1995 (2) (M.P.) page 1270 Nand Ram Khem Raj/State of M.P., in which the Hon'ble Madhya Pradesh High Court has laid down this principle that where a case was instituted on the basis of complaint and accused did not get opportunity of cross examination of complainant at the time of evidence prior to charges and in case complainant dies subsequently, the said evidence shall not be held to be admissible in evidence under Section 33 of Evidence Act.

21. Cr.L.R. 2000 (Raj.) page 764 Nanga/State of Raj., in which the Hon'ble Rajasthan High Court laid down the principle that where extraordinary delay committed in registration of FIR and the said extraordinary delay not explained – such delay is fatal to the prosecution.

22. Cr. L.R. 2000 (Raj.) page 144 Mohan Lal/State of Raj., in which also the Hon'ble Rajasthan High Court has laid down the same principle as in the abovesaid ruling.

23. C.C.C. 2005 (4) (Karnataka) page 466 Perumal & Ors/State in which the Hon'ble High Court has laid down this principle that where the prosecution has not been coming to the court with clean hands and is concealing the facts – accused cannot be held guilty and cannot be convicted.

14. In this connection, Id. Counsel for accused Dushyant Singh during arguments submitted that statement of witness Harish Dulani is not admissible in evidence against me, because he did not get any opportunity of cross examination. Even if the court holds that evidence of this witness is admissible, even then this witness Harish Dulani in his statements shows of Dushyant Singh getting down at the bungalow of Tutoo Banna. This witness does not give evidence of single word against me. No recovery has been made from accused. There is no evidence that the accused Dushyant Singh formed unlawful assembly in any manner whatsoever, armed with deadly weapons or instigated anyone or hunted deer destroyed any such evidence. Witness PW.11 Gani Khan himself denies the fact of Dushyant Singh arranging Gypsy. No police personnel or Forest Deptt. personnel give any evidence against me. Even if court admits that he helped accused Salman Khan in getting gypsy for shooting, providing gypsy to film personalities does not amount to crime. Accused Dushyant Singh is a reputed person belongs to royal family and holds a

good moral character and has not been involved in any crime. Hence, he is innocent and has been implicated merely on suspicion. Hence, accused Dushyant Singh be acquitted honorably.

15. During argument, the Id. Counsel for accused Om Singh, Gordhan Singh and Bal Angre alias Tulaji Angre submitted that Pratap Singh and Tulaji Angre have been dragged in this case without any reason and both the accused during investigation informed the IO that on 28.09.98 they both were in Delhi and that on 29.09.98 they came from Delhi to Jodhpur by air to attend some marriage function. Even after that the IO failed to conduct any enquiry in this regard to confirm whether both these accused were present in Delhi at the night of incident or not or if they were present there then where they were present. The IO Ashok Patni himself admits in his cross examination that it cannot be said that whether Pratap Singh and Tulaji Angre performed air journey on 29.09.98 or not. Witness PW.32 Krishan Lal Chandolia also admits in cross examination that names of both these accused are appearing in the list of passengers. The prosecution also concedes that boarding passes were issued in our name and journey performed with these names. It was the duty of the IO that had he thought that Tulaji Angre and Pratap Singh did not perform journey and that both these accused were present at Jodhpur at the night of 28.09.98 then who were those two persons in whose names air journey was performed against air tickets. Passengers list, traveling chart, boarding pass etc. are public documents and these cannot be fabricated in any manner. Shri Jagdev Singh, Advocate and I concluded cross examination of witness Harish Dulani. Hence, if this court holds that the evidence of this witness is admissible in evidence against me, even then no offence is proved against me from the evidence of PW.1 Harish Dulani. Name of Tulaji Angre is not mentioned in the FIR. Later on his name has been added in the supplementary statement. Witness Harish gives statement different that the statements taken under Section 164 Cr.P.C. The IO also has not got any identification of Tulaji Angre done. On the information of Gordhan Singh also thumb impression has been written after cutting signature, from which it becomes clear that after obtaining signature of accused Gordhan Singh on blank paper, the information was later recorded under Section 27 of Evidence Act. Witness Harish Dulani fully admits of not seeing Gordhan Singh at the spot and also makes totally contradictory statement with regard to my clients other accused. No other witness gives any evidence against me. As such, accused Om Singh, Gordhan Singh and Tulaji Angre are innocent. They have been implicated merely on the suspicion. The prosecution case is not proved beyond doubt against me. Hence, all these three accused be acquitted honorably.

16. In this connection, the Id. Counsel for accused Pratap Singh submitted during arguments that as per prosecution story the present FIR was registered at the time when Lalit Boda, IO of Forest Deptt. was investigating case No.93/26 of Forest Deptt. Hence, as per law, any report given during such investigation cannot be treated as First Information Report in the eye of law. Besides this, witness Harish in his statement Exh.P.94A given in the investigation has stated the fact of keeping dead deer by Pratap Singh and Om Singh in the gypsy. Whereas Pratap Singh is a Jagirdar then how he would himself put the dead deer in the vehicle, because Jagirdar keeps servants, employees. In the statement Exh.P.94A, search light said to have remained with Pratap Singh, whereas in the evidence on oath he has stated that search light was with Dinesh Gavre. In statement Exh.P.94A, dead deer said to have been kept in gypsy by Pratap Singh and Om Singh, whereas in the statement on oath in the court, stated that it was kept in gypsy by Om Singh and Dinesh Gavre. As such, showing light of search light and putting dead deer are vital points and there is much contradiction in these points which makes the reliability of this prosecution story totally doubtful. Even to that extent that witness Harish Dulani also denies his statement given before Magistrate. Hence, evidence of such an unreliable witness deposing falsely cannot in any manner be said to be proved evidence against me. The IO has not conducted any investigation with regard to journey of Pratap Singh, whereas the accused made this plea during the investigation itself, and therefore it was the duty of the IO to investigate regarding this plea. Except witness Harish Dulani, no other prosecution witness or document gives any evidence against me and evidence of witness Harish Dulani is totally contradictory and unreliable. Hence, the case against Pratap Singh is totally without any evidence. Hence, accused Pratap Singh be acquitted. Id. Counsel for accused in support of his argument invited attention of the court to the following rulings which were perused with respect:-

1. S.C.C. 2002 (7) (S.C.) page 317 Ashish Botham/State of Madhya Pradesh in which Hon'ble Supreme Court has laid down this principle that accused will be considered innocent till the charge against him is proved beyond any doubt. The crime being of grievous nature itself cannot be the ground of conviction of accused. The suspicion and doubt which may though be strong but this cannot at all take shape of evidence in law.
2. Cr.L.R. 1992 (Raj.) page 76 Satpal/State of Rajasthan in which the Hon'ble Rajasthan High Court has held that if there is contradiction with regard to explanation given for late registration of First Information Report, such delay cannot be condoned.
3. Cr.L.R. 1992 (Raj.) page 497 Fatta/State of Raj. In the said ruling, the Hon'ble Rajasthan High Court has held the delay in registration of FIR as fatal to the prosecution.
4. R.L.W. 1996 (2) page 423 Ramanuj/State of Rajasthan, in which the Hon'ble Rajasthan High Court has laid down this principle that on registration of FIR it is the duty of IO that he himself visits the place of occurrence and submit copy of that report to the Magistrate without any delay.
5. S.C.C. 2001 (10) (S.C.) page 103 M. Abbas/State of Kerala in which the Hon'ble Supreme Court has laid down this principle that in the trial of criminal case, it is necessary for the defence to only establish different probability.
6. S.C.C. 2002 (1) (S.C.) page 702 Subhash Chand/State of Rajasthan. In this ruling, the Hon'ble Supreme Court propounded this principle that if a recovered blood stained article is not produced before the court and nor any explanation is given as to whose blood is this – such recovery has no adverse effect against the accused.
7. S.C.C. 2004 (31) page 282 Dasri Shiva Prasad Reddy/Public Prosecutor. In this ruling, the Hon'ble Supreme Court has held that if the accused has taken plea of alibi, in case he fails to prove his presence elsewhere, this cannot be derived from that that at that point of time accused was not present there.
8. A.I.R. (SC) page 2637 T.T. Anthony/State of Kerala, in which the Hon'ble Supreme Court has laid down this principle that where in the course of investigation of a FIR, another fact comes to notice, the new report got registered on the basis of that fact does not come within the category of First Information Report in the eye of law.
9. S.C.C. 1998(1) page 1 Balwant Kaur/Chandigarh, in which the Hon'ble Supreme Court has laid down this principle that confirmation of vital facts of independent witnesses is established and practical principle of law. Its nature depends on each case and the accused cannot be held guilty on the basis of unconfirmed evidence of co-accused.
10. S.C.C. 1999 (5) page 253 State/Nalini & Ors., in which the Hon'ble Supreme Court has laid down principle with regard to confession under TADA Act.
11. S.C.C. 1999 (5) page 30 Ram Prasad/Maharashtra in which Hon'ble Supreme Court has laid down this principle that only after evidence of co-accused, the confirmation is required and only after having fully satisfied, such evidence can be used against other accused.

12. S.C.C. 2005 (4) page 512 K. Kalimuthu/State, in which Hon'ble Supreme Court propounded this principle that principle has been laid down with regard to the fact that when and to what extent the official duty would be considered under Section 197 Cr.P.C.

13. S.C.C. 2004 (8) page 31 S.K. Zutshi & Ors./Vimal Dev Nath & Ors., in which the Hon'ble Supreme Court has laid down the abovesaid principle.

14. S.C.C. 1988 (4) page 655 State of Bihar/Murad Ali Khan & Ors., in which the Hon'ble Supreme Court laid down this principle that when any act or omission constitute offence under some other Act, trial can be done only under other law besides under Wild Life (Protection) Act.

15. Cr.L.R. 1984 (Rajasthan) page 46 Hanja & Ors./State of Raj., in which the Hon'ble Rajasthan High Court has laid down this principle that where the FIR prepared after police reaching the place of occurrence and after obtaining thumb impression of witness – such document cannot be admissible in evidence in any manner whatsoever.

17. On behalf of prosecution, total 38 witnesses were produced and got examined to prove the charges framed against the accused persons and among them witness PW.1 Harish Dulani has stated that on 26.09.98 gypsy of Arun Yadav bearing No.RJ 19-1-C-2201 with its driver was engaged with accused Salman Khan during shooting of film. On 28.09.98 at 10.00 p.m. Salman Khan, Dinesh Gavre and Dushyant Singh with the gypsy went from Ummed Bhawan to Tutoo Banna bungalow and after taking Om Singh and Pratap Singh and one other person from there and keeping one search light and two guns reached Mathania Gudda Farm. Dushyant Singh got down at the bungalow of Tutoo Banna. While moving from Ummed Bhawan, accused Salman Khan was driving the gypsy. At Gunnda Farm, search light was connected to the battery of gypsy and after covering distance of 5-7 kms. they spotted a deer and Dinesh Gavre guided search light at the deer whereupon accused Salman Khan stopped the vehicle and taking telescopic gun in his hand fired shot at deer and deer got injured and he took gypsy near it and got down and accused Om Singh held the leg of deer and accused Salman Khan taking out knife from his pocket cut the neck of deer and then Om Singh and Dinesh Gavre lifted the dead deer and kept in the gypsy and after reaching Gudda Farm they removed dead deer from the gypsy and kept on the ground and one man of the Gudda Farm skinned the deer and after removal of skin the deer was put back in the gunny bag and kept in the gypsy. From there, they returned to Jodhpur and accused Salman Khan and Dinesh Gavre went to Ummed Bhawan and after dropping cook of Salman Khan near Beniwal Palace with the said bag, Pratap Singh and baldy man got down near Air force Area and he came to his house with gypsy. He cleaned the blood spilled over in the gypsy while the deer was being put in the gypsy. On showing the spot of this incident to police, site plan and facts of the spot exh.P.1 and 2 were prepared. Police packed and sealed the sample of blood found at the spot. On behalf of prosecution this witness was declared hostile and was cross examined in which this witness has stated that his statement Exh.P.3 were taken before the Magistrate.

18. Witness PW.2 Pukh Raj has stated that three years ago at 1.00 A.M. night I was working in the field of Ratna Ram. One vehicle with light on came near Ujalua Bhakar and its lights were on. Vehicle came from Mathania side and went back to that side.

19. Witness PW.5 Arun Kumar Yadav, who is owner of gypsy in question has stated in his evidence on oath that on 23.09.98 his client Gani Khan talked to Dushyant Singh for engaging vehicle for the guests arrived there for shooting of film and on receiving message he sent the gypsy with driver Harish Dulani to Ummed Palace. At the night of 1st Harish took vehicle to his home and on 2nd at noon on seeing vehicle found two front side tyres and one back side tyre punctured. On asking, Harish said that condition of vehicle is bad and tyres are punctured and vehicle was not got driven from him. Harish also told that Dushyant Singh and actor doing film shooting, after taking the vehicle kept on hunting and bringing Titar Bater. On seeing the vehicle and smelling of blood coming from

the vehicle, he washed the vehicle and that time found pellets and empty cartridges etc. from near the seat and blood spots found on plastic sheet. His nephew said that hood of vehicle was got opened by Dushyant Singh. The prosecution has cross examined this witness on the contradiction in his previous statements in which (cross examination) this witness has stated that his statement Exh.P.8 was taken by police. Portion C to D of Exh.P.8 was stated by him correctly to police. Today in his above statements, he has inadvertently stated the fact of tuning up of vehicle on 29.09.98.

20. Witness PW.6 Satya Mani Tiwari has stated in his statement on oath that on 26.09.98 while working as Mobile Traffic Inspector, on the verbal order of S.P., he was put on duty with film unit. On 29.09.98 during shooting at Luni Haveli, accused Salman Khan told him that his .32 Bore Smith & Vesan loaded revolver has been missing from under his pillow at night and on informing SP in this regard over telephone, instructions were given to get the case registered and thereupon on asking accused Salman Khan regarding licence of revolver, Dinesh Gavre Assisant of Salman Khan showed the licence. The licence had entry of .32 revolvers as also the entry of .22 rifle. Exh.P.9 is certified copy of licence of revolver and rifle. Then reaching Ummed Bhawan Palace with Assistant Dinesh Gavre, room in which accused Salman Khan was staying was searched in the presence of Manager Shri Sarkar, Security Officer Rajender Singh and Room Boy Berisal Singh and the said weapons were found there. On opening chamber of revolver, five rounds were found loaded in it and one lower chamber below the trigger was found empty. Thereafter, at Luni, SP was informed over telephone about finding of revolver.

21. Witness PW.7 Ram Kishan has stated that on 11.10.98 on information of Harish Dulani, police took action with regard to skin of deer and blood and hair found in a pit dug at some distance away from Ghodda Farm and prepared site plan Exh.P.1 and Memo of Pointing Exh.P.2. Police lifted blood stained earth and sample and sealed the same in a box. On 12.10.98 accused Gordhan Singh pointed the place of hunting and from there on finding blood of deer on the earth, sample was taken and sealed and accused Gordhan Singh got recovered churri type knife and gun. On behalf of prosecution, this witness was declared hostile and has been cross examined in which this witness has stated that it is correct that before him police during the course of taking action in this case inspected two three spots with him. It is correct that inspection was done on spots at three four places, hence he does not correctly remember as to at which particular spot and what particular action was taken by police. The spot where police prepared document was correctly written. It is correct that the spot where Gordhan Singh had thrown the skin was also shown and hair of deer were also found scattered there and black portion of tail of deer was also found lying there. It is correct that skin hair of deer were white brown in colour. Before me, police seized piece of tail and hair of deer and these were kept and sealed in a box. In examination-in-chief, I got the fact of recovery of only earth and hair and nothing else recorded, I could not understand that thing. Hence, I inadvertently got recorded the fact of not recovering anything else. Police seized end of tail and hair of deer and prepared seizure memo Exh.P.9 which bears my signature from A to B. Police prepared site plan of this spot Exh.P.10 which bears my signature from A to B. It is correct that the end of tail and hair of deer recovered were recovered from near a Medh (Pal) about 400ft. distance from Ghodda farm. It is correct that Gordhan Singh showed that spot also to the police, where after gunning down, deer was butchered. It is correct that from this spot, blood stained earth, plain earth samples and hair of deer were seized and sealed and moulds of tyres of gypsy were found present around that spot. It is correct that police prepared seizure memo Exh.P.11 and 12 in that context and these bear my signature from A to B.

22. Witness PW.8 Gordhan Singh has stated in his statement on oath that on 14.10.98 when he was deputed on duty at coal depot to keep watch on Gypsy No.RJ 19-1-C-2201, Boraj Singh, SHO of Mathania came with two men and before him and Sagar Ram Bishnoi lifted moulds of four tyres of gypsy and prepared Exh.P.13 seizure memo and obtained his signature from A to B.

23. Witness PW.9 Sagar Ram has stated in his evidence on oath that on 14.10.98 SHO of Mathania came with two persons at Coal Depot, Forest Deptt. and before him and Gordhan Singh lifted mould of tyres of Gypsy No.2201 parked there and after preparing seizure memo Exh.P.13 obtained his signature thereon.

24. Witness PW.10 Mahavir Singh has stated in his statement on oath that on 12.10.98 he went with Addl. Supdt. of Police Ashok Patni at Ghoda Farm within limit of Mathania in connection with investigation into CR No.163/98 and accused Gordhan Singh was arrested through memo Exh.P.15.

25. Witnesses PW.12 Sumnesh Limba and PW.13 Daulat Ram in their statements have stated that on 15.10.98 before them, Ashok Patni arrested accused Salman Khan through Memo Exh.P.17/17A. The same day on presenting a knife by Sohail Khan, it was taken into possession before them and seized through seizure memo Exh.P.18/18A on which their signatures were obtained. The knife was kept in a cloth bag and sealed.

26. Witness PW.14 Shiv Chand has stated that on 15.10.98 at about 3.30 A.M. night Udai Raghavan after bringing weapons of accused Salman Khan from Bombay presented one revolver and one rifle to Lait Boda whereupon these weapons were seized. Udai Raghavan along with weapons presented licence of accused Salman Khan renewed upto 22.09.98. At that time, Regional Forest Officer Om Prakash and accused Salman Khan were present. Accused Salman Khan stated that said weapons belong to him and these were kept separately in cloth bags and sealed and prepared seizure memos Exh.P.19/19A.

27. Witness PW.15 Om Prakash stated that on 15.10.98 at about 3.30 A.M. morning in his presence on presenting weapons of accused Salman Khan by Udai Kumar Raghavan to Wild Life Preservation Officer, Jodhpur, these weapons were taken into possession and kept in clothes and sealed and seizure memo Exh.P.19/19A prepared and got signed. One revolver, one rifle and one licence were seized. At that time, accused Salman Khan admitting that the said weapons belong to him also told that licence also belongs to him.

28. Witness PW.16 Angad Lal has stated that on 07.10.98 at 1.40 p.m. he and Gordhan Singh with Wild Life Preservation Officer Lalit Boda went to the house of Arun Kumar Yadav situated in Kamla Nehru Nagar where a gypsy was recovered and on checking, blood spots at different places on polythene of back seat were found and two to four hairs and small skin pieces were found lying on the mat laid in between back seats. The Regional Forest Officer on examination found five small pellets, one large size cartridge and some hairs and these were also seized and hairs were kept in cloth bag and pellets/cartridge were kept separately in paper bag and sealed. In this connection, seizure memo of gypsy Exh.P.14/14A and seizure memo of pellets/cartridge and hairs Exh.p.20/20A were prepared and his signatures obtained thereon.

29. Witness PW.17 Mahender Vyas has stated in his statement on oath that on 12.10.98 when he was sitting in his shop, Shiv Chand while passing from there asked to come to the office to take back remaining price and after visiting Forest Deptt. Office when enquiry was made about Lalit Boda in this regard, it was told that he has gone to coal depot whereupon he went to the coal depot to meet him and on reaching there, Sharavan Kumar in the presence of Hemender, Man Singh and Angad Lal inspected gypsy No.RJ 19-1-C-2201 and on finding 6 pellets on matting of front seat and 6-7 hairs on matting of back seat these were taken into possession and seized and sealed separately before him and prepared seizure memo Exh.P.20/20A before him and obtained his signature thereon. The same day, on reaching Ummed Bhawan Palace with Lalit Boda, Omji Joshi and officials of Forest Deptt., after searching room No.508 in the presence of accused Salman Khan, one air gun, telescope, one camera, one camera reel and two packets of rounds one loose and one sealed were found and these were seized and air gun and telescope were sealed together and other articles were sealed separately and seizure memo Exh.P.21/21A were prepared before him and his signature is available thereon. Sharavan Kumar, Rajender Singh and police officer were present during search.

30. Witness PW.18 Man Singh has stated in his statement on oath that on 12.10.98 Regional Forest Officer Sharavan Kumar Chauhan in the presence of, Mahender Vyas, Angad Lal Sharma and Hemender Dwivedi inspected gypsy No.RJ 19-1-C-2001 parked in coal depot and on finding one round of 8 MM and 5 rounds of 5 MM on matting below front left side seat kept these in a paper packet and on finding 6-7 hair pieces on and below the

back side mat kept the same in a paper envelope and sealed and prepared seizure memo Exh.P.21/21A before him and his signature were obtained thereon. This witness has also stated that these case property as evidence were brought and deposited in malkhana by Sharavan Kumar. On 12.10.98 itself 4 sealed packets were also deposited in malkhana. On 15.10.98 receiving instruction to take 4 sealed packets A, B, C, D to office of S.P., Jodhpur, he with forwarding letters with relevant documents took these 4 sealed packets same day and handed over the same to Virender Singh, Const. in the office of S.P. for depositing in FSL, Jaipur and on returning back by Virender Singh Const. the sealed packets with forwarding letter Exh.P.21 and relevant documents for depositing to FSL Jaipur, he deposited back the same in the malkhana of the office. On 15.10.98 after deposit of E, O, P packets in sealed condition in Malkhana, forwarding letter as prepared for getting the packets tested from FSL and with concerned documents and these packets were taken to SP Office, Jodhpur on 16.10.98 and handed over to Virender Singh, Const. who prepared forwarding letter and handed back the said sealed packets with documents to him for depositing the same in FSL, Jaipur and he brought the same to office and kept in malkhana. This witness has further stated in his statements that he took all the above case property as evidence on 17.10.98 to deposit in FSL, Jaipur and after depositing all these packets in sealed condition obtained receipt. The said packets remained in sealed condition with him. Exh.P.22, 24 and 26 are receipts of deposit in FSL and Exh.P.23 and 25 are copies of forwarding letter of SP Office.

31. Witness PW.19 Ram Singh the then ASI, Police Station Sardarpura, Jodhpur in his statement on oath has stated that on 12.10.98 he with Addl. Supdt. of Police Ashok Patni went to Mathania for investigation and arrested accused Gordhan Singh through memo Exh.P.15. This memo bears his signature from C to D. On 17.10.98 as per order of Addl. Supdt. of Police, he went to his office and there the Addl. Supdt. of Police gave letter with direction to deposit case property as evidence in case No.163/98 P.S. Mathania, whereupon he reached P.S. Udai Mandir and took 6 sealed packets from HC Hanuman Singh and came to office of Addl. Supdt. of Police and got the forwarding letter prepared from Virender Singh HC and he deposited the packets in sealed condition in FSL and submitted receipt to Addl. Supdt. of Police and a copy was deposited in the office of S.P. Exh.P.27 is letter issued from SP Office and Exh.P.28 is forwarding letter and Exh.P.31 and 32 are road certificates and these bear his signatures. Exh.P.29 and 30 are receipts of deposit of case property with FSL which were handed over to Addl. Supdt. of Police. So long the samples remained in his custody, the seals remained intact.

32. Witness PW.20 Hanuman Singh in his statement on oath has stated that on 11.10.98 while working as HC-Malkhana Incharge of P.S. Udai Mandir, two sealed packets marked A and B in case No.163/98 P.S. Mathania seized by Addl. Supdt. of Police were presented by Sohan Lal F.C. whereupon he deposited the same in malkhana and on 17.10.98 these in sealed condition were handed over to Ram Singh, ASI, P.S. Sardarpura and obtained receipt. On 12.10.98 after four packets marked C, D, E, F deposited in this case by Addl. Supdt. of Police Mr. Patni in malkhana, these packets in sealed condition were handed over to Ram Singh ASI with road certificate No.80 and 81 and obtained receipt. On 14.10.98 mould of tyres of gypsy marked C, D, E, F duly sealed were submitted by Boraj Singh, SI and on 13.11.98 two packets marked A, B duly sealed were submitted by Kishna Ram, H.C. and these packets were deposited in Malkhana. Road Certificate No.80 and 81 Exh.P.31 and 32 bear his signatures. The seal of case property remained intact so long these remained in his custody and in sealed condition these were handed over to Ram Singh. Entries were made in Malkhana Register and it is Exh.P.33, 34 and 36, and Exh.P.33A to 36A are certified copies of the same.

33. Witness PW.22 Kailash Giri has stated in his statement on oath that as per instructions of Lalit Boda, on 23.10.98 he took gypsy No.RJ-19-1-C-2201 seized in this case to the SP Office for depositing in FSL and handed over the same with concerned documents to Bhawani Singh HC and showed gypsy to him who got prepared forwarding letter Exh.P.24 from S.P. and gave the same to him whereupon he on 24.10.98 deposited the gypsy in FSL with relevant documents and obtained receipt and Exh.P.25 is certified copy of that receipt. The gypsy remained in the same condition as it was handed over to him.

34. Witness PW.23 Bhakar Ram has stated in his statement on oath that on 12.10.98 while posted as HC in P.S. Mathania, as charge of Malkhana was with him, Boraj Singh, SHO deposited mould of tyres of gypsy marked A, B in good condition and these were handed over on 13.11.98 to Kishna Ram Const. for taking to Office of Addl. S.P., City. The case property remained in good condition so long it remained in his custody.

35. Witness PW.24 Kishna Ram, the then HC, Police Station Mathania has stated in his statement on oath that on 13.11.98 Bhakar Ram, Malkhana Incharge of Police Station Mathania handed over mould of tyres Marked A, B in good condition, whereupon he took the same to the office of Addl. Supdt. of Police, City, Jodhpur and on the direction of depositing those moulds in the malkhana of P.S. Udai Mandir, he deposited the same in the same condition with Hanuman Singh, H.C. The mould remained in good sealed condition till these remained in his custody.

36. Witness PW.25 Virender Singh has stated in his statement on oath that on 11 and 12th.10.98 he with Addl. Supdt. of Police Ashok Patni visited place of occurrence in connection with case No.163/98, P.S. Mathania and as per his instructions took photographs and Exh.P.26 to 48 are negatives and Exh.P.49 to 66 are photos. On 17.10.98 Ram Singh, ASI with 6 packets and relevant documents came to him whereupon he prepared forwarding letter Exh.P.27 and 28 for sending these to FSL, Jaipur and again all the said sealed packets were handed over to Ram Singh for taking the same to FSL. Exh.P.31A and 32 A are receipts of packets received from Ram Singh. On 10.12.98 Madan Lal, Const. brought 6 mould of tyres whereupon he prepared forwarding letter Exh.p.67 for depositing the same to FSL and again these 6 mould were handed over back to Madan Lal. Exh.P.28 the certified copy of road certificate brought by Madan Lal bears his signature from A to B. Signature of Bhawani Singh, Const. working with him appears on Exh.P.24 forwarding letter. This witness has also stated in his statements that on 15.10.98 Man Singh brought four sealed packets and relevant documents whereupon he made endorsement A to B thereon and signed and handed over the forwarding letter for depositing in FSL Exh.P.21A with relevant packets as case property to Man Singh for depositing in FSL. On 16.10.98 Man Singh brought two sealed packets with relevant documents and same day brought one packet with letter Exh.P.21A, and receipts of the same were issued vide Exh.P.69 and A to B on Exh.P.21A. Exh.P.23A and 25A forwarding letter prepared from SP Office bear signature of Nathu Singh, C.I. Incharge. After handing over the said packets with these letters in sealed condition to Man Singh, receipt was obtained from him. All the packets remained in sealed condition with him and the same were handed over in sealed condition.

37. Witness PW.26 Boraj Singh has stated in his statements that on 1.10.98 while posted as SHO, P.S. Mathania, complainant Lalit Boda submitted report in writing Exh.P.70 to Addl. Supdt. of Police Ashok Patni whereupon he (Addl. S.P.) directed him to register the case and thereupon he registered case No.163/98 presented the FIR again to Addl. Supdt. of Police. He prepared report Exh.P.71 on that basis. In the investigation of case by Addl. Supdt. of Police, he was member of investigating team. On 14.10.98 before him the Incharge M.O.B., Jodhpur lifted mould of tyres of Gypsy No.RJ 19-1-C-2201 parked in the office premises of Regional Forest Officer and prepared seizure memo Exh.P.13 which bears his signature from E to F. On lifting moulds of tyres these were marked as C to F. Exh.P.72 and 73 are copies of entry of DD Register regarding departure from police station and arrival. Statements of witnesses were recorded as given by them. After investigation Exh.P.77 FSL Report, Exh.P.78 letter and other documents were forwarded by him with charge sheet against you accused.

38. Witness PW.27 Vijay Dhall has stated in his statement that on 13.10.98 being Incharge of M.O.B. branch, on receiving call to lift moulds of tyres, he went to coal depot and in the presence of Sagar Mal, Govardhan Singh and SHO Boraj Singh, he lifted moulds of four tyres of gypsy No.RJ 19-1-C-2201 seized as case property in case No.93 (26) dated 02.10.98 Forest Deptt. and case No.163/98 P.S. Mathania and marked these as C to F and handed over to Head Mohrir of P.S. Udai Mandir for depositing in Malkhana. In this connection seizure memo Exh.P.13 signed from Go to H was prepared. Article 205 presented in the court are samples/moulds of tyres of gypsy lifted by him.

39. Witness PW.28 Sohan Lal has stated in his statement on oath that on 11.10.98 during investigation of case No.163/98 P.S. Mathania, he was with Addl. Supdt. of Police Ashok Patni and on handing over two sealed packets Marked A and B containing blood stained earth and control sample of earth taken from the place of occurrence as case property to him for depositing in malkhana, he submitted these packets in the same condition the same day to Hanuman Singh, Malkhana Incharge of Police Station Udai Mandir for depositing in Malkhana. Case property remained sealed so long these remained in his custody.

40. Witness PW.29 Madan Lal has stated in his evidence on oath that on 01.12.98 as per directions of SHO, he visited office of Addl. Supdt. of Police where on handing over documents relating to case, he took these to Police Station Udai Mandir where HC Hanuman Singh handed over to him in good condition the 6 moulds of gypsy tyres which he took to SP Office and due to objection in preparing letter in the name of FSL, Jaipur, the case property could not be got deposited there and on coming back to Jodhpur he handed over the documents in SP Office and deposited back the said case property to said Hanuman Singh, HC. On 10.12.98 he after taking relevant documents from the office of Addl. Supdt. of Police went to P.S. Udai Mandi and from there he obtained said moulds of gypsy in good condition from Hanuman Singh, HC and visited SP Office from where forwarding letter was got prepared and case property were deposited on 13.12.98 in good condition in FSL, Jaipur and receipt submitted to Addl. Supdt. of Police. So long the case property remained in his custody these remained in tact. Forwarding letter Exh.P.67 bears his signature from C to D and Exh.P.80 is the receipt of deposit in FSL. Road Certificate Exh.P.64 bears signature of HC Virender Singh in the office of SP.

41. Witness PW.30 Rajender Singh has been declared hostile by prosecution but this witness in examination-in-chief itself states that accused Salman Khan was staying in Room No.508 of Ummed Bhawan.

42. Witness PW.31 Bhawani Singh has stated in his statement on oath that on 23.10.98 on arrival of Kailash Giri from Wild Life Deptt. Office with Gypsy No.RJ 19-1-C-2201 along with letter from SP Office for inspection by FSL, he inspected the gypsy and prepared letter Exh.P.24 and got it signed from Incharge of Crime Branch Gaj Singh from C to D and also appended his signature from A to B and handed over gypsy and relevant documents along with Exh.P.24 to Kailash Giri with the direction to deposit the same in FSL. Gypsy was handed over to Kailash Giri in the same condition as it was received by him.

43. Witness PW.32 Krishan Lal Chandelia has stated in his statement that in September, 98 he was working as Station Manager, Indian Airlines Limited, Jodhpur. It is necessary that the passenger traveling the journey should have valid airlines ticket. As per rule, ticket cannot be transferred to the name of other person but without informing Airlines, that person can get other person travel through airlines. Exh.P.91 is the copy of travel chart of passengers for the sector Delhi to Jodhpur for 29.09.98 and Exh.P.92 is copy of charge of details of passengers. Information was sent through letter Exh.P.87 to SHO, Mathania which bears his signature from A to B.

44. Witness PW.33 Rajesh Saraswat has stated in his statement on oath that on 12.10.98 on his visiting Forest Deptt. Office, Jodhpur, Lalit Boda asked him to become independent witness and besides him, Sharavan Kumar and Hemender Trivedi were present and that time Saif Ali appeared and before him presented one air rifle made in England, one packet containing 186 rounds and one packet containing 12 rounds and another packet containing 100 rounds to Lalit Boda whereupon these were seized and sealed through seizure memo Exh.P.93 prepared before him and his signature obtained thereon. Rifle was kept in a black colour cover.

45. Witness PW.34 Lalit Boda in his statement on oath has stated that in the month of October, 98 while working in the post of Wild Life Preservation Officer and Asstt. Conservator of Wild Life, the case No.93/26 dated 02.10.98 was registered in connection with hunting of deers at the night in between 1-2 October and investigation of the case was conducted by then Dy. Conservator of Forest L.M. Sonal, who authorised him to conduct further investigation from 07.10.98 onwards whereupon he traced out the

ownership of gypsy No.RJ 19-1-C-2201 used in the incident and recorded statement of owner Arun Yadav and driver Harish Dulani, who stated that at the night of 28.9.98 accused Salman Khan with other accused persons Dushyant Singh, Pratap Singh, Om Singh, Dinesh Gavre and half a dozen persons and with one other person taken from Ghonda Farm hunted one Chinkara deer by using rifle gun, whereupon considering it proper to get the report registered with police, he in this regard submitted report Exh.P.70 to Addl. Supdt. of Police Ashok Patni along with statement of Harish Dulani Exh.P.94/94A and the same bears his signature from I to J. After taking statement as given by Harish Dulani, he read and explained the same to him and obtained his signature. On 07.10.98 in the presence of Angad Lal and Gordhan Singh, Forest Guard and in the presence of Arun Kumar Yadav owner of gypsy seized the gypsy No.RJ 19-1-C-2201 and while inspecting the gypsy found discolouring mark due to burning on the bonnet, blood like spots on back side matting and blood like spots on the polythene pieces, gypsy was confiscated and brought to the office and handed over the same to Malkhana Incharge Sharavan Kumar. Exh.P.14/14A was prepared in this connection. This witness has also stated that on 13.10.98 Udai Raghavan came to Forest Deptt. Office and in the presence of accused Salman Khan presented one revolver .32 Bore and one rifle of .22 bore whereupon he in the presence of independent witnesses Shiv Chand and Om Prakash seized and sealed these weapons through seizure memo Exh.P.19 signed by him. Udai Raghavan also informed him that these weapons were sent by accused Salman Khan from Jodhpur to Bombay which have been brought by him as per the authority letter given in his name. These weapons were presented in the same condition in which these were received by Udai Raghavan. Accused Salman Khan also admitted that both the said weapons are his licensed weapons. Exh.P.9 is certified copy of licence. Licence was valid upto 22.09.98. Accused Salman Khan appended his signature from Q to R before him on the endorsement O to P on Exh.P.19. This witness has also stated in his examination-in-chief that Sharavan Kumar Chauhan, the then Regional Forest Officer on 12.10.98 inspected gypsy No.RJ-19-1-C-2201 in the presence of FSL Team and prepared seizure memo Exh.P.20 and signed it and he identifies the signature and writing and Exh.P.20A is its certified copy. This witness has also stated in his examination-in-chief that on 12.10.98 during search of accused Salman Khan staying in Room No.508, Ummed Bhawan Palace, camera, reel of Kodak, Airgun, National Air Rifle .22 Kalobi long 26188 with cover, one telescope angle, one loose packet and one sealed packet of pellets of air rifle and loose packet contained 76 pieces were found and seized and sealed and seizure memo Exh.P.21 prepared in the presence of witnesses Mahender Vyas, Rajender Singh, Soheli Khan, M.L. Sonal and Sharavan Kumar and signatures of witnesses were obtained on the seizure memo and signature of accused Salman Khan were also obtained thereon from G to H and he himself signed from I to J. During investigation of this case, he forwarded certified copies of letter Exh.P.21, Exh.P.22 copy of receipt of FSL, letter Exh.P.23, Exh.P.24 copy of receipt of FSL, Exh.P.26 receipt to police officer and certified photocopies of the same are Exh.P.21 A to 26A. After getting case property packet marked A, B,C,D,E,O and P deposited in malkhana forwarded from SP Office to Lab, these were got forwarded to FSL Lab for testing. This witness has also further stated that the gypsy was inspected at the spot by Senior Scientific Officer of FSL, Jaipur and report Exh.P.83 prepared and Exh.P.83A is the certified copy of the said report. Letter was written to SP, Jodhpur for getting the said gypsy inspected from FSL and letter Exh.P.24 bears his signature from A to B on the basis of which FSL Officer after inspection sent the report which was received. Exh.P.85 is report for packet O and P, Exh.P.86 is report of packets A,B,C and D and Exh.P.88 is report of inspection of gypsy and Exh.P.85A, 86A and 88A are certified copies of these reports. On 12.10.98 Saif Ali presented one BSA Rifle .22 caliber with pellets in the presence of Rajesh Saraswat, Sharavan and Hemender Dwivedi whereupon this was seized, sealed through seizure memo Exh.P.93 and signatures of these persons were obtained thereon and he himself also signed the seizure memo.

46. Witness PW.35 Ashok Patni, I.O. has stated in his statement on oath that on 11.10.98 while working as Addl. Supdt. of Police, Jodhpur, on my visiting Office of Forest Deptt. for security arrangement, Lalit Boda, Wild Life Preservation Officer submitted written report Exh.P.70 along with Exh.P.94A copy of statement of Harish Dulani, whereupon he directed the Police Station Mathania to register the case, and that report bears my endorsement and signature. On the basis of said report, the SHO, Mathania registered the case and again submitted file to him and on the direction of S.P., Jodhpur and I.G. Crime, the investigation of the case in question was conducted by me in which the statement of complainant Lalit Boda and Harish Dulani were recorded and reached Mathania Ghoda Farm along with Harish Dulani and other police officers where the inspection of spot where hair of deer were skinned by accused was conducted and memo of inspection prepared before independent witnesses Ram Kishan and Pusa Ram and on

finding the blood of deer lying there, the blood stained earth and sample earth were separately lifted and kept and sealed in plastic bag marked as A and B and seizure memo Exh.P.2 prepared and their signatures were obtained thereon and he himself also signed it. Exh.P.1 site plan of spot of skinning of deer was prepared. Both the said sealed packets in good condition were handed over to Sohan Lal, Const. for depositing in malkhana of Police Station Udai Mandir whereupon Sohan Lal deposited the same. Sealed packet Marked A is Article-2 and marked B is Article-3 which were forwarded to FSL for testing. This witness has also stated in his examination-in-chief that on 12.10.98 after arresting accused Gordhan Singh through memo Exh.P.15, in pursuance of information Exh.P.15, inspection conducted before independent witnesses Ram Kishan and Pusa Ram in which hair and blood of deer found scattered were seized separately for evidence and packets of the same were sealed and signatures of witnesses obtained and he himself also signed and instructions were given to SHO, Mathania to lift mould of tyres of gypsy present in the sand at the spot along with FSL team and MOB as case property and the said mould were seized through seizure memo Exh.P.12 and site plan of the spot Exh.P.11 was prepared and signatures of witnesses obtained and thumb impression of accused Gordhan Singh obtained and he himself also signed the memos. Packed of blood stained earth was marked as D and packet containing hair was marked as E and packet of sample earth was marked as F. Article-3 and Article-5 are packets marked as F and E respectively. This witness has also further stated in his statement on oath that the same day on the information Exh.P.96 of accused Gordhan Singh, inspection was conducted and on finding hair of skin and end portion of tail of deer lying there, these were seized and kept and sealed in a plastic box covered with cloth bag and it was marked as C and seizure memo Exh.P.9 and site plan Exh.P.10 prepared and signatures of witnesses obtained thereon and thumb impression of accused Gordhan Singh obtained and he himself also signed these memos. The case property lifted from the spot in sealed conditions were deposited with Hanuman Singh, Malkhana Incharge of P.S. Udai Mandir. On 13.10.98 SHO, Mathania Boraj Singh got lifted moulds of tyre of gypsy of accused from the spot and marked the same as A and B and entry recorded in the Register, Exh.P.72 and 73 are certified copies of the same. Mould of gypsy tyres were lifted by MOB Expert H.C. Prabhu Singh on the directions of Boraj Singh which were got deposited by Kishna Ram, L.C. with H.M. Hanuman Singh in Police Station Udai Mandir. On 14.10.98 as per his directions, Boraj Singh, SHO, Mathania after getting sample of tyre of gypsy in question parked in the office premises of Forest Deptt. from M.O.B., these were seized through seizure memo Exh.P.13 and marked as C,D,E,F and presented the same before him and seizure memo is placed in the file. This witness has also further stated in his examination-in-chief that on 15.10.98 on arresting accused Salman Khan through Exh.P.97 arrest memo, in pursuance of his information Exh.P.98, Soheli Khan reached P.S. Basni and presented one knife before Daulat Ram and Sumnesh Limba and the same was seized through seizure memo Exh.P.18 and sealed and Exh.P.18A is certified copy of the same on which signatures of said witnesses and of Soheli Khan and accused Salman Khan were obtained and he himself also signed it. After receiving Exh.P.17A certified copy of arrest memo, it was placed in the file. Article-6 is the knife recovered from accused Salman Khan. Exh.P.77 is the Report of Inspection of Spot by FSL on 13.10.98. On 17.11.98 letters were written to S.P., Jodhpur for issue of forwarding letter for getting the tests done from FSL in respect of packets marked C and E through Exh.D.3 and packets marked A, B, D and F through Exh.P.78 and these bear his signature from A to B. Copies of forwarding letters sent to FSL for testing of seized case property along with acknowledgement receipts and road certificates and malkhana register were obtained and annexed to the file. On 10.12.98 letter Exh.P.79 was written to Distt. Supdt. of Police, Jodhpur for issuing forwarding letter for testing of mould of tyres from FSL and the same also bears his signature from A to B. This witness has also stated at the end of his examination-in-chief that during investigation, he recorded statements of witnesses Harish Dulani, Lalit Kumar Boda, Dayal Singh, Kanvara Ram, Rupa Ram, Pukh Raj, Arun Yadav, Gani Khan being Exh.P.4, Exh.P.5, Exh.P.37, Exh.P.6, Exh.P.7, Exh.P.8, Exh.P.16 respectively as given by them. Satya Mani Tiwari while giving his statement has stated that one revolver .32 Bore, one air gun with telescope and one .22 gun with telescope were seen in the room of accused Salman Khan. The licence was valid upto 22.09.98. Certified copies of seizure memo of revolver and rifle Exh.P.19A, seizure memo of air gun air rifle, air gun telescope and pellets Exh.P.21A, seizure memo of air rifle and pellets Exh.P.93, seizure memo of gypsy Exh.P.14A and Exh.P.9 certified copy of licence and Exh.P.81 and 82 the Test Report of FSL were obtained and placed in the file and file handed over to Boraj Singh whereafter charge sheet was issued against accused. As per enquiry from Airlines Officers, accused Tulaji Angre and Pratap Singh were found present at Jodhpur on the day of incident.

47. Witness PW.36 Prabhu Singh has stated in his statement on oath that on 13.10.98 as per verbal order of Addl. Supdt. of Police, Ashok Patnia he along with SHO, Mathania Boraj Singh and FSL Team lifted two moulds of tyres marks available on sandy land and marked the same as A and B and these are Article 7 and 8. He submitted the said moulds to SHO Boraj Singh in the presence of police and accused for handing over the same to Experts of FSL.

48. Witness PW.38 Yashpal Singh in his statement on oath stated that on 13.10.98 while working as Chief Judicial Magistrate, Jodhpur, on filing application Exh.P.101 by Addl. Supdt. of Police, Jodhpur for recording statements of two witnesses under Section 164 Cr.P.C. in case No.163/98 P.S. Mathania, order for issue of summons to witnesses passed by me and it bears my signature from A to B. Exh.P.102 and 103 are summons duly served on witnesses Dana Ram and Harish Dulani. As the statement of witness Harish Dulani were recorded on 14.10.98 in case No.162/98 regarding this incident, his statement was not taken and statement Exh.P.100 of witness Dana Ram as given by this witness was got recorded by him through clerk Manoj and the same were sent to the concerned court through Exh.P.104 letter. Exh.P.101 order sheet dated 14.10.98 recorded in this regard and the same bears his seal and signature from G to H. His signature with seal also appears from C to D on statement Exh.P.100. Except portion A to B stated in Exh.P.100, no other statement was given by witness before him. Letter Exh.P.104 also bears his signature from A to B. This witness has also stated further that combined statement Exh.P.3 of Harish Dulani were recorded by him in case No.162 and 163/98 and these bear his signatures K to L at five places and signature of Harish Dulani is appearing from I to J. Except portion M to N of statement Exh.P.3, witness Harish did not give more statement. Exh.P.1 original statement is in case No.207/99 and Exh.P.105 is photo copy of the same.

49. First of all this question before me is to be decided that whether statement of witness Harish Dulani PW.1 is admissible in evidence under Section 33 of Indian Evidence Act or not against accused Salman Khan and others?

50. It may be seen that an application was filed on behalf of prosecution on 22.11.05 in this case seeking relief that before proving this fact that whereabouts of witness Harish is not known and he is not available, the prosecution wants to establish from the evidence on oath of process servers of summons and warrants of the said witness. Hence, evidence of process server may be taken in this regard and accused may be asked in their statements under Section 313 Cr.P.C. with regard to facts coming in statement of Harish Dulani. Accused Salman Khan filed reply to this application on 28.11.05 and no other accused filed any reply in writing to that application. This court dismissed this application of prosecution on 28.11.05 on this ground that if the court satisfies from the report of process servers without any evidence, the court of its own can make legal presumption to this effect that the witness cannot be located and with regard to asking accused in their examination under Section 313 Cr.P.C. in respect of portion of statements of witness Harish, court held that the parties will be at liberty to raise this objection at the time of final argument. The said application was disposed of accordingly by this court. Accused Salman Khan filed S.B. Crl. Misc. Petition No.1358/05 in the Hon'ble Rajasthan High Court against the aforesaid order which was dismissed on 19.01.2006 by the Hon'ble High Court. Being aggrieved from the said order of Hon'ble Rajasthan High Court, the accused Salman Khan also filed SLP Criminal No.929/06 in the Hon'ble Supreme Court, which was dismissed by the Hon'ble Supreme Court on 06.03.06.

51. Firstly, I consider it proper to quote the provisions of Section 33 of Indian Evidence Act:-

Section 33 – Indian Evidence Act reads as under:- **33. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated**
- Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a letter stage of the same judicial proceedings, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party or if his presence cannot be obtained without, an

amount of delay of expense which, under the circumstances of the case, the Court considers unreasonable;

Provided -

That the proceeding was between the same parties or their representatives in interest;

That the adverse party in the first proceeding had the right and opportunity to cross examine;

That the questions in issue were substantially the same in the first as in the second proceeding.

Explanation - A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

52. As such, if seen in accordance with provisions of Section 33, it becomes clear from these provisions that in case statement of a witness is taken by any competent authority in earlier or in same judicial proceedings and such a witness subsequently died, not traceable even after adequate efforts or became incapacitated to give evidence or defence/respondent made him out of access, then such evidence shall be fully relevant and admissible in evidence under the aforesaid Section, provided at the time of such earlier evidence/statement, the defence/respondent was having right and opportunity to cross examine this witness. If case file is perused in this regard, it becomes clear that after framing charges against all the accused on 20.07.01 in this case, the case was fixed for prosecution evidence on 22.09.01 and firstly two witnesses were called through summons. On 22.09.01 on both these witnesses not appearing after service of summons, both these witnesses were summoned for 02.11.01 with bailable warrant of Rs.500/-. The same day, Shri Ashok Parikhar, Id. Counsel for Harish Dulani filed application for exemption for attendance of witness Harish. On 02.11.01 when witness Harish failed to appear in the court after service of bailable warrant, it was directed to summon him with arrest warrant for appearance for evidence for 15.12.01. On 15.10.01 also, this witness did not appear whereupon this witness was again summoned with arrest warrant as before. On 24.01.02 the evidence of this witness was recorded and examination-in-chief was concluded and Shri Jagdev Singh, counsel for accused Pratap Singh, Tulaji Angre, Om Singh and Gordhan Singh cross examined him and on advocates seeking time for cross examination due to urgent work, the cross examination was adjourned and this witness was bounden for appearance on 20.03.02. The same day, witness Harish filed an application in this court that Girvar Vyas has been personally threatening him for a long time to give evidence in favour of Salman Khan and in case of not changing statement, he has been threatening to eliminate family with the help of members of goonda and mafia gangs. Hence, order be passed for protection of life and property of my family from Girvar Vyas and Salman Khan and members of goonda and mafia gang. This court through letter No.152/25.01.02 forwarded this application to Supdt. of Police, Jodhpur City with the direction to conduct enquiry and provide protection to witness. On 20.03.02 witness Harish appeared in the court and on his leaving the court without permission, this court issued notice to the witness under Section 350 Cr.P.C. and he was again summoned with bailable warrant of Rs.500/-. Witness Harish through his counsel filed application on 29.5.02 on the ground of death of his father. In the meanwhile on 02.06.04 prosecution filed an application regarding forfeiting bail bonds of accused and summoning witness Harish with bailable or arrest warrant, reply to which was filed on 09.06.04 by the counsel for Salman Khan. Thereafter, witness Harish was being summoned from time to time by this court on the request of prosecution. On 22.11.05 also, the prosecution filed an application with regard to proving the fact of witness Harish not being available from the evidence of process server. As such, it appears from the perusal of case file that the prosecution has not committed any negligence on their part to summon witness Harish and prosecution has made every effort to call witness Harish. If summons, bailable warrants and material available in this regard in the file are seen, this position also emerges from such perusal that this witness was summoned on 21.07.01 and through bailable warrants on 22.03.02, 17.04.02, 31.05.02, 15.11.02, 12.12.02, 08.01.03, 11.02.03, 24.03.03, 05.01.05, 04.12.05, 07.04.05, 05.01.05, 10.05.05, 05.10.05, 29.05.03, 04.08.03, 19.11.03, 01.03.05. In this connection, letter was sent to SHO, P.S. Shastri Nagar on 08.03.04. A.D.P. also wrote many D.O. letters to Supdt. of Police, Jodhpur City and also to Forest Deptt., in this regard, a team was also formed by Supdt. of

Police for service on witness. Report dated 31.05.04 of Shri Chain Singh, Head of the said team is also available in the case file. Report dated 26.03.03 of Asstt. Conservator of Forest is also available in the case file. Two Reports dated 04.05.05 and 07.06.05 of Police Station Khanda Falsa are also available in the case file. This court also sent D.O. letter to Supdt. of Policy, City and Rural, Jodhpur to make effort to effect service on the witnesses. If it is seen in view of report of process servers, only this conclusion comes out that this witness was never found at the given address. Police made efforts to find out his whereabouts from this witness's maternal grand mother, mother, father-in-law, brother, residents of locality, maternal uncle, etc. but from all the reports, it appears that nothing could be found out about the present residential address of this witness and this fact became clear that this witness with his wife and children have gone to some unknown place. It is, thus, clear that the prosecution has made adequate and all out efforts to ensure his presence for evidence in this court. Prosecution has expressed two views and possibilities with regard to not locating this witness, firstly that this witness has not been appearing in the court as a result of influence and fear from accused Salman Khan and for this reason, he is not found for effective service and secondly that accused Salman Khan has kept him out of reach of prosecution. As such, this argument of accused Salman Khan cannot be accepted that the prosecution has not made sincere efforts to call this witness in the court. As such, in view of entire facts and circumstances, it cannot be held that the prosecution ever had this purpose that this witness may not appear in the court for evidence or cross examination. As such, it is clear that this witness is not available to the prosecution.

53. So far the question of having or not having right and opportunity of cross examination is concerned, the counsel for accused Pratap Singh, Tula Ji Angre, Om Singh and Gordhan Singh himself has admitted that he cross examined. So far question of right and opportunity of accused Salman Khan for cross examination is concerned, it has been mentioned in the order sheet dated 24.01.02 in this regard that counsel for accused on having sudden urgent work sought time to cross examine the witness which was allowed and witness was bounden for 20.03.02. If as per argument of counsel for accused Salman Khan, it is deemed that on 24.01.02 Shri Jagdev Singh, Advocate alone had urgent work and he deferred the cross examination, even then it has not been stated anywhere in this order sheet that today counsel for accused Salman Khan is ready for cross examination, but the court does not allow him to cross examination today and nor it is the argument of accused Salman Khan that he was ready that day for cross examination but the court did not permit him. As such, it is absolutely clear that on 24.01.02 right and opportunity of cross examination of witness Harish was available to the accused Salman Khan but on the said day he did not avail the same. Now so far the question of having right and opportunity or not for cross examination on 20.03.02 is concerned, it is the argument of prosecution in this regard that on the said date, witness Harish came to the court at the correct time and remained present in the court till 3.00 p.m. and cross examination could not be done during this time as a result of advocate for accused Salman Khan did not turn up, whereas in this regard, it is the argument of counsel for Salman Khan that this witness though did come that day but left without leave of the court before his arrival and court issued notice of Section 350 Cr.P.C. on this account. Hence, argument of prosecution of his remaining present till 3.00 p.m. in the court is totally fabricated and contrary to order sheet. No presumption can be made contrary to order sheet. In this connection, it is stated in order sheet dated 20.03.02 that "Witness Shri Harish Dulani has left the court without leave of the Court, notice be issued to him under Section 350 Cr.P.C. and he be summoned again with bailable warrant of Rs.500." Hence, this argument of counsel for Salman Khan does not appear justified that fact of his remaining present till 3.00p.m. is totally incorrect because such has not been mentioned in the order sheet. However, if it is seen from different angle, it has not been mentioned anywhere in the said order sheet that whether this witness came on that day or not and if came at what time he came and till what time he remained present in the court and at what time he left without leave of court. So long these facts are not mentioned in the order sheet, then for what reason the counsel for accused Salman Khan is considering the fact of witness coming to the court as correct and why on this ground he has been raising his objection. Two stands on one fact cannot be permitted in law. The most important fact is that this witness Harish Dulani remained present in the court on that day till 3.00 P.M. which is fully confirmed from one written document of accused himself. This document is the reply to the said application which has been filed by accused Salman Khan in this court on 09.06.04 in reply to the application of the prosecution dated 02.06.04 regarding cancellation/forfeiting of bail bond of accused persons. In para 2 of the said application dated 02.06.04 of the prosecution, it has been stated that "Witness Harish Dulani PW.1 came to the court on 20.03.02 and

remained present in the court till 3.00 p.m. and thereafter suddenly disappeared from the court without informing any one". In para 2 of the reply dated 09.06.04 to this application, accused Salman Khan has submitted that "it appears from perusal of order sheet dated 20.03.02 that witness Harish Dulani PW.1 came to the court on 20.03.02 and remained present in the court till 3.00 p.m. but does not know this fact that thereafter he without informing any one suddenly remained absent from the court." As such, it is the admission in writing of accused Salman Khan himself that this witness remained present in this court on 20.03.2002 till 3.00 P.M. As such, it becomes fully clear that witness Harish came that day and also remained present in court till 3.00 P.M. Here it could be the argument of accused Salman Khan that he did come at first call after 3.00 P.M. and that time this witness was not available to him for cross examination. Hence, from the fact of witness coming on that day and remaining present till 3.00 P.M. it cannot be said that right and opportunity were available to him. However, if this argument is seen keeping in view the entire order sheet and facts and circumstances and existing working system and process and practice in the courts, this argument cannot at all be acceptable because had first call itself made at 3.00 P.M. and counsel for accused Salman Khan would have come to the court at that time, it would not have been recorded by the court in the order sheet that witness has left without permission. It itself proves from this that this witness came to the court on that day at proper time and fact of his coming was fully within the knowledge of the court, and for that reason, this court issued notice to him. Counsel for accused himself admits that he came that day after 3.00 P.M. As such, it becomes clear that on that day also, right and opportunity of cross examination of witness Harish were available to accused Salman Khan, provided he would have come to the court during the presence of this witness. This argument of counsel for Salman Khan is not sustainable that the court should have appointed amicus curiae in the presence of counsel because amicus curiae is appointed when no counsel for accused is engaged or he has made any such demand. When counsel has been engaged earlier and he has been making pairvi regularly, in such a case no question arises for appointing amicus curiae. Also, in these days this fact is also in the knowledge of every one that in the trial of criminal case, the intention of accused remains to prolong the evidence of witness till the witness somehow agrees to give evidence in his favour through every tactics and tricks or may agree to come to some sort of compromise and generally somehow the accused in order to achieve his this object keeps on making efforts to create obstruction to prolong the trial. In this time when crime graph is soaring, and seeing the instances of acquittal of accused due to lack of evidence/absence of evidence, circumstances demand that the said undue unfair tendencies and practice of accused to prolong the trial should be curtailed and curbed and only then it would be possible to curb such practices to a large extent and it would also be possible to accelerate the pace of trial of criminal case. In this case, witness Harish himself has filed application in this court in addition to submitting application to Addl. Supdt. of Police and Inspector General of Police and Home Minister regarding threat and risk to his life from Salman Khan. Hence, in view of entire facts and circumstances, the fact of threat cannot be casually brushed aside. This argument of accused Salman Khan has no force that the application of the prosecution for cancellation of bail on this ground of threat was dismissed by this court and Hon'ble Session Judge. Hence, allegation of threat is baseless. As it is well known fact that bail once granted as per process of law can be cancelled only under the well established provisions of law and there are certain limited grounds for such cancellation and the severe proceeding of cancellation of bail is taken up only on proving such grounds beyond any doubt. However, merely on the basis of dismissal of such an application, it cannot be said that allegation of threat is totally baseless. At this stage, I also consider it proper to state that on 07.04.2006 accused Salman Khan filed an application under Section 311 Cr.P.C. in this court for re-calling witness Harish. With this application, photocopy of Registry of property sold out by Harish Dulani to third person has also been annexed. The fact of photocopy of said document coming to the hand of accused Salman Khan after one day of alleged TV interview and news in the newspaper proves this argument and apprehension of prosecution correct that witness Harish has been under custody and influence of accused Salman Khan. In addition to this, it does not appear proper to admit that merely on this ground that this witness in his examination-in-chief has given strong statement against accused Salman Khan, hence this witness has no fear or threat from accused Salman Khan. In case a witness gathering his courage has given evidence against accused in the court, it cannot be held that he cannot be threatened by anyone in future. As such, keeping in view the entire facts and circumstances of the case and all the efforts made by prosecution, it is found that despite all adequate efforts by prosecution, they could not lay hand on the witness and the accused Salman Khan has got the right and opportunity to cross examine this witness. Hence, evidence of this witness is relevant and admissible against accused Salman Khan under the provisions of Section 33 of Indian Evidence Act. In this regard, I express my full

agreement and faith in the rulings submitted by counsels, however facts of those cases being totally different from the facts of the present case, the principles laid down therein are found to be not fully applicable in this present case.

54. As has been discussed hereinabove that the evidence of witness PW.1 Harish Dulani is relevant and admissible in evidence. Admittedly, among the witnesses produced and got examined by prosecution as eye witnesses of incident, this is the alone witness who gives affirmative evidence in favour of prosecution. Whereas on discussing and analyzing the evidence of this witness, it is found that this witness makes partially contradictory statement by somewhat modifying his all the previous statement. Hence, the court cannot form any adverse opinion against the accused by considering only this witness as star and reliable witness. It is the well established principle of law that an accused cannot be held guilty by exclusively relying upon the evidence of such a dithering witness. However, in case the evidence given by such a witness is confirmed from evidence of some other competent witness or relevant fact or relevant document or some other relevant circumstantial evidence in the form of chain of evidence, then the evidence of such a witness can be considered reliable and merely on the ground of witness not remaining firm in his evidence, evidence of such a witness cannot be thrown to the dustbin treating his entire evidence as totally false or fabulous, meaning thereby that direct or indirect evidence strongly confirming the statements of witness of this type must be available on record. As such, on considering while analyzing the evidence of PW.1 witness Harish Dulani in the light of said principle, that what evidence this witness has been giving and against which accused persons and how this evidence is being confirmed from other evidence, it is found that this witness in his examination-in-chief states the fact of his being driver of Gypsy No.RJ 19-1-C-2201 on 28.09.98 and witness PW.5 Arun Yadav being owner of said vehicle and at 10.00 P.M. of 28.09.98 the night of incident accused Salman Khan with Dinesh Gavre, Dushyant Singh coming out from Ummed Bhawan and taking along Omji, Pratap Ji and one half bald man from Tutoo Banna Bungalow and from there they all reaching Gudda Farm, Mathania and this witness also states that when we moved from Jodhpur, only one search light and two rifles were available in the gypsy and among these, one rifle was fitted with telescope and another one was without telescope. One man was taken from Gudda Farm, there search light was connected to the battery and due to short circuit, colour of surface of terminal got burnt. He has further stated that Salman Khan stopped the vehicle and using telescopic gun fired shot at deer and then came near it and after taking out knife from his pocket hacked its neck. The dead deer was kept in gypsy and brought to Gudda Farm and there one man skinned it. The remaining portion was kept in a bag and put in gypsy. From there we all came back to Jodhpur. Salman Khan and Dinesh Gavre with guns went to Ummed Bhawan. Om Singh was dropped on the way with bag containing deer. Pratap Ji and baldy man got down in Airforce area and I took gypsy to my house, etc. etc. As such, if the examination-in-chief of this witness is seen, then this witness makes statement regarding accused Salman Khan, Dinesh Gavre, Om Singh, Pratap Singh, one baldy man and one another man. This witness does not give any evidence against accused Dushyant Singh and states the fact of his getting down on the way itself. This witness also does not make statement about accused Bal Angre alias Tulaji Angre and in his cross examination totally denies the portion of identification of his supplementary statement to police Exh.P.5. In cross examination, this witness has also admitted the fact of not getting name of accused Pratap Singh named in his statement Exh.D.3 and also states the fact of his not getting recorded the fact of Pratap Singh getting down at golf course. This witness states that Pratap Singh was Jagirdar of Gwalior, however he does not make any other statement regarding involvement of Pratap Singh. As such, if evidence of this witness is examined keeping in view the oral and documentary evidence available on record, it is seen that this witness gives evidence clearly against accused Salman Khan, Dinesh Gavre, Om Singh and Gordhan Singh. Here, it may be remembered that investigation under Section 173 (8) Cr.P.C. is pending against Dinesh Gavre. Hence, nothing is being discussed in this judgement regarding said accused.

55. It is correct that witness Harish does not make any strong statement regarding accused Gordhan Singh and in this regard denies the portion of his supplementary statement Exh.P.4 relating to identification. However, after this witness turning hostile, the prosecution has cross examined him in which he has admitted that he went to the spot with police personnel and that time he came to know name of the person taken along from Gudda Farm as Gordhan Singh. As such, this witness admits that at the night of incident the person taken along from Gudda Farm to guide the route was Gordhan Singh. This witness denies of identifying this accused. However, merely on this ground, remaining

evidence available against Gordhan cannot be ignored. As Exh.P.96 information/confession has been given by accused Gordhan on his own desire on 12.10.98, in which he has admitted pointing the site where the deer was hacked to death and on this basis police on his identification and pointing took this accused to that spot where the accused killed deer by slaughtering its neck and in this regard, the police seized blood stained earth through seizure memo Exh.P.12 and on the pointing of this same accused, police also reached the spot where the skin was thrown after skinning and seizure memo Exh.P.9 and site plan Exh.P.10 in this regard were prepared and on the confession/information of this accused, police reached the spot of killing of deer and prepared site plan Exh.P.11. As such, this accused fully points out the place of occurrence, the spot where skin was thrown and spot where skinning was done and accordingly as per witness Harish the person who was taken along from Ghoda Farm was this person accused Gordhan only. However, this fact does not hold any specific importance that saying such is also possible due to pronunciation. It is correct that this witness states the fact of accused Om Singh remaining involved in this crime but no other single word in direct or indirect evidence on record is available for involvement of accused Om Singh. No recovery whatsoever has been made from this accused and nor any identification of spot or recovery has been made on any information provided by him. Hence, merely on the basis of evidence of witness Harish, no strong adverse presumption can be made. Besides this, witness Harish states that accused Om Singh is cook of Salman Khan, whereas no such evidence is available on record. Admittedly, as per order sheet on 24.01.02 accused Om Singh was present in the court at the time of signature but this witness has stated that Om Singh is not present in the court. In addition to this, there is serious contradiction in the statement of witness with regard to Om Singh. Hence, as discussed hereinabove, involvement of this accused in the incident is not proved beyond doubt. Presence of accused Salman Khan, Gordhan Singh and Dinesh Gavre is apparently clear from the evidence of witness Harish. Conclusively, it can be said that sufficient adverse evidence are available against accused Salman Khan and Gordhan Singh.

55A. Now, it is to be seen that the remaining evidence of prosecution is available or not to strongly confirm and support the statements of witness Harish Dulani.

56. First of all, so far the question of accused persons committing offence under Section 143, 144 and 148 IPC is concerned, as it has become clear from the discussion above that presence of three persons is established from the evidence of witness Harish. Presence of remaining four present accused is not proved beyond doubt. Hence, when unlawful assembly of five or more than five persons is not proved, then question of case of crime under Section 143, 144, and 148 IPC does not arise. Hence, I do not consider it necessary and proper to discuss and examine the issue any further in this regard.

57. Now, it is to be seen that whether any other direct or circumstantial concrete chain of evidence is available or not for illegal hunting of Chinkara and destruction of evidence against accused Salman Khan and Gordhan Singh? As has been held in the discussion hereinabove that from the evidence of witness PW.1 Harish Dulani, accused Salman Khan and Gordhan Singh going to the spot of killing of deer in Gypsy No.RJ 19-1-C-2201 has been primarily/prima facie established. So far rest of the confirmatory evidence against accused Salman Khan and Gordhan Singh is concerned, in this connection, prosecution has produced witness PW.7 Ram Kishan and PW.35 Ashok Patni and witness PW.35 Ashok Patni from his evidence on oath has proved the fact of preparing site plan Exh.P.1 of that spot on the pointing/identification by witness Harish, where the deer/chinkara has been killed and this witness from his evidence on oath has proved on the pointing of witness Harish the identification of spot of skinning of deer and seizure of blood stained earth packet A and B from that spot. Witness PW.7 Ram Kishan from his evidence on oath has also proved site plan Exh.P.1 and memo of identification/pointing Exh.P.2 prepared before him. It is correct that during cross examination of PW.7 Ram Kishan, some such facts have been stated which are contrary to documents but on seeing the said entire contradictions, it is found that such contradictions are not substantial in nature from which it could be fully deemed that this witness is deposing falsely and in fact, no such action was taken before him. This witness in his cross examination while confirming the facts stated in Exh.P.2 has clearly stated that police in his presence lifted blood stained earth from in front of Tabele(Stable) and that spot was 50-100 ft. away from tabela. This witness also further clearly states in his cross examination that police did not obtain his signature on documents at police station, in fact documents were got signed at the spot itself. As such, from the evidence of this witness, it cannot be held that this

witness was not even present at the spot. Similarly, it is also fully established from the evidence of this witness that police on the pointing/information of accused Gordhan Singh recovered and seized one piece of black colour tail and hair from the spot where after hunting the skin of deer was thrown and in his presence, Memo to this effect Exh.P.9 dated 12.10.98 was prepared and in the presence of this witness site plan Exh.P.10 was also prepared. And kept these in a plastic box and sealed and packet was marked as C. Similarly, it is fully proved from the prosecution evidence that on 12.10.98 the IO on the information Exh.P.95 of accused Gordhan Singh and on the pointing by accused reached the spot where accused Salman Khan with the knife killed Chinkara by cutting neck and in the presence of witnesses seized deer's blood mixed earth, plain earth and hair of deer through Exh.P.12 and the packets of these seized items were marked as D,E,F and sealed as per procedure. All these seized packets in sealed condition were deposited in the malkhana of police station. This fact is fully confirmed from the evidence of witness PW.20 Hanuman Singh, Malkhana Incharge, Police Station Udai Mandir. This witness makes it clear that on 11.10.98 two sealed packets marked A and B were handed over in sealed condition by witness PW.28 Sohan Lal, FC to him for depositing and on 12.10.98 four sealed packets marked A, B, E, F were got deposited by witness PW.35 Ashok Patni in sealed condition. Witness PW.28 Sohan Lal also fully confirms the said facts who makes it clear that that day Addl. Supdt. of Police Ashok Patni gave two sealed packets to him for depositing in Malkhana, which were got deposited by him the same at 11.30 P.M. with Hanuman Singh. The witness PW.35 Ashok Patni also fully confirms this fact. Witness PW.20 Hanuman Singh also states that all the said six sealed packets were handed over by him on 17.11.98 to witness PW.19 Ram Singh, ASI for depositing the same in FSL in the same condition. Witness PW.19 Ram Singh also fully confirm this fact and makes it clear that on the said date, six packets in sealed condition were received by him from PW.20 Hanuman Singh for taking to FSL and the same day in the same condition these six packets were got deposited by him at FSL Jaipur. As such, six packets seized from the place of seizure safely in sealed condition reaching the FSL is fully established as a chain of evidence. Exh.P.27 and Exh.P.28 letters and Exh.P.29 and Exh.P.30 receipts of FSL and Exh.P.31 and 32 Road Certificates also confirm the oral evidence of these witnesses and these facts are also confirmed from Exh.P.33 and 34 copies of Malkhana Register as a chain of evidence. It is also proved from documentary evidence of prosecution in addition to oral evidence of prosecution that the animal who was illegally hunted and whose blood mixed earth sample was seized was Chinkara. It is clear from Exh.P.82 Report dated 20.01.99 of FSL, Jodhpur that Ram Singh ASI deposited four packets marked A,B,D,F, in sealed condition on 17.11.98 on which FSL put marks as 1, 2,3 and 4 and after serological testing blood of deer (Chinkara) was found present in the earth of Exh.1 (packet-A) and Exh.3 (Packet D). After that, as per said report Exh.P.82, the said four samples were forwarded by FSL to Physical Division for further action, which fact is confirmed from Exh.P.89 dated 27.02.99 Report of FSL, Jaipur. As per this FSL Report, earth of Exh.1 and Exh.3 match with the earth of Exh.P.2 and Exh.P.4. As such, from the said oral and documentary evidence of prosecution, it becomes clear in the form of a chain that accused killed chinkara and cut the neck of Chinkara and skinned and after removing skin it was thrown.

58. Now so far the question of this fact is concerned that whether Gypsy No.RJ 19-1-C-2201 was used in the present illegal hunting or not and whether any confirmatory strong chain of evidence is available or not in respect of statements of witness PW.1 Harish Dulani with regard to reaching the place of occurrence in the said gypsy? In this connection, witness is PW.2 Pukh Raj, who does not fully give any strong evidence in favour of prosecution. This witness has been got declared hostile by the prosecution and was cross examined. In cross examination, he admits that it is correct that vehicle coming from Mathania side went towards Bhavad side and from there went back to Mathania. Ujaria Bhakar is 500 steps away from his field. I heard one sound of explosion. I do not know which caused that explosion. In case the evidence of this witness is seen in the light of oral evidence of remaining witnesses of prosecution and documentary evidence made in context of place of occurrence, then it also comes out as a chain of evidence. From the evidence of this witness, it becomes clear that on the day of incident, this witness was working in the field at 1.00 A.M. night when one vehicle coming from Mathania side went towards Ujaria Bhakar and came back from that side and that time one explosion also occurred. As is the prosecution story in which manner and at which place and at which night hunting by accused done, according to that story, this witness Pukh Raj gives positive affirmative evidence to that context. This witness in cross examination also clearly denies that he did not see military personnel conducting testing (firing practice) and nor saw military personnel there. This witness in examination-in-chief

also states that there was one vehicle with light mounted on it and when that vehicle came near Ujalia Bhakar, it was throwing light. Place shown in Exh.P.11 site plan of place of occurrence fully confirm and support the evidence of this witness. As such, to this extent from the evidence of witness Pukh Raj, prosecution story is confirmed as an internal chain. With regard to use of gypsy in the incident, oral evidence of other prosecution witnesses and documentary evidence of prosecution also confirm the statement of witness Harish with regard to use of gypsy in the incident. Witness PW.5 Arun Yadav establishes this from his evidence that witness PW.1 Harish was driver of the same gypsy and also makes it clear that on the day of incident, the said gypsy was in the possession and custody of Harish and in cross examination also, he states that people of Ummed Bhawan/Maharaj Travels paid him Rs. Ten thousand. He also states that Harish told that people from film industry were driving gypsy and bringing animals after hunting. The accused have not done any cross examination on the said point of driving by film people. In addition to this, this witness also gives clear evidence of himself seeing the blood spots on the gypsy. It is correct that in the cross examination, this witness at one place states the fact of himself not seeing blood at the night of 29.09.98 but as per this witness that day he went with Harish in the gypsy from the shop to the house, such is also not the story of prosecution that gypsy was fully smeared with blood till 29.09.98. Prosecution story is only of having some blood spots. Hence, if in such short time, blood spots not visible at night in sudden and casual look, it cannot be held that there was no blood spot present that day in the gypsy. As such, it is evident from the prosecution evidence that at the night of incident, this gypsy has been used in the incident of illegal hunting. Other oral and documentary evidence of prosecution confirm the evidence of these witnesses. This fact is also confirmed from the evidence of Witness PW.8 Goradhan Singh, PW.16 Angad Lal and PW.34 Lalit Boda. It becomes clear from the evidence of these witnesses that on 07.10.98 at 1.40 p.m. Lalit Boda before witness PW.5 Arun Yadav, PW.8 Gordhan Singh and PW.16 Angad Lal seized the said gypsy in case No.93/26 from the residential house of owner of said gypsy vehicle Arun Yadav situated in Kamla Nehru Nagar, Jodhpur and at that time blood spots were present below the back matting and seat of this gypsy. It is correct that no such solid evidence of prosecution has come that the said blood present in the gypsy was the animal hunted in this incident but it though becomes clear from this that accused used this gypsy in the incident of illegal hunting. In addition to all this, this question also arises before me that whether in addition to evidence detailed hereinabove, there is any such solid evidence of prosecution available from which it could be held that this gypsy was taken to the place of occurrence in this present hunting case at the night of incident. This fact is also confirmed from the oral and documentary evidence of prosecution. In this connection, witness PW.36 Prabhu Singh has fully made clear in his examination-in-chief that on 13.10.98 in the presence of Boraj Singh and FSL team he lifted moulds of tyres from Ujaria Bhakar spot and the said mould marked A and B were handed over to Boraj Singh. It is correct that due to lapse of prosecution, the fact of lifting mould from place of occurrence has not been got confirmed from Boraj Singh during statements but merely due to this one lapse, the entire proceedings of lifting of mould from place of occurrence cannot be declared false and unreliable. Evidence of witness Prabhu Singh confirm lifting of moulds of tyres Marked A and B by him. Exh.P.73 copy of DD Register of P.S. Mathania also fully confirm and support lifting of moulds by the said witness. It has been clearly stated in Exh.P.73 that as per directions of Hon'ble Addl. Supdt. of Police, he with team of FSL, Jaipur and M.O.B. reached the place of occurrence Ujaria Bhakar in case No.163/98. FSL team took photographs and conducted medical check up of blood found lying at the place of occurrence and MOB Team, Jodhpur found mark of tyres which were lifted from place of occurrence and mould of tyres marked A and B lifted from the spot were taken to police station and deposited in malkhana. Here it is also an important fact that accused did not at all ask any question from witness Boraj Singh about correctness and veracity of said DD entry Exh.P.73 and nor any such suggestion to this effect has been given from which it could be made clear that entry recorded in the said Register was false. Besides this, witness PW.35 Ashok Patni in his examination-in-chief has stated that marks of tyres of gypsy were also found on the sand at the spot, SHO, Mathania directed to lift the said marks of tyres stating that lift moulds of these tyres by going to the spot with FSL Team and MOB. This witness has made it clear further in his examination-in-chief that on 13.10.98 SHO, Mathania Boraj Singh as per directions lifted moulds/marks of tyres of gypsy of accused from the place of occurrence situated within the limit of Ujaria Bhakar and moulds of the same were got prepared. In addition, fact of lifting mould has been confirmed by witness Prabhu Singh. In addition to all this, witness PW.23 Bhakar Ram Malkhana Incharge of P.S. Mathania has made it clear in his evidence that on 13.10.98 Bhoraj Singh handed over mould marked A, B (Article 7 and 8) for depositing the same in malkhana. In cross examination, this witness states that entry of depositing both the said

mould in malkhana was made by me in my own handwriting. Besides this, Evidence of Prabhu Singh and prosecution evidence stated hereinabove with regard to presence of FSL Team is also confirmed FSL Report Exh.P.77. The said moulds Marked A and B were sent from Police Station Mathania to I.O. and finally deposited in Malkhana of P.S. Udai Mandir which fact has also been confirmed by witness PW.24 Kishna Ram. This witness states that on 13.11.98 he received moulds of two tyres marked A and B from Bhakar Ram and he took these to Addl. Supdt. of Police, City, who directed me to deposit these moulds in the Malkhana of Police Station Udai Mandir whereupon I deposited these mould with Hanuman Singh, H.C., P.S. Udai Mandir. Witness PW.20 Hanuman Singh, Malkhana Incharge, Police Station Udai Mandir also fully confirm these statements of Kishna Ram, who states that on 13.11.98 two packets marked A and B in this case were brought by Kishna Ram FC 667 to me at Police Station Mathania and got deposited in sealed condition. In addition to this, witness Prabhu Singh admits in cross examination that no memo of lifting of said mould was separately prepared. On the basis of not separately preparing seizure memo, it cannot be held that the said action of lifting of mould etc. was totally fabricated. It is correct that not doing so, though may be considered a lapse or irregularity of investigation, but when the fact of lifting of mould is confirmed from the remaining strong evidence, in such a case, any such lapse cannot be held to be fatal for the prosecution. As such, facts of visiting place of occurrence Ujala Bhakar and lifting mould of vehicle used in the incident and depositing the same in Police Station Mathania and moulds coming in custody of I.O. from police station Mathania and finally depositing the same in sealed condition in the malkhana of Police Station Udai Mandir are proved from the aforesaid prosecution evidence beyond any doubt in the form of a strong chain of evidence. As discussed hereinabove, gypsy No. RJ 19-1-C-2201 was seized through seizure memo Exh.P.14/14A and kept in the Forest Deptt. Office which facts have become clear. The action of lifting of moulds of tyres of this seized gypsy is totally proved as chain of evidence from the oral and documentary evidence of prosecution. In this context, witness PW.27 Vijay Dan, Incharge, MOB Branch, Jodhpur in his statement on oath has fully proved Memo Exh.P.13. It becomes clear from his evidence that this witness visited the office of Forest Deptt. on 14.10.98 and in the presence of witness PW.8 Gordhan Singh, PW.9 Sagar Ram and PW.26 Boraj Singh lifted mould tyre mark C,D,E,F of the said seized gypsy and this fact has been confirmed from the statement of witness PW.26 Boraj Singh and these moulds marked C,D,E,F were deposited in Malkhana, which fact is also confirmed from the evidence of witness PW.20 Hanuman Singh, Malkhana Incharge of Police Station Udai Mandir. This witness makes it clear that on 14.10.98 Boraj Singh got deposited mould marked C,D,E,F in the malkhana. This entire oral evidence is confirmed from Exh.P.35/35A and Exh.P.36/36A Malkhana Register of Police Station Udai Mandir. Action taken by police station regarding said mould is also confirmed from the evidence of witness PW.8 Gordhan Singh, Forest Guard, who in his evidence narrate the entire story of police coming to the office of Forest Deptt. in his presence and taking all the steps of lifting mould. All these steps of action are also fully confirmed from the statement on oath of IO PW.35 Ashok Patni who has verified and confirmed all the aforesaid facts of investigation.

59. As such, as per discussion above, mould marked A and B lifted from place of occurrence and moulds of tyre marked C,D,E,F of seized gypsy No.RJ 19-1-C-2201 lifted from office of Forest Deptt. and bringing these moulds from the spot and depositing in malkhana of police station Udai Mandir are proved beyond doubt as chain of evidence. In addition to this, witness PW.29 Madan Lal has clearly established in his evidence that on 01.12.98 he received six moulds in sealed condition from Hanuman Singh, Malkhana Incharge of Police Station Udai Mandir for depositing in FSL and on FSL not accepting these, these were again deposited back in the same condition to Hanuman Singh and on 10.12.98 again after receiving all the said six moulds from Hanuman Singh he deposited the same on 11.12.98 with FSL, Jaipur. This argument of Id. Counsel for accused Salman Khan does not appear reasonable and justified that after objection by FSL, said moulds were tampered with and chain of evidence get broken due to not having any entry of re-deposit. As it is clear from Exh.P.75 A copy of D.D. Register that after objection, witness Madan Lal on 04.12.98 again deposited the said moulds in the malkhana and it is clear from Exh.P.76A copy of DD Register that on 10.12.98 all the said moulds in sealed condition were given to Madan Lal for depositing in FSL, Jaipur. All these facts are also confirmed from the letter Exh.P.67 of Supdt. of Police sent to FSL, Jaipur with case property and it is also confirmed from Exh.P.68 the Road Certificate. As such, the prosecution from the aforesaid evidence has proved in the form of chain of evidence that two moulds were lifted from place of occurrence and four moulds from gypsy seized by Forest Department were lifted. All the said moulds were delivered to FSL, Jaipur safely in

sealed condition as per procedure. All these facts are also confirmed from Exh.P.90 dated 31.05.99 report of FSL, Jaipur. In the said report, it has been mentioned in the test report that "Tyre Tread impression in the mould exhibit A-1 is similar to the tyre tread impression in the moulds exhibits D-1, E-1 and F-1 in respect of tread design and dimension in general." It is fully proved from the said report that the gypsy in question was taken to the spot of illegal hunting at the night of 28.09.98. Witness Harish in his statement has stated the fact of search light connection taken from battery of gypsy which caused short circuit and colour of top of terminal of gypsy turned black due to short circuit. This fact is also confirmed from seizure memo of Gypsy Exh.P.14A and witness PW.34 Lalit Boda also confirms this fact and it is also confirmed from FSL Report.

60. Now question arises before me is that whether that portion of statement of witness PW.1 Harish Dulani has been confirmed in which he has stated that when they moved from Ummed Bhawan, there was two rifles, one fitted with telescope and another without telescope in the gypsy and accused taking telescopic gun in his hand fired at deer and Salman Khan and Dinesh Gavre went to Ummed Bhawan with guns? In this connection, witness PW.34 Lalit Boda has established and made clear in his statement on oath that on 12.10.98 before the witnesses PW.17 Mahender Vyas, PW.30 Rajender Singh, Soheli Khan, M.L. Sonel and Sharavan Kumar, room No.508, Ummed Bhawan in which accused Salman Khan was staying was searched and in that search one air gun .22 caliber with cover and one telescope wide angler and two packets of pellets along with other items were recovered and the same were sealed at the spot and seizure memo Exh.P.21 prepared. Witness PW.17 Mahender Vyas also fully confirms these facts and seizure. Both these witnesses have been cross examined at length by accused Salman Khan but in view of answers to the questions given by both these witnesses, it cannot be held that said seizure was not done before these witnesses and that entire action was fabricated and false. It is correct that there is some minor nature contradiction in the statements of witness Mahender Vyas but it is well known fact that after a long period, if a witness is examined, such contradiction coming in his evidence is a natural thing. The court is not to see that why this contradiction has come, in fact court is ought to see that whether this contradiction creates strong possibility that said witness was not the witness of action or fact as stated. It seen keeping in view of this, it cannot at all be said that witness Mahender Vyas was not present at the time of recovery. Prosecution has produced this witness as chance witness and it becomes clear from prosecution evidence that in fact he is independent and impartial witness and this witness on that day had gone to Forest Deptt. Office only in connection with his prize/award. It is correct that Exh.D.4 search memo was prepared on 10.10.98 by Sharavan Kumar, Regional Forest Officer at the time of search of room No.508, Ummed Bhawan Hotel and on that day nothing objectionable material whatsoever relating to wild life, fire arms or pellets, etc. were not found. However, on this ground, the subsequent seizure memo Exh.P.21A dated 12.10.98 cannot be said to be totally false and unreliable, that too in such a situation when the said seizure memo Exh.P.21A is fully proved beyond any doubt as per discussion hereinabove. As with regard to recovery in criminal cases the principle of "If not once then never" cannot be applied. In practical also, it is seen that many times, accused conceal objectionable item or material connected to crime at some place and police search other different places and finds nothing there and therefore it does not mean that the said another place has become forbidden for search for ever in future and that all the material recovered in future from the place which was earlier search holds no importance of evidence. If such a rule is applied, then the accused without any fear of threat would easily keep the articles connected to crime at the place already search in past. In addition to this, it is also seen in practice that clever and cunning criminal always continue to change his place and places of articles connected to crime on being afraid of being apprehended. As such, this possibility cannot be ignored that on 10.10.98 date of said search, the aforesaid weapons and other items were concealed by accused Salman Khan at some other places and after said search, again kept the said articles in that room. Besides this, weapons one revolver, one .22 rifle and one .22 air gun recovered from accused Salman Khan were seen by witness PW.6 Satya Mani Tiwari on 29.09.98 in this room and it is established from Exh.P.21A that out of the said articles, one air gun is the same which was seen by Satya Mani Tiwari in this room. As such, it appears to be a strong chain of evidence which is relevant evidence. In this context, the prosecution has produced witness PW.6 Satya Mani Tiwari from whose evidence, it is clear that on 29.09.98 this witness searched room No.508 of accused Salman Khan in Ummed Bhawan, Jodhpur to thoroughly confirm the fact of theft of revolver of Salman Khan and at that time one air gun fitted with telescope and one .22 bore rifle and another .32 bore revolver were seen by him at that time in this room and on matching with licence at that spot, this rifle and revolver were found the

same as described in the licence. As such, next day of this present incident, Satya Mandi Tiwari seeing weapons in the room of Salman Khan strongly confirm the portion of statement of witness Harish Dulani regarding weapons. In addition to this, witness PW.14 Shiv Chand and PW.15 Om Prakash have fully proved Exh.P.19A seizure memo of weapons and it has been made clear by them that on 15.10.98 Udai Raghavan on 15.10.98 brought one .22 rifle and one .32 revolver from Bombay and presented in their presence and in the presence of Salman Khan in the office of Forest Deptt. and these weapons were seized by witness PW.34 Lalit Boda through seizure memo P.19 A prepared. Witness PW.34 Lalit Boda has also fully proved this seizure. All these witnesses have stated in their evidence that on presentation of these weapons, accused Salman Khan present here identified these weapons as his weapons. As witness Shiv Chand and Om Prakash both are not from police department and in fact they are officials of Forest Department, hence confession made before such witnesses is fully relevant and admissible in evidence under the provisions of Evidence Act. The most important fact here is this also that accused Salman Khan in the cross examination of these witnesses has not cross examined a single word with regard to said weapons belonging to him and nor has even given suggestion of this fact being false one. Whereas licence of both these weapons is also in the name of accused Salman Khan in which type and number of weapons are given. Hence, it cannot be admitted in any manner whatsoever that the weapons seen by witness Satya Mani in the room of Salman Khan and the weapons presented by Udai Raghavan in the Forest Deptt. Office, both these weapons were not same weapons. As such, this fact is fully proved from the chain of evidence produced that the said three weapons .22 air gun, .22 rifle and .32 revolver remained in the sole possession of Salman Khan on the day of incident and till next date i.e. 29.09.98. This evidence confirms strongly the portion of statement about weapons given by witness Harish Dulani.

61. Now we have to see that whether that portion of statement of witness PW.1 Harish Dulani is confirmed from the evidence of other witnesses produced by prosecution or not in which portion Harish has stated that accused Salman Khan after taking out knife from his pocket killed the deer? This fact is confirmed from recovery of knife by IO presented by Soheli Khan in pursuance of information Exh.P.98A provided by accused Salman Khan, and this fact is also confirmed from the evidence of IO PW.35 Ashok Patni and facts of said recovery are also confirmed from the evidence of witness PW.12 Sumnesh Limba and PW.13 Daulat Ram. It is correct that this weapon was not directly recovered from the possession of accused Salman Khan and in fact it has been seized in pursuance of information provided by him to the IO under Section 27 of Evidence Act. I do not agree with the said argument of Id. Counsel for accused Salman Khan in this regard that prosecution has shown false recovery from Soheli Khan brother of accused in order to false implicate the accused. Recovery from brother further strengthen this argument that prosecution has not committed any fabrication and in fact has produced totally factual and actual story in accordance with facts before the court. If the prosecution has hatched a fabulous or false story, the said knife could have been shown recovered from clothes of accused Salman Khan, room of accused or from any personal effect of accused. As such, keeping in view all the crystal clear circumstances and situations, the said seizure cannot said to be fabricated and false. It is correct that the said knife was not having any blood marks etc. but it can be used as a chain of evidence. It is correct that the witnesses produced by prosecution with regard to recovery and search, there is some minor minute type of contradiction in the statements of those witnesses with regard to time, hour etc. of the recovery but when evidence of a witness is taken after a long period, consequent to normal human behaviour it is natural that some contradiction would inadvertently come with the passage of time in the statements given by him in his evidence and the minute contradiction apparent is not of vital in nature and on the basis of said contradictions, entire proceedings of prosecution cannot be outrightly rejected and cannot be termed as not reliable. If it is seen keeping in view the facts of the case, the prosecution case does not totally become weak from the contradiction pointed out in the arguments of counsel for said accused and the same is not at all found fatal for the prosecution. It is correct that on this ground alone, it cannot be held that in this present incident the said knife cannot be considered relevant and connected. If a person at different time and different places commits different crimes with one single weapon, then weapon remains one and if the said weapon has been seized and sealed in a case and any investigation regarding said weapon is pending, then there does not remain any object to seizure the said weapon same time once again in another case and if it is done, the possibility arises of seizure action of the previous case as also the present case comes within the cloud of doubt. If through seizure memos of previous case, the witnesses to the said memos prove use of the said weapon in the present incident, then in my humble opinion such evidence is fully

relevant and admissible in evidence against the accused in law. So far as the allegation of getting the FIR registered late against the accused persons is concerned, the reason stated by prosecution for late registration cannot in any way be deemed to be not pardonable keeping in view the facts and circumstances, etc. of the case and nor there is any such ground before me from which it could be held that during the said delay, the prosecution cooked up, fabricated any fact for false implication and involvement. So far this allegation of accused Salman Khan is concerned that whether copy of statement of Harish Dulani was annexed with Exh.P.70 written report or not, the IO Ashok Patni, PW.35 himself states in his examination-in-chief itself that Lalit Boda submitted to him a written report Exh.P.70 with which Exh.p.49A a copy of statement of witness Harish Dulani recorded in the Forest Deptt. Case FIR No.93/26 dated 02.10.98 was also annexed. In cross examination, this witness has clearly stated that statement Exh.P.94 were recorded first time before him at the time of submission of report Exh.P.70. As such, this argument of accused Salman Khan is not acceptable that statement Exh.P.49A was not submitted with Exh.P.70. I also do not agree with this argument of Id. Counsel for Salman Khan that the identification of place of occurrence was not got done from accused Salman Khan because the said accused did not at all go there, because witness Ashok Patni PW.35 has stated in cross examination in this regard that after arresting Salman Khan I did not get the spot identified and verified. He himself stated that he could not again go to this unknown spot. As such, the reason given by the IO for not getting the identification done is totally clear and strong.

62. As such, from the aforesaid discussion, and from the strong and chain of oral and documentary evidence of prosecution, it is fully proved beyond doubt at the relevant time and date and place, accused Salman Khan illegally hunted a Chinkara and accused Gordhan Singh committed offence of abetment in helping in this illegal act. Inducement/inciting to commit crime, hatch conspiracy for this and rendering assistance for this purpose all these three facts exist in the definition of abetment. In case a person before committing crime by an accused or till the time of committing crime, does any act or omission to facilitate the said act of crime and by the said act makes commitment of crime easy, such a person is called abettor and under section 52 of Wild Life (Protection) Act, such an abettor is also liable for crime defined in Section 51 of the Act.

63. Whereas, there is provision of different punishment on the basis of different species of different wild animals in Section 51, hence it is necessary to see that which category of wild animal has been hunted by accused persons. It is correct that in the prosecution story, somewhere word Deer and somewhere word Chinkara has been used. Similar use has been done in oral evidence of witnesses and in documentary evidence. For the said reasons, the court in the discussion hereinabove has used the word Chinkara at some places and word Deer at some other places. However, it is very necessary to ensure a particular species of wild animal because as per Section 51 of Wild Life (Protection) Act, if an accused is held guilty of illegal hunting of only deer (the category of which is not specifically clear), he can be punished with three years imprisonment or fine of Rs. twenty five thousand or both. However, if an accused commits said crime with regard to wild animal defined in Schedule I or Part -2 of Schedule II of this Act he can be sentenced to minimum one year imprisonment to maximum 6 years imprisonment and also with the minimum fine of Rs. Five thousand. The above provisions have been incorporated by the Amended Act No.44 of 1991 under Section 37(i) (ii) (iii) effective from 02.10.1991. In case any species of deer is not mentioned in 2nd part of said schedule I or II, punishment stated above for hunting such a deer cannot be given. As such, it is very essential to clearly and specifically prove the species of wild animal for the ground of difference in punishment. As per law in case a specific species or category of previously described wild life is not proved and not made clear, in such offences, it would be deemed that the offence inviting punishment upto three years imprisonment or fine of Rs. twenty five thousand under Section 51 has been committed. If seen in the light of aforesaid discussion, that whether in the present case strong evidence of hunting wild animal chinkara variety of deer by accused persons is available or not. It is correct that in the discussion by court hereinabove, merely by using word 'Chinkara' at many places by the court, the accused cannot be held guilty of said serious charge of offence. Whereas 'black buck' at S.No.2 and 'Chinkara' at S.No. 5B have been defined/notified in schedule I of the said Act and no other species of deer has been defined or notified in the 1st Schedule or 2nd part of II Schedule, in fact species of some other deer category have been defined in Schedule III. Hence, it is clear that there is separate provision of sentence for committing offence relating to black buck or chinkara variety of deer and there is different provision with regard to remaining species. As per discussion hereinabove in this case, the blood stained earth lifted from the killing spot packet Marked D and packet marked A lifted from the

spot where skinning etc. has been done and these packets have been forwarded to FSL for FSL Serological Examination and in the result of FSL, Jodhpur Report dated 20.01.99 Exh.P.82, it has been clearly stated that "On Serological examination exhibit No.1 (from Packet Marked A) and 3 (From D) were found to be stained with "Deer" (Chinkara) Blood". As such, it is fully proved beyond doubt from the said vital document of prosecution that accused have committed crime relating to hunting of 'Chinkara' variety of deer and not any other specie of deer. As such, accused Salman Khan illegally hunting the wild animal defined in the Schedule I of the Wild Life (Protection) Act of Section 51 is fully clear and abetment of committing crime by accused Gordhan Singh defined in the said Section is fully proved beyond doubt under Section 51 read with Section 52 of Wild Life (Protection) Act. It is correct that no charge with regard to Section 52 has been framed against accused Gordhan Singh but it is a well established principle of law that if a person charged with committing any offence and that the act of committing such an offence is not proved, even then legally the said person can be held guilty for abetment of said offence.

64. So far the charge of destruction of evidence by accused persons is concerned, firstly charge of destruction of evidence of cooking meat in Ashirvad Hotel has been made against accused person whereas there is no such story of prosecution and nor any evidence in this regard has been produced. It is correct that in case the right of defence of accused has not get prejudiced in any way whatsoever from framing of charges being bad in law and further object of justice do not in any way get defeated, then merely on this ground the accused does not become entitled to get any legal benefit. It is not at all clear from the prosecution story in this case and evidence produced in this regard that the accused persons thrown the skin of animal Chinkara to escape themselves from the punishment for any offence, nor any other strong evidence is available with regard to destruction of evidence. In these circumstances, as discussed above, it does not appear proper to hold the accused persons guilty of charge of destruction of evidence.

65. Now so far the question of accused Salman Khan committing offence punishable under Section 27 of Arms Act is concerned, the prosecution was required to prove in this regard that the accused Salman Khan on the said time and date used unlicensed fire arm for hunting chinkara. None of the witnesses of prosecution has clearly stated that accused Salman Khan killed chinkara with fire arm. It is correct that witness Harish Dulani PW.1 has stated the fact of hunting with gun fitted with telescope but admittedly one telescopic gun was also available in the possession of accused. The IO Ashok Patni PW.35 himself in his evidence has not stated even a single word that any fact emerged from the investigation with regard to use of any fire arm in the illegal hunting and in the cross examination it has also been admitted that in the investigation conducted by him, it could not be found that with which weapon the shot was fired which hit the target and it could also not be found that air gun was using in hunting or some other weapon was used in hunting. In addition to this, no round or other material has been recovered with regard to any fire arm. Hence, this presumption cannot be made without any strong evidence that accused Salman Khan hunted any chinkara from fire arms found in his possession and ownership. Hence, case of prosecution regarding charge about fire arm cannot be held to be proved beyond doubt.

66. As such, it is clearly proved beyond doubt from the prosecution evidence as discussed hereinabove that accused Salman Khan has committed offence under Section 51 of Wild Life (Protection) Act and accused Gordhan Singh has committed offence under Section 51 read with Section 52 of Wild Life (Protection) Act and both the said accused appear to be convicted for the aforesaid offences and both these accused persons appear to be eligible for acquittal giving benefit of doubt and remaining all the four accused persons appear to be liable to be acquitted from all the charges by getting benefit of doubt.

67. Whereas witness PW.1 Harish Dulani and witness PW.37 Dana Ram in the judicial proceedings have deliberately deposed falsely with the mala fide intention of saving some accused from sentence. Hence, in the interest of justice it also appears appropriate to conduct trial proceedings against both these witnesses for giving false evidence. Hence, notice under Section 334 Cr.P.C. be issued to both these witnesses and proceeded separately.

ORDER

68. Resultantly, accused Salman Khan S/o Salim Khan is convicted for the charge under section 51 of Wild Life (Protection) Act but giving him benefit of doubt he is acquitted from the charges of offence under Section 143, 144, 148 and 201 read with Section 149 I.P.C. and Section 27 of Arms Act. Accused Gordhan Singh S/o Madho Singh is convicted for the charge under section 51 read with Section 52 of Wild Life (Protection) Act but giving him benefit of doubt he is acquitted from the charges of offence under Section 143, 148 and 201 read with Section 149 I.P.C. Remaining four accused Dushyant singh S/o Maharaj Karan Singh, Om Singh S/o Hari Singh, Tulaji Angre S/o Shambha Ji and Pratap Singh S/o Dharam Kshetrapal Singh are acquitted from the charge of offence under Section 143, 148, 201 read with Section 149 I.P.C. and Section 51 or 51 of Wild Life (Protection) Act read with section 149 I.P.C. by giving them benefit of doubt. Previous Bail Bonds of accused Salman Khan and accused Gordhan Singh are cancelled.

69. Heard Id. Addl. Director – Prosecution on question of sentence. During argument, Id. Asstt. Director – Prosecution has submitted that this court on 17.02.2006 in case No.207/99 State Vs. Salman Khan & Ors. has convicted accused Salman Khan for this offence for the charge under Section 51 of Wild Life (Protection) Act and this is his second offence of same nature. Hence, accused Salman Khan be punished with enhanced punishment and it was also submitted that in conduct of accused Salman Khan is seen, it is evident that this accused in a very cruel and heinous manner killed the chinkara by hacking from its neck. Now-a-days many organizations are fighting tooth to nail to save this type of wild animals. Accused has not committed this crime under any compulsion but in fact has committed under influence of his might for his enjoyment and pleasure. Another case relating to illegal hunting is also pending against this accused in the court of Judicial Magistrate, Distt. Jodhpur, which fact is available on record. As such, in this case the accused Salman Khan may be punished with maximum punishment for the proved offence so that no other person in the society may dare to commit such crime and such film actors may not attempt to follow such act of committing illegal acts. Id. Asstt. Director – Prosecution has also admitted that accused has filed an appeal against the earlier judgement of this court and the appeal has also been filed by the State Government against the said judgement and both these appeals are pending adjudication. As such, accused Salman Khan is not liable to be released on probation or to be punished with minimum sentence. Hence, this accused be awarded the severest prison term.

70. With regard to sentence of accused Gordhan Singh, Id. Asstt. Director – Prosecution submitted that this person has also committed serious crime. Merely being a poor labour and no other case pending before, he cannot become entitled for probation and minimum punishment in sentence in any manner whatsoever. Hence, both these accused may not be released on probation and be awarded severest punishment.

71. During argument in this regard, the Id. Counsel for accused Salman Khan submitted that the appeal against the past conviction of accused by this court as claimed, is still pending, judgement of conviction by this Court has not been upheld by any court finally by confirming and holding conviction. Hence, enhanced punishment for second conviction by awarding sentence cannot be given, because prosecution has not produced any documentary evidence whatsoever to prove the second conviction. Hence, the said second conviction also cannot be upheld. Accused has been undergoing period of probation for the last about 7-8 years. Hence, adopting a lenient attitude towards accused, he may be given benefit of probation and merely on this ground that accused is an influential popular person, he has been discriminated/unfairly targeted and such message should not go to the society. Hence, on the aforesaid grounds, accused be given benefit of probation by adopting lenient view towards him. Counsel for accused Salman Khan also submitted with this that if the court does not deem fit to allow benefit of probation, even then lenient view be taken against accused and accused may be punished with minimum sentence under any Act. It is not necessary that even in case of minimum sentence provided under any Act, sentence less than that cannot be awarded. In view of facts and circumstances of the case, least minimum sentence can be awarded. After the said argument, the accused Salman Khan has filed an application under Section 248 (2) Cr.P.C. submitting therein that this court has held the accused guilty. Accused wants to advance detailed arguments by producing evidence on the question of sentence and opportunity for the same be given. Copy of said application supplied to Id. Asstt. Director – Prosecution who declined to file any written reply to that application. Heard arguments of

parties on the said application. During argument on this, the Id. Counsel for accused Salman Khan reiterating facts mentioned in his application prayed for allowing opportunity for detailed arguments and production of evidence on the question of sentence and in support of his arguments, invited attention of the court to the following rulings which were perused with respect:-

1. Crimes 2001 (3) page 383 Mani Singh vs. State of Bihar.
2. C.C.C. 2003 (3) page 544 M/s. Maya Ram & Sons Vs. State of Haryana.
3. R.C.C. 1981 page 1 Jagat Ram/State of Rajasthan.
4. R.D.C. 1995 (1) page 387 Jatan Singh/State of Raj.
5. R.C.C. 1999 (1) page 319 Pappu alias Pappi/State of Rajasthan.
6. C.C.C. 2003 (2) page 252 (P & H) Balvinder Singh/State of U.T. Administration.
7. C.C.C. 2003 (2) page 502 (Punjab and Haryana) Mohan SINGH & Ors. Vs. State of Haryana.
8. C.C.C. 2003 (2) page 695 (P & H) Gurmail Singh & Ors./State of Punjab.
9. Crimes 2000 (2) page 220 Jagjeet Singh Vs. State of Raj.
10. C.L.R. (Raj.) 1989 page 65 Bagu alias Bhag Chand/State of Raj.
11. A.I.R. 1975 S.C. page 845 Ghan Shyam Das/Municipal Corporation of Delhi.
12. Cr.L.R. 2004 page 2310 Pawn Kumar & Ors. Vs. Delhi State.

72. With regard to application under Section 248 (2) Cr.P.C., Id. Counsel for accused Salman Khan submitted following rulings:-

1. C.C.C. 2005 (1) (S.C.) page 809 Surender Pal Shiv Bala Pal/Gujarat State in which the Hon'ble Supreme Court in para 12 has laid down this principle that where the pairvi of an accused is being made through advocate and in case he has engaged an advocate, the court can ask this from the advocate that whether he wants to submit something regarding sentence or not.
2. A.I.R. 1995 (S.C.) page 1159 Pyare Lal/Delhi Administration, in which Hon'ble Supreme Court has laid down this principle that when there is no such evidence that when the trophy of skin of chikaran came in possession of accused, provision of minimum sentence for Section 51 of Wild Life (Protection) Act not applicable.
3. C.C.C. 2002 (1) (Allahabad) page 323 Bheru/State of U.P. in which the Hon'ble Allahabad High Court has laid down the principle that it is the duty of court to allow opportunity to the accused to produce evidence for hearing on the question of sentence.

73. During argument in this regard, the Id. Counsel for accused Gordhan Singh ahs submitted that this is first crime of accused. Accused is a poor labour in service. No other case whatsoever is pending against him and nor there is any fact of past conviction. Hence, in view of facts and circumstances of the case, lenient attitude be adopted towards the accused and he be given benefit of probation or he may be given least minimum punishment.

74. In this connection, the Id. Asstt. Director – Prosecution submitted that accused has made long and detailed argument on the question of sentence and has also submitted rulings in this regard. In the argument, the Id. Counsel for accused Salman Khan has himself admitted allegation/charge of appeal pending. Hence, it is an admitted position that in earlier case, accused Salman Khan was convicted in the crime of same nature. The court of its own may make presumption accordance with law under the provisions of Evidence Act. Hence, the application of accused under Section 248 Cr.P.C. may be dismissed and prayed for rejecting the prayer for argument.

75. Considering arguments of parties and with respect perused the rulings. So far the question of giving benefit of probation to accused Salman Khan and accused Gordhan Singh is concerned, as both these accused have hunted illegally the chinkara which is defined in schedule 1 of Wild Life (Protection) Act and for the said offence, there is provision of maximum sentence of six years and minimum sentence of one year and minimum fine of Rs. Five thousand. Keeping in view the facts and circumstances and offence in this case, I do not consider it proper to allow benefit of probation whatsoever seeing the quantum of sentence provided for the said offence. I express my total consent and faith in the rulings submitted in this regard by accused Salman Khan but facts of

those cases being different from the facts of the present case, these are not found applicable here.

76. Now so far the question of application under Section 248 (2) Cr.P.C. filed by counsel for accused Salman Khan is concerned, it is clearly provided in the provisions of Section 248 Cr.P.C. that where the court does not proceed in accordance with the provisions of Section 360, it can after hearing the accused on the question of sentence, may pass sentence upon him according to law. In Section 248 (2) Cr.P.C. there is no provision anywhere of taking evidence. However, evidence under Section 248 (3) Cr.P.C. can be taken only when there is dispute that whether there was previous conviction or not. In addition to this, word "may take" has been used in this Section, which is not mandatory. It is correct that in this case, the prosecution has taken the argument that the accused was held guilty in the same type of case by this court on 17.02.2006. However, the prosecution party itself is admitting that appeal from both the sides, i.e. from the side of accused and from the side of State Government against the judgment of this court are pending and Id. Counsel for accused Salman Khan has himself admitted this fact. Hence, there is no such dispute before me that previous conviction was made or not. In such a case, question of Section 248 (3) Cr.P.C. being applicable does not arise.

77. So far the question of awarding enhanced sentence on the basis of conviction against accused as argued by prosecution is concerned, it is evident from the discussion hereinbefore that appeal is pending against the said judgement and sentence order and the previous conviction has not been finally upheld by the Hon'ble Appellate Court. As such, this court has no power to award enhanced sentence. So far this argument of accused Salman Khan is concerned that opportunity for further detailed argument be given to him, in my humble opinion, when the counsel for accused Salman Khan on his application has made complete and detailed arguments on the question of quantum of sentence, then there is no provision in law to now again give such opportunity. With regard to ruling of Surrender Pal... regarding Section 248 Cr.P.C. submitted by Id. Counsel, firstly that case was for the crime under Section 302 and 376 IPC. In the said ruling, the fact of hearing on the question of sentence was disputed by the accused and secondly in that case also, the Hon'ble Court has not held that taking evidence is mandatory. So far the question of ruling of Pyare Lal... Case submitted by accused is concerned, this case was regarding the fact of keeping in possession trophy of skin of chinkara without any licence which is not applicable in this present case. Similarly, facts of the case being different, the principle laid down in the case of Bheru.... Is also not found applicable in the present case. Resultantly, I do not consider it justified and proper to give benefit of probation to accused Salman Khan and Gordhan Singh and I also do not consider it proper to allow the application filed by accused Salman Khan under Section 248(2) Cr.P.C. and this application is rejected. With this, the prayer of Id. Counsel for detailed argument and arguments at length is also rejected and disallowed.

78. So far the question of taking lenient view towards accused Gordhan Singh and awarding him least minimum sentence is concerned, it is correct that accused Gordhan Singh has been undergoing trauma of trial since eight years and there is no such evidence on record that he had previous conviction or involved in such illegal hunting activities and in the discussion made before in this judgement being passed today, this accused with other accused persons committed offence of abetment by himself pointing the route of illegal hunting spot and extended cooperation and assistance in throwing the skin etc. of chinkara. Accused is a labour class person and is a old aged man. Hence, keeping in view the facts and circumstances, past conduct, age and duration of trial and mainly role in the said offence, it appears reasonable to adopt lenient attitude. However, in view of quantum of sentence and gravity of offence, it does not appear reasonable in any manner to award him sentence less than the minimum sentence.

79. Now so far the question of awarding sentence less than the minimum provided to the accused Salman Khan is concerned, it is evident from the discussion hereinbefore that this accused has been convicted by this court in past for the offence of illegal hunting and it also becomes clear from the evidence available on record that case of similar illegal hunting is also pending against this accused in the court of Judicial Magistrate, Jodhpur Distt. Hence, in view of facts and circumstances of the case, the accused does not appear to be entitled for any leniency. It is correct that in the present case, enhanced punishment

cannot be given on the basis of previous conviction and not such previous conviction can be used for enhanced punishment against the accused. However, if the said previous conviction is considered in view of past conduct, character of the accused, there is no restriction in any law that such previous conviction can be taken into consideration in the process of considering the said conduct or behaviour of character. It is well known that now the wild life in entire country has reached to the extinction stage and it is also totally clear that accused Salman Khan is a popular film actor/personality and young generation follow and copy the living style, speaking style, dressing, eating and other acts and practice and style and habits of actors. It is well established principle of criminal law that it is not the only purpose of the court to punish the guilty but with it is also the object that other also refrain from repeating such crime. So far the question of this argument of accused Salman Khan is concerned that merely accused being popular, message of such discrimination should not go to the society. I fully express my agreement with the said argument because all are equal in the eyes of law. This principle is also applicable to the extent of conviction only, nature of question of sentence is a different aspect, in which the court is to take into consideration all these facts as well. As the accused Salman Khan has not committed this offence under any compulsion or to satisfy his hunger and in fact has committed the said offence to prove his mightiness and superiority. Hence, argument of principle of equality is not at all sustainable with regard to quantum of sentence. As such, keeping in view the entire facts, circumstances of the case, character-conduct of accused, another case pending against him and case remaining pending before etc., I do not consider it proper to adopt any lenient view whatsoever towards accused Salman Khan and does not consider it lawful to award him minimum sentence or less than the minimum sentence and as discussed hereinabove, I punish both these accused as under for the offence for which they have been convicted -

ORDER OF SENTENCE

80. Hence, accused Salman Khan is sentenced to simple imprisonment of 5 (five) years with fine of Rs.25,000/- for the charge under Section 51 of Wild Life (Protection) Act and in default of payment of fine, the accused shall undergo further simple imprisonment of three months separately and accused Gordhan Singh is sentenced to simple imprisonment of one year with fine of Rs.5,000/- for the charge of proved offence under Section 51 read with Section 52 of Wild Life (Protection) Act and in case of default in payment of fine, the accused shall undergo further simple imprisonment of three months separately. The duration of police custody and judicial custody undergone/spent by these accused persons be set off against their original sentence. Sentence Warrant of accused persons be prepared as per rules. Copy of judgement be supplied to the accused persons free of cost.

Sd/-
(Brajender Kumar Jain)
Chief Judicial Magistrate
Jodhpur

The judgement pronounced on this day of 10.04.2006 in the open court.

Sd/-
(Brajender Kumar Jain)
Chief Judicial Magistrate
Jodhpur