

**IN THE COURT OF SH. RAJENDER KUMAR SHASTRI, ADDITIONAL
SESSIONS JUDGE : KARKARDOOMA COURTS: DELHI.
S.C. no.14/06**

FIR No.21/99

U/s 302/201/403/404/411/419/392/397/120-B/34 IPC

PS Mandawli

**State Vs (i) Ravi Kant Sharma s/o Sh. J.D. Sharma
(ii) Sri Bhagwan Sharma s/o Sh. Onkar Sharma
(iii) Satya Prakash Sharma s/o Sh.Rattan Lal
(iv) Pradeep Sharma s/o Sh.Amrish Dev Sharma
(v) Ved Prakash Sharma s/o Sh. Suraj Bhan
(vi) Ved Prakash @ Kalu s/o Ram Kishan**

Date of institution of case:-25.10.2002.

Date on which the judgment was reserved:-05.03.2008.

Date on which the judgment was delivered:-18.03.2008.

**Present:-Sh.S.K.Saxena, Special Public Prosecutor with
Mrs. Manisha Sharma advocate for State.
All accused in Judicial Custody.
Sh.S.P.Minocha advocate for accused Ravi Kant
Sharma.
Sh.S.P.Ahluwalia advocate for accused Sri Bhagwan.
Sh.R.S Malik advocate for accused Satya Prakash.
Sh.D.B. Goswami advocate for accused Pradeep.
Sh.Mahavir Sharma advocate for accused Ved Prakash
Sharma.
Sh. Hari Haran advocate for accused Ved Prakash @
Kalu.**

JUDGMENT

1. Death is not bound to follow beaten track. It is known for wending its ways weirdly. On 23.01.99, Shivani Bhatnagar, a young Journalist was at her home i.e B-42, Navkunj Apartment, Patparganj, Delhi, rejoicing company of

infant born of her loins about three months back. Death approached her in disguise, having sweets in hands but snare incognito. She was found like a sitting duck. There was none in the house alongwith deceased except that baby who knew nothing except to smile.

2. As per case of prosecution, husband of victim namely Sh. Rakesh Bhatnagar (complainant) had gone to his office i.e Times of India, a leading daily newspaper where he was serving as a Legal Editor. Brother-in-law of latter Sh. B.S Bhatnagar (Pw 61) who had arrived there on previous day, spoke of Shivani Bhatnagar to the complainant on phone having been stabbed by someone. It created commotion in complainant's office. A colleague of him informed the police on telephone no. 100 (Police Control Room). The information was recorded in PS Mandawli as DD 13A. Investigation was marked to SI Radhey Shyam (Pw172), who proceeded for spot. Meanwhile, local SHO Inspector Satya Pal Singh (Pw183) also arrived there. Rakesh Bhatnagar reached his house and found Shivani Bhatnagar lying injured in front of their bedroom. She was taken to nearby SDN hospital. CMO Dr. Piyush Jain (Pw2) declared her 'brought dead'. Perhaps bereaving husband was

not ready to shed hope, he carried deceased to Apollo Hospital but for sheer dismay. SHO Inspector Satyapal Singh examined the complainant and latter gave first account of incident as:-

I am residing at aforementioned house (B-42, Navkunj Apartment, Patparganj, Delhi) and working in Times of India as Legal Editor. Today, at about 10.00 am my brother in law Sh.B.S Bhatnagar who had come from Punchkula on previous day i.e 22.1.99 had left our house for his personal work in the morning of 23.01.99. I also went to my office at about 12.15 hours. At that time my wife Shivani Bhatnagar, son Tanmay and maid servant Valli were present in the house. At about 3.30 PM my wife Shivani informed me on phone that one person from 'The Tribune' Chandigarh had brought invitation card of marriage of son of one Adhikari. I also talked to said person who told his name as 'Sharma'. At about 5.30 pm, I again received a phone call from Sh. B.S Bhatnagar who beseeched me to come soon as Shivani was stabbed. I reached at my house at about 6.00 PM and found Shivani lying injured in the bedroom. There was bleeding from her neck. One kitchen knife was stuck in her neck and another similar knife was lying on her abdomen. One girdle (tawa) and a piece of electric wire (yellow color) lying near her body. Household articles from all three bedrooms and almirahs were scattered here and there. Two cups full of tea and snacks in a plate were lying near sofa in drawing room. Two empty glass

tumblers were seen on the dinning table and one sweet box was kept near sofa. I called the police immediately.

3. Accused R.K.Sharma is a senior IPS officer who remained posted in Prime Minister office as Officer on Special Duty (O.S.D) during year 1997-98. Accused other than R.K.Sharma are connected with each other by a relationship. Accused Ved Prakash Sharma is brother in law i.e Sala of accused Sri Bhagwan. Accused Ved Prakash @ Kalu is nephew i.e sister's son of accused Sri Bhagwan. Accused Satya Prakash is maternal uncle of accused Pradeep.

4. Prosecution story goes on to say that accused Sri Bhagwan was known to R.K.Sharma as former's father Sh. Onkar Sharma, now a retired Police officer remained posted under accused R.K.Sharma. Even after his retirement, Sh. Onkar Sharma continued to be in regular touch with him. Accused Satya Prakash was also well acquainted with accused R.K. Sharma. The former was Sarpanch of village Utlodha in year 1996 and R.K.Sharma was posted as DIG/Range, Rohtak. The latter inaugurated a portion of school at village Utlodha on the invitation of former. Accused Satya Prakash resided in the house of Sri Bhagwan

at Gurgaon as tenant. All of accused Sri Bhagwan, Satya Prakash, Ved Prakash Sharma and Ved Prakash @ Kalu were engaged in the business of real estate and were operating from Gurgaon and Delhi. It was Sri Bhagwan who introduced Ved Prakash Sharma and Ved Prakash @ Kalu to R.K.Sharma.

5. Shivani Bhatnagar (hereinafter referred as deceased) joined Indian Express in February 1997 as a Principal Correspondent. Among other beats, she was looking after legal and constitutional implications, covering investigating agencies like Central Bureau of Investigation (C.B.I) and Intelligence Bureau (I.B.). She was covering Prime Minister office (P.M.O.) also.

6. Accused R.K.Sharma being OSD in Prime Minister office was in possession of various secret / classified documents. The deceased was visiting him in P.M.O to glean tit bits but started riding the waves after vamping R.K.Sharma by her youth. Accused handed over several such secret documents to the deceased for her inquisitive writings in media. This quid pro quo relationship reached its fruition. Both of them began calling each other on phones and started meeting after office hours. The

deceased went London from 08.03.98 to 07.06.98 excluding a period of 08.04.98 to 29.04.98 after getting British Chevening scholarship. During her stay in London she confided with her room-mate Smt. Sejal Shah (Pw83) that she was deeply in love with accused R.K.Sharma and was pregnant. The duo were so infatuated that they swore to marry each other after divorcing their respective spouses. The deceased gave birth to a male child in October 1998. She asked her sister Sevanti (Pw26) to inform R.K.Sharma about birth of a boy. Accused R.K.Sharma started ignoring the deceased. Unnerved by apathy shown by accused, deceased threatened to ruin his carrier and life by exposing him. Irked by this act of intimidation, accused R.K.Sharma connived with co accused to eliminate the deceased.

7. Accused Sri Bhagwan played pivotal role. During the period of 04.01.99 to 11.01.99 he talked frequently with R.K.Sharma on phone. The latter came to Delhi on 12.01.99 ostensibly to meet with Joint Secretary, MOCA & CVC but no such meeting actually took place. The accused had stayed at Ashoka Hotel. Accused Sri Bhagwan came there

accompanied by co-accused Satya Prakash, Ved Prakash Sharma and Ved Prakash @ Kalu to intrigue with accused R.K.Sharma. The latter called the deceased also in said hotel so that aforestated co-accused be familiarized with her. A photograph of same was also provided by R.K.Sharma to Satya Prakash. After the deceased was bid adieu, R.K.Sharma drove all of said accused in their esteem car to Navkunj Apartments and showed the location of her flat.

8. Accused R.K.Sharma attended a Vertical Interaction Course for IPS officers at CIRT Pune from 18.01.99 to 23.01.99 with intention to create an alibi. In order to monitor the execution of conspiracy, he borrowed a mobile phone no. 9822028128 from his friend Sh.Suresh Kukreja (Pw51). Through this phone, he (R.K.Sharma) talked with co accused Sri Bhagwan and deliberately avoided contact with the deceased. In furtherance of conspiracy, accused Satya Prakash contacted his nephew co-accused Pradeep Sharma to liquidate Shivani and asked him to come in Sunder nagar market, on 19.1.99. The latter went there. Similarly, accused Satya Prakash and Sri Bhagwan also arrived in that market. Accused Satya Prakash persuaded Pradeep Sharma to take the task. He was assured to be reinstated in HUDA where he had worked and also to get a case of him pending

at Chandigarh finished in lieu of said job. Accused Pradeep demanded a sum of Rs.3 lac in addition to aforementioned favours. Satya Prakash conveyed such demand of accused to accused Sri Bhagwan. The latter paid a sum of Rs.50,000/- to Pradeep Sharma as an advance. R.K.Sharma talked to Sri Bhagwan on 19.1.99 and gave him the approval for the deal.

9. The task was to be done on 21.1.99 in its afternoon as per directions of accused R.K.Sharma. Accused Ved Prakash Sharma and Ved Prakash @ Kalu proceeded to Navkunj apartment to keep a watch on Shivani's movements. Accused R.K.Sharma remained in constant touch and called co-accused Sri Bhagwan thrice on that day i.e 21.1.99. The plan could not go through as Shivani left her house before the time fixed for its execution. On 22.1.99 accused R.K.Sharma called co-accused Sri Bhagwan and thus 23.01.99 was again fixed to obviate the victim. Necessary directions were given by accused Sri Bhagwan and Satya Prakash to accused Pradeep Sharma. The latter was asked to reach Patparganj opposite mother dairy where he arrived. Accused Pradeep Sharma purchased one kilogram 'Besan ke Laddu' from a sweetshop. All of them went in an esteem car. Accused Pradeep and Satya Prakash reached

Navkunj apartments. Pradeep was carrying a piece of an electric wire concealed on his person. Accused Ved Prakash Sharma and accused Ved Prakash @ Kalu remained present near Navkunj apartments. They gave green signal to accused Pradeep Sharma, the latter entered Navkunj apartments and accomplished the task. On their way, the offenders informed their accomplice Sri Bhagwan on phone, who in turn accompanied by Satya Prakash conveyed to R.K.Sharma in Mumbai on phone from S.P.Office Gurgaon. On 24.01.99 accused Sri Bhagwan, Satya Prakash and Ved Prakash Sharma reached Mumbai and procured remaining contractual amount of Rs.3 lacs from R.K.Sharma.

10. After completion of investigation, all of accused were indicted for offence punishable u/s 302/201/403/404/411/419/392/397/120-B/34 IPC. All of them were charged by this court on 03.03.2003. All of accused pleaded not guilty and claimed trial when charge was read over and explained to them.

11. In order to bring home its case prosecution examined 209 witnesses in total.

12. The accused in their statements recorded u/s 313 Cr PC disputed the incriminating evidence adduced on the record and claimed themselves as innocent. As per accused

R.K.Sharma he was a victim of conspiracy.

13. Accused persons examined 15 witnesses in their defence.

14. I heard Ld SPP as well as Ld counsels appearing on behalf of accused.

15. Husband of deceased Sh. Rakesh Bhatnagar (Pw-66) deposed that the police removed Shivani to SDN hospital where she was declared as dead. Dr.Piyush Jain (Pw2) after examination found pulse of deceased impalpable, blood pressure not recordable, pupils were dilated and not reacting. There was no respiration and no heart sound and hence concluded that she was brought dead. As stated above, from SDN hospital the deceased was taken to Apollo Hospital. Dr. Amit Dhawan (Pw1) was posted in Apollo hospital on 23.01.99. The latter found deceased unconscious, pupils dilated and fixed, bilateral not responding to light. There was no spontaneous respiration, no pulse and no heart beat. ECG showed flat line. Limbs were cold flabby. Injuries were probable and dangerous. Considering all these, Dr. Amit Dhawan declared her as brought dead.

16. The dead body was identified by complainant Rakesh Bhatnagar (Pw66) and Gaurav Bhatnagar (Pw121) a nephew of

latter before its postmortem. It was conducted by a Board of Doctors consisting of Dr.R.K. Sharma, An additional Professor, Department of Forensic (AIIMS), Dr. D.N. Bhardwaj, Associate Professor and Dr.S.K.Gupta, Assistant Professor. Aforesaid doctors noticed following injuries on the dead body:-

- (i) Stab wound measuring 2 cm x .75 cm (on the left front of chest) elliptical in shape.
- (ii) Stab wound elliptical in shape over left neck measuring 1.5 cm x 0.5 cm x 1 cm deep.
- (iii) Stab wound elliptical in shape over left neck measuring 1 cm x 0.5 cm over right neck.
- (iv) Stab wound measuring 1.5 cm x 0.5 cm situated 2 cm below right mandible and 9 cm from right mastoid over right neck.
- (v) Stab wound 2 cm x 0.75 cm x subcutaneous tissue deep over right neck situated 0.4 cm from midclavicular point.
- (vi) Incised wound 1 cm superficial over right angle of mandible.
- (vii) Contused abrasion measuring 4 cm x 3 cm over front of the neck situated 12 cm below chin.
- (viii) Multiple contused abrasions over lower lob neck and front of upper left chest.
- (ix) Multiple contused abrasion over lower right neck ranging from 0.2 cm x 0.3 cm in an area of 12 cm x 6 cm.
- (x) Ligature mark around the neck measuring in breadth 0.5 cm circumference 35 cm.

17. Said doctors also noticed semi digested food resembling 'dalia' was present in the stomach of deceased. In their opinion, the cause of death was asphyxia as a result of antemortem strangulation by ligature. Apart from that, injury no. 1 to 6 shown in postmortem report were caused by sharp edged weapon and were antemortem in nature. Injury no. 1 and 4 were sufficient to cause death of a person in ordinary course of nature. This opinion of Board of Doctors is reiterated and reaffirmed by Dr.R.K.Sharma (Pw3) and Dr.Sudhir Kumar (Pw46), before this court.

18. As per case of prosecution, the killer entered Navkunj apartment at 2.40 PM after making entry in register maintained at its gate in the name of Rajiv Bhatnagar. Register Ex.Pw61/1 finds such an entry where the time of said person having entered the building is recorded as 2.40 PM and time of departure of same is shown as 15.10 hours. As per Pw66, the latter received a telephone of his wife i.e deceased Shivani at 3.00 PM on that day telling someone having come to his house to deliver an invitation card of Mr.Adhikari from the Tribune Chandigarh(a daily newspaper). Pw66 disclosed about B.S Bhatnagar (Pw61) having told him on phone at about 5.00 PM

that lock of doors of complainant's flat could not be opened by the keys handed over to him. Pw66 advised the caller (Pw61) to turn the keys twice on fulcrum. Pw61 called him (Pw66) further after about 15-20 minutes telling his futile efforts and again after further 15-20 minutes of earlier call when Pw61 found Shivani injured by stabbing. In this way, Shivani would have been injured/killed between 3.00 Pm to 5.30 PM.

19. Ld defence counsels struck the case of prosecution on its very sub-stratum. Dr.R.K.Sharma (Pw3) who participated in the postmortem on the dead body stated the time since death of deceased was about 21 hours before the time of conducting postmortem examination. As discussed earlier, doctors conducting postmortem found semi digested 'dalia' in the abdomen of deceased. On the basis of the condition of food it was opined by Dr. Sudhir K. Gupta (Pw46) that deceased had taken meals two hours prior to her death. In his opinion, food like dalia takes less than two hours to be reduced into semi digested condition. Referring all this, it is contended by Sh.S.P. Minocha advocate that time of death in this case comes around 1.30 PM and not between 3.00 PM to 5.30 PM as contemplated by the prosecution.

20. The complainant (Pw66) reaffirmed before this court that he left for his office on the day of incident at about 12.00 - 12.15 PM. Shivani had not taken breakfast till then. While his brother-in-law B.S Bhatnagar had left their house at about 10.00 AM. Ms.Valli (Pw85) a maid servant of complainant deposed that her mother had given breakfast to Jija of Mr.Bhatnagar and latter left said apartment just after her mother went away and she i.e Pw85 prepared paratha, dalia and gobhi (vegetable) for breakfast. Neither Mr.Bhatnagar nor Shivani had taken his/her breakfast in her presence on that day. This witness further explained that she had finished her job by 10.30 AM - 12.00 noon and then went out of apartment. Smt. Laxmi (Pw78) mother of Pw85 remembered to have left the house of complainant at about 11.00 AM, the time as such was told to her by her daughter Valli (Pw85). This witness also told having served breakfast i.e boiled eggs to brother-in-law of complainant. As per Ld SPP, it is clear from the statement of these witnesses that deceased had not taken breakfast till 12.00-12.15 PM when her husband i.e (Pw66) left their house and as per Dr.Sudhir.K. Gupta (Pw46) semi digested condition of dalia found in the abdomen of the deceased would have reached in that

condition after about two hours. As per Id SPP, there is not much difference in the time of death of deceased.

21. On the other hand, Sh. S.P.Minocha advocate submits that both i.e Rakesh Bhatnagar (Pw66) and Valli (Pw85) were unreliable witnesses. It is pointed out that Pw85 made improvement in her deposition before this court as no such time was disclosed by said witness in her statement recorded u/s 161 Cr PC and hence she was confronted with her earlier statement. In view of Sh.D.B.Goswami advocate representing accused Pradeep Sharma, there was clear contradiction in the ocular statement of Pw66 and Pw85 with medical evidence i.e postmortem report, which makes testimony of said witnesses doubtful. Id counsel relied upon a case titled as **Moti etc Vs State of U.P, 2003 (1), JCC 423.**

22. Though there appears not much difference in the deposition of complainant, Valli (Pw85) with postmortem report about the time when deceased would have taken her meal. Even if there was some inconsistency in the ocular evidence of said witness and the opinion of doctors, mejudice same is no reason to throw the testimony of said witnesses away like a waif. The opinion of doctors in this

regard was based on certain calculations guided by various other factors. There is no medical test which can bring out a definite result admitting no exception about the time being taken in digestion of specific food. May I refer here a case titled as **Mange Vs State of Haryana, AIR 1979 SC 1194** where it was held by the apex court that the medical evidence can hardly be relied upon to falsify the evidence of the eye witnesses, because the medical evidence is guided by various factors based on a guess and certain calculations.

23. Generally the investigating officer records statement of a witness as is relevant to the fact observed by that person. Same can never be termed as an exclusive detail of what was witnessed by him. If Pw85 had not stated some fact which is not very material, in her statement recorded u/s 161 Cr PC and disclosed in court on being inquired by a counsel, such witnesses cannot be termed as unreliable merely due to that reason. The apex court in case **State of U.P Vs Krishna Gopal, 1989 Cri. L.J 288** observed that it is trite that where the eye witness's account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as

conclusive. Witnesses are the eyes and ears to justice. Hence the importance and primacy of the quality of the trial process. Eye witness's account would require a careful independent assessment and evaluation for their credibility, which should not be adversely prejudged making any other evidence, as the sole touch stone for the test of credibility.

24. The case titled as **Moti's etc (SUPRA)** relied upon by Id defence counsel appears to be of no help to him. Pw5 in that case had stated that incident occurred at 9.30 PM after the victim had taken dinner while medical report indicated that the entire stomach of the deceased including both the intestines were empty, which went to show that the deceased had not taken the meals and his murder must have taken place at least 3 to 4 hours after he had his last meal. It was a total contradiction between the medical evidence and ocular evidence of Pw5. Same is not the position in our case. There is a slight difference between the opinion of doctor and ocular evidence of witnesses. Even otherwise, it has been clarified by Dr.R.K.Sharma (Pw3) that they had given the time since death as about 21 hours keeping in view rigor mortis

developed upon dead body, postmortem straining and other changes found in the body. They had also given **four hours margin** after considering the climate, preservation of the body and all other relevant factors. In this way, there was a margin of four hours in this time on both sides and hence the time of death may have been between 17 to 25 hours of postmortem. In such a way, there appears no contradiction between the opinion of Board of Doctors who conducted postmortem on the dead body of deceased and case of prosecution about death of deceased between 3.00 - 4.30 PM.

25. It is further the plea of Ld defence counsels on this point that :-

(i) Exit entry of person assuming name as Rajiv Bhatnagar at 15.10 hours in the register kept at gate of apartments shows that such person was seen by the watchman (chowkidar) while going out of gate. If the deceased was killed by him by stabbing with knives, in a way as depicted by prosecution i.e deceased lying on the floor and the killer stabbing her kneeling over her body, clothes which such offender was wearing would have found to be imbued with blood, spitting from her wounds. None in

that enclosed compound of the building or even at the exit gate noticed any such person wearing blood soaked clothes.

(ii) The psychology of malevolent intruder remains to complete the task at hands as quickly as possible and then flee away from spot without staying there unnecessarily. It was improbable that such murderer would have accepted hospitality of deceased by consuming snacks and taking tea. In the same way, deceased Shivani was not expected to have served tea etc to a totally stranger particularly when she was alone at home.

(iii) On the same analogy, it could not have been expected that a murderer would have talked to the husband of victim on phone. Such offender would have opted to finish the victim without giving any opportunity to the latter to have contact with any outsider.

(iv) If the story of prosecution is true, the murderer assuming the name of Rajiv Bhatnagar had not brought any deadly weapon with him. If such a person had any intention to kill the deceased, it was natural for him to be armed with such a weapon.

(v) In register Ex.Pw61/1, one Vasluddin is also shown to have entered in Navkunj apartments mentioning the flat of his visit as B-42 (house of deceased), purpose as dry

clean, time of going inside the apartments as 3.45 while time of exit as 16.00 hours. Similarly, there is an entry on same day in this register of a person namely Lalit. No other particular of same have been disclosed. It is contended by Id defence counsel that entry of these persons particularly Vasluddin makes it doubtful that it may not be any of these persons who would have committed crime.

26. I do not find much substance in these contentions. Human psychology is very complex. Different persons react differently in similar circumstances. Moreover, it was for the wrongdoer as how he had thought to execute his plan. Apparently the act of crime in this case was not an outcome of chance rather a preconceived act. Whether any deadly weapon was necessary or not, depended upon the modus oprendi adopted by the wrong doer. Deadly weapons do not remain always a mode of killing. There can be so many methods, adopting which a person can be killed without any weapon. If the offender had planned to kill the deceased in the way, the latter is found murdered, it was inevitable for him to win the faith of victim. If prosecution story is true, the offender found way in the house of victim posing himself as a harbinger of an inmate

of her husband and thus the same was not a stranger. In the same way, the ruse played by the offender, had left scope for the victim to contact her husband and such eventual talk could have been expected by the planner i.e offender. In such circumstances, I think it was not unnatural that the offender went slow in execution of his task or did not act in haste or not opted to bring deadly weapon with him.

27. So far as the fact that wearing apparels of the offender were not stained with blood is concerned, the doctors who conducted postmortem have opined that the victim died due to strangulation and stab injuries would have been caused to her thereafter. Immediately, after the death, the heart of a living being stops functioning i.e pumping the blood. When Shivani had breathed her last by strangulation, blood would have stopped running in her veins. In such a state, when she was laid on the ground supine and stabbed by knife by a person genuflecting over her body, the blood was not likely to gushed out in spate and hence it was not inevitable that wearing cloths of such person would have been impregnated with blood.

28. True, there remains likelihood that hand of offender in which weapon of stabbing was held, be imbued

with blood of victim but a clever murderer can easily avoid blood exuding from wounds of subjected person being fallen upon him. Further more, as the killer in this case had a friendly entry and none remained in the house to raise alarm after victim was killed, the former could have washed his hands there.

29. Ld SPP explained Vasluddin was a dry cleaner and he would have actually gone to the flat of deceased to take cloths for dry cleaning (if any) and if there was no response, same would have returned back.

30. The explanation given by Ld SPP has not been established on the file. I think prosecution should have examined said Vasluddin in this regard. Similarly, it remained unexplained as who said Lalit was. Even then, if prosecution is able to establish that it was some specific person (accused Pradeep) who had entered at that time, in such a situation non explanation about the visit of these two persons loses its significance.

31. Trite it to say that none has claimed to have witnessed the deceased being murdered. From postmortem report (Ex.Pw3/1) it is apparent that it was a homicidal death. Dr. Madhulika Sharma (Pw7) deposed to have received one parcel (mark 17) sealed with seal of Department of

Forensic Medicines and Toxicology AIIMS. Seals were intact. On being examined, the contents of viscera and blood sent in said parcel, Pw7 found no poisonous substance in abovesaid contents. Her report is Ex.Pw7/1. Only a minutia of circumstances of case can lay bare as to whether it were accused who had committed crime in question.

32. Ld defence counsels reminded this court that case in hands is a case based on circumstantial evidence. A bevy of authorities are cited by each of Ld counsels as how evidence in such cases is evaluated. Shorn of unnecessary details, may I reproduce here only few landmark cases, findings of which are treated as watershed on the point:-

(i) Sharad Birdhichand Sarda Vs State of Maharashtra, AIR 1984 Supreme Court 1622.

A three judge bench of the Supreme court of India laid down following five golden rules in this case popularly known as 'punchsheel' of circumstantial evidence.

The following conditions must be fulfilled before

a case against an accused based on circumstantial evidence can be said to be fully established;

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must or should' and not 'may be' established.

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

(3) The circumstances should be of a conclusive nature and tendency.

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

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

(ii) Mahmood Vs State of UP AIR 1976 SC 69.

In a case dependent wholly on circumstantial evidence, it was held that the court before recording a

conviction on the basis thereof must be satisfied :-

- (a) that the circumstances from which the inference of guilt is to be drawn, have been fully established by unimpeachable evidence beyond a shadow of doubt,
- (b) that the circumstances are of a determinative tendency unerringly pointing towards the guilt of the accused, and
- (c) that the circumstances, taken collectively, are incapable of explanation on any reasonable hypotheses save that of the guilt sought to be proved against him.

(iii) Padala Veera Reddy Vs State of A.P 1990 Cr.L.J 605

Prosecution established that death of deceased was due to forcible administration of poison, absence of direct evidence; failure of prosecution to prove guilt of accused decisively; it was held that strong suspicion against accused cannot take place of legal proof.

33. Ld SPP in his turn produced an authority delivered by same court titled as **Udaipal Singh Vs The State of U.P (1972) 4 Supreme Court cases 142** commenting upon circumstantial evidence, their Lordships observed as:-

In cases where only circumstantial evidence is available at the outset one normally starts looking for the motive and the opportunity to commit

the crime. If the evidence shows that the accused having a strong enough motive had the opportunity of committing the crime and the established circumstances on the record considered along with the explanation-if any- of the accused exclude the reasonable possibility of anyone else being the real culprit then the chain of evidence can be considered to be so complete as to show that within all human probability the crime must have been committed by the accused. He may, in that event, safely be held guilty on such circumstantial evidence.

34. I have gone through the cases cited by Ld counsels and this court is conscious about all such precedents.

35. Hira Lal (Pw87) a Security Guard was deputed on the entrance gate of Nav Kunj apartments on the day of incident i.e 23.1.99. It is stated by this witness that there were two gates for entry in Nav Kunj apartments. One gate used to remain closed and on another gate we were deployed. There was a visitors register at the gate and the visitors had to make entry in that register at the time of entrance. My job was to open the gate for cars, ask the visitors to make entry and to ensure that the entry of visitor is made in the register. The visitor was required to make entry in the register disclosing his

name, address, time of arrival and departure. He was also required to mention the name and address of the person to whom he wanted to meet in the apartments.

36. This witness (Pw87) verified that the time mentioned in visitors register (Ex.Pw61/1) at point X over entry Q1 was written in the hand of visitor himself and again that from the main gate of Navkunj apartments no stranger could enter in the flats of those apartments without making entry in said register. Shilajeet Singh (Pw79) was also deputed in Navkunj apartment as security supervisor at that time. It is verified by this witness also that the gate of eastern side used to remain closed and entry was only from western gate. Guard used to be posted at latter gate. Visitors to Navkunj apartment used to make entry in the register maintained at the gate in the presence of security guard. The purpose of visit and the date and time, name etc used to be mentioned in the register. Said register is Ex.Pw61/1. Pw79 corroborated said register, having been seized from him by Delhi police vide seizure memo Ex.Pw79/1 which was bearing his signatures at point A.

37. An IO of case Inspector Inder Singh (Pw203) told to the court that on 02.08.02 he got information about

accused Pradeep Sharma who was apprehended by him at about 10.15 PM from near the gate of Jawahar Lal Nehru University. On 03.08.02 accused was brought to crime branch office and he (Pw203) took specimen handwriting and signatures of accused Pradeep Sharma in the presence of SI Tilak Chand. The same are Ex.Pw132/1 to Ex.Pw132/22 (S-81 to S-102) and are encircled by red pencil. This witness identified signatures of accused Pradeep Sharma at point A on aforesaid 22 sheets, signatures of himself at point C and of SI Tilak Chand at point B respectively. As per Pw 203, specimen handwriting and signatures mentioned above were given by accused Pradeep Sharma voluntarily and that finger prints of accused Pradeep Sharma were taken by him on four sheets which are Ex.Pw192/91 to Ex.Pw192/94.

38. It is further the statement of IO inspector Inder Singh (Pw203) that on 04.08.02 specimen finger impression of accused Pradeep Sharma Ex.Pw192/91 to Ex.Pw192/94 were sent by him to Director, Finger Print Bureau vide covering letter Ex.Pw192/90 which was bearing his signatures at point A and that he had requested that those finger impressions to be compared with chance prints lifted from the place of occurrence in January

1999, which had already been sent to Finger Print Bureau, New Delhi.

39. Ct. Rajesh Kumar (Pw141) deposed on oath that on 23.1.99 he was posted in Crime team with SI Nag Bhushan as Finger Print Proficient. He had taken training for developing and lifting the finger prints from the spot or the objects and had five years experience in that field. On 23.1.99 along with other member of crime team, he reached at spot i.e B-42, Navkunj apartment at about 7.00 PM. On the direction of IO, Inspector Satya Pal (Pw183) and DCP (East) met him at spot he lifted chance prints from the objects available in the drawing room of that house. He lifted 10 chance prints from there. Two were found and developed from glass tumblers kept on a table, four chance prints from a polythene bag having a sweet meat box in it which was lying on a moodah and one chance print each from two cups lying in a tray kept on a sofa type moodah and two chance prints from refrigerator which was in the kitchen. This witness verified report mark Q1 and Q9 about finger prints lifted from two glasses, Q2, Q3 and Q5 finger prints lifted from polythene bag containing sweet box, mark Q6 and Q10 about finger prints lifted from cups and Q7 and Q8 finger prints lifted from

refrigerator. Same witness identified articles of case property i.e glasses and cups etc produced in court from a sealed packet which are Ex.Pw66/article 4 and Ex.Pw66/article 5 (cups) and Ex.Pw66/article 6, Ex.Pw66/article 7 (glass tumblers), Ex.Pw8/9 i.e polythene bag. As per this witness, he had prepared report about lifting of finger prints at spot which was Ex.Pw141/1 bearing his signatures at point A. It is explained by this witness that he had prepared report in duplicate Ex.Pw141/1 and was handed over to IO and carbon copy of same alongwith lifted chance prints was sent to Finger Print Expert, Finger Print Bureau, Malviya Nagar.

40. IO Inspector Satyapal Singh (PW182) noticed Crime Team having reached at spot and stated to the court that he gave directions to the crime team to pick up finger prints without disturbing the places of articles and scene of occurrence and accordingly the chance prints and finger prints were lifted from various articles by the crime team. Pw182 also recorded statement of Ct. Rajesh as well as of SI Nag Bhushan U/S 161 [Cr.P.C.](#)

41. Ms. Deepa Verma a Senior Scientific Officer

(Documents) from Forensic Science Lab, Government of NCT of Delhi (PW132) deposed on oath that a request for examination of documents was received by her in her office on 23.07.1999 vide letter no. 243 dated 23.07.1999 along with questioned writing contained in register (Ex.PW61/1). As per this witness, standard writing of various persons including specimen signatures and writing were sent for comparison and examination from entry marked Q1 in register Ex. PW61/1 at page no. 47. The last specimen writing was received vide letter no. 624 dated 05.09.2002. PW Ms. Deepa Verma also disclosed to have received specimen writing attributed to accused Pradeep Sharma and same were marked by her as S-81 to S-102 in which the name and address etc. of said accused Pradeep Sharma were noted at the top. The writings are encircled in red in S-81 - S-102 which were marked examination of said witness as PW132/1 to PW132/22 which were specimen writings and signatures attributed to accused Pradeep Sharma. It is stated again that admitted writings attributed to accused Pradeep Sharma was containing in register Ex. PW73/2 (document No. 70) which were marked by her as A-15/1 to A-25/1 from pages number 1 to 13 to aforesaid register further marked by her as A-

26 to A-120 from page no. 14 to page no. 157, the loose sheets collectively marked as PW7/3/X consisting of 4 leaves (8 pages) and writings attributed to accused Pradeep Sharma which were A - 121 to A - 128 as well certain other forms of accused Pradeep Shrma with his photo are marked as A- 129 to A-132 by her which were marked PW59/1 and PW59/2 having received by her for comparison with entry marked Q1 in register Ex. PW61/1. As per Pw132, she handed over her report as well as said register in a sealed cover to the police on 24.10.2002. Ms.Deepa Verma (PW132) reaffirms the conclusion reached by her that the person who wrote the red enclosed handwritings and signatures stamped and marked S - 81 to S - 102, A15/1 to A25/1 and A26/1 red enclosed handwritings and signatures and similarly stamped and marked Q1. Other entry is Ex. PW132/23. This witness verified her report Ex. PW132/4 running into 3 pages, signed by her on each page at points A, B and C. This report was forwarded along with original records to Dr. V.K. Goyal who was Director General of FSL, at that time.

42. SI Avdesh Kumar a finger print expert (Pw192) deposed on oath that on 25.01.99, he received file

regarding this case along with chance prints marked by Case Work Incharge. The ten chance prints were marked as Q-1 to Q-10 which were reported to have been lifted and developed on 23.01.99 from the scene of crime by Ct.Rajesh which are now exhibited as Ex.Pw192/1 to Pw192/10. Along with said chance prints, he received 20 photographs Ex.Pw141/1 out of which 10 were of Q-1 to Q-10 (Ex.Pw192/11 to Ex.PW192/20) and other 10 photographs are Ex.Pw192/21 to Ex.Pw192/30.

43. Pw192 also reminded having received specimen thumb/finger impressions of accused Pradeep Sharma in four sheets (Ex.Pw192/91 to Ex.Pw192/94) along with covering letter of Inspector Inder Singh (Ex.Pw192/20) on 05.08.02 and also having examined those thumb/finger impressions with questioned finger/thumb impressions Q-3 to Q-6 lifted and developed on 23.01.99. After examining the same following is the conclusion of this expert:-

Chance prints marked Q3,Q4,Q5 & Q6 developed on 23.1.99 are identical with right thumb, left index, left middle & right index finger impressions marked S3,S4,S5 & S6 respectively on the finger impression slip of Pradeep Sharma s/o Amresh Devi (Suspect) r/o H.No 200, Roshan Garden, Najafgarh, Delhi.

Chance prints marked Q1 & Q3 developed on 25.01.99 are not-identical with the finger/palm prints of the person mentioned

at para I (A).

44. Pw192 found following eight points similar in questioned as well as specimen impressions:-

- (I) Bifurcation of ridges which I have taken as starting first point.
- (II) Ridge ending which is to the south east of point no.I with one ridge intervening between the point no.I & II.
- (III) Ridge ending which is to the south east of point no.II and two ridges are intervening between the point no.II and III.
- (IV) Bifurcation of ridges to the East of point no.III with one ridge intervening between point No. III and IV.
- (V) Ridge ending which is to the south east of point No.IV with no ridge intervening.
- (VI) Ridge ending which is to the south west of point no.V with five ridges intervening between the point NO. V and VI.
- (VII) Ridge ending which is to the south west of point no. VI with four ridges intervening between the point No. VI and VII.
- (VIII) Ridge ending which is to the north west of point No.VII with no ridge intervening between the point No. VII and VIII.

45. As per Ld SPP the science of comparison of finger print is a complete science bearing no exception. Ld

counsel relied upon following cases in this regard:-

(1) **Jaspal Singh Vs State of Punjab AIR 1979 Cri.L.J**

Where it was held that science of identifying thumb impression is an exact science and does not admit any mistake or doubt.

(2) **Mohan Lal and Another Vs Ajit Singh and another, AIR 1978 Supreme Court 1183.**

A division bench of the apex court relied upon expert opinion stating that it is for a competent technician to examine and give his opinion whether the identity can be established, and if so whether that can be done on eight or even less identical characteristics in an appropriate case.

46. Similarly about reliability of opinions of handwriting expert followings precedents are cited by Ld SPP.:-

(1) **Murarilal VS State of M.P AIR 1980 Supreme Court 531.**

It was clarified by the apex court that there was no rule of law, nor any rule of prudence which has crystallized into a rule of law, that opinion evidence of a handwriting expert must never be acted upon, unless substantially corroborated. In cases where the reasons

for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony of a handwriting expert may be accepted.

(2) **Fakhruddin Vs The State of Madhya Pradesh, AIR 1967 Supreme Court 1326.**

Our Supreme court described as how writing of a person can be proved in court. It is advised that in each case, the court must satisfy itself by such means as are open that the opinion may be acted upon.

47. It is also deposed on oath by SI Avdesh (Pw192) an handwriting expert that even if one questioned thumb/finger impression is found identical with one specimen, then it is sufficient to fix the identity of a person and no thumb/finger impression of any person can be identical with the thumb/finger impression of any other person. The science is perfect and absolute science having no degree of error.

48. Referring all these, it is contended by Ld SPP that when finger impressions as well as handwriting of accused Pradeep both are tallied with chance prints lifted from the spot as well as handwriting found in register maintained on the gate of Navkunj apartments Ex.Pw61/1. There remains doubt that it was a accused

Pradeep Sharma who entered in Navkunj apartments assuming name of Rajiv Bhatnagar and then in the house of deceased and also committed crime in question i.e murder of deceased Shivani.

49. Ld counsel appearing on behalf of accused Pradeep Sharma did not dispute specimen handwritings given by his client which were compared with the writing in register Ex.Pw61/1 but denied his handwriting in the register allegedly seized by SI Dinesh (Pw198) from ET & T (a computer institute). In the same way, it is alleged that accused Pradeep Sharma while being interrogated by police in crime branch office, was made to take water in a glass tumbler and police would have picked up chance prints from that pot and hence it was not surprising that such chance prints lifted from a tumbler used by accused Pradeep Sharma would have tallied with his finger impressions. Ld counsel opposed the police taking of handwriting as well as finger print impressions of accused Pradeep Sharma in their custody without permission of court. Ld counsel doubted that same may have been tempered by the police.

50. SI Dinesh (Pw198) deposed on oath that on 01.08.01, he alongwith Inspector Inder Singh went to

Najafgarh ET & T computer centre and seized the record containing admitted handwriting of accused Pradeep Sharma after being produced by its Executive Director Sh. Brijesh Singh. The latter was examined in court as Pw59 but denied the fact that any such register was produced by him. However, it is admitted by this witness that he produced simply an admission form mark Pw59/1 alongwith inquiry card mark Pw59/2 which were blank at that time. Said record is stated to have been seized in the presence of one Sarla (Pw73). This witness also denied to have handed over any register like marked Ex.Pw73/2 to the police during investigation of the case. However, it is admitted by her that seizure memo Ex.Pw73/1 in this regard was made, bearing her signature. It is claimed by Pw73 that police had obtained her signature on blank papers which would have been converted into a seizure memo. As per Ld SPP both of these witnesses remained teacher and colleague of accused Pradeep Sharma and hence were won over by the accused. Whatsoever it may be, it could not be proved on file that handwriting in this register was of accused Pradeep Sharma.

51. I think, there was no illegality if specimen

finger prints or handwriting of accused Pradeep Sharma were taken in police custody without permission of the court. Particularly when accused did not dispute having given specimen handwriting. It was held by the apex court in case **State (NCT of Delhi) Vs Navjot Sandhu, 2005 Supreme Court cases (Cri) 1715** that taking of specimen signatures / handwriting or thumb impression of accused while in police custody (without permission of court) does not infringe article 20(3) of the constitution.

52. So far as doubt of ld counsel that register Ex.Pw61/1, specimen handwriting of accused Pradeep Sharma, chance prints lifted from the spot as well as specimen finger prints of said accused were tempered with in possession of the police is concerned, needless to say that crime in question took place on 23.1.99. It is deposed on oath by Inspector Satya Pal (Pw183) that when he entered in the drawing room he noticed three glasses on the dining table and one sweetmeat box wrapped in a polythene cover which were lying on a moodah. One cup was also observed by him kept on ground near sofa. He found crime team at spot and directed its members to do needful. Ct. Rajesh was a member of crime team and

reached at spot immediately after receipt of telephone call. At about 7.00 PM, he was instructed by inspector Satya Pal the IO to do needful. On the direction of latter, as well as of DCP (East) who was also present there, he lifted chance prints from the objects available in the drawing room. As per this witness, he lifted 10 chance prints. Two were found on glass tumblers, one from sweet box, one each from two cups and two chance prints from refrigerator lying in the kitchen. SI Nag Bhushan (Pw181) incharge crime team also took photographs of the drawing room which are marked as Pw66/1 to Pw66/18. Register from the gate of Navkunj apartments was seized by ACP P.P.Singh (Pw167). It is stated on oath by this witness that on 26.1.99 he went to spot and seized visitors register maintained by security guard. Said register is Ex.Pw61/1 pertaining to period from 07.1.99 to 23.1.99. Seizure memo in this regard is Ex.Pw79/1 signed by Shilajeet Singh. The latter was examined in court as Pw79 and verified seizure of said register Ex.Pw61/1 by ACP P.P.Singh (Pw167). ASI Subhash Chand (Pw180) deposed on oath that on 27.01.99, he took 20 pullindas connected with this case and two envelops from malkhana to FSL Malviya nagar vide RC no.3/21 and

deposited the same there. It is further deposed by this witness that on 05.02.99 he deposited aforesaid 20 pulindas and report of FSL to PS Mandawli. HC Subhash (Pw11) was malkhana moharrar in PS Mandawli from 06.03.96 to 17.03.01. It is verified by this witness that on 24.1.99 Inspector Satya Pal deposited seven pullindas in malkhana. He made entry in this regard in register no.19. One more pullinda was deposited on the same day, copy of same is Ex.Pw11/1. As per this witness, four more pullindas one by one were deposited in malkhana on same day. Entry was made by him, copies of which are Ex.Pw11/2, Pw11/3, Pw11/4 and Pw11/5. On 27.1.99 he sent all 22 items to FSL, Malviya nagar through HC Subhash. Entry in this regard is Ex.Pw11/2A. Carbon copy of R/C is Ex.Pw8/D. It is deposed on oath by this witness that till case property remained in his possession it remained intact. On 05.07.99, 20 pullindas sent by him to FSL through Ct. Manoj Kumar vide RC no.19/21, copy of entry is Ex.Pw11/8A and he received these pullindas from FSL on 09.8.99 through Ct. Manoj Kumar. Copy of entry is Ex.Pw11/8B. He received result from FSL, Malviya Nagar on 05.02.99 and again on 09.8.99.

53. As discussed above, SI Avdhesh (Pw192) gave

report after examination of same. Similarly, in the same way, Deepa Verma (Pw132) compared handwriting in register Ex.Pw61/1 with specimen handwriting of accused Pradeep Sharma. As discussed earlier, in the opinion of this witness the person who wrote writings and signatures stamped and marked S-81 to S-102 (A-15/1 to A-25/1 and A-26 to A-132) also wrote the red enclosed hand writings and signatures similarly stamped and marked as Q1. It is explained by the same witness i.e Pw 132 that register Ex.Pw61/1 remained with her from 30.07.99 to the date when report in this case was collected by the investigating agency i.e 24.10.02.

54. Keeping in view statements of these witnesses as discussed above, I see no reason to believe that chance prints lifted from spot or handwriting and specimen finger prints of accused or register Ex.Pw61/1 were tempered with. It is not sufficient to say that the police had occasion to manipulate the record unless there is any reason to substantiate doubt. It cannot be presumed that the record was manipulated simply because it remained in the custody of police. It is also the plea of ld SPP that accused Pradeep Sharma had filed an application seeking anticipatory bail and it was no where

the contention that handwriting or specimen finger prints of same were fabricated. If said fact was true, the accused could have mentioned the same in all probability in such application filed before the court.

Relation between accused persons

55. Naresh Chand (Pw88) testified in court that accused Pradeep Sharma was son of his sister in law namely Inder. Accused Satya Prakash was son of his bua (brother's sister) and the latter is maternal uncle of accused Pradeep Sharma.

56. Onkar Sharma (Pw71) deposed in court that accused Sri Bhagwan is his son. Accused Ved Prakash Sharma is brother in law i.e sala of accused Sri Bhagwan and accused Ved Prakash @ Kalu is son of his daughter Prem.

57. Srinivasan (Pw205) an Executive Producer T.V Today deposed in court that in August 2002 he was working as Executive Producer Incharge of News gathering for TV Channel 'Aaj Tak'. He assigned one Rajesh Ahuja a reporter to cover proceeding of the court. The latter (Rajesh Ahuja) interviewed Onkar Sharma and submitted video recording of said interview dated 14.08.02. He saw

the recording at that time. Copy of same was requested by Delhi Police and he forwarded the copy of it with forwarding letter Ex.Pw205/1 bearing his signatures at point A. Video cassette Ex.Pw205/article-1 was played before this witness in court and he testified that Ex.Pw205/2 was true transcript of interview of said Onkar Sharma. The latter has admitted his good relations with accused R.K.Sharma.

58. Diwan Chand Sharma (Pw16) also stated in court that accused Sri Bhagwan was his real brother in law (sala) and accused Ved Prakash Sharma was brother in law of accused Sri Bhagwan while accused Ved Prakash Sharma was brother in law (sala) of Sri Bhagwan and Ved Prakash @ Kalu is son of his sister in law i.e Sali.

59. When this evidence was put to accused in their statements recorded u/s 313 Cr PC, accused Pradeep Sharma and Satya Prakash replied that they did not know, accused Ved Prakash @ Kalu, Ved Prakash Sharma and Sri Bhagwan admitted the same as true.

60. As per Id SPP, accused R.K.Sharma and accused Satya Prakash were having good relations with each other. Accused Satya Prakash was Surpanch of village gram

panchayat Unthloda between 1994 to February 2000 and during his tenure he invited accused R.K.Sharma who was Superintendent of Police to inaugurate some portion of Government school in their village. One Sajjan Pal, Block Development Officer, Jhajhar was examined in court as Pw43 and verified the fact that accused Satya Prakash was Surpanch of Gram Panchayat Village since December 1994 to February 2000. This witness brought the proceedings of gram panchayat. Photocopy of which (12 pages) are collectively marked as Ex.Pw43/2.

61. As per Mr.S.K.Saxena, all accused except Pradeep Sharma and R.K.Sharma were dealing in real estate and the latter was investing his money in benami transactions of immovable properties through agency of accused Sri Bhagwan.

62. It is disclosed by Diwan Chand (Pw16) that accused Sri Bhagwan used to work as property dealer. Similarly, as per Visheshwar Dubey (Pw17) accused Ved Prakash Sharma was also a property dealer. Moti Ram (Pw96) deposed on oath that he knew accused Ved Prakash Sharma, Satya Prakash, Sri Bhagwan and Ved Prakash @ Kalu

who were doing business of property and were dealing in the sale of plots in Saraswati enclave. When this evidence was put to accused during their statements recorded u/s 313 Cr PC, accused Sri Bhagwan, Ved Prakash @ Kalu, Ved Prakash Sharma denied the same stating as incorrect while it was replied by accused Satya Prakash that he did not know.

63. To establish that accused R.K.Sharma was investing his money in real estate through Sri Bhagwan, the prosecution examined one Abha Singh (Pw105) and her husband Devender Pal Singh (Pw106). It is admitted by both of these witnesses that some property was purchased by them in the name of Pw105 in Gurgaon. Said witness did not support the prosecution on the point that same was purchased through agency of accused Sri Bhagwan. As per them, accused Sri Bhagwan was not known to them.

**Relationship between accused R.K.Sharma and deceased
Shivani Bhatnagar.**

64. Though it is not in dispute that accused

R.K.Sharma is an IPS officer and remained posted in Prime Minister's office. This fact is verified from the statement of Surjeet Singh (Pw161) a clerk from the office of Director General of Police, Haryana who deposed that accused R.K.Sharma is an IPS officer of Haryana cadre. Pw161 brought service book of said accused in court. Attested copy of same is Ex.Pw161/1. Pw P.K.Roi (Pw162) disclosed before this court that said accused was posted as OSD in Prime Minister office from 02.07.97 to 02.04.98. Reply given by this witness in response two letters received from police are Ex.Pw162/3 and Ex.Pw162/4. Sh. Mukandam Nair (Pw47) stated on oath that he was P.A to Mr.R.K.Sharma, the accused from April 1998 till 30.06.2000, the latter being posted as Director,Vigilance in Air India during said period.

65. It is not again an issue that deceased Shivani Bhatnagar was a press reporter employed with Indian Express and she was covering PMO also apart from other offices. It is stated by the husband of deceased Sh.Rakesh Bhatnagar (Pw66) that in early 1997, she joined Indian Express as a Principal Correspondent and was covering Supreme Court of India, Law Ministry and Prime Minister's office. As per this witness, accused

R.K.Sharma was a prized source of information for the deceased and that she was meeting with accused R.K.Sharma. Pw66 remembered one incident when he dropped deceased at Santushti restaurant who had an appointment to meet accused R.K.Sharma there.

66. As per ld SPP, accused R.K.Sharma and deceased had developed intimate relationship with each other and this fact is clear from the fact that both of them were frequently talking with each other on telephone.

67. A telephone bearing no.560336 was installed in the name of accused Ravi Kant Sharma in H.no 19, sector 6, Punchkula, Haryana. This fact is established from statement of Sanjay Aggarwal (Pw151) Deputy General Manager, BSNL. The latter brought in court prints out of call details of this phone from 01.10.98 to 31.10.98 and 01.07.02 to 31.08.02. Namita Sekho, General Manager, BSNL (Pw32) also verified call details of same phone Ex.Pw32/3 and Ex.Pw32/4. Mukandam Nair (Pw47) remained P.A to accused R.K.Sharma from April 1998 to June 2000. As per him, direct line in the office of accused R.K.Sharma during those days was having no. 2029935 exchange no.2024142 extension no.6575 at the office of Air India and residential phone no. of this accused was 3630252 and

there was one extension no. 6811. It is again disclosed by Pw47 that when accused R.K.Sharma went to attend Vertical Interaction Course at Pune from 18.1.99 to 23.1.99 and he gave a contact no. as 9822028128.

68. Ganga Charoan, Commercial Officer MTNL (Pw37) deposed about phone no.2251959 installed in the name of Rakesh Bhatnagar at latter's residence. Sh. Rakesh Bhatnagar (Pw66) the husband of deceased Shivani had a telephone no. 2251959 installed at their residence i.e 200, Sehyog apartment, Mayur Vihar and telephone no. 2726729 installed at B-42, Navkunj apartments.

69. Lala Ram (Pw22) deposed about call details of phone no.2043366 having old no.2251959 installed at the residence of Rakesh Bhatnagar. Pw Satish Kumar (Pw14) father of deceased, deposed that he is residing at Ghaziabad and at present was phone number is 2796927. Previous number of their phone was 721157.

70. D.T.Sarode (Pw25) a Vigilance Officer, MTNL deposed about call details of various phone numbers. As per Ex.Pw25/1, STD calls were made from phone no.3630252 (installed at residence of accused R.K.Sharma) on phone no.2043366 on 30.06.98 as well as on phone no.2726729 on 18.8.98, 19.9.98, 14.10.98 (two times), 06.11.98 and

30.11.98 (installed at B-42, Navkunj apartments). As per same document i.e Ex.Pw25/1, STD calls were made from telephone no.3630252 mentioned above on telephone no. 721157 (stated to be installed at father's house of deceased at Ghaziabad) on 02.09.98 (two times). As per Ex.Pw25/2, STD calls were made from telephone no.2029935 (installed at the office of accused R.K.Sharma at Mumbai) on phone no.2043366 (installed at B-42, Navkunj apartments) on 16.6.98, 19.6.98 (two times), 26.6.98, 30.6.98 (two times), 13.7.98, 14.7.98 (two times), 15.7.98, 16.7.98, 03.8.98, 11.8.98 (two times), 13.8.98, 14.8.98 as well as on phone no.2726729 (installed at residence of deceased mentioned above) on 02.9.98, 09.09.98, 11.9.98, 17.9.98, 18.9.98 (two times), 02.10.98 (four times), 07.10.98, 13.10.98, 07.11.98, 27.11.98 (three times), 30.11.98 (two times), 08.12.98 (three times), 10.12.98 (two times), 15.12.98, 16.12.98, 20.12.98 (two times), 23.12.98, 01.01.99 (two times), 05.01.99 and 25.01.99 (two times). Again Ex.Pw25/2 finds mention that STD calls were made from telephone no.2029935 (installed at office of accused R.K.Sharma at Mumbai) to telephone no.5806644 (installed at Scala House, London) on 04.05.98, 28.5.98 (two calls). Further

same document describes STD calls were made from telephone no.2029935 stated above to telephone no.721157 (installed at parents house of deceased at Ghaziabad) on 09.11.98 (three times), 13.11.98 (three times), 17.11.98 (two times), 20.11.98, 26.11.98, 16.12.98 (two times), 18.12.98 (two times) and 31.12.98.

71. R.K.Singh (Pw139), Nodal Officer, Bharti Cellular Limited, deposed about print outs of mobile no. 9810003040 for period December 1997 to 14.01.98, collectively marked as Ex.Pw139/1. As per this document, said phone was allotted to Prime Minister's office. Calls were made at this phone from telephone no.2251959 (installed at flat no.200, Sehyog apartments, Mayur Vihar) on 17.12.97 (two calls), 18.12.97, 19.12.97 (two calls), 20.12.97 (six calls), 22.12.97 (two calls), 23.12.97, 26.12.97, 28.12.97 (five calls), 29.12.97 (six calls), 30.12.97 (three calls), 20.1.98, 26.1.98 (two calls), 23.1.98 (two calls), 24.1.98, 04.02.98, 05.02.98, 06.02.98, 08.02.98, 09.02.98, 10.02.98 (three calls), 23.02.98, 24.02.98 (two calls). As per same document i.e Ex.Pw139/1 calls were made from same phone number i.e 9810003040 to phone no.721157 (installed at parents house of deceased Shivani at Ghaziabad) on 18.01.98 and

19.01.98.

72. Sh.S.K.Thukral (Pw160) an Under Secretary, Ministry of Home Affairs, deposed on oath that he was deputed by Mr.K.M.Singh, Minister Coordination in High Commission of India at London regarding telephone calls made by Shivani Bhatnagar when latter stayed in flat no.7, Scala Apartments, London. He procured printouts of phone extension no.18 installed at said flat from 08.03.98 to 30.05.98. Same are Ex.Pw160/2 (consisting of 14 leaves). As per these printouts, following calls were made from that flat on telephone no.2024142 (installed at the office of accused R.K.Sharma at Mumbai) on 04.05.98 three calls, 11.5.98 two calls and one call on 12.5.98.

73. SI Dinesh Kumar (Pw198) deposed to have seized printouts of call details about phone no.6288652 on being produced by A.K.Agrawal, AVO, vide seizure memo Ex.Pw53/5. The printouts are Ex.Pw198/1 (collectively). As per this document, ISD calls were made from said phone i.e 6288652 (installed at the residence of accused R.K.Sharma) on phone no.5806644 of Scala House, London.

74. Pw31 Sh. S.S Arya, AGM (Commercial), GMTD, Ghaziabad brought and verified printouts of STD calls made from phone no.721157 for the period 16.04.98 to

12.10.99. Same were Ex.Pw31/7 (10 pages). As per this document, STD calls were made from this phone no. (721157) installed at the parents of deceased at Ghaziabad at phone no.3630252 (installed at the residence of accused R.K.Sharma) on 19.10.98 (three times), 20.10.98 (two times), 01.11.98, 15.11.98 (two times) and 22.12.98 (two times). This document further shows STD calls having made from said phone i.e 721157 at telephone no. 2029935 (installed at the office of R.K.Sharma at Mumbai) on 09.11.98 and 25.11.98.

75. Pw O.P. Banswal (Pw24), Area Manager, MTNL, Mayur Vihar, deposed about phone no.2726729 in the name of Rakesh Bhatnagar installed at B-42, Navkunj apartments and also that its initial number was 2202959 which was changed to 2251959 and again 2043366. As per this witness, printouts of STD calls of this phone for period 16.8.98 to 15.10.98 (three pages) were Ex.Pw24/3. As per this document, STD calls were made from said phone (2726729) of phone no.3630252 (installed at the residence of accused R.K.Sharma at Mumbai) on 10.9.98, 16.9.98 (two calls), 18.9.98, 19.9.98 (six calls), 20.9.98 (four calls) and 21.9.98. It is also deposed by this witness that STD call details of same phone number from 16.10.98

to 15.12.98 were Ex.Pw24/4, as per which, following calls were made from that phone no. 3630252 (installed at residence of accused R.K.Sharma at Mumbai) three calls on 30.11.98, seven calls on 05.12.98, four calls on 07.12.98, 11.12.98 and 12.12.98, two calls on 13.12.98 and two calls on 14.12.98. Same document i.e Ex.Pw24/4 describes STD calls from same phone number i.e 2726729 on telephone no. 2029935 (installed at office of accused R.K.Sharma at Mumbai) two calls on 04.12.98, two calls on 08.12.98 and 10.12.98.

76. Id SPP counted the telephone calls made between accused R.K.Sharma and Shivani. As per him, accused R.K.Sharma called Shivani from telephone no. 2029935 installed at his office at Mumbai 63 times from 28.5.98 to 05.01.99 and from telephone no.3630252 installed at his residence at Mumbai 10 times at phone no.721157 (Ghaziabad) and 2726729 (B-42, Navkunj apartment) and also 044171-5806644 (Scala House, London) while Shivani called accused R.K.Sharma at Mumbai (phone no.3630252, 2029935) from her residence phone no.2726729 45 times from 10.9.98 to 14.12.98 and also from phone no.721157 (installed at Ghaziabad at her parents house) to 3630252 and 2029935 at Mumbai 13 times from 02.09.98 to 20.12.98.

77. Sewanti (Pw26) a sister of deceased reminded before the court that deceased gave birth to a male child on 19.10.98 in Jassa Ram Hospital. She went there on the same day to attend her sister. The deceased asked her (Pw26) to call accused R.K.Sharma at Mumbai. Following the direction of her sister, she (Pw26) informed accused R.K.Sharma about birth of baby child. She also asked in the name of deceased to the accused to bring some electronic bottle stabilizer. It is also stated by this witness that she called accused R.K.Sharma thrice from Ghaziabad but could not contact said accused. She called him again on next following day and conveyed the message of deceased. She found that accused R.K.Sharma was sounding indifferent after hearing birth of child. She also noticed that Shivani was depressed and upset. After being persuaded by her (Pw26), it was disclosed by the deceased that accused R.K.Sharma was avoiding her and not responding her phone calls.

78. Sejal Shah (Pw83) deposed in court that in year 1998 she was selected by British Chevening Scholarship sponsored by British Foreign Office. Shivani was also selected for this course. Both of them were given one apartment during their stay in London in this course

which was scheduled from 08.03.98 till 07.06.98. As per this witness, she as well as the deceased had developed instant liking for each other. They were sharing intimate relationship. It is again explained by this witness that Shivani Bhatnagar used to receive phone calls from accused R.K.Sharma every day. She knew this fact as she used to pick up phones at times. Shivani Bhatnagar told her that accused R.K.Sharma was her close friend and she was in love with him. It is further elaborated by this witness that Shivani was very upset as accused R.K.Sharma started ignoring her. She used to cry a lot. She had told her that accused R.K.Sharma would be coming to London and stay with her. It was also told by deceased to her that accused R.K.Sharma was scared of his wife due to their relationship. As per her, Shivani used to receive long telephone calls from accused R.K.Sharma.

79. Visit of deceased Shivani to London after getting British Chevening Scholarship, is also established from the statement of Vivek Mansukhani (Pw48) who deposed in court that he worked with British Council from 1993 to March 2001 as scholarship Manager. It was a programme for young Indian Journalists in London, U.K. This course was for three months from early March 1998 till early May

1998. He was contacted by Delhi Police on 02.06.99 and again in October 1999. He submitted the record about said scholarship to the police. The application/letter in this regard is Ex.Pw48/1. Photocopies (four pages) containing photographs and details of that course and of participants including Shivani Bhatnagar were collectively Ex.Pw48/1A.

80. SI K.S Rawat (Pw27) brought the record of FRR0, New Delhi about arrival and departure of Shivani Bhatnagar. Information regarding passengers or their coming to India was recorded in FRR0 at its airport's computer unit. The information conveyed to the police in this regard is Ex.Pw27/2.

81. It is vehemently contended by Sh. S.P.Minocha advocate that none from Pw Sewanti and Sejal Shah is reliable. As both of them are sister and friend respectively of the deceased. It is argued that statement of Sevanti (Pw26) was recorded by police on 24.05.99 while she was accessible to the police since the day of incident. It is admitted by said witness i.e (Pw26) that she had been regularly going to Navkunj apartment with her parents. Her finger prints were obtained by the police on 26.1.99. She was teaching in Dehradoon Public

School, Ghaziabad from where she had taken leave till tehravi (13th day of death) of deceased Shivani was performed. She was going to house of deceased during first week of her death every morning and afternoon and used to return Ghaziabad in the evening. It was also admitted by same witness in her cross examination that police did not opt to examine her till 24.05.99 and she did not offer to depose on her own. As per ld counsel, there is no explanation as why statement of this witness was not recorded earlier and that her statement was manipulated as suited to the prosecution. In the same way, Ms. Sejal Shah (Pw83) was examined in this case by IO on 17.08.02. Though the fact that deceased was sharing a common room with Pw 83 was well within the knowledge of complainant. There is no reason as why statement of Pw83 was not recorded at the earliest opportunity. Even otherwise, as per ld counsel, testimony of none of these witnesses is admissible, same being hearsay and only exception about admissibility of hearsay evidence is that same is related to cause of death u/s 32 of Indian Evidence Act. ld counsel cited here as a case titled as **Gananth Patnaik Vs State of Orissa, 2002 II AD (SC) 139.**

82. It is contended by Ld SPP that though said statements are not admissible in view of section 27 of the Indian Evidence Act, same are admissible U/s 8 of same act being related to the conduct of accused R.K.Sharma and of deceased.

83. Section 8 of said act prescribes that:-

The conduct of any party or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

84. It is explained in illustration (j) attached to this section:-

The question is, whether A was ravished- The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstance under which, and the terms in which, the complaint was made, are relevant.

85. Keeping in view aforestated, I find depositions of said two witnesses about conduct and mental position of deceased and accused R.K.Sharma is admissible u/s 8 of the Indian Evidence Act.

86. Even if testimony of Pw26 and Pw83 are admissible

in view of said provision, there is no gainsaying that Pw26 is a real sister of deceased while Pw83 remained roommate and friend of latter. Statements of both of these witnesses were recorded after a considerable delay. In these circumstances, it becomes duty of court to be extra cautious in placing reliance upon the testimony of such witnesses. Speaking on the testimony of a partisan witness, it was held in case titled as **Ram Bali Vs State, 1988 Cri.L.J 764** that where independent corroboration is possible, the court should seek such corroboration to the deposition of the partisan witnesses. But where there is no independent corroboration available, the evidence of the partisan witnesses should be examined with caution and if reliable accepted.

87. Accused R.K.Sharma in his statement recorded u/s 313 Cr PC admitted that he as well as deceased were talking to each other on telephone. As per this accused, the deceased was his family friend.

88. Ld SPP urged that frequent calls between said accused and deceased show that there were very close relations between both of them. As per him, deceased wanted to marry accused at any cost and when latter

showed apathy, she got infuriated as same is clear from the depositions of Pw Sewanti and Sejjal Shah as discussed above.

MOTIVE

89. In the opinion of ld. Special Public Prosecutor, the deceased was infatuated with accused R.K. Sharma, both of them i.e. deceased as well as accused R.K. Sharma had undertaken to marry each other after divorcing their respective spouses and when deceased gave birth to a child, she tried to contact accused R.K. Sharma but the latter showed his apathy. All this annoyed the deceased and she thought of exposing misdeeds of accused in revenge. Espying all this, accused R.K. Sharma decided to eliminate the deceased.

90. Ld. defence counsels in their turn, claimed that it was not accused R.K. Sharma but the husband of deceased namely Rakesh Bhatnagar who wanted to get rid of her, when came to know about her intimacy with said accused. In this way, as per ld. counsels Rakesh Bhatnagar (PW66) was having stronger motive to eliminate the deceased than accused R.K.Sharma.

91. Motive is “that which moves or induce act in a certain way”. True, the evidence provable as a relevant fact, U/s 8 of the Indian Evidence Act but it is very difficult to have an evidence about motive as the same is a fact which is only within the knowledge of person doing that act and no other human being but party itself can know. About relevance of motive, it was held in case titled as **Bhagwan Swaroop Vs. State of Maharashtra 1965 (1) CrL. Law Journal 608 (615)**

Motive is not an ingredient of an offence. The proof of motive helps a court in coming to a conclusion where there is no direct evidence. Where there is a direct evidence for implicating an accused for an offence, absence of proof of motive is not material.

92. There can be no direct evidence about the motive. Same can be inferred from the circumstances of each case. Let we discuss the evidence on record to assess as to whether accused persons had any motive particularly accused R.K. Sharma to finish the deceased.

93. As per case of prosecution, accused R.K.Sharma wanted to get rid of Shivani Bhatnagar as the latter had threatened to expose him when he started avoiding the

former and dragged out of his promise to marry her. As per Ld SPP, accused R.K.Sharma had provided three secret documents from PMO office to the deceased and the latter wanted to publish some sensational article based on those documents. These documents were recovered from the house of deceased during investigation of the case. Same were :

- (a) Photocopy of documents 'Main Trends in 1997 in J & K' (Pw12/mark A).
- (b) Rising Dalit consciousness and caste violence - Remedial Measures (Pw12/mark B (two pages)).
- (c) Investigation report about case pertaining to controversies surrounding bank accounts of Ajay Singh, First Trust Corporation Limited, Saint Kits (Ex.Pw13/1).

94. B.S. Kanwar (Pw12) a Deputy Director, Intelligence Bureau Delhi stated in court that he was Deputy Director in I.B. As per this witness, same received a letter from Delhi Police Ex.Pw12/1 inquiring about documents Ex.Pw12/mark A and Ex.Pw12/mark B. He gave reply which is Ex.Pw12/2. As per Pw12, both of documents i.e Ex.Pw12/mark A and Ex.Pw12/mark B were classified as secret documents. Same were sent to specified addresses and were not meant for publication in public. D.N.Choudhary (Pw13) deposed about investigation of case relating to controversies about bank accounts of

Ajay Singh mentioned above by the CBI. As per this witness, seven copies of investigation report in that case were prepared out of which one copy was delivered to Sh. V.C Pandey, Cabinet Secretary and other copies were delivered in Prime Minister office in May 1992 and other copies were available with CBI.

95. As per Mr. Saxena, neither the deceased nor any of his family members could have access of these documents. Same were provided by accused as copies of same were available in his office.

96. It is contended that aforesaid documents were recovered and seized from the house of complainant. The plea that said documents were provided by accused R.K.Sharma is strenuously opposed by Sh.S.P.Minocha advocate. It is pointed out that as per Pw13, copies of investigation report about bank accounts of Ajay Singh were delivered in PM office in May 1992. Accused R.K.Sharma was not posted in that office at that time. Even otherwise, it is disclosed by same witness i.e Pw13 that seven copies of that record were prepared, out of which one was delivered to Cabinet Secretary and some copies were retained in CBI office. Similarly, it is also admitted by Pw12 that he had no knowledge whether copies

of those documents (Ex.Pw12/mark A and Ex.Pw12/mark B) were sent to anywhere else or to any other person. Pw12 could not tell as how many copies of U.O. were prepared and it is admitted by him that these notes were circulated to various officers of his department.

97. It was also admitted by said witness that those notes were circulated to various officers of his department and personal staff of those officers to whom secret documents were circulated, had access to those documents. In the opinion of Id counsel, when said documents even if, classified were circulated and were available to so many persons, it cannot be concluded that it was accused R.K.Sharma who had supplied the same to the deceased. Even otherwise, husband of deceased i.e Rakesh Bhatnagar was also a press reporter. Same may have been procured by him from somewhere and handed over to the police. Sh.Minocha again pointed out that during investigation a Vest (baniyan) and a towel which were blood stained, were recovered from the bathroom of complainant. Both of these were wet. It is alleged that both of said cloths were of complainant himself and he tried to remove blood stains by washing the same. As per Id counsel, it was complainant who got Shivani murdered.

98. There remains no doubt that aforementioned three documents were accessible to several persons apart from accused R.K.Sharma. None claimed to have seen said accused delivering those documents to the deceased. One document was sent to Prime Minister office in May 1992 i.e several years before accused R.K.Sharma was posted there. In these circumstances, I agree with Id defence counsel stating that prosecution has failed to establish that it was accused R.K.Sharma who had supplied these documents to the deceased.

99. So far as the plea of Id defence counsels that complainant had a motive stronger than accused R.K.Sharma to kill Shivani, is concerned, I am unable to agree with Id counsel. No where it is established that it was within the knowledge of complainant that his wife i.e Shivani Bhatnagar was having intimate relations what to say of illicit with accused R.K.Sharma. Dr.Bibha Rani (Pw206) deposed to have conducted polygraphic test upon Pw Rakesh Bhatnagar on 20.05.99, 21.05.99 and 24.05.99, apart from other persons. As per Dr.Bibha, no deception was observed in the responses of Rakesh Bhatnagar, Sewanti and B.S Bhatnagar. Her report in this regard is Ex.Pw206/1. After examining complainant, Pw206 observed that latter was not

wanting to harass R.K.Sharma because of illicit relationship with Shivani. He never fought with the deceased about her character and her illicit relationship with accused R.K.Sharma.

100. Though polygraphic test is a weak evidence, the courts have realized the importance of scientific investigation including polygraphic test. The report about such a test conducted by an expert cannot be rejected like a balderdash.

101. It is not proved on the file that Baniyan and Towel found in the house of complainant were belonging to the latter or that the stains on the same were of blood.

102. Accused R.K.Sharma and deceased were having lengthy chatting on phone in even and odd hours of the day. All this hints at more than mere friendship, a curvet in personal relationship. Though it is claimed that the deceased was his 'family friend', nothing is adduced on record to show that they even visited each others house in the company of their other family members or talked personally even on phones to the spouses of their counter parts. Sewanti has depicted the deceased as distraught and crestfallen when she noted an antipathy on

the part of this friend i.e R.K.Sharma. Sewanti (Pw26) also reminded a threat hurled by contrite deceased to expose malfeasance of said accused. In such a case, there is no surprise that accused R.K.Sharma fostered grudge against the deceased or wanted to finish her.

103. One of ld defence counsels while others nodding in congruence called the deceased as crazy about her carrier. As per him, the latter was frequenting officers of high ranks and the big wigs affording an opportunity to them to take a leap. As per Mr. counsel, she wanted to spur her carrier at any cost and this was the reason that she opted to marry a person i.e Rakesh Bhatnagar who was 10-15 years older than her.

104. I think it was personal choice of deceased as whom she married. None, particularly accused had any right to challenge her personal liberty. Perhaps we have not come out of this 'illusive superiority' of male chauvinism. Why a lonely girl is taken as an easy prey, irrespective of her own whims and response. I think such comments tend to debauch very womanhood. Such an eerie plea advanced by a counsel is nothing but a pettifoggery played in the name of defending his client, under the

coverture of impunity. Same is highly deprecable as an egregious abuse of privilege bestowed by law.

105. Sh.D.B.Goswami advocate contends that no motive can be imputed to his client i.e Pradeep Sharma. As per prosecution, accused Pradeep Sharma was given a sum of Rs. 3 lacs to kill deceased. He was also promised to get a case against him dismissed and same was to be reemployed with Haryana Urban Development Authority (HUDA).

106. There is not an iota of evidence that any amount like Rs.3 lacs was paid to accused Pradeep Sharma. As per ld counsel, the latter did not sought his reappointment in HUDA from where he was relieved and in the same way even if some criminal case was pending against said accused. Accused R.K.Sharma had no authority to get the same dismissed.

107. I find weight in the submission of Ld counsel. None from said facts is established on record. At the same time, it has well been established that motive is not a necessary ingredient of an offence. Absence of same is not enough to extenuate the crime. All it depends whether prosecution has been able to prove a case against

the same by other evidence.

Conspiracy among accused persons

108. Section 120-A of IPC defines criminal conspiracy as:-

When two or more persons agree to do, or cause to be done,-

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

109. As per section 43 of IPC, an act would be illegal if it is an offence or if it is prohibited by law. Their Lordships in case **State (NCT of Delhi) Vs Navjot Sandhu (SUPRA)** referred several cases decided by the apex court while elaborating conspiracy. Ratio of some such cases is recapitulated as:-

Major E.G. Barsay Vs State of Bombay (1962) 2 SCR 195

The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts.

Kehar Singh Vs State (Delhi Admn.) (1988) 3 SCC 609

The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se, enough.

State Vs Nalini 1999 SCC (Cri) 691

The meeting of the minds of two or more persons for doing an illegal act or an act by illegal means is a *sine qua non* of the criminal conspiracy.

110. There can hardly be any evidence as to what was agreed among the conspirators. As it was held by the Supreme Court of India in case **Mohd. Usman Mohd. Hussain Maniyar Vs State of Maharashtra (1981) 2 SCC 443**, the agreement amongst the conspirators can be inferred by necessary implication.

111. Dr. Hari Singh Gour in his 'Commentary on Penal Law of India' (Vol-2, 11th Edn.) has summed up the conspiracy in following words:-

In order to constitute a single general conspiracy there must be a common design. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in a general conspiracy though he may not know all its secrets or the means by which the common purpose is to be accomplished. The evil scheme may be promoted by a few, some may drop out and some may join at a later stage, but the conspiracy continues until it is broken up. The conspiracy may develop in successive stages. There may be general plan to accomplish the common design by such means as may from time to time be found expedient.

112. May I peep into interacts among accused of this case to find out whether there existed any conspiracy amongst them to eliminate the deceased.

113. It is alleged that design to kill Shivani was conceived in the mind of accused R.K.Sharma, who shared the same with co-accused except accused Pradeep Sharma. The latters joined accused Pradeep Sharma in the plot. He was not known even to accused R.K.Sharma. As discussed above, for the purpose of conspiracy it is not necessary that all of offenders be known to each other or all of them may not be knowing the secrets of conspiracy or the means by which common purpose is to be accomplished, some

may drop out or joined at latter stage, conspiracy continues till it is broken.

114. Trite it to say that there is no person examined in this case who could have claimed to have witnessed accused persons intriguing. The prosecution strives to establish the conspiracy amongst the accused by proving their meeting in Ashoka Hotel and various conversations of them on phones prior to as well as post hoc of the crime.

115. It is contended that on being called by accused R.K.Sharma, accused Sri Bhagwan accompanied by co-accused came to Ashoka Hotel in his car bearing no. HR-26G-9800. Accused Satya Prakash, Sri Bhagwan and Pradeep went Navkunj apartments in the same car. Accused Satya Prakash is also stated to have taken co-accused Pradeep in the same car to Navkunj apartments on Shivani's day of doom. This fact is vehemently controverted by ld defence counsel. It is submitted that accused Sri Bhagwan had no concern with said car.

116. A registration clerk from SDM Office, Gurgaon namely Ram Singh Hans (Pw65) has been examined by prosecution. As per record of said office, a Maruti esteem car bearing no. HR-26G-9800 was registered in the

name of Dayanand Katariya. Pw65 identified signatures of Mr.Pawariya, the then SDM (Ex.Pw65/1). Registration certificate of this car is Ex.Pw65/2. As stated by Pw65, said car was registered in the name of Dayanand Katariya on 27.10.98 and was transferred in the name of one Maan Singh on 22.9.2000, on the basis of forms no.29,30 and an affidavit. These papers are marked Pw65/6 to Pw65/13. R.C in the of Maan Singh is Ex.Pw64/2 signed by SDM R.S Khan.

117. Pw65 further told that said car was again transferred in the name of Sabina Bhatia on 19.01.01 from Maan Singh on the basis of form no. 29,30 and affidavit which are Ex.Pw64/3 to Ex.Pw64/6. Registration Certificate in the name of Sabina Bhatia is Ex.Pw64/7. From latter, it was registered in the name of one Mr. Venkataraman on the basis of similar documents i.e form no.29, 30 and affidavit, which are Ex.Pw65/7 and Ex.Pw65/15.

118. Dayanand Katariya is examined as Pw69 and verified having purchased a car bearing no HR-26G-9800 in his name from Paasco Showroom, Gurgaon in year 1998 and he sold the same to Maan Singh in year 2000. On being cross examined by Ld SPP, Pw69 declined the suggestion

that he knew accused Sri Bhagwan and Ved Prakash. Maan Singh (Pw75) deposed to have purchased car bearing no. HR-26G-9800 from Ravinder Shoukin through Krishan Kumar Sharma a commission agent. The original registration certificate along with form no.29,30 and an affidavit were handed over to him by Mr. Ravinder Shoukin. This witness identified signatures of latter i.e Ravinder Shoukin on Ex.Pw69/2 and Ex.Pw69/3 and two forms of no.13 Ex.Pw69/4 and Ex.Pw69/5 which he received from Mr Ravinder Shoukin. Affidavit of latter was also received by him which is Ex.Pw69/6.

119. Ravinder Shokin (Pw77) denied to be knowing any person in the name of Krishan Kumar owner / proprietor of K.K.Motors. On being suggested by Ld SPP, it is denied by this witness that any such Krishan Kumar had come to his shop on 22.08.00 or told him that an esteem car of 1998 modal owned by Sh. Sri Bhagwan was available for sale or that he inspected that car or the deal was struck with said Sri Bhagwan for aforementioned car in sum of Rs.2,95,000/-.

120. It is urged by Ld SPP that when a vehicle is sold through an agent, the practice in vogue is that car

dealers get form no.29 and 30 which are used to get the ownership of a vehicle transferred, signed from the intended seller alongwith an affidavit. They (dealers) sell such vehicle to the intended purchaser on the basis of those documents filling his name on their own. Very often, it is not known to the seller as in whose name registration certificate of said vehicle will be transferred. Similarly it is not necessary that buyer meets seller face to face. Sometimes vehicle changes several hands, without any change in registration certificate. Same happened in this case. Car HR-26G-9800 was owned by accused Sri Bhagwan. He first purchased and than sold said car on the basis of form no. 29 and 30 and delivery receipt etc. His name was not entered in the registration card before the Transport Authority concerned. Mr. Saxena harped of a delivery receipt Ex.Pw77/2A signed in the name of accused Sri Bhagwan who is shown to have delivered car HR-26G-9800 against full and final payment. Though in this document one Ravinder Shoukin is shown to have taken delivery of said vehicle from one Dayanand Katariya.

121. Ravinder Shoukin (Pw77) also admitted his signatures at point A. Though claimed that it was blank

when it was taken by police from him. On being cross examined by Id counsel for accused Sri Bhagwan, it was admitted by Pw77 that said document Ex.Pw77/2A was got filled from him by the police on 20.08.02 and he had signed said document at the behest of police. When this fact was put to the accused Sri Bhagwan in his statement recorded u/s 313 Cr PC. He described the evidence of Ravinder Shokin and document Ex.Pw77/2A as false. Accused showed his ignorance about owners of this car at different times.

122. In his disclosure statement accused Sri Bhagwan admitted to have gone Ashoka Hotel to meet co-accused R.K.Sharma in said car. IO Inspector Inder Singh (Pw203) deposed that he had directed SI Sajjan Singh to seize car bearing no. HR-26G-9800 and the latter after seizing the same deposited it in malkhana of PS Mandawli on 24.10.02. Receipt signed by SI Sajjan Singh in this regard is Ex.Pw203/22. SI Sajjan Singh (Pw186) stated to have gone Hyderabad on 16.10.02, to serve a notice upon Mr.Girish Venkataraman the owner of said car and he seized said car along with title deeds of same on being produced by said Girish Venkataraman on 17.10.02.

123. SI Satish (Pw68) stated on oath that on 19.8.98

on being deputed by ACP Harish Joshi, he went to hotel Ashoka, New Delhi and seized counterfoils of free parking of said hotel. He went there and met Surender Singh, Manager Vigilance. The latter handed over to him 20 counterfoil booklets dated 13.01.99. Same were seized by him vide seizure memo Ex.Pw60/1. On coupon no.3014 (marked Pw60/2A) the number of vehicle is mentioned as '9800'. Surender Singh (Pw60) deposed that he was Manager Vigilance and Security in Ashoka Hotel and verified that on 19.8.02 police had seized said counterfoils of the coupons regarding car parking of Ashoka Hotel dated 13.01.99. Seizure memo in this regard is Ex.Pw60/1. As per this witness, free parking coupons were only for cars.

124. It is contended by Sh. S.P.Minocha advocate that from this number it cannot be presumed that it was car HR-26G-9800. In the opinion of Ld counsel, there may be at least 3000-4000 vehicles bearing no. '9800'.

125. It is clear that title deeds i.e registration card of said car never remained in the name of accused Sri Bhagwan. No explanation is given by accused about his signatures on Ex.Pw77/2A i.e delivery receipt about said car. In the same way, Ravinder Shoukin a dealer in

vehicles admits the execution of said receipt by identifying his signature. Though he claimed that police made him to put his signatures on said document. This is a 'quick fix' reply given by a witness when unable to explain. It is case of none that said witness complained to any public authority about taking his signatures by the police under compulsion. No weightage can be given to such refusal which is apparently false. The fact of execution of said documents was well within the knowledge of accused Sri Bhagwan and no explanation is given by him in this regard. In such a circumstance, an adverse inference can be drawn against him. I find support from a case titled as **State of Rajasthan Vs Parthu 2007 IX AD (SC) 393**. In this case the respondent/accused was tried for killing his own wife. It was held that 'if the deceased and respondent were together in their house at the time when incident took place, which was about at 10 o'clock in night, it was for the respondent to show as to how the death of deceased took place'. In the absence of sufficient or cogent explanation, the court would be entitled to consider the same as a circumstance against the accused.

126. No doubt, merely from number '9800', it cannot be inferred that it was same car i.e car bearing no. HR-26G-9800. But keeping in view the fact that accused Sri Bhagwan in his disclosure statement admitted to have gone Ashoka Hotel on that day i.e 13.01.99 to meet co-accused R.K.Sharma in car bearing no. HR-26G-9800 and on his disclosure, the fact that some car bearing no. 9800 was found parked in Ashoka Hotel and that such a car was recovered on that information, are discovered. This fact becomes admissible in view of section 27 of Indian Evidence Act.

127. May I reiterate conspiracy in this case is alleged to have hatched and carried forward on phones. Ld SPP gave details of telephonic conversation among the accused as follows:-

Details of call made from the landline of Sri Bhagwan bearing no. 332266 installed at his residence at Gurgaon to the landline telephone no. 3630252 installed at the residence of accused / R. K. Sharma at Mumbai.

Ref. : Document NO. 99 of charge sheet (Exh. Pw 52/I-E).

<u>SL.NO.</u>	<u>DATE</u>	<u>TIME</u>	<u>DURATION</u> (Seconds)	<u>TELEPHONE NO.</u>
1.		04.08.1998	07.45	118
		3630252		
2.		09.08.1998	07.28	233
	- do -			
3.		12.08.1998	08.02	068

4.	- do -	13.08.1998	06.55	013	
5.	- do -	20.08.1998	07.33	072	
6.	- do -	02.09.1998	06.45	120	
7.	- do -	02.09.1998	22.21	416	
8.	- do -	04.09.1998	09.27	017	
9.	- do -	07.09.1998	21.26	022	
10.	- do -	07.09.1998	22.00	074	
11.	- do -	16.09.1998	08.48	065	
12.	- do -	04.10.1998	07.35	015	
13.	- do -	04.10.1998	09.34	217	
14.	- do -	03.11.1998	08.01	020	-
15.	- do -	13.11.1998	07.11	131	-
16.	- do -	21.11.1998	07.26	139	-
17.	- do -	25.11.1998	21.46	038	-
18.	- do -	09.12.1998	09.02	054	-
19.	- do -	09.12.1998	09.14	052	-
20.	- do -	10.12.1998	08.09	018	-
21.	- do -	11.12.1998	07.56	095	-
22.	- do -	12.12.1998	09.35	028	-
23.	- do -	14.12.1998	07.43	018	-
24.	- do -	14.12.1998	07.45	013	-
25.	- do -	14.12.1998	08.39	031	-

26.		15.12.1998	08.12	130	-
do -					
27.		10.01.1999	08.34	088	-
do -					
28.		10.01.1999	10.51	102	-
do -					
29.	16.01.1999	10.04	078	-	do -
30.		28.01.1999	08.07	077	-
do -					
31.		02.05.1999	06.34	018	-
do -					
32.		02.05.1999	06.45	045	-
do -					

Details of call made to Sri Bhagwan's landline no. 332266 installed at his residence at Gurgaon from telephone no, 3630252 installed at the residence of accused / R.K. Sharma at Mumbai.

REF. : DOCUMENT NO. 87 OF CHARGE SHEET (EXH. PW25/1)

SL.NO.	DATE	TIME	DURATION	TELEPHONE
	SECONDS	No.		
1.	26.07.1998	09.46	037	332266
2.	11.08.1998	07.33	014	- DO -
3.	11.08.1998	21.45	070	- DO -
4.	04.09.1998	08.45	015	- DO -
5.	11.10.1998	20.52	013	- DO -
6.	18.10.1998	08.04	114	- DO -
7.	18.10.1998	09.09	015	- DO -
8.	08.11.1998	09.53	104	- DO -
9.	28.11.1998	09.14	003	- DO -
10.	04.01.1999	08.52	078	- DO -
11.	10.01.1999	10.04	129	- DO -
12.	10.01.1999	10.08	017	- DO -
13.	27.01.1999	19.54	017	- DO -
14.	28.01.1999	08.00	028	- DO -

Details of call made to Sri Bhagwan's landline no. 332266 installed at his residence at Gurgaon from telephone no.

2029935 installed at the office of accused / R.K.Sharma at Mumbai.

REF. : DOCUMENT NO. 87 OF CHARGE SHEET (EXH. PW25/2)

SL.NO.	DATE	TIME	DURATION
TELEPHONE	SECONDS	No.	
1.	04.09.1998	10.03	008
2.	04.09.1998	10.04	004
	- DO -		
3.	04.09.1998	10.47	138
	- DO -		
4.	10.12.1998	15.02	002
	- DO -		
5.	10.12.1998	16.14	003
	- DO -		
6.	04.01.1999	11.13	080
	- DO -		
7.	07.01.1999	10.14	191
	- DO -		
8.	08.01.1999	10.08	010
	- DO -		
9.	12.03.1999	12.54	015
	- DO -		
10.	21.04.1999	10.05	042
	- DO -		

Details of call made to the landline of Sri Bhagwan's brother Kishori bearing no. 301166 installed at his residence at Gurgaon from telephone no. 3630252 installed at the residence of accused / R.K. Sharma at Mumbai.

REF : DOCUMENT NO. 87 OF CHARGE SHEET (EXH. PW25/1).

SL.NO.	DATE	TIME	DURATION	TELEPHONE
	SECONDS	No.		
1.	30.06.1998	21.37	035	
	301166			
2.	01.07.1998	21.48	009	
	- DO -			

3.	01.07.1998 - DO -	21.50	031
4.	26.07.1998 - DO -	09.46	006
5.	14.08.1998 - DO -	20.20	011
6.	08.11.1998 - DO -	09.40	006
7.	08.11.1998 - DO -	09.45	004
8.	28.11.1998 - DO -	09.14	
9.	28.11.1998 - DO -	09.17	018
10.	28.11.1998 - DO -	09.20	089
11.	03.01.1999 - DO -	10.58	017

Details of call made to the landline of Sri Bhagwan's brother Kishori bearing no. 301166 installed at his residence at Gurgaon from telephone no. 2029935 installed at the office of accused / R.K. Sharma at Mumbai.

REF : DOCUMENT NO. 87 OF CHARGE SHEET (EXH. PW25/2).

SL.NO.	DATE	TIME	DURATION	TELEPHONE
		SECONDS	No.	
1.	02.07.1998	10.43	011	301166
2.	04.01.1999	11.12		-
DO -				

Details of call made on the mobile no. 9811008825 attributed to Sri Bhagwan to the mobile no. 9810067890 of Kunal Lalani (pw-108) no. 9810020829 attributed to Pragati d/o R.K.Sharma landline no. 255050 and 254040 of Dr. Pasricha installed at Karnal and to the landline of Shivani

bearing no. 2726729

REF : DOCUMENT NO. 103 OF CHARGE SHEET (EXH. PW135/28).

SL.NO.	DATE	TIME	DURATION	TELEPHONE
	SECONDS		No.	
1.	13.01.1999 255050	13.25	005	
2.	13.01.1999 254040	13.26	060	
3.	13.01.1999 2726729	14.13	039	
4.	13.01.1999 9810067890	14.28	051	
5.	13.01.1999 9810020829	14.30	041	
6.	21.01.1999 2726729	1539		001
7.	23.01.1999 2726729	13.17	009	

Details of call made from the mobile no. 9811008825 attributed to Sri Bhagwan to the landline no. belonging to Pradeep 5018092 (residence), 5011013 (ET&T Computer center) and 5653789, 5653889 (property dealer's office where Pradeep was sitting during that time) all installed at Delhi.

REF : DOCUMENT NO. 103 OF CHARGE SHEET (EXH. PW135/28).

SL.NO.	DATE	TIME	DURATION	TELEPHONE
	SECONDS		No.	
1.	21.01.1999 5011013	00.00	027	
2.	21.01.1999 - DO -	00.00	030	
3.	21.01.1999 - DO -	00.00	067	
4.	21.01.1999	00.00	024	

	- DO -		
5.	21.01.1999	00.00	085
	- DO -		
6.	21.01.1999	12.22.	039
	5011013		
7.	21.01.1999	12.23	013
	5653789		
8.	21.01.1999	12.25	013
	5653889		
9.	21.01.1999	15.41	008
	5653789		
10.	21.01.1999	15.42	011
	5653889		
11.	21.01.1999	16.14	012
	5018092		
12.	21.01.1999	16.17	019
	5018092		
13.	23.01.1999	11.55	151
	5018092		
14.	23.01.1999	11.59	057
	5018092		

Details of call received at the mobile no. 9811008825 attributed to Sri Bhagwan from the landline no. belonging to Pradeep 5018092 (residence), 5011013 (ET&T computer center) and 5653889 (property dealer's office where Pradeep was sitting during that time) all installed at Delhi.

REF : DOCUMENT NO. 103 OF CHARGE SHEET (EXH. PW135/28).

SL.NO.	DATE	TIME	DURATION	TELEPHONE
	SECOND	No.		
1.	21.01.1999	21.25	274	
	5018092			
2.	23.01.1999	13.35	130	
	- DO -			

Details of call made from the mobile no. 9811008825 attributed to Sri Bhagwan at the residence landline no.

(330292) of co-accused Ved Prakash Sharma
Gurgaon.

REF : DOCUMENT NO. 103 OF CHARGE SHEET (EXH. PW135/28).

SL.NO.	DATE	TIME	DURATION	TELEPHONE
	SECONDS		No.	
1.	06.01.1999 330292	00.00	014	
2.	10.01.1999 - DO -	12.25	058	
3.	11.01.1999 - DO -	11.17	040	
4.	16.01.1999 - DO -	17.26	036	
5.	21.01.1999 - DO -	13.26	015	
6.	22.01.1999 - DO -	12.14	014	

Details of call received at the mobile no. 9811008825
attributed to Sri Bhagwan from the residence landline no.
(330292) of co-accused Ved Prakash Sharma
Gurgaon.

REF : DOCUMENT NO. 103 OF CHARGE SHEET (EXH. PW135/28).

SL.NO.	DATE	TIME	DURATION	TELEPHONE
	SECONDS		No.	
1.	03.01.1999 330292	10.15	019	
2.	06.01.1999 - DO -	08.58	027	
3.	07.01.1999 - DO -	00.00	049	
4.	16.01.1999 - DO -	14.41	055	
5.	23.01.1999 - DO -	00.00	008	
6.	23.01.1999 - DO -	16.40	017	

Details of call made from the mobile no. 9811008825 attributed to Sri Bhagwan at the residence (3630252 / office (2029935) landline no. of R.K.Sharma installed at Mumbai and Kukreja's mobile no. 9822028128

REF : DOCUMENT NO. 103 OF CHARGE SHEET (EXH. PW135/28).

SL.NO.	DATE	TIME	DURATION	TELEPHONE
	SECONDS		No.	
1.	04.01.1999	08.59	015	
	3630252			
2.	04.01.1999	10.30	024	
	- DO -			
3.	05.01.1999	08.17	062	
	- DO -			
4.	06.01.1999	00.00	111	
	- DO -			
5.	10.01.1999	11.54	061	
	- DO -			
6.	16.01.1999	17.30	100	
	- DO -			
7.	17.01.1999	12.34	048	
	- DO -			
8.	21.01.1999	21.35	016	
	- DO -			
9.	21.01.1999	22.29	019	
	- DO -			
10.	22.01.1999	15.47	021	
	- DO -			
11.	22.01.1999	16.20	124	
	9822028128			

Details of call received at the mobile no. 9811008825 attributed to Sri Bhagwan from the residence (3630252 / office (2029935) landline no. of R.K.Sharma installed at Mumbai and Kukreja's mobile no. 9822028128

REF : DOCUMENT NO. 103 OF CHARGE SHEET (EXH. PW135/28).

SL.NO.	DATE	TIME	DURATION	TELEPHONE
	SECONDS		No.	
1.	11.01.1999 2029935	10.54	090	
2.	11.01.1999 - DO -	14.39	071	
3.	15.01.1999 - DO -	12.24	204	
4.	16.01.1999 3630252	19.37	024	

Details of call made from mobile no. 9811008825 attributed to Sri Bhagwan to the landline no. 332266 of Sri Bhagwan installed at his residence at Gurgaon.

REF : DOCUMENT NO. 103 OF CHARGE SHEET (EXH. PW135/28).

SL. NO.	DATE	TIME	DURATION	TELEPHONE
	SECOND		No.	
1.	03.01.1999 332266	08.36	012	
2.	03.01.1999 - DO -	00.00	009	
3.	03.01.1999 - DO -	15.13	014	
4.	04.01.1999 - DO -	00.00	003	
5.	05.01.1999 - DO -	15.26	011	
6.	05.01.1999 - DO -	20.39	188	
7.	08.01.1999 - DO -	00.00	018	
8.	08.01.1999 - DO -	00.00	016	
9.	08.01.1999 - DO -	19.39	034	
10.	10.01.1999 - DO -	12.28	026	

11.	12.01.1999	00.00	050
	- DO -		
12.	12.01.1999	21.20	022
	- DO -		
13.	14.01.1999	00.00	011
	- DO -		
14.	14.01.1999	00.00	041
	- DO -		
15.	15.01.1999	16.15	031
	- DO -		
16.	21.01.1999	13.22	031
	- DO -		
17.	22.01.1999	19.59	042
	- DO -		
18.	23.01.1999	15.50	005
	- DO -		
19.	23.01.1999	19.46	109
	- DO -		

Details of call received at the mobile no. 9811008825 attributed to Sri Bhagwan from his landline no. 332266 installed at his residence at Gurgaon.

REF : DOCUMENT NO. 103 OF CHARGE SHEET (EXH. PW135/28).

SL.NO.	DATE	TIME	DURATION	TELEPHONE
	SECONDS		No.	
1.	07.01.1999	20.21	009	
	332266			
2.	08.01.1999	00.00	029	
	- DO -			
3.	08.01.1999	21.31	019	
	- DO -			
4.	11.01.1999	15.49	006	
	- DO -			
5.	15.01.1999	18.53	040	
	- DO -			
6.	16.01.1999	17.24	050	
	- DO -			
7.	21.01.1999	10.32	016	
	- DO -			
8.	21.01.1999	21.35	016	
	- DO -			

9.	21.01.1999	22.39	019
	- DO -		
10.	22.01.1999	15.47	021
	- DO -		

128. Telephone number belonging to accused R.K.Sharma have already been discussed. D.T Sarode (Pw25) a vigilance officer, MTNL deposed about printouts of telephone calls from phone no.3630252 from 15.12.97 to 31.12.99 which were Ex.Pw25/1, telephone no.2029935 from 16.02.98 to 15.12.99 Ex.Pw25/2 and of phone no.2025727 from period 16.1.98 to 14.4.99 which are Ex.Pw25/3.

129. As per Chander Mohan Gupta, Commercial Officer, BSNL, Gurgaon (Pw45) a telephone bearing no.6332266 was installed at 603, Om Nagar, Gurgaon since 06.05.95 in the name of Sri Bhagwan Sharma (accused) and telephone no.6301166 was initially in the name of Manju Devi but on later's application same was shifted to H. no.742/21, Om Nagar, Gurgaon in the name of Kishori Lal Sharma. This fact is also verified from the statement of Onkar Singh, father of accused, who was examined as Pw71 as well as Mange Ram, a Divisional Engineer Telephone Exchange, Gurgaon (Pw28). Accused Sri Bhagwan in his statement u/s 313 Cr PC admitted the fact that both of said telephones

were installed at his house and at house of his brother Kishori.

130. Brijesh Singh (Pw59) is brother of Dinesh Pehlwaan who is stated to be running ET & T Computer Education Training Centre, at Najafgarh. As per this witness, there is a telephone bearing no. 5011013 installed in their institute. As per case of prosecution, said phone was used by accused Pradeep Sharma but the latter refuted this fact. It is also deposed by Pw59 that he did not know if several calls were made from said phone (no.5011013) to a mobile phone no. 9811008825 in the month of January 1999.

131. IO of the case Inspector Inder Singh (Pw203) deposed to have seized telephone bills Ex.Pw89/1 and Ex.89/2 regarding telephone no. 86404 installed in the name of Ratan Lal, father of accused Satya Prakash. Seizure memo in this regard is Ex.Pw89/3. Hawa Singh (Pw55), Junior Telecom Officer, BSNL, Jhajjar deposed that after checking the report in their office, he found telephone no.86404as STD/PCO in village Utlodha. This witness also verified telephone no. 86404 installed in that village in the name of Gram Panchyat in house of Ratan Singh, Ex-Surpunch of village. Reply given by him

to the police is Ex.Pw55/1 and Ex.Pw55/2. Surender Prakash (Pw89) is brother of accused Satya Prakash and verified having submitted a bill pertaining to telephone no.86404 which is PCO installed in their house. The bills are Ex.Pw89/1 and Ex.Pw89/2.

132. Inspector Inder Singh (Pw203) stated to have inquired about telephone no. 330292. As per this witness, he came to know that said telephone was installed at the residence of accused Ved Prakash Sharma. As per Chander Mohan Gupta (Pw45) a commercial officer of BSNL, Gurgaon, phone 330292 was initially allotted in the name of one Ashok Kumar Misra but it was transferred to H. no. 2110, Sector 4, Urban Estate, Gurgaon w.e.f 03.05.95. As per ld SPP, this house was belonging to accused Ved Prakash Sharma but when this fact was put to said accused during his statement recorded u/s 313 Cr PC, same was denied by accused. It is contended by latter that his house is bearing no '2110 A' and not '2110'. As per him, both of these are separate houses.

133. HC Chandraballabh (Pw100) stated to have remained posted as an operator in year 1998-99 in telephone exchange of Superintendent of Police, Gurgaon. It is testified by this witness that said telephone exchange

was having numbers 330700,320221 and 321777 in year 2002 and in the opinion of this witness same were telephone numbers in year 1999 also. Ct.Dev Charan (Pw102) also verified that telephone exchange in S.P.Office, Gurgaon was having STD facility and said telephone exchange was having no.320221,321777,320100 with phone no.330700.

134. Accused R.K.Sharma attended Vertical Interaction course in CIRT, Pune. As per case of prosecution, during this period, he used a mobile phone no.9822028128 belonging to Suresh Kukreja (Pw51) a friend of said accused. Pw51 admitted the fact that said telephone number was allotted in his name and on being sought by police, he handed over printouts of said phone from 18.01.99 to 23.01.99. Same are Ex.Pw66/2. As per this witness, he brought out call details of said phone from 18.1.99 to 23.1.99 on his own from computer. Same are Ex.Pw62/5 (running in four pages). Following is the detail of calls made from said phone to telephone no.9911008825. The call details Ex.Pw62/5 are also proved from the statement of CAJ Prakash (Pw62).

Calls made from phone no. 9822028128 to phone no.9811008825

Date	Time	Called no.	Duration
------	------	------------	----------

19.1.99	15.59.49	9811008825	
57			
21.1.99	10.41.49		do
	7		
21.1.99	10.42.31		do
	6		
21.1.99	10.43.34	do	
272			
21.1.99	15.54.32	do	
83			
21.1.99	15.57.58		do
	59		
22.1.99	15.39.56	do	
116			

Calls made from phone no. 9811008825 to 9822028128

Date	Time	Duration	Called no.
22.1.99	16.20.52	124	9822028128

135. Ld SPP contends that at least eight following calls were made / received by / on this phone from Air India's office during 21.1.99 to 23.1.99

Date	Time	Duration	Called no.
21.1.99 (outgoing)	16.11.58	117	624900
21.1.99 (incoming)	17.45.10	74	628900
22.1.99	10.02.11	105	626990 (incoming)
22.1.99	11.54.26	32	624900 (outgoing)
22.1.99	12.1.20	27	628190 (incoming)
22.1.99	15.26.07	131	624900 (incoming)
22.1.99	18.13.23	51	628190 (incoming)
23.1.99	10.11.33	-	624900 (incoming)

and various calls were received / made from / on said no. (9822028128) at landline no. of accused R.K.Sharma, from

all this, it is abundantly clear that said phone was being used by accused R.K.Sharma.

136. During investigation of this case, statement of Suresh Kukreja (Pw51) u/s 164 Cr PC was recorded by Sh. Rajneesh Kumar Gupta, Id MM, Delhi (Pw63). Same is Ex.Pw51/1. It was deposed on oath by Suresh Kukreja that accused Ravi Kant Sharma, IPS was known to him for the last 15 years. On 15.01.99 he (R.K.Sharma) told about his visit to Pune for training. On 18.01.99 he along with his father went there and met accused R.K.Sharma. On 19.01.99 in the morning, he visited said accused in CIRT with his Manager Kailash Sakallkar (Pw81). R.K.Sharma has taken his mobile phone bearing no.9822028128. He made 2-3 courtesy calls to accused from Aurangabad on said mobile phone (9822028128) from mobile no.9823042534. On 22.1.99 in the evening, he again called accused on said phone. R.K.Sharma sent sim card of said mobile phone which was received by him on 25.1.99 but never returned said instrument.

137. Sh.Rajneesh Kumar, Id MM (Pw63) verified having recorded statement of Suresh Kukreja Ex.Pw51/1. Pw51 denied in court during his examination that he had handed over aforesaid mobile phone to accused R.K.Sharma at any

point of time.

138. It is contended by Ld SPP that said witness told a lie to the court. A notice was served upon him by IO, during investigation of this case on 22.10.02, which is Ex.Pw51/2 and he gave reply of same on 24.10.02. It is admitted by Pw51 in court that he had stated in Ex.Pw51/2 about accused Ravi Kant Sharma having received instrument of that phone and that same was not returned by the latter till that day.

139. Sh. S.P.Minocha advocate submits that it is clear from the deposition of this witness that latter gave his reply Ex.Pw51/2 and also statement Ex.Pw51/1 under the pressure of the police. As per ld counsel, statement of a witness recorded u/s 164 Cr PC is not a substantive evidence. Ld counsel referred a case titled as **T.Diwakara Vs State of Karnataka 2006 Cr1.L.J 4813 (SC)** in this regard.

140. As stated above, several calls were exchanged between phone no. 9822028128 to telephone no.9811008825 (attributed to accused Sri Bhagwan). It is not denied that Pw51 and accused R.K.Sharma are friends, having known to each other for several years. Accused R.K.Sharma

accepted hospitality of said witness at Pune during his stay there. It is conceded by Pw51 in his cross examination that he did not file any complaint to any higher officer or to any court about the pressure exerted upon him by police at the time of his statement recorded u/s 164 Cr PC. In such a circumstance, I think it was merely a ruse, otherwise there is no reason to presume as why said witness would have given reply Ex.Pw51/2 on a notice served upon him by the police or had given statement to Magistrate under pressure from the police did not complaint to anybody at all. If a witness has deposed before the Magistrate under oath, same can be presumed to have testified voluntarily. The Supreme Court of India faced similar problem in case **State of M.P Vs Badri Yadav and Anr. 2006 (III) AD (SC) 536**. Statements of some witnesses were recorded u/s 164 Cr PC. Pw8 and Pw9 filed affidavits alleging that their statements before the Magistrate were recorded under pressure and that they were tutored by police. These witnesses were again examined as Dws and resiled completely from their previous statements examined as Pws. In such a situation it was held:-

It therefore clearly appears that their subsequent statements as Dws were concocted well and after thought. They were either won over or under threat or intimidation from the accused. No reasonable person, properly instructed in law, would have acted upon such statements-----No complaint whatsoever was made by Dw1 and Dw2 to any court or to any authority that they gave statements on 18.12.1990 due to coercion, threat or being tutored by police. This itself could have been a sufficient circumstance to disbelieve the subsequent statements as Dw1 and Dw2 as held by Sessions Judge, in our view rightly.

141. From all this discussion, it is apparent that Suresh Kukreja mendaciously denied phone no. 9822028128 having handed over by him to accused R.K.Sharma.

142. Phone no. 9811008825 is like a corner stone which connects accused persons with each other. Prosecution alleges that it was purchased by accused Sri Bhagwan from Lajpat Nagar Market. Same was used by the latter as well as co-accused while hatching conspiracy and also getting their design fulfilled. Shailender Gaba (PW107) from whom said instrument is stated to have been bought, told in court that he was dealing in sale and purchase of new mobile phones as well as sim cards in the

name of "Nirmal Communications" at his residence A-211, Ground Floor, Lajpat Nagar, Delhi. This witness did not remember whether any sim card or mobile phone was sold by him to a customer namely Naveen in 1998. On being cross-examined, Pw107 disclosed that he was not maintaining any record about sale of sim cards and hence he could not say whether any sim card bearing no. 9811008838 was sold by him or not. This witness denied having given any statement to the police about said sim card having sold to any such Naveen in September, 1998.

143. As per ld. Special Public Prosecutor, accused Sri Bhagwan and Satya Prakash have disclosed during investigation having used said phone to contact co - accused. As per him, even accused R.K. Sharma admitted in his disclosure statement that he received phone calls from said phone.

144. Accused Sri Bhagwan in his disclosure statement Ex.PW132/29 disclosed about an information given by co-accused Satya Prakash from phone no. 9811008825. Similarly, accused Pradeep and Satya Prakash disclosed to have informed Sri Bhagwan on same phone i.e. 9811008825 from an STD Booth in Defence Colony, New Delhi. Further, accused Sri Bhagwan disclosed about same phone number

having used by him on 23.01.1999 to confirm the presence of deceased at her house. Accused Satya Prakash also disclosed to the police having used said phone to tell accused Sri Bhagwan about killing of deceased. Accused R.K. Sharma disclosed having used said phone to contact deceased before going her house, accompanied by co-accused. Accused R.K. Sharma is consulted co-accused Sri Bhagwan on the same phone from telephone no. 9822028128 (belonging to Suresh Kukreja). The fact shown to have been discovered. In the opinion of Ld SPP, all these disclosures made by the accused to the police are admissible U/S 27 of the Indian Evidence Act. This issue will further be discussed slightly later on.

145. Mr. A.R. Satish (PW135) verified print-outs of mobile instrument having EMEI no. 490520304282810 for the month of March, 1999 (Ex. PW135/1), of April, 1999 (Ex. PW135/2, of May, 1999 (Ex. PW135/3), of June, 1999 Ex. PW135/4, of July, 1999 (Ex. PW135/5), of August, 1999 (Ex. PW135/6), of September, 1999 (Ex. PW135/7) and February, 2000 (Ex. PW135/8). It is disclosed by this witness that no calls were made or received on phone instrument in October, 1999, November, 1999 and December, 1999, though he took out the print-outs Ex. PW135/9, Ex.

PW135/10 and PW135/11 about these months but same are blank. Print-outs about the month of February, 1999 which were also blank. Same are Ex. PW139/12. Similarly, there was no call made or received from this mobile instrument in the month of January, 2000 and hence print-outs page was blank which is Ex. PW135/13. Again no call was made or received from said mobile instrument during January, 2001 to November, 2001, therefore, call detail was blank. One page is about call details from some instrument for the month of October, 2001 all being Ex. PW135/14 to Ex. PW135/25 bearing his signatures at point A on each page.

146. It is pointed out by Mr. Saxena, that in his disclosure statement Ex. PW179/1, accused Satya Prakash Sharma has disclosed that on 23.01.1999 said phone (9811008825) was taken by him from co-accused Sri Bhagwan after reaching at Gurgaon. Earlier sim card installed in that phone was destroyed by him. He used that instrument for about one - one and half months using another sim card. That new sim card was bearing number 9811048912 and he used it for about 4-5 months and then handed it over to co-accused Pradeep. used said instrument by inserting sim card bearing no.

9811046572. As per ld. SPP, all this is corroborated from call details proved from statement of PW135. A minutia of calls received or done from said instrument would show several calls were made / received on telephone numbers attributed to accused persons. Considering all this as well as the facts discovered from the disclosure statements given by accused, I think even if prosecution has failed to establish that said mobile phone bearing number 9811008825 was owned by accused Sri Bhagwan. It was widely used for conversation by accused persons.

147. Following are also found mentioned in the disclosure statements of accused persons namely R.K.Sharma, Pradeep Sharma, Satya Prakash Sharma and Sri Bhagwan recorded by police :-

- (a) Executive Lounge, Ashoka Hotel.
- (b) Dr. Pasricha Karnal
- (c) STD booth situated in Defence colony
- (d) STD booth at Patodi Road, Gurgaon
- (e) STD booth Khandsa Road, Gurgaon
- (f) S.P. Office, Gurgaon.
- (g) Hotel Milan, Bombay
- (h) Deepak, Taxi Driver

(i) Golden Hut Restaurant, Karnal

148. (a) In his statement Ex.Pw187/1 accused R.K.Sharma has disclosed to have stayed in Ashoka Hotel on 13.01.99 having come there on an official tour and called deceased Shivani on phone from Executive Lounge of Hotel. The calls made by said accused from Ashoka Hotel are established from call details Ex.Pw159/3. As per this document, there was a call from that hotel at 10.50 AM to telephone no.2726729 (installed at the residence of deceased).

(b) S.K.Verma (Pw34), an account officer in the office of GMTD, Karnal, deposed about having given printouts of phone no.255050 to the police (Ex.Pw34/1). As per this witness, said phone was installed in the name of Dr.J.K.Pasricha. Printouts of STD record about said phone for period January 1999 were Ex.Pw34/2. SI Anil Kumar (Pw190) stated having met Dr.J.K.Pasricha on 14.10.02 and seized photocopy of bill regarding phone no.254040 installed at his clinic. Same is Pw190/mark X. This witness again deposed to have seized printouts of said phone from S.K.Verma (Pw34). The latter also disclosed about telephone no.255050 installed in the name of Deepak

Pankaj at 1872, Sector 13, Urban Estate, Karnal. As per Pw190, he had seized call details of said phone (255050) and also examined said Deepak Bajaj. Photocopies of bills of phone no.255050 are Pw90/mark Y. The latter i.e Deepak Bajaj was also examined in court as Pw130 and verified having telephone no.255050 installed at his residence in June 1996 and that number of said phone was changed to 204050 by telephone department. It is again stated by this witness that phone 255050 was earlier installed in the name of Dr. Pasricha and when said phone was allotted to him, they used to receive calls for Dr. Pasricha.

As per Ld SPP, it was disclosed by accused R.K.Sharma that the latter called Dr. Pasricha from 9811008825 on his way to Navkunj apartments and this fact is proved from call details stated above.

(c) It is deposed on oath by ASI Subhash Chand (Pw180) that on 03.08.02 Inspector Inder Singh (Pw203) wrote a disclosure statement given by accused Pradeep Sharma. Same is Ex.Pw180/4 (three pages) bearing his signatures at point A, of Inspector Inder Singh at point B and of SI Tilak Chand at point C. Accused had also signed the same at point D. This witness again verified

supplementary disclosure statement of accused Pradeep Sharma recorded on 04.08.02 (Ex.Pw180/8) and on 17.08.02 (Ex.Pw180/9). Pw180 reminded that accused Pradeep Sharma led them to an STD booth situated at NDSE, Part-II, Defence Colony in front of Mahraj jewellers and pointed out said STD booth, a pointing out memo Ex.Pw180/7 was prepared in this regard. Same was bearing his signatures at point A and also signed the same at point D. As per Id SPP, it is verified from call details of phone no. 9811008825 that such a call was made to that phone from this STD booth.

(d) Sanjay (Pw70) deposed in court that he was running an STD booth in shop no.5, Patodi chowk, Gurgaon since November 2000. The number of same was 384498. This witness verified that seizure memo Ex.Pw70/1 was bearing his signatures. Pw70 despite being asked neither affirmed nor denied that previous number of this phone was 330547. Rakesh Kumar (Pw103) identified his signatures on pointing out memo Ex.Pw103/2 but claimed that it was blank when he signed it. This witness admitted himself to be owner/proprietor of said STD booth. SI Mahipal Singh (Pw194) testified about disclosure statement of accused

Sri Bhagwan Ex.Pw132/30 (four pages) and also that on 11.08.02 said accused led them to Patodi road, Gurgaon and pointed out shop no.5 (STD booth). Pointing out memo in this regard is Ex.Pw103/2 signed by him at point C, by Rakesh Kumar at point A, by Inspector Ram Pal Singh at point B. Inspector Rampal Singh (Pw171) corroborated this fact.

(e) SI Mahipal Singh (Pw194) deposed about accused Sri Bhagwan having taken them to STD booth no.43/23, Laxmi Garden, Gurgaon and pointed out said booth. Pointing out memo in this regard is Ex.Pw117/1 signed by him i.e Pw194 at point B. Inspector Rampal Singh (Pw171) also corroborated said fact.

(f) Telephone numbers of telephone exchange of SP Office, Gurgaon have already been discussed in para no.132 above. As per Id SPP, it is well proved that accused Sri Bhagwan called accused R.K.Sharma from telephone installed in said office.

(g) SI Tilak Chand (Pw189) deposed that accused Satya Prakash Sharma was interrogated by Inspector Inder Singh (Pw203) on 18.08.02 and he gave disclosure statement

Ex.Pw189/2. It is further stated by this witness that on 21.08.02 said accused (Satya Prakash Sharma) again gave a disclosure statement and he took us (Pw189, HC Harvinder and HC Rishiraj) to Mumbai. They reached Mumbai in the morning of 22.08.02. Accused Satya Prakash Sharma pointed out building of Air India at Floor no.21 i.e office of Chief Vigilance officer, Air India i.e R.K.Sharma. This accused is also stated to have led them to hotel Milan, Santakruj, Mumbai and pointed out said Hotel. Pointing out memo in this regard is Ex.Pw189/2.

Sayyed Abdul Sattar (Pw146) stated that he was working as Account's Manager in hotel Milan International, Mumbai from 1992 to 2002. This witness identified signatures of Mr.Shahnawaj Ahmad on memo Ex.Pw146/1 and also verified photocopies of telephone calls made from a room of that hotel mark Pw146/A to Ex.Pw146/D after seeing its monogram. Pw146 again deposed about copies of original ledger maintained in that hotel for period 01.04.98 to 25.10.98 i.e Ex.Pw125/2. As per Ld SPP, accused made following calls from that hotel:-

Date	Time	Called no.
To		

24.01.99	21.59	6242163	Deepak
--do--	22.17	6242162	--do--
--do--	23.12	3630252	
R.K.Sharma			
25.01.99	9.55	2024142	R.K.Sharma
--do--	10.2	6242163	Deepak

Imran Sheikh (Pw129) was also a receptionist in hotel Milan since 1996. This witness verified guest checking register of said hotel Ex.Pw129/1 for period 01.11.97 to 10.03.99 which was maintained by them regularly in the course of duty. As per this witness, two travelers had stayed in their hotel. Entry in this regard was Ex.Pw125/1A and signatures in the relevant column are in the name of S.P.Singh.

(h) Deepak Laxman Atra (Pw119) deposed in court that he was taxi driver having taxi no. MH-02-6516. He had a telephone no.6242163 installed at his residence. Though Pw119 did not identify accused Satya Prakash as the person who had hired his taxi. The witness admitted telephone bills of his telephone mentioned above, same are Ex.Pw119/1, Ex.Pw119/2 and Ex.Pw119/3 which were handed over by him to Delhi Police on 06.10.02 and seized by the police vide seizure memo Ex.Pw119/4 bearing his signatures at point A. It is further admitted by Pw119

that one or two staff members of hotel Milan had telephone no. of his residence and if any passenger staying in that hotel requested the staff for arranging a taxi then staff members used to call him through that phone. It is disclosed by this witness in his cross examination that he had gone to hotel Milan on 25.01.99 along with his aforestated taxi.

(i) Anil Kumar (Pw39) deposed that he was working in Golden Hut Restaurant since January 2001. Telephone bearing no.267993 having STD facility was installed in their restaurant. As per this witness, if anyone wants to make STD call from there, same was allowed to do. A register was maintained in that regard i.e Ex.Pw39/1 for period 02.04.02 to 01.08.02. Police seized said register vide seizure memo Ex.Pw39/2. P.P.Manik (Pw38), SD0, BSNL Karnal brought certified copy of printouts of phone no.267993 for period 20.07.02 to 30.07.02. Copies of documents produced by him were Ex.Pw38/3 and Ex.Pw38/4 which were certified by him and now marked as Pw38/5A. As per this witness, previous number of said phone was 256909 and STD facility on said phone were allotted to subscriber on 22.07.98.

149. Sh. S. P. Minocha advocate submitted that call details of telephones mentioned above have not been proved as per law. There were various discrepancies. Id. counsel pointed out that mentioning of IMEI number in Ex. PW135/28 was missing, format of printouts i.e. method of recording date, month and year of the calls was changed in Ex. PW135/28. It was admitted by Major A.R. Satish (PW135) that the method of recording date, month and year of the calls is mentioned in column no. 2 of printouts Ex. PW135/28 and same can be done manually in the call details. In several entries the time of call is shown as 0:00:00 in spite of accurate time. In one entry, duration of call made from phone 9811008825, is shown as 18963 seconds and call is shown to have been made at 15:41:59, but there were other calls from said phone overlapping in time.

150. It is again the plea of ld. counsel that no certificate was issued about these printouts as was required under Sub-section 4, Section 65B of The Indian Evidence Act. Moreover, the witnesses who deposed about these call details were not competent enough to verify genuineness of calls and were not conversant with the functioning of the computer.

151. Similar questions arose before the Apex Court in case **State (NCT of Delhi) Vs. Navjot Sandhu (SUPRA)**. Their lordships did not find those contentions tenable.

152. Two witnesses were examined in aforesaid case for proving printouts of computer record furnished by cellular service providing agencies namely Airtel (Bharti Cellular Limited) and ESSAR Cellular Phone. The covering letter about call details of one phone and certain other mobile numbers were signed by the security manager of Bharti Cellular Limited. On call details of another cell phone pertaining to Mohammad (Ex. PW35/5) PW 36 identified signatures of General Manager of his company who signed Ex. PW36 series.

153. It was explained by the apex court that according to Sec. 63 of the Indian Evidence Act, secondary evidence means and includes among other things, "Copies made of the original by mechanical processes which in themselves ensure the accuracy of the copy and copies compared with such copies." Section 65 enables secondary contents of a document to be adduced if the original is of such nature as not to be easily movable. It is not in dispute that the information contained in the call

records is stored in huge servers which cannot be easily moved and produced in the court. The Supreme Court upheld finding given by the High Court of Delhi that printouts taken from computer server by mechanical process and certified by a responsible official of service providing company can be led in evidence through a witness who can identify the signatures of certifying officer or otherwise speaks of the facts based on his personal knowledge. Irrespective of the compliance with the requirements of Section 65B, which is a provision dealing with admissibility of electronic record. There is no bar in adducing secondary evidence under the other provisions of the Evidence Act namely Section 63 and 65.

154. The court did not find substance in the arguments of ld. defence counsels stating the witnesses examined were not technical persons acquainted with the functioning of the computer by observing that both of those witnesses were responsible officials of the companies concerned who deposed to the fact that these are the printouts obtained from the computer records.

155. Afore-discussed observation of Supreme Court can be answer to the objections raised by the ld. defence counsel in case in hands. So far as the recording of time

by computer as 0:00:00 is concerned, it is well explained by Major A.R. Satish (PW135) himself as that the computer was not able to pick up the time of call but was able to record the duration of call correctly. If the computer was not able to pick up the time of call, from this very fact, it cannot be presumed that other informations provided by that computer were also incorrect, unless there is reason to presume so and no such thing is pointed out by ld. defence counsels.

156. As discussed earlier, several facts are alleged to have been discovered on disclosure statements of accused persons. As per Sh. Saxena, ld. Special Public Prosecutor, the facts disclosed by accused persons i.e. making calls on different phone numbers have already been established on record and hence same are admissible in view of Section 27 of the Indian Evidence Act.

157. Disputing tooth and nail, it is contented by ld. defence counsels that a disclosure statements allegedly given by accused persons are not admissible U/S 27 of The Indian Evidence Act (in brief 'The Act') due to following reasons :-

- (i) No material object like a weapon was discovered on the disclosure statements of accused.

- (ii) Facts alleged to be discovered were already known to the police.
- (iii) When a fact is discovered on the disclosure of accused, same fact cannot be rediscovered on the statement of co-accused as has been case.
- (iv) Information stated to be discovered from disclosure of accused were only the past history of events.

158. Section 25 and 26 of the Act makes a confession made to police officer or while in custody of police as inadmissible. Section 27 of the Act is its exception. The provision runs as under :-

- (i) Section 27 of the Act -

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

It is explained lucidly by the apex court in case **Earabhadrapa Vs. State of Karnataka AIR 1983 SC 446** that it is an exception to Section 25 and 26 and is a proviso to Section 26. It makes admissible so much of the statement of accused which leads to the discovery of a

fact deposed to by him and connected with the crime irrespective of the question whether it is confessional or not. The essential ingredient is that the information given by the accused must lead to the discovery of fact which is direct outcome of such information. Secondly, only such portion of information given as distinctly connected with the said discovery is admissible against the accused. Thirdly, the discovery of the fact must relate to the commission of some offence. When these ingredients are proved, the embargo on the statement of accused before police while in custody, will not apply.

I think, it will not be paradoxical to say that precedent established by the apex court in case **State (NCT of Delhi) Vs. Navjot Sandhu (SUPRA)** is like a web site where one can find every aspect of admissibility of disclosure statement of an accused U/S 27 of the Act.

The Supreme Court noted divergence of opinions among different High Courts mainly on twin aspects -

(1) Whether the facts contemplated by Section 27 are physical, material object or the mental facts of which the accused giving the information could be said to be

aware of. Some judges have gone to the extent of holding that the discovery of concrete facts, i.e. to say the material objects, which can be exhibited in the court are alone covered by Section 27.

(2) The other controversy on the point relating the extent of admissibility of a disclosure statement. In some cases a view was taken that any information which serve to connect the object with the offence charged, was admissible U/S 27.

Their lordships referred a finding given in case **Pulukuri Kottaya Vs. Empror AIR 1947 PC 67.** where it was held that :-

“It is fallacious to treat the “fact discovered” within the section as equivalent to the object produced that the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this and the information given must relate distinctly to this fact. Information as to past user, or the past history, or the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that ‘I will produce a knife concealed in the roof of my house does not lead to the discovery of a knife, knives were discovered many years ago. It leads to the discovery of the fact that a

knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of offence, the fact discovered is very relevant. But if to the statement the words be added with which I stabbed 'A' these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.”.

Madras High Court in case **Empror Vs. Ramanajum Ayyangar** AIR 1935 Madras 528 had held that the facts may not be self-probatory and the word 'fact' as contemplated by Section 27 is not limited to the actual physical material object Upholding finding of this case as well as of given in Pulukuri Kottaya's case, it was held -

“We are of the view that Kottaya's case is an authority for the proposition that “discovery of fact” cannot be equated to the object produced or found. It is more than that. The discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place.”

In case titled as **Mohd. Inayatullah Vs. State of Maharashtra (1976) 1 SCC 828** it was observed by Hon'ble Sarkaria J. while clarifying that expression “fact discovered” in Section 27 is not restri

or material fact which can be perceived by the senses and that it does include a mental fact, explained the meaning by giving the gist of what was laid down in Pulukuri Kottaya's case. Ld. judge speaking for the bench observed that "now it is fairly settled that the expression "fact discovered" includes not only the produced, but also the place from which it is produced and the knowledge of the accused as to this.

So was also held in **Udai Bhai Vs. AIR 1962 SC**

1116 -

"The discovery of a fact includes the object found, place from which it is produced and the knowledge of the accused as to its existence."

"Fact" has been defined in Section 3 under :-

"Fact" means and includes -

- (i) Anything, state of things, or relation of things, capable of being perceived by the senses :
- (ii) Any mental condition of which any person is conscious.

Speaking for majority Judges, Hon'ble Shadi Lal,

C.J. In case **Sukhan Vs. Emperor AIR 1929 Lah.344** pointed out that the expression "fact" as defined in Sec The Indian Evidence Act includes not only the physical fact which can be perceived by the Senses but also psychological fact or mental condition of which any person is conscious.

Ultimately it was concluded by the apex court in Navjot Sandhu's case that -

‘There is one more point which we would like to discuss i.e. whether pointing out of a material object by the accused furnishing the information is a necessary concomitant of Section 27. We think that the answer should be in the negative. Though in most of the cases the person who makes the disclosure himself leads the police officer to the place where an object is concealed and points out the same to him, however, it is not essential that there should be such pointing out in order to make the information admissible under Section 27. It could very well be that on the basis of information furnished by the accused, the investigating officer may go to the spot in the company of other witnesses and recover the material object. By doing so, the investigating officer will be discovering a fact viz. The concealment of an incriminating

article and the knowledge of the accused furnishing the information about it. In other words, where the information furnished by the person in custody is verified by the police officer by going to the spot mentioned by the informant and finds it to be correct, that amounts to discovery of fact within the meaning of Section 27".

In case in hands, it was disclosed by accused R.K. Sharma that while going to Navkunj Apartments in car along with co-accused, he Shivani at her house, Dr. Pasricha and his daughter on phone from mobile no. 9811008825. This fact has been discovered from the call details of telephone concerned. This accused has also admitted having received calls from co-accused and also having called phone belonging to Mr.Kukreja and these facts have already been established from the call details of telephones concerned. In the same way, co-accused Sri Bhagwan, Satya Prakash and Pradeep Sharma have also disclosed to have contacted co-accused. As earlier, the fact that such calls were made, has been discovered from the printouts of these telephones. Now the fact that a call was made from on specific

telephones and the fact that making of such calls were within the knowledge of accused concerned, is admissible U/S 27 of the Act.

(ii) Id. defence counsel representing accused Satya Prakash urges that some places like Hotel Milan, office / residence of co - accused R.K. Sharma etc. which are stated to have been discovered on disclosure statement made by his client, but said places in Mumbai were already within the knowledge of police as they had already visited there and hence same cannot be admissible U/S 27 of The Act.

True, it is a necessary requisite for the application of this provision that fact discovered should not be within the knowledge of police. The apex court has held in Navjot Sandhu's case (SUPRA) -

“What makes the information leading to the discovery of the witness admissible as the discovery from him of the thing sold to him or hidden or kept with him which the police did not know until information was furnished to them by the accused. A witness cannot be stated to be discovered if anything is to be found or recovered from him as consequence of the information furnished by the accused and the information which disclosed the identity of the witness will not be admissible.”

I think ld. counsel has mis-construed the provision. It was not Hotel Milan, the office or residence of said co-accused R.K. Sharma discovered after disclosure statement of accused. But the fact that a call was made from Hotel Milan to the taxi driver and this was within the knowledge of accused, is admissible. As it had been referred by the apex court in **Pulukuri Kotayya's case (SUPRA)** that the admission of accused "I had concealed the knife in can get recovered", the fact that knife as knives have already been discovered years before but it was fact that the knife was concealed in the house of informant and same was within his knowledge, which was discovered.

Similarly it was held by our own High Court in case titled as **"Tahir & Others Vs. State of Delhi 294"** -

"There is nothing in Section 27 of The Indian Evidence Act which renders statement of the accused inadmissible, if recovery of the articles was made from any place which is "open or accessible to others". It is fallacious notion that when recovery of any incriminating article was made from the place which is open or accessible to others, it would vitiate

the evidence U/S 27 of the Act. Any object can be concealed in places which are open or accessible to others."

It is case of none that the fact discovered i.e. call was made from Hotel Milan to the taxi driver Deepak or to accused R.K. Shrama was known to the police before the same was discovered by them (police) after going to Mumbai, with the assistance of information provided by the accused.

(iii) It is well settled now that joint disclosure made by several accused are also admissible. It was held in Navjot Sandhu's case (SUPRA) -

"Joint disclosures, to be very accurate, simultaneous disclosures, per se are not inadmissible U/S 27. "A person accused" need not necessarily be a single person, but it could be plurality of the accused. It seems to us that the real reason for not acting upon the joint disclosures by taking resort to Sec. 27 is the inherent difficulty in placing reliance on such information supposed to have emerged from the mouths of two or more accused at a time. In fact, joint or simultaneous disclosure is a myth, because two or more accused persons would not have uttered informatory words in a chorus. At best, one person would have made the statement orally and the other person would have stated so substantially in similar terms a few seconds or minutes later, or the second person would have given unequivocal nod to what has been said by the person. Or, two persons in custody may be interrogated separately and simultaneously and

both of them may furnish similar information leading to the discovery of fact. Or, in rare cases, both the accused may reduce the information into writing and hand over the written notes to the police officer at the same time. We do not think that such disclosures by two or more persons in police custody go out of the purview of section 27 altogether. If information is given one after the other without any break, almost simultaneously, and if such information is followed up by pointing out the material thing by both of them, we find no good reason to eschew such evidence from the regime of Section 27."

There is no gainsaying that disclosure statements in this case were recorded on different dates. These facts discovered cannot be attributed to all accused persons. In such a circumstance, even if facts so discovered may not be accepted against all the accused. It is well established that accused persons in a conspiracy act as agents of each other. It was observed by the Supreme Court in case **State of Maharashtra Vs. Damu etc. V (2000) SLT 194 -**

One of the offences alleged against all the accused is criminal conspiracy under Section 120-B of the Indian Penal Code. Section 10 of the Evidence Act falls within Chapter - 2 which deals with "relevancy of facts". That Section tenders anything said, done or written by anyone of the conspirators in reference to their common intention as a

relevant fact, not only as against each of the conspirators but for proving the existence of the conspiracy itself. Further, the said fact can be used for showing that a particular person was a party to the conspiracy. The only condition for application of the rule in Section 10 is that there must be "reasonable ground to believe that two or more persons have conspired together to commit an offence".

It was further held that in same case:-

The basic principle which is underlined in Section 10 of the Evidence Act is the theory of agency and hence every conspirator is an agent of his associate in carrying out the object of the conspiracy.

Admission made by one accused if inculpatory can be relied upon against co - accused.

(iv) I do not find much substance in the contention of Sh. S.P. Minocha advocate stating that the facts discovered on the statement given by the accused to police were merely "past history of events". As has been discussed above, the fact "a telephone call was a specific telephone to another specific telephone which were distinctly related to the accused / crime is admissible evidence against such accused". It will be fallacious to say that said fact was merely a history of

events.

159. The accused persons have examined 15 witnesses in their defence. Not much reliance was placed upon the deposition of these witnesses even by Ld defence counsels except of Satypal Singh (Dw3), Inspector Ramesh Kumar (Dw7) and Hari Om Sharma (Dw9).

160. It is deposed by Dw3 that he was residing in Gurgaon for about 20 years. He knew accused R.K.Sharma. The latter remained SSP of Gurgaon in year 1988-89 and he i.e Dw3 used to meet said accused in his official capacity. The accused requested him in December 1998 to get some wood work done in his house as there was problem of termite which had damaged windows and cupboards of his house. On being requested by said accused, he employed one Raju a Thekedar to get wood work done in that house of accused and he i.e Dw3 had given telephone no. of accused R.K.Sharma to that contractor Raju.

161. Dw7 brought summoned record i.e file of inquiry initiated on a complaint filed by one Dharmender Sharma. Photocopy of same is Ex.Dw7/A. On being asked by ld counsel it was replied by Dw7 that according to said record, Inspector Inder Singh and SI Dinesh were delinquent officers in relation to aforementioned

inquiry. Referring same, it is contended by Sh.Minocha advocate that both of said officers remained IO's of this case. Departmental proceedings initiated against them show that same were not honest in discharge of their duty and hence no reliance can be placed on the deposition or the investigation done by these witnesses.

162. Dw9 stated that he knew accused R.K.Sharma and also his father Late Sh.J.D Sharma. Accused had asked him (Dw3) to look after agricultural land of his sister in law (sali) situated at Village Jakhopur, Tehsil Ballabgarh, Haryana and he accepted the request. It is further stated by this witness that accused R.K.Sharma had given him his residential phone number in Delhi and he (Dw9) gave a telephone number of his land lady namely Smt. Santosh Sharma i.e 0124-332266 as a contact number. He also gave an alternative contact number of him as 0124-301166 belonging to one Chander Prakash Sharma.

163. It is urged by Sh. Minocha advocate that if some calls are found to and from accused R.K.Sharma on aforementioned two telephones, same were a conversation between accused R.K.Sharma and said Hari Om Sharma, and not with co accused Sri Bhagwan. In the same way, as per ld counsel, it was said contractor Raju employed by Dw

Satpal Singh who had talked with accused R.K.Sharma at Mumbai and not co-accused.

164. So far as a departmental inquiry initiated against SI Dinesh and Inspector Inder Singh is concerned, even if it is presumed that any such departmental inquiry was initiated, it is not plea of ld counsel that same was about any irregularity in investigation of case in hands. It is plea of none that any of said police officers was held guilty. Merely to say that a departmental inquiry was initiated, does not mean that same were found guilty. Even otherwise, initiation of inquiry in some other case, is no reason to doubt the truthfulness or genuineness of investigation done by said officers in other case i.e case in hands.

165. About deposition of Dw3 and Dw9, none of these witnesses had come forward to depose before the police during investigation of this case. It is not their plea that they filed any complaint before the court or any higher police officer against the IO for no recording their statement. In these circumstances, it appears that both of these witnesses have been introduced only to buttress the case of accused and same are not reliable.

166. One golden chain belonging to deceased is alleged to have recovered at the instance of accused Ved Prakash Sharma from his house which was taken away by co accused Pradeep Sharma after committing her murder. Seizure memo in this regard is Ex.Pw122/1. Similarly, a camera (Kodak) is stated to have been recovered at the instance of accused Ved Prakash @ Kalu vide seizure memo Ex.Pw188/10.

167. It is contended by Ld SPP that maid of deceased Valli (Pw85) that she had seen such camera on the refrigerator in the house of deceased before she left that house. Similarly, it was testified by complainant (Pw66) that he noticed that golden chain which deceased was wearing, was not found on her neck. In the opinion of Ld SPP, all this makes it clear that both of these articles i.e Golden chain and Kodak camera were stolen by the killer at the time of incident. Both of these articles were identified by the complainant in TIP before a Magistrate as belonging to him/deceased.

168. It is deposed on oath by Inspector Ashok Saroha (Pw185) that on 03.10.02 accused Ved Prakash Sharma was handed over to him for interrogation and on same day, said accused disclosed about having concealed golden

chain belonging to deceased in his house. It is further stated by this witness that on 07.10.02 said accused (Ved Prakash Sharma) took them to his house no.2110A, Gurgaon, Haryana, entered there and opened the almirah which was kept in the drawing room of his house and took out a golden chain wrapped in a piece of newspaper and handed over to us telling that it is the same chain which was given to him by co-accused after murder of Shivani. The chain was seized after keeping it in a match box and sealed by seal of AKS. Seizure memo in this regard is Ex.Pw122/1.

169. Ld counsel ridiculed said recovery. It is alleged that it was a very sensitive and highly publicized case. The matter was being reported in the newspaper as well as on TV everyday. In such a circumstance, even if it is presumed that accused Ved Prakash Sharma was involved, same could not have thought to retain golden chain which was belonging to deceased and that in his own house, in a place accessible to all, in a almirah of his drawing room.

170. As per Inspector Rajender Bhatia (Pw188) accused Ved Prakash @ Kalu was interrogated by him on 4th and 5th October, 2002. The latter gave a disclosure statement on

06.10.02. Same is Ex.Pw188/8 bearing his signatures at point A. It is further stated by this witness that accused Ved Prakash @ Kalu led them to village Asoda to the house of his aunt i.e bua namely Laxmi. He pointed out the cavity below the stairs and he i.e accused brought out one Camera from that cavity. Letters 'RB' were engraved on that camera.

171. Similar is plea of ld counsel representing accused Ved Prakash @ kalu. It is alleged that it was not a precious thing which could have allure the accused to retain the same, particularly when the police was searching for the offenders of the case.

172. I find weight in the submissions of ld counsel. It was contrary to basic human nature. In the circumstances discussed above, it could not have been expected that the accused persons would have retained the articles i.e chain or camera if same were subject matter of case property as there was every chance of their implication in the case.

173. There is not much incriminating evidence against any of these two accused about their participation in conspiracy to kill the deceased except some stray

incidents. In the opinion of Ld defence counsels merely by citing a few circumstances, it cannot be presumed that accused was involved in the conspiracy. Ld counsels relied upon a case in this regard titled as **Kehar Singh Vs State, AIR 1988 SC 1883** where it was observed that the prosecution has to establish circumstances from which inference of conspiracy can be drawn. Merely some circumstances articulated cannot prove conspiracy.

174. Considering all these facts, in my opinion, prosecution has failed to prove any of charges levelled against accused Ved Prakash Sharma and Ved Prakash @ Kalu. Both of them are hence acquitted.

175. It is urged by Ld SPP that circumstances of the case should be evaluated collectively. As per him, case should be decided considering totality of the evidence on record and not each piece separately. Ld counsel relied upon in this regard a case titled as **Faqrudin Vs State of Kerala, V (2001), SLT (SC) 880.**

176. Ruminating all the evidence adduced on record, I think it is well established on record that accused R.K.Sharma, Sri Bhagwan, Satya Prakash and Pradeep Sharma had spoken to each other at all times in

flangrante delicto which were very crucial and closely around the time when conspiracy in question would have hatched and also when Shivani Bhatnagar was done to death, even after the incident when police started hunting for the offenders. The circumstances established on the record are intertwined intrinsically. Same if concatenated, form a chain which give only inference that said accused were conspiring each other. Apart from all these, following are also incriminating against said accused.

Each of said accused denied having talked to co-accused on phone when the evidence on record was put to them and said facts have been proved on record as discussed above. The fact of calling each other was within specific knowledge of accused and when same denied such fact, an adverse inference can be drawn against said accused. Similar was held by the apex court in case **State of Rajasthan Vs Parthu 2007 (SUPRA) IX AD (SC) 393.**

177. As per Sh. Saxena accused R.K.Sharma avoided joining investigation of the case. NBWs and then process u/s 82/83 Cr PC was issued against him. The investigating agency even declared a reward for the person who could

give clue about whereabouts of said accused.

178. On the other hand, it is contended by Sh. Minocha advocate that process u/s 82/83 Cr PC against his client was wrongly issued and hence same cannot be taken as evidence against him. Ld counsel referred a case in this regard titled as **Rohit Kumar @ Raju Vs State of NCT of Delhi, 2007 (4) JCC 2924** where it was observed by High Court of Delhi that provisions of section 82/83 Cr PC have to be strictly followed. Attachment order has to maintain a distance of not less than 30 days from the date of publication.

179. It is clarified by Ld SPP that process u/s 82/83 Cr PC was issued against accused R.K.Sharma but till his immovable property was attached, same surrendered before the court. In this way, said process was not complete and hence there was no question of strictly following the procedure of attachment of properties of accused or declaring him as PO.

180. There is no denial that it was a case where proceedings were being widely publicized in media. It is not plea of accused R.K.Sharma even that he did not know that he was wanted for interrogation in this case.

Avoiding/not joining investigation by him can be taken as a fact against him and admissible u/s 8 of the Indian Evidence Act being conduct of same.

181. Accused R.K.Sharma, Sri Bhagwan, Satya Prakash and Pradeep Sharma are hence convicted for offence of hatching criminal conspiracy with each other to kill Shivani Bhatnagar (deceased) and the latter was actually killed by accused Pradeep Sharma in execution of said conspiracy. All these accused are hence convicted for offence punishable u/s 120-B r/w section 302 IPC.

182. No other charge is proved against any of these accused. Same are hence acquitted for those charges.

183. Sh.Suresh Kukreja was examined in this case as Pw51. He gave statement in court under oath and as discussed earlier, it appears that said witness had deliberately told a lie before the court. Same is an offence punishable u/s 181 & 193 IPC. A complaint is being lodged to CMM/ACMM concerned seeking initiation of criminal proceedings against said witness.

184. I am unable to refrain myself from mentioning here that behaviour of all accused during trial remained cooperative. None of them ever obstructed the proceedings of the court or sought unnecessary adjournment.

Announced in the open court today (Rajender Kumar Shastri)
i.e on 18th day of March, 2008. Additional Sessions Judge,

Karkardooma Courts, Delhi