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Chandrakant Jha and Another Vs. State and Another

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Court : Delhi

Decided On : Jan-27-2016

Judge : Sanjiv Khanna &Amp; R.K. Gauba

Appeal No. : Criminal Appeal No. 216 of 2015 & Crl. M. A. No. 10421 of 2015 & Death Sentence Reference No. 2 of 2013

Appellant : Chandrakant Jha and Another

Respondent : State and Another

Judgement :

Sanjiv Khanna, J.

1. The appellant-Chandrakant Jha has filed three appeals impugning three separate judgments, all dated 24th January, 2013, convicting him for offences under Sections 302 and 201 of the Indian Penal Code,1860 (IPC for short). These convictions arise from the charge-sheets filed in FIR No.609/2006 dated 20th October, 2006; FIR No.243/2007 dated 25th April, 2007 and FIR No.279/2007 dated 18th May, 2007 recorded at the Police Station Hari Nagar after headless torsos of unknown persons were found packed in a gunny bag/carton outside the Central Jail, Tihar, Delhi on three separate dates when the FIRs were registered, i.e., on 20th October, 2006, 25th April, 2007 and 18th May, 2007.

2. The following table gives details of the FIRs, name of the victims/deceased, orders on sentence and the punishment imposed; criminal appeal numbers

preferred by Chandrakant Jha, and the death references preferred by the State:-

FIR No.	Name of the victim/deceased	Order on sentence date	Sentence Imposed	Criminal Appeal No.

609/2006	Anil Mandal @ Amit	6/2/2013	Death Sentence and fine of Rs.10,000/- for the offence under Section 302 IPC and in default, simple imprisonment for one month. Rigorous Imprisonment of seven years and fine of Rs.10,000/- for the offence under Section 201 IPC and in default, simple imprisonment for one month.	Criminal Appeal No. 216/2015 and Death Reference No.2/2013

246/2007	Upender	5/2/2013	Death Sentence and fine of Rs.10,000/- for the offence under Section 302 IPC and in default, simple imprisonment for one month. Rigorous Imprisonment of seven years and fine of Rs.10,000/- for the offence under Section 201 IPC and in default, simple imprisonment for one month.	Criminal Appeal No. 655/2013 and Death Reference No.3/2013

279/2007	unidentified	4/2/2013	Life imprisonment and fine of Rs.10,000/-, for the offence under Section 302 IPC and in default, simple imprisonment for one month. Rigorous Imprisonment of Seven years and fine of Rs.10,000/- for the offence under Section 201 IPC.	Criminal Appeal No.656/2013

3. We begin by noticing the prosecution assertions as to the significant similarities or commonalities in the three charge sheets as is also noticed in the impugned judgments. The first is the identity of the perpetrator i.e. Chandrakant Jha. The second is similarity of the motive i.e. ulterior feeling or objective that prompted and led to the crime, and the pattern in which the offences were committed by decapitating the heads of the victim and throwing the headless torso outside the Tihar Jail, Delhi. Bilateral similarities in the charge sheets and as recorded in the judgments may also be noticed. In the last two cases arising out of FIR

No.243/2007 and FIR No.279/2007, body parts, namely, arms and legs were chopped and the amputated parts were thrown in and around Delhi. In the first and last case, i.e. FIR No.609/2006 and FIR No.279/2007, there are two more connecting links. Firstly, hand written letter, one in each case, were found and recovered along with the decapitated body left outside the Tihar Jail. These letters taunt and ridicule the police with a challenge to identify and incarcerate the perpetrator. They use caustic and pungent language panning and castigating the Delhi Police for dishonourable and damnatory conduct of harassment, torture and false implication of innocents like the author/perpetrator. Secondly, as a part of his strategy, the perpetrator had made telephone calls to intimate and inform to the police that he had left the dead corpse outside the jail. The sly calls and incendiary first information to the police about the beheaded bodies outside the jail is a peculiar similar feature in the first and the last FIR i.e. FIR Nos.609/06 and 279/07. We have in the course of our decision made reference to Sections 14 and 15 of the Indian Evidence Act, 1872 (Evidence Act, for short) and examined whether this percipient evidence is admissible/relevant by applying the said provisions.

4. We would decide the three appeals and the two connected death references by three separate judgments taking into account the evidence led in each case, albeit we also elucidate and refer to commonality of motive and facts as established by applying similar fact evidenceprinciple as permitted under Sections 14 and 15 of the Evidence Act.

5. In the present judgment we are dealing-with Criminal Appeal No. 216/2015 and Death Reference No. 2/2013 which arise from the judgment dated 24th January, 2013 and the order of sentence dated 6th February, 2013 relating to the charge sheets filed in FIR No. 609/2006, P.S. Hari Nagar.

Similar Fact Evidence

6. The legal issue which must be first answered is whether, when and to what extent similar fact evidenceis relevant and would be admissible? Similar fact evidenceprinciple is an exception to the dictum that evidence of mere propensity to commit a crime of a certain nature is inadmissible and should not be allowed to be adduced. Simply put, a likelihood or proclivity to commit an offence is forbidden

and should not form a part of the chain of reasoning in a judgment. An accused's other misconduct which could reflect mere tendency by itself, should be excluded from consideration. Presumption of innocence should be preserved. This dictum, resonant and known to the Common Law has exceptions, similar fact evidence', being one. Similar fact evidenceas a Common Law term, refers to evidence that may, because of the degree of similarity in two or more events where the accused is common to each event, show improbability of coincidence i.e. this evidence would elucidate and help in determining, whether the facts alleged were intended/deliberate, or accidental. This principle can be extended, as noticed below, to show the identity of the culprit and his involvement in the actus reus.

7. Similar fact evidencesecured legitimacy way back in 1894 in Makin Vs. Attorney General of New South Wales [1894] AC 57 at 65, wherein the following principle was propounded:

It is undoubtedly not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts other than those covered by the indictment, for the purpose of leading to the conclusion that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried. On the other hand, the mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue before the jury, and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental, or to rebut a defence which would otherwise be opened to the accused. ?

In this case, John Makin and his wife were arraigned for murder of an infant, who could not be identified due to lack of proof. However, this did not negate their conviction for causing murder of an infant, informally adopted on payment. In addition to the circumstantial evidence, the prosecution had adduced and relied on evidence of other mothers, who had placed babies with the perpetrators. Evidence that bodies of 13 babies were found in different premises occupied at various times by the persons charged was led. This evidence was held admissible as to corroborate the circumstances evidencing, the actus reus and the requisite mens

rea required for the crime charged.

8. Subsequently in 1975, the House of Lords in Boardman Vs. DPP [1975] AC 421 preferred to adopt the striking similarity test. The test was described by Lord Salmon in the following words:-

It has never been doubted that if the crime charged is committed in a uniquely or strikingly similar manner to other crimes committed by the accused the manner in which the other crimes were committed may be evidence upon which a jury could reasonably conclude that the accused was guilty of the crime charged. The similarity would have to be so unique or striking that common sense makes it inexplicable on the basis of coincidence. ?

9. As per aforesaid test, evidence must meet the threshold of being strikingly similar to the case at hand, before being admissible. The said somewhat stringent test underwent a recast and in DPP Vs. P [1991] 2 AC 447, the shift was to emphasise on relevance i.e. the relevance of the evidence to the matter in issue. The striking similarity test, it was observed, would be one of the criterion on satisfaction of which similar fact evidencecould be led. The test of striking similaritiesis based on the nature of the crimes, i.e. the signature or special feature of the crimes and the modus opernadi of the separate incidents, which should be clearly established. On the other hand, the relevancy test balances degree of relevancy with proportionate prejudice. Evidence would be admitted if its probative value is substantially greater and out-weighs the prejudicial effect. Both principles are predicated and applied on the basis of practical experience and common sense.

10. The significant development made by the above case law, enables similar fact evidenceto be tendered as admissible to prove the identity of the perpetrator, to establish the actus and not merely to demonstrate mens rea of the offence charged. The similar fact evidencerule, as evolved and perfected, states that evidence of similar facts is often irrelevant, unless it is admissible under the exceptions, i.e. it is relevant and the probative value out-weighs the prejudicial effect; striking similaritytest is satisfied; or requisite mental state is in issue. A pragmatic and a practical approach stands applied and adopted.

11. This dictum stands statutorily declared and pronounced in England with enactment of Sections 101 and 103 of the Criminal Justice Act, 2003. Section 101(1) stipulates gateways to admissibility of such evidence in the following category of cases:

(a) all parties to the proceedings agree to the evidence being admissible,

(b) the evidence is adduced by the defendant himself or is given in answer to a question asked by him in cross-examination and intended to elicit it,

(c) it is important explanatory evidence,

(d) it is relevant to an important matter in issue between the defendant and the prosecution,

(e) it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant,

(f) it is evidence to correct a false impression given by the defendant, or

(g) the defendant has made an attack on another person's character. ?

12. Though there is some disagreement, several jurists profess that the aforesaid enactment is not a break from the past, but merely reflects the existing mood of law and the judges. [See paragraph 19.02 on Phipson on Evidence, 17th Edition, 2010]. The above codified law and the legal principle recognises that similar fact evidencein the circumstances stipulated, could be led to form the basis for convicting the guilty, without putting those who are not guilty at the risk of conviction by prejudice.

13. Section 54 of the Evidence Act expressly deals with bad character evidence. Section 54 states that in criminal proceedings the fact that the accused person had a bad character is irrelevant, except when evidence has been given that he has a good character. In light of Explanation 1, this stipulation would not apply to cases in which bad character of a person itself is a fact in issue. Explanation 2 to Section 54 states that previous conviction is relevant as evidence of bad character. In the present case, the three judgments were pronounced on the same day, i.e., 24th

January, 2013. It is a case of simultaneous convictions for three offences of culpable homicide amounting to murder. Moreover, purported bad character of Chandrakant Jha cannot and would not be a relevant fact in the present case, but as noticed and elucidated, identity of perpetrator in other crimes is a relevant fact in this case.

14. We begin by drawing a thin distinction between the bad character evidenceand similar fact evidence'. We are conscious that many a jurist do not draw such distinction, but elucidation on this dissimilarity is necessary for in the context of Sections 54, 14 and 15 of the Evidence Act. Bad character evidencewould stress and emphasise on the criminal or immoral traits and antecedents of an individual, whereas in similar fact evidencethe emphasis is predominately on similarity of facts alongwith safeguards to demonstrate that it is legally permissible to rely on such evidence. This distinction is predicated on Sections 14 and 15 of the Evidence Act, which for the sake of convenience are reproduced in entirety along with the relevant illustrations, which exposit the legislative intent of the said provisions:-

14. Facts showing existence of state of mind, or of body or bodily feeling. ”Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling, is in issue or relevant.

Explanation 1. ”A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question. Explanation 2. ”But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact.

Illustrations

(a) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article. The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession, to be stolen.

(b) A is accused of fraudulently delivering to another person a counterfeit coin which, at the time when he delivered it, he knew to be counterfeit. The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin is relevant. The fact that A had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit is relevant.]

(c) A sues B for damage done by a dog of B's, which B knew to be ferocious. The facts that the dog had previously bitten X, Y, and Z, and that they had made complaints to B, are relevant.

(d) The question is, whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious. The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant, as showing that A knew that the payee was a fictitious person.

(e) XXXX

(f) XXXX

(g) XXXX

(h) XXXX

(i) A is charged with shooting at B with intent to kill him. In order to show A's intent, the fact of A's having previously shot at B may be proved.

(j) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved, as showing intention of the letters.

(k) XXXXX

(l) XXXXX

(m)XXXXX

(n) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured. The fact that B's attention was drawn on other occasions to the defect of that particular carriage, is relevant. The fact that B was habitually negligent about the carriages which he let to hire, is irrelevant.

(o) A is tried for the murder of B by intentionally shooting him dead. The fact that A, on other occasions shot at B is relevant, as showing his intention to shoot B. The fact that A was in the habit of shooting at people with intent to murder them, is irrelevant.

(p) A is tried for a crime. The fact that he said something indicating an intention to commit that particular crime is relevant. The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant.

xxxx

15. Facts bearing on question whether act was accidental or intentional. ”When there is a question whether an act was accidental or intentional, 1[or done with a particular knowledge or intention,] the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant. ”When there is a question whether an act was accidental or intentional, 1[or done with a particular knowledge or intention,] the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant." Illustrations

(a) A is accused of burning down his house in order to obtain money for which it is insured. The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance office, are relevant, as tending to show that the fires were not accidental.

(b) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive. The question is, whether this false entry was accidental or intentional. The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(c) A is accused of fraudulently delivering to B a counterfeit rupee. The question is, whether the delivery of the rupee was accidental. The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D and E are relevant, as showing that the delivery to B, was not accidental. ?

15. Section 14 deals with facts showing existence of any state of mind, be it intention, knowledge, good faith, ill-will, goodwill, etc. or existence of body or bodily feeling. These facts are relevant when the existence of state of mind, body or bodily feeling is in issue or relevant. Explanation 1 is of significance and states that evidence of a relevant state of mind must be advanced with reference to the particular matter in question and not generally. Important examples are Illustrations (o) and (p). The fact that A was in a habit of shooting people with the intention to murder them is declared to be irrelevant, but the fact that on an earlier occasion A had shot B is relevant as showing the specific or particular intent to murder B. Illustration (n) is also relevant as it draws a distinction between a general mental state of being negligent reflected in providing carriages for hire not reasonably fit for use, and intention specific to a particular carriage. The fact which would show that the defendant's attention was drawn on other occasions to the defect in a particular carriage, is contrasted with the assertion that the defendant was habitually negligent about carriages in general. The latter is irrelevant, but former is relevant and admissible. Illustration (c) has to be read with Illustrations (o) and (p). Illustration (c) expounds that the fact that B's dog had bitten others who had complained to B would be relevant in showing that B knew that his dog was ferocious. The illustration explains relevance of Section 14 as to the state of mind as is the case with other illustrations. Albeit, it would be wrong to only restrict the example to proof or evidence of state of mind and not actus reus. The example expands the scope of the exception for it refers to dog bites suffered by several

persons and predominant focus is on the dog and its owner. Illustration (d) is even more decisive as it refers to a bill of exchange drawn by a fictitious payee and whether A knew that the name of the payee was fictitious. In the said matrix, evidence that bills of exchange drawn in the same manner were previously accepted by A although the payees were fictitious, would be relevant. The emphasis in this illustration is on the term same mannerand not on the general disposition. Similar facts would be equally relevant in establishing the actus reus or modus adopted, in addition to inference drawn regarding the metal condition/state. This illustration is lucid and relevant to the present factual matrix as special features of the crimes and the two letters and their contents are the common vertex and converge the three cases.

16. Illustrations (a) and (b) to Section 14 are instances of coincidence evidence', another facet of the rule of similar fact evidence'. The illustrations do show that similar fact evidencecould dispel improbability of coincidence and indicate guilty mind or intent. When an accused is found to be in possession of a specific stolen article, the fact that the accused was in possession of many other stolen articles is relevant, as they tend to show that the accused knew that the specified articles were stolen. Similarly, when a person is found to be in possession of a number of counterfeit coins, this fact would be relevant when the accused is tried for delivering a counterfeit coin to another person. These illustrations, as many others, deal with cases where a question arises as to whether an act was accidental or done with particular knowledge or intention. Section 15 of the Evidence Act, it has been observed, reflects application of the rule laid down in Section 14 and is not by way of an exception.

17. Generally, the law precludes evidence of previous offences or convictions and such evidence is inadmissible. Similar facts are, therefore, ordinarily inadmissible to prove the main fact, a part of the transaction, or the identity or connection with the accused, as they would only show a general disposition or habit. However, Sections 14 and 15 of the Evidence Act do stipulate and covenant exceptions to this axiom. Similar fact evidenceis admissible if it bears on the question whether the acts alleged to constitute a crime were designed or mere accidents and thereby to rebut defences alleging an innocent state of mind. This rule applies

when mental condition of the person with reference to a particular act is in issue.

18. Similar fact evidencecan be led when there is a nexus between the similar fact and the main fact in issue. Apposite, when several distinct offences demonstrate a continuity of action, evidence of previous or subsequent acts would, common sense states, become relevant. For in such cases proof of cumulative facts may aid in proving the main fact in a case. A series of transactions or acts are relevant when they seek to bring about a certain result and obtain certain object. The best way to apply the similar evidence testis to ascertain the facts to be proved (factum probus) and ascertain whether there is sufficient and reasonable connection or a common link with the evidentiary fact. When there is a significant and particular connection of the facts to be proved with the evidentiary fact, i.e., factum probandum, similar fact evidenceis admissible. Mere similarity is not sufficient and is not a common link, but a pre-existing plan or design and where one transaction forms a part of a series designed to bring about certain result with a certain object, the connection envisaged above exists. For example, when A is required to prove that B has committed a fraud, it is neither sufficient nor relevant to prove that B had committed fraud on others, but it may become relevant if it is to be shown that the fraud committed on B was a part of series of other transaction having common features.

19. Section 7 of the Evidence Act states that facts which tend to prove or disprove the acts under enquiry, immediate or otherwise, or constitute the state of things under which they happened, which afford an opportunity for their occurrence or transaction are relevant. Similar fact evidenceprinciple would therefore apply when the earlier and post wrongful acts are a part of systematic pursuit with the same criminal objective. As per Section 8 of the Evidence Act, exculpatory statements are relevant. We accept and acknowledge that the prosecution, to secure conviction is required to rule out the possibility of innocence and another person being the perpetrator. Hence, it can rely upon evidence to establish animus of the act to rebut by anticipation defences of ignorance, accident or any other assertions regarding innocent state of mind.

20. The striking similaritytest could be applied and accepted as permissible within the ambit and scope of Sections 7, 8, 14 and 15 of the Evidence Act. This test negates and repels any chance of misuse or over evaluation for it does not dilute the principle that admission of a mere general disposition or tendencies is impetuous and dangerous being conjectural and remote. Striking similaritytest finds recognition and can be discerned from the illustrations to Section 14, specially (a) to (d) quoted above. Similar fact evidencein such cases may be given to prove and establish, the identity of the perpetrator when it relates to and has a definite and precise reference to a particular matter in question. Strange, exceptional or atypical nature of acts on two or more occasions on a particular matter, could make it safe to rely upon, for interpreting the conduct in question. It is this nexus and link which helps to draw the distinction between a general or particular act. This stringent requirement would satisfy the touchstone and criterion of a particular matter and not a mere general disposition.

21. Thus, similarity in evidence principle can be applied to rule-out probability of co-incidence, mistake or innocent intent, as well as to identify the perpetrator. The first aspect of similar fact evidence can be distinguished and is different, when and where the said principle is articulated and applied to establish the identity of the perpetrator i.e. actus reus was committed by the accused and no one else. In the latter case, conviction could require some other evidence to show commission of actus reus by the accused, which allows relevancy of the similar fact evidence to be taken on record and admitted in evidence, either on account of striking similarity or because the evidence is logically relevant to an important matter and issue connecting the accused. The test of striking similarity or underlying unity when identity of the accused on the basis of actus reus is sought to be established requires a higher threshold. The aforesaid doctrine or principles have to be applied with great caution and care for the general principle is that previous guilt or criminal acts other than those covered by indictment are inadmissible and should not be taken into account when deciding whether the person accused and tried is guilty of the said particular offence.

22. Having expounded the contours and boundaries of admissible similar fact evidenceexception, strictly as per Sections 14 and 15 of the Evidence Act, we

would proceed to refer and elucidate on the facts proved and tangible material proved on record. We have proceeded on the aforesaid legal principles, which are of relevance in these cases as the prosecution alleges and submits and the trial court judgment holds that the appellant-Chandrakant Jha was a serial killer and a psychopath.

A. The First Information Report, post-mortem of the unidentified decapitated body and initial leads

23. We begin with the facts mentioned in the FIR No. 609/2006 and the post mortem report Ex. PW2/A proved by Dr. Anil Shandilya (PW-2).

24. At about 7.20 a.m. on 20th October, 2006, DD No.8A, marked Ex. PW-17/A, was recorded in P.S. Hari Nagar on information statedly communicated by Mukesh Tiwari to the Police Control Room that a bundle containing a beheaded dead body was lying outside Jail No.3, Tihar Jail. ASI Sukhdev Singh (PW17) and Constable Surender Singh (PW21), on being directed to ascertain the factual position, reached the spot where a headless body of a male, aged about 25-28 years, in a basket (tokri) tied with a rope was found wrapped in a jute bag with pieces of plastic and newspaper. Inspector Sunder Singh (PW22) on reaching the spot at about 7.53 AM, inspected the said headless dead body. The severed neck of the deceased was covered with an underwear and one purple pant and sky blue shirt was also found wrapped with the body. The deceased had a tattoo mark of a scorpion (bichhoo) on the left shoulder and word Amit in Hindi inscribed on the right arm. Two bluish marks were observed on the knee and another bluish mark was also noticed on the ribs towards the left lower back. A letter written by the perpetrator was found near the dead body. Mobile Crime Team was called and photographs were taken. Rukka marked Ex.PW22/A was prepared by Inspector Sunder Singh (PW22) at about 10:15 AM and FIR No.609/2006, Ex. PW-15/A, was registered. The FIR specifically mentions that a letter in Hindi which began and ended with the words Delhi Police .Tumhare intezar me tumhare logo ka baap Jijaji (C.C.) was found near the dead body.

25. On the question of recovery of the decapitated body and the letter, we have analogous statements of SI Kartar Singh (PW-1), ASI Sukhdev Singh (PW-17),

Constable Surender Kumar (PW-21) and Inspector Sunder Singh (PW-22).

26. Dr. Anil Shandilya (PW2) who had conducted the post mortem examination on this decapitated body of an unknown male on 30th October, 2006, vide report Ex. PW-2/A, has testified having noticed dried up blood stains adjacent and over the wounds over both shoulders, chest, back and lower limbs. The cause of death, it was opined, was the decapitated injury ante-mortem in nature, caused by a sharp edged weapon sufficient to cause death in ordinary course of nature. The time of death was estimated to be about 10 days prior to the date of post mortem examination. Blood in gauze piece, gunny bag, nylon rope, two underwear and sternum for DNA finger printing were preserved, sealed and handed over to the police. PW2 was not cross-examined.

27. Inspector Sunder Singh (PW22) has stated that ASI Bal Kishan (PW7) had informed him about having received a call from a criminal, who had expressed desire to talk to the Inspector Hoshiyar Singh and he had given his mobile number. In the meanwhile, Inspector Hoshiyar Singh (PW-34) had received a call from landline number 25993011 and had been warned of continuous dropping of dead bodies in front of the jail, for the caller had been harassed by jail officials/police. Inspector Sunder Singh (PW22) along with other police officers had visited the telephone booth from where the call was made and had met one Ram Babu (PW-12), who was operating the said booth, allotted to a handicapped person called Mahesh Bhatia. They had learnt that the caller had left the booth immediately after making the call.

28. Inspector Hoshiyar Singh (PW-34) has testified that he was using telephone No. 9871284644 on 20th October, 2006 and had received a call from landline No. 25993011 and had spoken to the caller, who had identified himself as CC.

29. For the sake of convenience and clarity, we would at this stage itself record that Tarun Khurana (PW-33) has affirmed that telephone No. 9871284644 was subscribed by Inspector Hoshiyar Singh vide customer application form, Exhibit PW-33/A. He had also proved the call record details (CDR, for short) of the said phone between 19th October, 2006 and 21st October, 2006, marked Exhibit PW-22/Z15, which had the signature and official seal of the then Zonal Officer, R.K.

Singh. He had produced and proved the certificate under Section 65B of the Evidence Act, marked Exhibit PW-33/D, and the cell ID chart which was marked Exhibit PW-33/E. In his cross-examination, PW33 has deposed that he had issued the certificate of authenticity in personal capacity as an authorised officer, who was entitled to issue the said certificate in terms of the power of attorney executed by Bharti Airtel Limited, marked Exhibit PW-33/DX1.

30. Registration of FIR Nos. 243/2007 and 279/2007 on 25th April,2007 and 18th May,2007 are not disputed and challenged. Registration of the FIR No. 243/2007 on 25th April, 2007 on recovery of another body outside Tihar Jail stands adverted to by Inspector Sunder Singh (PW-22). This witness had discussed this case with Inspector Hoshiyar Singh (PW-34). Inspector Sunder Singh (PW22) has also deposed about the recovery of the third headless body outside Tihar Jail on 18th May, 2007 with a hand written letter addressed to the police. FIR No. 279/2007 was registered and PW-22 had visited the spot and interacted with Inspt. Ombir Singh. Efforts were made to trace the accused as a secret informer had indicated that the culprit was available in the area, but the culprit could not be traced.

31. Thus, the three cases were blind murders, with neither identity of the victims nor that of the perpetrator of the crime being initially known. The police, for obvious reasons and grounds, felt and had deduced that the perpetrator was a common person.

32. It is apparent from the testimony of Inspector Sunder Singh (PW-22), the Investigating Officer in the first FIR, that the investigations carried out were common and evidence in the form of the letters, electronic records, forensic reports etc. are mutually relevant.

B. Arrest of Chandrakant Jha and recoveries made from Alipur and Haiderpur:

33. We would begin with and refer to the testimony of Inspector Sunder Singh (PW-22) on the events leading to the arrest of Chandrakant Jha. Insp. Sunder Singh (PW-22) has testified:-

(i) On 18th May, 2007, he had learnt from the secret informer that the perpetrator was available in the area around the Tihar Jail. Attempts were made to trace the culprit, but without success.

(ii) On 19th May, 2007, the secret informer met PW-22 and gave the clue that the perpetrator was residing near Shiv Mandir, Alipur.

(iii) On 20th May, 2007, the said informer again came to PW22's office at Tagore Garden and on this occasion had specific information that the perpetrator was available in his room at Alipur.

(iv) After obtaining permission from seniors, a police team of Inspector Sunder Singh (PW22), ASI Virender Tyagi and other officers of Special Staff and Dilip Kaushik, SI Jai Prakash of P.S. Nangloi and SI Jarnail Singh etc., was constituted. The team reached Alipur, Delhi at about 12 noon.

(v) Watch was kept at Shiv mandir wali gali and at about 2 p.m., Chandrakant Jha was apprehended. Initially the appellant resisted and remained uncooperative, but after persistent and continuous interrogation, Chandrakant Jha broke down and made a disclosure statement marked Ex. PW-22/K.

(vi) Chandrakant Jha was arrested on 20th May, 2007 at 3 P.M. vide arrest memo Ex.PW22/I, which records the place of arrest as the thoroughfare near Chota Mandir, Alipur, Delhi. Intimation regarding his arrest was conveyed to Mamta Jha, wife of the appellant who had signed the arrest memo.

(vii). On personal search a mobile phone Samsung model SCHS 109, with TATA Indicom SIM was recovered and recorded in the personal search memo (Ex.PW22/J). This memo also refers to the recovery of a paper with telephone numbers written thereon. This paper was subsequently seized vide Memo Ex.PW-22/Z8 and was identified by PW-22 in the court as Ex.PW22/Z9. This paper is of relevance and was used to identify the victim in FIR No. 243/2007 and trace the witness Pankaj (PW45). This mobile phone is also of relevance and implicates Chandrakant Jha in the charge for murdering Upender subject matter of FIR No.243/2007.

(viii) An engine operated rickshaw identified by Chandrakant Jha was taken into possession vide memo Ex.PW22/L.

(ix) Chandrakant Jha thereafter took the police team to a rented room on the ground floor in property No. 229 at Haiderpur. The Crime Team and FSL experts were called. The lock affixed on the door of the room was broken.

(x) Three long knives statedly the weapon of offence with blood stains were sealed with the seal NK FSL, Delhi. The sketches of the three knives were prepared and marked Ex.PW22/N. All the knives were put in separate parcels and sealed with the seal of NK FSL, Delhi and seized vide memo Ex.PW22/O.

(xi). Another important material or evidence found at the spot were telephone numbers and names written on the wall. These numbers and names were copied on a piece of paper which was taken into possession vide memo Ex.PW22/Q. Photographs (Ex. PW14/A-1 to Ex. PW14/A-18) which included photographs of the wall with telephone numbers, etc. were taken by Ct. Suresh Kumar (PW-14).

(xii) A mobile phone instrument bearing no. PLC 2682840208 with a SIM of TATA Indicom found in the almirah at Haiderpur, was taken into possession vide common seizure memo marked Ex.PW22/P.

(xiii). A visual site plan Ex.PW22/R was prepared.

34. Inspector Sunder Singh (PW22) identified the mobile phone instrument recovered from the almirah of the room at Haiderpur, used by the appellant Chandrakant Jha as Ex.P22, the three knives recovered from the room at Haiderpur place as Ex.P17, Ex.P18 and Ex.P19 respectively and the rickshaw with a scooter engine from Alipur as Ex.P25. The mobile phone instrument found on personal search was identified and marked Ex.P-27.

35. SI Kartar Singh (PW1), ASI Sukhdev Singh (PW17), HC Vijender Singh (PW-19), ASI Virender Tyagi (PW23), Inspt. Dalip Kaushik (PW24), and SI Narender Kumar (PW32) have deposed on the arrest of Chandrakant Jha at Alipur, personal search and recoveries from Haiderpur.

36. Constable Suresh Kumar (PW-14) had taken 19 photographs of the room at Haiderpur, but as one photograph was washed out, 18 photographs were developed and marked Exhibit PW-14/A1 to A18. Negative of these photographs were filed in the charge sheet arising out of FIR No. 243/2007, but the positives were compared with the said negatives and were taken on record in the present case.

37. Sanjay Mann (PW-13) identified the appellant and has testified that on 10th May, 2007, the appellant Chandrakant Jha's wife had come with their children and PW-13 had rented out two rooms to them for Rs.600/- per month. PW-13 had seen Chandrakant Jha on one or two occasions, but had never spoken to him. PW-13 has accepted that his statement was recorded by the police and, at the time of arrest, the appellant was residing at the said address. However, PW-13 was not present at the time of arrest.

38. Rajeev Kumar (PW-30) has testified that the property No. 229/2 Haiderpur was in the name of his grandmother Ram Kali and had about 12 rooms, including 8 rooms on the ground floor. He had earlier in October, 2004, rented out one room to Vikas, a resident of Bihar. At the instance and on reference of the said Vikas, PW-30 had rented out one room of the said property to the appellant, whom he identified. Chandrakant Jha had told PW30 that he was working in Azadpur Sabzi Mandi. The appellant had stayed in the said room with his family, including his mother, who had come to stay with him for sometime. Later on, his mother had left the premises. PW-30 has testified that Chandrakant Jha was in possession of the room, having paid rent for the month of May, 2007. In his cross-examination, PW-30 reiterated that the police had broken the lock of the said room and had seized the floor pieces etc.

39. Chandrakant Jha has contested and challenged his date of arrest. He professes being arrested on 19th May, 2007 and places reliance on a news item published in Dainik Jagaran dated 20th May, 2007, marked Ex.PW22/DX-1. A similar assertion was made by Chandrakant Jha in his statement under Section 313 Cr.P.C. We have read the said newspaper item, but hold that the same cannot be read as evidence of truth of its contents. Inspector Sunder Singh (PW22) has

highlighted that the news item did not have the name of the arresting officer or the accused. As per the police version and deposition of Inspector Sunder Singh (PW-22), Insp. Dalip Kaushik (PW24), ASI Virender Tyagi (PW23) and SI Narender Kumar (PW32), noticed above, Chandrakant Jha was arrested on 20th May, 2007 vide arrest memo Ex.PW22/I which is also signed by his wife Mrs. Mamta Jha. Even if we assume that Chandrakant Jha was arrested a day earlier on 19th May, 2007, it would not corrode or nullify the prosecution case. At best, it would be an irregularity and not an illegality which materially knocks the charge. In Asif @ Shabbu v/s State, Cr.I.A.No.615/2011 decided on 28th May, 2014, a Division Bench of this Court has held:-

27. However, it would not be correct and appropriate to acquit the two appellants for failure to adhere to the limit prescribed in Article 22 and follow the requirements of Sections 52 and 57 of the Cr.P.C. This violation would result in procedural irregularity and would not make the arrest and the prosecution's story in the present case null and void. Strict compliance of statutory provisions should be there but that by itself does not render the acts done by the police officer void ab initio and at the most it may affect the probative value of the evidence regarding arrest or search and in some cases it may invalidate such arrest or search. But such violation by itself does not invalidate the trial or the conviction if otherwise there is sufficient material. [See H.N. Rishbud and Inder Singh Vs. The State of Delhi: AIR 1955 SC 196, Manubhai Ratilal Patel Tr. Ushaben Vs. State of Gujarat and Ors.: AIR 2013 SC 313, Sadhwi Pragyna Singh Thakur Vs. State of Maharashtra: 2011 (10) Scale 77, Ashok Tshering Bhutia Vs. State of Sikkim: AIR 2011 SC 1363, State of M.P. Vs. Ramesh C. Sharma, (2005) 12 SCC 628, and State of Punjab Vs. Balbir Singh,: AIR 1994 SC 1872 and State Through Reference Vs. Ram Singh and Ors. And Pawan Kumar Gupta Vs. State, (Death Sentence Reference No. 6/2013 and CRL. APP. No. 1398/2013 Decided On: 13.03.2014)].

This ratio was followed in Anil Kumar and Ors. v/s State; 221 (2015) DLT 516.

C. Recovery of Skull and Jaw from the banks of the River Yamuna on 23rd May, 2007:

40. Inspector Sunder Singh (PW-22) on this aspect has testified:-

(i) On 23rd May, 2007, appellant Chandrakant Jha was taken by the police team to the banks of river Yamuna.

(ii) They recovered a skull with lower jaw, one red cloth and a ghaghri. On the basis of the assertions by the appellant, it was assumed that the skull and jaw was of one Dalip, who was addicted to gutkha and paan, statedly the victim in FIR No.279/2007.

(iii) Site plan of the place from where the skull and jaw were recovered was prepared and marked Ex.PW22/Z3.

(iv) Photographer Sanjay Kumar @ Rajesh (PW-20) took 11 photographs of the skull, jaw etc., at the place of recovery which were sealed with the seal of DK and taken into possession vide memo Ex.PW19/A.

41. Inspector Sunder Singh (PW22) and Sanjay Kumar @ Rajesh (PW-20) identified two sets of 11 photographs (22 photographs in all), taken by the latter, marked Ex.PW20/A-1 to A-11 and Ex.PW20/1 to Ex.PW 20/22. Inspector Sunder Singh (PW-22) identified the skull recovered from the banks of river Yamuna as Ex.P13, the jaw as Ex.P14, the red cloth as Ex.P15 and the ghagri as Ex.P16.

42. On the question of recovery of skull and the jaw on 23rd May, 2007, we have affirmative and identical testimonies of ASI Virender Tyagi (PW-23), Inspector Dalip Kaushik (PW-24) and SI Narender Kumar (PW-32). SI Satender Mohan (PW-31) has also affirmed recovery of the skull and the jaw from the banks of river Yamuna on 23rd May, 2007 at the behest of the appellant.

43. At this stage and before any further analysis and scrutiny of evidence, we should examine the scope and ambit of Sections 8 and 27 of the Evidence Act. We have already referred to the disclosure statement of Chandrakant Jha, Ex.PW-22/K, recoveries and leads given in the said disclosure statement or otherwise, resulting in recoveries from the room at Haiderpur, importantly recovery of the skull and jaw from the banks of the river Yamuna and would post refer to the witness Pankaj (PW-45) and discerning and identification of the victims as Anil

Mandal @ Amit son of Tiwari Mandal and Upender. The aforesaid recoveries, leads and clues are admissible under Sections 8 and 27 of the Evidence Act, and not debarred and hit by Sections 25 and 26 of the Evidence Act.

44. Section 27 of the Evidence Act has been a subject matter of interpretation in several cases, albeit the judgment of the Privy Council in Pulukuri Kotayya Vs. King Empror AIR 1947 PC 67 is still regarded as the locus classicus. The decision holds that a fact discovered is not equivalent of the physical object recovered/ produced, and that the fact discovered embraces the place from which the object was produced and the knowledge of the accused as to this fact. Information given by the accused must relate distinctly to that fact. Admissibility would obviously not include in its ambit, a fact already known. In Mohd. Inayatullah Vs. State of Maharashtra, 1976 (1) SCC 828, it was observed:-

11. Although the interpretation and scope of Section 27 has been the subject of several authoritative pronouncements, its application to concrete cases is not always free from difficulty. It will therefore be worthwhile at the outset, to have a short and swift glance at the section and be reminded of its requirements. The section says:

27. How much of information received from accused may be proved. “

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. ?

12. The expression provided that together with the phrase whether it amounts to a confession or not show that the section is in the nature of an exception to the preceding provisions particularly Sections 25 and 26. It is not necessary in this case to consider if this section qualifies, to any extent, Section 24, also. It will be seen that the first condition necessary for bringing this section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the

information the accused must be in police custody. The last but the most important condition is that only so much of the information as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word distinctly means directly ?, indubitably ?, strictly ?, unmistakably ?. The word has been advisedly used to limit and define the scope of the provable information. The phrase distinctly relates to the fact thereby discovered is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered.

13. At one time it was held that the expression fact discovered in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact (see Sukhan v. Crown5; Rex v. Ganee). Now it is fairly settled that the expression fact discovered includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this (see Palukuri Kotayya v. Emperor; Udai Bhan v. State of Uttar Pradesh). ?

45. In Vasanta Sampat Dupare Vs. State of Maharashtra (2015) 1 SCC 253 the said provision stands exhaustively examined and it was held that recovery of the dead body of the deceased at the instance of the accused would be a fact within the special knowledge of the accused, and therefore, the said recovery including the recovery of the clothes in the said case, were admissible and relevant evidences as per section 27 of the Evidence Act. The aforesaid decision also refers to Section 8 of the Evidence Act and quotes paragraph 8 from Prakash Chand Vs. State (Delhi Administration), (1979) 3 SCC 90, which reads:-

8 There is a clear distinction between the conduct of a person against whom an offence is alleged, which is admissible under Section 8 of the Evidence Act, if such conduct is influenced by any fact in issue or relevant fact and the statement made to a Police Officer in the course of an investigation which is hit by Section 162 of the Criminal Procedure Code. What is excluded by Section 162, Criminal Procedure Code is the statement made to a Police Officer in the course of investigation and not the evidence relating to the conduct of an accused person (not amounting to a statement) when confronted or questioned by a Police Officer during the course of an investigation. For example, the evidence of the circumstance, simpliciter, that an accused person led a Police Officer and pointed out the place where stolen articles or weapons which might have been used in the commission of the offence were found hidden, would be admissible as conduct, under Section 8 of the Evidence Act, irrespective of whether any statement by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 of the Evidence Act. ?

Paragraph 9 from A.N. Venkatesh Vs. State of Karnataka (2005) 7 SCC 714 was also quoted. The said paragraph reads:-

9. By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in Prakash Chand v. State (Delhi Admn.). Even if we hold that the disclosure statement made by the accused appellants (Exts. P-15 and P-16) is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8. The evidence of the investigating officer and PWs 1, 2, 7 and PW 4 the spot mahazar witness that the accused had taken them to the spot and pointed out the place where the dead body was buried, is an admissible piece of evidence under Section 8 as the conduct of the accused. Presence of A-1 and A-2 at a place where ransom demand was to be fulfilled and

their action of fleeing on spotting the police party is a relevant circumstance and are admissible under Section 8 of the Evidence Act. ?

46. In State (NCT of Delhi) Vs. Navjot Sandhu (2005) 11 SCC 600, the two provisions i.e. Section 8 and Section 27 of the Evidence Act were elucidated in detail with reference to the case law on the subject and apropos to Section 8 of the Evidence Act, it was held:-

205. Before proceeding further, we may advert to Section 8 of the Evidence Act. Section 8 insofar as it is relevant for our purpose makes the conduct of an accused person relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. It could be either a previous or subsequent conduct. There are two Explanations to the section, which explain the ambit of the word conduct ?. They are:

Explanation 1. ”The word conductin this section does not include statements, unless those statements accompany and explain acts other than statements, but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2. ”When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant. ?

The conduct, in order to be admissible, must be such that it has close nexus with a fact in issue or relevant fact. Explanation 1 makes it clear that the mere statements as distinguished from acts do not constitute conduct unless those statements accompany and explain acts other than statements ?. Such statements accompanying the acts are considered to be evidence of res gestae. Two illustrations appended to Section 8 deserve special mention:

(f) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence ” the police are coming to look for the man who robbed B', and that immediately afterwards A ran away, are relevant.

* * *

(i) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant. ?

It was further held;-

206. We have already noticed the distinction highlighted in Prakash Chand case between the conduct of an accused which is admissible under Section 8 and the statement made to a police officer in the course of an investigation which is hit by Section 162 Cr PC. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where stolen articles or weapons used in the commission of the offence were hidden, would be admissible as •conduct –under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct, falls within the purview of Section 27, as pointed out in Prakash Chand case. In Om Prakash case this Court held that: (SCC p. 262, para 14)

[E]ven apart from the admissibility of the information under Section 27, the evidence of the investigating officer and the panchas that the accused had taken them to PW 11 (from whom he purchased the weapon) and pointed him out and as corroborated by PW 11 himself would be admissible under Section 8 of the Evidence Act as conduct of the accused. ?

D. Identity of the dead body in F.I.R. No. 609/2006

47. The testimony of Inspector Sunder Singh (PW-22) on the question of the identification of the dead bodies is illustrative and exposits that the headless bodies found outside the Tihar Jail, subject matter of F.I.R. Nos. 609/06 and 243/07, as per investigation and evidence available were discerned to be of Anil Mandal @ Amit and Upender @ Pintu respectively. Impugned judgment in our opinion rightly holds that the identity of the third dead body, subject matter of FIR

No.279/2007, could not be established and proved. On the question of identity of the victim in FIR No.609/2006, depositions of Inspector Sunder Singh (PW-22), Dr. Anil Shandilya (PW-2), Naresh Kumar (PW-11), Dr. A.K. Srivastava (PW-35), Head Constable Sahan Singh (PW-28), Inspector Harpal Singh (PW-36), Ravinder Kumar (PW-37) and Inspector Jai Singh (PW-44) have to read in seriatim and together.

48. Dr. Anil Shandilya (PW-2) had conducted post-mortem, vide report 982/06 marked Exhibit PW-2/A, on an unknown male aged between 25-30 years, with a tattoo mark of scorpio (bichoo) on his left shoulder and the name Amit engraved on his right forearm. He had preserved the sternum for DNA finger printing and the same was sealed and handed over to the police officers.

49. Naresh Kumar (PW-11), Senior Scientific Assistant, FSL Rohini had proved the biological and serological report Exhibit PWs-11/A and 11/B and has stated that certain parcels were sent to the DNA Division for DNA examination.

50. A.K. Srivastava (PW-35), Assistant Director (Biology), DNA finger printing unit, FSL, Rohini, Delhi has deposed that the two blood samples of Hari Singh and Saroj Devi received from the DDU Hospital were subjected to DNA isolation and DNA print profiles was prepared for STR analysis with bone piece sternum vide PM (post mortem) No.982/06. PW35 opined that the alleles from the source of blood samples of Hari Singh and Saroj Devi did not match with the DNA profiling (STR analysis) of the bone piece sternum. He proved his report Ex.PW35/A dated 3rd December, 2008. Thus, the DNA report Ex.PW-35/A firmly establishes that the headless torso found on 20th October, 2006 was not of Anil Mandal@ Amit son of Hari Singh or Saroj Devi, but of some other person.

51. The DNA report (Ex.PW35/A) had prompted Chandrakant Jha to move an application before the trial court seeking discharge. Inspector Jai Singh of P.S. Hari Nagar also moved an application, Ex.PW1/T, before the Additional Sessions Judge, inter alia, stating that further investigation had revealed that one Anil Mandal @ Amit, son of Tiwari Mandal, resident of village Ugri, district Bhagalpur, Bihar, who was arrested in FIR No.26/2003 dated 13th January, 2003 under Section 25/54/59 of Arms Act, P.S. Shalimar Bagh was known and associated with

Chanderkant Jha. Examination of the dossier of the said Anil Mandal @ Amit son of Tiwari Mandal had revealed presence of tattoo marks of a scorpion on his left shoulder and the word Amiton his right arm. On verification, it was learnt that the said Anil Mandal @ Amit son of Tiwari Mandal was missing since the date of the occurrence and possibly the headless body, subject matter of post mortem No.982/2006 could be of the said Anil Mandal @ Amit. The order dated 5th October, 2011, passed by the trial court makes reference to the dossier of Anil Mandal @ Amit and records that the finger prints on the said dossier had matched with the finger prints of the deceased initially taken when the headless corpse was recovered outside the Tihar Jail on 20th October, 2006.

52. A.K. Srivastava (PW35) thereafter had conducted DNA profiling (STR analysis) on two blood samples received on 30th November, 2011 of Vijay (PW-40) and Manda (PW-41), which were subjected to DNA isolation. The data was analyzed using Gennescan and Gen Mapper ID-X software. The test showed that the bone piece sternum, subject matter of PM (Post Mortem) No.982/06 received on 3rd December, 2008, was the biological father of Manda (PW-41). The report also records that partial DNA profiling could be deduced from the blood sample of Vijay (PW-40). The said report was marked Ex.PW35/D and the geno type data marked as Ex.PW35/E. In his cross-examination, PW35 has stated that STR analysis had been used for matching the DNA samples and when 10 or more bands out of 15 match, the probability that the DNA was of the same origin was very high. In this case, 15 out of 15 bands had matched. DNA report Ex.PW35/D, thus convincingly and definitely showed that the headless torso found outside the Tihar Jail was of Anil Mandal@ Amit son of Tiwari Mandal and father of Manda (PW41).

53. PW35 has referred to the DNA finger printing profile of the teeth of the recovered skull vide FSL No.2007/DNA-2804 and the DNA profile of the bone piece i.e. sternum vide FSL No.2007/DNA-2849 in FIR No.279/07 and FIR No.609/06, both of P.S. Hari Nagar. He opined that the alleles from the source of the teeth were accounted for in the alleles from the source of the sternum in FIR 609/2006. PW-35's affirmative conclusion from the DNA profiling (STR analysis) of the aforesaid two exhibits i.e. the teeth of the jaw and the DNA of the sternum, was that the two biological samples belonged to the same person. He proved his

report marked Ex.PW35/F, which was forwarded to the SHO vide letter dated 3rd January, 2012.This report establishes that the jaw recovered on 23rd May, 2007 from the banks of the river Yamuna at the behest of Chandrakant Jha was of the same person whose headless torso was found outside the Tihar Jail on 20th Oct.,2006. The jaw did not relate to Dalipi.e. the purported victim in the third FIR i.e. FIR No.279/2007.

54. Inspector Harpal Singh (PW36) has deposed that after the transfer of Inspector Sunder Singh (PW22), the investigation was conducted for some time by Inspector Jai Singh, who had made inquiries regarding the criminal record of Anil Mandal @ Amit, which was traced out and collected. Inspector Jai Singh had also collected the dossier record, which has been marked Ex.PW28/A and had the photograph of Anil Mandal @ Amit. PW-36 has also referred to the finger prints taken by Ravinder Kumar from the unidentified headless body in FIR No.609/06, P.S. Hari Nagar and their comparison with specimen left finger/palm/palm prints slip in the dossier of Anil Mandal, son of Tiwari Mandal. He has deposed about the finger print report of Ravinder Kumar, marked Ex.PW36/A. On 29th October, 2011, PW-36 had visited the village Ugri, district Bhagalpur, Bihar and had taken blood samples of Tiwari Mandal and his wife Madho Devi at a government hospital in Kahalgaon, Bhagalpur, Bihar. However, the DNA finger print profile could not been prepared due to non-amplification of DNA. Thereafter, PW-36 had got in touch with the widow of Anil Mandal, namely, Bharti Devi and had requested her to give blood samples of her children. He has deposed that DNA test of the skull with teeth recovered in FIR No. 279/07 of PS Hari Nagar had already been done vide FSL report No. 2007/DN2804 and on direction of senior officers, the DNA test of the bone piece i.e. sternum of the deceased was got done vide FSL report No. 2007/DN2849 on 31st July, 2007. On his request dated 26th December, 2011, FSL report Nos.2007/DNA/2804 and 2849 were supplied. As per the said reports, the jaw and headless body had matched and were of the same person i.e. Anil Mandal @ Amit, son of Tiwari Mandal.

55. Ravinder Kumar, Finger Print Expert (PW37) has proved his finger print report marked Ex.PW36/A and has testified that he had compared the finger prints of Anil Mandal available in the dossier Ex.PW28/A with the search slip Ex.PW28/B and

had opined that they were of the same person. The said comparison was made pursuant to letter No.1135 dated 9th June, 2010, received from the SHO, P.S. Hari Nagar.

56. Head Constable Sahan Singh (PW28) in his affidavit has deposed that the dossier with photographs of Anil Mandal, son of Tiwari Mandal, resident of Jhuggi AA Block, Shalimar Bagh was handed by him to Inspector Jai Singh. He identified the dossier with photographs of Anil Mandal (the dossier, Ex.PW28/A, and finger prints enclosed as Ex.PW28/B).

57. The aforesaid evidence is of vital importance and connects the identity of the jaw recovered on 23rd May, 2007 from the banks of the river Yamuna with the headless dead body found outside Tihar Jail on 20th October, 2006. The DNA profiling also proves and identifies the deceased as Anil Mandal @ Amit, father of Manda (PW41). Apposite, the jaw was recovered at the behest of Chandrakant Jha, from the banks of River Yamuna.

58. In Nandlal Wasudeo Badwaik versus Lata Nandlal Badwaik and Another, (2014) 2 SCC 576, the nature and evidentiary value of a DNA or deoxyribonucleic acid test on the basis of chromosomes of the cells was elucidated upon and observed that accuracy of the results of such a test when conducted properly is of the highest order. In Anil @ Anthony Arikswamy Joseph versus State of Maharashtra, (2014) 4 SCC 69, the Supreme Court emphasised on the transcending impact of the DNA profiling on the forensic investigation for if the profiles of the samples of the accused match with any sample found at the scene of crime, the said result would be of extreme relevance and would be reliable and safe to accept. In Dharam Deo Yadav versus State of U.P., (2014) 5 SCC 509, the Supreme Court acknowledged extensive use of DNA tests in investigation of crimes and that the courts often accept opinions of DNA experts. While DNA profiling tests were generally valid and reliable, the Supreme Court cautioned that the result would depend upon the quality control and quality assurance procedures in the laboratory. Significantly in the present case, the DNA test report Ex.PW35/A did not support the prosecution version as it was opined that the DNA profiling of the sternum did not match the blood samples of Hari Singh and Saroj Devi. This

had, as noted above, prompted Chandrakant Jha to file an application seeking discharge in the trial in the charge-sheet filed in the FIR No. 609/2006, pleading that the DNA report did not corroborate the identity of the dead body with the prosecution version and had belied the disclosure statement marked Exhibit PW-22/K. Negative DNA report (Ex.PW-35/A) had actuated the prosecution and forced them to carry out further investigation. Acting on the leads given by Chandrakant Jha in his disclosure statement Ex.PW22/K that the victim named Anil Mandal @ Amit had a criminal background, they came across dossier of one Anil Mandal @ Amit, son of Tiwari Mandal. The said Anil Mandal @ Amit was also missing and his recorded finger prints matched with the finger prints lifted from the headless body in the present case. Ravinder Kumar (PW-37), the finger print expert, had compared the dossier prints with the search slip of the unidentified dead body. Enthused by this break, the police traced Bharti Devi wife of Anil Mandal @ Amit, who has deposed as PW-39. She has affirmed that her husband Anil Mandal @ Amit was facing prosecution in a criminal case and had gone to attend a court hearing on 19th October, 2006. Thereafter, he did not return. PW-39 identified the photograph of Anil Mandal @ Amit marked Exhibit PW-39/A on the dossier maintained by the police as that of her husband. PW-39's version is corroborated by Paro (PW-42), aunt of Anil Mandal @ Amit. Bharti Devi (PW-39) affirmed that her children Vijay (PW-40) and Manda (PW-41), had given blood samples, a factum also affirmed by Vijay (PW-40) and Manda (PW-41). The DNA profile of the sternum of the headless body matched the DNA from the blood sample of Manda (PW-41) vide report Exhibit PW-35/D as well as the teeth from the recovered jaw vide report Exhibit PW-35/F. The Presiding Judge had called for the records of the criminal case in which Anil Mandal @ Amit was facing prosecution and has recorded that the said case was fixed for hearing in the Court of Mr. Rajesh Goel, Metropolitan Magistrate on 19th October, 2006.

59. Identification of the victim Anil Mandal @ Amit, son of Tiwari Mandal, biological father of Manda (PW-41) and the recovery of the jaw of the said Anil Mandal @ Amit at the behest of the Chandrakant Jha are relevant and admissible evidence, which implicates and incriminates. They bring home the said charge, for Chandrakant Jha was aware and knew that the de-headed skull/ jaw could be found at the banks of river Yamuna and the identity of decapitated body. But for

the said revelation and disclosure by the appellant “Chandrakant Jha, the jaw would not have been recovered and the identity of the victim, whose de-capacitated torso was found outside the Tihar Jail on 20th October, 2006 would not have been ascertained and established. These revelations and disclosures are weighty and substantive evidence. They carry considerable and significant probative value.

60. In view of the assertion and the disclosure satatement of Chandrakant Jha that the jaw and the skull belonged to one Dalip, the victim whose headless torso was found on 18th May, 2007, and the police had initially connected the said recovery with FIR No. 279/2007. Possibly, this was an attempt by Chandrakant Jha to mislead and delude the investigation. Uninformed, Chandrakant Jha was not aware and did not realise that DNA analysis of the jaw could connect and match with the DNA of the sternum of the headless torso in FIR No. 609/2006. Finger prints also matched. The said empirical finding is a primary evidence connecting the crime with Chandrakant Jha.

E. Identification of appellant ChandraKant Jha by Ram Babu (PW12).

61. Under heading Awe have referred to Inspector Sunder Singh (PW22)'s deposition that on 20th October, 2006, Duty Officer ASI Balkishan had received a telephone call and the caller had asked for the mobile phone number of the SHO, expressing his desire to talk to him. The aforesaid factum stands confirmed by Inspector Hoshiyar Singh (PW34), who in his testimony accepts being posted as the SHO of P.S. Hari Nagar on 20th October, 2006 and being informed that someone calling himself Mukesh Tiwari wanted to speak to him about dumping of a dead body in a bag (katta) outside Gate 3, Tihar Jail. After about 10-15 minutes, PW34 had received a call from the landline number 25993011 and the caller, who had identified himself as CC, had professed having thrown the said headless body outside Gate 3, Tihar Jail. The caller had proclaimed that he was earlier falsely implicated in a case under the Arms Act but refused to divulge the details. Besides, the caller had stated that he had remained in custody from 30th to 3rd and had complained about mis-treatment in the Tihar Jail and had stated that one Head Constable Balbir had tortured him. The caller had warned that he would

continue to drop bodies in front of the Tihar Jail. Inspector Hoshiyar Singh (PW34) had tried to engage the caller in a prolonged conversation but the caller had disconnected the phone. After the said call, they had called back on the phone number 25993011 and were connected to Ram Babu, who had informed that his telephone booth was located in front of the Delhi Jal Board office, Tilak Nagar. PW34 had passed on this information to Inspector Sunder Singh (PW22).

62. ASI Balkishan Sharma (PW7) has independently confirmed that at about 7.05 a.m. on 20th October, 2006, a call was received from the alleged perpetrator, who had identified himself as Mukesh Tiwari and as asked, PW7 had given the telephone number of Inspector Hoshiyar Singh to the caller. PW7 was working as a DD writer at police station Hari Nagar on 19th /20th October, 2006. The second call from the said Mukesh Tiwari was received at about 8.45 a.m.

63. Testimony of Tarun Khurana (PW33) and the CDRs Ex.PW22/Z15 referred to under heading A', affirm the said facts.

64. With this lead and information, a police team led by Inspector Sunder Singh (PW22) had proceeded to the telephone booth where the aforesaid landline connection was installed and had interrogated Ram Babu (PW12). Ram Babu (PW12) accepts and affirms the aforesaid version given by Inspector Hoshiyar Singh (PW34) and Inspector Sunder Singh (PW22) and the fact that on 20th October, 2006, police had come to his telephone booth. He affirms that at about 8.30-8.45 a.m., one person aged about 40 years had made a call and left, after making a payment of Rs.12/-. Thereafter, he had received a phone call from Inspector Hoshiyar Singh (PW34) of P.S. Hari Nagar. By then the caller had left the booth. Police had tried to trace the caller, but all in vain. He affirmed that the caller was a tall person of brown colour and was speaking eastern Hindi dialect. He identified the appellant Chandrakant Jha as the person, who had made the call. He has deposed having gone to Rohini Courts and thereafter to the Tihar Jail to identify the appellant in Test Identification Proceedings (TIP Proceedings), but the same were not conducted. In his examination in chief, PW12 had given the said date as 26th October, 2006, which is obviously wrong. The witness was confused about the date, as in the cross examination, PW-12 had then mentioned

the date as 26th November, 2007 and thereupon asserted that the correct date was 26th June, 2007. What is important and is of relevance is the dock identification of Chandrakant Jha, as the person who had made the call from his booth to the police on 20th October, 2006. The witness had identified the appellant in a photograph. PW-12 has deposed that on his narration, a portrait sketch of the caller was prepared on a computer at the police station.

65. Inspector Sunder Singh (PW22) has also testified that on 26th June, 2007, he along with Ram Babu (PW12) had gone to the Court No.108, Rohini Court Complex, where the appellant was produced from judicial custody. Witness Ram Babu (PW12) had identified the appellant as the person, who had made a call from his booth to Inspector Hoshiyar Singh (PW34), on 20th October, 2006. PW-22 had accordingly recorded the supplementary statement of Ram Babu (PW12) under Section 161 Cr.P.C.

66. Constable Babu Lal (PW8) has testified that on 10th November, 2006, he was posted as a Computer Operator in the Dossier Cell, PS-Rajouri Garden and had drawn a computer sketch on the basis of the description given by Ram Babu (PW12). He proved the computer sketch, which was marked Ex.PW8/A.

67. It is correct that the photograph of Chandrakant Jha had appeared in a newspaper and his photograph (PW-22/DX) was also taken when the crime team had visited Haiderpur. Chandrakant Jha had claimed that he was shown to the witness and photographs were taken at Police Station Hari Nagar. He had also stated that his face had been shown in newspapers and TV news channels. Inspector Sunder Singh (PW-22) has, however, stated that Chandrakant Jha had deliberately unmuffled his face and did not accept the advice and direction to keep his face muffled and concealed. This fact was recorded in the police case diary and even a DD entry was recorded. PW-22 has stated that on 4th June, 2007, Ram Babu (PW-12) was brought to Rohini Court Complex and as per the directions of the Metropolitan Magistrate taken to Rohini Jail to participate in the TIP proceedings. The application moved by PW-22 for the said purpose was marked Exhibit PW-22/Z10. Chandrakant Jha had refused to participate in the TIP proceedings vide Exhibit PW-22/Z11 (an admitted document).

68. Reliance was placed on information dated 11th August, 2009, marked Ex.DW1/E, furnished under the Right to Information Act, 2005, (RTI Act, for short) that Chandrakant Jha was not produced in any court on 26th June, 2007, which contradicts the testimony of several police witnesses and Ram Babu (PW-12). It will be wrong and assumptuous to take and treat the contents of the said RTI reply as gospel truth and thereby reject the depositions of the aforesaid witnesses, including investigating officer for the simple reason that the RTI reply is based on records made available to the officer communicating or required to supply/ furnish the information. The information conveyed would be from a particular or specific record. There could be other records which would indicate that the appellant, at the relevant time, was housed or taken from a different jail. We cannot take the RTI reply as sacrosanct and draw inferences from the said information, without the witnesses who have deposed and affirmed to the contrary being confronted with the assertions or documents.

69. The other question which arises for consideration relates to the evidentiary or probative value of the dock identification by Ram Babu (PW-12) and whether the same is trustworthy and credible. There cannot be any doubt and debate that the caller had interacted and made a phone call from his telephone booth on 20th October, 2006. Shortly thereafter, telephone call was made from the Police Station Hari Nagar and police officers had also interrogated and questioned Ram Babu (PW-12). We believe and accept the prosecution case that the dock identification by the said witness of Chandrakant Jha carries weight and should be accepted. In Manu Sharma Vs. State (Govt. of NCT of Delhi) 2010 (6) SCC 1, the Supreme Court elucidated and highlighted significance of dock identification, observing that TIP etc. relate to the stage of investigation. In R. Shaji Vs. State of Kerala (2013) 14 SCC 266, after referring to varied case law on the subject of TIP and Section 9 of the Evidence Act, it was observed that TIP cannot be claimed by the accused as a matter of right and only corroborates identification of the accused in the Court. TIP may be meaningless, if the witness is known to the accused or was shown his photograph or had been exposed to the media. TIP may be helpful in investigation to ascertain whether the investigation was going in the proper direction but it is the identification in court that matters. In State Vs. Sunil Kumar (2015) 8 SCC 478, the Supreme Court highlighted that identification of an accused

in the court by a witness constitutes substantive evidence and TIP is not a rule of law, but a rule of prudence. In a given case, in the absence of TIP, identification in the court may become unreliable and unworthy of reliance, but it would depend upon the factual matrix. Where a witness had abundant opportunity to notice the features and the face of the accused and the offender and witness was in close proximity, the courts can rely upon the dock identification. Recently in Kulwinder Singh v. State of Punjab, (2015) 6 SCC 674 it has been observed:

10. First, we shall deal with the facet of test identification parade. There is no dispute that the test identification parade has not been held in this case. The two witnesses, namely, PW 2 and PW 3 have identified the appellant-accused in court. As per their evidence they had seen the appellant-accused in torchlight and they had also seen them running away. It has also come in the evidence that they chased them but they could not be apprehended. The learned trial Judge as well as the High Court has taken note of the fact that it was 4.00 a.m. in the month of April and, therefore, it was not all that dark and with the help of torchlight, they could have identified the accused persons. The suggestion given to these witnesses is absolutely vague. Nothing really has been elicited in the cross-examination to discard the testimony of these witnesses.

11. In Matru v. State of U.P, it has been held that the identification test does not constitute substantive evidence and it is primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation of an offence is proceeding on the right lines.

12. In Santokh Singh v. Izhar Hussain, it has been observed that the identification can only be used as corroborative of the statement in court.

13. In Malkhansingh v. State of M.P. it has been held thus: (SCC pp. 751-52, para 7)

7. The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are

essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. ?

14. In this context, reference to a passage from Visveswaran v. State, would be apt. It is as follows: (SCC p. 78, para 11)

11. The identification of the accused either in test identification parade or in Court is not a sine qua non in every case if from the circumstances the guilt is otherwise established. Many a time, crimes are committed under the cover of darkness when none is able to identify the accused. The commission of a crime can be proved also by circumstantial evidence. ?

15. In the case at hand, as the witnesses have identified the appellant-accused in the court and except giving a bald suggestion that they have not seen the accused persons, there is nothing in the cross-examination we are disposed to accept the identification in court. Hence, the submission canvassed by the learned counsel for the appellants on this score pales into insignificance. ?

70. The appellant had filed an application Crl. M.A. No. 10421/2015 under Section 391 read with Section 482 Cr.P.C. Order dated 21st September, 2015, records that the appellant-Chandrakant Jha was only pressing for taking on record Annexures P-1 and P-2 to this application. The said annexures are information received under the RTI Act to the effect that Babu Lal (PW-8) was on leave from 26th October, 2006 to 24th January, 2007 (90 days). The contention of Chandrakant Jha is that Babu Lal (PW-8) could not have purportedly drawn the computer sketch on the basis of the description given by Ram Babu (PW-12) on 10th November, 2006 as he was on leave. The contention of the State is that even assuming Babu Lal (PW-8) was on leave for some time, he could have been specifically called to draw the sketch. Further the reply under the RTI Act by itself cannot be read in evidence. We would observe that the said Annexures P-1 and P-2 by itself would not override Babu Lal (PW-8)'s testimony that the sketch was drawn on 10th November, 2006 and equally affirmative Ram Babu (PW-12)'s statement that on his description a sketch was drawn. Babu Lal (PW-8) could well

have drawn the said sketch on being specifically requested and asked, though he was on leave. The said aspect should have been put to both Ram Babu (PW-12) and Babu Lal (PW-8). The sketch Exhibit PW-8/A is on record.

71. With the aforesaid observations, the application Crl.M.A. No. 10421/2015 is disposed of.

F. The two letters and the reports of the handwriting expert

72. Along with the decapitated body found outside Tihar Jail on 20th October, 2006 (in FIR No.609/2006), a letter written in Hindi, which was seized vide memo Ex.PW1/B, was also found. The said letter avoiding expletives used, reads:-

.delhi police teri maa ki xxxxx, teri maa ki xxxx. Ab kaan khol kar saare delhi police sun lo ki ab tak main najayaj case jhelta raha lekin main ab hakikat mein murder kiya hoon. Agar is murder mein tum mujhe pakar sako to pakar kar dikhao tab main samjhunga ki tum saare ke saare delhi police uper se niche tak ke staff apne asal maa-baap ke paidaish ho. Nahin to najayaj case lagana band karo varna ye shilshila hamesha hamesha ke liye jari rahega aur tum log mujhe kabhi bhi nahin pakar paoge kyonki main koi gangvar nahin hoon ki mujhe case khulne ka dar laga rahega kyonki iska saboot ye hai ki 2003 ke november mahina mein jo ek number par main-ne murder karke dala usko bhi tum log nahin khol sake aur na hi is case ko khol paoge kyonki ye hamara vada hai varna nahin to najayaj case lagana band karo ya phir case khol sako to case khol kar dikha do. Tumhare intzar mein tum logon ka baap + jijaji. CC...." (xs stand for words deliberately omitted)

73. The aforesaid letter is in nature of extra judicial confession by the perpetrator, who had thrown the dead body and also mocked the police to identify and arrest him in this murder case. He had referred to another case of November, 2003, but the case could not be ascertained or solved. Prosecution has not led evidence to show and establish involvement of Chandrakant Jha in any case registered in November, 2003. Thus, it was submitted that Chandrakant Jha was not the author of the said anonymous letter. The contention of the prosecution, which is weighty and cannot be rejected as superfluous, is that the said statement could be false and misleading and made to confuse and obtrude the investigation. This argument

of Chandrakant Jha, we believe, cannot be a ground and reason to absolve and acquit him.

74. As recorded earlier, another letter written in Hindi was found with the decapitated body found outside Tihar Jail on 18th May, 2007, which became subject matter of FIR No.279/2007. The said letter in Hindi (avoiding expletives used) reads:-

" .... Mere priyajano. delhi police ke jaanbaz D.H.G.se lekar I.P.S. Tum sabhi ko tumhare jijaji aur tumhare daamad ke taraf se khullam-khulla challenge hai ki agar vakai mein tumlogon ki maa ko tumlogon ke hi baap ne xxxx paida kiya hai to mujhe pakarkar dikhao varna tum saare upar se niche tak ke delhi police ka staff najayaz maa + baap ka paidaish kahlaoge aur tum log yahi sochna ki vakai mein tum logon ki maa aur behan kisi aur adhikar wallon se xxxx wall hai kyonki (xxxx) xxxx ke aulaad tum delhi police vale bahut hi behxxxxd aur maa chxd ho kyonki tum log najayaz case lagakar ek sharif aadmi ko bahut hi galat tarike se pareshaan aur mazbur tatha badnaam kar dete ho ki vo kamane khane ke laayak bhi nahin reh pata hai. Lekin saale tum log ye bhul jaate ho ki jab ek sharif aadmi sharafat chor kar crime karta hai to phir tum logon ki aise hi maa behan xxxx hai jaisa ki Tihar Jail par hota aaya hai aur hota hi rahega jab tak ki tum log mujhe (DCP) Manish Kumar Aggarwal se nahin baat karva doge aur main ek baat (SHO Hoshiyar Singh ji) se jarur kehna chahoonga ki abhi jo pichle hi saal 20.10.2006 ko laash mill thi usme us laash ka app logoon ne thik dhang se muaayena nahin kiya tha kyonki us laash par uske haath par (Amit) naam likha tha lekin aap loogoon ne akhbaar mein uska naam bhi nahin dalwaya tha. Vaise main ye letter -likhta to nahin lekin abhi jo shayad 24 ya uske ek aadh din aage-piche April mein main-ne murder karke Tihar Jail par delhi police ke liye tohfa bheja, tha uske andar jo letter nahin mila to bechare akhbar vale bhi pareshaan ho gaye ki aakhir delhi police valoon ke damaad aur jijajine abki baar letter kyon nahin bheja. Isliye main aap logoon ke shikavat par gaur pharmaya hai. Mujhe ummid hai ki ye shilshila aise hi chalta rahega aur delhi police valoon ki maa + behan xxxx rahegi varna mujhe (DCP Manish Kumar Aggarwal) se baath karva do nahin to shale har 15 din mein aisa tohfa bhejna shuru kar doonga aur tum log mera xxxx bhi nahin bigar paaoge. Kramshah Pr CC Main CC ye baat sina taan kar kabul kar raha hoon ki karib karib

saal mein kam se kam 7-8 murder har haal mein karta hoon varna mera dimaag pagal hone lagta hai kyonki ye xxxxx delhi police vaaloon ne mujhe najayaz case laga-lagakar itna Majboor kar diya ki mujhe majburan ye kadam uthana pada taki unko bhi pata chale ki jab koi sharif aadmi apne haath mein hathiyar uthata hai to uska irada kitna jyada khatarnaak hota hai. Aur shale delhi police ke chote se bare ohdedaaroon tumhe zara si bhi akal nahin hai ki kam se kam itna murder karne vale ke upar abhi tak nahin kuch to 50 hazar inaam to rakh hi doon ya upar valoon se is CC ke baare mein jyada se jyada khunkhar aur khatarnaak ka upadhi de kar inaam rakhvaane ka koshih karo taki is khel mein kuch maja aaye kyonki tum to shale sharif ke baare mein akhbar aur challan mein aise darshaate ho jaise ki vo janamjaat peshevar criminal ho lekin xxxxx delhi police vale main teri maa behan xxxx raha hoon khullam-khulla to mere upar inaam kyon nahin rakh rahe ho. Main apne upar inaam ki raashi jaanne ke liye ati utsuk hoon. Dhyan rakhna ki mere kaam ke laayak inaam jarur hona chahiye varna meri beijjati hogi to main tum sabki beijjati karva doonga. Ye letter akhbar valoon ko bhi padhwa dena. Aage phir Tohfa ko samay par bhej doonga " tum loogoon ka " jijaji +daamaad = C. C" (xs- stands for words deliberately omitted)

75. A reading of the said letter shows that the writer, who had thrown the dead body, was hateful and detested the Delhi Police. He had made reference to Manish Kumar Aggarwal and Hoshiyar Singh, the SHO. He had defied and challenged the Delhi Police to catch and arrest him. Pertinently, this letter refers to the first occurrence dated 20th October, 2006 and the second occurrence in the month of April, possibly 24th, when a dead body was thrown outside the Tihar Jail without any letter in order to confuse and traumatize the police. The writer had warned that more murders would take place. He had described himself as CC, as in the first letter. We would in our judgment refer to this letter as the second letter.

76. By order dated 25th May, 2012, certified copy of the second letter, which has been described as the confession letter, specimen handwriting of 64 pages and the report of the handwriting expert, were taken on record in the present case. Pertinently, the said letter and the report had been filed in the charge sheet arising out of FIR No. 279/2007. Thereafter, the prosecution moved another application, which was disposed of vide order dated 25th September, 2012, inter alia,

recording that the FSL report (relating to the first and the second letters subject matter of FIR No.609/2006 and FIR No. 279/2007) were per se admissible under Section 293 Cr.P.C., but as authenticity and correctness of the FSL reports was under challenge, the expert Sanjeev Kumar should be examined in the court and formally asked to prove the FSL report. The application was allowed and pursuant thereto, Sanjeev Kumar, the handwriting expert, was examined as PW-47.

77. Sanjeev Kumar, Senior Scientific Officer (document), FSL, Delhi (PW-47) had examined the first letter (Q1 and Q2), identified and marked as Ex.PW-22/B, and specimen handwriting of the appellant (S1 to S7), marked Ex.PW22/U1 to Ex.PW22/U7, and has proved his report Ex.PW47/A. He has opined that the questioned and specimen documents were subjected to careful and thorough examination with scientific instruments like stereo microscope, video spectral comparator IV, Docucenter and VSC-2000/HR etc. under differing lighting conditions. He has conclusively and unequivocally opined that the questioned document Q1 and Q2 was written by the same person, who had written specimen S1 to S7. In his cross-examination, Sanjeev Kumar (PW47) affirmed that the questioned handwriting and specimen handwriting were received in the department's office at the receiving counter/section, which also records the number of pages received. During the course of cross-examination, counsel for the accused i.e. the appellant had confronted PW-47 with the second letter and the specimen handwriting going into 64 pages, i.e. the specimen handwriting sent to Sanjeev Kumar (PW47) for comparison of the second letter in FIR No.279/2007. He affirmed that the specimen handwriting running into 64 pages had the signature of the learned Magistrate. Referring to the questioned documents, he opined that the handwriting rhythm was absent. The reports marked Ex. PW-47/A is elaborate and illustrative of the minute details and thorough examination undertaken. The report reads:-

The specimen writings marked S1 to S7 show freedom in their execution, natural variation and internal consistency among themselves. The questioned writings marked Q1 and Q2 are also freely written, show natural variation and internal consistency among themselves. On comparison, similarities are observed between questioned and specimen writings, the detailed execution of characters

and parts of characters such as " manner of execution of Hindi letter HINDI in two pen operations, nature and direction of finish of its curved body part as observed in Hindi words HINDI (Q2), HINDI (Q1), HINDI (Q1 and Q2), HINDI (Q1 and Q2), HINDI (S6), HINDI (S6); manner of execution of Hindi letter HINDI ?, nature of its start and bifurcating movement of its body part in continuation with its downward vertical stroke as observed in Hindi words HINDI (Q1), HINDI (Q1), HINDI (Q2), HINDI (S1), HINDI (S6): manner of formation of Hindi letter direction of its finish as observed in Hindi words HINDI (Q1), HINDI (Q1), HINDI (Q2), HINDI (Q2), HINDI (S3); manner of execution of Hindi letter HINDI ?, nature of its shoulders, direction of its finish as observed in Hindi words HINDI (Q1, Q2 and S3): manner of execution of Hindi letter HINDI in two pen operations as observed in Hindi word HINDI (Q1), HINDI (Q2), HINDI (S3); manner of formation of Hindi letter HINDI ?, nature of its lower curved body part as observed Hindi words HINDI (Q1), HINDI (Q1, Q2 and S3), HINDI (S3): manner of formation of Hindi letter HINDI ?, nature and direction of finish of its body part as observed in Hindi words HINDI (Q1, Q2 and S3); manner of execution of Hindi letter HINDI ?, nature of its lower curved body part as observed in Hindi words HINDI (Q1, Q2, S3, S5, S6). HINDI (Q1), HINDI (S1): manner of formation of Hindi letter elongated nature of its lower body part; manner of formation of Hindi letter HINDI ?, location of its start and direction of its finish as observed in Hindi words HINDI (Q2), HINDI (Q2) HINDI (S3), HINDI (S5): manner of formation of Hindi letter HINDI ?, nature of its start; manner of formation of Hindi letter HINDI ?, nature of its start as observed in Hindi words HINDI (Q1), HINDI (Q2), HINDI (S1), HINDI (S1), HINDI (S3); peculiar manner of formation of UKAR as observed in words HINDI (Q1), HINDI (Q1 and Q2), HINDI (Q2), HINDI (S3 and S6), HINDI (S3): manner of formation of curved part of chanderbindu and direction of its finish as observed in Hindi words HINDI (Q1, Q2, S1 and S3). HINDI (Q2), similar manner of formation of Hindi letters HINDI and figure 2: manner of formation of character HINDI and direction of its finish; etc. etc. as observed in questioned is also similarly observed in specimens with similar variations at one or the other places.

Similarities are also observed in general features such as writing movement, skill, spacing, relative size and proportion of characters and nature of commencing and terminating strokes etc.

There is no divergence observed between the questioned and specimen writings and the aforesaid similarities in the writing habit are significant and sufficient and cannot be attributed to accidental coincidence and when considered collectively they lead me to the above said opinion. ?

78. The report of Sanjeev Kumar, in respect of the second letter and specimen handwriting is equally elaborate and lucid as to the reasons and findings. For convenience, we would refer to this report as the second report. The said report reads:-

The specimen writings marked S1 to S64 show freedom in their execution, natural variation and internal consistency among themselves. The questioned writings marked Q1 to Q3 are also freely written, show natural variation and internal consistency among themselves. On comparison, similarities are observed between questioned and specimen writings in the detailed execution of various characters and parts of characters such as “ manner of execution of Hindi letter HINDI in two pen operations, nature and direction of finish of its curved body part as observed in Hindi words HINDI (Q1 and, S2, S10), HINDI (Q1, S11), HINDI (Q2, S4), HINDI (Q2, Q3, S22), HINDI (Q2, S11), HINDI (Q3, S50), HINDI (Q3, S45); manner of execution of Hindi letter HINDI nature of its start and bifurcating movement of its body part in continuation with its downward vertical stroke as observed in Hindi words HINDI (Q1 and S4), HINDI (Q1 and S3) HINDI (Q2 and S12), HINDI (Q2 and S13); manner of formation of Hindi letter HINDI direction of its finish as observed in Hindi words HINDI (Q1), HINDI (S15 and S19); HINDI (Q1 and S14), HINDI (Q2 and S13), HINDI (Q3 and S41) HINDI (Q3) HINDI (S43); manner of execution of Hindi letter HINDI nature of its shoulders, direction of its finish as observed in questioned similarly observed specimens; manner of formation of Hindi letter HINDI nature of its lower curved body part as observed in Hindi words (Q1, Q3, S8 and S22), (Q2 and S5); manner of formation of Hindi letter nature and direction of finish of its body part as observed in Hindi words HINDI (Q1). HINDI (Q2), HINDI (Q1 and S23), HINDI (Q3 and S39); manner of execution of Hindi letter HINDI nature of its curved body part as observed in Hindi words HINDI (Q1, Q2, Q3, S7 S10 and S17), HINDI (Q1 and Q3, S3, S8); manner of information of Hindi letter HINDI elongated nature of its lower body part; manner

of formation of Hindi letter HINDI nature of its start as observed in Hindi words HINDI (Q1 and S14), HINDI (Q2 and S41), HINDI (Q3) (S51); peculiar manner of formation of UKAR HINDI manner of formation of curved part of chanderbindu HINDI and direction of its finish; manner of combining EEKAR HINDI in continuation with the Hindi letter HINDI as observed in words HINDI (Q1, Q2, Q3 and S11, S15); similar manner of formation of Hindi letters HINDI ?; peculiar manner of formation of Hindi letter HINDI in continuation with IKAR HINDI as observed in words HINDI (Q1, Q2) HINDI (Q1, S20), HINDI (Q2 and S20), HINDI (S23 and S41); manner of formation of character O', location of its start, nature and direction of its finish; manner of execution of Mnature of its shoulders as observed in Q1; manner of execution of D', nature of its curved part; manner of execution J', direction of its finish as observed in Q1 is similarly observed in S28; shape of oval part of a', movement while making its downward staff; movement in the formation of character n', nature of its shoulder; shape of oval part of d', blind loop formation while making its downward staff as observed in word and(Q1 and S28); flying start of character lnature of its loop; nature and location of t-cross bar; manner of formation of letter rnature of its lower round part as observed in the word letter(Q2 and S33); manner of formation of figure 2'; nature of start of figure 6'; manner of combining 00as observed in figures of date in Q2 is similarly observed in S12; manner of execution of figure 7', nature of its cross-bar; manner of formation of figure 8', nature of its commencement; similar manner of formation of characters C', Pand Hand figure 5'; etc. etc. as observed in questioned is also similarly observed in specimens with similar variations at one or the other places. Similarities are also observed in general features such as writing movement, skill, speed, spacing, relative size and proportion of characters and nature of commencing and terminating strokes etc. There is no divergence observed between the questioned and specimen writings and the aforesaid similarities in the writing habit are significant and sufficient and cannot be attributed to accidental coincidence and when considered collectively they lead me to the above said opinion. ?

79. PW47, in his cross-examination, has stated that he had examined more than 1000 handwriting styles and he had more than 12 yearsof experience having dealt with examination of handwriting in different laboratories.

80. On 21st May, 2007, when Chandrakant Jha was produced after arrest, before the Metropolitan Magistrate, Inspector Sunder Singh (PW-22) had moved an application seeking permission to obtain his specimen handwriting as they were required for comparison with the questioned document, i.e., the first letter. This application is available in trial court record in Volume-VI at page No. 3073. The order dated 21st May, 2007 on the application stands recorded/passed on the application itself. It mentions that the appellant was produced in a muffled face and an advocate from legal aid was present. The application was allowed and the IO was permitted to take specimen handwriting of Chandrakant Jha. The second order again recorded on the application, states that specimen handwriting of Chandrakant Jha had been taken on 7 pages in terms of the earlier order. However, the Metropolitan Magistrate did not sign or endorse the seven pages.

81. Specimen handwriting of Chandrakant Jha on 64 pages taken by the Additional SHO Omkar Singh on 8th June, 2007, bears attestation by the Metropolitan Magistrate before whom an application dated 7th June, 2007 for permission to take specimen handwriting was filed. There cannot, therefore, be any doubt about the said specimen handwriting.

82. It is correct that the appellant had filed an application seeking permission to submit specimen handwriting for fresh handwriting examination, on the ground that his specimen handwriting Exhibit PW-22/U1 to U7, placed on record, had been fabricated and not in his handwriting. The said specimen handwritings did not bear endorsement of the Metropolitan Magistrate and was not sealed. The application, in our opinion, was rightly dismissed by the trial court recording that the application was belated and filed to deliberately delay the proceedings. The specimen handwritings on two occasions were taken with the permission of the Metropolitan Magistrates. Sanjeev Kumar (PW-47) had examined and opined on the two letters and had the benefit of examining and comparing specimen handwriting of 64 pages and the second letter as well as the first letter and the specimen handwriting going into 7 pages. His opinion on both letters and specimen handwritings is identical. Sanjeev Kumar (PW-47) had the advantage and benefit of examining the two specimen handwritings and his well reasoned and discernible opinion being that the handwritings were similar and alike, negates and nullifies

the challenge made. Pertinently, there is no assertion and allegation that Chandrakant Jha was compelled and forced to write the two questioned letters. For the same reason, assertion that the two letters should have been sealed and deposited in the Malkhana, which is a challenge to genuineness and authenticity of the two letters, must fail for it is not the appellant's plea that he was bullied and intimidated to write these letters. Fabrication of the two letters in the handwriting of Chandrakant Jha is ruled out in view of the expert evidence led by PW-47 and other evidence on record.

83. This challenge has been examined and dealt with in the impugned judgment in detail and we would accept the said reasoning. In fact, the appellant-Chandrakant Jha, in his statement under Section 313 Cr.P.C., while challenging and questioning his specimen handwritings did not challenge and question the authenticity or the genuineness of these letters or allege that he was made to write these letters in his handwriting. The letters are eloquent, lucid and detailed. (See answer to question Nos. 16, 39 wherein Chandrakant Jha has alleged that he was made to sign many documents, which were later on converted into statements and memos, but did not claim that he was made to write the said letters. Similarly, in response to question No.146, Chandrakant Jha has professed that all documents were prepared by the police on their own). Another contention raised and rejected in the impugned judgment with reference to these letters is that the crime team reports in both FIR No. 609/2006 and FIR No. 279/2007 did not mention that the said letters were recovered. However, it has been rightly held that to the two letters find reference in the rukka and tehrir in both cases and the resultant FIRs. The FIRs were dispatched to Ilaka Magistrate and the tehrir was a part of the inquest papers sent to the autopsy surgeon. Thus, there cannot be any doubt that the letters recovered with the bodies, were, in fact, the same as those produced in the Court. They were not swapped, tampered with or fabricated.

84. The contents of the aforesaid letters are instructive and convey information on the intent and objective behind the crimes as well as reflect on the identity of the perpetrator. The author of the letters while confessing to the crime, had narrated his earlier implication and trial in a murder case. Chandrakant Jha had been tried and acquitted in a murder case (see mark X-1 produced and relied by

Chandrakant Jha). This factum would only confirm that Chandrakant Jha could have been the author and, therefore, relevant, but would not be conclusive or firmly establish his complexity in the crimes in question, for there could be several others, who could meet the said criterion. It is in fact the permeating and spiral effect of the contents, that cascades and their harmonic resonance encircles and entangles the appellant. The contents mutually reciprocate corroborating and supporting evidence. The second letter recovered along with the dead body on 18th May, 2007, which became subject matter of FIR No.279/2007, acknowledges and confesses the author's involvement and participation in the first and in the second murder case, subject matter of FIR Nos.609/2006 and 243/2007. It refers to the tattoo Amit engraved on the body of the first victim and that hehad not enclosed any letter with the second headless torso. This gospel stating the masked and dark truths is telltale and unmasks the perpetrator as it confirms that the culprit behind the three murders was the same person. In other words, evidence showing and establishing identity of the perpetrator in FIR Nos.243/2007 and 279/2007 would become relevant to material in FIR No.609/2006 and vice versa. Thus, this letter would be of relevance in the three FIRs. The second letter would connect and link the three offences, as the perpetrator had made reference to the three occurrences in detail and had candidly admitted his involvement, after conspicuously concealing his name and identity. In these circumstances, evidence establishing identity of the perpetrator in any charge sheet would be relevant in the other charge sheets. For this reason, identification of Chandrakant Jha and evidence to show his involvement in the crime in one case, would be of relevance and importance in the other cases. This relevancy is not predicated only on similar fact evidence', i.e., motive, striking similarity etc. and is accusative in view of the confession of the perpetrator that he was the person who has committed the said three offences. It is ergative, for the evidence led and relevant in identifying the perpetrator in one case, is of relevance and material in discerning the perpetrator in the other two cases. Having said so, we would still only take into account the record in each case, i.e. the evidence that has been led and brought on record by the prosecution in the said case; and are, therefore, disposing of the appeals by separate judgments.

85. It is in this context, we would now refer to the testimony of Pankaj (PW-45), who had identified Chandrakant Jha as a person close to and intimate with the deceased Upender, the victim in FIR No.243/2007. Evidence of M.N. Vijayan (PW-46), Nodal Officer, Tata Tele Services corroborates the version given by Pankaj (PW-45). Testimony of Inspector Sunder Singh (PW-22) on identification of Upender is for the same reason relevant and admissible. In this manner, the evidence relating to identity of Chandrakant Jha would vindicate and confirm the opinion of the handwriting expert Sanjeev Kumar (PW-47) that Chandrakant Jha was the writer, who had authored the said letters.

86. The contents of the two letters avow that the writer / perpetrator was one, and when the perpetrator's identity is supplemented and gets assurance from other evidence, we can form a fortified and vitrified opinion as to the authorship of the letters i.e. identity of the writer. Internal evidence in the form of the content can help to decipher and ascertain this individual. Proof of authorship need not be direct and can be circumstantial. The context and content could furnish proof of authorship [Mobarik Ali Ahmed v/s The State of Bombay, AIR 1957 SC 857 and Mohd. Jamiludin Nasir v/s State of W.B., 2014 (7) SCC 443]. Therefore, it would be incorrect and wrong to assert that we have accepted authorship of Chandrakant Jha solely on the basis of the handwriting expert's opinion. We have accepted the prosecution version and Chandrakant Jha's authorship by referring to the opinion of the handwriting expert and other substantive and supporting evidences, which cumulatively and collectively establishes that it was Chandrakant Jha and no other person had penned these letters. Thus, the content, the handwriting expert's opinion and asseveration of other evidence identifying the perpetrator, i.e. Chandrakant Jha, have combined and their amalgamation and meld, rules out any possibility of a third party perpetrator.

87. We would also take note of the submission made by the State that with the arrest of the appellant-Chandrakant Jha, repeated dropping of headless torsos had stopped for no other similar instance has been since reported. We would not place primordial reliance on the factual assertion for we perceive that the prosecution must prove their case against the appellant-Chandrakant Jha by leading positive evidence to show his involvement as the perpetrator, though it is a

fact that no further case of a headless corpse being thrown outside Tihar Jial has been reported after the arrest of the appellant. This facet would be a supporting or corroborating circumstance, which assures that our positive and affirmative conclusion and finding, on the basis of evidence adduced, is correct.

88. The two letters although addressed to the police, are not hit by Sections 25 and 26 of the Evidence Act. These letters were voluntarily written, even before the police knew the identity/name of the culprit and much before the appellant was arrested or detained. The embargo imposed by Section 25 of the Evidence Act cannot be invoked, as the said letters were not written by an accused person in the presence or in the custody of a police officer, which is a statutory prerequisite for invoking Sections 25 and 26 of the Evidence Act. The letters in the present case must be also distinguished from a first information report made by the culprit to a police officer, whether it is a self-exculpatory version or self-incriminating confession. [see Aghoo Nagesia versus State of Bihar, AIR 1966 SC 119, Khatri and Hemraj versus State of Gujarat, AIR 1972 SC 922 and Kanda Padayachi versus State of Tamil Nadu, (1971) 2 SCC 641)]. In these situations, the person charged, hands over a complaint or makes a statement and enters into a direct conversation with a police officer. Thus there is a physical proximity, interaction and personal contact between the offender and the police officer, even when the written communication is not transcribed or penned before the police. In the present case, the letters though addressed and meant for the police, were not written or personally handed over by the offender to a police officer, confessing the crime or professing that a third person or someone else was the perpetrator. In the present case, the writer, while accepting and confessing the crimes had concealed his entity and extorted and teased police to trace and identify the author. Thus, the bar created by sections 25 and 26 of the Act would not be attracted. A similar issue was examined in Sita Ram Vs. State of U.P. 1966 SC 1906. In the aforementioned case, the confessions were made by the writer in a letter dated 14th September, 1962 found at the scene of crime. The writer had confessed murdering his wife and that no one else had committed the crime. Subsequently the perpetrator surrendered before court on 19th September, 1962. The prosecution relied upon this letter addressed to a Sub-Inspector. The Supreme Court observed that the letter, being hand written and signed by the accused was

admissible as a confession, admitting the crime. The court clarified that the letter, although addressed to a police officer, would not be a confession to a police officer under Section 25 of the Evidence Act, for the reason that the police officer was not present when the letter was written and, therefore, there was no element of inducement or threat. The mere fact that the letter was addressed to the sub-Inspector, and not to any third person, would not by itself make the letter inadmissible. In the present case, the confessions are in the form of letters which were written earlier and before the appellant was first apprehended by the police which signify that they were written voluntarily. There was no chance of inducement or threat. Confessions made in the two letters are admissible.

G. Identification by Pankaj (PW45) and murder of Upender

89. After arrest of the appellant Chandrakant Jha and assimilating the leads available, Inspector Sunder Singh (PW-22) got in touch with Pankaj (PW-45) whose testimony in the present case is of importance and relevance.

90. Pankaj (PW-45) has testified that he was working at Bhramik Ayurved Ashram Bhiwani and knew one Upender, his cousin, who was working in Delhi. Pankaj (PW-45) has testified that he would make calls from STD booths in Bhiwadi, Rajasthan to Upender in Delhi on mobile Nos. 9211463742 and 9211463743. His last such conversation with Upender was on 20th April, 2007. He used to also come to Delhi and had for the first time met Chandrakant Jha at Jahangirpuri. At that time, he wanted help for release of two boys from Prayas Children Home. Upender had introduced them to Chandrakant Jha and stated that he could help. PW-45 narrates that he had in May, 2007 called on number 9211463743 and had spoken to a girl, statedly daughter of Chandrakant Jha. She had asked him to call after ten minutes. PW-45 had called after 10-15 minutes and conversed with Chandrakant Jha, whose voice he identified. PW45 had enquired and questioned Chandrakant Jha about Upender and was told that Upender had taken Rs.20, 000/- and his rehri/thela and gone somewhere. In his cross-examination PW-45 continued to affirm his version and has elaborately narrated about his interaction with Chandrakant Jha on different occasions and how father of Upender had come to Delhi and at that time they had learnt that Chandrakant Jha was involved in a

murder case. He voluntarily added that Upender was residing with Chandrakant Jha only.

91. As per Inspector Sunder Singh (PW-22), Chandrakant Jha had indicated during interrogation that the headless body of the deceased found outside Tihar Jail on 25th April, 2007 was that of Upender. He has elaborated on how the police team had reached Pankaj (PW-45) and ascertained facts regarding the two telephone numbers 9211463743 and 9211463742.

92. At the time of arrest and on personal search of the appellant, Tata Samsung phone having No. 8562-A099 and SIM of Tata Indicom 921143742 was recovered. At the time of arrest, a paper containing some telephone numbers, Exhibit PW-22/Z9, was also recovered. The paper had the name and address of one Pankaj Rathor, resident of 140 Richo Industrial Area Bhiwadi Alwar and telephone No. 01493-22069 with the words Pinku Dost of Upender written in Hindi. The said paper had several telephone numbers and names written thereon.

93. M.N. Vijayan (PW-46), Nodal Officer, Tata Teleservices Limited has proved that the two telephone connection Nos. 9211463742 and 9211463743, were subscribed by one Rahul Jain vide application forms Exhibits PW-46/A and PW-46/C. PW-46 had also proved the call detail records for the period 1st April, 2000 to 20th May, 2000 for telephone No. 9211463742 vide Exhibit PW-29/B and of telephone number 9211463743 for the period 11th March, 2007 to 20th May, 2007 vide Exhibit PW-29/D. In his cross-examination, PW-46 has stated that CDRs were retrieved from the main server at Hyderabad and the CDRs had been sent by the Hyderabad branch. They had power back up system for 24 hours and denied the fact that the CDRs had been fabricated or manipulated at the instance of the police. He has also stated that he was a duly appointed Nodal Officer under Section 65 of the Evidence Act vide authority letter Exhibit PW-46/DX1. He further clarified that they had necessary security measures and it was not possible to tamper or change the call records. M.N. Vijayan (PW-46) had brought and proved the certificate under Section 65B of the Evidence Act, marked Exhibit PW-46/E. This electronic record maintained by a third party confirm the factual narration of Pankaj (PW-45).

H. Section 219 of the Code of Criminal Procedure, 1973

94. By order dated 25th November, 2010, Additional Sessions Judge, North-West-4, Rohini Courts noticed that there were three connected charge sheets arising out of FIR Nos. 609/2006, 243/2007 and 279/2007 all under Sections 302 and Section 201 IPC and relating to Police Station Hari Nagar, in which Chandrakant Jha was facing prosecution. The aforesaid Additional Sessions Judge by the said order had directed that the case may be put up before the District Judge-1 and Sessions Judge, Tis Hazari Courts for appropriate orders. Thereafter, the Sessions Judge, Delhi passed an order dated 1st December, 2010 stating that the aforesaid cases were connected with common witnesses and should be tried in one court. Charge sheet in FIR No. 243/2007 was thereby transferred to the court where the connected charge sheets relating to FIR No. 609/2006 and 279/2007 were pending (charge sheet in FIR No. 243/2007 relates to murder of Upender). Pertinently, the order dated 25th November, 2010 passed by Additional Sessions Judge, North-West-4, Rohini Courts records that the defence counsel had no objection. No dissent or protest was raised by the appellant during the trial of three charge sheets before a single Court/Judge. Thereafter, during the course of proceedings before the same Additional Sessions Judge on 4th January, 2012, the three charge sheets were taken up for hearing and it was directed that the State would examine the common witnesses.

95. In the three cases, recourse to Section 219 of Cr.P.C., which permits one trial of three offences of the same kind committed within a span of 12 months from the first offence, would have curtailed duplication of evidence and also brought clarity and avoided procedural and technical difficulties as evidence is intertwined and is inextricably harnessed in a chain, could have been brought on record and read together. This would have expedited the trial and obviated the need to file repeated applications for leading additional evidence.

I. Defence Evidence and Stand

96. The appellant-Chandrakant Jha in his statement under Section 313 Cr.P.C. does not dispute that he was residing at Alipur in the property owned by Sanjay Mann (PW-13) but disputes that he had ever occupied the room at Haiderpur as

deposed by Rajeev Kumar (PW-30). In response to question No. 35 in the same statement, appellant-Chandrakant Jha has claimed that he was lifted from his house on 19th May, 2007 along with his wife and children, who were kept separately. In response to question No. 42, the appellant has stated that he did not stay at House No.220, Haiderpur at any point of time and he was made to sit in a Maruti Car with ASI Virender (PW-23), when the police team had gone inside the house at Haiderpur on 20th May, 2007. In response to question No. 146, he has stated that he used to reside in Gali No.6 at Haiderpur. He was taken to the house of Rajeev Kumar at Haiderpur, and had remained there for hardly five minutes.

97. Chandrakant Jha had also appeared as DW-1. However, in his deposition he did not claim that he was arrested on 19th May, 2006. He had produced on record some judgments in which he was acquitted marked Exhibits DW-1/J and DW-1/K and marked X1. He also relied on replies received under the RTI Act and had submitted that he was never produced in any court from jail on 26th June, 2007. Chandrakant Jha proclaimed that he was in jail from 29th November, 2005 to 17th July, 2006.

98. Narender Rana (DW-2), Warden, Rohini Jail and Manmohan (DW-4), Assistant Superintendent, Central Jail-I, Tihar Jail have given list of six FIRs registered during the year 2003 to 2005 as against Chadrakant Jha and have deposed that said Chandrakant Jha was lodged in Rohini Jail from 18th March, 2006 to 17th July, 2006 and from 29th November, 2005 to 18th March, 2006, respectively.

99. Mamta, wife of Chandrakant Jha, has deposed as DW-3. She has in her testimony asserted that they were residing in Gali No. 6 at Haiderpur. She professes that Chandrakant Jha was lifted by 10-15 persons in plain clothes statedly police officials from their house in Alipur in the evening of 19th May, 2007. DW-3 has stated that she was also lifted and taken in a jeep along with her children and detained for four days. In her cross-examination, however, DW-3 was unable to give the name of the landlord of the house they used to occupy at Haiderpur. We have accepted the prosecution version that the appellant-Chandrakant Jha was residing in a rented room at Haiderpur, where recoveries were made.

100. Minor discrepancies in the statement of witnesses as to specific time, dates, seriatim in which places were visited, as to how many locks were broken, incorrect telephone number in Pankaj (PW-45)'s deposition etc. are of a trivial nature and do not affect the core of their depositions. These do not make the version given by the witness a suspect and unworthy of reliance. The aforesaid discrepancies or diversions are natural, as any narration of facts after a time gap cannot be meticulous or without variation. There would be divergence even if the same witness was asked to repeat facts so stated. The trial court judgment has rightly relied upon several decisions of the Supreme Court including State of H.P. Vs. Lekhraj and Anr. JT 1999 (9) SC 43, Surender Singh Vs. State of Haryana JT 2006 (1) SC 645, Ousu Varghese Vs. State of Kerala (1974) 3 SCC 767, Jagdish Vs. State of M.P. AIR 1981 SC 1167, State of Rajasthan Vs. Kalki (1981) 2 SCC 752 and Bhag Singh and Ors. Vs. State of Punjab 1997 (7) AD SC 507 and has quoted the following portion from Bharwada Boginbhai Hajri Bhai Vs. State of Gujarat (1983) 3 SCC 217:

(a) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

(b) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

(c) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.

(d) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

(e) In regard to exact time of an incident, or the time duration of an occurrence, usually people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time sense of individuals which varies from person to person.

(f) Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

(g) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, of fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved through the witness is giving a truthful and honest account of the occurrence witnessed by him perhaps it is a sort of psychological defence mechanism activated on the moment. ?

J. Reply/information under the Right to Information Act, 2005.

101. At this stage, we would like to deal with the contention raised by the appellant relying on the replies received under the RTI Act. The appellant has filed possibly a hundred such applications and relied before us and even before the trial court replies received from different Information Commissioners as evidence for the assertion and truth of statements made about facts. Before the trial court, reliance was placed on one such reply dated 27.12.2011 which was at variance with the facts deposed by ASI Balkishan (PW-7), proclaiming that he was the duty officer in the morning on 20th October, 2006. The RTI reply, marked Ex.PW-34/DX-1, had averred that one Head Constable Krishan Verma 137(W) was the duty officer. The State had contested and urged that the RTI reply, Exhibit PW-34/DX-1, was factually incorrect and had relied on a corrigendum dated 17th January, 2012. Rishi Pal, Additional DCP West District (PW-43) was examined in the charge-sheet arising out of FIR No.609/2006. He contested the reply (Ex.PW34/DX), ascribing that the contents were factually incorrect and wrong. We have referred to

this matrix, to show that the reply received under the RTI Act, may not be factually correct. Filing of a document in the form of a reply received under the RTI Act, and marking an exhibit number, would not in all cases, establish or prove the truth of the contents stated therein. The truth or falsity of the contents has to be examined and ascertained, before it is accepted. Evidentiary or probative value of a RTI reply would depend upon several factors. When evidence on record is in disagreement and contrary to the RTI reply, questions and issues would arise. The witness should be confronted with the contrary version as per law, to get a response and answer. An RTI reply relied as fresh or new evidence in appellate proceedings, cannot be read as truth of the contents, when the ocular testimonies or other evidence proved on record, negates and emphatically rebuts the assertion in the reply. In a given case, the appellate or the trial court, would be justified in recalling/ re-examining a witness. Albeit, it would not be correct without good and cogent reasons, especially when there is a contest, for the court to reject and discard the evidence on record by referring to the version given in the RTI reply. Veracity and correctness of any statement of fact must be tested by right and opportunity of cross-examination.

102. Therefore, we would not consider a reply given under the RTI Act, as the absolute truth of what is stated or mentioned therein, when the evidence on record is at variance. Difference between proving a document and truth of its contents is recognized and a facet of Law of Evidence which is seminal and vital. Factum of a statement and truth of a statement are distinct. Marking a document as exhibit, does not dispense with proof of its contents (Sait Tarajee Khimchand and Ors. Vs. Yelamarti Satyam alias Satteyya and Ors., AIR 1971 SC 1865, Narbada Devi Gupta Vs. Birendra Kumar Jaiswal and Anr., AIR 2004 SC 175 and Mohammed Yusuf and Anr. Vs. D. and Anr., AIR 1968 Bom. 112). Invariably, information commissioners communicate information, but they may not have personal knowledge of the contents. The principle of hearsay even applies to documents obtained through RTI. Where a document exists, the primary evidence must be produced; it being the best evidence of what is stated therein. When contents of a document contain a matter which is hearsay, the matter cannot be a content of a document. Facts or opinions, which are second hand, deviate from the best evidence rule ?. It is for these reasons, that newspaper reports are not treated as

evidence of contents thereof, unless proved by examining the author.

103. Reference was made before us to DD No.21A dated 7th May, 2007 recorded at Police Station Hari Nagar. The said DD entry records that a dangerous criminal Chandrakant Jha, son of Radhey Kant Jha, resident of District Madhepura, Bihar, was the perpetrator of the offence, subject matter of the FIR No.243/2007 dated 25th April, 2007. He was a lunatic and had been earlier booked for offences in the years 1976 " 78. He was described as a very dangerous, fearless and quarrelsome person, who had allegedly earlier committed a murder in Azad Pur Mandi in the year 2003. The aforesaid DD entry would not in any way assist or show that the appellant Chandrakant Jha was or was not the perpetrator in the present set of cases. In fact, the DD entry, it can be urged, would support the prosecution case that they had suspected involvement of a person called Chandrakant Jha.

CRL.M.A. No. 3886/2015

104. By order dated 17th July, 2015, Crl.M.A. No. 3886/2015 was disposed of directing that we would examine Annexures P-1, P-7 and P-27 at the time of arguments, including the legal effect and other aspects. These documents, we may note, are RTI replies and repetition of reply Exhibit DW-1/E and pertain to the aspect whether Chandrakant Jha was produced in the Court on 26th June, 2007. The said aspect has been already dealt with and examined above while dealing with dock identification of the appellant by Ram Babu (PW-12). It does not call for reconsideration.

105. Annexure P-8, which is an RTI reply enclosing therewith copy of DD No. 29A dated 7th May, 2007, as observed above, does not dent or in any way negate the prosecution case, but on the other hand, would indicates that the police had some information that Chandrakant Jha was possibly the person, who had committed the murders and had thrown decapitated bodies outside Tihar Jail. Annexure P-12, we may note, as per the State is not relevant as the fact that Chandrakant Jha had deliberately unmuffled himself before the media was recorded contemporaneously in the case diary dated 21st May, 2007 of the Special Cell.

K. Final findings and observations.

106. This is a case based upon circumstantial evidence and the law settled by the Supreme Court postulates that each of the incriminating pieces of circumstantial evidence should be proved by cogent and reliable evidence and then the court should be satisfied that the proved pieces of circumstantial evidence when taken together forge such a chain wherefrom no inference other than the guilt can be drawn against the accused. In other words, the proved pieces of circumstantial evidence should not be capable of being explained on any hypothesis other than the guilt of the accused (see Mohibur Rahman and Another versus State of Assam, (2002) 6 SCC 715). In Sharad Birdhichand Sarda vearsus State of Maharashtra, (1984) 4 SCC 116, the Supreme Court referred to their earlier decision in Shivaji Sahabrao Bobade versus State of Maharashtra, (1973) 2 SCC 793 wherein the following test or principles were elucidated:-

Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between may beand must beis long and divides vague conjectures from sure conclusions.

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

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

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

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

The aforesaid principles described as five golden rules, constitute the foundation of the proof in a case based upon circumstantial evidence. This dictum remains the edifice of all cases when conviction is sought on the basis of circumstantial evidence.

107. We have elaborately discussed the evidence brought on record by the prosecution. For the sake of clarity and convenience, we would like to recapitulate the said evidence so that a clear picture with regard to our finding is lucid and perspicious.

(i) The three FIRs, all registered at the Police Station Hari Nagar, namely, FIR No. 609/2006, FIR No. 243/2007 and FIR No. 279/2007 have striking similarities and uniqueness for in each case a headless torso of unknown person was found in the early morning hours outside the Tihar Jail. The perpetrator had made telephone calls in the first and third case informing the police that he had left the headless decapitated bodies and had taunted the police to identify and arrest the caller. Two hand-written letters were found with the dead bodies in the first and third FIR. The letter found along with the third FIR professes and acknowledges that the perpetrator was also responsible and had committed the second murder subject matter of FIR No. 243/2007.

(ii) Chandrakant Jha was arrested on 20th May, 2007 and made a disclosure statement Exhibit PW-22/K. On 23rd May, 2007 a skull and a jaw was recovered at his behest from the banks of river Yamuna.

(iii) On interrogation and disclosure statement Ex.PW22/K, the deceased in FIR No.609/2006 was identified as Anil Mandal @ Amit. Further, on 19th October, 2006, Anil Mandal @ Amit had attended a court hearing.

(iv) The DNA report Exhibit PW 35/D and F affirms and proves that the headless torso found outside Tihar Jail on 20th October, 2006 was of Anil Mandal @ Amit son of Tiwari Mandal, father of Manda (PW-41). The DNA report Ex.PW37/F proves that the jaw recovered at the behest of Chandrakant Jha was of the same person, i.e., Anil Mandal @ Amit, son of Tiwari Mandal and father of Manda (PW-41). The aforesaid DNA reports are crucial and critical for the disclosures and leads given by Chandrakant Jha had enabled the Police to ascertain and identify that the headless torso and affirms that the jaw was of Anil Mandal @ Amit son of Tiwari Mandal and father of Manda (PW-41), whose headless torso was found outside Tihar Jail. Recovery of this headless jaw is admissible under Section 27 of the Evidence Act. The leads given by the appellant, which helped the police

identify the victim as Anil Mandal @ Amit son of Tiwari Mandal and father of Manda (PW-41), are admissible under Section 8 of the Evidence Act. The victim Anil Mandal @ Amit had also attended a court hearing in a criminal case on 19th October, 2006.

(v) Ram Babu (PW-12), telephone booth operator, from where the call was made to the police on 20th October, 2006, identified Chandrakant Jha as the person, who had made the said phone call from his booth.

(vi) On the basis of narration and description given by Ram Babu (PW-12), Constable Babu Lal (PW-8) had prepared the sketch Exhibit PW-8/A. The sketch broadly matches with the face of Chandrakant Jha.

(vii) Evidence gathered and collected from the tenanted accommodation at Haiderpur, disclosure statement Ex.PW-22/K and the leads given to the police helped the police identify and ascertain that the second headless torso found outside Tihar Jail on 25th October, 2007, was of Upender. The clues led them to one Pankaj (PW-45), who knew Upender and had met Chandrakant Jha, a number of times. PW-45 identified Chandrakant Jha and has deposed that Upender was working and associated with Chandrakant Jha. PW-45 has testified and spoken about his conversation with Chandrakant Jha after Upender had gone missing and the appellant's evasive answers.

(viii) The two letters recovered with the headless corpse on 20th October, 2006 and 18th May, 2007 are confessions by the perpetrator, and are admissible in evidence. They exposit the motive and intent behind the three murders. The perpetrator had cast aspersions against the police for indulging in victimization, torture and harassment of innocents and had professed that by committing brutal murders and leaving the headless bodies outside the prison, he wanted to insult and vilify the police and show to the public that they were incompetent and imbecile. For several reasons set out under the heading Two letters and the reports of the handwriting expert ?, we have held that Chandrakant Jha was the writer, who had penned the said letters. Logically and as a sequitur, it follows that the Chandrakant Jha has confessed that he had committed murder of Anil Mandal @ Amit son of Tiwari Mandal and father of Manda (PW-41).

108. The aforesaid evidence has been established beyond doubt and is compelling for it not only implicates and confirms involvement of the Chandrakant Jha in the actus reus, but also rules out any possibility of a third person being a perpetrator. We, thus, uphold the conviction of Chandrakant Jha for having committed murder of Anil Mandal @ Amit, father of Manda (PW41) and son of Tiwari Mandal.

SENTENCE

109. The last issue that arises for consideration is the seminal, question of sentence. Punishment should be proportionate to the offender's culpability and the crime. In Deepak Rai versus State of Bihar, (2013) 10 SCC 421, the Supreme Court noticed the shift in sentencing policy after elucidating the perceptible difference between Section 367(5) of the Code of Criminal Procedure, 1898 and Section 354(3) of the present Code enacted in 1973. The Supreme Court has extensively referred to case law on the subject of death penalty and has quoted the following passage from Bachan Singh versus State of Punjab, (1980) 2 SCC 684 interpreting Section 354(3) of the Code:-

(a) The normal rule is that the offence of murder shall be punished with the sentence of life imprisonment. The court can depart from that rule and impose the sentence of death only if there are special reasons for doing so. Such reasons must be recorded in writing before imposing the death sentence.

(b) While considering the question of sentence to be imposed for the offence of murder under Section 302 of the Penal Code, the court must have regard to every relevant circumstance relating to the crime as well as the criminal. If the court finds, but not otherwise, that the offence is of an exceptionally depraved and heinous character and constitutes, on account of its design and the manner of its execution, a source of grave danger to the society at large, the court may impose the death sentence. ?

110. In Bachan Singh's case (supra), the Supreme Court thus observed that special reasons means exceptional reasons founded on exceptionally grave circumstances relating to the crime and the criminal. Acknowledging, exceptional

difficulty in classifying or making a catalogue of such extreme cases, for infinite unpredictable and unforeseeable factual variations exist, the Supreme Court exposited that relative weight has to be given to aggravating and mitigating circumstances. These two considerations are intertwined and not isolated. Broad illustrative guidelines were laid down emphasising that death penalty was an extreme penalty to be imposed only in rarest of rare crimes. In Machhi singh versus State of Punjab, (1983) 3 SCC 470, the following five categories of crimes were delineated to possibly fall in this extreme category, but with the caution that the aforesaid factors were not inflexible, absolute or immutable, but were only indicators:-

I. Manner of commission of murder

33. When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community. For instance, (i) when the house of the victim is set aflame with the end in view to roast him alive in the house.

(ii) when the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death.

(iii) when the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.

II. Motive for commission of murder

34. When the murder is committed for a motive which evinces total depravity and meanness. For instance when (a) a hired assassin commits murder for the sake of money or reward (b) a cold-blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis- -vis whom the murderer is in a dominating position or in a position of trust, or (c) a murder is committed in the course of betrayal of the motherland.

III. Anti-social or socially abhorrent nature of the crime

35. (a) When murder of a member of a Scheduled Caste or minority community, etc. is committed not for personal reasons but in circumstances which arouse social wrath. For instance when such a crime is committed in order to terrorise such persons and frighten them into fleeing from a place or in order to deprive them of, or make them surrender, lands or benefits conferred on them with a view to reverse past injustices and in order to restore the social balance.

(b) In cases of 'bride burning' and what are known as 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

IV. Magnitude of crime

36. When the crime is enormous in proportion. For instance when multiple murders say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

V. Personality of victim of murder

37. When the victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder (b) a helpless woman or a person rendered helpless by old age or infirmity (c) when the victim is a person vis- -vis whom the murderer is in a position of domination or trust (d) when the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons. (Emphasis supplied)

111. In Ramnaresh versus State of Chhattisgarh, (2012) 4 SCC 257, it was observed that cumulative effect of aggravating and mitigating circumstances has to be considered and it may not be appropriate for the Court to give significance to one of the classes under a particular head, ignoring the classes under the other head for balance and equilibrium is required. The aggravating, mitigating circumstances and the principles, as enunciated read:-

Aggravating circumstances

(1) The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping, etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions.

(2) The offence was committed while the offender was engaged in the commission of another serious offence.

(3) The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.

(4) The offence of murder was committed for ransom or like offences to receive money or monetary benefits.

(5) Hired killings.

(6) The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.

(7) The offence was committed by a person while in lawful custody.

(8) The murder or the offence was committed to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under Section 43 Cr PC.

(9) When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.

(10) When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.

(11) When murder is committed for a motive which evidences total depravity and meanness.

(12) When there is a cold-blooded murder without provocation.

(13) The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

Mitigating circumstances

(1) The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.

(2) The age of the accused is a relevant consideration but not a determinative factor by itself.

(3) The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.

(4) The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.

(5) The circumstances which, in normal course of life, would render such a behaviour possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behaviour that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

(6) Where the court upon proper appreciation of evidence is of the view that the crime was not committed in a preordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

(7) Where it is absolutely unsafe to rely upon the testimony of a sole eyewitness though the prosecution has brought home the guilt of the accused.

77. While determining the questions relatable to sentencing policy, the court has to follow certain principles and those principles are the loadstar besides the above

considerations in imposition or otherwise of the death sentence.

Principles

(1) The court has to apply the test to determine, if it was the "rarest of rare" case for imposition of a death sentence.

(2) In the opinion of the court, imposition of any other punishment i.e. life imprisonment would be completely inadequate and would not meet the ends of justice.

(3) Life imprisonment is the rule and death sentence is an exception.

(4) The option to impose sentence of imprisonment for life cannot be cautiously exercised having regard to the nature and circumstances of the crime and all relevant considerations.

(5) The method (planned or otherwise) and the manner (extent of brutality and inhumanity, etc.) in which the crime was committed and the circumstances leading to commission of such heinous crime. ?

112. When we turn to the factual matrix of the present case and notice the aggravating and mitigating circumstances, we observe that the three offences were taken up for trial together and the judgment of conviction was pronounced on the same day. However, there are separate judgments and orders on sentence and we are concerned with the sentence arising from conviction in the charge sheet filed in FIR No.609/2006. We would, therefore, for the purpose of sentence refer to the evidence and material on record in this case. We accept that there was brutality and diabolicism in the crime for the victim's head was decapitated. The motive and reason for the crime had nothing to do with the personal conduct or provocation by the victim, but as professed, was directed against the police, who were challenged. The language and expressions used in the letters and the manner in which the crime was committed reflects a sense of deride, conceited arrogance and illusions of glory of a person who considered himself to be above the law and who had committed the crimes, to make the police quiver and fret. The perpetrator projected himself and the crimes grandiosely, proclaiming that he

would continue to commit murders without being identified and caught. Our aforesaid findings would be primarily and largely predicated on the two confessional letters, which we have quoted in our judgment. The letters, however, also reveal and reflect the mitigating factors, why and how Chandrakant Jha, a family man with children, had committed the said offence. These palliative and relieving factors candidly mentioned in the two letters cannot be ignored or rejected as make-belief. When we read the incriminating or aggravating part of the letters, we must also take into account the mitigating factors, lucid and apparent from the said letters. In Aghnoo Nagesia v. State of Bihar, (1966) 1 SCR 134, it has been observed:-

12. Shortly put, a confession may be defined as an admission of the offence by a person charged with the offence. A statement which contains self-exculpatory matter cannot amount to a confession, if the exculpatory statement is of some fact which, if true, would negative the offence alleged to be confessed. If an admission of an accused is to be used against him. The whole of it should be tendered in evidence, and if part of the admission is exculpatory and part inculpatory, the prosecution is not at liberty to use in evidence the inculpatory part only. See Hanumant v. State of U.P. (1952) SCR 1091, 1111 and Palvinder Kaur v. State of Punjab; (1953) SCR 94, 104.The accused is entitled to insist that the entire admission including the exculpatory part must be tendered in evidence. But this principle is of no assistance to the accused where no part of his statement is self-exculpatory, and the prosecution intends to use the whole of the statement against the accused. ?

113. It has also been proved and brought on record that Chandrakant Jha was prosecuted and thereafter acquitted in a murder case and had statedly faced prosecution in as many as five other FIRs in the period 2003 till 2005. Chandrakant Jha in the confessional letters has stated that he was innocent, harassed and falsely implicated and this harassment and persecution was the cause of his deviant behaviour. There is evidence to show that the appellant had worked and earned his livelihood as a vendor selling vegetables.

114. In the present case there was no eye witness and the prosecution has relied upon circumstantial evidence which, we have held, has been proved beyond reasonable doubt. By order of sentence dated 4th February, 2013 arising out of charge sheet filed in FIR No. 279/2007, which relates to the third murder committed on or about 18th May, 2007, Chandrakant Jha has been awarded life imprisonment and not capital punishment of death for the reason the victim remained unidentified. Recently, a Constitution Bench of the Supreme Court in Union of India versus V. Sriharan Murugan and Others, Writ Petition (Criminal) No. 185/2014 and other cases decided on 2nd December, 2015 has exhaustively examined several questions including what is meant by the term life imprisonmentand whether imprisonment for life can be for the rest of the convict's remaining life and whether the courts can award and direct that there would be no remission or power of remission would not be exercised till the convict has suffered incarceration for a specified period.

115. To answer the question what is meant by the term imprisonment for life and whether it connotes a fixed period or refers to remaining of convicted person's natural life, reference was made to Gopal Vinayak Godse Vs. The State of Maharashtra and Ors. (1961) 3 SCR 440 and the subsequent decisions of the Supreme Court, to hold that life sentence is nothing less than the life-long imprisonment i.e. for the remaining period of the convicted person's natural life. Reference was also made to different provisions of the IPC and Cr.P.C. including Sections 432, 433 and 433A of Cr.P.C. We would at this stage quote the following paragraph from the judgment in Ranjit Singh alias Roda Vs. Union Territory of Chandigarh (1984) 1 SCC 31, relating to power of the Government to remit and suspend sentence, which was quoted with approval in Sridharan @ Murugan (Supra):

"the two life sentences should run consecutively, to ensure that even if any remission is granted for the first life sentence, the second one can commence thereafter". The said observation was made while commuting death sentence to sentence for life and the Supreme Court had observed that if in one case remission was granted, the sentence of life imprisonment in the second case would commence thereafter. The effect and ambit of Section 428 of Cr.P.C. was

also explained.

116. However, more important and relevant for us is the ratio of the majority opinion of the Constitution Bench, explaining and relying upon Swamy Shraddananda (2) alias Murali Manohar Mishra v. State of Karnataka (2008) 13 SCC 767 on two aspects. Firstly, the Supreme Court, has held that the courts while awarding life sentence or when modifying award of death penalty in a reference or otherwise in an appeal, to life sentence, can stipulate that the life sentence would mean the entire life span of the convict. It is permissible for Courts to award and impose the said condition and also state that no remission should be granted to nullify such imposition for the remainder of life or for a particular period. This direction would not be contrary to law. However, this direction would not affect the constitutional power of remission provided under Articles 72 and 161 of the Constitution of India, which would remain untouched by any such direction (we are not concerned in this case with the exercise of the said power).

117. Secondly, the Supreme Court recognized the need to uphold and accept that the courts can award life imprisonment with a negative stipulation with regard to remission for cases which fall in the in-between category i.e. where life imprisonment in which remission can be granted in terms of the Statute; and where capital punishment by way of death is awarded. Thus there could be cases, where imprisonment for life with right of remission would be insufficient and inadequate punishment and death sentence would be too harsh and unjustified. Award of imprisonment for life without remission for entire life or for a specified period would meet the ends of justice. The said position is clearly brought out in the following words of Swami Shraddananda (supra):

69. Keeping the above perception of the Rule of Law and the settled principle of Criminal Law Jurisprudence, this Court expressed its concern as to in what manner even while let loose of the said appellant of the capital punishment of death also felt that any scope of the appellant being let out after 14 years of imprisonment by applying the concept of remission being granted would not meet the ends of justice. With that view, this Court expressed its well thought out reasoning for adopting a course whereby such heartless, hardened, money

minded, lecherous, paid assassins though are not meted out with the death penalty are in any case allowed to live their life but at the same time the common man and the vulnerable lot are protected from their evil designs and treacherous behavior. ?

Paragraph 56 of Swami Shraddananda (supra) was usefully referred to elucidate and the ratio pronounced to follow:-

56. But this leads to a more important question about the punishment commensurate to the appellant's crime. The sentence of imprisonment for a term of 14 years, that goes under the euphemism of life imprisonment is equally, if not more, unacceptable. As a matter of fact, Mr. Hegde informed us that the appellant was taken in custody on 28-3-1994 and submitted that by virtue of the provisions relating to remission, the sentence of life imprisonment, without any qualification or further direction would, in all likelihood, lead to his release from jail in the first quarter of 2009 since he has already completed more than 14 years of incarceration. This eventuality is simply not acceptable to this Court. What then is the answer? The answer lies in breaking this standardisation that, in practice, renders the sentence of life imprisonment equal to imprisonment for a period of no more than 14 years; in making it clear that the sentence of life imprisonment when awarded as a substitute for death penalty would be carried out strictly as directed by the Court. This Court, therefore, must lay down a good and sound legal basis for putting the punishment of imprisonment for life, awarded as substitute for death penalty, beyond any remission and to be carried out as directed by the Court so that it may be followed, in appropriate cases as a uniform policy not only by this Court but also by the High Courts, being the superior courts in their respective States. A suggestion to this effect was made by this Court nearly thirty years ago in Dalbir Singh v. State of Punjab. In para 14 of the judgment this Court held and observed as follows: (SCC p. 753):

14. The sentences of death in the present appeal are liable to be reduced to life imprisonment. We may add a footnote to the ruling in Rajendra Prasad case. Taking the cue from the English legislation on abolition, we may suggest that life imprisonment which strictly means imprisonment for the whole of the men's life but

in practice amounts to incarceration for a period between 10 and 14 years may, at the option of the convicting court, be subject to the condition that the sentence of imprisonment shall last as long as life lasts, where there are exceptional indications of murderous recidivism and the community cannot run the risk of the convict being at large. This takes care of judicial apprehensions that unless physically liquidated the culprit may at some remote time repeat murder. ?

We think that it is time that the course suggested in Dalbir Singh should receive a formal recognition by the Court. ?

Reference made is to Dalbir Singh versus State of Punjab; (1987) 3 SCC 360. Reference was also made to paragraph 92 of the decision in Swamy Shraddananda (Supra), which reads as under:-

92. The matter may be looked at from a slightly different angle. The issue of sentencing has two aspects. A sentence may be excessive and unduly harsh or it may be highly disproportionately inadequate. When an appellant comes to this Court carrying a death sentence awarded by the trial court and confirmed by the High Court, this Court may find, as in the present appeal, that the case just falls short of the rarest of the rare category and may feel somewhat reluctant in endorsing the death sentence. But at the same time, having regard to the nature of the crime, the Court may strongly feel that a sentence of life imprisonment subject to remission normally works out to a term of 14 years would be grossly disproportionate and inadequate. What then should the Court do? If the Court's option is limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the Court may feel tempted and find itself nudged into endorsing the death penalty. Such a course would indeed be disastrous. A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the Court i.e. the vast hiatus between 14 years' imprisonment and death. It needs to be emphasised that the Court would take recourse to the expanded option primarily because in the facts of the case, the sentence of 14 years' imprisonment would amount to no punishment at all." (Emphasis added)

118. In light of the aforesaid factum and balancing out of the aggravating and mitigating circumstances, we feel that the present case would fall in the category wherein the extreme sentence of death by capital punishment would not be justified and at the same time possibility of award of remission and release of Chandrakant Jha on completion of sentence of 14 years or even thereafter, would be inadequate and parlous. The heinous and outrageous crime, involving inhumane behaviour and torture, must be emphatically and adequately punished. This case falls in the third category, beyond application of remission.

119. In light of the above, whilst not confirming the death sentence proposed by the trial court, we award punishment of life imprisonment with a direction that Chandrakant Jha would not be released on remission for remainder of his natural life. This direction would not affect the power under Articles 72 and 161 of the Constitution of India. This we feel would be appropriate and the proportionate sentence in the present case. The appeal and the death reference are accordingly disposed of.

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