

Sunil Kumar Vs. State

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Court : Delhi

Decided On : Jan-06-2015

Judge : Sunita Gupta

Appellant : Sunil Kumar

Respondent : State

Advocate for Def. : Mr. M.N. Dudeja, Mr. Sunil Dalal, Mr. Himanshu Agarwal

Advocate for Pet/Ap. : Mr. K.K. Sharma, Mr. Vipin Rathi

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

6. h January, 2015 + CRL.A. 1213/2013 SUNIL KUMAR Through: Appellant Mr. K.K. Sharma and Mr. Vipin Rathi, Advocates versus STATE Through: Respondent Mr. M.N. Dudeja, Additional Public Prosecutor for the State along with SI Kuldeep Singh Police Station Gazipur, Delhi and SI Amarjeet Singh Police Station Geeta Colony Mr. Sunil Dalal and Mr. Himanshu Agarwal, Advs. for the complainant CORAM: HON'BLE MS. JUSTICE SUNITA GUPTA

JUDGMENT

: SUNITA GUPTA, J.

1. Challenge in this appeal is to the impugned judgment and order on sentence dated 31st August, 2013 and 4th September, 2013 respectively passed by learned District and Sessions Judge, Karkardooma Courts, Delhi arising out of FIR No.116/2011 u/s 307/34 IPC and 25/27/54 Arms Act, whereby the appellant was convicted u/s 307 IPC and Section 25/27 Arms Act and sentenced to five years rigorous imprisonment and fine of Rs.20,000/- for offence punishable under Section 307 IPC in default to undergo SI for six months and sentenced to three years rigorous imprisonment and fine of Rs.10,000/- each for offence under Section 25 and 27 of Arms Act in default to undergo SI for three months.

2. The facts germane to the prosecution case are that on 14th April, 2011, one Harbir Singh made a complaint to the Police Station Ghazipur alleging, inter alia, that he was working as a driver in DTC. On 14th April, 2011, he was driving his old model DTC Bus bearing No.DL1PB5189 on route No.542 from Seemapuri Depot to Sarai Kale Khan Depot. At about 8:00 p.m., he reached near EDM Mall along with conductor Ram Milan Yadav. At that time, his son-in-law Sunil along with his brother Bittu and other two persons came in one Indigo Car which was given by him in dowry to his son-in-law and suddenly stopped the car in front of the running DTC bus. He took a sudden break. Sunil, Bittu and one other person came down from the car while the fourth person remained sitting in the car on driving seat. On the provocation of 3rd person, Bittu hit the glass of the bus with the brick lying on the road and in the meantime Sunil took out katta from his pocket and fired on him. Harbir bowed down and did not receive any injury. All the passengers sitting in the bus ran away from the bus. He made a call at 100 Number to police. The police reached the spot. SI Amarjeet Singh also reached the spot. He recorded the statement of Harbir Singh. One live cartridge, used cartridge, broken pieces of glass and piece of brick were seized.

3. On the statement of Harbir Singh, rukka Ex.PW17/A was prepared and FIR Ex.PW2/B was registered. Crime team was called at the spot headed by SI Naveen Kumar-PW6. Spot was got photographed through Constable Sandeep-PW3. Site Plan was prepared. Statement of PW7-Ram Milan Yadav, conductor of the bus was recorded.

4. On 15th April, 2011, the police reached Sahibabad at the house of accused Sunil. Car bearing No.DL4 AL0826 was got photographed. Mobile of the accused was put on surveillance. On 19th April, 2011, the DTC bus was got examined by the FSL Expert Sh. R. Suresh-PW16. On 30th April, 2011, it was revealed that the complainant Harbir Singh had been murdered regarding which an FIR bearing No.646/11 u/s 302/201 IPC had been registered at Police Station Sahibabad, UP against accused Sunil and his brother Bittu. Accused Sunil was arrested in which he made disclosure statement regarding present case. After getting production warrant issued against Sunil, he was arrested in this case. His disclosure Statement Ex.PW17/B was recorded. He took the police party to the place of incident and pointed out the same vide memo Ex.PW17/E. During the course of investigation, exhibits were sent to FSL, Rohini. After completion of investigation, charge sheet was submitted against the accused. The accused pleaded not guilty of the charge framed u/s 307/34 IPC and Section 25/27/54 Arms Act.

5. In order to substantiate its case, prosecution examined as many as 17 witnesses. All the incriminating evidence was put to the accused while recording his statement under Section 313 Cr.P.C. wherein he denied the case of prosecution in toto and alleged his false implication in this case. According to him, his wife Monika was having illicit relation with her earlier neighbour Ajay Pratap. Both of them were caught red handed and police of Indrapuram had registered FIR No.346/2011 in this regard. Thereafter Monika left her matrimonial home and lodged a false complaint in CAW Cell. A false case was registered against him. He regularly joined the investigation. Later on he was falsely implicated in the murder case of the complainant Harbir Singh. Several representations were made by him to the police authorities regarding his false implication. In order to substantiate his case, he examined himself as DW1. Besides that, he examined DW2 Chunni Lal Mishra, DW3-Vineet Rastogi, DW4-Smt. Harpyari, DW5-Sh. R.K. Singh, DW6- Sh. Surender Kumar and DW7-Sh. Israr Babu.

6. After considering the evidence adduced by the prosecution and the defence version, vide impugned judgment the learned Sessions Judge arrived at the conclusion that the complaint made by Harbir Singh since deceased, stands proved by his wife Babita, SI Amarjeet Singh, Investigating Officer of the case,

PW1-Constable Rakesh Kumar, PW4-ASI Bhagwat Dayal and PW7-Ram Milan Yadav. The contents of the complaint stands corroborated by the conductor of the bus PW7-Ram Milan Yadav. Moreover, the seizure of glass pieces, brick pieces and cartridges proves the case of prosecution. Further the appellant had a motive to commit the crime, inasmuch as, relations between the accused and his wife Monika(daughter of the complainant) were strained. Proceedings were going on in CAW Cell. As such, it was observed that the prosecution succeeded in proving its case beyond reasonable doubt. Accordingly, the accused was convicted and sentenced as mentioned above.

7. Feeling aggrieved, present appeal has been preferred. The findings of the learned Trial Court have been assailed by the learned counsel for the appellant, inter alia, on the following grounds:(i) There was a matrimonial dispute between the accused and PWMonika, daughter of the complainant. As such, the complainant was having motive to implicate the applicant in a false case just to settle their score in matrimonial dispute. (ii) Testimony of complainant cannot be read in evidence as he did not come to depose before the Court as he was dead. Moreover, Investigating Officer of the case recorded twice the statement of the complainant and driver Ram Milan Yadav. The statements are improved one, hence does not inspire confidence. (iii) According to prosecution, PW5-Ram Milan Yadav is the eye witness. However, his statement dated 14th April, 2011 is entirely different from his statement dated 17th April, 2011. Moreover, he admitted that he had not seen the assailant who came and attacked on the bus. He further denied having made any statement to the Investigating Officer on 17 th April, 2011. In these circumstances, the testimony of the witness being hearsay cannot be relied upon. (iv) The scientific evidence totally demolishes the case of prosecution. (v) Conduct of the accused proves his innocence. He was very much available to the Investigating Officer of the case and in fact joined investigation three times which fact was admitted by the Investigating Officer in his cross-examination. Yet Investigating Officer did not arrest him knowing well that he is innocent. Had accused committed any crime, he would have taken legal remedies available to him. He even did not apply for anticipatory bail. He was pursuing his regular routine job even after alleged incident and even after the date of murder. He was arrested only on 28th June, 2011 by way of production warrant and then one day

police remand was taken. It is highly unbelievable that when accused already joined investigation where was the need to take his police remand. (vi) Investigation is highly defective. The Investigating Officer failed to produce on record crime team report, photographs of the place of incident, call detail record etc. (vii) Defence witnesses are entitled to the same weightage as that of prosecution witnesses as held in *Dudh Nath Pandey v. State of UP*, (1981) SCC (Cri.) 379 and *Nasir Sikander Shaikh v. State of Maharashtra*, AIR 2005 SC2533 (viii) There was no injury to complainant, hence inference to commit murder cannot be drawn.

8. Rebutting the submission of learned counsel for the appellant, it was submitted by the learned Additional Public Prosecutor for the State that:(i) Case of prosecution stands established from the complaint made by Harbir Singh immediately after the incident. (ii) The complaint finds corroboration from the testimony of PW7 Ram Milan Yadav who was working as conductor on the same bus. Immediately after the incident, the information was given by the complainant to Ram Milan Yadav. As such, statement made by him to Ram Milan Yadav is admissible in evidence under Section 6 of Evidence Act. (iii) Circumstantial evidence, viz., breaking of glasses of the bus, recovery of piece of brick, live and fired cartridges from the spot amply proves the case of prosecution. (iv) Motive on the part of the appellant to eliminate Harbir Singh is apparent from the fact that matrimonial discord was going on between the appellant and his wife. (v) Even if there is any defect in the investigation that does not entitle the accused to claim acquittal.

9. I have given my considerable thoughts to the respective submissions of the learned counsel for the parties and have perused the record.

10. It is an undisputed case of the parties that the appellant is the son-in-law of deceased complainant Harbir Singh. The relation between the two were strained which is manifest from the averments made in the statement made by Harbir Singh which culminated in registration of FIR. Even PW7-Ram Milan Yadav, who was working as a conductor on the bus, which was being driven by the complainant Harbir Singh at the relevant time, has also deposed that Harbir Singh

had informed him that matrimonial dispute was going on between his daughter and son-in-law Sunil Kumar. PW10 Smt. Babita is the wife of deceased Harbir. She has also deposed that the marriage of the accused with her daughter had taken place on 5th April, 2009. There used to be quarrels between the two on lame excuses such as accused did not like her daughter, her face was not good or that a small car was given in dowry. Once the accused had tried to burn her daughter by pouring kerosene oil on her, however, she did not inform her about the same. Her daughter lived with the accused once for about 5 months and at other time for about 6 months. The accused promised that he would keep her separate from his family and would treat her well. Thereafter the accused started living with her daughter at Vasundhara in a rented accommodation. On 23rd February, 2011, her husband had gone to invite the accused and his family members for marriage of daughter of her brother scheduled for 2 nd March, 2011. On 27th February, 2011, the accused along with his family members shifted to the old house at Saraswati Colony, Sahibabad. Accused, however, did not attend the marriage on 2nd March, 2011. He called Ajay Pratap at his tenanted premises at Saraswati Colony, Sahibabad. On 7th March, 2011, she received a call from her daughter Monika informing her that she be taken back otherwise she would be killed, as such, she went along with her husband to bring her daughter. At that time, quarrel took place. Thereafter Sunil along with his brother and one other person came to her house and forcibly took back her granddaughter. Police was called and her daughter was medically examined in GTB hospital. On 14th March, 2011, a complaint was made to Crime against Women Cell, Nanakpura, Delhi and they were asked to report in Women Cell on 30th March, 2011. In the Women Cell, accused Sunil abused her and her husband and quarrel took place there. She was given beatings for which she was medically examined at Safdarjung Hospital. The accused threatened her husband to withdraw the proceedings. As such, a complaint was made by him on 7th April, 2011 at Police Station Seemapuri. On 14 th April, 2011, accused attempted to commit murder of her husband and ultimately murdered him on 28th April, 2011.

11. PW12-Monika is the wife of the accused. She has also deposed that after two months of the marriage, the accused and his family members started mentally and physically torturing and beating her on the pretext of bringing insufficient dowry.

She gave birth to a female child on 27th December, 2009 whereupon the accused and his family members became more offensive and started causing mental and physical cruelty upon her. Once the accused poured kerosene oil upon her and tried to set her on fire but somehow, she managed to save herself. After some time, accused shifted to Vasundhara, Ghaziabad where also he used to beat her. On 27 th February, 2011, again they returned back to Saraswati Colony, Sahibabad. On 2 nd March, 2011, accused did not attend the marriage of her cousin. On the same day, he called Ajay Pratap who was residing in the neighbourhood of her parents and was her muhbola bhai. He got him arrested by police of Vasundhara when she was present at her matrimonial home at Saraswati Colony, Sahibabad. Accused took her to Police Station Vasundhara where she came to know that he got accused Ajay Pratap arrested by levelling false allegations that she was having illicit relations with Ajay Pratap. During the period 2nd March, 2011 to 7th March, 2011, accused gave number of calls to her parents and informed that she was going to commit suicide. Her father and brother came to take her back but accused did not allow them to meet her.

12. She further deposed that accused conspired with his brother and mother to commit her murder and she informed her father. Her parents came to her matrimonial home where accused quarrelled with them. Somehow she managed to flee along with her mother. Accused Sunil along with his brother again came to her parental house and took away her female child forcibly. She informed police at 100 number. She was taken to GTB Hospital where she was medically examined. Later on, she filed a complaint in CAW Cell at Nanakpura, New Delhi where accused was called on 30 th March, 2011. On that day, accused along with his mausi reached there and abused her and her mother and thereafter assaulted her mother. Her father intervened and accused threatened her father to kill him. On 7 th April, 2011 again accused threatened her father to face dire consequences if she complains against him in CAW Cell. On 14th April, 2011, accused along with his brother and other associates assaulted his father in order to commit murder at Ghazipur when he was on duty. Thereafter on 28th April, 2011 her father was murdered by the accused.

13. PW5-Ajay Pratap Singh has deposed that he used to treat Monika as his sister, however, on 2nd March, 2011, accused called him by sending SMS on mobile phone at Indrapuram, Ghaziabad where he got him falsely implicated in a criminal case on the false allegation that he was having illicit relations with Monika.

14. The factum of strained relations between the appellant and his wife is not even disputed by the appellant. In fact, in his statement recorded under Section 313 Cr.P.C. he stated that he suspected that his wife was having illicit relations with one Ajay Pratap, the neighbour of his wifes parental house. According to him he made her understand many a times and she also apologised for the same and assured that she will not be in touch with Ajay. For one or two months, she remained normal but thereafter again, he found her talking with Ajay on his mobile Nos. 9999405066 and 9289404102 from her mobile Nos. 7838766642 and 9582567448 on several occasions. He caught Ajay red handed at his house at Vasundhra on 2nd March, 2011. He immediately called the police. Police caught him and registered an FIR bearing No.346/2011 u/s 294/506 IPC with Police Station Indrapuram. Monika again apologised for the same and he shifted to his parental house, i.e., 117, Saraswati Colony Village, Sahibabad, UP. On 7th March, 2011, his wife left the matrimonial home as she was caught red handed with Ajay. Later on, she filed a false complaint in Women Cell for demand of dowry against him. He made representation to various authorities. Thereafter she got a false case registered against him on 14 th April, 2011. Besides that, he examined himself under Section 315 Cr.P.C. and his sworn testimony is also to the same effect. He also examined his mother DW4-Smt. Harpyari, who also deposed regarding the strained relations between the accused, his wife and her family members.

15. DW7-Israr Babu, Nodal Officer, Vodafone Mobile Services was examined to prove the call details of Monika and Ajay Pratap Singh for disproving the testimony of PW5-Ajay Pratap that neither he nor Monika were having mobile numbers of each other and to show that as per call details of the mobile phone of Monika and Ajay Pratap, they were regularly in touch with each other. This witness brought the record of mobile number 9999405066 belonging to Ajay Pratap as per Ex.DW7/A and mobile number 7838766642 belonging to Monika as per Ex.DW7/B and their

call details Ex.DW7/F and Ex.DW7/G to prove that on 02.03.2011 they had exchanged 31 messages.

16. The aforesaid evidence coming on record establishes that the parties were inimical to each other and litigations were also going on between them. Dealing with this aspect of the matter, in *State of Orissa v. Madhusudan Sahu*, 2007 Cri.L.J.

440, it was observed as under:

It is to be borne in mind that the parties involved in the case are inimical to each other and large number of litigations are going on between them. While the accused persons propagate the plea that because of this enmity, they have been falsely implicated, the prosecution has come up with the suggestion that the attack on P.W. 6 was carried because of the enmity. Enmity between the parties is a double edged weapon. The effect of enmity is to be considered in the case according to the circum stance and evidence available on record. What is settled is that once enmity exists between the parties, the evidence adduced by the parties are to be scrutinized with great care and caution and every mitigating circumstance has to be given importance. See (2004) 27 OCR899(SC) *Biharinath Goswamy v. Shiv Kumar Singh*; (2004) 27 OCR462 (2004) 27 OCR899(SC) *Bhargavan v. State of Kerala*.

17. In view of the fact that the parties were on inimical terms, each and every piece of evidence available on record has to be scrutinized and analyzed carefully.

18. Police machinery was set in motion on receipt of DD No.34A regarding firing on bus conductor of DTC bus of Route No.542 at road no.56 near Maruti Suzuki Showroom near EDM Mall, Ghazipur whereupon PW4-ASI Bhagwat Dayal along with PW1 Constable Rakesh Kumar reached the spot. SI Amarjeet also reached the spot and recorded the statement of driver Harbir Singh Ex.PW10/A wherein he stated that while driving the DTC bus along with conductor Ram Milan Yadav at about 8:00 p.m. he reached near EDM Mall. One car TATA Indigo No.DL4 AL0826 which he had given to his son-in-law Sunil at the time of marriage of his daughter Monika, suddenly stopped in front of his bus. He applied breaks. His son-

in-law Sunil, his younger brother Bittu and one other boy came out of the car. The third boy asked Sunil to fire whereupon Bittu picked up a piece of brick and hit the front glass of the driver seat. Sunil took out a katta from pocket of his pant and fired at him. However, he bowed down and the glass broke. Passengers got down from the bus. All the three managed to escape in the Indigo Car wherein one boy was already sitting on the driver seat. This statement culminated in registration of FIR Ex.PW2/B. The complainant Harbir Singh, however, could not be examined by the prosecution since he was murdered on 28th April, 2011.

19. So far as making of the complaint Ex.PW10/A by Harbir Singh is concerned, Ld. Trial Court was right in observing that the same stands proved from PW7 Ram Milan Yadav, PW10-Smt. Babita. PW17-SI Amarjeet Singh, PW1 Constable Rakesh Kumar and PW4 ASI Bhagwat Dayal.

20. The crucial question for consideration, however, is the evidentiary value of such statement which culminated in registration of FIR. It is settled law that the FIR cannot be used as a substantive piece of evidence. It can only be used as a previous statement for the purpose of either corroborating its maker under Section 157 of Indian Evidence Act or contradicting him under Section 145 of the Indian Evidence Act. It cannot be used for the purpose of corroborating or contradicting other witnesses.

21. In *Sheikh v. State of Bihar*, 1972 Cri LJ233 the Supreme Court explained the purpose and value of FIR in the following language: "...The principal object of the first information report from the point of view of the informant is to set the criminal law in motion and from the point of view of the investigating authorities is to obtain information about the alleged criminal activity so as to be able to take suitable steps for tracing and bringing to book the guilty party. The first information report, we may point out, does not constitute substantive evidence though its importance as conveying the earliest information regarding the occurrence cannot be doubted. It can, however, only be used as a previous statement for the purpose of either corroborating its maker under Section 157 of the Indian Evidence Act or for contradicting him under Section 145 of that Act. It cannot be used for the purpose of corroborating or contradicting other witnesses....

Similar view was taken in *Harkirat Singh v State of Punjab*, 1997 Cri LJ3954 and *Madhusudan Singh and Anr. v State of Bihar*, AIR 1995 SC1437 22. In view of this legal position, the statement of Harbir Singh which resulted in registration of FIR is not a substantive piece of evidence and could not be treated so by Ld. Trial Court.

23. Furthermore, the statement given by Harbir Singh to the Investigating Officer is not even admissible as dying declaration under Section 32 of the Evidence Act as the same does not pertain to cause of his death. Section 32(1) of the Evidence Act renders a statement relevant which was made by a person who is dead in cases in which cause of his death comes into question, but its admissibility depends upon one of the two conditions; either such statement should relate to the cause of his death or it should relate to any of the circumstances of transaction which resulted in his death. When the deceased made the statement, he was not under the expectation of death. The circumstances also do not relate to the transaction which resulted in his death. Under the circumstances, the statement does not fall within the purview of Section 32(1) of Evidence Act. According to SI Amarjeet Singh, he also recorded statement of Harbir Singh under Section 161 of the Code of Criminal Procedure, however, even that statement is not admissible in evidence under Section 33 of the Evidence Act.

24. Learned Additional Public Prosecutor for the State, however, submitted that even if the statement is not admissible in evidence under Section 32 and 33 of the Evidence Act, immediately after the incident PW7- Ram Milan Yadav was informed about the incident by the complainant, as such, the statement is admissible under Section 6 of the Evidence Act.

25. Section 6 of the Evidence Act is an exception to the general rule whereunder the hearsay evidence becomes admissible. But for bringing such hearsay evidence within the provisions of Section 6, what is required to be established is that it must be almost contemporaneous with the acts and there should not be an interval which would allow fabrication. The statements sought to be admitted, therefore, as forming part of *res gestae*, must have been made contemporaneously with the acts or immediately thereafter. The aforesaid rule as it is stated in Wigmore's Evidence Act reads thus:

Under the present Exception [to hearsay], an utterance is by hypothesis, offered as an assertion to evidence the fact asserted (for example that a car-brake was set or not set), and the only condition is that it shall have been made spontaneously, i.e. as the natural effusion of a state of excitement. Now this state of excitement may well continue to exist after the exciting fact has ended. The declaration, therefore, may be admissible even though subsequent to the occurrence, provided it is near enough in time to allow the assumption that the exciting influence continued.

26. Sarkar on Evidence (Fifteenth Edition) summarises the law relating to applicability of Section 6 of the Evidence Act thus:

1. The declarations (oral or written) must relate to the act which is in issue or relevant thereto; they are not admissible merely because they accompany an act. Moreover the declarations must relate to and explain the fact they accompany, and not independent facts previous or subsequent thereto unless such facts are part of a transaction which is continuous.

2. The declarations must be substantially contemporaneous with the fact and not merely the narrative of a past.

3. The declaration and the act may be by the same person, or they may be by different persons, e.g., the declarations of the victim, assailant and by-standers. In conspiracy, riot & the declarations of all concerned in the common object are admissible.

4. Though admissible to explain or corroborate or to understand the significance of the act, declarations are not evidence of the truth of the matters stated.

27. Honble Supreme Court in *Gentela Vijayavardhan Rao and Anr. v. State of A.P.*, 1996 SCC (Cri.) 1290 considering the law embodied in Section 6 of the Evidence Act held thus:

15. The principle of law embodied in Section 6 of the Evidence Act is usually known as the rule of *res gestae* recognised in English law. The essence of the doctrine is that a fact which, though not in issue, is so connected with the fact in

issue "as to form part of the same transaction" becomes relevant by itself. This rule is, roughly speaking, an exception to the general rule that hearsay evidence is not admissible. The rationale in making certain statement or fact admissible under Section 6 of the Evidence Act is on account of the spontaneity and immediacy of such statement or fact in relation to the fact in issue. But it is necessary that such fact or statement must be a part of the same transaction. In other words, such statement must have been made contemporaneous with the acts which constitute the offence or at least immediately thereafter. But if there was an interval, however slight it may be, which was sufficient enough for fabrication then the statement is not part of *res gestae*.

28. In another judgment of the Supreme Court in *Rattan Singh v. State of H.P.*, (1997) 4 SCC161 the Court examined the applicability of Section 6 of the Evidence Act to the statement of the deceased and held thus:

...The aforesaid statement of Kanta Devi can be admitted under Section 6 of the Evidence Act on account of its proximity of time to the act of murder. Illustration 'A' to Section 6 makes it clear. It reads thus: (a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact. Here the act of the assailant intruding into the courtyard during dead of the night, victim's identification of the assailant, her pronouncement that appellant was standing with a gun and his firing the gun at her, are all circumstances so intertwined with each other by proximity of time and space that the statement of the deceased became part of the same transaction. Hence it is admissible under Section 6 of the Evidence Act.

29. Applying the ratio of the aforesaid two cases to the evidence of PW7-Ram Milan Yadav, his statement indicating that the incident was narrated to him by driver Harbir would become admissible under Section 6 of the Evidence Act.

30. The next question that arises for consideration is whether even if the statement becomes admissible, can the statement be held to be so reliable that a conviction under Section 307 can be based thereupon. According to this witness, he was working as a conductor on the same bus which was being driven by the

complainant Harbir Singh. On the fateful day, they had started from Seemapuri bus stop at about 7:30 pm for Sarai Kale Khan and at about 8:00 pm, they reached bus stand EDM Mall. After dropping and taking passengers from bus stand of EDM Mall they might have moved for ten paces and reached near Competent Maruti Showroom near Tata automobiles before Gazipur Flyover, meanwhile he heard a noise of dhamaka. After hearing the noise of dhamaka, the passengers started running out from the bus through gates. He came down from the bus and reached near driver side. Then driver Harbir Singh told him that his son-in-law along with his brother came in white colour car bearing No.DL4 AL0826 and his son-in-law had fired shot upon him while his brother had hit the front glass with piece of brick. The front glass of driver side was also broken. Pieces of bricks were also lying near the bonnet. One fired cartridge and one live cartridge were found lying near right front wheel. As the front glass of the bus got damaged, he got written complaint in the complaint book, maintained in every DTC bus and handed over to the conductor who was deputed on the bus. He had deposited the complaint book in DTC Depot Seema Puri. In cross-examination he admitted that he had neither seen vehicle No.DL4 AL0826 nor the assailant who came and attacked on the bus. He further admitted that he had obtained the signatures of the passengers in the complaint book. However, the complaint book bearing the signatures of the passengers was not produced in the Court. Moreover, although according to this witness, his statement was not recorded on 17th April, 2011, according to SI Amarjeet Singh, he had recorded statement of Harbir Singh as well as Ram Milan Yadav on 14th April, 2011 and 17th April, 2011. A perusal of the two statements dated 14th April, 2011 and 17th April, 2011 goes to show that they are at complete variance with each other, inasmuch as, while in his statement dated 14th April, 2011 he had stated that the number of the car was given to him by Harbir Singh. However, in the statement dated 17th April, 2011, it is recorded that the number of the car was given to him by the passengers and the same was given by him to Harbir Singh. He further stated that he could not tell as to which car had come at the spot, how many passengers had come in the car and whether any firing had taken place or not. Under the circumstances, although this witness was very much present in the bus when the incident had taken place, however, neither he noticed any car coming in front of the bus nor could tell whether any

firing had taken place or not. Moreover, it becomes doubtful whether the number of car was given by Harbir Singh of his own or was at the instance of this witness who was given the number of the car by the passengers. Admittedly none of the passengers have been examined by the prosecution and even if it is taken that as per the statement of this witness, the passengers got down from the bus and left, even the complaint book bearing the signatures of the passengers was not produced. In this view of the matter, the evidence of this witness is not of such an unimpeachable character on whose testimony alone the conviction can be based without any corroboration.

31. It is further the case of prosecution that immediately after the incident, complainant Harbir Singh informed his wife on telephone. According to PW10-Babita, on 14th April, 2011, her husband Harbir Singh informed her telephonically about the present incident when she was at her house. According to her, she had not made call to her husband during this period nor she was having any phone at that time. In cross examination, she, however, admitted that the mobile number bearing 9718298776 belongs to her and her husband was having mobile No.9891239815.

32. PW12-Monika, daughter of Harbir Singh also stated in her cross-examination that on 14th April, 2011 at about 8:30 PM, she was at her parental house. Her mother received call from her father informing her about the incident. She also gave mobile number of her father and mother and that her mother was not having any other phone.

33. The appellant examined DW6-Sh. Surender Kumar, Assistant Nodal Officer, Idea Cellular Limited who proved the call details of mobile number 9718298776 belonging to Babita as Ex.DW6/D and call details of mobile number 9891239815 belonging to Harbir Singh as Ex.DW6/B and as per the location charts Ex.DW6/H of mobile of Babita and Harbir Singh on 14th April, 2011 between 8:00 to 8:30 pm, Harbir Singh did not make any call to Babita. In fact Babita called him twice and her location was Patparganj Industrial Area which was near to the alleged place of incident as confirmed by SI Amarjeet Singh that Patpatganj Industrial Area is situated across the road and nala from the spot. Aforesaid circumstances lends

the testimony of PW10 and PW12 doubtful.

34. The prosecution relies upon the circumstantial evidence in the form of broken piece of glass lying inside and outside the bus, one live cartridge and one fired cartridge found lying near the bus and piece of brick lying inside the bus near the driver seat. It is to be seen whether these circumstantial evidence are sufficient to prove the complicity of the accused in the crime.

35. It has come in the statement of PW4-ASI Bhagwat Dayal and PW1-Constable Rakesh Kumar that when they reached the spot on receipt of DD No.34A, one DTC bus number DL1PB5189 was found stationed there. Front glass of driver side was found lying broken. One brick piece was lying inside the bus and broken glass pieces were lying inside and outside the bus. One used cartridge and one live cartridge were lying outside the bus. The same were seized by the Investigating Officer of the case-SI Amarjeet Singh. Crime team was also called at the spot and photographs of the scene of crime were also taken.

36. PW6-SI Naveen Kumar, the Incharge-Mobile Crime Team along with his team members reached the spot and inspected the scene of crime. According to him, he prepared his report and handed over the same to SI Amarjeet Singh. Surprisingly, the said report does not form part either of police file or of judicial file. Moreover, PW3 Constable Sandeep, Photographer has also deposed that he took eight (8) photographs of the spot from different angles at the instance of Investigating Officer. According to him, he submitted the same containing photographs of scene of crime. He brought eight (8) negatives which were collectively exhibited as Ex.PW3/P1. However, on judicial file there were only six (6) photographs and according to him photographs Mark A-1 to A-6 are of the six (6) negatives out of eight (8). However, SI Amarjeet Singh stated in cross examination that photographer took photographs from inside and outside the bus. He also took photographs of bricks, broken glasses and cartridges. However, he did not file photographs of the spot with the charge-sheet taken by the photographer for which he could not assign any reason. As per him, photographs marked A1 to A6 were taken subsequently at Police Station Gazipur when the bus was to be released on superdari.

37. During the course of investigation, the seized articles were sent to FSL, Rohini. PW15-Parshu Ram Singh, Assistant Director, Physics Division, FSL Rohini, Delhi examined parcels containing small pieces of glass and broken piece of brick. After physical and microscopic examination, he gave following opinion:(i) No pieces of brick particle were sticking on any of the glass piece. (ii) No glass pieces were found sticking to the broken piece of brick.

38. On the basis of above observation, it was opined that the glass could not be broken by the brick Ex.3.

39. PW16-R. Suresh, Assistant Director, Ballistics, Central Forensic Science Laboratory, Kolkata visited Police Station Gazipur on 19th April, 2011 and examined DTC bus No.DL1PB5189 parked inside the premises of Police Station Gazipur. After examination, he submitted his report Ex.PW16/A and made following observations:(i) The front glass opposite to the driver seat was found completely broken. Some broken glass pieces were found on the dash board in front of steering and on the floor surface below the steering. (ii) The adjacent glass (next to broken front glass) opposite to driver seat was found intact and no hole was found but few radial cracks were found present in this front glass at lower portion. (iii) The two head lamp glasses were found absent. (iv) No hole was found on the fixed backside glass of driver seat. (v) No physical clue material was recovered relating to impact of bullet/pellets from the said bus No.DL1B5189 40. He also examined the cartridges sent to him and gave his report Ex.PW16/B opining that one 12 bore cartridge marked Ex.A1 is a live one and can be fired through 12 bore gun.

41. He also examined some glass pieces stated to be broken from the bus and gave his report Ex.PW16/C to the following effect:(i) The swab samples taken from the glass pieces collectively marked Ex.GP were analyzed in the Atomic Absorption Spectrophotometer (AAS) for detection of Gunshot Residue (GSR) particles. As a result of AAS analysis, no opinion can be given on the glass pieces collectively marked Ex. GP whether it can be broken by the bullet shot or otherwise due to insufficient data.

42. In cross-examination, the witness admitted that as per his report Ex.PW16/B, no clue of the bullet was recovered. He also admitted that he did not find any clue during his examination in respect of alleged firing. In *Ghurey Lal v. State of U.P.*, (2008) 10 SCC450 it was held by the Honble Apex Court as under:

The ballistic expert is disinterested, independent witness who has technical knowledge and experience.

That being so, implicit reliance can be placed on their reports. Moreover, ASI Bhagwat Dayal who first reached the spot on the day of incident has admitted in cross examination that he had not seen any bullet mark inside the bus. He did not see any bullet track and hole in the drivers seat. Even SI Amarjeet Singh, in his cross-examination, admitted that he did not find any pallet marks inside the bus. Under the circumstances, the averments made in the complaint that appellant Sunil fired from a katta at Driver Harbir and his brother Bittu threw a brick resulting in breaking of the glass of the bus does not find corroboration from the scientific reports given by PW15 & PW16. Admittedly, weapon of offence has not been recovered to ascertain that fired cartridge was fired from that gun or that the live cartridge could be fired from that weapon.

43. A three Judge Bench of Honble Apex Court in *Sharad Birdhichand Sarda v. State of Maharashtra*, 1984 (4) SCC116 laid down certain cardinal principles for conviction on the basis of circumstantial evidence, held as under:¹⁵². Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is *Hanumant Govind Nargundkar v. State of M.P.*, AIR 1952 SC343 This case has been uniformly followed and applied by this Court in a large number of later decisions up-to-date, for instance, the cases of *Tufail v. State of U.P.*, (1969) 3 SCC198 and *Ram Gopal v. State of Maharashtra*, (1972) 4 SCC625 It may be useful to extract what Mahajan, J.

has laid down in *Hanumant* case (supra):

10.... It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established: (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. (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.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

44. Testing on the touchstone of aforesaid principles, circumstances set up by the prosecution are not of conclusive nature to prove that in all human probabilities the act must have been done by the accused.

45. Further, lapses committed by the investigating agencies in not carrying out its most solemn duty of conducting fair, honest, flawless and scientific investigation into the crime is writ large:(i) Despite the fact that in the complaint itself, name of appellant was figuring and the appellant was joining investigation yet no efforts were made by the Investigating Officer either to arrest him or to recover the

weapon of offence. Testimony of SI Amarjeet Singh is in this regard is very relevant. According to him on 15th April, 2011, he made search of accused persons, namely, Sunil and Bittu but they could not be traced. He went to the house of the accused Sunil at Sahibabad where his mother met him. He enquired about accused Sunil and Bittu but their mother informed that both have gone somewhere but did not disclose their exact whereabouts and place of their visit. On 16th April, 2011, he put the telephone number of the accused persons on surveillance. On 30th April, 2011, he received information from Police Station Sahibabad that the complainant Harbir had been murdered. He again visited the residence of accused persons to search them but none could be found there. On 22nd June, 2011, he received information that accused has been arrested by the police of Sahibabad in the murder case of the complainant. As such, on 23rd June, 2011, he went to Police Station Sahibabad and collected the copy of the disclosure statement. Thereafter he moved application before the Court of learned Magistrate of Police Station Gazipur. On 28th June, 2011, accused was produced before the Court. He moved application for interrogation and arrest of the accused. Accused made disclosure statement Ex.PW17/B which he refused to sign. He arrested the accused and took one day police remand. Thereafter accused took the police party at the scene of crime and pointed out the same vide pointing out memo Ex.PW17/E. Accused disclosed that he had hidden the weapon of offence in the vacant plot adjacent to Hindon River, Gazipur. He made search of weapon of offence at the spot pointed out by accused Sunil but the weapon of offence could not be traced. On 29th June, 2011, accused Sunil was again joined investigation for search of his associates, namely, Bittu and Kuldeep but they could not be traced. However, in cross-examination, he admitted that the accused had joined investigation thrice after the date of incident. Accused as DW-1 has deposed that on 14th April, 2011 he was present at his house as office was closed due to Ambedkar Jayanti. On 15th April, 2011, he went to his office. At about 3:00 pm, he was informed by the mother that some police officials had come to his house and he was made to talk on mobile with SI Amarjeet Singh who informed about the present case and he was asked to come to Police Station. From internet, he gathered the information that FIR has been registered against him. As such, he made representation to Commissioner, Delhi, Dy. Commissioner of

Police, East Delhi, Dy. Commissioner, Vigilance and sent the same through internet and on fax as per receipts Ex.DW1/E1 to E3. He received a reply from the Police Commissioner on his e mail ID, Ex. DW1/F that his complaint has been forwarded to Joint Commissioner Crime against Women Cell. Thereafter he received notice from police station Gazipur to appear before the Investigating Officer on 25th April, 2011. He went to police station along with his mother and made his statement, copy of which is Ex.DW1/G. In between also he sent various representations. He again received notice from Police Station Gazipur to appear on 3rd June, 2011 on which date he joined investigation and his statement Ex.DW1/L was recorded by the Investigating Officer. In cross-examination, SI Amarjeet Singh could not deny that the accused joined investigation on 25th April, 2011, 3rd June, 2011 and 9th June, 2011. In fact, he also admitted that Bittu, brother of accused Sunil also joined investigation of the present case on 3rd June, 2011. Therefore, the impression which SI Amarjeet Singh wanted to give in his examination-in-Chief that accused was avoiding to join investigation is belied by his admission in cross-examination coupled with the documents placed on record by the accused. If the accused had joined investigation immediately after the registration of FIR, it is not understandable as to why the accused was not arrested immediately or why no efforts were made by the Investigating Officer to recover the weapon of offence. It was only after his arrest on 22nd June, 2011 that he obtained his police remand for one day and then nothing was recovered. In the absence of recovery of weapon of offence, it is also not proved as to from which weapon the live cartridge and fired cartridge which were found at the spot were fired. (ii) The FIR also mentions the name of brother of Sunil, Bittu as one of the offenders. Despite the fact that he joined investigation on 3rd June, 2011 yet there is no whisper in the entire charge sheet as to why he was not arrested and what action was taken qua him. (iii) According to PW3-Constable Sandeep, he had taken photographs of the place of incident and according to him, the photographs are marked A1 to A6. However, according to SI Amarjeet, the photographs Ex.A1 to A6 were taken when the bus was in the compound of PS Gazipur before releasing the bus on superdari. According to him, he had not filed photographs of the spot taken by the photographer with the charge sheet. He could not assign any reason as to why he did not file the photographs of the spot along with the charge

sheet. (iv) SI Naveen Kumar, Incharge, Mobile Crime Team inspected the spot and prepared his report. According to him, the report was handed over to SI Amarjeet Singh. However, SI Amarjet Singh did not bother to place the crime team report on the judicial record.

46. Learned Additional Public Prosecutor for the State relied upon Hema v. State, (2013) 10 SCC192 for submitting that for defects in investigation, the accused cannot be acquitted. In this case, Honble Supreme Court referred to various decisions and observed as under:

14. It is also settled law that for certain defects in investigation, the accused cannot be acquitted. This aspect has been considered in various decisions. In C. Muniappan and Ors. v. State of Tamil Nadu, 2010 (9) SCC567 the following discussion and conclusion are relevant which are as follows:

55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation.

15. In Dayal Singh and Ors. v. State of Uttaranchal, 2012 (8) SCC263 while reiterating the principles rendered in C. Muniappan (supra), this Court held thus:

18... Merely because PW3 and PW6 have failed to perform their duties in accordance with the requirements of law, and there has been some defect in the investigation, it will not be to the benefit of the accused persons to the extent that they would be entitled to an order of acquittal on this ground.

16. In *Gajoo v. State of Uttarakhand*, 2012 (9) SCC 532 while reiterating the same principle again, this Court held that:

19.....defective investigation, unless affects the very root of the prosecution case and is prejudicial to the accused should not be an aspect of material consideration by the Court.

17. Since, the Court has adverted to all the earlier decisions with regard to defective investigation and outcome of the same, it is useful to refer the dictum laid down in those cases:

20. In regard to defective investigation, this Court in *Dayal Singh v. State of Uttaranchal* while dealing with the cases of omissions and commissions by the investigating officer, and duty of the court in such cases, held as under:

27. Now, we may advert to the duty of the court in such cases. In *Sathi Prasad v. State of U.P.* this Court stated that it is well settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the court to see if the evidence given in court should be relied upon and such lapses ignored. Noticing the possibility of investigation being designedly defective, this Court in *Dhanaj Singh v. State of Punjab*, held:

5. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.

28. Dealing with the cases of omission and commission, the Court in *Paras Yadav v. State of Bihar* enunciated the principle, in conformity with the previous judgments, that if the lapse or omission is committed by the investigating agency, negligently or otherwise, the prosecution evidence is required to be examined

dehors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts, otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

47. In view of the aforesaid decisions, although it is true that defective investigation by itself cannot be made a ground for acquittal of the accused but in view of such defective investigation, the court has to be circumspect in evaluating the evidence. The complainant could not be examined by the prosecution since he has died, therefore, the complaint made by him, which form the basis of FIR cannot be treated as substantive piece of evidence. Ram Milan Yadav does not claim to be an eye witness of the incident. His testimony is merely hearsay. The circumstantial evidence does not corroborate the averment made in the complaint. The enmity between the parties is writ large.

48. Moreover, the submission of learned counsel for the appellant that defence witnesses are entitled to some weight as that of prosecution witnesses as held in *Dudh Nath Pandey* (supra) and *Nasir Sikander Shaikh* (supra) has force. The accused has examined himself as DW1 to substantiate his version. He also examined DW3 to prove that he was working with TMF India Pvt. Ltd. 14th April, 2011 was declared a holiday and as such, he was present at his house. He examined DW2-Chunni Lal Mishra who although was a prosecution witness but was not examined by the prosecution and, therefore, the accused choose to examine him as DW2. This witness has deposed that on 14th April, 2011, he had taken out his vehicle at about 6:00-6:30 pm. He used to park his vehicle in a plot. Apart from his vehicle, two other vehicles were also parked there. One Tata Indigo Car bearing No.DL4 AL0826 was parked ahead of his car for the last number of days. He took out his vehicle and came back at about 8:00 pm and the vehicle was still there in the same status. On the next date, SI Amarjeet Singh came and on his inquiry, he gave his statement to the police.

49. He also examined DW3-Sh. R.K. Singh, Nodal Officer, Bharti Airtel Ltd., DW6-Surender Kumar, Asstt. Nodal Officer, Idea Cellular Ltd. and DW7-Israr Babu, Nodal Officer, Vodafone Mobile Services to prove the call details of complainant

Harbir, Babita, Monika and Ajay Pratap. In view of the evidence led by these witnesses, accused has been able to cast a cloud on the prosecution version.

50. It is fundamental principle of criminal jurisprudence that the onus of proving everything essential to the establishment of the charge against the accused lies on the prosecution. The evidence must be such as to exclude to a moral certainty every reasonable doubt of the guilt of the accused.

51. In *Sarwan Singh Rattan Singh v. State of Punjab*, AIR 1957 SC637 it was held by the Apex Court that in criminal cases mere suspicion, however, strong, cannot take the place of proof. The Court must also take into consideration that an accused is presumed to be innocent till charges against him are proved beyond reasonable doubt. It was held:

Considered as a whole, the prosecution story may be true; but between may be true and must be true, there is inevitably a long distance to travel and the whole of this distance must be covered by legal, reliable and unimpeachable evidence before an accused can be convicted.

52. Moreover, in *Kali Ram vs. State of Himachal Pradesh*, AIR 1973 SC2773 the Apex Court had observed as follows:

Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable : it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm

conclusion or so timid that it is hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by resort to surmises, conjectures or fanciful considerations. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex-facie trustworthy on grounds which are fanciful or in the nature of conjectures. The guilt of the accused has to be adjudged not by the fact that a vast number of people believe him to be guilty but whether his guilt has been established by the evidence brought on record. Indeed, the courts have hardly any other yardstick or material to adjudge the guilt of the person arraigned as accused. Reference is sometimes made to the clash of public interest and that of the individual accused. The conflict in this respect, in our opinion, is more apparent than real. It is no doubt true that wrongful acquittals are undesirable and shake the confidence of the people in the judicial system, much worse, however, is the wrongful conviction of an innocent person. The consequences of the conviction of an innocent person are far more serious and its reverberations cannot but be felt in a civilized society. All this highlights the importance of ensuring as far as possible, that there should be no wrongful conviction of an innocent person. Some risk of the conviction of the innocent, of course, is always there in any system of the administration of criminal justice. Such a risk can be minimised but not ruled out altogether.

53. In *Mousam Singh Roy & Ors. v. State of West Bengal*, (2003) 12 SCC377 it was held:

27. Before we conclude we must place on record the fact that we are not unaware of the degree of agony and frustration that may be caused to the society in general and the families of the victims in particular, by the fact that a heinous crime like this goes unpunished, but then the law does not permit the courts to punish the accused on the basis of moral conviction or on suspicion alone. The burden of proof in a criminal trial never shifts, and it is always the burden of the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence.

It was further observed:

....It is also a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof, since a higher degree of assurance is required to convict the accused.

54. In view of the aforesaid principles, the case of prosecution remained in the realm of suspicion but as stated above, suspicion, howsoever grave cannot take the place of proof. In case of any doubt, benefit has to be given to the accused. Accordingly, the accused is entitled to benefit of doubt. That being so, the appeal is allowed. The impugned judgment and order on sentence dated 31 st August, 2013 and 4th September, 2013 passed by learned District and Sessions Judge, Karkardooma Courts, Delhi are set aside. Appellant is acquitted of the offences alleged against him. He be set at liberty, if not wanted in any other case. Trial Court record be sent back along with the copy of the judgment. A copy of the judgment be sent to the Superintendent, Jail for information to the appellant and compliance. (SUNITA GUPTA) JUDGE JANUARY06 2015 rs

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