

**Rakesh Kumar and ors. Vs. State**

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**Court :** Delhi

**Decided On :** Aug-27-2009

**Reported in :** 183(2009)DLT658

**Judge :** Pradeep Nandrajog and; Indermeet Kaur, JJ.

**Acts :** [Arms Act, 1959](#) - Sections 25 and 27; Criminal Law (Amendment) Act, 1913; [Evidence Act, 1872](#) - Sections 3, 8, 10, 11(2), 27, 45, 63, 65, 65A, 65B, 65B(1), 65B(2), 65B(3), 65B(4), 65B(5), 106 and 145; Evidence (Amendment) Act, 2000; Sea Customs Act, 1878 - Sections 167; [Information Technology Act, 2000](#) - Sections 2; Code of Criminal Procedure (CrPC) - Sections 82, 83, 161, 161(2), 162, 164, 313 and 342; Indian Penal Code (IPC) - Sections 34, 120A, 120B, 121A, 201, 302 and 364

**Appeal No. :** Crl. A. 19/2007

**Appellant :** Rakesh Kumar and ors.

**Respondent :** State

**Advocate for Def. :** Richa Kapoor, Adv.

**Advocate for Pet/Ap. :** M.L. Yadav, Adv.; R.N. Mittal, Sr. Adv.; Tanveer A.Mir; Manoj Kumar; Rajpal Singh; Ashutosh Bhardwaj; R

**Judgement :**

## **Pradeep Nandrajog, J.**

1. Atma Ram Gupta (hereinafter referred to the 'Deceased'), a member of the Indian National Congress, was a Councillor of the Municipal Corporation of Delhi, having been elected from Ward No. 27, Tri Nagar, Delhi, in the Elections held in February 2002.

2. At 10:15 AM on 24.8.2002 he left his residence in an Indica Car bearing registration No. DL 6SA 0025 owned by him, which was driven by his driver Prabhu Yadav PW-17. While leaving the house he told his wife Sumitra Gupta PW-18, that he was going to attend a rally organized by the Congress Party at Firozshah Kotla Grounds Delhi.

3. He did not return to his residence till late evening and could not be contacted on his mobile phone since the same was switched off. His wife got worried. She contacted the younger brothers of Atma Ram Gupta as also her children and apprised them of the situation. The children of Atma Ram Gupta as also his younger brothers came to his residence and made inquiries from persons who were in contact with Atma Ram Gupta during the day. They could not ascertain the whereabouts of Atma Ram Gupta till midnight and thus Rajinder Pal Gupta PW-9, the younger brother of Atma Ram Gupta, lodged a missing person report at PS Keshav Puram. HC Ashok Kumar PW-6, recorded DD No. 31, Ex.PW-6/A at 1:00 AM on 25.8.2002 in which it stands recorded that on 24.8.2002 at about 10:30 AM Atma Ram Gupta left his residence in his white coloured Indica Car bearing registration No. DL 6SA 0025 which was driven by the driver Prabhu Yadav and that he went to the residence of Sharda Jain, a Member of Indian National Congress and also a Municipal Councillor from Keshav Puram Ward New Delhi. That on reaching the residence of Sharda Jain, Atma Ram sent back his car with the driver and thereafter, in the company of Sharda Jain and another person, Atma Ram Gupta left the residence of Sharda Jain in an Indica Car bearing registration No. DL 3SAB 0016 belonging to Sharda Jain, which was driven by Prakash Chauhan the driver of Sharda Jain and they left for Firozshah Kotla grounds to attend a rally. When Atma Ram Gupta did not return home till evening his family members contacted Sharda Jain who told them that Atma Ram Gupta had

accompanied her to the rally held at Firozshah Kotla grounds and attended the same for sometime. Leaving the venue of the rally the said four persons proceeded in the car of Sharda Jain towards ring road and at a red light near Jamuna Bazar, Hanuman Mandir, opposite Nigam Bodh Ghat the driver of Sharda Jain got down from the car as he was not feeling well. The unidentified person started driving the car. Sharda Jain further told them that after some time Atma Ram Gupta got down from her car.

4. On 25.8.2002 itself, Inspector Shiv Raj Singh PW-55, recorded the statement, Ex.PW-62/DB, of Sumitra Gupta PW- 18, as also the statement Ex.PW-9/C of Rajinder Pal Gupta PW- 9, the younger brother of Atma Ram Gupta.

5. In her statement, Ex.PW-62/DB, Sumitra Gupta stated that on 24.08.2002 at about 10.15 A.M. her husband left his residence in his Indica car bearing registration No. DL 6SA 0025 being driven by his driver Prabhu Yadav. Before leaving the house, her husband told her that he would first go to the house of Sharda Jain and thereafter would proceed to a rally along with Sharda Jain. She further stated that while leaving the house her husband was wearing a watch in his right hand as also a gold ring on his finger, on which letters 'AR' were engraved and was also carrying a mobile phone, some cards and documents. After some time Prabhu Yadav returned to the house and told her that he had dropped her husband at the residence of Sharda Jain and that Atma Ram Gupta told him to take back the car to the house because he would go to the rally in the car of Sharda Jain. When her husband did not return home till evening she contacted Sharda Jain over the telephone to enquire about the whereabouts of her husband and Sharda Jain informed her that her husband did not accompany her to the rally.

6. In his statement Ex.PW-9/C, Rajinder Pal Gupta PW- 9, stated same facts which were already recorded in DD No. 31, Ex.PW-6/A.

7. On the next day i.e. 26.08.2002, Inspector Shiv Raj Singh PW-55, recorded the statement Ex.PW-11/DA of Om Parkash, the driver of Sharda Jain, and the statement Ex.PW- 10/A of the mother of Om Parkash; namely, Shanti PW-10.

8. In his statement Ex.PW-11/DA, Om Parkash stated that he had driven Sharda Jain and Atma Ram Gupta in the car of Sharda Jain to the venue of the rally at Firozshah Kotla Grounds and that another person named Rajesh @ Raju was also in the car. From the venue of the rally they all left and he drove the car towards ring road. When the car reached the red light near Hanuman Mandir at Jamuna Bazar, Nigam Bodh Ghat, since he was not feeling well, he got down from the car and Rajesh started driving the car. He further stated that Raj Kumar the brother of Sharda Jain, Rajesh @ Raju and a person named Roshan Singh Pradhan had visited the house of Sharda Jain 8-10 days prior to 24.8.2002 and he saw them again in the house of Sharda Jain on 22.8.2002. He heard suspicious talks between Roshan Singh and Sharda Jain. He further disclosed that in the night of 24.8.2002 Sharda Jain had visited his house and had told him not to divulge to anyone that Atma Ram Gupta was in her company in the morning of 24.8.2002.

9. In her statement Ex.PW-10/A, Shanti PW-10, the mother of Om Prakash, stated that Sharda Jain visited their house in the night of 24.08.2002 and asked her son Om Parkash not to divulge to anyone that Atma Ram Gupta was in her company in the morning.

10. On 26.08.2002, Inspector V.S. Meena PW-62, took over the investigation of the case.

11. The fact that the deceased was present in the company of Sharda Jain and Rajinder @ Rajesh @ Raje @ Raju on the day he went missing; that Sharda Jain, Rajinder @ Rajesh @ Raje @ Raju, Raj Kumar @ Raju and Roshan Singh were meeting each other few days before the deceased went missing and that something fishy was being discussed in the meetings between Sharda Jain, Raj Kumar, Roshan Singh and Rajinder, the said persons became suspects.

12. On 27.08.2002 Inspector V.S. Meena PW-62, accompanied by Inspector Shiv Raj Singh PW-55, SI Anil Kumar PW-44 and HC Sunita PW-31, went to the residence of Sharda Jain and arrested her at 01.00 P.M. as recorded in the arrest memo Ex.PW-31/A. On interrogation by Inspector V.S. Meena PW-62, in the presence of Inspector Shiv Raj Singh PW-55, Anil Kumar PW-44 and HC Sunita PW-31, Sharda Jain made a disclosure statement Ex.PW-31/D wherein she

disclosed that she hatched a conspiracy with her brother Raj Kumar and two other persons; namely, Roshan Singh and Rajinder to murder the deceased and that pursuant to the conspiracy the deceased was taken to village Chajjupur on 24.8.2002 in her car. Two hired assassins shot him as per plan when the deceased was led to village Chajjupur. That she could take the police and show the place where the deceased was murdered.

13. After she was arrested, Sharda Jain produced one mobile phone having number 9811508688 9811508688 . The phone along with the SIM card were seized vide memo Ex.PW-31/C. Indica car bearing registration No. DL 3SAB 0016 was parked outside the residence of Sharda Jain. It was searched. One pair of molded P.O.P. denture set on which name of Dr. S.C. Rajput was engraved; four invitation cards dated 24.08.2002 one of which had the name of the deceased written thereon and two labels for parking of the car at Firozshah Kotla ground were recovered and hence seized vide memo Ex.PW-44/C. Mud was found sticking on the right rear tyre of the said car. The same i.e. the tyre was seized vide memo Ex.PW-44/C1.

14. When aforementioned events were transpiring in the house of Sharda Jain, Raj Kumar the brother of Sharda Jain came there and tried to slip away on seeing the police. However, he could not manage to escape and was arrested at 3 P.M. as recorded in the arrest memo Ex.PW-44/A. On being interrogated by Inspector V.S. Meena PW-62, in the presence of Inspector Shiv Raj Singh PW-55 and SI Anil Kumar PW-44, Raj Kumar made a disclosure statement Ex.PW-44/O wherein he disclosed that he was a party to the conspiracy with Sharda Jain and two other persons; namely, Roshan Singh and Rajinder to murder the deceased and that two other persons; namely, Pushpender and Nirvikar were the hired assassins who fired shots at the deceased in pursuance of the said conspiracy. He stated that he could lead the police to the place and identify the same, where the deceased was murdered. He further disclosed that he had removed the wrist watch of the deceased and could get the same recovered.

15. Pursuant to their respective disclosure statements, Sharda Jain and Raj Kumar led the police party consisting of Inspector V.S. Meena PW-62, HC Sunita

PW-31, SI Ram Kumar PW-32, SI Anil Kumar Chauhan PW-44 and SI Shiv Raj Singh PW-55 to a Dak Bangla near a Rajwaha (minor canal) situated behind village Chajjupur, U.P. and vide pointing out memos Ex.PW-44/D and Ex.PW-44/E both of them, at the same time, pointed out a spot and stated that the said spot is the place where the deceased was murdered.

16. On a thorough investigation of the place pointed out by accused Sharda Jain and Raj Kumar, the earth therein was found to be stained with blood at three different spots. SI Ram Kumar PW-32, lifted the portions of the earth stained with blood as also the earth control and seized the same vide memo Ex.PW-44/F. Thereafter the control mud/soil at the place in question was lifted and seized vide memo Ex.PW-44/G. Inspector V.S. Meena PW-62, prepared the site plan Ex.PW-62/B of the spot in question; recording therein at points 'A.' 'B' and 'C', the spots where the earth was found to be stained with blood and samples lifted.

17. SI Manohar Lal PW-29, a draftsman and HC Sajjan Kumar PW-33 a photographer were summoned. SI Manohar Lal prepared the site plan to scale Ex.PW-29/A of the place in question, at the instance of Inspector V.S. Meena. HC Sajjan Kumar took five photographs Ex.PW-33/A to Ex.PW-33/E of the place in question; negatives whereof are Ex.PW-33/A1 to Ex.PW-33/E1.

18. Thereafter accused Raj Kumar led the police party consisting of Inspector V.S. Meena PW-62, SI Anil Kumar Chauhan PW-44 and SI Shiv Raj Singh PW-55, to his residence at village Gulawati, District Bulandshar, UP and recovered a wrist watch of make 'Citizen Quartz. with a gold chain from behind a speaker kept at a ventilator in the balcony of his house and the same was seized vide memo Ex.PW-44/H. The said watch was deposited in the Malkhana on the date of its recovery itself i.e. 28.08.2002 as recorded vide entry No. 1560 entered by HC Dinesh Kumar PW-43, in the Store-Room Register (Part I).

19. Attempts made to locate the dead body of Atma Ram Gupta failed till 31.08.2002, when around 5 A.M. on 31.8.2002, Ram Kumar PW-22, an agriculturist and resident of village Deher Ki Madia, Bulandshar, UP saw a dead body of a male person lying in a sub-canal of the canal known as 'Bulandshar Rajwaha/Sanota Canal'. Ram Kumar apprised the police officials. Since the body

found in the canal appeared to be that of the deceased, the police called the relatives of the deceased for the purposes of the identification of the said body. Rajinder Pal Gupta PW-9, Ved Prakash Gupta PW-15, Rajpal Gupta PW-16, brothers of the deceased and Mahender Pal Gupta PW-8 and Amrit Lal Singhal PW-37, friends of the deceased, identified the body found in the canal as that of the deceased.

20. Since the body of the deceased was found within the jurisdiction of Police Station Gulawati, UP, the police officials of the said police station were joined in the recovery. Inspector V.S. Meena PW-62, informed the duty officer of PS Gulawati by way of a written application Ex.PW-62/C about the recovery of the body of the deceased based whereon Const. Lalit Kumar PW-60, prepared DD Entry Ex.PW-60/B at 5.00 A.M. on 31.08.2002. Taking along a copy of the afore-noted DD Entry, SI Rambir Singh PW-61, reached the canal, lifted the earth from near the canal and water oozing out from the body of the deceased and seized the same vide Ex.PW- 23/A. SI Rambir Singh also prepared inquest report Ex.PW-61/A and other documents pertaining to the recovery and conduct of post-mortem of the deceased. Inspector V.S. Meena PW-62, prepared the rough site plan Ex.PW-62/D of the place of the recovery of the body of the deceased; recording therein at points 'A' and 'B' the spots where the body of the deceased was found stuck in the heap of garbage in the canal and where the body was kept after being taken out from the canal. HC Sajjan Kumar PW-33, photographer, reached the said place and took the photographs Ex.PW-33/X1 to Ex.PW-33/X12 of the body of the deceased and the place of the recovery of the said body; negatives whereof are Ex.PW33/X1A to Ex.PW-33/X12A. (It may be noted here that the photographs Exhibits PW-33/X1, PW-33/X7, PW-33/X8, PW-33/X9, PW-33/X10 and PW-33/X11 are the photographs of the body of the deceased whereas the photographs Exhibits PW-33/X2, PW-33/X3, PW-33/X4, PW- 33/X5 PW-33/X6 and PW-33/X12 are the photographs of the place of the recovery of the dead body of the deceased) Ravinder Singh PW-23 and Jai Chand PW-26, public persons, witnessed the investigation conducted at the place in question and preparation of the memos as also the other documents prepared by the police in connection with recovery of the body of the deceased.

21. Thereafter the body of the deceased was sent to the mortuary at District Hospital, Bulandshar, where Dr. S.K. Aggarwal PW-21 and Dr. M.M. Aggarwal conducted the post-mortem of the deceased at 2.30 P.M. on 31.08.2002 and prepared the post-mortem report Ex.PW-21/A which records following ante-mortem injuries on the person of the deceased:

1. Firearm wound of entry 1.0 cm x 1 cm x cavity deep on right side forehead 2.0 cm above lateral end of right eye brow, margins inverted.

2. Firearm wound of exit 2.0 cm x 3.5 cm x cavity deep on left side of head 1.0 cm above left ear. On exploration, injuries nos.1 and 2 found communicating with each other. Margins inverted.

3. Abraded contusion 2.5 cm x 1.5 cm above top of head.

22. The relevant portion of the external examination of the deceased recorded in the post-mortem report Ex.PW-21/A reads as under:. Skin peeled off at places, scalp hair loose and easily detachable. Body covered with mud at places. Skin of hands and feet (soles) wrinkled. Foul smell present. Face scrotus and penis swollen.

23. The post-mortem report further records that the brain of the deceased was in a liquefied state; that the small intestine was contain gases; that the death was caused due to coma, shock and haemorrhage as a result of ante-mortem injuries found on the person of the deceased and that the death of the deceased had taken place about one week prior to the conduct of the post-mortem.

24. After the post-mortem, the doctors handed over the clothes and artificial teeth, six in number; viscera of the deceased; vial of sample of preservative used for preserving the viscera of the deceased and one sample seal to SO of PS Gulawati. HC Ajay Pal PW-4, handed over the afore-noted materials as also the materials seized vide memo Ex.PW-23/A; namely, earth lifted from near the canal and water which had oozed out from the body of the deceased; the post-mortem report and its copies and the inquest papers to Inspector V.S. Meena PW-62, vide memo Ex.PW-4/A.

25. Since accused Roshan Singh could not be located in his house, the police flashed a wireless message, Ex.PW-55/A, to all SSP's and DCP's in India to search for Roshan Singh and a Maruti 800 car bearing registration No. DDU 1371 owned by him. Proceedings were initiated to declare him a proclaimed offender.

26. Attempts were made to trace Pusphender and Nirvikar. On 6.9.2002, Inspector Ram Chander PW-20, along with other police officials was present near PS Tappal, District Aligarh when a secret informer informed him that accused Pushpender is staying in the house of his relative situated at village Bharatpur. Inspector Ram Chander PW-20, sent the aforesaid information to Police Station Keshav Puram, where DD No. 11, Ex.PW-62/E, was recorded at 3.20 P.M. noting the said information. Thereafter Inspector Ram Chander proceeded to village Bharatpur and apprehended Pushpender from a road in the village. Inspector V.S. Meena accompanied by SI Sukaram Pal PW-39 and SI Anil Kumar Chauhan PW-44, reached village Bharatpur and formally arrested accused Pushpender at 7.30 P.M. as recorded in the arrest memo Ex.PW-20/A.

27. The personal search of Pushpender resulted in the recovery of Rs. 44/- and one I-Card issued in the name of the deceased by All India Crime Prevention Organization and the same were seized vide memos Ex.PW-20/B and Ex.PW-20/C respectively. On being interrogated by Inspector V.S. Meena PW-62, in the presence of SI Sukaram Pal and SI Anil Kumar PW-44, Pushpender made a disclosure statement Ex.PW-20/D wherein he disclosed that he had fired a shot at the deceased in pursuance of a conspiracy to murder the deceased.

28. On 17.09.2002 Inspector Ram Chander PW-20, telephonically informed duty officer at PS Keshav Puram that accused Nirvikar who was granted bail in connection with FIR bearing No. 250/01 registered against him and had got his bail cancelled and is lodged in Aligarh Jail, based whereon, DD No. 7A Ex.PW-62/F, was recorded at 10.45 A.M. noting the same information. On receipt of said information, Inspector V.S. Meena PW-62, proceeded to Aligarh, where after filing an application and getting permission from the District Judge, Aligarh, he obtained the custody of accused Nirvikar and formally arrested him at 01.00 A.M. on 18.09.2002 as recorded in the arrest memo Ex.PW-39/A1.

29. On interrogation by Inspector V.S. Meena PW-62, in the presence of SI Sukaram Pal PW-39, accused Nirvikar made a disclosure statement Ex.PW-39/A, wherein he disclosed that the shot which caused the death of the deceased was fired by him. Additionally, he stated that he can point out the place where the deceased was murdered and the residence of accused Roshan Singh and can also get recovered the country made pistols used for committing the murder of the deceased. Pursuant to his disclosure statement, Nirvikar led the police party consisting of Inspector V.S. Meena PW-62 and SI Sukaram Pal PW-39, to a Dak Bangla near a Rajwaha which was situated behind village Chajjupur, U.P. and vide pointing out memo Ex.PW-39/B pointed out a spot and stated that said spot is the place of the murder of the deceased. (It may be noted here that the said spot is the same which was told by accused Sharda Jain and Raj Kumar as the spot where the murder of the deceased was committed i.e. the spot was already known to the police). Thereafter, he led the afore-noted police officials to the residence of his brother-in-law situated at village Chajjupur and got recovered an I-card issued in the name of the deceased by ISCKON, from underneath a trunk, which was seized vide memo Ex.PW-39/C. (It may be noted here that in the disclosure statement Ex.PW-39/A made by accused Nirvikar he has not made any mention of any I-card or of the fact that he can get one recovered).

30. On the basis of secret information, the police party, consisting of Inspector V.S. Meena PW-62, SI Anil Kumar Chauhan PW-44 and SI Sukaram Pal PW-39, arrested accused Rajinder Singh at a bus stand situated at JJ Colony, Wazirpur, Delhi, at 8.30 P.M. on 30.09.2002 as recorded in the arrest memo Ex.PW-44/J. On being interrogated by Inspector V.S. Meena PW-62, in the presence of SI Sukaram Pal and SI Anil Kumar PW-44, Rajinder Singh made a disclosure statement Ex.PW-39/E, wherein he disclosed that he hatched a conspiracy with Sharda Jain, Raj Kumar, Roshan Singh and Rajinder to murder the deceased and that two unknown persons fired shots at the deceased in pursuance of the said conspiracy. Pursuant to his disclosure statement, Rajinder Singh led the police party consisting of Inspector V.S. Meena PW-62 and SI Sukaram PW-39, to a Dak Bangla near a Rajwaha which was situated behind village Chajjupur, U.P. and vide pointing out memo Ex.PW-39/G pointed out a spot and stated that spot is the place of the murder of the deceased. Thereafter he led the afore-noted police

officials to the residence of Sharda Jain and vide pointing out memo Ex.PW- 39/F pointed out the said house as the place where the conspiracy to murder the deceased was hatched. (It may be noted here that the said places were already in the knowledge of the police).

31. On 01.10.2002, Inspector V.S. Meena PW-62, filed an application Ex.PW-62/H before the court of Metropolitan Magistrate for conduct of Test Identification of Rajinder. Rajinder refused to participate in the TIP proceedings on the ground that he is known to the witnesses. Said fact was recorded in the record Ex.PW-40/A pertaining to the TIP proceedings.

32. On 13.10.2002, SI Manohar Lal PW-29, prepared the site plan to scale Ex.PW-29/B of the place where the dead body of the deceased was recovered. He did so at the instance of Insp. V.S. Meena.

33. On 16.10.2002 Inspector V.S. Meena PW-62, filed an application before the court of Metropolitan Magistrate, Delhi for conduct of Test Identification of the wrist watch recovered at the instance of accused Raj Kumar. On 21.10.2002, Test Identification of the said wrist watch was conducted and Rajinder Pal Gupta PW-9, younger brother of the deceased, identified the wrist watch recovered at the instance of Raj Kumar, as that of the deceased. The Test Identification Proceedings were recorded vide Ex.PW-40/C. Being relevant to discuss the issue relating to the identification of the watch as that of the deceased, it may be noted that it is recorded in Ex.PW-40/C as under:

On opening of the pullanda one wrist watch make citizen quartz with gold chain is found. All the wrist watches including the case property is displayed by me in a row and the case property is lying at fourth position from my left and at sixth place from my right. It is pertinent to mention here that the dial, chain and design of wrist watches produced by IO for the purpose of mixing up is similar to that of the case property. The make of wrist watches brought by IO is of different companies and there is no wrist watch of make citizen.

(Emphasis Supplied)

34. On 14.10.2002 a secret information was received by Inspector J.R. Uike PW-63, posted at PS Babai, District Hoshangabad, MP, that accused Roshan Singh is present at Rampur Tala near the tube well of Kamal Singh, pursuant whereto he went there and arrested Roshan Singh at 6.10 P.M. in the presence of two public witnesses; namely, Lalit Dubey PW-56 and Ram Bilas PW-57, as recorded in the arrest memo Ex.PW-63/A2.

35. On the next day i.e. 15.11.2002 the SP, Hoshangabad, sent the information, Ex.PW-63/B, about the arrest of Roshan Singh to the Commissioner of Police Delhi, pursuant whereto, Inspector VS Meena, accompanied by Inspector Ram Chander PW-20 and SI Sukaram Pal PW-39, went to Hoshangaband, where after filing an application and getting permission from the court at Hoshangabad, Inspector V.S. Meena obtained the police custody of Roshan Singh and formally arrested him at 04.00 P.M. as recorded in the arrest memo Ex.PW-39/G. On being interrogated by Inspector V.S. Meena PW-62, in the presence of Inspector Ram Chander PW-20 and SI Sukaram Pal PW-39, Roshan Singh made a disclosure statement Ex.PW-20/E, wherein he disclosed that he hatched a conspiracy with Sharda Jain, Raj Kumar and Rajinder to murder the deceased and that two other persons; namely, Pushpender and Nirvikar fired shots at the deceased in pursuance of the said conspiracy. He further disclosed that he, along with three police officials; namely, Shri Pal Singh Raghav, Rakesh Kumar and Satender Kumar had thrown the body of the deceased in the canal; that one Subash who is a resident of village Chajjupur can shed some light on the said aspect of the matter and that he can get recovered a gold ring and the mobile phone of the deceased as also his mobile phone and the two pistols used for committing the murder of the deceased.

36. On 21.11.2002, Inspector V.S. Meena PW-62, came to know that Maruti car bearing registration No. DDU 1371 belonging to Roshan Singh is lying unclaimed at Malkhana of PS Kharkoda, District Meerut, UP since 09.09.2002. On the same day, Inspector V.S. Meena obtained the custody of the said car and seized the same vide memo Ex.PW-62/N. SI Karan Singh PW-45, from the crime team reached PS Kharkoda, on being summoned and inspected the car in question but no chance print could be detected thereon as recorded in the report Ex.PW-45/A.

37. On 22.11.2002, Roshan Singh took the police party, consisting of Inspector V.S. Meena PW-62, SI Sukaram Pal PW- 39 and SI Anil Kumar Chauhan PW-44, to Bijoli Mode, UP and got recovered his mobile phone from the bushes and the same was seized vide memo Ex.PW-39/O. Thereafter Roshan Singh led the said police officials to his residence and got recovered two country made pistols; two live cartridges and one gold ring from a polythene bag which was kept hidden in a heap of cattle feed, lying in a room of his house and the same were seized vide memo Ex.PW-39/L. Inspector V.S. Meena prepared rough site plan Ex.PW-62/N of the residence of Roshan Singh; recording therein at point 'B' the room where the afore-noted articles were recovered. He also prepared the sketches of the pistols and live cartridges recovered at the instance of Roshan Singh, being Ex.PW-39/H, Ex.PW-39/J and Ex.PW-39/K respectively. All the seized articles were deposited in the Malkhana on 22.11.2002 as recorded vide entry No. 1642 entered in the store room register (part I) by HC Dinesh Kumar PW-43.

38. Thereafter Roshan Singh led the police officers and pointed out the spots where the deceased was murdered and body of the deceased respectively was thrown into the canal, vide pointing out memos Ex.PW-39/H and Ex.PW-39/N respectively. (It may be noted here that the spot which was pointed out by accused Roshan Singh as the place of the murder of the deceased is the same which was told by accused Sharda Jain and Raj Kumar as the spot where the deceased was murdered i.e. the spot was already known to the police). (It may further be noted here that sketch of one of the pistols recovered at the instance of accused Roshan Singh as also the pointing out memo of the place of murder of the deceased prepared at the instance of Roshan Singh have been exhibited as Ex.PW-39/H i.e. two documents have been given the same exhibit mark.) The mobile phone of the deceased could not be found pursuant to the disclosure statement of accused Roshan Singh.

39. In his disclosure statement, Roshan Singh had named Subash, stating that Subhash could shed some light on the aspect of the disposal of the dead body of the deceased, Inspector V.S. Meena tracked Subhash PW-38, and recorded his statement Ex.PW-38/DA. Thereafter, Inspector V.S. Meena filed an application Ex.PW-40/J before the Court of the Metropolitan Magistrate Delhi for recording the

statement of Subash under Section 164 Cr.P.C. Shri P.K. Jain PW-40, Metropolitan Magistrate Delhi, recorded the statement Ex.PW-38/A dated 10.12.2002 of Subash, wherein he stated that he is an agriculturist and resides in village Chajjapur. That on 24.08.2002 at around 06.00 PM he returned to his house after finishing work at his fields when some children told him that a dead body is lying near the government bungalow situated near the canal. On hearing the same, he proceeded to the house of Roshan Singh who was the Pradhan of his village to apprise him of the said fact. On his way to the house of Roshan Singh he met Roshan Singh who was driving a car and he told him about the dead body, upon which Roshan Singh told him that they should go to the police station and give the said information. Thereafter he sat in the car of Roshan Singh and while they were on their way to the police station they met three police officers; namely Shri Pal Singh Raghav, Rakesh Kumar and Satender Kumar to whom they gave the information about the dead body. The three police officers sat in the car of Roshan Singh. When the car reached near the canal, Roshan Singh asked him to get down from the car and told him that he, along with the three police officers would take care of the matter upon which he got down from the car. Roshan Singh drove the car towards the canal and he returned to his house. Roshan Singh absconded from his house since that day. He did not see the dead body with his own eyes. He came to know that the said body was that of the deceased after reading a newspaper report a few days after the dead body of Atma Ram Gupta was discovered.

40. On 30.11.2002 Inspector V.S. Meena took the two pistols recovered at the instance of accused Roshan Singh to Dr. S.K. Aggarwal PW-21, for his opinion about the weapon. Vide report Ex.PW-21/B, Dr. S.K. Aggarwal opined that the ante-mortem injury No. (1) found on the person of the deceased could possibly be caused by one of the said two pistols.

41. In view of what was told to Inspector V.S. Meena by Subhash, it became apparent that Shri Pal Singh Raghav, Rakesh Kumar and Satender Kumar became suspects regarding the disposal of the dead body.

42. On 11.12.2002 Inspector V.S. Meena, accompanied by SI Sukaram Pal PW-39, went to PS Vijay Nagar, Ghaziabad, UP where he arrested Sripal Singh Raghav and Satender Kumar at 6.00 PM as recorded in the arrest memos Ex.PW-39/T and Ex.PW-39/U. On interrogation by Inspector V.S. Meena, in the presence of SI Sukaram Pal PW-39, accused Sripal Singh Raghav and Satender Kumar made disclosure statements Ex.PW-39/P and Ex.PW-39/Q respectively, wherein they disclosed that along with Roshan Singh and another police officer; namely Rakesh Kumar, they threw the body of the deceased into the canal. Both of them led Inspector V.S. Meena to the place which had already been identified to the police as the place where the deceased as murdered and vide pointing out memos Ex.PW-39/V, Ex.PW-39/X, Ex.PW-39/Y and Ex.PW-39/W accused Sripal Singh Raghav and Satender Kumar pointed out the place where the dead body of the deceased was lying before it was thrown into the canal and the place where they threw the body of the deceased into the canal.

43. On the basis of secret information, Inspector V.S. Meena accompanied by SI Anil Kumar Chauhan PW-44, arrested accused Rakesh Kumar at a bus stop situated at B-2 Block, Keshav Puram, Delhi at 09.30 AM on 23.12.2002, as recorded in the arrest memo Ex.PW-44/K. On being interrogated by Inspector V.S. Meena, in the presence of SI Anil Kumar Chauhan PW-44, accused Rakesh Kumar made a disclosure statement Ex.PW-44/L wherein he disclosed that he along with Roshan Singh, Sripal Singh Raghav and Satender Kumar had thrown the body of the deceased into the canal. Thereafter vide pointing out memo Ex.PW-44/N, accused Rakesh Kumar pointed out the place where the dead body of the deceased was lying before it was thrown into the canal.

44. On 13.01.2003, Inspector V.S. Meena, obtained the blood samples of the parents of the deceased for the purposes of DNA testing and seized the same vide memo Ex.PW-62/X1.

45. On 16.01.2003 Inspector V.S. Meena, filed an application in the Court of Metropolitan Magistrate Delhi for conduct of Test Identification of the ring recovered at the instance of accused Roshan Singh. On 18.01.2003, the Test Identification of the said ring was conducted. Sumitra Gupta PW-18, wife of the

deceased, identified the ring recovered at the instance of Roshan Singh as that of the deceased as noted in the record of the proceedings Ex.PW-40/M. The manner in which the TIP of said ring was conducted, is recorded in Ex.PW- 40/M as under:

Today I.O. Insp V.S. Meena produced one sealed pullanda duly sealed with the seal of V.S. On opening of the same, one gold ring is found in match box. The English letter AR is engraved on the top of the ring. I.O. also produced eight other rings which appear to be of gold. The design and size of these rings are similar to that of case property. It is pertinent to mention here that on none of the said rings the English letters AR is engraved'

(Emphasis supplied)

46. In the meantime, some of the materials seized during the course of investigation; namely, the blood samples of the parents of the deceased, the soil/earth lifted from the spot pointed out by accused Sharda Jain and Raj Kumar as the place of the murder of the deceased, the clothes, artificial teeth and viscera of the deceased, the sample of the vial used for preserving the viscera of the deceased, the tyre of the car of Sharda Jain, two country made pistols and cartridges were sent to the Forensic Science Laboratory for serological/chemical/ballistic examination.

47. Vide CFSL report Ex.P-1, it was opined that the samples of the blood of the parents of the deceased and the sample of the tissue of the body recovered from the canal were subjected for DNA isolation by organic extraction method and that the said sample of tissue belongs to the male child of the parents of the deceased. Vide FSL reports Ex.PW-41/A and Ex.PW-41/B it was opined that the earth/soil/mud lifted from the place of occurrence was found to be stained with human blood; group whereof could not be determined and that blood could not be detected on the clothes and artificial teeth of the deceased. Vide FSL report Ex.PW-66/A it was opined that the mud/soil lifted from the place of occurrence and the soil/mud found stuck on the tyre of the car of Sharda Jain were similar in physical characteristics. Vide FSL report Ex.PW-50/A it was opined that the pistols recovered at the instance of Roshan Singh are of 315 bore, designed to fire a standard 8 mm/.315 bore and are in working order in their present condition and

that the cartridges recovered at the instance of Roshan Singh are live and can be fired through a 315 bore firearm. Vide FSL report Ex.PW-59/A it was opined that blood or any other biological material could not be detected on the car of Roshan Singh.

48. Armed with the aforesaid material, the prosecution filed a charge-sheet against the accused persons. As per the charge-sheet, the broad contours of the case set up by the prosecution against the accused persons are that accused Sharda Jain developed intimate relations with the deceased due to which her husband left her. But, the deceased developed intimate relations with one Memwati Berwala who was also a member of the Indian National Congress and a Municipal Councillor. When the deceased did not end his relations with Memwati Berwala despite strong objection raised by accused Sharda Jain, accused Sharda Jain tried to commit suicide by consuming sulfas tablets. After the said incident, the relations between accused Sharda Jain and the deceased became normal and accused Sharda Jain got elected as a Municipal Councilor due to the influence of the deceased. However, after sometime, the deceased again developed intimate relations with Memwati Berwala as also started ignoring accused Sharda Jain and promoted the political career of Memwati Berwala at the cost of the career of accused Sharda Jain. The aforesaid conduct of the deceased enraged accused Sharda Jain to such an extent that she decided to do away with the deceased. Accused Sharda Jain confided in her brother Raj Kumar who agreed to aid Sharda Jain in achieving her illegal desire. To give effect to the illegal desire of Sharda Jain he contacted accused Roshan Singh and his i.e. Roshan Singh's driver Rajinder Singh. The four of them i.e. Sharda Jain, Raj Kumar, Roshan Singh and Rajinder Singh met twice at the residence of Sharda Jain, where they hatched a conspiracy to murder the deceased. To execute the conspiracy accused Roshan Singh contacted accused Nirvikar and Pushpender, who agreed to kill the deceased. In pursuance of the said conspiracy, on 24.08.2002, accused Sharda Jain made the deceased sit in her Indica car bearing registration No. DL-3S- AB-0016, being driven by accused Rajinder Singh, and in a friendly manner, led him to a Dak Bangla near a Rajwaha situated behind village Chajjupur, UP, where accused Pushpender and Nirvikar fired shots at the deceased and caused his death. Thereafter Sharda Jain along with Rajinder Singh left the spot and asked the other accused persons to dispose

of the body of the deceased. Roshan Singh asked the remaining accused persons; namely, Raj Kumar, Pushpender and Nirvikar to disperse and told them that they would come back to said spot in the evening to dispose of the body of the deceased. Before dispersing from the place of the crime, the said accused persons removed the I-cards, wrist watch and gold ring of the deceased. However, everything did not work out according to their plan inasmuch as Subash, who is a resident of village Chajjupur, got knowledge about the presence of a body at the place in question. Notwithstanding the said obstacle, Roshan Singh, with the aid accused Sripal Singh Raghav, Rakesh Kumar and Satender Kumar managed to dispose of the body of the deceased by throwing the same in the canal flowing near the place where the deceased was murdered.

49. Charges were framed against the accused Sharda Jain, Raj Kumar, Rajinder Singh, Roshan Singh, Pushpender and Nirvikar under Section 120-B, Section 364 read with Section 120-B and Section 302 read with Section 120-B IPC for having hatched a conspiracy to abduct and murder the deceased; abducting and murdering the deceased in pursuance of the said conspiracy. Charges were also framed against accused Sharda Jain, Raj Kumar, Roshan Singh, Sripal Singh Raghav, Satender Kumar and Rakesh Kumar under Sections 120-B and 201 read with Section 120-B IPC for having hatched a conspiracy to cause disappearance of the evidence by throwing the body of the deceased in the canal in pursuance of the said conspiracy. Additionally, a charge under Section 25 of [Arms Act, 1959](#) was framed against accused Roshan Singh for being in unlawful possession of a firearm. A charge under Section 27 of [Arms Act, 1959](#) was also framed against accused Pushpender and Nirvikar for illegally using a firearm.

## ANALYSIS OF THE EVIDENCE LED BEFORE THE TRIAL

### COURT

50. At the trial, the prosecution examined as many as 66 witnesses. We need not note the testimony of the various police officers who took part in the investigation for they have deposed facts regarding the respective role played by them during investigation which have already been succinctly stated by us in the preceding paragraphs and in respect whereof not much submission were made during

arguments in the appeals. However, whenever necessary, to deal with the submissions made by learned Counsel for the appellants, such part of the testimony of the relevant witness would be noted. We would also be splitting, while noting, the testimonies of the witnesses, whenever required pertaining to the evidence throwing light on different facets/stages of the case of the prosecution.

51. With a view to have clarity in the analysis of the evidence led by the prosecution, we segregate the relevant witnesses into 10 categories, clubbing in one category witnesses who have thrown light on the same issue.

A Witnesses who participated in the preparation of the necessary documents prepared by the police till the FIR was registered:- HC Ashok Kumar PW-6, SI Shiv Raj Singh PW-55, Const. Jitender PW-25, HC Savitri PW-27 and HC Sher Singh PW- 35.

52. HC Ashok Kumar PW-6, deposed that he recorded DD No. 31 Ex.PW-6/A at about 01.00 A. on 25.08.2002 on the basis of the report lodged by Rajinder Pal Gupta PW-9, regarding the deceased being missing. It may be noted here that the testimony of the said witness was not controverted by the defence. SI Shiv Raj Singh PW-55, deposed that the endorsement Ex.PW-55/C was recorded by him at 12.05 PM on 25.08.2002. No suggestion was given to the said witness in his cross-examination regarding the recording of the said endorsement. Jitender PW-25, deposed having handed over the endorsement Ex.PW-55/C to the duty officer at Police Station Keshav Puram. HC Savitri PW-27, deposed having registered FIR Ex.PW-27/A at 12.20 PM on 25.08.2002. HC Sher Singh PW-35, deposed having delivered copies of the FIR to the Ilaqa Magistrate and senior police officers.

B Witnesses to prove last seen, suspicious conduct of Sharda Jain and factum of hatching of conspiracy by the accused persons:- Sumitra Gupta PW-18, Prabhu Yadav PW-17, Manish PW-14, Om Prakash Chauhan PW-11 and Rajinder Pal Gupta PW-9.

53. Sumitra Gupta PW-18, the wife of the deceased, deposed that on 24.08.2002, at about 10.15 AM the deceased left his residence in his Indica car bearing

registration No. DL 6SA 0025, which was driven by his driver Prabhu Yadav. Before leaving the house, the deceased told her that he would first go to the house of Sharda Jain and thereafter would proceed to a rally along with Sharda Jain. She deposed that while leaving the house, the deceased was wearing a watch in his right hand and a gold ring on which letters 'AR' were engraved and was also carrying a mobile phone, some cards and papers. After sometime Prabhu Yadav returned home and told her that he had dropped the deceased at the residence of Sharda Jain and that the deceased had told him to return to his house as he would be going to the rally in the car of Sharda Jain. When the deceased did not return till evening, she tried to contact him on his mobile phone having number 9810166101 9810166101 , but the same was switched off. Thereafter, she contacted her children and the younger brothers of the deceased and apprised them that the deceased was missing. She made a telephonic call to Sharda Jain to enquire about the whereabouts of the deceased, in response whereto, Sharda Jain told her that the deceased did not accompany her to the rally in question. After sometime, her son Amit Gupta called Sharda Jain, who then informed that the deceased did accompany her to the rally, but stated that the deceased got down from her car near ISBT when they were returning from the rally.

54. On being cross-examined about the relations between the deceased and herself, Sumitra Gupta stated (Quote): 'My husband was honest and loyal to people and was faithful to me'. On being questioned about the belongings of the deceased, the witness stated (Quote): 'After lodging the missing report of my husband with the police, the police had not taken any belongings of Atma Ram from my house. It is wrong to suggest that police official Meena had come to my house and had taken away the ring of my husband.... It is wrong to suggest that the ring Ex.PW-18/1 was with me till 17.12.02. It is wrong to suggest that on 18.12.02, I had given the ring, Ex.PW-18/1 to Insp. Meena'. It may be noted here that no specific suggestion was given to Sumitra Gupta that the Investigating Officer collected the wrist watch, the ring or the I-cards of the deceased from her.

55. Prabhu Yadav PW-17, the driver of the deceased, deposed that he had dropped the deceased at the residence of Sharda Jain in the morning of 24.08.2002. On reaching the residence of Sharda Jain, the deceased told him to

take back the car to his house and meet him in the evening. He had seen the deceased, Sharda Jain and another person whom he cannot identify, sitting in the car of Sharda Jain, being driven by Om Prakash Chauhan, the driver of Sharda Jain. On returning the residence of the deceased, he handed over the keys of the car of the deceased to the wife of the deceased and told her that accompanied by Sharda Jain the deceased had gone to attend the rally in the car of Sharda Jain. Thereafter he left for his house. On the same day, at about 05.00 PM he again returned to the residence of the deceased but the deceased was not present there. He remained at the residence of the deceased till about 7.00 PM - 8.00 PM but the deceased did not return.

56. On being cross-examined about the instructions given to him by the deceased on 24.08.2002 at the time when he dropped the deceased at the residence of Sharda Jain, Prabhu Yadav stated (Quote): 'When Atma Ram Gupta left for rally in the car of Sharda Jain he had told me to come to his house at 05.00 PM and he had not told me that I should come to Kamal Clinic of Dr.Mahender Pal Gupta'. It may be noted here that save and except asking aforesaid question, the testimony of the said witness was not controverted by the defence.

57. Om Parkash Chauhan PW-11, the driver of Sharda Jain, was the star witness of the prosecution inasmuch as he was examined to prove that the deceased was last seen in the company of accused Sharda Jain and Rajinder Singh; to prove the exchange of money between accused Roshan Singh and Sharda Jain under suspicious circumstances; the visits of accused Raj Kumar, Roshan Singh and Rajinder Singh at the residence of accused Sharda Jain and the suspicious conduct of Sharda Jain on 24.08.2002.

58. Om Parkash Chauhan deposed that he and accused Rajinder Singh were present in the house of Sharda Jain in the morning of 24.08.2002. The deceased came to the house of Sharda Jain in his Indica car, being driven by his driver Prabhu Yadav. Thereafter, the deceased sent back his car with his driver and occupied a seat in the car of Sharda Jain along with Sharda Jain and Rajinder. Thereafter, he drove the said car to Firozshah Kotla ground where a rally was organized by the Congress Party. On reaching there, the deceased and Sharda

Jain went to attend the rally, while he and Rajinder remained seated in the car. Within ten-fifteen minutes of going to the rally, the deceased and Sharda Jain came back to the car and Sharda Jain instructed him to go towards Ghaziabad. When the car reached near the red light at Hanuman Mandir, Ring Road, Sharda Jain asked him to stop the car and leave for his house as he was not feeling well, upon which he enquired from Sharda Jain as to who would drive the car in his absence, to which, she replied that Rajinder would drive the car. Thereafter, he got down and saw accused Rajinder drive the car. That in the intervening night of 24/25.08.2002 a fat man came to his house and told him that Sharda Jain is calling him, whereupon he went downstairs but did not find Sharda Jain present there. The said fat man insisted that he should immediately go and meet Sharda Jain at her residence to which he replied that he would meet her in the morning. Sometime thereafter, he received a telephonic call from the driver of the deceased i.e. Prabhu Yadav who made enquiries about the whereabouts of the deceased and he apprised him of the above facts. He went to the residence of the deceased and apprised the family members of the deceased with the above facts.

59. On being cross-examined by the learned APP since Om Prakash deviated from his statement recorded under Section 161 Cr.P.C., Om Parkash stated that eight-ten days prior to 24.08.2002, Accused Raj Kumar along with two other persons whom he cannot identify, had come to the residence of Sharda Jain. He denied having listened to any talks between Sharda Jain, Raj Kumar and said two persons regarding payment in sum of Rs. 1 lakh or that he had given any such statement to the police. He stated that on 22.08.2002 Raj Kumar along with said two persons again came to the residence of Sharda Jain. On being confronted with his statement Ex.PW-11/DA wherein it was recorded that accused Sharda Jain had come to his residence and threatened him in the intervening night of 24/25.08.2002, he stated (Quote): 'It is incorrect to suggest that in the night at about 12:00 of 24.8.2002 Sharda Jain had also come to my house or that she told me that I should not tell to anybody that Atma Ram Gupta was also with her on that day otherwise consequences would not be good nor I so stated to the police. Confronted with portion C to C of mark PW-11/A where it is so recorded'.

60. On being cross-examined by the defence about the visit of accused Raj Kumar to the residence of accused Sharda Jain on 22.08.2002, he stated that he had not seen any person at the residence of accused Sharda Jain on 22.08.2002 as he was on leave on said day and therefore did not go to the residence of accused Sharda Jain. On being confronted with the omission to mention the fact in the statement Ex.PW- 11/DA that accused Sharda Jain had told him on 24.08.2002 that they had to go towards Ghaziabad, the witness stated (Quote): 'Madam Sharda Jain told me that they had to go towards Ghazibad. Confronted with statement Ex.PW-11/DA where it is not so recorded. It is incorrect to suggest that I did not state to the police because Madam Sharda Jain had not told me that they had to go towards Ghaziabad.' The same was the reply of the witness when confronted with the omission in the statement Ex.PW-11/DA to mention the fact that the driver of the deceased made a telephonic call and that he visited the residence of the deceased on 24.08.2002. It may be noted here that Om Prakash stated that the police had kept him in police station for two days after his visit to the police station on the intervening night of 24/25.08.2002. It is further noted that neither any question was put, nor any suggestion was given to the witness in his cross-examination, regarding the factum of visit of the fatty man to his residence on 24.08.2002.

61. Shanti PW-10, the mother of the driver of Sharda Jain i.e. the mother of Om Prakash PW-11, deposed that her son was employed as a driver with Sharda Jain and that she does not know Sharda Jain. One night Sharda Jain had come to her residence and sent a boy inside her residence to call her son, whereupon she asked her son to go and meet Sharda Jain. No talks took place between Sharda Jain and her son in her presence.

62. On being cross-examined by the learned APP as she was testifying at variance with her statement recorded by the police pertaining to the afore-noted testimony, she stated (Quote): 'It is incorrect to suggest that I know Sharda Jain. I cannot say if it was 24.08.2002 but however, it was about 12 in the night when one boy came to me and asked that Om Parkash had been called by Sharda Jain'. It is relevant to note that the testimony of the witness was not controverted by the defence.

63. Manish PW-14, the son of Mahender Pal Gupta PW-8 a friend of the deceased, deposed that on 24.08.2002 he attended a rally at Firozshah Kotla ground. He had last seen the deceased in the rally at about 12 noon. On the way after returning from the rally, his car was moving behind a car in which the deceased along with Sharda Jain and accused Rajinder Singh were traveling and that the said car was being driven by the driver of Sharda Jain. He saw that the said car stopped near the red light at Nigam Bodh Ghat, whereupon the driver of the car got down and started walking towards ISBT. He made enquiries from the deceased, who told him that driver of Sharda Jain has left as he was not feeling well and that accused Rajinder would drive the car in the absence of the driver of Sharda Jain. Thereafter, accused Rajinder sat on the driver's seat and drove the car towards ISBT. That he first identified accused Rajinder on 2.10.2002 at PS Keshav Puram when he had gone there to lodge a report about his mobile phone being missing.

64. On being cross-examined about his mobile phone being missing, Manish stated (Quote): 'I had lost my mobile phone and therefore, I had gone to the PS Keshav Puram on 2.10.2002 to make report about it. I did not so tell to the police in my statement under Section 161 Cr.P.C. The report about the missing of the mobile phone was not recorded by the police, rather I was given suggestion first I should search it out in my house. The report about the mobile has not been recorded in the PS till date because I found my mobile in my car as it was found on the next day.... I do not remember the number of my mobile which had misplaced when I had gone to the PS to make the report on 25.8.2002. It is wrong to suggest that I do not recollect the number of my mobile phone because I had not gone to the PS on 2.10.2002.

65. Rajinder Pal Gupta PW-9, the younger brother of the deceased, deposed that in the morning of 24.08.2002 the deceased left his house in his Indica car being driven by his driver Prabhu Yadav to go to the house of Sharda Jain. The deceased was wearing a wrist watch with a gold chain, one gold ring and off-white coloured Safari suit and was also carrying a mobile phone having number 9810166101 9810166101 at the time when he left the house. On reaching the house of Sharda Jain, the deceased asked his driver to leave from there and

directed him to meet him at Kamal Clinic in the evening, but the deceased did not come to the said clinic. Sumitra Gupta, the wife of the deceased, informed him that she had made a telephonic call to Sharda Jain, who told her that she is not aware about the whereabouts of the deceased. Prabhu Yadav, the driver of the deceased, also confirmed to him that he had dropped the deceased at the house of Sharda Jain in the morning. On making enquiries from Om Prakash Chauhan, the driver of Sharda Jain, Om Prakash Chauhan informed him that he had taken the deceased, Sharda Jain and another person to the rally in the car of Sharda Jain; the deceased and Sharda Jain returned to the said car after attending the rally and that he left the car near red light at Hanuman Mandir on his way, after returning from the rally, whereupon the third person sitting in the car started driving the same. Thereafter Sumitra Gupta again contacted Sharda Jain, who then informed her that the deceased went with her in her car to the rally but got down from her car near ISBT when they were returning from the rally as he had met some known person there. Amit Gupta, the son of the deceased, also made a telephonic call to Sharda Jain in his presence wherein Sharda Jain told him that the third person sitting in the car was her brother-in-law Sunil Jain, which fact was found to be false by the police.

66. On being cross-examined about his presence at the residence of the deceased on 24.08.2002 at the time when the deceased left the residence of Sharda Jain, Rajinder Pal Gupta stated (Quote): 'On 24.8.2002 Atma Ram Gupta had left the house to attend the Congress Rally in my presence. Volt : I have my office in Tri Nagar where I go daily. I usually used to go to the house of my brother Atma Ram Gupta. If the police had asked me if Atma Ram Gupta left his house in my presence on 24.8.2002 then I must have so stated. At this stage the defence counsel has asked the witness to go through his Ex.PW9/C and then answer if Atma Ram Gupta had left the house in his presence. The witness has stated that it is not so written in Ex.PW9/C.'

C Witnesses to prove the deposit of the wrist watch and the gold ring of the deceased recovered at the instance of accused Raj Kumar and Roshan Singh in the Malkhana:- Inspector V.S. Meena PW-62 and HC Dinesh Kumar PW-43.

67. Inspector V.S. Meena PW-62, deposed that the wrist watch and the gold ring of the deceased recovered at the instance of accused Raj Kumar and Roshan Singh respectively were deposited by him in the Malkhana on 28.08.2002 and 22.11.2002 respectively. HC Dinesh Kumar PW-43, also deposed that the said wrist watch and the gold ring were deposited in the Malkhana on 28.08.2002 and 22.11.2002 and that he had made entries in the Malkhana Register in the said regard. It may be noted here that no suggestion to the contrary was given to the said witnesses.

D Witnesses to prove the identification of the body of the deceased: - Mahender Pal Gupta PW-8, Rajinder Pal Gupta PW-9, Ved Prakash Gupta PW-15, Rajpal Gupta PW-16, Amrit Lal Singhal PW-37 and Zaheer Ahmad PW-36.

68. Mahender Pal Gupta PW-8, a friend of the deceased, deposed that on 31.08.2002 along with the relatives of the deceased he had gone to a canal near village Gulawati where he saw the body of the deceased lying on the bank of said canal. The body of the deceased was swollen and was clothed in an off-white colored safari suit. A label of 'Lovely Tailors' was stitched on the shirt of the safari suit. The deceased had 4 artificial teeth and that the same were not found in the jaw when the body was recovered.

69. On being confronted with the photographs Ex.DX and Ex.DX-1, Mahinder Pal Gupta stated (Quote): 'The photographs of the dead body were taken on 31.08.2002. When I saw the body, then the wrist watch was found wearing on the left hand of Atma Ram Gupta and it also reflects in the photographs Ex.DX and DX-1.' (It may be noted here that the said statement of the witness strikes a discordant note with the case of the prosecution for the reason the claim of the prosecution is that the wrist watch of the deceased was removed by accused Raj Kumar after the death of the deceased and that the same was recovered at the instance of accused Raj Kumar).

70. Rajinder Pal Gupta PW-9, Ved Prakash Gupta PW-15, Rajpal Gupta PW-16, the younger brothers of the deceased and Amrit Lal Singhal PW-37, a friend of the deceased, deposed that they had gone to a canal near village Gulawati where they found the body of the deceased lying on the bank of said canal. Additionally,

Rajinder Pal Gupta deposed that an off-white colored safari suit was found on the body and that the artificial teeth were found in the jaw. A label of 'Lovely Tailors' was found stitched on the shirt of the said safari suit. (It may be noted here that no question regarding the presence of a wrist watch on the body of the deceased was put to the said witnesses in their cross-examinations).

71. Zaheer Ahmad PW-36, deposed that he runs a tailoring shop in the name and style of 'Lovely Tailors' at Tri Nagar, Delhi. The deceased used to get his clothes stitched by him and that he stitches his label 'Lovely' on the clothes stitched by him.

E Witnesses to prove the post-mortem report of the deceased:- Dr. S.K. Aggarwal PW-21.

72. Dr. S.K. Aggarwal PW-21, deposed that he conducted the post-mortem of the deceased on 31.08.2002 and that the post-mortem report Ex.PW-21/A as also the report Ex.P-W21/B regarding the opinion on the weapon of offence were prepared by him.

F Witnesses to prove the reports submitted by the Forensic Science Laboratory:- A.K.Srivastava PW-41, Sri Narain PW-42, K.C. Varsheny PW-50, Dr.Rajinder Kumar PW-59 and Dr. Swaroop Vedanand PW-66.

73. A.K. Srivastava PW-41, deposed that the FSL reports Ex.PW-41/A and Ex.PW-41/B were prepared by him. Sri Narain PW-42, deposed that the FSL report dated 29.01.2003 was prepared by him. It is noted here that the two witnesses were not subjected to any cross-examination on behalf of the accused persons.

74. K.C. Varshney PW-50, deposed that the FSL report Ex.PW-50/A was prepared by him. It may be noted here that the witness denied the suggestions that the two pistols examined by him were not in a working condition and that he did not examine them.

75. Dr. Swaroop Vedanand PW-66, deposed that FSL report Ex.PW-66/A was prepared by him. He further deposed that he holds a degree in the Masters of

Science in Physics, M.Phil and Ph.D. and that he has been working as Scientific Assistant and Scientific Officer in FSL since 1993. It may be relevant to note that as per the report Ex.PW-66/A the physical characteristics of the soil scrapped from the right rear tyre of the Indica car of accused Sharda Jain were the same as that of the soil lifted from the spot pointed out by accused Sharda Jain and her brother Raj Kumar as the place where the deceased was murdered.

76. On being questioned about his credentials during cross-examination, Dr. Swaroop Vedaanand stated: It is correct that I have not studied any course in Geology. I have not studied any degree or diploma in structural geology or physical geology. However, structural physics forms part of a degree course in physics. On being questioned about the methodology adopted by him for carrying out the examination of the soil, he stated: 'It is correct that I did not carry out any Chemical examination of the soil supplied to me in the present matter so as to ascertain its various components or as to its salinity. It is correct that I had not mentioned the volume of different components of the soil sample examined by me. The elevation of the place from where the alleged samples were lifted from the sea level were not supplied to the laboratory.... Witness further states that on account of difference in quantity of samples etc it is difficult to give an opinion of identical physical character-sticks or for that matter some physical character-sticks.'

G Witnesses to prove the ownership of the articles recovered at the instance of the accused persons:- Subash Chander PW-2, Yadukuleshwar Dass PW-5, Rajinder Pal Gupta PW-9, Sumitra Gupta PW-18, P.K. Jain PW-40 and Baldev Kumar PW-52.

77. Subash Chander PW-2, President of All India Crime Prevention Organization, deposed that the deceased enrolled himself as a member of All India Crime Prevention Organization on 08.03.1995 and that the I-card Ex.PW-2/A recovered at the instance of accused Pushpender was issued to the deceased on the same day. He further deposed that the membership of the deceased expired on 31.12.1995. Yadukuleshwar Dass PW-5, Vice-President of International Society for Krishna Consciousness (ISCKON), deposed that the deceased was a member of ISCKON and that the I-card Ex.PW-5/A recovered at the instance of accused

Nirvikar was issued to the deceased. It may be noted here that the testimony of the said two witnesses was not controverted by the defence.

78. Rajinder Pal Gupta PW-9 and Sumitra Gupta PW-18, the younger brother and the wife respectively of the deceased, deposed that they had identified the wrist watch Ex.P-4 and the ring Ex.PW-18/1 of the deceased in a Test Identification proceedings. On being questioned about the wrist watch in question, Rajinder Pal Gupta stated (Quote): 'Atma Ram Gupta had gone to Singapur perhaps in the year 1996 and from where he had brought the wrist watch Ex. P-4 but I was not present when he purchased the watch.... It is correct that there is no special mark of identification on the wrist watch of Atma Ram Gupta.... Atma Ram Gupta had other wrist watches also but however after he had brought the wrist watch Ex.P-4 from Singapur, he used to wear only this watch.'

79. P.K. Jain PW-40, Metropolitan Magistrate Delhi deposed that he conducted the TIP of the wrist watch and the gold ring recovered at the instance of accused Raj Kumar and Roshan Singh and that the said wrist watch and ring were identified as belonging to the deceased by Rajinder Pal Gupta and Sumitra Gupta respectively. He also deposed having prepared the record in respect of the said TIP proceedings i.e. Ex.PW-40/C and Ex.PW-40/G.

80. Baldev Kumar PW-52, deposed that he runs a jewellery shop under the name and style of Gogna Jewelers at Narang Colony, Tri Nagar. That on 23.10.2001 the deceased purchased a gold ring from him on which the letters AR were engraved and that he issued a bill Ex.PW-52/A to the deceased in said regard. The ring Ex.PW-18/1 recovered at the instance of accused Roshan Singh is the same ring which was purchased by the deceased from him.

H Witnesses to prove the record relating to the mobile phone of accused Sharda Jain :- Gulshan Arora PW-34, Anu Anand PW-65 and Inspector V.S. Meena PW-62.

81. Gulshan Arora PW-34, an employee of cellular company HUTCH, produced the record pertaining to mobile number 9811508688 9811508688 . On basis of the said record, he deposed that the said number is registered in the name of Sharda

Jain. He further deposed that the call record Ex.PW-34/A pertaining to the said number is for the period 24.8.2002 to 27.8.2002.

82. Anu Anand PW-65, an employee of the cellular company HUTCH, produced the Cell ID Chart Ex.PW-65/A, which record indicates the locations of the various towers installed by cellular company HUTCH in Delhi and NCR and proved the same.

83. A cumulative reading of the documents Ex.PW-34/A and Ex.PW-65/A shows that on 24.08.2002 incoming calls were received on the number 9811508688 9811508688 at Shalimar Bagh at 9.09 A.M., Sarai Rohilla at 11.42 A.M., Turkman Gate at 12.05 P.M. and Raj Nagar (Ghaziabad) at 4.18 P.M., Mohan Nagar (Ghaziabad) at 4.32 P.M., Dilshad Garden at 4.52 P.M. and Mori Gate at 5.11 P.M.; outgoing calls were made from the number 9811508688 9811508688 at Raj Nagar (Ghaziabad) at 4.21 P.M., Zaina Tower, Raj Nagar (Ghaziabad) at 4.27 P.M., Navyug Market (Ghaziabad) at 4.30 P.M. and Ashok Vihar at 5.31 P.M.

84. Inspector V.S. Meena PW-62, deposed that he obtained the call record Ex.PW-62/A of the mobile number 9811508688 9811508688 pertaining to the period 01.06.2002 to 26.08.2002 during the course of the investigation of the present case. He further deposed that on the basis of the said record he prepared a chart, Ex.PW-62/A1 which shows the movement of the mobile phone No. 9811508688 9811508688 on 24.8.2002.

85. At this juncture, it may be noted that the call details pertaining to the mobile No. 9811508688 9811508688 for the date 24.08.2002 contained in the call records Ex.PW-34/A and Ex.PW-62/A are exactly the same.

I Witnesses to prove the motive of Sharda Jain to murder the deceased:- Mahender Pal Gupta PW-8, Captain Dr.Satish Chand Rajput PW-3, Const.Satbir Singh PW-7, ASI Baljeet Singh PW-19, Dr.Sunil Markan PW-24, HC Bhagirath PW-28 and Tariq Nasir PW-58.

86. Mahender Pal Gupta PW-8, a friend of the deceased, deposed that he runs a medical clinic at Keshav Puram, Delhi and that Sharda Jain used to visit his clinic

along with the deceased. The deceased provided help to Sharda Jain when she contested elections for the post of Municipal Councilor and that Sharda Jain was having her office at a premises situated at Keshav Puram, which premises were provided by him to Sharda Jain at the request of the deceased. After Sharda Jain was elected as councilor, she once came to his clinic and expressed her displeasure over the fact that despite the fact that she is the Chairman of the Education Committee, the deceased made Memwati Barwala, who was also a municipal councilor, a chief guest at a function organized at a school, instead of her. She further told him that she liked the deceased and because of said liking, she has left her husband. Sharda Jain also told him that the deceased was developing intimate relations with Memwati Barwala and that he should advise the deceased to discontinue his relations with Memwati Berwala. Sharda Jain told him that on one occasion she tried to commit suicide by consuming sulfas tablets on account of her liking for the deceased. She told him that she consumed sulfas tablets because the deceased started liking Memati Berwala. Sharda Jain asked him to advise the deceased to mend his ways, else the consequences would not be good. After her talks with Sharda Jain, he talked to the deceased about his talks with Sharda Jain, but the deceased did not pay any heed to his advice.

87. On being cross-examined about his talks with Sharda Jain, Mahender Pal Gupta stated (Quote): 'It is also correct that because of my such relations with Atma Ram Gupta, accused Sharda Jain made complaint to me against Atma Ram Gupta. It is correct that accused Sharda Jain had told me that Atma Ram Gupta had developed physical relations with Mem Wati Berwala and such relations was also with her and that she did not like such relations of Atma Ram with Mem Wati Berwala .... I do not recollect if Sharda Jain told me that when Atma Ram Gupta, did not act on her advice to have no physical relations with Mem Wati Berwala and therefore, she had consumed Shalfas tablet. The attention of the witness has been drawn towards the portion A to A of his statement under Section 161 Cr.P.C. dt. 28.08.2002 mark PW8/C where it is so recorded. But the witness states that he does not recollect. Sharda Jain told me that Atma Ram Gupta was bent upon to spoil her political career and was taking steps to develop political career of Memwati Berwala, and that for that she could go to any extent .... The elections to Municipal Corporation of Delhi were held in Feb. 2002. No election office was

opened in premises A-1 Keshav Puram before the said elections of Feb. 2002. I stated to the police that Sharda Jain told me that because of her said relations with Atma Ram Gupta, she left her husband. (confronted with statement mark PW8/C, now exhibited as Ex.PW8/DA where it is not recorded) I do not recollect the date but it was month of July 2002 when Sharda Jain told me the facts that I have deposed today I did not tell police that those facts were told to me by Sharda Jain in the month of July 2002.

88. Dr.Satish Chand Rajput PW-3, deposed that he runs a dental clinic at Vivek Vihar, Delhi. He deposed that the deceased visited his clinic on four dates, namely, 13/20/21/23 August 2002. On 30.07.2002 the deceased visited his clinic after the visiting hours. The deceased was accompanied by Sharda Jain in some of the visits. On 20.08.2002 he put an artificial denture from upper first canine to upper right canine in the jaw of the deceased. During one of the aforesaid visits, Sharda Jain told him that she would make payment for the treatment rendered by him to the deceased. That the photostat copies of the record of the visit and treatment given to Shri Atma Ram Gupta on 30.7.2002, 13.8.2002, 20.8.2002, 21.8.2002 and 23.8.2002 are Ex.PW-3/A to Ex.PW-3/E. (It be noted here that the entries pertaining to the visits of the deceased are in lead pencil in the original register which had been perused by us during arguments in the appeal. All other entries pertaining to the patients of PW-3 are in ink. It may further be noted that the pair of moulded POP denture set with name of Dr. S.C. Rajput engraved thereon recovered from the car of Sharda Jain on 27.8.2002, seizure whereof has been recorded in the memo Ex.PW-44/C has not been put to the witness for purposes of identification.)

89. On being cross-examined about the entries pertaining to the visits of the deceased at his clinic, Dr. Satish Chand Rajput stated (Quote): 'The entries Ex.PW-3/A to E are not in my hand, rather the same are in the hand-writing of my assistant. The entry register starts from 1.4.2002 to 29.7.2002 are in pen ink. The entries of 30.7.2002 is written in pencil. In the register, on 13.8.02, the only entry is in regard to the visit of Atma Ram Gupta and Sharda Jain and the entry is in pencil. It is correct that on 20.8.02 there are five entries in my register and out of them all are in pen except the entry of Atma Ram Gupta, which is in pencil.

Similarly, there are four entries on 21.8.02 and the first three are written in pen but the last entry of Atma Ram Gupta is written in pencil. Similarly on 23.8.02, there are three entries in my register and out of them first two are written in pen and the third of Atma Ram is written in pencil. It is wrong to suggest that the writer of the entries in pen and pencil are different.

90. On being questioned about the factum of overwriting in the entries pertaining to the visits of the deceased, Dr.Satish Chand Rajput stated (Quote): 'It is correct that there is overwriting of the figure '4' of the date 23.8.02 in the register. The figure '4' has been written over the figure '3'.

91. It is also worthwhile to note that suggestions were given to the witness that the deceased visited his clinic on 24/25/26 August 2002, which suggestions have been denied by the witness.

92. Const.Satbir Singh PW-7, deposed that on 25.10.2002 (should read 25.10.2000) he received an information from two different sources that Sharda Jain has consumed some tablets and that she has been admitted in the hospital, based whereon, he recorded DD Entries Ex.PW-7/A and Ex.PW-7/B. (It may be noted here that a perusal of the aforesaid entries shows that the same have been recorded on the intervening night of 24/25.10.2000 therefore it is clear that either the witness has inadvertently deposed regarding the date in question or that there has been a typographical error at the time of the recording of the evidence).

93. ASI Baljeet Singh PW-19, deposed that he conducted investigation pertaining to the incident dated 25.10.2000 of consumption of sulfas tablets by Sharda Jain and that he prepared two DD entries Ex.PW-19/A and Ex.PW-19/B in said regard. It may be noted here that DD entry Ex.PW-19/B records that Sharda Jain gave a statement to the police to the effect that she inadvertently consumed sulfas tablets for the reason she was suffering from an illness as also was tense on account of the fact that her husband left for Madras but did not return home in spite of considerable time lapsing.

94. Dr.Sunil Marken PW-24, deposed that on 25.10.2000, Sharda Jain was admitted at Maharaja Agarsen Hospital as she had consumed sulfas tablets and

that he prepared the MLC Ex.PW-24/A pertaining to Sharda Jain in said regard.

95. HC Bhagirath PW-28, deposed that on 27.03.2001 Sharda Jain visited police post Shanti Nagar and lodged a report that her husband was missing, based whereon, he recorded DD Entry Ex.PW-28/A. It may be noted here that DD entry Ex.PW-28/A records that Sharda Jain informed the police that 6-7 months ago, her husband Ishwar Jain left for Madras and that he did not return home even up till 27.03.2001. That she has no knowledge about the whereabouts of her husband.

96. Tariq Nasir PW-58, Senior Correspondent, Rashtriya Sahara, deposed that the news item with the photograph Ex.PW-58/A was published in the Delhi edition of Rashtriya Sahara on 22.8.2002. We may note that the news item pertains to a function of a park being inaugurated and Memwati Berwala present at the function and her announcing that she would ensure that Rohini becomes garbage and corruption free area. The photograph shows Atma Ram Gupta i.e. the deceased standing next to Memwati Berwala.

J Residual Witnesses:- P.S.Chauhan PW-1, Mahender Pal Gupta PW-8, Ram Kumar PW-22, Ravinder Singh PW-23, Jai Chand PW-26, Subash PW-38, SI Kalicharan PW-53 and Dr. Prabhat Chaurasia PW-64.

97. Subash PW-38, deposed the facts recorded in his statement Ex.PW-38/A under Section 164 Cr.P.C., contents whereof have already been noted by us in para 41 above.

98. On being cross-examined about the factum of his inimical relations with accused Roshan Singh, Subhash admitted (Quote): 'It is correct that my father Kishan Singh once contested against accused Roshan Singh for the post of village pardhan and in which my father lost.... It is correct that after Roshan Singh had won the election one complaint was lodged against him regarding misappropriation of village funds Voltd. I was one of the signatory to the said complaint alongwith other villagers.' On being cross-examined about his knowledge of the identity of the dead body of the deceased he stated (Quote): 'I do not remember whether I stated in my statement to the IO that after about three days I came to know from news papers that the said dead body belonged to Atma

Ram (confronted with statement EXPW 38/DA where the fact that 'after three days from the news papers I came to know' is not mentioned).....Police as per my knowledge came to our village either on the third or fourth day of the incident. On that day the police did not meet me. It is correct that my statement was recorded by IO after about 3 months. During the said period of 3 months I myself did not go to any police official to inform about the above incident.

99. Mahender Pal Gupta PW-8, a friend of the deceased, deposed that on 28.08.2002, while he was sitting at his clinic, he saw a news item on TV, regarding the deceased being missing. He further learnt from the news item that the police, along with accused Sharda Jain, Raj Kumar and Raju had gone to village Chajjupur in connection with the present case. On reaching the rajwaha situated at village Chajjupur, he saw that accused Sharda Jain, Raj Kumar, Raju and Roshan Singh were present there. He further deposed that the police was making inquiry from accused Roshan Singh and that he does not recollect whether other accused persons; namely, Sharda Jain, Raj Kumar and Raju took part in the investigation. He stated that he appended his signatures on certain papers prepared in connection with the inquiries made from accused Roshan Singh as also signed the pointing out memos Ex.PW-8/A and Ex.PW-8/B of accused Sharda Jain and Raj Kumar. He identified accused Raj Kumar, Rajinder and Roshan Singh as the persons who were present at village Chajjupur on 28.08.2002. He also deposed that accused Rajinder is Raju.

100. On being cross-examined about the presence of accused persons at village Chajjupur on 28.08.2002, Mahender Pal GUpta stated (Quote): 'It is correct that on 28.8.2002 from the Media report, I had come to know that the police had gone to village Chajjupur along with accused Sharda Jain and Raj Kumar @ Raju and that I had not come to know that third person had also accompanied the police ... I had stated before the police that on 28.8.2002 when I reached to village Chajjupur then accused Roshan Singh was also present there and the police was making inquiry from him (confronted with statement mark PW8/C where it is not so recorded) It is correct that no person by the name of Roshan Singh met me in village Chajupur when I had gone there on 28.8.02.It is correct that accused Sharda Jain and Raj Kumar @ Raju was speaking about Roshan Singh when I visited village Chajupur

.... I had seen accused Rajinder as I identified in the court today, in the police station at the time of my visit after 15/20 days of 31.8.2002'.

101. P.S. Chauhan PW-1, Head Clerk, Motor Licensing Office, Delhi, deposed that Indica car bearing registration No. DL 3S AB 0016 is registered in the name of Sharda Jain. The witness was not cross-examined by the defence and thus his testimony has gone unchallenged.

102. Ram Kumar PW-22, Ravinder Singh PW-23 and Jai Chand PW-26 deposed that they saw the body of the deceased lying in the canal in the morning of 31.08.2002. Additionally, Ravinder Singh PW-23 and Jai Chand PW-26 deposed having witnessed the investigation conducted by the police at the time of the recovery of the body of the deceased.

103. SI Kalicharan PW-53, deposed that Maruti car bearing registration No. DDU 1371 was deposited in the Malkhana of PS Kharkoda on 09.09.2002 and that the custody of the same was handed over to Inspector V.S. Meena on 21.11.2002. Dr. Prabhat Chaurasia PW-64, deposed that he sold Maruti car bearing registration No. DDU 1371 to Roshan Singh on 27.11.2001. It may be noted here that the said witnesses were not cross-examined by the defence and thus their testimonies have gone unchallenged.

104. Inspector V.S. Meena PW-62 deposed facts pertaining to the investigation conducted by him. He deposed that he prepared the various seizure memos and that he seized the exhibits recorded in the seizure memos and deposited the same in the malkhana. He deposed having sent various exhibits for forensic opinion and the reports received. Since, while noting the case of the prosecution with reference to the contemporaneous investigation allegedly conducted, where role of Inspector V.S. Meena has been extensively noted, we are not noting his testimony which is fairly lengthy, but clarify that would be noting such parts thereof as are relevant to be noted while dealing with the submissions made during arguments in the appeals.

105. In the backdrop of the aforesaid evidence led by the prosecution, the accused were examined under Section 313 Cr.P.C.

106. In her examination under Section 313 Cr.P.C., accused Sharda Jain stated that she is innocent and denied everything save and except admitted that she and Atma Ram Gupta in the company of accused Rajinder left her residence on 24.8.2002 to attend a Congress rally. She also admitted that after the rally Atma Ram Gupta left in her car but stated that he got down at ISBT. She also admitted that accused Raj Kumar is her brother. Everything else was denied by her. Her admissions afore-noted are contained in the answers to question No. 18, 20 and 27 which are as under:

Ques 18: It is in evidence against you that on 24.08.02 Atma Ram Gupta left his house to attend the Congress rally in his Indica Car No. DL6SK 0025 along with his driver Prabhu Yadav and from there he came to your house and after having talks with you Atma Ram asked his driver Prabhu Yadav (PW-17) to take back the car to his house and Atma Ram Gupta sat in your car alongwith you and which was driven by your driver Om Parkash Chauhan. One other person namely co-accused Rajinder also sat alongwith you people in the said car. What you have to say?

Ans: It is correct.

Ques 20: It is further in evidence against you that on 24.08.02 after attending the Congress Rally at Feroz Shah Kotla Ground for about 15/20 minutes you alongwith Atma Ram Gupta and your co-accused Rajinder Singh left in your Indica car being driven by your driver PW11 Om Prakash Chauhan for Ghaziabad and at near Jamuna Bazar, Hanuman Mandir, ISBT you asked PW11 to go back to his house and the car was thereafter being driven by Rajinder Singh? What you have to say?

Ans: It is incorrect that after the rally we were to go to Ghaziabad.

Ques 27: It is in evidence against you that when the family members of Atma Ram Gupta made enquiries from Om Parkash Chauhan, the driver of your Indica car and came to know that Atma Ram Gupta left the Rally alongwith you in your car for Ghaziabad, that they again made enquiries from you but you again claimed ignorance stating that Atma Ram Gupta had got down at ISBT for his some

personal work. What you have to say?

Ans: It is incorrect but it is a fact that Atma Ram Gupta got down at ISBT.

(Emphasis Supplied)

107. In his examination under Section 313 Cr.P.C. accused Raj Kumar only admitted knowing accused Sharda Jain as his sister. He denied everything else.

108. In his examination under Section 313 Cr.P.C. accused Roshan Singh only admitted knowing Pushpender and Nirvikar. He denied knowing or ever meeting any other co-accused. He denied every piece of incriminating evidence put to him.

109. In their examinations under Section 313 Cr.P.C. accused Pushpender and Nirvikar denied everything.

110. In their examinations under Section 313 Cr.P.C. Sripal Singh Raghav, Rakesh Kumar and Satender Kumar pleaded innocence and denied everything. They stated that they have been falsely implicated in order to save Govind Singh Rawat, SO of PS Gulawati. But how, they failed to disclose.

111. The accused led no evidence in their defence.

ANALYSIS OF THE IMPUGNED

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